

111TH CONGRESS
1ST SESSION

H. R. 4173

To provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 2, 2009

Mr. FRANK of Massachusetts introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on Agriculture, Energy and Commerce, the Judiciary, Rules, the Budget, Oversight and Government Reform, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “The Wall Street Re-
5 form and Consumer Protection Act of 2009”.

1 **SEC. 2. TABLE OF CONTENTS.**

2 The table of contents for this Act is as follows:

- Sec. 1. Short title.
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- Sec. 1000A. Restrictions on the Federal Reserve System pending audit report.

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1 **TITLE I—FINANCIAL STABILITY**
2 **IMPROVEMENT ACT**

3 **SEC. 1000. SHORT TITLE; DEFINITIONS.**

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

6 (b) **DEFINITIONS.**—For purposes of this title, the fol-
7 lowing definitions shall apply:

8 (1) The term “Board” means the Board of
9 Governors of the Federal Reserve System.

10 (2) The term “Council” means the Financial
11 Services Oversight Council established under section
12 1001.

13 (3) The term “Federal financial regulatory
14 agency” means any agency that has a voting mem-
15 ber of the Council as set forth in section 1001(b)(1).

16 (4) The term “financial company” means a
17 company or other entity—

18 (A) that is—

19 (i) incorporated or organized under
20 the laws of the United States or any State,
21 territory, or possession of the United
22 States, the District of Columbia, Common-
23 wealth of Puerto Rico, Commonwealth of
24 Northern Mariana Islands, Guam, Amer-

1 ican Samoa, or the United States Virgin
2 Islands; or

3 (ii) a company incorporated in or or-
4 ganized in a country other than the United
5 States that has significant operations in
6 the United States through—

7 (I) a Federal or State branch or
8 agency of a foreign bank as such
9 terms are defined in the International
10 Banking Act of 1978 (12 U.S.C. 3101
11 et seq.); or

12 (II) a United States affiliate or
13 other United States operating entity
14 of a company that is incorporated or
15 organized in a country other than the
16 United States; and

17 (B) that is, in whole or in part, directly or
18 indirectly, engaged in financial activities.

19 (5) FINANCIAL HOLDING COMPANY SUBJECT TO
20 STRICTER STANDARDS.—The term “financial holding
21 company subject to stricter standards” means—

22 (A) a financial company that has been sub-
23 jected to stricter prudential standards under
24 subtitle B; or

1 (B) in the case of a financial company de-
2 scribed in subparagraph (A) that is required to
3 establish an intermediate holding company
4 under section 6 of the Bank Holding Company
5 Act, the section 6 holding company through
6 which the financial company is required to con-
7 duct its financial activities.

8 (6) The term “primary financial regulatory
9 agency” means the following:

10 (A) The Comptroller of the Currency, with
11 respect to any national bank, any Federal
12 branch or Federal agency of a foreign bank,
13 and, after the date on which the functions of
14 the Office of Thrift Supervision and the Direc-
15 tor of the Office of Thrift Supervision are
16 transferred under subtitle C, a Federal savings
17 association.

18 (B) The Board, with respect to—

19 (i) any State member bank;

20 (ii) any bank holding company and
21 any subsidiary of such company (as such
22 terms are defined in the Bank Holding
23 Company Act), other than a subsidiary
24 that is described in any other subpara-
25 graph of this paragraph to the extent that

1 the subsidiary is engaged in an activity de-
2 scribed in such subparagraph;

3 (iii) any financial holding company
4 subject to stricter standards and any sub-
5 sidiary (as such term is defined in the
6 Bank Holding Company Act) of such com-
7 pany, other than a subsidiary that is de-
8 scribed in any other subparagraph of this
9 paragraph to the extent that the subsidiary
10 is engaged in an activity described in such
11 subparagraph;

12 (iv) any organization organized and
13 operated under section 25 or 25A of the
14 Federal Reserve Act (12 U.S.C. 601 et
15 seq. or 611 et seq.); and

16 (v) any foreign bank or company that
17 is treated as a bank holding company
18 under subsection (a) of section 8 of the
19 International Banking Act of 1978 and
20 any subsidiary (other than a bank or other
21 subsidiary that is described in any other
22 subparagraph of this paragraph) of any
23 such foreign bank or company.

24 (C) The Federal Deposit Insurance Cor-
25 poration, with respect to a State nonmember

1 bank, any insured State branch of a foreign
2 bank (as such terms are defined in section 3 of
3 the Federal Deposit Insurance Act), and, after
4 the date on which the functions of the Office of
5 Thrift Supervision are transferred under sub-
6 title C, any State savings association.

7 (D) The National Credit Union Adminis-
8 tration, with respect to any insured credit union
9 under the Federal Credit Union Act (12 U.S.C.
10 1751 et seq.).

11 (E) The Securities and Exchange Commis-
12 sion, with respect to—

13 (i) any broker or dealer registered
14 with the Securities and Exchange Commis-
15 sion under the Securities Exchange Act of
16 1934 (15 U.S.C. 78a et seq.);

17 (ii) any investment company reg-
18 istered with the Securities and Exchange
19 Commission under the Investment Com-
20 pany Act of 1940 (15 U.S.C. 80a–1 et
21 seq.);

22 (iii) any investment adviser registered
23 with the Securities and Exchange Commis-
24 sion under the Investment Advisers Act of
25 1940 (15 U.S.C. 80b–1 et seq.) with re-

1 spect to the investment advisory activities
2 of such company and activities incidental
3 to such advisory activities;

4 (iv) any clearing agency (as defined in
5 section 3(a)(23) of the Securities Ex-
6 change Act of 1934;

7 (v) any exchange registered as a na-
8 tional securities exchange with the Securi-
9 ties and Exchange Commission under the
10 Securities Exchange Act of 1934 (15
11 U.S.C. 78a et seq.);

12 (vi) any credit rating agency reg-
13 istered with the Securities and Exchange
14 Commission under the Securities Exchange
15 Act of 1934 (15 U.S.C. 78a et seq.);

16 (vii) any securities information proc-
17 essor registered with the Securities and
18 Exchange Commission under the Securities
19 Exchange Act of 1934 (15 U.S.C. 78a et
20 seq.); and

21 (viii) any transfer agent registered
22 with the Securities and Exchange Commis-
23 sion under the Securities Exchange Act of
24 1934 (15 U.S.C. 78a et seq.).

1 (F) The Commodity Futures Trading
2 Commission, with respect to—

3 (i) any futures commission merchant,
4 any commodity trading adviser, and any
5 commodity pool operator registered with
6 the Commodity Futures Trading Commis-
7 sion under the Commodity Exchange Act
8 (7 U.S.C. 1 et seq.) with respect to the
9 commodities activities of such entity and
10 activities incidental to such commodities
11 activities; and

12 (ii) any derivatives clearing organiza-
13 tion (as defined in the Commodity Ex-
14 change Act).

15 (G) The Federal Housing Finance Agency
16 with respect to the Federal National Mortgage
17 Association, the Federal Home Loan Mortgage
18 Corporation, and the Federal home loan banks.

19 (H) 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 incidental to such insurance ac-
23 tivities of an insurance company that is subject
24 to supervision by the State insurance authority
25 under State insurance law.

1 (I) The Office of Thrift Supervision, with
2 respect to any Federal savings association,
3 State savings association, or savings and loan
4 holding company, until the date on which the
5 functions of the Office of Thrift Supervision are
6 transferred under subtitle C.

7 (7) TERMS DEFINED IN OTHER LAWS.—

8 (A) AFFILIATE.—The term “affiliate” has
9 the meaning given such term in section 2(k) of
10 the Bank Holding Company Act of 1956.

11 (B) STATE MEMBER BANK, STATE NON-
12 MEMBER BANK.—The terms “State member
13 bank” and “State nonmember bank” have the
14 same meanings as in subsections (d)(2) and
15 (e)(2), respectively, of section 3 of the Federal
16 Deposit Insurance Act.

17 **SEC. 1000A. RESTRICTIONS ON THE FEDERAL RESERVE**
18 **SYSTEM PENDING AUDIT REPORT.**

19 (a) IN GENERAL.—Notwithstanding any other provi-
20 sion of law, the Comptroller General of the United States
21 shall perform an audit of all actions taken by the Board
22 of Governors of the Federal Reserve System and the Fed-
23 eral reserve banks during the current economic crisis pur-
24 suant to the authority granted under section 13(c) of the
25 Federal Reserve Act. Such audit shall be completed as ex-

1 peditiously as possible after the date of the enactment of
2 the Financial Stability Improvement Act of 2009.

3 (b) REPORT.—

4 (1) REQUIRED.—Not later than the end of the
5 90-day period beginning on the date the audit re-
6 ferred to in subsection (a) is completed, the Comp-
7 troller General of the United States shall submit a
8 report to the Congress, and make such report avail-
9 able to the public.

10 (2) CONTENTS.—The report under paragraph
11 (1) shall include a detailed description of the find-
12 ings and conclusion of the Comptroller General with
13 respect to the audit that is the subject of the report,
14 together with such recommendations for legislative
15 or administrative action as the Comptroller General
16 may determine to be appropriate.

17 **Subtitle A—The Financial Services** 18 **Oversight Council**

19 **SEC. 1001. FINANCIAL SERVICES OVERSIGHT COUNCIL ES-**
20 **TABLISHED.**

21 (a) ESTABLISHMENT.—Immediately upon enactment
22 of this title, there is established a Financial Services Over-
23 sight Council.

24 (b) MEMBERSHIP.—The Council shall consist of the
25 following:

1 (1) VOTING MEMBERS.—Voting members, who
2 shall each have one vote on the Council, as follows:

3 (A) The Secretary of the Treasury, who
4 shall serve as the Chairman of the Council.

5 (B) The Chairman of the Board of Gov-
6 ernors of the Federal Reserve System.

7 (C) The Comptroller of the Currency.

8 (D) The Director of the Office of Thrift
9 Supervision, until the functions of the Director
10 of the Office of Thrift Supervision are trans-
11 ferred to pursuant to subtitle C.

12 (E) The Chairman of the Securities and
13 Exchange Commission.

14 (F) The Chairman of the Commodity Fu-
15 tures Trading Commission.

16 (G) The Chairperson of the Federal De-
17 posit Insurance Corporation.

18 (H) The Director of the Federal Housing
19 Finance Agency.

20 (I) The Chairman of the National Credit
21 Union Administration.

22 (2) NONVOTING MEMBERS.—Nonvoting mem-
23 bers, who shall serve in an advisory capacity:

24 (A) A State insurance commissioner, to be
25 designated by a selection process determined by

1 the State insurance commissioners, provided
2 that the term for which a State insurance com-
3 missioner may serve shall last no more than the
4 2-year period beginning on the date that the
5 commissioner is selected.

6 (B) A State banking supervisor, to be des-
7 ignated by a selection process determined by
8 the State bank supervisors, provided that the
9 term for which a State banking supervisor may
10 serve shall last no more than the 2-year period
11 beginning on the date that the supervisor is se-
12 lected.

13 (c) DUTIES.—The Council shall have the following
14 duties:

15 (1) To advise the Congress on financial domes-
16 tic and international regulatory developments, in-
17 cluding insurance and accounting developments, and
18 make recommendations that will enhance the integ-
19 rity, efficiency, orderliness, competitiveness, and sta-
20 bility of the United States financial markets.

21 (2) To monitor the financial services market-
22 place to identify potential threats to the stability of
23 the United States financial system.

1 (3) To identify potential threats to the stability
2 of the United States financial system that do not
3 arise out of the financial services marketplace.

4 (4) To develop plans (and conduct exercises in
5 furtherance of those plans) to prepare for potential
6 threats identified under paragraphs (2) and (3).

7 (5) To subject financial companies and financial
8 activities to stricter prudential standards in order to
9 promote financial stability and mitigate systemic
10 risk in accordance with subtitle B.

11 (6) To issue formal recommendations that a
12 Council member agency adopt stricter prudential
13 standards for firms it regulates to mitigate systemic
14 risk in accordance with subtitle B of this title.

15 (7) To monitor international regulatory develop-
16 ments, including both insurance and accounting de-
17 velopments, and to identify those developments that
18 may conflict with the policies of the United States
19 or place United States financial services firms or
20 United States financial markets at a competitive dis-
21 advantage.

22 (8) To facilitate information sharing and co-
23 ordination among the members of the Council re-
24 garding financial services policy development,

1 rulemakings, examinations, reporting requirements,
2 and enforcement actions.

3 (9) To provide a forum for discussion and anal-
4 ysis of emerging market developments and financial
5 regulatory issues among its members.

6 (10) At the request of an agency that is a
7 Council member, to resolve a jurisdictional dispute
8 between that agency and another agency that is a
9 Council member in accordance with section 1002.

10 (11) To review and submit comments to the Se-
11 curities and Exchange Commission and any stand-
12 ards setting body with respect to an existing or pro-
13 posed accounting principle, standard, or procedure.

14 **SEC. 1002. RESOLUTION OF DISPUTES AMONG FEDERAL FI-**
15 **NANCIAL REGULATORY AGENCIES.**

16 (a) REQUEST FOR DISPUTE RESOLUTION.—The
17 Council shall resolve a dispute among 2 or more Federal
18 financial regulatory agencies if—

19 (1) a Federal financial regulatory agency has a
20 dispute with another Federal financial regulatory
21 agency about the agencies' respective jurisdiction
22 over a particular financial company or financial ac-
23 tivity or product (excluding matters for which an-
24 other dispute mechanism specifically has been pro-
25 vided under Federal law);

1 (2) the disputing agencies cannot, after a dem-
2 onstrated good faith effort, resolve the dispute
3 among themselves; and

4 (3) any of the Federal financial regulatory
5 agencies involved in the dispute—

6 (A) provides all other disputants prior no-
7 tice of its intent to request dispute resolution
8 by the Council; and

9 (B) requests in writing, no earlier than 14
10 days after providing the notice described in
11 paragraph (A), that the Council resolve the dis-
12 pute.

13 (b) COUNCIL DECISION.—The Council shall decide
14 the dispute—

15 (1) within a reasonable time after receiving the
16 dispute resolution request;

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

19 (3) by agreeing with 1 of the disputants regard-
20 ing the entirety of the matter or by determining a
21 compromise position.

22 (c) FORM AND BINDING EFFECT.—A Council deci-
23 sion under this section shall be in writing and include an
24 explanation and shall be binding on all Federal financial
25 regulatory agencies that are parties to the dispute.

1 **SEC. 1003. TECHNICAL AND PROFESSIONAL ADVISORY**
2 **COMMITTEES.**

3 The Council is authorized to appoint—

4 (1) subsidiary working groups composed of
5 Council members and their staff, Council staff, or a
6 combination; and

7 (2) such temporary special advisory, technical,
8 or professional committees as may be useful in car-
9 rying out its functions, which may be composed of
10 Council members and their staff, other persons, or
11 a combination.

12 **SEC. 1004. FINANCIAL SERVICES OVERSIGHT COUNCIL**
13 **MEETINGS AND COUNCIL GOVERNANCE.**

14 (a) MEETINGS.—The Council shall meet as fre-
15 quently as the Chairman deems necessary, but not less
16 than quarterly.

17 (b) VOTING.—Unless otherwise provided, the Council
18 shall make all decisions the Council is required or author-
19 ized to make by a majority of the total voting membership
20 of the Council under section 1001(b)(1).

21 **SEC. 1005. COUNCIL STAFF AND FUNDING.**

22 (a) DEPARTMENT OF THE TREASURY.—The Sec-
23 retary of the Treasury shall—

24 (1) detail permanent staff from the Department
25 of the Treasury to provide the Council (and any
26 temporary special advisory, technical, or professional

1 committees appointed by the Council) with profes-
2 sional and expert support; and

3 (2) provide such other services and facilities
4 necessary for the performance of the Council's func-
5 tions and fulfillment of the duties and mission of the
6 Council.

7 (b) OTHER DEPARTMENTS AND AGENCIES.—In addi-
8 tion to the assistance prescribed in subsection (a), depart-
9 ments and agencies of the United States may, with the
10 approval of the Secretary of the Treasury—

11 (1) detail department or agency staff on a tem-
12 porary basis to provide additional support to the
13 Council (and any special advisory, technical, or pro-
14 fessional committees appointed by the Council); and

15 (2) provide such services, and facilities as the
16 other departments or agencies may determine advis-
17 able.

18 (c) STAFF STATUS; COUNCIL FUNDING.—

19 (1) STATUS.—Staff detailed to the Council by
20 the Secretary of the Treasury and other United
21 States departments or agencies shall—

22 (A) report to and be subject to oversight
23 by the Council during their assignment to the
24 Council; and

1 (B) be compensated by the department of
2 agency from which the staff was detailed.

3 (2) FUNDING.—The administrative expense of
4 the Council shall be paid by the departments and
5 agencies represented by voting members of the
6 Council on an equal basis.

7 **SEC. 1006. REPORTS TO THE CONGRESS.**

8 (a) IN GENERAL.—Semiannually the Council shall
9 submit a report to the Committee on Financial Services
10 of the House of Representatives, the Committee on Bank-
11 ing, Housing, and Urban Affairs of the Senate, and the
12 Comptroller General of the United States that—

13 (1) describes significant financial and regu-
14 latory developments, including insurance and ac-
15 counting regulations and standards, and assesses the
16 impact of those developments on the stability of the
17 financial system;

18 (2) recommends actions that will improve finan-
19 cial stability;

20 (3) details the size, scale, scope, concentration,
21 activities, and interconnectedness of the 50 largest
22 financial institutions, by total assets, in the United
23 States;

24 (4) describes plans developed by the Council to
25 respond to potential threats to the stability of the

1 United States financial system and the outcome of
2 exercises conducted in furtherance of those plans;

3 (5) describes the nature and scope of any com-
4 pany or activities identified under subtitle B and
5 steps taken to address them; and

6 (6) describes any dispute resolutions under-
7 taken under section 1002 and the result of such res-
8 olutions.

9 (b) EVALUATION OF ANNUAL REPORT BY GAO.—
10 Not later than 120 days after receiving the report required
11 by subsection (a), the Comptroller General of the United
12 States shall submit an evaluation of such report to the
13 Committee on Financial Services of the House of Rep-
14 resentatives and the Committee on Banking, Housing, and
15 Urban Affairs of the Senate.

16 (c) STATEMENTS BY VOTING MEMBERS OF THE
17 COUNCIL.—At the time each report is submitted under
18 subsection (a), each voting member of the Council shall—

19 (1) if such member believes that the Council,
20 the Government, and the private sector are taking
21 all reasonable steps to ensure financial stability and
22 to prevent systemic risk that would negatively affect
23 the economy, submit a signed statement to the Com-
24 mittee on Financial Services of the House of Rep-
25 resentatives and the Committee on Banking, Hous-

1 ing, and Urban Affairs of the Senate stating such
2 belief; or

3 (2) if such member does not believe that all rea-
4 sonable steps described under paragraph (1) are
5 being taken, submit a signed statement to the Com-
6 mittee on Financial Services of the House of Rep-
7 resentatives and the Committee on Banking, Hous-
8 ing, and Urban Affairs of the Senate stating what
9 actions such member believes need to be taken in
10 order to ensure that all reasonable steps described
11 under paragraph (1) are taken.

12 (d) TESTIMONY BY THE CHAIRMAN.—The Chairman
13 of the Council shall appear before the Committee on Fi-
14 nancial Services of the House of Representatives and the
15 Committee on Banking, Housing, and Urban Affairs of
16 the Senate at a semi-annual hearing, after the report is
17 submitted under subsection (a)—

18 (1) to discuss the efforts, activities, objectives,
19 and plans of the Council; and

20 (2) to discuss and answer questions concerning
21 such report.

22 **SEC. 1007. APPLICABILITY OF CERTAIN FEDERAL LAWS.**

23 (a) The Federal Advisory Committee Act shall not
24 apply to the Financial Services Oversight Council, or any
25 special advisory, technical, or professional committees ap-

1 pointed by the Council (except that, if an advisory, tech-
2 nical, or professional committee has one or more members
3 who are not employees of or affiliated with the United
4 States government, the Council shall publish a list of the
5 names of the members of such committee).

6 (b) The Council shall not be deemed an “agency” for
7 purposes of any State or Federal law.

8 **SEC. 1008. OVERSIGHT BY GAO.**

9 (a) **AUTHORITY TO AUDIT.**—The Comptroller Gen-
10 eral of the United States may audit the activities and fi-
11 nancial transactions of—

12 (1) the Council; and

13 (2) any person or entity acting on behalf of or
14 under the authority of the Council, to the extent
15 such activities and financial transactions relate to
16 such person’s or entity’s work for the Council.

17 (b) **ACCESS TO INFORMATION.**—

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

23 (A) any records or other information under
24 the control of the Council; and

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 such records or other information is
5 relevant to an audit under subsection (a).

6 (2) CERTAIN INFORMATION SPECIFIED.—Access
7 under paragraph (1) includes access to—

8 (A) information provided to the Council by
9 its voting and nonvoting members under section
10 1101; and

11 (B) the identity of each financial holding
12 company subject to stricter standards.

13 (c) PERIODIC EVALUATIONS.—The Comptroller Gen-
14 eral of the United States shall periodically evaluate the
15 processes and activities of the Council and the extent to
16 which the Council is fulfilling its duties under this title.
17 The Comptroller General shall submit to the Committee
18 on Financial Services of the House of Representatives and
19 the Committee on Banking, Housing, and Urban Affairs
20 of the Senate a report on the results of each such evalua-
21 tion.

22 (d) CONFIDENTIALITY.—Any committees or Mem-
23 bers of Congress receiving reports or other information
24 from the Comptroller General of the United States shall

1 maintain the confidentiality of any such information relat-
2 ing to—

3 (1) dispute resolutions undertaken under sec-
4 tion 1002, including the result of such dispute reso-
5 lutions; and

6 (2) financial holding companies subject to
7 stricter standards.

8 **Subtitle B—Prudential Regulation**
9 **of Companies and Activities for**
10 **Financial Stability Purposes**

11 **SEC. 1101. COUNCIL AND BOARD AUTHORITY TO OBTAIN**
12 **INFORMATION.**

13 (a) IN GENERAL.—The Council and the Board are
14 authorized to receive, and may request the production of,
15 any data or information from members of the Council, as
16 necessary—

17 (1) to monitor the financial services market-
18 place to identify potential threats to the stability of
19 the United States financial system;

20 (2) to identify global trends and developments
21 that could pose systemic risks to the stability of the
22 economy of the United States or other economies; or

23 (3) to otherwise carry out any of the provisions
24 of this title, including to ascertain a primary finan-

1 cial regulatory agency’s implementation of rec-
2 ommended prudential standards under this subtitle.

3 (b) SUBMISSION BY COUNCIL MEMBERS.—Notwith-
4 standing any provision of law, any voting or nonvoting
5 member of the Council is authorized to provide informa-
6 tion to the Council, and the members of the Council shall
7 maintain the confidentiality of such information.

8 (c) FINANCIAL COMPANY DATA COLLECTION.—

9 (1) IN GENERAL.—The Council or the Board
10 may require the submission of periodic and other re-
11 ports from any financial company solely for the pur-
12 pose of assessing the extent to which a financial ac-
13 tivity or financial market in which the financial com-
14 pany participates, or the company itself, poses a
15 threat to financial stability.

16 (2) MITIGATION OF REPORT BURDEN.—Before
17 requiring the submission of reports from financial
18 companies that are regulated by the primary finan-
19 cial regulatory agencies, the Council or the Board
20 shall coordinate with such agencies and shall, when-
21 ever possible, rely on information already being col-
22 lected by such agencies.

23 (d) CONSULTATION WITH AGENCIES AND ENTI-
24 TIES.—The Council or the Board, as appropriate, may

1 consult with Federal and State agencies and other entities
2 to carry out any of the provisions of this subtitle.

3 (e) ADDITIONAL PROVISIONS.—

4 (1) DATA AND INFORMATION SHARING.—The
5 Chairman of the Council, in consultation with the
6 other members of the Council may—

7 (A) establish procedures to share data and
8 information collected by the Council under this
9 section with the members of the Council;

10 (B) develop an electronic process for shar-
11 ing all information collected by the Council with
12 the Chairman of the Board on a real-time basis;
13 and

14 (C) issue any regulations necessary to
15 carry out this subsection; and

16 (D) designate the format in which re-
17 quested data and information must be sub-
18 mitted to the Council, including any electronic,
19 digital, or other format that facilitates the use
20 of such data by the Council in its analysis.

21 (2) APPLICABLE PRIVILEGES NOT WAIVED.—A
22 Federal financial regulator, State financial regu-
23 lator, United States financial company, foreign fi-
24 nancial company operating in the United States, fi-
25 nancial market utility, or other person shall not be

1 deemed to have waived any privilege otherwise appli-
2 cable to any data or information by transferring the
3 data or information to, or permitting that data or
4 information to be used by—

5 (A) the Council;

6 (B) any Federal financial regulator or
7 State financial regulator, in any capacity; or

8 (C) any other agency of the Federal Gov-
9 ernment (as defined in section 6 of title 18,
10 United States Code).

11 (3) DISCLOSURE EXEMPTION.—Any informa-
12 tion obtained by the Council under this section shall
13 be exempt from the disclosure requirements under
14 section 552 of title 5, United States Code.

15 (4) CONSULTATION WITH FOREIGN GOVERN-
16 MENTS.—Under the supervision of the President,
17 and in a manner consistent with section 207 of the
18 Foreign Service Act of 1980 (22 U.S.C. 3927), the
19 Chairman of the Council, in consultation with the
20 other members of the Council, shall regularly consult
21 with the financial regulatory entities and other ap-
22 propriate organizations of foreign governments or
23 international organizations on matters relating to
24 systemic risk to the international financial system.

1 (5) REPORT.—Not later than 6 months after
2 the date of the enactment of this title, the Chairman
3 of the Council shall report to the Financial Services
4 Committee of the House of Representatives and the
5 Banking, Housing, and Urban Affairs Committee of
6 the Senate the opinion of the Council as to whether
7 setting up an electronic database as described in
8 paragraph (1)(B) would aid the Council in carrying
9 out this section.

10 **SEC. 1102. COUNCIL PRUDENTIAL REGULATION REC-**
11 **COMMENDATIONS TO FEDERAL FINANCIAL**
12 **REGULATORY AGENCIES.**

13 (a) IN GENERAL.—The Council is authorized to issue
14 formal recommendations, publicly or privately, that a Fed-
15 eral financial regulatory agency adopt stricter prudential
16 standards for firms it regulates to mitigate systemic risk.

17 (b) AGENCY AUTHORITY TO IMPLEMENT STAND-
18 ARDS.—A Federal financial regulatory agency specifically
19 is authorized to impose, require reports regarding, exam-
20 ine for compliance with, and enforce stricter prudential
21 standards and safeguards for the firms it regulates to
22 mitigate systemic risk. This authority is in addition to and
23 does not limit any other authority of the Federal financial
24 regulatory agencies. Compliance by an entity with actions
25 taken by a Federal financial regulatory agency under this

1 section shall be enforceable in accordance with the statutes
2 governing the respective Federal financial regulatory
3 agency's jurisdiction over the entity as if the agency action
4 were taken under those statutes.

5 (c) AGENCY NOTICE TO COUNCIL.—A Federal finan-
6 cial regulatory agency shall, within 60 days of receiving
7 a Council recommendation under this section, notify the
8 Council in writing regarding—

9 (1) the actions the Federal financial regulatory
10 agency has taken in response to the Council's rec-
11 ommendation, additional actions contemplated, and
12 timetables therefore; or

13 (2) the reason the Federal financial regulatory
14 agency has failed to respond to the Council's re-
15 quest.

16 **SEC. 1103. SUBJECTING FINANCIAL COMPANIES TO STRICT-**
17 **ER PRUDENTIAL STANDARDS FOR FINANCIAL**
18 **STABILITY PURPOSES.**

19 (a) IN GENERAL.—The Council shall, in consultation
20 with the Board and any other primary financial regulatory
21 agency that regulates the financial company or a sub-
22 sidiary of such company, subject a financial company to
23 stricter prudential standards under this subtitle if the
24 Council determines that—

1 (1) material financial distress at the company
2 could pose a threat to financial stability or the econ-
3 omy; or

4 (2) the nature, scope, size, scale, concentration,
5 and interconnectedness, or mix of the company's ac-
6 tivities could pose a threat to financial stability or
7 the economy.

8 (b) CRITERIA.—In making a determination under
9 subsection (a), the Council shall consider the following cri-
10 teria:

11 (1) The amount and nature of the company's fi-
12 nancial assets.

13 (2) The amount and nature of the company's li-
14 abilities, including the degree of reliance on short-
15 term funding.

16 (3) The extent of the company's leverage.

17 (4) The extent and nature of the company's off-
18 balance sheet exposures.

19 (5) The extent and nature of the company's
20 transactions and relationships with other financial
21 companies.

22 (6) The company's importance as a source of
23 credit for households, businesses, and State and
24 local governments and as a source of liquidity for
25 the financial system.

1 (7) The nature, scope, and mix of the com-
2 pany's activities.

3 (8) The degree to which the company is already
4 regulated by one or more Federal financial regu-
5 latory agencies.

6 (9) Any other factors that the Council deems
7 appropriate.

8 (c) NOTIFICATION OF DECISION.—The Board, in an
9 executive capacity on behalf of the Council, shall imme-
10 diately upon the Council's decision notify the financial
11 company by order, which shall be public, that the financial
12 company is subject to stricter prudential standards, as
13 prescribed by the Board in accordance with section 1104.

14 (d) PERIODIC REVIEW AND RESCISSION OF FIND-
15 INGS.—

16 (1) SUBMISSION OF ASSESSMENT.—The Board
17 shall periodically submit a report to the Council con-
18 taining an assessment of whether each company sub-
19 jected to stricter prudential standards should con-
20 tinue to be subject to such standards.

21 (2) REVIEW AND RESCISSION.—The Council
22 shall—

23 (A) review the assessment submitted pur-
24 suant to paragraph (1) and any information or
25 recommendation submitted by members of the

1 Council regarding whether a financial holding
2 company subject to stricter standards continues
3 to merit stricter prudential standards; and

4 (B) rescind the action subjecting a com-
5 pany to stricter prudential standards if the
6 Council determines that the company no longer
7 meets the conditions for being subjected to
8 stricter prudential standards in subsections (a)
9 and (b).

10 (e) EMERGENCY EXCEPTION TO MAJORITY VOTE OF
11 COUNCIL REQUIREMENT.—If each of the Secretary of the
12 Treasury, the Board, and the Federal Deposit Insurance
13 Corporation determines that a financial company must be
14 subjected to stricter prudential standards in accordance
15 with this section immediately to prevent destabilization of
16 the financial system or economy, the Secretary, the Board,
17 and the Corporation may, upon approval by the President,
18 subject such company to stricter prudential standards
19 under this section.

20 (f) APPEAL.—

21 (1) ADMINISTRATIVE.—The Council and the
22 Board, in an executive capacity on behalf of the
23 Council, shall establish a procedure through which a
24 financial company that has been subjected to stricter
25 prudential standards in accordance with this section

1 may appeal being subjected to stricter prudential
2 standards.

3 (2) JUDICIAL REVIEW.—Any financial company
4 which has been subjected to stricter prudential
5 standards may seek judicial review by filing a peti-
6 tion for such review in the United States Court of
7 Appeals for the District of Columbia.

8 (g) EFFECT OF COUNCIL DECISION.—

9 (1) APPLICATION OF THE BANK HOLDING COM-
10 PANY ACT.—A financial company that is not a bank
11 holding company as defined in the Bank Holding
12 Company Act at the time the financial company is
13 subjected to stricter prudential standards in accord-
14 ance with this section, shall—

15 (A) if such company conducts at the time
16 such company is subjected to stricter prudential
17 standards in accordance with this section only
18 activities that are determined to be financial in
19 nature or incidental thereto under section 4(k)
20 of the Bank Holding Company Act of 1956, be
21 treated as a bank holding company that has
22 elected to be a financial holding company for
23 purposes of the Bank Holding Company Act of
24 1956, the Federal Deposit Insurance Act, and
25 all other Federal laws and regulations gov-

1 erning bank holding companies and financial
2 holding companies and be the financial holding
3 company subject to stricter standards for pur-
4 poses of this subtitle; or

5 (B) if such company conducts at the time
6 that such company is subjected to stricter pru-
7 dential standards in accordance with this sec-
8 tion activities other than those that are deter-
9 mined to be financial in nature or incidental
10 thereto under section 4(k) of the Bank Holding
11 Company Act, be required to establish and con-
12 duct all its activities that are determined to be
13 financial in nature or incidental thereto under
14 section 4(k) of the Bank Holding Company Act
15 of 1956 in an intermediate holding company es-
16 tablished under section 6 of the Bank Holding
17 Company Act of 1956, which intermediate hold-
18 ing company shall be treated as a bank holding
19 company that has elected to be a financial hold-
20 ing company for purposes of the Bank Holding
21 Company Act of 1956, the Federal Deposit In-
22 surance Act, and all other Federal laws and
23 regulations governing bank holding companies
24 and financial holding companies, and such sec-
25 tion 6 holding company shall be a financial

1 holding company subject to stricter standards
2 for purposes of this title.

3 (2) EXEMPTIVE AUTHORITY.—Notwithstanding
4 any provision of the Bank Holding Company Act of
5 1956, the Board may, if it determines such action
6 is necessary to ensure appropriate stricter prudential
7 supervision, issue such exemptions from that Act as
8 may be necessary with regard to financial holding
9 companies subject to stricter standards that do not
10 control an insured depository institution.

11 (3) LEVERAGE LIMITATION.—The Board shall
12 require each financial holding company subject to
13 stricter standards to maintain a debt to equity ratio
14 of no more than 15 to 1, and the Board shall issue
15 regulations containing procedures and timelines for
16 how a financial holding company subject to stricter
17 standards with a debt to equity ratio of more than
18 15 to 1 at the time such company becomes a finan-
19 cial holding company subject to stricter standards
20 shall reduce such ratio.

21 **SEC. 1104. STRICTER PRUDENTIAL STANDARDS FOR CER-**
22 **TAIN FINANCIAL HOLDING COMPANIES FOR**
23 **FINANCIAL STABILITY PURPOSES.**

24 (a) STRICTER PRUDENTIAL STANDARDS.—

1 (1) IN GENERAL.—To mitigate risks to finan-
2 cial stability and the economy posed by a financial
3 holding company that has been subjected to stricter
4 prudential standards in accordance with section
5 1103, the Board shall impose stricter prudential
6 standards on such company. Such standards shall be
7 designed to maximize financial stability taking costs
8 to long-term financial and economic growth into ac-
9 count, be heightened when compared to the stand-
10 ards that otherwise would apply to financial holding
11 companies that are not subjected to stricter pruden-
12 tial standards pursuant to this subtitle (including by
13 addressing additional or different types of risks than
14 otherwise applicable standards), and reflect the po-
15 tential risk posed to financial stability by the finan-
16 cial holding company subject to stricter standards.

17 (2) STANDARDS.—

18 (A) REQUIRED STANDARDS.—The height-
19 ened standards imposed by the Board under
20 this section shall include—

- 21 (i) risk-based capital requirements;
22 (ii) leverage limits;
23 (iii) liquidity requirements;
24 (iv) concentration requirements (as
25 specified in subsection (c));

1 (v) prompt corrective action require-
2 ments (as specified in subsection (e));

3 (vi) resolution plan requirements (as
4 specified in subsection (f));

5 (vii) overall risk management require-
6 ments; and

7 (viii) and may establish short-term
8 debt limits in accordance with subsection
9 (d).

10 (B) ADDITIONAL STANDARDS.—The
11 heightened standards imposed by the Board
12 under this section also may include any other
13 prudential standards that the Board deems ad-
14 visable, including taking actions to mitigate sys-
15 temic risk.

16 (C) CONSULTATION WITH FEDERAL FI-
17 NANCIAL REGULATORY AGENCIES.—The Board,
18 in developing stricter prudential standards
19 under this subsection, shall consult with other
20 Federal financial regulatory agencies with re-
21 spect to any standard that is likely to have a
22 significant impact on a functionally regulated
23 subsidiary, or a subsidiary depository institu-
24 tion, of a financial holding company that is sub-

1 ject to stricter prudential standards under this
2 title.

3 (3) APPLICATION OF REQUIRED STANDARDS.—

4 In imposing prudential standards under this sub-
5 section, the Board may differentiate among financial
6 holding companies subject to stricter standards on
7 an individual basis or by category, taking into con-
8 sideration their capital structure, risk, complexity,
9 financial activities, the financial activities of their
10 subsidiaries, and any other factors that the Board
11 deems appropriate.

12 (4) WELL CAPITALIZED AND WELL MAN-
13 AGED.—A financial holding company subject to
14 stricter standards shall at all times after it is subject
15 to such standards be well capitalized and well man-
16 aged as defined by the Board.

17 (5) APPLICATION TO FOREIGN FINANCIAL COM-
18 PANIES.—The Board shall prescribe regulations re-
19 garding the application of stricter prudential stand-
20 ards to financial companies that are organized or in-
21 corporated in a country other than the United
22 States, and that own or control a Federal or State
23 branch, subsidiary, or operating entity that is a fi-
24 nancial holding company subject to stricter stand-
25 ards, giving due regard to the principle of national

1 treatment and equality of competitive opportunity
2 and taking into account the extent to which such
3 companies are subject to home country standards
4 comparable to those applied to financial holding
5 companies in the United States.

6 (6) INCLUSION OF OFF BALANCE SHEET AC-
7 TIVITIES IN COMPUTING CAPITAL REQUIREMENTS.—

8 (A) IN GENERAL.—In the case of any fi-
9 nancial holding company subject to stricter
10 standards, the computation of capital require-
11 ments shall take into account off balance sheet
12 activities for such a company.

13 (B) EXEMPTION.—If the Board determines
14 that an exemption from the requirements under
15 subparagraph (A) is appropriate, the Board
16 may exempt a financial holding company sub-
17 ject to stricter standards from the requirements
18 under subparagraph (A) or any transaction or
19 transactions engaged in by such a company.

20 (C) OFF BALANCE SHEET ACTIVITIES DE-
21 FINED.—For purposes of this paragraph, the
22 term “off balance sheet activities” means a li-
23 ability that is not currently a balance sheet li-
24 ability but may become one upon the happening
25 of some future event, including the following

1 transactions, to the extent they may create a li-
2 ability:

3 (i) Direct credit substitutes in which a
4 bank substitutes its own credit for a third
5 party, including standby letters of credit.

6 (ii) Irrevocable letters of credit that
7 guarantee repayment of commercial paper
8 or tax-exempt securities.

9 (iii) Risk participation in bankers' ac-
10 ceptances.

11 (iv) Sale and repurchase agreements.

12 (v) Asset sales with recourse against
13 the seller.

14 (vi) Interest rate swaps.

15 (vii) Credit swaps.

16 (viii) Commodity contracts.

17 (ix) Forward contracts.

18 (x) Securities contracts.

19 (xi) Such other activities or trans-
20 actions as the Board may, by rule, define.

21 (b) PRUDENTIAL STANDARDS AT FUNCTIONALLY
22 REGULATED SUBSIDIARIES AND SUBSIDIARY DEPOSI-
23 TORY INSTITUTIONS.—

24 (1) BOARD AUTHORITY TO RECOMMEND STAND-
25 ARDS.—With respect to a functionally regulated sub-

1 subsidiary (as such term is defined in section 5 of the
2 Bank Holding Company Act) or a subsidiary deposi-
3 tory institution of a financial holding company sub-
4 ject to stricter standards, the Board may rec-
5 ommend that the relevant Federal financial regu-
6 latory agency for such functionally regulated sub-
7 sidiary or subsidiary depository institution prescribe
8 stricter prudential standards on such functionally
9 regulated subsidiary or subsidiary depository institu-
10 tion. Any standards recommended by the Board
11 under this section shall be of the same type as those
12 described in subsection (a)(2) that the Board is re-
13 quired or authorized to impose directly on the finan-
14 cial holding company subject to stricter standards.

15 (2) AGENCY AUTHORITY TO IMPLEMENT
16 HEIGHTENED STANDARDS AND SAFEGUARDS.—Each
17 Federal financial regulatory agency that receives a
18 Board recommendation under paragraph (1) is au-
19 thorized to impose, require reports regarding, exam-
20 ine for compliance with, and enforce standards
21 under this subsection with respect to the entities
22 such agency regulates, as such entities are described
23 in section 1006(b)(6). This authority is in addition
24 to and does not limit any other authority of the Fed-
25 eral financial regulatory agencies. Compliance by an

1 entity with actions taken by a Federal financial reg-
2 ulatory agency under this section shall be enforce-
3 able in accordance with the statutes governing the
4 respective agency's jurisdiction over the entity as if
5 the agency action were taken under those statutes.

6 (3) IMPOSITION OF STANDARDS.—Standards
7 imposed by a Federal financial regulatory agency
8 under this subsection shall be the standards rec-
9 ommended by the Board in accordance with para-
10 graph (1) or any other similar standards that the
11 Board deems acceptable after consultation between
12 the Board and the primary financial regulatory
13 agency.

14 (4) FEDERAL FINANCIAL REGULATORY AGENCY
15 RESPONSE; NOTICE TO COUNCIL AND BOARD.—A
16 Federal financial regulatory agency shall notify the
17 Council and the Board in writing on whether and to
18 what extent the agency has imposed the stricter pru-
19 dential standards described in paragraph (3) within
20 60 days of the Board's recommendation under para-
21 graph (1). A Federal financial regulatory agency
22 that fails to impose such standards shall provide
23 specific justification for such failure to act in the
24 written notice from the agency to the Council and
25 Board.

1 (c) CONCENTRATION LIMITS FOR FINANCIAL HOLD-
2 ING COMPANIES SUBJECT TO STRICTER STANDARDS.—

3 (1) STANDARDS.—In order to limit the risks
4 that the failure of any company could pose to a fi-
5 nancial holding company subject to stricter stand-
6 ards and to the stability of the United States finan-
7 cial system, the Board, by regulation, shall prescribe
8 standards that limit the risks posed by the exposure
9 of a financial holding company subject to stricter
10 standards to any other company.

11 (2) LIMITATION ON CREDIT EXPOSURE.—The
12 regulations prescribed by the Board shall prohibit
13 each financial holding company subject to stricter
14 standards from having credit exposure to any unaf-
15 filiated company that exceeds 25 percent of capital
16 stock and surplus of the financial holding company
17 subject to stricter standards, or such lower amount
18 as the Board may determine by regulation to be nec-
19 essary to mitigate risks to financial stability.

20 (3) CREDIT EXPOSURE.—For purposes of this
21 subsection and with respect to a financial holding
22 company subject to stricter standards, the term
23 “credit exposure” to a company means—

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

1 (B) all repurchase agreements and reverse
2 repurchase agreement with the company;

3 (C) all securities borrowing and lending
4 transactions with the company to the extent
5 that such transactions create credit exposure of
6 the financial holding company subject to strict-
7 er standards to the company;

8 (D) all guarantees, acceptances, or letters
9 of credit (including endorsement or standby let-
10 ters of credit) issued on behalf of the company;

11 (E) all purchases of or investment in secu-
12 rities issued by the company;

13 (F) counterparty credit exposure to the
14 company in connection with a derivative trans-
15 action between the financial holding company
16 subject to stricter standards and the company;
17 and

18 (G) any other similar transactions that the
19 Board by regulation determines to be a credit
20 exposure for purposes of this section.

21 (4) **ATTRIBUTION RULE.**—For purposes of this
22 subsection, any transaction by a financial holding
23 company subject to stricter standards with any per-
24 son is deemed a transaction with a company to the

1 extent that the proceeds of the transaction are used
2 for the benefit of, or transferred to, that company.

3 (5) RULEMAKING.—The Board may issue such
4 regulations and orders, including definitions con-
5 sistent with this subsection, as may be necessary to
6 administer and carry out the purpose of this sub-
7 section.

8 (6) EXEMPTIONS.—

9 (A) IN GENERAL.—

10 (i) FEDERAL HOME LOAN BANKS.—

11 This subsection shall not apply to any Fed-
12 eral home loan bank, but Federal home
13 loan banks are not exempt from any other
14 provision of this title.

15 (ii) APPLICABILITY TO OTHER ENTI-

16 TIES.—The Federal National Mortgage As-
17 sociation and the Federal Home Loan
18 Mortgage Corporation are not exempt from
19 any provision of this title.

20 (B) REGULATIONS.—The Board may, by
21 regulation or order, exempt transactions, in
22 whole or in part, from the definition of credit
23 exposure if it finds that the exemption is in the
24 public interest and consistent with the purpose
25 of this subsection.

1 (7) TRANSITION PERIOD.—This subsection and
2 any regulations and orders of the Board under the
3 authority of this subsection shall not take effect
4 until the date that is 3 years from the date of the
5 enactment of this subsection. The Board may extend
6 the effective date for up to 2 additional years to pro-
7 mote financial stability.

8 (d) SHORT-TERM DEBT LIMITS FOR CERTAIN FI-
9 NANCIAL HOLDING COMPANIES.—

10 (1) IN GENERAL.—In order to limit the risks
11 that an overaccumulation of short-term debt could
12 pose to financial holding companies and to the sta-
13 bility of the United States financial system, the
14 Board shall by regulation prescribe a limit on the
15 amount of short-term debt, including off-balance
16 sheet exposures, that may be accumulated by any fi-
17 nancial holding company subject to stricter stand-
18 ards for purposes of this title.

19 (2) BASIS OF LIMIT.—The limit prescribed
20 under paragraph (1) shall be based on a financial
21 holding company’s short-term debt as a percentage
22 of its capital stock and surplus or on such other
23 measure as the Board considers appropriate.

24 (3) SHORT-TERM DEBT DEFINED.—For pur-
25 poses of this subsection, the term “short-term debt”

1 means such liabilities with short-dated maturity that
2 the Board identifies by regulation, except that such
3 term does not include insured deposits.

4 (4) RULEMAKING AUTHORITY.—In addition to
5 prescribing regulations under paragraphs (1) and
6 (3), the Board may prescribe such regulations, in-
7 cluding definitions consistent with this subsection,
8 and issue such orders as may be necessary to carry
9 out this subsection.

10 (5) AUTHORITY TO ISSUE EXEMPTIONS AND
11 ADJUSTMENTS.—Notwithstanding the Bank Holding
12 Company Act of 1956 (12 U.S.C. 1841 et seq.), the
13 Board may, if it determines such action is necessary
14 to ensure appropriate heightened prudential super-
15 vision, with respect to a financial holding company
16 that does not control an insured depository institu-
17 tion, issue to such company an exemption from or
18 adjustment to the limit prescribed under paragraph
19 (1).

20 (6) TRANSITION PERIOD.—This subsection and
21 any regulation or order of the Board under this sub-
22 section shall take effect 3 years after the date of the
23 enactment of this title. The Board may postpone the
24 date when this subsection takes effect by not more
25 than 2 years in order to promote financial stability.

1 (e) PROMPT CORRECTIVE ACTION FOR FINANCIAL
2 HOLDING COMPANIES SUBJECT TO STRICTER STAND-
3 ARDS.—

4 (1) PROMPT CORRECTIVE ACTION REQUIRED.—

5 The Board shall take prompt corrective action to re-
6 solve the problems of financial holding companies
7 subject to stricter standards. Except as specifically
8 provided otherwise, this subsection shall apply only
9 to financial holding companies that are incorporated
10 or organized under United States laws.

11 (2) DEFINITIONS.—For purposes of this sec-
12 tion—

13 (A) CAPITAL CATEGORIES.—

14 (i) WELL CAPITALIZED.—A financial
15 holding company subject to stricter stand-
16 ards is “well capitalized” if it exceeds the
17 required minimum level for each relevant
18 capital measure.

19 (ii) UNDERCAPITALIZED.—A financial
20 holding company subject to stricter stand-
21 ards is “undercapitalized” if it fails to
22 meet the required minimum level for any
23 relevant capital measure.

24 (iii) SIGNIFICANTLY UNDERCAPITAL-
25 IZED.—A financial holding company sub-

1 ject to stricter standards is “significantly
2 undercapitalized” if it is significantly below
3 the required minimum level for any rel-
4 evant capital measure.

5 (iv) CRITICALLY UNDERCAPITAL-
6 IZED.—A financial holding company sub-
7 ject to stricter standards is “critically
8 undercapitalized” if it fails to meet any
9 level specified in paragraph (4)(C)(i).

10 (3) OTHER DEFINITIONS.—

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

17 (B) CAPITAL DISTRIBUTION.—The term
18 “capital distribution” means—

19 (i) a distribution of cash or other
20 property by a financial holding company
21 subject to stricter standards to its owners
22 made on account of that ownership, but
23 not including any dividend consisting only
24 of shares of the financial holding company

1 subject to stricter standards or rights to
2 purchase such shares;

3 (ii) a payment by a financial holding
4 company subject to stricter standards to
5 repurchase, redeem, retire, or otherwise ac-
6 quire any of its shares or other ownership
7 interests, including any extension of credit
8 to finance any person's acquisition of those
9 shares or interests; and

10 (iii) a transaction that the Board de-
11 termines, by order or regulation, to be in
12 substance a distribution of capital to the
13 owners of the financial holding company
14 subject to stricter standards.

15 (C) CAPITAL RESTORATION PLAN.—The
16 term “capital restoration plan” means a plan
17 submitted under paragraph (6)(B).

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

22 (E) RELEVANT CAPITAL MEASURE.—The
23 term “relevant capital measure” means the
24 measures described in paragraph (4).

1 (F) REQUIRED MINIMUM LEVEL.—The
2 term “required minimum level” means, with re-
3 spect to each relevant capital measure, the min-
4 imum acceptable capital level specified by the
5 Board by regulation.

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

11 (4) CAPITAL STANDARDS.—

12 (A) RELEVANT CAPITAL MEASURES.—

13 (i) IN GENERAL.—Except as provided
14 in clause (ii)(II), the capital standards pre-
15 scribed by the Board under section
16 1104(a)(2) shall include—

17 (I) a leverage limit; and

18 (II) a risk-based capital require-
19 ment.

20 (ii) OTHER CAPITAL MEASURES.—The
21 Board may by regulation—

22 (I) establish any additional rel-
23 evant capital measures to carry out
24 this section; or

1 (II) rescind any relevant capital
2 measure required under clause (i)
3 upon determining that the measure is
4 no longer an appropriate means for
5 carrying out this section.

6 (B) CAPITAL CATEGORIES GENERALLY.—
7 The Board shall, by regulation, specify for each
8 relevant capital measure the levels at which a
9 financial holding company subject to stricter
10 standards is well capitalized, undercapitalized,
11 and significantly undercapitalized.

12 (C) CRITICAL CAPITAL.—

13 (i) BOARD TO SPECIFY LEVEL.—

14 (I) LEVERAGE LIMIT.—The
15 Board shall, by regulation, specify the
16 ratio of tangible equity to total assets
17 at which a financial holding company
18 subject to stricter standards is criti-
19 cally undercapitalized.

20 (II) OTHER RELEVANT CAPITAL
21 MEASURES.—The Board may, by reg-
22 ulation, specify for 1 or more other
23 relevant capital measures, the level at
24 which a financial holding company

1 subject to stricter standards is criti-
2 cally undercapitalized.

3 (ii) LEVERAGE LIMIT RANGE.—The
4 level specified under clause (i)(I) shall re-
5 quire tangible equity in an amount—

6 (I) not less than 2 percent of
7 total assets; and

8 (II) except as provided in sub-
9 clause (I), not more than 65 percent
10 of the required minimum level of cap-
11 ital under the leverage limit.

12 (5) CAPITAL DISTRIBUTIONS RESTRICTED.—

13 (A) IN GENERAL.—A financial holding
14 company subject to stricter standards shall
15 make no capital distribution if, after making
16 the distribution, the financial holding company
17 subject to stricter standards would be under-
18 capitalized.

19 (B) EXCEPTION.—Notwithstanding sub-
20 paragraph (A), the Board may permit a finan-
21 cial holding company subject to stricter stand-
22 ards to repurchase, redeem, retire, or otherwise
23 acquire shares or ownership interests if the re-
24 purchase, redemption, retirement, or other ac-
25 quisition—

1 (i) is made in connection with the
2 issuance of additional shares or obligations
3 of the financial holding company subject to
4 stricter standards in at least an equivalent
5 amount; and

6 (ii) will reduce the financial obliga-
7 tions of the financial holding company sub-
8 ject to stricter standards or otherwise im-
9 prove the financial condition of the finan-
10 cial holding company subject to stricter
11 standards.

12 (6) PROVISIONS APPLICABLE TO UNDER-
13 CAPITALIZED FINANCIAL HOLDING COMPANY SUB-
14 JECT TO STRICTER STANDARDS.—

15 (A) MONITORING REQUIRED.—The Board
16 shall—

17 (i) closely monitor the condition of
18 any undercapitalized financial holding com-
19 pany subject to stricter standards;

20 (ii) closely monitor compliance by any
21 undercapitalized financial holding company
22 subject to stricter standards with capital
23 restoration plans, restrictions, and require-
24 ments imposed under this section; and

1 (iii) periodically review the plan, re-
2 strictions, and requirements applicable to
3 any undercapitalized financial holding com-
4 pany subject to stricter standards to deter-
5 mine whether the plan, restrictions, and
6 requirements are effective.

7 (B) CAPITAL RESTORATION PLAN RE-
8 QUIRED.—

9 (i) IN GENERAL.—Any undercapital-
10 ized financial holding company subject to
11 stricter standards shall submit an accept-
12 able capital restoration plan to the Board
13 within the time allowed by the Board
14 under clause (iv).

15 (ii) CONTENTS OF PLAN.—The capital
16 restoration plan shall—

17 (I) specify—

18 (aa) the steps the financial
19 holding company subject to
20 stricter standards will take to be-
21 come well capitalized;

22 (bb) the levels of capital to
23 be attained by the financial hold-
24 ing company subject to stricter

1 standards during each year in
2 which the plan will be in effect;

3 (cc) how the financial hold-
4 ing company subject to stricter
5 standards will comply with the
6 restrictions or requirements then
7 in effect under this section; and

8 (dd) the types and levels of
9 activities in which the financial
10 holding company subject to
11 stricter standards will engage;
12 and

13 (II) contain such other informa-
14 tion that the Board may require.

15 (iii) CRITERIA FOR ACCEPTING
16 PLAN.—The Board shall not accept a cap-
17 ital restoration plan unless it determines
18 that the plan—

19 (I) complies with clause (ii);

20 (II) is based on realistic assump-
21 tions, and is likely to succeed in re-
22 storing the capital of the financial
23 holding company subject to stricter
24 standards; and

1 (III) would not appreciably in-
2 crease the risk (including credit risk,
3 interest-rate risk, and other types of
4 risk) to which the financial holding
5 company subject to stricter standards
6 is exposed.

7 (iv) DEADLINES FOR SUBMISSION AND
8 REVIEW OF PLANS.—The Board shall, by
9 regulation, establish deadlines that—

10 (I) provide financial holding com-
11 panies subject to stricter standards
12 with reasonable time to submit capital
13 restoration plans, and generally re-
14 quire a financial holding company
15 subject to stricter standards to submit
16 a plan not later than 45 days after it
17 becomes undercapitalized; and

18 (II) require the Board to act on
19 capital restoration plans expeditiously,
20 and generally not later than 60 days
21 after the plan is submitted.

22 (C) ASSET GROWTH RESTRICTED.—An
23 undercapitalized financial holding company sub-
24 ject to stricter standards shall not permit its
25 average total assets during any calendar quar-

1 ter to exceed its average total assets during the
2 preceding calendar quarter unless—

3 (i) the Board has accepted the capital
4 restoration plan of the financial holding
5 company subject to stricter standards;

6 (ii) any increase in total assets is con-
7 sistent with the plan; and

8 (iii) the ratio of tangible equity to
9 total assets of the financial holding com-
10 pany subject to stricter standards increases
11 during the calendar quarter at a rate suffi-
12 cient to enable it to become well capitalized
13 within a reasonable time.

14 (D) PRIOR APPROVAL REQUIRED FOR AC-
15 QUISITIONS AND NEW LINES OF BUSINESS.—An
16 undercapitalized financial holding company sub-
17 ject to stricter standards shall not, directly or
18 indirectly, acquire any interest in any company
19 or insured depository institution, or engage in
20 any new line of business, unless—

21 (i) the Board has accepted the capital
22 restoration plan of the financial holding
23 company subject to stricter standards, the
24 financial holding company subject to strict-
25 er standards is implementing the plan, and

1 the Board determines that the proposed
2 action is consistent with and will further
3 the achievement of the plan;

4 (ii) the Board determines that the
5 specific proposed action is appropriate; or

6 (iii) the Board has exempted the fi-
7 nancial holding company subject to stricter
8 standards from the requirements of this
9 paragraph with respect to the class of ac-
10 quisitions that includes the proposed ac-
11 tion.

12 (E) DISCRETIONARY SAFEGUARDS.—The
13 Board may, with respect to any undercapital-
14 ized financial holding company subject to strict-
15 er standards, take actions described in any
16 clause of paragraph (7)(B) if the Board deter-
17 mines that those actions are necessary.

18 (7) PROVISIONS APPLICABLE TO SIGNIFICANTLY
19 UNDERCAPITALIZED FINANCIAL HOLDING COMPA-
20 NIES SUBJECT TO STRICTER STANDARDS AND
21 UNDERCAPITALIZED FINANCIAL HOLDING COMPA-
22 NIES SUBJECT TO STRICTER STANDARDS THAT FAIL
23 TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION
24 PLANS.—

1 (A) IN GENERAL.—This paragraph shall
2 apply with respect to any financial holding com-
3 pany subject to stricter standards that—

4 (i) is significantly undercapitalized; or

5 (ii) is undercapitalized and—

6 (I) fails to submit an acceptable
7 capital restoration plan within the
8 time allowed by the Board under
9 paragraph (6)(B)(iv); or

10 (II) fails in any material respect
11 to implement a capital restoration
12 plan accepted by the Board.

13 (B) SPECIFIC ACTIONS AUTHORIZED.—The
14 Board shall carry out this paragraph by taking
15 1 or more of the following actions—

16 (i) REQUIRING RECAPITALIZATION.—

17 Doing one or more of the following:

18 (I) Requiring the financial hold-
19 ing company subject to stricter stand-
20 ards to sell enough shares or obliga-
21 tions of the financial holding company
22 subject to stricter standards so that
23 the financial holding company subject
24 to stricter standards will be well cap-
25 italized after the sale.

1 (II) Further requiring that in-
2 struments sold under subclause (I) be
3 voting shares.

4 (III) Requiring the financial
5 holding company subject to stricter
6 standards to be acquired by or com-
7 bine with another company.

8 (ii) RESTRICTING TRANSACTIONS
9 WITH AFFILIATES.—

10 (I) Requiring the financial hold-
11 ing company subject to stricter stand-
12 ards to comply with section 23A of
13 the Federal Reserve Act (12 U.S.C.
14 371e), as if it were a member bank.

15 (II) Further restricting the
16 transactions of the financial holding
17 company subject to stricter standards
18 with affiliates and insiders.

19 (iii) RESTRICTING ASSET GROWTH.—
20 Restricting the asset growth of the finan-
21 cial holding company subject to stricter
22 standards more stringently than paragraph
23 (6)(C), or requiring the financial holding
24 company subject to stricter standards to
25 reduce its total assets.

1 (iv) RESTRICTING ACTIVITIES.—Re-
2 quiring the financial holding company sub-
3 ject to stricter standards or any of its sub-
4 sidiaries to alter, reduce, or terminate any
5 activity that the Board determines poses
6 excessive risk to the financial holding com-
7 pany subject to stricter standards.

8 (v) IMPROVING MANAGEMENT.—Doing
9 one or more of the following:

10 (I) NEW ELECTION OF DIREC-
11 TORS.—Ordering a new election for
12 the board of directors of the financial
13 holding company subject to stricter
14 standards.

15 (II) DISMISSING DIRECTORS OR
16 SENIOR EXECUTIVE OFFICERS.—Re-
17 quiring the financial holding company
18 subject to stricter standards to dis-
19 miss from office any director or senior
20 executive officer who had held office
21 for more than 180 days immediately
22 before the financial holding company
23 subject to stricter standards became
24 undercapitalized. Dismissal under this
25 clause shall not be construed to be a

1 removal under section 8 of the Fed-
2 eral Deposit Insurance Act (12 U.S.C.
3 1818).

4 (III) EMPLOYING QUALIFIED
5 SENIOR EXECUTIVE OFFICERS.—Re-
6 quiring the financial holding company
7 subject to stricter standards to employ
8 qualified senior executive officers
9 (who, if the Board so specifies, shall
10 be subject to approval by the Board).

11 (vi) REQUIRING DIVESTITURE.—Re-
12 quiring the financial holding company sub-
13 ject to stricter standards to divest itself of
14 or liquidate any subsidiary if the Board de-
15 termines that the subsidiary is in danger
16 of becoming insolvent, poses a significant
17 risk to the financial holding company sub-
18 ject to stricter standards, or is likely to
19 cause a significant dissipation of the assets
20 or earnings of the financial holding com-
21 pany subject to stricter standards.

22 (vii) REQUIRING OTHER ACTION.—Re-
23 quiring the financial holding company sub-
24 ject to stricter standards to take any other
25 action that the Board determines will bet-

1 ter carry out the purpose of this section
2 than any of the actions described in this
3 subparagraph.

4 (C) PRESUMPTION IN FAVOR OF CERTAIN
5 ACTIONS.—In complying with subparagraph
6 (B), the Board shall take the following actions,
7 unless the Board determines that the actions
8 would not be appropriate—

9 (i) The action described in subclause
10 (I) or (III) of subparagraph (B)(i) (relat-
11 ing to requiring the sale of shares or obli-
12 gations, or requiring the financial holding
13 company subject to stricter standards to be
14 acquired by or combine with another com-
15 pany).

16 (ii) The action described in subpara-
17 graph (B)(ii) (relating to restricting trans-
18 actions with affiliates).

19 (D) SENIOR EXECUTIVE OFFICERS' COM-
20 PENSATION RESTRICTED.—

21 (i) IN GENERAL.—The financial hold-
22 ing company subject to stricter standards
23 shall not do any of the following without
24 the prior written approval of the Board:

1 (I) Pay any bonus to any senior
2 executive officer.

3 (II) Provide compensation to any
4 senior executive officer at a rate ex-
5 ceeding that officer's average rate of
6 compensation (excluding bonuses,
7 stock options, and profit-sharing) dur-
8 ing the 12 calendar months preceding
9 the calendar month in which the fi-
10 nancial holding company subject to
11 stricter standards became under-
12 capitalized.

13 (ii) FAILING TO SUBMIT PLAN.—The
14 Board shall not grant any approval under
15 clause (i) with respect to a financial hold-
16 ing company subject to stricter standards
17 that has failed to submit an acceptable
18 capital restoration plan.

19 (E) CONSULTATION WITH OTHER REGU-
20 LATORS.—Before the Board makes a deter-
21 mination under subparagraph (B)(vi) with re-
22 spect to a subsidiary that is a broker, dealer,
23 government securities broker, government secu-
24 rities dealer, investment company, or invest-
25 ment adviser, the Board shall consult with the

1 Securities and Exchange Commission and, in
2 the case of any other subsidiary which is sub-
3 ject to any financial responsibility or capital re-
4 quirement, any other appropriate regulator of
5 such subsidiary with respect to the proposed de-
6 termination of the Board and actions pursuant
7 to such determination.

8 (8) MORE STRINGENT TREATMENT BASED ON
9 OTHER SUPERVISORY CRITERIA.—

10 (A) IN GENERAL.—If the Board deter-
11 mines (after notice and an opportunity for
12 hearing) that a financial holding company sub-
13 ject to stricter standards is in an unsafe or un-
14 sound condition or, pursuant to section 8(b)(8)
15 of the Federal Deposit Insurance Act (12
16 U.S.C. 1818(b)(8)), deems the financial holding
17 company subject to stricter standards to be en-
18 gaging in an unsafe or unsound practice, the
19 Board may—

20 (i) if the financial holding company
21 subject to stricter standards is well capital-
22 ized, require the financial holding company
23 subject to stricter standards to comply
24 with one or more provisions of paragraphs

1 (6) and (7), as if the institution were
2 undercapitalized; or

3 (ii) if the financial holding company
4 subject to stricter standards is under-
5 capitalized, take any one or more actions
6 authorized under paragraph (7)(B) as if
7 the financial holding company subject to
8 stricter standards were significantly under-
9 capitalized.

10 (B) CONTENTS OF PLAN.—A plan that
11 may be required pursuant to subparagraph
12 (A)(i) shall specify the steps that the financial
13 holding company subject to stricter standards
14 will take to correct the unsafe or unsound con-
15 dition or practice.

16 (9) IMPLEMENTATION.—The Board shall pre-
17 scribe such regulations, issue such orders, and take
18 such other actions the Board determines to be nec-
19 essary to carry out this subsection.

20 (10) OTHER AUTHORITY NOT AFFECTED.—This
21 section does not limit any authority of the Board,
22 any other Federal regulatory agency, or a State to
23 take action in addition to (but not in derogation of)
24 that required under this section.

1 (11) CONSULTATION.—The Board and the Sec-
2 retary of the Treasury shall consult with their for-
3 eign counterparts and through appropriate multilat-
4 eral organizations to reach agreement to extend
5 comprehensive and robust prudential supervision and
6 regulation to all highly leveraged and substantially
7 interconnected financial companies.

8 (12) ADMINISTRATIVE REVIEW OF DISMISSAL
9 ORDERS.—

10 (A) TIMELY PETITION REQUIRED.—A di-
11 rector or senior executive officer dismissed pur-
12 suant to an order under paragraph
13 (7)(B)(v)(II) may obtain review of that order
14 by filing a written petition for reinstatement
15 with the Board not later than 10 days after re-
16 ceiving notice of the dismissal.

17 (B) PROCEDURE.—

18 (i) HEARING REQUIRED.—The Board
19 shall give the petitioner an opportunity
20 to—

21 (I) submit written materials in
22 support of the petition; and

23 (II) appear, personally or
24 through counsel, before 1 or more

1 members of the Board or designated
2 employees of the Board.

3 (ii) DEADLINE FOR HEARING.—The
4 Board shall—

5 (I) schedule the hearing referred
6 to in clause (i)(II) promptly after the
7 petition is filed; and

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

13 (iii) DEADLINE FOR DECISION.—Not
14 later than 60 days after the date of the
15 hearing, the Board shall—

16 (I) by order, grant or deny the
17 petition;

18 (II) if the order is adverse to the
19 petitioner, set forth the basis for the
20 order; and

21 (III) notify the petitioner of the
22 order.

23 (C) STANDARD FOR REVIEW OF DISMISSAL
24 ORDERS.—The petitioner shall bear the burden
25 of proving that the petitioner's continued em-

1 ployment would materially strengthen the abil-
2 ity of the financial holding company subject to
3 stricter standards—

4 (i) to become well capitalized, to the
5 extent that the order is based on the cap-
6 ital level of the financial holding company
7 subject to stricter standards or such com-
8 pany's failure to submit or implement a
9 capital restoration plan; and

10 (ii) to correct the unsafe or unsound
11 condition or unsafe or unsound practice, to
12 the extent that the order is based on para-
13 graph (8)(A).

14 (13) ENFORCEMENT AUTHORITY FOR FOREIGN
15 FINANCIAL HOLDING COMPANY SUBJECT TO STRICT-
16 ER STANDARDS.—

17 (A) TERMINATION AUTHORITY.—If the
18 Board believes that a condition, practice, or ac-
19 tivity of a foreign financial holding company
20 subject to stricter standards does not comply
21 with this title or the rules or orders prescribed
22 by the Board under this title or otherwise poses
23 a threat to financial stability, the Board may,
24 after notice and opportunity for a hearing, take
25 such actions as necessary to mitigate such risk,

1 including ordering a foreign financial holding
2 company subject to stricter standards in the
3 United States to terminate the activities of such
4 branch, agency, or subsidiary.

5 (B) DISCRETION TO DENY HEARING.—The
6 Board may issue an order under paragraph (1)
7 without providing for an opportunity for a hear-
8 ing if the Board determines that expeditious ac-
9 tion is necessary in order to protect the public
10 interest.

11 (f) REPORTS REGARDING RAPID AND ORDERLY RES-
12 OLUTION AND CREDIT EXPOSURE.—

13 (1) IN GENERAL.—The Board shall require
14 each financial holding company subject to stricter
15 standards incorporated or organized in the United
16 States to report periodically to the Board on—

17 (A) its plan for rapid and orderly resolu-
18 tion in the event of severe financial distress;

19 (B) the nature and extent to which the fi-
20 nancial holding company subject to stricter
21 standards has credit exposure to other signifi-
22 cant financial companies; and

23 (C) the nature and extent to which other
24 significant financial companies have credit ex-

1 posure to the financial holding company subject
2 to stricter standards.

3 (2) NO LIMITING EFFECT.—A rapid resolution
4 plan submitted in accordance with this subsection
5 shall not be binding on a receiver appointed under
6 subtitle G, a bankruptcy court, or any other author-
7 ity that is authorized or required to resolve the fi-
8 nancial holding company subject to stricter stand-
9 ards or any of its subsidiaries or affiliates.

10 (3) REPORTING TRIGGERED BY STRESS TEST
11 RESULTS.—

12 (A) FINANCIAL HOLDING COMPANIES SUB-
13 JECT TO STRICTER STANDARDS.—Each time
14 the results of a quarterly stress test under base-
15 line or adverse conditions conducted by a finan-
16 cial holding company subject to stricter stand-
17 ards under section 1114(a) or the results of a
18 stress test of that financial holding company
19 subject to stricter standards conducted by the
20 Board under subsection (g) indicate that the fi-
21 nancial holding company subject to stricter
22 standards is, in the determination of the Board,
23 significantly or critically undercapitalized, that
24 financial holding company subject to stricter
25 standards shall submit a rapid resolution plan

1 in accordance with this subsection that has
2 been revised to address the causes of those re-
3 sults.

4 (B) FINANCIAL COMPANIES THAT ARE NOT
5 FINANCIAL HOLDING COMPANIES SUBJECT TO
6 STRICTER STANDARDS.—Each time the results
7 of a semiannual stress test under baseline or
8 adverse conditions conducted by a financial
9 company under section 1114(b) indicate that
10 the financial company is, in the determination
11 of the Board, significantly or critically under-
12 capitalized, that financial company shall be re-
13 quired to report under this subsection. The
14 Board shall prescribe regulations establishing
15 expedited procedures for such reporting.

16 (C) TRANSPARENCY.—Any rapid resolution
17 plan submitted pursuant to this paragraph shall
18 be subject to any restrictions regarding the dis-
19 closure of any other rapid resolution plan sub-
20 mitted pursuant to this subsection.

21 (g) STRESS TESTS.—

22 (1) The Board, in coordination with the appro-
23 priate primary financial regulatory agency, shall
24 conduct annual stress tests of each financial holding
25 company subject to stricter standards. The Board

1 may, as the Board determines appropriate, conduct
2 stress tests of financial companies that are not fi-
3 nancial holding companies subject to stricter stand-
4 ards. The Board shall publish a summary of the re-
5 sults of such stress tests.

6 (2) The Board shall issue regulations to define
7 the term “stress test” for purposes of this sub-
8 section. Such a definition shall provide for not less
9 than 3 different sets of conditions under which a
10 stress test should be conducted: baseline, adverse,
11 and severely adverse scenarios.

12 (h) AVOIDING DUPLICATION.—The Board shall take
13 any action the Board deems appropriate to avoid imposing
14 duplicative requirements under this subtitle for financial
15 holding companies subject to stricter standards that are
16 also bank holding companies.

17 (i) RESOLUTION PLANS REQUIRED.—

18 (1) IN GENERAL.—The Corporation and the
19 Board, after consultation with the Council, shall
20 jointly issue regulations requiring financial holding
21 companies subject to stricter standards to develop
22 plans designed to assist in the rapid and orderly res-
23 olution of the company.

24 (2) STANDARDS FOR RESOLUTION PLANS.—The
25 regulations required by paragraph (1) shall—

1 (A) define the scope of financial holding
2 companies subject to stricter standards covered
3 by these requirements and may exempt finan-
4 cial holding companies subject to stricter stand-
5 ards from the requirements of this subsection if
6 the Corporation and the Board jointly deter-
7 mine that exemption is consistent with the pur-
8 poses of this title;

9 (B) require each plan to demonstrate that
10 any insured depository institution affiliated
11 with a financial holding company subject to
12 stricter standards is adequately insulated from
13 the activities of any non-bank subsidiary of the
14 institution or financial holding companies sub-
15 ject to stricter standards;

16 (C) require that each plan include informa-
17 tion detailing—

18 (i) the nature and extent to which the
19 financial holding company subject to strict-
20 er standards has credit exposure to other
21 significant financial companies;

22 (ii) the nature and extent to which
23 other significant financial companies have
24 credit exposure to the financial holding
25 company subject to stricter standards;

1 (iii) full descriptions of the financial
2 holding company subject to stricter stand-
3 ards' ownership structure, assets, liabil-
4 ities, and contractual obligations; and

5 (iv) the cross-guarantees tied to dif-
6 ferent securities, a list of major counter-
7 parties, and a process for determining
8 where the financial holding company sub-
9 ject to stricter standards' collateral is
10 pledged; and

11 (D) establish such other standards as the
12 Corporation and the Board may jointly deem
13 necessary to carry out this subsection.

14 (3) REVIEW OF PLANS.—

15 (A) SUBMISSION OF PLANS.—Each finan-
16 cial holding company subject to stricter stand-
17 ards that is subject to the requirement under
18 paragraph (1) shall submit its plan to the Cor-
19 poration and the Board.

20 (B) REVIEW.—Upon the submission of a
21 plan pursuant to subparagraph (A), and not
22 less often than annually thereafter, the Cor-
23 poration and the Board, after consultation with
24 any Federal financial regulatory agencies with
25 jurisdiction over the financial holding company

1 subject to stricter standards, shall jointly review
2 such plan and may require a financial holding
3 company subject to stricter standards to revise
4 its plan consistent with the standards estab-
5 lished pursuant to paragraph (2).

6 (4) ENFORCEMENT.—

7 (A) IN GENERAL.—The Corporation, after
8 consultation with the Board, shall have the au-
9 thority to take any enforcement action in sec-
10 tion 8 of the Federal Deposit Insurance Act (12
11 U.S.C. 1818) against any financial holding
12 company subject to stricter standards that fails
13 to comply with the requirements of this section
14 or any regulations issued pursuant to this sec-
15 tion.

16 (B) NO LIMITATION ON BOARD AUTHOR-
17 ITY.—Nothing under this subsection shall be
18 construed as limiting any enforcement authority
19 available to the Board under any other provi-
20 sion of law.

21 (5) NO LIMITING EFFECT ON RECEIVER.—A
22 rapid resolution plan submitted under this section
23 shall not be binding on a receiver appointed under
24 subtitle G, a bankruptcy court, or any other author-
25 ity that is authorized or required to resolve the fi-

1 financial holding company subject to stricter stand-
2 ards or any of its subsidiaries or affiliates.

3 (6) NO PRIVATE RIGHT OF ACTION.—No pri-
4 vate right of action may be based on any resolution
5 plan submitted under this section.

6 **SEC. 1105. MITIGATION OF SYSTEMIC RISK.**

7 (a) COUNCIL AUTHORITY TO RESTRICT OPERATIONS
8 AND ACTIVITIES.—If the Council determines, after notice
9 and an opportunity for hearing, that despite the higher
10 prudential standards imposed pursuant to section
11 1104(a)(2), the size of a financial holding company sub-
12 ject to stricter standards or the scope, nature, scale, con-
13 centration, interconnectedness, or mix of activities directly
14 or indirectly conducted by a financial holding company
15 subject to stricter standards poses a grave threat to the
16 financial stability or economy of the United States, the
17 Council shall require the company to undertake 1 or more
18 mitigatory actions described in subsection (d).

19 (b) CONSULTATION WITH FEDERAL FINANCIAL
20 REGULATORY AGENCIES.—The Council, in determining
21 whether to impose any requirement under this section that
22 is likely to have a significant impact on a functionally reg-
23 ulated subsidiary, or a subsidiary depository institution,
24 of a financial company subjected to stricter prudential

1 standards under this title, shall consult with the Federal
2 financial regulatory agency for any such subsidiary.

3 (c) FACTORS FOR CONSIDERATION.—In reaching a
4 determination described in subsection (a), the Council
5 shall take into consideration the following factors, as ap-
6 propriate—

7 (1) the amount and nature of the company’s fi-
8 nancial assets;

9 (2) the amount and nature of the company’s li-
10 abilities, including the degree of reliance on short-
11 term funding;

12 (3) the extent and nature of the company’s off-
13 balance sheet exposures;

14 (4) the company’s reliance on leverage;

15 (5) the extent and nature of the company’s
16 transactions, relationships, and interconnectedness
17 with other financial and non-financial companies;

18 (6) the company’s importance as a source of
19 credit for households, businesses, and State and
20 local governments and as a source of liquidity for
21 the financial system;

22 (7) the scope, nature, size, scale, concentration,
23 interconnectedness and mix of the company’s activi-
24 ties;

1 (8) the extent to which prudential regulations
2 mitigate the risk posed; and

3 (9) any other factors identified that the Council
4 determines appropriate.

5 (d) MITIGATORY ACTIONS.—

6 (1) IN GENERAL.—Mitigatory action may in-
7 clude—

8 (A) modifying the prudential standards im-
9 posed pursuant to section 1104(a);

10 (B) terminating 1 or more activities;

11 (C) imposing conditions on the manner in
12 which a financial holding company subject to
13 stricter standards conducts 1 or more activities;

14 (D) limiting the ability to merge with, ac-
15 quire, consolidate with, or otherwise become af-
16 filiated with another company;

17 (E) restricting the ability to offer a finan-
18 cial product or products; and

19 (F) in the event the Council deems sub-
20 paragraphs (A) through (E) inadequate as a
21 means to address the identified risks, selling,
22 divesting, or otherwise transferring business
23 units, branches, assets, or off-balance sheet
24 items to unaffiliated companies.

1 (2) INTERNATIONAL COMPETITIVENESS CON-
2 SIDERATIONS.—In making any decision pursuant to
3 paragraph (1), the Council shall consider—

4 (A) the need to maintain the international
5 competitiveness of the United States financial
6 services industry; and

7 (B) the extent to which other countries
8 with a significant financial services industry
9 have established corresponding regimes to miti-
10 gate threats to financial stability or the econ-
11 omy posed by financial companies.

12 (e) DUE PROCESS.—

13 (1) NOTICE AND HEARING.—The Council shall
14 give notice to a financial company subject to stricter
15 prudential standards, and opportunity for hearing if
16 requested, that the financial company is being con-
17 sidered for mitigatory action pursuant to subsection
18 (a). The hearing shall occur no later than 30 days
19 after the financial company receives notice of the
20 proposed action from the Council.

21 (2) NOTICE.—The Council shall notify the fi-
22 nancial company subject to stricter prudential stand-
23 ards of the Council’s determination, and, if the
24 Council determines that mitigatory action is appro-

1 appropriate, require the company to submit a plan to the
2 Council to implement the required mitigatory action.

3 (3) SUBMISSION OF PLAN.—The financial hold-
4 ing company subject to stricter standards shall sub-
5 mit its proposed plan to implement the required
6 mitigatory action or actions to the Council within 60
7 days from the date it receives notice under para-
8 graph (2) or such shorter timeframe as the Council
9 may require, if the Council determines an emergency
10 situation merits expeditious implementation.

11 (4) APPROVAL OR AMENDMENT OF THE
12 PLAN.—The Council shall review the plan submitted
13 pursuant to paragraph (3) and determine whether
14 the plan achieves the goal of mitigating a grave
15 threat to the financial stability or the economy of
16 the United States. The Council may approve or dis-
17 approve the plan with or without amendment.

18 (5) EFFECT OF PLAN APPROVAL.—The Council
19 shall—

20 (A) notify a financial holding company
21 subject to stricter standards by order, which
22 shall be public, that the Council has approved
23 the plan with or without amendment; and

24 (B) direct the Board to require a financial
25 holding company subject to stricter standards

1 to comply with the plan to implement mitiga-
2 tory action or actions within a reasonable time-
3 frame after the Council's approval and in ac-
4 cordance with such deadlines established in the
5 plan.

6 (f) TREASURY SECRETARY CONCURRENCE.—Mitiga-
7 tory action imposed by the Council involving the sale, di-
8 vestiture, or transfer of more than \$10,000,000,000 in
9 total assets by a financial holding company subject to
10 stricter standards shall require the Secretary of the Treas-
11 ury's concurrence before the issuance of the notice in sub-
12 section (e)(5)(A). If the sale, divestiture, or transfer of
13 total assets by a financial holding company subject to
14 stricter standards exceeds \$100,000,000,000, the Sec-
15 retary of the Treasury shall consult with the President be-
16 fore concurrence.

17 (g) FAILURE TO IMPLEMENT THE PLAN.—If a finan-
18 cial holding company subject to stricter standards fails to
19 implement a plan for mitigatory action imposed pursuant
20 to subsection (e)(5) within a reasonable timeframe, the
21 Council shall direct the Board to take such actions as nec-
22 essary to ensure compliance with the plan.

23 (h) JUDICIAL REVIEW.—For any plan required under
24 this section, a financial holding company subject to strict-
25 er standards may, not later than 30 days after receipt of

1 the Council’s notice under subsection (e)(5), bring an ac-
2 tion in the United States district court for the judicial dis-
3 trict in which the home office of such company is located,
4 or in the United States District Court for the District of
5 Columbia, for an order requiring that the requirement for
6 a mitigatory action be rescinded. Judicial review under
7 this section shall be limited to the imposition of a mitiga-
8 tory action. In reviewing the Council’s imposition of a
9 mitigatory action, the court shall rescind or dismiss only
10 those mitigatory actions it finds to be imposed in an arbi-
11 trary and capricious manner.

12 **SEC. 1106. SUBJECTING ACTIVITIES OR PRACTICES TO**
13 **STRICTER PRUDENTIAL STANDARDS FOR FI-**
14 **NANCIAL STABILITY PURPOSES.**

15 (a) IN GENERAL.—The Council may subject a finan-
16 cial activity or practice to stricter prudential standards
17 under this subtitle if the Council determines that the con-
18 duct, scope, nature, size, scale, concentration, or inter-
19 connectedness of such activity or practice could create or
20 increase the risk of significant liquidity, credit, or other
21 problems spreading among financial institutions or mar-
22 kets and local, minority, or underserved communities, and
23 thereby threaten the stability of the financial system or
24 economy.

1 (b) PERIODIC REVIEW OF ACTIVITY IDENTIFICA-
2 TIONS.—

3 (1) SUBMISSION OF ASSESSMENT.—The Board
4 shall periodically submit a report to the Council con-
5 taining an assessment of whether each activity or
6 practice subjected to stricter prudential standards
7 should continue to be subject to such standards.

8 (2) REVIEW AND RECISION.—The Council
9 shall—

10 (A) review the assessment submitted pur-
11 suant to paragraph (1) and any information or
12 recommendation submitted by members of the
13 Council regarding whether a financial activity
14 subjected to stricter prudential standards con-
15 tinues to merit stricter prudential standards;
16 and

17 (B) rescind the action subjecting an activ-
18 ity to heightened prudential supervision if the
19 Council determines that the activity no longer
20 meets the criteria in subsection (a).

21 (c) PROCEDURE FOR SUBJECTING OR CEASING TO
22 SUBJECT AN ACTIVITY OR PRACTICE TO STRICTER PRU-
23 DENTIAL STANDARDS.—

24 (1) COUNCIL AND BOARD COORDINATION.—The
25 Council shall inform the Board if the Council is con-

1 sidering whether to subject or cease to subject an
2 activity to stricter prudential standards in accord-
3 ance with this section.

4 (2) NOTICE AND OPPORTUNITY FOR CONSIDER-
5 ATION OF WRITTEN MATERIALS.—

6 (A) IN GENERAL.—The Board shall, in an
7 executive capacity on behalf of the Council, pro-
8 vide notice to financial companies that the
9 Council is considering whether to subject an ac-
10 tivity or practice to heightened prudential regu-
11 lation, and shall provide a financial company
12 engaged in such activity or practice 30 days to
13 submit written materials to inform the Coun-
14 cil’s decision. The Council shall decide, and the
15 Board shall provide notice of the Council’s deci-
16 sion, within 60 days of the due date for such
17 written materials.

18 (B) EMERGENCY EXCEPTION.—The Coun-
19 cil may waive or modify the requirements of
20 subparagraph (A) if the Council determines
21 that such waiver or modification is necessary or
22 appropriate to prevent or mitigate threats posed
23 by an activity to financial stability. The Board
24 shall, in an executive capacity on behalf of the
25 Council, provide notice of such waiver or modi-

1 fication to financial companies as soon as prac-
2 ticable, which shall be no later than 24 hours
3 after the waiver or modification.

4 (3) FORM OF DECISION.—The Board shall pro-
5 vide all notices required under this subsection by
6 posting a notice on the Board’s web site and pub-
7 lishing a notice in the Federal Register.

8 **SEC. 1107. STRICTER REGULATION OF ACTIVITIES AND**
9 **PRACTICES FOR FINANCIAL STABILITY PUR-**
10 **POSES.**

11 (a) PRUDENTIAL STANDARDS.—

12 (1) BOARD AUTHORITY TO RECOMMEND.—

13 (A) IN GENERAL.—To mitigate the risks to
14 United States financial stability and the United
15 States economy posed by financial activities and
16 practices that the Council identifies for stricter
17 prudential standards under section 1106 the
18 Board shall recommend prudential standards to
19 the appropriate primary financial regulatory
20 agencies to apply to such identified activities
21 and practices.

22 (B) CONSULTATION WITH PRIMARY FINAN-
23 CIAL REGULATORY AGENCIES.—The Board, in
24 developing recommendations under this sub-
25 section, shall consult with the relevant primary

1 financial regulatory agencies with respect to
2 any standard that is likely to have a significant
3 effect on entities described in section
4 1000(b)(6).

5 (2) CRITERIA.—The actions recommended
6 under paragraph (1)—

7 (A) shall be designed to maximize financial
8 stability, taking costs to long-term financial and
9 economic growth into account; and

10 (B) may include prescribing the conduct of
11 the activity or practice in specific ways (such as
12 by limiting its scope, nature, size, scale, con-
13 centration, or interconnectedness, or applying
14 particular capital or risk-management require-
15 ments to the conduct of the activity) or prohib-
16 iting the activity or practice altogether.

17 (b) IMPLEMENTATION OF RECOMMENDED STAND-
18 ARDS.—

19 (1) ROLE OF PRIMARY FINANCIAL REGULATORY
20 AGENCY.—Each primary financial regulatory agency
21 is authorized to impose, require reports regarding,
22 examine for compliance with, and enforce standards
23 in accordance with this section with respect to those
24 entities described in section 1000(b)(6) for which it
25 is the primary financial regulatory agency. This au-

1 thority is in addition to and does not limit any other
2 authority of the primary financial regulatory agen-
3 cies. Compliance by an entity with actions taken by
4 a primary financial regulatory agency under this sec-
5 tion shall be enforceable in accordance with the stat-
6 utes governing the respective primary financial regu-
7 latory agency's jurisdiction over the entity as if the
8 agency action were taken under those statutes.

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

16 (3) PRIMARY FINANCIAL REGULATORY AGENCY
17 RESPONSE.—A primary financial regulatory agency
18 shall notify the Council and the Board in writing on
19 whether and to what extent the agency has imposed
20 the stricter prudential standards described in para-
21 graph (2) within 60 days of the Board's rec-
22 ommendation. A primary financial regulatory agency
23 that fails to impose such standards shall provide
24 specific justification for such failure to act in the

1 written notice from the agency to the Council and
2 Board.

3 **SEC. 1108. EFFECT OF RESCISSION OF IDENTIFICATION.**

4 (a) NOTICE.—When the Council determines that a
5 company or activity or practice no longer is subject to
6 heightened prudential scrutiny, the Board shall inform the
7 relevant primary financial regulatory agency or agencies
8 (if different from the Board) of that finding.

9 (b) DETERMINATION OF PRIMARY FINANCIAL REGU-
10 LATORY AGENCY TO CONTINUE.—A primary financial
11 regulatory agency that has imposed stricter prudential
12 standards for financial stability purposes under this sub-
13 title shall determine whether standards that it has im-
14 posed under this subtitle should remain in effect.

15 **SEC. 1109. EMERGENCY FINANCIAL STABILIZATION.**

16 (a) IN GENERAL.—Upon the written determination
17 of the Council that a liquidity event exists that could de-
18 stabilize the financial system (which determination shall
19 be made upon a vote of not less than two-thirds of the
20 members of the Council then serving) and with the written
21 consent of the Secretary of the Treasury (after certifi-
22 cation by the President that an emergency exists), the
23 Corporation may create a widely-available program de-
24 signed to avoid or mitigate adverse effects on systemic eco-
25 nomic conditions or financial stability by guaranteeing ob-

1 ligations of solvent insured depository institutions or other
2 solvent companies that are predominantly engaged in ac-
3 tivities that are financial in nature or are incidental there-
4 to pursuant to section 4(k) of the Bank Holding Company
5 Act, if necessary to prevent systemic financial instability
6 during times of severe economic distress, except that a
7 guarantee of obligations under this section may not in-
8 clude provision of equity in any form.

9 (b) POLICIES AND PROCEDURES.—Prior to exercising
10 any authority under this section, the Corporation shall es-
11 tablish policies and procedures governing the issuance of
12 guarantees. The terms and conditions of any guarantees
13 issued shall be established by the Corporation with the ap-
14 proval of the Secretary of the Treasury and the Financial
15 Stability Oversight Council.

16 (c) FUNDING.—

17 (1) ADMINISTRATIVE EXPENSES AND COST OF
18 GUARANTEES.—A program established pursuant to
19 this section shall require funding only for the pur-
20 poses of paying administrative expenses and for pay-
21 ing a guarantee in the event that a guaranteed loan
22 defaults.

23 (2) FEES AND OTHER CHARGES.—The Corpora-
24 tion shall charge fees or other charges to all partici-
25 pants in such program established pursuant to this

1 section. To the extent that a program established
2 pursuant to this section has expenses or losses, the
3 program will be funded entirely through fees or
4 other charges assessed on participants in such pro-
5 gram.

6 (3) EXCESS FUNDS.—If at the conclusion of
7 such program there are any excess funds collected
8 from the fees associated with such program, the
9 funds will be deposited into the Systemic Resolution
10 Fund established pursuant to section 1609(n).

11 (4) AUTHORITY OF CORPORATION.—For pur-
12 poses of conducting a program established pursuant
13 to this section, the Corporation—

14 (A) may borrow funds from the Secretary
15 of the Treasury, which shall be repaid in full
16 with interest through fees and charges paid by
17 participants in accordance with paragraph (2),
18 and, to the extent such additional amounts are
19 necessary, assessments on large financial com-
20 panies under paragraph (5), and there shall be
21 available to the Corporation amounts in the
22 Treasury not otherwise appropriated, including
23 for the payment of reasonable administrative
24 expenses;

1 (B) may not borrow funds from the De-
2 posit Insurance Fund established pursuant to
3 section 11(a)(4) of the Federal Deposit Insur-
4 ance Act; and

5 (C) may not borrow funds from the Sys-
6 temic Resolution Fund established pursuant to
7 section 1609(n).

8 (5) BACK-UP SPECIAL ASSESSMENT.—To the
9 extent that the funds collected pursuant to para-
10 graph (2) are insufficient to cover any losses or ex-
11 penses (including monies borrowed pursuant to
12 paragraph (4)) arising from a program established
13 pursuant to this section, the Corporation shall im-
14 pose a special assessment on—

15 (A) large financial companies subject to as-
16 sessments under section 1609(n) (whether or
17 not such company participated in such pro-
18 gram) in the manner provided in such section
19 1609(n); and

20 (B) participants in the program that are
21 not large financial companies paying assess-
22 ments pursuant to section 1609(n).

23 (d) PLAN FOR MAINTENANCE OR INCREASE OF
24 LENDING.—In connection with any application or request
25 to participate in such program authorized pursuant to this

1 section, a solvent company seeking to participate in such
2 program shall be required to submit to the Corporation
3 a plan detailing how the use of such guaranteed funds will
4 facilitate the increase or maintenance of such solvent com-
5 pany's level of lending to consumers or small businesses.

6 (e) DEFINITIONS.—For purposes of this section, the
7 following definitions apply:

8 (1) ACTIVITIES THAT ARE FINANCIAL IN NA-
9 TURE.—The term “activities that are financial in
10 nature” means activities that are determined to be
11 financial in nature, or incidental to such activities,
12 under section 4(k) of the Bank Holding Company
13 Act of 1956 (12 U.S.C. 1843(k)) and activities that
14 are identified for stricter prudential standards under
15 section 1106.

16 (2) COMPANY.—The term “company” means
17 any entity other than a natural person that is incor-
18 porated or organized under Federal law or the laws
19 of any State.

20 (3) CORPORATION.—The term “Corporation”
21 means the Federal Deposit Insurance Corporation.

22 (4) INSURED DEPOSITORY INSTITUTION.—The
23 term “insured depository institution” shall have the
24 same meaning as in section 3 of the Federal Deposit
25 Insurance Act (12 U.S.C. 1813).

1 (5) SOLVENT.—The term “solvent” means as-
2 sets are more than the obligations to creditors.

3 (f) SUNSET OF CORPORATION’S AUTHORITY.—The
4 Corporation’s authority under subsections (a) and (c) and
5 the authority to borrow or obligate funds under section
6 1609(n) shall expire on December 31, 2013, unless the
7 President transmits to the Congress a request for renewal
8 of the authority and there is enacted a joint resolution,
9 as defined in subsection (g).

10 (g) JOINT RESOLUTION.—

11 (1) TERMS.—For purposes of subsection (f),
12 the term “joint resolution” means only a joint reso-
13 lution which is introduced within a 2-day period be-
14 ginning on the date on which the President trans-
15 mits the request to the Congress under subsection
16 (f), and—

17 (A) which does not have a preamble;

18 (B) the matter after the resolving clause of
19 which is as follows: “That Congress approves
20 the request for renewal of authority provided
21 under sections 1108 and 1609(n) of the Finan-
22 cial Stability Improvement Act of 2009 as sub-
23 mitted by the President on _____”,
24 the blank space being filled in with the appro-
25 priate date; and

1 (C) the title of which is as follows: “Joint
2 resolution approving the renewal of financial
3 stabilization authority.”.

4 (2) REFERRAL.—A resolution described in
5 paragraph (1) that is introduced in the House of
6 Representatives shall be referred to the Committee
7 on Financial Services of the House of Representa-
8 tives. A resolution described in paragraph (1) intro-
9 duced in the Senate shall be referred to the Com-
10 mittee on Banking, Housing, and Urban Affairs of
11 the Senate.

12 (3) DISCHARGE.—If the committee to which a
13 resolution described in paragraph (1) is referred has
14 not reported such resolution (or an identical resolu-
15 tion) by the end of the 2-day period beginning on
16 the date on which the President transmits the re-
17 quest to the Congress under subsection (f), such
18 committee shall be, at the end of such period, dis-
19 charged from further consideration of such resolu-
20 tion, and such resolution shall be placed on the ap-
21 propriate calendar of the House involved.

22 (4) CONSIDERATION.—

23 (A) IN GENERAL.—On or after the day
24 after the date on which the committee to which
25 such a resolution is referred has reported, or

1 has been discharged (under paragraph (3))
2 from further consideration of, such a resolution,
3 it is in order (even though a previous motion to
4 the same effect has been disagreed to) for any
5 Member of the respective House to move to pro-
6 ceed to the consideration of the resolution. A
7 Member may make the motion only on the day
8 after the calendar day on which the Member
9 announces to the House concerned the Mem-
10 ber's intention to make the motion, except that,
11 in the case of the House of Representatives, the
12 motion may be made without such prior an-
13 nouncement if the motion is made by direction
14 of the committee to which the resolution was re-
15 ferred. All points of order against the resolution
16 (and against consideration of the resolution)
17 are waived. The motion is highly privileged in
18 the House of Representatives and is privileged
19 in the Senate and is not debatable. The motion
20 is not subject to amendment, or to a motion to
21 postpone, or to a motion to proceed to the con-
22 sideration of other business. A motion to recon-
23 sider the vote by which the motion is agreed to
24 or disagreed to shall not be in order. If a mo-
25 tion to proceed to the consideration of the reso-

1 lution is agreed to, the respective House shall
2 immediately proceed to consideration of the
3 joint resolution without intervening motion,
4 order, or other business, and the resolution
5 shall remain the unfinished business of the re-
6 spective House until disposed of.

7 (B) DEBATE.—Debate on the resolution,
8 and on all debatable motions and appeals in
9 connection therewith, shall be limited to not
10 more than 2 hours, which shall be divided
11 equally between those favoring and those oppos-
12 ing the resolution. An amendment to the resolu-
13 tion is not in order. A motion to limit further
14 debate is in order and not debatable. A motion
15 to postpone, or a motion to proceed to the con-
16 sideration of other business, or a motion to re-
17 commit the resolution is not in order. A motion
18 to reconsider the vote by which the resolution is
19 agreed to or disagreed to is not in order.

20 (C) VOTE.—Immediately following the con-
21 clusion of the debate on a resolution described
22 in paragraph (1) and a single quorum call at
23 the conclusion of the debate, if requested in ac-
24 cordance with the rules of the appropriate

1 House, the vote on final passage of the resolu-
2 tion shall occur.

3 (D) RULES APPEALS.—Appeals of the de-
4 cisions of the Chair relating to the application
5 of the rules of the Senate or the House of Rep-
6 resentatives, as the case may be, to the proce-
7 dure relating to a resolution described in para-
8 graph (1) shall be decided without debate.

9 (5) CONSIDERATION BY OTHER HOUSE.—

10 (A) IN GENERAL.—If, before the passage
11 by one House of a resolution of that House de-
12 scribed in paragraph (1), that House receives
13 from the other House a resolution described in
14 paragraph (1), then the following procedures
15 shall apply:

16 (i) The resolution of the other House
17 shall not be referred to a committee and
18 may not be considered in the House receiv-
19 ing it except in the case of final passage as
20 provided in clause (ii)(II).

21 (ii) With respect to a resolution de-
22 scribed in paragraph (1) of the House re-
23 ceiving the resolution—

24 (I) the procedure in that House
25 shall be the same as if no resolution

1 had been received from the other
2 House; but

3 (II) the vote on final passage
4 shall be on the resolution of the other
5 House.

6 (B) CONSIDERATION.—Upon disposition of
7 the resolution received from the other House, it
8 shall no longer be in order to consider the reso-
9 lution that originated in the receiving House.

10 (6) RULES OF THE SENATE AND HOUSE.—This
11 subsection is enacted by the Congress—

12 (A) as an exercise of the rulemaking power
13 of the Senate and House of Representatives, re-
14 spectively, and as such it is deemed a part of
15 the rules of each House, respectively, but appli-
16 cable only with respect to the procedure to be
17 followed in that House in the case of a resolu-
18 tion described in paragraph (1), and it super-
19 sedes other rules only to the extent that it is in-
20 consistent with such rules; and

21 (B) with full recognition of the constitu-
22 tional right of either House to change the rules
23 (so far as relating to the procedure of that
24 House) at any time, in the same manner, and

1 to the same extent as in the case of any other
2 rule of that House.

3 (7) EFFECTIVE PERIOD.—The Presidential re-
4 quest referred to in paragraph (1) shall specify the
5 period of time that such authority is extended and
6 the adoption of the joint resolution shall extend such
7 powers for such period of time.

8 **SEC. 1110. CORPORATION MUST RECEIVE WARRANTS WHEN**
9 **PAYING OR RISKING TAXPAYER FUNDS.**

10 (a) IN GENERAL.—The Federal Deposit Insurance
11 Corporation (hereinafter in this section referred to as the
12 “Corporation”) may not provide any payment, credit ex-
13 tension, or guarantee, or make any such commitment
14 under the authority of section 1109 or 1604, unless the
15 Corporation receives from the financial company for which
16 the credit extension or guarantee is intended, as fair mar-
17 ket value consideration for such payment, credit extension
18 or guarantee—

19 (1) in the case of a financial company, the secu-
20 rities of which are traded on a national securities ex-
21 change, a warrant giving the right to the Corpora-
22 tion to receive nonvoting common stock or preferred
23 stock in such financial institution, or voting stock
24 with respect to which, the Corporation agrees not to

1 exercise voting power, as the Corporation determines
2 appropriate; or

3 (2) in the case of any financial company other
4 than one described in paragraph (1), a warrant for
5 common or preferred stock, or a senior debt instru-
6 ment from such financial institution, as described in
7 subsection (b)(3).

8 (b) TERMS AND CONDITIONS.—The terms and condi-
9 tions of any warrant or senior debt instrument required
10 under subsection (a) shall meet the following require-
11 ments:

12 (1) PURPOSES.—Such terms and conditions
13 shall, at a minimum, be designed—

14 (A) to provide for reasonable participation
15 by the Corporation, for the benefit of taxpayers,
16 in equity appreciation in the case of a warrant
17 or other equity security, or a reasonable interest
18 rate premium, in the case of a debt instrument;
19 and

20 (B) to provide additional protection for the
21 taxpayer against losses from such payment, ex-
22 tension of credit, or guarantee by the Corpora-
23 tion under this title.

24 (2) AUTHORITY TO SELL, EXERCISE, OR SUR-
25 RENDER.—The Corporation may sell, exercise, or

1 surrender a warrant or any senior debt instrument
2 received under this subsection, based on the condi-
3 tions established under paragraph (1).

4 (3) CONVERSION.—The warrant shall provide
5 that if, after the warrant is received by the Corpora-
6 tion under this subsection, the financial company
7 that issued the warrant is no longer listed or traded
8 on a national securities exchange or securities asso-
9 ciation, as described in subsection (a)(1), such war-
10 rants shall convert to senior debt, or contain appro-
11 priate protections for the Corporation to ensure that
12 the Corporation is appropriately compensated for the
13 value of the warrant, in an amount determined by
14 the Corporation.

15 (4) PROTECTIONS.—Any warrant representing
16 securities to be received by the Corporation under
17 this subsection shall contain anti-dilution provisions
18 of the type employed in capital market transactions,
19 as determined by the Corporation. Such provisions
20 shall protect the value of the securities from market
21 transactions such as stock splits, stock distributions,
22 dividends, and other distributions, mergers, and
23 other forms of reorganization or recapitalization.

24 (5) EXERCISE PRICE.—The exercise price for
25 any warrant issued pursuant to this subsection shall

1 be set by the Corporation, in the interest of the tax-
2 payers.

3 (6) SUFFICIENCY.—The financial company
4 shall guarantee to the Corporation that it has au-
5 thorized shares of nonvoting stock available to fulfill
6 its obligations under this subsection. Should the fi-
7 nancial company not have sufficient authorized
8 shares, including preferred shares that may carry
9 dividend rights equal to a multiple number of com-
10 mon shares, the Corporation may, to the extent nec-
11 essary, accept a senior debt note in an amount, and
12 on such terms as will compensate the Corporation
13 with equivalent value, in the event that a sufficient
14 shareholder vote to authorize the necessary addi-
15 tional shares cannot be obtained.

16 (c) EXCEPTIONS.—

17 (1) The Corporation shall establish an exception
18 to the requirements of this section and appropriate
19 alternative requirements for any participating finan-
20 cial company that is legally prohibited from issuing
21 securities and debt instruments, so as not to allow
22 circumvention of the requirements of this section.

23 (2) If the Corporation is providing a payment,
24 extension of credit, or guarantee with regard to its
25 authority under section 1604 and the Corporate de-

1 termines that it is certain that at the conclusion of
2 the Resolution Process the shareholders of all classes
3 shall lose their entire investment and receive nothing
4 therefor, then the requirements of this section shall
5 not apply.

6 **SEC. 1111. EXAMINATIONS AND ENFORCEMENT ACTIONS**
7 **FOR INSURANCE AND RESOLUTIONS PUR-**
8 **POSES.**

9 (a) **EXAMINATIONS FOR INSURANCE AND RESOLU-**
10 **TIONS PURPOSES.**—Section 10(b)(3) of the Federal De-
11 posit Insurance Act (12 U.S.C. 1820(b)(3)) is amended
12 by striking “whenever the Board of Directors determines”
13 and all that follows through the period and inserting “or
14 financial holding company subject to stricter standards (as
15 defined in section 1000(b)(5) of the Financial Stability
16 Improvement Act of 2009) whenever the Board of Direc-
17 tors determines a special examination of any such deposi-
18 tory institution is necessary to determine the condition of
19 such depository institution for insurance or such financial
20 holding company subject to stricter standards for resolu-
21 tion purposes.”.

22 (b) **ENFORCEMENT AUTHORITY.**—Section 8(t) of the
23 Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is
24 amended—

25 (1) in paragraph (2)—

1 (A) at the end of subparagraph (B), by
2 striking “or”;

3 (B) at the end of subparagraph (C), by
4 striking the period and inserting “; or”; and

5 (C) by inserting at the end the following
6 new subparagraph:

7 “(D) the conduct or threatened conduct
8 (including any acts or omissions) of the deposi-
9 tory institution holding company poses a risk to
10 the Deposit Insurance Fund.”; and

11 (2) by adding at the end the following new
12 paragraph:

13 “(6) For purposes of this subsection:

14 “(A) The Corporation shall have the same
15 powers with respect to a depository institution
16 holding company and its affiliates as the appro-
17 priate Federal banking agency has with respect
18 to the holding company and its affiliates; and

19 “(B) the holding company and its affiliates
20 shall have the same duties and obligations with
21 respect to the Corporation as the holding com-
22 pany and its affiliates have with respect to the
23 appropriate Federal banking agency.”.

1 **SEC. 1112. STUDY OF THE EFFECTS OF SIZE AND COM-**
2 **PLEXITY OF FINANCIAL INSTITUTIONS ON**
3 **CAPITAL MARKET EFFICIENCY AND ECO-**
4 **NOMIC GROWTH.**

5 (a) **STUDY REQUIRED.**—The Chairman of the Coun-
6 cil shall carry out a study of the economic impact of pos-
7 sible financial services regulatory limitations intended to
8 reduce systemic risk. Such study shall estimate the effect
9 on the efficiency of capital markets, costs imposed on the
10 financial sector, and on national economic growth, of—

11 (1) explicit or implicit limits on the maximum
12 size of banks, bank holding companies, and other
13 large financial institutions;

14 (2) limits on the organizational complexity and
15 diversification of large financial institutions;

16 (3) requirements for operational separation be-
17 tween business units of large financial institutions in
18 order to expedite resolution in case of failure;

19 (4) limits on risk transfer between business
20 units of large financial institutions;

21 (5) requirements to carry contingent capital or
22 similar mechanisms;

23 (6) limits on commingling of commercial and fi-
24 nancial activities by large financial institutions;

1 (7) segregation requirements between tradi-
2 tional financial activities and trading or other high-
3 risk operations in large financial institutions; and

4 (8) other limitations on the activities or struc-
5 ture of large financial institutions that may be use-
6 ful to limit systemic risk.

7 The study shall include recommendations for the optimal
8 structure of any limits considered in paragraphs (1)
9 through (5) in order to maximize their effectiveness and
10 minimize their economic impact.

11 (b) REPORT.—Not later than the end of the 180-day
12 period beginning on the date of the enactment of this title,
13 the Chairman shall issue a report to the Congress con-
14 taining any findings and determinations made in carrying
15 out the study required under subsection (a).

16 **SEC. 1113. EXERCISE OF FEDERAL RESERVE AUTHORITY.**

17 (a) NO DECISIONS BY FEDERAL RESERVE BANK
18 PRESIDENTS.—No provision of this title relating to the
19 authority of the Board shall be construed as conferring
20 any decision-making authority on presidents of Federal re-
21 serve banks.

22 (b) VOTING DECISIONS BY BOARD.—The Board of
23 Governors of the Federal Reserve System shall not dele-
24 gate the authority to make any voting decision that the
25 Board is authorized or required to make under this title

1 in contravention of section 11(k) of the Federal Reserve
2 Act.

3 **SEC. 1114. STRESS TESTS.**

4 (a) A financial holding company subject to stricter
5 standards shall—

6 (1) conduct quarterly stress tests; and

7 (2) submit a report on its quarterly stress test
8 to the head of the primary financial regulatory agen-
9 cy and to the Board at such time, in such form, and
10 containing such information as the head of the pri-
11 mary financial regulatory agency may require.

12 (b) A financial company that has more than
13 \$10,000,000,000 in total assets and is not a financial
14 holding company subject to stricter standards shall—

15 (1) conduct semiannual stress tests; and

16 (2) submit a report on its semiannual stress
17 test to the head of the primary financial regulatory
18 agency and to the Board at such time, in such form,
19 and containing such information as the head of the
20 primary financial regulatory agency may require.

21 (c) A stress test under this section shall provide for
22 testing under each of the following sets of conditions:

23 (1) Baseline.

24 (2) Adverse.

25 (3) Severely adverse.

1 (d) The head of each primary financial regulatory
2 agency, in coordination with the Board, shall issue regula-
3 tions to define the term “stress test” for purposes of this
4 section.

5 **SEC. 1115. CONTINGENT CAPITAL.**

6 (a) IN GENERAL.—The Board, in coordination with
7 the appropriate primary financial regulatory agency, may
8 promulgate regulations that require a financial holding
9 company subject to stricter standards to maintain a min-
10 imum amount of long-term hybrid debt that is convertible
11 to equity when—

12 (1) a specified financial company fails to meet
13 prudential standards established by the agency; and

14 (2) the agency has determined that threats to
15 United States financial system stability make such a
16 conversion necessary.

17 (b) FACTORS TO CONSIDER.—In establishing regula-
18 tions under this section, the Board shall consider—

19 (1) an appropriate transition period for imple-
20 mentation of a conversion under this section;

21 (2) capital requirements applicable to the speci-
22 fied financial company and its subsidiaries; and

23 (3) any other factor that the Board deems ap-
24 propriate.

1 (c) STUDY REQUIRED.—The Chairman of the Coun-
2 cil shall carry out a study to determine an optimal imple-
3 mentation of contingent capital requirements to maximize
4 financial stability, minimize the probability of drawing on
5 the Systemic Resolution Fund established under section
6 1609(n) in a financial crisis, and minimize costs for finan-
7 cial holding companies subject to stricter standards. To
8 the extent practicable, the study shall take place with
9 input from industry participants and international finan-
10 cial regulators. Such study shall include—

11 (1) an evaluation of the characteristics and
12 amounts of convertible debt that should be required,
13 including possible tranche structure;

14 (2) an analysis of possible trigger mechanisms
15 for debt conversion, including violation of regulatory
16 capital requirements, failure of stress tests, declara-
17 tion of systemic emergency by regulators, market-
18 based triggers and other trigger mechanisms;

19 (3) an estimate of the costs of carrying contin-
20 gent capital;

21 (4) an estimate of the effectiveness of contin-
22 gent capital requirements in reducing losses to the
23 systemic resolution fund in cases of single-firm or
24 systemic failure; and

1 (5) recommendations for implementing legisla-
2 tion.

3 (d) REPORT.—Not later than the end of the 180-day
4 period beginning on the date of the enactment of this title,
5 the Chairman of Council shall issue a report to the Con-
6 gress containing any findings and determinations made in
7 carrying out the study required under subsection (c).

8 **SEC. 1116. RESTRICTION ON PROPRIETARY TRADING BY**
9 **DESIGNATED FINANCIAL HOLDING COMPA-**
10 **NIES.**

11 (a) IN GENERAL.—If the Board determines that pro-
12 priety trading by a financial holding company subject to
13 stricter standards poses an existing or foreseeable threat
14 to the safety and soundness of such company or to the
15 financial stability of the United States, the Board may
16 prohibit such company from engaging in proprietary trading.

17 (b) EXCEPTIONS PERMITTED.—The Board may ex-
18 empt from the prohibition of subsection (a) proprietary
19 trading that the Board determines to be ancillary to other
20 operations of such company and not to pose a threat to
21 the safety and soundness of such company or to the finan-
22 cial stability of the United States, including—

23 (1) making a market in securities issued by
24 such company;

25 (2) hedging or managing risk;

1 (3) determining the market value of assets of
2 such company; and

3 (4) proprietary trading for such other purposes
4 allowed by the Board by rule.

5 (c) **RULEMAKING AUTHORITY.**—The primary finan-
6 cial regulatory agencies of banks and bank holding compa-
7 nies shall jointly issue regulations to carry out this section.

8 (d) **EFFECTIVE DATE.**—The provisions of this sec-
9 tion shall take effect after the end of the 180-day period
10 beginning on the date of the enactment of this title.

11 (e) **PROPRIETARY TRADING DEFINED.**—For pur-
12 poses of this section and with respect to a company, the
13 term “proprietary trading” means the trading of stocks,
14 bonds, options, commodities, derivatives, or other financial
15 instruments with the company’s own money and for the
16 company’s own account.

17 **SEC. 1117. RULE OF CONSTRUCTION.**

18 The authorities granted to agencies under this sub-
19 title are in addition to any rulemaking, report-related, ex-
20 amination, enforcement, or other authority that such
21 agencies may have under other law and in no way shall
22 be construed to limit such other authority, except that any
23 standards imposed for financial stability purposes under
24 this subtitle shall supersede any conflicting less stringent

1 requirements of the primary financial regulatory agency
2 but only the extent of the conflict.

3 **Subtitle C—Improvements to Su-**
4 **per vision and Regulation of**
5 **Federal Depository Institutions**

6 **SEC. 1201. DEFINITIONS.**

7 For purposes of this subtitle, the following definitions
8 shall apply:

9 (1) **BOARD OF GOVERNORS.**—The term “Board
10 of Governors” means the Board of Governors of the
11 Federal Reserve System.

12 (2) **CORPORATION.**—The term “Corporation”
13 means the Federal Deposit Insurance Corporation.

14 (3) **OFFICE OF THE COMPTROLLER OF THE**
15 **CURRENCY.**—The term “Office of the Comptroller of
16 the Currency” means the office established by sec-
17 tion 324 of the Revised Statutes (12 U.S.C. 1).

18 (4) **OFFICE OF THRIFT SUPERVISION.**—The
19 term “Office of Thrift Supervision” means the office
20 established by section 3 of the Home Owners’ Loan
21 Act (12 U.S.C. 1462a).

22 (5) **SECRETARY.**—The term “Secretary” means
23 the Secretary of the Treasury.

24 (6) **TRANSFER DATE.**—The term “transfer
25 date” has the meaning provided in section 1205.

1 (7) CERTAIN OTHER TERMS.—The terms “affil-
2 iate”, “bank holding company”, “control” (when
3 used with respect to a depository institution), “de-
4 pository institution”, “Federal banking agency”,
5 “Federal savings association”, “including”, “insured
6 branch”, “insured depository institution”, “savings
7 association”, “State savings association”, and “sub-
8 sidiary” have the same meanings as in section 3 of
9 the Federal Deposit Insurance Act.

10 **SEC. 1202. AMENDMENTS TO THE HOME OWNERS’ LOAN**
11 **ACT RELATING TO TRANSFER OF FUNCTIONS.**

12 (a) AMENDMENTS TO SECTION 2.—Section 2 of the
13 Home Owners’ Loan Act (12 U.S.C. 1462) is amended—

14 (1) by striking paragraph (1) and inserting the
15 following new paragraph:

16 “(1) BOARD OF GOVERNORS.—The term ‘Board
17 of Governors’ means the Board of Governors of the
18 Federal Reserve System.”; and

19 (2) by striking paragraph (3) and inserting the
20 following new paragraph:

21 “(3) [repealed]”.

22 (b) AMENDMENTS TO SECTION 3.—Section 3 of the
23 Home Owners’ Loan Act (12 U.S.C. 1462a) is amended—

24 (1) by striking subsection (a) and inserting the
25 following new subsection:

1 “(a) ESTABLISHMENT OF DIVISION OF THRIFT SU-
2 PERVISION.—To carry out the purposes of this Act, there
3 is hereby established the Division of Thrift Supervision,
4 which shall be a division within the Office of the Comp-
5 troller of the Currency.”;

6 (2) in subsection (b)—

7 (A) by striking paragraph (1) and insert-
8 ing the following new paragraph:

9 “(1) IN GENERAL.—The Division of Thrift Su-
10 pervision shall be headed by a Senior Deputy Comp-
11 troller of the Currency who shall be subject to the
12 general oversight of the Comptroller of the Cur-
13 rency.”;

14 (B) in paragraph (2), by striking “Direc-
15 tor” and inserting “Comptroller of the Cur-
16 rency”; and

17 (C) by striking paragraphs (3) and (4);

18 (3) by striking subsections (c), (d), and (e) and
19 inserting the following new subsection:

20 “(c) POWERS OF THE COMPTROLLER OF THE CUR-
21 RENCY.—The Comptroller of the Currency shall have all
22 the powers, duties, and functions transferred by the Fi-
23 nancial Stability Improvement Act of 2009 to the Comp-
24 troller of the Currency to carry out this Act.”;

1 (4) by redesignating subsections (f) and (i) as
2 subsections (d) and (e), respectively;

3 (5) in subsection (d) (as so redesignated), by
4 striking “Director” each place such term appears
5 and inserting “Comptroller of the Currency”;

6 (6) by striking subsections (g), (h), and (j); and

7 (7) in subsection (e) (as so redesignated), by
8 striking “compensation of the Director and other
9 employees of the Office and all other expenses there-
10 of” and inserting “expenses incurred by the Comp-
11 troller of the Currency in carrying out this Act”.

12 (c) AMENDMENTS TO SECTION 4.—Section 4 of the
13 Home Owners’ Loan Act (12 U.S.C. 1463) is amended
14 by striking “Director” each time it appears and inserting
15 “Comptroller of the Currency”.

16 (d) AMENDMENTS TO SECTION 5.—

17 (1) UNIVERSAL.—Section 5 of the Home Own-
18 ers’ Loan Act (12 U.S.C. 1464) is amended—

19 (A) by striking “Director” and “Director
20 of the Office of Thrift Supervision” each place
21 such terms appear and inserting “Comptroller
22 of the Currency”; and

23 (B) by striking “Director’s” each place
24 such term appears and inserting “Comptroller
25 of the Currency’s”.

1 (2) SPECIFIC PROVISIONS.—

2 (A) Section 5(d)(2)(E) of the Home Own-
3 ers' Loan Act is amended by striking “or the
4 Resolution Trust Corporation, as appropriate,”
5 each place such term appears.

6 (B) Section 5(d)(3)(B) of the Home Own-
7 ers' Loan Act is amended by striking “or the
8 Resolution Trust Corporation”.

9 (e) AMENDMENTS TO SECTIONS 8 AND 9.—Sections
10 8 and 9 of the Home Owners' Loan Act (12 U.S.C. 1466a
11 and 1467) are each amended by striking “Director” each
12 place such term appears and inserting “Comptroller of the
13 Currency”.

14 (f) TECHNICAL AND CONFORMING AMENDMENTS.—

15 (1) SECTION 3.—The heading for section 3 of
16 the Home Owners' Loan Act is amended by striking
17 “**DIRECTOR OF THE OFFICE OF THRIFT SUPER-**
18 **VISION**” and inserting “**DIVISION OF THRIFT SU-**
19 **PERVISION**”.

20 (2) SECTION 5.—The heading for paragraph
21 (2)(E)(ii) of section 5(d) of the Home Owners' Loan
22 Act and the heading for paragraph (3)(B) of such
23 section are each amended by striking “OR RTC”.

24 (g) CLERICAL AMENDMENT.—The table of contents
25 section for the Home Owners' Loan Act is amended by

1 striking the item relating to section 3 and inserting the
2 following new item:

“Sec. 3. Division of Thrift Supervision.”.

3 **SEC. 1203. AMENDMENTS TO THE REVISED STATUTES.**

4 (a) AMENDMENT TO SECTION 324.—Section 324 of
5 the Revised Statutes of the United States (12 U.S.C. 1)
6 is amended to read as follows:

7 **“SEC. 324. COMPTROLLER OF THE CURRENCY.**

8 “There shall be in the Department of the Treasury
9 a bureau, the chief officer of which bureau shall be called
10 the Comptroller of the Currency, and shall perform the
11 duties of the Comptroller of the Currency under the gen-
12 eral direction of the Secretary of the Treasury. The Comp-
13 troller of the Currency shall have the same authority over
14 matters as were vested in the Director of the Office of
15 Thrift Supervision or the Office of Thrift Supervision on
16 the day before the date of enactment of the Financial Sta-
17 bility Improvement Act of 2009 other than those authori-
18 ties with respect to savings and loan holding companies
19 and any affiliate of any such company (other than a sav-
20 ings association) as were vested in the Director of the Of-
21 fice of Thrift Supervision on such date. The Secretary of
22 the Treasury may not delay or prevent the issuance of any
23 rule or the promulgation of any regulation by the Comp-
24 troller of the Currency and may not intervene in any mat-
25 ter or proceeding before the Comptroller of the Currency

1 (including agency enforcement actions) unless otherwise
2 specifically provided by law.”.

3 (b) AMENDMENTS TO SECTION 327.—Section 327 of
4 the Revised Statutes of the United States (12 U.S.C. 4)
5 is amended to read as follows:

6 **“SEC. 327 DEPUTY COMPTROLLERS.**

7 “(a) APPOINTMENT.—The Secretary of the Treasury
8 shall appoint no more than 5 Deputy Comptrollers of the
9 Currency—

10 “(1) 1 of whom shall be designated the Senior
11 Deputy Comptroller for National Banks, who shall
12 oversee the regulation and supervision of national
13 banks; and

14 “(2) 1 of whom shall be designated the Senior
15 Deputy Comptroller for Thrift Supervision, who
16 shall oversee the regulation and supervision of Fed-
17 eral savings associations.

18 “(b) PAY.—The Secretary of the Treasury shall fix
19 the compensation of the Deputy Comptrollers of the Cur-
20 rency and provide such other benefits as the Secretary
21 may determine to be appropriate.

22 “(c) OATH OF OFFICE; DUTIES.—Each Deputy
23 Comptroller shall take the oath of office and shall perform
24 such duties as the Comptroller of the Currency shall di-
25 rect.

1 “(d) SERVICE AS ACTING COMPTROLLER.—During a
2 vacancy in the office or during the absence or disability
3 of the Comptroller, each Deputy Comptroller shall possess
4 the power and perform the duties attached by law to the
5 Office of the Comptroller under such order of succession
6 as the Comptroller shall direct.”.

7 (c) AMENDMENT TO SECTION 329.—Section 329 of
8 the Revised Statutes of the United States (12 U.S.C. 11)
9 is amended by inserting “or any Federal savings associa-
10 tion” before the period at the end.

11 (d) AMENDMENT TO SECTION 5240.—The fourth
12 sentence of the second undesignated paragraph of Section
13 5240 of the Revised Statutes of the United States (12
14 U.S.C. 481) is amended by striking “Secretary of the
15 Treasury;” and all that follows through the end of the sen-
16 tence, and inserting “Secretary of the Treasury; the em-
17 ployment and compensation of examiners, chief examiners,
18 reviewing examiners, assistant examiners, and of the other
19 employees of the office of the Comptroller of the Currency
20 whose compensation is and shall be paid from assessments
21 on banks or affiliates thereof or from other fees or charges
22 imposed pursuant to this subchapter shall be set and ad-
23 justed pursuant to chapter 71 of title 5, United States
24 Code and without regard to the provisions of other laws
25 applicable to officers or employees of the United States.”

1 (e) AMENDMENT TO SECTION 5240.—The first sen-
2 tence in the first undesignated paragraph of Section 5240
3 of the Revised Statutes of the United States (12 U.S.C.
4 482) is amended by inserting “pursuant to chapter 71 of
5 title 5, United States Code,” after “shall,”.

6 **SEC. 1204. POWER AND DUTIES TRANSFERRED.**

7 (a) DIRECTOR OF THE OFFICE OF THRIFT SUPER-
8 VISION.—

9 (1) TRANSFER OF FUNCTIONS.—Except as oth-
10 erwise provided in this subtitle, all functions of the
11 Director of the Office of Thrift Supervision are
12 transferred to the Office of the Comptroller of the
13 Currency.

14 (2) COMPTROLLER’S AUTHORITY.—Except as
15 otherwise provided in this subtitle, the Comptroller
16 of the Currency shall succeed to all powers, authori-
17 ties, rights, and duties that were vested in the Direc-
18 tor of the Office of Thrift Supervision under Federal
19 law, including the Home Owners’ Loan Act, on the
20 day before the transfer date other than those pow-
21 ers, authorities, rights, and duties with respect to
22 savings and loan holding companies and any affiliate
23 of any such company (other than a savings associa-
24 tion) as were vested in the Director of the Office of
25 Thrift Supervision on such date.

1 (3) FUNCTIONS RELATING TO SUPERVISION OF
2 STATE SAVINGS ASSOCIATIONS.—

3 (A) TRANSFER OF FUNCTIONS.—All func-
4 tions of the Director of the Office of Thrift Su-
5 pervision relating to the supervision and regula-
6 tion of State savings associations are trans-
7 ferred to the Corporation.

8 (B) CORPORATION'S AUTHORITY.—The
9 Corporation shall succeed to all powers, au-
10 thorities, rights, and duties that were vested in
11 the Director of the Office of Thrift Supervision
12 under Federal law, including the Home Owners'
13 Loan Act, on the day before the transfer date,
14 relating to the supervision and regulation of
15 State savings associations.

16 (b) APPROPRIATE FEDERAL BANKING AGENCY.—
17 Section 3 of the Federal Deposit Insurance Act (12 U.S.C.
18 1813) is amended in subsection (q)—

19 (1) by amending paragraph (1) to read as fol-
20 lows:

21 “(1) the Comptroller of the Currency in the
22 case of any national bank, Federal savings associa-
23 tion or any Federal branch or agency of a foreign
24 bank;”;

1 (2) in paragraph (2)(F), by adding “and” at
2 the end after the semicolon;

3 (3) by amending paragraph (3) to read as fol-
4 lows:

5 “(3) the Federal Deposit Insurance Corporation
6 in the case of a State nonmember insured bank, a
7 State savings association or a foreign bank having
8 an insured branch.”; and

9 (4) by striking paragraph (4).

10 (c) **TRANSFER OF CONSUMER FINANCIAL PROTEC-**
11 **TION FUNCTIONS.**—Nothing in subsection (a) or (b) shall
12 affect any transfer of consumer financial protection func-
13 tions of the Comptroller of the Currency and the Director
14 of the Office of Thrift Supervision to the Consumer Finan-
15 cial Protection Agency as provided in the Consumer Fi-
16 nancial Protection Agency Act of 2009.

17 (d) **EFFECTIVE DATE.**—Subsections (a) and (b) shall
18 become effective on the transfer date.

19 **SEC. 1205. TRANSFER DATE.**

20 (a) **IN GENERAL.**—Except as provided in subsection
21 (b), the date for the transfer of functions to the Office
22 of the Comptroller of the Currency and the Corporation
23 under section 1204 shall be 1 year after the date of enact-
24 ment of this title.

25 (b) **EXTENSION PERMITTED.**—

1 (1) NOTICE REQUIRED.—The Secretary, in con-
2 sultation with the Comptroller of the Currency and
3 the Director of the Office of Thrift Supervision, may
4 designate a calendar date for the transfer of func-
5 tions of the Office of Thrift Supervision to the Of-
6 fice of the Comptroller of the Currency, and the Cor-
7 poration under section 1204 that is later than 1
8 year after the date of enactment of this title if the
9 Secretary—

10 (A) transmits to the Committee on Bank-
11 ing, Housing, and Urban Affairs of the Senate
12 and the Committee on Financial Services of the
13 House of Representatives—

14 (i) a written determination that or-
15 derly implementation of this subtitle is not
16 feasible on the date that is 1 year after the
17 date of enactment of this subtitle;

18 (ii) an explanation of why an exten-
19 sion is necessary for the orderly implemen-
20 tation of this subtitle; and

21 (iii) a description of the steps that will
22 be taken to effect an orderly and timely
23 implementation of this subtitle within the
24 extended time period; and

1 (B) publishes notice of that designated
2 later date in the Federal Register.

3 (2) EXTENSION LIMITED.—In no case shall any
4 date designated under paragraph (1) be later than
5 18 months after the date of enactment of this sub-
6 title.

7 (3) EFFECT ON REFERENCES TO “TRANSFER
8 DATE”.—If the Secretary takes the actions provided
9 in paragraph (1) for designating a date for the
10 transfer of functions to the Office of the Comptroller
11 of the Currency, and the Corporation under section
12 1204, references in this title to “transfer date” shall
13 mean the date designated by the Secretary.

14 **SEC. 1206. EXPIRATION OF TERM OF COMPTROLLER.**

15 (a) IN GENERAL.—Notwithstanding section 325 of
16 the Revised Statutes of the United States, the term of the
17 person serving as Comptroller on the date of the enact-
18 ment of this title shall terminate as of such date.

19 (b) ACTING COMPTROLLER.—Subject to sections
20 3345, 3346, and 3347 of title 5, United States Code, the
21 President may designate a person to serve as acting
22 Comptroller and perform the functions and duties of the
23 Comptroller until a Comptroller has been appointed and
24 qualified in the manner established in section 325 of the
25 Revised Statutes of the United States.

1 **SEC. 1207. OFFICE OF THRIFT SUPERVISION ABOLISHED.**

2 Effective 90 days after the transfer date, the position
3 of Director of the Office of Thrift Supervision and the Of-
4 fice of Thrift Supervision are abolished.

5 **SEC. 1208. SAVINGS PROVISIONS.**

6 (a) OFFICE OF THRIFT SUPERVISION.—

7 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
8 TIONS NOT AFFECTED.—Sections 1204(a) and 1207
9 shall not affect the validity of any right, duty, or ob-
10 ligation of the United States, the Director of the Of-
11 fice of Thrift Supervision, the Office of Thrift Su-
12 pervision, or any other person, that existed on the
13 day before the transfer date.

14 (2) CONTINUATION OF SUITS.—This subtitle
15 shall not abate any action or proceeding commenced
16 by or against the Director of the Office of Thrift Su-
17 pervision or the Office of Thrift Supervision before
18 the transfer date, except that—

19 (A) for any action or proceeding arising
20 out of a function of the Director of the Office
21 of Thrift Supervision transferred to the Comp-
22 troller of the Currency by this title, the Comp-
23 troller of the Currency or the Office of the
24 Comptroller of the Currency shall be sub-
25 stituted for the Director of the Office of Thrift
26 Supervision or the Office of Thrift Supervision,

1 as the case may be, as a party to the action or
2 proceeding as of the transfer date; and

3 (B) for any action or proceeding arising
4 out of a function of the Director of the Office
5 of Thrift Supervision transferred to the Cor-
6 poration by this title, the Chairman of the Cor-
7 poration shall be substituted for the Director of
8 the Office of Thrift Supervision as a party to
9 the action or proceeding as of the transfer date.

10 (b) CONTINUATION OF EXISTING OTS ORDERS, RES-
11 OLUTIONS, DETERMINATIONS, AGREEMENTS, REGULA-
12 TIONS, ETC.—All orders, resolutions, determinations,
13 agreements, and regulations, interpretative rules, other in-
14 terpretations, guidelines, procedures, and other advisory
15 materials, that have been issued, made, prescribed, or al-
16 lowed to become effective by the Office of Thrift Super-
17 vision, or by a court of competent jurisdiction, in the per-
18 formance of functions that are transferred by this title and
19 that are in effect on the day before the transfer date, shall
20 continue in effect according to the terms of those orders,
21 resolutions, determinations, agreements, and regulations,
22 interpretative rules, other interpretations, guidelines, pro-
23 cedures, and other advisory materials, and shall be en-
24 forceable by or against—

1 (1) the Office of the Comptroller of the Cur-
2 rency, in the case of a function of the Director of
3 the Office of Thrift Supervision transferred to the
4 Comptroller of the Currency, until modified, termi-
5 nated, set aside, or superseded in accordance with
6 applicable law by the Office of the Comptroller of
7 the Currency, by any court of competent jurisdic-
8 tion, or by operation of law; and

9 (2) the Corporation, in the case of a function
10 of the Director of the Office of Thrift Supervision
11 transferred to the Corporation, until modified, termi-
12 nated, set aside, or superseded in accordance with
13 applicable law by the Corporation, by any court of
14 competent jurisdiction, or by operation of law.

15 (c) CONTINUATION OF EXISTING OTS ENFORCE-
16 MENT ACTIONS.—Any formal or informal enforcement ac-
17 tion taken by the Director of the Office of Thrift Super-
18 vision with respect to a savings and loan holding company,
19 a subsidiary of a savings and loan holding company (other
20 than a savings association) or an institution-affiliated
21 party of a savings and loan holding company or such a
22 subsidiary, that is in effect on the day before the date of
23 the enactment of this title shall continue to be effective
24 and enforceable against such company, subsidiary, or in-
25 stitution-affiliated party after such date as if—

1 (1) such savings and loan holding company, or
2 the savings and loan holding company related to
3 such subsidiary or institution-affiliated party, had
4 been a bank holding company on the effective date
5 of the final enforcement action; and

6 (2) the action had been taken by the Board, un-
7 less otherwise terminated or modified by the Board.

8 (d) IDENTIFICATION OF REGULATIONS CONTIN-
9 UED.—

10 (1) BY OFFICE OF THE COMPTROLLER OF THE
11 CURRENCY.—Not later than the transfer date, the
12 Comptroller of the Currency shall—

13 (A) after consultation with the Chairperson
14 of the Corporation, identify the regulations con-
15 tinued under subsection (b) that will be en-
16 forced by the Office of the Comptroller of the
17 Currency; and

18 (B) publish a list of such regulations in the
19 Federal Register.

20 (2) BY THE CORPORATION.—Not later than the
21 transfer date, the Corporation shall—

22 (A) after consultation with the Office of
23 the Comptroller of the Currency, identify the
24 regulations continued under subsection (b) that
25 will be enforced by the Corporation; and

1 (B) publish a list of such regulations in the
2 Federal Register.

3 (e) STATUS OF REGULATIONS PROPOSED OR NOT
4 YET EFFECTIVE.—

5 (1) PROPOSED REGULATIONS.—Any proposed
6 regulation of the Office of Thrift Supervision, which
7 that agency, in performing functions transferred by
8 this title, has proposed before the transfer date but
9 has not published as a final regulation before that
10 date, shall be deemed to be a proposed regulation of
11 the Office of the Comptroller of the Currency, or the
12 Corporation, as appropriate, according to its terms.

13 (2) REGULATIONS NOT YET EFFECTIVE.—Any
14 interim or final regulation of the Office of Thrift Su-
15 pervision, which that agency, in performing func-
16 tions transferred by this title, has published before
17 the transfer date but which has not become effective
18 before that date, shall become effective as a regula-
19 tion of the Office of the Comptroller of the Cur-
20 rency, or the Corporation, as appropriate, according
21 to its terms.

22 **SEC. 1209. REGULATIONS AND ORDERS.**

23 In addition to any powers transferred to the Comp-
24 troller of the Currency by this title, the Comptroller of
25 the Currency may prescribe such regulations and issue

1 such orders as the Comptroller of the Currency determines
2 to be appropriate to carry out this title and the powers
3 and duties transferred to the Comptroller of the Currency
4 by this title.

5 **SEC. 1210. COORDINATION OF TRANSITION ACTIVITIES.**

6 Before the transfer date, the Comptroller of the Cur-
7 rency shall—

8 (1) consult and cooperate with the Office of
9 Thrift Supervision to facilitate the orderly transfer
10 of functions to the Comptroller of the Currency;

11 (2) determine and redetermine, from time to
12 time—

13 (A) the amount of funds necessary to pay
14 any expenses associated with the transfer of
15 functions (including expenses for personnel,
16 property, and administrative services) during
17 the period beginning on the date of enactment
18 of this title and ending on the transfer date;

19 (B) what personnel are appropriate to fa-
20 cilitate the orderly transfer of functions by this
21 title; and

22 (C) what property and administrative serv-
23 ices are necessary to support the Office of the
24 Comptroller of the Currency during the period

1 beginning on the date of enactment of this title
2 and ending on the transfer date; and

3 (3) take such actions as may be necessary to
4 provide for the orderly implementation of this title.

5 **SEC. 1211. INTERIM RESPONSIBILITIES OF OFFICE OF THE**
6 **COMPTROLLER OF THE CURRENCY AND OF-**
7 **OFFICE OF THRIFT SUPERVISION.**

8 (a) IN GENERAL.—When requested by the Comp-
9 troller of the Currency to do so before the transfer date,
10 the Office of Thrift Supervision shall—

11 (1) pay to the Comptroller of the Currency,
12 from funds obtained by the Office of Thrift Super-
13 vision through assessments, fees, or other charges
14 that the Office of Thrift Supervision is authorized
15 by law to impose, such amounts that the Comp-
16 troller of the Currency determines to be necessary
17 under section 1210(2)(A);

18 (2) detail to the Office of the Comptroller of the
19 Currency such personnel as the Comptroller of the
20 Currency determines to be appropriate under section
21 1210(2)(B); and

22 (3) make available to the Office of the Comp-
23 troller of the Currency such property and provide
24 the Office of the Comptroller of the Currency such
25 administrative services as the Comptroller of the

1 Currency determines to be necessary under section
2 1210(2)(C).

3 (b) NOTICE REQUIRED.—The Comptroller of the
4 Currency shall give the Office of Thrift Supervision rea-
5 sonable prior notice of any request that the Office of the
6 Comptroller of the Currency intends to make under sub-
7 section (a).

8 **SEC. 1212. EMPLOYEES TRANSFERRED.**

9 (a) IN GENERAL.—

10 (1) OTS EMPLOYEES.—

11 (A) IN GENERAL.—All employees of the
12 Office of Thrift Supervision shall be transferred
13 to either the Comptroller of the Currency or the
14 Corporation for employment.

15 (B) ALLOCATING EMPLOYEES FOR TRANS-
16 FER TO RECEIVING AGENCIES.—The Director of
17 the Office of Thrift Supervision, the Comp-
18 troller of the Currency, and the Chairperson of
19 the Corporation shall—

20 (i) jointly determine the number of
21 employees of the Office of Thrift Super-
22 vision necessary to perform or support—

23 (I) the functions of the Office of
24 Thrift Supervision that are trans-

1 ferred to the Office of the Comptroller
2 of the Currency by this title; and

3 (II) the functions of the Office of
4 Thrift Supervision that are trans-
5 ferred to the Corporation by this title;

6 (ii) consistent with the numbers deter-
7 mined under clause (ii), jointly identify
8 employees of the Office of Thrift Super-
9 vision for transfer to the Office of the
10 Comptroller of the Currency or the Cor-
11 poration in a manner that the Director of
12 the Office of Thrift Supervision, the Comp-
13 troller of the Currency, and the Chair-
14 person of the Corporation, in their discre-
15 tion, deem equitable.

16 (2) TRANSFER OF EMPLOYEES PERFORMING
17 CONSUMER FINANCIAL PROTECTION FUNCTIONS.—

18 Nothing in paragraph (1) shall affect the transfer of
19 employees performing or supporting consumer finan-
20 cial protection functions of the Comptroller of the
21 Currency and the Director of the Office of Thrift
22 Supervision to the Consumer Financial Protection
23 Agency as provided in the Consumer Financial Pro-
24 tection Agency Act of 2009.

1 (3) APPOINTMENT AUTHORITY FOR EXCEPTED
2 SERVICE TRANSFERRED.—

3 (A) IN GENERAL.—In the case of employ-
4 ees occupying positions in the excepted service,
5 any appointment authority established pursuant
6 to law or regulations of the Office of Personnel
7 Management for filling such positions shall be
8 transferred, subject to subparagraph (B).

9 (B) DECLINING TRANSFERS ALLOWED.—
10 The Office of the Comptroller of the Currency
11 and the Corporation may decline to accept a
12 transfer of authority under subparagraph (A)
13 (and the employees appointed pursuant thereto)
14 to the extent that such authority relates to posi-
15 tions excepted from the competitive service be-
16 cause of their confidential, policy-making, pol-
17 icy-determining, or policy-advocating character.

18 (b) TIMING OF TRANSFERS AND POSITION ASSIGN-
19 MENTS.—Each employee to be transferred under this sec-
20 tion shall—

21 (1) be transferred not later than 90 days after
22 the transfer date; and

23 (2) receive notice of his or her position assign-
24 ment not later than 120 days after the effective date
25 of his or her transfer.

1 (c) TRANSFER OF FUNCTION.—

2 (1) IN GENERAL.—Notwithstanding any other
3 provision of law, the transfer of employees shall be
4 deemed a transfer of functions for the purpose of
5 section 3503 of title 5, United States Code.

6 (2) PRIORITY OF THIS SUBTITLE.—If any pro-
7 vision of this subtitle conflicts with any protection
8 provided to transferred employees under section
9 3503 of title 5, United States Code, the provisions
10 of this subtitle shall control.

11 (d) EMPLOYEES' STATUS AND ELIGIBILITY.—The
12 transfer of functions and employees under this title, and
13 the abolition of the Office of Thrift Supervision, shall not
14 affect the status of the transferred employees as employ-
15 ees of an agency of the United States under any provision
16 of law.

17 (e) EQUAL STATUS AND TENURE POSITIONS.—Each
18 employee transferred from the Office of Thrift Supervision
19 shall be placed in a position at either the Office of the
20 Comptroller of the Currency or the Corporation with the
21 same status and tenure as he or she held on the day before
22 the transfer date.

23 (f) NO ADDITIONAL CERTIFICATION REQUIRE-
24 MENTS.—Examiners transferred to the Office of the
25 Comptroller of the Currency or the Corporation shall not

1 be subject to any additional certification requirements be-
2 fore being placed in a comparable examiner's position at
3 the Office of the Comptroller of the Currency or the Cor-
4 poration examining the same types of institutions as they
5 examined before they were transferred.

6 (g) PERSONNEL ACTIONS LIMITED.—

7 (1) 3-YEAR PROTECTION.—

8 (A) IN GENERAL.—Except as provided in
9 paragraph (2), each affected employee shall not,
10 during the 3-year period beginning on the
11 transfer date, be involuntarily separated, or in-
12 voluntarily reassigned outside his or her locality
13 pay area as defined by the Office of Personnel
14 Management.

15 (B) AFFECTED EMPLOYEES.—For pur-
16 poses of this paragraph, the term “affected em-
17 ployee” means—

18 (i) an employee transferred from the
19 Office of Thrift Supervision holding a per-
20 manent position on the day before the
21 transfer date;

22 (ii) an employee of the Office of the
23 Comptroller of the Currency holding a per-
24 manent position on the day before the
25 transfer date; and

1 (iii) an employee of the Corporation
2 holding a permanent position on the day
3 before the transfer date.

4 (2) EXCEPTIONS.—Paragraph (1) does not
5 limit the right of the Office of the Comptroller of the
6 Currency or the Corporation to—

7 (A) separate an employee for cause or for
8 unacceptable performance; or

9 (B) terminate an appointment to a position
10 excepted from the competitive service because of
11 its confidential policy-making, policy-deter-
12 mining, or policy-advocating character.

13 (h) PAY.—

14 (1) 1-YEAR PROTECTION.—Except as provided
15 in paragraph (2), each employee transferred from
16 the Office of Thrift Supervision shall, during the 1-
17 year period beginning on the transfer date, receive
18 pay at a rate not less than the basic rate of pay (in-
19 cluding any geographic differential) that the em-
20 ployee received during the 1-year period immediately
21 before the transfer.

22 (2) EXCEPTIONS.—Paragraph (1) does not
23 limit the right of the Office of the Comptroller of the
24 Currency or the Corporation to reduce a transferred
25 employee's rate of basic pay—

- 1 (A) for cause;
2 (B) for unacceptable performance; or
3 (C) with the employee's consent.

4 (3) PROTECTION ONLY WHILE EMPLOYED.—
5 Paragraph (1) applies to a transferred employee
6 only while that employee remains employed by the
7 Office of the Comptroller of the Currency or the
8 Corporation.

9 (4) PAY INCREASES PERMITTED.—Paragraph
10 (1) does not limit the authority of the Office of the
11 Comptroller of the Currency or the Corporation to
12 increase a transferred employee's pay.

13 (i) BENEFITS.—

14 (1) RETIREMENT BENEFITS FOR TRANSFERRED
15 EMPLOYEES.—

16 (A) IN GENERAL.—

17 (i) CONTINUATION OF EXISTING RE-
18 TIREMENT PLAN.—Each employee trans-
19 ferred from the Office of Thrift Super-
20 vision may remain enrolled in his or her
21 existing retirement plan or plans as long as
22 he or she remains employed by the Office
23 of the Comptroller of the Currency or the
24 Corporation.

1 (ii) EMPLOYER'S CONTRIBUTION.—

2 The Office of the Comptroller of the Cur-
3 rency or the Corporation shall pay any em-
4 ployer contributions to the existing retire-
5 ment plan of each employee transferred
6 from the Office of Thrift Supervision as
7 required under that plan.

8 (B) DEFINITION.—For purposes of this
9 paragraph, the term “existing retirement plan”
10 means, with respect to any employee trans-
11 ferred under this section, the particular retire-
12 ment plan (including the Financial Institutions
13 Retirement Fund) and any associated thrift
14 savings plan of the agency from which the em-
15 ployee was transferred, which the employee was
16 enrolled in on the day before the transfer date.

17 (2) BENEFITS OTHER THAN RETIREMENT BEN-
18 EFITS.—

19 (A) DURING 1ST YEAR.—

20 (i) EXISTING PLANS CONTINUE.—

21 Each transferred employee may, for 1 year
22 after the transfer date, retain membership
23 in any other employee benefit program of
24 the Office of Thrift Supervision, including
25 a dental, vision, long term care, or life in-

1 insurance program, to which the employee
2 belonged on the day before the transfer
3 date.

4 (ii) EMPLOYER'S CONTRIBUTION.—

5 The Office of the Comptroller of the Cur-
6 rency or the Corporation shall pay any em-
7 ployer cost in continuing to extend cov-
8 erage in the benefit program to the em-
9 ployee as required under that program or
10 negotiated agreements.

11 (B) DENTAL, VISION, OR LIFE INSURANCE

12 AFTER 1ST YEAR.—If, after the 1-year period
13 beginning on the transfer date, the Office of the
14 Comptroller of the Currency or the Corporation
15 decides not to continue participation in any
16 dental, vision, or life insurance program of the
17 Office of Thrift Supervision, an employee trans-
18 ferred from the Office of Thrift Supervision
19 pursuant to this title who is a member of such
20 a program may, before the decision of the Of-
21 fice of the Comptroller of the Currency or the
22 Corporation takes effect, elect to enroll, without
23 regard to any regularly scheduled open season,
24 in—

1 (i) the enhanced dental benefits pro-
2 gram established by chapter 89A of title 5,
3 United States Code;

4 (ii) the enhanced vision benefits estab-
5 lished by chapter 89B of title 5, United
6 States Code; and

7 (iii) the Federal Employees Group
8 Life Insurance Program established by
9 chapter 87 of title 5, United States Code,
10 without regard to any requirement of in-
11 surability.

12 (C) LONG TERM CARE INSURANCE AFTER
13 1ST YEAR.—If, after the 1-year period begin-
14 ning on the transfer date, the Office of the
15 Comptroller of the Currency or the Corporation
16 decides not to continue participation in any
17 long term care insurance program of the Office
18 of Thrift Supervision, an employee transferred
19 from the Office of Thrift Supervision pursuant
20 to this title who is a member of such a program
21 may, before the decision of the Office of the
22 Comptroller of the Currency or the Corporation
23 takes effect, elect to apply for coverage under
24 the Federal Long Term Care Insurance Pro-
25 gram established by chapter 90 of title 5,

1 United States Code, under the underwriting re-
2 quirements applicable to a new active workforce
3 member (as defined in Part 875, title 5, Code
4 of Federal Regulations).

5 (D) EMPLOYEE'S CONTRIBUTION.—

6 (i) IN GENERAL.—Subject to clause
7 (ii), an individual enrolled in the Federal
8 Employees Health Benefits program under
9 this subparagraph shall pay any employee
10 contribution required by the plan.

11 (ii) COST DIFFERENTIAL.—The dif-
12 ference in costs between the benefits that
13 the Office of Thrift Supervision is pro-
14 viding on the date of enactment of this
15 title and the benefits provided by this sec-
16 tion shall be paid by the Comptroller of the
17 Currency or the Corporation.

18 (iii) FUNDS TRANSFER.—The Office
19 of the Comptroller of the Currency or the
20 Corporation shall transfer to the Federal
21 Employees Health Benefits Fund estab-
22 lished under section 8909 of title 5, United
23 States Code, an amount determined by the
24 Director of the Office of Personnel Man-
25 agement, after consultation with the Office

1 of the Comptroller of the Currency or the
2 Corporation and the Office of Management
3 and Budget, to be necessary to reimburse
4 the Fund for the cost to the Fund of pro-
5 viding benefits under this subparagraph
6 not otherwise paid for by the employee
7 under clause (i).

8 (E) SPECIAL PROVISIONS TO ENSURE CON-
9 TINUATION OF LIFE INSURANCE BENEFITS.—

10 (i) IN GENERAL.—An annuitant (as
11 defined in section 8901(3) of title 5,
12 United States Code) who is enrolled in a
13 life insurance plan administered by the Of-
14 fice of Thrift Supervision on the day before
15 the transfer date shall be eligible for cov-
16 erage by a life insurance plan under sec-
17 tions 8706(b), 8714a, 8714b, and 8714c of
18 title 5, United States Code, or in a life in-
19 surance plan established by the Office of
20 the Comptroller of the Currency or the
21 Corporation, without regard to any regu-
22 larly scheduled open season and require-
23 ment of insurability.

24 (ii) EMPLOYEE'S CONTRIBUTION.—

1 (I) IN GENERAL.—Subject to
2 subclause (II), an individual enrolled
3 in a life insurance plan under this
4 clause shall pay any employee con-
5 tribution required by the plan.

6 (II) COST DIFFERENTIAL.—The
7 difference in costs between the bene-
8 fits that the Office of Thrift Super-
9 vision is providing on the date of en-
10 actment of this title and the benefits
11 provided by this section shall be paid
12 by the Comptroller of the Currency or
13 the Corporation.

14 (III) FUNDS TRANSFER.—The
15 Office of the Comptroller of the Cur-
16 rency or the Corporation shall trans-
17 fer to the Employees' Life Insurance
18 Fund established under section 8714
19 of title 5, United States Code, an
20 amount determined by the Director of
21 the Office of Personnel Management,
22 after consultation with the Office of
23 the Comptroller of the Currency or
24 the Corporation and the Office of
25 Management and Budget, to be nec-

1 essary to reimburse the Fund for the
2 cost to the Fund of providing benefits
3 under this subparagraph not other-
4 wise paid for by the employee under
5 subclause (I).

6 (IV) CREDIT FOR TIME EN-
7 ROLLED IN OTHER PLANS.—For em-
8 ployees transferred under this section,
9 enrollment in a life insurance plan ad-
10 ministered by the Office of the Comp-
11 troller of the Currency, the Office of
12 Thrift Supervision, or the Corporation
13 immediately before enrollment in a life
14 insurance plan under chapter 87 of
15 title 5, United States Code, shall be
16 considered as enrollment in a life in-
17 surance plan under that chapter for
18 purposes of section 8706(b)(1)(A) of
19 title 5, United States Code.

20 (j) EQUITABLE TREATMENT.—In administering the
21 provisions of this section, the Office of the Comptroller
22 of the Currency and the Corporation—

23 (1) shall take no action that would unfairly dis-
24 advantage transferred employees relative to other
25 employees of the Office of the Comptroller of the

1 Currency or the Corporation based on their prior
2 employment by the Office of Thrift Supervision;

3 (2) may take such action as is appropriate in
4 individual cases so that employees transferred under
5 this section receive equitable treatment, with respect
6 to those employees' status, tenure, pay, benefits
7 (other than benefits under programs administered by
8 the Office of Personnel Management), and accrued
9 leave or vacation time, for prior periods of service
10 with any Federal agency;

11 (3) shall, jointly with the Director of the Office
12 of Thrift Supervision, develop and adopt procedures
13 and safeguards designed to ensure that the require-
14 ments of this subsection are met; and

15 (4) shall conduct a study detailing the position
16 assignments of all employees transferred pursuant to
17 subsection (a), describing the procedures and safe-
18 guards adopted pursuant to paragraph (3), and
19 demonstrating that the requirements of this sub-
20 section have been met; and shall, not later than 365
21 days after the transfer date, submit a copy of such
22 study to Congress.

23 **SEC. 1213. PROPERTY TRANSFERRED.**

24 (a) IN GENERAL.—Not later than 90 days after the
25 transfer date, all property of the Office of Thrift Super-

1 vision shall be transferred to the Office of the Comptroller
2 of the Currency or the Corporation, allocated in a manner
3 consistent with section 1212(a).

4 (b) CONTRACTS RELATED TO PROPERTY TRANS-
5 FERRED.—All contracts, agreements, leases, licenses, per-
6 mits, and similar arrangements relating to property trans-
7 ferred to the Office of the Comptroller of the Currency
8 or the Corporation by this section shall be transferred to
9 the Office of the Comptroller of the Currency or the Cor-
10 poration together with that property.

11 (c) PRESERVATION OF PROPERTY.—Property identi-
12 fied for transfer under this section shall not be altered,
13 destroyed, or deleted before transfer under this section.

14 (d) PROPERTY DEFINED.—For purposes of this sec-
15 tion, the term “property” includes all real property (in-
16 cluding leaseholds) and all personal property (including
17 computers, furniture, fixtures, equipment, books, ac-
18 counts, records, reports, files, memoranda, paper, reports
19 of examination, work papers and correspondence related
20 to such reports, and any other information or materials).

21 **SEC. 1214. FUNDS TRANSFERRED.**

22 Except to the extent needed to dispose of affairs
23 under section 1215, all funds that, on the day before the
24 transfer date, are available to the Director of the Office
25 of Thrift Supervision to pay the expenses of the Office

1 of Thrift Supervision shall be transferred to the Office of
2 the Comptroller of the Currency or the Corporation, allo-
3 cated in a manner consistent with section 1212(a), on the
4 transfer date.

5 **SEC. 1215. DISPOSITION OF AFFAIRS.**

6 (a) IN GENERAL.—During the 90-day period begin-
7 ning on the transfer date, the Director of the Office of
8 Thrift Supervision—

9 (1) shall, solely for the purpose of winding up
10 the affairs of the agency related to any function
11 transferred to the Office of the Comptroller of the
12 Currency or the Corporation by this subtitle—

13 (A) manage any employees of the Office of
14 Thrift Supervision and provide for the payment
15 of the compensation and benefits of any such
16 employees that accrue before the transfer date;
17 and

18 (B) manage any property of the Office of
19 Thrift Supervision until the property is trans-
20 ferred under section 1213; and

21 (2) may take any other action necessary to
22 wind up the affairs of the Office of Thrift Super-
23 vision relating to the transferred functions.

24 (b) AUTHORITY AND STATUS OF DIRECTOR.—

1 (1) IN GENERAL.—Notwithstanding the trans-
2 fers of functions under this subtitle, the Director of
3 the Office of Thrift Supervision shall, during the 90-
4 day period beginning on the transfer date, retain
5 and may exercise any authority vested in the Direc-
6 tor on the day before the transfer date that is nec-
7 essary to carry out the requirements of this subtitle
8 during that period.

9 (2) OTHER PROVISIONS.—For purposes of
10 paragraph (1), the Director of the Office of Thrift
11 Supervision shall, during the 90-day period begin-
12 ning on the transfer date, continue to be—

13 (A) treated as an officer of the United
14 States; and

15 (B) entitled to receive compensation at the
16 same annual rate of basic pay that he or she
17 was receiving on the day before the transfer
18 date.

19 **SEC. 1216. CONTINUATION OF SERVICES.**

20 Any agency, department, or other instrumentality of
21 the United States, and any successor to any such agency,
22 department, or instrumentality, that was, before the trans-
23 fer date, providing support services to the Office of Thrift
24 Supervision in connection with functions to be transferred

1 to the Office of the Comptroller of the Currency or the
2 Corporation, shall—

3 (1) continue to provide those services, subject to
4 reimbursement, until the transfer of those functions
5 is complete; and

6 (2) consult with any such agency to coordinate
7 and facilitate a prompt and orderly transition.

8 **SEC. 1217. CONTRACTING AND LEASING AUTHORITY.**

9 In addition to any powers transferred to the Comp-
10 troller of the Currency by this subtitle, the Comptroller
11 of the Currency may—

12 (1) enter into and perform contracts, execute
13 instruments, and acquire in any lawful manner such
14 goods and services, or real or personal property, or
15 interest in property, as the Comptroller of the Cur-
16 rency determines to be necessary or convenient to
17 carry out the duties and responsibilities of the
18 Comptroller of the Currency; and

19 (2) hold, maintain, sell, lease, or otherwise dis-
20 pose of any real or personal property or interest in
21 property without regard to title 40, United States
22 Code, title III of the Federal Properties and Admin-
23 istrative Services Act of 1949 (41 U.S.C. 251 et
24 seq.), and other Federal laws of a similar type gov-
25 erning the procurement of goods and services or the

1 acquisition or disposition of any property or interest
2 in property by Federal agencies.

3 **SEC. 1218. TREATMENT OF SAVINGS AND LOAN HOLDING**
4 **COMPANIES.**

5 Section 10 of the Home Owners' Loan Act (12 U.S.C.
6 1467a) is amended as follows:

7 (1) In subsection (m)—

8 (A) in paragraph (2), by striking “Direc-
9 tor” and inserting “Comptroller”;

10 (B) in paragraph (2), by striking “Director
11 may grant” and inserting “Comptroller of the
12 Currency may grant”;

13 (C) in paragraph (2), by striking “the Di-
14 rector deems” and inserting “the Comptroller
15 deems”;

16 (D) in paragraph (2)(A), by striking “Di-
17 rector” and inserting “Comptroller”;

18 (E) in paragraph (2)(B), by striking “Di-
19 rector” and inserting “Comptroller”;

20 (F) in paragraph (2)(B)(iii), by striking
21 “Director” and inserting “Comptroller”;

22 (G) by striking subparagraph (A) of para-
23 graph (3) and inserting the following new sub-
24 paragraph:

1 “(A) IN GENERAL.—A savings association
2 that fails to become or remain a qualified thrift
3 lender shall—

4 “(i) immediately be subject to the re-
5 strictions in subparagraph (B); and

6 “(ii) become one or more banks (other
7 than a savings bank) within one year after
8 the date on which the savings association
9 should have become or ceases to be a quali-
10 fied thrift lender, except as provided in
11 subparagraph (C)(i).”;

12 (H) by striking subclause (III) of para-
13 graph (3)(B)(i) and inserting the following new
14 subclause:

15 “(III) DIVIDENDS.—The savings
16 association shall be prohibited from
17 paying dividends except for such divi-
18 dends—

19 “(aa) as would be permis-
20 sible for a national bank;

21 “(bb) that are necessary to
22 meet obligations of a company
23 that controls such savings asso-
24 ciation; and

1 “(cc) that are specifically
2 approved by the Comptroller and
3 the Board of Governors after
4 prior written request of at least
5 30 days to the Comptroller and
6 the Board of Governors.”;

7 (I) by striking clause (ii) of paragraph
8 (3)(B);

9 (J) by striking subparagraphs (C) and (D)
10 of paragraph (3) and inserting the following
11 new subparagraphs:

12 “(C) REGULATORY AUTHORITY.—A sav-
13 ings association that fails to become or remain
14 a qualified thrift lender shall be deemed to have
15 violated section 5 of the Home Owners’ Loan
16 Act and subject to actions authorized by section
17 5(d) of the Home Owners’ Loan Act.

18 “(D) REQUALIFICATIONS.—

19 “(i) A savings association that should
20 have become or ceases to be a qualified
21 thrift lender shall not be subject to sub-
22 paragraph (A)(ii) if the savings association
23 becomes a qualified thrift lender by meet-
24 ing the qualified thrift lender requirement
25 in paragraph (1) on a monthly average

1 basis in 9 out of the preceding 12 months
2 and remains a qualified thrift lender.

3 “(ii) If the savings association re-
4 ferred to in clause (i) (or any savings asso-
5 ciation that acquired all or substantially all
6 of its assets from that savings association)
7 at any time thereafter ceases to be a quali-
8 fied thrift lender it shall immediately be
9 subject to subparagraph (A)(ii) as if the
10 one-year time period provided for in sub-
11 paragraph (A)(ii) already has expired, and
12 as if the exception in clause (i) was not ap-
13 plicable or available to such savings asso-
14 ciation.”;

15 (K) in paragraph (4)(D) by striking “Di-
16 rector” and inserting “Comptroller”;

17 (L) in paragraph (4)(E) by striking “Di-
18 rector” and inserting “Comptroller”; and

19 (M) in paragraph (7)(B) by striking “Di-
20 rector” and inserting “Comptroller”.

21 (2) In subsection (o)—

22 (A) in paragraph (3) in the heading by
23 striking “DIRECTOR” and inserting “BOARD”;

24 (B) in paragraph (3)(A) by striking “Di-
25 rector” and inserting “Board”;

1 (C) in paragraph (3)(B) by striking “Di-
2 rector” and inserting “Board”;

3 (D) in paragraph (3)(C) by striking “Di-
4 rector” and inserting “Board”;

5 (E) in paragraph (3)(D) by striking “Di-
6 rector” and inserting “Comptroller”;

7 (F) in paragraph (5)(E), by striking “ac-
8 tivities described in subsection (c)(2) or
9 (c)(9)(A)(ii)” and inserting “activities otherwise
10 permissible for the company pursuant to, and in
11 accordance with, section 4 of the Bank Holding
12 Company Act of 1956”;

13 (G) in paragraph (7) by striking “char-
14 tered by the Director” and inserting “chartered
15 by the Comptroller”; and

16 (H) in paragraph (7) by striking “regula-
17 tions as the Director may” and inserting “regu-
18 lations as the Board may”.

19 **SEC. 1219. PRACTICES OF CERTAIN MUTUAL THRIFT HOLD-**
20 **ING COMPANIES PRESERVED.**

21 (a) TREATMENT OF DIVIDENDS BY CERTAIN MU-
22 TUAL HOLDING COMPANIES.—Section 3(g) of the Bank
23 Holding Company Act of 1956 (12 U.S. C. 1842(g)) is
24 amended by adding at the end the following new para-
25 graphs:

1 “(3) DECLARATION OF DIVIDENDS.—Every
2 subsidiary savings association of a mutual holding
3 company shall give the Board not less than 30 days
4 advance notice of the proposed declaration by its di-
5 rectors of any dividend on its guaranty, permanent,
6 or other nonwithdrawable stock. Such notice period
7 shall commence to run from the date of receipt of
8 such notice by the Board. Any such dividend de-
9 clared within such period, or without the giving of
10 such notice to the Board, shall be invalid and shall
11 confer no rights or benefits upon the holder of any
12 such stock.

13 “(4) WAIVER OF DIVIDENDS.—Any mutual
14 thrift holding company organized under section
15 10(b) of the Home Owners’ Loan Act shall be per-
16 mitted to waive such company’s right to receive any
17 dividend declared by a subsidiary, if—

18 “(A) no insider of the mutual holding com-
19 pany, associate of an insider, or tax-qualified or
20 non-tax-qualified employee stock benefit plan of
21 the mutual holding company holds any share of
22 the stock in the class of stock to which the
23 waiver would apply; or

24 “(B) the mutual holding company provides
25 the Board with written notice of its intent to

1 waive its right to receive dividends 30 days
2 prior to the proposed date of payment of the
3 dividend and the Board does not object.

4 “(5) STANDARDS FOR WAIVER OF DIVIDEND.—
5 The Board shall not object to a notice of intent to
6 waive dividends under paragraph (4) if—

7 “(A) the waiver would not be detrimental
8 to the safe and sound operation of the savings
9 association; and

10 “(B) the board of directors of the mutual
11 holding company expressly determines that a
12 waiver of the dividend by the mutual holding
13 company is consistent with the directors’ fidu-
14 ciary duties to the mutual members of such
15 company.

16 “(6) RESOLUTION INCLUDED IN WAIVER NO-
17 TICE.—A dividend waiver notice shall include a copy
18 of the resolution of the board of directors of the mu-
19 tual holding company, in form and substance satis-
20 factory to the Board, together with any supporting
21 materials relied upon by the board of directors, con-
22 cluding that the proposed dividend waiver is con-
23 sistent with the board of director’s fiduciary duties
24 to the mutual members of the mutual holding com-
25 pany.

1 “(7) VALUATION.—The Board will not consider
2 waived dividends in determining an appropriate ex-
3 change ratio in the event of a full conversion to
4 stock form.”.

5 **SEC. 1220. IMPLEMENTATION PLAN AND REPORTS.**

6 (a) PLAN SUBMISSION.—Within 90 days of the enact-
7 ment of the Financial Stability Improvement Act of 2009,
8 the Secretary and the Corporation, in consultation with
9 the Office of the Comptroller of the Currency and the Of-
10 fice of Thrift Supervision, shall jointly submit a plan to
11 the Congress and the Inspectors General of the Depart-
12 ment of the Treasury and of the Corporation detailing the
13 steps the Secretary, the Corporation, the Office of the
14 Comptroller of the Currency, and the Office of Thrift Su-
15 pervision will take to implement the provisions of sections
16 1201 through 1216, and the provisions of the amendments
17 made by such sections.

18 (b) INSPECTORS GENERAL REVIEW OF THE PLAN.—
19 Within 60 days of the date on which the Congress receives
20 the plan required under subsection (a), the Inspectors
21 General of the Department of the Treasury and of the
22 Corporation shall jointly provide a written report to the
23 Secretary and the Corporation and shall submit a copy
24 to the Congress detailing whether the plan conforms with
25 the intent of the provisions of sections 1201 through 1216,

1 and the provisions of the amendments made by such sec-
2 tions, including—

3 (1) whether the plan sufficiently takes into con-
4 sideration the orderly transfer of personnel;

5 (2) whether the plan describes procedures and
6 safeguards to ensure that the Office of Thrift Super-
7 vision employees are not unfairly disadvantaged rel-
8 ative to employees of the Office of the Comptroller
9 of the Currency and the Corporation;

10 (3) whether the plan sufficiently takes into con-
11 sideration the orderly transfer of authority and re-
12 sponsibilities;

13 (4) whether the plan sufficiently takes into con-
14 sideration the effective transfer of funds;

15 (5) whether the plan sufficiently takes in con-
16 sideration the orderly transfer of property; and

17 (6) any additional recommendations for an or-
18 derly and effective process.

19 (c) IMPLEMENTATION REPORTS.—Not later than 6
20 months after the date on which the Congress receives the
21 report required under subsection (b), and every 6 months
22 thereafter until all aspects of the plan have been imple-
23 mented, the Inspectors General of the Department of the
24 Treasury and the Corporation shall jointly provide a writ-
25 ten report on the status of the implementation of the plan

1 to the Secretary and the Corporation and shall submit a
2 copy to the Congress.

3 **SEC. 1221. COMPOSITION OF BOARD OF DIRECTORS OF THE**
4 **FEDERAL DEPOSIT INSURANCE CORPORA-**
5 **TION.**

6 Section 2 of the Federal Deposit Insurance Act (12
7 U.S.C. 1812) is amended—

8 (1) in subsection (a)(1)—

9 (A) in subparagraph (B), by striking “Di-
10 rector of the Office of Thrift Supervision” and
11 inserting “Chairman of the Board of Governors
12 of the Federal Reserve System, or such other
13 member of the Board of Governors as the
14 Chairman of the Board of Governors shall des-
15 ignate”;

16 (2) by amending subsection (d)(2) to read as
17 follows:

18 “(2) ACTING OFFICIALS MAY SERVE.—In the
19 event of a vacancy in the office of the Comptroller
20 of the Currency and pending the appointment of a
21 successor, or during the absence or disability of the
22 Comptroller of the Currency, the acting Comptroller
23 of the Currency shall be a member of the Board of
24 Directors in the place of the Comptroller of the Cur-
25 rency.”; and

1 (3) in subsection (f)(2), by striking “or of the
2 Office of Thrift Supervision”.

3 **SEC. 1222. AMENDMENTS TO SECTION 3.**

4 Section 3 of the Federal Deposit Insurance Act (12
5 U.S.C. 1813) is amended—

6 (1) in subsection (b)(1)(C) (relating to the defi-
7 nition of the term “savings association”), by striking
8 “Director of the Office of Thrift Supervision” and
9 inserting “Comptroller of the Currency”;

10 (2) in subsection (l)(5) (relating to the defini-
11 tion of the term “deposit”), in the introductory text,
12 by striking “Director of the Office of Thrift Super-
13 vision,”; and

14 (3) in subsection (z) (relating to the definition
15 of the term “Federal banking agency”), by striking
16 “the Director of the Office of Thrift Supervision,”.

17 **SEC. 1223. AMENDMENTS TO SECTION 7.**

18 Section 7(a) of the Federal Deposit Insurance Act
19 (12 U.S.C. 1817) is amended—

20 (1) in paragraph (2)(A)—

21 (A) in the first sentence, by striking “the
22 Director of the Office of Thrift Supervision”;

23 (B) in the second sentence, by striking
24 “the Director of the Office of Thrift Super-
25 vision,”;

1 (2) in paragraph (3), in the first sentence, by
2 striking “, the Comptroller of the Currency, the
3 Chairman of the Board of Governors of the Federal
4 Reserve System, and the Director of the Office of
5 Thrift Supervision” and inserting “Comptroller of
6 the Currency and the Chairman of the Board of
7 Governors of the Federal Reserve System”; and

8 (3) in paragraph (7), by striking “, the Director
9 of the Office of Thrift Supervision,”.

10 **SEC. 1224. AMENDMENTS TO SECTION 8.**

11 Section 8 of the Federal Deposit Insurance Act (12
12 U.S.C. 1818) is amended—

13 (1) in subsection (a)(8)(B)(ii), in the last sen-
14 tence—

15 (A) by striking “Director of the Office of
16 Thrift Supervision” each place it appears and
17 inserting “Comptroller of the Currency”; and

18 (B) by inserting “the Office of Thrift Su-
19 pervision, as a successor to” after “as a suc-
20 cessor to”;

21 (2) in subsection (o), by striking “Director of
22 the Office of Thrift Supervision” and inserting
23 “Comptroller of the Currency”; and

1 (3) in subsection (w)(3)(A), by striking “Office
2 of Thrift Supervision” and inserting “Office of the
3 Comptroller of the Currency”.

4 **SEC. 1225. AMENDMENTS TO SECTION 11.**

5 Section 11 of the Federal Deposit Insurance Act (12
6 U.S.C. 1821) is amended—

7 (1) in subsection (c)(6)—

8 (A) in the heading, by striking “DIRECTOR
9 OF THE OFFICE OF THRIFT SUPERVISION” and
10 inserting “COMPTROLLER OF THE CURRENCY”;

11 (B) in subparagraph (A), by striking “Di-
12 rector of the Office of Thrift Supervision” and
13 inserting “Comptroller of the Currency”;

14 (C) in subparagraph (B), by striking “Di-
15 rector of the Office of Thrift Supervision” and
16 inserting “Comptroller of the Currency”;

17 (2) in subsection (d)—

18 (A) in paragraph (17)(A)—

19 (i) by striking “, or the Director of
20 the Office of Thrift Supervision”; and

21 (ii) by striking “appropriate”; and

22 (B) in paragraph (18)(B), by striking “or
23 the Director of the Office of Thrift Super-
24 vision”; and

25 (3) in subsection (n)—

1 (A) in paragraph (1)(A), by striking “the
2 Director of the Office of Thrift Supervision,
3 with respect to 1 or more insured”

4 (B) in paragraph (2)(A), by striking “the
5 Director of the Office of Thrift Supervision”;

6 (C) in paragraph (4)(D), by striking “and
7 the Director of the Office of Thrift Supervision,
8 as appropriate,”;

9 (D) in paragraph (4)(G), by striking “and
10 the Director of the Office of Thrift Supervision,
11 as appropriate,”; and

12 (E) in paragraph (12)(B), by striking “or
13 the Director of the Office of Thrift Supervision,
14 as appropriate,”.

15 **SEC. 1226. AMENDMENTS TO SECTION 13.**

16 Section 13(k)(1)(A)(iv) of the Federal Deposit Insur-
17 ance Act (12 U.S.C. 1823(k)(1)(A)(iv)) is amended by
18 striking “Director of the Office of Thrift Supervision” and
19 inserting “Comptroller of the Currency”.

20 **SEC. 1227. AMENDMENTS TO SECTION 18.**

21 Section 18 of the Federal Deposit Insurance Act (12
22 U.S.C. 1828) is amended—

23 (1) in subsection (c)(2)—

1 (A) in subparagraph (A), by striking
2 “bank;” and inserting “bank or a savings asso-
3 ciation; and”;

4 (B) in subparagraph (B), by inserting
5 “and” at the end after the semicolon;

6 (C) in subparagraph (C), by striking
7 “bank (except a savings bank supervised by the
8 Director of the Office of Thrift Supervision);
9 and” and inserting “bank or State savings as-
10 sociation.”; and

11 (D) by striking subparagraph (D); and

12 (2) in subsection (g)(1), by striking “Director
13 of the Office of Thrift Supervision” and inserting
14 “Comptroller of the Currency”;

15 (3) in subsection (i)(2)—

16 (A) by striking subparagraph (B) and in-
17 serting the following new subparagraph:

18 “(B) the Corporation, if the resulting insti-
19 tution is to be a State nonmember insured bank
20 or insured State savings association.”; and

21 (B) by striking subparagraph (C);

22 (4) in subsection (m)—

23 (A) in paragraph (1)—

24 (i) in subparagraph (A), by striking
25 “Director of the Office of Thrift Super-

1 vision” and inserting “Comptroller of the
2 Currency”; and

3 (ii) in subparagraph (B), by striking
4 “Director of the Office of Thrift Super-
5 vision” and inserting “Comptroller of the
6 Currency”;

7 (B) in paragraph (2)—

8 (i) in subparagraph (A), by striking
9 “Director of the Office of Thrift Super-
10 vision” and inserting “Comptroller of the
11 Currency”; and

12 (ii) in subparagraph (B)—

13 (I) by striking “Director of the
14 Office of Thrift Supervision” each
15 place it appears and inserting “Comp-
16 troller of the Currency”; and

17 (II) by striking “Director may
18 deem appropriate” and inserting
19 “Comptroller may deem appropriate”;
20 and

21 (C) in paragraph (3)—

22 (i) in subparagraph (A), by striking
23 “Director of the Office of Thrift Super-
24 vision” and inserting “Comptroller of the
25 Currency”; and

1 (ii) in subparagraph (B), by striking
2 “Office of Thrift Supervision” and insert-
3 ing “Comptroller of the Currency”.

4 **SEC. 1228. AMENDMENTS TO SECTION 28.**

5 Section 28 of the Federal Deposit Insurance Act (12
6 U.S.C. 1831e) is amended—

7 (1) in subsection (e)—

8 (A) in paragraph (2)—

9 (i) in subparagraph (A)(ii), by strik-
10 ing “Director of the Office of Thrift Su-
11 pervision” and inserting “Comptroller of
12 the Currency”;

13 (ii) in subparagraph (C), by striking
14 “Director of the Office of Thrift Super-
15 vision” and inserting “Comptroller of the
16 Currency”; and

17 (iii) in subparagraph (F), by striking
18 “Director of the Office of Thrift Super-
19 vision” and inserting “Comptroller of the
20 Currency”; and

21 (B) in paragraph (3)—

22 (i) in subparagraph (A), by striking
23 “Director of the Office of Thrift Super-
24 vision” and inserting “Comptroller of the
25 Currency”; and

1 (ii) in subparagraph (B), by striking
2 “Director of the Office of Thrift Super-
3 vision” and inserting “Comptroller of the
4 Currency”; and

5 (2) in subsection (h)(2), by striking “Director
6 of the Office of Thrift Supervision” and inserting
7 “Comptroller of the Currency”.

8 **SEC. 1229. AMENDMENTS TO THE ALTERNATIVE MORT-**
9 **GAGE TRANSACTION PARITY ACT OF 1982.**

10 (a) AMENDMENTS TO SECTION 802.—Section
11 802(a)(3) of the Alternative Mortgage Transaction Parity
12 Act of 1982 (12 U.S.C. 3801(a)(3)) is amended—

13 (1) by striking “Comptroller of the Currency,”
14 and inserting “Comptroller of the Currency and”;
15 and

16 (2) by striking “, and the Director of the Office
17 of Thrift Supervision”.

18 (b) AMENDMENTS TO SECTION 804.—Section 804(a)
19 of the Alternative Mortgage Transaction Parity Act of
20 1982 (12 U.S.C. 3803(a)) is amended—

21 (1) by amending paragraph (1) to read as fol-
22 lows:

23 “(1) with respect to banks, savings associations,
24 mutual savings banks, and savings banks, only to
25 transactions made in accordance with regulations

1 governing alternative mortgage transactions as pre-
2 scribed by the Comptroller of the Currency to the
3 extent that such regulations are authorized by rule-
4 making authority granted to the Comptroller of the
5 Currency under laws other than this section; and”;

6 (2) in paragraph (2), by striking “; and” and
7 inserting a period; and

8 (3) by striking paragraph (3).

9 **SEC. 1230. AMENDMENTS TO THE BANK HOLDING COM-**
10 **PANY ACT OF 1956.**

11 Section 4(f)(12)(A) of the Bank Holding Company
12 Act of 1956 (12 U.S.C. 1843(f)(12)(A)) is amended strik-
13 ing “the Resolution Trust Corporation, the Federal De-
14 posit Insurance Corporation, or” and inserting “the Fed-
15 eral Deposit Insurance Corporation or”.

16 **SEC. 1231. AMENDMENTS TO THE BANK PROTECTION ACT**
17 **OF 1968.**

18 Section 2 of the Bank Protection Act of 1968 (12
19 U.S.C. 1881) is amended—

20 (1) in paragraph (1), by striking “national
21 banks,” and inserting “national banks and federal
22 savings associations,”;

23 (2) in paragraph (2), by inserting “and” at the
24 end;

1 (3) in paragraph (3), by striking “, and” and
2 inserting a period; and

3 (4) by striking paragraph (4).

4 **SEC. 1232. AMENDMENTS TO THE BANK SERVICE COMPANY**
5 **ACT.**

6 Section 1(b) of the Bank Service Company Act (12
7 U.S.C. 1861(b)) is amended—

8 (1) in paragraph (4), by striking “insured
9 bank,” and inserting “insured bank or”;

10 (2) by striking “Director of the Office of Thrift
11 Supervision” and inserting “Comptroller of the Cur-
12 rency”; and

13 (3) by striking “, the Federal Savings and Loan
14 Insurance Corporation,”.

15 **SEC. 1233. AMENDMENTS TO THE COMMUNITY REINVEST-**
16 **MENT ACT OF 1977.**

17 Section 803 of the Community Reinvestment Act of
18 1977 (12 U.S.C. 2902) is amended—

19 (1) in paragraph (1)—

20 (A) in subparagraph (A), by striking “na-
21 tional banks” and inserting “national banks or
22 savings associations (the deposits of which are
23 insured by the Federal Deposit Insurance Cor-
24 poration)”; and

1 (B) in subparagraph (B), by striking “and
2 bank holding companies;” and inserting “, bank
3 holding companies and savings and loan holding
4 companies;”; and

5 (2) by striking the first paragraph (2) (relating
6 to section 8 of the Federal Deposit Insurance Act).

7 **SEC. 1234. AMENDMENTS TO THE DEPOSITORY INSTITU-**
8 **TION MANAGEMENT INTERLOCKS ACT.**

9 (a) AMENDMENT TO SECTION 207.—Section 207 of
10 the Depository Institution Management Interlocks Act (12
11 U.S.C. 3206) is amended—

12 (1) in paragraph (1), by striking “national
13 banks,” and inserting “national banks and Federal
14 savings associations (the deposits of which are in-
15 sured by the Federal Deposit Insurance Corpora-
16 tion),”;

17 (2) in paragraph (2), by striking “and bank
18 holding companies,” and inserting “, bank holding
19 companies, and savings and loan holding compa-
20 nies,”

21 (3) by striking paragraph (4); and

22 (4) by redesignating paragraphs (5) and (6) as
23 paragraphs (4) and (5), respectively.

1 (b) AMENDMENT TO SECTION 209.—Section 209 of
2 the Depository Institution Management Interlocks Act (12
3 U.S.C. 3207) is amended—

4 (1) in paragraph (1), by striking “national
5 banks,” and inserting “national banks and Federal
6 savings associations (the deposits of which are in-
7 sured by the Federal Deposit Insurance Corpora-
8 tion),”;

9 (2) in paragraph (2), by striking “and bank
10 holding companies,” and inserting “, bank holding
11 companies, and savings and loan holding compa-
12 nies,”;

13 (3) at the end of paragraph (3), by inserting
14 “and” after the comma;

15 (4) by striking paragraph (4); and

16 (5) by redesignating paragraph (5) as para-
17 graph (4).

18 (c) AMENDMENT TO SECTION 210.—Subsection
19 210(a) of the Depository Institution Management Inter-
20 locks Act (12 U.S.C. 3208(a)) is amended—

21 (1) by striking “his” and inserting “the”; and

22 (2) by inserting “of the Attorney General” after
23 “enforcement functions”.

1 **SEC. 1235. AMENDMENTS TO THE EMERGENCY HOME-**
2 **OWNERS' RELIEF ACT.**

3 Section 110 of the Emergency Homeowners' Relief
4 Act (12 U.S.C. 2709) is amended—

5 (1) by striking the “Federal Home Loan Bank
6 Board” and inserting “Federal Housing Finance
7 Agency”; and

8 (2) by striking “the Federal Savings and Loan
9 Insurance Corporation,”.

10 **SEC. 1236. AMENDMENTS TO THE EQUAL CREDIT OPPOR-**
11 **TUNITY ACT.**

12 Section 704(a) of the Equal Credit Opportunity Act
13 (15 U.S.C. 1691c(a)) is amended—

14 (1) in paragraph (1)(A), by striking “and Fed-
15 eral branches and Federal agencies of foreign
16 banks,” and inserting “Federal branches and Fed-
17 eral agencies of foreign banks, or a savings associa-
18 tion the deposits of which are insured by the Federal
19 Deposit Insurance Corporation,”;

20 (2) by striking paragraph (2); and

21 (3) by redesignating paragraphs (3) through
22 (9) as paragraphs (2) through (8).

1 **SEC. 1237. AMENDMENTS TO THE FEDERAL CREDIT UNION**
2 **ACT.**

3 (a) AMENDMENTS TO SECTION 206.—Section
4 206(g)(7) of the Federal Credit Union Act (12 U.S.C.
5 1786(g)(7)) is amended—

6 (1) in subparagraph (A)—

7 (A) in clause (v), by inserting “and” after
8 the semicolon;

9 (B) in clause (vi)—

10 (i) by striking “Federal Housing Fi-
11 nance Board” and inserting “Federal
12 Housing Finance Agency”; and

13 (ii) by striking “; and” and inserting
14 a period; and

15 (C) by striking clause (vii); and

16 (2) in subparagraph (D)—

17 (A) in clause (iii), by inserting “and” after
18 the semicolon;

19 (B) in clause (iv), by striking “; and” and
20 inserting a period; and

21 (C) by striking clause (v).

22 **SEC. 1238. AMENDMENTS TO THE FEDERAL FINANCIAL IN-**
23 **STITUTIONS EXAMINATION COUNCIL ACT OF**
24 **1978.**

25 (a) AMENDMENT TO SECTION 1002.—Section 1002
26 of the Federal Financial Institutions Examination Council

1 Act of 1978 (12 U.S.C. 3301) is amended by striking
2 “Federal Home Loan Bank Board” and inserting “Fed-
3 eral Housing Finance Agency”.

4 (b) AMENDMENT TO SECTION 1003.—Section
5 1003(1) of the Federal Financial Institutions Examina-
6 tion Council Act of 1978 (12 U.S.C. 3302(1)) is amended
7 by striking “the Office of Thrift Supervision,”.

8 (c) AMENDMENTS TO SECTION 1004.—Section
9 1004(a) of the Federal Financial Institutions Examina-
10 tion Council Act of 1978 (12 U.S.C. 3303(a)) is amend-
11 ed—

12 (1) by striking paragraph (4); and

13 (2) by redesignating paragraphs (5) and (6) as
14 paragraphs (4) and (5), respectively.

15 **SEC. 1239. AMENDMENTS TO THE FEDERAL HOME LOAN**
16 **BANK ACT.**

17 (a) AMENDMENTS TO SECTION 18.—Section 18(c) of
18 the Federal Home Loan Bank Act (12 U.S.C. 1438(c))
19 is amended—

20 (1) by striking “Director of the Office of Thrift
21 Supervision” each place it appears and inserting
22 “Comptroller of the Currency”;

23 (2) in paragraph (1)(B), by striking “and the
24 agencies under its administration or supervision”;
25 and

1 (3) in paragraph (5), by striking “and such
2 agencies”.

3 (b) REPEAL OF SECTION 21A.—Section 21A of the
4 Federal Home Loan Bank Act (12 U.S.C. 1441a) is here-
5 by repealed.

6 **SEC. 1240. AMENDMENTS TO THE FEDERAL RESERVE ACT.**

7 Section 19(b) of the Federal Reserve Act (12 U.S.C.
8 461) is amended—

9 (1) in paragraph (1)(F), by striking “the Direc-
10 tor of the Office of Thrift Supervision” and insert-
11 ing “the Comptroller of the Currency”; and

12 (2) in paragraph (4)(B), by striking “the Direc-
13 tor of the Office of Thrift Supervision” and insert-
14 ing “the Comptroller of the Currency”.

15 **SEC. 1241. AMENDMENTS TO THE FINANCIAL INSTITUTIONS**
16 **REFORM, RECOVERY, AND ENFORCEMENT**
17 **ACT OF 1989.**

18 (a) AMENDMENTS TO SECTION 302.—Section 302(1)
19 of the Financial Institutions Reform, Recovery, and En-
20 forcement Act of 1989 is amended by striking “Director
21 of the Office of Thrift Supervision” and inserting “Comp-
22 troller of the Currency”.

23 (b) AMENDMENT TO SECTION 305.—Section
24 305(b)(1) of the Financial Institutions Reform, Recovery,
25 and Enforcement Act of 1989 is amended by striking “Di-

1 rector of the Office of Thrift Supervision” and inserting
2 “Comptroller of the Currency”.

3 (c) AMENDMENT TO SECTION 308.—Section 308(a)
4 of the Financial Institutions Reform, Recovery, and En-
5 forcement Act of 1989 (12 U.S.C. 1463 note) is amended
6 by striking “Director of the Office of Supervision” and
7 inserting “Comptroller of the Currency”.

8 (d) AMENDMENTS TO SECTION 402.—Section 402 of
9 the Financial Institutions Reform, Recovery, and Enforce-
10 ment Act of 1989 (12 U.S.C. 1437 note) is amended—

11 (1) in subsection (a), by striking “Director of
12 the Office of Thrift Supervision” and inserting
13 “Comptroller of the Currency”;

14 (2) in subsection (b), by striking “Director of
15 the Office of Thrift Supervision” and inserting
16 “Comptroller of the Currency”; and

17 (3) in subsection (e)—

18 (A) in paragraph (1), by striking “Office
19 of Thrift Supervision” and inserting “Office of
20 the Comptroller of the Currency”;

21 (B) in paragraph (2), by striking “Director
22 of the Office of Thrift Supervision” each place
23 it appears and inserting “Comptroller of the
24 Currency”;

1 (C) in paragraph (3), by striking “Director
2 of the Office of Thrift Supervision” and insert-
3 ing “Comptroller of the Currency”; and

4 (D) in paragraph (4), by striking “Direc-
5 tor of the Office of Thrift Supervision” and in-
6 serting “Comptroller of the Currency”.

7 (e) AMENDMENT TO SECTION 1103.—Section
8 1103(a)(2) of the Financial Institutions Reform, Recov-
9 ery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)(2))
10 is amended by striking “and the Resolution Trust Cor-
11 poration”.

12 (f) AMENDMENTS TO SECTION 1205.—Subsection
13 1205(b) of the Financial Institutions Reform, Recovery,
14 and Enforcement Act of 1989 (12 U.S.C. 1818 note) is
15 amended—

16 (1) in paragraph (1)—

17 (A) in subparagraph (B), by striking “Di-
18 rector of the Office of Thrift Supervision, or the
19 Director’s designee” and inserting “Comptroller
20 of the Currency, or the Comptroller’s designee”;

21 (B) by striking subparagraph (D); and

22 (C) by redesignating subparagraphs (E)
23 and (F) as subparagraphs (D) and (E), respec-
24 tively;

1 (2) in paragraph (2), by striking “paragraph
2 (1)(F)” and inserting “paragraph (1)(E)”;

3 (3) in paragraph (3), by striking “paragraph
4 (1)(F)” and inserting “paragraph (1)(E)”;

5 (4) in paragraph (5), by striking “through (E)”
6 and inserting “through (D)”.

7 (g) AMENDMENTS TO SECTION 1206.—Section
8 1206(a) of the Financial Institutions Reform, Recovery,
9 and Enforcement Act of 1989 (12 U.S.C. 1833b(a)) is
10 amended—

11 (1) by striking “the Oversight Board of the
12 Resolution Trust Corporation” and inserting “and”;
13 and

14 (2) by striking “, and the Office of Thrift Su-
15 pervision,”.

16 (h) AMENDMENTS TO SECTION 1216.—Section 1216
17 of the Financial Institutions Reform, Recovery, and En-
18 forcement Act of 1989 (12 U.S.C. 1833e) is amended—

19 (1) in subsection (a)—

20 (A) by striking paragraphs (2), (5), and
21 (6);

22 (B) by redesignating paragraphs (3) and
23 (4) as paragraphs (2) and (3), respectively; and

24 (C) in paragraph (2) (as redesignated), by
25 adding “and” at the end;

1 (2) in subsection (c)—

2 (A) by striking “the Director of the Office
3 of Thrift Supervision,” and inserting “and”;
4 and

5 (B) by striking “, the Oversight Board of
6 the Resolution Trust Corporation, and the Res-
7 olution Trust Corporation”; and

8 (3) in subsection (d)—

9 (A) by striking paragraphs (3), (5) and
10 (6); and

11 (B) by redesignating paragraphs (4), (7),
12 and (8) as paragraphs (3), (4), and (5), respec-
13 tively.

14 **SEC. 1242. AMENDMENTS TO THE HOUSING ACT OF 1948.**

15 Section 502(c) of the Housing Act of 1948 (12
16 U.S.C. 1701c(c)) is amended in the introductory text by
17 striking “Director of the Office of Thrift Supervision” and
18 inserting “Comptroller of the Currency”.

19 **SEC. 1243. AMENDMENTS TO THE HOUSING AND COMMU-
20 NITY DEVELOPMENT ACT OF 1992 AND THE
21 FEDERAL HOUSING ENTERPRISES FINANCIAL
22 SAFETY AND SOUNDNESS ACT OF 1992.**

23 (a) AMENDMENTS TO SECTION 543 OF THE HOUSING
24 AND COMMUNITY DEVELOPMENT ACT OF 1992.—Section

1 543 of the Housing and Community Development Act of
2 1992 (12 U.S.C. 1707 note) is amended—

3 (1) in subsection (c)(1)—

4 (A) by striking subparagraphs (D) through
5 (F); and

6 (B) by redesignating subparagraphs (G)
7 and (H) as subparagraphs (D) and (E), respec-
8 tively; and

9 (2) in subsection (f)—

10 (A) in paragraph (2)—

11 (i) by striking “the Office of Thrift
12 Supervision,”; and

13 (ii) in subparagraph (D), by striking
14 “the Office of Thrift Supervision,”; and

15 (B) in paragraph (3)—

16 (i) by striking “the Office of Thrift
17 Supervision,”; and

18 (ii) in subparagraph (D), by striking
19 “Office of Thrift Supervision,” and insert-
20 ing “Comptroller of the Currency,”.

21 (b) AMENDMENT TO SECTION 1315 OF THE FED-
22 ERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND
23 SOUNDNESS ACT OF 1992.—Section 1315(b) of the Fed-
24 eral Housing Enterprises Financial Safety and Soundness
25 Act of 1992 (12 U.S.C. 4515(b)) is amended by striking

1 “the Federal Deposit Insurance Corporation, and the Of-
 2 fice of Thrift Supervision.” and inserting “and the Fed-
 3 eral Deposit Insurance Corporation.”.

4 (c) AMENDMENT TO SECTION 1317 OF THE FED-
 5 ERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND
 6 SOUNDNESS ACT OF 1992.—Section 1317(c) of the of the
 7 Federal Housing Enterprises Financial Safety and Sound-
 8 ness Act of 1992 (12 U.S.C. 4517(c)) is amended by strik-
 9 ing “the Federal Deposit Insurance Corporation, or the
 10 Director of the Office of Thrift Supervision” and inserting
 11 “or the Federal Deposit Insurance Corporation”.

12 **SEC. 1244. AMENDMENT TO THE HOUSING AND URBAN-**
 13 **RURAL RECOVERY ACT OF 1983.**

14 Section 469 of the Housing and Urban-Rural Recov-
 15 ery Act of 1983 (12 U.S.C. 1701p–1) is amended in the
 16 first sentence by striking “Federal Home Loan Bank
 17 Board” and inserting “Federal Housing Finance Agency”.

18 **SEC. 1245. AMENDMENTS TO THE NATIONAL HOUSING ACT.**

19 Section 202(f) of the National Housing Act is amend-
 20 ed—

21 (1) by amending paragraph (5) to read as fol-
 22 lows:

23 “(5) if the mortgagee is a national bank, a sub-
 24 sidiary or affiliate of such a bank, a Federal savings

1 association or a subsidiary or affiliate of a savings
2 association, the Comptroller of the Currency;”;

3 (2) in paragraph (6), by adding “and” at the
4 end;

5 (3) in paragraph (7)—

6 (A) by inserting “or State savings associa-
7 tion” after “State bank”; and

8 (B) by striking “; and” and inserting a pe-
9 riod; and

10 (4) by striking paragraph (8).

11 **SEC. 1246. AMENDMENTS TO THE RIGHT TO FINANCIAL**
12 **PRIVACY ACT OF 1978.**

13 Section 1101(7) of the Right to Financial Privacy
14 Act of 1978 (12 U.S.C. 3401(7)) is amended by striking
15 subparagraph (B).

16 **SEC. 1247. AMENDMENTS TO THE BALANCED BUDGET AND**
17 **EMERGENCY DEFICIT CONTROL ACT OF 1985.**

18 (a) AMENDMENTS TO SECTION 255.—Section
19 255(g)(1)(A) of the Balanced Budget and Emergency
20 Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is
21 amended by striking “Office of Thrift Supervision (20-
22 4108-0-3-373);”.

23 (b) AMENDMENTS TO SECTION 256.—Section
24 256(h)(4) of the Balanced Budget and Emergency Deficit
25 Control Act of 1985 (2 U.S.C. 906(h)(4)) is amended—

1 (1) by striking subparagraphs (C) and (G); and
2 (2) by redesignating subparagraphs (D), (E),
3 (F), and (H) as subparagraphs (C) through (G), re-
4 spectively.

5 **SEC. 1248. AMENDMENTS TO THE CRIME CONTROL ACT OF**
6 **1990.**

7 (a) AMENDMENTS TO SECTION 2539.—Section
8 2539(c)(2) of the Crime Control Act of 1990 (Public Law
9 101–647) is amended by striking subparagraph (F) and
10 redesignating subparagraphs (G) and (H) as subpara-
11 graphs (F) through (G), respectively.

12 (b) AMENDMENT TO SECTION 2554.—Section
13 2554(b)(2) of the Crime Control Act of 1990 (Public Law
14 101–647) is amended by striking “Director of the Office
15 of Thrift Supervision” and inserting “Comptroller of the
16 Currency”.

17 **SEC. 1249. AMENDMENT TO THE FLOOD DISASTER PROTEC-**
18 **TION 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. 1250. AMENDMENT TO THE INVESTMENT COMPANY**
23 **ACT OF 1940.**

24 Section 6(a)(3) of the Investment Company Act of
25 1940 (15 U.S.C. 80a–6(a)(3)) is amended by striking

1 “Federal Savings and Loan Insurance Corporation” and
2 inserting “Comptroller of the Currency”.

3 **SEC. 1251. AMENDMENT TO THE NEIGHBORHOOD REIN-**
4 **VESTMENT CORPORATION ACT.**

5 Section 606(c)(3) of the Neighborhood Reinvestment
6 Corporation Act is amended by striking “Federal Home
7 Loan Bank Board” and inserting “Federal Housing Fi-
8 nance Agency”.

9 **SEC. 1252. AMENDMENTS TO THE SECURITIES EXCHANGE**
10 **ACT OF 1934.**

11 (a) AMENDMENTS TO SECTION 3.—Section 3(a)(34)
12 of the Securities Exchange Act of 1934 (15 U.S.C.
13 78c(a)(34)) is amended—

14 (1) in subparagraph (A)—

15 (A) in clause (i), by striking “bank;” and
16 inserting “bank, or a savings association (as de-
17 fined in section 3(b) of the Federal Deposit In-
18 surance Act (12 U.S.C. 1813(b))), the deposits
19 of which are insured by the Federal Deposit In-
20 surance Corporation, a subsidiary or a depart-
21 ment or division of any such savings associa-
22 tion, or a savings and loan holding;”;

23 (B) in clause (iii), by adding “and” at the
24 end;

25 (C) by striking clause (iv); and

1 (D) by redesignating clause (v) as clause
2 (iv);
3 (2) in subparagraph (B)—

4 (A) in clause (i), by striking “bank;” and
5 inserting “bank, or a savings association (as de-
6 fined in section 3(b) of the Federal Deposit In-
7 surance Act (12 U.S.C. 1813 (b))), the deposits
8 of which are insured by the Federal Deposit In-
9 surance Corporation, a subsidiary or a depart-
10 ment or division of any such savings associa-
11 tion, or a savings and loan holding;”;

12 (B) in clause (iii), by adding “and” and
13 the end;

14 (C) by striking clause (iv); and

15 (D) by redesignating clause (v) as clause
16 (iv);
17 (3) in subparagraph (C)—

18 (A) in clause (i), by striking “bank;” and
19 inserting “bank, or a savings association (as de-
20 fined in section 3(b) of the Federal Deposit In-
21 surance Act (12 U.S.C. 1813 (b))), the deposits
22 of which are insured by the Federal Deposit In-
23 surance Corporation, a subsidiary or a depart-
24 ment or division of any such savings associa-
25 tion, or a savings and loan holding;”;

1 (B) in clause (iii), by adding “and” at the
2 end;

3 (C) by striking clause (iv); and

4 (D) by redesignating clause (v) as clause
5 (iv); and

6 (4) in subparagraph (F)—

7 (A) in clause (i), by striking “bank;” and
8 inserting “or a savings association (as defined
9 in section 3(b) of the Federal Deposit Insur-
10 ance Act (12 U.S.C. 1813 (b))), the deposits of
11 which are insured by the Federal Deposit In-
12 surance Corporation;”;

13 (B) by striking clause (ii); and

14 (C) redesignating clauses (iii), (iv), and (v)
15 as clauses (ii), (iii) and (iv), respectively.

16 (b) AMENDMENTS TO SECTION 15C.—Section 15C of
17 the Securities Exchange Act of 1934 (15 U.S.C. 78o-5)
18 is amended in subsection (g)(1) by striking “the Director
19 of the Office of Thrift Supervision, the Federal Savings
20 and Loan Insurance Corporation,”.

21 **SEC. 1253. AMENDMENTS TO TITLE 18, UNITED STATES**

22 **CODE.**

23 (a) AMENDMENT TO SECTION 212.—Section
24 212(e)(2) of title 18, United States Code, is amended—

25 (1) by striking subparagraph (C); and

1 (2) by redesignating subparagraphs (D)
2 through (H) as subparagraphs (C) through (G), re-
3 spectively.

4 (b) AMENDMENT TO SECTION 657.—Section 657 of
5 title 18, United States Code, is amended by striking “Of-
6 fice of Thrift Supervision, the Resolution Trust Corpora-
7 tion,”.

8 (c) AMENDMENT TO SECTION 981.—Section
9 981(a)(1)(D) of title 18, United States Code, is amend-
10 ed—

11 (1) by striking “the Resolution Trust Corpora-
12 tion,”; and

13 (2) by striking “or the Office of Thrift Super-
14 vision”.

15 (d) AMENDMENT TO SECTION 982.—Section
16 982(a)(3) of title 18, United States Code, is amended—

17 (1) by striking “the Resolution Trust Corpora-
18 tion,”;and

19 (2) by striking “or the Office of Thrift Super-
20 vision”.

21 (e) AMENDMENT TO SECTION 1006.—Section 1006
22 of title 18, United States Code, is amended—

23 (1) by striking “Office of Thrift Supervision,”;
24 and

1 (2) by striking “the Resolution Trust Corpora-
2 tion,”.

3 (f) AMENDMENT TO SECTION 1014.—Section 1014
4 of title 18, United States Code, is amended—

5 (1) by striking “the Office of Thrift Super-
6 vision,”; and

7 (2) by striking “the Resolution Trust Corpora-
8 tion,”.

9 (g) AMENDMENT TO SECTION 1032.—Section
10 1032(1) of title 18, United States Code, is amended—

11 (1) by striking “the Resolution Trust Corpora-
12 tion,”; and

13 (2) by striking “or the Director of the Office of
14 Thrift Supervision”.

15 **SEC. 1254. AMENDMENTS TO TITLE 31, UNITED STATES**
16 **CODE.**

17 (a) AMENDMENT TO SECTION 309.—Section 309 of
18 title 31, United States Code, is amended to read as fol-
19 lows:

20 **“§ 309. Division of Thrift Supervision**

21 “The Division of Thrift Supervision established
22 under section 3(a) of the Home Owners’ Loan Act shall
23 be a division in the Office of the Comptroller of the Cur-
24 rency.”.

1 (b) AMENDMENTS TO SECTION 321.—Section 321 of
2 title 31, United States Code, is amended—

3 (1) in subsection (c)—

4 (A) in paragraph (1), by adding “and” at
5 the end;

6 (B) in paragraph (2), by striking “; and”
7 and inserting a period; and

8 (C) by striking paragraph (3); and
9 (2) by striking subsection (e).

10 (c) AMENDMENTS TO SECTION 714.—Section 714 of
11 title 31, United States Code, is amended—

12 (1) in subsection (a), by striking “the Office of
13 the Comptroller of the Currency, and the Office of
14 Thrift Supervision.” and inserting “and the Office of
15 the Comptroller of the Currency.”;

16 (2) in subsection (b), by striking all after “has
17 consented in writing.” and inserting the following:
18 “Audits of the Federal Reserve Board and Federal
19 reserve banks shall not include unreleased tran-
20 scriptions or minutes of meetings of the Board of Gov-
21 ernors or of the Federal Open Market Committee.
22 To the extent that an audit deals with individual
23 market actions, records related to such actions shall
24 only be released by the Comptroller General after

1 180 days have elapsed following the effective date of
2 such actions.”;

3 (3) in subsection (c)(1), in the first sentence, by
4 striking “subsection,” and inserting “subsection or
5 in the audits or audit reports referring or relating
6 to the Federal Reserve Board or Reserve Banks,”;
7 and

8 (4) by adding at the end the following:

9 “(f) AUDIT AND REPORT OF THE FEDERAL RESERVE
10 SYSTEM.—

11 “(1) IN GENERAL.—An audit of the Board of
12 Governors of the Federal Reserve System and the
13 Federal reserve banks under subsection (b) shall be
14 completed within 12 months of the enactment of the
15 Financial Stability Improvement Act of 2009.

16 “(2) REPORT.—

17 “(A) REQUIRED.—A report on the audit
18 referred to in paragraph (1) shall be submitted
19 by the Comptroller General to the Congress be-
20 fore the end of the 90-day period beginning on
21 the date on which such audit is completed and
22 made available to—

23 “(i) the Speaker of the House of Rep-
24 resentatives;

1 “(ii) the majority and minority leaders
2 of the House of Representatives;

3 “(iii) the majority and minority lead-
4 ers of the Senate;

5 “(iv) the Chairman and Ranking
6 Member of the committee and each sub-
7 committee of jurisdiction in the House of
8 Representatives and the Senate; and

9 “(v) any other Member of Congress
10 who requests it.

11 “(B) CONTENTS.—The report under sub-
12 paragraph (A) shall include a detailed descrip-
13 tion of the findings and conclusion of the
14 Comptroller General with respect to the audit
15 that is the subject of the report.

16 “(3) CONSTRUCTION.—Nothing in this sub-
17 section shall be construed—

18 “(A) as interference in or dictation of mon-
19 etary policy to the Federal Reserve System by
20 the Congress or the Government Accountability
21 Office; or

22 “(B) to limit the ability of the Government
23 Accountability Office to perform additional au-
24 dits of the Board of Governors of the Federal

1 Reserve System or of the Federal reserve
2 banks.”.

3 **SEC. 1255. REQUIREMENT FOR COUNTERCYCLICAL CAP-**
4 **ITAL REQUIREMENTS.**

5 Section 908(a) of the International Lending Super-
6 vision Act of 1983 (12 U.S.C. 3907(a)) is amended by
7 adding at the end the following new paragraph:

8 “(3) Each appropriate Federal banking agency
9 shall, in establishing capital requirements under this
10 Act or other provisions of Federal law for banking
11 institutions, seek to make such requirements coun-
12 tercyclical so that the amount of capital required to
13 be maintained by a banking institution increases in
14 times of economic expansion and may decrease in
15 times of economic contraction, consistent with the
16 safety and soundness of the institution.”.

17 **SEC. 1256. TRANSFER OF AUTHORITY TO THE BOARD WITH**
18 **RESPECT TO SAVINGS AND LOAN HOLDING**
19 **COMPANIES.**

20 (a) TRANSFER OF FUNCTIONS.—Notwithstanding
21 any other provision of this subtitle, all functions of the
22 Director of the Office of Thrift Supervision with respect
23 to savings and loan holding companies that are, on a con-
24 solidated basis, predominantly engaged in the business of
25 insurance are transferred to the Board.

1 (b) BOARD'S AUTHORITY.—Notwithstanding any
2 other provision of this subtitle, the Board shall succeed
3 to all powers, authorities, rights, and duties with respect
4 to savings and loan holding companies that are, on a con-
5 solidated basis, predominantly engaged in the business of
6 insurance that were vested in the Director of the Office
7 of Thrift Supervision under Federal law, including the
8 Home Owners' Loan Act, on the day before the transfer
9 date.

10 (c) SAVINGS AND LOAN HOLDING COMPANY DE-
11 FINED.—The term “savings and loan holding company”
12 shall have the meaning given such term under section 10
13 of the Home Owners' Loan Act.

14 **Subtitle D—Further Improvements**
15 **to the Regulation of Bank Hold-**
16 **ing Companies and Depository**
17 **Institutions**

18 **SEC. 1301. TREATMENT OF INDUSTRIAL LOAN COMPANIES,**
19 **SAVINGS ASSOCIATIONS, AND CERTAIN**
20 **OTHER COMPANIES UNDER THE BANK HOLD-**
21 **ING COMPANY ACT.**

22 (a) DEFINITIONS.—Section 2 of the Bank Holding
23 Company Act of 1956 (12 U.S.C. 1841) is amended—

24 (1) by striking subsection (a)(1) and inserting
25 the following:

1 “(a) BANK HOLDING COMPANY.—

2 “(1) IN GENERAL.—Except as provided in para-
3 graph (5), the term ‘bank holding company’
4 means—

5 “(A) any company, other than a company
6 described in section 4(p), which has control over
7 any bank or over any company that is or be-
8 comes a bank holding company by virtue of this
9 Act; and

10 “(B) any section 6 holding company estab-
11 lished by a company described in section
12 6(a)(1)(C).”.

13 (2) in subsection (a)(5), by adding at the end
14 the following new subparagraph:

15 “(G) No company is a bank holding com-
16 pany by virtue of its ownership or control of a
17 section 6 holding company or any subsidiary of
18 a section 6 holding company, so long as the re-
19 quirements of sections 4(p) and 6 of this Act
20 are met, as applicable, by the section 6 holding
21 company;”;

22 (3) in subsection (c)(1)(A), by striking “insured
23 bank” and inserting “insured depository institu-
24 tion”, and by striking “section 3(h) of the Federal

1 Deposit Insurance Act” and inserting “section
2 3(c)(2) of the Federal Deposit Insurance Act”;

3 (4) in subsection (c)(2)—

4 (A) in subparagraph (B), by inserting be-
5 fore the period the following: “that is controlled
6 by a company that is, on a consolidated basis,
7 predominantly engaged in the business of insur-
8 ance”; and

9 (B) by striking subparagraph (H); and

10 (5) by adding at the end the following new sub-
11 section:

12 “(r) SECTION 6 HOLDING COMPANIES.—The term
13 ‘section 6 holding company’ means a company that is re-
14 quired to be established as an intermediate holding com-
15 pany under section 6 of this Act.”.

16 (b) NONBANKING ACTIVITIES EXCEPTIONS.—Section
17 4 of the Bank Holding Company Act of 1956 (12 U.S.C.
18 1843) is amended—

19 (1) in subsection (f)(1)(B) by striking “for pur-
20 poses of this Act” and inserting “for purposes of
21 section 4(a)”;

22 (2) in subsection (f)(2)—

23 (A) in subparagraph (B)(ii), by striking “;
24 or” and inserting a semicolon;

1 (B) in subparagraph (C), by striking the
2 period and inserting “; or”; and

3 (C) by adding at the end the following new
4 subparagraph:

5 “(D) such company fails to—

6 “(i) establish and register a section 6
7 holding company pursuant to section 6 of
8 this Act within 180 days after the adoption
9 of rules required by this section; and

10 “(ii) conduct such activities which are
11 permissible for a financial holding com-
12 pany, as determined under section 4(k),
13 through such section 6 holding company,
14 other than internal financial activities con-
15 ducted for such company or any affiliate,
16 including, but not limited to internal treas-
17 ury, investment, and employee benefit
18 functions, provided that with respect to
19 any internal financial activity engaged in
20 for the company or an affiliate and a non-
21 affiliate during the year prior to date of
22 enactment, the company (or an affiliate
23 not a subsidiary of the section 6 company)
24 may continue to engage in that activity so
25 long as at least two-thirds of the assets or

1 two-thirds of the revenues generated from
2 the activity are from or attributable to the
3 company or an affiliate, subject to review
4 by the Board to determine whether engag-
5 ing in such activity presents undue risk to
6 the section 6 company or undue systemic
7 risk.”; and

8 (3) by inserting at the end the following new
9 subsections:

10 “(p) CERTAIN COMPANIES NOT SUBJECT TO THIS
11 ACT.—

12 “(1) IN GENERAL.—Except as provided in para-
13 graphs (6) and (7), any company which—

14 “(A) was—

15 “(i) a unitary savings and loan hold-
16 ing company on May 4, 1999, or became
17 a unitary savings and loan holding com-
18 pany pursuant to an application pending
19 before the Director of the Office of Thrift
20 Supervision on or before that date, and
21 that—

22 “(I) on June 30, 2009, continued
23 to control not fewer than 1 savings
24 association that it controlled on May
25 4, 1999, or that such company ac-

1 quired pursuant to an application
2 pending before the Director of the Of-
3 fice of Thrift Supervision on or before
4 such date, which became a bank for
5 purposes of the Bank Holding Com-
6 pany Act as a result of the enactment
7 of section 1301(a)(4)(A); and

8 “(II) on June 30, 2009, and the
9 date of enactment of the Financial
10 Stability Improvement Act of 2009,
11 such savings association subsidiary
12 was and remains a qualified thrift
13 lender (as determined by section 10 of
14 the Home Owners’ Loan Act); or

15 “(ii) on November 23, 2009—

16 “(I) controlled an institution
17 which became a bank as a result of
18 the enactment of section
19 1301(a)(3)(B) of the Financial Sta-
20 bility Improvement Act of 2009;

21 “(II) had an application pending,
22 or approved but not executed, before
23 the Federal Deposit Insurance Cor-
24 poration, that, if approved, would per-
25 mit the applicant to control an indus-

1 trial loan company, industrial bank, or
2 other similar institution—

3 “(aa) that is a federally in-
4 sured, State-chartered depository
5 institution;

6 “(bb) that is organized
7 under the laws of a State that on
8 March 5, 1987, had in effect, or
9 had under consideration in the
10 legislature of such State, a stat-
11 ute that required such institution
12 to obtain insurance under the
13 Federal Deposit Insurance Act;
14 and

15 “(cc) that—

16 “(AA) does not accept
17 demand deposits that the
18 depositor may withdraw by
19 check or similar means for
20 payment to third parties; or

21 “(BB) maintains total
22 assets of less than
23 \$100,000,000; or

24 “(III) controlled an institution it
25 has continuously controlled since

1 March 5, 1987, which became a bank
2 as a result of the enactment of the
3 Competitive Equality Banking Act of
4 1987, pursuant to subsection (f);
5 “(B) was not on June 30, 2009—
6 “(i) a bank holding company; or
7 “(ii) subject to the Bank Holding
8 Company Act of 1956 by reason of section
9 8(a) of the International Banking Act of
10 1978 (12 U.S.C. 3106(a)); and
11 “(C) on June 30, 2009, directly or indi-
12 rectly controlled shares or engaged in activities
13 that did not, on the day before the date of en-
14 actment of the Financial Stability Act of 2009,
15 comply with the activity or investment restric-
16 tions on financial holding companies in section
17 4 in accordance with regulations prescribed by
18 the Board,
19 shall not be treated as a bank holding company for
20 purposes of this Act solely by virtue of such com-
21 pany’s control of such institution and control of a
22 section 6 holding company established pursuant to
23 section 6.

1 “(2) LOSS OF EXEMPTION.—A company de-
2 scribed in paragraph (1) shall no longer qualify for
3 the exemption provided under that paragraph if—

4 “(A) such company fails to—

5 “(i) establish and register a section 6
6 holding company pursuant to section 6 of
7 this Act within 180 days after adoption of
8 rules required by this section, unless the
9 Board grants an extension of such period
10 for compliance which shall not exceed 180
11 additional days; and

12 “(ii) maintain a section 6 holding
13 company in compliance with all the re-
14 quirements for a section 6 holding com-
15 pany under section 6 of this Act.

16 “(B) such company directly or indirectly
17 (including through the section 6 holding com-
18 pany it must form pursuant to this subsection
19 and section 6 of this Act) acquires control of an
20 additional bank or insured depository institu-
21 tion after June 30, 2009, provided that such
22 company directly or indirectly (including
23 through the section 6 holding company) may
24 acquire—

1 “(i) shares held as a bona fide fidu-
2 ciary (whether with or without the sole dis-
3 cretion to vote such shares);

4 “(ii) shares held by any person as a
5 bona fide fiduciary solely for the benefit of
6 employees of either the company described
7 in paragraph (1) or any subsidiary of that
8 company and the beneficiaries of those em-
9 ployees;

10 “(iii) shares held temporarily pursu-
11 ant to an underwriting commitment in the
12 normal course of an underwriting business;

13 “(iv) shares held in an account solely
14 for trading purposes;

15 “(v) shares over which no control is
16 held other than control of voting rights ac-
17 quired in the normal course of a proxy so-
18 licitation;

19 “(vi) loans or other accounts receiv-
20 able acquired from an insured depository
21 institution in the normal course of busi-
22 ness;

23 “(vii) shares or assets acquired in se-
24 curing or collecting a debt previously con-
25 tracted in good faith, during the 2-year pe-

1 riod beginning on the date of such acquisi-
2 tion or for such additional time (not ex-
3 ceeding 3 years) as the Board may permit
4 if the Board determines that such an ex-
5 tension will not be detrimental to the pub-
6 lic interest;

7 “(viii) shares or assets acquired di-
8 rectly or indirectly by a depository institu-
9 tion controlled by such company in a
10 transaction involving an insured depository
11 institution for which the Federal Deposit
12 Insurance Corporation has been appointed
13 as receiver or which has been found to be
14 in danger of default (as defined in section
15 3 of the Federal Deposit Insurance Act) by
16 the appropriate Federal or State authority;

17 “(ix) shares or assets of another in-
18 dustrial loan company meeting the require-
19 ments of this Act if such company continu-
20 ously controlled an industrial loan com-
21 pany since the date of enactment of the Fi-
22 nancial Stability Improvement Act of
23 2009; and

24 “(x) shares or assets of a savings as-
25 sociation acquired directly or indirectly by

1 the savings association controlled by such
2 company if such company continuously
3 controlled a savings association since the
4 date of enactment of the Financial Sta-
5 bility Improvement Act of 2009;

6 “(C)(i) the section 6 holding company re-
7 quired to be established by such company, or
8 any subsidiary bank of such company undergoes
9 a change in control after the date of enactment
10 of the Financial Stability Improvement Act of
11 2009, other than—

12 “(I) the merger or whole acquisition
13 of such parent company in a bona fide
14 merger or acquisition (as shall be deter-
15 mined by the Board, which is authorized to
16 find that a transaction is not a bona fide
17 merger or acquisition and thus results in
18 the loss of exemption), with a company
19 that is predominantly engaged in activities
20 not permissible for a financial holding com-
21 pany pursuant to section 4(k), or

22 “(II) the acquisition of additional
23 shares by a company that owned or con-
24 trolled 7.5 percent or more of any class of
25 such parent company’s outstanding voting

1 stock on or before June 30, 2009, and con-
2 tinuously owned or controlled at least such
3 7.5 percent since June 30, 2009.

4 “(ii) Nothing in this subparagraph shall be
5 construed as preventing the Board from requir-
6 ing compliance with this subsection, section 6
7 or the requirements of the Change in Bank
8 Control Act, as applicable to a company that is
9 permitted to acquire control without loss of the
10 exemption in this subsection 4(p)(2); or

11 “(D) any subsidiary bank of such company
12 engages in any activity after the date of enact-
13 ment of the Financial Stability Improvement
14 Act of 2009 which would have caused such in-
15 stitution to be a bank (as defined in section
16 2(c) of this Act, as in effect before such date)
17 if such activities had been engaged in before
18 such date.

19 “(3) DIVESTITURE IN CASE OF LOSS OF EX-
20 EMPTION.—If any company described in paragraph
21 (1) fails to qualify for the exemption provided under
22 paragraph (1) by operation of paragraph (2), such
23 exemption shall cease to apply to such company and
24 such company shall divest control of each bank it
25 controls before the end of the 180-day period begin-

1 ning on the date on which the company receives no-
2 tice from the Board that the company has failed to
3 continue to qualify for such exemption, unless, be-
4 fore the end of such 180-day period, the company
5 has—

6 “(A) either—

7 “(i) corrected the condition or ceased
8 the activity that caused the company to
9 fail to continue to qualify for the exemp-
10 tion; or

11 “(ii) submitted a plan to the Board
12 for approval to cease the activity or correct
13 the condition in a timely manner (which
14 shall not exceed 1 year); and

15 “(B) implemented procedures that are rea-
16 sonably adapted to avoid the reoccurrence of
17 such condition or activity.

18 “(4) SUBSECTION CEASES TO APPLY UNDER
19 CERTAIN CIRCUMSTANCES.—This subsection shall
20 cease to apply to any company described in para-
21 graph (1) if such company—

22 “(A) registers as a bank holding company
23 under section 2(a) of this Act;

24 “(B) immediately upon such registration,
25 complies with all of the requirements of this

1 chapter, and regulations prescribed by the
2 Board pursuant to this chapter, including the
3 nonbanking restrictions of this section; and

4 “(C) does not, at the time of such registra-
5 tion, control banks in more than one State, the
6 acquisition of which would be prohibited by sec-
7 tion 3(d) of this Act if an application for such
8 acquisition by such company were filed under
9 section 3(a) of this Act.

10 “(5) INFORMATION REQUIREMENT.—Each com-
11 pany described in paragraph (1) shall, within 60
12 days after the date of enactment of the Financial
13 Stability Improvement Act of 2009, provide the
14 Board with the name and address of such company,
15 the name and address of each bank such company
16 controls, and a description of each such bank’s ac-
17 tivities.

18 “(6) EXAMINATIONS AND REPORTS.—The
19 Board may, from time to time, examine a company
20 described in paragraph (1) or a bank controlled by
21 such a company, and may require reports under
22 oath from a company described in paragraph (1),
23 and appropriate officers or directors of such com-
24 pany, in each case solely for purposes of assuring

1 compliance with the provisions of this subsection and
2 enforcing such compliance.

3 “(7) LIMITED ENFORCEMENT.—

4 “(A) IN GENERAL.—In addition to any
5 other power of the Board, the Board may en-
6 force compliance with the provisions of this sub-
7 section which are applicable to any company de-
8 scribed in paragraph (1), and any bank con-
9 trolled by such company, under section 8 of the
10 Federal Deposit Insurance Act, and such com-
11 pany or bank shall be subject to such section
12 (for such purposes) in the same manner and to
13 the same extent as if such company were a
14 bank holding company.

15 “(B) APPLICATION OF OTHER ACT.—Any
16 violation of this subsection by any company de-
17 scribed in paragraph (1) or any bank controlled
18 by such a company, may also be treated as a
19 violation of the Federal Deposit Insurance Act
20 for purposes of subparagraph (A).

21 “(C) NO EFFECT ON OTHER AUTHOR-
22 ITY.—No provision of this paragraph shall be
23 construed as limiting any authority of the
24 Board or any other Federal agency under any
25 other provision of law.

1 “(q) PRESERVATION OF CERTAIN SAVINGS AND
2 LOAN HOLDING COMPANY AUTHORITIES.—Notwith-
3 standing subsection (a), a company that was a savings and
4 loan holding company on June 30, 2009, that became a
5 bank holding company by operation of section 1301 of the
6 Financial Stability Improvement Act of 2009 may con-
7 tinue to engage in the following activities in which such
8 company was continuously engaged on June 30, 2009
9 through the day of enactment of the Financial Stability
10 Improvement Act of 2009:

11 “(1) Furnishing or performing management
12 services for a savings association subsidiary of such
13 company.

14 “(2) Conducting an insurance agency or escrow
15 business.

16 “(3) Holding, managing, or liquidating assets
17 owned or acquired from a savings association sub-
18 sidiary of such company.

19 “(4) Holding or managing properties used or
20 occupied by a savings association subsidiary of such
21 company.

22 “(5) Acting as trustee under deed of trust.

23 “(6) Any other activity in which multiple sav-
24 ings and loan holding companies were authorized (by
25 regulation) to directly engage on March 5, 1987.”.

1 (c) SECTION 6 HOLDING COMPANIES.—The Bank
2 Holding Company Act of 1956 (12 U.S.C. 1841 et seq.)
3 is amended by inserting after section 5 the following new
4 section:

5 **“SEC. 6. SPECIAL-PURPOSE HOLDING COMPANIES.**

6 “(a) ESTABLISHMENT, PURPOSE AND REQUIRE-
7 MENTS OF SPECIAL PURPOSE HOLDING COMPANIES.—

8 “(1) REQUIREMENT.—A special purpose hold-
9 ing company (hereafter in this section referred to as
10 a ‘section 6 holding company’) shall be established
11 and maintained by a company—

12 “(A) described in section 4(f)(1) as re-
13 quired by section 4(f)(2)(D) of this Act;

14 “(B) described in section 4(p)(1) as re-
15 quired by section 4(p)(2)(A) of this Act; or

16 “(C) that—

17 “(i) is subject to stricter prudential
18 standards under subtitle B of the Finan-
19 cial Stability Improvement Act of 2009;

20 “(ii) is not—

21 “(I) a bank holding company, or

22 “(II) subject to the Bank Hold-
23 ing Company Act by reason of section
24 8(a) of the International Banking Act
25 of 1978 (12 U.S.C. 3106(a)); and

1 “(iii) directly or indirectly controlled
2 shares or engaged in activities that did
3 not, on the date the company is first sub-
4 ject to stricter prudential standards pursu-
5 ant to subtitle B of the Financial Stability
6 Improvement Act of 2009, comply with the
7 activity or investment restrictions on finan-
8 cial holding companies in section 4 in ac-
9 cordance with regulations prescribed by the
10 Board.

11 “(2) PURPOSE.—

12 “(A) The purpose of this section is to pro-
13 vide for consolidated supervision of certain fi-
14 nancial companies by the Board.

15 “(B) A company that is required to form
16 a section 6 holding company shall conduct such
17 activities which are permissible for a financial
18 holding company, as determined under section
19 4(k), through such section 6 holding company,
20 other than internal financial activities con-
21 ducted for such company or any affiliate, in-
22 cluding, but not limited to internal treasury, in-
23 vestment, and employee benefit functions, pro-
24 vided that with respect to any internal financial
25 activity engaged in for the company or an affil-

1 iate and a nonaffiliate during the year prior to
2 date of enactment, the company (or an affiliate
3 not a subsidiary of the section 6 company) may
4 continue to engage in that activity so long as at
5 least two-thirds of the assets or two-thirds of
6 the revenues of generated from the activity are
7 from or attributable to the company or an affil-
8 iate, subject to review by the Board to deter-
9 mine whether engaging in such activity presents
10 undue risk to the section 6 company or undue
11 systemic risk.

12 “(C) A section 6 holding company shall be
13 prohibited from conducting any nonbanking ac-
14 tivities or investing in any nonbank companies
15 other than those permissible for a financial
16 holding company under sections 3 and 4, unless
17 the Board specifically determines otherwise in
18 accordance with paragraph (6), and provided
19 that, for purposes of this paragraph, a company
20 designated as a section 6 holding company and
21 described under paragraph (4) (or any per-
22 mitted successor) is not prohibited from con-
23 tinuing to engage in any impermissible activity
24 in which it was engaged continuously during the
25 6 months prior to the date of enactment, from

1 owning any shares or types of assets related to
2 such activity, or continuing to own such other
3 shares or assets that it owned on the date of
4 enactment.

5 “(3) REGISTRATION.—

6 “(A) A section 6 holding company required
7 to be established by a company described in
8 paragraph (1)(A) shall be established, and such
9 company shall register with the Board as a
10 bank holding company, pursuant to the require-
11 ments in section 4(f).

12 “(B) A section 6 holding company required
13 to be established by a company described in
14 paragraph (1)(B) shall be established, and such
15 company shall register with the Board as a
16 bank holding company, pursuant to the require-
17 ments in section 4(p).

18 “(C) A section 6 holding company required
19 to be established by a company described in
20 paragraph (1)(C) shall be—

21 “(i) established, and such company
22 shall register with the Board, as a bank
23 holding company within 90 days after such
24 company or such company’s parent holding
25 company has been notified by the Board

1 that such company is subject to stricter
2 prudential standards under subtitle B of
3 the Financial Stability Improvement Act of
4 2009, unless the Board grants an exten-
5 sion of such period for compliance which
6 shall not exceed 180 additional days;

7 “(ii) treated as a financial holding
8 company under this Act; and

9 “(iii) subject to the authority of the
10 Board to enforce compliance with the pro-
11 visions of this section under section 8 of
12 the Federal Deposit Insurance Act in the
13 same manner and to the same extent as if
14 such company were a bank holding com-
15 pany.

16 “(4) RULE OF CONSTRUCTION.—For purposes
17 of this section, designation of an already established
18 intermediate holding company that will serve as the
19 section 6 holding company shall satisfy the require-
20 ment to establish a section 6 holding company, pro-
21 vided that such existing intermediate holding com-
22 pany complies with all other provisions applicable to
23 a section 6 holding company.

24 “(5) LIMITATIONS ON AUTHORITY OF COMMERCIAL PARENT.—A company that is not a bank hold-
25

1 ing company or treated as a bank holding company
2 pursuant to section 8(a) of the International Bank
3 Act of 1978 that has been notified that it is a finan-
4 cial holding company subject to stricter standards,
5 pursuant to subtitle A of the Financial Stability Im-
6 provement Act of 2009, shall—

7 “(A) not be deemed to be, or treated as, a
8 bank holding company, solely because of its
9 ownership or control of a section 6 holding com-
10 pany; and

11 “(B) not be subject to this Act, except for
12 such provisions as are explicitly made applicable
13 in this section.

14 “(6) BOARD AUTHORITY.—

15 “(A) RULES AND EXEMPTIONS.—In addi-
16 tion to any other authority of the Board, the
17 Board shall prescribe rules and regulations or
18 issue orders providing for the establishment and
19 registration of section 6 holding companies and
20 shall provide exemptions from the requirements
21 of this Act (including an order in response to
22 a request from an affected company), including,
23 but not limited to, exemptions—

24 “(i) with respect to the requirement to
25 conduct such activities which are financial

1 in nature, as determined under section
2 4(k), other than financial activities con-
3 ducted for such company or any affiliate,
4 including any financial activity engaged in
5 for both the company or an affiliate and a
6 nonaffiliate as permitted under section
7 4(f)(2)(D) or section 6(a)(2)(B), through
8 such section 6 holding company, if the
9 Board makes a finding that such exemp-
10 tion—

11 “(I)(aa) would facilitate the ex-
12 tension of credit to individuals, house-
13 holds, and businesses; or

14 “(bb) would allow for greater ef-
15 ficiency, improved customer service, or
16 other public benefits in the conduct of
17 financial activities by affected compa-
18 nies;

19 “(II) would not threaten the
20 safety and soundness of the section 6
21 holding company, or of any insured
22 depository institution or other sub-
23 sidiary of the section 6 holding com-
24 pany;

1 “(III) would not increase sys-
2 temic risk or threaten the stability of
3 the overall financial system;

4 “(IV) would not, as applied to
5 the activities that are the subject of
6 the rule, order or request, result in
7 substantially lessening competition, or
8 to tend to create a monopoly, or which
9 in any other manner would be in re-
10 straint of trade, unless the Board
11 finds that the anticompetitive effects
12 are outweighed in the public interest
13 by the probable effect of the exemp-
14 tion in meeting the convenience and
15 needs of the community to be served;
16 and

17 “(V) would meet the financial
18 and managerial standards for finan-
19 cial holding companies described in
20 subparagraphs (A) and (B) of section
21 4(j)(4); and

22 “(ii) from the affiliate transaction re-
23 quirements of subsection (b), including but
24 not limited to exemptions that would facili-
25 tate extensions of credit to unaffiliated

1 persons for the personal, household, or
2 business purposes of such unaffiliated per-
3 sons, unless the Board makes a finding
4 that such exemption—

5 “(I) is not consistent with the
6 purposes of section 23A and section
7 23B of the Federal Reserve Act;

8 “(II) would threaten the safety
9 and soundness of the section 6 hold-
10 ing company, or any insured deposi-
11 tory institution or other subsidiary of
12 the section 6 holding company;

13 “(III) would increase systemic
14 risk or threaten the stability of the
15 overall financial system;

16 “(IV) would not, as applied to
17 the activities that are the subject of
18 the rule, order or request result in
19 substantially lessening competition, or
20 to tend to create a monopoly, or which
21 in any other manner would be in re-
22 straint of trade, unless the Board
23 finds that the anticompetitive effects
24 are outweighed in the public interest
25 by the probable effect of the exemp-

1 tion in meeting the convenience and
2 needs of the community to be served;
3 or

4 “(V) would permit an unfair, de-
5 ceptive, abusive, or unsafe-and-un-
6 sound act or practice.

7 “(B) PARENT COMPANY REPORTS.—The
8 Board may, from time to time, require reports
9 under oath from a company that controls a sec-
10 tion 6 holding company, and appropriate offi-
11 cers or directors of such company, solely for
12 purposes of ensuring compliance with the provi-
13 sions of this section (including assessing the
14 company’s ability to serve as a source of finan-
15 cial strength pursuant to subsection (g)) and
16 enforcing such compliance.

17 “(C) LIMITED PARENT COMPANY EN-
18 FORCEMENT.—

19 “(i) IN GENERAL.—In addition to any
20 other power of the Board, the Board may
21 enforce compliance with the provisions of
22 this subsection which are applicable to any
23 company described in paragraph (1), and
24 any bank controlled by such company,
25 under section 8 of the Federal Deposit In-

1 insurance Act and such company or bank
2 shall be subject to such section (for such
3 purposes) in the same manner and to the
4 same extent as if such company were a
5 bank holding company.

6 “(ii) APPLICATION OF OTHER ACT.—

7 Any violation of this subsection by any
8 company that controls a section 6 holding
9 company or any bank controlled by such a
10 company, may also be treated as a viola-
11 tion of the Federal Deposit Insurance Act
12 for purposes of clause (i).

13 “(iii) NO EFFECT ON OTHER AUTHOR-

14 ITY.—No provision of this subparagraph
15 shall be construed as limiting any author-
16 ity of the Board or any other Federal
17 agency under any other provision of law.

18 “(b) RESTRICTIONS ON AFFILIATE TRANS-
19 ACTIONS.—

20 “(1) SECTION 23A AND 23B APPLICABILITY.—

21 “(A) IN GENERAL.—Transactions between
22 a section 6 holding company (or any nonbank
23 subsidiary thereof) and any affiliate not con-
24 trolled by the section 6 holding company shall
25 be subject to the restrictions and limitations

1 contained in section 23A and section 23B of the
2 Federal Reserve Act as if the section 6 holding
3 company were a member bank, provided, that a
4 transaction that otherwise would be a covered
5 transaction shall not be a covered transaction if
6 the transaction is in connection with the bona
7 fide acquisition or lease by an unaffiliated per-
8 son of assets, goods or services but shall be sub-
9 ject to review under section 23A(f)(1) of such
10 Act.

11 “(B) COVERED TRANSACTIONS.—A deposi-
12 tory institution controlled by a section 6 holding
13 company may not engage in a covered trans-
14 action (as defined in section 23A(b)(7) of the
15 Federal Reserve Act) with any affiliate that is
16 not the section 6 holding company or a sub-
17 sidiary of the section 6 holding company; pro-
18 vided that, for purposes of the prohibition, a
19 transaction that otherwise would be a covered
20 transaction shall not be a covered transaction if
21 the transaction is in connection with the bona
22 fide acquisition or lease by an unaffiliated per-
23 son of assets, goods or services, but shall be
24 subject to review under section 23A(f)(1) of the
25 Federal Reserve Act.

1 “(2) RULE OF CONSTRUCTION.—No provision
2 of this subsection shall be construed as exempting
3 any subsidiary insured depository institution of a
4 section 6 holding company from compliance with sec-
5 tion 23A or 23B of the Federal Reserve Act with re-
6 spect to each affiliate of such institution (as defined
7 in section 23A or 23B of the Federal Reserve Act),
8 including any affiliate that is the section 6 holding
9 company or subsidiary of the section 6 holding com-
10 pany.

11 “(c) TYING PROVISIONS.—A company that directly or
12 indirectly controls a section 6 holding company shall be—

13 “(1) treated as a bank holding company for
14 purposes of section 106 of the Bank Holding Com-
15 pany Act Amendments of 1970 and section 22(h) of
16 the Federal Reserve Act and any regulation pre-
17 scribed under any such section; and

18 “(2) subject to the restrictions of section 106 of
19 the Bank Holding Company Act Amendments of
20 1970, in connection with any transaction involving
21 the products or services of such company or affiliate
22 and those of a bank affiliate, as if such company or
23 affiliate were a bank and such bank were a sub-
24 sidiary of a bank holding company.

1 “(d) FINANCIAL HOLDING COMPANY REQUIRE-
2 MENTS.—A section 6 holding company shall be subject
3 to—

4 “(1) the conditions for engaging in expanded fi-
5 nancial activities in section 4(l); and

6 “(2) the provisions applicable to financial hold-
7 ing companies that fail to meet certain requirements
8 in section 4(m).

9 “(e) INDEPENDENCE OF SECTION 6 HOLDING COM-
10 PANY.—

11 “(1) No less than 25 percent of the members
12 of the board of directors of a section 6 holding com-
13 pany, and each subsidiary of a section 6 holding
14 company, shall be independent of the parent com-
15 pany of the section 6 holding company and any sub-
16 sidiary of such parent company. For purposes of this
17 subsection, a director shall be independent of the
18 parent company if such person is not currently serv-
19 ing, and has not within the previous two-year period
20 served, as a director, officer, or employee of any af-
21 filiate of the section 6 holding company that is not
22 a subsidiary of the section 6 holding company.

23 “(2) No executive officer of a section 6 holding
24 company or any subsidiary of a section 6 holding
25 company may serve as a director, officer, or em-

1 ployee of an affiliate of the section 6 holding com-
2 pany that is not a subsidiary of the section 6 holding
3 company.

4 “(3) The Board shall issue regulations that re-
5 quire effective legal and operational separation of
6 the functions of a section 6 holding company from
7 its affiliates that are not subsidiaries of such section
8 6 holding company, provided, however that such
9 rules shall not require operational separation of in-
10 ternal functions including, but not limited to, human
11 resources management, employee benefit plans, and
12 information technology.

13 “(f) SOURCE OF STRENGTH.—A company that di-
14 rectly or indirectly controls a section 6 holding company
15 shall serve as a source of financial strength to its sub-
16 sidiary section 6 holding company.”.

17 (d) CONFORMING CHANGES.—Section 4(h) of the
18 Bank Holding Company Act of 1956 (12 U.S.C. 1843(h)),
19 is amended—

20 (1) in paragraph (1), by striking “subpara-
21 graph (D), (F), (G), or (H)” and inserting “sub-
22 paragraph (C) or (D)”;

23 (2) in paragraph (2), by striking “subpara-
24 graph (D), (F), (G), or (H)” and inserting “sub-
25 paragraph (C) or (D)”.

1 **SEC. 1302. REGISTRATION OF CERTAIN COMPANIES AS**
2 **BANK HOLDING COMPANIES.**

3 Section 5 of the Bank Holding Company Act of 1956
4 (12 U.S.C. 1844) is amended by inserting at the end the
5 following new subsection:

6 “(h) CONVERSION TO BANK HOLDING COMPANY BY
7 OPERATION OF LAW.—

8 “(1) CONVERSION BY OPERATION OF LAW.—A
9 company that, on the day before the date of enact-
10 ment of the Financial Stability Improvement Act of
11 2009, was not a bank holding company but which,
12 by reason of sections 4(p) and 6 becomes a bank
13 holding company by operation of law, shall register
14 as a bank holding company with the Board in ac-
15 cordance with section 5(a) within 90 days of the
16 date of enactment of that Act.

17 “(2) COMPLIANCE WITH BANK HOLDING COM-
18 PANY ACT.—With respect to any company described
19 in paragraph (1), the Board may grant temporary
20 exemptions or provide other appropriate temporary
21 relief to permit such company to implement meas-
22 ures necessary to comply with the requirements
23 under the Bank Holding Company Act.”.

1 **SEC. 1303. REPORTS AND EXAMINATIONS OF BANK HOLD-**
2 **ING COMPANIES; REGULATION OF FUNCTION-**
3 **ALLY REGULATED SUBSIDIARIES.**

4 (a) REPORTS OF BANK HOLDING COMPANIES.—Sec-
5 tions 5(c)(1)(A) and (B) of the Bank Holding Company
6 Act of 1956 (12 U.S.C. 1844(c)(1)(A) and (B)) are
7 amended to read as follows:

8 “(A) IN GENERAL.—The Board, from time
9 to time, may require a bank holding company
10 and any subsidiary of such company to submit
11 reports under oath that the Board determines
12 are necessary or appropriate for the Board to
13 carry out the purposes of this chapter, prevent
14 evasions thereof, and monitor compliance by the
15 company or subsidiary with the applicable pro-
16 visions of law.

17 “(B) USE OF EXISTING REPORTS.—

18 “(i) IN GENERAL.—The Board shall,
19 to the fullest extent possible, use:

20 “(I) reports that a bank holding
21 company or any subsidiary of such
22 company has been required to provide
23 to other Federal or State regulatory
24 agencies;

1 “(II) information that is other-
2 wise required to be reported publicly;
3 and

4 “(III) externally audited financial
5 statements.

6 “(ii) AVAILABILITY.—A bank holding
7 company or a subsidiary of such company
8 shall promptly provide to the Board, at the
9 request of the Board, a report referred to
10 in clause (i)(I).”.

11 (b) FUNCTIONALLY REGULATED SUBSIDIARY.—Sec-
12 tion 5(c)(1) of the Bank Holding Company Act of 1956
13 (12 U.S.C. 1844(c)(1)) is amended by inserting at the end
14 the following new subparagraph:

15 “(C) DEFINITION.—For purposes of this
16 subsection and section 6, the term ‘functionally
17 regulated subsidiary’ means any subsidiary
18 (other than a depository institution) of a bank
19 holding company that is—

20 “(i) a broker or dealer registered with
21 the Securities and Exchange Commission
22 under the Securities Exchange Act of
23 1934, for which the Securities and Ex-
24 change Commission is the Federal regu-
25 latory agency;

1 “(ii) an investment company reg-
2 istered with the Securities and Exchange
3 Commission under the Investment Com-
4 pany Act of 1940, for which the Securities
5 and Exchange Commission is the Federal
6 regulatory agency;

7 “(iii) an investment adviser registered
8 with the Securities and Exchange Commis-
9 sion under the Investment Advisers Act of
10 1940, for which the Securities and Ex-
11 change Commission is the Federal regu-
12 latory agency, with respect to the invest-
13 ment advisory activities of such investment
14 adviser and activities incidental to such in-
15 vestment advisory activities; and

16 “(iv) a futures commission merchant,
17 commodity trading advisor, and commodity
18 pool operator registered with the Com-
19 modity Futures Trading Commission
20 under the Commodity Exchange Act, for
21 which the Commodity Futures Trading
22 Commission is the Federal regulatory
23 agency, with respect to the commodities
24 activities of such entity and activities inci-
25 dental to such commodities activities.”.

1 (c) EXAMINATIONS OF BANK HOLDING COMPA-
2 NIES.—Sections 5(c)(2)(A) and (B) of the Bank Holding
3 Company Act of 1956 (12 U.S.C. 1844(c)(2)(A) and (B))
4 are amended to read as follows:

5 “(A) IN GENERAL.—The Board may make
6 examinations of a bank holding company and
7 any subsidiary of such a company to carry out
8 the purposes of this chapter, prevent evasions
9 thereof, and monitor compliance by the com-
10 pany or subsidiary with applicable provisions of
11 law.

12 “(B) FUNCTIONALLY REGULATED AND DE-
13 POSITORY INSTITUTION SUBSIDIARIES.—The
14 Board shall, to the fullest extent possible, use
15 reports of examination of functionally regulated
16 subsidiaries and subsidiary depository institu-
17 tions made by other Federal or State regulatory
18 authorities.”.

19 (d) REGULATION OF FINANCIAL HOLDING COMPA-
20 NIES.—Section 5(c)(2) of the Bank Holding Company Act
21 of 1956 (12 U.S.C. 1844(c)) is amended by striking sub-
22 paragraphs (C), (D), and (E).

23 (e) AUTHORITY TO REGULATE FUNCTIONALLY REG-
24 ULATED SUBSIDIARIES OF BANK HOLDING COMPA-
25 NIES.—The Bank Holding Company Act of 1956 (12

1 U.S.C. 1841, et seq.) is amended by striking section 10A
2 (12 U.S.C. 1848a).

3 **SEC. 1304. REQUIREMENTS FOR FINANCIAL HOLDING COM-**
4 **PANIES TO REMAIN WELL CAPITALIZED AND**
5 **WELL MANAGED.**

6 Section 4(l)(1) of the Bank Holding Company Act of
7 1956 (12 U.S.C. 1843(l)(1)) is amended—

8 (1) in subparagraph (B), by striking “and”;

9 (2) by redesignating subparagraph (C) as sub-
10 paragraph (D);

11 (3) by inserting after subparagraph (B) the fol-
12 lowing new subparagraph:

13 “(C) the bank holding company is well
14 capitalized and well managed; and”;

15 (4) in subparagraph (D) (as so redesignated)
16 by amending clause (ii) to read as follows:

17 “(ii) a certification that the company
18 meets the requirements of subparagraphs
19 (A) through (C).”.

20 **SEC. 1305. STANDARDS FOR INTERSTATE ACQUISITIONS.**

21 (a) **BANK HOLDING COMPANY ACT OF 1956 AMEND-**
22 **MENT.**—Section 3(d)(1)(A) of the Bank Holding Company
23 Act of 1956 (12 U.S.C. 1842(d)(1)(A)) is amended—

24 (1) by striking “adequately capitalized” and in-
25 serting “well capitalized”; and

1 (2) by striking “adequately managed” and in-
2 serting “well managed”.

3 (b) FEDERAL DEPOSIT INSURANCE ACT AMEND-
4 MENT.—Section 44(b)(4)(B) of the Federal Deposit In-
5 surance Act (12 U.S.C. 1831u(b)(4)(B)) is amended to
6 read as follows:

7 “(B) the responsible agency determines
8 that the resulting bank will be well capitalized
9 and well managed upon the consummation of
10 the transaction.”.

11 **SEC. 1306. ENHANCING EXISTING RESTRICTIONS ON BANK**
12 **TRANSACTIONS WITH AFFILIATES.**

13 (a) Section 23A of the Federal Reserve Act (12
14 U.S.C. 371c) is amended—

15 (1) in subsection (b)(1), by striking subpara-
16 graph (D) and inserting the following new subpara-
17 graph:

18 “(D) any investment fund with respect to
19 which a member bank or affiliate thereof is an
20 investment adviser; and”

21 (2) in subsection (b)(7)(A), by inserting “(in-
22 cluding a purchase of assets subject to an agreement
23 to repurchase)” after “affiliate”;

1 (3) in subsection (b)(7)(C), by striking “, in-
2 including assets subject to an agreement to repur-
3 chase,”;

4 (4) in subsection (b)(7)(D)—

5 (A) by inserting “or other debt obliga-
6 tions” after “acceptance of securities”, and

7 (B) by striking “or” after the semicolon;

8 (5) in subsection (b)(7), by inserting at the end
9 the following new subparagraphs:

10 “(F) any securities borrowing and lending
11 transactions with an affiliate to the extent that
12 the transactions create credit exposure of the
13 member bank to the affiliate; or

14 “(G) current and potential future credit
15 exposure to the affiliate on derivative trans-
16 actions with the affiliate;”;

17 (6) in subsection (c)(1), by striking “at the
18 time of the transaction,” and inserting “at all
19 times”;

20 (7) in subsection (c)—

21 (A) by striking paragraph (2);

22 (B) by redesignating paragraphs (3), (4),
23 and (5) as paragraphs (2), (3), and (4), respec-
24 tively;

1 (8) in subsection (c)(3) (as so redesignated by
2 paragraph (7)), by inserting “or other debt obliga-
3 tions” after “securities”;

4 (9) in subsection (f)(2), by inserting at the end
5 the following: “The Board may not, by regulation or
6 order, grant an exemption under this section unless
7 the Board obtains the concurrence of the Chairman
8 of the Federal Deposit Insurance Corporation.”; and

9 (10) in subsection (f)—

10 (A) by redesignating paragraph (3) as
11 paragraph (4);

12 (B) and inserting after paragraph (2) the
13 following new paragraph:

14 “(3) CONCURRENCE OF THE COMPTROLLER OF
15 THE CURRENCY.—With respect to a transaction or
16 relationship involving a national bank or Federal
17 savings association, the Board may not grant an ex-
18 emption under this section unless the Board obtains
19 the concurrence of the Comptroller of the Currency
20 (in addition to obtaining the concurrence of the
21 Chairman of the Federal Deposit Insurance Cor-
22 poration under paragraph (2)).”.

23 (b) TECHNICAL AND CONFORMING AMENDMENT.—

24 Section 23B(e) of the Federal Reserve Act (12 U.S.C.

1 371–1(e)), is amended by inserting at the end the fol-
2 lowing new paragraph:

3 “(3) The Board may not grant an exemption or
4 exclusion under this section unless the Board ob-
5 tains the concurrence of the Chairman of the Fed-
6 eral Deposit Insurance Corporation.”.

7 **SEC. 1307. ELIMINATING EXCEPTIONS FOR TRANSACTIONS**
8 **WITH FINANCIAL SUBSIDIARIES.**

9 Section 23A(e) of the Federal Reserve Act (12 U.S.C.
10 371c(e)) is amended—

11 (1) by striking paragraph (3); and

12 (2) by redesignating paragraph (4) as para-
13 graph (3).

14 **SEC. 1308. LENDING LIMITS APPLICABLE TO CREDIT EXPO-**
15 **SURE ON DERIVATIVE TRANSACTIONS, RE-**
16 **PURCHASE AGREEMENTS, REVERSE REPUR-**
17 **CHASE AGREEMENTS, AND SECURITIES**
18 **LENDING AND BORROWING TRANSACTIONS.**

19 Section 5200 of the Revised Statutes of the United
20 States (12 U.S.C. 84) is amended—

21 (1) in subsection (b)(1), by striking “shall in-
22 clude all direct or indirect” and all that follows
23 through “commitment;” and inserting: “shall in-
24 clude—

1 “(A) all direct or indirect advances of
2 funds to a person made on the basis of any ob-
3 ligation of that person to repay the funds or re-
4 payable from specific property pledged by or on
5 behalf of the person;

6 “(B) to the extent specified by the Comp-
7 troller of the Currency, such term shall also in-
8 clude any liability of a national banking associa-
9 tion to advance funds to or on behalf of a per-
10 son pursuant to a contractual commitment; and

11 “(C) credit exposure to a person arising
12 from a derivative transaction, repurchase agree-
13 ment, reverse repurchase agreement, securities
14 lending transaction, or securities borrowing
15 transaction between the national banking asso-
16 ciation and the person;”;

17 (2) in subsection (b)(2) by striking the period
18 at the end and inserting “; and”;

19 (3) in subsection (b), by inserting after para-
20 graph (2) the following new paragraph:

21 “(3) the term ‘derivative transaction’ means
22 any transaction that is a contract, agreement, swap,
23 warrant, note, or option that is based, in whole or
24 in part, on the value of, any interest in, or any
25 quantitative measure or the occurrence of any event

1 relating to, one or more commodities, securities, cur-
2 rencies, interest or other rates, indices, or other as-
3 sets.”; and

4 (4) in subsection (d), by inserting after para-
5 graph (2) the following new paragraph:

6 “(3) The Comptroller of the Currency shall pre-
7 scribe rules to administer and carry out the pur-
8 poses of this section with respect to credit exposures
9 arising from any derivative transaction, repurchase
10 agreement, reverse repurchase agreement, securities
11 lending transaction, or securities borrowing trans-
12 action. Rules required to be prescribed under this
13 paragraph (3) shall take effect, in final form, not
14 later than 180 days after the date of enactment of
15 the Financial Stability Improvement Act of 2009.”.

16 **SEC. 1309. RESTRICTION ON CONVERSIONS OF TROUBLED**
17 **BANKS AND THRIFTS.**

18 (a) CONVERSION OF A NATIONAL BANKING ASSOCIA-
19 TION TO A STATE BANK.—The National Bank Consolida-
20 tion and Merger Act (12 U.S.C. 215 et seq.) is amended
21 by redesignating section 7 as section 8 and by inserting
22 after section 6 the following:

23 **“SEC. 7. PROHIBITION ON CERTAIN CONVERSIONS.**

24 “A national bank may not convert to a State bank
25 during any period of time in which it is subject to a cease

1 and desist order, memorandum of understanding, or other
2 enforcement action entered into with or issued by the
3 Comptroller of the Currency.”

4 (b) CONVERSION OF A STATE BANK TO A NATIONAL
5 BANK.—Section 5154 of the Revised Statutes (12 U.S.C.
6 35) is amended by adding at the end the following new
7 sentence: “The Comptroller of the Currency shall not ap-
8 prove the conversion of a State bank to a national bank
9 during any period of time in which the State bank is sub-
10 ject to a cease and desist order, memorandum of under-
11 standing, or other enforcement action entered into or
12 issued by a State bank supervisor, the Federal Deposit
13 Insurance Corporation, the Board of Governors of the
14 Federal Reserve System or a Federal Reserve Bank.”.

15 (c) CONVERSION BETWEEN A FEDERAL SAVINGS AS-
16 SOCIATION AND A STATE SAVINGS ASSOCIATION.—Section
17 5(i) of the Home Owners’ Loan Act (12 U.S.C. 1464(i))
18 is amended by adding at the end the following new para-
19 graph:

20 “(6) PROHIBITION ON CERTAIN CONVER-
21 SIONS.—A Federal savings association may not con-
22 vert to a State savings association, and a State sav-
23 ings association may not convert to a Federal sav-
24 ings association, during any period of time in which
25 such savings association is subject to a cease and de-

1 sist order, memorandum of understanding, or other
2 enforcement action entered into with or issued by
3 the Director of the Office of Thrift Supervision or
4 a State savings association supervisor.”.

5 **SEC. 1310. LENDING LIMITS TO INSIDERS.**

6 Section 22(h)(9)(D)(ii) of the Federal Reserve Act
7 (12 U.S.C. 375b(h)(9)(D)(ii)) is amended by inserting “,
8 except that a member bank shall be deemed to have ex-
9 tended credit to a person if the member bank has credit
10 exposure to the person arising from a derivative trans-
11 action, repurchase agreement, reverse repurchase agree-
12 ment, securities lending transaction, or securities bor-
13 rowing transaction between the member bank and the per-
14 son” before the period at the end.

15 **SEC. 1311. LIMITATIONS ON PURCHASES OF ASSETS FROM**
16 **INSIDERS.**

17 (a) Section 18 of the Federal Deposit Insurance Act
18 (12 U.S.C. 1828) is amended by inserting after subsection
19 (y) (as added by section 1408) the following new sub-
20 section:

21 “(z) GENERAL PROHIBITION.—An insured depository
22 institution shall not purchase an asset from, or sell an
23 asset to, one of its executive officers, directors, or principal
24 shareholders or any related interest of such person (as
25 such terms are defined in section 22(h) of Federal Reserve

1 Act) unless the transaction is on market terms and, if the
2 transaction represents more than 10 percent of the insti-
3 tution's capital stock and surplus, the transaction has
4 been approved in advance by a majority of the institution's
5 board of directors (with interested directors of the insured
6 depository institution not participating in the approval of
7 the transaction).”.

8 (b) FDIC RULEMAKING AUTHORITY.—The Federal
9 Deposit Insurance Corporation may prescribe rules to im-
10 plement the requirements of subsection (a) and the
11 amendments made by subsection (a).

12 (c) AMENDMENTS TO THE FEDERAL RESERVE
13 ACT.—Section 22 of the Federal Reserve Act (12 U.S.C.
14 375) is amended by striking subsection (d).

15 **SEC. 1312. RULES REGARDING CAPITAL LEVELS OF BANK**
16 **HOLDING COMPANIES.**

17 Section 5(b) of the Bank Holding Company Act of
18 1956 (12 U.S.C. 1844(b)) is amended by inserting “, in-
19 cluding regulations relating to the capital levels of bank
20 holding companies” before the period at the end.

21 **SEC. 1313. ENHANCEMENTS TO FACTORS TO BE CONSID-**
22 **ERED IN CERTAIN ACQUISITIONS.**

23 (a) BANK ACQUISITIONS.—Section 3(e) of the Bank
24 Holding Company Act of 1956 (12 U.S.C. 1842(e)) is

1 amended by inserting at the end the following new para-
2 graph:

3 “(7) FINANCIAL STABILITY.—

4 “(A) IN GENERAL.—In every case, the
5 Board shall take into consideration the extent
6 to which the proposed acquisition, merger, or
7 consolidation may pose risk to the stability of
8 the United States financial system or the econ-
9 omy of the United States , including the result-
10 ing scope, nature, size, scale, concentration, or
11 interconnectedness of activities that are finan-
12 cial in nature.

13 “(B) STANDARDS FOR APPROVAL.—The
14 Board may in its sole discretion disapprove any
15 acquisition, merger, or consolidation of, or by,
16 a financial company subject to stricter pruden-
17 tial standards if the Board determines that the
18 resulting concentration of liabilities on a con-
19 solidated basis is likely to pose a greater threat
20 to financial stability during times of severe eco-
21 nomic distress.”.

22 (b) NONBANK ACQUISITIONS.—

23 (1) Section 4(j)(2)(A) of the Bank Holding
24 Company is amended by—

1 (A) striking “or” before “unsound banking
2 practices”; and

3 (B) inserting before the period at the end
4 the following: “, or risk to the stability of the
5 United States financial system or the economy
6 of the United States”.

7 (2) Section 4(k)(6) of the Bank Holding Com-
8 pany Act of 1956 is amended by striking subpara-
9 graph (B) and inserting the following new subpara-
10 graph:

11 “(B) A financial holding company may
12 commence any activity or acquire any company,
13 pursuant to paragraph (4) or any regulation
14 prescribed or order issued under paragraph (5),
15 without prior approval of the Board, except—

16 “(i) for a transaction in which the
17 total assets to be acquired by the financial
18 holding company exceed \$25 billion; and

19 “(ii) as provided in subsection (j) with
20 regard to the acquisition of a savings asso-
21 ciation.”.

22 (c) BANK MERGER ACT TRANSACTIONS.—Section
23 8(c)(5) of the Federal Deposit Insurance Act (12 U.S.C.
24 1828(c)(5)) is amended by—

1 (1) by striking “and” before “the convenience
2 and needs of the community to be served”; and

3 (2) by inserting before the period at the end the
4 following: “, and the risk to the stability of the
5 United States financial system and the economy of
6 the United States based on, among other things, the
7 scope, nature, size, scale, concentration, or inter-
8 connectedness of activities that are financial in na-
9 ture”.

10 **SEC. 1314. ELIMINATION OF ELECTIVE INVESTMENT BANK**
11 **HOLDING COMPANY FRAMEWORK.**

12 Section 17 of the Securities Exchange Act of 1934
13 (15 U.S.C. 78q) is amended—

14 (1) by striking subsection (i); and

15 (2) by redesignating subsections (j) and (k) as
16 subsections (i) and (j), respectively.

17 **SEC. 1315. EXAMINATION FEES FOR LARGE BANK HOLDING**
18 **COMPANIES.**

19 The Bank Holding Company Act of 1956 is amended
20 by inserting after section 5 the following new section:

21 **“SEC. 5A. EXAMINATION FEES.**

22 “The Board of Governors of the Federal Reserve Sys-
23 tem or the Federal Reserve Banks shall assess fees on
24 bank holding companies with total consolidated assets of
25 \$10 billion or more. Such fees shall be sufficient to defray

1 the cost of the examination of such bank holding compa-
2 nies.”.

3 **Subtitle E—Improvements to the**
4 **Federal Deposit Insurance Fund**

5 **SEC. 1401. ACCOUNTING FOR ACTUAL RISK TO THE DE-**
6 **POSIT INSURANCE FUND.**

7 (a) Section 7(b)(1)(C) of the Federal Deposit Insur-
8 ance Act is amended to read as follows:

9 “(C) ‘RISK-BASED ASSESSMENT SYSTEM’
10 DEFINED.—For purposes of this paragraph, the
11 term ‘risk-based assessment system’ means a
12 system for calculating a depository institution’s
13 assessment based on—

14 “(i) the probability that the Deposit
15 Insurance Fund will incur a loss with re-
16 spect to the institution;

17 “(ii) the likely amount of any such
18 loss;

19 “(iii) the risks to the Deposit Insur-
20 ance Fund attributable to such depository
21 institution, including risks posed by its af-
22 filiates to the extent the Corporation deter-
23 mines appropriate, taking into account—

24 “(I) the amount, different cat-
25 egories, and concentrations of assets

1 of the insured depository institution
2 and its affiliates, including both on-
3 balance sheet and off-balance sheet
4 assets;

5 “(II) the amount, different cat-
6 egories, and concentrations of liabil-
7 ities, both insured and uninsured, con-
8 tingent and noncontingent, including
9 both on-balance sheet and off-balance
10 sheet liabilities, of the insured deposit-
11 tory institution and its affiliates; and

12 “(III) any other factors the Cor-
13 poration determines are relevant to
14 assessing the risks; and

15 “(iv) the revenue needs of the Deposit
16 Insurance Fund.”.

17 (b) Section 7(b)(2) of the Federal Deposit Insurance
18 Act is amended by striking subparagraph (D) and by re-
19 designating subparagraph (E) as subparagraph (D).

20 **SEC. 1402. CREATING A RISK-FOCUSED ASSESSMENT BASE.**

21 Section 7(b)(2) of such Act, as amended, is further
22 amended by amending subparagraph (C) to read as fol-
23 lows:

24 “(C) **ASSESSMENT.**—The assessment of
25 any insured depository institution imposed

1 under this subsection shall be an amount equal
2 to the product of—

3 “(i) an assessment rate established by
4 the Corporation; and

5 “(ii) the amount of the insured depos-
6 itory institution’s average total assets dur-
7 ing the assessment period minus the
8 amount of the insured depository institu-
9 tion’s average tangible equity during the
10 assessment period.”.

11 **SEC. 1403. ELIMINATION OF PROCYCLICAL ASSESSMENTS.**

12 Section 7(e) of the Federal Deposit Insurance Act is
13 amended—

14 (1) in paragraph (2)—

15 (A) by amending subparagraph (B) to read
16 as follows:

17 “(B) LIMITATION.—The Board of Direc-
18 tors may, in its sole discretion, suspend or limit
19 the declaration of payment of dividends under
20 subparagraph (A).”;

21 (B) by amending subparagraph (C) to read
22 as follows:

23 “(C) NOTICE AND OPPORTUNITY FOR COM-
24 MENT.—The Corporation shall prescribe, by
25 regulation, after notice and opportunity for

1 comment, the method for the declaration, cal-
2 culation, distribution, and payment of dividends
3 under this paragraph”; and

4 (C) by striking subparagraphs (D) through
5 (G); and

6 (2) in paragraph (4)(A) by striking “para-
7 graphs (2)(D) and” and inserting “paragraphs (2)
8 and”.

9 **SEC. 1404. ENHANCED ACCESS TO INFORMATION FOR DE-**
10 **POSIT INSURANCE PURPOSES.**

11 (a) Section 7(a)(2)(B) of the Federal Deposit Insur-
12 ance Act is amended by striking “, after agreement with
13 the Comptroller of the Currency, the Board of Governors
14 of the Federal Reserve system, and the Director of the Of-
15 fice of Thrift Supervision, as appropriate,”.

16 (b) Section 7(b)(1)(E) of the Federal Deposit Insur-
17 ance Act is amended—

18 (1) in clause (i), by striking “such as” and in-
19 serting “including”; and

20 (2) by striking clause (iii).

21 **SEC. 1405. TRANSITION RESERVE RATIO REQUIREMENTS**
22 **TO REFLECT NEW ASSESSMENT BASE.**

23 (a) Section 7(b)(3)(B) of the Federal Deposit Insur-
24 ance Act is amended to read as follows:

1 “(B) MINIMUM RESERVE RATIO.—The re-
2 serve ratio designated by the Board of Direc-
3 tors for any year may not be less than 1.15 per-
4 cent of estimated insured deposits, or the com-
5 parable percentage of the assessment base set
6 forth in paragraph (2)(C).”.

7 (b) Section 3(y)(3) of the Federal Deposit Insurance
8 Act is amended by inserting “, or such comparable per-
9 centage of the assessment base set forth in section
10 7(b)(2)(C)” before the period.

11 (c) For a period of not less than 5 years after the
12 date of the enactment of this title, the Federal Deposit
13 Insurance Corporation shall make available to the public
14 the reserve ratio and the designated reserve ratio using
15 both estimated insured deposits and the assessment base
16 under section 7(b)(2)(C) of the Federal Deposit Insurance
17 Act.

18 **Subtitle F—Improvements to the**
19 **Asset-backed Securitization**
20 **Process**

21 **SEC. 1501. SHORT TITLE.**

22 This subtitle may be cited as the “Credit Risk Reten-
23 tion Act of 2009”.

1 **SEC. 1502. CREDIT RISK RETENTION.**

2 (a) AMENDMENT.—The Securities Act of 1933 (15
3 U.S.C. 77a et seq.) is amended by inserting after section
4 28 the following new section:

5 **“SEC. 29. CREDIT RISK RETENTION.**

6 “(a) IN GENERAL.—

7 “(1) INTEREST IN LOANS MADE BY CREDI-
8 TORS.—Within 180 days of the date of the enact-
9 ment of this section, the appropriate agencies shall
10 prescribe regulations to require any creditor that
11 makes a loan to retain an economic interest in a ma-
12 terial portion of the credit risk of any such loan that
13 the creditor transfers, sells, or conveys to a third
14 party, including for the purpose of including such
15 loan in a pool of loans backing an issuance of asset-
16 backed securities.

17 “(2) INTEREST IN ASSETS BACKING ASSET-
18 BACKED SECURITIES.—The appropriate agencies
19 shall prescribe regulations to require any securitizer
20 of asset-backed securities that are backed by assets
21 not described in paragraph (1) to retain an economic
22 interest in a material portion of any such asset used
23 to back an issuance of securities.

24 “(b) ALTERNATIVE RISK RETENTION FOR CREDIT
25 SECURITIZERS.—The appropriate agencies may apply the
26 risk retention requirements of this section to securitizers

1 of loans or particular types of loans in addition to or in
2 substitution for any or all of the requirements that apply
3 to creditors that make such loans or types of loans, if the
4 agencies determine that applying the requirements to such
5 securitizers would—

6 “(1) be consistent with helping to ensure high
7 quality underwriting standards for creditors, taking
8 into account other applicable laws, regulations, and
9 standards; and

10 “(2) facilitate appropriate risk management
11 practices by such creditors, improve access of con-
12 sumers to credit on reasonable terms, or otherwise
13 serve the public interest.

14 “(c) STANDARDS FOR REGULATION.—Regulations
15 prescribed under subsections (a) and (b) shall—

16 “(1) prohibit a creditor or securitizer from di-
17 rectly or indirectly hedging or otherwise transferring
18 the credit risk such creditor or securitizer is required
19 to retain under the regulations;

20 “(2) require a creditor or securitizer to retain
21 5 percent of the credit risk on any loan that is
22 transferred, sold, or conveyed by such creditor or
23 securitized by such securitizer except—

24 “(A) an appropriate agency may specify
25 that the percentage of risk may be less than 5

1 percent of the credit risk, or exempt such cred-
2 itor or securitizer from the risk retention re-
3 quirement, if—

4 “(i) the credit underwriting by the
5 creditor or the due diligence by the
6 securitizer meets such standards as an ap-
7 propriate agency prescribes; and

8 “(ii) the loan that is transferred, sold,
9 or conveyed by such creditor or securitized
10 by such securitizer meets terms, condi-
11 tions, and characteristics that are deter-
12 mined by an appropriate agency to reflect
13 loans with reduced credit risk, such as
14 loans that meet certain interest rate
15 thresholds, loans that are fully amortizing,
16 and loans that are included in a
17 securitization in which a third-party pur-
18 chaser specifically negotiates for the pur-
19 chase of the first-loss position and provides
20 due diligence on all individual loans in the
21 pool prior to the issuance of the asset-
22 backed securities, and retains a first-loss
23 position; and

24 “(B) an appropriate agency may specify
25 that the percentage of risk may be more than

1 5 percent of the credit risk if the underwriting
2 by the creditor or due diligence by the
3 securitizer is insufficient;

4 “(3) specify that the credit risk retained must
5 be no less at risk for loss than the average of the
6 credit risk not so retained; and

7 “(4) set the minimum duration of the required
8 risk retention.

9 “(d) EXEMPTIONS AND ADJUSTMENTS.—

10 “(1) IN GENERAL.—The appropriate agencies
11 shall have authority to provide exemptions or adjust-
12 ments to the requirements of this section, including
13 exemptions or adjustments relating to the percent-
14 age of risk retention required to be held and the
15 hedging prohibition.

16 “(2) APPLICABLE STANDARDS.—Any exemp-
17 tions or adjustments provided under paragraph (1)
18 shall—

19 “(A) be consistent with the purpose of en-
20 suring high quality underwriting standards for
21 creditors, taking into account other applicable
22 laws, regulations, or standards; and

23 “(B) facilitate appropriate risk manage-
24 ment practices by such creditors, improve ac-

1 cess for consumers to credit on reasonable
2 terms, or otherwise serve the public interest.

3 “(e) APPROPRIATE AGENCY DEFINED.—For pur-
4 poses of this section, the term ‘appropriate agency’ means
5 any of the following agencies with regard to the respective
6 loans and asset-backed securities:

7 “(1) BANKING AGENCIES.—The Federal bank-
8 ing agencies, the National Credit Union Administra-
9 tion Board, and the Commission, with respect to any
10 loan or asset-backed security for which there is no
11 appropriate agency under paragraph (2).

12 “(2) OTHER AGENCIES.—

13 “(A) With regard to any mortgage insured
14 under title II of the National Housing Act, the
15 Secretary of Housing and Urban Development.

16 “(B) With regard to any loan meeting the
17 conforming loan standards of the Federal Na-
18 tional Mortgage Corporation or the Federal
19 Home Loan Mortgage Corporation or any
20 asset-backed security issued by either such cor-
21 poration, the Federal Housing Finance Agency.

22 “(C) With regard to any loan insured by
23 the Rural Housing Service, the Rural Housing
24 Service.

1 “(f) JOINT APPROPRIATE AGENCY REGULATIONS.—
2 All regulations prescribed by the agencies identified in
3 subsection (e)(1) shall be prescribed jointly by such agen-
4 cies.

5 “(g) ENFORCEMENT.—

6 “(1) Compliance with the requirements imposed
7 under this section shall be enforced under—

8 “(A) section 8 of the Federal Deposit In-
9 surance Act (12 U.S.C. 1818), in the case of—

10 “(i) national banks, and Federal
11 branches and Federal agencies of foreign
12 banks, by the Office of the Comptroller of
13 the Currency;

14 “(ii) member banks of the Federal
15 Reserve System (other than national
16 banks), branches and agencies of foreign
17 banks (other than Federal branches, Fed-
18 eral agencies, and insured State branches
19 of foreign banks), commercial lending com-
20 panies owned or controlled by foreign
21 banks, and organizations operating under
22 section 25 or 25A of the Federal Reserve
23 Act, bank holding companies, and subsidi-
24 aries of bank holding companies (other

1 than insured depository institutions), by
2 the Board; and

3 “(iii) banks insured by the Federal
4 Deposit Insurance Corporation (other than
5 members of the Federal Reserve System)
6 and insured State branches of foreign
7 banks, by the Board of Directors of the
8 Federal Deposit Insurance Corporation;

9 “(B) section 8 of the Federal Deposit In-
10 surance Act (12 U.S.C. 1818), by the Director
11 of the Office of Thrift Supervision, in the case
12 of a savings association the deposits of which
13 are insured by the Federal Deposit Insurance
14 Corporation and a savings and loan holding
15 company and to any subsidiary (other than a
16 bank or subsidiary of that bank); and

17 “(C) the Federal Credit Union Act (12
18 U.S.C. 1751 et seq.), by the National Credit
19 Union Administration Board with respect to
20 any Federal credit union.

21 “(2) Except to the extent that enforcement of
22 the requirements imposed under this section is spe-
23 cifically committed to some other Federal agency
24 under paragraph (1), the Commission shall enforce
25 such requirements.

1 “(3) The authority of the Commission under
2 this section shall be in addition to its existing au-
3 thority to enforce the securities laws.

4 “(h) EXCLUSIONS.—Notwithstanding any other pro-
5 vision of this section, the requirements of this section shall
6 not apply to any loan—

7 “(1) insured, guaranteed, or administered by
8 the Secretary of Education, the Secretary of Agri-
9 culture, the Secretary of Veterans Affairs, or the
10 Small Business Administration; or

11 “(2) made, insured, guaranteed, or purchased
12 by any person that is subject to the supervision of
13 the Farm Credit Administration, including the Fed-
14 eral Agricultural Mortgage Corporation.

15 “(i) DEFINITIONS.—For purposes of this section:

16 “(1) The term ‘asset-backed security’ has the
17 meaning given such term in section 229.1101(e) of
18 title 17, Code of Federal Regulations, or any suc-
19 cessor thereto.

20 “(2) The term ‘Federal banking agencies’
21 means the Board of Governors of the Federal Re-
22 serve System, the Office of the Comptroller of the
23 Currency, the Office of Thrift Supervision, and the
24 Federal Deposit Insurance Corporation.

1 “(3) The term ‘insured depository institution’
2 has the meaning given such term in section 3(e) of
3 the Federal Deposit Insurance Act (12 U.S.C.
4 1813(e)).

5 “(4) The term ‘securitization vehicle’ means a
6 trust, corporation, partnership, limited liability enti-
7 ty, special purpose entity, or other structure that—

8 “(A) is the issuer, or is created by the
9 issuer, of pass-through certificates, participa-
10 tion certificates, asset-backed securities, or
11 other similar securities backed by a pool of as-
12 sets that includes loans; and

13 “(B) holds such loans.

14 “(5) The term ‘securitizer’ means the person
15 that transfers, conveys, or assigns, or causes the
16 transfer, conveyance, or assignment of, loans, includ-
17 ing through a special purpose vehicle, to any
18 securitization vehicle, excluding any trustee that
19 holds such loans for the benefit of the securitization
20 vehicle.”.

21 (b) STUDY ON RISK RETENTION.—

22 (1) STUDY.—The Board, in coordination and
23 consultation with the Comptroller of the Currency,
24 the Office of Thrift Supervision, the Federal Deposit
25 Insurance Corporation, and the Securities and Ex-

1 change Commission, shall conduct a study of the
2 combined impact by each individual class of asset-
3 backed security of—

4 (A) the new credit risk retention require-
5 ments contained in the amendment made by
6 subsection (a); and

7 (B) the Financial Accounting Statements
8 166 and 167 issued by the Financial Account-
9 ing Standards Board.

10 (2) REPORT.—Not later than 90 days after the
11 date of enactment of this title, the Board shall sub-
12 mit to Congress a report on the study conducted
13 under paragraph (1). Such report shall include stat-
14 utory and regulatory recommendations for elimi-
15 nating any negative impacts on the continued viabil-
16 ity of the asset-backed securitization markets and on
17 the availability of credit for new lending identified
18 by the study conducted under paragraph (1).

19 **SEC. 1503. PERIODIC AND OTHER REPORTING UNDER THE**
20 **SECURITIES EXCHANGE ACT OF 1934 FOR**
21 **ASSET-BACKED SECURITIES.**

22 Section 15(d) of Securities Exchange Act of 1934 (15
23 U.S.C. 78o(d)) is amended—

24 (1) by inserting “, other than securities of any
25 class of asset-backed security (as defined in section

1 229.1101(c) of title 17, Code of Federal Regula-
2 tions, or any successor thereto),” after “securities of
3 each class”;

4 (2) by inserting at the end the following: “The
5 Commission may by rules and regulations provide
6 for the suspension or termination of the duty to file
7 under this subsection for any class of issuer of asset-
8 backed security upon such terms and conditions and
9 for such period or periods as it deems necessary or
10 appropriate in the public interest or for the protec-
11 tion of investors. The Commission may, for the pur-
12 poses of this subsection, classify issuers and pre-
13 scribe requirements appropriate for each class of
14 issuer of asset-backed security.”; and

15 (3) by inserting after the fifth sentence the fol-
16 lowing: “The Commission shall adopt regulations
17 under this subsection requiring each issuer of an
18 asset-backed security to disclose, for each tranche or
19 class of security, information regarding the assets
20 backing that security. In adopting regulations under
21 this subsection, the Commission shall set standards
22 for the format of the data provided by issuers of an
23 asset-backed security, which shall, to the extent fea-
24 sible, facilitate comparison of such data across secu-
25 rities in similar types of asset classes. The Commis-

1 sion shall require issuers of asset-backed securities
2 at a minimum to disclose asset-level or loan-level
3 data necessary for investors to independently per-
4 form due diligence. Asset-level or loan-level data
5 shall include data with unique identifiers relating to
6 loan brokers or originators, the nature and extent of
7 the compensation of the broker or originator of the
8 assets backing the security, and the amount of risk
9 retention of the originator or the securitizer of such
10 assets.”.

11 **SEC. 1504. REPRESENTATIONS AND WARRANTIES IN ASSET-**
12 **BACKED OFFERINGS.**

13 The Commission shall prescribe regulations on the
14 use of representations and warranties in the asset-backed
15 securities market that—

16 (1) require credit rating agencies to include in
17 reports accompanying credit ratings a description of
18 the representations, warranties, and enforcement
19 mechanisms available to investors and how they dif-
20 fer from representations, warranties, and enforce-
21 ment mechanisms in similar issuances; and

22 (2) require disclosure on fulfilled repurchase re-
23 quests across all trusts aggregated by originator, so
24 that investors may identify asset originators with
25 clear underwriting deficiencies.

1 **SEC. 1505. EXEMPTED TRANSACTIONS UNDER THE SECURI-**
2 **TIES ACT OF 1933.**

3 (a) IN GENERAL.—Section 4 of the Securities Act of
4 1933 (15 U.S.C. 77d) is amended—

5 (1) by striking paragraph (5); and

6 (2) by redesignating paragraph (6) as para-
7 graph (5).

8 (b) CONFORMING AMENDMENT.—Section
9 3(a)(4)(B)(vii)(I) of the Securities Exchange Act of 1934
10 (15 U.S.C. 78c(a)(4)(B)(vii)(I)) is amended by striking
11 “4(6)” and inserting “4(5)”.

12 **SEC. 1506. STUDY ON THE MACROECONOMIC EFFECTS OF**
13 **RISK RETENTION REQUIREMENTS.**

14 (a) STUDY REQUIRED.—The Chairman of the Finan-
15 cial Services Oversight Council shall carry out a study on
16 the macroeconomic effects of the risk retention require-
17 ments under this subtitle, and the amendments made by
18 this subtitle, with emphasis placed on potential beneficial
19 effects with respect to stabilizing the real estate market.
20 Such study shall include—

21 (1) an analysis of the effects of risk retention
22 on real estate asset price bubbles, including a retro-
23 spective estimate of what fraction of real estate
24 losses may have been averted had such requirements
25 been in force in recent years;

1 (2) an analysis of the feasibility of minimizing
2 real estate price bubbles by proactively adjusting the
3 percentage of risk retention that must be borne by
4 creditors and securitizers of real estate debt, as a
5 function of regional or national market conditions;

6 (3) a comparable analysis for proactively ad-
7 justing mortgage origination requirements;

8 (4) an assessment of whether such proactive ad-
9 justments should be made by an independent regu-
10 lator, or in a formulaic and transparent manner;

11 (5) an assessment of whether such adjustments
12 should take place independently or in concert with
13 monetary policy; and

14 (6) recommendations for implementation and
15 enabling legislation.

16 (b) REPORT.—Not later than the end of the 180-day
17 period beginning on the date of the enactment of this title,
18 the Chairman of the Financial Services Oversight Council
19 shall issue a report to the Congress containing any find-
20 ings and determinations made in carrying out the study
21 required under subsection (a).

1 **Subtitle G—Enhanced Dissolution**
2 **Authority**

3 **SEC. 1601. SHORT TITLE.**

4 This subtitle may be cited as the “Dissolution Au-
5 thority for Large, Interconnected Financial Companies
6 Act of 2009”.

7 **SEC. 1602. DEFINITIONS.**

8 For purposes of this subtitle, the following definitions
9 shall apply:

10 (1) APPROPRIATE REGULATORY AGENCY.—

11 (A) CORPORATION AND COMMISSION.—The
12 term “appropriate regulatory agency” means—

13 (i) the Corporation;

14 (ii) the Commission, if the financial
15 company, or an affiliate thereof, is a
16 broker or dealer registered with the Com-
17 mission under section 15(b) of the Securi-
18 ties Exchange Act of 1934 (15 U.S.C.
19 78o(b) (other than an insured depository
20 institution)); and

21 (iii) if the financial company or an af-
22 filiate of the financial company is an insur-
23 ance company (other than an insured de-
24 pository institution), the applicable State

1 insurance authority of the State in which
2 the insurance company is domiciled.

3 (B) RULES OF CONSTRUCTION.—More
4 than 1 agency may be an appropriate regu-
5 latory agency with respect to any given finan-
6 cial company. In such instances, the Commis-
7 sion shall be the appropriate regulatory agency
8 for purposes of section 1603 if the largest sub-
9 sidiary of the financial company is a broker or
10 dealer as measured by total assets as of the end
11 of the previous calendar quarter, the applicable
12 State insurance authority of the State in which
13 the insurance company is domiciled shall be the
14 appropriate regulatory agency for purposes of
15 section 1603 if the largest subsidiary of the fi-
16 nancial company is an insurance company as
17 measured by total assets as of the end of the
18 previous calendar quarter, and otherwise the
19 Corporation shall be the appropriate regulatory
20 agency for purposes of section 1603.

21 (2) BRIDGE FINANCIAL COMPANY.—The term
22 “bridge financial company” means a new financial
23 company organized in accordance with section
24 1609(h) by the Corporation.

1 (3) COMMISSION.—The term “Commission”
2 means the Securities and Exchange Commission.

3 (4) CORPORATION.—The term “Corporation”
4 means the Federal Deposit Insurance Corporation.

5 (5) COVERED FINANCIAL COMPANY.—The term
6 “covered financial company” means a financial com-
7 pany for which a determination has been made pur-
8 suant to and in accordance with section 1603(b).

9 (6) COVERED SUBSIDIARY.—The term “covered
10 subsidiary” means a subsidiary covered in paragraph
11 (9)(B)(v).

12 (7) CUSTOMER PROPERTY.—The term “cus-
13 tomer property” has the meaning ascribed to it in
14 the Securities Investor Protection Act of 1970.

15 (8) FEDERAL RESERVE BOARD.—The term
16 “Federal Reserve Board” means the Board of Gov-
17 ernors of the Federal Reserve System.

18 (9) FINANCIAL COMPANY.—The term “financial
19 company” means any company that—

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

22 (B) is—

23 (i) any bank holding company as de-
24 fined in section 2(a) of the Bank Holding

1 Company Act of 1956 (12 U.S.C.
2 1841(a));

3 (ii) any company that has been sub-
4 jected to stricter prudential regulation
5 under section 1103;

6 (iii) any insurance company;

7 (iv) any company predominantly en-
8 gaged in activities that are financial in na-
9 ture or incidental thereto for purposes of
10 section 4(k) of the Bank Holding Company
11 Act of 1956 (12 U.S.C. 1843(k)) or that
12 have been identified for stricter prudential
13 standards under section 1103 of this title;
14 or

15 (v) any subsidiary of companies de-
16 scribed in clauses (i) through (iv) (other
17 than an insured depository institution or
18 any broker or dealer registered with the
19 Commission under section 15(b) of the Se-
20 curities Exchange Act of 1934 (15 U.S.C.
21 78o(b)) that is a member of the Securities
22 Investor Protection Corporation).

23 (10) FUND.—The term “Fund” means the Sys-
24 temic Dissolution Fund established in accordance
25 with section 1609(n).

1 (11) INSURANCE COMPANY.—The term “insur-
2 ance company” includes any person engaged in the
3 business of insurance to the extent of such activities.

4 (12) SECRETARY.—The term “Secretary” shall
5 mean the Secretary of the Treasury.

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

12 (14) CERTAIN OTHER TERMS.—The terms “af-
13 filiate,” “company,” “control,” “deposit,” “deposi-
14 tory institution,” “foreign bank,” “insured deposi-
15 tory institution,” and “subsidiary” have the same
16 meanings as in section 3 of the Federal Deposit In-
17 surance Act (12 U.S.C. 1813).

18 **SEC. 1603. SYSTEMIC RISK DETERMINATION.**

19 (a) WRITTEN RECOMMENDATION OF THE FEDERAL
20 RESERVE BOARD AND THE APPROPRIATE REGULATORY
21 AGENCY.—

22 (1) VOTE REQUIRED.—At the request of the
23 Secretary or the Chairman of the Federal Reserve
24 Board or, in cases where an financial company has
25 a broker or dealer as its largest subsidiary as meas-

1 ured by total assets as of the end of the previous
2 calendar quarter, the Commission, the Federal Re-
3 serve Board and the appropriate regulatory agency
4 shall; or on their own initiative, the Federal Reserve
5 Board and the appropriate regulatory agency may;
6 consider whether to make the written recommenda-
7 tion provided for in paragraph (2) with respect to a
8 financial company, which recommendation shall be
9 made upon a vote of not less than two-thirds of the
10 members of the Federal Reserve Board then serving
11 and two-thirds of the members of the board or of the
12 commission then serving of the appropriate regu-
13 latory agency, as applicable.

14 (2) RECOMMENDATION REQUIRED.—Any writ-
15 ten recommendations made by the Federal Reserve
16 Board and the appropriate regulatory agency under
17 paragraph (1) shall contain the following:

18 (A) A description of the effect that the de-
19 fault of the financial company would have on
20 economic conditions or financial stability in the
21 United States.

22 (B) A description of the effect that the de-
23 fault of the financial company would have on
24 economic conditions or financial stability for

1 low-income, minority, or underserved commu-
2 nities.

3 (C) A recommendation regarding the na-
4 ture and the extent of actions that the Board
5 and the appropriate regulatory agency rec-
6 ommend be taken under section 1604 regarding
7 the financial holding company subject to strict-
8 er standards.

9 (b) DETERMINATION BY THE SECRETARY.—Notwith-
10 standing any other provision of Federal law or the law
11 of any State, if, upon the written recommendation of the
12 Federal Reserve Board and the board of directors or com-
13 mission of the appropriate regulatory agency as provided
14 for in subsection (a)(1), the Secretary (in consultation
15 with the President) determines that—

16 (1) the financial company is in default or is in
17 danger of default;

18 (2) the failure of the financial company and its
19 resolution under otherwise applicable Federal or
20 State law would have serious adverse effects on fi-
21 nancial stability or economic conditions in the
22 United States; and

23 (3) any action under section 1604 would avoid
24 or mitigate such adverse effects, taking into consid-
25 eration the effectiveness of the action in mitigating

1 potential adverse effects on the financial system or
2 economic conditions, the cost to the general fund of
3 the Treasury, and the potential to increase moral
4 hazard on the part of creditors, counterparties, and
5 shareholders in the financial company,
6 then the Secretary must take action under section
7 1604(a), the Corporation must act in accordance with sec-
8 tion 1604(b), and the Corporation may take 1 or more
9 actions specified in section 1604(c) in accordance with the
10 requirements of that subsection, except that, prior to the
11 Secretary or Corporation taking any action under section
12 1604, the Federal Reserve Board or the appropriate Fed-
13 eral regulatory agency shall take action to avoid or miti-
14 gate potential adverse effects on low-income, minority, or
15 underserved communities affected by the failure of such
16 financial company.

17 (c) DOCUMENTATION AND REVIEW.—

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

19 (A) document any determination under
20 subsection (b); and,

21 (B) retain the documentation for review
22 under paragraph (2).

23 (2) GAO REVIEW.—The Comptroller General of
24 the United States shall review and report to the

1 Congress on any determination under subsection (b),
2 including—

3 (A) the basis for the determination;

4 (B) the purpose for which any action was
5 taken pursuant thereto; and

6 (C) the likely effect of the determination
7 and such action on the incentives and conduct
8 of financial holding companies subject to strict-
9 er standards and their creditors, counterparties,
10 and shareholders.

11 (3) REPORT TO CONGRESS.—Within 48 hours
12 after a determination is made under subsection (b),
13 the Secretary shall provide written notice of the de-
14 termination to the Committee on Banking, Housing,
15 and Urban Affairs of the Senate and the Committee
16 on Financial Services of the House of Representa-
17 tives. The notice shall include a description of the
18 basis for the determination.

19 (d) DEFAULT OR IN DANGER OF DEFAULT.—For
20 purposes of subsection (b), a financial holding company
21 subject to stricter standards shall be considered to be in
22 default or in danger of default if any of the following con-
23 ditions exist, as determined in accordance with that sub-
24 section:

1 (1) A case has been, or likely will promptly be,
2 commenced with respect to the financial holding
3 company subject to stricter standards under title 11,
4 United States Code.

5 (2) The financial holding company subject to
6 stricter standards is critically undercapitalized, as
7 such term has been or may be defined by the Fed-
8 eral Reserve Board.

9 (3) The financial holding company subject to
10 stricter standards has incurred, or is likely to incur,
11 losses that will deplete all or substantially all of its
12 capital, and there is no reasonable prospect for the
13 company to avoid such depletion without assistance
14 under section 1604.

15 (4) The assets of the financial holding company
16 subject to stricter standards are, or are likely to be,
17 less than its obligations to creditors and others.

18 (5) The financial holding company subject to
19 stricter standards is, or is likely to be, unable to pay
20 its obligations (other than those subject to a bona
21 fide dispute) in the normal course of business.

22 **SEC. 1604. RESOLUTION; STABILIZATION.**

23 (a) APPOINTMENT OF RECEIVER.—

24 (1) IN GENERAL.—Upon the Secretary making
25 a determination in accordance with section 1603(b),

1 the Secretary shall appoint the Corporation as re-
2 ceiver for the covered financial company.

3 (2) TIME LIMIT ON RECEIVERSHIP AUTHOR-
4 ITY.—Any appointment of the Corporation as re-
5 ceiver under paragraph (1) shall terminate on the
6 date that is the end of the 1-year period beginning
7 on the date such appointment is made.

8 (b) RESOLUTION LIMITATIONS.—

9 (1) IN GENERAL.—An insolvent financial com-
10 pany may be resolved under this subtitle only if the
11 failure and resolution of such company under title
12 11, United States Code, would be systemically desta-
13 bilizing, as determined by the appropriate Federal
14 regulatory agencies and the Secretary of the Treas-
15 ury (in consultation with the President) in accord-
16 ance with section 1603(b).

17 (2) LIQUIDATION.—A financial company that
18 comes within coverage of this subtitle for resolution
19 shall be placed in liquidation, and the associated liq-
20 uidation costs shall be paid from the company's as-
21 sets and borne by the shareholders and unsecured
22 creditors of such company.

23 (3) ASSESSMENT FOR EXCESS LIQUIDATION
24 COSTS.—Any liquidation costs that exceed the
25 amount of liquidated assets of the company shall be

1 paid through assessments on large financial compa-
2 nies.

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

4 (1) shall consult with the regulators of the cov-
5 ered financial company and its covered subsidiaries
6 for purposes of ensuring an orderly resolution of the
7 covered financial company;

8 (2) may consult with, or under section
9 1609(a)(1)(B)(v) or section 1609(a)(1)(K) acquire
10 services of, any outside experts as appropriate to in-
11 form and aid the Corporation in the resolution proc-
12 ess; and

13 (3) shall consult with the primary regulators of
14 any subsidiaries of the covered financial company
15 that are not covered subsidiaries as described in sec-
16 tion 1602(9)(B)(iv) and coordinate with such regu-
17 lators regarding the treatment of such solvent sub-
18 sidiaries and the separate resolution of any such in-
19 solvent subsidiaries under other governmental au-
20 thority, as appropriate.

21 (d) EMERGENCY STABILIZATION AFTER APPOINT-
22 MENT OF RECEIVER.—Upon the Secretary appointing the
23 Corporation as receiver under subsection (a), the Corpora-
24 tion may, in its corporate capacity and as an agency of
25 the United States, with the approval of the Secretary and

1 subject to the conditions in subsections (f) through (g),
2 take the following actions under such terms and conditions
3 that the Corporation and the Secretary jointly deem ap-
4 propriate:

5 (1) Making loans to, or purchasing any debt ob-
6 ligation of, the covered financial company or any
7 covered subsidiary.

8 (2) Purchasing assets of the covered financial
9 company or any covered subsidiary directly or
10 through an entity established by the Corporation for
11 such purpose.

12 (3) Assuming or guaranteeing the obligations of
13 the covered financial company or any covered sub-
14 sidiary to one or more third parties.

15 (4) Taking a lien on any or all assets of the
16 covered financial company or any covered subsidiary,
17 including a first priority lien on all unencumbered
18 assets of the company or any covered subsidiary to
19 secure repayment of any transactions conducted
20 under this subsection.

21 (5) Selling or transferring all, or any part
22 thereof, of such acquired assets, liabilities, or obliga-
23 tions of the covered financial company or any cov-
24 ered subsidiary.

1 (e) TREATMENT OF CERTAIN INSURANCE SUBSIDI-
2 ARIES.—

3 (1) IN GENERAL.—Notwithstanding subsection
4 (a), if a covered financial company is an insurance
5 company covered by a State law designed specifically
6 to deal with the insolvency of an insurance company,
7 resolution of such company, and any subsidiary of
8 such company, will be conducted as provided under
9 such State law.

10 (2) EXCEPTION FOR COVERED SUBSIDIARIES.—
11 The requirement of paragraph (1) shall not apply
12 with respect to any covered subsidiary of such an in-
13 surance company.

14 (3) BACKUP AUTHORITY.—Notwithstanding
15 paragraph (1), with respect to a covered financial
16 company described under paragraph (1), if, after the
17 end of the 60-day period beginning on the date a de-
18 termination is made under section 1603(b) with re-
19 spect to such company, the appropriate regulatory
20 agency has not filed the appropriate judicial action
21 in the appropriate State court to place such com-
22 pany into resolution under the State's laws and re-
23 quirements, the Corporation shall have the authority
24 to stand in the place of the appropriate regulatory
25 agency and file the appropriate judicial action in the

1 appropriate State court to place such company into
2 resolution under the State's laws and requirements.

3 (f) MANDATORY TERMS AND CONDITIONS FOR ALL
4 STABILIZATION ACTIONS.—The Corporation as receiver is
5 authorized to take the stabilization actions listed in sub-
6 section (d) only if—

7 (1) the Secretary and the Corporation deter-
8 mine that such action is necessary for the purpose
9 of financial stability and not for the purpose of pre-
10 serving the covered financial company;

11 (2) the Corporation ensures that the share-
12 holders of a covered financial company do not re-
13 ceive payment until after all other claims are fully
14 paid;

15 (3) the Corporation ensures that any funds
16 from taxpayers shall be repaid as part of the resolu-
17 tion process before payments are made to creditors;

18 (4) the Corporation ensures that unsecured
19 creditors bear losses;

20 (5) the Corporation ensures that management
21 responsible for the failed condition of the covered fi-
22 nancial company is removed (if such management
23 has not already been removed at the time the Cor-
24 poration is appointed as receiver); and

1 (6) the Corporation ensures that the members
2 of the board of directors (or body performing similar
3 functions) responsible for the failed condition of the
4 covered financial company are removed (if such
5 members have not already been removed at the time
6 the Corporation is appointed as receiver).

7 (g) RECOUPMENT OF FUNDS EXPENDED FOR SYS-
8 TEMIC STABILIZATION PURPOSES.—Amounts expended
9 from the Fund by the Corporation under this section shall
10 be repaid in full to the Fund from the following sources:

11 (1) RESOLUTION PROCESS.—Amounts attrib-
12 utable to the proceeds of the sale of, or income from,
13 the assets of the covered financial company.

14 (2) INDUSTRY ASSESSMENTS.—If the sources
15 described in paragraph (1) are insufficient to repay
16 the amount of the stabilization action in full, the dif-
17 ference shall be recouped through assessments on fi-
18 nancial companies in accordance with section
19 1609(o).

20 **SEC. 1605. JUDICIAL REVIEW.**

21 If a receiver is appointed, the covered financial com-
22 pany may, not later than 30 days thereafter, bring an ac-
23 tion in the United States district court for the judicial dis-
24 trict in which the home office of such covered financial
25 company is located, or in the United States District Court

1 for the District of Columbia, for an order requiring that
2 the receiver be removed, and the court shall, upon the
3 merits, dismiss such action or direct the receiver to be re-
4 moved. Review of such an action shall be limited to the
5 appointment of a receiver under section 1604.

6 **SEC. 1606. DIRECTORS NOT LIABLE FOR ACQUIESCING IN**
7 **APPOINTMENT OF RECEIVER.**

8 The members of the board of directors (or body per-
9 forming similar functions) of a covered financial company
10 shall not be liable to the covered financial company's
11 shareholders or creditors for acquiescing in or consenting
12 in good faith to—

13 (1) the Secretary's appointment of the Corpora-
14 tion as receiver for the covered financial company
15 under section 1604; or

16 (2) an acquisition, combination, or transfer of
17 assets or liabilities under section 1609.

18 **SEC. 1607. TERMINATION AND EXCLUSION OF OTHER AC-**
19 **TIONS.**

20 The Corporation's acting as receiver for a covered fi-
21 nancial company under this title shall immediately, and
22 by operation of law, terminate any case commenced with
23 respect to the covered financial company under title 11,
24 United States Code, or any proceeding under any State
25 insolvency law with respect to the covered financial com-

1 pany, and no such case or proceeding may be commenced
2 with respect to the covered financial company at any time
3 while the Corporation acts as receiver for the covered fi-
4 nancial company.

5 **SEC. 1608. RULEMAKING.**

6 The Corporation may prescribe such regulations as
7 the Corporation considers necessary or appropriate to im-
8 plement the provisions of this title.

9 **SEC. 1609. POWERS AND DUTIES OF CORPORATION.**

10 (a) POWERS AND AUTHORITIES.—

11 (1) GENERAL POWERS.—

12 (A) SUCCESSOR TO COVERED FINANCIAL
13 COMPANY.—The Corporation shall, upon ap-
14 pointment as receiver for a covered financial
15 company under section 1604, and by operation
16 of law, succeed to—

17 (i) all rights, titles, powers, and privi-
18 leges of the covered financial company, and
19 of any stockholder, member, officer, or di-
20 rector of such institution with respect to
21 the covered financial company and the as-
22 sets of the covered financial company; and

23 (ii) title to the books, records, and as-
24 sets of any previous receiver or other legal

1 custodian of such covered financial com-
2 pany.

3 (B) OPERATE THE COVERED FINANCIAL
4 COMPANY.—The Corporation as receiver for a
5 covered financial company may—

6 (i) take over the assets of and operate
7 the covered financial company with all the
8 powers of the members or shareholders,
9 the directors, and the officers of the cov-
10 ered financial company and conduct all
11 business of the covered financial company;

12 (ii) collect all obligations and money
13 due the covered financial company;

14 (iii) perform all functions of the cov-
15 ered financial company in the name of the
16 covered financial company;

17 (iv) preserve and conserve the assets
18 and property of the covered financial com-
19 pany; and

20 (v) provide by contract for assistance
21 in fulfilling any function, activity, action,
22 or duty of the Corporation as receiver.

23 (C) FUNCTIONS OF COVERED FINANCIAL
24 COMPANY'S OFFICERS, DIRECTORS, AND SHARE-
25 HOLDERS.—

1 (i) IN GENERAL.—The Corporation
2 may provide for the exercise of any func-
3 tion by any member or stockholder, direc-
4 tor, or officer of any covered financial com-
5 pany for which the Corporation has been
6 appointed as receiver under this section.

7 (ii) PRESUMPTION.—There shall be a
8 strong presumption that the Corporation,
9 as receiver, will remove management re-
10 sponsible for the failed condition of the
11 covered financial company (if such man-
12 agement has not already been removed at
13 the time the Corporation is appointed as
14 receiver).

15 (D) ADDITIONAL POWERS AS RECEIVER.—

16 The Corporation may, as receiver, and subject
17 to all legally enforceable and perfected security
18 interests, place the covered financial company
19 in liquidation and proceed to realize upon the
20 assets of the covered financial company in such
21 manner as the Corporation deems appropriate,
22 including through the sale of assets, the trans-
23 fer of assets to a bridge financial company es-
24 tablished under subsection (h), or the exercise

1 of any other rights or privileges granted to the
2 receiver under this section.

3 (E) ORGANIZATION OF NEW COMPANIES.—

4 The Corporation as receiver may organize a
5 bridge financial company under subsection (h).

6 (F) MERGER; TRANSFER OF ASSETS AND
7 LIABILITIES.—

8 (i) IN GENERAL.—Subject to clause
9 (ii), the Corporation as receiver may—

10 (I) merge the covered financial
11 company with another company; or

12 (II) transfer any asset or liability
13 of the covered financial company (in-
14 cluding assets and liabilities associ-
15 ated with any trust or custody busi-
16 ness) without obtaining any approval,
17 assignment, or consent with respect to
18 such transfer.

19 (ii) FEDERAL AGENCY APPROVAL;
20 ANTITRUST REVIEW.—

21 (I) IN GENERAL.—If a trans-
22 action described in clause (i) requires
23 approval by a Federal agency, the
24 transaction may not be consummated
25 before the 5th calendar day after the

1 date of approval by the Federal agen-
2 cy responsible for such approval with
3 respect thereto. If, in connection with
4 any such approval, a report on com-
5 petitive factors is required, the Fed-
6 eral agency responsible for such ap-
7 proval shall promptly notify the Attor-
8 ney General of the proposed trans-
9 action and the Attorney General shall
10 provide the required report within 10
11 days of the request. If a filing is re-
12 quired under the Hart Scott-Rodino
13 Antitrust Improvements Act of 1976
14 with the Department of Justice or the
15 Federal Trade Commission, the wait-
16 ing period shall expire not later than
17 the 30th day following such filing not-
18 withstanding any other provision of
19 Federal law or any attempt by any
20 Federal agency to extend such waiting
21 period, and no further request for in-
22 formation by any Federal agency shall
23 be permitted.

24 (II) EMERGENCY.—If the Sec-
25 retary in consultation with the Chair-

1 man of the Federal Reserve Board
2 has found that the Corporation must
3 act immediately to prevent the prob-
4 able failure of 1 or more of the cov-
5 ered financial companies involved, the
6 approvals and filings referred to in
7 subclause (I) shall not be required
8 and the transactions may be con-
9 summated immediately by the Cor-
10 poration.

11 (G) PAYMENT OF VALID OBLIGATIONS.—

12 The Corporation, as receiver, shall, to the ex-
13 tent funds are available, pay all valid obliga-
14 tions of the covered financial company that are
15 due and payable at the time of the appointment
16 of the Corporation as receiver in accordance
17 with the prescriptions and limitations of this
18 title.

19 (H) SUBPOENA AUTHORITY.—

20 (i) IN GENERAL.—The Corporation
21 may, for purposes of carrying out any
22 power, authority, or duty with respect to a
23 covered financial company (including deter-
24 mining any claim against the covered fi-
25 nancial company and determining and real-

1 izing upon any asset of any person in the
2 course of collecting money due the covered
3 financial company), exercise any power es-
4 tablished under section 8(n) of the Federal
5 Deposit Insurance Act as if the covered fi-
6 nancial company were an insured deposi-
7 tory institution.

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

14 (I) INCIDENTAL POWERS.—The Corpora-
15 tion, as receiver, may—

16 (i) exercise all powers and authorities
17 specifically granted to receivers under this
18 section and such incidental powers as shall
19 be necessary to carry out such powers; and

20 (ii) take any action authorized by this
21 section, which the Corporation determines
22 is in the best interests of the covered fi-
23 nancial company, its customers, its credi-
24 tors, its counterparties, or the stability of
25 the financial system.

1 (J) UTILIZATION OF PRIVATE SECTOR.—In
2 carrying out its responsibilities in the manage-
3 ment and disposition of assets from a covered
4 financial company, the Corporation, as receiver,
5 may utilize the services of private persons, in-
6 cluding real estate and loan portfolio asset
7 management, property management, auction
8 marketing, legal, and brokerage services, if such
9 services are available in the private sector and
10 the Corporation determines utilization of such
11 services is practicable, efficient, and cost effec-
12 tive.

13 (K) SHAREHOLDERS AND CREDITORS OF
14 COVERED FINANCIAL COMPANY.—Notwith-
15 standing any other provision of law, the Cor-
16 poration as receiver for a covered financial com-
17 pany pursuant to this section and its succes-
18 sion, by operation of law, to the rights, titles,
19 powers, and privileges described in subpara-
20 graph (A) shall terminate all rights and claims
21 that the stockholders and creditors of the cov-
22 ered financial company may have against the
23 assets of the covered financial company or the
24 Corporation arising out of their status as stock-
25 holders or creditors, except for their right to

1 payment, resolution, or other satisfaction of
2 their claims, as permitted under this section.
3 The Corporation shall ensure that shareholders
4 and unsecured creditors bear losses, consistent
5 with the priority of claims provisions in section
6 1609(b).

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

15 (2) AUTHORITY OF CORPORATION TO DETER-
16 MINE CLAIMS.—

17 (A) IN GENERAL.—The Corporation may,
18 as receiver, determine claims in accordance with
19 the requirements of this subsection and regula-
20 tions prescribed under paragraph (3).

21 (B) NOTICE REQUIREMENTS.—The re-
22 ceiver, in any case involving the liquidation or
23 winding up of the affairs of a covered financial
24 company, shall—

1 (i) promptly publish a notice to the
2 covered financial company's creditors to
3 present their claims, together with proof,
4 to the receiver by a date specified in the
5 notice which shall be not less than 90 days
6 after the publication of such notice; and

7 (ii) republish such notice approxi-
8 mately 1 month and 2 months, respec-
9 tively, after the publication under clause
10 (i).

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

16 (i) at the creditor's last address ap-
17 pearing in such books; or

18 (ii) upon discovery of the name and
19 address of a claimant not appearing on the
20 covered financial company's books, within
21 30 days after the discovery of such name
22 and address.

23 (3) RULEMAKING AUTHORITY RELATING TO DE-
24 TERMINATION OF CLAIMS.—

1 (A) IN GENERAL.—Subject to subsection
2 (b), the Corporation shall prescribe rules and
3 regulations regarding the allowance or disallow-
4 ance of claims by the Corporation and providing
5 for administrative determination of claims and
6 review of such determination.

7 (B) EXISTING RULES.—The Corporation
8 may elect to use the regulations adopted pursu-
9 ant to the provisions of section 11 of the Fed-
10 eral Deposit Insurance Act with respect to the
11 determination of claims for a covered financial
12 company as if the covered financial company
13 were an insured depository institution.

14 (4) PROCEDURES FOR DETERMINATION OF
15 CLAIMS.—

16 (A) DETERMINATION PERIOD.—

17 (i) IN GENERAL.—Before the end of
18 the 180-day period beginning on the date
19 any claim against a covered financial com-
20 pany is filed with the Corporation as re-
21 ceiver, the Corporation shall determine
22 whether to allow or disallow the claim and
23 shall notify the claimant of any determina-
24 tion with respect to such claim.

1 (ii) EXTENSION OF TIME.—The period
2 described in clause (i) may be extended by
3 a written agreement between the claimant
4 and the Corporation.

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

11 (I) on the covered financial com-
12 pany's books;

13 (II) in the claim filed by the
14 claimant; or

15 (III) in documents submitted in
16 proof of the claim.

17 (iv) CONTENTS OF NOTICE OF DIS-
18 ALLOWANCE.—If any claim filed under
19 clause (i) is disallowed, the notice to the
20 claimant shall contain—

21 (I) a statement of each reason
22 for the disallowance; and

23 (II) the procedures available for
24 obtaining agency review of the deter-

1 mination to disallow the claim or judi-
2 cial determination of the claim.

3 (B) ALLOWANCE OF PROVEN CLAIM.—The
4 Corporation shall allow any claim received on or
5 before the date specified in the notice published
6 under paragraph (2)(B)(i) by the Corporation
7 from any claimant which is proved to the satis-
8 faction of the Corporation.

9 (C) DISALLOWANCE OF CLAIMS FILED
10 AFTER END OF FILING PERIOD.—

11 (i) IN GENERAL.—Except as provided
12 in clause (ii), claims filed after the date
13 specified in the notice published under
14 paragraph (2)(B)(i) shall be disallowed
15 and such disallowance shall be final.

16 (ii) CERTAIN EXCEPTIONS.—Clause
17 (i) shall not apply with respect to any
18 claim filed by any claimant after the date
19 specified in the notice published under
20 paragraph (2)(B)(i) and such claim may
21 be considered by the receiver if—

22 (I) the claimant did not receive
23 notice of the appointment of the re-
24 ceiver in time to file such claim before
25 such date; and

1 (II) such claim is filed in time to
2 permit payment of such claim.

3 (D) AUTHORITY TO DISALLOW CLAIMS.—

4 (i) IN GENERAL.—The Corporation
5 may disallow any portion of any claim by
6 a creditor or claim of security, preference,
7 or priority which is not proved to the satis-
8 faction of the Corporation.

9 (ii) PAYMENTS TO LESS THAN FULLY
10 SECURED CREDITORS.—In the case of a
11 claim of a creditor against a covered finan-
12 cial company which is secured by any prop-
13 erty or other asset of such covered finan-
14 cial company, the receiver—

15 (I) may treat the portion of such
16 claim which exceeds an amount equal
17 to the fair market value of such prop-
18 erty or other asset as an unsecured
19 claim against the covered financial
20 company; and

21 (II) may not make any payment
22 with respect to such unsecured por-
23 tion of the claim other than in connec-
24 tion with the disposition of all claims

1 of unsecured creditors of the covered
2 financial company.

3 (iii) EXCEPTIONS.—No provision of
4 this paragraph shall apply with respect
5 to—

6 (I) any extension of credit from
7 any Federal Reserve bank, or the Cor-
8 poration, to any covered financial
9 company; or

10 (II) subject to clause (ii), any le-
11 gally enforceable or perfected security
12 interest in the assets of the covered fi-
13 nancial company securing any such
14 extension of credit.

15 (iv) PAYMENTS TO FULLY SECURED
16 CREDITORS.—Notwithstanding any other
17 provision of law, in any receivership of a
18 covered financial company in which
19 amounts realized from the resolution are
20 insufficient to satisfy completely any
21 amounts owed to the United States or to
22 the Fund, as determined in the receiver's
23 sole discretion, an allowed claim under a
24 legally enforceable or perfected security in-
25 terest (that became a legally enforceable or

1 perfected security interest after the date of
2 the enactment of this clause), other than a
3 legally enforceable or perfected security in-
4 terest of the Federal Government, in any
5 of the assets of the covered financial com-
6 pany in receivership may be treated as an
7 unsecured claim in the amount of up to 20
8 percent as necessary to satisfy any
9 amounts owed to the United States or to
10 the Fund. Any balance of such claim that
11 is treated as an unsecured claim under this
12 subparagraph shall be paid as a general li-
13 ability of the covered financial company.

14 (E) NO JUDICIAL REVIEW OF DETERMINA-
15 TION PURSUANT TO SUBPARAGRAPH (D).—No
16 court may review the Corporation determination
17 pursuant to subparagraph (D) to disallow a
18 claim.

19 (F) LEGAL EFFECT OF FILING.—

20 (i) STATUTE OF LIMITATION
21 TOLLED.—For purposes of any applicable
22 statute of limitations, the filing of a claim
23 with the Corporation shall constitute a
24 commencement of an action.

1 (ii) NO PREJUDICE TO OTHER AC-
2 TIONS.—Subject to paragraph (9), the fil-
3 ing of a claim with the Corporation shall
4 not prejudice any right of the claimant to
5 continue any action which was filed before
6 the appointment of the Corporation as re-
7 ceiver for the covered financial company.

8 (5) PROVISION FOR JUDICIAL DETERMINATION
9 OF CLAIMS.—

10 (A) IN GENERAL.—Before the end of the
11 60-day period beginning on the earlier of—

12 (i) the end of the period described in
13 paragraph (4)(A)(i) (or, if extended by
14 agreement of the Corporation and the
15 claimant, the period described in para-
16 graph (4)(A)(ii)) with respect to any claim
17 against a covered financial company for
18 which the Corporation is receiver; or

19 (ii) the date of any notice of disallow-
20 ance of such claim pursuant to paragraph
21 (4)(A)(i),

22 the claimant may file suit on a claim (or con-
23 tinue an action commenced before the appoint-
24 ment of the receiver) in the district or terri-
25 torial court of the United States for the district

1 within which the covered financial company's
2 principal place of business is located or the
3 United States District Court for the District of
4 Columbia (and such court shall have jurisdic-
5 tion to hear such claim).

6 (B) STATUTE OF LIMITATIONS.—If any
7 claimant fails to file suit on such claim (or con-
8 tinue an action commenced before the appoint-
9 ment of the receiver) before the end of the 60-
10 day period described in subparagraph (A), the
11 claim shall be deemed to be disallowed (other
12 than any portion of such claim which was al-
13 lowed by the receiver) as of the end of such pe-
14 riod, such disallowance shall be final, and the
15 claimant shall have no further rights or rem-
16 edies with respect to such claim.

17 (6) EXPEDITED DETERMINATION OF CLAIMS.—

18 (A) ESTABLISHMENT REQUIRED.—The
19 Corporation shall establish a procedure for ex-
20 pedited relief outside of the routine claims proc-
21 ess established under paragraph (4) for claim-
22 ants who—

23 (i) allege the existence of legally valid
24 and enforceable or perfected security inter-
25 ests in assets of any covered financial com-

1 pany for which the Corporation has been
2 appointed as receiver; and

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

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

11 (i) determine—

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

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

18 (ii) notify the claimant of the deter-
19 mination, and if the claim is disallowed,
20 provide a statement of each reason for the
21 disallowance and the procedure for obtain-
22 ing judicial determination.

23 (C) PERIOD FOR FILING OR RENEWING
24 SUIT.—Any claimant who files a request for ex-
25 pedited relief shall be permitted to file a suit,

1 or to continue such a suit filed before the ap-
2 pointment of the Corporation as receiver, seek-
3 ing a determination of the claimant's rights
4 with respect to such security interest after the
5 earlier of—

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

9 (ii) the date the Corporation denies
10 the claim.

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

23 (E) LEGAL EFFECT OF FILING.—

24 (i) STATUTE OF LIMITATION
25 TOLLED.—For purposes of any applicable

1 statute of limitations, the filing of a claim
2 with the receiver shall constitute a com-
3 mencement of an action.

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

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

19 (8) PAYMENT OF CLAIMS.—

20 (A) IN GENERAL.—The Corporation as re-
21 ceiver may, in its discretion and to the extent
22 funds are available, pay creditor claims, in such
23 manner and amounts as are authorized under
24 this section, which are—

25 (i) allowed by the receiver;

1 (ii) approved by the Corporation pur-
2 suant to a final determination pursuant to
3 paragraph (6); or

4 (ii) determined by the final judgment
5 of any court of competent jurisdiction.

6 (B) PAYMENT OF DIVIDENDS ON
7 CLAIMS.—The receiver may, in the receiver’s
8 sole discretion and to the extent otherwise per-
9 mitted by this section, pay dividends on proven
10 claims at any time, and no liability shall attach
11 to the Corporation (in the Corporation’s capac-
12 ity as receiver), by reason of any such payment,
13 for failure to pay dividends to a claimant whose
14 claim is not proved at the time of any such pay-
15 ment.

16 (C) RULEMAKING AUTHORITY OF COR-
17 PORATION.—The Corporation may prescribe
18 such rules, including definitions of terms, as it
19 deems appropriate to establish a single uniform
20 interest rate for, or to make payments of post
21 insolvency interest to creditors holding proven
22 claims against the receivership estates of a cov-
23 ered financial company following satisfaction by
24 the receiver of the principal amount of all cred-
25 itor claims.

1 (9) SUSPENSION OF LEGAL ACTIONS.—

2 (A) IN GENERAL.—After the appointment
3 of the Corporation as receiver for a covered fi-
4 nancial company, the Corporation may request
5 a stay for a period not to exceed 90 days in any
6 noncriminal judicial action or proceeding to
7 which such covered financial company is or be-
8 comes a party.

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

16 (10) ADDITIONAL RIGHTS AND DUTIES.—

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

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

1 (i) have all the rights and remedies
2 available to the covered financial company
3 (before the appointment of the receiver
4 under section 1604) and the Corporation,
5 including but not limited to removal to
6 Federal court and all appellate rights; and

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

9 (C) NO ATTACHMENT OR EXECUTION.—No
10 attachment or execution may issue by any court
11 upon assets in the possession of the receiver.

12 (D) LIMITATION ON JUDICIAL REVIEW.—
13 Except as otherwise provided in this subsection,
14 no court shall have jurisdiction over—

15 (i) any claim or action for payment
16 from, or any action seeking a determina-
17 tion of rights with respect to, the assets of
18 any covered financial company for which
19 the Corporation has been appointed re-
20 ceiver, including any assets which the Cor-
21 poration may acquire from itself as such
22 receiver; or

23 (ii) any claim relating to any act or
24 omission of such covered financial company
25 or the Corporation as receiver.

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

9 (i) maximizes the net present value
10 return from the sale or disposition of such
11 assets;

12 (ii) minimizes the amount of any loss
13 realized in the resolution of cases;

14 (iii) minimizes the cost to the general
15 fund of the Treasury;

16 (iv) mitigates the potential for serious
17 adverse effects to the financial system and
18 the U.S. economy;

19 (v) ensures timely and adequate com-
20 petition and fair and consistent treatment
21 of offerors; and

22 (vi) prohibits discrimination on the
23 basis of race, sex, or ethnic groups in the
24 solicitation and consideration of offers.

1 (11) STATUTE OF LIMITATIONS FOR ACTIONS
2 BROUGHT BY RECEIVER.—

3 (A) IN GENERAL.—Notwithstanding any
4 provision of any contract, the applicable statute
5 of limitations with regard to any action brought
6 by the Corporation as receiver shall be—

7 (i) in the case of any contract claim,
8 the longer of—

9 (I) the 6-year period beginning
10 on the date the claim accrues; or

11 (II) the period applicable under
12 State law; and

13 (ii) in the case of any tort claim, the
14 longer of—

15 (I) the 3-year period beginning
16 on the date the claim accrues; or

17 (II) the period applicable under
18 State law.

19 (B) DETERMINATION OF THE DATE ON
20 WHICH A CLAIM ACCRUES.—For purposes of
21 subparagraph (A), the date on which the stat-
22 ute of limitations begins to run on any claim
23 described in such subparagraph shall be the
24 later of—

1 (i) the date of the appointment of the
2 Corporation as receiver under this title; or

3 (ii) the date on which the cause of ac-
4 tion accrues.

5 (C) REVIVAL OF EXPIRED STATE CAUSES
6 OF ACTION.—

7 (i) IN GENERAL.—In the case of any
8 tort claim described in clause (ii) for which
9 the statute of limitation applicable under
10 State law with respect to such claim has
11 expired not more than 5 years before the
12 appointment of the Corporation as re-
13 ceiver, the Corporation may bring an ac-
14 tion as receiver on such claim without re-
15 gard to the expiration of the statute of lim-
16 itation applicable under State law.

17 (ii) CLAIMS DESCRIBED.—A tort
18 claim referred to in clause (i) is a claim
19 arising from fraud, intentional misconduct
20 resulting in unjust enrichment, or inten-
21 tional misconduct resulting in substantial
22 loss to the covered financial company.

23 (12) FRAUDULENT TRANSFERS.—

24 (A) IN GENERAL.—The Corporation, as re-
25 ceiver for any covered financial company, may

1 avoid a transfer of any interest of an institution
2 affiliated party, or any person who the Corpora-
3 tion determines is a debtor of the covered finan-
4 cial company, in property, or any obligation in-
5 curred by such party or person, that was made
6 within 5 years of the date on which the Cor-
7 poration was appointed receiver if such party or
8 person voluntarily or involuntarily made such
9 transfer or incurred such liability with the in-
10 tent to hinder, delay, or defraud the covered fi-
11 nancial company or the Corporation.

12 (B) RIGHT OF RECOVERY.—To the extent
13 a transfer is avoided under subparagraph (A),
14 the Corporation may recover, for the benefit of
15 the covered financial company, the property
16 transferred or, if a court so orders, the value of
17 such property (at the time of such transfer)
18 from—

19 (i) the initial transferee of such trans-
20 fer or the institution-affiliated party or
21 person for whose benefit such transfer was
22 made; or

23 (ii) any immediate or mediate trans-
24 feree of any such initial transferee.

1 (C) RIGHTS OF TRANSFEREE OR OBLI-
2 GEE.—The Corporation may not recover under
3 subparagraph (B)—

4 (i) any transfer that takes for value,
5 including satisfaction or securing of a
6 present or antecedent debt, in good faith,
7 or

8 (ii) any immediate or mediate good
9 faith transferee of such transferee.

10 (D) RIGHTS UNDER THIS SUBSECTION.—
11 The rights of the Corporation as receiver of a
12 covered financial company under this subsection
13 shall be superior to any rights of a trustee or
14 any other party (other than any party which is
15 a Federal agency) under title 11, United States
16 Code.

17 (E) DEFINITION.—For purposes of this
18 subsection, the term “institution affiliated
19 party” means—

20 (i) any director, officer, employee, or
21 controlling stockholder of, or agent for, a
22 covered financial company;

23 (ii) any shareholder, consultant, joint
24 venture partner, and any other person as
25 determined by the Corporation (by regula-

1 tion or otherwise) who participates in the
2 conduct of the affairs of a covered finan-
3 cial company; and

4 (iii) any independent contractor (in-
5 cluding any attorney, appraiser, or ac-
6 countant) who knowingly or recklessly par-
7 ticipates in—

8 (I) any violation of any law or
9 regulation;

10 (II) any breach of fiduciary duty;

11 or

12 (III) any unsafe or unsound
13 practice,

14 which caused or is likely to cause more
15 than a minimal financial loss to, or a sig-
16 nificant adverse effect on, the covered fi-
17 nancial company.

18 (13) ATTACHMENT OF ASSETS AND OTHER IN-
19 JUNCTIVE RELIEF.—Subject to paragraph (14), any
20 court of competent jurisdiction may, at the request
21 of the Corporation, issue an order in accordance
22 with Rule 65 of the Federal Rules of Civil Proce-
23 dure, including an order placing the assets of any
24 person designated by the Corporation under the con-

1 trol of the court and appointing a trustee to hold
2 such assets.

3 (14) STANDARDS.—

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

10 (B) STATE PROCEEDING.—If, in the case
11 of any proceeding in a State court, the court
12 determines that rules of civil procedure avail-
13 able under the laws of such State provide sub-
14 stantially similar protections to such party's
15 right to due process as Rule 65 (as modified
16 with respect to such proceeding by subpara-
17 graph (A)), the relief sought by the Corporation
18 pursuant to paragraph (14) may be requested
19 under the laws of such State.

20 (15) TREATMENT OF CLAIMS ARISING FROM
21 BREACH OF CONTRACTS EXECUTED BY THE COR-
22 PORATION AS RECEIVER.—Notwithstanding any
23 other provision of this subsection, any final and
24 unappealable judgment for monetary damages en-
25 tered against the Corporation as receiver for a cov-

1 ered financial company for the breach of an agree-
2 ment executed or approved by the Corporation after
3 the date of its appointment shall be paid as an ad-
4 ministrative expense of the receiver. Nothing in this
5 paragraph shall be construed to limit the power of
6 a receiver to exercise any rights under contract or
7 law, including to terminate, breach, cancel, or other-
8 wise discontinue such agreement.

9 (16) ACCOUNTING AND RECORDKEEPING RE-
10 QUIREMENTS.—

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

17 (B) ANNUAL ACCOUNTING OR REPORT.—
18 With respect to each receivership to which the
19 Corporation was appointed, the Corporation
20 shall make an annual accounting or report, as
21 appropriate, available to the Secretary and the
22 Comptroller General of the United States.

23 (C) AVAILABILITY OF REPORTS.—Any re-
24 port prepared pursuant to subparagraph (B)

1 shall be made available by the Corporation upon
2 request to any member of the public.

3 (D) RECORDKEEPING REQUIREMENT.—

4 (i) IN GENERAL.—Except as provided
5 in clause (ii), after the end of the 6-year
6 period beginning on the date the Corpora-
7 tion is appointed as receiver of a covered
8 financial company the Corporation may de-
9 stroy any records of such covered financial
10 company which the Corporation, in the
11 Corporation’s discretion, determines to be
12 unnecessary unless directed not to do so by
13 a court of competent jurisdiction or gov-
14 ernmental agency, or prohibited by law.

15 (ii) OLD RECORDS.—Notwithstanding
16 clause (i), the Corporation may destroy
17 records of a covered financial company
18 which are at least 10 years old as of the
19 date on which the Corporation is appointed
20 as the receiver of such company in accord-
21 ance with clause (i) at any time after such
22 appointment is final, without regard to the
23 6-year period of limitation contained in
24 clause (i).

1 (b) PRIORITY OF EXPENSES AND UNSECURED
2 CLAIMS.—

3 (1) IN GENERAL.—Unsecured claims against a
4 covered financial company, or the receiver for such
5 covered financial company under this section, that
6 are proven to the satisfaction of the receiver shall
7 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) Any other general or senior liability of
14 the covered financial company (which is not a
15 liability described under subparagraph (D) or
16 (E)).

17 (D) Any obligation subordinated to general
18 creditors (which is not an obligation described
19 under subparagraph (E)).

20 (E) Any obligation to shareholders, mem-
21 bers, general partners, limited partners or other
22 persons with interests in the equity of the cov-
23 ered financial company arising as a result of
24 their status as shareholders, members, general
25 partners, limited partners or other persons with

1 interests in the equity of the covered financial
2 company.

3 (2) POST-RECEIVERSHIP FINANCING PRI-
4 ORITY.—In the event that the Corporation as re-
5 ceiver is unable to obtain unsecured credit for the
6 covered financial company from commercial sources,
7 the Corporation as receiver may obtain credit or
8 incur debt on the part of the covered financial com-
9 pany which shall have priority over any or all admin-
10 istrative expenses of the receiver under paragraph
11 (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.—Subject
18 to the priorities established under paragraphs (2)
19 and (3), all claimants of a covered financial company
20 that are similarly situated under paragraph (1) shall
21 be treated in a similar manner, except that the re-
22 ceiver may take any action (including making pay-
23 ments) that does not comply with this subsection,
24 if—

1 (A) the Corporation determines that such
2 action is necessary to maximize the value of the
3 assets of the covered financial company, to
4 maximize the present value return from the sale
5 or other disposition of the assets of the covered
6 financial company, to minimize the amount of
7 any loss realized upon the sale or other disposi-
8 tion of the assets of the covered financial com-
9 pany, or to contain or address serious adverse
10 effects on financial stability or the U.S. econ-
11 omy; and

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

15 (3) SECURED CLAIMS UNAFFECTED.—This sub-
16 section shall not affect secured claims, except to the
17 extent that the security is insufficient to satisfy the
18 claim and then only with regard to the difference be-
19 tween the claim and the amount realized from the
20 security.

21 (4) DEFINITIONS.—As used in this subsection,
22 the term “administrative expenses of the receiver”
23 includes—

24 (A) the actual, necessary costs and ex-
25 penses incurred by the receiver in preserving

1 the assets of a covered financial company or liq-
2 uidating or otherwise resolving the affairs of a
3 covered financial company for which the Cor-
4 poration has been appointed as receiver; and

5 (B) any obligations that the receiver deter-
6 mines are necessary and appropriate to facili-
7 tate the smooth and orderly liquidation or other
8 resolution of the covered financial company.

9 (c) PROVISIONS RELATING TO CONTRACTS ENTERED
10 INTO BEFORE APPOINTMENT OF RECEIVER.—

11 (1) AUTHORITY TO REPUDIATE CONTRACTS.—

12 In addition to any other rights a receiver may have,
13 the Corporation as receiver for any covered financial
14 company may disaffirm or repudiate any contract or
15 lease—

16 (A) to which the covered financial company
17 is a party;

18 (B) the performance of which the receiver,
19 in the receiver's discretion, determines to be
20 burdensome; and

21 (C) the disaffirmance or repudiation of
22 which the receiver determines, in the receiver's
23 discretion, will promote the orderly administra-
24 tion of the covered financial company's affairs.

1 (2) TIMING OF REPUDIATION.—The receiver
2 appointed for any covered financial company under
3 section 1604 shall determine whether or not to exer-
4 cise the rights of repudiation under this subsection
5 within a reasonable period following such appoint-
6 ment.

7 (3) CLAIMS FOR DAMAGES FOR REPUDI-
8 ATION.—

9 (A) IN GENERAL.—Except as otherwise
10 provided in subparagraph (C) and paragraphs
11 (4), (5), and (6), the liability of the receiver for
12 the disaffirmance or repudiation of any contract
13 pursuant to paragraph (1) shall be—

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

16 (ii) determined as of—

17 (I) the date of the appointment
18 of the receiver; or

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

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

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

3 (i) punitive or exemplary damages;

4 (ii) damages for lost profits or oppor-
5 tunity; or

6 (iii) damages for pain and suffering.

7 (C) MEASURE OF DAMAGES FOR REPUDI-
8 ATION OF QUALIFIED FINANCIAL CONTRACTS.—

9 In the case of any qualified financial contract
10 or agreement to which paragraph (8) applies,
11 compensatory damages shall be—

12 (i) deemed to include normal and rea-
13 sonable costs of cover or other reasonable
14 measures of damages utilized in the indus-
15 tries for such contract and agreement
16 claims; and

17 (ii) paid in accordance with this sub-
18 section and subsection (d) except as other-
19 wise specifically provided in this sub-
20 section.

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

23 (A) IN GENERAL.—If the receiver dis-
24 affirms or repudiates a lease under which the
25 covered financial company was the lessee, the

1 receiver shall not be liable for any damages
2 (other than damages determined pursuant to
3 subparagraph (B)) for the disaffirmance or re-
4 pudiation of such lease.

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

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

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

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

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

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

1 (5) LEASES UNDER WHICH THE COVERED FI-
2 NANCIAL COMPANY IS THE LESSOR.—

3 (A) IN GENERAL.—If the receiver repudi-
4 ates an unexpired written lease of real property
5 of the covered financial company under which
6 the covered financial company is the lessor and
7 the lessee is not, as of the date of such repudi-
8 ation, in default, the lessee under such lease
9 may either—

10 (i) treat the lease as terminated by
11 such repudiation; or

12 (ii) remain in possession of the lease-
13 hold interest for the balance of the term of
14 the lease unless the lessee defaults under
15 the terms of the lease after the date of
16 such repudiation.

17 (B) PROVISIONS APPLICABLE TO LESSEE
18 REMAINING IN POSSESSION.—If any lessee
19 under a lease described in subparagraph (A) re-
20 mains in possession of a leasehold interest pur-
21 suant to clause (ii) of such subparagraph—

22 (i) the lessee—

23 (I) shall continue to pay the con-
24 tractual rent pursuant to the terms of

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

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

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

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

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

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

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

11 (i) the purchaser—

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

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

22 (ii) the receiver shall—

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

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

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

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

9 (C) ASSIGNMENT AND SALE ALLOWED.—

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

16 (ii) NO LIABILITY AFTER ASSIGNMENT
17 AND SALE.—If an assignment and sale de-
18 scribed in clause (i) is consummated, the
19 receiver shall have no further liability
20 under the contract described in subpara-
21 graph (A) or with respect to the real prop-
22 erty which was the subject of such con-
23 tract.

24 (7) PROVISIONS APPLICABLE TO SERVICE CON-
25 TRACTS.—

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

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

10 (ii) deemed to have arisen as of the
11 date the receiver was appointed.

12 (B) SERVICES PERFORMED AFTER AP-
13 POINTMENT AND PRIOR TO REPUDIATION.—If,
14 in the case of any contract for services de-
15 scribed in subparagraph (A), the receiver ac-
16 cepts performance by the other person before
17 the receiver makes any determination to exer-
18 cise the right of repudiation of such contract
19 under this section—

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

23 (ii) the amount of such payment shall
24 be treated as an administrative expense of
25 the receivership.

1 (C) ACCEPTANCE OF PERFORMANCE NO
2 BAR TO SUBSEQUENT REPUDIATION.—The ac-
3 ceptance by any receiver of services referred to
4 in subparagraph (B) in connection with a con-
5 tract described in such subparagraph shall not
6 affect the right of the receiver to repudiate such
7 contract under this section at any time after
8 such performance.

9 (8) CERTAIN QUALIFIED FINANCIAL CON-
10 TRACTS.—

11 (A) RIGHTS OF PARTIES TO CONTRACTS.—
12 Subject to paragraphs (9) and (10) of this sub-
13 section and notwithstanding any other provision
14 of this section (other than subsection (a)(7)),
15 any other Federal law, or the law of any State,
16 no person shall be stayed or prohibited from ex-
17 ercising—

18 (i) any right such person has to cause
19 the termination, liquidation, or acceleration
20 of any qualified financial contract with a
21 covered financial company which arises
22 upon the appointment of the Corporation
23 as receiver for such covered financial com-
24 pany at any time after such appointment;

1 (ii) any right under any security
2 agreement or arrangement or other credit
3 enhancement related to one or more quali-
4 fied financial contracts described in clause
5 (i).

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

13 (B) APPLICABILITY OF OTHER PROVI-
14 SIONS.—Subsection (a)(9) shall apply in the
15 case of any judicial action or proceeding
16 brought against any receiver referred to in sub-
17 paragraph (A), or the covered financial com-
18 pany for which such receiver was appointed, by
19 any party to a contract or agreement described
20 in subparagraph (A)(i) with such company.

21 (C) CERTAIN TRANSFERS NOT AVOID-
22 ABLE.—

23 (i) IN GENERAL.—Notwithstanding
24 paragraph (11), section 5242 of the Re-
25 vised Statutes of the United States or any

1 other provision of Federal or State law re-
2 lating to the avoidance of preferential or
3 fraudulent transfers, the Corporation,
4 whether acting as such or as receiver of a
5 covered financial company, may not avoid
6 any transfer of money or other property in
7 connection with any qualified financial con-
8 tract with a covered financial company.

9 (ii) EXCEPTION FOR CERTAIN TRANS-
10 FERS.—Clause (i) shall not apply to any
11 transfer of money or other property in con-
12 nection with any qualified financial con-
13 tract with a covered financial company if
14 the Corporation determines that the trans-
15 feree had actual intent to hinder, delay, or
16 defraud such company, the creditors of
17 such company, or any receiver appointed
18 for such company.

19 (D) CERTAIN CONTACTS AND AGREE-
20 MENTS DEFINED.—For purposes of this sub-
21 section, the following definitions shall apply:

22 (i) QUALIFIED FINANCIAL CON-
23 TRACT.—The term “qualified financial
24 contract” means any securities contract,
25 commodity contract, forward contract, re-

1 purchase agreement, swap agreement, and
2 any similar agreement that the Corpora-
3 tion determines by regulation, resolution,
4 or order to be a qualified financial contract
5 for purposes of this paragraph.

6 (ii) SECURITIES CONTRACT.—The
7 term “securities contract”—

8 (I) means a contract for the pur-
9 chase, sale, or loan of a security, a
10 certificate of deposit, a mortgage loan,
11 any interest in a mortgage loan, a
12 group or index of securities, certifi-
13 cates of deposit, or mortgage loans or
14 interests therein (including any inter-
15 est therein or based on the value
16 thereof) or any option on any of the
17 foregoing, including any option to
18 purchase or sell any such security,
19 certificate of deposit, mortgage loan,
20 interest, group or index, or option,
21 and including any repurchase or re-
22 verse repurchase transaction on any
23 such security, certificate of deposit,
24 mortgage loan, interest, group or
25 index, or option (whether or not such

1 repurchase or reverse repurchase
2 transaction is a “repurchase agree-
3 ment,” as defined in clause (v));

4 (II) does not include any pur-
5 chase, sale, or repurchase obligation
6 under a participation in a commercial
7 mortgage loan unless the Corporation
8 determines by regulation, resolution,
9 or order to include any such agree-
10 ment within the meaning of such
11 term;

12 (III) means any option entered
13 into on a national securities exchange
14 relating to foreign currencies;

15 (IV) means the guarantee (in-
16 cluding by novation) by or to any se-
17 curities clearing agency of any settle-
18 ment of cash, securities, certificates of
19 deposit, mortgage loans or interests
20 therein, group or index of securities,
21 certificates of deposit or mortgage
22 loans or interests therein (including
23 any interest therein or based on the
24 value thereof) or option on any of the
25 foregoing, including any option to

1 purchase or sell any such security,
2 certificate of deposit, mortgage loan,
3 interest, group or index, or option
4 (whether or not such settlement is in
5 connection with any agreement or
6 transaction referred to in subclauses
7 (I) through (XII) (other than sub-
8 clause (II));

9 (V) means any margin loan;

10 (VI) means any extension of
11 credit for the clearance or settlement
12 of securities transactions;

13 (VII) means any loan transaction
14 coupled with a securities collar trans-
15 action, any prepaid securities forward
16 transaction, or any total return swap
17 transaction coupled with a securities
18 sale transaction;

19 (VIII) means any other agree-
20 ment or transaction that is similar to
21 any agreement or transaction referred
22 to in this clause;

23 (IX) means any combination of
24 the agreements or transactions re-
25 ferred to in this clause;

1 (X) means any option to enter
2 into any agreement or transaction re-
3 ferred to in this clause;

4 (XI) means a master agreement
5 that provides for an agreement or
6 transaction referred to in subclause
7 (I), (III), (IV), (V), (VI), (VII),
8 (VIII), (IX), or (X), together with all
9 supplements to any such master
10 agreement, without regard to whether
11 the master agreement provides for an
12 agreement or transaction that is not a
13 securities contract under this clause,
14 except that the master agreement
15 shall be considered to be a securities
16 contract under this clause only with
17 respect to each agreement or trans-
18 action under the master agreement
19 that is referred to in subclause (I),
20 (III), (IV), (V), (VI), (VII), (VIII),
21 (IX), or (X); and

22 (XII) means any security agree-
23 ment or arrangement or other credit
24 enhancement related to any agree-
25 ment or transaction referred to in this

1 clause, including any guarantee or re-
2 imbursement obligation in connection
3 with any agreement or transaction re-
4 ferred to in this clause.

5 (iii) COMMODITY CONTRACT.—The
6 term “commodity contract” means—

7 (I) with respect to a futures com-
8 mission merchant, a contract for the
9 purchase or sale of a commodity for
10 future delivery on, or subject to the
11 rules of, a contract market or board
12 of trade;

13 (II) with respect to a foreign fu-
14 tures commission merchant, a foreign
15 future;

16 (III) with respect to a leverage
17 transaction merchant, a leverage
18 transaction;

19 (IV) with respect to a clearing
20 organization, a contract for the pur-
21 chase or sale of a commodity for fu-
22 ture delivery on, or subject to the
23 rules of, a contract market or board
24 of trade that is cleared by such clear-
25 ing organization, or commodity option

1 traded on, or subject to the rules of,
2 a contract market or board of trade
3 that is cleared by such clearing orga-
4 nization;

5 (V) with respect to a commodity
6 options dealer, a commodity option;

7 (VI) any other agreement or
8 transaction that is similar to any
9 agreement or transaction referred to
10 in this clause;

11 (VII) any combination of the
12 agreements or transactions referred to
13 in this clause;

14 (VIII) any option to enter into
15 any agreement or transaction referred
16 to in this clause;

17 (IX) a master agreement that
18 provides for an agreement or trans-
19 action referred to in subclause (I),
20 (II), (III), (IV), (V), (VI), (VII), or
21 (VIII), together with all supplements
22 to any such master agreement, with-
23 out regard to whether the master
24 agreement provides for an agreement
25 or transaction that is not a com-

1 commodity contract under this clause, ex-
2 cept that the master agreement shall
3 be considered to be a commodity con-
4 tract under this clause only with re-
5 spect to each agreement or trans-
6 action under the master agreement
7 that is referred to in subclause (I),
8 (II), (III), (IV), (V), (VI), (VII), or
9 (VIII); or

10 (X) any security agreement or
11 arrangement or other credit enhance-
12 ment related to any agreement or
13 transaction referred to in this clause,
14 including any guarantee or reimburse-
15 ment obligation in connection with
16 any agreement or transaction referred
17 to in this clause.

18 (iv) FORWARD CONTRACT.—The term
19 “forward contract” means—

20 (I) a contract (other than a com-
21 modity contract) for the purchase,
22 sale, or transfer of a commodity or
23 any similar good, article, service,
24 right, or interest which is presently or
25 in the future becomes the subject of

1 dealing in the forward contract trade,
2 or product or byproduct thereof, with
3 a maturity date more than 2 days
4 after the date the contract is entered
5 into, including a repurchase or reverse
6 repurchase transaction (whether or
7 not such repurchase or reverse repur-
8 chase transaction is a “repurchase
9 agreement”, as defined in clause (v)),
10 consignment, lease, swap, hedge
11 transaction, deposit, loan, option, allo-
12 cated transaction, unallocated trans-
13 action, or any other similar agree-
14 ment;

15 (II) any combination of agree-
16 ments or transactions referred to in
17 subclauses (I) and (III);

18 (III) any option to enter into any
19 agreement or transaction referred to
20 in subclause (I) or (II);

21 (IV) a master agreement that
22 provides for an agreement or trans-
23 action referred to in subclauses (I),
24 (II), or (III), together with all supple-
25 ments to any such master agreement,

1 without regard to whether the master
2 agreement provides for an agreement
3 or transaction that is not a forward
4 contract under this clause, except that
5 the master agreement shall be consid-
6 ered to be a forward contract under
7 this clause only with respect to each
8 agreement or transaction under the
9 master agreement that is referred to
10 in subclause (I), (II), or (III); or

11 (V) any security agreement or ar-
12 rangement or other credit enhance-
13 ment related to any agreement or
14 transaction referred to in subclause
15 (I), (II), (III), or (IV), including any
16 guarantee or reimbursement obliga-
17 tion in connection with any agreement
18 or transaction referred to in any such
19 subclause.

20 (v) REPURCHASE AGREEMENT.—The
21 term “repurchase agreement” (which defi-
22 nition also applies to a reverse repurchase
23 agreement)—

24 (I) means an agreement, includ-
25 ing related terms, which provides for

1 the transfer of one or more certifi-
2 cates of deposit, mortgage-related se-
3 curities (as such term is defined in
4 the Securities Exchange Act of 1934),
5 mortgage loans, interests in mortgage-
6 related securities or mortgage loans,
7 eligible bankers' acceptances, qualified
8 foreign government securities (which
9 for purposes of this clause shall mean
10 a security that is a direct obligation
11 of, or that is fully guaranteed by, the
12 central government of a member of
13 the Organization for Economic Co-
14 operation and Development as deter-
15 mined by regulation or order adopted
16 by the Federal Reserve Board) or se-
17 curities that are direct obligations of,
18 or that are fully guaranteed by, the
19 United States or any agency of the
20 United States against the transfer of
21 funds by the transferee of such certifi-
22 cates of deposit, eligible bankers' ac-
23 ceptances, securities, mortgage loans,
24 or interests with a simultaneous
25 agreement by such transferee to

1 transfer to the transferor thereof cer-
2 tificates of deposit, eligible bankers'
3 acceptances, securities, mortgage
4 loans, or interests as described above,
5 at a date certain not later than 1 year
6 after such transfers or on demand,
7 against the transfer of funds, or any
8 other similar agreement;

9 (II) does not include any repur-
10 chase obligation under a participation
11 in a commercial mortgage loan unless
12 the Corporation determines by regula-
13 tion, resolution, or order to include
14 any such participation within the
15 meaning of such term;

16 (III) means any combination of
17 agreements or transactions referred to
18 in subclauses (I) and (IV);

19 (IV) means any option to enter
20 into any agreement or transaction re-
21 ferred to in subclause (I) or (III);

22 (V) means a master agreement
23 that provides for an agreement or
24 transaction referred to in subclause
25 (I), (III), or (IV), together with all

1 supplements to any such master
2 agreement, without regard to whether
3 the master agreement provides for an
4 agreement or transaction that is not a
5 repurchase agreement under this
6 clause, except that the master agree-
7 ment shall be considered to be a re-
8 purchase agreement under this sub-
9 clause only with respect to each agree-
10 ment or transaction under the master
11 agreement that is referred to in sub-
12 clause (I), (III), or (IV); and

13 (VI) means any security agree-
14 ment or arrangement or other credit
15 enhancement related to any agree-
16 ment or transaction referred to in
17 subclause (I), (III), (IV), or (V), in-
18 cluding any guarantee or reimburse-
19 ment obligation in connection with
20 any agreement or transaction referred
21 to in any such subclause.

22 (vi) SWAP AGREEMENT.—The term
23 “swap agreement” means—

24 (I) any agreement, including the
25 terms and conditions incorporated by

1 reference in any such agreement,
2 which is an interest rate swap, option,
3 future, or forward agreement, includ-
4 ing a rate floor, rate cap, rate collar,
5 cross-currency rate swap, and basis
6 swap; a spot, same day-tomorrow, to-
7 morrow-next, forward, or other for-
8 eign exchange, precious metals, or
9 other commodity agreement; a cur-
10 rency swap, option, future, or forward
11 agreement; an equity index or equity
12 swap, option, future, or forward
13 agreement; a debt index or debt swap,
14 option, future, or forward agreement;
15 a total return, credit spread or credit
16 swap, option, future, or forward
17 agreement; a commodity index or
18 commodity swap, option, future, or
19 forward agreement; weather swap, op-
20 tion, future, or forward agreement; an
21 emissions swap, option, future, or for-
22 ward agreement; or an inflation swap,
23 option, future, or forward agreement;
24 (II) any agreement or transaction
25 that is similar to any other agreement

1 or transaction referred to in this
2 clause and that is of a type that has
3 been, is presently, or in the future be-
4 comes, the subject of recurrent deal-
5 ings in the swap or other derivatives
6 markets (including terms and condi-
7 tions incorporated by reference in
8 such agreement) and that is a for-
9 ward, swap, future, option or spot
10 transaction on one or more rates, cur-
11 rencies, commodities, equity securities
12 or other equity instruments, debt se-
13 curities or other debt instruments,
14 quantitative measures associated with
15 an occurrence, extent of an occur-
16 rence, or contingency associated with
17 a financial, commercial, or economic
18 consequence, or economic or financial
19 indices or measures of economic or fi-
20 nancial risk or value;

21 (III) any combination of agree-
22 ments or transactions referred to in
23 this clause;

1 (IV) any option to enter into any
2 agreement or transaction referred to
3 in this clause;

4 (V) a master agreement that pro-
5 vides for an agreement or transaction
6 referred to in subclause (I), (II), (III),
7 or (IV), together with all supplements
8 to any such master agreement, with-
9 out regard to whether the master
10 agreement contains an agreement or
11 transaction that is not a swap agree-
12 ment under this clause, except that
13 the master agreement shall be consid-
14 ered to be a swap agreement under
15 this clause only with respect to each
16 agreement or transaction under the
17 master agreement that is referred to
18 in subclause (I), (II), (III), or (IV);
19 and

20 (VI) any security agreement or
21 arrangement or other credit enhance-
22 ment related to any agreements or
23 transactions referred to in subclause
24 (I), (II), (III), (IV), or (V), including
25 any guarantee or reimbursement obli-

1 gation in connection with any agree-
2 ment or transaction referred to in any
3 such subclause.

4 (vii) DEFINITIONS RELATING TO DE-
5 FAULT.—When used in this paragraph and
6 paragraph (10)—

7 (I) The term “default” shall
8 mean, with respect to a covered finan-
9 cial company, any adjudication or
10 other official determination by any
11 court of competent jurisdiction, or
12 other public authority pursuant to
13 which a conservator, receiver, or other
14 legal custodian is appointed; and

15 (II) The term “in danger of de-
16 fault” shall mean a covered financial
17 company with respect to which the
18 Corporation or appropriate State au-
19 thority has determined that—

20 (aa) in the opinion of the
21 Corporation or such authority—

22 (AA) the covered finan-
23 cial company is not likely to
24 be able to pay its obligations

1 in the normal course of busi-
2 ness; and

3 (BB) there is no rea-
4 sonable prospect that the
5 covered financial company
6 will be able to pay such obli-
7 gations without Federal as-
8 sistance; or

9 (CC) in the opinion of
10 the Corporation or such au-
11 thority—

12 (bb) the covered financial
13 company has incurred or is likely
14 to incur losses that will deplete
15 all or substantially all of its cap-
16 ital; and

17 (cc) there is no reasonable
18 prospect that the capital will be
19 replenished without Federal as-
20 sistance.

21 (viii) TREATMENT OF MASTER AGREE-
22 MENT AS ONE AGREEMENT.—Any master
23 agreement for any contract or agreement
24 described in any preceding clause of this
25 subparagraph (or any master agreement

1 for such master agreement or agreements),
2 together with all supplements to such mas-
3 ter agreement, shall be treated as a single
4 agreement and a single qualified financial
5 contact. If a master agreement contains
6 provisions relating to agreements or trans-
7 actions that are not themselves qualified fi-
8 nancial contracts, the master agreement
9 shall be deemed to be a qualified financial
10 contract only with respect to those trans-
11 actions that are themselves qualified finan-
12 cial contracts.

13 (ix) TRANSFER.—The term “transfer”
14 means every mode, direct or indirect, abso-
15 lute or conditional, voluntary or involun-
16 tary, of disposing of or parting with prop-
17 erty or with an interest in property, includ-
18 ing retention of title as a security interest
19 and foreclosure of the covered financial
20 company’s equity of redemption.

21 (x) PERSON.—The term “person” in-
22 cludes any governmental entity in addition
23 to any entity included in the definition of
24 such term in section 1, title 1, United
25 States Code.

1 (E) CLARIFICATION.—No provision of law
2 shall be construed as limiting the right or
3 power of the Corporation, or authorizing any
4 court or agency to limit or delay, in any man-
5 ner, the right or power of the Corporation to
6 transfer any qualified financial contract in ac-
7 cordance with paragraphs (9) and (10) of this
8 subsection or to disaffirm or repudiate any such
9 contract in accordance with subsection (c)(1) of
10 this section.

11 (F) WALKAWAY CLAUSES NOT EFFEC-
12 TIVE.—

13 (i) IN GENERAL.—Notwithstanding
14 the provisions of subparagraph (A) and
15 sections 403 and 404 of the Federal De-
16 posit Insurance Corporation Improvement
17 Act of 1991, no walkaway clause shall be
18 enforceable in a qualified financial contract
19 of a covered financial company in default.

20 (ii) LIMITED SUSPENSION OF CERTAIN
21 OBLIGATIONS.—In the case of a qualified
22 financial contract referred to in clause (i),
23 any payment or delivery obligations other-
24 wise due from a party pursuant to the
25 qualified financial contract shall be sus-

1 pended from the time the receiver is ap-
2 pointed until the earlier of—

3 (I) the time such party receives
4 notice that such contract has been
5 transferred pursuant to paragraph
6 (10)(A); or

7 (II) 5:00 p.m. (eastern time) on
8 the business day following the date of
9 the appointment of the receiver.

10 (iii) WALKAWAY CLAUSE DEFINED.—

11 For purposes of this subparagraph, the
12 term “walkaway clause” means any provi-
13 sion in a qualified financial contract that
14 suspends, conditions, or extinguishes a
15 payment obligation of a party, in whole or
16 in part, or does not create a payment obli-
17 gation of a party that would otherwise
18 exist, solely because of such party’s status
19 as a nondefaulting party in connection
20 with the insolvency of a covered financial
21 company that is a party to the contract or
22 the appointment of or the exercise of rights
23 or powers by a receiver of such covered fi-
24 nancial company, and not as a result of a
25 party’s exercise of any right to offset,

1 setoff, or net obligations that exist under
2 the contract, any other contract between
3 those parties, or applicable law.

4 (G) RECORDKEEPING.—The Corporation,
5 in consultation with the Federal Reserve Board,
6 may prescribe regulations requiring that the
7 covered financial company maintain such
8 records with respect to qualified financial con-
9 tracts (including market valuations) as the Cor-
10 poration determines to be necessary or appro-
11 priate in order to assist the receiver of the cov-
12 ered financial company in being able to exercise
13 its rights and fulfill its obligations under this
14 paragraph or paragraph (9) or (10).

15 (9) TRANSFER OF QUALIFIED FINANCIAL CON-
16 TRACTS.—

17 (A) IN GENERAL.—In making any transfer
18 of assets or liabilities of a covered financial
19 company in default which includes any qualified
20 financial contract, the receiver for such covered
21 financial company shall 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 receiver for the
11 covered financial company shall not make such
12 transfer to a foreign bank, financial institution
13 organized under the laws of a foreign country,
14 or a branch or agency of a foreign bank or fi-
15 nancial institution unless, under the law appli-
16 cable to such bank, financial institution, branch
17 or agency, to the qualified financial contracts,
18 and to any netting contract, any security agree-
19 ment or arrangement or other credit enhance-
20 ment related to one or more qualified financial
21 contracts, the contractual rights of the parties
22 to such qualified financial contracts, netting
23 contracts, security agreements or arrangements,
24 or other credit enhancements are enforceable

1 substantially to the same extent as permitted
2 under this section.

3 (C) TRANSFER OF CONTRACTS SUBJECT
4 TO THE RULES OF A CLEARING ORGANIZA-
5 TION.—In the event that a receiver transfers
6 any qualified financial contract and related
7 claims, property, and credit enhancements pur-
8 suant to subparagraph (A)(i) and such contract
9 is cleared by or subject to the rules of a clear-
10 ing organization, the clearing organization shall
11 not be required to accept the transferee as a
12 member by virtue of the transfer.

13 (D) DEFINITIONS.—For purposes of this
14 paragraph, the term “financial institution”
15 means a broker or dealer, a depository institu-
16 tion, a futures commission merchant, a bridge
17 financial company, or any other institution de-
18 termined by the Corporation by regulation to be
19 a financial institution, and the term “clearing
20 organization” has the same meaning as in sec-
21 tion 402 of the Federal Deposit Insurance Cor-
22 poration Improvement Act of 1991.

23 (10) NOTIFICATION OF TRANSFER.—

24 (A) IN GENERAL.—If—

1 (i) the receiver for a covered financial
2 company in default or in danger of default
3 transfers any assets and liabilities of the
4 covered financial company; and

5 (ii) the transfer includes any qualified
6 financial contract,

7 the receiver shall notify any person who is a
8 party to any such contract of such transfer by
9 5:00 p.m. (eastern time) on the business day
10 following the date of the appointment of the re-
11 ceiver.

12 (B) CERTAIN RIGHTS NOT ENFORCE-
13 ABLE.—

14 (i) RECEIVERSHIP.—A person who is
15 a party to a qualified financial contract
16 with a covered financial company may not
17 exercise any right that such person has to
18 terminate, liquidate, or net such contract
19 under paragraph (8)(A) of this subsection
20 solely by reason of or incidental to the ap-
21 pointment under this section of a receiver
22 for the covered financial company (or the
23 insolvency or financial condition of the cov-
24 ered financial company for which the re-
25 ceiver has been appointed)—

1 (I) until 5:00 p.m. (eastern time)
2 on the business day following the date
3 of the appointment of the receiver; or

4 (II) after the person has received
5 notice that the contract has been
6 transferred pursuant to paragraph
7 (9)(A).

8 (ii) NOTICE.—For purposes of this
9 paragraph, the receiver for a covered fi-
10 nancial company shall be deemed to have
11 notified a person who is a party to a quali-
12 fied financial contract with such covered fi-
13 nancial company if the receiver has taken
14 steps reasonably calculated to provide no-
15 tice to such person by the time specified in
16 subparagraph (A).

17 (C) TREATMENT OF BRIDGE FINANCIAL
18 COMPANY.—For purposes of paragraph (9), a
19 bridge financial company shall not be consid-
20 ered to be a financial institution for which a
21 conservator, receiver, trustee in bankruptcy, or
22 other legal custodian has been appointed or
23 which is otherwise the subject of a bankruptcy
24 or insolvency proceeding.

1 (D) BUSINESS DAY DEFINED.—For pur-
2 poses of this paragraph, the term “business
3 day” means any day other than any Saturday,
4 Sunday, or any day on which either the New
5 York Stock Exchange or the Federal Reserve
6 Bank of New York is closed.

7 (11) DISAFFIRMANCE OR REPUDIATION OF
8 QUALIFIED FINANCIAL CONTRACTS.—In exercising
9 the rights of disaffirmance or repudiation of a re-
10 ceiver with respect to any qualified financial contract
11 to which a covered financial company is a party, the
12 receiver for such covered financial shall either—

13 (A) disaffirm or repudiate all qualified fi-
14 nancial contracts between—

15 (i) any person or any affiliate of such
16 person; and

17 (ii) the covered financial company in
18 default; or

19 (B) disaffirm or repudiate none of the
20 qualified financial contracts referred to in sub-
21 paragraph (A) (with respect to such person or
22 any affiliate of such person).

23 (12) CERTAIN SECURITY AND CUSTOMER IN-
24 TERESTS NOT AVIODABLE.—No provision of this

1 subsection shall be construed as permitting the
2 avoidance of any—

3 (A) legally enforceable or perfected secu-
4 rity interest in any of the assets of any covered
5 financial company except where such an inter-
6 est is taken in contemplation of the company's
7 insolvency or with the intent to hinder, delay, or
8 defraud the company or the creditors of such
9 company; or

10 (B) legally enforceable interest in customer
11 property.

12 (13) AUTHORITY TO ENFORCE CONTRACTS.—

13 (A) IN GENERAL.—The receiver may en-
14 force any contract, other than a director's or of-
15 ficer's liability insurance contract or a financial
16 institution bond, entered into by the covered fi-
17 nancial company notwithstanding any provision
18 of the contract providing for termination, de-
19 fault, acceleration, or exercise of rights upon, or
20 solely by reason of, insolvency or the appoint-
21 ment of or the exercise of rights or powers by
22 a receiver.

23 (B) CERTAIN RIGHTS NOT AFFECTED.—

24 No provision of this paragraph may be con-
25 strued as impairing or affecting any right of the

1 receiver to enforce or recover under a director's
2 or officer's liability insurance contract or finan-
3 cial institution bond under other applicable law.

4 (C) CONSENT REQUIREMENT.—

5 (i) IN GENERAL.—Except as otherwise
6 provided by this section, no person may ex-
7 ercise any right or power to terminate, ac-
8 celerate, or declare a default under any
9 contract to which the covered financial
10 company is a party, or to obtain possession
11 of or exercise control over any property of
12 the covered financial company or affect
13 any contractual rights of the covered finan-
14 cial company, without the consent of the
15 receiver, as appropriate, of the covered fi-
16 nancial company during the 90-day period
17 beginning on the date of the appointment
18 of the receiver, as applicable.

19 (ii) CERTAIN EXCEPTIONS.—No provi-
20 sion of this subparagraph shall apply to a
21 director or officer liability insurance con-
22 tract or a financial institution bond, to the
23 rights of parties to certain qualified finan-
24 cial contracts pursuant to paragraph (8),
25 or to the rights of parties to netting con-

1 tracts pursuant to subtitle A of title IV of
2 the Federal Deposit Insurance Corporation
3 Improvement Act of 1991 (12 U.S.C. 4401
4 et seq.), or shall be construed as permit-
5 ting the receiver to fail to comply with oth-
6 erwise enforceable provisions of such con-
7 tract.

8 (14) EXCEPTION FOR FEDERAL RESERVE
9 BANKS AND CORPORATION SECURITY INTEREST.—
10 No provision of this subsection shall apply with re-
11 spect to—

12 (A) any extension of credit from any Fed-
13 eral Reserve bank or the Corporation to any
14 covered financial company; or

15 (B) any security interest in the assets of
16 the covered financial company securing any
17 such extension of credit.

18 (15) SAVINGS CLAUSE.—The meanings of terms
19 used in this subsection are applicable for purposes of
20 this subsection only, and shall not be construed or
21 applied so as to challenge or affect the characteriza-
22 tion, definition, or treatment of any similar terms
23 under any other statute, regulation, or rule, includ-
24 ing, but not limited, to the Gramm-Leach-Bliley Act,
25 the Legal Certainty for Bank Products Act of 2000,

1 the securities laws (as that term is defined in section
2 3(a)(47) of the Securities Exchange Act of 1934),
3 and the Commodity Exchange Act.

4 (d) VALUATION OF CLAIMS IN DEFAULT.—

5 (1) IN GENERAL.—Notwithstanding any other
6 provision of Federal law or the law of any State, and
7 regardless of the method which the Corporation de-
8 termines to utilize with respect to a covered financial
9 company, including transactions authorized under
10 subsection (h), this subsection shall govern the
11 rights of the creditors of such covered financial com-
12 pany.

13 (2) MAXIMUM LIABILITY.—The maximum li-
14 ability of the Corporation, acting as receiver or in
15 any other capacity, to any person having a claim
16 against the receiver or the covered financial com-
17 pany for which such receiver is appointed shall equal
18 the amount such claimant would have received if—

19 (A) a determination had not been made
20 under section 1603(b) with respect to the cov-
21 ered financial company; and

22 (B) the covered financial company had
23 been liquidated under title 11, United States
24 Code, or any case related to title 11, United
25 States Code (including a case initiated by the

1 Securities Investor Protection Corporation with
2 respect to a financial company subject to the
3 Securities Investor Protection Act of 1970), or
4 any State insolvency law.

5 (3) ADDITIONAL PAYMENTS AUTHORIZED.—

6 (A) IN GENERAL.—The Corporation may,
7 as receiver and with the approval of the Sec-
8 retary, make additional payments or credit ad-
9 ditional amounts to or with respect to or for the
10 account of any claimant or category of claim-
11 ants of a covered financial company if the Cor-
12 poration determines that such payments or
13 credits are necessary or appropriate to—

14 (i) minimize losses to the receiver
15 from the resolution of the covered financial
16 company under this section; or

17 (ii) prevent or mitigate serious ad-
18 verse effects to financial stability or the
19 United States economy.

20 (B) MANNER OF PAYMENT.—The Corpora-
21 tion may make payments or credit amounts
22 under subparagraph (A) directly to the claim-
23 ants or may make such payments or credit such
24 amounts to a company other than a covered fi-
25 nancial company or a bridge financial company

1 established with respect thereto in order to in-
2 duce such other company to accept liability for
3 such claims.

4 (e) LIMITATION ON COURT ACTION.—Except as pro-
5 vided in this section or at the request of the receiver ap-
6 pointed for a covered financial company, no court may
7 take any action to restrain or affect the exercise of powers
8 or functions of the receiver hereunder.

9 (f) LIABILITY OF DIRECTORS AND OFFICERS.—

10 (1) IN GENERAL.—A director or officer of a
11 covered financial company may be held personally
12 liable for monetary damages in any civil action de-
13 scribed in paragraph (2) by, on behalf of, or at the
14 request or direction of the Corporation, which action
15 is prosecuted wholly or partially for the benefit of
16 the Corporation—

17 (A) acting as receiver of such covered fi-
18 nancial company;

19 (B) acting based upon a suit, claim, or
20 cause of action purchased from, assigned by, or
21 otherwise conveyed by such receiver; or

22 (C) acting based upon a suit, claim, or
23 cause of action purchased from, assigned by, or
24 otherwise conveyed in whole or in part by a cov-
25 ered financial company or its affiliate in con-

1 nection with assistance provided under section
2 1604.

3 (2) ACTIONS COVERED.—Paragraph (1) shall
4 apply with respect to actions for gross negligence,
5 including any similar conduct or conduct that dem-
6 onstrates a greater disregard of a duty of care (than
7 gross negligence) including intentional tortious con-
8 duct, as such terms are defined and determined
9 under applicable State law.

10 (3) SAVINGS CLAUSE.—Nothing in this sub-
11 section shall impair or affect any right of the Cor-
12 poration under other applicable law.

13 (g) DAMAGES.—In any proceeding related to any
14 claim against a covered financial company’s director, offi-
15 cer, employee, agent, attorney, accountant, appraiser, or
16 any other party employed by or providing services to a
17 covered financial company, recoverable damages deter-
18 mined to result from the improvident or otherwise im-
19 proper use or investment of any covered financial com-
20 pany’s assets shall include principal losses and appropriate
21 interest.

22 (h) BRIDGE FINANCIAL COMPANIES.—

23 (1) ORGANIZATION.—

24 (A) PURPOSE.—The Corporation, as re-
25 ceiver of 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.—If the Corporation
25 is appointed as receiver for a covered financial

1 company, the Corporation may grant a Federal
2 charter to and approve articles of association
3 for one or more bridge financial company or
4 companies with respect to such covered finan-
5 cial company which shall, by operation of law
6 and immediately upon issuance of its charter
7 and approval of its articles of association, be es-
8 tablished and operate in accordance with, and
9 subject to, such charter, articles, and this sec-
10 tion.

11 (B) MANAGEMENT.—Upon its establish-
12 ment, a bridge financial company shall be under
13 the management of a board of directors ap-
14 pointed by the Corporation.

15 (C) ARTICLES OF ASSOCIATION.—The arti-
16 cles of association and organization certificate
17 of a bridge financial shall have such terms as
18 the Corporation may provide, and shall be exe-
19 cuted by such representatives as the Corpora-
20 tion may designate.

21 (D) TERMS OF CHARTER; RIGHTS AND
22 PRIVILEGES.—Subject to and in accordance
23 with the provisions of this subsection, the Cor-
24 poration shall—

1 (i) establish the terms of the charter
2 of a bridge financial company and the
3 rights, powers, authorities and privileges of
4 a bridge financial company granted by the
5 charter or as an incident thereto; and

6 (ii) provide for, and establish the
7 terms and conditions governing, the man-
8 agement (including, but not limited to, the
9 bylaws and the number of directors of the
10 board of directors) and operations of the
11 bridge financial 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 law or the
16 law of any State, the Corporation may pro-
17 vide for a bridge financial company to suc-
18 ceed to and assume any rights, powers, au-
19 thorities or privileges of the covered finan-
20 cial company with respect to which the
21 bridge financial company was established
22 and, upon such determination by the Cor-
23 poration, the bridge financial company
24 shall immediately and by operation of law

1 succeed to and assume such rights, powers,
2 authorities and 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 as are applicable to a
20 corporation incorporated under the general cor-
21 poration 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 (3) INTERESTS IN AND ASSETS AND OBLIGA-
2 TIONS OF COVERED FINANCIAL COMPANY.—Notwith-
3 standing paragraphs (1) or (2) or any other provi-
4 sion of law—

5 (A) a bridge financial company shall as-
6 sume, acquire, or succeed to the assets or liabil-
7 ities of a covered financial company (including
8 the assets or liabilities associated with any trust
9 or custody business) only to the extent that
10 such assets or liabilities are transferred by the
11 Corporation to the bridge financial company in
12 accordance with, and subject to the restrictions
13 set forth in, paragraph (1)(B); and

14 (B) a bridge financial company shall not
15 assume, acquire, or succeed to any obligation
16 that a covered financial company for which a
17 receiver has been appointed may have to any
18 shareholder, member, general partner, limited
19 partner, or other person with an interest in the
20 equity of the covered financial company that
21 arises as a result of the status of that person
22 having an equity claim in the covered financial
23 company.

24 (4) BRIDGE FINANCIAL COMPANY TREATED AS
25 BEING IN DEFAULT FOR CERTAIN PURPOSES.—A

1 bridge financial company shall be treated as a cov-
2 ered financial company in default at such times and
3 for such purposes as the Corporation may, in its dis-
4 cretion, determine.

5 (5) TRANSFER OF ASSETS AND LIABILITIES.—

6 (A) TRANSFER OF ASSETS AND LIABIL-
7 ITIES.—The Corporation, as receiver, may
8 transfer any assets and liabilities of a covered
9 financial company (including any assets or li-
10 abilities associated with any trust or custody
11 business) to one or more bridge financial com-
12 panies in accordance with and subject to the re-
13 strictions of paragraph (1)(B).

14 (B) SUBSEQUENT TRANSFERS.—At any
15 time after the establishment of a bridge finan-
16 cial company with respect to a covered financial
17 company, the Corporation, as receiver, may
18 transfer any assets and liabilities of such cov-
19 ered financial company as the Corporation may,
20 in its discretion, determine to be appropriate in
21 accordance with and subject to the restrictions
22 of paragraph (1)(B).

23 (C) TREATMENT OF TRUST OR CUSTODY
24 BUSINESS.—For purposes of this paragraph,
25 the trust or custody business, including fidu-

1 ciary appointments, held by any covered finan-
2 cial company is included among its assets and
3 liabilities.

4 (D) EFFECTIVE WITHOUT APPROVAL.—

5 The transfer of any assets or liabilities, includ-
6 ing those associated with any trust or custody
7 business of a covered financial company to a
8 bridge financial company shall be effective with-
9 out any further approval under Federal or
10 State law, assignment, or consent with respect
11 thereto.

12 (E) EQUITABLE TREATMENT OF SIMI-

13 LARLY SITUATED CREDITORS.—The Corpora-
14 tion shall treat all creditors of a covered finan-
15 cial company that are similarly situated under
16 subsection (b)(1) in a similar manner in exer-
17 cising the authority of the Corporation under
18 this subsection to transfer any assets or liabil-
19 ities of the covered financial company to one or
20 more bridge financial companies established
21 with respect to such covered financial company,
22 except that the Corporation may take actions
23 (including making payments) that do not com-
24 ply with this subparagraph, if—

1 (i) the Corporation determines that
2 such actions are necessary to maximize the
3 value of the assets of the covered financial
4 company, to maximize the present value
5 return from the sale or other disposition of
6 the assets of the covered financial com-
7 pany, to minimize the amount of any loss
8 realized upon the sale or other disposition
9 of the assets of the covered financial com-
10 pany, or to contain or address serious ad-
11 verse effects to financial stability or the
12 U.S. economy; and

13 (ii) all creditors that are similarly sit-
14 uated under subsection (b)(1) receive not
15 less than the amount provided in sub-
16 section (d)(2).

17 (F) LIMITATION ON TRANSFER OF LIABIL-
18 ITIES.—Notwithstanding any other provision of
19 law, the aggregate amount of liabilities of a cov-
20 ered financial company that are transferred to,
21 or assumed by, a bridge financial company from
22 a covered financial company may not exceed the
23 aggregate amount of the assets of the covered
24 financial company that are transferred to, or

1 purchased by, the bridge financial company
2 from the covered financial company.

3 (6) STAY OF JUDICIAL ACTION.—Any judicial
4 action to which a bridge financial company becomes
5 a party by virtue of its acquisition of any assets or
6 assumption of any liabilities of a covered financial
7 company shall be stayed from further proceedings
8 for a period of up to 45 days (or such longer period
9 as may be agreed to upon the consent of all parties)
10 at the request of the bridge financial company.

11 (7) AGREEMENTS AGAINST INTEREST OF THE
12 BRIDGE FINANCIAL COMPANY.—No agreement that
13 tends to diminish or defeat the interest of the bridge
14 financial company in any asset of a covered financial
15 company acquired by the bridge financial company
16 shall be valid against the bridge financial company
17 unless such agreement is in writing and executed by
18 an authorized officer or representative of the covered
19 financial company.

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) EXEMPT TAX STATUS.—Notwithstanding
22 any other provision of Federal or State law, a bridge
23 financial company, its franchise, property, and in-
24 come shall be exempt from all taxation now or here-
25 after imposed by the United States, by any territory,

1 dependency, or possession thereof, or by any State,
2 county, municipality, or local taxing authority.

3 (10) FEDERAL AGENCY APPROVAL; ANTITRUST
4 REVIEW.—

5 (A) IN GENERAL.—If a transaction involv-
6 ing the merger or sale of a bridge financial
7 company requires approval by a Federal agency,
8 the transaction may not be consummated before
9 the 5th calendar day after the date of approval
10 by the Federal agency responsible for such ap-
11 proval with respect thereto. If, in connection
12 with any such approval a report on competitive
13 factors from the Attorney General is required,
14 the Federal agency responsible for such ap-
15 proval shall promptly notify the Attorney Gen-
16 eral of the proposed transaction and the Attor-
17 ney General shall provide the required report
18 within 10 days of the request. If a filing is re-
19 quired under the Hart-Scott-Rodino Antitrust
20 Improvements Act of 1976 with the Depart-
21 ment of Justice or the Federal Trade Commis-
22 sion, the waiting period shall expire not later
23 than the 30th day following such filing notwith-
24 standing any other provision of Federal law or
25 any attempt by any Federal agency to extend

1 such waiting period, and no further request for
2 information by any Federal agency shall be per-
3 mitted.

4 (B) EMERGENCY.—If the Secretary, in
5 consultation with the Chairman of the Federal
6 Reserve Board, has found that the Corporation
7 must act immediately to prevent the probable
8 failure of the covered financial company in-
9 volved, the approvals and filings referred to in
10 subparagraph (A) shall not be required and the
11 transaction may be consummated immediately
12 by the Corporation.

13 (11) DURATION OF BRIDGE FINANCIAL COM-
14 PANY.—Subject to paragraphs (12), (13) and (14),
15 the status of a bridge financial company as such
16 shall terminate at the end of the 2-year period fol-
17 lowing the date it was granted a charter. The Cor-
18 poration may, in its discretion, extend the status of
19 the bridge financial company as such for 3 addi-
20 tional 1-year periods.

21 (12) TERMINATION OF BRIDGE FINANCIAL COM-
22 PANY STATUS.—The status of any bridge financial
23 company as such shall terminate upon the earliest
24 of—

1 (A) the merger or consolidation of the
2 bridge financial company with a company that
3 is not a bridge financial company;

4 (B) at the election of the Corporation, the
5 sale of a majority of the capital stock of the
6 bridge financial company to a company other
7 than the Corporation and other than another
8 bridge financial company;

9 (C) the sale of 80 percent, or more, of the
10 capital stock of the bridge financial company to
11 a person other than the Corporation and other
12 than another bridge financial company;

13 (D) at the election of the Corporation, ei-
14 ther the assumption of all or substantially all of
15 the liabilities of the bridge financial company by
16 a company that is not a bridge financial com-
17 pany, or the acquisition of all or substantially
18 all of the assets of the bridge financial company
19 by a company that is not a bridge financial
20 company, or other entity as permitted under
21 applicable law; and

22 (E) the expiration of the period provided in
23 paragraph (11), or the earlier dissolution of the
24 bridge financial company as provided in para-
25 graph (14).

1 (13) EFFECT OF TERMINATION EVENTS.—

2 (A) MERGER OR CONSOLIDATION.—A
3 merger or consolidation as provided in para-
4 graph (12)(A) shall be conducted in accordance
5 with, and shall have the effect provided in, the
6 provisions of applicable law. For the purpose of
7 effecting such a merger or consolidation, the
8 bridge financial company shall be treated as a
9 corporation organized under the laws of the
10 State of Delaware (unless the law of another
11 State has been selected by the bridge financial
12 company in accordance with paragraph (2)(F)),
13 and the Corporation shall be treated as the sole
14 shareholder thereof, notwithstanding any other
15 provision of State or Federal law.

16 (B) CHARTER CONVERSION.—Following
17 the sale of a majority of the capital stock of the
18 bridge financial company as provided in para-
19 graph (12)(B), the Corporation may amend the
20 charter of the bridge financial company to re-
21 flect the termination of the status of the bridge
22 financial company as such, whereupon the com-
23 pany shall have all of the rights, powers, and
24 privileges under its constituent documents and
25 applicable State or Federal law. In connection

1 therewith, the Corporation may take such steps
2 as may be necessary or convenient to reincor-
3 porate the bridge financial company under the
4 laws of a State and, notwithstanding any provi-
5 sions of State or Federal law, such State-char-
6 tered corporation shall be deemed to succeed by
7 operation of law to such rights, titles, powers
8 and interests of the bridge financial company as
9 the Corporation may provide, with the same ef-
10 fect as if the bridge financial company had
11 merged with the State-chartered corporation
12 under provisions of the corporate laws of such
13 State.

14 (C) SALE OF STOCK.—Following the sale
15 of 80 percent or more of the capital stock of a
16 bridge financial company as provided in para-
17 graph (12)(C), the company shall have all of
18 the rights, powers, and privileges under its con-
19 stituent documents and applicable State or Fed-
20 eral law. In connection therewith, the Corpora-
21 tion may take such steps as may be necessary
22 or convenient to reincorporate the bridge finan-
23 cial company under the laws of a State and,
24 notwithstanding any provisions of State or Fed-
25 eral law, the State-chartered corporation shall

1 be deemed to succeed by operation of law to
2 such rights, titles, powers and interests of the
3 bridge financial company as the Corporation
4 may provide, with the same effect as if the
5 bridge financial company had merged with the
6 State-chartered corporation under provisions of
7 the corporate laws of such State.

8 (D) ASSUMPTION OF LIABILITIES AND
9 SALE OF ASSETS.—Following the assumption of
10 all or substantially all of the liabilities of the
11 bridge financial company, or the sale of all or
12 substantially all of the assets of the bridge fi-
13 nancial company, as provided in paragraph
14 (12)(D), at the election of the Corporation the
15 bridge financial company may retain its status
16 as such for the period provided in paragraph
17 (11) or may be dissolved at the election of the
18 Corporation.

19 (E) AMENDMENTS TO CHARTER.—Fol-
20 lowing the consummation of a transaction de-
21 scribed in subparagraph (A), (B), (C), or (D)
22 of paragraph (12), the charter of the resulting
23 company shall be amended to reflect the termi-
24 nation of bridge financial company status, if ap-
25 propriate.

1 (14) DISSOLUTION OF BRIDGE FINANCIAL COM-
2 PANY.—

3 (A) IN GENERAL.—Notwithstanding any
4 other provision of State or Federal law, if a
5 bridge financial company’s status as such has
6 not previously been terminated by the occur-
7 rence of an event specified in subparagraph (A),
8 (B), (C), or (D) of paragraph (12)—

9 (i) the Corporation may, in its discre-
10 tion, dissolve the bridge financial company
11 in accordance with this paragraph at any
12 time; and

13 (ii) the Corporation shall promptly
14 commence dissolution proceedings in ac-
15 cordance with this paragraph upon the ex-
16 piration of the 2-year period following the
17 date the bridge financial company was
18 chartered, or any extension thereof, as pro-
19 vided in paragraph (11).

20 (B) PROCEDURES.—The Corporation shall
21 remain the receiver of a bridge financial com-
22 pany for the purpose of dissolving the bridge fi-
23 nancial company. The Corporation as such re-
24 ceiver shall wind up the affairs of the bridge fi-
25 nancial company in conformity with the provi-

1 sions of law relating to the liquidation of cov-
2 ered financial companies. With respect to any
3 such bridge financial company, the Corporation
4 as receiver shall have all the rights, powers, and
5 privileges and shall perform the duties related
6 to the exercise of such rights, powers, or privi-
7 leges granted by law to a receiver of a covered
8 financial company and, notwithstanding any
9 other provision of law, in the exercise of such
10 rights, powers, and privileges the Corporation
11 shall not be subject to the direction or super-
12 vision of any State agency or other Federal
13 agency.

14 (15) AUTHORITY TO OBTAIN CREDIT.—

15 (A) IN GENERAL.—A bridge financial com-
16 pany may obtain unsecured credit and issue un-
17 secured debt.

18 (B) INABILITY TO OBTAIN CREDIT.—If a
19 bridge financial company is unable to obtain
20 unsecured credit or issue unsecured debt, the
21 Corporation may authorize the obtaining of
22 credit or the issuance of debt by the bridge fi-
23 nancial company—

1 (i) with priority over any or all of the
2 obligations of the bridge financial com-
3 pany;

4 (ii) secured by a lien on property of
5 the bridge financial company that is not
6 otherwise subject to a lien; or

7 (iii) secured by a junior lien on prop-
8 erty of the bridge financial company that
9 is subject to a lien.

10 (C) LIMITATIONS.—

11 (i) IN GENERAL.—The Corporation,
12 after notice and a hearing, may authorize
13 the obtaining of credit or the issuance of
14 debt by a bridge financial company that is
15 secured by a senior or equal lien on prop-
16 erty of the bridge financial company that
17 is subject to a lien only if—

18 (I) the bridge financial company
19 is unable to otherwise obtain such
20 credit or issue such debt; and

21 (II) there is adequate protection
22 of the interest of the holder of the lien
23 on the property with respect to which
24 such senior or equal lien is proposed
25 to be granted.

1 (D) BURDEN OF PROOF.—In any hearing
2 under this subsection, the Corporation has the
3 burden of proof on the issue of adequate protec-
4 tion.

5 (16) EFFECT ON DEBTS AND LIENS.—The re-
6 versal or modification on appeal of an authorization
7 under this subsection to obtain credit or issue debt,
8 or of a grant under this section of a priority or a
9 lien, does not affect the validity of any debt so
10 issued, or any priority or lien so granted, to an enti-
11 ty that extended such credit in good faith, whether
12 or not such entity knew of the pendency of the ap-
13 peal, unless such authorization and the issuance of
14 such debt, or the granting of such priority or lien,
15 were stayed pending appeal.

16 (i) SHARING RECORDS.—Whenever the Corporation
17 has been appointed as receiver for a covered financial com-
18 pany, the Federal Reserve Board and the company's pri-
19 mary appropriate regulatory agency, if any, shall each
20 make all records relating to the company available to the
21 receiver which may be used by the receiver in any manner
22 the receiver determines to be appropriate.

23 (j) EXPEDITED PROCEDURES FOR CERTAIN
24 CLAIMS.—

1 (1) TIME FOR FILING NOTICE OF APPEAL.—

2 The notice of appeal of any order, whether interlocu-
3 tory or final, entered in any case brought by the
4 Corporation against a covered financial company's
5 director, officer, employee, agent, attorney, account-
6 ant, or appraiser or any other person employed by
7 or providing services to a covered financial company
8 shall be filed not later than 30 days after the date
9 of entry of the order. The hearing of the appeal shall
10 be held not later than 120 days after the date of the
11 notice of appeal. The appeal shall be decided not
12 later than 180 days after the date of the notice of
13 appeal.

14 (2) SCHEDULING.—A court of the United
15 States shall expedite the consideration of any case
16 brought by the Corporation against a covered finan-
17 cial company's director, officer, employee, agent, at-
18 torney, accountant, or appraiser or any other person
19 employed by or providing services to a covered finan-
20 cial company. As far as practicable, the court shall
21 give such case priority on its docket.

22 (3) JUDICIAL DISCRETION.—The court may
23 modify the schedule and limitations stated in para-
24 graphs (1) and (2) in a particular case, based on a
25 specific finding that the ends of justice that would

1 be served by making such a modification would out-
2 weigh the best interest of the public in having the
3 case resolved expeditiously.

4 (k) FOREIGN INVESTIGATIONS.—The Corporation, as
5 receiver of any covered financial company and for pur-
6 poses of carrying out any power, authority, or duty with
7 respect to a covered financial company—

8 (1) may request the assistance of any foreign fi-
9 nancial authority and provide assistance to any for-
10 eign financial authority in accordance with section
11 8(v) of the Federal Deposit Insurance Act as if the
12 covered financial company were an insured deposi-
13 tory institution, the Corporation were the appro-
14 priate Federal banking agency for the company and
15 any foreign financial authority were the foreign
16 banking authority; and

17 (2) may maintain an office to coordinate for-
18 eign investigations or investigations on behalf of for-
19 eign financial authorities.

20 (l) PROHIBITION ON ENTERING SECRECY AGREE-
21 MENTS AND PROTECTIVE ORDERS.—The Corporation
22 may not enter into any agreement or approve any protec-
23 tive order which prohibits the Corporation from disclosing
24 the terms of any settlement of an administrative or other
25 action for damages or restitution brought by the Corpora-

1 tion in its capacity as receiver for a covered financial com-
2 pany.

3 (m) LIQUIDATION OF CERTAIN COVERED FINANCIAL
4 COMPANIES OR BRIDGE FINANCIAL COMPANIES.—Not-
5 withstanding any other provision of law (other than a con-
6 flicting provision of this section), the Corporation, in con-
7 nection with the liquidation of any covered financial com-
8 pany or bridge financial company with respect to which
9 the Corporation has been appointed as receiver, shall—

10 (1) in the case of any covered financial com-
11 pany or bridge financial company that is or has a
12 subsidiary that is a stockbroker (as that term is de-
13 fined in section 101 of title 11 of the United States
14 Code) but is not a member of the Securities Investor
15 Protection Corporation, apply the provisions of sub-
16 chapter III of chapter 7 of title 11 of the United
17 States Code in respect of the distribution to any
18 “customer” of all “customer name securities” and
19 “customer property” (as such terms are defined in
20 section 741 of such title 11) as if such covered fi-
21 nancial company or bridge financial company were a
22 debtor for purposes of such subchapter; or

23 (2) in the case of any covered financial com-
24 pany or bridge financial company that is a com-
25 modity broker (as that term is defined in section

1 101 of title 11 of the United States Code), apply the
2 provisions of subchapter IV of chapter 7 of title 11
3 of the United States Code in respect of the distribu-
4 tion to any “customer” of all “customer property”
5 (as such terms are defined in section 761 of such
6 title 11) as if such covered financial company or
7 bridge financial company were a debtor for purposes
8 of such subchapter.

9 (n) SYSTEMIC DISSOLUTION FUND.—

10 (1) ESTABLISHMENT AND PURPOSE.—

11 (A) IN GENERAL.—There is established in
12 the Treasury a separate fund to be known as
13 the “Systemic Dissolution Fund”—

14 (i) to facilitate and provide for the or-
15 derly and complete dissolution of any failed
16 financial company or companies that pose
17 a systemic threat to the financial markets
18 or economy, as determined under 1603(b);
19 and

20 (ii) to ensure that any taxpayer funds
21 utilized to facilitate such liquidations are
22 fully repaid from assessments levied on fi-
23 nancial companies that have assets of
24 \$50,000,000,000, adjusted for inflation, or
25 more.

1 (B) ADJUSTMENT OF THRESHOLD.—The
2 threshold referred to in subparagraph (A)(ii)
3 shall be adjusted on an annual basis, based on
4 the growth of assets owned or managed by fi-
5 nancial companies (as defined in section
6 1602(9)).

7 (2) AUTHORITY.—The Systemic Dissolution
8 Fund shall be administered by the Corporation,
9 which shall have exclusive authority to—

10 (A) impose assessments on covered finan-
11 cial companies in accordance with paragraphs
12 (6) through (8);

13 (B) maintain and administer the Fund in
14 a manner so as to make clear to the general
15 public that such Fund is unrelated to any other
16 Fund maintained and administered by the Cor-
17 poration, including the Deposit Insurance
18 Fund;

19 (C) utilize the Fund to facilitate the dis-
20 solution of a covered financial company (as de-
21 fined by section 1602(5)) as provided in para-
22 graph (3), or take such other actions as are au-
23 thorized by this subtitle;

1 (D) invest the Fund in accordance with
2 section 13(a) of the Federal Deposit Insurance
3 Act; and

4 (E) exercise borrowing authority as pre-
5 scribed in subsection (o).

6 (3) USES.—

7 (A) The Fund shall be available to the
8 Corporation for use with respect to the dissolu-
9 tion of a covered financial company to—

10 (i) cover the costs incurred by the
11 Corporation, including as receiver, in exer-
12 cising its rights, authorities, and powers
13 and fulfilling its obligations and respon-
14 sibilities under this section;

15 (ii) repay such funds in accordance
16 with subsection (o)(6); and

17 (iii) cover the costs of systemic sta-
18 bilization actions, pursuant to subsections
19 (d) and (f) of section 1604.

20 (B) The Fund shall not be used in any
21 manner to benefit any officer or director of
22 such company removed pursuant to section
23 1604(f)(6).

1 (4) DEPOSITS TO FUND.—All amounts assessed
2 against a financial company under this section shall
3 be deposited into the Fund.

4 (5) SIZE OF FUND.—The Corporation shall, by
5 rule, establish the minimum size of the Fund con-
6 sistent with subparagraphs (C) and (D) of para-
7 graph (6).

8 (6) ASSESSMENTS.—

9 (A) ASSESSMENTS TO MAINTAIN FUND.—
10 The Corporation shall impose risk-based assess-
11 ments on financial companies in such amount
12 and manner and subject to such terms and con-
13 ditions that the Corporation determines, by reg-
14 ulation and in consultation with the Council,
15 are necessary for the amount in the Fund to at
16 least equal the minimum size established pursu-
17 ant to paragraph (5).

18 (B) ASSESSMENTS TO REPLENISH THE
19 FUND.—If the Fund falls below the minimum
20 size established pursuant to paragraph (5), the
21 Corporation shall impose assessments on finan-
22 cial companies in such amounts and manner
23 and subject to such terms and conditions as the
24 Corporation determines, by regulation and in
25 consultation with the Council, are necessary to

1 replenish the fund subject to the limitations in
2 subparagraph (D).

3 (C) MINIMUM ASSESSMENT THRESHOLD.—

4 (i) IN GENERAL.—The Corporation
5 shall not assess financial companies with
6 less than \$50,000,000,000, adjusted for in-
7 flation, of assets on a consolidated basis,
8 subject to any differentiation as permitted
9 in paragraph (8) and shall assess financial
10 companies with \$10,000,000,000, adjusted
11 for inflation or more in assets in accord-
12 ance with paragraphs (7) and (8).

13 (ii) HEDGE FUNDS.—The Corporation
14 shall not assess financial companies that
15 manage hedge funds (as defined by the
16 Corporation for the purpose of this section,
17 in consultation with the Securities and Ex-
18 change Commission) with less than
19 \$10,000,000,000, adjusted for inflation, of
20 assets, under management on a consoli-
21 dated basis, subject to any differentiation
22 as permitted in paragraph (8) and shall
23 assess any financial companies that man-
24 age hedge funds with \$10,000,000,000 or

1 more of assets under management in ac-
2 cordance with paragraphs (7) and (8).

3 (D) MAXIMUM SIZE OF FUND VIA ASSESS-
4 MENTS.—

5 (i) IN GENERAL.—The Corporation
6 shall suspend assessments on financial
7 companies on the day after the date on
8 which the total of the assessments, exclud-
9 ing interest or other earnings from invest-
10 ments made pursuant to paragraph (2)(D),
11 equals \$150,000,000,000.

12 (ii) EXCEPTIONS.—Any suspension of
13 assessments under clause (i)—

14 (I) may be set aside if the Fund
15 falls below \$150,000,000,000; and

16 (II) shall be set aside if the Fund
17 falls below the minimum level estab-
18 lished in subparagraph (C).

19 (7) FACTORS.—The Corporation, in consulta-
20 tion with the Council shall establish a risk matrix to
21 be used in establishing assessments that takes into
22 account—

23 (A) the actual or expected risk of losses to
24 the Fund;

1 (B) economic conditions generally affecting
2 financial companies so as to allow assessments
3 and the Fund to increase during more favorable
4 economic conditions and to decrease during less
5 favorable economic conditions;

6 (C) any assessments imposed on a finan-
7 cial company or an affiliate of a financial com-
8 pany that—

9 (i) is an insured depository institu-
10 tion, assessed pursuant to section 7 or
11 13(c)(4)(G) of the Federal Deposit Insur-
12 ance Act;

13 (ii) is a member of the Securities In-
14 vestor Protection Corporation, assessed
15 pursuant to section 4 of the Securities In-
16 vestor Protection Act of 1970 (15 U.S.C.
17 78ddd);

18 (iii) is an insured credit union, as-
19 sessed pursuant to section 202(c)(1)(A)(i)
20 of the Federal Credit Union Act (12
21 U.S.C. 1782(c)(1)(A)(i)); or

22 (iv) is an insurance company, assessed
23 pursuant to applicable State law to cover
24 (or reimburse payments made to cover) the
25 costs of the rehabilitation, liquidation or

1 other State insolvency proceeding with re-
2 spect to 1 or more insurance companies;

3 (D) the risks presented by the financial
4 company to the financial system and the extent
5 to which the financial company has benefitted,
6 or likely would benefit, from the dissolution of
7 a financial company under this title, includ-
8 ing—

9 (i) the amount, different categories,
10 and concentrations of assets of the finan-
11 cial company and its affiliates, including
12 both on-balance sheet and off-balance sheet
13 assets;

14 (ii) the activities of the financial com-
15 pany and its affiliates;

16 (iii) the relevant market share of the
17 financial company and its affiliates;

18 (iv) the extent to which the financial
19 company is leveraged;

20 (v) the potential exposure to sudden
21 calls on liquidity precipitated by economic
22 distress;

23 (vi) the amount, maturity, volatility,
24 and stability of the company's financial ob-

1 ligations to, and relationship with, other fi-
2 nancial companies;

3 (vii) the amount, maturity, volatility,
4 and stability of the company's liabilities,
5 including the degree of reliance on short-
6 term funding, taking into consideration ex-
7 isting systems for measuring a company's
8 risk-based capital;

9 (viii) the stability and variety of the
10 company's sources of funding;

11 (ix) the company's importance as a
12 source of credit for households, businesses,
13 and State and local governments and as a
14 source of liquidity for the financial system;

15 (x) the extent to which assets are sim-
16 ply managed and not owned by the finan-
17 cial company and the extent to which own-
18 ership of assets under management is dif-
19 fuse; and

20 (xi) the amount, different categories,
21 and concentrations of liabilities, both in-
22 sured and uninsured, contingent and non-
23 contingent, including both on-balance sheet
24 and off-balance sheet liabilities, of the fi-
25 nancial company and its affiliates; and

1 (E) such other factors as the Corporation,
2 in consultation with the Council, may determine
3 to be appropriate.

4 (8) REQUIREMENT FOR EQUITABLE TREAT-
5 MENT IN ASSESSMENTS.—In establishing the assess-
6 ment system for the Fund, the Corporation, by regu-
7 lation and in consultation with the Council, shall dif-
8 ferentiate among financial companies based on com-
9 plexity of operations or organization, interconnected-
10 ness, size, direct or indirect activities, and any other
11 factors the Corporation or the Council may deem ap-
12 propriate to ensure that the assessments charged eq-
13 uitably reflect the risk posed to the Fund by par-
14 ticular classes of financial companies.

15 (9) MINIMUM COMMENT PERIOD.—In order to
16 ensure sufficient opportunity for public and congress-
17 sional review and evaluation of any assessment sys-
18 tem, any proposed regulations regarding the imple-
19 mentation of the assessment system under this sub-
20 title shall provide an opportunity for public comment
21 during a period of not less than 60 days.

22 (o) BORROWING AUTHORITY.—

23 (1) BORROWING FROM TREASURY.—

24 (A) IN GENERAL.—Subject to paragraphs

25 (3), (4), and (5), the Corporation may borrow

1 from the Treasury, and the Secretary of the
2 Treasury is authorized to lend to the Corpora-
3 tion on such terms as may be fixed by the Cor-
4 poration and the Secretary, such funds as in
5 the judgment of the Board of Directors of the
6 Corporation are required, in addition to the
7 funds available in the Systemic Dissolution
8 Fund, to permit the orderly dissolution of 1 or
9 more covered systemically significant financial
10 companies, covered affiliates, or covered sub-
11 sidiaries under this title.

12 (B) RATE OF INTEREST.—The rate of in-
13 terest to be charged in connection with any loan
14 made pursuant to this subsection shall not be
15 less than an amount determined by the Sec-
16 retary of the Treasury, taking into consider-
17 ation current market yields on outstanding
18 marketable obligations of the United States of
19 comparable maturities.

20 (2) PUBLIC DEBT ISSUANCES.—For the pur-
21 poses described in subsection (1), the Secretary of
22 the Treasury may use as a public-debt transaction
23 the proceeds of the sale of any securities hereafter
24 issued under chapter 31 of title 31, and the pur-
25 poses for which securities may be issued under chap-

1 ter 31 of title 31 are extended to include such loans.
2 All loans and repayments under this subsection shall
3 be treated as public-debt transactions of the United
4 States.

5 (3) BORROWING AUTHORITY WHEN FUND AS-
6 SETS ARE LESS THAN \$150,000,000,000.—

7 (A) Subject to paragraph (B), the bor-
8 rowing authority granted in paragraph (1) shall
9 be available to the Corporation where—

10 (i) the value of the Fund is less than
11 \$150,000,000,000;

12 (ii) the Corporation determines that
13 the immediate dissolution of a financial
14 company or financial companies requires
15 more funds than are available in the Fund;
16 and

17 (iii) the Corporation has provided a
18 specific plan for repayment under para-
19 graph (7)(A).

20 (B) The Corporation may borrow, and the
21 Secretary may lend, any amount of funds that,
22 when added to the amount available in the
23 Fund on the date the Corporation makes a re-
24 quest to borrow funds, would not exceed
25 \$150,000,000,000.

1 (C) For purposes of paragraph (1), the
2 Corporation's total debt may not exceed
3 \$150,000,000,000 (not including any funds bor-
4 rowed pursuant to subsection (s)).

5 (4) ADDITIONAL BORROWING AUTHORITY.—

6 (A) If at any time the Corporation antici-
7 pates that the dissolution of any financial com-
8 pany or financial companies will require funds
9 in excess of \$150,000,000,000—

10 (i) the Corporation shall submit to the
11 Secretary and the President a written re-
12 quest for additional borrowing authority
13 subject to the limitation in subparagraph
14 (5), which shall be accompanied by a cer-
15 tification indicating the anticipated amount
16 needed, the basis on which such amount
17 was determined, and any such information
18 as the Secretary may deem necessary; and

19 (ii) the President shall transmit a re-
20 quest to the House of Representatives and
21 the Senate requesting the additional bor-
22 rowing authority, which shall include the
23 certification referred to in clause (i) and
24 which includes a repayment schedule as
25 outlined in paragraph (7).

1 (B) Any request for borrowing authority
2 under paragraph (A) shall be effective only if
3 approved by affirmative vote of the House of
4 Representatives and the Senate in accordance
5 with subsection (s).

6 (5) LIMITATIONS ON ADDITIONAL BORROWING
7 AUTHORITY.—

8 (A) No request for borrowing authority is
9 permitted under paragraph (4) unless the
10 President, in consultation with the Council, cer-
11 tifies to the House of Representatives and the
12 Senate that the borrowing authority is nec-
13 essary to avoid or mitigate an imminent finan-
14 cial emergency.

15 (B) The amount of borrowing authority re-
16 quested under subparagraph (A)(i) may not ex-
17 ceed \$50,000,000,000.

18 (6) PROCEEDS FROM LIQUIDATION, REPAYMENT
19 OF FUNDS.—

20 (A) IN GENERAL.—The Corporation shall
21 take such measures as may be appropriate to
22 maximize the amount of funds from any dis-
23 solution that may be available for repayment
24 under subparagraph (B) consistent with sys-
25 temic concerns.

1 (B) REPAYMENT PRIORITY.—Amounts re-
2 alized from the dissolution of any financial com-
3 pany under this subtitle that are not otherwise
4 utilized by the Corporation to dissolve a finan-
5 cial company under subsection (n)(3)(A) shall
6 be paid—

7 (i) first, to repay any costs incurred
8 in exercising the borrowing authority
9 granted in paragraph (1); and

10 (ii) second, to recapitalize the Fund to
11 such level as the Corporation deems nec-
12 essary, but not to exceed
13 \$150,000,000,000.

14 (7) REPAYMENT PLAN AND SCHEDULES RE-
15 QUIRED FOR ANY BORROWING.—

16 (A) IN GENERAL.—No amount may be
17 provided by the Secretary of the Treasury to
18 the Corporation under paragraph (1) unless an
19 agreement is in effect between the Secretary
20 and the Corporation which—

21 (i) provides a specific plan and sched-
22 ule for assessments under (n)(6) to achieve
23 the repayment of the outstanding amount
24 of any borrowing under such subsection;
25 and

1 (ii) demonstrates that income to the
2 Corporation from assessments under this
3 section will be sufficient to amortize the
4 outstanding balance within the period es-
5 tablished in the repayment schedule and
6 pay the interest accruing on such balance.

7 (B) CONSULTATION WITH AND REPORT TO
8 CONGRESS.—The Secretary of the Treasury and
9 the Corporation shall—

10 (i) consult with the Committee on Fi-
11 nancial Services of the House of Rep-
12 resentatives and the Committee on Bank-
13 ing, Housing, and Urban Affairs of the
14 Senate on the terms of any repayment
15 schedule agreement; and

16 (ii) submit a copy of each repayment
17 schedule agreement to the Committee on
18 Financial Services of the House of Rep-
19 resentatives and the Committee on Bank-
20 ing, Housing, and Urban Affairs of the
21 Senate before the end of the 30-day period
22 beginning on the date any amount is pro-
23 vided by the Secretary of the Treasury to
24 the Corporation under paragraph (1).

1 (p) INFORMATION GATHERING AND VERIFICATION;
2 PAYMENTS .—

3 (1) IN GENERAL.—The Corporation may re-
4 quire each financial company to make available such
5 information as the Corporation may require—

6 (A) for purposes of—

7 (i) determining the financial com-
8 pany’s assessment under this section;

9 (ii) verifying the accuracy of informa-
10 tion; and

11 (iii) preparing for resolution, includ-
12 ing a resolution plan as required by this
13 section; and

14 (B) for such other purposes as may be ap-
15 propriate and necessary to promote the orderly
16 dissolution of the financial company.

17 (2) USE OF EXISTING REPORTS.—The Corpora-
18 tion shall, to the fullest extent possible, accept—

19 (A) reports that a financial company has
20 provided or been required to provide to other
21 Federal or State supervisors or to appropriate
22 self-regulatory organizations;

23 (B) information that is otherwise required
24 to be reported publicly; and

25 (C) externally audited financial statements.

1 (3) AUTHORITY FOR ON-SITE INSPECTION.—

2 The Corporation may make on-site inspections of a
3 financial company's books and records as necessary
4 to carry out the purposes of this subsection.

5 (4) RULEMAKING.—The Corporation may pro-
6 mulgate such rules or regulations as are necessary
7 or appropriate to implement this subsection.

8 (5) PAYMENTS OF ASSESSMENTS REQUIRED .—

9 (A) IN GENERAL.—Any financial company
10 subject to an assessment under this section
11 shall pay to the Corporation such assessment.

12 (B) FORM OF PAYMENT.—The payments
13 required under this section shall be made in
14 such manner and at such time or times as the
15 Corporation, in consultation with the Council,
16 shall prescribe by regulation.

17 (6) PENALTY FOR FAILURE TO TIMELY PAY AS-
18 SESSMENTS.—Any financial company that fails or
19 refuses to pay any assessment under this section
20 shall be subject to a penalty under section 18(h) of
21 the Federal Deposit Insurance Act, as if that finan-
22 cial company were an insured depository institution.

23 (q) ASSESSMENT ACTIONS.—

24 (1) IN GENERAL.—The Corporation, in any
25 court of competent jurisdiction, shall be entitled to

1 recover from any financial company the amount of
2 any unpaid assessment lawfully payable by such
3 company.

4 (2) STATUTE OF LIMITATIONS.—Notwith-
5 standing any other provision in Federal law, or the
6 law of any State—

7 (A) any action by a financial company to
8 recover from the Corporation the overpaid
9 amount of any assessment shall be brought
10 within 3 years after the date the assessment
11 payment was due, subject to subparagraph (C);

12 (B) any action by the Corporation to re-
13 cover from a financial company the underpaid
14 amount of any assessment shall be brought
15 within 3 years after the date the assessment
16 payment was due, subject to subparagraph (C);
17 and

18 (C) if a financial company has made a
19 false or fraudulent statement with intent to
20 evade any or all of its assessment, the Corpora-
21 tion shall have until 3 years after the date of
22 discovery of the false or fraudulent statement in
23 which to bring an action to recover the under-
24 paid amount.

1 (r) REQUIREMENT TO MAINTAIN SYSTEMIC DIS-
2 SOLUTION FUND AS SEPARATE FUND.—The Systemic
3 Dissolution Fund shall at all times be administered in a
4 manner that is separate and distinct from the Deposit In-
5 surance Fund, and the Corporation shall take such actions
6 as may be necessary to ensure that such distinction is
7 made with respect to internal processes and procedures
8 as well as with regard to any public information, discus-
9 sion or other communications involving either Fund.

10 (s) CONGRESSIONAL APPROVAL OF ADDITIONAL
11 BORROWING AUTHORITY.—

12 (1) INTRODUCTION.—On the day on which the
13 request of the President is received by the House of
14 Representatives and the Senate under subsection
15 (o)(4)(A)(ii), a joint resolution specified in para-
16 graph (5) shall be introduced in the House by the
17 majority leader and minority leader of the House
18 and in the Senate by the majority leader and minor-
19 ity leader of the Senate. If either House is not in
20 session on the day on which such a request is re-
21 ceived, the joint resolution with respect to such re-
22 quest shall be introduced in that House, as provided
23 in the preceding sentence, on the first day thereafter
24 on which that House is in session.

1 (2) CONSIDERATION IN THE HOUSE OF REP-
2 REPRESENTATIVES.—

3 (A) REPORTING AND DISCHARGE.—Any
4 committee of the House of Representatives to
5 which a joint resolution introduced under para-
6 graph (1) is referred shall report such joint res-
7 olution to the House not later than 5 calendar
8 days after the applicable date of introduction of
9 the joint resolution. If a committee fails to re-
10 port such joint resolution within that period,
11 the committee shall be discharged from further
12 consideration of the joint resolution and the
13 joint resolution shall be referred to the appro-
14 priate calendar.

15 (B) PROCEEDING TO CONSIDERATION.—
16 After all committees authorized to consider a
17 joint resolution have reported such joint resolu-
18 tion to the House or have been discharged from
19 its consideration, it shall be in order, not later
20 than the sixth day after the applicable date of
21 introduction of the joint resolution, to move to
22 proceed to consider the joint resolution in the
23 House. Such a motion shall not be in order
24 after the House has disposed of a motion to
25 proceed on the joint resolution and shall not be

1 in order if the House has received a message
2 from the Senate under paragraph (4)(C). The
3 previous question shall be considered as ordered
4 on the motion to its adoption without inter-
5 vening motion. A motion to reconsider the vote
6 by which the motion is disposed of shall not be
7 in order.

8 (C) CONSIDERATION.—The joint resolution
9 shall be considered in the House and shall be
10 considered as read. All points of order against
11 a joint resolution and against its consideration
12 are waived. The previous question shall be con-
13 sidered as ordered on the joint resolution to its
14 passage without intervening motion except two
15 hours of debate equally divided and controlled
16 by the proponent and an opponent. A motion to
17 reconsider the vote on passage of a joint resolu-
18 tion shall not be in order.

19 (3) CONSIDERATION IN THE SENATE.—

20 (A) PLACEMENT ON CALENDAR.—Upon in-
21 troduction in the Senate, the joint resolution
22 shall be placed immediately on the calendar.

23 (B) FLOOR CONSIDERATION.—

24 (i) IN GENERAL.—Notwithstanding
25 rule XXII of the Standing Rules of the

1 Senate, it is in order at any time during
2 the period beginning on the 4th day after
3 the applicable date of introduction in the
4 Senate and ending on the 6th day after the
5 applicable date of introduction in the Sen-
6 ate (even though a previous motion to the
7 same effect has been disagreed to) to move
8 to proceed to the consideration of the joint
9 resolution, and all points of order against
10 the joint resolution (and against consider-
11 ation of the joint resolution) are waived.
12 The motion to proceed is not debatable.
13 The motion is not subject to a motion to
14 postpone. A motion to reconsider the vote
15 by which the motion is agreed to or dis-
16 agreed to shall not be in order. If a motion
17 to proceed to the consideration of the reso-
18 lution is agreed to, the joint resolution
19 shall remain the unfinished business until
20 disposed of.

21 (ii) DEBATE.—Debate on the joint
22 resolution, and on all debatable motions
23 and appeals in connection therewith, shall
24 be limited to not more than 10 hours,
25 which shall be divided equally between the

1 majority and minority leaders or their des-
2 ignees. A motion further to limit debate is
3 in order and not debatable. An amendment
4 to, or a motion to postpone, or a motion to
5 proceed to the consideration of other busi-
6 ness, or a motion to recommit the joint
7 resolution is not in order.

8 (iii) VOTE ON PASSAGE.—The vote on
9 passage shall occur immediately following
10 the conclusion of the debate on a joint res-
11 olution, and a single quorum call at the
12 conclusion of the debate if requested in ac-
13 cordance with the rules of the Senate.

14 (iv) RULINGS OF THE CHAIR ON PRO-
15 CEDURE.—Appeals from the decisions of
16 the Chair relating to the application of the
17 rules of the Senate, as the case may be, to
18 the procedure relating to a joint resolution
19 shall be decided without debate.

20 (4) RULES RELATING TO SENATE AND HOUSE
21 OF REPRESENTATIVES.—

22 (A) COORDINATION WITH ACTION BY
23 OTHER HOUSE.—If, before the passage by one
24 House of a joint resolution of that House, that
25 House receives from the other House a joint

1 resolution, then the following procedures shall
2 apply:

3 (i) The joint resolution of the other
4 House shall not be referred to a com-
5 mittee.

6 (ii) With respect to the joint resolu-
7 tion of the House receiving the resolution,
8 the procedure in that House shall be the
9 same as if no such joint resolution had
10 been received from the other House; but
11 the vote on passage shall be on the joint
12 resolution of the other House.

13 (B) TREATMENT OF COMPANION MEAS-
14 URES.—If, following passage of a joint resolu-
15 tion in the Senate, the Senate then receives the
16 companion measure from the House of Rep-
17 resentatives, the companion measure shall not
18 be debatable.

19 (C) FAILURE OF JOINT RESOLUTION IN
20 THE SENATE.—

21 (i) If, in the Senate, the motion to
22 proceed to the consideration of the joint
23 resolution fails on adoption, the Secretary
24 of the Senate shall transmit a message to

1 that effect to the House of Representa-
2 tives.

3 (ii) If, in the Senate, the joint resolu-
4 tion fails on passage, the Secretary of the
5 Senate shall transmit a message to that ef-
6 fect to the House of Representatives.

7 (D) RULES OF HOUSE OF REPRESENTA-
8 TIVES AND SENATE.—This paragraph and the
9 preceding paragraphs are enacted by Con-
10 gress—

11 (i) as an exercise of the rulemaking
12 power of the Senate and House of Rep-
13 resentatives, respectively, and as such it is
14 deemed a part of the rules of each House,
15 respectively, but applicable only with re-
16 spect to the procedure to be followed in
17 that House in the case of a joint resolu-
18 tion, and it supersedes other rules only to
19 the extent that it is inconsistent with such
20 rules; and

21 (ii) with full recognition of the con-
22 stitutional right of either House to change
23 the rules (so far as relating to the proce-
24 dure of that House) at any time, in the

1 same manner, and to the same extent as in
2 the case of any other rule of that House.

3 (5) DEFINITION.—In this section, the term
4 “joint resolution” means only a joint resolution—

5 (A) which does not have a preamble;

6 (B) the title of which is as follows: “Joint
7 resolution relating to the approval of request
8 for borrowing authority under the Financial
9 Stability Improvement Act of 2009.”; and

10 (C) the sole matter after the resolving
11 clause of which is as follows: “That the Con-
12 gress approves the request for additional bor-
13 rowing authority transmitted to the Congress
14 on _____ by the President under section
15 1609(o)(4)(A)(ii) of the Financial Stability Im-
16 provement Act of 2009.”, the blank space being
17 filled with the appropriate date.

18 (t) NO FEDERAL STATUS.—

19 (1) AGENCY STATUS.—A covered financial com-
20 pany (or any covered subsidiary thereof) that is
21 placed into receivership is not a department, agency,
22 or instrumentality of the United States for purposes
23 of statutes that confer powers on or impose obliga-
24 tions on government entities.

1 (2) EMPLOYEE STATUS.—Interim directors, di-
2 rectors, officers, employees, or agents of a covered
3 financial company that is placed into receivership
4 are not, solely by virtue of service in any such capac-
5 ity, officers or employees of the United States. Any
6 employee of the Corporation, acting as receiver or of
7 any Federal agency who serves at the request of the
8 receiver as an interim director, director, officer, em-
9 ployee, or agent of a covered financial company that
10 is placed into receivership shall not—

11 (A) solely by virtue of service in any such
12 capacity lose any existing status as an officer or
13 employee of the United States for purposes of
14 title 5, United States Code, or any other provi-
15 sion of law, or;

16 (B) receive any salary or benefits for serv-
17 ice in any such capacity with respect to a cov-
18 ered financial company that is placed into re-
19 ceivership in addition to such salary or benefits
20 as are obtained through employment with the
21 Corporation or other Federal agency.

1 **SEC. 1610. CLARIFICATION OF PROHIBITION REGARDING**
2 **CONCEALMENT OF ASSETS FROM RECEIVER**
3 **OR LIQUIDATING AGENT.**

4 (a) IN GENERAL.—Section 1032 of title 18, United
5 States Code, is amended in paragraph (1) by deleting “or”
6 before “the National Credit Union Administration
7 Board,” and by inserting immediately thereafter “or the
8 Corporation, as defined in section 1602 of the Resolution
9 Authority for Large, Interconnected Financial Companies
10 Act of 2009,”.

11 (b) CONFORMING CHANGE.—The heading of section
12 1032 of title 18, United States Code, is amended by strik-
13 ing “**of financial institution**”.

14 **SEC. 1611. OFFICE OF RESOLUTION.**

15 (a) TRIGGER OF AND PLAN FOR ESTABLISHMENT.—

16 (1) TRIGGER.—If the Secretary appoints the
17 Corporation as receiver for a financial company
18 under section 1604, the Inspector General of the
19 Corporation shall, as soon as possible after such ap-
20 pointment, establish in accordance with this section
21 the Office of Resolution as an office within the Of-
22 fice of the Inspector General of the Corporation.

23 (2) PLAN.—The Inspector General of the Cor-
24 poration shall, in consultation with the Council of
25 Inspectors General on Financial Oversight estab-
26 lished under section 1702, formulate and maintain a

1 plan to allow for the timely establishment of an Of-
2 fice of Resolution in accordance with paragraph (1).
3 The Inspector General of the Corporation shall make
4 such plan available to the Financial Services Over-
5 sight Council established under section 1001.

6 (b) SPECIAL DEPUTY INSPECTOR GENERAL.—The
7 head of the Office of Resolution is the Special Deputy In-
8 spector General for Resolution (in this section referred to
9 as the “Special Deputy Inspector General”), who shall be
10 appointed by and report to the Inspector General of the
11 Corporation.

12 (c) DUTIES.—

13 (1) AUDITS AND INVESTIGATIONS.—It shall be
14 the duty of the Special Deputy Inspector General, in
15 consultation with and subject to the approval of the
16 Inspector General of the Corporation, to conduct,
17 supervise, and coordinate audits and investigations
18 of the activities of the Corporation in its capacity as
19 receiver for a financial company under section 1604,
20 including by collecting the following information:

21 (A) A description of each financial com-
22 pany for which the Corporation has been ap-
23 pointed as receiver under section 1604.

24 (B) A description of the activities and fu-
25 ture plans of the Corporation with respect to

1 each financial company for which it has been
2 appointed as receiver, and an analysis of wheth-
3 er such activities and plans conform to the re-
4 quirements of this subtitle and other applicable
5 law and are in the best interest of the overall
6 stability of the financial system.

7 (C) Such other information as the Special
8 Deputy Inspector General considers appro-
9 priate, in consultation with and subject to the
10 approval of the Inspector General of the Cor-
11 poration.

12 (2) ADDITIONAL DUTIES.—

13 (A) SYSTEMS, PROCEDURES, AND CON-
14 TROLS.—The Special Deputy Inspector General
15 shall establish, maintain, and oversee such sys-
16 tems, procedures, and controls as the Special
17 Deputy Inspector General considers appro-
18 priate, in consultation with and subject to the
19 approval of the Inspector General of the Cor-
20 poration, to discharge the duties under para-
21 graph (1).

22 (B) REPORTING OF CRIMINAL VIOLATIONS
23 TO ATTORNEY GENERAL.—If the Special Dep-
24 uty Inspector General, in carrying out this sec-
25 tion, discovers facts that give the Special Dep-

1 uty Inspector General reasonable grounds to be-
2 lieve there has been a violation of Federal
3 criminal law, the Special Deputy Inspector Gen-
4 eral shall expeditiously report such facts to the
5 Attorney General.

6 (C) MINIMIZING DUPLICATION OF EF-
7 FORT.—The Inspector General of the Corpora-
8 tion and the Special Deputy Inspector General
9 shall coordinate to minimize duplication of ef-
10 fort in the oversight of the Corporation’s activi-
11 ties as receiver for financial companies under
12 section 1604.

13 (3) DUTIES UNDER THE INSPECTOR GENERAL
14 ACT OF 1978.—In addition to the duties specified in
15 paragraphs (1) and (2), the Special Deputy Inspec-
16 tor General shall assist the Inspector General of the
17 Corporation in carrying out such duties and respon-
18 sibilities of inspectors general under the Inspector
19 General Act of 1978 as the Inspector General of the
20 Corporation considers appropriate.

21 (d) AUTHORITIES UNDER THE INSPECTOR GENERAL
22 ACT OF 1978.—The Inspector General of the Corporation
23 may confer on the Special Deputy Inspector General such
24 authorities provided to the Inspector General of the Cor-
25 poration in section 6 of the Inspector General Act of 1978

1 as the Inspector General of the Corporation considers nec-
2 essary to enable the Special Deputy Inspector General to
3 carry out the duties specified in subsection (c).

4 (e) PERSONNEL, FACILITIES, AND OTHER RE-
5 SOURCES.—

6 (1) IN GENERAL.—The Special Deputy Inspec-
7 tor General may, in consultation with and subject to
8 the approval of the Inspector General of the Cor-
9 poration, expend such amounts from the fund estab-
10 lished under section 1609(n) as are necessary to
11 carry out the duties described in subsection (c) and
12 to submit the reports required by subsection (h).

13 (2) ADDITIONAL FUNDS.—If the fund estab-
14 lished under section 1609(n) is insufficient to enable
15 the Special Deputy Inspector General to begin car-
16 rying out the duties of the Special Deputy Inspector
17 General in a timely fashion or later becomes insuffi-
18 cient to enable the Special Deputy Inspector General
19 to carry out such duties, the Inspector General of
20 the Corporation shall detail the necessary personnel,
21 facilities, or other resources to the Special Deputy
22 Inspector General.

23 (f) CORRECTIVE RESPONSES TO AUDIT PROB-
24 LEMS.—The Chairman of the Corporation shall—

1 (1) take action to address deficiencies identified
2 by a report or investigation of the Special Deputy
3 Inspector General; or

4 (2) certify to the appropriate committees of
5 Congress that no action is necessary or appropriate.

6 (g) COOPERATION AND COORDINATION WITH OTHER
7 ENTITIES.—In carrying out the duties, responsibilities,
8 and authorities of the Special Deputy Inspector General
9 under this section, the Special Deputy Inspector General
10 shall work with each of the inspectors general who is a
11 member of the Council of Inspectors General on Financial
12 Oversight established under section 1703(a)(1), in order
13 to avoid duplication of effort and ensure comprehensive
14 oversight of the Corporation's activities as a receiver ap-
15 pointed under section 1604.

16 (h) REPORTS.—

17 (1) IN GENERAL.—In lieu of the semiannual re-
18 ports required by section 5(a) of the Inspector Gen-
19 eral Act of 1978, the Special Deputy Inspector Gen-
20 eral shall submit to the appropriate committees of
21 Congress at the following times a report prepared in
22 consultation with and approved by the Inspector
23 General of the Corporation:

1 (A) Not later than 30 days after the ap-
2 pointment of the Special Deputy Inspector Gen-
3 eral.

4 (B) During the first 3 years after such ap-
5 pointment, not later than 30 days after the end
6 of each fiscal quarter during which the Cor-
7 poration acts as receiver for a financial com-
8 pany under section 1604.

9 (C) During the 4th year after such ap-
10 pointment and each year thereafter, not later
11 than 30 days after the end of the 2nd and the
12 4th fiscal quarters, if the Corporation acts as
13 receiver for a financial company under section
14 1604 during such semiannual period.

15 (2) CONTENT OF REPORTS.—Each report re-
16 quired by paragraph (1) shall include a summary,
17 for the period since the last required report (or, in
18 the case of the first report, for the period since the
19 Corporation was first appointed as a receiver under
20 section 1604) of—

21 (A) the activities of the Special Deputy In-
22 spector General; and

23 (B) the activities and future plans of the
24 Corporation with respect to each financial com-
25 pany for which it served as receiver.

1 (i) TERMINATION.—The Office of Resolution shall
2 terminate 6 months after the Corporation ceases to serve
3 as a receiver for any financial company under section
4 1604, subject to reestablishment pursuant to subsection
5 (a)(1).

6 **SEC. 1612. MISCELLANEOUS PROVISIONS.**

7 (a) BANKRUPTCY CODE AMENDMENTS.—Section
8 109(b)(2) of title 11 of the United States Code is amended
9 by inserting “covered financial company (as that term is
10 defined in section 1602(5) of the Dissolution Authority for
11 Large, Interconnected Financial Companies Act of
12 2009),” after “a domestic insurance company,”.

13 (b) FEDERAL DEPOSIT INSURANCE ACT AND FED-
14 ERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT
15 ACT OF 1991.—

16 (1) Section 18(c)(4)(G)(i) of the Federal De-
17 posit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) is
18 amended by inserting at the end the following new
19 sentence: “The determination with regard to the
20 Corporation’s exercise of authority under this sub-
21 paragraph shall apply to only an insured depository
22 institution except when severe financial conditions
23 exist which threaten the stability of a significant
24 number of insured depository institutions.”.

1 (2) Section 403(a) of the Federal Deposit In-
2 surance Corporation Improvement Act of 1991 (12
3 U.S.C. 4403(a)) is amended by inserting “section
4 1609(e) of the Resolution Authority for Large,
5 Interconnected Financial Companies Act of 2009,
6 section 1367 of the Federal Housing Enterprises Fi-
7 nancial Safety and Soundness Act of 1992 (12
8 U.S.C. 4617(d)),” after “section 11(e) of the Fed-
9 eral Deposit Insurance Act,”.

10 **SEC. 1613. AMENDMENT TO FEDERAL DEPOSIT INSURANCE**

11 **ACT.**

12 The Federal Deposit Insurance Act (12 U.S.C. 1811
13 et seq.) is amended by inserting after section 11A the fol-
14 lowing new section:

15 **“SEC. 11B. SYSTEMIC DISSOLUTION AUTHORITY AND FUND.**

16 “(a) SYSTEMIC DISSOLUTION AUTHORITY.—The
17 Corporation shall establish a Systemic Dissolution Author-
18 ity, which shall function as a subsidiary of the Corpora-
19 tion.

20 “(b) SYSTEMIC DISSOLUTION FUND.—Any fund es-
21 tablished for the purpose of facilitating the dissolution of
22 a financial company under subtitle G of the Financial Sta-
23 bility Improvement Act shall be called the Systemic Dis-
24 solution Fund, which shall be managed by the Corpora-
25 tion, through the Systemic Dissolution Authority.

1 “(c) MANAGEMENT OF FUND.—

2 “(1) SEPARATE MAINTENANCE.—The Systemic
3 Dissolution Fund shall be separately maintained and
4 not commingled with any other fund of the Corpora-
5 tion.

6 “(2) TREATMENT OF AND ACCOUNTING FOR AS-
7 SETS.—The assets and liabilities of the Systemic
8 Dissolution Fund—

9 “(A) shall be the assets and liabilities of
10 the Fund and not of the Corporation; and

11 “(B) shall not be consolidated with the as-
12 sets and liabilities of the Deposit Insurance
13 Fund or the Corporation for accounting, report-
14 ing, or any other purpose.

15 “(d) RIGHTS, POWERS, AND DUTIES.—

16 “(1) IN GENERAL.—The Corporation, in addi-
17 tion to any rights, powers, and duties under this Act
18 or any other law, shall, through the Systemic Dis-
19 solution Authority, have all rights, powers, and du-
20 ties necessary to implement and maintain the Sys-
21 temic Dissolution Fund in accordance with subtitle
22 G of the Financial Stability Improvement Act of
23 2009.

24 “(2) POWERS AS RECEIVER FOR COVERED FI-
25 NANCIAL COMPANY.—When acting as receiver with

1 respect to any covered financial company, as defined
2 in subtitle G of the Financial Stability Improvement
3 Act of 2009, the Corporation, through the Systemic
4 Dissolution Authority, shall have all rights, powers,
5 and duties that the Corporation has as receiver
6 under such subtitle.

7 “(3) SPECIFIC AND INCIDENTAL POWERS.—The
8 Corporation, through the Systemic Dissolution Au-
9 thority, or any duly authorized officer or agent of
10 the Authority, may exercise all powers specifically
11 granted by the provisions of this Act and subtitle G
12 of the Financial Stability Improvement Act and such
13 incidental powers as shall be necessary to carry out
14 the powers so granted and accomplish the purposes
15 of subtitle G of the Financial Stability Improvement
16 Act.

17 “(e) STAFF AND RESOURCES.—

18 “(1) IN GENERAL.—The Corporation shall as-
19 sign such staff, and provide such administrative and
20 other support services to the Systemic Dissolution
21 Authority as is necessary to fulfill the statutory re-
22 sponsibilities of the Authority.

23 “(2) ADMINISTRATIVE EXPENSES.— The cost
24 of all personnel, services, and resources provided on

1 behalf of the Systemic Dissolution Authority shall be
2 paid from the Systemic Dissolution Fund.”.

3 **SEC. 1614. APPLICATION OF EXECUTIVE COMPENSATION**
4 **LIMITATIONS.**

5 The provisions of section 111 of the Emergency Eco-
6 nomic Stabilization Act of 2008 shall apply to a covered
7 financial institution for which a receiver has been ap-
8 pointed pursuant to section 1604. Such covered financial
9 institution shall be considered a TARP recipient for pur-
10 poses of such section 111 for so long as such institution
11 is in receivership.

12 **Subtitle H—Additional Improve-**
13 **ments for Financial Crisis Man-**
14 **agement**

15 **SEC. 1701. ADDITIONAL IMPROVEMENTS FOR FINANCIAL**
16 **CRISIS MANAGEMENT.**

17 Section 13 of the Federal Reserve Act (12 U.S.C.
18 343) is amended by striking the 3rd undesignated para-
19 graph and inserting the following new subsection:

20 “(c) FINANCIAL CRISIS MANAGEMENT.—

21 “(1) IN GENERAL.—In unusual and exigent cir-
22 cumstances, the Board of Governors of the Federal
23 Reserve System, upon the written determination,
24 pursuant to section 1109 of the Financial Stability
25 Improvement Act of 2009, of the Financial Stability

1 Oversight Council, that a liquidity event exists that
2 could destabilize the financial system (which deter-
3 mination shall be made upon a vote of not less than
4 two-thirds of the members of such Council then serv-
5 ing), and with the written consent of the Secretary
6 of the Treasury (after certification by the President
7 that an emergency exists), may authorize any Fed-
8 eral reserve bank, during such periods as the Board
9 may determine and at rates established in accord-
10 ance with the provision designated as (d) of section
11 14, to discount for an individual, partnership, or
12 corporation, notes, drafts, and bills of exchange
13 when such notes, drafts, and bills of exchange are
14 indorsed or otherwise secured to the satisfaction of
15 the Federal reserve bank and in conformance with
16 regulations or guidelines issued by the Board of
17 Governors regarding the quality of notes, drafts, and
18 bills of exchange available for discount and of the se-
19 curity for those notes, drafts and bills of exchange,
20 unless a joint resolution (as defined in paragraph
21 (5)) is adopted. Upon making any determination
22 under this paragraph, with the consent of the Sec-
23 retary of the Treasury, the Financial Stability Over-
24 sight Council shall promptly submit a notice of such
25 determination to the Congress. The amounts made

1 available under this subsection shall not exceed
2 \$4,000,000,000,000.

3 “(2) CLARIFICATION OF ‘SECURED TO THE SAT-
4 ISFACTION OF THE FEDERAL RESERVE BANK’.—No
5 member of the Board of Governors of the Federal
6 Reserve System shall vote to authorize any action
7 permitted under paragraph (1) and the Secretary of
8 the Treasury shall not provide the written consent
9 required by paragraph (1) unless that member be-
10 lieves and the Secretary of the Treasury believes:

11 “(A) that there is at least a 99 percent
12 likelihood that all funds disbursed or put at risk
13 by such action will be repaid to the Federal Re-
14 serve System; and

15 “(B) that there is at least a 99 percent
16 likelihood that all interest due on any funds dis-
17 bursed will also be paid to the Federal Reserve
18 System.

19 “(3) LOW QUALITY ASSETS EXCLUDED.—The
20 notes, drafts, and bills of exchange available for dis-
21 count for purposes of paragraph (1), and the secu-
22 rity for those notes, drafts and bills of exchange may
23 only include any of the following assets if such asset
24 is used to further enhance the security for those
25 notes, drafts and bills of exchange which shall be

1 fully secured with assets that are not any of the fol-
2 lowing assets:

3 “(A) An asset (including a security) that
4 would be classified as “substandard,” “doubt-
5 ful,” or “loss,” or treated as “special mention”
6 or “other transfer risk problems,” in a report
7 of examination or inspection of bank or an affil-
8 iate of a bank prepared by either a Federal or
9 State supervisory agency or in any internal
10 classification system used by such individual,
11 partnership or corporation.

12 “(B) An asset in a nonaccrual status.

13 “(C) An asset on which principal or inter-
14 est payments are more than 30 days past due.

15 “(D) An asset whose terms have been re-
16 negotiated or compromised due to the deterio-
17 rating financial condition of the obligor unless
18 such asset has been performing for at least 6
19 months since the renegotiation.

20 “(4) NO SINGLE OR SPECIFIC BENE-
21 FICIARIES.—The Board of Governors of the Federal
22 Reserve System may authorize a Federal reserve
23 bank to discount notes, drafts, or bills of exchange
24 under this section only as part of a broadly available
25 credit or other facility and may not authorize a Fed-

1 eral Reserve bank to discount notes, drafts, or bills
2 of exchange for only a single and specific individual,
3 partnership, or corporation.

4 “(5) EVIDENCE OF UNAVAILABILITY OF CRED-
5 IT.—Before discounting any note, draft, or bill of ex-
6 change under this subsection for an individual, a
7 partnership or corporation as part of a broadly
8 available credit or other facility the Federal reserve
9 bank shall obtain evidence that such individual, part-
10 nership, or corporation is unable to secure adequate
11 credit accommodations from other banking institu-
12 tions. All discounts under this subsection for individ-
13 uals, partnerships, or corporations shall be subject
14 to such limitations, restrictions, and regulations as
15 the Board of Governors of the Federal Reserve Sys-
16 tem may prescribe.

17 “(6) CONGRESSIONAL DISAPPROVAL OF ADDI-
18 TIONAL BORROWING AUTHORITY.—

19 “(A) INTRODUCTION.—Within 90 days of
20 the day on which notice from the Financial Sta-
21 bility Oversight Council is received by the
22 House of Representatives and the Senate under
23 paragraph (1), a joint resolution specified in
24 subparagraph (E) may be introduced in the
25 House by the majority leader and minority

1 leader of the House and in the Senate by the
2 majority leader and minority leader of the Sen-
3 ate.

4 “(B) CONSIDERATION IN THE HOUSE OF
5 REPRESENTATIVES.—

6 “(i) REPORTING AND DISCHARGE.—

7 Any committee of the House of Represent-
8 atives to which a joint resolution intro-
9 duced under subparagraph (A) is referred
10 shall report such joint resolution to the
11 House not later than 5 calendar days after
12 the applicable date of introduction of the
13 joint resolution. If a committee fails to re-
14 port such joint resolution within that pe-
15 riod, the committee shall be discharged
16 from further consideration of the joint res-
17 olution and the joint resolution shall be re-
18 ferred to the appropriate calendar.

19 “(ii) PROCEEDING TO CONSIDER-
20 ATION.—After each committee authorized
21 to consider a joint resolution reports such
22 joint resolution to the House or has been
23 discharged from its consideration, it shall
24 be in order, not later than the sixth day
25 after the applicable date of introduction of

1 the joint resolution, to move to proceed to
2 consider the joint resolution in the House.
3 Such a motion shall not be in order after
4 the House has disposed of a motion to pro-
5 ceed on the joint resolution and shall not
6 be in order if the House has received a
7 message from the Senate under subpara-
8 graph (D)(iii)(I). The previous question
9 shall be considered as ordered on the mo-
10 tion to its adoption without intervening
11 motion. A motion to reconsider the vote by
12 which the motion is disposed of shall not
13 be in order.

14 “(iii) CONSIDERATION.—The joint
15 resolution shall be considered in the House
16 and shall be considered as read. All points
17 of order against a joint resolution and
18 against its consideration are waived. The
19 previous question shall be considered as or-
20 dered on the joint resolution to its passage
21 without intervening motion except two
22 hours of debate equally divided and con-
23 trolled by the proponent and an opponent.
24 A motion to reconsider the vote on passage
25 of a joint resolution shall not be in order.

1 “(C) CONSIDERATION IN THE SENATE.—

2 “(i) PLACEMENT ON CALENDAR.—

3 Upon introduction in the Senate, the joint
4 resolution shall be placed immediately on
5 the calendar.

6 “(ii) FLOOR CONSIDERATION.—

7 “(I) IN GENERAL.—Notwith-
8 standing rule XXII of the Standing
9 Rules of the Senate, it is in order at
10 any time during the period beginning
11 on the 4th day after the applicable
12 date of introduction of the joint reso-
13 lution and ending on the 6th day after
14 the applicable date of introduction
15 (even though a previous motion to the
16 same effect has been disagreed to) to
17 move to proceed to the consideration
18 of the joint resolution, and all points
19 of order against the joint resolution
20 (and against consideration of the joint
21 resolution) are waived. The motion to
22 proceed is not debatable. The motion
23 is not subject to a motion to postpone.
24 A motion to reconsider the vote by
25 which the motion is agreed to or dis-

1 agreed to shall not be in order. If a
2 motion to proceed to the consideration
3 of the resolution is agreed to, the joint
4 resolution shall remain the unfinished
5 business until disposed of.

6 “(II) DEBATE.—Debate on the
7 joint resolution, and on all debatable
8 motions and appeals in connection
9 therewith, shall be limited to not more
10 than 10 hours, which shall be divided
11 equally between the majority and mi-
12 nority leaders or their designees. A
13 motion further to limit debate is in
14 order and not debatable. An amend-
15 ment to, or a motion to postpone, or
16 a motion to proceed to the consider-
17 ation of other business, or a motion to
18 recommit the joint resolution is not in
19 order.

20 “(III) VOTE ON PASSAGE.—The
21 vote on passage shall occur imme-
22 diately following the conclusion of the
23 debate on a joint resolution, and a
24 single quorum call at the conclusion of

1 the debate if requested in accordance
2 with the rules of the Senate.

3 “(IV) RULINGS OF THE CHAIR
4 ON PROCEDURE.—Appeals from the
5 decisions of the Chair relating to the
6 application of the rules of the Senate,
7 as the case may be, to the procedure
8 relating to a joint resolution shall be
9 decided without debate.

10 “(D) RULES RELATING TO SENATE AND
11 HOUSE OF REPRESENTATIVES.—

12 “(i) COORDINATION WITH ACTION BY
13 OTHER HOUSE.—If, before the passage by
14 one House of a joint resolution of that
15 House, that House receives from the other
16 House a joint resolution, then the following
17 procedures shall apply:

18 “(I) The joint resolution of the
19 other House shall not be referred to a
20 committee.

21 “(II) With respect to the joint
22 resolution of the House receiving the
23 resolution, the procedure in that
24 House shall be the same as if no such
25 joint resolution had been received

1 from the other House; but the vote on
2 passage shall be on the joint resolu-
3 tion of the other House.

4 “(ii) TREATMENT OF COMPANION
5 MEASURES.—If, following passage of a
6 joint resolution in the Senate, the Senate
7 then receives the companion measure from
8 the House of Representatives, the com-
9 panion measure shall not be debatable.

10 “(iii) FAILURE OF JOINT RESOLUTION
11 IN THE SENATE.—

12 “(I) If, in the Senate, the motion
13 to proceed to the consideration of the
14 joint resolution fails, the Secretary of
15 the Senate shall transmit a message
16 to that effect to the House of Rep-
17 resentatives.

18 “(II) If, in the Senate, the joint
19 resolution fails on passage, the Sec-
20 retary of the Senate shall transmit a
21 message to that effect to the House of
22 Representatives.

23 “(iv) RULES OF HOUSE OF REP-
24 RESENTATIVES AND SENATE.—This para-

1 graph and the preceding paragraphs are
2 enacted by Congress—

3 “(I) as an exercise of the rule-
4 making power of the Senate and
5 House of Representatives, respec-
6 tively, and as such it is deemed a part
7 of the rules of each House, respec-
8 tively, but applicable only with respect
9 to the procedure to be followed in that
10 House in the case of a joint resolu-
11 tion, and it supersedes other rules
12 only to the extent that it is incon-
13 sistent with such rules; and

14 “(II) with full recognition of the
15 constitutional right of either House to
16 change the rules (so far as relating to
17 the procedure of that House) at any
18 time, in the same manner, and to the
19 same extent as in the case of any
20 other rule of that House.

21 “(E) DEFINITION.—In this paragraph, the
22 term ‘joint resolution’ means only a joint reso-
23 lution—

24 “(i) which does not have a preamble;

1 “(ii) the title of which is as follows:
2 ‘Joint resolution relating to the use of au-
3 thority relevant to section 13(c) of the
4 Federal Reserve Act under the Financial
5 Stability Improvement Act of 2009.’; and

6 “(iii) the sole matter after the resolv-
7 ing clause of which is as follows: ‘That the
8 Congress disapproves the use of authority
9 pursuant to use of authority relevant to
10 section 13(c) of the Federal Reserve Act
11 transmitted to the Congress on _____ by
12 the Board of Governors of the Federal Re-
13 serve System’, the blank space being filled
14 with the appropriate date.

15 “(F) NONSCORING OF JOINT RESOLUTIONS
16 OF DISAPPROVAL.—A joint resolution of dis-
17 approval shall be treated as having no budg-
18 etary effect by the Congressional Budget Office
19 and the Office of Management and Budget for
20 any purpose under the Rules of the House of
21 Representatives, the Standing Rules of the Sen-
22 ate, the Congressional Budget Act of 1974, or
23 any statutory pay-as-you-go requirement.”.

1 **SEC. 1702. CERTAIN RESTRICTIONS RELATED TO FOREIGN**
2 **CURRENCY SWAP AUTHORITY.**

3 Section 14 of the Federal Reserve Act is amended
4 by adding at the end the following new subsection:

5 “(h) CERTAIN RESTRICTIONS RELATED TO FOREIGN
6 CURRENCY SWAP AUTHORITY.—A Federal reserve bank
7 may not take any action pursuant to the authority pro-
8 vided under this section with respect to foreign currency
9 swaps unless—

10 “(1) such action is approved in advance by the
11 affirmative vote of not less than five members of the
12 Board of Governors of the Federal Reserve System;
13 and

14 “(2) such action is taken with the written con-
15 currence of the Secretary of the Treasury.”.

16 **SEC. 1703. ADDITIONAL OVERSIGHT OF FINANCIAL REGU-**
17 **LATORY SYSTEM.**

18 (a) COUNCIL OF INSPECTORS GENERAL ON FINAN-
19 CIAL OVERSIGHT.—

20 (1) ESTABLISHMENT AND MEMBERSHIP.—

21 There is established a Council of Inspectors General
22 on Financial Oversight (in this section referred to as
23 the “Council of Inspectors General”) chaired by the
24 Inspector General of the Department of the Treas-
25 ury and composed of the inspectors general of the
26 following:

1 (A) The Board of Governors of the Federal
2 Reserve System.

3 (B) The Commodity Futures Trading
4 Commission.

5 (C) The Department of Housing and
6 Urban Development.

7 (D) The Department of the Treasury.

8 (E) The Federal Deposit Insurance Cor-
9 poration.

10 (F) The Federal Housing Finance Agency.

11 (G) The National Credit Union Adminis-
12 tration.

13 (H) The Securities and Exchange Commis-
14 sion.

15 (I) The Troubled Asset Relief Program
16 (until the termination of the authority of the
17 Special Inspector General for such program
18 under section 121(h) of the Emergency Eco-
19 nomic Stabilization Act of 2008 (12 U.S.C.
20 5231(h))).

21 (2) DUTIES.—

22 (A) MEETINGS.—The Council of Inspec-
23 tors General shall meet not less than once each
24 quarter, or more frequently if the chair con-
25 siders it appropriate, to facilitate the sharing of

1 information among inspectors general and to
2 discuss the ongoing work of each inspector gen-
3 eral who is a member of the Council of Inspec-
4 tors General, with a focus on concerns that may
5 apply to the broader financial sector and ways
6 to improve financial oversight.

7 (B) ANNUAL REPORT.—The Council of In-
8 spectors General shall, each year within a time-
9 frame that permits consideration by the Finan-
10 cial Services Oversight Council (in this section
11 referred to as the “Oversight Council”) prior to
12 the submission of its report for such year under
13 section 1006, submit to the Oversight Council
14 and to Congress a report including—

15 (i) for each inspector general who is a
16 member of the Council of Inspectors Gen-
17 eral, a section within the exclusive editorial
18 control of such inspector general that high-
19 lights the concerns and recommendations
20 of such inspector general in such inspector
21 general’s ongoing and completed work,
22 with a focus on issues that may apply to
23 the broader financial sector; and

24 (ii) a summary of the general observa-
25 tions of the Council of Inspectors General

1 based on the views expressed by each in-
2 spector general as required by clause (i),
3 with a focus on measures that should be
4 taken to improve financial oversight.

5 (3) COUNCIL OF INSPECTORS GENERAL WORK-
6 ING GROUPS.—

7 (A) WORKING GROUPS TO EVALUATE
8 OVERSIGHT COUNCIL.—

9 (i) CONVENING A WORKING GROUP.—

10 The Council of Inspectors General may, by
11 majority vote, convene a Council of Inspec-
12 tors General Working Group to evaluate
13 the effectiveness and internal operations of
14 the Oversight Council.

15 (ii) PERSONNEL AND RESOURCES.—

16 The inspectors general who are members
17 of the Council of Inspectors General may
18 detail staff and resources to a Council of
19 Inspectors General Working Group estab-
20 lished under this subparagraph to enable it
21 to carry out its duties.

22 (iii) REPORTS.—A Council of Inspec-
23 tors General Working Group established
24 under this subparagraph shall submit reg-
25 ular reports to the Oversight Council and

1 to Congress on its evaluations pursuant to
2 this subparagraph.

3 (B) WORKING GROUPS FOR FINANCIAL
4 COMPANIES UNDERGOING RESOLUTION.—

5 (i) CONVENING A WORKING GROUP.—

6 The Council of Inspectors General shall
7 convene a Council of Inspectors General
8 Working Group for each financial company
9 for which the Secretary of the Treasury
10 appoints the Federal Deposit Insurance
11 Corporation as receiver under section
12 1604.

13 (ii) PERSONNEL AND RESOURCES.—

14 The inspectors general who are members
15 of the Council of Inspectors General may
16 detail staff and resources to a Council of
17 Inspectors General Working Group estab-
18 lished under this subparagraph to enable it
19 to carry out its duties.

20 (iii) REPORTS.—Not later than 270

21 days after the appointment of the Federal
22 Deposit Insurance Corporation as receiver
23 for the financial company for which a
24 Council of Inspectors General Working
25 Group is convened under clause (i), such

1 Working Group shall submit to the pri-
2 mary financial regulatory agency and to
3 Congress a report that includes—

4 (I) the reasons for such financial
5 company's failure;

6 (II) the reasons for the Secretary
7 of the Treasury's appointment of the
8 Federal Deposit Insurance Corpora-
9 tion as receiver for such financial
10 company; and

11 (III) recommendations for pre-
12 venting future failures of financial
13 companies.

14 (b) RESPONSE TO REPORT BY OVERSIGHT COUN-
15 CIL.—The Oversight Council shall include in its annual
16 report under section 1006 responses to the concerns raised
17 in the report of the Council of Inspectors General under
18 subsection (a)(2)(B) for such year.

19 **Subtitle I—Miscellaneous**

20 **SEC. 1801. INCLUSION OF MINORITIES AND WOMEN; DIVER-** 21 **SITY IN AGENCY WORKFORCE.**

22 (a) OFFICE OF MINORITY AND WOMEN INCLU-
23 SION.—

24 (1) ESTABLISHMENT.—Not later than 180 days
25 following the enactment of this title, each agency

1 shall establish an Office of Minority and Women In-
2 clusion (hereinafter in this section referred to as the
3 “Office”) that shall advise the agency administrator
4 of the impact of policies and regulations of the agen-
5 cy on minority-owned and women-owned businesses,
6 and shall be responsible for all matters of the agency
7 relating to diversity in management, employment,
8 and business activities, including the coordination of
9 technical assistance, in accordance with such stand-
10 ards and requirements as the Director of the Office
11 shall establish.

12 (2) CONSOLIDATION.—Each agency that has
13 assigned these or comparable responsibilities to ex-
14 isting offices shall ensure that such responsibilities
15 are consolidated within the Office.

16 (b) DIRECTOR.—

17 (1) IN GENERAL.—For each Office, the Presi-
18 dent shall appoint, by and with the advice and con-
19 sent of the Senate, a Director of Minority and
20 Women Inclusion (hereinafter in this section re-
21 ferred to as the “Director”), who shall also hold a
22 title within such agency comparable to that of other
23 senior level staff who are, as applicable, either ap-
24 pointed by the President, by and with the advice and
25 consent of the Senate, or act in a managerial capac-

1 ity that requires reporting directly to the agency ad-
2 ministrator.

3 (2) DUTIES.—Each Director shall—

4 (A) ensure equal employment opportunity
5 and the racial, ethnic and gender diversity of
6 the agency’s workforce and senior management;

7 (B) increase the participation of minority-
8 owned and women-owned businesses in the pro-
9 grams and contracts of the agency;

10 (C) provide guidance to the agency admin-
11 istrator to ensure that the policies and regula-
12 tions of the agency strengthen minority-owned
13 and women-owned businesses; and

14 (D) conduct an assessment, as part of the
15 examination process for the entities regulated
16 or monitored by the agency of the diversity and
17 inclusion efforts by such entities.

18 (c) INCLUSION IN ALL LEVELS OF BUSINESS ACTIVI-
19 TIES.—

20 (1) IN GENERAL.—Each Director shall develop
21 and implement standards and procedures to ensure,
22 to the maximum extent possible, the inclusion and
23 utilization of minorities (as such term is defined in
24 section 1204(c) of the Financial Institutions Re-
25 form, Recovery, and Enforcement Act of 1989 (12

1 U.S.C. 1811 note)), women, and minority-owned and
2 women-owned businesses (as such terms are defined
3 in section 21A(r)(4) of the Federal Home Loan
4 Bank Act (12 U.S.C. 1441a(r)(4)) (including finan-
5 cial institutions, investment banking firms, mortgage
6 banking firms, asset management firms, broker-deal-
7 ers, financial services firms, underwriters, account-
8 ants, brokers, investment consultants, and providers
9 of legal services) in all business and activities of the
10 agency at all levels, including in procurement, insur-
11 ance, and all types of contracts (including, as appli-
12 cable, contracts for the issuance or guarantee of any
13 debt, equity, or security, the sale of assets, the man-
14 agement of its assets, the making of its equity in-
15 vestments, and the implementation of programs to
16 address economic recovery).

17 (2) CONTRACTS.—The processes established by
18 each agency for review and evaluation for contract
19 proposals and to hire service providers shall include
20 a component that gives consideration to the diversity
21 of the applicant.

22 (3) WRITTEN ASSURANCE.—All such contract
23 proposals, provided such proposals are of an amount
24 greater than \$50,000 and the contractor employs
25 more than 50 employees, shall include a written as-

1 surance, in a form and substance that the Director
2 shall prescribe, that the contractor shall ensure, to
3 the maximum extent possible, the inclusion of mi-
4 norities and women in its workforce and, as applica-
5 ble, by its subcontractors.

6 (4) TERMINATION.—A Director may terminate
7 any contract upon a finding that the contractor has
8 failed to make a good faith effort to comply with
9 paragraph (3), except that a contractor may appeal
10 such finding and termination to the agency adminis-
11 trator within a reasonable amount of time as deter-
12 mined by the Director.

13 (d) APPLICABILITY.—This section shall apply to all
14 contracts of an agency for services of any kind, including
15 services that require the services of investment banking,
16 asset management entities, broker-dealers, financial serv-
17 ices entities, underwriters, accountants, investment con-
18 sultants, and providers of legal services.

19 (e) REPORTS.—Not later than 90 days before the end
20 of each Federal fiscal year, each Director shall report to
21 the Congress detailed information describing the actions
22 taken by the agency and the Director pursuant to this sec-
23 tion, which shall—

24 (1) to the extent contracts exceed the contract
25 amount and employment levels established in sub-

1 section (c)(3), include a statement of the total
2 amounts paid by the agency to third party contrac-
3 tors since the last such report;

4 (2) the percentage of such amounts paid to
5 businesses described in subsection (c)(1);

6 (3) the successes achieved and challenges faced
7 by the agency in operating minority and women out-
8 reach programs;

9 (4) the challenges the agency may face in hiring
10 qualified minority and women employees and con-
11 tracting with qualified minority-owned and women-
12 owned businesses; and

13 (5) such other information, findings, conclu-
14 sions, and recommendations for legislative or agency
15 action, as the Director may determine to be appro-
16 priate to include in such report.

17 (f) DIVERSITY IN AGENCY WORKFORCE.—Each
18 agency shall take affirmative steps to seek diversity in its
19 workforce at all levels of the agency consistent with the
20 demographic diversity of the United States and the Fed-
21 eral government, which shall include—

22 (1) heavily recruiting at historically black col-
23 leges and universities, Hispanic-serving institutions,
24 women’s colleges, and colleges that typically serve
25 majority minority populations;

1 (2) sponsoring and recruiting at job fairs in
2 urban communities, and placing employment adver-
3 tisements in newspapers and magazines oriented to-
4 ward women and people of color;

5 (3) partnering with organizations that are fo-
6 cused on developing opportunities for minorities and
7 women to place talented young minorities and
8 women in industry internships, summer employment,
9 and full-time positions;

10 (4) where feasible, partnering with inner-city
11 high schools, girls' high schools, and high schools
12 with majority minority populations to establish or
13 enhance financial literacy programs and provide
14 mentoring; and

15 (5) such other mass media communications that
16 the Director determines are necessary.

17 (g) DEFINITIONS.—For purposes of this section:

18 (1) AGENCY.—The term “agency” means—

19 (A) the Department of the Treasury,

20 (B) the Federal Deposit Insurance Cor-
21 poration,

22 (C) the Federal Housing Finance Agency,

23 (D) each of the Federal reserve banks,

24 (E) the Board,

1 (F) the National Credit Union Administra-
2 tion,

3 (G) the Office of the Comptroller of the
4 Currency,

5 (H) the Office of Thrift Supervision,

6 (I) the Securities and Exchange Commis-
7 sion,

8 (J) the Federal department or agency that
9 the President has identified as the main depart-
10 ment or agency responsible for consumer finan-
11 cial protection,

12 (K) the Federal department or agency that
13 the President has identified as the main depart-
14 ment or agency responsible for insurance infor-
15 mation,

16 and any successors to such entities.

17 (2) AGENCY ADMINISTRATOR.—The term
18 “agency administrator” means the head of an agen-
19 cy.

20 **Subtitle J—International Policy** 21 **Coordination**

22 **SEC. 1901. INTERNATIONAL POLICY COORDINATION.**

23 The President of the United States, or a designee of
24 the President, shall coordinate through all available inter-
25 national policy channels similar policies as found in United

1 States law related to limiting the scope, nature, size, scale,
2 concentration, and interconnectedness of financial compa-
3 nies in order to protect financial stability and the global
4 economy.

5 **Subtitle K—International Financial** 6 **Provisions**

7 **SEC. 1951. ACCESS TO UNITED STATES FINANCIAL MARKET** 8 **BY FOREIGN INSTITUTIONS.**

9 (a) ESTABLISHMENT OF FOREIGN BANK OFFICES IN
10 THE UNITED STATES.—Subsection 7(d)(3) of the Inter-
11 national Banking Act of 1978 (U.S.C. 3105(d)(3)) is
12 amended—

13 (1) by striking “and” at the end of subpara-
14 graph (C);

15 (2) by striking the period at the end of sub-
16 paragraph (D) and inserting “; and”; and

17 (3) by adding at the end the following new sub-
18 paragraph:

19 “(E) for a foreign bank that presents a
20 systemic risk to the United States (as deter-
21 mined in accordance with section 1603 of the
22 Financial Stability Improvement Act of 2009),
23 whether the home country of the foreign bank
24 has adopted, or is making demonstrable
25 progress toward adopting, an appropriate sys-

1 tem of financial regulation for the financial sys-
2 tem of such home country to mitigate such sys-
3 temic risk.”.

4 (b) TERMINATION OF FOREIGN BANK OFFICES IN
5 THE UNITED STATES.—Subsection 7(e)(1) of the Inter-
6 national Banking Act of 1978 (U.S.C. 3105(e)(1)) is
7 amended—

8 (1) by striking “or” at the end of subparagraph
9 (A);

10 (2) by striking the period at the end of sub-
11 paragraph (B) and inserting “; or”; and

12 (3) by inserting after subparagraph (B), the
13 following new subparagraph:

14 “(C) for a foreign bank that presents a
15 systemic risk to the United States (as deter-
16 mined in accordance with section 1603 of the
17 Financial Stability Improvement Act of 2009),
18 the home country of the foreign bank has not
19 adopted or made demonstrable progress toward
20 adopting an appropriate system of financial reg-
21 ulation to mitigate such systemic risk.”.

22 (c) REGISTRATION OR SUCCESSION TO UNITED
23 STATES BROKERAGE OR DEALER AND TERMINATION OF
24 SUCH REGISTRATION.—Section 15 of the Securities Ex-

1 change Act of 1934 (15 U.S.C. 78o) is amended by adding
2 at the end the following new subsections:

3 “(k) REGISTRATION OR SUCCESSION TO A UNITED
4 STATES BROKER OR DEALER.—In determining whether
5 to permit a foreign person or an affiliate of a foreign per-
6 son to register as a United States broker or dealer, or
7 succeed to the registration of a United States broker or
8 dealer, the Securities and Exchange Commission may con-
9 sider whether, for a foreign person, or an affiliate of a
10 foreign person that presents a systemic risk to the United
11 States (as determined in accordance with section 1603 of
12 the Financial Stability Improvement Act of 2009), the
13 home country of the foreign person has adopted or made
14 demonstrable progress toward adopting an appropriate
15 system of financial regulation to mitigate such systemic
16 risk.

17 “(l) TERMINATION OF A UNITED STATES BROKER
18 OR DEALER.—For a foreign person or an affiliate of a
19 foreign person that presents such a systemic risk to the
20 United States, the Securities and Exchange Commission
21 may determine to terminate the registration of such for-
22 eign person or an affiliate of such foreign person as a
23 broker or dealer in the United States if the Commission
24 determines that the home country of the foreign person
25 has not adopted, or made demonstrable progress toward

1 adopting, an appropriate system of financial regulation to
2 mitigate such systemic risk.”.

3 **TITLE II—CORPORATE AND FI-**
4 **NANCIAL INSTITUTION COM-**
5 **PENSATION FAIRNESS ACT**

6 **SEC. 2001. SHORT TITLE.**

7 This title may be cited as the “Corporate and Finan-
8 cial Institution Compensation Fairness Act of 2009”.

9 **SEC. 2002. SHAREHOLDER VOTE ON EXECUTIVE COM-**
10 **PENSATION DISCLOSURES.**

11 Section 14 of the Securities Exchange Act of 1934
12 (15 U.S.C. 78n) is amended by adding at the end the fol-
13 lowing new subsection:

14 “(i) ANNUAL SHAREHOLDER APPROVAL OF EXECU-
15 TIVE COMPENSATION.—

16 “(1) ANNUAL VOTE.—Any proxy or consent or
17 authorization (the solicitation of which is subject to
18 the rules of the Commission pursuant to subsection
19 (a)) for an annual meeting of the shareholders to
20 elect directors (or a special meeting in lieu of such
21 meeting) where proxies are solicited in respect of
22 any security registered under section 12 occurring
23 on or after the date that is 6 months after the date
24 on which final rules are issued under paragraph (4),
25 shall provide for a separate shareholder vote to ap-

1 prove the compensation of executives as disclosed
2 pursuant to the Commission's compensation disclo-
3 sure rules for named executive officers (which disclo-
4 sure shall include the compensation committee re-
5 port, the compensation discussion and analysis, the
6 compensation tables, and any related materials, to
7 the extent required by such rules). The shareholder
8 vote shall not be binding on the issuer or the board
9 of directors and shall not be construed as overruling
10 a decision by such board, nor to create or imply any
11 additional fiduciary duty by such board, nor shall
12 such vote be construed to restrict or limit the ability
13 of shareholders to make proposals for inclusion in
14 such proxy materials related to executive compensa-
15 tion.

16 “(2) SHAREHOLDER APPROVAL OF GOLDEN
17 PARACHUTE COMPENSATION.—

18 “(A) DISCLOSURE.—In any proxy or con-
19 sent solicitation material (the solicitation of
20 which is subject to the rules of the Commission
21 pursuant to subsection (a)) for a meeting of the
22 shareholders occurring on or after the date that
23 is 6 months after the date on which final rules
24 are issued under paragraph (4), at which share-
25 holders are asked to approve an acquisition,

1 merger, consolidation, or proposed sale or other
2 disposition of all or substantially all the assets
3 of an issuer, the person making such solicita-
4 tion shall disclose in the proxy or consent solici-
5 tation material, in a clear and simple form in
6 accordance with regulations to be promulgated
7 by the Commission, any agreements or under-
8 standings that such person has with any named
9 executive officers of such issuer (or of the ac-
10 quiring issuer, if such issuer is not the acquir-
11 ing issuer) concerning any type of compensation
12 (whether present, deferred, or contingent) that
13 is based on or otherwise relates to the acquisi-
14 tion, merger, consolidation, sale, or other dis-
15 position of all or substantially all of the assets
16 of the issuer and the aggregate total of all such
17 compensation that may (and the conditions
18 upon which it may) be paid or become payable
19 to or on behalf of such executive officer.

20 “(B) SHAREHOLDER APPROVAL.—Any
21 proxy or consent or authorization relating to
22 the proxy or consent solicitation material con-
23 taining the disclosure required by subparagraph
24 (A) shall provide for a separate shareholder
25 vote to approve such agreements or under-

1 standings and compensation as disclosed, unless
2 such agreements or understandings have been
3 subject to a shareholder vote under paragraph
4 (1). A vote by the shareholders shall not be
5 binding on the issuer or the board of directors
6 of the issuer or the person making the solicita-
7 tion and shall not be construed as overruling a
8 decision by any such person or issuer, nor to
9 create or imply any additional fiduciary duty by
10 any such person or issuer.

11 “(3) DISCLOSURE OF VOTES.—Every institu-
12 tional investment manager subject to section 13(f)
13 shall report at least annually how it voted on any
14 shareholder vote pursuant to paragraphs (1) or (2)
15 of this section, unless such vote is otherwise required
16 to be reported publicly by rule or regulation of the
17 Commission.

18 “(4) RULEMAKING.—Not later than 6 months
19 after the date of the enactment of the Corporate and
20 Financial Institution Compensation Fairness Act of
21 2009, the Commission shall issue final rules to im-
22 plement this subsection.

23 “(5) EXEMPTION AUTHORITY.—The Commis-
24 sion may exempt certain categories of issuers from
25 the requirements of this subsection, where appro-

1 appropriate in view of the purpose of this subsection. In
 2 determining appropriate exemptions, the Commis-
 3 sion shall take into account, among other consider-
 4 ations, the potential impact on smaller reporting
 5 issuers.”.

6 **SEC. 2003. COMPENSATION COMMITTEE INDEPENDENCE.**

7 (a) STANDARDS RELATING TO COMPENSATION COM-
 8 MITTEES.—The Securities Exchange Act of 1934 (15
 9 U.S.C. 78a et seq.) is amended by inserting after section
 10 10A the following new section:

11 **“SEC. 10B. STANDARDS RELATING TO COMPENSATION COM-**
 12 **MITTEES.**

13 “(a) COMMISSION RULES.—

14 “(1) IN GENERAL.—Effective not later than 9
 15 months after the date of enactment of the Corporate
 16 and Financial Institution Compensation Fairness
 17 Act of 2009, the Commission shall, by rule, direct
 18 the national securities exchanges and national secu-
 19 rities associations to prohibit the listing of any class
 20 of equity security of an issuer that is not in compli-
 21 ance with the requirements of any portion of sub-
 22 sections (b) through (f).

23 “(2) OPPORTUNITY TO CURE DEFECTS.—The
 24 rules of the Commission under paragraph (1) shall
 25 provide for appropriate procedures for an issuer to

1 have an opportunity to cure any defects that would
2 be the basis for a prohibition under paragraph (1)
3 before the imposition of such prohibition.

4 “(3) EXEMPTION AUTHORITY.—The Commis-
5 sion may exempt certain categories of issuers from
6 the requirements of subsections (b) through (f),
7 where appropriate in view of the purpose of this sec-
8 tion. In determining appropriate exemptions, the
9 Commission shall take into account, among other
10 considerations, the potential impact on smaller re-
11 porting issuers.

12 “(b) INDEPENDENCE OF COMPENSATION COMMIT-
13 TEES.—

14 “(1) IN GENERAL.—Each member of the com-
15 pensation committee of the board of directors of the
16 issuer shall be independent.

17 “(2) CRITERIA.—In order to be considered to
18 be independent for purposes of this subsection, a
19 member of a compensation committee of an issuer
20 may not, other than in his or her capacity as a
21 member of the compensation committee, the board
22 of directors, or any other board committee accept
23 any consulting, advisory, or other compensatory fee
24 from the issuer.

1 “(3) EXEMPTION AUTHORITY.—The Commis-
2 sion may exempt from the requirements of para-
3 graph (2) a particular relationship with respect to
4 compensation committee members, where appro-
5 prium in view of the purpose of this section.

6 “(4) DEFINITION.—As used in this section, the
7 term ‘compensation committee’ means—

8 “(A) a committee (or equivalent body) es-
9 tablished by and amongst the board of directors
10 of an issuer for the purpose of determining and
11 approving the compensation arrangements for
12 the executive officers of the issuer; and

13 “(B) if no such committee exists with re-
14 spect to an issuer, the independent members of
15 the entire board of directors.

16 “(c) INDEPENDENCE STANDARDS FOR COMPENSA-
17 TION CONSULTANTS AND OTHER COMMITTEE ADVI-
18 SORS.—Any compensation consultant or other similar ad-
19 viser to the compensation committee of any issuer shall
20 meet standards for independence established by the Com-
21 mission by regulation.

22 “(d) COMPENSATION COMMITTEE AUTHORITY RE-
23 LATING TO COMPENSATION CONSULTANTS.—

24 “(1) IN GENERAL.—The compensation com-
25 mittee of each issuer, in its capacity as a committee

1 of the board of directors, shall have the authority,
2 in its sole discretion, to retain and obtain the advice
3 of a compensation consultant meeting the standards
4 for independence promulgated pursuant to sub-
5 section (c), and the compensation committee shall be
6 directly responsible for the appointment, compensa-
7 tion, and oversight of the work of such independent
8 compensation consultant. This provision shall not be
9 construed to require the compensation committee to
10 implement or act consistently with the advice or rec-
11 ommendations of the compensation consultant, and
12 shall not otherwise affect the compensation commit-
13 tee's ability or obligation to exercise its own judg-
14 ment in fulfillment of its duties.

15 “(2) DISCLOSURE.—In any proxy or consent
16 solicitation material for an annual meeting of the
17 shareholders (or a special meeting in lieu of the an-
18 nual meeting) occurring on or after the date that is
19 1 year after the date of enactment of the Corporate
20 and Financial Institution Compensation Fairness
21 Act of 2009, each issuer shall disclose in the proxy
22 or consent material, in accordance with regulations
23 to be promulgated by the Commission whether the
24 compensation committee of the issuer retained and
25 obtained the advice of a compensation consultant

1 meeting the standards for independence promulgated
2 pursuant to subsection (c).

3 “(3) REGULATIONS.—In promulgating regula-
4 tions under this subsection or any other provision of
5 law with respect to compensation consultants, the
6 Commission shall ensure that such regulations are
7 competitively neutral among categories of consult-
8 ants and preserve the ability of compensation com-
9 mittees to retain the services of members of any
10 such category.

11 “(e) AUTHORITY TO ENGAGE INDEPENDENT COUN-
12 SEL AND OTHER ADVISORS.—The compensation com-
13 mittee of each issuer, in its capacity as a committee of
14 the board of directors, shall have the authority, in its sole
15 discretion, to retain and obtain the advice of independent
16 counsel and other advisers meeting the standards for inde-
17 pendence promulgated pursuant to subsection (c), and the
18 compensation committee shall be directly responsible for
19 the appointment, compensation, and oversight of the work
20 of such independent counsel and other advisers. This pro-
21 vision shall not be construed to require the compensation
22 committee to implement or act consistently with the advice
23 or recommendations of such independent counsel and
24 other advisers, and shall not otherwise affect the com-

1 pension committee's ability or obligation to exercise its
2 own judgment in fulfillment of its duties.

3 “(f) FUNDING.—Each issuer shall provide for appro-
4 priate funding, as determined by the compensation com-
5 mittee, in its capacity as a committee of the board of direc-
6 tors, for payment of compensation—

7 “(1) to any compensation consultant to the
8 compensation committee that meets the standards
9 for independence promulgated pursuant to sub-
10 section (c), and

11 “(2) to any independent counsel or other ad-
12 viser to the compensation committee.”.

13 (b) STUDY AND REVIEW REQUIRED.—

14 (1) IN GENERAL.—The Securities and Ex-
15 change Commission shall conduct a study and review
16 of the use of compensation consultants meeting the
17 standards for independence promulgated pursuant to
18 section 10B(c) of the Securities Exchange Act of
19 1934 (as added by subsection (a)), and the effects
20 of such use.

21 (2) REPORT TO CONGRESS.—Not later than 2
22 years after the rules required by the amendment
23 made by this section take effect, the Commission
24 shall submit a report to the Congress on the results
25 of the study and review required by this paragraph.

1 **SEC. 2004. ENHANCED COMPENSATION STRUCTURE RE-**
2 **PORTING TO REDUCE PERVERSE INCEN-**
3 **TIVES.**

4 (a) ENHANCED DISCLOSURE AND REPORTING OF
5 COMPENSATION ARRANGEMENTS.—

6 (1) IN GENERAL.—Not later than 9 months
7 after the date of enactment of this title, the appro-
8 priate Federal regulators jointly shall prescribe regu-
9 lations to require each covered financial institution
10 to disclose to the appropriate Federal regulator the
11 structures of all incentive-based compensation ar-
12 rangements offered by such covered financial institu-
13 tions sufficient to determine whether the compensa-
14 tion structure—

15 (A) is aligned with sound risk manage-
16 ment;

17 (B) is structured to account for the time
18 horizon of risks; and

19 (C) meets such other criteria as the appro-
20 priate Federal regulators jointly may determine
21 to be appropriate to reduce unreasonable incen-
22 tives offered by such institutions for employees
23 to take undue risks that—

24 (i) could threaten the safety and
25 soundness of covered financial institutions;
26 or

1 (ii) could have serious adverse effects
2 on economic conditions or financial sta-
3 bility.

4 (2) RULES OF CONSTRUCTION.—Nothing in
5 this subsection shall be construed as requiring the
6 reporting of the actual compensation of particular
7 individuals. Nothing in this subsection shall be con-
8 strued to require a covered financial institution that
9 does not have an incentive-based payment arrange-
10 ment to make the disclosures required under this
11 subsection.

12 (b) PROHIBITION ON CERTAIN COMPENSATION AR-
13 RANGEMENTS.—Not later than 9 months after the date
14 of enactment of this title, and taking into account the fac-
15 tors described in subparagraphs (A), (B), and (C) of sub-
16 section (a)(1), the appropriate Federal regulators shall
17 jointly prescribe regulations that prohibit any incentive-
18 based payment arrangement, or any feature of any such
19 arrangement, that the regulators determine encourages in-
20 appropriate risks by covered financial institutions that—

21 (1) could threaten the safety and soundness of
22 covered financial institutions; or

23 (2) could have serious adverse effects on eco-
24 nomic conditions or financial stability.

1 (c) ENFORCEMENT.—The provisions of this section
2 shall be enforced under section 505 of the Gramm-Leach-
3 Bliley Act and, for purposes of such section, a violation
4 of this section shall be treated as a violation of subtitle
5 A of title V of such Act.

6 (d) DEFINITIONS.—As used in this section—

7 (1) the term “appropriate Federal regulator”
8 means—

9 (A) the Board of Governors of the Federal
10 Reserve System;

11 (B) the Office of the Comptroller of the
12 Currency;

13 (C) the Board of Directors of the Federal
14 Deposit Insurance Corporation;

15 (D) the Director of the Office of Thrift
16 Supervision;

17 (E) the National Credit Union Administra-
18 tion Board;

19 (F) the Securities and Exchange Commis-
20 sion; and

21 (G) the Federal Housing Finance Agency;

22 and

23 (2) the term “covered financial institution”
24 means—

1 (A) a depository institution or depository
2 institution holding company, as such terms are
3 defined in section 3 of the Federal Deposit In-
4 surance Act (12 U.S.C. 1813);

5 (B) a broker-dealer registered under sec-
6 tion 15 of the Securities Exchange Act of 1934
7 (15 U.S.C. 78o);

8 (C) a credit union, as described in section
9 19(b)(1)(A)(iv) of the Federal Reserve Act;

10 (D) an investment advisor, as such term is
11 defined in section 202(a)(11) of the Investment
12 Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11));

13 (E) the Federal National Mortgage Asso-
14 ciation;

15 (F) the Federal Home Loan Mortgage
16 Corporation; and

17 (G) any other financial institution that the
18 appropriate Federal regulators, jointly, by rule,
19 determine should be treated as a covered finan-
20 cial institution for purposes of this section.

21 (e) EXEMPTION FOR CERTAIN FINANCIAL INSTITU-
22 TIONS.—The requirements of this section shall not apply
23 to covered financial institutions with assets of less than
24 \$1,000,000,000.

1 (f) LIMITATION.—No regulation promulgated pursu-
2 ant to this section shall be allowed to require the recovery
3 of incentive-based compensation under compensation ar-
4 rangements in effect on the date of enactment of this title,
5 provided such compensation agreements are for a period
6 of no more than 24 months. Nothing in this title shall
7 prevent or limit the recovery of incentive-based compensa-
8 tion under any other applicable law.

9 (g) GAO STUDY.—

10 (1) STUDY REQUIRED.—

11 (A) IN GENERAL.—The Comptroller Gen-
12 eral of the United States shall carry out a
13 study to determine whether there is a correla-
14 tion between compensation structures and ex-
15 cessive risk taking.

16 (B) FACTORS TO CONSIDER.—In carrying
17 out the study required under subparagraph (A),
18 the Comptroller General shall—

19 (i) consider compensation structures
20 used by companies from 2000 to 2008; and

21 (ii) compare companies that failed, or
22 nearly failed but for government assist-
23 ance, to companies that remained viable
24 throughout the housing and credit market
25 crisis of 2007 and 2008, including the

1 compensation practices of all such compa-
2 nies.

3 (C) DETERMINING COMPANIES THAT
4 FAILED OR NEARLY FAILED.—In determining
5 whether a company failed, or nearly failed but
6 for government assistance, for purposes of sub-
7 paragraph (B)(ii), the Comptroller General
8 shall focus on—

9 (i) companies that received excep-
10 tional assistance under the Troubled Asset
11 Relief Program under title I of the Emer-
12 gency Economic Stabilization Act of 2009
13 (12 U.S.C. 5211 et seq.) or other forms of
14 significant government assistance, includ-
15 ing under the Automotive Industry Financ-
16 ing Program, the Targeted Investment
17 Program, the Asset Guarantee Program,
18 and the Systemically Significant Failing
19 Institutions Program;

20 (ii) the Federal National Mortgage
21 Association;

22 (iii) the Federal Home Loan Mort-
23 gage Corporation; and

24 (iv) companies that participated in the
25 Security and Exchange Commission’s Con-

1 solidated Supervised Entities Program as
2 of January 2008.

3 (2) REPORT.—Not later than the end of the 1-
4 year period beginning on the date of the enactment
5 of this title, the Comptroller General shall issue a re-
6 port to the Congress containing the results of the
7 study required under paragraph (1).

8 **TITLE III—OVER-THE-COUNTER**
9 **DERIVATIVES MARKETS ACT**

10 **SEC. 3001. SHORT TITLE.**

11 This title may be cited as the “Over-the-Counter De-
12 rivatives Markets Act of 2009”.

13 **Subtitle A—Regulation of Swap**
14 **Markets**

15 **SEC. 3101. DEFINITIONS.**

16 (a) AMENDMENTS TO DEFINITIONS IN THE COM-
17 MODITY EXCHANGE ACT.—Section 1a of the Commodity
18 Exchange Act (7 U.S.C. 1a) is amended—

19 (1) by redesignating paragraphs (9) through
20 (34) as paragraphs (10) through (35), respectively;

21 (2) by adding after paragraph (8) the following:

22 “(9) DERIVATIVE.—The term ‘derivative’
23 means—

24 “(A) a contract of sale of a commodity for
25 future delivery; or

1 “(B) a swap.”;

2 (3) by redesignating paragraph (35) (as redesi-
3 gnated by paragraph (1)) as paragraph (36);

4 (4) by adding after paragraph (34) (as redesi-
5 gnated by paragraph (1)) the following:

6 “(35) SWAP.—

7 “(A) IN GENERAL.—Except as provided in
8 subparagraph (B), the term ‘swap’ means any
9 agreement, contract, or transaction that—

10 “(i) is a put, call, cap, floor, collar, or
11 similar option of any kind for the purchase
12 or sale of, or based on the value of, one or
13 more interest or other rates, currencies,
14 commodities, securities, instruments of in-
15 debtedness, indices, quantitative measures,
16 or other financial or economic interests or
17 property of any kind;

18 “(ii) provides for any purchase, sale,
19 payment, or delivery (other than a dividend
20 on an equity security) that is dependent on
21 the occurrence, non-occurrence, or the ex-
22 tent of the occurrence of an event or con-
23 tingency associated with a potential finan-
24 cial, economic, or commercial consequence;

1 “(iii) provides on an executory basis
2 for the exchange, on a fixed or contingent
3 basis, of one or more payments based on
4 the value or level of one or more interest
5 or other rates, currencies, commodities, se-
6 curities, instruments of indebtedness, indi-
7 ces, quantitative measures, or other finan-
8 cial or economic interests or property of
9 any kind, or any interest therein or based
10 on the value thereof, and that transfers, as
11 between the parties to the transaction, in
12 whole or in part, the financial risk associ-
13 ated with a future change in any such
14 value or level without also conveying a cur-
15 rent or future direct or indirect ownership
16 interest in an asset (including any enter-
17 prise or investment pool) or liability that
18 incorporates the financial risk so trans-
19 ferred, including any agreement, contract,
20 or transaction commonly known as an in-
21 terest rate swap, a rate floor, rate cap,
22 rate collar, cross-currency rate swap, basis
23 swap, currency swap, total return swap,
24 equity index swap, equity swap, debt index
25 swap, debt swap, credit spread, credit de-

1 fault swap, credit swap, weather swap, en-
2 ergy swap, metal swap, agricultural swap,
3 emissions swap, or commodity swap;

4 “(iv) is an agreement, contract, or
5 transaction that is, or in the future be-
6 comes, commonly known to the trade as a
7 swap; or

8 “(v) is any combination or permuta-
9 tion of, or option on, any agreement, con-
10 tract, or transaction described in any of
11 clauses (i) through (iv).

12 “(B) EXCLUSIONS.—The term ‘swap’ does
13 not include:

14 “(i) any contract of sale of a com-
15 modity for future delivery or security fu-
16 tures product traded on or subject to the
17 rules of any board of trade designated as
18 a contract market under section 5 or 5f;

19 “(ii) any sale of a nonfinancial com-
20 modity for deferred shipment or delivery,
21 so long as such transaction is physically
22 settled;

23 “(iii) any put, call, straddle, option, or
24 privilege on any security, certificate of de-
25 posit, or group or index of securities, in-

1 cluding any interest therein or based on
2 the value thereof, that is subject to the Se-
3 curities Act of 1933 (15 U.S.C. 77a et
4 seq.) and the Securities Exchange Act of
5 1934 (15 U.S.C. 78a et seq.);

6 “(iv) any put, call, straddle, option, or
7 privilege relating to foreign currency en-
8 tered into on a national securities exchange
9 registered pursuant to section 6(a) of the
10 Securities Exchange Act of 1934 (15
11 U.S.C. 78f(a));

12 “(v) any agreement, contract, or
13 transaction providing for the purchase or
14 sale of one or more securities on a fixed
15 basis that is subject to the Securities Act
16 of 1933 (15 U.S.C. 77a et seq.) and the
17 Securities Exchange Act of 1934 (15
18 U.S.C. 78a et seq.);

19 “(vi) any agreement, contract, or
20 transaction providing for the purchase or
21 sale of one or more securities on a contin-
22 gent basis that is subject to the Securities
23 Act of 1933 (15 U.S.C. 77a et seq.) and
24 the Securities Exchange Act of 1934 (15
25 U.S.C. 78a et seq.), unless such agree-

1 ment, contract, or transaction predicates
2 such purchase or sale on the occurrence of
3 a bona fide contingency that might reason-
4 ably be expected to affect or be affected by
5 the creditworthiness of a party other than
6 a party to the agreement, contract, or
7 transaction;

8 “(vii) any note, bond, or evidence of
9 indebtedness that is a security as defined
10 in section 2(a)(1) of the Securities Act of
11 1933 (15 U.S.C. 77b(a)(1));

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)(11) of the Securities Act
18 of 1933) (15 U.S.C. 77b(a)(11)) by
19 the issuer of such security for the
20 purposes of raising capital, unless
21 such agreement, contract, or trans-
22 action is entered into to manage a
23 risk associated with capital raising;

24 “(ix) any foreign exchange swap;

25 “(x) any foreign exchange forward;

1 “(xi) any agreement, contract, or
2 transaction a counterparty of which is a
3 Federal Reserve bank or the United States
4 Government, or an agency of the United
5 States Government that is expressly
6 backed by the full faith and credit of the
7 United States; and

8 “(xii) any security-based swap, other
9 than a security-based swap as described in
10 paragraph (38)(C).

11 “(C) RULE OF CONSTRUCTION REGARDING
12 MASTER AGREEMENTS.—The term ‘swap’ shall
13 be construed to include a master agreement
14 that provides for an agreement, contract, or
15 transaction that is a swap pursuant to subpara-
16 graph (A), together with all supplements to any
17 such master agreement, without regard to
18 whether the master agreement contains an
19 agreement, contract, or transaction that is not
20 a swap pursuant to subparagraph (A), except
21 that the master agreement shall be considered
22 to be a swap only with respect to each agree-
23 ment, contract, or transaction under the master
24 agreement that is a swap pursuant to subpara-
25 graph (A).”;

1 (5) in paragraph (13) (as redesignated by para-
2 graph (1))—

3 (A) in subparagraph (A)—

4 (i) in clause (vii), by striking
5 “\$25,000,000” and inserting
6 “\$50,000,000”; and

7 (ii) in clause (xi), by striking “total
8 assets in an amount” and inserting
9 “amounts invested on a discretionary
10 basis”; and

11 (B) in subparagraph (C), by striking “de-
12 termines” and inserting “and the Securities and
13 Exchange Commission may jointly determine”;

14 (6) in paragraph (30) (as redesignated by para-
15 graph (1)), by—

16 (A) redesignating subparagraph (E) as
17 subparagraph (G);

18 (B) in subparagraph (D), by striking
19 “and”; and

20 (C) inserting after subparagraph (D) the
21 following:

22 “(E) a swap execution facility registered
23 under section 5h;

24 “(F) a swap repository; and”;

1 (7) by adding after paragraph (36) (as redesignig-
2 nated by paragraph (3)) the following:

3 “(37) BOARD.—The term ‘Board’ means the
4 Board of Governors of the Federal Reserve Sys-
5 tem.”;

6 (8) by adding after paragraph (37) the fol-
7 lowing:

8 “(38) SECURITY-BASED SWAP.—

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), the term ‘security-based
11 swap’ means any agreement, contract, or trans-
12 action that would be a swap under paragraph
13 (35) (without regard to paragraph
14 (35)(B)(xii)), and that—

15 “(i) is based on an index that is a
16 narrow-based security index, including any
17 interest therein or based on the value
18 thereof;

19 “(ii) is based on a single security or
20 loan, including any interest therein or
21 based on the value thereof; or

22 “(iii) is based on the occurrence, non-
23 occurrence, or extent of the occurrence of
24 an event relating to a single issuer of a se-
25 curity or the issuers of securities in a nar-

1 row-based security index, provided that
2 such event must directly affect the finan-
3 cial statements, financial condition, or fi-
4 nancial obligations of the issuer.

5 “(B) EXCLUSION.—The term ‘security-
6 based swap’ does not include any agreement,
7 contract, or transaction that meets the defini-
8 tion of security-based swap only because it ref-
9 erences or is based upon a government security.

10 “(C) MIXED SWAP.—The term ‘security-
11 based swap’ includes any agreement, contract,
12 or transaction that is as described in subpara-
13 graph (A) and also is based on the value of one
14 or more interest or other rates, currencies, com-
15 modities, instruments of indebtedness, indices,
16 quantitative measures, other financial or eco-
17 nomic interest or property of any kind (other
18 than a single security or a narrow-based secu-
19 rity index), or the occurrence, non-occurrence,
20 or the extent of the occurrence of an event or
21 contingency associated with a potential finan-
22 cial, economic, or commercial consequence
23 (other than an event described in subparagraph
24 (A)(iii)).

1 “(D) RULE OF CONSTRUCTION REGARDING
2 MASTER AGREEMENTS.—The term ‘security-
3 based swap’ shall be construed to include a
4 master agreement that provides for an agree-
5 ment, contract, or transaction that is a secu-
6 rity-based swap pursuant to subparagraph (A),
7 together with all supplements to any such mas-
8 ter agreement, without regard to whether the
9 master agreement contains an agreement, con-
10 tract, or transaction that is not a security-based
11 swap pursuant to subparagraph (A), except
12 that the master agreement shall be considered
13 to be a security-based swap only with respect to
14 each agreement, contract, or transaction under
15 the master agreement that is a security-based
16 swap pursuant to subparagraph (A).”;

17 (9) by adding after paragraph (38) the fol-
18 lowing:

19 “(39) SWAP DEALER.—

20 “(A) IN GENERAL.—The term ‘swap deal-
21 er’ means any person engaged in the business
22 of buying and selling swaps for such person’s
23 own account, through a broker or otherwise.

24 “(B) EXCEPTION.—The term ‘swap dealer’
25 does not include a person that buys or sells

1 swaps for such person's own account, either in-
2 dividually or in a fiduciary capacity, but not as
3 a part of a regular business.”;

4 (10) by adding after paragraph (39) the fol-
5 lowing:

6 “(40) MAJOR SWAP PARTICIPANT.—

7 “(A) IN GENERAL.—The term ‘major swap
8 participant’ means any person who is not a
9 swap dealer and—

10 “(i) who maintains a substantial net
11 position in outstanding swaps, excluding
12 positions held primarily for hedging, reduc-
13 ing, or otherwise mitigating commercial
14 risk; or

15 “(ii) whose outstanding swaps create
16 substantial net counterparty exposure (cur-
17 rent and potential future) that would ex-
18 pose counterparties to significant credit
19 losses that could have a material adverse
20 effect on capital of the counterparties.

21 “(B) DEFINITIONS.—The Commission and
22 the Securities and Exchange Commission shall
23 jointly define by rule or regulation the term
24 ‘substantial net position’ and ‘substantial net
25 counterparty exposure’ at a threshold that the

1 Commissions determine prudent for the effec-
2 tive monitoring of, management and oversight
3 of the financial system. In the event the Com-
4 missions are unable to agree upon a level within
5 60 days of the commencement of such consulta-
6 tions, the Secretary of the Treasury shall make
7 such determination, which shall be binding on
8 and adopted by such Commissions.

9 “(41) MAJOR SECURITY-BASED SWAP PARTICI-
10 PANT.—

11 “(A) IN GENERAL.—The term ‘major secu-
12 rity-based swap participant’ means any person
13 who is not a swap dealer and—

14 “(i) who maintains a substantial net
15 position in outstanding security-based
16 swaps, excluding positions held primarily
17 for hedging, reducing, or otherwise miti-
18 gating commercial risk; or

19 “(ii) whose outstanding security-based
20 swaps create substantial net counterparty
21 exposure (current and potential future)
22 that would expose counterparties to signifi-
23 cant credit losses that could have a mate-
24 rial adverse effect on capital of the
25 counterparties.

1 “(B) DEFINITIONS.—The Commission and
2 the Securities and Exchange Commission shall
3 jointly define by rule or regulation the term
4 ‘substantial net position’ and ‘substantial net
5 counterparty exposure’ at a threshold that the
6 Commissions determine prudent for the effective
7 monitoring of, management and oversight
8 of the financial system. In the event the Com-
9 missions are unable to agree upon a level within
10 60 days of the commencement of such consulta-
11 tions, the Secretary of the Treasury shall make
12 such determination, which shall be binding on
13 and adopted by such Commissions.”;

14 (11) by adding after paragraph (41) the fol-
15 lowing:

16 “(42) APPROPRIATE FEDERAL BANKING AGEN-
17 CY.—The term ‘appropriate Federal banking agency’
18 has the same meaning as in section 3(q) of the Fed-
19 eral Deposit Insurance Act (12 U.S.C. 1813(q)).”;

20 (12) by adding after paragraph (42) the fol-
21 lowing:

22 “(43) PRUDENTIAL REGULATOR.—The term
23 ‘Prudential Regulator’ means—

24 “(A) the Board in the case of a swap deal-
25 er, major swap participant, security-based swap

1 dealer or major security-based swap participant
2 that is—

3 “(i) a State-chartered bank that is a
4 member of the Federal Reserve System; or

5 “(ii) a State-chartered branch or
6 agency of a foreign bank;

7 “(B) the Office of the Comptroller of the
8 Currency in the case of a swap dealer, major
9 swap participant, security-based swap dealer or
10 major security-based swap participant that is—

11 “(i) a national bank; or

12 “(ii) a federally chartered branch or
13 agency of a foreign bank; and

14 “(C) the Federal Deposit Insurance Cor-
15 poration in the case of a swap dealer, major
16 swap participant, security-based swap dealer or
17 major security-based swap participant that is a
18 State-chartered bank that is not a member of
19 the Federal Reserve System.”;

20 (13) by adding after paragraph (43) the fol-
21 lowing:

22 “(44) SECURITY-BASED SWAP DEALER.—

23 “(A) IN GENERAL.—The term ‘security-
24 based swap dealer’ means any person engaged
25 in the business of buying and selling security-

1 based swaps for such person's own account,
2 through a broker or otherwise.

3 “(B) EXCEPTION.—The term ‘security-
4 based swap dealer’ does not include a person
5 that buys or sells security-based swaps for such
6 person's own account, either individually or in
7 a fiduciary capacity, but not as a part of a reg-
8 ular business.”;

9 (14) by adding after paragraph (44) the fol-
10 lowing:

11 “(45) GOVERNMENT SECURITY.—The term
12 ‘government security’ has the same meaning as in
13 section 3(a)(42) of the Securities Exchange Act of
14 1934 (15 U.S.C. 78c(a)(42)).”;

15 (15) by adding after paragraph (45) the fol-
16 lowing:

17 “(46) FOREIGN EXCHANGE FORWARD.—The
18 term ‘foreign exchange forward’ means a transaction
19 that solely involves the exchange of 2 different cur-
20 rencies on a specific future date at a fixed rate
21 agreed at the inception of the contract.”;

22 (16) by adding after paragraph (46) the fol-
23 lowing:

24 “(47) FOREIGN EXCHANGE SWAP.—The term
25 ‘foreign exchange swap’ means a transaction that

1 solely involves the exchange of 2 different currencies
2 on a specific date at a fixed rate agreed at the incep-
3 tion of the contract, and a reverse exchange of the
4 same 2 currencies at a date further in the future
5 and at a fixed rate agreed at the inception of the
6 contract.”;

7 (17) by adding after paragraph (47) the fol-
8 lowing:

9 “(48) PERSON ASSOCIATED WITH A SECURITY-
10 BASED SWAP DEALER OR MAJOR SECURITY-BASED
11 SWAP PARTICIPANT.—The term ‘person associated
12 with a security-based swap dealer or major security-
13 based swap participant’ or ‘associated person of a
14 security-based swap dealer or major security-based
15 swap participant’ means any partner, officer, direc-
16 tor, or branch manager of such security-based swap
17 dealer or major security-based swap participant (or
18 any person occupying a similar status or performing
19 similar functions), any person directly or indirectly
20 controlling, controlled by, or under common control
21 with such security-based swap dealer or major secu-
22 rity-based swap participant, or any employee of such
23 security-based swap dealer or major security-based
24 swap participant, except that any person associated
25 with a security-based swap dealer or major security-

1 based swap participant whose functions are solely
2 clerical or ministerial shall not be included in the
3 meaning of such term other than for purposes of
4 section 15F(e)(2) of the Securities Exchange Act of
5 1934 (15 U.S.C. 78o–10).”;

6 (18) by adding after paragraph (48) the fol-
7 lowing:

8 “(49) PERSON ASSOCIATED WITH A SWAP
9 DEALER OR MAJOR SWAP PARTICIPANT.—The term
10 ‘person associated with a swap dealer or major swap
11 participant’ or ‘associated person of a swap dealer or
12 major swap participant’ means any partner, officer,
13 director, or branch manager of such swap dealer or
14 major swap participant (or any person occupying a
15 similar status or performing similar functions), any
16 person directly or indirectly controlling, controlled
17 by, or under common control with such swap dealer
18 or major swap participant, or any employee of such
19 swap dealer or major swap participant, except that
20 any person associated with a swap dealer or major
21 swap participant whose functions are solely clerical
22 or ministerial shall not be included in the meaning
23 of such term other than for purposes of section
24 4s(b)(6).”;

1 (19) by adding after paragraph (49) the fol-
2 lowing:

3 “(50) SWAP REPOSITORY.—The term ‘swap re-
4 pository’ means an entity that collects and maintains
5 the records of the terms and conditions of swaps or
6 security-based swaps entered into by third parties.

7 “(51) RESTRICTED OWNER.—The term ‘re-
8 stricted owner’ means any swap dealer, security-
9 based swap dealer, major swap participant, major
10 security-based swap participant, person associated
11 with a swap dealer or major swap participant, or
12 person associated with a security-based swap dealer
13 or major security-based swap participant.”.

14 (b) JOINT RULEMAKING ON FURTHER DEFINITION
15 OF TERMS.—

16 (1) IN GENERAL.—The Commodity Futures
17 Trading Commission and the Securities and Ex-
18 change Commission shall jointly adopt a rule further
19 defining the terms “swap”, “security-based swap”,
20 “swap dealer”, “security-based swap dealer”, “major
21 swap participant”, “major security-based swap par-
22 ticipant”, and “eligible contract participant” no
23 later than 180 days after the effective date of this
24 title.

1 (2) PREVENTION OF EVASIONS.—The Com-
2 modity Futures Trading Commission and the Securi-
3 ties and Exchange Commission may prescribe rules
4 defining the term “swap” or “security-based swap”
5 to include transactions that have been structured to
6 evade this title.

7 (c) JOINT RULEMAKING UNDER THIS TITLE.—

8 (1) UNIFORM RULES.—Rules and regulations
9 prescribed jointly under this title by the Commodity
10 Futures Trading Commission and the Securities and
11 Exchange Commission shall be uniform.

12 (2) TREASURY DEPARTMENT.—In the event
13 that the Commodity Futures Trading Commission
14 and the Securities and Exchange Commission fail to
15 jointly prescribe uniform rules and regulations under
16 any provision of this title in a timely manner, the
17 Secretary of the Treasury, in consultation with the
18 Commodity Futures Trading Commission and the
19 Securities and Exchange Commission, shall prescribe
20 rules and regulations under such provision. A rule
21 prescribed by the Secretary of the Treasury shall be
22 enforced as if prescribed jointly by the Commodity
23 Futures Trading Commission and the Securities and
24 Exchange Commission and shall remain in effect
25 until the Secretary rescinds the rule or until the ef-

1 fective date of a corresponding rule prescribed joint-
2 ly by the Commodity Futures Trading Commission
3 and the Securities and Exchange Commission in ac-
4 cordance with this section, whichever is later.

5 (3) DEADLINE.—The Secretary of the Treasury
6 shall adopt rules and regulations under paragraph
7 (2) within 180 days of the time that the Commodity
8 Futures Trading Commission and the Securities and
9 Exchange Commission failed to adopt uniform rules
10 and regulations.

11 (4) TREATMENT OF SIMILAR PRODUCTS.—In
12 adopting joint rules and regulations under this title,
13 the Commodity Futures Trading Commission and
14 the Securities and Exchange Commission shall pre-
15 scribe requirements to treat functionally or economi-
16 cally similar products similarly.

17 (5) TREATMENT OF DISSIMILAR PRODUCTS.—
18 Nothing in this title shall be construed to require
19 the Commodity Futures Trading Commission and
20 the Securities and Exchange Commission to adopt
21 joint rules that treat functionally or economically
22 different products identically.

23 (6) JOINT INTERPRETATION.—Any interpreta-
24 tion of, or guidance regarding, a provision of this
25 title, shall be effective only if issued jointly by the

1 Commodity Futures Trading Commission and the
2 Securities and Exchange Commission if this title re-
3 quires the Commodity Futures Trading Commission
4 and the Securities and Exchange Commission to
5 issue joint regulations to implement the provision.

6 **SEC. 3102. JURISDICTION.**

7 (a) **EXCLUSIVE JURISDICTION.**—The first sentence
8 of section 2(a)(1)(A) of the Commodity Exchange Act (7
9 U.S.C. 2(a)(1)(A)) is amended—

10 (1) by striking “(C) and (D)” and inserting
11 “(C), (D), and (G)”;

12 (2) by striking “subsections (e) through (i)”
13 and inserting “subsections (c) and (f)”;

14 (3) by striking “involving contracts of sale” and
15 inserting “involving swaps or contracts of sale”.

16 (b) **NO LIMITATION.**—Section 2(a)(1) of the Com-
17 modity Exchange Act (7 U.S.C. 2(a)(1)) is amended by
18 inserting after subparagraph (F) the following:

19 “(G) Nothing contained in this paragraph
20 shall supersede or limit the jurisdiction con-
21 ferred on the Securities and Exchange Commis-
22 sion or other regulatory authority by, or other-
23 wise restrict the authority of the Securities and
24 Exchange Commission or other regulatory au-
25 thority under, the Over-the-Counter Derivatives

1 Markets Act of 2009, including with respect to
2 a security-based swap as described in section
3 1a(38)(C) of this Act.”.

4 (c) ADDITIONS.—Section 2(e)(2)(A) of the Com-
5 modity Exchange Act (7 U.S.C. 2(e)(2)(A)) is amended—

6 (1) in clause (i), by striking “or” at the end;

7 (2) by redesignating clause (ii) as clause (iii);

8 and

9 (3) by inserting after clause (i) the following:

10 “(ii) a swap; or”.

11 **SEC. 3103. CLEARING.**

12 (a) CLEARING REQUIREMENT.—

13 (1) Sections 2(d), 2(e), 2(g), and 2(h) of the
14 Commodity Exchange Act (7 U.S.C. 2(d), 2(e), 2(g),
15 and 2(h)) are repealed.

16 (2) Section 2 of the Commodity Exchange Act
17 (7 U.S.C. 2) is further amended by inserting after
18 subsection (c) the following:

19 “(d) SWAPS.—Nothing in this Act (other than sub-
20 sections (a)(1)(A), (a)(1)(B), (f), and (j), sections 4a, 4b,
21 4b-1, 4c(a), 4c(b), 4o, 4r, 4s, 4t, 4u, 5b, 5c, 5h, 6(c), 6(d),
22 6e, 6d, 8, 8a, 9, 12(e)(2), 12(f), 13(a), 13(b), 21, and
23 22(a)(4) and such other provisions of this Act as are appli-
24 cable by their terms to registered entities and Commission
25 registrants) governs or applies to a swap.

1 “(e) LIMITATION ON PARTICIPATION.—It shall be
2 unlawful for any person, other than an eligible contract
3 participant, to enter into a swap unless the swap is en-
4 tered into on or subject to the rules of a board of trade
5 designated as a contract market under section 5.”.

6 (3) Section 2 of the Commodity Exchange Act
7 (7 U.S.C. 2) is further amended by inserting after
8 subsection (i) the following:

9 “(j) CLEARING OF SWAPS.—

10 “(1) IN GENERAL.—

11 “(A) PRESUMPTION OF CLEARING.—A
12 swap shall be submitted for clearing if a deriva-
13 tives clearing organization that is registered
14 under this Act will accept the swap for clearing.

15 “(B) OPEN ACCESS.—The rules of a de-
16 rivatives clearing organization described in sub-
17 paragraph (A) shall—

18 “(i) prescribe that all swaps submitted
19 to the derivatives clearing organization
20 with the same terms and conditions are
21 economically equivalent and may be offset
22 with each other within the derivatives
23 clearing organization; and

24 “(ii) provide for non-discriminatory
25 clearing of a swap executed on or through

1 the rules of an unaffiliated designated con-
2 tract market or swap execution facility.

3 “(2) COMMISSION APPROVAL.—

4 “(A) IN GENERAL.—A derivatives clearing
5 organization shall submit to the Commission for
6 prior approval each swap, or any group, cat-
7 egory, type, or class of swaps, that it seeks to
8 accept for clearing, which submission the Com-
9 mission shall make available to the public.

10 “(B) DEADLINE.—The Commission shall
11 take final action on a request submitted pursu-
12 ant to subparagraph (A) not later than 90 days
13 after submission of the request, unless the de-
14 rivatives clearing organization submitting the
15 request agrees to an extension of the time limi-
16 tation established under this subparagraph. A
17 request on which the Commission fails to take
18 final action within the time limitation estab-
19 lished under this subparagraph is deemed ap-
20 proved.

21 “(C) APPROVAL.—The Commission shall
22 approve, unconditionally or subject to such
23 terms and conditions as the Commission deter-
24 mines to be appropriate, any request submitted
25 pursuant to subparagraph (A) if the Commis-

1 sion finds that the request is consistent with
2 section 5b(c)(2).

3 “(D) RULES.—Not later than 180 days
4 after the date of the enactment of the Over-the-
5 Counter Derivatives Markets Act of 2009, the
6 Commission shall adopt rules for a derivatives
7 clearing organization’s submission for approval,
8 pursuant to this paragraph, of a swap, or a
9 group, category, type or class of swaps, that it
10 seeks to accept for clearing.

11 “(3) STAY OF CLEARING REQUIREMENT.—At
12 any time after issuance of an approval pursuant to
13 paragraph (2):

14 “(A) REVIEW PROCESS.—The Commission,
15 on application of a counterparty to a swap or
16 on its own initiative, may stay the clearing re-
17 quirement of paragraph (1) until the Commis-
18 sion completes a review of the terms of the
19 swap (or the group, category, type, or class of
20 swaps) and the clearing arrangement.

21 “(B) DEADLINE.—The Commission shall
22 complete a review undertaken pursuant to sub-
23 paragraph (A) not later than 90 days after
24 issuance of the stay, unless the derivatives
25 clearing organization that clears the swap, or

1 group, category, type or class of swaps, agrees
2 to an extension of the time limitation estab-
3 lished under this subparagraph.

4 “(C) DETERMINATION.—Upon completion
5 of the review undertaken pursuant to subpara-
6 graph (A), the Commission may—

7 “(i) determine, unconditionally or sub-
8 ject to such terms and conditions as the
9 Commission determines to be appropriate,
10 that the swap, or group, category, type, or
11 class of swaps, must be cleared pursuant
12 to this subsection if it finds that such
13 clearing is consistent with section 5b(c)(2);
14 or

15 “(ii) determine that the clearing re-
16 quirement of paragraph (1) shall not apply
17 to the swap, or group, category, type, or
18 class of swaps.

19 “(D) RULES.—Not later than 180 days
20 after the date of the enactment of the Over-the-
21 Counter Derivatives Markets Act of 2009, the
22 Commission shall adopt rules for reviewing,
23 pursuant to this paragraph, a derivatives clear-
24 ing organization’s clearing of a swap, or a

1 group, category, type, or class of swaps, that it
2 has accepted for clearing.

3 “(4) PREVENTION OF EVASION.—The Commis-
4 sion and the Securities and Exchange Commission
5 shall have authority to prescribe rules under this
6 subsection, or issue interpretations of such rules, as
7 necessary to prevent evasions of this Act provided
8 that any such rules or interpretations must be issued
9 jointly to be effective.

10 “(5) REQUIRED REPORTING.—

11 “(A) IN GENERAL.—All swap transactions
12 that are not accepted for clearing by any de-
13 rivatives clearing organization shall be reported
14 to either a swap repository described in section
15 21 or, if there is no repository that would ac-
16 cept the swap, to the Commission pursuant to
17 section 4r within such time period as the Com-
18 mission may by rule or regulation prescribe.

19 “(B) AUTHORITY OF SWAP DEALER TO RE-
20 PORT.—Counterparties may agree which
21 counterparty will report the swap transaction.
22 In transactions where only 1 counterparty is a
23 swap dealer, the swap dealer will report the
24 transaction.

1 “(6) TRANSITION RULES.—Rules adopted by
2 the Commission under this section shall provide for
3 the reporting of data, as follows:

4 “(A) Swaps that were entered into before
5 the date of enactment of the Over-the-Counter
6 Derivatives Markets Act of 2009 shall be re-
7 ported to a registered swap repository or the
8 Commission no later than 180 days after the
9 effective date of the Over-the-Counter Deriva-
10 tives Markets Act of 2009.

11 “(B) Swaps that were entered into on or
12 after the date of enactment of the Over-the-
13 Counter Derivatives Markets Act of 2009 shall
14 be reported to a registered swap repository or
15 the Commission no later than the later of—

16 “(i) 90 days after the effective date of
17 the Over-the-Counter Derivatives Markets
18 Act of 2009; or

19 “(ii) such other time after entering
20 into the swap as the Commission may pre-
21 scribe by rule or regulation.

22 “(7) TRADE EXECUTION.—

23 “(A) IN GENERAL.—With respect to trans-
24 actions involving swaps subject to the clearing
25 requirement of paragraph (1) and where both

1 counterparty are either swap dealers or major
2 swap participants, such counterparty shall—

3 “(i) execute the transaction on a
4 board of trade designated as a contract
5 market under section 5; or

6 “(ii) execute the transaction on a
7 swap execution facility registered with the
8 Commission.

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.

13 “(C) REQUIRED REPORTING.—If the ex-
14 ception of subparagraph (B) applies and there
15 is no facility that makes the swap available to
16 trade, the counterparty shall comply with any
17 recordkeeping and transaction reporting re-
18 quirements as may be prescribed by the Com-
19 mission with respect to swaps subject to the re-
20 quirements of paragraph (1).

21 “(8) EXCHANGE TRADING.—In adopting rules
22 and regulations, the Commission shall endeavor to
23 eliminate unnecessary impediments to the trading on
24 boards of trade designated as contract markets
25 under section 5 of contracts, agreements or trans-

1 actions that would be security-based swaps but for
2 the trading of such contracts, agreements or trans-
3 actions on such a designated contract market.

4 “(9) EXCEPTIONS.—The requirements of para-
5 graph (1) shall not apply to a swap if—

6 “(A) no derivatives clearing organization
7 registered under this Act will accept the swap
8 for clearing; or

9 “(B) one of the counterparties to the swap
10 is not a swap dealer or major swap participant.

11 “(10) EXCLUSION.—Paragraph (1) shall not
12 apply to a swap 1 party to which is not a swap deal-
13 er or major swap participant, and which is entered
14 into before the end of the 90-day period that begins
15 with the effective date of this paragraph.”.

16 (b) DERIVATIVES CLEARING ORGANIZATIONS.—

17 (1) Subsections (a) and (b) of section 5b of the
18 Commodity Exchange Act (7 U.S.C. 7a-1) are
19 amended to read as follows:

20 “(a) REGISTRATION REQUIREMENT.—It shall be un-
21 lawful for a derivatives clearing organization, unless reg-
22 istered with the Commission, directly or indirectly to make
23 use of the mails or any means or instrumentality of inter-
24 state commerce to perform the functions of a derivatives

1 clearing organization described in section 1a(10) of this
2 Act with respect to—

3 “(1) a contract of sale of a commodity for fu-
4 ture delivery (or option on such a contract) or option
5 on a commodity, in each case unless the contract or
6 option is—

7 “(A) excluded from this Act by section
8 2(a)(1)(C)(i), 2(c), or 2(f); or

9 “(B) a security futures product cleared by
10 a clearing agency registered with the Securities
11 and Exchange Commission under the Securities
12 Exchange Act of 1934 (15 U.S.C. 78a et seq.);
13 or

14 “(2) a swap.

15 “(b) VOLUNTARY REGISTRATION.—

16 “(1) DERIVATIVES CLEARING ORGANIZA-
17 TIONS.—A person that clears agreements, contracts,
18 or transactions that are not required to be cleared
19 under this Act may register with the Commission as
20 a derivatives clearing organization.

21 “(2) CLEARING AGENCIES.—A derivatives clear-
22 ing organization may clear security-based swaps that
23 are required to be cleared by a person who is reg-
24 istered as a clearing agency under the Securities Ex-
25 change Act of 1934 (15 U.S.C. 78a et seq.).”.

1 (2) Section 5b of the Commodity Exchange Act
2 (7 U.S.C. 7a–1) is amended by adding at the end
3 the following:

4 “(g) REQUIRED REGISTRATION FOR BANKS AND
5 CLEARING AGENCIES.—A person that is required to be
6 registered as a derivatives clearing organization under this
7 section shall register with the Commission regardless of
8 whether the person is also a bank or a clearing agency
9 registered with the Securities and Exchange Commission
10 under the Securities Exchange Act of 1934 (15 U.S.C.
11 78a et seq.).

12 “(h) HARMONIZATION OF RULES.—Not later than
13 180 days after the effective date of the Over-the-Counter
14 Derivatives Markets Act of 2009, the Commission and the
15 Securities and Exchange Commission shall jointly adopt
16 uniform rules governing persons that are registered as de-
17 rivatives clearing organizations for swaps under this sub-
18 section and persons that are registered as clearing agen-
19 cies for security-based swaps under the Securities Ex-
20 change Act of 1934 (15 U.S.C. 78a et seq.).

21 “(i) CONSULTATION.—The Commission and the Se-
22 curities and Exchange Commission shall consult with the
23 appropriate Federal banking agencies prior to adopting
24 rules under this section with respect to swaps.

1 “(j) EXEMPTIONS.—The Commission may exempt,
2 conditionally or unconditionally, a derivatives clearing or-
3 ganization from registration under this section for the
4 clearing of swaps if the Commission finds that such de-
5 rivatives clearing organization is subject to comparable,
6 comprehensive supervision and regulation on a consoli-
7 dated basis by the Securities and Exchange Commission,
8 a Prudential Regulator or the appropriate governmental
9 authorities in the organization’s home country.

10 “(k) DESIGNATION OF COMPLIANCE OFFICER.—

11 “(1) IN GENERAL.—Each derivatives clearing
12 organization shall designate an individual to serve as
13 a compliance officer.

14 “(2) DUTIES.—The compliance officer—

15 “(A) shall report directly to the board or
16 to the senior officer of the derivatives clearing
17 organization;

18 “(B) shall—

19 “(i) review compliance with the core
20 principles in section 5b(c)(2);

21 “(ii) in consultation with the board of
22 the derivatives clearing organization, a
23 body performing a function similar to that
24 of a board, or the senior officer of the de-

1 derivatives clearing organization, resolve any
2 conflicts of interest that may arise;

3 “(iii) be responsible for administering
4 the policies and procedures required to be
5 established pursuant to this section; and

6 “(iv) ensure compliance with com-
7 modity laws and the rules and regulations
8 issued thereunder, including rules pre-
9 scribed by the Commission pursuant to
10 this section; and

11 “(C) shall establish procedures for remedi-
12 ation of noncompliance issues found during
13 compliance office reviews, lookbacks, internal or
14 external audit findings, self-reported errors, or
15 through validated complaints. Procedures will
16 establish the handling, management response,
17 remediation, retesting, and closing of non-
18 compliant issues.

19 “(3) ANNUAL REPORTS REQUIRED.—The com-
20 pliance officer shall annually prepare and sign a re-
21 port on the compliance of the derivatives clearing or-
22 ganization with the commodity laws and its policies
23 and procedures, including its code of ethics and con-
24 flict of interest policies, in accordance with rules pre-
25 scribed by the Commission. Such compliance report

1 shall accompany the financial reports of the deriva-
2 tives clearing organization that are required to be
3 furnished to the Commission pursuant to this sec-
4 tion and shall include a certification that, under pen-
5 alty of law, the report is accurate and complete.”.

6 (3) Section 5b(c)(2) of the Commodity Ex-
7 change Act (7 U.S.C. 7a–1(c)(2)) is amended to
8 read as follows:

9 “(2) CORE PRINCIPLES FOR DERIVATIVES
10 CLEARING ORGANIZATIONS.—To be registered and to
11 maintain registration as a derivatives clearing orga-
12 nization, a derivatives clearing organization shall
13 comply with the core principles specified in subpara-
14 graphs (B) through (N) this paragraph. The Com-
15 mission may conform the core principles to reflect
16 evolving United States and international stand-
17 ards.”.

18 (4) Section 5b of the Commodity Exchange Act
19 (7 U.S.C. 7a–1) is further amended by adding after
20 subsection (k), as added by paragraph (2), the fol-
21 lowing:

22 “(1) REPORTING.—

23 “(1) IN GENERAL.—A derivatives clearing orga-
24 nization that clears swaps shall provide to the Com-
25 mission and any designated swap repository all in-

1 formation determined by the Commission to be nec-
2 essary to perform its responsibilities under this Act.
3 The Commission shall adopt data collection and
4 maintenance requirements for swaps cleared by de-
5 rivatives clearing organizations that are comparable
6 to the corresponding requirements for swaps accept-
7 ed by swap repositories and swaps traded on swap
8 execution facilities. A derivatives clearing organiza-
9 tion that clears security-based swap agreements (as
10 defined in section 3(a)(76) of the Securities Ex-
11 change Act of 1934) shall, upon request, make avail-
12 able to the Securities and Exchange Commission all
13 information (including information on a real-time
14 basis) relating to such security-based swap agree-
15 ments. Subject to section 8, the Commission shall
16 share such information, upon request, with the
17 Board, the Securities and Exchange Commission
18 (with respect to swaps other than security-based
19 swap agreements), the appropriate Federal banking
20 agencies, the Financial Services Oversight Council,
21 and the Department of Justice or to other persons
22 the Commission deems appropriate, including for-
23 eign financial supervisors (including foreign futures
24 authorities), foreign central banks, and foreign min-
25 istries.

1 “(2) PUBLIC INFORMATION.—A derivatives
2 clearing organization that clears swaps shall provide
3 to the Commission, or its designee, such information
4 as is required by, and in a form and at a frequency
5 to be determined by, the Commission, in order to
6 comply with the public reporting requirements con-
7 tained in section 8(j).”.

8 (5) Section 8(e) of the Commodity Exchange
9 Act (7 U.S.C. 12(e)) is amended in the last sentence
10 by adding “central bank and ministries” after “de-
11 partment” each place it appears.

12 (c) LEGAL CERTAINTY FOR IDENTIFIED BANKING
13 PRODUCTS.—

14 (1) REPEAL.—Sections 402(d), 404, 407,
15 408(b), and 408(c)(2) of the Legal Certainty for
16 Bank Products Act of 2000 (7 U.S.C. 27(d), 27b,
17 27e, 27f(b), and 27f(c)(2)) are repealed.

18 (2) LEGAL CERTAINTY.—Section 403 of the
19 Legal Certainty for Bank Products Act of 2000 (7
20 U.S.C. 27a) is amended to read as follows:

21 **“SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.**

22 “(a) EXCLUSION.—Except as provided in subsection
23 (b) or (c), no provisions of the Commodity Exchange Act
24 (7 U.S.C. 1 et seq.) shall apply to, and the Commodity
25 Futures Trading Commission and the Securities and Ex-

1 change Commission shall not exercise regulatory authority
2 under the Commodity Exchange Act with respect to, an
3 identified banking product.

4 “(b) EXCEPTION.—An appropriate Federal banking
5 agency may except an identified banking product or a
6 bank under its regulatory jurisdiction from the exclusion
7 in subsection (a) if the agency determines, in consultation
8 with the Commodity Futures Trading Commission and the
9 Securities and Exchange Commission, that the product—

10 “(1) would meet the definition of swap in sec-
11 tion 1a(35) of the Commodity Exchange Act (7
12 U.S.C. 1a(35)) or security-based swap in section
13 1a(38) of the Commodity Exchange Act (7 U.S.C.
14 1a(38)); and

15 “(2) has become known to the trade as a swap
16 or security-based swap, or otherwise has been struc-
17 tured as an identified banking product for the pur-
18 pose of evading the provisions of the Commodity Ex-
19 change Act (7 U.S.C. 1 et seq.), the Securities Act
20 of 1933 (15 U.S.C. 77a et seq.), or the Securities
21 Exchange Act of 1934 (15 U.S.C. 78a et seq.).

22 “(c) ADDITIONAL EXCEPTION.—The exclusion in
23 subsection (a) shall not apply to an identified banking
24 product that—

1 “(1) is a product of a bank that is not under
2 the regulatory jurisdiction of an appropriate Federal
3 banking agency;

4 “(2) meets the definition of swap in section
5 1a(35) of the Commodity Exchange Act or security-
6 based swap in section 3(a)(68) of the Securities and
7 Exchange Act of 1934; and

8 “(3) has become known to the trade as a swap
9 or security-based swap, or has been structured as an
10 identified banking product for the purpose of evad-
11 ing the provisions of the Commodity Exchange Act
12 (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15
13 U.S.C. 77a et seq.), or the Securities Exchange Act
14 of 1934 (15 U.S.C. 78a et seq.).”.

15 **SEC. 3104. PUBLIC REPORTING OF AGGREGATE SWAP**
16 **DATA.**

17 Section 8 of the Commodity Exchange Act (7 U.S.C.
18 12) is amended by adding after subsection (i) the fol-
19 lowing:

20 “(j) **PUBLIC REPORTING OF AGGREGATE SWAP**
21 **DATA.**—

22 “(1) **IN GENERAL.**—The Commission, or a per-
23 son designated by the Commission pursuant to para-
24 graph (2), shall make available to the public, in a
25 manner that does not disclose the business trans-

1 actions and market positions of any person, aggregate
2 data on swap trading volumes and positions
3 from the sources set forth in paragraph (3).

4 “(2) DESIGNEE OF THE COMMISSION.—The
5 Commission may designate a derivatives clearing or-
6 ganization or a swap repository to carry out the
7 public reporting described in paragraph (1).

8 “(3) SOURCES OF INFORMATION.—The sources
9 of the information to be publicly reported as de-
10 scribed in paragraph (1) are—

11 “(A) derivatives clearing organizations
12 pursuant to section 5b(k)(2);

13 “(B) swap repositories pursuant to section
14 21(c)(3); and

15 “(C) reports received by the Commission
16 pursuant to section 4r.”

17 **SEC. 3105. SWAP REPOSITORIES.**

18 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
19 is amended by inserting after section 20 the following:

20 **“SEC. 21. SWAP REPOSITORIES.**

21 “(a) REGISTRATION REQUIREMENT.—

22 “(1) IN GENERAL.—It shall be unlawful for any
23 person, unless registered with the Commission, di-
24 rectly or indirectly to make use of the mails or any

1 means or instrumentality of interstate commerce to
2 perform the functions of a swap repository.

3 “(2) INSPECTION AND EXAMINATION.—Reg-
4 istered swap repositories shall be subject to inspec-
5 tion and examination by any representative of the
6 Commission.

7 “(b) STANDARD SETTING.—

8 “(1) DATA IDENTIFICATION.—The Commission
9 shall prescribe standards that specify the data ele-
10 ments for each swap that shall be collected and
11 maintained by each registered swap repository.

12 “(2) DATA COLLECTION AND MAINTENANCE.—
13 The Commission shall prescribe data collection and
14 data maintenance standards for swap repositories.

15 “(3) COMPARABILITY.—The standards pre-
16 scribed by the Commission under this subsection
17 shall be comparable to the data standards imposed
18 by the Commission on derivatives clearing organiza-
19 tions that clear swaps.

20 “(c) DUTIES.—A swap repository shall—

21 “(1) accept data prescribed by the Commission
22 for each swap under subsection (b);

23 “(2) maintain such data in such form and man-
24 ner and for such period as may be required by the
25 Commission;

1 “(3) provide to the Commission, or its designee,
2 such information as is required by, and in a form
3 and at a frequency to be determined by, the Com-
4 mission, in order to comply with the public reporting
5 requirements contained in section 8(j); and

6 “(4) make available, on a confidential basis
7 pursuant to section 8, all data obtained by the swap
8 repository, including individual counterparty trade
9 and position data, to the Commission, the appro-
10 priate Federal banking agencies, the Financial Serv-
11 ices Oversight Council, the Securities and Exchange
12 Commission, and the Department of Justice or to
13 other persons the Commission deems appropriate,
14 including foreign financial supervisors (including for-
15 eign futures authorities), foreign central banks, and
16 foreign ministries.

17 “(d) REQUIRED REGISTRATION FOR SECURITY-
18 BASED SWAP REPOSITORIES.—Any person that is re-
19 quired to be registered as a swap repository under this
20 section shall register with the Commission regardless of
21 whether that person also is registered with the Securities
22 and Exchange Commission as a security-based swap re-
23 pository.

24 “(e) HARMONIZATION OF RULES.—Not later than
25 180 days after the effective date of the Over-the-Counter

1 Derivatives Markets Act of 2009, the Commission and the
2 Securities and Exchange Commission shall jointly adopt
3 uniform rules governing persons that are registered under
4 this section and persons that are registered as security-
5 based swap repositories under the Securities Exchange
6 Act of 1934 (15 U.S.C. 78a et seq.), including uniform
7 rules that specify the data elements that shall be collected
8 and maintained by each repository.

9 “(f) EXEMPTIONS.—The Commission may exempt,
10 conditionally or unconditionally, a swap repository from
11 the requirements of this section if the Commission finds
12 that such swap repository is subject to comparable, com-
13 prehensive supervision and regulation on a consolidated
14 basis by the Securities and Exchange Commission, a Pru-
15 dential Regulator or the appropriate governmental au-
16 thorities in the organization’s home country.”.

17 **SEC. 3106. REPORTING AND RECORDKEEPING.**

18 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
19 is amended by inserting after section 4q the following:

20 **“SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN**
21 **SWAPS.**

22 “(a) IN GENERAL.—Any person who enters into a
23 swap and—

24 “(1) did not clear the swap in accordance with
25 section 2(j)(1); and

1 “(2) did not have data regarding the swap ac-
2 cepted by a swap repository in accordance with rules
3 (including time frames) adopted by the Commission
4 under section 21,
5 shall meet the requirements in subsection (b).

6 “(b) REPORTS.—Any person described in subsection
7 (a) shall—

8 “(1) make such reports in such form and man-
9 ner and for such period as the Commission shall pre-
10 scribe by rule or regulation regarding the swaps held
11 by the person; and

12 “(2) keep books and records pertaining to the
13 swaps held by the person in such form and manner
14 and for such period as may be required by the Com-
15 mission, which books and records shall be open to
16 inspection by any representative of the Commission,
17 an appropriate Federal banking agency, the Securi-
18 ties and Exchange Commission, the Financial Serv-
19 ices Oversight Council, and the Department of Jus-
20 tice.

21 “(c) IDENTICAL DATA.—In adopting rules under this
22 section, the Commission shall require persons described in
23 subsection (a) to report the same or a more comprehensive
24 set of data than the Commission requires swap reposi-
25 tories to collect under section 21.”.

1 **SEC. 3107. REGISTRATION AND REGULATION OF SWAP**
2 **DEALERS AND MAJOR SWAP PARTICIPANTS.**

3 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
4 is amended by inserting after section 4r (as added by sec-
5 tion 3106) the following:

6 **“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEAL-**
7 **ERS AND MAJOR SWAP PARTICIPANTS.**

8 “(a) REGISTRATION.—

9 “(1) It shall be unlawful for any person to act
10 as a swap dealer unless such person is registered as
11 a swap dealer with the Commission.

12 “(2) It shall be unlawful for any person to act
13 as a major swap participant unless such person shall
14 have registered as a major swap participant with the
15 Commission.

16 “(b) REQUIREMENTS.—

17 “(1) IN GENERAL.—A person shall register as
18 a swap dealer or major swap participant by filing a
19 registration application with the Commission.

20 “(2) CONTENTS.—The application shall be
21 made in such form and manner as prescribed by the
22 Commission, giving any information and facts as the
23 Commission may deem necessary concerning the
24 business in which the applicant is or will be engaged.
25 Such person, when registered as a swap dealer or
26 major swap participant, shall continue to report and

1 furnish to the Commission such information per-
2 taining to such person's business as the Commission
3 may require.

4 “(3) EXPIRATION.—Each registration shall ex-
5 pire at such time as the Commission may by rule or
6 regulation prescribe.

7 “(4) RULES.—Except as provided in sub-
8 sections (c), (d) and (e), the Commission may pre-
9 scribe rules applicable to swap dealers and major
10 swap participants, including rules that limit the ac-
11 tivities of swap dealers and major swap participants.

12 “(5) TRANSITION.—Rules adopted under this
13 section shall provide for the registration of swap
14 dealers and major swap participants no later than
15 one year after the effective date of the Over-the-
16 Counter Derivatives Markets Act of 2009.

17 “(6) STATUTORY DISQUALIFICATION.—Except
18 to the extent otherwise specifically provided by rule,
19 regulation, or order, it shall be unlawful for a swap
20 dealer or a major swap participant to permit any
21 person associated with a swap dealer or a major
22 swap participant who is subject to a statutory dis-
23 qualification to effect or be involved in effecting
24 swaps on behalf of such swap dealer or major swap
25 participant, if such swap dealer or major swap par-

1 participant knew, or in the exercise of reasonable care
2 should have known, of such statutory disqualifica-
3 tion.

4 “(c) DUAL REGISTRATION.—

5 “(1) SWAP DEALER.—Any person that is re-
6 quired to be registered as a swap dealer under this
7 section shall register with the Commission regardless
8 of whether that person also is a bank or is registered
9 with the Securities and Exchange Commission as a
10 security-based swap dealer.

11 “(2) MAJOR SWAP PARTICIPANT.—Any person
12 that is required to be registered as a major swap
13 participant under this section shall register with the
14 Commission regardless of whether that person also
15 is a bank or is registered with the Securities and
16 Exchange Commission as a major security-based
17 swap participant.

18 “(d) JOINT RULES.—

19 “(1) IN GENERAL.—Not later than 180 days
20 after the effective date of the Over-the-Counter De-
21 rivatives Markets Act of 2009, the Commission and
22 the Securities and Exchange Commission shall joint-
23 ly adopt uniform rules for persons that are reg-
24 istered as swap dealers or major swap participants
25 under this section and persons that are registered as

1 security-based swap dealers or major security-based
2 swap participants under the Securities Exchange Act
3 of 1934 (15 U.S.C. 78a et seq.).

4 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
5 MENTS.—The Commission and the Securities and
6 Exchange Commission shall not prescribe rules im-
7 posing prudential requirements (including activity
8 restrictions) on swap dealers, major swap partici-
9 pants, security-based swap dealers, or major secu-
10 rity-based swap participants for which there is a
11 Prudential Regulator. This provision shall not be
12 construed as limiting the authority of the Commis-
13 sion and the Securities and Exchange Commission to
14 prescribe appropriate business conduct, reporting,
15 and recordkeeping requirements to protect investors.

16 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

17 “(1) IN GENERAL.—

18 “(A) BANK SWAP DEALERS AND MAJOR
19 SWAP PARTICIPANTS.—Each registered swap
20 dealer and major swap participant for which
21 there is a Prudential Regulator shall meet such
22 minimum capital requirements and minimum
23 margin requirements as the Prudential Regu-
24 lators shall by rule or regulation jointly pre-

1 scribe to help ensure the safety and soundness
2 of the swap dealer or major swap participant.

3 “(B) NONBANK SWAP DEALERS AND
4 MAJOR SWAP PARTICIPANTS.—Each registered
5 swap dealer and major swap participant for
6 which there is not a Prudential Regulator shall
7 meet such minimum capital requirements and
8 minimum margin requirements as the Commis-
9 sion and the Securities and Exchange Commis-
10 sion shall by rule or regulation jointly prescribe
11 to help ensure the safety and soundness of the
12 swap dealer or major swap participant.

13 “(2) JOINT RULES.—

14 “(A) BANK SWAP DEALERS AND MAJOR
15 SWAP PARTICIPANTS.—Within 180 days of the
16 enactment of the Over-the-Counter Derivatives
17 Markets Act of 2009, the Prudential Regu-
18 lators, in consultation with the Commission and
19 the Securities and Exchange Commission, shall
20 jointly adopt rules imposing capital and margin
21 requirements under this subsection for swap
22 dealers and major swap participants.

23 “(B) NONBANK SWAP DEALERS AND
24 MAJOR SWAP PARTICIPANTS.—Within 180 days
25 of the enactment of the Over-the-Counter De-

1 derivatives Markets Act of 2009, the Commission
2 and the Securities and Exchange Commission,
3 in consultation with the Prudential Regulators,
4 shall jointly adopt rules imposing capital and
5 margin requirements under this subsection for
6 swap dealers and major swap participants for
7 which there is no Prudential Regulator.

8 “(3) CAPITAL.—

9 “(A) BANK SWAP DEALERS AND MAJOR
10 SWAP PARTICIPANTS.—In setting capital re-
11 quirements under this subsection, the Pruden-
12 tial Regulators shall impose:

13 “(i) a capital requirement that is
14 greater than zero for swaps that are
15 cleared by a derivatives clearing organiza-
16 tion; and

17 “(ii) to offset the greater risk to the
18 swap dealer or major swap participant and
19 to the financial system arising from the
20 use of swaps that are not centrally cleared,
21 higher capital requirements for swaps that
22 are not cleared by a registered derivatives
23 clearing organization than for swaps that
24 are centrally cleared.

1 “(B) EXCLUSION.—Subparagraph (A)
2 shall not apply to a swap 1 party to which is
3 not a swap dealer or major swap participant,
4 and which is entered into before the end of the
5 90-day period that begins with the effective
6 date of this subparagraph.

7 “(C) NONBANK SWAP DEALERS AND
8 MAJOR SWAP PARTICIPANTS.—Capital require-
9 ments set by the Commission and the Securities
10 and Exchange Commission under this sub-
11 section shall be as strict as or stricter than the
12 capital requirements set by the Prudential Reg-
13 ulators under this subsection.

14 “(D) BANK HOLDING COMPANIES.—Cap-
15 ital requirements set by the Board for swaps of
16 bank holding companies on a consolidated basis
17 shall be as strict as or stricter than the capital
18 requirements set by the Prudential Regulators
19 under this subsection.

20 “(E) A futures commission merchant, in-
21 troducing broker, broker or dealer shall main-
22 tain sufficient capital to comply with the strict-
23 er of any applicable capital requirements to
24 which it is subject.

25 “(4) MARGIN.—

1 “(A) BANK SWAP DEALERS AND MAJOR
2 SWAP PARTICIPANTS.—The Prudential Regu-
3 lators shall impose margin requirements under
4 this subsection on all swaps that are not cleared
5 by a registered derivatives clearing organiza-
6 tion.

7 “(B) NON-SWAP DEALERS OR MAJOR SWAP
8 PARTICIPANTS.—The Prudential Regulators
9 may, but are not required to, impose margin re-
10 quirements with respect to swaps in which one
11 of the counterparties is neither a swap dealer,
12 major swap participant, security-based swap
13 dealer nor a major security-based swap partici-
14 pant. Any such margin requirements for swaps
15 shall provide for the use of non-cash collateral.

16 “(C) EXCLUSION.—Subparagraph (B)
17 shall not apply to a swap 1 party to which is
18 not a swap dealer or major swap participant,
19 and which is entered into before the end of the
20 90-day period that begins with the effective
21 date of this subparagraph.

22 “(D) NONBANK SWAP DEALERS AND
23 MAJOR SWAP PARTICIPANTS.—Margin require-
24 ments for swaps set by the Commission and the
25 Securities and Exchange Commission under this

1 subsection shall be as strict as or stricter than
2 margin requirements for swaps set by the Pru-
3 dential Regulators.

4 “(f) REPORTING AND RECORDKEEPING.—

5 “(1) IN GENERAL.—Each registered swap deal-
6 er and major swap participant—

7 “(A) shall make such reports as are pre-
8 scribed by the Commission by rule or regulation
9 regarding the transactions and positions and fi-
10 nancial condition of such person;

11 “(B) for which—

12 “(i) there is a Prudential Regulator
13 shall keep books and records of all activi-
14 ties related to its business as a swap dealer
15 or major swap participant in such form
16 and manner and for such period as may be
17 prescribed by the Commission by rule or
18 regulation;

19 “(ii) there is no Prudential Regulator
20 shall keep books and records in such form
21 and manner and for such period as may be
22 prescribed by the Commission by rule or
23 regulation;

1 “(C) shall keep such books and records
2 open to inspection and examination by any rep-
3 resentative of the Commission; and

4 “(D) shall keep any such books and
5 records relating to transactions in swaps based
6 on one or more securities open to inspection
7 and examination by the Securities and Ex-
8 change Commission.

9 “(2) RULES.—Within 365 days of the enact-
10 ment of the Over-the-Counter Derivatives Markets
11 Act of 2009, the Commission and the Securities and
12 Exchange Commission, in consultation with the ap-
13 propriate Federal banking agencies, shall jointly
14 adopt rules governing reporting and recordkeeping
15 for swap dealers, major swap participants, security-
16 based swap dealers, and major security-based swap
17 participants.

18 “(g) DAILY TRADING RECORDS.—

19 “(1) IN GENERAL.—Each registered swap deal-
20 er and major swap participant shall maintain daily
21 trading records of its swaps and all related records
22 (including related cash or forward transactions) and
23 recorded communications including but not limited
24 to electronic mail, instant messages, and recordings

1 of telephone calls, for such period as may be pre-
2 scribed by the Commission by rule or regulation.

3 “(2) INFORMATION REQUIREMENTS.—The daily
4 trading records shall include such information as the
5 Commission shall prescribe by rule or regulation.

6 “(3) CUSTOMER RECORDS.—Each registered
7 swap dealer and major swap participant shall main-
8 tain daily trading records for each customer or
9 counterparty in such manner and form as to be
10 identifiable with each swap transaction.

11 “(4) AUDIT TRAIL.—Each registered swap deal-
12 er and major swap participant shall maintain a com-
13 plete audit trail for conducting comprehensive and
14 accurate trade reconstructions.

15 “(5) RULES.—Within 365 days of the enact-
16 ment of the Over-the-Counter Derivatives Markets
17 Act of 2009, the Commission and the Securities and
18 Exchange Commission, in consultation with the ap-
19 propriate Federal banking agencies, shall jointly
20 adopt rules governing daily trading records for swap
21 dealers, major swap participants, security-based
22 swap dealers, and major security-based swap partici-
23 pants.

24 “(h) BUSINESS CONDUCT STANDARDS.—

1 “(1) IN GENERAL.—Each registered swap deal-
2 er and major swap participant shall conform with
3 business conduct standards as may be prescribed by
4 the Commission by rule or regulation addressing—

5 “(A) fraud, manipulation, and other abu-
6 sive practices involving swaps (including swaps
7 that are offered but not entered into);

8 “(B) diligent supervision of its business as
9 a swap dealer;

10 “(C) adherence to all applicable position
11 limits;

12 “(D) the prevention of self-dealing, by lim-
13 iting the extent to which such a swap dealer or
14 major swap participant may conduct business
15 with a derivatives clearing organization, a board
16 of trade, or an alternative swap execution facil-
17 ity that clears or trades swaps and in which
18 such a swap dealer or major swap participant
19 has a material debt or equity investment; and

20 “(D) such other matters as the Commis-
21 sion shall determine to be necessary or appro-
22 priate.

23 “(2) BUSINESS CONDUCT REQUIREMENTS.—
24 Business conduct requirements adopted by the Com-
25 mission shall—

1 “(A) establish the standard of care for a
2 swap dealer or major swap participant to verify
3 that any counterparty meets the eligibility
4 standards for an eligible contract participant;

5 “(B) require disclosure by the swap dealer
6 or major swap participant to any counterparty
7 to the transaction (other than a swap dealer,
8 major swap participant, security-based swap
9 dealer or major security-based swap partici-
10 pant) of—

11 “(i) information about the material
12 risks and characteristics of the swap;

13 “(ii) for cleared swaps, upon the re-
14 quest of the counterparty, the daily mark
15 from the appropriate clearinghouse and for
16 non-cleared swaps, upon the request of the
17 counterparty, the daily mark of the swap
18 dealer or major swap participant; and

19 “(iii) any other material incentives or
20 conflicts of interest that the swap dealer or
21 major swap participant may have in con-
22 nection with the swap; and

23 “(C) establish such other standards and
24 requirements as the Commission may determine
25 are necessary or appropriate in the public inter-

1 est, for the protection of investors, or otherwise
2 in furtherance of the purposes of this Act.

3 “(3) RULES.—The Commission and the Securi-
4 ties and Exchange Commission, in consultation with
5 the appropriate Federal banking agencies, shall
6 jointly prescribe rules under this subsection gov-
7 erning business conduct standards for swap dealers,
8 major swap participants, security-based swap deal-
9 ers, and major security-based swap participants
10 within 365 days of the enactment of the Over-the-
11 Counter Derivatives Markets Act of 2009.

12 “(i) DOCUMENTATION AND BACK OFFICE STAND-
13 ARDS.—

14 “(1) IN GENERAL.—Each registered swap deal-
15 er and major swap participant shall conform with
16 standards, as may be prescribed by the Commission
17 by rule or regulation, addressing timely and accurate
18 confirmation, processing, netting, documentation,
19 and valuation of all swaps.

20 “(2) RULES.—Within 365 days of the enact-
21 ment of the Over-the-Counter Derivatives Markets
22 Act of 2009, the Commission and the Securities and
23 Exchange Commission, in consultation with the ap-
24 propriate Federal banking agencies, shall adopt rules
25 governing documentation and back office standards

1 for swap dealers, major swap participants, security-
2 based swap dealers, and major security-based swap
3 participants.

4 “(j) DEALER RESPONSIBILITIES.—Each registered
5 swap dealer and major swap participant at all times shall
6 comply with the following requirements:

7 “(1) MONITORING OF TRADING.—The swap
8 dealer or major swap participant shall monitor its
9 trading in swaps to prevent violations of applicable
10 position limits.

11 “(2) DISCLOSURE OF GENERAL INFORMA-
12 TION.—The swap dealer or major swap participant
13 shall disclose to the Commission and to the Pruden-
14 tial Regulator for such swap dealer or major swap
15 participant, as applicable, information concerning—

16 “(A) terms and conditions of its swaps;

17 “(B) swap trading operations, mechanisms,
18 and practices;

19 “(C) financial integrity protections relating
20 to swaps; and

21 “(D) other information relevant to its trad-
22 ing in swaps.

23 “(3) ABILITY TO OBTAIN INFORMATION.—The
24 swap dealer or major swap participant shall—

1 “(A) establish and enforce internal systems
2 and procedures to obtain any necessary infor-
3 mation to perform any of the functions de-
4 scribed in this section; and

5 “(B) provide the information to the Com-
6 mission and to the Prudential Regulator for
7 such swap dealer or major swap participant, as
8 applicable, upon request.

9 “(4) CONFLICTS OF INTEREST.—The swap
10 dealer and major swap participant shall implement
11 conflict-of-interest systems and procedures that—

12 “(A) establish structural and institutional
13 safeguards to assure that the activities of any
14 person within the firm relating to research or
15 analysis of the price or market for any com-
16 modity are separated by appropriate informa-
17 tional partitions within the firm from the re-
18 view, pressure, or oversight of those whose in-
19 volvement in trading or clearing activities might
20 potentially bias their judgment or supervision;
21 and

22 “(B) address such other issues as the
23 Commission determines appropriate.

24 “(5) ANTITRUST CONSIDERATIONS.—Unless
25 necessary or appropriate to achieve the purposes of

1 this Act, the swap dealer or major swap participant
2 shall avoid—

3 “(A) adopting any processes or taking any
4 actions that result in any unreasonable re-
5 straints of trade; or

6 “(B) imposing any material anticompeti-
7 tive burden on trading.

8 “(k) RULES.—The Commission, the Securities and
9 Exchange Commission, and the Prudential Regulators
10 shall consult with each other prior to adopting any rules
11 under the Over-the-Counter Derivatives Markets Act of
12 2009.

13 “(l) EXEMPTIONS.—The Commission may exempt,
14 conditionally or unconditionally, a swap dealer or major
15 swap participant from the prudential requirements of the
16 Over-the-Counter Derivatives Markets Act of 2009 if the
17 Commission finds that such swap dealer or major swap
18 participant is subject to comparable, comprehensive super-
19 vision and regulation on a consolidated basis by the Secu-
20 rities and Exchange Commission, a Prudential Regulator
21 or the appropriate governmental authorities in the organi-
22 zation’s home country.

23 “(m) EXEMPTIVE AUTHORITY.—

24 “(1) IN GENERAL.—The Commission, by rule
25 or regulation, may conditionally or unconditionally

1 exempt any person, derivative, or transaction, or any
2 class or classes of persons, derivatives, or trans-
3 actions, from any provision of this Act that was
4 added by an amendment in the Over-the-Counter
5 Derivatives Markets Act of 2009, to the extent that
6 such exemption is necessary or appropriate in the
7 public interest, and is consistent with the purposes
8 of such Act.

9 “(2) PROCEDURES.—The Commission shall, by
10 rule or regulation, determine the procedures under
11 which an exemptive order under this subsection shall
12 be granted and may, in its sole discretion, decline to
13 entertain any application for an order of exemption
14 under this subsection.”.

15 **SEC. 3108. SEGREGATION OF ASSETS HELD AS COLLAT-**
16 **ERAL IN SWAP TRANSACTIONS.**

17 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
18 is further amended by inserting after section 4s the fol-
19 lowing:

20 **“SEC. 4t. SEGREGATION OF ASSETS HELD AS COLLATERAL**
21 **IN OVER-THE-COUNTER SWAP TRANS-**
22 **ACTIONS.**

23 “(a) SEGREGATION.—At the request of a swap
24 counterparty who provides funds or other property to a
25 swap dealer as variation or initial margin or collateral to

1 secure the obligations of the counterparty under a swap
2 between the counterparty and the swap dealer that is not
3 submitted for clearing to a derivatives clearing organiza-
4 tion, the swap dealer shall segregate the funds or other
5 property for the benefit of the counterparty, and maintain
6 the variation or initial margin or collateral in an account
7 which is carried by an independent third-party custodian
8 and designated as a segregated account for the
9 counterparty, in accordance with such rules and regula-
10 tions as the Commission or Prudential Regulator may pre-
11 scribe. If a swap counterparty is a swap dealer or major
12 swap participant who owns more than 20 percent of, or
13 has more than 50 percent representation on the board of
14 directors of, a custodian, the custodian shall not be consid-
15 ered independent from the swap counterparties for pur-
16 poses of the preceding sentence. This subsection shall not
17 be interpreted to preclude commercial arrangements re-
18 garding the investment of the segregated funds or other
19 property and the related allocation of gains and losses re-
20 sulting from any such investment.

21 “(b) BACK OFFICE AUDIT REPORTING.—If a swap
22 dealer does not segregate funds at the request of a swap
23 counterparty in accordance with subsection (a), the swap
24 dealer shall report to its counterparty on a quarterly basis
25 that its back office procedures relating to margin and col-

1 lateral requirements are in compliance with the agreement
2 of the counterparties.”.

3 **SEC. 3109. CONFLICTS OF INTEREST.**

4 Section 4d of the Commodity Exchange Act (7 U.S.C.
5 6d) is amended by—

6 (1) redesignating subsection (c) as subsection
7 (d); and

8 (2) inserting after subsection (b) the following:

9 “(c) CONFLICTS OF INTEREST.—The Commission
10 shall require that futures commission merchants and in-
11 troducing brokers implement conflict-of-interest systems
12 and procedures that—

13 “(1) establish structural and institutional safe-
14 guards to assure that the activities of any person
15 within the firm relating to research or analysis of
16 the price or market for any commodity are separated
17 by appropriate informational partitions within the
18 firm from the review, pressure, or oversight of those
19 whose involvement in trading or clearing activities
20 might potentially bias their judgment or supervision;
21 and

22 “(2) address such other issues as the Commis-
23 sion determines appropriate.”.

1 **SEC. 3110. SWAP EXECUTION FACILITIES.**

2 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
3 is amended by inserting after section 5g the following:

4 **“SEC. 5h. SWAP EXECUTION FACILITIES.**

5 “(a) REGISTRATION.—

6 “(1) IN GENERAL.—

7 “(A) No person may operate a swap execu-
8 tion facility unless the facility is registered
9 under this section.

10 “(B) The term ‘swap execution facility’
11 means an entity that facilitates the execution of
12 swaps between two persons through any means
13 of interstate commerce but which is not a des-
14 ignated contract market.

15 “(2) DUAL REGISTRATION.—Any person that is
16 required to be registered as a swap execution facility
17 under this section shall register with the Commis-
18 sion regardless of whether that person also is reg-
19 istered with the Securities and Exchange Commis-
20 sion as a swap execution facility.

21 “(b) REQUIREMENTS FOR TRADING.—A swap execu-
22 tion facility that is registered under subsection (a) may
23 trade any swap.

24 “(c) TRADING BY CONTRACT MARKETS.—A board of
25 trade that operates a contract market shall, to the extent
26 that the board of trade also operates a swap execution fa-

1 cility and uses the same electronic trade execution system
2 for trading on the contract market and the swap execution
3 facility, identify whether the electronic trading is taking
4 place on the contract market or the swap execution facil-
5 ity.

6 “(d) CRITERIA FOR REGISTRATION.—

7 “(1) IN GENERAL.—To be registered as a swap
8 execution facility, the facility shall be required to
9 demonstrate to the Commission that it meets the
10 criteria specified herein.

11 “(2) DETERRENCE OF ABUSES.—The swap exe-
12 cution facility shall establish and enforce trading
13 and participation rules that will deter abuses and
14 have the capacity to detect, investigate, and enforce
15 those rules, including means to—

16 “(A) obtain information necessary to per-
17 form the functions required under this section;

18 or

19 “(B) use means to—

20 “(i) provide market participants with
21 impartial access to the market; and

22 “(ii) capture information that may be
23 used in establishing whether rule violations
24 have occurred.

1 “(3) TRADING PROCEDURES.—The swap execu-
2 tion facility shall establish and enforce rules or
3 terms and conditions defining, or specifications de-
4 tailing, trading procedures to be used in entering
5 and executing orders traded on or through its facili-
6 ties.

7 “(4) FINANCIAL INTEGRITY OF TRANS-
8 ACTIONS.—The swap execution facility shall estab-
9 lish and enforce rules and procedures for ensuring
10 the financial integrity of swaps entered on or
11 through its facilities, including the clearance and
12 settlement of the swaps pursuant to section 2(j)(1).

13 “(e) CORE PRINCIPLES FOR SWAP EXECUTION FA-
14 CILITIES.—

15 “(1) IN GENERAL.—To maintain its registra-
16 tion as a swap execution facility, the facility shall
17 comply with the core principles specified in this sub-
18 section and any requirement that the Commission
19 may impose by rule or regulation pursuant to section
20 8a(5). Except where the Commission determines
21 otherwise by rule or regulation, the facility shall
22 have reasonable discretion in establishing the man-
23 ner in which it complies with these core principles.

24 “(2) COMPLIANCE WITH RULES.—The swap
25 execution facility shall monitor and enforce compli-

1 ance with any of the rules of the facility, including
2 the terms and conditions of the swaps traded on or
3 through the facility and any limitations on access to
4 the facility.

5 “(3) SWAPS NOT READILY SUSCEPTIBLE TO MA-
6 NIPULATION.—The swap execution facility shall per-
7 mit trading only in swaps that are not readily sus-
8 ceptible to manipulation.

9 “(4) MONITORING OF TRADING.—The swap
10 execution facility shall monitor trading in swaps to
11 prevent manipulation, price distortion, and interrup-
12 tions of the delivery or cash settlement process
13 through surveillance, compliance, and disciplinary
14 practices and procedures, including methods for con-
15 ducting real-time monitoring of trading and com-
16 prehensive and accurate trade reconstructions.

17 “(5) ABILITY TO OBTAIN INFORMATION.—The
18 swap execution facility shall—

19 “(A) establish and enforce rules that will
20 allow the facility to obtain any necessary infor-
21 mation to perform any of the functions de-
22 scribed in this subsection;

23 “(B) provide the information to the Com-
24 mission upon request; and

1 “(C) have the capacity to carry out such
2 international information-sharing agreements as
3 the Commission may require.

4 “(6) EMERGENCY AUTHORITY.—The swap exe-
5 cution facility shall adopt rules to provide for the ex-
6 ercise of emergency authority, in consultation or co-
7 operation with the Commission, where necessary and
8 appropriate, including the authority to liquidate or
9 transfer open positions in any swap or to suspend or
10 curtail trading in a swap.

11 “(7) TIMELY PUBLICATION OF TRADING INFOR-
12 MATION.—The swap execution facility shall make
13 public timely information on price, trading volume,
14 and other trading data on swaps to the extent pre-
15 scribed by the Commission.

16 “(8) RECORDKEEPING AND REPORTING.—The
17 swap execution facility shall maintain records of all
18 activities related to the business of the facility, in-
19 cluding a complete audit trail, in a form and manner
20 acceptable to the Commission for a period of 5
21 years, and report to the Commission all information
22 determined by the Commission to be necessary or
23 appropriate for the Commission to perform its re-
24 sponsibilities under this Act in a form and manner
25 acceptable to the Commission. The swap execution

1 facility shall, upon request, make available to the Se-
2 curities and Exchange Commission all information
3 (including information on a real-time basis) relating
4 to transactions in security-based swap agreements
5 (as defined in section 3(a)(76) of the Securities Ex-
6 change Act of 1934). The Commission shall adopt
7 data collection and reporting requirements for swap
8 execution facilities that are comparable to cor-
9 responding requirements for derivatives clearing or-
10 ganizations and swap repositories.

11 “(9) ANTITRUST CONSIDERATIONS.—Unless
12 necessary or appropriate to achieve the purposes of
13 this Act, the swap execution facility shall avoid—

14 “(A) adopting any rules or taking any ac-
15 tions that result in any unreasonable restraints
16 of trade; or

17 “(B) imposing any material anticompeti-
18 tive burden on trading on the swap execution
19 facility.

20 “(10) CONFLICTS OF INTEREST.—

21 “(A) The swap execution facility shall es-
22 tablish and enforce rules to minimize conflicts
23 of interest in its decision-making process, and
24 establish a process for resolving any such con-
25 flicts of interest.

1 “(B) The rules of the swap execution facil-
2 ity shall provide that a restricted owner shall
3 not be permitted directly or indirectly to ac-
4 quire beneficial ownership of interests in the fa-
5 cility or in persons with a controlling interest in
6 the facility, to the extent that such an acquisi-
7 tion would result in restricted owners control-
8 ling more than 20 percent of the votes entitled
9 to be cast on any matter by the holders of the
10 ownership interests.

11 “(C) The rules of the swap execution facil-
12 ity shall provide that a majority of the directors
13 of the facility shall not be associated with a re-
14 stricted owner.

15 “(11) DESIGNATION OF COMPLIANCE OFFI-
16 CER.—

17 “(A) IN GENERAL.—Each swap execution
18 facility shall designate an individual to serve as
19 a compliance officer.

20 “(B) DUTIES.—The compliance officer
21 shall—

22 “(i) report directly to the board or to
23 the senior officer of the facility;

24 “(ii) shall—

1 “(I) review compliance with the
2 core principles in this subsection;

3 “(II) in consultation with the
4 board of the facility, a body per-
5 forming a function similar to that of
6 a board, or the senior officer of the
7 facility, resolve any conflicts of inter-
8 est that may arise;

9 “(III) be responsible for admin-
10 istering the policies and procedures
11 required to be established pursuant to
12 this section; and

13 “(IV) ensure compliance with
14 commodity laws and the rules and
15 regulations issued thereunder, includ-
16 ing rules prescribed by the Commis-
17 sion pursuant to this section; and

18 “(iii) establish procedures for remedi-
19 ation of non-compliance issues found dur-
20 ing compliance office reviews, lookbacks,
21 internal or external audit findings, self-re-
22 ported errors, or through validated com-
23 plaints. Procedures will establish the han-
24 dling, management response, remediation,

1 re-testing, and closing of non-compliant
2 issues.

3 “(C) ANNUAL REPORTS REQUIRED.—The
4 compliance officer shall annually prepare and
5 sign a report on the compliance of the facility
6 with the commodity laws and its policies and
7 procedures, including its code of ethics and con-
8 flict of interest policies, in accordance with
9 rules prescribed by the Commission. Such com-
10 pliance report shall accompany the financial re-
11 ports of the facility that are required to be fur-
12 nished to the Commission pursuant to this sec-
13 tion and shall include a certification that, under
14 penalty of law, the report is accurate and com-
15 plete.

16 “(f) EXEMPTIONS.—The Commission may exempt,
17 conditionally or unconditionally, a swap execution facility
18 from registration under this section if the Commission
19 finds that such facility is subject to comparable, com-
20 prehensive supervision and regulation on a consolidated
21 basis by the Securities and Exchange Commission, a Pru-
22 dential Regulator or the appropriate governmental au-
23 thorities in the organization’s home country.

24 “(g) HARMONIZATION OF RULES.—Within 180 days
25 of the enactment of the Over-the-Counter Derivatives

1 Markets Act of 2009, the Commission and the Securities
2 and Exchange Commission shall jointly prescribe rules
3 governing the regulation of swap execution facilities under
4 this section and section 3B of the Securities Exchange Act
5 of 1934 (15 U.S.C. 78e-2).”.

6 **SEC. 3111. DERIVATIVES TRANSACTION EXECUTION FACILI-**
7 **TIES AND EXEMPT BOARDS OF TRADE.**

8 Sections 5a and 5d of the Commodity Exchange Act
9 (7 U.S.C. 7 and 7a-3) are repealed.

10 **SEC. 3112. DESIGNATED CONTRACT MARKETS.**

11 (a) Section 5(d) of the Commodity Exchange Act (7
12 U.S.C. 7(d)) is amended by striking paragraph (9) and
13 inserting the following:

14 “(9) EXECUTION OF TRANSACTIONS.—

15 “(A) The board of trade shall provide a
16 competitive, open, and efficient market and
17 mechanism for executing transactions that pro-
18 tects the price discovery process of trading in
19 the board of trade’s centralized market.

20 “(B) The rules may authorize, for bona
21 fide business purposes—

22 “(i) transfer trades or office trades;

23 “(ii) an exchange of—

24 “(I) futures in connection with a
25 cash commodity transaction;

1 “(II) futures for cash commod-
2 ities; or

3 “(III) futures for swaps; or

4 “(iii) a futures commission merchant,
5 acting as principal or agent, to enter into
6 or confirm the execution of a contract for
7 the purchase or sale of a commodity for fu-
8 ture delivery if the contract is reported, re-
9 corded, or cleared in accordance with the
10 rules of the contract market or a deriva-
11 tives clearing organization.”.

12 (b) Section 5(d) of the Commodity Exchange Act (7
13 U.S.C. 7(d)) is amended by striking paragraph (15) and
14 inserting the following:

15 “(15) CONFLICTS OF INTEREST.—

16 “(A) The board of trade shall establish
17 and enforce rules to minimize conflicts of inter-
18 est in the decisionmaking process of the con-
19 tract market, and establish a process for resolv-
20 ing any such conflicts of interest.

21 “(B) The rules of a board of trade that
22 trades swaps shall provide that a restricted
23 owner shall not be permitted directly or indi-
24 rectly to acquire beneficial ownership of inter-
25 ests in the board of trade or in persons with a

1 controlling interest in the board of trade, to the
2 extent that such an acquisition would result in
3 restricted owners controlling more than 20 per-
4 cent of the votes entitled to be cast on any mat-
5 ter by the holders of the ownership interests.

6 “(C) The rules of a board of trade that
7 trades swaps shall provide that a majority of
8 the directors of the board of trade shall not be
9 associated with a restricted owner.”.

10 (c) Section 5(d) of the Commodity Exchange Act (7
11 U.S.C. 7(d)) is amended by adding after paragraph (18)
12 the following:

13 “(19) FINANCIAL RESOURCES.—The board of
14 trade shall demonstrate that it has adequate finan-
15 cial, operational, and managerial resources to dis-
16 charge the responsibilities of a contract market. For
17 the board of trade’s financial resources to be consid-
18 ered adequate, their value shall exceed the total
19 amount that would enable the contract market to
20 cover its operating costs for a period of one year,
21 calculated on a rolling basis.

22 “(20) SYSTEM SAFEGUARDS.—The board of
23 trade shall—

24 “(A) establish and maintain a program of
25 risk analysis and oversight to identify and mini-

1 mize sources of operational risk through the de-
2 velopment of appropriate controls and proce-
3 dures, and the development of automated sys-
4 tems, that are reliable, secure, and give ade-
5 quate scalable capacity;

6 “(B) establish and maintain emergency
7 procedures, backup facilities, and a plan for dis-
8 aster recovery that allow for the timely recovery
9 and resumption of operations and the fulfill-
10 ment of the board of trade’s responsibilities and
11 obligations; and

12 “(C) periodically conduct tests to verify
13 that back-up resources are sufficient to ensure
14 continued order processing and trade matching,
15 price reporting, market surveillance, and main-
16 tenance of a comprehensive and accurate audit
17 trail.”.

18 **SEC. 3113. POSITION LIMITS.**

19 (a) Section 4a(a) of the Commodity Exchange Act (7
20 U.S.C. 6a(a)) is amended by—

21 (1) inserting “(1)” after “(a)”;

22 (2) striking “on electronic trading facilities with
23 respect to a significant price discovery contract” in
24 the first sentence and inserting “swaps that perform

1 or affect a significant price discovery function with
2 respect to regulated markets”;

3 (3) inserting “, including any group or class of
4 traders,” in the second sentence after “held by any
5 person”;

6 (4) striking “on an electronic trading facility
7 with respect to a significant price discovery con-
8 tract,” in the second sentence and inserting “swaps
9 that perform or affect a significant price discovery
10 function with respect to regulated markets,”; and

11 (5) inserting at the end the following:

12 “(2) AGGREGATE POSITION LIMITS.—The Com-
13 mission may, by rule or regulation, establish limits
14 (including related hedge exemption provisions) on
15 the aggregate number or amount of positions in con-
16 tracts based upon the same underlying commodity
17 (as defined by the Commission) that may be held by
18 any person, including any group or class of traders,
19 for each month across—

20 “(A) contracts listed by designated con-
21 tract markets;

22 “(B) contracts traded on a foreign board
23 of trade that provides members or other partici-
24 pants located in the United States with direct

1 access to its electronic trading and order
2 matching system; and

3 “(C) swap contracts that perform or affect
4 a significant price discovery function with re-
5 spect to regulated markets.

6 “(3) SIGNIFICANT PRICE DISCOVERY FUNC-
7 TION.—In making a determination whether a swap
8 performs or affects a significant price discovery
9 function with respect to regulated markets, the Com-
10 mission shall consider, as appropriate:

11 “(A) PRICE LINKAGE.—The extent to
12 which the swap uses or otherwise relies on a
13 daily or final settlement price, or other major
14 price parameter, of another contract traded on
15 a regulated market based upon the same under-
16 lying commodity, to value a position, transfer or
17 convert a position, financially settle a position,
18 or close out a position.

19 “(B) ARBITRAGE.—The extent to which
20 the price for the swap is sufficiently related to
21 the price of another contract traded on a regu-
22 lated market based upon the same underlying
23 commodity so as to permit market participants
24 to effectively arbitrage between the markets by
25 simultaneously maintaining positions or exe-

1 cutting trades in the swaps on a frequent and
2 recurring basis.

3 “(C) MATERIAL PRICE REFERENCE.—The
4 extent to which, on a frequent and recurring
5 basis, bids, offers, or transactions in a contract
6 traded on a regulated market are directly based
7 on, or are determined by referencing, the price
8 generated by the swap.

9 “(D) MATERIAL LIQUIDITY.—The extent
10 to which the volume of swaps being traded in
11 the commodity is sufficient to have a material
12 effect on another contract traded on a regulated
13 market.

14 “(E) OTHER MATERIAL FACTORS.—Such
15 other material factors as the Commission speci-
16 fies by rule or regulation as relevant to deter-
17 mine whether a swap serves a significant price
18 discovery function with respect to a regulated
19 market.

20 “(4) EXEMPTIONS.—The Commission, by rule,
21 regulation, or order, may exempt, conditionally or
22 unconditionally, any person or class of persons, any
23 swap or class of swaps, or any transaction or class
24 of transactions from any requirement it may estab-

1 lish under this section with respect to position lim-
2 its.”.

3 (b) Section 4a(b) of the Commodity Exchange Act
4 (7 U.S.C. 6a(b)) is amended—

5 (1) in paragraph (1), by striking “or derivatives
6 transaction execution facility or facilities or elec-
7 tronic trading facility” and inserting “or swap exe-
8 cution facility or facilities”; and

9 (2) in paragraph (2), by striking “or derivatives
10 transaction execution facility or electronic trading
11 facility” and inserting “or swap execution facility”.

12 **SEC. 3114. ENHANCED AUTHORITY OVER REGISTERED EN-**
13 **TITIES.**

14 (a) Section 5(d)(1) of the Commodity Exchange Act
15 (7 U.S.C. 7(d)(1)) is amended by striking “The board of
16 trade shall have” and inserting “Except where the Com-
17 mission otherwise determines by rule or regulation pursu-
18 ant to section 8a(5), the board of trade shall have”.

19 (b) Section 5c(c) of the Commodity Exchange Act (7
20 U.S.C. 7a-2(c)) is amended to read as follows:

21 “(c) NEW CONTRACTS, NEW RULES, AND RULE
22 AMENDMENTS.—

23 “(1) IN GENERAL.—Subject to paragraph (2), a
24 registered entity may elect to list for trading or ac-
25 cept for clearing any new contract or other instru-

1 ment, or may elect to approve and implement any
2 new rule or rule amendment, by providing to the
3 Commission (and the Secretary of the Treasury, in
4 the case of a contract of sale of a government secu-
5 rity for future delivery (or option on such a con-
6 tract) or a rule or rule amendment specifically re-
7 lated to such a contract) a written certification that
8 the new contract or instrument or clearing of the
9 new contract or instrument, new rule, or rule
10 amendment complies with this Act (including regula-
11 tions under this Act).

12 “(2) PRIOR APPROVAL.—

13 “(A) IN GENERAL.—A registered entity
14 may request that the Commission grant prior
15 approval to any new contract or other instru-
16 ment, new rule, or rule amendment.

17 “(B) PRIOR APPROVAL REQUIRED.—Not-
18 withstanding any other provision of this section,
19 a designated contract market shall submit to
20 the Commission for prior approval under sub-
21 paragraph (A) each rule amendment that mate-
22 rially changes the terms and conditions, as de-
23 termined by the Commission, in any contract of
24 sale for future delivery of a commodity (or any
25 option thereon) traded through its facilities if

1 the rule amendment applies to contracts and
2 delivery months which have already been listed
3 for trading and for which there is open interest.

4 “(C) DEADLINE.—If prior approval is re-
5 quested under subparagraph (A), the Commis-
6 sion shall take final action on the request not
7 later than 90 days after submission of the re-
8 quest, unless the person submitting the request
9 agrees to an extension of the time limitation es-
10 tablished under this subparagraph.

11 “(3) APPROVAL.—The Commission shall ap-
12 prove any such new contract or instrument, new
13 rule, or rule amendment unless the Commission
14 finds that the new contract or instrument, new rule,
15 or rule amendment would violate this Act.”.

16 **SEC. 3115. FOREIGN BOARDS OF TRADE.**

17 (a) Section 4(b) of the Commodity Exchange Act (7
18 U.S.C. 6(b)) is amended by striking “No rule or regula-
19 tion” and inserting “Except as provided in paragraphs (1)
20 and (2), no rule or regulation”.

21 (b) Section 4(b) of the Commodity Exchange Act (7
22 U.S.C. 6(b)) is further amended by inserting before “The
23 Commission” the following: “(1) The Commission may
24 adopt rules and regulations requiring registration with the
25 Commission for a foreign board of trade that provides the

1 members of the foreign board of trade or other partici-
2 pants located in the United States direct access to the
3 electronic trading and order matching system of the for-
4 eign board of trade, including rules and regulations pre-
5 scribing procedures and requirements applicable to the
6 registration of such foreign boards of trade. For purposes
7 of this paragraph, ‘direct access’ refers to an explicit grant
8 of authority by a foreign board of trade to an identified
9 member or other participant located in the United States
10 to enter trades directly into the trade matching system
11 of the foreign board of trade.

12 “(2) It shall be unlawful for a foreign board of trade
13 to provide to the members of the foreign board of trade
14 or other participants located in the United States direct
15 access to the electronic trading and order-matching system
16 of the foreign board of trade with respect to an agreement,
17 contract, or transaction that settles against any price (in-
18 cluding the daily or final settlement price) of 1 or more
19 contracts listed for trading on a registered entity, unless
20 the Commission determines that—

21 “(A) the foreign board of trade makes public
22 daily trading information regarding the agreement,
23 contract, or transaction that is comparable to the
24 daily trading information published by the registered
25 entity for the 1 or more contracts against which the

1 agreement, contract, or transaction traded on the
2 foreign board of trade settles; and

3 “(B) the foreign board of trade (or the foreign
4 futures authority that oversees the foreign board of
5 trade)—

6 “(i) adopts position limits (including re-
7 lated hedge exemption provisions) for the agree-
8 ment, contract, or transaction that are com-
9 parable to the position limits (including related
10 hedge exemption provisions) adopted by the reg-
11 istered entity for the 1 or more contracts
12 against which the agreement, contract, or
13 transaction traded on the foreign board of trade
14 settles;

15 “(ii) has the authority to require or direct
16 market participants to limit, reduce, or liq-
17 uidate any position the foreign board of trade
18 (or the foreign futures authority that oversees
19 the foreign board of trade) determines to be
20 necessary to prevent or reduce the threat of
21 price manipulation, excessive speculation as de-
22 scribed in section 4a, price distortion, or disrup-
23 tion of delivery or the cash settlement process;

24 “(iii) agrees to promptly notify the Com-
25 mission, with regard to the agreement, contract,

1 or transaction that settles against any price (in-
2 cluding the daily or final settlement price) of 1
3 or more contracts listed for trading on a reg-
4 istered entity, of any change regarding—

5 “(I) the information that the foreign
6 board of trade will make publicly available;

7 “(II) the position limits that the for-
8 eign board of trade or foreign futures au-
9 thority will adopt and enforce;

10 “(III) the position reductions required
11 to prevent manipulation, excessive specula-
12 tion as described in section 4a, price dis-
13 tortion, or disruption of delivery or the
14 cash settlement process; and

15 “(IV) any other area of interest ex-
16 pressed by the Commission to the foreign
17 board of trade or foreign futures authority;

18 “(iv) provides information to the Commis-
19 sion regarding large trader positions in the
20 agreement, contract, or transaction that is com-
21 parable to the large trader position information
22 collected by the Commission for the 1 or more
23 contracts against which the agreement, con-
24 tract, or transaction traded on the foreign
25 board of trade settles; and

1 “(v) provides the Commission with infor-
2 mation necessary to publish reports on aggre-
3 gate trader positions for the agreement, con-
4 tract, or transaction traded on the foreign
5 board of trade that are comparable to such re-
6 ports on aggregate trader positions for the 1 or
7 more contracts against which the agreement,
8 contract, or transaction traded on the foreign
9 board of trade settles.

10 “(3) Paragraphs (1) and (2) shall not be effective
11 with respect to any foreign board of trade to which the
12 Commission has granted direct access permission before
13 the date of the enactment of this subsection until the date
14 that is 180 days after such date of enactment.

15 “(4)”.

16 (c) LIABILITY OF REGISTERED PERSONS TRADING
17 ON A FOREIGN BOARD OF TRADE.—

18 (1) Section 4(a) of the Commodity Exchange
19 Act (7. U.S.C. 6(a)) is amended by inserting “or by
20 subsection (f)” after “Unless exempted by the Com-
21 mission pursuant to subsection (c)”; and

22 (2) Section 4 of the Commodity Exchange Act
23 (7 U.S.C. 6) is further amended by adding at the
24 end the following:

1 “(f) A person registered with the Commission, or ex-
2 empt from registration by the Commission, under this Act
3 may not be found to have violated subsection (a) with re-
4 spect to a transaction in, or in connection with, a contract
5 of sale of a commodity for future delivery if the person
6 has reason to believe that the transaction and the contract
7 is made on or subject to the rules of a foreign board of
8 trade that has complied with subsections (b)(1) and
9 (b)(2).”.

10 (d) CONTRACT ENFORCEMENT FOR FOREIGN FU-
11 TURES CONTRACTS.—Section 22(a) of the Commodity Ex-
12 change Act (7 U.S.C. 25(a)) is amended by adding at the
13 end the following:

14 “(5) CONTRACT ENFORCEMENT FOR FOREIGN
15 FUTURES CONTRACTS.—A contract of sale of a com-
16 modity for future delivery traded or executed on or
17 through the facilities of a board of trade, exchange,
18 or market located outside the United States for pur-
19 poses of section 4(a) shall not be void, voidable, or
20 unenforceable, and a party to such a contract shall
21 not be entitled to rescind or recover any payment
22 made with respect to the contract, based on the fail-
23 ure of the foreign board of trade to comply with any
24 provision of this Act.”.

1 **SEC. 3116. LEGAL CERTAINTY FOR SWAPS.**

2 Section 22(a)(4) of the Commodity Exchange Act (7
3 U.S.C. 25(a)(4)) is amended to read as follows:

4 “(4) CONTRACT ENFORCEMENT BETWEEN ELI-
5 GIBLE COUNTERPARTIES.—

6 “(A) No hybrid instrument sold to any in-
7 vestor shall be void, voidable, or unenforceable,
8 and no party to such hybrid instrument shall be
9 entitled to rescind, or recover any payment
10 made with respect to, such a hybrid instrument
11 under this section or any other provision of
12 Federal or State law, based solely on the failure
13 of the hybrid instrument to comply with the
14 terms or conditions of section 2(f) or regula-
15 tions of the Commission.

16 “(B) No agreement, contract, or trans-
17 action between eligible contract participants or
18 persons reasonably believed to be eligible con-
19 tract participants shall be void, voidable, or un-
20 enforceable, and no party thereto shall be enti-
21 tled to rescind, or recover any payment made
22 with respect to, such agreement, contract, or
23 transaction under this section or any other pro-
24 vision of Federal or State law, based solely on
25 the failure of the agreement, contract, or trans-
26 action to meet the definition of a swap set forth

1 in section 1a or to be cleared pursuant to sec-
2 tion 2(j)(1).”.

3 **SEC. 3117. MULTILATERAL CLEARING ORGANIZATIONS.**

4 (a) 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 by striking “section 2(c), 2(d),
7 2(f), or 2(g) of such Act, or exempted under section 2(h)
8 or 4(c) of such Act” and inserting “section 2(c) or 2(f)
9 of such Act”.

10 (b) Section 408 of the Federal Deposit Insurance
11 Corporation Improvement Act of 1991 (12 U.S.C. 4421)
12 is further amended by inserting at the end the following:

13 “(4) The term ‘over-the-counter derivative in-
14 strument’ does not include a swap or a security-
15 based swap as defined in sections 1a(35) and 1a(38)
16 of the Commodity Exchange Act (7 U.S.C. 1a(35)
17 and 1a(38)).”.

18 **SEC. 3118. PRIMARY ENFORCEMENT AUTHORITY.**

19 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
20 is amended by adding the following new section after sec-
21 tion 4b:

22 **“SEC. 4b-1. PRIMARY ENFORCEMENT AUTHORITY.**

23 “(a) CFTC.—Except as provided in subsections (b),
24 (c), and (d), the Commission shall have primary authority
25 to enforce the provisions of Subtitle A of the Over-the-

1 Counter Derivatives Markets Act of 2009 with respect to
2 any person.

3 “(b) PRUDENTIAL REGULATORS.—The Prudential
4 Regulators shall have exclusive authority to enforce the
5 provisions of section 4s(e) and other prudential require-
6 ments of this Act with respect to banks, and branches or
7 agencies of foreign banks that are swap dealers or major
8 swap participants.

9 “(c) REFERRAL.—If the Prudential Regulator for a
10 swap dealer or major swap participant has cause to believe
11 that such swap dealer or major swap participant may have
12 engaged in conduct that constitutes a violation of the non-
13 prudential requirements of section 4s or rules adopted by
14 the Commission thereunder, that Prudential Regulator
15 may recommend in writing to the Commission that the
16 Commission initiate an enforcement proceeding as author-
17 ized under this Act. The recommendation shall be accom-
18 panied by a written explanation of the concerns giving rise
19 to the recommendation.

20 “(d) BACKSTOP ENFORCEMENT AUTHORITY.—If the
21 Commission does not initiate an enforcement proceeding
22 before the end of the 90-day period beginning on the date
23 on which the Commission receives a recommendation
24 under subsection (c), the Prudential Regulator may ini-

1 tiate an enforcement proceeding as permitted under Fed-
2 eral law.”.

3 **SEC. 3119. ENFORCEMENT.**

4 (a) Section 4b(a)(2) of the Commodity Exchange Act
5 (7 U.S.C. 6b(a)(2)) is amended by striking “or other
6 agreement, contract, or transaction subject to paragraphs
7 (1) and (2) of section 5a(g),” and inserting “or swap,”.

8 (b) Section 4b(b) of the Commodity Exchange Act
9 (7 U.S.C. 6b(b)) is amended by striking “or other agree-
10 ment, contract or transaction subject to paragraphs (1)
11 and (2) of section 5a(g),” and inserting “or swap,”.

12 (c) Section 4c(a) of the Commodity Exchange Act (7
13 U.S.C. 6c(a)) is amended by inserting “or swap” before
14 “if the transaction is used or may be used”.

15 (d) Section 9(a)(2) of the Commodity Exchange Act
16 (7 U.S.C. 13(a)(2)) is amended by inserting “or of any
17 swap,” before “or to corner”.

18 (e) Section 9(a)(4) of the Commodity Exchange Act
19 (7 U.S.C. 13(a)(4)) is amended by inserting “swap reposi-
20 tory,” before “or futures association”.

21 (f) Section 9(e)(1) of the Commodity Exchange Act
22 (7 U.S.C. 13(e)(1)) is amended by inserting “swap reposi-
23 tory,” before “or registered futures association” and by
24 inserting “, or swaps,” before “on the basis”.

1 (g) Section 8(b) of the Federal Deposit Insurance Act
2 (12 U.S.C. 1818(b)) is amended by redesignating para-
3 graphs (6) through (10) as paragraphs (7) through (11),
4 respectively, and by inserting after paragraph (5) the fol-
5 lowing:

6 “(6) This section shall apply to any swap deal-
7 er, major swap participant, security-based swap
8 dealer, major security-based swap participant, de-
9 rivatives clearing organization, swap repository or
10 swap execution facility, whether or not it is an in-
11 sured depository institution, for which the Board,
12 the Corporation, or the Office of the Comptroller of
13 the Currency is the appropriate Federal banking
14 agency or Prudential Regulator for purposes of the
15 Over-the-Counter Derivatives Markets Act of
16 2009.”.

17 **SEC. 3120. RETAIL COMMODITY TRANSACTIONS.**

18 Section 2(c) of the Commodity Exchange Act (7
19 U.S.C. 2(c)) is amended—

20 (1) in paragraph (1), by striking “(to the extent
21 provided in section 5a(g)), 5b, 5d, or 12(e)(2)(B))”
22 and inserting “, 5b, or 12(e)(2)(B))”;

23 (2) in paragraph (2), by inserting after sub-
24 paragraph (C) the following:

1 “(D) RETAIL COMMODITY TRANS-
2 ACTIONS.—

3 “(i) This subparagraph shall apply to
4 any agreement, contract, or transaction in
5 any commodity that is—

6 “(I) entered into with, or offered
7 to (even if not entered into with), a
8 person that is not an eligible contract
9 participant or eligible commercial en-
10 tity; and

11 “(II) entered into, or offered
12 (even if not entered into), on a lever-
13 aged or margined basis, or financed
14 by the offeror, the counterparty, or a
15 person acting in concert with the of-
16 feror or counterparty on a similar
17 basis.

18 “(ii) Clause (i) shall not apply to—

19 “(I) an agreement, contract, or
20 transaction described in paragraph (1)
21 or subparagraphs (A), (B), or (C), in-
22 cluding any agreement, contract, or
23 transaction specifically excluded from
24 subparagraph (A), (B), or (C);

25 “(II) any security;

1 “(III) a contract of sale that—

2 “(aa) results in actual deliv-
3 ery within 28 days or such other
4 period as the Commission may
5 determine by rule or regulation
6 based upon the typical commer-
7 cial practice in cash or spot mar-
8 kets for the commodity involved;
9 or

10 “(bb) creates an enforceable
11 obligation to deliver between a
12 seller and a buyer that have the
13 ability to deliver and accept deliv-
14 ery, respectively, in connection
15 with their line of business;

16 “(IV) an agreement, contract, or
17 transaction that is listed on a national
18 securities exchange registered under
19 section 6(a) of the Securities Ex-
20 change Act of 1934 (15 U.S.C.
21 78f(a)); or

22 “(V) an identified banking prod-
23 uct, as defined in section 402(b) of
24 the Legal Certainty for Bank Prod-
25 ucts Act of 2000 (7 U.S.C. 27(b)).

1 “(iii) Sections 4(a), 4(b) and 4b shall
2 apply to any agreement, contract or trans-
3 action described in clause (i), that is not
4 excluded from clause (i) by clause (ii), as
5 if the agreement, contract, or transaction
6 were a contract of sale of a commodity for
7 future delivery.

8 “(iv) This subparagraph shall not be
9 construed to limit any jurisdiction that the
10 Commission may otherwise have under any
11 other provision of this Act over an agree-
12 ment, contract, or transaction that is a
13 contract of sale of a commodity for future
14 delivery.

15 “(v) This subparagraph shall not be
16 construed to limit any jurisdiction that the
17 Commission or the Securities and Ex-
18 change Commission may otherwise have
19 under any other provisions of this Act with
20 respect to security futures products and
21 persons effecting transactions in security
22 futures products.

23 “(vi) For the purposes of this sub-
24 paragraph, an agricultural producer, pack-
25 er, or handler shall be considered an eligi-

1 ble commercial entity for any agreement,
2 contract, or transaction for a commodity in
3 connection with its line of business.”.

4 **SEC. 3121. LARGE SWAP TRADER REPORTING.**

5 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
6 is amended by adding after section 4t (as added by section
7 3108) the following:

8 **“SEC. 4u. LARGE SWAP TRADER REPORTING.**

9 “(a) It shall be unlawful for any person to enter into
10 any swap that performs or affects a significant price dis-
11 covery function with respect to regulated markets if—

12 “(1) such person shall directly or indirectly
13 enter into such swaps during any one day in an
14 amount equal to or in excess of such amount as
15 shall be fixed from time to time by the Commission;
16 and

17 “(2) such person shall directly or indirectly
18 have or obtain a position in such swaps equal to or
19 in excess of such amount as shall be fixed from time
20 to time by the Commission,

21 unless such person files or causes to be filed with the prop-
22 erly designated officer of the Commission such reports re-
23 garding any transactions or positions described in para-
24 graphs (1) and (2) as the Commission may by rule or reg-
25 ulation require and unless, in accordance with the rules

1 and regulations of the Commission, such person shall keep
2 books and records of all such swaps and any transactions
3 and positions in any related commodity traded on or sub-
4 ject to the rules of any board of trade, and of cash or
5 spot transactions in, inventories of, and purchase and sale
6 commitments of, such a commodity.

7 “(b) Such books and records shall show complete de-
8 tails concerning all transactions and positions as the Com-
9 mission may by rule or regulation prescribe.

10 “(c) Such books and records shall be open at all times
11 to inspection and examination by any representative of the
12 Commission.

13 “(d) Any such books and records relating to trans-
14 actions in security-based swap agreements (as defined in
15 section 3(a)(76) of the Securities Exchange Act of 1934)
16 shall be open at all times to inspection and examination
17 by the Securities and Exchange Commission.

18 “(e) For the purpose of this section, the swaps, fu-
19 tures and cash or spot transactions and positions of any
20 person shall include such transactions and positions of any
21 persons directly or indirectly controlled by such person.

22 “(f) In making a determination whether a swap per-
23 forms or affects a significant price discovery function with
24 respect to regulated markets, the Commission shall con-
25 sider the factors set forth in section 4a(a)(3).”.

1 **SEC. 3122. AUTHORITY TO BAN ABUSIVE SWAPS.**

2 The Commodity Futures Trading Commission and
3 the Securities and Exchange Commission may, by rule or
4 order, jointly collect information as may be necessary con-
5 cerning the markets for any types of swap (as defined in
6 section 1a(35) of the Commodity Exchange Act) or secu-
7 rity-based swap (as defined in section 1a(38) of the such
8 Act) and jointly issue a report with respect to any types
9 of swaps or security-based swaps which the Commodity
10 Futures Trading Commission and the Securities and Ex-
11 change Commission find are detrimental to the stability
12 of a financial market or of participants in a financial mar-
13 ket.

14 **SEC. 3123. INTERNATIONAL HARMONIZATION.**

15 In order to promote effective and consistent global
16 regulation of swaps, the Securities and Exchange Commis-
17 sion, the Commodity Futures Trading Commission, the
18 Prudential Regulators (as defined in section 1a(43) of the
19 Commodity Exchange Act), and the financial stability reg-
20 ulator, shall consult and coordinate with foreign regu-
21 latory authorities on the establishment of consistent inter-
22 national standards with respect to the regulation of swaps,
23 and may agree to such information-sharing arrangements
24 as may be deemed to be necessary or appropriate in the
25 public interest or for the protection of investors and swap
26 counterparties.

1 **SEC. 3124. AUTHORITY TO BAN ACCESS TO THE UNITED**
2 **STATES FINANCIAL SYSTEM.**

3 If the Commodity Futures Trading Commission or
4 the Securities and Exchange Commission determines that
5 the regulation of swaps or security-based swaps markets
6 in a foreign country undermines the stability of the U.S.
7 financial system, either Commission, in consultation with
8 the Secretary of the Treasury, may prohibit an entity
9 domiciled in that country from participating in the United
10 States in any swap or security-based swap activities.

11 **SEC. 3125. OTHER AUTHORITY.**

12 Unless otherwise provided by its terms, this title does
13 not divest any appropriate Federal banking agency, the
14 Commission, the Securities and Exchange Commission, or
15 other Federal or State agency, of any authority derived
16 from any other applicable law.

17 **SEC. 3126. ANTITRUST.**

18 Nothing in the amendments made by this title shall
19 be construed to modify, impair, or supersede the operation
20 of any of the antitrust laws. For purposes of this subtitle,
21 the term “antitrust laws” has the same meaning given
22 such term in subsection (a) of the first section of the Clay-
23 ton Act, except that such term includes section 5 of the
24 Federal Trade Commission Act to the extent that such
25 section 5 applies to unfair methods of competition.

1 **SEC. 3127. EFFECTIVE DATE.**

2 This subtitle is effective 270 days after the date of
3 enactment.

4 **Subtitle B—Regulation of Security-**
5 **Based Swap Markets**

6 **SEC. 3201. DEFINITIONS UNDER THE SECURITIES EX-**
7 **CHANGE ACT OF 1934.**

8 Section 3(a) of the Securities Exchange Act of 1934
9 (15 U.S.C. 78c(a)) is amended—

10 (1) in paragraph (5)(A) and (B), by inserting
11 “(but not security-based swaps, other than security-
12 based swaps with or for persons that are not eligible
13 contract participants)” after “securities” in each
14 place it appears;

15 (2) in paragraph (10) by inserting “security-
16 based swaps” after “security future,”

17 (3) in paragraph (13), by adding at the end the
18 following: “For security-based swaps, such terms in-
19 clude the execution, termination (prior to its sched-
20 uled maturity date), assignment, exchange, or simi-
21 lar transfer or conveyance of, or extinguishing of
22 rights or obligations under, a security-based swap,
23 as the context may require.”;

24 (4) in paragraph (14), by adding at the end the
25 following: “For security-based swaps, such terms in-
26 clude the execution, termination (prior to its sched-

1 uled maturity date), assignment, exchange, or simi-
2 lar transfer or conveyance of, or extinguishing of
3 rights or obligations under, a security-based swap,
4 as the context may require.”;

5 (5) in paragraph (39)—

6 (A) by striking “or government securities
7 dealer” and inserting “government securities
8 dealer, security-based swap dealer or major se-
9 curity-based swap participant” in subparagraph
10 (B)(i)(I);

11 (B) by inserting “security-based swap deal-
12 er, major security-based swap participant,”
13 after “government securities dealer,” in sub-
14 paragraph (B)(i)(II);

15 (C) by striking “or government securities
16 dealer” and inserting “government securities
17 dealer, security-based swap dealer or major se-
18 curity-based swap participant” in subparagraph
19 (C); and

20 (D) by inserting “security-based swap
21 dealer, major security-based swap participant,”
22 after “government securities dealer,” in sub-
23 paragraph (D); and

24 (6) by adding at the end the following:

1 “(65) ELIGIBLE CONTRACT PARTICIPANT.—The
2 term ‘eligible contract participant’ has the same
3 meaning as in section 1a(13) of the Commodity Ex-
4 change Act (7 U.S.C. 1a(13)).

5 “(66) MAJOR SWAP PARTICIPANT.—The term
6 ‘major swap participant’ has the same meaning as in
7 section 1a(40) of the Commodity Exchange Act (7
8 U.S.C. 1a(40)).

9 “(67) MAJOR SECURITY-BASED SWAP PARTICI-
10 PANT.—The term ‘major security-based swap partici-
11 ipant’ has the same meaning as in section 1a(41) of
12 the Commodity Exchange Act (7 U.S.C. 1a(41)).

13 “(68) SECURITY-BASED SWAP.—The term ‘se-
14 curity-based swap’ has the same meaning as in sec-
15 tion 1a(38) of the Commodity Exchange Act (7
16 U.S.C. 1a(38)).

17 “(69) SWAP.—The term ‘swap’ has the same
18 meaning as in section 1a(35) of the Commodity Ex-
19 change Act (7 U.S.C. 1a(35)).

20 “(70) PERSON ASSOCIATED WITH A SECURITY-
21 BASED SWAP DEALER OR MAJOR SECURITY-BASED
22 SWAP PARTICIPANT.—The term ‘person associated
23 with a security-based swap dealer or major security-
24 based swap participant’ or ‘associated person of a
25 security-based swap dealer or major security-based

1 swap participant’ has the same meaning as in sec-
2 tion 1a(48) of the Commodity Exchange Act (7
3 U.S.C. 1a(48)).

4 “(71) SECURITY-BASED SWAP DEALER.—The
5 term ‘security-based swap dealer’ has the same
6 meaning as in section 1a(44) of the Commodity Ex-
7 change Act (7 U.S.C. 1a(44)).

8 “(72) APPROPRIATE FEDERAL BANKING AGEN-
9 CY.—The term ‘appropriate Federal banking agency’
10 has the same meaning as in section 3(q) of the Fed-
11 eral Deposit Insurance Act (12 U.S.C. 1813(q)).

12 “(73) BOARD.—The term ‘Board’ means the
13 Board of Governors of the Federal Reserve System.

14 “(74) PRUDENTIAL REGULATOR.—The term
15 ‘Prudential Regulator’ has the same meaning as in
16 section 1a(43) of the Commodity Exchange Act (7
17 U.S.C. 1a(43)).

18 “(75) SWAP DEALER.—The term ‘swap dealer’
19 has the same meaning as in section 1a(39) of the
20 Commodity Exchange Act (7 U.S.C. 1a(39)).

21 “(76) SECURITY-BASED SWAP AGREEMENT.—

22 “(A) IN GENERAL.—For purposes of sec-
23 tions 10, 16, 20, and 21A of this Act, and sec-
24 tion 17 of the Securities Act of 1933 (15
25 U.S.C. 77q), the term ‘security-based swap

1 agreement' means a swap agreement as defined
2 in section 206A of the Gramm-Leach-Bliley Act
3 (15 U.S.C. 78c note) of which a material term
4 is based on the price, yield, value, or volatility
5 of any security or any group or index of securi-
6 ties, or any interest therein.

7 “(B) EXCLUSIONS.—The term ‘security-
8 based swap agreement’ does not include any se-
9 curity-based swap.

10 “(77) RESTRICTED OWNER.—The term ‘re-
11 stricted owner’ has the same meaning as in section
12 1a(51) of the Commodity Exchange Act.”.

13 **SEC. 3202. REPEAL OF PROHIBITION ON REGULATION OF**
14 **SECURITY-BASED SWAPS.**

15 (a) REPEAL OF LAW.—Section 206B of the Gramm-
16 Leach-Bliley Act (15 U.S.C. 78c note) is repealed.

17 (b) CONFORMING AMENDMENTS TO THE SECURITIES
18 ACT OF 1933.—

19 (1) Section 2A(b) of the Securities Act of 1933
20 (15 U.S.C. 77b–1) is amended by striking “(as de-
21 fined in section 206B of the Gramm-Leach-Bliley
22 Act)” each place that such term appears.

23 (2) Section 17 of the Securities Act of 1933 (15
24 U.S.C. 77q) is amended—

25 (A) in subsection (a)—

1 (i) by inserting “(including security-
2 based swaps)” after “securities”; and

3 (ii) by striking “206B of the Gramm-
4 Leach-Bliley Act” and inserting “3(a)(76)
5 of the Securities Exchange Act of 1934”;
6 and

7 (B) in subsection (d), by striking “206B of
8 the Gramm-Leach-Bliley Act” and inserting
9 “3(a)(76) of the Securities Exchange Act of
10 1934”.

11 (c) CONFORMING AMENDMENTS TO THE SECURITIES
12 EXCHANGE ACT OF 1934.—The Securities Exchange Act
13 of 1934 (15 U.S.C. 78a, et seq.) is amended as follows:

14 (1) Section 3A (15 U.S.C. 78c–1) is amended
15 by striking “(as defined in section 206B of the
16 Gramm-Leach-Bliley Act)” each place that the term
17 appears.

18 (2) Section 9(a) (15 U.S.C. 78i(a)) is amended
19 by striking paragraphs (2) through (5) and insert-
20 ing:

21 “(2) To effect, alone or with one or more other per-
22 sons, a series of transactions in any security registered
23 on a national securities exchange or in connection with
24 any security-based swap or security-based swap agreement
25 with respect to such security creating actual or apparent

1 active trading in such security, or raising or depressing
2 the price of such security, for the purpose of inducing the
3 purchase or sale of such security by others.

4 “(3) If a dealer, broker, security-based swap dealer,
5 major security-based swap participant or other person sell-
6 ing or offering for sale or purchasing or offering to pur-
7 chase the security, or a security-based swap or security-
8 based swap agreement with respect to such security, to
9 induce the purchase or sale of any security registered on
10 a national securities exchange or any security-based swap
11 or security-based swap agreement with respect to such se-
12 curity by the circulation or dissemination in the ordinary
13 course of business of information to the effect that the
14 price of any such security will or is likely to rise or fall
15 because of market operations of any one or more persons
16 conducted for the purpose of raising or depressing the
17 price of such security.

18 “(4) If a dealer, broker, security-based swap dealer,
19 major security-based swap participant or other person sell-
20 ing or offering for sale or purchasing or offering to pur-
21 chase the security, or a security-based swap or security-
22 based swap agreement with respect to such security, to
23 make, regarding any security registered on a national se-
24 curities exchange or any security-based swap or security-
25 based swap agreement with respect to such security, for

1 the purpose of inducing the purchase or sale of such secu-
2 rity or such security-based swap or security-based swap
3 agreement, any statement which was at the time and in
4 the light of the circumstances under which it was made,
5 false or misleading with respect to any material fact, and
6 which he knew or had reasonable ground to believe was
7 so false or misleading.

8 “(5) For a consideration, received directly or indi-
9 rectly from a dealer, broker, security-based swap dealer,
10 major security-based swap participant or other person sell-
11 ing or offering for sale or purchasing or offering to pur-
12 chase the security, or a security-based swap or security-
13 based swap agreement with respect to such security, to
14 induce the purchase of any security registered on a na-
15 tional securities exchange or any security-based swap or
16 security-based swap agreement with respect to such secu-
17 rity by the circulation or dissemination of information to
18 the effect that the price of any such security will or is
19 likely to rise or fall because of the market operations of
20 any one or more persons conducted for the purpose of rais-
21 ing or depressing the price of such security.”.

22 (3) Section 9(i) (15 U.S.C. 78i(i)) is amended
23 by striking “(as defined in section 206B of the
24 Gramm-Leach-Bliley Act)”;

1 (4) Section 10 (15 U.S.C. 78j) is amended by
2 striking “(as defined in section 206B of the Gramm-
3 Leach-Bliley Act)” each place that the term appears.

4 (5) Section 15(c)(1) is amended—

5 (A) in subparagraph (A), by striking “, or
6 any security-based swap agreement (as defined
7 in section 206B of the Gramm-Leach-Bliley
8 Act),”; and

9 (B) in subparagraphs (B) and (C), by
10 striking “agreement (as defined in section 206B
11 of the Gramm-Leach-Bliley Act)” in each place
12 that the term appears.

13 (6) Section 15(i) (15 U.S.C. 78o(i), as added
14 by section 303(f) of the Commodity Futures Mod-
15 ernization Act of 2000 (Public Law 106–554; 114
16 Stat. 2763A–455) is amended by striking “(as de-
17 fined in section 206B of the Gramm-Leach-Bliley
18 Act)”.

19 (7) Section 16 (15 U.S.C. 78p) is amended—

20 (A) in subsection (a)(2)(C), by striking
21 “(as defined in section 206(b) of the Gramm-
22 Leach-Bliley Act (15 U.S.C. 78c note))”;

23 (B) in subsection (b), by striking “(as de-
24 fined in section 206B of the Gramm-Leach-Bli-

1 ley Act)” in each place that the term appears;
2 and

3 (C) in subsection (g), by striking “(as de-
4 fined in section 206B of the Gramm-Leach-Bli-
5 ley Act)”;

6 (8) Section 20 (15 U.S.C. 78t) is amended—

7 (A) in subsection (d), by striking “(as de-
8 fined in section 206B of the Gramm-Leach-Bli-
9 ley Act)”;

10 (B) in subsection (f), by striking “(as de-
11 fined in section 206B of the Gramm-Leach-Bli-
12 ley Act)”;

13 (9) Section 21A (15 U.S.C. 78u–1) is amend-
14 ed—

15 (A) in subsection (a)(1), by striking “(as
16 defined in section 206B of the Gramm-Leach-
17 Bliley Act)”;

18 (B) in subsection (g), by striking “(as de-
19 fined in section 206B of the Gramm-Leach-Bli-
20 ley Act)”.

21 **SEC. 3203. AMENDMENTS TO THE SECURITIES EXCHANGE**

22 **ACT OF 1934.**

23 (a) **CLEARING FOR SECURITY-BASED SWAPS.**—The
24 Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.)

1 is amended by adding the following section after section
2 3A:

3 **“SEC. 3B. CLEARING OF SECURITY-BASED SWAPS.**

4 “(a) CLEARING REQUIREMENT.—

5 “(1) IN GENERAL.—

6 “(A) PRESUMPTION OF CLEARING.—A se-
7 curity-based swap shall be submitted for clear-
8 ing if a clearing agency that is registered under
9 this Act will accept the security-based swap for
10 clearing;

11 “(B) OPEN ACCESS.—The rules of a clear-
12 ing agency described in subparagraph (A)
13 shall—

14 “(i) prescribe that all security-based
15 swaps submitted to the clearing agency
16 with the same terms and conditions are
17 fungible and may be offset with each other;
18 and

19 “(ii) provide for non-discriminatory
20 clearing of a security-based swap executed
21 on or through the rules of an unaffiliated
22 exchange or alternative swap execution fa-
23 cility.

24 “(2) COMMISSION APPROVAL.—

1 “(A) IN GENERAL.—A clearing agency
2 shall submit to the Commission for prior ap-
3 proval each security-based swap, or any group,
4 category, type or class of security-based swaps,
5 that it seeks to accept for clearing, which sub-
6 mission the Commission shall make available to
7 the public.

8 “(B) DEADLINE.—The Commission shall
9 take final action on a request submitted pursu-
10 ant to subparagraph (A) not later than 90 days
11 after submission of the request, unless the
12 clearing agency submitting the request agrees
13 to an extension of the time limitation estab-
14 lished under this subparagraph. A request on
15 which the Commission fails to take final action
16 within the time limitation established under this
17 subparagraph shall be deemed approved.

18 “(C) APPROVAL.—The Commission shall
19 approve, unconditionally or subject to such
20 terms and conditions as the Commission deter-
21 mines to be appropriate, any request submitted
22 pursuant to subparagraph (A) if it finds that
23 the request is consistent with the core principles
24 specified under subsection (l).

1 “(D) RULES.—Not later than 180 days
2 after the date of enactment of the Over-the-
3 Counter Derivatives Markets Act of 2009, the
4 Commission shall adopt rules for a clearing
5 agency’s submission for approval, pursuant to
6 this paragraph, of a security-based swap, or a
7 group, category, type or class of security-based
8 swaps, that it seeks to accept for clearing.

9 “(3) STAY OF CLEARING REQUIREMENT.—At
10 any time after issuance of an approval pursuant to
11 paragraph (2)—

12 “(A) REVIEW PROCESS.—The Commission,
13 on application of a counterparty to a security-
14 based swap or on its own initiative, may stay
15 the clearing requirement of paragraph (1) until
16 the Commission completes a review of the terms
17 of the security-based swap (or the group, cat-
18 egory, type or class of security-based swaps)
19 and the clearing arrangement.

20 “(B) DEADLINE.—The Commission shall
21 complete a review undertaken pursuant to sub-
22 paragraph (A) not later than 90 days after
23 issuance of the stay, unless the clearing agency
24 that clears the security-based swap, or group,
25 category, type or class of security-based swaps,

1 agrees to an extension of the time limitation es-
2 tablished under this subparagraph.

3 “(C) DETERMINATION.—Upon completion
4 of the review undertaken pursuant to subpara-
5 graph (A), the Commission may—

6 “(i) determine, unconditionally or sub-
7 ject to such terms and conditions as the
8 Commission determines to be appropriate,
9 that the security-based swap, or group,
10 category, type or class of security-based
11 swaps, must be cleared pursuant to this
12 subsection if it finds that such clearing is
13 consistent with the securities laws; or

14 “(ii) determine that the clearing re-
15 quirement of paragraph (1) shall not apply
16 to the security-based swap, or group, cat-
17 egory, type or class of security-based
18 swaps.

19 “(D) RULES.—Not later than 180 days
20 after the date of enactment of the Over-the-
21 Counter Derivatives Markets Act of 2009, the
22 Commission shall adopt rules for reviewing,
23 pursuant to this paragraph, a clearing agency’s
24 clearing of a security-based swap, or a group,

1 category, type or class of security-based swaps,
2 that it has accepted for clearing.

3 “(4) PREVENTION OF EVASION.—The Commis-
4 sion and the Commodities Futures Trading Commis-
5 sion shall have authority to prescribe rules under
6 this section, or issue interpretations of such rules, as
7 necessary to prevent evasions of this Act. Any such
8 rules or interpretations of rules shall be prescribed
9 and issued jointly by both Commissions.

10 “(5) REQUIRED REPORTING.—

11 “(A) IN GENERAL.—Any security-based
12 swap that is not accepted for clearing by any
13 clearing agency shall be reported to either a se-
14 curity-based swap repository described in sec-
15 tion 13(n) or, if there is no repository that
16 would accept the security-based swap, to the
17 Commission pursuant to section 13A within
18 such time period as the Commission may by
19 rule prescribe.

20 “(B) REPORTING BY SECURITY-BASED
21 SWAP DEALERS AND MAJOR SECURITY-BASED
22 SWAP PARTICIPANTS.—In transactions where
23 only 1 counterparty is a security-based swap
24 dealer or major security-based swap participant,
25 the security-based swap dealer or major secu-

1 rity-based swap participant shall report the
2 transaction. In transactions where neither
3 counterparty is a security-based swap dealer or
4 major security-based swap participant, only 1
5 counterparty shall be required to report the
6 transaction and the counterparties shall deter-
7 mine the reporting party by contract or other-
8 wise.

9 “(6) TRANSITION RULES.—Rules adopted by
10 the Commission under this section shall provide for
11 the reporting of data, as follows:

12 “(A) Security-based swaps that were en-
13 tered into before the date of enactment of the
14 Over-the-Counter Derivatives Markets Act of
15 2009 shall be reported to a registered security-
16 based swap repository or the Commission no
17 later than 180 days after the effective date of
18 such Act.

19 “(B) Security-based swaps that were en-
20 tered into on or after the date of enactment of
21 the Over-the-Counter Derivatives Markets Act
22 of 2009 shall be reported to a registered secu-
23 rity-based swap repository or the Commission
24 no later than the later of—

1 “(i) 90 days after the effective date of
2 such Act; or

3 “(ii) such other time after entering
4 into the swap as the Commission may pre-
5 scribe by rule or regulation.

6 “(7) EXCEPTION.—The requirements of para-
7 graph (1) shall not apply to a security-based swap
8 if—

9 “(A) no clearing agency registered under
10 this Act will accept the security-based swap for
11 clearing; or

12 “(B) one of the counterparties to the secu-
13 rity-based swap is not a security-based swap
14 dealer or major security-based swap participant.

15 “(8) EXCLUSION.—Paragraph (1) shall not
16 apply to a security-based swap one party to which is
17 not a security-based swap dealer or major security-
18 based swap participant, and which is entered into
19 before the end of the 180-day period that begins
20 with the effective date of this paragraph.

21 “(b) CONSULTATION.—The Commission and the
22 Commodity Futures Trading Commission shall consult
23 with the appropriate Federal banking agencies and each
24 other prior to adopting rules under this section.”.

1 (b) CLEARING AGENCY REQUIREMENTS.—Section
2 17A of the Securities Exchange Act of 1934 (15 U.S.C.
3 78q) is amended by adding at the end the following new
4 subsections:

5 “(g) REGISTRATION REQUIREMENT.—It shall be un-
6 lawful for a clearing agency, unless registered with the
7 Commission, directly or indirectly to make use of the mails
8 or any means or instrumentality of interstate commerce
9 to perform the functions of a clearing agency with respect
10 to a swap.

11 “(h) VOLUNTARY REGISTRATION.—

12 “(1) CLEARING AGENCIES.—A person that
13 clears agreements, contracts, or transactions that
14 are not required to be cleared under this Act may
15 register with the Commission as a clearing agency.

16 “(2) DERIVATIVES CLEARING ORGANIZA-
17 TIONS.—A clearing agency may clear swaps that are
18 required to be cleared by a person who is registered
19 as a derivatives clearing organization under the
20 Commodity Exchange Act (7 U.S.C. 1, et seq.).

21 “(i) REQUIRED REGISTRATION FOR BANKS AND
22 CLEARING AGENCIES.—A person that is required to be
23 registered as a clearing agency under this section shall
24 register with the Commission regardless of whether the
25 person is also a bank or a derivatives clearing organization

1 registered with the Commodity Futures Trading Commis-
2 sion under the Commodity Exchange Act (7 U.S.C. 1, et
3 seq.).

4 “(j) REPORTING.—

5 “(1) IN GENERAL.—A clearing agency that
6 clears security-based swaps shall provide to the
7 Commission and any designated swap repository all
8 information determined by the Commission to be
9 necessary to perform its responsibilities under this
10 Act. The Commission shall adopt data collection and
11 maintenance requirements for security-based swaps
12 cleared by clearing agencies that are comparable to
13 the corresponding requirements for security-based
14 swaps accepted by security-based swap repositories
15 and security-based swaps traded on swap execution
16 facilities. The Commission shall share such informa-
17 tion, upon request, with the Board, the Commodity
18 Futures Trading Commission, the appropriate Fed-
19 eral banking agencies, the Financial Services Over-
20 sight Council, and the Department of Justice or to
21 other persons the Commission deems appropriate,
22 including foreign financial supervisors (including for-
23 eign futures authorities), foreign central banks, and
24 foreign ministries.

1 “(2) PUBLIC INFORMATION.—A clearing agency
2 that clears security-based swaps shall provide to the
3 Commission, or its designee, such information as is
4 required by, and in a form and at a frequency to be
5 determined by, the Commission, in order to comply
6 with the public reporting requirements contained in
7 section 13.

8 “(k) DESIGNATION OF COMPLIANCE OFFICER.—

9 “(1) IN GENERAL.—Each clearing agency that
10 clears security-based swaps shall designate an indi-
11 vidual to serve as a compliance officer.

12 “(2) DUTIES.—The compliance officer shall—

13 “(A) report directly to the board or to the
14 senior officer of the clearing agency;

15 “(B) in consultation with the board of the
16 clearing agency, a body performing a function
17 similar to that of a board, or the senior officer
18 of the clearing agency, resolve any conflicts of
19 interest that may arise;

20 “(C) be responsible for administering the
21 policies and procedures required to be estab-
22 lished pursuant to this section;

23 “(D) ensure compliance with securities
24 laws and the rules and regulations issued there-

1 under, including rules prescribed by the Com-
2 mission pursuant to this section; and

3 “(E) establish procedures for remediation
4 of noncompliance issues found during compli-
5 ance office reviews, lookbacks, internal or exter-
6 nal audit findings, self-reported errors, or
7 through validated complaints which will estab-
8 lish the handling, management response, reme-
9 diation, retesting, and closing of noncompliance
10 issues.

11 “(3) ANNUAL REPORTS REQUIRED.—The com-
12 pliance officer shall annually prepare and sign a re-
13 port on the compliance of the clearing agency with
14 the securities laws and its policies and procedures,
15 including its code of ethics and conflict of interest
16 policies, in accordance with rules prescribed by the
17 Commission. Such compliance report shall accom-
18 pany the financial reports of the clearing agency
19 that are required to be furnished to the Commission
20 pursuant to this section and shall include a certifi-
21 cation that, under penalty of law, the report is accu-
22 rate and complete.

23 “(1) STANDARDS FOR CLEARING AGENCIES CLEAR-
24 ING SWAP TRANSACTIONS.—To be registered and to main-
25 tain registration as a clearing agency that clears swap

1 transactions, a clearing agency shall comply with such
2 standards as the Commission may establish by rule. In
3 establishing any such standards, and in the exercise of its
4 oversight of such a clearing agency pursuant to this title,
5 the Commission may conform such standards or oversight
6 to reflect evolving United States and international stand-
7 ards. Except where the Commission determines otherwise
8 by rule or regulation, a clearing agency shall have reason-
9 able discretion in establishing the manner in which it com-
10 plies with any such standards.

11 “(m) CONSULTATION.—The Commission and the
12 Commodity Futures Trading Commission shall consult
13 with the appropriate Federal banking agencies and each
14 other prior to adopting rules under this section.

15 “(n) HARMONIZATION OF RULES.—Not later than
16 180 days after the effective date of the Over-the-Counter
17 Derivatives Markets Act of 2009, the Commission and the
18 Commodity Futures Trading Commission shall jointly
19 adopt uniform rules governing persons that are registered
20 as derivatives clearing organizations for swaps under the
21 Commodity Exchange Act (7 U.S.C. 1, et seq.) and per-
22 sons that are registered as clearing agencies for security-
23 based swaps under the Securities Exchange Act of 1934
24 (15 U.S.C. 78a, et seq.).”

1 (c) EXECUTION OF SECURITY-BASED SWAPS.—The
2 Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.)
3 is amended by inserting after section 5 the following:

4 **“SEC. 5A. EXECUTION OF SECURITY-BASED SWAPS.**

5 “(a) TRADE EXECUTION.—

6 “(1) IN GENERAL.—With respect to trans-
7 actions involving security-based swaps subject to the
8 clearing requirement of section 3B and where both
9 counterparties are either security-based swap dealers
10 or major security-based swap participants, such
11 counterparties shall—

12 “(A) execute the transaction on a national
13 securities exchange registered pursuant to sec-
14 tion 6(a) (in which event such transaction shall
15 be subject to regulation under this title as a
16 transaction in a security); or

17 “(B) execute the transaction on a swap
18 execution facility registered with the Commis-
19 sion.

20 “(2) EXCEPTION.—The requirements of sub-
21 paragraphs (A) or (B) of paragraph (1) shall not
22 apply if no board of trade or swap execution facility
23 makes the swap available to trade.

24 “(3) REQUIRED REPORTING.—If the exception
25 of paragraph (2) applies and there is no facility that

1 makes the swap available to trade, the counterpar-
2 ties shall comply with any recordkeeping and trans-
3 action reporting requirements as may be prescribed
4 by the Commission with respect to security-based
5 swaps subject to the requirements of section 3B and
6 where both counterparties are either security-based
7 swap dealers or major security-based swap partici-
8 pants.

9 “(b) EXCHANGE TRADING.—In adopting rules and
10 regulations, the Commission shall endeavor to eliminate
11 unnecessary impediments to the trading on national secu-
12 rities exchanges or swap execution facilities, agreements
13 or transactions that would be commodity swaps but for
14 the trading of such contracts, agreements or transactions
15 on such a designated contract market.”.

16 (d) SWAP EXECUTION FACILITIES.—The Securities
17 Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is further
18 amended by adding after section 3B (as added by sub-
19 section (a)) the following:

20 **“SEC. 3C. SWAP EXECUTION FACILITIES.**

21 “(a) REGISTRATION.—

22 “(1) IN GENERAL.—

23 “(A) No person may operate a swap execu-
24 tion facility unless such facility is registered
25 under this section.

1 “(B) For purposes of this section, the term
2 ‘swap execution facility’ means an entity that
3 facilitates the execution of swaps between 2
4 persons through any means of interstate com-
5 merce but which is not a designated contract
6 market.

7 “(2) DUAL REGISTRATION.—Any person that is
8 required to be registered as a swap execution facility
9 under this section shall register with the Commis-
10 sion regardless of whether that person also is reg-
11 istered with the Commodity Futures Trading Com-
12 mission as a swap execution facility.

13 “(b) REQUIREMENTS FOR TRADING.—A swap execu-
14 tion facility that is registered under subsection (a) may
15 trade any security-based swap.

16 “(c) TRADING BY EXCHANGES.—An exchange shall,
17 to the extent that the exchange also operates a swap exe-
18 cution facility and uses the same electronic trade execution
19 system for trading on the exchange and the swap execu-
20 tion facility, identify whether the electronic trading is tak-
21 ing place on the exchange or the swap execution facility.

22 “(d) CRITERIA FOR REGISTRATION.—

23 “(1) IN GENERAL.—To be registered as a swap
24 execution facility, the facility shall be required to

1 demonstrate to the Commission that it meets the
2 criteria specified herein.

3 “(2) DETERRENCE OF ABUSES.—The swap exe-
4 cution facility shall establish and enforce trading
5 and participation rules that will deter abuses and
6 have the capacity to detect, investigate, and enforce
7 those rules, including means to—

8 “(A) obtain information necessary to per-
9 form the functions required under this section;

10 or

11 “(B) use means to—

12 “(i) provide market participants with
13 impartial access to the market; and

14 “(ii) capture information that may be
15 used in establishing whether rule violations
16 have occurred.

17 “(3) TRADING PROCEDURES.—The swap execu-
18 tion facility shall establish and enforce rules or
19 terms and conditions defining, or specifications de-
20 tailing, trading procedures to be used in entering
21 and executing orders traded on or through its facili-
22 ties.

23 “(4) FINANCIAL INTEGRITY OF TRANS-
24 ACTIONS.—The swap execution facility shall estab-
25 lish and enforce rules and procedures for ensuring

1 the financial integrity of security-based swaps en-
2 tered on or through its facilities, including the clear-
3 ance and settlement of the security-based swaps.

4 “(e) CORE PRINCIPLES FOR SWAP EXECUTION FA-
5 CILITIES.—

6 “(1) IN GENERAL.—To maintain its registra-
7 tion as a swap execution facility, the facility shall
8 comply with the core principles specified in this sub-
9 section and any requirement that the Commission
10 may impose by rule or regulation. Except where the
11 Commission determines otherwise by rule or regula-
12 tion, the facility shall have reasonable discretion in
13 establishing the manner in which it complies with
14 these core principles.

15 “(2) COMPLIANCE WITH RULES.—The swap
16 execution facility shall monitor and enforce compli-
17 ance with any of the rules of the facility, including
18 the terms and conditions of the security-based swaps
19 traded on or through the facility and any limitations
20 on access to the facility.

21 “(3) SECURITY-BASED SWAPS NOT READILY
22 SUSCEPTIBLE TO MANIPULATION.—The swap execu-
23 tion facility shall permit trading only in security-
24 based swaps that are not readily susceptible to ma-
25 nipulation.

1 “(4) MONITORING OF TRADING.—The swap
2 execution facility shall monitor trading in security-
3 based swaps to prevent manipulation and price dis-
4 tortion through surveillance, compliance, and dis-
5 ciplinary practices and procedures, including meth-
6 ods for conducting real-time monitoring of trading
7 and comprehensive and accurate trade reconstruc-
8 tions.

9 “(5) ABILITY TO OBTAIN INFORMATION.—The
10 swap execution facility shall—

11 “(A) establish and enforce rules that will
12 allow the facility to obtain any necessary infor-
13 mation to perform any of the functions de-
14 scribed in this subsection;

15 “(B) provide the information to the Com-
16 mission upon request; and

17 “(C) have the capacity to carry out such
18 international information-sharing agreements as
19 the Commission may require.

20 “(6) EMERGENCY AUTHORITY.—The swap exe-
21 cution facility shall adopt rules to provide for the ex-
22 ercise of emergency authority, in consultation or co-
23 operation with the Commission, where necessary and
24 appropriate, including the authority to suspend or
25 curtail trading in a security-based swap.

1 “(7) TIMELY PUBLICATION OF TRADING INFOR-
2 MATION.—The swap execution facility shall make
3 public timely information on price, trading volume,
4 and other trading data to the extent prescribed by
5 the Commission.

6 “(8) RECORDKEEPING AND REPORTING.—The
7 swap execution facility shall maintain records of all
8 activities related to the business of the facility, in-
9 cluding a complete audit trail, in a form and manner
10 acceptable to the Commission for a period of 5
11 years, and report to the Commission all information
12 determined by the Commission to be necessary or
13 appropriate for the Commission to perform its re-
14 sponsibilities under this Act in a form and manner
15 acceptable to the Commission. The Commission shall
16 adopt data collection and reporting requirements for
17 swap execution facilities that are comparable to cor-
18 responding requirements for clearing agencies and
19 security-based swap repositories.

20 “(9) ANTITRUST CONSIDERATIONS.—Unless
21 necessary or appropriate to achieve the purposes of
22 this Act, the swap execution facility shall avoid—

23 “(A) adopting any rules or taking any ac-
24 tions that result in any unreasonable restraints
25 of trade; or

1 “(B) imposing any material anticompeti-
2 tive burden on trading on the swap execution
3 facility.

4 “(10) CONFLICTS OF INTEREST.—

5 “(A) IN GENERAL.—The swap execution
6 facility shall establish and enforce rules to mini-
7 mize conflicts of interest in its decision-making
8 process and establish a process for resolving
9 such conflicts of interest.

10 “(B) BENEFICIAL OWNERSHIP BY A RE-
11 STRICTED OWNER.—The rules of the swap exe-
12 cution facility shall provide that a restricted
13 owner shall not be permitted directly or indi-
14 rectly to acquire beneficial ownership of inter-
15 ests in the facility or in persons with a control-
16 ling interest in the facility, to the extent that
17 such an acquisition would result in restricted
18 owners controlling more than 20 percent of the
19 votes entitled to be cast on any matter by the
20 holders of the ownership interests.

21 “(C) ASSOCIATION WITH A RESTRICTED
22 OWNER.—The rules of the swap execution facil-
23 ity shall provide that a majority of the directors
24 of the facility shall not be associated with a re-
25 stricted owner.

1 “(11) DESIGNATION OF COMPLIANCE OFFI-
2 CER.—

3 “(A) IN GENERAL.—Each swap execution
4 facility shall designate an individual to serve as
5 a compliance officer.

6 “(B) DUTIES.—The compliance officer—

7 “(i) shall report directly to the board
8 or to the senior officer of the facility;

9 “(ii) shall—

10 “(I) review compliance with the
11 core principles in section 3B(e);

12 “(II) in consultation with the
13 board of the facility, a body per-
14 forming a function similar to that of
15 a board, or the senior officer of the
16 facility, resolve any conflicts of inter-
17 est that may arise;

18 “(III) be responsible for admin-
19 istering the policies and procedures
20 required to be established pursuant to
21 this section; and

22 “(IV) ensure compliance with se-
23 curities laws and the rules and regula-
24 tions issued thereunder, including

1 rules prescribed by the Commission
2 pursuant to this section; and

3 “(iii) shall establish procedures for re-
4 mediation of non-compliance issues found
5 during compliance office reviews,
6 lookbacks, internal or external audit find-
7 ings, self-reported errors, or through vali-
8 dated complaints. Procedures will establish
9 the handling, management response, reme-
10 diation, retesting, and closing of non-
11 compliant issues.

12 “(C) ANNUAL REPORTS REQUIRED.—The
13 compliance officer shall annually prepare and
14 sign a report on the compliance of the facility
15 with the securities laws and its policies and pro-
16 cedures, including its code of ethics and conflict
17 of interest policies, in accordance with rules
18 prescribed by the Commission. Such compliance
19 report shall accompany the financial reports of
20 the facility that are required to be furnished to
21 the Commission pursuant to this section and
22 shall include a certification that, under penalty
23 of law, the report is accurate and complete.

24 “(f) EXEMPTIONS.—The Commission may exempt,
25 conditionally or unconditionally, a swap execution facility

1 from registration under this section if the Commission
2 finds that such organization is subject to comparable,
3 comprehensive supervision and regulation on a consoli-
4 dated basis by the Commodity Futures Trading Commis-
5 sion, a Prudential Regulator or the appropriate govern-
6 mental authorities in the organization’s home country.

7 “(g) HARMONIZATION OF RULES.—Not later than
8 180 days after the date of enactment of the Over-the-
9 Counter Derivatives Markets Act of 2009, the Commission
10 and the Commodity Futures Trading Commission shall
11 jointly prescribe rules governing the regulation of swap
12 execution facilities under this section and section 5h of
13 the Commodity Exchange Act (7 U.S.C. 7b–3).”.

14 (e) SEGREGATION OF ASSETS HELD AS COLLATERAL
15 IN SWAP TRANSACTIONS.—The Securities Exchange Act
16 of 1934 (15 U.S.C. 78a, et seq.) is further amended by
17 adding after section 3C (as added by subsection (b)) the
18 following:

19 **“SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL**
20 **IN OVER-THE-COUNTER SWAP TRANS-**
21 **ACTIONS.**

22 “(a) SEGREGATION.—At the request of a
23 counterparty to a security-based swap who provides funds
24 or other property to a swap dealer as variation or initial
25 margin or collateral to secure the obligations of the

1 counterparty under a security-based swap between the
2 counterparty and the swap dealer that is not submitted
3 for clearing to a derivatives clearing agency, the swap
4 dealer shall segregate the variation or initial margin or
5 collateral for the benefit of the counterparty, and maintain
6 the variation or initial margin or collateral in an account
7 which is carried by an independent third-party custodian
8 and designated as a segregated account for the
9 counterparty, in accordance with such rules and regula-
10 tions as the Commission or Prudential Regulator may pre-
11 scribe. If a securities-based swap counterparty is a swap
12 dealer or major securities-based swap participant who
13 owns more than 20 percent of, or has more than 50 per-
14 cent representation on the board of directors of, a custo-
15 dian, the custodian shall not be considered independent
16 from the securities-based swap counterparties for purposes
17 of the preceding sentence. This subsection shall not be in-
18 terpreted to preclude commercial arrangements regarding
19 the investment of the segregated funds or other property
20 and the related allocation of gains and losses resulting
21 from any such investment.

22 “(b) BACK OFFICE AUDIT REPORTING.—If a secu-
23 rity-based swap dealer does not segregate funds at the re-
24 quest of a security-based swap counterparty in accordance
25 with subsection (a), the security-based swap dealer shall

1 report to its counterparty on a quarterly basis that its
2 back office procedures relating to margin and collateral
3 requirements are in compliance with the agreement of the
4 counterparties.”.

5 (f) TRADING IN SECURITY-BASED SWAP AGREE-
6 MENTS.—Section 6 of the Securities Exchange Act of
7 1934 (15 U.S.C. 78f) is amended by adding at the end
8 the following:

9 “(l) It shall be unlawful for any person to effect a
10 transaction in a security-based swap with or for a person
11 that is not an eligible contract participant unless such
12 transaction is effected on a national securities exchange
13 registered pursuant to subsection (b).”.

14 (g) ADDITIONS OF SECURITY-BASED SWAPS TO CER-
15 TAIN ENFORCEMENT PROVISIONS.—Paragraphs (1)
16 through (3) of section 9(b) of the Securities Exchange Act
17 of 1934 (15 U.S.C. 78i(b)(1)–(3)) are amended to read
18 as follows:

19 “(1) any transaction in connection with any se-
20 curity whereby any party to such transaction ac-
21 quires (A) any put, call, straddle, or other option or
22 privilege of buying the security from or selling the
23 security to another without being bound to do so;
24 (B) any security futures product on the security; or

1 (C) any security-based swap involving the security or
2 the issuer of the security;

3 “(2) any transaction in connection with any se-
4 curity with relation to which he has, directly or indi-
5 rectly, any interest in any (A) such put, call, strad-
6 dle, option, or privilege; (B) such security futures
7 product; or (C) such security-based swap; or

8 “(3) any transaction in any security for the ac-
9 count of any person who he has reason to believe
10 has, and who actually has, directly or indirectly, any
11 interest in (A) any such put, call, straddle, option,
12 or privilege; (B) such security futures product with
13 relation to such security; or (C) any security-based
14 swap involving such security or the issuer of such se-
15 curity.”.

16 (h) RULEMAKING AUTHORITY TO PREVENT FRAUD,
17 MANIPULATION, AND DECEPTIVE CONDUCT IN SECURITY-
18 BASED SWAPS AND SECURITY-BASED SWAP AGREE-
19 MENTS.—Section 9 of the Securities Exchange Act of
20 1934 (15 U.S.C. 78i) is amended by adding at the end
21 the following:

22 “(j) It shall be unlawful for any person, directly or
23 indirectly, by the use of any means or instrumentality of
24 interstate commerce or of the mails, or of any facility of
25 any national securities exchange, to effect any transaction

1 in, or to induce or attempt to induce the purchase or sale
2 of, any security-based swap or any security-based swap
3 agreement, in connection with which such person engages
4 in any fraudulent, deceptive, or manipulative act or prac-
5 tice, makes any fictitious quotation, or engages in any
6 transaction, practice, or course of business which operates
7 as a fraud or deceit upon any person. The Commission
8 shall, for the purposes of this subsection, by rules and reg-
9 ulations define, and prescribe means reasonably designed
10 to prevent, such transactions, acts, practices, and courses
11 of business as are fraudulent, deceptive, or manipulative,
12 and such quotations as are fictitious.”.

13 (i) POSITION LIMITS AND POSITION ACCOUNT-
14 ABILITY FOR SECURITY-BASED SWAPS.—The Securities
15 Exchange Act of 1934 is further amended by inserting
16 after section 10B (15 U.S.C. 78j–1) (as added by section
17 2003(a)) the following new section:

18 **“SEC. 10C. POSITION LIMITS AND POSITION ACCOUNT-**
19 **ABILITY FOR SECURITY-BASED SWAPS AND**
20 **LARGE TRADER REPORTING.**

21 “(a) POSITION LIMITS.—As a means reasonably de-
22 signed to prevent fraud and manipulation, the Commission
23 may, by rule or regulation, as necessary or appropriate
24 in the public interest or for the protection of investors,
25 establish limits (including related hedge exemption provi-

1 sions) on the size of positions in any security-based swap
2 or security-based swap agreement that may be held by any
3 person. In establishing such limits, the Commission may
4 require any person to aggregate positions in—

5 “(1) any security-based swap and any security
6 or loan or group or index of securities or loans on
7 which such security-based swap is based, which such
8 security-based swap references, or to which such se-
9 curity-based swap is related as described in section
10 3(a)(68), and any security-based swap agreement
11 and any other instrument relating to such security
12 or loan or group or index of securities or loans; or

13 “(2) any security-based swap and (A) any secu-
14 rity or group or index of securities, the price, yield,
15 value, or volatility of which, or of which any interest
16 therein, is the basis for a material term of such se-
17 curity-based swap as described in section 3(a)(76)
18 and (B) any security-based swap and any other in-
19 strument relating to the same security or group or
20 index of securities.

21 “(b) EXEMPTIONS.—The Commission, by rule, regu-
22 lation, or order, may conditionally or unconditionally ex-
23 empt any person or class of persons, any security-based
24 swap or class of security-based swaps, or any transaction

1 or class of transactions from any requirement it may es-
2 tablish under this section with respect to position limits.

3 “(c) SRO RULES.—

4 “(1) IN GENERAL.—As a means reasonably de-
5 signed to prevent fraud or manipulation, the Com-
6 mission, by rule, regulation, or order, as necessary
7 or appropriate in the public interest, for the protec-
8 tion of investors, or otherwise in furtherance of the
9 purposes of this title, may direct a self-regulatory
10 organization—

11 “(A) to adopt rules regarding the size of
12 positions in any security-based swap that may
13 be held by—

14 “(i) any member of such self-regu-
15 latory organization; or

16 “(ii) any person for whom a member
17 of such self-regulatory organization effects
18 transactions in such security-based swap or
19 other security-based swap agreement; and

20 “(B) to adopt rules reasonably designed to
21 ensure compliance with requirements prescribed
22 by the Commission under subparagraph (A).

23 “(2) REQUIREMENT TO AGGREGATE POSI-
24 TIONS.—In establishing such limits, the self-regu-

1 latory organization may require such member or per-
2 son to aggregate positions in—

3 “(A) any security-based swap and any se-
4 curity or loan or group or index of securities or
5 loans on which such security-based swap is
6 based, which such security-based swap ref-
7 erences, or to which such security-based swap is
8 related as described in section 3(a)(68), and
9 any security-based swap agreement and any
10 other instrument relating to such security or
11 loan or group or index of securities or loans; or

12 “(B)(i) any security-based swap;

13 “(ii) any security or group or index of se-
14 curities, the price, yield, value, or volatility of
15 which, or of which any interest therein, is the
16 basis for a material term of such security-based
17 swap as described in section 3(a)(76); and

18 “(iii) any security-based swap and any
19 other instrument relating to the same security
20 or group or index of securities.

21 “(d) LARGE TRADER REPORTING.—The Commis-
22 sion, by rule or regulation, may require any person that
23 effects transactions for such person’s own account or the
24 account of others in any securities-based swap or security-
25 based swap agreement and any security or loan or group

1 or index of securities or loans as set forth in paragraphs
2 (1) and (2) of subsection (a) to report such information
3 as the Commission may prescribe regarding any position
4 or positions in any security-based swap or security-based
5 swap agreement and any security or loan or group or index
6 of securities or loans and any other instrument relating
7 to such security or loan or group or index of securities
8 or loans as set forth in paragraphs (1) and (2) of sub-
9 section (a).”.

10 (j) PUBLIC REPORTING AND REPOSITORIES FOR SE-
11 CURITY-BASED SWAP AGREEMENTS.—Section 13 of the
12 Securities Exchange Act of 1934 (15 U.S.C. 78m) is
13 amended by adding at the end the following:

14 “(m) PUBLIC REPORTING OF AGGREGATE SECURITY-
15 BASED SWAP DATA.—

16 “(1) IN GENERAL.—The Commission, or a per-
17 son designated by the Commission pursuant to para-
18 graph (2), shall make available to the public, in a
19 manner that does not disclose the business trans-
20 actions and market positions of any person, aggre-
21 gate data on security-based swap trading volumes
22 and positions from the sources set forth in para-
23 graph (3).

24 “(2) DESIGNEE OF THE COMMISSION.—The
25 Commission may designate a clearing agency or a

1 security-based swap repository to carry out the pub-
2 lic reporting described in paragraph (1).

3 “(3) SOURCES OF INFORMATION.—The sources
4 of the information to be publicly reported as de-
5 scribed in paragraph (1) are—

6 “(A) clearing agencies pursuant to section
7 3A;

8 “(B) security-based swap repositories pur-
9 suant to subsection (n); and

10 “(C) reports received by the Commission
11 pursuant to section 13A.

12 “(n) SECURITY-BASED SWAP REPOSITORIES.—

13 “(1) REGISTRATION REQUIREMENT.—

14 “(A) IN GENERAL.—It shall be unlawful
15 for a security-based swap repository, unless reg-
16 istered with the Commission, directly or indi-
17 rectly to make use of the mails or any means
18 or instrumentality of interstate commerce to
19 perform the functions of a security-based swap
20 repository.

21 “(B) INSPECTION AND EXAMINATION.—
22 Registered security-based swap repositories
23 shall be subject to inspection and examination
24 by any representatives of the Commission.

25 “(2) STANDARD SETTING.—

1 “(A) DATA IDENTIFICATION.—The Com-
2 mission shall prescribe standards that specify
3 the data elements for each security-based swap
4 that shall be collected and maintained by each
5 security-based swap repository.

6 “(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data
7 collection and data maintenance standards for
8 security-based swap repositories.

9 “(C) COMPARABILITY.—The standards
10 prescribed by the Commission under this sub-
11 section shall be comparable to the data stand-
12 ards imposed by the Commission on clearing
13 agencies that clear security-based swaps.

14 “(3) DUTIES.—A security-based swap reposi-
15 tory shall—

16 “(A) accept data prescribed by the Com-
17 mission for each security-based swap under this
18 paragraph (2);

19 “(B) maintain such data in such form and
20 manner and for such period as may be required
21 by the Commission;

22 “(C) provide to the Commission, or its des-
23 ignee, such information as is required by, and
24 in a form and at a frequency to be determined
25

1 by, the Commission, in order to comply with the
2 public reporting requirements contained in sub-
3 section (m); and

4 “(D) make available, on a confidential
5 basis, all data obtained by the security-based
6 swap repository, including individual
7 counterparty trade and position data, to the
8 Commission, the appropriate Federal banking
9 agencies, the Commodity Futures Trading
10 Commission, the Financial Services Oversight
11 Council, and the Department of Justice or to
12 other persons the Commission deems appro-
13 priate, including foreign financial supervisors
14 (including foreign futures authorities), foreign
15 central banks, and foreign ministries.

16 “(4) REQUIRED REGISTRATION FOR SECURITY-
17 BASED SWAP REPOSITORIES.—Any person that is re-
18 quired to be registered as a securities-based swap re-
19 pository under this subsection shall register with the
20 Commission, regardless of whether that person also
21 is registered with the Commodity Futures Trading
22 Commission as a swap repository.

23 “(5) HARMONIZATION OF RULES.—Not later
24 than 180 days after the date of enactment of the
25 Over-the-Counter Derivatives Markets Act of 2009,

1 the Commission and the Commodity Futures Trad-
2 ing Commission shall jointly adopt uniform rules
3 governing persons that are registered under this sec-
4 tion and persons that are registered as swap reposi-
5 tories under the Commodity Exchange Act (7 U.S.C.
6 1, et seq.), including uniform rules that specify the
7 data elements that shall be collected and maintained
8 by each repository.

9 “(6) EXEMPTIONS.—The Commission may ex-
10 empt, conditionally or unconditionally, a security-
11 based swap repository from the requirements of this
12 section if the Commission finds that such security-
13 based swap repository is subject to comparable, com-
14 prehensive supervision or regulation on a consoli-
15 dated basis by the Commodity Futures Trading
16 Commission, a Prudential Regulator or the appro-
17 priate governmental authorities in the organization’s
18 home country.”.

19 **SEC. 3204. REGISTRATION AND REGULATION OF SWAP**
20 **DEALERS AND MAJOR SWAP PARTICIPANTS.**

21 The Securities Exchange Act of 1934 (15 U.S.C. 78a,
22 et seq.) is amended by inserting after section 15E (15
23 U.S.C. 78o-7) the following:

1 **“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-**
2 **BASED SWAP DEALERS AND MAJOR SECUR-**
3 **RITY-BASED SWAP PARTICIPANTS.**

4 “(a) REGISTRATION.—

5 “(1) It shall be unlawful for any person to act
6 as a security-based swap dealer unless such person
7 is registered as a security-based swap dealer with
8 the Commission.

9 “(2) It shall be unlawful for any person to act
10 as a major security-based swap participant unless
11 such person is registered as a major security-based
12 swap participant with the Commission.

13 “(b) REQUIREMENTS.—

14 “(1) IN GENERAL.—A person shall register as
15 a security-based swap dealer or major security-based
16 swap participant by filing a registration application
17 with the Commission.

18 “(2) CONTENTS.—The application shall be
19 made in such form and manner as prescribed by the
20 Commission, giving any information and facts as the
21 Commission may deem necessary concerning the
22 business in which the applicant is or will be engaged.
23 Such person, when registered as a security-based
24 swap dealer or major security-based swap partici-
25 pant, shall continue to report and furnish to the

1 Commission such information pertaining to such
2 person's business as the Commission may require.

3 “(3) EXPIRATION.—Each registration shall ex-
4 pire at such time as the Commission may by rule or
5 regulation prescribe.

6 “(4) RULES.—Except as provided in sub-
7 sections (c), (d) and (e), the Commission may pre-
8 scribe rules applicable to security-based swap dealers
9 and major security-based swap participants, includ-
10 ing rules that limit the activities of security-based
11 swap dealers and major security-based swap partici-
12 pants. Except as provided in subsections (c) and (e),
13 the Commission may provide conditional or uncondi-
14 tional exemptions from rules prescribed under this
15 section for security-based swap dealers and major
16 security-based swap participants that are subject to
17 substantially similar requirements as brokers or
18 dealers.

19 “(5) TRANSITION.—Rules adopted under this
20 section shall provide for the registration of security-
21 based swap dealers and major security-based swap
22 participants no later than 1 year after the effective
23 date of the Over-the-Counter Derivatives Markets
24 Act of 2009.

25 “(c) DUAL REGISTRATION.—

1 “(1) SECURITY-BASED SWAP DEALERS.—Any
2 person that is required to be registered as a secu-
3 rity-based swap dealer under this section shall reg-
4 ister with the Commission regardless of whether that
5 person also is a bank or is registered with the Com-
6 modity Futures Trading Commission as a swap deal-
7 er.

8 “(2) MAJOR SECURITY-BASED SWAP PARTICI-
9 PANTS.—Any person that is required to be reg-
10 istered as a major security-based swap participant
11 under this section shall register with the Commis-
12 sion regardless of whether that person also is a bank
13 or is registered with the Commodity Futures Trad-
14 ing Commission as a major swap participant.

15 “(d) JOINT RULES.—

16 “(1) IN GENERAL.—Not later than 180 days
17 after the effective date of the Over-the-Counter De-
18 rivatives Markets Act of 2009, the Commission and
19 the Commodity Futures Trading Commission shall
20 jointly adopt uniform rules for persons that are reg-
21 istered as security-based swap dealers or major secu-
22 rity-based swap participants under this Act and per-
23 sons that are registered as swap dealers or major
24 swap participants under the Commodity Exchange
25 Act (7 U.S.C. 1, et seq.).

1 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
2 MENTS.—The Commission and the Commodity Fu-
3 tures Trading Commission shall not prescribe rules
4 imposing prudential requirements (including activity
5 restrictions) on security-based swap dealers or major
6 security-based swap participants for which there is a
7 Prudential Regulator. This provision shall not be
8 construed as limiting the authority of the Commis-
9 sion and the Commodity Futures Trading Commis-
10 sion to prescribe appropriate business conduct, re-
11 porting, and recordkeeping requirements to protect
12 investors.

13 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

14 “(1) IN GENERAL.—

15 “(A) BANK SECURITY-BASED SWAP DEAL-
16 ERS AND MAJOR SECURITY-BASED SWAP PAR-
17 TICIPANTS.—Each registered security-based
18 swap dealer and major security-based swap par-
19 ticipant for which there is a Prudential Regu-
20 lator shall meet such minimum capital require-
21 ments and minimum margin requirements as
22 the Prudential Regulators shall by rule or regu-
23 lation jointly prescribe to help ensure the safety
24 and soundness of the security-based swap deal-
25 er or major security-based swap participant.

1 “(B) NONBANK SECURITY-BASED SWAP
2 DEALERS AND MAJOR SECURITY-BASED SWAP
3 PARTICIPANTS.—Each registered security-based
4 swap dealer and major security-based swap par-
5 ticipant for which there is not a Prudential
6 Regulator shall meet such minimum capital re-
7 quirements and minimum margin requirements
8 as the Commission and the Commodity Futures
9 Trading Commission shall by rule or regulation
10 jointly prescribe to help ensure the safety and
11 soundness of the security-based swap dealer or
12 major security-based swap participant.

13 “(2) JOINT RULES.—

14 “(A) BANK SECURITY-BASED SWAP DEAL-
15 ERS AND MAJOR SECURITY-BASED SWAP PAR-
16 TICIPANTS.—Within 180 days of the enactment
17 of the Over-the-Counter Derivatives Markets
18 Act of 2009, the Prudential Regulators, in con-
19 sultation with the Commission and the Com-
20 modity Futures Trading Commission, shall
21 jointly adopt rules imposing capital and margin
22 requirements under this subsection for security-
23 based swap dealers and major security-based
24 swap participants.

1 “(B) NONBANK SECURITY-BASED SWAP
2 DEALERS AND MAJOR SECURITY-BASED SWAP
3 PARTICIPANTS.—Within 180 days of the enact-
4 ment of the Over-the-Counter Derivatives Mar-
5 kets Act of 2009, the Commission and the
6 Commodity Futures Trading Commission, in
7 consultation with the Prudential Regulators,
8 shall jointly adopt rules imposing capital and
9 margin requirements under this subsection for
10 security-based swap dealers and major security-
11 based swap participants for which there is no
12 Prudential Regulator.

13 “(3) CAPITAL.—

14 “(A) BANK SECURITY-BASED SWAP DEAL-
15 ERS AND MAJOR SECURITY-BASED SWAP PAR-
16 TICIPANTS.—In setting capital requirements
17 under this subsection, the Prudential Regu-
18 lators shall impose—

19 “(i) a capital requirement that is
20 greater than zero for security-based swaps
21 that are cleared by a clearing agency; and

22 “(ii) to offset the greater risk to the
23 security-based swap dealer or major secu-
24 rity-based swap participant and to the fi-
25 nancial system arising from the use of se-

1 security-based swaps that are not centrally
2 cleared, higher capital requirements for se-
3 curity-based swaps that are not cleared by
4 a clearing agency than for security-based
5 swaps that are centrally cleared.

6 “(B) EXCLUSION.—Subparagraph (A)
7 shall not apply to a security-based swap one
8 party to which is not a security-based swap
9 dealer or major security-based swap participant,
10 and which is entered into before the end of the
11 90-day period that begins with the effective
12 date of this subparagraph.

13 “(C) NONBANK SECURITY-BASED SWAP
14 DEALERS AND MAJOR SECURITY-BASED SWAP
15 PARTICIPANTS.—Capital requirements set by
16 the Commission and the Commodity Futures
17 Trading Commission under this subsection shall
18 be as strict as or stricter than the capital re-
19 quirements set by the Prudential Regulators
20 under this subsection.

21 “(D) BANK HOLDING COMPANIES.—Cap-
22 ital requirements set by the Board for security-
23 based swaps of bank holding companies on a
24 consolidated basis shall be as strict as or strict-

1 er than the capital requirements set by the Pru-
2 dential Regulators under this subsection.

3 “(4) MARGIN.—

4 “(A) BANK SECURITY-BASED SWAP DEAL-
5 ERS AND MAJOR SECURITY-BASED SWAP PAR-
6 TICIPANTS.—The Prudential Regulators shall
7 impose margin requirements under this sub-
8 section on all security-based swaps that are not
9 cleared by a registered clearing agency.

10 “(B) NON-SWAP DEALERS AND MAJOR
11 MARKET PARTICIPANTS.—The Prudential Regu-
12 lators may, but are not required to, impose
13 margin requirements with respect to security-
14 based swaps in which one of the counterparties
15 is not a swap dealer, major swap participant,
16 security-based swap dealer or major security-
17 based swap participant. Margin requirements
18 for swaps set by the Commission and the Com-
19 modity Futures Trading Commission shall pro-
20 vide for the use of non-cash assets as collateral.

21 “(C) EXCLUSION.—Subparagraph (B)
22 shall not apply to a security-based swap one
23 party to which is not a security-based swap
24 dealer or major security-based swap participant,
25 and which is entered into before the end of the

1 90-day period that begins with the effective
2 date of this subparagraph.

3 “(D) NONBANK SECURITY-BASED SWAP
4 DEALERS AND MAJOR SECURITY-BASED SWAP
5 PARTICIPANTS.—Margin requirements for secu-
6 rity-based swaps set by the Commission and the
7 Commodity Futures Trading Commission under
8 this subsection shall be as strict as or stricter
9 than margin requirements for security-based
10 swaps set by the Prudential Regulators.

11 “(f) REPORTING AND RECORDKEEPING.—

12 “(1) IN GENERAL.—Each registered security-
13 based swap dealer and major security-based swap
14 participant—

15 “(A) shall make such reports as are pre-
16 scribed by the Commission by rule or regulation
17 regarding the transactions and positions and fi-
18 nancial condition of such person;

19 “(B) for which—

20 “(i) there is a Prudential Regulator,
21 shall keep books and records of all activi-
22 ties related to its business as a security-
23 based swap dealer or major security-based
24 swap participant in such form and manner
25 and for such period as may be prescribed

1 by the Commission by rule or regulation;
2 or

3 “(ii) there is no Prudential Regulator,
4 shall keep books and records in such form
5 and manner and for such period as may be
6 prescribed by the Commission by rule or
7 regulation;

8 “(C) shall keep such books and records
9 open to inspection and examination by any rep-
10 resentative of the Commission; and

11 “(D) shall keep any such books and
12 records relating to transactions in swaps based
13 on 1 or more securities open to inspection and
14 examination by the Commission.

15 “(2) RULES.—Not later than 1 year after the
16 date of enactment of the Over-the-Counter Deriva-
17 tives Markets Act of 2009, the Commission and the
18 Commodity Futures Trading Commission, in con-
19 sultation with the appropriate Federal banking agen-
20 cies, shall jointly adopt rules governing reporting
21 and recordkeeping for swap dealers, major swap par-
22 ticipants, security-based swap dealers and major se-
23 curity-based swap participants.

24 “(g) DAILY TRADING RECORDS.—

1 “(1) IN GENERAL.—Each registered security-
2 based swap dealer and major security-based swap
3 participant shall maintain daily trading records of
4 its security-based swaps and all related records (in-
5 cluding related transactions) and recorded commu-
6 nications including but not limited to electronic mail,
7 instant messages, and recordings of telephone calls,
8 for such period as may be prescribed by the Com-
9 mission by rule or regulation.

10 “(2) INFORMATION REQUIREMENTS.—The daily
11 trading records shall include such information as the
12 Commission shall prescribe by rule or regulation.

13 “(3) CUSTOMER RECORDS.—Each registered se-
14 curity-based swap dealer or major security-based
15 swap participant shall maintain daily trading records
16 for each customer or counterparty in such manner
17 and form as to be identifiable with each security-
18 based swap transaction.

19 “(4) AUDIT TRAIL.—Each registered security-
20 based swap dealer or major security-based swap par-
21 ticipant shall maintain a complete audit trail for
22 conducting comprehensive and accurate trade recon-
23 structions.

24 “(5) RULES.—Not later than 1 year after the
25 date of enactment of the Over-the-Counter Deriva-

1 tives Markets Act of 2009, the Commission and the
2 Commodity Futures Trading Commission, in con-
3 sultation with the appropriate Federal banking agen-
4 cies, shall jointly adopt rules governing daily trading
5 records for swap dealers, major swap participants,
6 security-based swap dealers, and major security-
7 based swap participants.

8 “(h) BUSINESS CONDUCT STANDARDS.—

9 “(1) IN GENERAL.—Each registered security-
10 based swap dealer and major security-based swap
11 participant shall conform with business conduct
12 standards as may be prescribed by the Commission
13 by rule or regulation addressing—

14 “(A) fraud, manipulation, and other abu-
15 sive practices involving security-based swaps
16 (including security-based swaps that are offered
17 but not entered into);

18 “(B) diligent supervision of its business as
19 a security-based swap dealer;

20 “(C) adherence to all applicable position
21 limits;

22 “(D) the prevention of self-dealing by lim-
23 iting the extent to which a security-based swap
24 dealer or major security-based swap participant
25 may conduct business with a clearing agency,

1 an exchange, or an alternative swap execution
2 facility that clears or trades security-based
3 swaps and in which such a dealer or participant
4 has a material debt or equity investment; and

5 “(E) such other matters as the Commis-
6 sion shall determine to be necessary or appro-
7 priate.

8 “(2) BUSINESS CONDUCT REQUIREMENTS.—
9 Business conduct requirements adopted by the Com-
10 mission shall—

11 “(A) establish the standard of care for a
12 security-based swap dealer or major security-
13 based swap participant to verify that any secu-
14 rity-based swap counterparty meets the eligi-
15 bility standards for an eligible contract partici-
16 pant;

17 “(B) require disclosure by the security-
18 based swap dealer or major security-based swap
19 participant to any counterparty to the security-
20 based swap (other than a swap dealer, major
21 swap participant, security-based swap dealer or
22 major security-based swap participant) of—

23 “(i) information about the material
24 risks and characteristics of the security-
25 based swap;

1 “(ii) for cleared swaps, upon the re-
2 quest of the counterparty, the daily mark
3 from the appropriate clearinghouse and for
4 non-cleared swaps, upon the request of the
5 counterparty, the daily mark of the secu-
6 rity-based swap dealer or major security-
7 based swap participant; and

8 “(iii) any other material incentives or
9 conflicts of interest that the security-based
10 swap dealer or major security-based swap
11 participant may have in connection with
12 the security-based swap; and

13 “(C) establish such other standards and
14 requirements as the Commission may determine
15 are necessary or appropriate in the public inter-
16 est, for the protection of investors, or otherwise
17 in furtherance of the purposes of this title.

18 “(3) RULES.—Not later than 1 year after the
19 date of enactment of the Over-the-Counter Deriva-
20 tives Markets Act of 2009, the Commission and the
21 Commodity Futures Trading Commission, in con-
22 sultation with the appropriate Federal banking agen-
23 cies, shall jointly prescribe rules under this sub-
24 section governing business conduct standards for
25 swap dealers, major swap participants, security-

1 based swap dealers, and major security-based swap
2 participants.

3 “(i) DOCUMENTATION AND BACK OFFICE STAND-
4 ARDS.—

5 “(1) IN GENERAL.—Each registered security-
6 based swap dealer and major security-based swap
7 participant shall conform with standards, as may be
8 prescribed by the Commission by rule or regulation,
9 addressing timely and accurate confirmation, proc-
10 essing, netting, documentation, and valuation of all
11 security-based swaps.

12 “(2) RULES.—Not later than 1 year after the
13 date of enactment of the Over-the-Counter Deriva-
14 tives Markets Act of 2009, the Commission and the
15 Commodity Futures Trading Commission, in con-
16 sultation with the appropriate Federal banking agen-
17 cies, shall jointly adopt rules governing documenta-
18 tion and back office standards for swap dealers,
19 major swap participants, security-based swap deal-
20 ers, and major security-based swap participants.

21 “(j) DEALER RESPONSIBILITIES.—Each registered
22 security-based swap dealer and major security-based swap
23 participant at all times shall comply with the following re-
24 quirements:

1 “(1) MONITORING OF TRADING.—The security-
2 based swap dealer or major security-based swap par-
3 ticipant shall monitor its trading in security-based
4 swaps to prevent violations of applicable position
5 limits.

6 “(2) DISCLOSURE OF GENERAL INFORMA-
7 TION.—The security-based swap dealer or major se-
8 curity-based swap participant shall disclose to the
9 Commission and to the Prudential Regulator for
10 such security-based swap dealer or major security-
11 based swap participant, as applicable, information
12 concerning—

13 “(A) terms and conditions of its security-
14 based swaps;

15 “(B) security-based swap trading oper-
16 ations, mechanisms, and practices;

17 “(C) financial integrity protections relating
18 to security-based swaps; and

19 “(D) other information relevant to its trad-
20 ing in security-based swaps.

21 “(3) ABILITY TO OBTAIN INFORMATION.—The
22 security-based swap dealer or major swap security-
23 based participant shall—

24 “(A) establish and enforce internal systems
25 and procedures to obtain any necessary infor-

1 mation to perform any of the functions de-
2 scribed in this section; and

3 “(B) provide the information to the Com-
4 mission and to the Prudential Regulator for
5 such security-based swap dealer or major secu-
6 rity-based swap participant, as applicable, upon
7 request.

8 “(4) CONFLICTS OF INTEREST.—The security-
9 based swap dealer and major security-based swap
10 participant shall implement conflict-of-interest sys-
11 tems and procedures that—

12 “(A) establish structural and institutional
13 safeguards to assure that the activities of any
14 person within the firm relating to research or
15 analysis of the price or market for any security
16 are separated by appropriate informational par-
17 titions within the firm from the review, pres-
18 sure, or oversight of those whose involvement in
19 trading or clearing activities might potentially
20 bias their judgment or supervision; and

21 “(B) address such other issues as the
22 Commission determines appropriate.

23 “(5) ANTITRUST CONSIDERATIONS.—Unless
24 necessary or appropriate to achieve the purposes of

1 this Act, the security-based swap dealer or major se-
2 curity-based swap participant shall avoid—

3 “(A) adopting any processes or taking any
4 actions that result in any unreasonable re-
5 straints of trade; or

6 “(B) imposing any material anticompeti-
7 tive burden on trading.

8 “(k) RULES.—The Commission, the Commodity Fu-
9 tures Trading Commission, and the Prudential Regulators
10 shall consult with each other prior to adopting any rules
11 under the Over-the-Counter Derivatives Markets Act of
12 2009.

13 “(l) STATUTORY DISQUALIFICATION.—Except to the
14 extent otherwise specifically provided by rule, regulation,
15 or order of the Commission, it shall be unlawful for a secu-
16 rity-based swap dealer or a major security-based swap par-
17 ticipant to permit any person associated with a security-
18 based swap dealer or a major security-based swap partici-
19 pant who is subject to a statutory disqualification to effect
20 or be involved in effecting security-based swaps on behalf
21 of such security-based swap dealer or major security-based
22 swap participant, if such security-based swap dealer or
23 major security-based swap participant knew, or in the ex-
24 ercise of reasonable care should have known, of such stat-
25 utory disqualification.

1 “(m) ENFORCEMENT AND ADMINISTRATIVE PRO-
2 CEEDING AUTHORITY.—

3 “(1) PRIMARY ENFORCEMENT AUTHORITY.—

4 “(A) SEC.—Except as provided in sub-
5 section (b), the Commission shall have primary
6 authority to enforce the provisions of the
7 amendments made by subtitle B of the Over-
8 the-Counter Derivatives Markets Act of 2009
9 with respect to any person.

10 “(B) PRUDENTIAL REGULATORS.—The
11 Prudential Regulators shall have exclusive au-
12 thority to enforce the provisions of subsection
13 (e) and other prudential requirements of this
14 Act with respect to banks, and branches or
15 agencies of foreign banks that are security-
16 based swap dealers or major security-based
17 swap participants.

18 “(C) REFERRAL.—If the Prudential Regu-
19 lator for a security-based swap dealer or major
20 security-based swap participant has cause to be-
21 lieve that such security-based swap dealer or
22 major security-based swap participant may have
23 engaged in conduct that constitutes a violation
24 of the nonprudential requirements of section
25 15F or rules adopted by the Commission there-

1 under, that Prudential Regulator may rec-
2 ommend in writing to the Commission that the
3 Commission initiate an enforcement proceeding
4 as authorized under this Act. The recommenda-
5 tion shall be accompanied by a written expla-
6 nation of the concerns giving rise to the rec-
7 ommendation.

8 “(D) BACKSTOP ENFORCEMENT AUTHOR-
9 ITY.—If the Commission does not initiate an
10 enforcement proceeding before the end of the
11 90 day period beginning on the date on which
12 the Commission receives a recommendation
13 under subparagraph (C), the Prudential Regu-
14 lator may initiate an enforcement proceeding as
15 permitted under Federal law.

16 “(2) CENSURE, DENIAL, SUSPENSION; NOTICE
17 AND HEARING.—The Commission, by order, shall
18 censure, place limitations on the activities, functions,
19 or operations of, or revoke the registration of any se-
20 curity-based swap dealer or major security-based
21 swap participant that has registered with the Com-
22 mission pursuant to subsection (b) if it finds, on the
23 record after notice and opportunity for hearing, that
24 such censure, placing of limitations, or revocation is
25 in the public interest and that such security-based

1 swap dealer or major security-based swap partici-
2 pant, or any person associated with such security-
3 based swap dealer or major security-based swap par-
4 ticipant effecting or involved in effecting trans-
5 actions in security-based swaps on behalf of such se-
6 curity-based swap dealer or major security-based
7 swap participant, whether prior or subsequent to be-
8 coming so associated—

9 “(A) has committed or omitted any act, or
10 is subject to an order or finding, enumerated in
11 subparagraph (A), (D), or (E) of paragraph (4)
12 of section 15(b);

13 “(B) has been convicted of any offense
14 specified in subparagraph (B) of such para-
15 graph (4) within 10 years of the commencement
16 of the proceedings under this subsection;

17 “(C) is enjoined from any action, conduct,
18 or practice specified in subparagraph (C) of
19 such paragraph (4);

20 “(D) is subject to an order or a final order
21 specified in subparagraph (F) or (H), respec-
22 tively, of such paragraph (4); or

23 “(E) has been found by a foreign financial
24 regulatory authority to have committed or omit-
25 ted any act, or violated any foreign statute or

1 regulation, enumerated in subparagraph (G) of
2 such paragraph (4).

3 “(3) With respect to any person who is associ-
4 ated, who is seeking to become associated, or, at the
5 time of the alleged misconduct, who was associated
6 or was seeking to become associated with a security-
7 based swap dealer or major security-based swap par-
8 ticipant for the purpose of effecting or being in-
9 volved in effecting security-based swaps on behalf of
10 such security-based swap dealer or major security-
11 based swap participant, the Commission, by order,
12 shall censure, place limitations on the activities or
13 functions of such person, or suspend for a period not
14 exceeding 12 months, or bar such person from being
15 associated with a security-based swap dealer or
16 major security-based swap participant, if the Com-
17 mission finds, on the record after notice and oppor-
18 tunity for a hearing, that such censure, placing of
19 limitations, suspension, or bar is in the public inter-
20 est and that such person—

21 “(A) has committed or omitted any act, or
22 is subject to an order or finding, enumerated in
23 subparagraph (A), (D), or (E) of paragraph (4)
24 of section 15(b);

1 “(B) has been convicted of any offense
2 specified in subparagraph (B) of such para-
3 graph (4) within 10 years of the commencement
4 of the proceedings under this subsection;

5 “(C) is enjoined from any action, conduct,
6 or practice specified in subparagraph (C) of
7 such paragraph (4);

8 “(D) is subject to an order or a final order
9 specified in subparagraph (F) or (H), respec-
10 tively, of such paragraph (4); or

11 “(E) has been found by a foreign financial
12 regulatory authority to have committed or omit-
13 ted any act, or violated any foreign statute or
14 regulation, enumerated in subparagraph (G) of
15 such paragraph (4).

16 “(4) It shall be unlawful—

17 “(A) for any person as to whom an order
18 under paragraph (3) is in effect, without the
19 consent of the Commission, willfully to become,
20 or to be, associated with a security-based swap
21 dealer or major security-based swap participant
22 in contravention of such order; or

23 “(B) for any security-based swap dealer or
24 major security-based swap participant to permit
25 such a person, without the consent of the Com-

1 mission, to become or remain a person associ-
2 ated with the security-based swap dealer or
3 major security-based swap participant in con-
4 travention of such order, if such security-based
5 swap dealer or major security-based swap par-
6 ticipant knew, or in the exercise of reasonable
7 care should have known, of such order.

8 “(5) EXEMPTIONS.—The Commission may ex-
9 empt, conditionally or unconditionally, a security-
10 based swap dealer or major security-based swap par-
11 ticipant from the prudential requirements of the
12 Over-the-Counter Derivatives Markets Act of 2009 if
13 the Commission finds that such security-based swap
14 dealer or major security-based swap participant is
15 subject to comparable, comprehensive supervision
16 and regulation on a consolidated basis by the Com-
17 modity Futures Trading Commission, a Prudential
18 Regulator or the appropriate governmental authori-
19 ties in the organization’s home country.

20 “(n) EXEMPTIVE AUTHORITY.—

21 “(1) IN GENERAL.—The Commission, by rule
22 or regulation, may conditionally or unconditionally
23 exempt any person, derivative, or transaction, or any
24 class or classes of persons, derivatives, or trans-
25 actions, from any provision of this Act that was

1 added by an amendment in the Over-the-Counter
2 Derivatives Markets Act of 2009, to the extent that
3 such exemption is necessary or appropriate in the
4 public interest, and is consistent with the purposes
5 of such Act.

6 “(2) PROCEDURES.—The Commission shall, by
7 rule or regulation, determine the procedures under
8 which an exemptive order under this subsection shall
9 be granted and may, in its sole discretion, decline to
10 entertain any application for an order of exemption
11 under this subsection.”.

12 **SEC. 3205. NATIONAL SECURITY EXCHANGE REGISTRATION**
13 **REQUIREMENTS.**

14 Section 6(b) of the Securities Exchange Act of 1934
15 (15 U.S.C. 78f(b)) is amended by adding at the end the
16 following new paragraphs:

17 “(10) The rules of the exchange minimize con-
18 flicts of interest in its decision-making process and
19 establish a process for resolving such conflicts of in-
20 terest.

21 “(11) The rules of an exchange that trades se-
22 curity-based swaps provide that a majority of the di-
23 rectors of the exchange shall not be associated with
24 a restricted owner.

1 “(12) The rules of an exchange that trades se-
2 curity-based swaps provide that a restricted owner
3 shall not be permitted directly or indirectly to ac-
4 quire beneficial ownership of interests in the ex-
5 change or in persons with a controlling interest in
6 the exchange, to the extent that such an acquisition
7 would result in restricted owners controlling more
8 than 20 percent of the votes entitled to be cast on
9 any matter by the holders of the ownership inter-
10 ests.”.

11 **SEC. 3206. REPORTING AND RECORDKEEPING.**

12 (a) IN GENERAL.—The Securities Exchange Act of
13 1934 (15 U.S.C. 78a, et seq.) is amended by inserting
14 after section 13 the following section:

15 **“SEC. 13A. REPORTING AND RECORDKEEPING FOR CER-**
16 **TAIN SECURITY-BASED SWAPS.**

17 “(a) IN GENERAL.—Any person who enters into a se-
18 curity-based swap and—

19 “(1) did not clear the security-based swap in
20 accordance with section 3A; and

21 “(2) did not have data regarding the security-
22 based swap accepted by a security-based swap repos-
23 itory in accordance with rules adopted by the Com-
24 mission under section 13(n),

25 shall meet the requirements in subsection (b).

1 “(b) REPORTS.—Any person described in subsection
2 (a) shall—

3 “(1) make such reports in such form and man-
4 ner and for such period as the Commission shall pre-
5 scribe by rule or regulation regarding the security-
6 based swaps held by the person; and

7 “(2) keep books and records pertaining to the
8 security-based swaps held by the person in such
9 form and manner and for such period as may be re-
10 quired by the Commission, which books and records
11 shall be open to inspection by any representative of
12 the Commission, an appropriate Federal banking
13 agency, the Commodity Futures Trading Commis-
14 sion, the Financial Services Oversight Council, and
15 the Department of Justice.

16 “(c) IDENTICAL DATA.—In adopting rules under this
17 section, the Commission shall require persons described in
18 subsection (a) to report the same or more comprehensive
19 data than the Commission requires security-based swap
20 repositories to collect under subsection (n).”.

21 (b) BENEFICIAL OWNERSHIP REPORTING.—

22 (1) Section 13(d)(1) of the Securities Exchange
23 Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by
24 inserting “or otherwise becomes or is deemed to be-
25 come a beneficial owner of any of the foregoing upon

1 the purchase or sale of a security-based swap or
2 other derivative instrument as the Commission may
3 define by rule, and” after “Alaska Native Claims
4 Settlement Act,”.

5 (2) Section 13(g)(1) of the Securities Exchange
6 Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by
7 inserting “or otherwise becomes or is deemed to be-
8 come a beneficial owner of any security of a class de-
9 scribed in subsection (d)(1) upon the purchase or
10 sale of a security-based swap or other derivative in-
11 strument, as the Commission may define by rule”
12 after “subsection (d)(1) of this section”.

13 (c) REPORTS BY INSTITUTIONAL INVESTMENT MAN-
14 AGERS.—Section 13(f)(1) of the Securities Exchange Act
15 of 1934 (15 U.S.C. 78m(f)(1)) is amended by striking
16 “section 13(d)(1) of this title” and inserting “subsection
17 (d)(1), or otherwise becomes or is deemed to become a
18 beneficial owner of any security of a class described in sub-
19 section (d)(1) upon the purchase or sale of a security-
20 based swap or other derivative instrument, as the Commis-
21 sion may define by rule,”.

22 (d) ADMINISTRATIVE PROCEEDING AUTHORITY.—
23 Section 15(b)(4) of the Securities Exchange Act of 1934
24 (15 U.S.C. 78o(b)(4)) is amended—

1 (1) in subparagraph (C), by inserting “security-
2 based swap dealer, major security-based swap partici-
3 pant,” after “government securities dealer,”; and

4 (2) in subparagraph (F), by inserting “, or se-
5 curity-based swap dealer, or a major security-based
6 swap participant” after “or dealer”.

7 (e) DERIVATIVES BENEFICIAL OWNERSHIP.—Section
8 13 of the Securities Exchange Act of 1934 (15 U.S.C.
9 78m) is amended by adding at the end the following:

10 “(o) BENEFICIAL OWNERSHIP.—For purposes of this
11 section and section 16, a person shall be deemed to acquire
12 beneficial ownership of an equity security based on the
13 purchase or sale of a security-based swap or other deriva-
14 tive instrument only to the extent that the Commission,
15 by rule, determines after consultation with the Prudential
16 Regulators and the Secretary of the Treasury, that the
17 purchase or sale of the security-based swap or other deriv-
18 ative instrument, or class of security-based swaps or other
19 derivative instruments, provides incidents of ownership
20 comparable to direct ownership of the equity security, and
21 that it is necessary to achieve the purposes of this section
22 that the purchase or sale of the security-based swaps or
23 instrument, or class of security-based swap or instru-
24 ments, be deemed the acquisition of beneficial ownership
25 of the equity security.”.

1 **SEC. 3207. STATE GAMING AND BUCKET SHOP LAWS.**

2 Section 28(a) of the Securities Exchange Act of 1934
3 (15 U.S.C. 78bb(a)) is amended to read as follows:

4 “(a) Except as provided in subsection (f), the rights
5 and remedies provided by this title shall be in addition
6 to any and all other rights and remedies that may exist
7 at law or in equity; but no person permitted to maintain
8 a suit for damages under the provisions of this title shall
9 recover, through satisfaction of judgment in one or more
10 actions, a total amount in excess of his actual damages
11 on account of the act complained of. Except as otherwise
12 specifically provided in this title, nothing in this title shall
13 affect the jurisdiction of the securities commission (or any
14 agency or officer performing like functions) of any State
15 over any security or any person insofar as it does not con-
16 flict with the provisions of this title or the rules and regu-
17 lations thereunder. No State law which prohibits or regu-
18 lates the making or promoting of wagering or gaming con-
19 tracts, or the operation of ‘bucket shops’ or other similar
20 or related activities, shall invalidate (1) any put, call,
21 straddle, option, privilege, or other security subject to this
22 title (except a security-based swap agreement and any se-
23 curity that has a pari-mutuel payout or otherwise is deter-
24 mined by the Commission, acting by rule, regulation, or
25 order, to be appropriately subject to such laws), or apply
26 to any activity which is incidental or related to the offer,

1 purchase, sale, exercise, settlement, or closeout of any
2 such security, (2) any security-based swap between eligible
3 contract participants, or (3) any security-based swap ef-
4 fected on a national securities exchange registered pursu-
5 ant to section 6(b). No provision of State law regarding
6 the offer, sale, or distribution of securities shall apply to
7 any transaction in a security-based swap or a security fu-
8 tures product, except that this sentence shall not be con-
9 strued as limiting any State antifraud law of general ap-
10 plicability.”.

11 **SEC. 3208. AMENDMENTS TO THE SECURITIES ACT OF 1933;**

12 **TREATMENT OF SECURITY-BASED SWAPS.**

13 (a) DEFINITIONS.—Section 2(a) of the Securities Act
14 of 1933 (15 U.S.C. 77b(a)) is amended—

15 (1) in paragraph (1), by inserting “security-
16 based swap,” after “security future,”;

17 (2) in paragraph (3) by adding at the end the
18 following: “Any offer or sale of a security-based
19 swap by or on behalf of the issuer of the securities
20 upon which such security-based swap is based or is
21 referenced, an affiliate of the issuer, or an under-
22 writer, shall constitute a contract for sale of, sale of,
23 offer for sale, or offer to sell such securities.”; and

24 (3) by adding at the end the following:

1 “(17) The terms ‘swap’ and ‘security-based
2 swap’ have the same meanings as provided in sec-
3 tions 1a(35) and (38) of the Commodity Exchange
4 Act (7 U.S.C. 1a(35) and (38)).

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) EXEMPTION FROM REGISTRATION.—Section 3(a)
13 of the Securities Act of 1933 is amended by adding at
14 the end the following:

15 “(15) Any security-based swap, as defined in
16 section 2(a)(17) that is not otherwise a security as
17 defined in section 2(a)(1) and that satisfies such
18 conditions as established by rule or regulation by the
19 Commission consistent with the provisions of the
20 Over-the-Counter Derivatives Markets Act of 2009.
21 The Commission shall promulgate rules imple-
22 menting this exemption.”.

23 (c) REGISTRATION OF SECURITY-BASED SWAPS.—
24 Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)
25 is amended by adding at the end the following:

1 “(d) Notwithstanding the provisions of section 3 or
2 section 4, unless a registration statement meeting the re-
3 quirements of subsection (a) of section 10 is in effect as
4 to a security-based swap, it shall be unlawful for any per-
5 son, directly or indirectly, to make use of any means or
6 instruments of transportation or communication in inter-
7 state commerce or of the mails to offer to sell, offer to
8 buy or purchase or sell a security-based swap to any per-
9 son who is not an eligible contract participant as defined
10 in section 1a(13) of the Commodity Exchange Act (7
11 U.S.C. 1a(13)).”.

12 **SEC. 3209. OTHER AUTHORITY.**

13 Unless otherwise provided by its terms, this subtitle
14 does not divest any appropriate Federal banking agency,
15 the Commission, the Commodity Futures Trading Com-
16 mission, or other Federal or State agency, of any authority
17 derived from any other applicable law.

18 **SEC. 3210. JURISDICTION.**

19 Section 36 of the Securities Exchange Act of 1934
20 (15 U.S.C. 78mm) is amended by adding at the end the
21 following new subsection:

22 “(c) **EXEMPTIVE AUTHORITY.**—The Commission
23 may use its authority under subsection (a) to exempt any
24 person, security, or transaction, or any class of persons,
25 securities, or transactions from any provision or provisions

1 of this title or of any rule or regulation thereunder that
2 applies to such person, security, or transaction solely be-
3 cause a security-based swap is a security, as such term
4 is defined in section 3(a) of this title.”.

5 **SEC. 3211. EFFECTIVE DATE.**

6 This subtitle is effective 270 days after the date of
7 enactment.

8 **Subtitle C—Miscellaneous**

9 **SEC. 3301. STUDY ON FEASIBILITY OF REQUIRING USE OF**
10 **STANDARDIZED ALGORITHMIC DESCRIP-**
11 **TIONS FOR FINANCIAL DERIVATIVES.**

12 (a) IN GENERAL.—The Securities and Exchange
13 Commission and the Commodity Futures Trading Com-
14 mission shall conduct a joint study of the feasibility of re-
15 quiring the derivatives industry to adopt standardized
16 computer-readable algorithmic descriptions which may be
17 used to describe complex and standardized financial de-
18 rivatives.

19 (b) GOALS.—The algorithmic descriptions defined in
20 the study shall be designed to facilitate computerized anal-
21 ysis of individual derivative contracts and to calculate net
22 exposures to complex derivatives. The algorithmic descrip-
23 tions shall be optimized for simultaneous use by:

24 (1) commercial users and traders of derivatives;

1 (2) derivative clearing houses, exchanges and
2 electronic trading platforms;

3 (3) trade repositories and regulator investiga-
4 tions of market activities; and

5 (4) systemic risk regulators.

6 The study will also examine the extent to which the algo-
7 rithmic description, together with standardized and exten-
8 sible legal definitions, may serve as the binding legal defi-
9 nition of derivative contracts. The study will examine the
10 logistics of possible implementations of standardized algo-
11 rithmic descriptions for derivatives contracts. The study
12 shall be limited to electronic formats for exchange of deriv-
13 ative contract descriptions and will not contemplate disclo-
14 sure of proprietary valuation models.

15 (c) INTERNATIONAL COORDINATION.—In conducting
16 the study, the Securities and Exchange Commission and
17 the Commodity Futures Trading Commission shall coordi-
18 nate the study with international financial institutions and
19 regulators as appropriate and practical.

20 (d) REPORT.—Within 8 months after the date of the
21 enactment of this title, the Securities and Exchange Com-
22 mission and the Commodity Futures Trading Commission
23 shall jointly submit to the Committees on Agriculture and
24 on Financial Services of the House of Representatives and
25 the Committees on Agriculture, Nutrition, and Forestry

1 and on Banking, Housing, and Urban Affairs of the Sen-
2 ate a written report which contains the results of the study
3 required by subsections (a) through (c).

4 **SEC. 3302. STUDY OF DESIRABILITY AND FEASIBILITY OF**
5 **ESTABLISHING SINGLE REGULATOR FOR ALL**
6 **TRANSACTIONS INVOLVING FINANCIAL DE-**
7 **RIVATIVES.**

8 (a) IN GENERAL.—The Secretary of the Treasury,
9 the Commodity Futures Trading Commission, and the Se-
10 curities and Exchange Commission shall conduct a joint
11 study of the desirability and feasibility of establishing, by
12 January 1, 2012, a single regulator for all transactions
13 involving financial derivatives.

14 (b) REPORT TO THE CONGRESS.—Not later than De-
15 cember 1, 2010, Secretary of the Treasury, the Com-
16 modity Futures Trading Commission, and the Securities
17 and Exchange Commission shall jointly submit to the
18 Committees on Agriculture and on Financial Services of
19 the House of Representatives and the Committees on Ag-
20 riculture, Nutrition, and Forestry and on Banking, Hous-
21 ing, and Urban Affairs of the Senate a written report that
22 contains the results of the study required by subsection
23 (a).

1 **SEC. 3303. RECOMMENDATIONS FOR CHANGES TO INSOL-**
2 **VENCY LAWS.**

3 Not later than 180 days after the date of enactment
4 of this title, the Securities and Exchange Commission, the
5 Commodity Futures Trading Commission, and the Pru-
6 dential Regulators (as defined in section 1a of the Com-
7 modity Exchange Act, as amended by section 3101 of this
8 title) shall transmit to Congress recommendations for leg-
9 islative changes to the Federal insolvency laws—

10 (1) in order to enhance the legal certainty with
11 respect to swap participants clearing non-proprietary
12 swap positions with a swap clearinghouse, includ-
13 ing—

14 (A) customer rights to recover margin de-
15 posits or custodial property held at or through
16 an insolvent swap clearinghouse, or clearing
17 participant; and

18 (B) the enforceability of clearing rules re-
19 lating to the portability of customer swap posi-
20 tions (and associated margin) upon the insol-
21 vency of a clearing participant;

22 (2) to clarify and harmonize the insolvency law
23 framework applicable to entities that are both com-
24 modity brokers (as defined in section 101(6) of title
25 11, United States Code) and registered brokers or

1 dealers (as defined in section 3(a) of the Securities
2 Exchange Act of 1934 (15 U.S.C. 78c(a))); and

3 (3) to facilitate the portfolio margining of secu-
4 rities and commodity futures and options positions
5 held through entities that are both futures commis-
6 sion merchants (as defined in section 1a of the Com-
7 modity Exchange Act) and registered brokers or
8 dealers (as defined in section 3 of the Securities Ex-
9 change Act of 1934 (15 U.S.C. 78c(a))).

10 **SEC. 3304. PROHIBITION AGAINST GOVERNMENT ASSIST-**
11 **ANCE.**

12 (a) IN GENERAL.—No provision of this title shall be
13 construed to authorize Federal assistance to support the
14 clearing operations or liquidation of a derivatives clearing
15 organization described in the Commodity Exchange Act,
16 except where explicitly authorized by an Act of Congress.

17 (b) DEFINITION.—For the purposes of this section,
18 the term “Federal assistance” shall be defined as the use
19 of public funds for the purposes of—

20 (1) making loans to, or purchasing any debt ob-
21 ligation of, a derivatives clearing organization or a
22 subsidiary;

23 (2) purchasing assets of a derivatives clearing
24 organization or a subsidiary;

1 (3) assuming or guaranteeing the obligations of
2 a derivatives clearing organization or a subsidiary;
3 or

4 (4) acquiring any type of equity interest or se-
5 curity of a derivatives clearing organization or a sub-
6 sidiary.

7 **TITLE IV—CONSUMER FINAN-**
8 **CIAL PROTECTION AGENCY**
9 **ACT**

10 **SEC. 4001. SHORT TITLE.**

11 This title may be cited as the “Consumer Financial
12 Protection Agency Act of 2009”.

13 **SEC. 4002. DEFINITIONS.**

14 For the purposes of subtitles A through F of this
15 title, the following definitions shall apply:

16 (1) **AFFILIATE.**—The term “affiliate” means
17 any person that controls, is controlled by, or is
18 under common control with another person.

19 (2) **AGENCY.**—The term “Agency” means the
20 Consumer Financial Protection Agency.

21 (3) **BANK HOLDING COMPANY.**—The term
22 “bank holding company” has the same meaning as
23 in section 2(a) of the Bank Holding Company Act
24 of 1956.

1 (4) BOARD.—Except when used in connection
2 with the term “Board of Governors”, the term
3 “Board” means the Consumer Financial Protection
4 Oversight Board.

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

8 (6) BUSINESS OF INSURANCE.—The term
9 “business of insurance” means the writing of insur-
10 ance or the reinsuring of risks by an insurer, includ-
11 ing all acts necessary to such writing or reinsuring
12 and the activities relating to the writing of insurance
13 or the reinsuring of risks conducted by persons who
14 act as, or are, officers, directors, agents, or employ-
15 ees of insurers or who are other persons authorized
16 to act on behalf of such persons.

17 (7) CONSUMER.—The term “consumer” means
18 an individual or an agent, trustee, or representative
19 acting on behalf of an individual.

20 (8) CONSUMER FINANCIAL PRODUCT OR SERV-
21 ICE.—The term “consumer financial product or
22 service” means any financial product, other than a
23 Federal tax return, or service to be used by a con-
24 sumer primarily for personal, family, or household
25 purposes.

1 (9) COVERED PERSON.—

2 (A) IN GENERAL.—The term “covered per-
3 son” means any person who engages directly or
4 indirectly in a financial activity, in connection
5 with the provision of a consumer financial prod-
6 uct or service.

7 (B) EXCLUSION.—The term “covered per-
8 son” shall not include the Secretary, the De-
9 partment of the Treasury, any agency or bu-
10 reau under the jurisdiction of the Secretary, or
11 any person collecting Federal taxes for the
12 United States to the extent such person is act-
13 ing in such capacity.

14 (10) CREDIT.—The term “credit” means the
15 right granted by a person to a consumer to defer
16 payment of a debt, incur debt and defer its payment,
17 or purchase property or services and defer payment
18 for such purchase.

19 (11) CREDIT UNION.—The term “credit union”
20 means a Federal credit union or a State credit union
21 as defined in section 101 of the Federal Credit
22 Union Act.

23 (12) DEPOSIT.—The term “deposit”—

24 (A) has the same meaning as in section
25 3(l) of the Federal Deposit Insurance Act; and

1 (B) includes a share in a member account
2 (as defined in section 101(5) of the Federal
3 Credit Union Act) at a credit union.

4 (13) DEPOSIT-TAKING ACTIVITY.—The term
5 “deposit-taking activity” means—

6 (A) the acceptance of deposits, the mainte-
7 nance of deposit accounts, or the provision of
8 services related to the acceptance of deposits;

9 (B) the acceptance of money, the provision
10 of other services related to the acceptance of
11 money, or the maintenance of members’ share
12 accounts by a credit union; or

13 (C) the receipt of money or its equivalent,
14 as the Director may determine by regulation or
15 order, received or held by the covered person
16 (or an agent for the person) for the purpose of
17 facilitating a payment or transferring funds or
18 value of funds by a consumer to a third party.

19 (14) DESIGNATED TRANSFER DATE.—The term
20 “designated transfer date” has the meaning pro-
21 vided in section 4602.

22 (15) DIRECTOR.—The term “Director” means
23 the Director of the Agency.

1 (16) ENUMERATED CONSUMER LAWS.—The
2 term “enumerated consumer laws” means each of
3 the following:

4 (A) The Alternative Mortgage Transaction
5 Parity Act (12 U.S.C. 3801 et seq.).

6 (B) The Electronic Funds Transfer Act
7 (15 U.S.C. 1693 et seq.)

8 (C) The Equal Credit Opportunity Act (15
9 U.S.C. 1691 et seq.).

10 (D) The Fair Credit Reporting Act (15
11 U.S.C. 1681 et seq.), except with respect to sec-
12 tions 615(e) and 628 of such Act.

13 (E) The Fair Debt Collection Practices Act
14 (15 U.S.C. 1692 et seq.).

15 (F) Subsections (c), (d), (e), and (f) of sec-
16 tion 43 of the Federal Deposit Insurance Act
17 (12 U.S.C. 1831t).

18 (G) Sections 502, 503, 504, 505, 506,
19 507, 508, and 509 of the Gramm-Leach-Bliley
20 Act (15 U.S.C. 6802 et seq.).

21 (H) The Homeowners Protection Act of
22 1998.

23 (I) The Home Mortgage Disclosure Act
24 (12 U.S.C. 2801 et seq.).

1 (J) The Real Estate Settlement Proce-
2 dures Act (12 U.S.C. 2601 et seq.).

3 (K) The Secure and Fair Enforcement for
4 Mortgage Licensing Act (12 U.S.C. 5101 et
5 seq.).

6 (L) The Truth in Lending Act (15 U.S.C.
7 1601 et seq.).

8 (M) The Truth in Savings Act (12 U.S.C.
9 4301 et seq.).

10 (17) FEDERAL BANKING AGENCY.—The term
11 “Federal banking agency” means the Board of Gov-
12 ernors, the Comptroller of the Currency, the Direc-
13 tor of the Office of Thrift Supervision, the Federal
14 Deposit Insurance Corporation, or the National
15 Credit Union Administration and the term “Federal
16 banking agencies” means all of such agencies.

17 (18) FAIR LENDING.—The term “fair lending”
18 means fair, equitable, and nondiscriminatory access
19 to credit for both individuals and communities.

20 (19) FINANCIAL ACTIVITY.—

21 (A) IN GENERAL.—The term “financial ac-
22 tivity” means any of the following activities:

23 (i) Deposit-taking activities.

24 (ii) Extending credit and servicing
25 loans, including—

1 (I) acquiring, purchasing, selling,
2 brokering, or servicing loans or other
3 extensions of credit;

4 (II) engaging in any other activ-
5 ity usual in connection with extensions
6 of credit or servicing loans, including
7 performing appraisals of real estate
8 and personal property.

9 (iii) Check cashing and check-guar-
10 anty services, including—

11 (I) authorizing a subscribing
12 merchant to accept personal checks
13 tendered by the merchant's customers
14 in payment for goods and services;
15 and

16 (II) purchasing from a sub-
17 scribing merchant validly authorized
18 checks that are subsequently dishon-
19 ored.

20 (iv) Collecting, analyzing, maintain-
21 ing, and providing consumer report infor-
22 mation or other account information by
23 covered persons, including information re-
24 lating to the credit history of consumers
25 and providing the information to a credit

1 grantor who is considering a consumer ap-
2 plication for credit or who has extended
3 credit to the borrower.

4 (v) Collection of debt related to any
5 consumer financial product or service.

6 (vi) Providing real estate settlement
7 services.

8 (vii) Leasing personal or real property
9 or acting as agent, broker, or adviser in
10 leasing such property if—

11 (I) the lease is on a non-oper-
12 ating basis;

13 (II) the initial term of the lease
14 is at least 90 days; and

15 (III) in the case of leases involv-
16 ing real property, at the inception of
17 the initial lease, the transaction is in-
18 tended to result in ownership of the
19 leased property to be transferred to
20 the lessee, subject to standards pre-
21 scribed by the Director.

22 (viii) Acting as an investment adviser
23 to any person (excluding an investment ad-
24 viser that is a person regulated by the
25 Commodity Futures Trading Commission,

1 the Securities and Exchange Commission,
2 or any securities commission (or any agen-
3 cy or office performing like functions) of
4 any State).

5 (ix) Acting as financial adviser to any
6 person (excluding an investment adviser
7 that is a person regulated by the Com-
8 modity Futures Trading Commission, the
9 Securities and Exchange Commission, or
10 any securities commission (or any agency
11 or office performing like functions) of any
12 State), including—

13 (I) providing financial and other
14 related advisory services;

15 (II) providing educational
16 courses, and instructional materials to
17 consumers on individual financial
18 management matters;

19 (III) providing credit counseling
20 or tax planning services to any person
21 (excluding the preparation of returns,
22 or claims for refund, of tax imposed
23 by the Internal Revenue Code or ad-
24 vice with respect to positions taken
25 therein, or services regulated by the

1 Secretary of the Treasury under sec-
2 tion 330 of title 31, United States
3 Code); or

4 (IV) providing services to assist a
5 consumer with debt management or
6 debt settlement, with modifying the
7 terms of any extension of credit, or
8 with avoiding foreclosure.

9 (x) For purposes of this title, the fol-
10 lowing shall not be considered acting as fi-
11 nancial adviser:

12 (I) Publishing any bona fide
13 newspaper, news magazine or business
14 or financial publication of general and
15 regular circulation, including pub-
16 lishing market data, news, or data
17 analytics or investment information or
18 recommendations that are not tailored
19 to the individual needs of a particular
20 consumer.

21 (II) Providing advice, analyses,
22 or reports that do not relate to any
23 securities other than securities which
24 are direct obligations of or obligations
25 guaranteed as to principal or interest

1 by the United States, or securities
2 issued or guaranteed by corporations
3 in which the United States has a di-
4 rect or indirect interest which shall
5 have been designated by the Secretary
6 of the Treasury, pursuant to section
7 3(a)(12) of the Securities Exchange
8 Act of 1934, as exempted securities
9 for the purposes of that Act.

10 (xi) Financial data processing by any
11 technological means, including providing
12 data processing, access to or use of data-
13 bases or facilities, or advice regarding
14 processing or archiving, if the data to be
15 processed, furnished, stored, or archived
16 are financial, banking, or economic, except
17 that it shall not be considered a “financial
18 activity” if with respect to financial data
19 processing the person—

20 (I) unknowingly or incidentally
21 transmits, processes, or stores finan-
22 cial data in a manner that such data
23 is undifferentiated from other types of
24 data that the person transmits, proc-
25 esses, or stores;

1 (II) does not provide to any con-
2 sumer a consumer financial product
3 or service in connection with or relat-
4 ing to in any manner financial data
5 processing; and

6 (III) does not provide a material
7 service to any covered person in con-
8 nection with the provision of a con-
9 sumer financial product or service.

10 (xii) Money transmitting.

11 (xiii) Sale, provision or issuance of
12 stored value, except that, in the case of a
13 sale, only if the seller influences the terms
14 or conditions of the stored value provided
15 to the consumer.

16 (xiv) Acting as a money services busi-
17 ness.

18 (xv) Acting as a custodian of money
19 or any financial instrument.

20 (xvi)(I) Any other activity that the Di-
21 rector defines, by regulation, as a financial
22 activity after finding that—

23 (aa) the activity has, or
24 there is a substantial likelihood
25 that the activity will have, a ma-

1 material adverse impact on the cred-
2 itworthiness or financial well
3 being of consumers;

4 (bb) the activity is incidental
5 or complementary to any other fi-
6 nancial activity regulated by the
7 Agency; or

8 (cc) the activity is entered
9 into or conducted as a subterfuge
10 or with a purpose to evade any
11 requirement under this title, the
12 enumerated consumer laws, and
13 the authorities transferred under
14 subtitles F and H.

15 (II) For purposes of subclause (I)(bb),
16 the following activities provided to a cov-
17 ered person shall not be “incidental or
18 complementary”:

19 (aa) Providing information prod-
20 ucts or services to a covered person
21 for identity authentication.

22 (bb) Providing information prod-
23 ucts or services for fraud or identify
24 theft detection, prevention, or inves-
25 tigation.

1 (cc) Providing document retrieval
2 or delivery services.

3 (dd) Providing public records in-
4 formation retrieval.

5 (ee) Providing information prod-
6 ucts or services for anti-money laun-
7 dering activities.

8 (B) BUSINESS OF INSURANCE EXCEP-
9 TION.—The term “financial activity” shall not
10 include the business of insurance.

11 (20) FINANCIAL PRODUCT OR SERVICE.—The
12 term “financial product or service” means any prod-
13 uct or service that, directly or indirectly, results
14 from or is related to engaging in 1 or more financial
15 activities.

16 (21) FOREIGN EXCHANGE.—The term “foreign
17 exchange” means the exchange, for compensation, of
18 currency of the United States or of a foreign govern-
19 ment for currency of another government.

20 (22) INSURED CREDIT UNION.—The term “in-
21 sured credit union” has the same meaning as in sec-
22 tion 101 of the National Credit Union Act.

23 (23) INSURED DEPOSITORY INSTITUTION.—The
24 term “insured depository institution” has the same

1 meaning as in section 3 of the Federal Deposit In-
2 surance Act.

3 (24) MONEY SERVICES BUSINESS.—The term
4 “money services business” means a person that—

5 (A) receives currency, monetary value, or
6 payment instruments for the purpose of ex-
7 changing or transmitting the same by any
8 means, including transmission by wire, fac-
9 simile, electronic transfer, courier, the Internet,
10 or through bill payment services, or other busi-
11 nesses that facilitate third-party transfers with-
12 in the United States or to or from the United
13 States; or

14 (B) issues payment instruments or stored
15 value.

16 (25) MONEY TRANSMITTING.—The term
17 “money transmitting” means the receipt by a cov-
18 ered person of currency, monetary value, or payment
19 instruments for the purpose of transmitting the
20 same to any third-party by any means, including
21 transmission by wire, facsimile, electronic transfer,
22 courier, the Internet, or through bill payment serv-
23 ices.

24 (26) PAYMENT INSTRUMENT.—The term “pay-
25 ment instrument” means a check, draft, warrant,

1 money order, traveler’s check, electronic instrument,
2 or other instrument, payment of money, or monetary
3 value (other than currency).

4 (27) PERSON.—The term “person” means an
5 individual, partnership, company, corporation, asso-
6 ciation (incorporated or unincorporated), trust, es-
7 tate, cooperative organization, or other entity.

8 (28) PERSON REGULATED BY A STATE INSUR-
9 ANCE REGULATOR.—The term “person regulated by
10 a State insurance regulator” means any person who
11 is—

12 (A) engaged in the business of insurance,
13 and

14 (B) subject to regulation by any State in-
15 surance regulator,

16 but only to the extent that such person acts in such
17 capacity.

18 (29) PERSON REGULATED BY THE COMMODITY
19 FUTURES TRADING COMMISSION.—The term “person
20 regulated by the Commodity Futures Trading Com-
21 mission” means any futures commission merchant,
22 commodity trading adviser, commodity pool oper-
23 ator, introducing broker, boards of trade, derivatives
24 clearing organizations, or multilateral clearing orga-
25 nizations to the extent that such person’s actions are

1 subject to the jurisdiction of the Commodity Futures
2 Trading Commission under the Commodity Ex-
3 change Act and any agent, employee, or contractor
4 acting on behalf of, registered with, or providing
5 services to such person but only to the extent the
6 person, or the employee, agent, or contractor of such
7 person, acts in a registered capacity.

8 (30) PERSON REGULATED BY THE SECURITIES
9 AND EXCHANGE COMMISSION.—The term “person
10 regulated by the Securities and Exchange Commis-
11 sion” means—

12 (A) a broker or dealer that is required to
13 be registered under the Securities Exchange Act
14 of 1934;

15 (B) an investment adviser that is reg-
16 istered under the Investment Advisers Act of
17 1940;

18 (C) an investment company that is re-
19 quired to be registered under the Investment
20 Company Act of 1940;

21 (D) a national securities exchange that is
22 required to be registered under the Securities
23 Exchange Act of 1934;

1 (E) a transfer agent that is required to be
2 registered under the Securities Exchange Act of
3 1934;

4 (F) a clearing corporation that is required
5 to be registered under the Securities Exchange
6 Act of 1934;

7 (G) any municipal securities dealer that is
8 registered with the Securities and Exchange
9 Commission;

10 (H) any self-regulatory organization that is
11 registered with the Securities and Exchange
12 Commission;

13 (I) any national securities exchange or
14 other entity that is required to be registered
15 under the Securities Exchange Act of 1934;
16 and

17 (J) the Municipal Securities Rulemaking
18 Board,

19 and any employee, agent, or contractor acting on be-
20 half of, registered with, or providing services to, any
21 such person, but only to the extent that the person,
22 or the employee agent, or contractor of such person,
23 acts in a registered capacity.

24 (31) PROVISION OF A CONSUMER FINANCIAL
25 PRODUCT OR SERVICE.—The terms “provision of a

1 consumer financial product or service” and “pro-
2 viding a consumer financial product or service”
3 mean the advertisement, marketing, solicitation,
4 sale, disclosure, delivery, or account maintenance or
5 servicing of a consumer financial product or service.

6 (32) PERSON THAT PERFORMS INCOME TAX
7 PREPARATION ACTIVITIES FOR CONSUMERS.—The
8 term “person that performs income tax preparation
9 activities for consumers” means—

10 (A) any tax return preparer (as defined in
11 section 7701(a)(36) of the Internal Revenue
12 Code of 1986), regardless of whether com-
13 pensated, but only to the extent that the person
14 acts in such capacity;

15 (B) any person regulated by the Secretary
16 of the Treasury under section 330 of title 31,
17 United States Code, but only to the extent that
18 the person acts in such capacity; and

19 (C) any authorized IRS e-file Providers (as
20 defined for purposes of section 7216 of the In-
21 ternal Revenue Code of 1986), but only to the
22 extent that the person acts in such capacity.

23 (33) RELATED PERSON.—

24 (A) IN GENERAL.—The term “related per-
25 son”, when used in connection with a covered

1 person that is not a bank holding company,
2 credit union, depository institution, means—

3 (i) any director, officer, employee
4 charged with managerial responsibility, or
5 controlling stockholder of, or agent for,
6 such covered person;

7 (ii) any shareholder, consultant, joint
8 venture partner, and any other person as
9 determined by the Director (by regulation
10 or on a case-by-case basis) who materially
11 participates in the conduct of the affairs of
12 such covered person; and

13 (iii) any independent contractor (in-
14 cluding any attorney, appraiser, or ac-
15 countant), with respect to such covered
16 person, who knowingly or recklessly par-
17 ticipates in any—

18 (I) violation of any law or regula-
19 tion; or

20 (II) breach of fiduciary duty.

21 (B) TREATMENT OF A RELATED PERSON
22 AS A COVERED PERSON.—Any person who is a
23 related person under subparagraph (A) shall be
24 deemed to be a covered person for all purposes
25 of this title, any enumerated consumer law, and

1 any law for which authorities were transferred
2 by subtitles F and H.

3 (34) SECRETARY.—The term “Secretary”
4 means the Secretary of the Treasury.

5 (35) SERVICE PROVIDER.—

6 (A) IN GENERAL.—The term “service pro-
7 vider” means any person who provides a mate-
8 rial service to a covered person in the provision
9 of a consumer financial product or service, in-
10 cluding a person who—

11 (i) facilitates the design of, or oper-
12 ations relating to the provision of, the con-
13 sumer financial product or service;

14 (ii) has direct interaction with a con-
15 sumer (whether in person or via tele-
16 communication device or other similar
17 technology) regarding the consumer finan-
18 cial product or service; or

19 (iii) processes transactions relating to
20 the consumer financial product or service.

21 (B) EXCEPTIONS.—The term “service pro-
22 vider” shall not apply to a person solely by vir-
23 tue of such person providing or selling to a cov-
24 ered person—

1 (i) a support service of a type pro-
2 vided to businesses generally or a similar
3 ministerial service;

4 (ii) a service that does not materially
5 affect the terms or conditions of the con-
6 sumer financial product or service, its per-
7 formance or operation, or the propensity of
8 a consumer to obtain or use such product
9 or service; or

10 (iii) time or space for an advertise-
11 ment for a consumer financial product or
12 service through print, newspaper, or elec-
13 tronic media.

14 (36) STATE.—The term “State” means any
15 State, territory, or possession of the United States,
16 the District of Columbia, Commonwealth of Puerto
17 Rico, Commonwealth of the Northern Mariana Is-
18 lands, Guam, American Samoa, or the United States
19 Virgin Islands.

20 (37) STORED VALUE.—The term “stored
21 value”—

22 (A) means funds or monetary value rep-
23 resented in any electronic format, whether or
24 not specially encrypted, and stored or capable
25 of storage on electronic media in such a way as

1 to be retrievable and transferred electronically;
2 and

3 (B) includes a prepaid debit card or prod-
4 uct (other than a card or product used solely
5 for telephone services) or any other similar
6 product,

7 regardless of whether the amount of the funds or
8 monetary value may be increased or reloaded.

9 **Subtitle A—Establishment of the**
10 **Agency**

11 **SEC. 4101. ESTABLISHMENT OF THE CONSUMER FINANCIAL**
12 **PROTECTION AGENCY.**

13 (a) AGENCY ESTABLISHED.—There is established the
14 Consumer Financial Protection Agency as an independent
15 agency to regulate the provision of consumer financial
16 products or services under this title, the enumerated con-
17 sumer laws, and the authorities transferred under sub-
18 titles F and H.

19 (b) PRINCIPAL OFFICE.—The principal office of the
20 Agency shall be located in the city of Washington, District
21 of Columbia, at 1 or more sites.

22 **SEC. 4102. DIRECTOR.**

23 (a) ESTABLISHMENT OF POSITION.—

1 (1) IN GENERAL.—There is hereby established
2 the position of the Director of the Agency who shall
3 be the head of the Agency.

4 (2) AUTHORITY TO PRESCRIBE REGULA-
5 TIONS.—The Director may prescribe such regula-
6 tions and issue such orders in accordance with this
7 title as the Director may determine to be necessary
8 for carrying out this title and all other laws within
9 the Director's jurisdiction.

10 (b) APPOINTMENT; TERM.—

11 (1) APPOINTMENT.—The Director shall be ap-
12 pointed by the President, by and with the advice and
13 consent of the Senate, from among individuals who
14 are citizens of the United States.

15 (2) TERM.—The Director shall be appointed for
16 a term of 5 years.

17 (3) REMOVAL.—The Director may be removed
18 before the end of a term only for cause.

19 (4) VACANCY.—

20 (A) IN GENERAL.—A vacancy in the posi-
21 tion of Director which occurs before the expira-
22 tion of the term for which a Director was ap-
23 pointed shall be filled in the manner established
24 in paragraph (1) and the Director appointed to

1 fill such vacancy shall be appointed only for the
2 remainder of such term.

3 (B) ACTING DIRECTOR.—

4 (i) IN GENERAL.—In the event of a
5 vacancy in the position of Director or dur-
6 ing the absence or disability of the Direc-
7 tor, an Acting Director shall be appointed
8 in the manner provided in section 3345, of
9 title 5, United States Code.

10 (ii) AUTHORITY OF ACTING DIREC-
11 TOR.—Any individual serving as Acting Di-
12 rector under this subparagraph shall be
13 vested with all authority, duties, and privi-
14 leges of the Director.

15 (5) SERVICE AFTER END OF TERM.—An indi-
16 vidual may serve as Director after the expiration of
17 the term for which appointed until a successor Di-
18 rector has been appointed and qualified.

19 (c) PROHIBITION ON FINANCIAL INTERESTS.—The
20 Director shall not have a direct or indirect financial inter-
21 est in any covered person.

22 (d) COMPENSATION.—The Director shall receive com-
23 pensation at the rate prescribed for Level I of the Execu-
24 tive Schedule under section 5313 of title 5, United States
25 Code.

1 **SEC. 4103. CONSUMER FINANCIAL PROTECTION OVER-**
2 **SIGHT BOARD.**

3 (a) ESTABLISHED.—There is hereby established the
4 Consumer Financial Protection Oversight Board as an in-
5 strumentality of the United States.

6 (b) DUTIES AND POWERS.—

7 (1) DUTY TO ADVISE DIRECTOR.—The Board
8 shall advise the Director on—

9 (A) the consistency of a proposed regula-
10 tion of the Director with prudential, market, or
11 systemic objectives administered by the agencies
12 that comprise the Board;

13 (B) the overall strategies and policies in
14 carrying out the duties of the Director under
15 this title; and

16 (C) actions the Director can take to en-
17 hance and ensure that all consumers are subject
18 to robust financial protection.

19 (2) LIMITATION ON POWERS.—The Board may
20 not exercise any executive authority, and the Direc-
21 tor may not delegate to the Board any of the func-
22 tions, powers, or duties of the Director.

23 (c) COMPOSITION.—The Board shall be comprised of
24 7 members as follows:

25 (1) The Chairman of the Board of Governors.

1 (2) The head of the agency responsible for
2 chartering and regulating national banks.

3 (3) The Chairperson of the Federal Deposit In-
4 surance Corporation.

5 (4) The Chairman of the National Credit Union
6 Administration.

7 (5) The Chairman of the Federal Trade Com-
8 mission.

9 (6) The Secretary of Housing and Urban Devel-
10 opment.

11 (7) The Chairman of the liaison committee of
12 representatives of State agencies to the Financial In-
13 stitutions Examination Council.

14 (d) REPRESENTATIVE OF ADDITIONAL INTERESTS.—

15 (1) COMPOSITION.—Notwithstanding subsection
16 (c), the President, by and with the advice and con-
17 sent of the Senate, shall appoint 5 additional mem-
18 bers of the Board from among experts in the fields
19 of consumer protection, fair lending and civil rights,
20 representatives of depository institutions that pri-
21 marily serve underserved communities, or represent-
22 atives of communities that have been significantly
23 impacted by higher-priced mortgage loans, as such
24 communities are identified by the Director through
25 an analysis of data received by reason of the provi-

1 sions of the Home Mortgage Disclosure Act of 1975
2 or other data on lending patterns.

3 (2) AFFILIATION.—With respect to members
4 appointed pursuant to paragraph (1), not more than
5 3 shall be members of any one political party.

6 (e) MEETINGS.—

7 (1) IN GENERAL.—The Board shall meet upon
8 notice by the Director, but in no event shall the
9 Board meet less frequently than once every 3
10 months.

11 (2) SPECIAL MEETINGS.—Any member of the
12 Board may, upon giving written notice to the Direc-
13 tor, require a special meeting of the Board.

14 (f) PROHIBITION ON ADDITIONAL COMPENSATION.—
15 Members of the Board may not receive additional pay, al-
16 lowances, or benefits by reason of their service on the
17 Board.

18 (g) COMPLAINTS RELATED TO REQUIRED OFFERING
19 OF SPECIFIC FINANCIAL PRODUCTS OR SERVICES.—The
20 Board shall establish procedures to receive and analyze
21 complaints from any person claiming that the Director is
22 not in compliance with the requirements under section
23 4311.

1 **SEC. 4104. EXECUTIVE AND ADMINISTRATIVE POWERS.**

2 The Director may exercise all executive and adminis-
3 trative functions of the Agency, including to—

4 (1) establish regulations for conducting the
5 Agency's general business in a manner not incon-
6 sistent with this title;

7 (2) bind the Agency and enter into contracts;

8 (3) direct the establishment of and maintain di-
9 visions or other offices within the Agency in order to
10 fulfill the responsibilities of this title, the enumer-
11 ated consumer laws, and the authorities transferred
12 under subtitles F and H, and to satisfy the require-
13 ments of other applicable law;

14 (4) coordinate and oversee the operation of all
15 administrative, enforcement, and research activities
16 of the Agency;

17 (5) adopt and use a seal;

18 (6) determine the character of and the necessity
19 for the Agency's obligations and expenditures, and
20 the manner in which they shall be incurred, allowed,
21 and paid;

22 (7) delegate authority, at the Director's discre-
23 tion, to any officer or employee of the Agency to
24 take action under any provision of this title or under
25 other applicable law;

1 (8) to implement this title and the Agency's au-
2 thorities under the enumerated consumer laws and
3 under subtitles F and H through regulations, orders,
4 guidance, interpretations, statements of policy, ex-
5 aminations, and enforcement actions; and

6 (9) perform such other functions as may be au-
7 thorized or required by law.

8 **SEC. 4105. ADMINISTRATION.**

9 (a) OFFICERS.—The Director shall appoint the fol-
10 lowing officials:

11 (1) A secretary, who shall be charged with
12 maintaining the records of the Agency and per-
13 forming such other activities as the Director directs.

14 (2) A general counsel, who shall be charged
15 with overseeing the legal affairs of the Agency and
16 performing such other activities as the Director di-
17 rects.

18 (3) An inspector general, who shall have the au-
19 thority and functions of an inspector general of a
20 designated Federal entity under the Inspector Gen-
21 eral Act of 1978 (5 U.S.C. App. 3).

22 (4) An Ombudsperson, who shall—

23 (A) develop and maintain expertise in and
24 understanding of the law relating to consumer
25 financial products;

1 (B) at the request of a Federal agency or
2 a State agency, and with the prior approval of
3 the Director, advise such agency with respect to
4 actions that may affect consumers;

5 (C) advise consumers who may have a le-
6 gitimate potential or actual claim against a
7 Federal agency involving the provision of con-
8 sumer financial products regarding their rights
9 under this title;

10 (D) identify Federal agency actions that
11 have potential implications for consumers and,
12 if appropriate, and with the prior approval of
13 the Director, advise the relevant Federal agen-
14 cies with respect to those implications;

15 (E) provide information to private citizens,
16 civic groups, Federal agencies, State agencies,
17 and other interested parties regarding the
18 rights of those parties under this title;

19 (F) develop, maintain, and provide exper-
20 tise designed to assist covered persons, espe-
21 cially smaller depository institutions and other
22 smaller entities to comply with regulations and
23 other requirements issued to implement the pro-
24 visions of this title, and where such assistance
25 for smaller depository institutions shall be pro-

1 vided jointly by the Agency and the appropriate
2 Federal banking agency;

3 (G) develop procedures to assist covered
4 persons, especially smaller depository institu-
5 tions and other smaller entities, in responding
6 to or challenging actions taken by the Director
7 or the Agency to implement the provisions of
8 this title and to ensure that safeguards exist to
9 preserve the confidentiality of covered persons
10 using those procedures; and

11 (H) perform such other duties as the Di-
12 rector may delegate to the Ombudsperson.

13 (b) PERSONNEL.—

14 (1) APPOINTMENT.—

15 (A) IN GENERAL.—The Director may fix
16 the number of, and appoint and direct, all em-
17 ployees of the Agency.

18 (B) EXPEDITED HIRING.—The Director
19 may appoint, without regard to the provisions
20 of sections 3309 through 3318, of title 5,
21 United States Code, candidates directly to posi-
22 tions for which public notice has been given.

23 (C) HIRING VETERANS.—In hiring employ-
24 ees of the Agency, the Director shall establish
25 appropriate targets, including timetables, to

1 hire veterans (as defined in paragraphs (1) and
2 (2) of section 2108 of title 5, United States
3 Code) as employees of the Agency. In estab-
4 lishing appropriate targets under this para-
5 graph, the Director may consider, among other
6 relevant factors, the proportion of veterans
7 hired by Federal agencies with comparable
8 functions or types of occupations and their ex-
9 periences in hiring veterans.

10 (2) COMPENSATION.—

11 (A) PAY.—The Director shall fix, adjust,
12 and administer the pay for all employees of the
13 Agency without regard to the provisions of
14 chapter 51 or subchapter III of chapter 53 of
15 title 5, United States Code.

16 (B) BENEFITS.—The Director may provide
17 additional benefits to Agency employees if the
18 same type of benefits are then being provided
19 by the Board of Governors or, if not then being
20 provided, could be provided by the Board of
21 Governors under applicable provisions of law or
22 regulations.

23 (C) MINIMUM STANDARD.—The Director
24 shall at all times provide compensation and ben-
25 efits to classes of employees that, at a min-

1 imum, are equivalent to the compensation and
2 benefits provided by the Board of Governors for
3 the corresponding class of employees in any fis-
4 cal year.

5 (c) SPECIFIC FUNCTIONAL UNITS.—

6 (1) RESEARCH.—The Agency shall establish a
7 unit whose functions shall include—

8 (A) conducting research on consumer fi-
9 nancial counseling and education, including—

10 (i) on the topics of debt, credit, sav-
11 ings, financial product usage, and financial
12 planning;

13 (ii) exploring effective methods, tools,
14 and approaches; and

15 (iii) identifying ways to incorporate
16 new technology for the delivery and evalua-
17 tion of financial counseling and education
18 efforts;

19 (B) researching, analyzing, and reporting
20 on—

21 (i) current and prospective develop-
22 ments in markets for consumer financial
23 products or services, including market
24 areas of alternative consumer financial

1 products or services with high growth
2 rates;

3 (ii) consumer awareness, under-
4 standing, and use of disclosures and com-
5 munications regarding consumer financial
6 products or services;

7 (iii) consumer awareness and under-
8 standing of costs, risks, and benefits of
9 consumer financial products or services;

10 (iv) consumer behavior with respect to
11 consumer financial products or services, in-
12 cluding performance on mortgage loan;
13 and

14 (v) experiences of traditionally under-
15 served consumers, including un-banked and
16 under-banked consumers, regarding con-
17 sumer financial products or services;

18 (C) identifying priorities for consumer fi-
19 nancial education efforts, based on consumer
20 complaints, research or analysis conducted pur-
21 suant to subparagraph (A), or other informa-
22 tion; and

23 (D) testing and identifying methods of
24 educating consumers to determine which meth-
25 ods are most effective.

1 (2) COMMUNITY AFFAIRS.—The Director shall
2 establish a unit whose functions shall include pro-
3 viding information, guidance, and technical assist-
4 ance regarding the provision of consumer financial
5 products or services to traditionally underserved con-
6 sumers and communities.

7 (3) CONSUMER COMPLAINTS.—

8 (A) IN GENERAL.—The Director shall es-
9 tablish a unit whose functions shall include es-
10 tablishing a central database, or utilizing an ex-
11 isting database, for collecting and tracking in-
12 formation on consumer complaints about con-
13 sumer financial products or services and resolu-
14 tion of complaints.

15 (B) COORDINATION.—In performing the
16 functions described in subparagraph (A), the
17 Director shall coordinate with the Federal
18 banking agencies, other Federal agencies, and
19 other regulatory agencies or enforcement au-
20 thorities.

21 (C) DATA SHARING REQUIRED.—To the
22 extent permitted by law and the regulations
23 prescribed by the Director regarding the con-
24 fidential treatment of information, the Director
25 shall share data relating to consumer com-

1 plaints with Federal banking agencies, other
2 Federal agencies, and State regulators. To the
3 extent permitted by law and the regulations
4 prescribed by the Federal banking agencies and
5 other Federal agencies regarding the confiden-
6 tial treatment of information, the Federal bank-
7 ing agencies and other Federal agencies, respec-
8 tively, shall share data relating to consumer
9 complaints with the Director and the Agency.

10 (4) CONSUMER FINANCIAL EDUCATION.—

11 (A) IN GENERAL.—The Agency shall es-
12 tablish a unit to be named the Office of Finan-
13 cial Literacy, whose functions shall include ac-
14 tivities designed to facilitate the education of
15 consumers on consumer financial products and
16 services, including through the dissemination of
17 materials to consumers on such topics.

18 (B) DIRECTOR.—The Office of Financial
19 Literacy shall be headed by a director.

20 (C) DUTIES.—Such unit shall—

21 (i) develop goals for programs to be
22 provided by persons that provide consumer
23 financial education and counseling, includ-
24 ing programs through which such per-
25 sons—

- 1 (I) provide one-on-one financial
2 counseling;
- 3 (II) help individuals understand
4 basic banking and savings tools;
- 5 (III) help individuals understand
6 their credit history and credit score;
- 7 (IV) assist individuals in efforts
8 to plan for major purchases, reduce
9 their debt, and improve their financial
10 stability; and
- 11 (V) work with individuals to de-
12 sign plans for long-term savings;
- 13 (ii) develop recommendations regard-
14 ing effective certification of persons pro-
15 viding programs, or performing the activi-
16 ties, described in clause (i), including rec-
17 ommendations regarding—
- 18 (I) certification processes and
19 standards for certification;
- 20 (II) appropriate certifying bodies;
21 and
- 22 (III) mechanisms for funding the
23 certification processes;

1 (iii) develop a technology tool to col-
2 lect data on financial education and coun-
3 seling outcomes; and

4 (iv) conduct research to identify effec-
5 tive methods, tools, technology, and strate-
6 gies to educate and counsel consumers
7 about personal finance management, in-
8 cluding on the topics of debt, credit, sav-
9 ings, financial product usage, and financial
10 planning.

11 (D) COORDINATION.—Such unit shall co-
12 ordinate with other units within the Agency in
13 carrying out its functions, including—

14 (i) working with the unit established
15 under paragraph (2) to—

16 (I) provide information and re-
17 sources to community organizations,
18 nonprofit organizations, and other en-
19 tities to assist in helping educate con-
20 sumers about consumer financial
21 products and services; and

22 (II) develop a marketing strategy
23 to promote financial education and
24 one-on-one counseling; and

1 (ii) working with the unit established
2 under paragraph (1) to conduct research
3 related to consumer financial education
4 and counseling.

5 (d) SINGLE TOLL-FREE TELEPHONE NUMBER FOR
6 CONSUMER COMPLAINTS AND INQUIRIES.—

7 (1) CALL INTAKE SYSTEM.—The Consumer Fi-
8 nancial Protection Agency shall establish a single,
9 toll-free telephone number for consumer complaints
10 and inquiries concerning institutions regulated by
11 such agencies and a system for collecting and moni-
12 toring complaints and, as soon as practicable, a sys-
13 tem for routing such calls to the Federal financial
14 institution regulatory agency that primarily super-
15 vises the financial institution, or that is otherwise
16 the appropriate Federal agency to address the sub-
17 ject of the complaint or inquiry.

18 (2) ROUTING CALLS TO STATES.—To the extent
19 practicable, State agencies may receive appropriate
20 call transfers from the system established under
21 paragraph (1) if—

22 (A) the State agency's system has the
23 functional capacity to receive calls routed by the
24 system; and

1 (B) the State agency has satisfied any con-
2 ditions of participation in the system that the
3 Council, coordinating with State agencies
4 through the chairperson of the State Liaison
5 Committee, may establish.

6 (e) REPORT TO THE CONGRESS.—Before the end of
7 the 6-month period beginning on the date of the enact-
8 ment of this title, the Federal financial institution regu-
9 latory agencies shall submit a report to the Committee on
10 Financial Services of the House of Representatives and
11 the Committee on Banking, Housing, and Urban Affairs
12 of the Senate describing the agencies' efforts to estab-
13 lish—

14 (1) a public interagency Web site for directing
15 and referring Internet consumer complaints and in-
16 quiries concerning any financial institution to the
17 Consumer Financial Protection Agency for purposes
18 of collecting, monitoring, and responding to such
19 complaints and, where appropriate, a system for re-
20 ferring complaints to the Federal financial institu-
21 tion regulatory agency, other Federal agency, or
22 State agency that is otherwise the appropriate agen-
23 cy to address the subject of the complaint or inquiry;
24 and

1 (2) a system to expedite the prompt and effective rerouting of any misdirected consumer complaint or inquiry documents between or among the agencies, with prompt referral of any complaint or inquiry to the appropriate Federal financial institution regulatory agency, and to participating State agencies.

8 (f) OFFICE OF FAIR LENDING AND EQUAL OPPORTUNITY.—

10 (1) ESTABLISHMENT.—Before the end of the 180-day period beginning on the date of the enactment of this title, the Director shall establish within the Agency the Office of Fair Lending and Equal Opportunity.

15 (2) FUNCTIONS.—The Office of Fair Lending and Equal Opportunity shall have such powers and duties as the Director may delegate the Office which shall include the following functions:

19 (A) Providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Agency, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act.

1 (B) Coordinating fair lending enforcement
2 efforts of the Agency with other Federal agen-
3 cies and State regulators, as appropriate, to
4 promote consistent, efficient and effective en-
5 forcement of Federal fair lending laws.

6 (C) Working with private industry, fair
7 lending, civil rights, consumer and community
8 advocates on the promotion of fair lending com-
9 pliance and education.

10 (D) Providing annual reports to the Con-
11 gress on the Agency's efforts to fulfill its fair
12 lending mandate.

13 (3) ADMINISTRATION OF OFFICE.—There is
14 hereby established the position of Assistant Director
15 of the Agency for Fair Lending and Equal Oppor-
16 tunity who—

17 (A) shall be appointed by the Director;

18 (B) shall carry out such duties as the Di-
19 rector may delegate to such Assistant Director;
20 and

21 (C) shall serve as the Director of the Of-
22 fice of Fair Lending and Equal Opportunity.

23 (4) PROHIBITIONS ON PARTICIPATION IN PRO-
24 GRAMS WITH RESPECT TO CERTAIN INDICTED ORGA-
25 NIZATIONS.—

1 (A) PROHIBITION.—The Director of the
2 Office of Fair Lending and Equal Opportunity
3 may not allow a covered organization to partici-
4 pate in any program established by such Direc-
5 tor.

6 (B) COVERED ORGANIZATION.—In this
7 paragraph, the term “covered organization”
8 means any of the following:

9 (i) Any organization that has been in-
10 dicted for a violation under any Federal or
11 State law governing the financing of a
12 campaign for election for public office or
13 any law governing the administration of an
14 election for public office, including a law
15 relating to voter registration.

16 (ii) Any organization that had its
17 State corporate charter terminated due to
18 its failure to comply with Federal or State
19 lobbying disclosure requirements.

20 (iii) Any organization that has filed a
21 fraudulent form with any Federal or State
22 regulatory agency.

23 (iv) Any organization that—

1 (I) employs any applicable indi-
2 vidual, in a permanent or temporary
3 capacity;

4 (II) has under contract or retains
5 any applicable individual; or

6 (III) has any applicable indi-
7 vidual acting on the organization's be-
8 half or with the express or apparent
9 authority of the organization.

10 (C) ADDITIONAL DEFINITIONS.—In this
11 paragraph:

12 (i) The term “organization” includes
13 the Association of Community Organiza-
14 tions for Reform Now (in this paragraph
15 referred to as “ACORN”) and any
16 ACORN-related affiliate.

17 (ii) The term “ACORN-related affil-
18 iate” means any of the following:

19 (I) Any State chapter of ACORN
20 registered with the Secretary of
21 State's office in that State.

22 (II) Any organization that shares
23 directors, employees, or independent
24 contractors with ACORN.

1 (III) Any organization that has a
2 financial stake in ACORN.

3 (IV) Any organization whose fi-
4 nances, whether federally funded,
5 donor-funded, or raised through orga-
6 nizational goods and services, are
7 shared or controlled by ACORN.

8 (iii) The term “applicable individual”
9 means an individual who has been indicted
10 for a violation under Federal or State law
11 relating to an election for Federal or State
12 office.

13 (D) REVISION OF FEDERAL ACQUISITION
14 REGULATION.—The Federal Acquisition Regu-
15 lation shall be revised to carry out the provi-
16 sions of this paragraph relating to contracts.

17 (E) SEVERABILITY.—If any provision of
18 this section or any application of such provision
19 to any person or circumstance is held to be un-
20 constitutional, the remainder of this section and
21 the application of the provision to any other
22 person or circumstance shall not be affected.

23 **SEC. 4106. CONSUMER ADVISORY BOARD.**

24 (a) ESTABLISHMENT REQUIRED.—The Director shall
25 establish a Consumer Advisory Board to advise and con-

1 sult with the Director in the exercise of the functions of
2 the Director and the Agency under this title, the enumer-
3 ated consumer laws, and to provide information on emerg-
4 ing practices in the consumer financial products or serv-
5 ices industry.

6 (b) MEMBERSHIP.—

7 (1) IN GENERAL.—In appointing the members
8 of the Consumer Advisory Board, the Director shall
9 seek—

10 (A) to assemble experts in financial serv-
11 ices, community development, fair lending and
12 civil rights, consumer protection, and consumer
13 financial products or services; and

14 (B) to represent the interests of covered
15 persons and consumers.

16 (2) PROHIBITION ON MEMBERSHIP WITH RE-
17 SPECT TO CERTAIN INDICTED ORGANIZATIONS.—The
18 director may not appoint an employee of a covered
19 organization (as defined in section 4105(f)(4)(B)) to
20 the Consumer Advisory Board.

21 (c) POLITICAL AFFILIATION.—Not more than 1 more
22 than half of the members of the Consumer Advisory Board
23 may be members of the same political party.

1 (d) 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 (e) 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. 4107. COORDINATION.**

15 (a) COORDINATION WITH OTHER FEDERAL AGEN-
16 CIES AND STATE REGULATORS.—The Director shall co-
17 ordinate with the Securities and Exchange Commission,
18 the Commodity Futures Trading Commission, the Sec-
19 retary of the Treasury, and other Federal agencies and
20 State regulators, as appropriate, to promote consistent
21 regulatory treatment of, and enforcement related to, con-
22 sumer and investment products, services, and laws.

23 (b) COORDINATION OF CONSUMER EDUCATION INI-
24 TIATIVES.—

1 (1) IN GENERAL.—The Director shall coordi-
2 nate with each agency that is a member of the Fi-
3 nancial Literacy and Education Commission estab-
4 lished by the Financial Literacy and Education Im-
5 provement Act (20 U.S.C. 9701 et seq.) to assist
6 each agency in enhancing its existing financial lit-
7 eracy and education initiatives to better achieve the
8 goals in paragraph (2) and to ensure the consistency
9 of such initiatives across Federal agencies.

10 (2) GOALS OF COORDINATION.—In coordinating
11 with the agencies described in paragraph (1), the
12 Director shall seek to improve efforts to educate
13 consumers about financial matters generally, the
14 management of their own financial affairs, and their
15 judgments about the appropriateness of certain fi-
16 nancial products.

17 (c) COORDINATION.—The Agency may coordinate in-
18 vestigations, compliance examinations, information shar-
19 ing, and related activities in support of activities under-
20 taken pursuant to the Fair Housing Act by other Federal
21 agencies.

22 **SEC. 4108. REPORTS TO THE CONGRESS.**

23 (a) REPORTS REQUIRED.—The Director shall pre-
24 pare and submit to the President and the appropriate
25 committees of the Congress a report at the beginning of

1 each regular session of the Congress, beginning with the
2 session following the designated transfer date.

3 (b) CONTENTS.—The reports required by subsection
4 (a) shall include—

5 (1) a list of the significant regulations and or-
6 ders adopted by the Director, as well as other sig-
7 nificant initiatives conducted by the Director, during
8 the preceding year and the Director’s plan for regu-
9 lations, orders, or other initiatives to be undertaken
10 during the upcoming period;

11 (2) an analysis of complaints about consumer
12 financial products or services that the Agency has
13 received and collected in its central database on
14 complaints during the preceding year;

15 (3) a list, with a brief statement of the issues,
16 of the public supervisory and enforcement actions to
17 which the Agency is a party (including adjudication
18 proceedings conducted under subtitle E) during the
19 preceding year;

20 (4) the actions taken regarding regulations, or-
21 ders, and supervisory actions with respect to covered
22 persons which are not credit unions or depository in-
23 stitutions, including descriptions of the types of such
24 covered persons, financial activities, and consumer

1 financial products or services affected by such regu-
2 lations, orders, and supervisory actions;

3 (5) an appraisal of significant actions, including
4 actions under Federal or State law, by State attor-
5 neys general or State regulators relating to this title,
6 the authorities transferred under subtitles F and H,
7 and the enumerated consumer laws;

8 (6) an analysis of the Agency's efforts to fulfill
9 the fair lending mission of the Agency; and

10 (7) an appraisal of the regulatory and legal dif-
11 ficulties encountered by the Agency in carrying out
12 the mission and duties of the Agency with respect to
13 consumer protection, including a description of—

14 (A) the difficulties and hardships encoun-
15 tered with respect to coordinating with other
16 Federal and State government entities;

17 (B) the regulatory and enforcement limita-
18 tions placed on the Agency by this title;

19 (C) the practices of persons, covered and
20 uncovered under this title, that allow such per-
21 sons to harm consumers and escape regulation
22 or enforcement, including any trends identified;
23 and

1 (D) legislative and administrative rec-
2 ommendations with respect to solving or alle-
3 viating identified difficulties.

4 (c) ANNUAL APPEARANCE BEFORE THE CON-
5 GRESS.—The Director shall appear before the House
6 Committee on Financial Services at an annual hearing,
7 after the report is submitted under subsection (a)—

8 (1) to discuss the efforts, activities, objectives
9 and plans of the Agency; and

10 (2) discuss and answer questions concerning
11 such report.

12 **SEC. 4109. FUNDING; FEES AND ASSESSMENTS; PENALTIES**
13 **AND FINES.**

14 (a) TRANSFER OF FUNDS FROM THE BOARD OF
15 GOVERNORS.—

16 (1) TRANSFER REQUIRED.—Each year, begin-
17 ning on the designated transfer date, the Board of
18 Governors shall transfer funds in an amount equal-
19 ing 10 percent of the Federal Reserve System’s total
20 system expenses (as reported in the Budget Review
21 of the Board of Governors most recent Annual Re-
22 port to Congress) to the Director for the purposes
23 of carrying out the authorities granted in this title,
24 under the enumerated consumer laws, and trans-
25 ferred under subtitles F and H.

1 (2) PROCEDURES.—The Board of Governors, in
2 consultation with the Agency, shall make appro-
3 priate arrangements to transfer funds to the Direc-
4 tor in accordance with this subsection.

5 (b) FEES AND ASSESSMENTS.—

6 (1) ASSESSMENT REQUIRED.—

7 (A) IN GENERAL.—Taking into account
8 such other sums available to the Agency and
9 subject to the provisions of this subsection and
10 subsection (d), the Director shall assess fees on
11 covered persons to meet the Agency’s expenses
12 for carrying out the duties and responsibilities
13 of the Agency, including supervising such cov-
14 ered persons.

15 (B) BASIS FOR ASSESSMENT.—The Agency
16 shall assess fees on covered persons pursuant to
17 this subsection based on the size and complexity
18 of the covered person, and the compliance
19 record of the covered person under the enumer-
20 ated consumer laws, the laws and authorities
21 transferred under subtitles F and H, and this
22 title.

23 (2) REGULATIONS.—

1 (A) IN GENERAL.—The Director shall pre-
2 scribe regulations to govern the imposition and
3 collection of fees and assessments.

4 (B) FACTORS REQUIRED TO BE AD-
5 DRESSED.—Regulations prescribed by the Di-
6 rector under this subsection shall specify and
7 define—

8 (i) the basis of fees or assessments
9 (such as the outstanding number of con-
10 sumer credit accounts, off-balance sheet re-
11 ceivables attributable to the covered per-
12 son, total consolidated assets, total assets
13 under management, or volume of consumer
14 financial transactions or use of service pro-
15 viders);

16 (ii) the amount and frequency of fees
17 or assessments; and

18 (iii) such other factors that the Direc-
19 tor determines are appropriate, which shall
20 include a covered person's compliance
21 record under the enumerated consumer
22 laws, the authorities transferred under
23 subtitles F and H, and this title.

24 (3) ASSESSMENTS ON DEPOSITORY INSTITU-
25 TION COVERED PERSONS.—

1 (A) DEPOSITORY INSTITUTION COVERED
2 PERSON DEFINED.—For purposes of this sec-
3 tion, the term “depository institution covered
4 person” means a covered person that is an in-
5 sured depository institution or credit union.

6 (B) ASSESSMENTS.—

7 (i) FEES REQUIRED.—The Director
8 shall assess fees for supervision as are ap-
9 propriate on depository institution covered
10 persons, taking into account the size and
11 complexity of the covered person, and the
12 compliance record of the covered person
13 under the enumerated consumer laws, the
14 laws and authorities transferred under
15 subtitles F and H, and this title.

16 (ii) LIMITATION ON CERTAIN FEES.—
17 The Agency shall not assess examination
18 fees on an institution referred to in section
19 4203(a), or an institution whose examina-
20 tion responsibilities have been delegated to
21 an appropriate agency, pursuant to section
22 4202(c)(11).

23 (iii) BASIS FOR FEE AMOUNTS.—Fees
24 assessed by the Director under this sub-
25 paragraph may be established at levels nec-

1 essary to meet the Agency's expenses for
2 carrying out the duties and responsibilities
3 of the Director and the Agency under this
4 title with regard to depository institution
5 covered persons.

6 (C) COORDINATION DURING IMPLEMENTA-
7 TION PERIOD.—The Director and the agencies
8 responsible for chartering and or supervising
9 depository institution covered persons shall co-
10 ordinate on the levels of fees assessed on depos-
11 itory institution covered persons under this
12 paragraph, so that levels of assessments under
13 this subparagraph combined with levels of as-
14 sessments by agencies responsible for chartering
15 and or supervising depository institution cov-
16 ered persons shall be no more than the assess-
17 ments such depository institution covered per-
18 son was required to pay for the 12-month pe-
19 riod ending on December 31, 2009.

20 (D) MARGINAL ASSESSMENT RATE.—

21 (i) IN GENERAL.—In setting assess-
22 ment rates for depository institution cov-
23 ered persons, the Director shall not impose
24 assessments that result in higher marginal
25 assessment rates for depository institution

1 covered persons with assets of less than
2 \$25,000,000,000 than the marginal rates
3 for depository institutions covered persons
4 with assets that exceed that amount.

5 (ii) RULE OF CONSTRUCTION.—

6 Clause (i) shall not be construed as lim-
7 iting or impairing the authority of the Di-
8 rector to set assessments that would result
9 in higher marginal assessment rates on the
10 larger depository institution covered per-
11 sons.

12 (E) LIMITATIONS ON ASSESSMENTS.—

13 (i) ASSESSMENTS FOR ADMINISTRA-
14 TIVE COSTS.—Notwithstanding any provi-
15 sion in this title, no depository institution
16 covered person shall be charged an assess-
17 ment to be used for the supervision, exam-
18 ination, enforcement or regulation by the
19 Agency of nondepository covered persons.

20 (ii) AMOUNTS PAID FOR CONSUMER
21 COMPLIANCE SUPERVISION.—Notwith-
22 standing any provision in this title, no de-
23 pository institution covered person shall
24 pay more for consumer compliance super-

1 vision than it paid before the date of en-
2 actment of this title.

3 (4) ASSESSMENTS ON NONDEPOSITORY COV-
4 ERED PERSONS.—

5 (A) NONDEPOSITORY COVERED PERSON
6 DEFINED.—For purposes of this section, the
7 term “nondepository covered person”—

8 (i) means a covered person that is not
9 a credit union or insured depository insti-
10 tution; and

11 (ii) includes any bank holding com-
12 pany.

13 (B) ASSESSMENTS.—

14 (i) FEES REQUIRED.—The Director
15 shall assess fees for registration, examina-
16 tion, and supervision of nondepository cov-
17 ered persons.

18 (ii) BASIS FOR FEE AMOUNTS.—Fees
19 assessed by the Director under this sub-
20 paragraph may be established at levels nec-
21 essary to meet the Agency’s expenses for
22 carrying out the duties and responsibilities
23 of the Director and the Agency, including
24 supervising such covered persons, taking

1 into account such other sums available to
2 the Agency.

3 (iii) REGISTRATION FEE MINIMUMS.—
4 Registration fees imposed on a nondeposi-
5 tory covered person under this paragraph
6 shall, at a minimum, be imposed on such
7 covered person at the time the person reg-
8 isters (or periodically renews any such reg-
9 istration) with the Agency, in accordance
10 with regulations prescribed by the Direc-
11 tor.

12 (C) NONDEPOSITORY COVERED PERSON
13 ASSESSMENT NOT LESS THAN FOR DEPOSITORY
14 COVERED PERSONS.—Assessment rates levied
15 by the Director under this section on a non-
16 depository institution covered persons shall be
17 no less than assessments levied by the Agency
18 under this section on a depository institution
19 covered person with similar characteristics.

20 (e) AUTHORIZATION OF APPROPRIATIONS.—

21 (1) IN GENERAL.—For the purposes of carrying
22 out the authorities granted in this title, under the
23 enumerated consumer laws, and the laws and au-
24 thorities transferred under subtitles F and H, there

1 are authorized to be appropriated to the Director
2 such sums as may be necessary for any fiscal year.

3 (2) APPORTIONMENT.—Notwithstanding any
4 other provision of law, such amounts shall be subject
5 to apportionment under section 1517 of title 31,
6 United States Code, and restrictions that generally
7 apply to the use of appropriated funds in title 31,
8 United States Code, and other laws.

9 (3) OTHER AVAILABLE FUNDS TAKEN INTO AC-
10 COUNT.—Sums appropriated under this subsection
11 shall take into account such other sums available to
12 the Agency under this section.

13 (d) CONSUMER FINANCIAL PROTECTION AGENCY
14 DEPOSITORY INSTITUTION FUND.—

15 (1) ESTABLISHMENT.—

16 (A) IN GENERAL.—There is established in
17 the Treasury a separate fund to be known as
18 the “Consumer Financial Protection Agency
19 Depository Institution Fund” (hereafter in this
20 section referred to as the “CFPA Depository
21 Fund”).

22 (B) AMOUNTS IN FUND NOT AVAILABLE
23 FOR CERTAIN PURPOSES.—Other than pursuant
24 to subsection (f), amounts on deposit in the
25 CFPA Depository Fund shall not be used in the

1 supervision and examination of nondepository
2 institution covered persons.

3 (2) ALL TRANSFERRED FUNDS DEPOSITED.—
4 All amounts transferred to the Agency under sub-
5 section (a) shall be deposited into the CFPA Deposi-
6 tory Fund.

7 (3) ALL APPLICABLE SUPERVISORY FEES AND
8 ASSESSMENTS DEPOSITED.—The Director shall de-
9 posit all amounts received from assessments under
10 subsection (b)(3) in the CFPA Depository Fund.

11 (e) CONSUMER FINANCIAL PROTECTION AGENCY
12 NONDEPOSITORY INSTITUTION FUND.—

13 (1) ESTABLISHMENT.—

14 (A) IN GENERAL.—There is established in
15 the Treasury a separate fund called the Con-
16 sumer Financial Protection Agency Nondeposi-
17 tory Institution Fund (hereafter in this section
18 referred to as the “CFPA Nondepository
19 Fund”).

20 (B) AMOUNTS IN FUND NOT AVAILABLE
21 FOR CERTAIN PURPOSES.—Other than pursuant
22 to subsection (f), amounts on deposit in the
23 CFPA Nondepository Fund shall not be used
24 for the supervision and examination of deposi-
25 tory institution covered persons.

1 (2) ALL APPLICABLE SUPERVISORY FEES AND
2 ASSESSMENTS DEPOSITED.—The Director shall de-
3 posit all amounts received from assessments under
4 subsection (b)(4) in the CFPA Nondepository Fund.

5 (f) GENERAL PROVISIONS RELATING TO FUNDS.—

6 (1) MAINTENANCE OF FUNDS.—

7 (A) AGENCY FUNDS MAINTAINED BY
8 TREASURY.—The Consumer Financial Protec-
9 tion Agency Depository Institution Fund estab-
10 lished under subsection (d) and the Consumer
11 Financial Protection Agency Nondepository In-
12 stitution Fund established under subsection (e)
13 shall each be—

14 (i) maintained and administered by
15 the Secretary; and

16 (ii) maintained separately and not
17 commingled.

18 (B) AGENCY'S AUTHORITY.—Any provision
19 of this title forbidding the commingling or use
20 of the CFPA Depository Fund and the CFPA
21 Nondepository Fund shall not be construed as
22 limiting or impairing the authority of the Agen-
23 cy to use the same facilities and resources in
24 the course of conducting supervisory and regu-
25 latory functions with respect to depository insti-

1 tutions and nondepository institutions, or to in-
2 tegrate such functions.

3 (C) ACCOUNTING REQUIREMENTS.—

4 (i) ACCOUNTING FOR USE OF FACILI-
5 TIES AND RESOURCES.—The Agency shall
6 keep a full and complete accounting of all
7 costs and expenses associated with the use
8 of any facility or resource used in the
9 course of any function specified in sub-
10 paragraph (B) and shall allocate, in the
11 manner provided in subparagraph (D), any
12 such costs and expenses incurred by the
13 Agency—

14 (I) with respect to depository in-
15 stitution covered persons, to the
16 CFPA Depository Fund; and

17 (II) with respect to nondepository
18 covered persons, to the CFPA Non-
19 depository fund.

20 (D) ALLOCATION OF ADMINISTRATIVE EX-
21 PENSES.—Any personnel, administrative, or
22 other overhead expense of the Agency shall be
23 allocated—

24 (i) fully to the CFPA Depository
25 Fund if the expense was incurred directly

1 as a result of the Agency's responsibilities
2 solely with respect to depository institution
3 covered persons;

4 (ii) fully to the CFPA Nondepository
5 Fund, if the expense was incurred directly
6 as a result of the Agency's responsibilities
7 solely with respect to nondepository cov-
8 ered persons;

9 (iii) between the CFPA Depository
10 Fund and the CFPA Nondepository Fund,
11 in amounts reflecting the relative degree to
12 which the expense was incurred as a result
13 of the activities of depository institution
14 covered persons, and nondepository covered
15 persons; and

16 (iv) if the Director is unable to make
17 a complete allocation under clause (i), (ii),
18 or (iii), between the CFPA Depository
19 Fund and the CFPA Nondepository Fund,
20 in amounts reflecting the relative propor-
21 tion that, as of the end of the preceding
22 year—

23 (I) the aggregate assets of all de-
24 pository institution covered persons

1 bears to the aggregate assets of all
2 covered persons; and

3 (II) the aggregate assets of all
4 nondepository covered persons bears
5 to the aggregate assets of all covered
6 persons.

7 (E) AGENCY FUND.—The “Agency fund”
8 means the Consumer Financial Protection
9 Agency Depository Institution Fund established
10 under subsection (d), and, the Consumer Fi-
11 nancial Protection Agency Nondepository Insti-
12 tution Fund established under subsection (e),
13 and the Consumer Financial Protection Agency
14 Civil Penalty Fund established under subsection
15 (g).

16 (2) INVESTMENT.—

17 (A) AMOUNTS IN FUNDS MAY BE IN-
18 VESTED.—The Director may request the Sec-
19 retary to invest the portion of any Agency fund
20 that, in the Director’s judgment, is not required
21 to meet the current needs of such fund.

22 (B) ELIGIBLE INVESTMENTS.—Invest-
23 ments pursuant to subparagraph (A) shall be
24 made by the Secretary in obligations of the
25 United States or obligations that are guaran-

1 teed as to principal and interest by the United
2 States, with maturities suitable to the needs of
3 the Agency fund involved, as determined by the
4 Director.

5 (C) INTEREST AND PROCEEDS CRED-
6 ITED.—The interest on, and the proceeds from
7 the sale or redemption of, any obligations held
8 in the respective Agency Fund shall be credited
9 to and form a part of the respective Agency
10 Fund.

11 (3) USE OF FUNDS.—Funds obtained by, trans-
12 ferred to, or credited to any Agency fund shall be
13 immediately available to the Agency, and remain
14 available until expended, to pay the expenses of the
15 Agency in carrying out the duties and responsibil-
16 ities of the Director and the Agency, including the
17 payment of compensation of the Director and offi-
18 cers and employees of the Agency.

19 (2) FEES, ASSESSMENTS AND OTHER FUNDS
20 NOT GOVERNMENT FUNDS.—Funds obtained by or
21 transferred to any Agency fund shall not be con-
22 strued to be Government funds or appropriated
23 monies.

24 (3) AMOUNTS NOT SUBJECT TO APPORTION-
25 MENT.—Notwithstanding any other provision of law,

1 amounts in any Agency fund shall not be subject to
2 apportionment for purposes of chapter 15 of title 31,
3 United States Code, or under any other authority.

4 (g) PENALTIES AND FINES.—

5 (1) ESTABLISHMENT OF VICTIMS RELIEF
6 FUND.—There is established in the Treasury of the
7 United States a fund to be known as the “Consumer
8 Financial Protection Agency Civil Penalty Fund”
9 (hereafter in this section referred to as the “Civil
10 Penalty Fund”).

11 (2) DEPOSITS.—If the Agency obtains a civil
12 penalty against any person in any judicial or admin-
13 istrative action under this title, any law or authority
14 transferred under subtitles F and H, or any enumer-
15 ated consumer law, the Agency shall deposit into the
16 Civil Penalty Fund the amount of the penalty col-
17 lected.

18 (3) PAYMENT TO VICTIMS.—Amounts in the
19 Civil Penalty Fund shall be available to the Director,
20 without fiscal year limitation, for payments to the
21 victims of activities for which civil penalties have
22 been imposed under this title, the law and authori-
23 ties transferred under subtitles F and H, or any
24 enumerated consumer law.

1 **SEC. 4110. AMENDMENTS RELATING TO OTHER ADMINIS-**
2 **TRATIVE PROVISIONS.**

3 (a) ACT OF OCTOBER 28, 1974.—Section 111 of
4 Public Law 93–495 (12 U.S.C. 250) is amended by insert-
5 ing “the Consumer Financial Protection Agency,” after
6 “Federal Deposit Insurance Corporation,”.

7 (b) PAPERWORK REDUCTION ACT.—Section 2(5) of
8 the Paperwork Reduction Act (44 U.S.C. 3502(5)) by in-
9 serting “the Consumer Financial Protection Agency,”
10 after “the Securities and Exchange Commission,”.

11 **SEC. 4111. EFFECTIVE DATE.**

12 This subtitle shall take effect on the date of the en-
13 actment of this title.

14 **Subtitle B—General Powers of the**
15 **Director and Agency**

16 **SEC. 4201. MANDATE AND OBJECTIVES.**

17 (a) MANDATE.—The Director shall seek to promote
18 transparency, simplicity, fairness, accountability, and
19 equal access in the market for consumer financial products
20 or services.

21 (b) OBJECTIVES.—The Director may exercise the au-
22 thorities granted in this title, in the enumerated consumer
23 laws, and transferred under subtitles F and H for the pur-
24 poses of ensuring that, with respect to consumer financial
25 products or services—

1 (1) consumers have and can use the informa-
2 tion they need to make responsible decisions about
3 consumer financial products or services;

4 (2) consumers are protected from abuse, unfair-
5 ness, deception, and discrimination;

6 (3) markets for consumer financial products or
7 services operate fairly and efficiently with ample
8 room for sustainable growth and innovation; and

9 (4) traditionally underserved consumers and
10 communities have equal access to responsible finan-
11 cial services.

12 **SEC. 4202. AUTHORITIES.**

13 (a) **IN GENERAL.**—The Director may exercise the au-
14 thorities granted in this title, in the enumerated consumer
15 laws, and transferred under subtitles F and H, to admin-
16 ister, enforce, and otherwise implement the provisions of
17 this title, the authorities transferred in subtitles F and
18 H, and the enumerated consumer laws.

19 (b) **RULEMAKING, ORDERS, AND GUIDANCE.**—

20 (1) **IN GENERAL.**—The Director may prescribe
21 regulations and issue orders and guidance as may be
22 necessary or appropriate to enable it to administer
23 and carry out the purposes and objectives of this
24 title, the authorities transferred under subtitles F
25 and H, and the enumerated consumer laws, and to

1 prevent evasions of this title, any such authority,
2 and any such law.

3 (2) STANDARDS FOR RULEMAKING.—In pre-
4 scribing a regulation under this title or pursuant to
5 the authorities transferred under subtitles F and H
6 or the enumerated consumer laws, the Director
7 shall—

8 (A) consider the potential benefits and
9 costs to consumers and covered persons, includ-
10 ing the potential reduction of consumers' access
11 to consumer financial products or services, re-
12 sulting from such regulation; and

13 (B) consult with the Federal banking agen-
14 cies, State bank supervisors, the Federal Trade
15 Commission, or other Federal agencies, as ap-
16 propriate, regarding the consistency of a pro-
17 posed regulation with prudential, consumer pro-
18 tection, civil rights, market, or systemic objec-
19 tives administered by such agencies or super-
20 visors.

21 (3) EXEMPTIONS.—

22 (A) IN GENERAL.—The Director, by regu-
23 lation or order, may conditionally or uncondi-
24 tionally exempt any covered person, service pro-
25 vider, or any consumer financial product or

1 service or any class of covered persons, class of
2 service providers, or consumer financial prod-
3 ucts or services, from any provision of this title,
4 any enumerated consumer law, or from any reg-
5 ulation under any such provision or law, as the
6 Director deems necessary or appropriate to
7 carry out the purposes and objectives of this
8 title taking into consideration the factors in
9 subparagraph (B).

10 (B) FACTORS.—In issuing an exemption
11 by regulation or order as permitted in subpara-
12 graph (A), the Director shall as appropriate
13 take into consideration the following:

14 (i) The total assets of the covered per-
15 son.

16 (ii) The volume of transactions involv-
17 ing consumer financial products or services
18 in which the covered person engages.

19 (iii) The extent to which the covered
20 person engages in 1 or more financial ac-
21 tivities.

22 (iv) Existing laws or regulations which
23 are applicable to the consumer financial
24 product or service and the extent to which

1 such laws or regulations provide consumers
2 with adequate protections.

3 (C) RULE OF CONSTRUCTION.—No provi-
4 sion of this section shall be construed as alter-
5 ing, amending, or affecting any authority under
6 sections 304(a), 304(i), 305(a), and 306(b) of
7 the Home Mortgage Disclosure Act of 1975 and
8 sections 703(a)(1), 703(a)(2), 703(a)(3),
9 705(f), and 705(g) of the Equal Credit Oppor-
10 tunity Act for determining whether a covered
11 person should be provided an exemption.

12 (c) EXAMINATIONS AND REPORTS.—

13 (1) IN GENERAL.—Except as provided under
14 section 4203, the Director may on a periodic basis
15 examine a covered person or service provider, with
16 respect to any consumer financial product or service,
17 for purposes of ensuring compliance with the re-
18 quirements of this title, the enumerated consumer
19 laws, and any regulations prescribed by the Director
20 under this title or pursuant to the authorities trans-
21 ferred under subtitles F and H, and enforcing com-
22 pliance with such requirements.

23 (2) EXAMINATION PROGRAM.—The Director
24 shall exercise any authority of the Director under
25 paragraph (1) in a manner designed to ensure that

1 such authorities are exercised with respect to cov-
2 ered persons or service providers, without regard to
3 charter or corporate form, based on the Director's
4 assessment of the risks posed to consumers in the
5 relevant product markets and geographic markets,
6 and taking into consideration, as applicable, the fol-
7 lowing factors:

8 (A) The asset size of the covered persons.

9 (B) The volume of transactions involving
10 consumer financial products or services in
11 which the covered persons engage.

12 (C) The risks to consumers created by the
13 provision of such consumer financial products
14 or services.

15 (D) In the case of State-chartered institu-
16 tions, the extent to which such institutions are
17 subject to oversight by State authorities for
18 consumer protection.

19 (3) COORDINATION.—The Director shall coordi-
20 nate the Agency's supervisory activities with the su-
21 pervisory activities conducted by the Federal bank-
22 ing agencies and the State bank supervisors, includ-
23 ing establishing their respective schedules for exam-
24 ining covered persons and requirements regarding
25 reports to be submitted by covered persons.

1 (4) REPORTS.—The Director may require re-
2 ports from a covered person for purposes of ensuring
3 compliance with the requirements of this title, the
4 enumerated consumers laws, and any regulation pre-
5 scribed by the Director under this title or pursuant
6 to the authorities transferred under subtitles F and
7 H, and enforcing compliance with such require-
8 ments.

9 (5) CONTENT OF REPORTS.—The reports au-
10 thorized in paragraph (4) may include such informa-
11 tion as necessary to keep the Agency informed as
12 to—

13 (A) the compliance systems or procedures
14 of the covered person or any affiliate thereof,
15 with applicable provisions of this title or any
16 other law that the Agency has jurisdiction to
17 enforce; and

18 (B) matters related to the provision of con-
19 sumer financial products or services including
20 the servicing or maintenance of accounts or ex-
21 tensions of credit.

22 (6) USE OF EXISTING REPORTS.—In general,
23 the Agency shall, to the fullest extent possible, use—

24 (A) reports that a covered person, or any
25 affiliate thereof, or any service provider to such

1 covered person or affiliate, has provided or been
2 required to provide to a Federal or State agen-
3 cy; and

4 (B) information that has been reported
5 publicly.

6 (7) ACCESS BY THE AGENCY TO REPORTS OF
7 OTHER REGULATORS.—

8 (A) EXAMINATION AND FINANCIAL CONDI-
9 TION REPORTS.—Upon providing reasonable as-
10 surances of confidentiality, the Agency shall
11 have access to any report of examination or fi-
12 nancial condition, including a report containing
13 data regarding consumer complaints, made by a
14 Federal banking agency or other Federal agen-
15 cy having supervision of a covered person, or a
16 service provider, (other than returns and return
17 information described in section 6103 of the In-
18 ternal Revenue Code of 1986) and to all revi-
19 sions made to any such report.

20 (B) PROVISION OF OTHER REPORTS TO
21 AGENCY.—In addition to the reports described
22 in subparagraph (A), a Federal banking agency
23 may, in its discretion, furnish to the Agency
24 any other report or other confidential super-
25 visory information concerning any insured de-

1 pository institution, any credit union, or other
2 entity examined by such agency under authority
3 of any Federal law.

4 (8) ACCESS BY OTHER REGULATORS TO RE-
5 PORTS OF THE AGENCY.—

6 (A) EXAMINATION REPORTS.—Upon pro-
7 viding reasonable assurances of confidentiality,
8 a Federal banking agency, a State regulator, or
9 any other Federal agency having supervision of
10 a covered person shall have access to any report
11 of examination made by the Agency with re-
12 spect to the covered person or service provider,
13 and to all revisions made to any such report.

14 (B) PROVISION OF OTHER REPORTS TO
15 OTHER REGULATORS.—In addition to the re-
16 ports described in paragraph (A), the Agency
17 may, in the discretion of the Agency, furnish to
18 a Federal banking agency any other report or
19 other confidential supervisory information con-
20 cerning any insured depository institution, any
21 credit union, or other entity examined by the
22 Agency under authority of any Federal law.

23 (9) PRESERVATION OF AUTHORITY.—No provi-
24 sion in paragraph (3) shall be construed as pre-
25 venting the Agency from conducting an examination

1 authorized by this title or under the authorities
2 transferred under subtitles F and H or pursuant to
3 any enumerated consumer law. No provision of this
4 title shall be construed as limiting the authority of
5 the Director to require reports from a covered per-
6 son, as permitted under paragraph (4), regarding in-
7 formation owned or under the control of the covered
8 person, regardless of whether such information is
9 maintained, stored, or processed by another person.

10 (10) REPORTS OF TAX LAW NONCOMPLI-
11 ANCE.—The Director shall provide the Commis-
12 sioner of Internal Revenue with any report of exam-
13 ination or related information identifying possible
14 tax law noncompliance.

15 (11) DELEGATION.—

16 (A) IN GENERAL.—The Director may dele-
17 gate the examination authorities of the Agency
18 under this title to any appropriate agency, as
19 defined in section 4203, for any insured deposi-
20 tory institution or insured credit union that is
21 not subject to section 4203 upon a petition by
22 an appropriate agency.

23 (B) STANDARD FOR DELEGATION.—The
24 Director shall provide such delegation if, in the

1 Director's sole discretion, the Director deter-
2 mines that—

3 (i) the delegation is consistent with
4 the public interest;

5 (ii) the appropriate agency is capable
6 of enforcing compliance with this title, and
7 with any regulation prescribed under this
8 title; and

9 (iii) such capability is comparable to
10 or superior to the capability of the Agency,
11 in terms of expertise, demonstrated com-
12 mitment, and overall effectiveness, in en-
13 forcing such compliance.

14 (C) EFFECT OF DELEGATION.—The in-
15 sured depository institution or insured credit
16 union shall be subject to the examination proc-
17 ess described in section 4203(b).

18 (D) NO EFFECT ON ENFORCEMENT.—The
19 Director's delegation authority under this para-
20 graph shall not apply to the Director's enforce-
21 ment responsibilities under subsection (e).

22 (d) EXCLUSIVE RULEMAKING AND EXAMINATION
23 AUTHORITY.—Notwithstanding any other provision of
24 Federal law other than section 4203 and subsections (f)
25 and (h) of this section, to the extent that a Federal law

1 authorizes the Director and another Federal agency to
2 prescribe regulations, issue guidance, conduct examina-
3 tions, or require reports under that law for purposes of
4 assuring compliance with this title, any enumerated con-
5 sumer law, the laws for which authorities were transferred
6 under subtitles F and H, and any regulations prescribed
7 under this title or pursuant to any such authority, the Di-
8 rector shall have the exclusive authority to prescribe regu-
9 lations, issue guidance, conduct examinations, require re-
10 ports, or issue exemptions with regard to any person sub-
11 ject to that law and with respect to any activity regulated
12 under any enumerated consumer law.

13 (e) PRIMARY ENFORCEMENT AUTHORITY.—

14 (1) THE AGENCY TO HAVE PRIMARY ENFORCE-
15 MENT AUTHORITY.—To the extent that a Federal
16 law authorizes the Agency and another Federal
17 agency to enforce that law, the Agency shall have
18 primary authority to enforce that Federal law with
19 respect to any person in accordance with this sub-
20 section.

21 (2) COORDINATION WITH FEDERAL TRADE
22 COMMISSION.—

23 (A) NOTICE.—If the Commission is au-
24 thorized to enforce any Federal law described in
25 paragraph (1), or a regulation prescribed under

1 any such Federal law, the Commission shall
2 serve written notice to the Director of any en-
3 forcement action at least 30 days prior to initi-
4 ating such an enforcement action, except that if
5 exigent circumstances are present, the Commis-
6 sion may provide notice immediately upon initi-
7 ating such enforcement action.

8 (B) INTERVENTION BY THE DIRECTOR.—

9 Upon receiving any notice under subparagraph
10 (A) with respect to an enforcement action, the
11 Director may intervene in such enforcement ac-
12 tion and upon intervening—

13 (i) be heard on all matters arising in
14 such enforcement action; and

15 (ii) file petitions for appeal in such
16 enforcement action.

17 (C) PENDENCY OF AGENCY ACTION.—

18 Whenever a civil action has been instituted by
19 or on behalf of the Agency for any violation of
20 any Federal law described in paragraph (1), or
21 a regulation prescribed under any such Federal
22 law, the Commission may not, during the pend-
23 ency of that action instituted by or on behalf of
24 the Agency, institute a civil action under such
25 law or regulation against any defendant named

1 in the Agency complaint in such action for any
2 violation alleged in the Agency complaint.

3 (D) AGREEMENTS BETWEEN AGENCIES.—

4 (i) NEGOTIATIONS AUTHORIZED.—

5 The Director may negotiate an agreement
6 with the Commission to establish proce-
7 dures to ensure that the enforcement ac-
8 tions of the 2 agencies are appropriately
9 coordinated.

10 (ii) SCOPE OF NEGOTIATED AGREE-

11 MENT.—The terms of any agreement nego-
12 tiated pursuant to clause (i) may modify or
13 supersede the provisions of subparagraphs
14 (A), (B), and (C).

15 (3) COORDINATION WITH OTHER FEDERAL

16 AGENCY.—

17 (A) REFERRAL.—Any Federal agency

18 (other than the Federal Trade Commission)
19 that is authorized to enforce a Federal law de-
20 scribed in paragraph (1) may recommend in
21 writing to the Director that the Agency initiate
22 an enforcement proceeding to the extent the
23 Agency is authorized by that Federal law or by
24 this title. The recommendation shall be accom-

1 panied by a written explanation of the concerns
2 giving rise to the recommendation.

3 (B) BACKSTOP ENFORCEMENT AUTHORITY
4 OF OTHER FEDERAL AGENCY.—If the Agency
5 does not, before the end of the 120-day period
6 beginning on the date on which the Director re-
7 ceives a recommendation under subparagraph
8 (A), initiate an enforcement proceeding, the
9 other agency referred to in subparagraph (A)
10 may initiate an enforcement proceeding as per-
11 mitted by that Federal law.

12 (4) INSTITUTIONS SUBJECT TO SPECIAL EXAM-
13 INATION AND ENFORCEMENT PROCEDURES.—This
14 subsection shall not apply to institutions subject to
15 section 4203.

16 (f) PRESERVATION OF OTHER AUTHORITY.—

17 (1) ATTORNEY GENERAL.—No provision of this
18 title shall be construed as affecting any authority of
19 the Attorney General.

20 (2) SECRETARY OF THE TREASURY.—No provi-
21 sion of this title shall be construed as affecting any
22 authority of the Secretary of the Treasury, including
23 with respect to prescribing regulations, initiating en-
24 forcement proceedings, or taking other actions with

1 respect to a person providing tax planning or tax
2 preparation services.

3 (3) FAIR HOUSING ACT.—No provision of this
4 title shall be construed as affecting any authority
5 arising under the Fair Housing Act.

6 (g) EFFECT ON OTHER AUTHORITY.—No provision
7 of this section or section 4203 shall be construed as modi-
8 fying or limiting the authority of any appropriate Federal
9 banking agency or the Director or Agency to interpret,
10 or take enforcement action under, any law or regulation
11 the interpretation or enforcement of which is committed
12 to the banking agency or the Director or Agency, which
13 shall include, in the case of the Director and the Agency,
14 this title, the enumerated consumer laws, and the regula-
15 tions prescribed under this title or such laws.

16 (h) PRESERVATION OF FEDERAL TRADE COMMIS-
17 SION AUTHORITY.—No provision of this title shall be con-
18 strued as modifying, limiting, or otherwise affecting the
19 authority of the Federal Trade Commission under the
20 Federal Trade Commission Act or other laws other than
21 the enumerated consumer laws.

22 **SEC. 4203. EXAMINATION AND ENFORCEMENT FOR SMALL**
23 **BANKS, THRIFTS, AND CREDIT UNIONS.**

24 (a) SCOPE OF INSTITUTIONS SUBJECT TO THIS SEC-
25 TION.—

1 (1) INSTITUTIONS COVERED.—This section
2 shall apply to—

3 (A) any insured depository institution with
4 total assets of \$10,000,000,000 or less; or

5 (B) any insured credit union with total as-
6 sets of \$1,500,000,000 or less.

7 (2) APPROPRIATE AGENCY.—For purposes of
8 this title, the term “appropriate agency” means—

9 (A) in the case of an insured depository in-
10 stitution, the appropriate Federal banking
11 agency as such term is defined in section 3 of
12 the Federal Deposit Insurance Act; and

13 (B) in the case of an insured credit union,
14 the National Credit Union Administration.

15 (b) EXAMINATIONS.—

16 (1) IN GENERAL.—The appropriate agency
17 shall on a periodic basis examine, or require reports
18 from, an institution referred to in subsection (a) for
19 purposes of ensuring compliance with the require-
20 ments of this title, the enumerated consumer laws,
21 and any regulation prescribed by the Director under
22 this title or pursuant to the authorities transferred
23 under subtitles F and H, and enforcing compliance
24 with such requirements.

25 (2) AGENCY ROLE IN EXAMINATIONS.—

1 (A) The appropriate agency shall provide
2 all reports, records, and documentation related
3 to the examination process to the Agency on a
4 timely and ongoing basis.

5 (B) The Director and Agency may, at its
6 discretion, include an examiner on any examina-
7 tion conducted under paragraph (1). The ap-
8 propriate agency shall involve such Agency ex-
9 aminer in the entire examination process, in-
10 cluding setting the scope of an examination,
11 participating in the examination, and providing
12 input on the examination report, matters re-
13 quiring attention and examination ratings.

14 (c) ENFORCEMENT.—

15 (1) IN GENERAL.—Notwithstanding any other
16 provision of this title other than this subsection, the
17 appropriate agency shall have primary authority to
18 enforce violations identified at institutions referred
19 to in subsection (a) of any of the requirements of
20 this title, the enumerated consumers laws, and any
21 regulation prescribed by the Director under this title
22 or pursuant to the authorities transferred under
23 subtitles F and H.

24 (2) COORDINATION WITH APPROPRIATE AGEN-
25 CY.—

1 (A) REFERRAL.—

2 (i) IN GENERAL.—The Agency may
3 recommend in writing to the appropriate
4 agency that the appropriate agency initiate
5 an enforcement proceeding to the extent
6 the appropriate agency is authorized by
7 that Federal law or by this title.

8 (ii) EXPLANATION.—Any rec-
9 ommendation under clause (i) shall be ac-
10 companied by a written explanation of the
11 concerns giving rise to the recommenda-
12 tion.

13 (B) BACKSTOP ENFORCEMENT AUTHORITY
14 OF AGENCY.—If the appropriate agency does
15 not, before the end of the 120-day period begin-
16 ning on the date on which the appropriate
17 agency receives a recommendation under sub-
18 paragraph (A), initiate an enforcement pro-
19 ceeding, the Agency may initiate an enforce-
20 ment proceeding as permitted by Federal law.

21 (d) ACTIONS ARISING OUT OF CONSUMER COM-
22 PLAINT SYSTEM.—Notwithstanding any provision of this
23 section, if through the consumer complaint system admin-
24 istered by the Agency under section 4105(c)(3), the Direc-
25 tor has reasonable cause to believe that an institution re-

1 ferred to in subsection (a) demonstrates noncompliance
2 with any provision of this title, the enumerated consumer
3 laws, or any regulation prescribed by the Director under
4 this title or pursuant to the authorities transferred under
5 subtitles F and H, the Director may directly investigate
6 such institution for such noncompliance and take any ac-
7 tion permitted under subtitle E that the Director deems
8 appropriate.

9 (e) REMOVAL OF APPROPRIATE AGENCY FOR PAR-
10 TICULAR INSTITUTION.—

11 (1) HEIGHTENED SUPERVISION.—The Direc-
12 tor—

13 (A) may provide notice to an appropriate
14 agency that the Director is considering issuing
15 a removal order under paragraph (2); and

16 (B) shall have an Agency examiner partici-
17 pate in the examination process under sub-
18 section (b) for at least 1 examination cycle.

19 (2) REMOVAL BY ORDER.—If, after the comple-
20 tion of at least 1 examination cycle following the
21 provision of notice to an appropriate agency under
22 paragraph (1), the Director determines in writing
23 that the appropriate agency has failed to adequately
24 conduct consumer compliance examinations or bring
25 appropriate enforcement actions against an institu-

1 tion referred to in subsection (a), the Director may
2 order the removal of the appropriate agency from its
3 responsibilities under this section for such institu-
4 tion.

5 (3) AGENCY AUTHORITY UPON REMOVAL.—
6 Upon removal pursuant to paragraph (2), the Agen-
7 cy shall examine and enforce against such institution
8 as if the institution were subject to section 4202.

9 (4) EFFECTIVE DATE.—An order under para-
10 graph (2) shall take effect 30 days after a deter-
11 mination by the Secretary of the Treasury pursuant
12 to paragraphs (5) and (6).

13 (5) AUTOMATIC APPEAL.—An order issued by
14 the Director pursuant to paragraph (2) shall be
15 automatically appealed to the Secretary.

16 (6) DECISION BY THE SECRETARY OF THE
17 TREASURY.—

18 (A) DETERMINATION.—The order issued
19 pursuant to paragraph (2) shall be deemed af-
20 firmed unless the Secretary of the Treasury de-
21 nies the determination of the Director within
22 120 days of the issuance of the order pursuant
23 to paragraph (2).

24 (B) RULE OF CONSTRUCTION.—Nothing in
25 subparagraph (A) shall be construed as prohib-

1 iting the Secretary of the Treasury from mak-
2 ing a determination to either affirm or deny an
3 order issued pursuant to paragraph (2) prior to
4 the passage of the time period in subparagraph
5 (A).

6 (7) REGULATIONS.—By the transfer date, the
7 Secretary shall issue regulations that establish the
8 standards the Director shall apply in making a de-
9 termination to remove an appropriate agency and
10 the process, procedures, and standards for an ap-
11 peal. Such standards shall require the Director to
12 consider at least the following in issuing an order re-
13 moving an appropriate agency for an institution re-
14 ferred to in subsection (a)(1):

15 (A) Reports of examination of such institu-
16 tion.

17 (B) Any enforcement actions taken by an
18 appropriate agency against such institution and
19 the results of those actions.

20 (C) Consumer complaints issued against
21 such institution.

22 (D) Actions taken by State attorneys gen-
23 eral and private rights of action against such
24 institution.

1 (f) POLICIES AND PROCEDURES.—Within 180 days
2 after the designated transfer date, the Agency and the ap-
3 propriate agency shall develop policies and procedures for
4 implementing this section.

5 (g) ASSESSMENTS.—

6 (1) LIMITATION ON CERTAIN FEES.—The Agen-
7 cy shall not assess examination fees on an institution
8 referred to in subsection (a).

9 (2) RULE OF CONSTRUCTION.—No provision of
10 this section shall be construed as preventing the ap-
11 propriate agency from assessing fees on an institu-
12 tion referred to in paragraph (1) to meet the appro-
13 priate agency's expenses for carrying out such exam-
14 ination and supervision responsibilities pursuant to
15 this section.

16 **SEC. 4204. SIMULTANEOUS AND COORDINATED SUPER-**
17 **VISORY ACTION.**

18 (a) EXAMINATIONS.—A Federal banking agency and
19 the Agency shall, with respect to each insured depository
20 institution, credit union, or other covered person super-
21 vised by the Federal banking agency and the Agency, re-
22 spectively—

23 (1) coordinate the scheduling of examinations of
24 the insured depository institution, and credit union,
25 or other covered person;

1 (2) conduct simultaneous examinations of each
2 insured depository institution, credit union or other
3 covered person, unless such institution requests ex-
4 aminations to be conducted separately;

5 (3) share each draft report of examination with
6 the other agency and permit the receiving agency a
7 reasonable opportunity (which shall not be less than
8 a period of 30 days after the date of receipt) to com-
9 ment on the draft report before such report is made
10 final; and

11 (4) prior to issuing a final report of examina-
12 tion or taking supervisory action, an agency shall
13 take into consideration concerns, if any, raised in
14 the comments made by the other agency.

15 (b) COORDINATION WITH STATE BANK SUPER-
16 VISORS.—The Agency shall pursue arrangements and
17 agreements with State bank supervisors to coordinate ex-
18 aminations consistent with subsection (a).

19 (c) RESOLUTION OF CONFLICT IN SUPERVISION.—

20 (1) REQUEST OF DEPOSITORY INSTITUTION.—

21 (A) IN GENERAL.—If the proposed mate-
22 rial supervisory determinations of the Agency
23 and a Federal banking agency are conflicting,
24 an insured depository institution, credit union,
25 or other covered person may request the agen-

1 cies to coordinate and present a joint statement
2 of coordinated supervisory action.

3 (B) LIMITATION.—A request of an insured
4 depository institution, credit union, or other
5 covered person shall not be used to appeal a su-
6 pervisory rating or determination by the Agency
7 or a Federal banking agency.

8 (2) JOINT STATEMENT.—The agencies receiving
9 a request from an insured depository institution,
10 credit union, or covered person under paragraph (1)
11 shall provide a joint statement resolving the conflict
12 under such subparagraph before the end of the 30-
13 day period beginning on the date the agencies re-
14 ceive such request.

15 (d) APPEALS TO GOVERNING PANEL.—

16 (1) IN GENERAL.—If the agencies receiving a
17 request from an insured depository institution, credit
18 union, or covered person under subsection (c)(1) do
19 not issue a joint statement under subsection (c)(2),
20 or if either agency takes or attempts to take any su-
21 pervisory action relating to the request for the joint
22 statement without the consent of the other agency,
23 the insured depository institution, credit union, or
24 other covered person may institute an appeal to a
25 governing panel under this subsection.

1 (2) TIMETABLE.—Any appeal under paragraph
2 (1) with regard to a failure of agencies to issue a
3 joint statement shall be filed before the end of the
4 30-day period beginning at the end of the 30-day pe-
5 riod during which such joint statement was due
6 under subsection (c)(2).

7 (e) COMPOSITION OF GOVERNING PANEL.—The gov-
8 erning panel for an appeal under this section shall be com-
9 posed of—

10 (1) 2 individuals—

11 (A) 1 of whom is a representative from the
12 Agency;

13 (B) 1 of whom is a representative of the
14 Federal banking agency which received the re-
15 quest to which the appeal relates; and

16 (C) neither of whom—

17 (i) have participated in the material
18 supervisory determinations under appeal;
19 and

20 (ii) report directly or indirectly to the
21 individual who made the supervisory deter-
22 minations under appeal; and

23 (2) 1 individual who is a representative from—

1 (A) the Federal banking agency that heads
2 the Financial Institution Examination Council;
3 or

4 (B) if the Financial Institutions Examina-
5 tion Council is headed by a Federal banking
6 agency that is a party to the appeal, the Fed-
7 eral banking agency that is next scheduled to
8 head the Financial Institutions Examination
9 Council.

10 (f) CONDUCT OF APPEAL.—

11 (1) CONTENT OF FILING APPEAL.—The insured
12 depository institution, credit union, or other covered
13 person which institutes an appeal under subsection
14 (d)(1) shall include in the filing of such appeal all
15 the facts and legal arguments pertaining to the mat-
16 ter appealed.

17 (2) APPEARANCE.—The insured depository in-
18 stitution, credit union, or other covered person which
19 institutes an appeal under this section may appear
20 before the governing panel in person or by telephone,
21 through counsel, employees, or representatives of, or
22 for, such institution, credit union, or other covered
23 person.

24 (3) REQUESTS FOR ADDITIONAL INFORMA-
25 TION.—Any governing panel convened under this

1 section may request the insured depository institu-
2 tion, credit union, or other covered person, the
3 Agency, or the Federal banking agency to produce
4 additional information relevant to the appeal.

5 (4) FINAL WRITTEN DETERMINATIONS.—Any
6 governing panel convened under this section, by a
7 majority vote of the members of the panel, shall pro-
8 vide a final determination, in writing, within 30 days
9 of the filing of an informationally complete appeal,
10 or such longer period as the panel and the insured
11 depository institution, credit union, or other covered
12 person may jointly agree.

13 (5) PUBLIC INFORMATION.—A redacted copy of
14 any determination by a governing panel convened
15 under this section shall be made public upon the
16 issuance of such determination.

17 (g) PROHIBITION AGAINST RETALIATION.—The Di-
18 rector and the Federal banking agencies shall prescribe
19 regulations to provide safeguards from retaliation against
20 any insured depository institution, credit union, or other
21 covered person which institutes an appeal under this sec-
22 tion, as well as against any officer or and employee of any
23 such institution, credit union, or other person.

1 (h) MATERIAL SUPERVISORY DETERMINATION DE-
2 FINED.—For purposes of this section, the term “material
3 supervisory determination”—

4 (1) includes any action relating to any super-
5 vision or examinations; and

6 (2) does not include—

7 (A) a determination by any Federal bank-
8 ing agency to appoint a conservator or receiver
9 for an insured depository institution or a liqui-
10 dating agent for an insured credit union, as the
11 case may be, or a decision to take action pursu-
12 ant to section 38 of the Federal Deposit Insur-
13 ance Act or section 212 of the Federal Credit
14 Union Act, as the case may be; or

15 (B) any regulation or guidance, or order of
16 general applicability.

17 **SEC. 4205. LIMITATIONS ON AUTHORITY OF AGENCY AND**
18 **DIRECTOR.**

19 (a) EXCLUSION FOR MERCHANTS, RETAILERS, AND
20 SELLERS OF NONFINANCIAL SERVICES.—

21 (1) IN GENERAL.—Notwithstanding any provi-
22 sion of this title (other than paragraph (4)) and sub-
23 ject to paragraph (2), the Director and the Agency
24 may not exercise any rulemaking, supervisory, en-

1 enforcement or other authority, including authority to
2 order assessments, under this title with respect to—

3 (A) credit extended directly by a merchant,
4 retailer, or seller of nonfinancial services to a
5 consumer, in a case in which the good or service
6 being provided is not itself a consumer financial
7 product or service, exclusively for the purpose
8 of enabling that consumer to purchase goods or
9 services directly from the merchant, retailer, or
10 seller of nonfinancial services; or

11 (B) collection of debt, directly by the mer-
12 chant, retailer, or seller of nonfinancial services,
13 arising from such credit extended.

14 (2) EXCEPTION FOR EXISTING AUTHORITY.—

15 The Director may exercise any rulemaking authority
16 regarding an extension of credit described in para-
17 graph (1)(A) or the collection of debt arising from
18 such extension, as may be authorized by the enumer-
19 ated consumer laws or any law or authority trans-
20 ferred under subtitle F or H.

21 (3) RULE OF CONSTRUCTION.—No provision of

22 this title shall be construed as modifying, limiting,
23 or superseding the authority of the Federal Trade
24 Commission or any other agency with respect to
25 credit extended, or the collection of debt arising

1 from such extension, directly by a merchant, retailer,
2 or seller of nonfinancial services to a consumer ex-
3 clusively for the purpose of enabling that consumer
4 to purchase goods or services directly from the mer-
5 chant, retailer, or seller of nonfinancial services.

6 (4) EXCLUSION NOT APPLICABLE TO CERTAIN
7 CREDIT TRANSACTIONS.—Paragraph (1) shall not
8 apply to—

9 (A) any credit transaction, including the
10 collection of the debt arising from such exten-
11 sion, in which the merchant, retailer, or seller
12 of nonfinancial services assigns, sells, or other-
13 wise conveys such debt owed by the consumer
14 to another person; or

15 (B) any credit transaction—

16 (i) in which the credit provided sig-
17 nificantly exceeds the market value of the
18 product or service provided, and

19 (ii) with respect to which the Director
20 finds that the sale of the product or service
21 is done as a subterfuge so as to evade or
22 circumvent the provisions of this title.

23 (b) EXCLUSION FOR PERSONS REGULATED BY THE
24 SECURITIES AND EXCHANGE COMMISSION.—

1 (1) IN GENERAL.—No provision of this title
2 shall be construed as altering, amending, or affect-
3 ing the authority of the Securities and Exchange
4 Commission or any securities commission (or any
5 agency or office performing like functions) of any
6 State to adopt rules, initiate enforcement pro-
7 ceedings, or take any other action with respect to a
8 person regulated by the Securities and Exchange
9 Commission or any securities commission (or any
10 agency or office performing like functions) of any
11 State. The Director and Agency shall have no au-
12 thority to exercise any power to enforce this title
13 with respect to a person regulated by the Securities
14 and Exchange Commission or any securities commis-
15 sion (or any agency or office performing like func-
16 tions) of any State.

17 (2) CONSULTATION AND COORDINATION.—Not-
18 withstanding paragraph (1), the Securities and Ex-
19 change Commission shall consult and coordinate
20 with the Director with respect to any rule (including
21 any advance notice of proposed rulemaking) regard-
22 ing an investment product or service that is the
23 same type of product as, or that competes directly
24 with, a consumer financial product or service that is

1 subject to the jurisdiction of the Agency under this
2 title or under any other law.

3 (c) EXCLUSION FOR PERSONS REGULATED BY THE
4 COMMODITY FUTURES TRADING COMMISSION.—

5 (1) IN GENERAL.—No provision of this title
6 shall be construed as altering, amending, or affect-
7 ing the authority of the Commodity Futures Trading
8 Commission to adopt rules, initiate enforcement pro-
9 ceedings, or take any other action with respect to a
10 person regulated by the Commodity Futures Trading
11 Commission. The Director and the Agency shall
12 have no authority to exercise any power to enforce
13 this title with respect to a person regulated by the
14 Commodity Futures Trading Commission.

15 (2) CONSULTATION AND COORDINATION.—Not-
16 withstanding paragraph (1), the Commodity Futures
17 Trading Commission shall consult and coordinate
18 with the Director with respect to any rule (including
19 any advance notice of proposed rulemaking) regard-
20 ing a product or service that is the same type of
21 product as, or that competes directly with, a con-
22 sumer financial product or service that is subject to
23 the jurisdiction of the Agency under this title or
24 under any other law.

1 (d) EXCLUSION FOR PERSONS REGULATED BY A
2 STATE INSURANCE REGULATOR.—

3 (1) IN GENERAL.—No provision of this title
4 shall be construed as altering, amending, or affect-
5 ing the authority of any State insurance regulator to
6 adopt rules, initiate enforcement proceedings, or
7 take any other action with respect to a person regu-
8 lated by any State insurance regulator. Except as
9 provided in paragraphs (2) and (3), the Agency shall
10 have no authority to exercise any power to enforce
11 this title with respect to a person regulated by any
12 State insurance regulator.

13 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
14 (1) shall not apply to any person described in such
15 paragraph to the extent such person is engaged in
16 any financial activity described in any subparagraph
17 of section 4002(19) or is otherwise subject to any of
18 the enumerated consumer laws or the authorities
19 transferred under subtitle F or H.

20 (3) PRESERVATION OF CERTAIN AUTHORI-
21 TIES.—Nothing in this title shall be construed as
22 limiting the authority of the Director and the Agen-
23 cy from exercising powers under this title with re-
24 spect to the provision by a covered person of a prod-
25 uct or service, not otherwise subject to this title, for

1 or on behalf of a person regulated by a State insur-
2 ance regulator, in connection with a financial activ-
3 ity.

4 (e) EXCLUSION FOR PERSONS REGULATED BY THE
5 FEDERAL HOUSING FINANCE AGENCY.—No provision of
6 this title shall be construed as altering, amending, or af-
7 fecting the authority of the Federal Housing Finance
8 Agency to adopt rules, initiate enforcement proceedings,
9 or take any other action with respect to a person regulated
10 by the Federal Housing Finance Agency. The Director
11 and Agency shall have no authority to exercise any power
12 to enforce this title with respect to a person regulated by
13 the Federal Housing Agency. For purposes of this sub-
14 section, the term “person regulated by the Federal Hous-
15 ing Finance Agency” means any Federal home loan bank,
16 and any joint office of 1 or more Federal home loan banks.

17 (f) EXCLUSION FOR QUALIFIED RETIREMENT OR EL-
18 IGIBLE DEFERRED COMPENSATION PLANS AND AR-
19 RANGEMENTS.—

20 (1) IN GENERAL.—No provision of this title
21 shall be construed as altering, amending, or affect-
22 ing the authority of the Secretary of the Treasury,
23 the Secretary of Labor, or the Commissioner of In-
24 ternal Revenue to adopt regulations, initiate enforce-

1 ment proceedings, or take any actions with respect
2 to—

3 (A) any retirement or eligible deferred
4 compensation plan or arrangement qualified
5 under or meeting the requirements of section
6 401(a), 403(a), 403(b), 457(b), 408 or 408A of
7 the Internal Revenue Code; or

8 (B) any educational savings arrangement
9 under section 529 of such Code.

10 (2) LIMITATION ON AGENCY AUTHORITY.—

11 (A) IN GENERAL.—The Director and the
12 Agency may not exercise any power to enforce
13 this title with respect to services provided di-
14 rectly (or indirectly if the services relate to the
15 operation of such plan or arrangement) to—

16 (i) any retirement or eligible deferred
17 compensation plan or arrangement quali-
18 fied under or meeting the requirements of
19 section 401(a), 403(a), 403(b), 457(b),
20 408, or 408A of the Internal Revenue
21 Code; or

22 (ii) any educational savings arrange-
23 ment under section 529 of such Code.

24 (B) SERVICES DEFINED.—For purposes
25 subparagraph (A), the term “services” shall in-

1 include, for example, services for custody and in-
2 vestment of assets, administration, compliance,
3 and participant assistance.

4 (g) EXCLUSION FOR ACCOUNTANTS, TAX PRE-
5 PARERS, AND ATTORNEYS.—

6 (1) IN GENERAL.—Except as permitted in para-
7 graph (2), the Director and the Agency may not ex-
8 ercise any rulemaking, supervisory, enforcement or
9 other authority, including authority to order assess-
10 ments, over—

11 (A) any person that is a certified public ac-
12 countant, permitted to practice as a certified
13 public accounting firm, or certified or licensed
14 for such purpose by a State, or any individual
15 who is employed by or holds an ownership inter-
16 est with respect to a person described in this
17 subparagraph when such person is performing
18 or offering to perform customary and usual ac-
19 counting activities, including the provision of
20 accounting, tax, advisory, other services that
21 are subject to the regulatory authority of a
22 state board of accountancy or a federal author-
23 ity, or other services that are incidental to such
24 customary and usual accounting activities, to
25 the extent that such incidental services are not

1 offered or provided by the person separate and
2 apart from such customary and usual account-
3 ing activities and are not offered or provided to
4 consumers who are not receiving such cus-
5 tomary and usual accounting activities;

6 (B) any person other than a person de-
7 scribed in subparagraph (A) that performs in-
8 come tax preparation activities for consumers;
9 or

10 (C) any individual who is providing legal
11 advice or services for which a license to practice
12 law is required under the law of the State in
13 which the advice or services are provided and
14 which are performed within the scope of an at-
15 torney-client relationship established by an
16 agreement, but only to the extent of such legal
17 advice or services.

18 (2) NO EXCLUSION WITH RESPECT TO REG-
19 ISTRATION OF MOST ATTORNEYS.—Notwithstanding
20 paragraph (1), this subsection shall not apply to any
21 authority granted to the Director or the Agency
22 under section 4209 with respect to a licensed attor-
23 ney, except to the extent a licensed attorney is solely
24 providing legal services in connection with—

1 (A) the preparation and filing of a bank-
2 ruptcy petition; or

3 (B) court proceedings to avoid a fore-
4 closure.

5 (3) DESCRIPTION OF ACTIVITIES.—Paragraph
6 (1) shall not apply to—

7 (A) any person described in paragraph
8 (1)(A) to the extent such person is engaged in
9 any activity which is not a customary and usual
10 accounting activity described in paragraph
11 (1)(A) or incidental thereto but which is a fi-
12 nancial activity described in any subparagraph
13 of section 4002(19);

14 (B) any person described in paragraph
15 (1)(B) or (1)(C) to the extent such person is
16 engaged in any activity which is a financial ac-
17 tivity described in any subparagraph of section
18 4002(19); or

19 (C) any person described in paragraph
20 (1)(A), (1)(B) or (1)(C) that is otherwise sub-
21 ject to any of the enumerated consumer laws or
22 the authorities transferred under subtitle F or
23 H.

24 (h) EXCLUSION FOR REAL ESTATE LICENSEES.—

1 (1) IN GENERAL.—Except as permitted in para-
2 graph (2), the Director and the Agency may not ex-
3 ercise any rulemaking, supervisory, enforcement or
4 other authority, including authority to order assess-
5 ments, over a person that is licensed or registered as
6 a real estate broker, real estate agent, in accordance
7 with State law, but only to the extent that such per-
8 son—

9 (A) acts as a real estate agent or broker
10 for a buyer, seller, lessor, or lessee of real prop-
11 erty;

12 (B) brings together parties interested in
13 the sale, purchase, lease, rental, or exchange of
14 real property;

15 (C) negotiates, on behalf of any party, any
16 portion of a contract relating to the sale, pur-
17 chase, lease, rental, or exchange of real prop-
18 erty (other than in connection with providing fi-
19 nancing with respect to any such transaction);

20 (D) engages in any activity for which a
21 person engaged in the activity is required to be
22 registered or licensed as a real estate agent or
23 real estate broker under any applicable law; or

1 (E) offers to engage in any activity, or act
2 in any capacity, described in subparagraph (A),
3 (B), (C), or (D).

4 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
5 (1) shall not apply to any person described in such
6 paragraph to the extent such person is engaged in
7 any financial activity described in any subparagraph
8 of section 4002(19) or is otherwise subject to any of
9 the enumerated consumer laws or the authorities
10 transferred under subtitle F or H.

11 (i) EXCLUSION FOR AUTO DEALERS.—

12 (1) IN GENERAL.—The Director and the Agen-
13 cy may not exercise any rulemaking, supervisory, en-
14 forcement or any other authority, including author-
15 ity to order assessments, over—

16 (A) a motor vehicle dealer that is primarily
17 engaged in the sale and servicing of motor vehi-
18 cles, the leasing and servicing of motor vehicles,
19 or both; or

20 (B) a person that—

21 (i) is controlled by, or is under com-
22 mon control with, one or more motor vehi-
23 cle dealers; and

24 (ii) primarily engages in the extension
25 of, or arranging for the extension of, retail

1 credit or retail leases involving motor vehi-
2 cles, where 90 percent of such extension,
3 or arranging for such extension, is made
4 with respect to customers of one or more
5 motor vehicle dealers that control such per-
6 son or with which such person is under
7 common control.

8 (2) CERTAIN FUNCTIONS EXCEPTED.—The pro-
9 visions of paragraph (1) shall not apply to any per-
10 son to the extent that person—

11 (A) provides consumers with any services
12 related to residential mortgages; or

13 (B) operates a line of business that in-
14 volves the extension of retail credit or retail
15 leases involving motor vehicles, and in which—

16 (i) the extension of retail credit or re-
17 tail leases is routinely provided directly to
18 consumers; and

19 (ii) the contract governing such exten-
20 sion of retail credit or retail leases is not
21 routinely assigned to a third party finance
22 or leasing source.

23 (3) NO IMPACT ON PRIOR AUTHORITY.—Noth-
24 ing in this subsection shall be construed to modify,
25 limit, or supersede the rulemaking or enforcement

1 authority over motor vehicle dealers that could be
2 exercised by any Federal department or agency on
3 the day prior to the enactment of this title.

4 (4) NO TRANSFER OF CERTAIN AUTHORITY.—
5 Notwithstanding subtitle F or any other provision of
6 law under this title, the consumer financial protec-
7 tion functions of the Board of Governors and the
8 Federal Trade Commission shall not be transferred
9 to the Director or the Agency to the extent such
10 functions are with respect to a person described
11 under paragraph (1).

12 (5) DEFINITIONS.—For purposes of this sub-
13 section:

14 (A) MOTOR VEHICLE.—The term “motor
15 vehicle” means any self-propelled vehicle de-
16 signed for transporting persons or property on
17 a street, highway, or other road.

18 (B) MOTOR VEHICLE DEALER.—The term
19 “motor vehicle dealer” means any person resi-
20 dent in the United States or any territory of
21 the United States, and licensed by a State, a
22 territory of the United States, or the District of
23 Columbia to engage in the sale of motor vehi-
24 cles.

1 (j) NO AUTHORITY TO IMPOSE USURY LIMIT.—No
2 provision of this title shall be construed as conferring au-
3 thority on the Director or the Agency to establish a usury
4 limit applicable to an extension of credit offered or made
5 by a covered person to a consumer, unless explicitly au-
6 thorized by law.

7 (k) EXCLUSION FOR MANUFACTURED HOME RE-
8 TAILERS AND MODULAR HOME RETAILERS.—

9 (1) IN GENERAL.—The Director and the Agen-
10 cy may not exercise any rulemaking, supervisory, en-
11 forcement or other authority, including authority to
12 order assessments, over a person to the extent such
13 person—

14 (A) acts as an agent or broker for a buyer
15 or seller of a manufactured home or a modular
16 home;

17 (B) facilitates the purchase by a consumer
18 of a manufactured home or modular home, by
19 negotiating the purchase price or terms of the
20 sales contract (other than providing financing
21 with respect to such transaction); or

22 (C) offers to engage in any activity de-
23 scribed in subparagraphs (A) or (B).

24 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
25 (1) shall not apply to any person described in such

1 paragraph to the extent such person is engaged in
2 any financial activity described in any subparagraph
3 of section 4002(19) or is otherwise subject to any of
4 the enumerated consumer laws or the authorities
5 transferred under subtitle F or H.

6 (3) DEFINITIONS.—For purposes of this sub-
7 section:

8 (A) MANUFACTURED HOME.—The term
9 “manufactured home” has the meaning given
10 such term in section 603 of the National Manu-
11 factured Housing Construction and Safety
12 Standards Act of 1974 (42 U.S.C. 5402).

13 (B) MODULAR HOME.—The term “mod-
14 ular home” means a house built in a factory in
15 two or more modules that meet the State or
16 local building codes where the house will be lo-
17 cated and where such modules are transported
18 to the building site, installed on foundations,
19 and completed.

20 **SEC. 4206. COLLECTION OF INFORMATION; CONFIDEN-**
21 **TIALITY REGULATIONS.**

22 (a) COLLECTION OF INFORMATION.—

23 (1) IN GENERAL.—In conducting research on
24 the provision of consumer financial products or serv-
25 ices, the Director shall have the power to gather in-

1 formation from time to time regarding the organiza-
2 tion, business conduct, and practices of covered per-
3 sons or service providers.

4 (2) SPECIFIC AUTHORITY.—In order to gather
5 such information, the Director shall have the
6 power—

7 (A) to gather and compile information;

8 (B) to require persons to file with the
9 Agency, in such form and within such reason-
10 able period of time as the Director may pre-
11 scribe, by regulation or order, annual or special
12 reports, or answers in writing to specific ques-
13 tions, furnishing information the Director may
14 require; and

15 (C) to make public such information ob-
16 tained by it under this section as is in the pub-
17 lic interest in reports or otherwise in the man-
18 ner best suited for public information and use.

19 (b) CONFIDENTIALITY REGULATIONS.—The Director
20 shall prescribe regulations regarding the confidential
21 treatment of information obtained from persons in connec-
22 tion with the exercise of any authority of the Agency or
23 Director under this title and the enumerated consumer
24 laws and the authorities transferred under subtitles F and
25 H.

1 (c) PRIVACY CONSIDERATIONS.—In collecting infor-
2 mation from any person, publicly releasing information
3 held by the Agency, or requiring covered persons to pub-
4 licly report information, the Director and the Agency shall
5 take steps to ensure that proprietary, personal or con-
6 fidential consumer information that are protected from
7 public disclosure under section 552(b) or 552a of title 5,
8 United States Code, or any other provision of law are not
9 made public under this title.

10 **SEC. 4207. MONITORING; ASSESSMENTS OF SIGNIFICANT**
11 **REGULATIONS; REPORTS.**

12 (a) MONITORING.—

13 (1) IN GENERAL.—The Agency shall monitor
14 for risks to consumers in the provision of consumer
15 financial products or services, including develop-
16 ments in markets for such products or services.

17 (2) MEANS OF MONITORING.—Such monitoring
18 may be conducted by examinations of covered per-
19 sons or service providers, analysis of reports ob-
20 tained from covered persons or service providers, as-
21 sessment of consumer complaints, surveys and inter-
22 views of covered persons, service providers, and con-
23 sumers, and review of available databases.

24 (3) CONSIDERATIONS.—In allocating the re-
25 sources of the Agency to perform the monitoring re-

1 quired by this section, the Director may consider,
2 among other factors—

3 (A) likely risks and costs to consumers as-
4 sociated with buying or using a type of con-
5 sumer financial product or service;

6 (B) consumers' understanding of the risks
7 of a type of consumer financial product or serv-
8 ice;

9 (C) the state of the law that applies to the
10 provision of a consumer financial product or
11 service, including the extent to which the law is
12 likely to adequately protect consumers;

13 (D) rates of growth in the provision of a
14 consumer financial product or service;

15 (E) extent, if any, to which the risks of a
16 consumer financial product or service may dis-
17 proportionately affect traditionally underserved
18 consumers, if any; or

19 (F) types, number, and other pertinent
20 characteristics of covered persons that provide
21 the product or service.

22 (4) REPORTS.—The Agency shall publish at
23 least 1 report of significant findings of the moni-
24 toring required by paragraph (1) in each calendar

1 year, beginning in the calendar year that is 1 year
2 after the designated transfer date.

3 (b) ASSESSMENT OF SIGNIFICANT REGULATIONS.—

4 (1) IN GENERAL.—The Agency shall conduct an
5 assessment of each significant regulation prescribed
6 or order issued by the Director under this title,
7 under the authorities transferred under subtitles F
8 and H or pursuant to any enumerated consumer law
9 that addresses, among other relevant factors, the ef-
10 fectiveness of the regulation in meeting the purposes
11 and objectives of this title and the specific goals
12 stated by the Director.

13 (2) BASIS FOR ASSESSMENT.—The assessment
14 shall reflect available evidence and any data that the
15 Agency reasonably may collect.

16 (3) REPORTS.—The Agency shall publish a re-
17 port of an assessment under this subsection not
18 later than 3 years after the effective date of the reg-
19 ulation or order, unless the Director determines that
20 3 years is not sufficient time to study or review the
21 impact of the regulation, but in no event shall the
22 Agency publish a report of such assessment more
23 than 5 years after the effective date of the regula-
24 tion or order.

1 (4) PUBLIC COMMENTED REQUIRED.—Before
2 publishing a report of its assessment, the Agency
3 shall invite, with sufficient time allotted, public com-
4 ment on, and may hold public hearings on, rec-
5 ommendations for modifying, expanding, or elimi-
6 nating the newly adopted significant regulation or
7 order.

8 (c) INFORMATION GATHERING.—In conducting any
9 monitoring or assessment required by this section, the
10 Agency may gather information through a variety of meth-
11 ods, including by conducting surveys or interviews of con-
12 sumers.

13 **SEC. 4208. AUTHORITY TO RESTRICT MANDATORY**
14 **PREDISPUTE ARBITRATION.**

15 (a) IN GENERAL.—The Director, by regulation, may
16 prohibit or impose conditions or limitations on the use of
17 any agreement between a covered person and a consumer
18 for a consumer financial product or service providing for
19 arbitration of any future dispute between the parties if
20 the Director finds that such a prohibition or imposition
21 of conditions or limitations are in the public interest and
22 for the protection of consumers.

23 (b) EFFECTIVE DATE.—Notwithstanding any other
24 provision of law, any regulation prescribed by the Director
25 under subsection (a) 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 Director.

5 **SEC. 4209. REGISTRATION AND SUPERVISION OF NON-**
6 **DEPOSITORY COVERED PERSONS.**

7 (a) RISK-BASED PROGRAMS.—

8 (1) IN GENERAL.—The Agency shall develop
9 risk-based programs to supervise covered persons
10 that are not credit unions, depository institutions, or
11 persons excluded under section 4205 by prescribing
12 registration requirements, reporting requirements,
13 and examination standards and procedures.

14 (2) BASIS FOR PROGRAMS.—The risk-based su-
15 pervisory programs established pursuant to para-
16 graph (1) shall be based on—

17 (A) relevant registration and reporting in-
18 formation about such covered persons, as deter-
19 mined by the Agency; and

20 (B) the Agency’s assessment of risks posed
21 to consumers in the relevant geographic mar-
22 kets and markets for consumer financial prod-
23 ucts and services.

24 (b) REGISTRATION.—

1 (1) IN GENERAL.—The Director shall prescribe
2 regulations regarding registration requirements for
3 covered persons that are not credit unions or deposi-
4 tory institutions.

5 (2) CONSULTATION WITH STATE AGENCIES.—
6 In developing and implementing registration require-
7 ments under this subsection, the Agency shall con-
8 sult with State agencies regarding requirements or
9 systems for registration (including coordinated or
10 combined systems), where appropriate.

11 (3) EXCEPTION FOR RELATED PERSONS.—The
12 Agency shall not impose requirements regarding the
13 registration of a related person.

14 (4) REGISTRATION INFORMATION.—Subject to
15 regulations prescribed by the Director, the Agency
16 shall publicly disclose the registration information
17 about a covered person which is not a bank holding
18 company, credit union, or depository institution for
19 the purposes of facilitating the ability of consumers
20 to identify the covered person as registered with the
21 Agency.

22 (c) REPORTING REQUIREMENTS.—

23 (1) IN GENERAL.—The Agency may require re-
24 ports from covered persons that are not credit
25 unions or depository institutions, or service providers

1 thereto, for the purposes of facilitating supervision
2 of such covered persons or service providers.

3 (2) CONSISTENCY OF REPORTING REQUIRE-
4 MENTS AND RISK-BASED STANDARDS.—The Agency
5 shall impose reporting requirements under this sub-
6 section that are consistent with the risk-based stand-
7 ards developed and implemented under this section
8 and the registration information pertaining to the
9 relevant types or classes of covered persons.

10 (3) CONTENTS OF REPORTS.—Reporting re-
11 quirements imposed under this paragraph may in-
12 clude information regarding—

13 (A) the nature of the covered person’s
14 business;

15 (B) the covered person’s name, legal form,
16 ownership and management structure, and re-
17 lated persons;

18 (C) the covered person’s locations of oper-
19 ation;

20 (D) the covered person’s types and number
21 of consumer financial products and services
22 provided by the covered person;

23 (E) compliance with any requirement im-
24 posed or enforced by the Agency, including any

1 requirement relating to registration, licensing,
2 fees, or assessments; and

3 (F) the financial condition of such covered
4 person, including a related person, for the pur-
5 pose of assessing the ability of such person to
6 perform its obligation to consumers.

7 (4) EXCEPTION FOR RELATED PERSONS.—
8 Other than reports permitted under paragraph
9 (3)(F) or in connection with a supervisory action or
10 examination or pursuant to the powers granted in
11 subtitle E, the Agency shall not impose requirements
12 regarding reports of any related person.

13 (d) EXAMINATIONS.—

14 (1) EXAMINATIONS REQUIRED.—The Agency
15 shall conduct examinations of covered persons that
16 are not credit unions or depository institutions as
17 part of the programs implemented under paragraphs
18 (2) and (3) of section 4202(c).

19 (2) EXAMINATION STANDARDS AND PROCE-
20 DURES.—The Director shall establish risk-based
21 standards and procedures for conducting examina-
22 tions of covered persons required to be examined
23 under paragraph (1), including the frequency and
24 scope of such examinations, except that the Agency
25 shall conduct examinations of such covered persons

1 that are determined to pose the highest risk to con-
2 sumers based on factors determined by the Director,
3 such as the operations, sales practices, or consumer
4 financial products or services provided by such cov-
5 ered persons.

6 (e) **AUTHORITY TO COLLECT INFORMATION REGARD-**
7 **ING FEES OR ASSESSMENTS.**—To the extent permitted by
8 Federal law, the Agency may obtain from the Secretary
9 of the Treasury information relating to a covered person
10 which is not a bank holding company, credit union, or de-
11 pository institution, including information regarding com-
12 pliance with a reporting or registration requirement under
13 the subchapter II of chapter 53 of title 31, United States
14 Code, for the purposes of, and only to the extent necessary
15 in, investigating, determining, or enforcing compliance
16 with a requirement relating to any fee or assessment im-
17 posed by the Agency under this title.

18 **SEC. 4210. EFFECTIVE DATE.**

19 This subtitle shall take effect on the designated
20 transfer date.

21 **Subtitle C—Specific Authorities**

22 **SEC. 4301. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE**
23 **ACTS OR PRACTICES.**

24 (a) **IN GENERAL.**—The Agency may take any action
25 authorized under subtitle E to prevent a person from com-

1 mitting or engaging in an unfair, deceptive, or abusive act
2 or practice under Federal law in connection with any
3 transaction with a consumer for a consumer financial
4 product or service, or the offering of a consumer financial
5 product or service.

6 (b) REGULATIONS.—

7 (1) IN GENERAL.—The Director may prescribe
8 regulations identifying as unlawful unfair, deceptive,
9 or abusive acts or practices in connection with any
10 transaction with a consumer for a consumer finan-
11 cial product or service or the offering of a consumer
12 financial product or service.

13 (2) INCLUDES PREVENTION MEASURES.—Regu-
14 lations prescribed under this section may include re-
15 quirements for the purpose of preventing such acts
16 or practices.

17 (c) UNFAIRNESS.—

18 (1) IN GENERAL.—The Director and the Agen-
19 cy shall have no authority under this section to de-
20 clare an act or practice in connection with a trans-
21 action with a consumer for a consumer financial
22 product or service, or the offering of a consumer fi-
23 nancial product or service, to be unlawful on the
24 grounds that such act or practice is unfair unless
25 the Agency has a reasonable basis to conclude that

1 the act or practice causes or is likely to cause sub-
2 stantial injury to consumers which is not reasonably
3 avoidable by consumers and such substantial injury
4 is not outweighed by countervailing benefits to con-
5 sumers or to competition.

6 (2) ESTABLISHED PUBLIC POLICY AS FAC-
7 TOR.—In determining whether an act or practice is
8 unfair, the Agency may consider established public
9 policies as evidence to be considered with all other
10 evidence.

11 (d) CONSULTATION.—In prescribing any regulation
12 under this section, the Director shall consult with the Fed-
13 eral banking agencies, State bank supervisors, the Federal
14 Trade Commission, or other Federal agencies, as appro-
15 priate, regarding the consistency of a proposed regulation
16 with prudential, consumer protection, civil rights, market,
17 or systemic objectives administered by such agencies or
18 supervisors.

19 **SEC. 4302. DISCLOSURES.**

20 (a) IN GENERAL.—The Director may prescribe regu-
21 lations to ensure the timely, appropriate and effective dis-
22 closure to consumers of the costs, benefits, and risks asso-
23 ciated with any consumer financial product or service.

24 (b) COORDINATION WITH OTHER LAWS.—In pre-
25 scribing regulations under subsection (a), the Director

1 shall take into account disclosure requirements under
2 other laws in order to enhance consumer compliance and
3 reduce regulatory burden.

4 (c) COMPLIANCE.—

5 (1) MODEL DISCLOSURES.—The Agency may
6 provide model disclosures to facilitate compliance
7 with the requirements of regulations prescribed
8 under this section.

9 (2) PER SE COMPLIANCE.—Compliance by a
10 covered person with the model disclosures issued by
11 the Agency under this subsection shall per se con-
12 stitute compliance with the disclosure requirements
13 of this section.

14 (3) ADDITIONAL GUIDANCE.—The Agency may
15 issue exemptions, no action letters, and other guid-
16 ance to promote compliance with disclosures require-
17 ments of regulations prescribed under this section.

18 (d) COMBINED MORTGAGE LOAN DISCLOSURE.—
19 Within 1 year after the designated transfer date, the Di-
20 rector shall propose for public comment regulations and
21 model disclosures that combine the disclosures required
22 under the Truth in Lending Act and the Real Estate Set-
23 tlement Procedures Act into a single, integrated disclosure
24 for mortgage loan transactions covered by those laws, un-
25 less the Director determines that any proposal issued by

1 the Board of Governors and the Department of Housing
2 and Urban Development carries out the same purpose.

3 **SEC. 4303. SALES PRACTICES.**

4 The Director may prescribe regulations and issue or-
5 ders and guidance regarding the manner, settings, and cir-
6 cumstances for the provision of any consumer financial
7 products or services to ensure that the risks, costs, and
8 benefits of the products or services, both initially and over
9 the term of the products or services, are fully and accu-
10 rately represented to consumers.

11 **SEC. 4304. PILOT DISCLOSURES.**

12 (a) PILOT DISCLOSURES.—The Agency shall estab-
13 lish standards and procedures for approval of pilot disclo-
14 sures to be provided or made available by a covered person
15 to consumers in connection with the provision of a con-
16 sumer financial product or service, or the offering of a
17 consumer financial product or service.

18 (b) STANDARDS.—The procedures shall provide that
19 a pilot disclosure must be limited in time and scope and
20 reasonably designed to contribute materially to the under-
21 standing of consumer awareness and understanding of,
22 and responses to, disclosures or communications about the
23 risks, costs, and benefits of consumer financial products
24 or services.

1 (c) TRANSPARENCY.—The procedures shall provide
2 for public disclosure of pilots, but the Agency may limit
3 disclosure to the extent necessary to encourage covered
4 persons to conduct effective pilots.

5 **SEC. 4305. ADOPTING OPERATIONAL STANDARDS TO**
6 **DETER UNFAIR, DECEPTIVE, OR ABUSIVE**
7 **PRACTICES.**

8 (a) AUTHORITY TO PRESCRIBE STANDARDS.—The
9 States are encouraged to prescribe standards applicable
10 to covered persons who are not insured depository institu-
11 tions or credit unions, or service providers, to deter and
12 detect unfair, deceptive, abusive, fraudulent, or illegal
13 transactions in the provision of consumer financial prod-
14 ucts or services, including standards for—

15 (1) background checks for principals, officers,
16 directors, or key personnel;

17 (2) registration, licensing, or certification;

18 (3) bond or other appropriate financial require-
19 ments to provide reasonable assurance of ability to
20 perform its obligations to consumers;

21 (4) creating and maintaining records of trans-
22 actions or accounts; or

23 (5) procedures and operations relating to the
24 provision of, or maintenance of accounts for, con-
25 sumer financial products or services.

1 (b) AGENCY AUTHORITY TO PRESCRIBE STAND-
2 ARDS.—

3 (1) IN GENERAL.—The Director may prescribe
4 regulations establishing minimum standards under
5 this section for any class of covered persons other
6 than covered persons which are subject to the juris-
7 diction of a Federal banking agency or a State bank
8 supervisor , or for any service provider.

9 (2) REGISTRATION AND LICENSING STAND-
10 ARDS.—In addition to prescribing standards for the
11 purposes described in subsection (a), the Director
12 may prescribe registration or licensing standards ap-
13 plicable to covered persons for the purposes of im-
14 posing fees or assessments in accordance with this
15 title.

16 (3) ENFORCEMENT OF STANDARDS.—The Di-
17 rector may enforce under subtitle E compliance with
18 standards adopted by the Director or a State pursu-
19 ant to this section for covered persons or service
20 providers operating in that State.

21 (c) CONSULTATION.—In prescribing minimum stand-
22 ards under this section, the Director shall consult with the
23 Federal banking agencies, State bank supervisors, the
24 Federal Trade Commission, or other Federal agencies, as
25 appropriate, regarding the consistency of a proposed regu-

1 lation with prudential, consumer protection, civil rights,
2 market, or systemic objectives administered by such agen-
3 cies or supervisors.

4 **SEC. 4306. DUTIES.**

5 (a) IN GENERAL.—

6 (1) REGULATIONS ENSURING FAIR DEALING
7 WITH CONSUMERS.—The Director shall prescribe
8 regulations imposing duties on a covered person, or
9 an employee of a covered person, or an agent or
10 independent contractor for a covered person, who
11 deals or communicates directly with consumers in
12 the provision of a consumer financial product or
13 service, as the Director deems appropriate or nec-
14 essary to ensure fair dealing with consumers.

15 (2) CONSIDERATIONS FOR DUTIES.—In pre-
16 scribing such regulations, the Director shall consider
17 whether—

18 (A) the covered person, employee, agent, or
19 independent contractor represents implicitly or
20 explicitly that the person, employee, agent, or
21 contractor is acting in the interest of the con-
22 sumer with respect to any aspect of the trans-
23 action;

24 (B) the covered person, employee, agent,
25 or independent contractor provides the con-

1 consumer with advice with respect to any aspect of
2 the transaction;

3 (C) the consumer's reliance on or use of
4 any advice from the covered person, employee,
5 agent, or independent contractor would be rea-
6 sonable and justifiable under the circumstances;

7 (D) the benefits to consumers of imposing
8 a particular duty would outweigh the costs; and

9 (E) any other factors as the Director con-
10 siders appropriate.

11 (3) DUTIES RELATING TO COMPENSATION
12 PRACTICES.—

13 (A) IN GENERAL.—The Director may pre-
14 scribe regulations establishing duties regarding
15 compensation practices applicable to a covered
16 person, employee, agent, or independent con-
17 tractor who deals or communicates directly with
18 a consumer in the provision of a consumer fi-
19 nancial product or service for the purpose of
20 promoting fair dealing with consumers.

21 (B) NO COMPENSATION CAPS.—The Direc-
22 tor may not prescribe a limit on the total dollar
23 amount of compensation paid to any person.

24 (C) DISPARITY TREATMENT PROHIB-
25 ITED.—The Director may not prescribe regula-

1 tions that directly or indirectly disparately
2 treat, or are interpreted to disparately treat, or
3 disparately impact any entity that employs cov-
4 ered persons.

5 (4) REQUIREMENT TO INCLUDE DISCLAIMER ON
6 PUBLIC STATEMENTS.—The Director shall ensure
7 that the Agency’s website, and any statement made
8 by the Director or the Agency to the public, includes
9 a disclaimer stating that the Agency does not en-
10 dorse any particular financial product or service and
11 consumers are expected to exercise due diligence in
12 deciding what financial products and services are ap-
13 propriate for them.

14 (b) ADMINISTRATIVE PROCEEDINGS.—

15 (1) IN GENERAL.—Any regulation prescribed by
16 the Director under this section shall be enforceable
17 only by the Agency through an adjudication pro-
18 ceeding under subtitle E or by a State regulator
19 through an appropriate administrative proceeding as
20 permitted under State law.

21 (2) EXCLUSIVITY OF REMEDY.—No action may
22 be commenced in any court to enforce any require-
23 ment of a regulation prescribed under this section,
24 and no court may exercise supplemental jurisdiction
25 over a claim asserted under a regulation prescribed

1 under this section based on allegations or evidence
2 of conduct that otherwise may be subject to such
3 regulation.

4 (3) RULE OF CONSTRUCTION.—The Agency,
5 the Attorney General, and any State attorney gen-
6 eral or State regulator shall not be precluded from
7 enforcing any other Federal or State law against a
8 person with respect to conduct that may be subject
9 to a regulation prescribed by the Director under this
10 section.

11 (c) EXCLUSIONS.—This section shall not be con-
12 strued as authorizing the Director to prescribe regulations
13 applicable to—

14 (1) an attorney licensed to practice law and in
15 compliance with the applicable rules and standards
16 of professional conduct, but only to the extent that
17 the consumer financial product or service provided is
18 within the attorney-client relationship with the con-
19 sumer; or

20 (2) any trustee, custodian, or other person that
21 holds a fiduciary duty in connection with a trust, in-
22 cluding a fiduciary duty to a grantor or beneficiary
23 of a trust, that is subject to and in compliance with
24 the applicable law relating to such trust.

1 **SEC. 4307. CONSUMER RIGHTS TO ACCESS INFORMATION.**

2 (a) IN GENERAL.—Subject to regulations prescribed
3 by the Director, a covered person shall make available to
4 a consumer, in an electronic form usable by the consumer,
5 information in the control or possession of the covered per-
6 son concerning the consumer financial product or service
7 that the consumer obtained from such covered person in-
8 cluding information relating to any transaction, series of
9 transactions, or to the account including costs, charges
10 and usage data.

11 (b) EXCEPTIONS.—A covered person shall not be re-
12 quired by this section to make available to the consumer—

13 (1) any confidential commercial information, in-
14 cluding an algorithm used to derive credit scores or
15 other risk scores or predictors;

16 (2) any information collected by the covered
17 person for the purpose of preventing fraud or money
18 laundering, or detecting, or making any report re-
19 garding other unlawful or potentially unlawful con-
20 duct;

21 (3) any information required to be kept con-
22 fidential by any other law (including section 6103 of
23 the Internal Revenue Code of 1986); or

24 (4) any information that the covered person
25 cannot retrieve in the ordinary course of its business
26 with respect to that information.

1 (c) NO DUTY TO MAINTAIN RECORDS.—No provision
2 of this section shall be construed as imposing any duty
3 on a covered person to maintain or keep any information
4 about a consumer.

5 (d) STANDARDIZED FORMATS FOR DATA.—The Di-
6 rector, by regulation, shall prescribe standards applicable
7 to covered persons to promote the development and use
8 of standardized formats for information, including
9 through the use of machine readable files, to be made
10 available to consumers under this section.

11 (e) CONSULTATION.—The Director shall, when pre-
12 scribing any regulation under this section, consult with the
13 Federal banking agencies, State bank supervisors, the
14 Federal Trade Commission, and the Commissioner of In-
15 ternal Revenue to ensure that the regulations—

16 (1) impose substantively similar requirements
17 on covered persons;

18 (2) take into account conditions under which
19 covered persons do business both in the United
20 States and in other countries; and

21 (3) do not require or promote the use of any
22 particular technology in order to develop systems for
23 compliance.

24 **SEC. 4308. PROHIBITED ACTS.**

25 It shall be unlawful for any person—

1 (1) to advertise, market, offer, sell, enforce, or
2 attempt to enforce, any term, agreement, change in
3 terms, fee, or charge in connection with a consumer
4 financial product or service that is not in conformity
5 with this title or applicable regulation prescribed or
6 order issued by the Director or to engage in any un-
7 fair, deceptive, or abusive act or practice, except that
8 no person shall be held to have violated this sub-
9 section solely by virtue of providing or selling time
10 or space to a person placing an advertisement;

11 (2) to fail or refuse to pay any fee or assess-
12 ment imposed by the Agency under this title, to fail
13 or refuse to permit access to or copying of records,
14 to fail or refuse to establish or maintain records, or
15 to fail or refuse to make reports or provide informa-
16 tion to the Agency, as required by this title, an enu-
17 merated consumer law, or pursuant to the authori-
18 ties transferred by subtitles F and H, or any regula-
19 tion prescribed or order issued by the Director this
20 title or pursuant to any such authority; or

21 (3) to knowingly or recklessly provide substan-
22 tial assistance to another person in violation of the
23 provisions of section 4301, or any regulation pre-
24 scribed or order issued under such section, and any
25 such person shall be deemed to be in violation of

1 that section to the same extent as the person to
2 whom such assistance is provided.

3 **SEC. 4309. TREATMENT OF REMITTANCE TRANSFERS.**

4 (a) DISCLOSURES REQUIRED FOR REMITTANCE
5 TRANSFERS.—

6 (1) IN GENERAL.—Each remittance transfer
7 provider shall make disclosures to consumers, as
8 specified by this section and by regulation prescribed
9 by the Director.

10 (2) SPECIFIC DISCLOSURES.—In addition to
11 any other disclosures applicable under this title, a
12 remittance transfer provider shall—

13 (A) disclose clearly and conspicuously, in
14 writing and in a form that the consumer may
15 keep, to each consumer who requests informa-
16 tion regarding the fees or exchange rate for a
17 remittance transfer, prior to the consumer mak-
18 ing any payment in connection with the trans-
19 fer—

20 (i) the total amount in United States
21 dollars that will be required to be paid by
22 the consumer in connection with the remit-
23 tance transfer;

24 (ii) the amount of currency that the
25 designated recipient of the remittance

1 transfer will receive, using the values of
2 the currency into which the funds will be
3 exchanged;

4 (iii) the fee charged by the remittance
5 transfer provider for the remittance trans-
6 fer;

7 (iv) any exchange rate to be used by
8 the remittance transfer provider for the re-
9 mittance transfer, unless the exchange rate
10 is not fixed on send;

11 (v) the amount of time for which the
12 information specified in this subparagraph
13 (A) will be in effect;

14 (vi) the expected time interval within
15 which the funds being transferred will be
16 made available to the recipient; and

17 (vii) the location where the funds
18 being transferred will be made available to
19 the recipient if the funds are to be made
20 available only at one location, or if the re-
21 mittance transfer provider permits the re-
22 cipient to choose from multiple locations
23 where the funds being transferred will be
24 made available to the recipient, the remit-
25 tance transfer provider shall make avail-

1 able to the consumer or the recipient a re-
2 source that lists such locations;

3 (B) at the time at which the consumer
4 makes payment in connection with the remit-
5 tance transfer, a receipt in writing disclosing
6 clearly and conspicuously—

7 (i) the information described in sub-
8 paragraph (A);

9 (ii) the expected time interval within
10 which the funds being transferred will be
11 made available to the recipient, which shall
12 be not more than ten days after the date
13 the consumer makes payment in connec-
14 tion with the remittance transfer unless
15 otherwise prohibited by applicable State or
16 Federal law or the law of another country,
17 or as may be specified by the consumer so
18 long as the consumer has the choice to
19 order that the funds be made available to
20 the recipient not more than ten days after
21 the consumer makes payment in connec-
22 tion with the remittance transfer;

23 (iii) the location where the funds
24 being transferred will be made available to
25 the recipient if the funds are to be made

1 available only at one location, or if the re-
2 mittance transfer provider permits the re-
3 cipient to choose from multiple locations
4 where the funds being transferred will be
5 made available to the recipient, the remit-
6 tance transfer provider shall make avail-
7 able to the consumer or the recipient a re-
8 source that lists such locations;

9 (iv) the name and telephone number
10 or address of the designated recipient, if
11 provided to the remittance transfer pro-
12 vider by the consumer;

13 (v) information about the rights of the
14 consumer under this section to cancel the
15 remittance transfer, to resolve errors and
16 to receive refunds;

17 (vi) appropriate contact information
18 for the remittance transfer provider;

19 (vii) a transaction reference number
20 unique to that remittance transfer; and

21 (viii) information as to when the ex-
22 change rate will be calculated (for example,
23 when the funds are received by the recipi-
24 ent), if the customer has been notified that
25 the exchange rate is not fixed on send;

1 (C) at the time at which the consumer ini-
2 tiates the remittance transfer, offer to provide
3 in writing, prior to making any payment in con-
4 nection with the transfer, the information listed
5 in subparagraph (A); and

6 (D) in the case of an exchange rate not
7 fixed on send, the remittance provider shall also
8 disclose, at the time at which the consumer ini-
9 tiates the remittance transfer, the range, using
10 the high and low rates, for the prior 30 day pe-
11 riod, that the consumer would have received if
12 a representative amount had been exchanged by
13 the remittance transfer provider, as well as a
14 clear and conspicuous notice that the actual ex-
15 change rate may vary.

16 If the actual rate used for the transfer is known to
17 the remittance provider, either because such rate
18 was set by the remittance provider itself or because
19 the remittance provider receives confirmation of the
20 actual exchange rate used, the remittance provider
21 shall make available to consumers written or elec-
22 tronic confirmation of the actual exchange rate used
23 and the amount of currency that the recipient or the
24 remittance transfer received, using the values of the
25 currency into which the funds were exchanged. The

1 Director shall within 2 years after the date of the
2 enactment of the Consumer Financial Protection
3 Agency Act of 2009 prescribe consumer disclosures
4 for transfers with rates not fixed on send that are
5 functionally equivalent to those applicable to remit-
6 tances where the exchange rate is specified by the
7 remittance transfer provider at the time the con-
8 sumer initiates the remittance transfer. To the
9 greatest extent possible, the Director shall ensure
10 that functional equivalence will enable remittance
11 transfer providers to comply with all requirements in
12 this title and provide consumers with information
13 sufficient to compare services providers, to time
14 their use of the product, to discover errors in trans-
15 mission and to seek remedies.

16 (3) EXEMPTION.—Notwithstanding require-
17 ments under paragraph (2)(A)(ii), (2)(A)(iv), or
18 (2)(B)(i), no such disclosure is required—

19 (A) because of the requirements of another
20 law, including the law of another country;

21 (B) because the transfer is being routed
22 through the Directo a México offered by the
23 Federal reserve banks; or

24 (C) because of any other circumstance
25 deemed permissible by regulation of the Direc-

1 tor; If the actual rate used for the transfer is
2 known to the remittance provider, the remit-
3 tance provider shall make available to con-
4 sumers written or electronic confirmation of the
5 actual exchange rate used and the amount of
6 currency that the recipient of the remittance
7 transfer received, using the values of the cur-
8 rency into which the funds were exchanged.

9 (4) PROVISION OF TOLL-FREE NUMBER AND
10 WEB ACCESS.—

11 (A) In addition to providing the disclosures
12 required by this section to a consumer at a re-
13 mittance transfer provider location, a remit-
14 tance transfer provider shall provide a toll-free
15 telephone number or local number, and an
16 Internet website that a consumer can access for
17 which access no remittance transfer provider
18 may assess a charge, to obtain the information
19 required by paragraph (2)(A) for remittance
20 transfers offered by that remittance transfer
21 provider or information about the status of a
22 remittance transfer for which a consumer has
23 made payment.

24 (B) A remittance transfer provider that on
25 an aggregate basis originates 30,000 or fewer

1 transfers on a calendar year basis (or such
2 other amount as may be prescribed by the Di-
3 rector) is not required to offer the web access
4 prescribed in subparagraph (A), but is required
5 to provide a toll-free telephone number or local
6 number as prescribed in subparagraph (A).

7 (5) ALTERNATIVE METHODS OF DISCLOSURE.—
8 Subject to subsection (e)(2), a remittance transfer
9 provider may—

10 (A) if the transaction is conducted entirely
11 by telephone (which shall include, but not be
12 limited to, a mobile telephone) satisfy the re-
13 quirements of paragraph (2)(A) orally or, at the
14 option of the consumer, electronically through a
15 message sent to the consumer through any elec-
16 tronic means (including, but not limited to, an
17 electronic mail address or a mobile telephone)
18 as designated by the consumer;

19 (B) satisfy the requirements of paragraph
20 (2)(A) electronically if the transfer is initiated
21 by the consumer electronically through the re-
22 mittance transfer provider's website or through
23 any other electronic means; and

24 (C) satisfy the requirements of paragraph
25 (2)(B) by mailing (or transmitting electronically

1 if the transfer is initiated electronically by the
2 consumer through the remittance transfer pro-
3 vider's website or the consumer otherwise con-
4 sents in accordance with the provisions of sec-
5 tion 101 of the Electronic Signatures in Global
6 and National Commerce Act) the information
7 required under such paragraph to the consumer
8 not later than one business day after the date
9 on which the transaction is conducted, if the
10 transaction is conducted entirely by telephone
11 (or electronically) and the consumer requests a
12 written receipt.

13 (b) WRITTEN FOREIGN LANGUAGE DISCLOSURES.—

14 (1) IN GENERAL.—The disclosures required
15 under subsections (a)(2)(A) and (a)(2)(B)(i) shall be
16 made in English and—

17 (A) at each remittance transfer provider
18 location, shall be made in the same languages
19 principally used by the remittance transfer pro-
20 vider, or any of its agents, to advertise, solicit,
21 or market its remittance transfers business, ei-
22 ther orally or in writing, at that location, if
23 other than English, provided that such lan-
24 guages are those for which the Director has

1 issued model disclosures as provided in sub-
2 section (g); or

3 (B) on a remittance transfer provider's
4 website, shall at a minimum be made in any
5 other language for which the Director has
6 issued model disclosures as provided in sub-
7 section (g) if the remittance transfer provider,
8 or any of its agents, advertises, solicits, or mar-
9 kets its remittance transfers business in such
10 language.

11 (2) DISPUTES CONCERNING TERMS.—If a dis-
12 closure is required by this section to be in English
13 and another language, the English version of the
14 disclosure shall govern any dispute concerning the
15 terms of the receipt. However, any discrepancies be-
16 tween the English version and any other version due
17 to the translation of the receipt from English to an-
18 other language including errors or ambiguities shall
19 be construed against the remittance transfer pro-
20 vider or its agent and the remittance transfer pro-
21 vider or its agent shall be liable for any damages
22 caused by these discrepancies.

23 (c) REMITTANCE TRANSFER CANCELLATIONS, RE-
24 FUNDS, AND ERRORS.—

25 (1) CANCELLATIONS.—

1 (A) After receiving the receipt required
2 under subsection (a)(2)(B), a consumer may
3 cancel the currency transaction—

4 (i) before leaving the premises of the
5 remittance transfer provider where the
6 consumer received the receipt, and

7 (ii) not later than 30 minutes after
8 the time the consumer initiated the remit-
9 tance transfer with the remittance transfer
10 provider.

11 (B) If a consumer cancels the transaction,
12 the remittance transfer provider shall imme-
13 diately refund to the consumer the fees paid
14 and the currency to be transferred, and issue a
15 receipt indicating that the transaction has been
16 cancelled.

17 (C) A consumer may not cancel a remit-
18 tance transfer after the remittance transfer pro-
19 vider has sent the funds to the recipient.

20 (D) A remittance transfer provider shall
21 not be required to provide a refund if providing
22 a refund would violate State or Federal law.

23 (2) REFUNDS.—

24 (A) If a remittance transfer provider re-
25 ceives written notice from the consumer within

1 ten days of the promised date of delivery of a
2 remittance transfer that no amount of the
3 funds to be remitted was made available to the
4 designated recipient in the foreign country, the
5 remittance transfer provider shall—

6 (i) refund to the consumer the total
7 amount in U.S. dollars that was paid by
8 the consumer in connection with such re-
9 mittance transfer;

10 (ii) promptly transmit the remittance
11 transfer in accordance with the terms in
12 the written receipt provided to the con-
13 sumer pursuant to subsection (a)(2)(B);

14 (iii) provide such other remedy, as de-
15 termined appropriate by rule of the Direc-
16 tor for the protection of consumers; or

17 (iv) demonstrate to the consumer that
18 the proceeds of the remittance transfer
19 were made available to the recipient of the
20 remittance provider.

21 (B) A remittance transfer provider shall
22 not be required to provide a refund if providing
23 a refund would violate State or Federal law.

24 (3) ERROR RESOLUTION.—

1 (A) IN GENERAL.—If a remittance transfer
2 provider receives written notice from the con-
3 sumer within 60 days of the promised date of
4 delivery that an error occurred with respect to
5 a remittance transfer, including that the full
6 amount of the funds to be remitted was not
7 made available to the designated recipient in
8 the foreign country, the remittance transfer
9 provider shall resolve the error pursuant to this
10 paragraph.

11 (B) REMEDIES.—Not later than 120 days
12 after the date of receipt of a notice from the
13 consumer pursuant to subparagraph (A), the
14 remittance transfer provider shall—

15 (i) as applicable to the error and as
16 designated by the consumer—

17 (I) refund to the consumer the
18 total amount in U.S. dollars that was
19 paid by the consumer in connection
20 with the remittance transfer that was
21 not properly transmitted;

22 (II) make available to the des-
23 ignated recipient, without additional
24 cost to the designated recipient or to

1 the consumer, the amount appropriate
2 to resolve the error;

3 (III) provide such other remedy,
4 as determined appropriate by regula-
5 tion of the Director for the protection
6 of consumers; or

7 (ii) demonstrate to the consumer that
8 there was no error.

9 (4) REGULATIONS.—The Director, in order to
10 protect consumers, shall establish, by regulation,
11 clear and appropriate standards for remittance
12 transfer providers with respect to error resolution,
13 cancellation and refunds.

14 (d) ENFORCEMENT AUTHORITY.—The Director shall
15 have the sole authority to enforce the provisions of this
16 section, and any regulations established pursuant to this
17 section.

18 (e) APPLICABILITY OF OTHER PROVISIONS OF
19 LAW.—

20 (1) APPLICABILITY OF TITLE 18 AND TITLE 31
21 PROVISIONS.—A remittance transfer provider that is
22 a money transmitting business as defined in section
23 5330 of title 31, United States Code, may provide
24 remittance transfers only if such provider is in com-
25 pliance with the requirements of section 5330 of title

1 31, United States Code, and section 1960 of title
2 18, United States Code, as applicable.

3 (2) RULE OF CONSTRUCTION.—Nothing in this
4 section shall be construed—

5 (A) to affect the application to any trans-
6 action, to any remittance provider, or to any
7 other person of any of the provisions of sub-
8 chapter II of chapter 53 of title 31, United
9 States Code, section 21 of the Federal Deposit
10 Insurance Act, or chapter 2 of title I of Public
11 Law 91–508, or any regulations promulgated
12 thereunder; or

13 (B) to cause any fund transfer that would
14 not otherwise be treated as such under para-
15 graph (2) to be treated as an electronic fund
16 transfer, or as otherwise subject to this title, for
17 the purposes of any of the provisions referred to
18 in subparagraph (A) or any regulation pre-
19 scribed under such subparagraph.

20 (f) DEFINITIONS.—For purposes of this section, the
21 following definitions shall apply:

22 (1) DEPOSITORY INSTITUTION.—the term “de-
23 pository institution” has the same meaning as in
24 section 3 of the Federal Deposit Insurance Act and
25 includes a credit union.

1 (2) NOT FIXED ON SEND.—The term “not fixed
2 on send” when referring to an exchange rate used
3 in a remittance transfer means an exchange rate
4 that is not set by the remittance transfer provider
5 at the time the consumer initiates the remittance
6 transfer.

7 (3) REMITTANCE TRANSFER.—The term “re-
8 mittance transfer” means the electronic (as defined
9 in section 106(2) of the Electronic Signatures in
10 Global and National Commerce Act) transfer of
11 funds at the request of a consumer located in any
12 State to a person in another country that is initiated
13 by a remittance transfer provider, whether or not
14 the consumer is an account holder of the remittance
15 transfer provider or whether or not the remittance
16 transfer is also an electronic fund transfer, as de-
17 fined in section 903 of the Electronic Fund Transfer
18 Act.

19 (4) REMITTANCE TRANSFER PROVIDER.—The
20 term “remittance transfer provider” means any per-
21 son or depository institution, or agent thereof, that
22 originates remittance transfers on behalf of con-
23 sumers in the normal course of its business, whether
24 or not the consumer is an account holder of that
25 person or depository institution.

1 (g) MODEL DISCLOSURES.—

2 (1) PUBLICATION.—Notwithstanding any provi-
3 sions of this title, the Director shall establish and
4 publish model disclosure forms to facilitate compli-
5 ance with the disclosure requirements of this section
6 and to aid the consumer in understanding the trans-
7 action to which the subject disclosure form relates.

8 (2) LANGUAGES TO BE USED IN MODEL DIS-
9 CLOSURES.—The Director shall make these disclo-
10 sures available within 1 year of the effective date of
11 this title—

12 (A) in English, and

13 (B) the ten most frequently spoken lan-
14 guages in the United States, other than
15 English, used by consumers initiating remit-
16 tance transfers, as may be determined by the
17 Director.

18 (3) USE OF AUTOMATED EQUIPMENT.—In es-
19 tablishing model forms under this subsection, the
20 Director shall consider the use by lessors of data
21 processing or similar automated equipment.

22 (4) USE OPTIONAL.—A remittance transfer pro-
23 vider may utilize a model disclosure form established
24 by the Director under this subsection for purposes

1 of compliance with this section, at the discretion of
2 the remittance transfer provider.

3 (5) EFFECT OF USE.—Any remittance transfer
4 provider that properly uses the material aspects of
5 any model disclosure form established by the Direc-
6 tor under this subsection shall be deemed to be in
7 compliance with the disclosure requirements to
8 which the form relates.

9 (h) REGULATION AND EXEMPTION AUTHORITY.—
10 Notwithstanding any other provisions of this title, the Di-
11 rector, in the sole discretion of the Director, in consulta-
12 tion with relevant Federal and State government agencies
13 may by regulation exempt from one or more requirements
14 of this section, any category of remittance transfer pro-
15 vider if the Director determines that under applicable Fed-
16 eral or State law that such category of remittance transfer
17 provider is subject to requirements substantially similar
18 to those imposed under this section or that such law gives
19 greater protection and benefit to the consumer, and that
20 there is adequate provision for enforcement.

21 (i) APPLICABILITY OF STATE LAW.—

22 (1) This section does not annul, alter, affect, or
23 exempt any person subject to the provisions of this
24 section from complying with other applicable Federal
25 law and the laws of any State relating to remittance

1 transfers and remittance transfer providers, except
2 to the extent that those laws are inconsistent with
3 the provisions of this section, and then only to the
4 extent of the inconsistency.

5 (2) Notwithstanding any other provisions of
6 this title, the Director may determine whether such
7 inconsistencies exist. A State law is not inconsistent
8 with this section if the protection such law affords
9 any consumer is greater than the protection afforded
10 by this section. If the Director determines that a
11 State requirement is inconsistent, remittance trans-
12 fer providers shall incur no liability under the law of
13 that State for a good faith failure to comply with
14 that law, notwithstanding that such determination is
15 subsequently amended, rescinded, or determined by
16 judicial or other authority to be invalid for any rea-
17 son. This section does not extend the applicability of
18 any such law to any class of persons or transactions
19 to which it would not otherwise apply.

20 (3) This section does not annul, alter, or affect
21 the laws of any State relating to the licensing or
22 registration, supervision or examination of remit-
23 tance transfer providers.

24 (4) Nothing in this section shall be construed as
25 limiting the authority of a State attorney general or

1 State regulator to bring an action or other regu-
2 latory proceeding arising solely under the law of that
3 State.

4 (j) FEDERAL CREDIT UNION ACT AMENDMENT.—
5 Paragraph (12)(A) of section 107 of the Federal Credit
6 Union Act (12 U.S.C. 1757(12)(A)) is amended by insert-
7 ing “and remittance transfers, as defined in section 4309
8 of the Consumer Financial Protection Agency Act of
9 2009” after “and domestic electronic fund transfers”.

10 (k) AUTOMATED CLEARINGHOUSE SYSTEM.—

11 (1) EXPANSION OF SYSTEM.—The Board of
12 Governors of the Federal Reserve System shall work
13 with the Federal reserve banks to expand the use of
14 the automated clearinghouse system for remittance
15 transfers to foreign countries, with a focus on coun-
16 tries that receive significant remittance transfers
17 from the United States, based on—

18 (A) the volume and dollar amount of re-
19 mittance transfers to those countries;

20 (B) the significance of the volume of such
21 transfers, relative to the external financial flows
22 of the receiving country; and

23 (C) the feasibility of such an expansion.

24 (2) REPORT TO THE CONGRESS.—Before the
25 end of the 180-day period beginning on the date of

1 the enactment of this title, and on April 30 bienni-
2 ally thereafter, the Board of Governors of the Fed-
3 eral Reserve System shall submit a report to the Di-
4 rector, the Committee on Banking, Housing, and
5 Urban Affairs of the Senate, and the Committee on
6 Financial Services of the House of Representatives
7 on the status of the automated clearinghouse system
8 and its progress in complying with the requirements
9 of this section.

10 (l) REGULATORY GUIDANCE ON REMITTANCE
11 TRANSFERS.—

12 (1) PROVISION OF GUIDELINES TO INSTITU-
13 TIONS.—The Director shall provide guidelines to all
14 remittance transfer providers regarding—

15 (A) the offering of low-cost remittance
16 transfers;

17 (B) the availability of agency services to
18 remittance transfer providers;

19 (C) compliance with the provisions of this
20 title; and

21 (D) specific options that allow remittance
22 transfer providers to take advantage of auto-
23 mated clearing systems, including the FedACH
24 International Services offered by the Board of
25 Governors of the Federal Reserve System and

1 the Federal reserve banks, to transmit remit-
2 tances at low cost.

3 (2) CONTENT OF GUIDELINES.—Guidelines pro-
4 vided to remittance transfer providers under this
5 section shall include—

6 (A) information as to the methods of pro-
7 viding remittance transfer services;

8 (B) the potential economic opportunities in
9 providing low-cost remittance transfers; and

10 (C) the potential value to depository insti-
11 tutions of broadening their financial bases to
12 include persons that use remittance transfers.

13 (3) ASSISTANCE TO FINANCIAL LITERACY COM-
14 MISSION.—The Secretary of the Treasury and each
15 agency referred to in subsection (a) shall, as part of
16 their duties as members of the Financial Literacy
17 and Education Commission, assist that Commission
18 in improving the financial literacy and education of
19 consumers who send remittances.

20 (m) REPORT ON FEASIBILITY OF AND IMPEDIMENTS
21 TO USE OF REMITTANCE HISTORY IN CALCULATION OF
22 CREDIT SCORE.—Before the end of the 365-day period
23 beginning on the date of the enactment of this title, the
24 Director shall submit a report to the President, the Com-
25 mittee on Banking, Housing, and Urban Affairs of the

1 Senate, and the Committee on Financial Services of the
2 House of Representatives regarding—

3 (1) the manner in which a consumer's remit-
4 tance history could be used to enhance a consumer's
5 credit score;

6 (2) the current legal and business model bar-
7 riers and impediments that impede the use of a con-
8 sumer's remittance history to enhance the con-
9 sumer's credit score; and

10 (3) recommendations on the manner in which
11 maximum transparency and disclosure to consumers
12 of exchange rates for remittance transfers subject to
13 this title may be accomplished, whether or not such
14 exchange rates are known at the time of origination
15 or payment by the consumer for the remittance
16 transfer, including disclosure to the sender of the ac-
17 tual exchange rate used and the amount of currency
18 that the recipient of the remittance transfer re-
19 ceived, using the values of the currency into which
20 the funds were exchanged, as contained in section s
21 919(a)(2)(D) and 919(a)(3) of the Electronic Fund
22 Transfer Act (as amended by subsection (a)).

23 (n) EFFECTIVE DATE.—This section shall apply with
24 respect to remittance transfers made after the end of the

1 180-day period beginning on the date of the enactment
2 of this title.

3 **SEC. 4310. EFFECTIVE DATE.**

4 This subtitle shall take effect on the designated
5 transfer date.

6 **SEC. 4311. NO AUTHORITY TO REQUIRE THE OFFERING OF**
7 **FINANCIAL PRODUCTS OR SERVICES.**

8 The Director may not prescribe any regulation, issue
9 any order or guidance, or take any other action, including
10 any enforcement action, the effect of which would be to
11 require a covered person to offer to any consumer a spe-
12 cific financial product or service.

13 **SEC. 4312. APPRAISAL INDEPENDENCE REQUIREMENTS.**

14 (a) PROMULGATION OF NEW REQUIREMENTS.—The
15 Director shall lead a Negotiated Rulemaking Committee
16 under the Federal Advisory Committee Act and the Nego-
17 tiated Rulemaking Act to promulgate appraisal independ-
18 ence requirements for residential loan purposes, and such
19 Committee shall promulgate such requirements not later
20 than the end of the 60-day period beginning on the date
21 of the enactment of this title.

22 (b) CERTAIN REGULATION REQUIREMENTS.—Regu-
23 lations promulgated by the Negotiated Rulemaking Com-
24 mittee under this section—

1 (1) shall not prohibit lenders, the Federal Na-
2 tional Mortgage Association, or the Federal Home
3 Loan Mortgage Corporation from accepting any ap-
4 praisal report completed by an appraiser selected,
5 retained, or compensated in any manner by a mort-
6 gage loan originator—

7 (A) licensed or registered in accordance
8 with section 1501 et seq. of the SAFE Mort-
9 gage Licensing Act of 2008; and

10 (B) subject to State or Federal laws that
11 make it unlawful for a mortgage loan originator
12 to make any payment, threat, or promise, di-
13 rectly or indirectly, to any appraiser of a prop-
14 erty, for the purposes of influencing the inde-
15 pendent judgment of the appraiser with respect
16 to the value of the property, except that nothing
17 in this section shall prohibit a person with an
18 interest in a real estate transaction from asking
19 an appraiser to—

20 (i) consider additional, appropriate
21 property information;

22 (ii) provide further detail, substan-
23 tiation, or explanation for the appraiser's
24 value conclusion; or

1 (iii) correct errors in the appraisal re-
2 port; and

3 (2) shall include a requirement that lenders and
4 their agents compensate appraisers at a rate that is
5 customary and reasonable for appraisal services per-
6 formed in the market area of the property being ap-
7 praised.

8 (c) SUNSET.—Effective on the date the appraisal
9 independence requirements are promulgated pursuant to
10 subsection (a), the Home Valuation Code of Conduct an-
11 nounced by the Federal Housing Finance Agency on De-
12 cember 23, 2008, shall have no force or effect.

13 **Subtitle D—Preservation of State** 14 **Law**

15 **SEC. 4401. RELATION TO STATE LAW.**

16 (a) IN GENERAL.—

17 (1) RULE OF CONSTRUCTION.—This title shall
18 not be construed as annulling, altering, or affecting,
19 or exempting any person subject to the provisions of
20 this title from complying with, the laws, regulations,
21 orders, or interpretations, in effect in any State, ex-
22 cept to the extent that such statute, regulation,
23 order, or interpretation is inconsistent with the pro-
24 visions of this title and then only to the extent of the
25 inconsistency.

1 (2) GREATER PROTECTION UNDER STATE
2 LAW.—For the purposes of this subsection, a stat-
3 ute, regulation, order, or interpretation in effect in
4 any State is not inconsistent with the provisions of
5 this title if the protection such statute, regulation,
6 order, or interpretation affords consumers is greater
7 than the protection provided under this title. A de-
8 termination regarding whether a statute, regulation,
9 order, or interpretation in effect in any State is in-
10 consistent with the provisions of this title may be
11 made by the Agency on its own motion or in re-
12 sponse to a nonfrivolous petition initiated by any in-
13 terested person.

14 (b) RELATION TO OTHER PROVISIONS OF ENUMER-
15 ATED CONSUMER LAWS THAT RELATE TO STATE LAW.—
16 No provision of this title, except as provided in section
17 4803, shall be construed as modifying, limiting, or super-
18 seding the operation of any provision of an enumerated
19 consumer law that relates to the application of a law in
20 effect in any State with respect to such Federal law.

21 **SEC. 4402. PRESERVATION OF ENFORCEMENT POWERS OF**
22 **STATES.**

23 (a) IN GENERAL.—

24 (1) ACTION BY STATE.—Any State attorney
25 general may bring a civil action in the name of such

1 State, as *parens patriae* on behalf of natural persons
2 residing in such State, in any district court of the
3 United States or State court having jurisdiction of
4 the defendant, to secure monetary or equitable relief
5 for violation of any provisions of this title or regula-
6 tions issued thereunder.

7 (2) RULE OF CONSTRUCTION.—No provision of
8 this title shall be construed as modifying, limiting,
9 or superseding the operation of any provision of an
10 enumerated consumer law that relates to the author-
11 ity of a State attorney general or State regulator to
12 enforce such Federal law.

13 (b) CONSULTATION REQUIRED.—

14 (1) NOTICE.—

15 (A) IN GENERAL.—Before initiating any
16 action in a court or other administrative or reg-
17 ulatory proceeding against any covered person
18 to enforce any provision of this title, including
19 any regulation prescribed by the Director under
20 this title, a State attorney general or State reg-
21 ulator shall timely provide a copy of the com-
22 plete complaint to be filed and written notice
23 describing such action or proceeding to the
24 Agency, or the Agency’s designee.

1 (B) EMERGENCY ACTION.—If prior notice
2 is not practicable, the State attorney general or
3 State regulator shall provide a copy of the com-
4 plete complaint and the notice to the Agency
5 immediately upon instituting the action or pro-
6 ceeding.

7 (C) CONTENTS OF NOTICE.—The notifica-
8 tion required under this section shall, at a min-
9 imum, describe—

10 (i) the identity of the parties;

11 (ii) the alleged facts underlying the
12 proceeding; and

13 (iii) whether there may be a need to
14 coordinate the prosecution of the pro-
15 ceeding so as not to interfere with any ac-
16 tion, including any rulemaking, undertaken
17 by the Director or Agency or another Fed-
18 eral agency.

19 (2) AGENCY RESPONSE.—In any action de-
20 scribed in paragraph (1), the Agency may—

21 (A) intervene in the action as a party;

22 (B) upon intervening—

23 (i) remove the action to the appro-
24 priate United States district court, if the

1 action was not originally brought there;
2 and

3 (ii) be heard on all matters arising in
4 the action; and

5 (C) appeal any order or judgment to the
6 same extent as any other party in the pro-
7 ceeding may.

8 (c) REGULATIONS.—The Director shall prescribe reg-
9 ulations to implement the requirements of this section
10 and, from time to time, provide guidance in order to fur-
11 ther coordinate actions with the State attorneys general
12 and other regulators.

13 (d) PRESERVATION OF STATE AUTHORITY.—

14 (1) STATE CLAIMS.—No provision of this sec-
15 tion shall be construed as limiting the authority of
16 a State attorney general or State regulator to bring
17 an action or other regulatory proceeding arising sole-
18 ly under the law of that 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. 4403. PRESERVATION OF EXISTING CONTRACTS.**

11 This title, and regulations, orders, guidance, and in-
12 terpretations prescribed, issued, and established by the
13 Agency, shall not be construed to alter or affect the appli-
14 cability of any regulation, order, guidance, or interpreta-
15 tion prescribed, issued, and established by the Comptroller
16 of the Currency or the Director of the Office of Thrift
17 Supervision regarding the applicability of State law under
18 Federal banking law to any contract entered into on or
19 before the date of the enactment of this title, by national
20 banks, Federal savings associations, or subsidiaries there-
21 of that are regulated and supervised by the Comptroller
22 of the Currency or the Director of the Office of Thrift
23 Supervision, respectively.

1 **SEC. 4404. 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 1 seq.) is amended by inserting after section 5136B the
7 following 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 regulates the man-
24 ner, content, or terms and conditions of any finan-
25 cial transaction (as may be authorized for national

1 banks to engage in), or any account related thereto,
2 with respect to a consumer.

3 “(3) OTHER DEFINITIONS.—The terms ‘affil-
4 iate’, ‘subsidiary’, ‘includes’, and ‘including’ have the
5 same meaning as in section 3 of the Federal Deposit
6 Insurance Act.

7 “(b) PREEMPTION STANDARD.—

8 “(1) IN GENERAL.—National banks shall gen-
9 erally comply with State laws. State laws are pre-
10 empted only if—

11 “(A) application of a state law would have
12 a discriminatory effect on national banks in
13 comparison with the effect of the law on a bank
14 chartered by that State;

15 “(B) the Comptroller of the Currency de-
16 termines by regulation or order on a case-by-
17 case basis that a State law prevents or signifi-
18 cantly interferes with the ability of an insured
19 depository institution chartered as national
20 bank to engage in the business of banking; or

21 “(C) the State law is preempted by Fed-
22 eral law other than this Act.

23 “(2) SAVINGS CLAUSE.—This Act does not pre-
24 empt or alter the applicability of any State law to
25 any national bank subsidiary, affiliate, or other enti-

1 ty that is not an insured depository institution char-
2 tered as a national bank.

3 “(3) RULE OF CONSTRUCTION.—This Act does
4 not occupy the field in any area of State law and a
5 court shall review any claim that a State law is pre-
6 empted by this Act as a matter of law and without
7 deference to any agency claim that a State law is
8 preempted under this Act.

9 “(4) REVIEW OF PREEMPTION DECISIONS.—A
10 court shall review any claim that a State law is pre-
11 empted by this Act as a matter of law and without
12 deference to any agency claim that a state law is
13 preempted under this Act. Nothing in this sub-
14 section shall affect the deference that a court affords
15 to the Comptroller of the Currency regarding the
16 meaning or interpretation of the National Bank Act
17 or other Federal laws.

18 “(c) SUBSTANTIAL EVIDENCE.—No regulation of the
19 Comptroller of the Currency prescribed under subsection
20 (b)(1)(B), shall be interpreted or applied so as to invali-
21 date, or otherwise declare inapplicable to a national bank,
22 the provision of the State consumer financial law unless
23 substantial evidence, made on the record of the pro-
24 ceeding, supports the specific finding that the provision
25 prevents or significantly interferes with the national

1 bank’s exercise of a power explicitly granted by the Con-
2 gress.

3 “(d) OTHER FEDERAL LAWS.—Notwithstanding any
4 other provision of law, the Comptroller of the Currency
5 may not prescribe regulation pursuant to subsection
6 (b)(1)(B) until the Comptroller of the Currency, after con-
7 sultation with the Consumer Financial Protection Agency,
8 makes a finding, in writing, that a Federal law provides
9 a substantive standard, applicable to a national bank,
10 which regulates the particular conduct, activity, or author-
11 ity that is subject to such provision of the State consumer
12 financial law.

13 “(e) PERIODIC REVIEW OF PREEMPTION DETER-
14 MINATIONS.—The Comptroller of the Currency shall peri-
15 odically conduct a review, through notice and public com-
16 ment, of each determination that a provision of Federal
17 law preempts a State consumer financial law. The agency
18 shall conduct such review within the 5-year period after
19 prescribing or otherwise issuing such determination, and
20 at least once during each 5-year period thereafter. After
21 conducting the review of, and inspecting the comments
22 made on, the determination, the agency shall timely pro-
23 pose to continue, amend or rescind it, as may be appro-
24 priate, in accordance with the procedures set forth in sub-

1 sections (a) and (b) of section 5244 (12 U.S.C. 43(a)–
2 (b)).

3 “(f) APPLICATION OF STATE CONSUMER FINANCIAL
4 LAW TO SUBSIDIARIES AND AFFILIATES.—Notwith-
5 standing any provision of this title, a State consumer fi-
6 nancial law shall apply to a subsidiary or affiliate of a
7 national bank to the same extent that the State consumer
8 financial law applies to any person, corporation, or other
9 entity subject to such State law.”.

10 (b) CLERICAL AMENDMENT.—The table of sections
11 for chapter one of title LXII of the Revised Statutes of
12 the United States is amended by inserting after the item
13 relating to section 5136B the following new item:

“5136C. State law preemption standards for national banks and subsidiaries
clarified.”.

14 **SEC. 4405. VISITORIAL STANDARDS.**

15 Section 5136C of the Revised Statutes of the United
16 States (as added by section 4404) is amended by adding
17 at the end the following new subsections:

18 “(g) VISITORIAL POWERS.—

19 “(1) RULE OF CONSTRUCTION.—No provision
20 of this title which relates to visitorial powers or oth-
21 erwise limits or restricts the supervisory, examina-
22 tion, or regulatory authority to which any national
23 bank is subject shall be construed as limiting or re-
24 stricting the authority of any attorney general (or

1 other chief law enforcement officer) of any State to
2 bring any action in any court of appropriate jurisdic-
3 tion—

4 “(A) to require a national bank to produce
5 records relative to the investigation of violations
6 of State consumer law, or Federal consumer
7 laws;

8 “(B) to enforce any applicable Federal or
9 State law, as authorized by such law; or

10 “(C) on behalf of residents of such State,
11 to enforce any applicable provision of any Fed-
12 eral or State law against a national bank, as
13 authorized by such law, or to seek relief and re-
14 cover damages for such residents from any vio-
15 lation of any such law by any national bank.

16 “(2) CONSULTATION.—The attorney general (or
17 other chief law enforcement officer) of any State
18 shall consult with the head of the agency responsible
19 for chartering and regulating national banks before
20 acting under paragraph (1).

21 “(h) ENFORCEMENT ACTIONS.—The ability of the
22 head of the agency responsible for chartering and regu-
23 lating national banks to bring an enforcement action
24 under this title or section 5 of the Federal Trade Commis-
25 sion Act shall not be construed as precluding private par-

1 ties from enforcing rights granted under Federal or State
2 law in the courts.”.

3 **SEC. 4406. CLARIFICATION OF LAW APPLICABLE TO NON-**
4 **DEPOSITORY INSTITUTION SUBSIDIARIES.**

5 Section 5136C of the Revised Statutes of the United
6 States is amended by inserting after subsection (h) (as
7 added by section 4405) the following new subsection:

8 “(i) CLARIFICATION OF LAW APPLICABLE TO NON-
9 DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILI-
10 ATES OF NATIONAL BANKS.—

11 “(1) DEFINITIONS.—For purposes of this sec-
12 tion, the following definitions shall apply:

13 “(A) DEPOSITORY INSTITUTION, SUB-
14 SIDIARY, AFFILIATE.—The terms ‘depository in-
15 stitution’, ‘subsidiary’, and ‘affiliate’ have the
16 same meanings as in section 3 of the Federal
17 Deposit Insurance Act.

18 “(B) NONDEPOSITORY INSTITUTION.—The
19 term ‘nondepository institution’ means any enti-
20 ty that is not a depository institution.

21 “(2) IN GENERAL.—No provision of this title
22 shall be construed as annulling, altering, or affecting
23 the applicability of State law to any nondepository
24 institution, subsidiary, other affiliate, or agent of a
25 national bank.”.

1 **SEC. 4407. STATE LAW PREEMPTION STANDARDS FOR FED-**
2 **ERAL SAVINGS ASSOCIATIONS AND SUBSIDI-**
3 **ARIES CLARIFIED.**

4 (a) IN GENERAL.—The Home Owners' Loan Act (12
5 U.S.C. 1461 et seq.) is amended by inserting after section
6 5 the following new section:

7 **“SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FED-**
8 **ERAL SAVINGS ASSOCIATIONS CLARIFIED.**

9 “(a) STATE CONSUMER FINANCIAL LAW DE-
10 FINED.—For purposes of this section, the term ‘State con-
11 sumer financial law’ means a State law that does not di-
12 rectly or indirectly discriminate against Federal savings
13 associations and that regulates the manner, content, or
14 terms and conditions of any financial transaction (as may
15 be authorized for Federal savings associations to engage
16 in), or any account related thereto, with respect to a con-
17 sumer.

18 “(b) PREEMPTION STANDARD.—

19 “(1) IN GENERAL.—Federal savings associa-
20 tions shall generally comply with State laws. State
21 laws are preempted only if—

22 “(A) application of a state law would have
23 a discriminatory effect on Federal savings asso-
24 ciations in comparison with the effect of the law
25 on a bank chartered by that State;

1 “(B) the Director of the Office of Thrift
2 Supervision determines by regulation or order
3 on a case-by-case basis that a State law pre-
4 vents or significantly interferes with the ability
5 of an insured depository institution chartered as
6 a Federal savings associations to engage in the
7 business of banking; or

8 “(C) the State law is preempted by Fed-
9 eral law other than this Act.

10 “(2) SAVINGS CLAUSE.—This Act does not pre-
11 empt or alter the applicability of any State law to
12 any Federal savings associations subsidiary, affiliate,
13 or other entity that is not an insured depository in-
14 stitution chartered as a national bank.

15 “(3) RULE OF CONSTRUCTION.—This Act does
16 not occupy the field in any area of State law and a
17 court shall review any claim that a State law is pre-
18 empted by this Act as a matter of law and without
19 deference to any agency claim that a State law is
20 preempted under this Act.

21 “(4) REVIEW OF PREEMPTION DECISIONS.—A
22 court shall review any claim that a State law is pre-
23 empted by this Act as a matter of law and without
24 deference to any agency claim that a state law is
25 preempted under this Act. Nothing in this sub-

1 section shall affect the deference that a court affords
2 to the Director of the Office of Thrift Supervision
3 regarding the meaning or interpretation of the Na-
4 tional Bank Act or other Federal laws.

5 “(c) OTHER FEDERAL LAW.—Notwithstanding any
6 other provision of law, the Director of the Office of Thrift
7 Supervision may not prescribe any regulation pursuant to
8 subsection (b)(1)(B) until such Director, after consulta-
9 tion with the Consumer Financial Protection Agency,
10 makes a finding, in writing, that a Federal law provides
11 a substantive standard, applicable to a Federal savings as-
12 sociation, which regulates the particular conduct, activity,
13 or authority that is subject to such provision of the State
14 consumer financial law.

15 “(d) SUBSTANTIAL EVIDENCE.—No regulation pre-
16 scribed by the Director of the Office of Thrift Supervision
17 issued under subsection (b)(1)(B) shall be interpreted or
18 applied so as to invalidate, or otherwise declare inappli-
19 cable to a Federal savings association, the provision of the
20 State consumer financial law unless substantial evidence,
21 made on the record of the proceeding, supports the specific
22 finding that the provision prevents or significantly inter-
23 feres with the Federal savings association’s exercise of a
24 power explicitly granted by the Congress.

1 “(e) PERIODIC REVIEW OF PREEMPTION DETER-
2 MINATIONS.—The Director of the Office of Thrift Super-
3 vision shall periodically conduct a review, through notice
4 and public comment, of each determination that a provi-
5 sion of Federal law preempts a State consumer financial
6 law. The agency shall conduct such review within the 5-
7 year period after prescribing or otherwise issuing such de-
8 termination, and at least once during each 5-year period
9 thereafter. After conducting the review of, and inspecting
10 the comments made on, the determination, the agency
11 shall timely propose to continue, amend or rescind it, as
12 may be appropriate, in accordance with the procedures set
13 forth in subsections (a) and (b) of section 5244 of the
14 Revised Statutes of the United States (12 U.S.C. 43(a)-
15 (b)).

16 “(f) APPLICATION OF STATE CONSUMER FINANCIAL
17 LAW TO SUBSIDIARIES AND AFFILIATES.—Notwith-
18 standing any provision of this Act, a State consumer fi-
19 nancial law shall apply to a subsidiary or affiliate of a
20 Federal savings association to the same extent that the
21 State consumer financial law applies to any person, cor-
22 poration, or other entity subject to such State law and
23 consistent with Federal law.”.

24 (b) CLERICAL AMENDMENT.—The table of sections
25 for the Home Owners’ Loan Act (12 U.S.C. 1461 et seq.)

1 is amended by striking the item relating to section 6 and
2 inserting the following new item:

“Sec. 6. State law preemption standards for Federal savings associations clarified.”.

3 **SEC. 4408. VISITORIAL STANDARDS.**

4 Section 6 of the Home Owners’ Loan Act (as added
5 by section 4407 of this title) is amended by adding at the
6 end the following new subsections:

7 “(g) VISITORIAL POWERS.—

8 “(1) IN GENERAL.—No provision of this Act
9 shall be construed as limiting or restricting the au-
10 thority of any attorney general (or other chief law
11 enforcement officer) of any State to bring any action
12 in any court of appropriate jurisdiction—

13 “(A) to require a Federal savings associa-
14 tion to produce records relative to the investiga-
15 tion of violations of State consumer law, or
16 Federal consumer laws;

17 “(B) to enforce any applicable Federal or
18 State law, as authorized by such law; or

19 “(C) on behalf of residents of such State,
20 to enforce any applicable provision of any Fed-
21 eral or State law against a Federal savings as-
22 sociation, as authorized by such law, or to seek
23 relief and recover damages for such residents

1 from any violation of any such law by any Fed-
2 eral savings association.

3 “(2) CONSULTATION.—The attorney general (or
4 other chief law enforcement officer) of any State
5 shall consult with the Director or any successor
6 agency before acting under paragraph (1).

7 “(h) ENFORCEMENT ACTIONS.—The ability of the
8 Director or any successor officer or agency to bring an
9 enforcement action under this Act or section 5 of the Fed-
10 eral Trade Commission Act shall not be construed as pre-
11 cluding private parties from enforcing rights granted
12 under Federal or State law in the courts.”.

13 **SEC. 4409. CLARIFICATION OF LAW APPLICABLE TO NON-**
14 **DEPOSITORY INSTITUTION SUBSIDIARIES.**

15 Section 6 of the Home Owners’ Loan Act is amended
16 by adding after subsection (h) (as added by section 4408)
17 the following new subsection:

18 “(i) CLARIFICATION OF LAW APPLICABLE TO NON-
19 DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILI-
20 ATES OF FEDERAL SAVINGS ASSOCIATIONS.—

21 “(1) DEFINITIONS.—For purposes of this sec-
22 tion, the following definitions shall apply:

23 “(A) DEPOSITORY INSTITUTION, SUB-
24 SIDIARY, AFFILIATE.—The terms ‘depository in-
25 stitution’, ‘subsidiary’, and ‘affiliate’ have the

1 same meanings as in section 3 of the Federal
2 Deposit Insurance Act.

3 “(B) NONDEPOSITORY INSTITUTION.—The
4 term ‘nondepository institution’ means any enti-
5 ty that is not a depository institution.

6 “(2) IN GENERAL.—No provision of this title
7 shall be construed as preempting the applicability of
8 State law to any nondepository institution, sub-
9 sidiary, other affiliate, or agent of a Federal savings
10 association.”.

11 **SEC. 4410. EFFECTIVE DATE.**

12 This subtitle shall take effect on the designated
13 transfer date.

14 **Subtitle E—Enforcement Powers**

15 **SEC. 4501. DEFINITIONS.**

16 For purposes of this subtitle, the following definitions
17 shall apply:

18 (1) CIVIL INVESTIGATIVE DEMAND AND DE-
19 MAND.—The terms “civil investigative demand” and
20 “demand” mean any demand issued by the Agency.

21 (2) AGENCY INVESTIGATION.—The term
22 “Agency investigation” means any inquiry conducted
23 by an Agency investigator for the purpose of
24 ascertaining whether any person is or has been en-
25 gaged in any conduct that violates this title, any

1 enumerated consumer law, or any regulation pre-
2 scribed or order issued by the Director under this
3 title or under the authorities transferred under sub-
4 titles F and H.

5 (3) AGENCY INVESTIGATOR.—The term “Agen-
6 cy investigator” means any attorney or investigator
7 employed by the Agency who is charged with the
8 duty of enforcing or carrying into effect any provi-
9 sions of this title, any enumerated consumer law, the
10 authorities transferred under subtitles F and H, or
11 any regulation prescribed or order issued under this
12 title or pursuant to any such authority by the Direc-
13 tor.

14 (4) CUSTODIAN.—The term “custodian” means
15 the custodian or any deputy custodian designated by
16 the Agency.

17 (5) DOCUMENTARY MATERIAL.—The term
18 “documentary material” includes the original or any
19 copy of any book, document, record, report, memo-
20 randum, paper, communication, tabulation, chart,
21 log, electronic file, or other data or data compila-
22 tions stored in any medium.

23 (6) VIOLATION.—The term “violation” means
24 any act or omission that, if proved, would constitute
25 a violation of any provision of this title, any enumer-

1 ated consumer law, any law for which authorities
 2 were transferred under subtitles F and H, or of any
 3 regulation prescribed or order issued by the Director
 4 under this title or pursuant to any such authority.

5 **SEC. 4502. INVESTIGATIONS AND ADMINISTRATIVE DIS-**
 6 **COVERY.**

7 (a) JOINT INVESTIGATIONS.—

8 (1) IN GENERAL.—The Agency or, where ap-
 9 propriate, an Agency representative may engage in
 10 joint investigations and requests for information.

11 (2) FAIR LENDING.—The authority under para-
 12 graph (1) includes matters relating to fair lending,
 13 and where appropriate, joint investigations and re-
 14 quests for information with the Secretary of Hous-
 15 ing and Urban Development, the Attorney General,
 16 or both.”

17 (b) SUBPOENAS.—

18 (1) IN GENERAL.—The Agency or an Agency
 19 investigator may issue subpoenas for the attendance
 20 and testimony of witnesses and the production of
 21 relevant papers, books, documents, or other material
 22 in connection with hearings under this title.

23 (2) FAILURE TO OBEY.—In case of contumacy
 24 or refusal to obey a subpoena issued pursuant to
 25 this paragraph and served upon any person, the dis-

1 district court of the United States for any district in
2 which such person is found, resides, or transacts
3 business, upon application by the Agency or an
4 Agency investigator and after notice to such person,
5 shall have jurisdiction to issue an order requiring
6 such person to appear and give testimony or to ap-
7 pear and produce documents or other material, or
8 both.

9 (3) CONTEMPT.—Any failure to obey an order
10 of the court under this subsection may be punished
11 by the court as a contempt thereof.

12 (c) DEMANDS.—

13 (1) IN GENERAL.—Whenever the Agency has
14 reason to believe that any person may be in posses-
15 sion, custody, or control of any documentary mate-
16 rial or tangible things, or may have any information,
17 relevant to a violation, the Agency may, before the
18 institution of any proceedings under this title or
19 under any enumerated consumer law or pursuant to
20 the authorities transferred under subtitles F and H,
21 issue in writing, and cause to be served upon such
22 person, a civil investigative demand requiring such
23 person to—

1 (A) produce such documentary material for
2 inspection and copying or reproduction in the
3 form or medium requested by the Agency;

4 (B) submit such tangible things;

5 (C) file written reports or answers to ques-
6 tions;

7 (D) give oral testimony concerning docu-
8 mentary material or other information; or

9 (E) furnish any combination of such mate-
10 rial, answers, or testimony.

11 (2) REQUIREMENTS.—Each civil investigative
12 demand shall state the nature of the conduct consti-
13 tuting the alleged violation which is under investiga-
14 tion and the provision of law applicable to such vio-
15 lation.

16 (3) PRODUCTION OF DOCUMENTS.—Each civil
17 investigative demand for the production of documen-
18 tary material shall—

19 (A) describe each class of documentary
20 material to be produced under the demand with
21 such definiteness and certainty as to permit
22 such material to be fairly identified;

23 (B) prescribe a return date or dates which
24 will provide a reasonable period of time within
25 which the material so demanded may be assem-

1 bled and made available for inspection and
2 copying or reproduction; and

3 (C) identify the custodian to whom such
4 material shall be made available.

5 (4) PRODUCTION OF THINGS.—Each civil inves-
6 tigative demand for the submission of tangible
7 things shall—

8 (A) describe each class of tangible things
9 to be submitted under the demand with such
10 definiteness and certainty as to permit such
11 things to be fairly identified;

12 (B) prescribe a return date or dates which
13 will provide a reasonable period of time within
14 which the things so demanded may be assem-
15 bled and submitted; and

16 (C) identify the custodian to whom such
17 things shall be submitted.

18 (5) DEMAND FOR WRITTEN REPORTS OR AN-
19 SWERS.—Each civil investigative demand for written
20 reports or answers to questions shall—

21 (A) propound with definiteness and cer-
22 tainty the reports to be produced or the ques-
23 tions to be answered;

1 (B) prescribe a date or dates at which time
2 written reports or answers to questions shall be
3 submitted; and

4 (C) identify the custodian to whom such
5 reports or answers shall be submitted.

6 (6) ORAL TESTIMONY.—Each civil investigative
7 demand for the giving of oral testimony shall—

8 (A) prescribe a date, time, and place at
9 which oral testimony shall be commenced; and

10 (B) identify a Agency investigator who
11 shall conduct the investigation and the custo-
12 dian to whom the transcript of such investiga-
13 tion shall be submitted.

14 (7) SERVICE.—

15 (A) Any civil investigative demand may be
16 served by any Agency investigator at any place
17 within the territorial jurisdiction of any court of
18 the United States.

19 (B) Any such demand or any enforcement
20 petition filed under this section may be served
21 upon any person who is not found within the
22 territorial jurisdiction of any court of the
23 United States, in such manner as the Federal
24 Rules of Civil Procedure prescribe for service in
25 a foreign nation.

1 (C) To the extent that the courts of the
2 United States have authority to assert jurisdic-
3 tion over such person consistent with due proc-
4 ess, the United States District Court for the
5 District of Columbia shall have the same juris-
6 diction to take any action respecting compliance
7 with this section by such person that such dis-
8 trict court would have if such person were per-
9 sonally within the jurisdiction of such district
10 court.

11 (8) METHOD OF SERVICE.—Service of any civil
12 investigative demand or any enforcement petition
13 filed under this section may be made upon a person,
14 including any legal entity, by—

15 (A) delivering a duly executed copy of such
16 demand or petition to the individual or to any
17 partner, executive officer, managing agent, or
18 general agent of such person, or to any agent
19 of such person authorized by appointment or by
20 law to receive service of process on behalf of
21 such person;

22 (B) delivering a duly executed copy of such
23 demand or petition to the principal office or
24 place of business of the person to be served; or

1 (C) depositing a duly executed copy in the
2 United States mails, by registered or certified
3 mail, return receipt requested, duly addressed
4 to such person at its principal office or place of
5 business.

6 (9) PROOF OF SERVICE.—

7 (A) A verified return by the individual
8 serving any civil investigative demand or any
9 enforcement petition filed under this section
10 setting forth the manner of such service shall
11 be proof of such service.

12 (B) In the case of service by registered or
13 certified mail, such return shall be accompanied
14 by the return post office receipt of delivery of
15 such demand or enforcement petition.

16 (10) PRODUCTION OF DOCUMENTARY MATE-
17 RIAL.—The production of documentary material in
18 response to a civil investigative demand shall be
19 made under a sworn certificate, in such form as the
20 demand designates, by the person, if a natural per-
21 son, to whom the demand is directed or, if not a
22 natural person, by any person having knowledge of
23 the facts and circumstances relating to such produc-
24 tion, to the effect that all of the documentary mate-
25 rial required by the demand and in the possession,

1 custody, or control of the person to whom the de-
2 mand is directed has been produced and made avail-
3 able to the custodian.

4 (11) SUBMISSION OF TANGIBLE THINGS.—The
5 submission of tangible things in response to a civil
6 investigative demand shall be made under a sworn
7 certificate, in such form as the demand designates,
8 by the person to whom the demand is directed or,
9 if not a natural person, by any person having knowl-
10 edge of the facts and circumstances relating to such
11 production, to the effect that all of the tangible
12 things required by the demand and in the posses-
13 sion, custody, or control of the person to whom the
14 demand is directed have been submitted to the cus-
15 todian.

16 (12) SEPARATE ANSWERS.—Each reporting re-
17 quirement or question in a civil investigative demand
18 shall be answered separately and fully in writing
19 under oath, unless it is objected to, in which event
20 the reasons for the objection shall be stated in lieu
21 of an answer, and it shall be submitted under a
22 sworn certificate, in such form as the demand des-
23 ignates, by the person, if a natural person, to whom
24 the demand is directed or, if not a natural person,
25 by any person responsible for answering each report-

1 ing requirement or question, to the effect that all in-
2 formation required by the demand and in the posses-
3 sion, custody, control, or knowledge of the person to
4 whom the demand is directed has been submitted.

5 (13) TESTIMONY.—

6 (A) PROCEDURE.—

7 (i) OATH AND RECORDATION.—Any
8 Agency investigator before whom oral testi-
9 mony is to be taken shall put the witness
10 on oath or affirmation and shall person-
11 ally, or by any individual acting under the
12 direction of and in the presence of the in-
13 vestigator, record the testimony of the wit-
14 ness.

15 (ii) TRANSCRIPTIONS.—The testimony
16 shall be taken stenographically and tran-
17 scribed.

18 (iii) COPY TO CUSTODIAN.—After the
19 testimony is fully transcribed, the Agency
20 investigator before whom the testimony is
21 taken shall promptly transmit a copy of
22 the transcript of the testimony to the cus-
23 todian.

24 (B) PARTIES PRESENT.—Any Agency in-
25 vestigator before whom oral testimony is to be

1 taken shall exclude from the place where the
2 testimony is to be taken all other persons ex-
3 cept the person giving the testimony, the attor-
4 ney for such person, the officer before whom
5 the testimony is to be taken, an investigator or
6 representative of an agency with which the
7 Agency is engaged in a joint investigation, and
8 any stenographer taking such testimony.

9 (C) LOCATION.—The oral testimony of any
10 person taken pursuant to a civil investigative
11 demand shall be taken in the judicial district of
12 the United States in which such person resides,
13 is found, or transacts business, or in such other
14 place as may be agreed upon by the Agency in-
15 vestigator before whom the oral testimony of
16 such person is to be taken and such person.

17 (D) ATTORNEY REPRESENTATION.—

18 (i) IN GENERAL.—Any person com-
19 pelled to appear under a civil investigative
20 demand for oral testimony pursuant to this
21 section may be accompanied, represented,
22 and advised by an attorney.

23 (ii) CONFIDENTIAL ADVICE.—The at-
24 torney may advise the person summoned,
25 in confidence, either upon the request of

1 such person or upon the initiative of the
2 attorney, with respect to any question
3 asked of such person.

4 (iii) OBJECTIONS.—The person sum-
5 moned or the attorney may object on the
6 record to any question, in whole or in part,
7 and shall briefly state for the record the
8 reason for the objection.

9 (iv) REFUSAL TO ANSWER.—An objec-
10 tion may properly be made, received, and
11 entered upon the record when it is claimed
12 that the person summoned is entitled to
13 refuse to answer the question on grounds
14 of any constitutional or other legal right or
15 privilege, including the privilege against
16 self-incrimination, but such person shall
17 not otherwise object to or refuse to answer
18 any question, and shall not otherwise inter-
19 rupt the oral examination, directly or
20 through such person's attorney.

21 (v) PETITION FOR ORDER.—If such
22 person refuses to answer any question, the
23 Agency may petition the district court of
24 the United States pursuant to this section

1 for an order compelling such person to an-
2 swer such question.

3 (vi) BASIS FOR COMPELLING TESTI-
4 MONY.—If such person refuses to answer
5 any question on grounds of the privilege
6 against self-incrimination, the testimony of
7 such person may be compelled in accord-
8 ance with the provisions of section 6004 of
9 title 18, United States Code.

10 (E) TRANSCRIPTS.—

11 (i) RIGHT TO EXAMINE.—After the
12 testimony of any witness is fully tran-
13 scribed, the Agency investigator shall af-
14 ford the witness (who may be accompanied
15 by an attorney) a reasonable opportunity
16 to examine the transcript.

17 (ii) READING THE TRANSCRIPT.—The
18 transcript shall be read to or by the wit-
19 ness, unless such examination and reading
20 are waived by the witness.

21 (iii) REQUEST FOR CHANGES.—Any
22 changes in form or substance which the
23 witness desires to make shall be entered
24 and identified upon the transcript by the
25 Agency investigator with a statement of

1 the reasons given by the witness for mak-
2 ing such changes.

3 (iv) SIGNATURE.—The transcript
4 shall be signed by the witness, unless the
5 witness in writing waives the signing, is ill,
6 cannot be found, or refuses to sign.

7 (v) AGENCY ACTION IN LIEU OF SIG-
8 NATURE.—If the transcript is not signed
9 by the witness during the 30-day period
10 following the date upon which the witness
11 is first afforded a reasonable opportunity
12 to examine it, the Agency investigator shall
13 sign the transcript and state on the record
14 the fact of the waiver, illness, absence of
15 the witness, or the refusal to sign, together
16 with any reasons given for the failure to
17 sign.

18 (F) CERTIFICATION BY INVESTIGATOR.—
19 The Agency investigator shall certify on the
20 transcript that the witness was duly sworn by
21 the investigator and that the transcript is a
22 true record of the testimony given by the wit-
23 ness, and the Agency investigator shall prompt-
24 ly deliver the transcript or send it by registered
25 or certified mail to the custodian.

1 (G) COPY OF TRANSCRIPT.—The Agency
2 investigator shall furnish a copy of the tran-
3 script (upon payment of reasonable charges for
4 the transcript) to the witness only, except that
5 the Agency may for good cause limit such wit-
6 ness to inspection of the official transcript of
7 the testimony of such witness.

8 (H) WITNESS FEES.—Any witness appear-
9 ing for the taking of oral testimony pursuant to
10 a civil investigative demand shall be entitled to
11 the same fees and mileage which are paid to
12 witnesses in the district courts of the United
13 States.

14 (d) CONFIDENTIAL TREATMENT OF DEMAND MATE-
15 RIAL.—

16 (1) IN GENERAL.—Materials received as a re-
17 sult of a civil investigative demand shall be subject
18 to requirements and procedures regarding confiden-
19 tiality, in accordance with regulations established by
20 the Director.

21 (2) DISCLOSURE TO CONGRESS.—No regulation
22 established by the Director regarding the confiden-
23 tiality of materials submitted to, or otherwise ob-
24 tained by, the Agency shall be intended to prevent
25 disclosure to either House of the Congress or to an

1 appropriate committee of the Congress, except that
2 the Director may prescribe regulations allowing prior
3 notice to any party that owns or otherwise provided
4 the material to the Agency and has designated such
5 material as confidential.

6 (e) PETITION FOR ENFORCEMENT.—

7 (1) IN GENERAL.—Whenever any person fails
8 to comply with any civil investigative demand duly
9 served upon such person under this section, or when-
10 ever satisfactory copying or reproduction of material
11 requested pursuant to the demand cannot be accom-
12 plished and such person refuses to surrender such
13 material, the Agency, through such officers or attor-
14 neys as the Director may designate, may file, in the
15 district court of the United States for any judicial
16 district in which such person resides, is found, or
17 transacts business, and serve upon such person, a
18 petition for an order of such court for the enforce-
19 ment of this section.

20 (2) SERVICE OF PROCESS.—All process of any
21 court to which application may be made as provided
22 in this subsection may be served in any judicial dis-
23 trict.

24 (f) PETITION FOR ORDER MODIFYING OR SETTING
25 ASIDE DEMAND.—

1 (1) IN GENERAL.—Not later than 20 days after
2 the service of any civil investigative demand upon
3 any person under subsection (b), or at any time be-
4 fore the return date specified in the demand, which-
5 ever period is shorter, or within such period exceed-
6 ing 20 days after service or in excess of such return
7 date as may be prescribed in writing, subsequent to
8 service, by any Agency investigator named in the de-
9 mand, such person may file with the Agency a peti-
10 tion for an order by the Agency modifying or setting
11 aside the demand.

12 (2) COMPLIANCE DURING PENDENCY.—The
13 time permitted for compliance with the demand in
14 whole or in part, as deemed proper and ordered by
15 the Agency, shall not run during the pendency of
16 such petition at the Agency, except that such person
17 shall comply with any portions of the demand not
18 sought to be modified or set aside.

19 (3) SPECIFIC GROUNDS.—Such petition shall
20 specify each ground upon which the petitioner relies
21 in seeking such relief, and may be based upon any
22 failure of the demand to comply with the provisions
23 of this section, or upon any constitutional or other
24 legal right or privilege of such person.

1 (g) CUSTODIAL CONTROL.—At any time during
2 which any custodian is in custody or control of any docu-
3 mentary material, tangible things, reports, answers to
4 questions, or transcripts of oral testimony given by any
5 person in compliance with any civil investigative demand,
6 such person may file, in the district court of the United
7 States for the judicial district within which the office of
8 such custodian is situated, and serve upon such custodian,
9 a petition for an order of such court requiring the per-
10 formance by such custodian of any duty imposed upon
11 such custodian by this section or regulation prescribed by
12 the Director.

13 (h) JURISDICTION OF COURT.—

14 (1) IN GENERAL.—Whenever any petition is
15 filed in any district court of the United States under
16 this section, such court shall have jurisdiction to
17 hear and determine the matter so presented, and to
18 enter such order or orders as may be required to
19 carry into effect the provisions of this section.

20 (2) APPEAL.—Any final order so entered shall
21 be subject to appeal pursuant to section 1291 of title
22 28, United States Code.

23 **SEC. 4503. HEARINGS AND ADJUDICATION PROCEEDINGS.**

24 (a) IN GENERAL.—The Agency may conduct hear-
25 ings and adjudication proceedings with respect to any per-

1 son in the manner prescribed by chapter 5 of title 5,
2 United States Code in order to ensure or enforce compli-
3 ance with—

4 (1) the provisions of this title, including any
5 regulations prescribed by the Director under this
6 title; and

7 (2) any other Federal law that the Agency is
8 authorized to enforce, including an enumerated con-
9 sumer law, and any regulations or order prescribed
10 thereunder, unless such Federal law specifically lim-
11 its the Agency from conducting a hearing or adju-
12 dication proceeding and only to the extent of such
13 limitation.

14 (b) SPECIAL RULES FOR CEASE-AND-DESIST PRO-
15 CEEDINGS.—

16 (1) ISSUANCE.—

17 (A) NOTICE OF CHARGES.—If, in the opin-
18 ion of the Agency, any covered person or service
19 provider is engaging or has engaged in an activ-
20 ity that violates a law, regulation, or any condi-
21 tion imposed in writing on the person by the
22 Agency, the Agency may issue and serve upon
23 the person a notice of charges with respect to
24 such violation.

1 (B) CONTENTS OF NOTICE.—The notice
2 shall contain a statement of the facts consti-
3 tuting any alleged violation and shall fix a time
4 and place at which a hearing will be held to de-
5 termine whether an order to cease-and-desist
6 there from should issue against the person.

7 (C) TIME OF HEARING.—A hearing under
8 this subsection shall be fixed for a date not ear-
9 lier than 30 days nor later than 60 days after
10 service of such notice unless an earlier or a
11 later date is set by the Agency at the request
12 of any party so served.

13 (D) NONAPPEARANCE DEEMED TO BE
14 CONSENT TO ORDER.—Unless the party or par-
15 ties so served shall appear at the hearing per-
16 sonally or by a duly authorized representative,
17 they shall be deemed to have consented to the
18 issuance of the cease-and-desist order.

19 (E) ISSUANCE OF ORDER.—In the event of
20 such consent, or if upon the record made at any
21 such hearing, the Agency shall find that any
22 violation specified in the notice of charges has
23 been established, the Agency may issue and
24 serve upon the person an order to cease-and-de-
25 sist from any such violation or practice.

1 (F) INCLUDES REQUIREMENT FOR COR-
2 RECTIVE ACTION.—Such order may, by provi-
3 sions which may be mandatory or otherwise, re-
4 quire the person to cease-and-desist from the
5 same, and, further, to take affirmative action to
6 correct the conditions resulting from any such
7 violation.

8 (2) EFFECTIVENESS OF ORDER.—A cease-and-
9 desist order shall take effect at the end of the 30-
10 day period beginning on the date of the service of
11 such order upon the covered person or service pro-
12 vider concerned (except in the case of a cease-and-
13 desist order issued upon consent, which shall take
14 effect at the time specified therein), and shall re-
15 main effective and enforceable as provided therein,
16 except to such extent as it is stayed, modified, termi-
17 nated, or set aside by action of the Agency or a re-
18 viewing court.

19 (3) DECISION AND APPEAL.—

20 (A) PLACE OF AND PROCEDURES FOR
21 HEARING.—Any hearing provided for in this
22 subsection shall be held in the Federal judicial
23 district or in the territory in which the resi-
24 dence or home office of the person is located
25 unless the person consents to another place,

1 and shall be conducted in accordance with the
2 provisions of chapter 5 of title 5 of the United
3 States Code.

4 (B) TIME LIMIT FOR DECISION.—After
5 such hearing, and within 90 days after the
6 Agency has notified the parties that the case
7 has been submitted to it for final decision, the
8 Agency shall—

9 (i) render its decision (which shall in-
10 clude findings of fact upon which its deci-
11 sion is predicated) and shall issue; and

12 (ii) serve upon each party to the pro-
13 ceeding an order or orders consistent with
14 the provisions of this section. Judicial re-
15 view of any such order shall be exclusively
16 as provided in this subsection.

17 (C) MODIFICATION OF ORDER GEN-
18 ERALLY.—Unless a petition for review is timely
19 filed in a court of appeals of the United States,
20 as hereinafter provided in paragraph (4), and
21 thereafter until the record in the proceeding has
22 been filed as so provided, the Agency may at
23 any time, upon such notice and in such manner
24 as it shall deem proper, modify, terminate, or
25 set aside any such order.

1 (D) MODIFICATION OF ORDER AFTER FIL-
2 ING RECORD ON APPEAL.—Upon such filing of
3 the record, the Agency may modify, terminate,
4 or set aside any such order with permission of
5 the court.

6 (4) APPEAL TO COURT OF APPEALS.—

7 (A) IN GENERAL.—Any party to any pro-
8 ceeding under this subsection may obtain a re-
9 view of any order served pursuant to this sub-
10 section (other than an order issued with the
11 consent of the person concerned) by the filing
12 in the court of appeals of the United States for
13 the circuit in which the principal office of the
14 covered person is located, or in the United
15 States Court of Appeals for the District of Co-
16 lumbia Circuit, within 30 days after the date of
17 service of such order, a written petition praying
18 that the order of the Agency be modified, termi-
19 nated, or set aside.

20 (B) TRANSMITTAL OF COPY TO THE AGEN-
21 CY.—A copy of such petition shall be forthwith
22 transmitted by the clerk of the court to the
23 Agency, and thereupon the Agency shall file in
24 the court the record in the proceeding, as pro-

1 vided in section 2112 of title 28 of the United
2 States Code.

3 (C) JURISDICTION OF COURT.—Upon the
4 filing of a petition under subparagraph (A),
5 such court shall have jurisdiction, which upon
6 the filing of the record shall except as provided
7 in the last sentence of paragraph (3) be exclu-
8 sive, to affirm, modify, terminate, or set aside,
9 in whole or in part, the order of the Agency.

10 (D) SCOPE OF REVIEW.—Review of such
11 proceedings shall be had as provided in chapter
12 7 of title 5 of the United States Code.

13 (E) FINALITY.—The judgment and decree
14 of the court shall be final, except that the same
15 shall be subject to review by the Supreme Court
16 upon certiorari, as provided in section 1254 of
17 title 28 of the United States Code.

18 (5) NO STAY.—The commencement of pro-
19 ceedings for judicial review under paragraph (4)
20 shall not, unless specifically ordered by the court,
21 operate as a stay of any order issued by the Agency.

22 (c) SPECIAL RULES FOR TEMPORARY CEASE-AND-
23 DESIST PROCEEDINGS.—

24 (1) ISSUANCE.—

1 (A) IN GENERAL.—Whenever the Agency
2 determines that the violation specified in the
3 notice of charges served upon a person, includ-
4 ing a service provider, pursuant to subsection
5 (b), or the continuation of such violation, is
6 likely to cause the person to be insolvent or oth-
7 erwise prejudice the interests of consumers be-
8 fore the completion of the proceedings con-
9 ducted pursuant to subsection (b), the Agency
10 may issue a temporary order requiring the per-
11 son to cease-and-desist from any such violation
12 or practice and to take affirmative action to
13 prevent or remedy such insolvency or other con-
14 dition pending completion of such proceedings.

15 (B) OTHER REQUIREMENTS.—Any tem-
16 porary order issued under this paragraph may
17 include any requirement authorized under this
18 subtitle.

19 (C) EFFECT DATE OF ORDER.—Any tem-
20 porary order issued under this paragraph shall
21 take effect upon service upon the person and,
22 unless set aside, limited, or suspended by a
23 court in proceedings authorized by paragraph
24 (2) of this subsection, shall remain effective and
25 enforceable pending the completion of the ad-

1 ministrative proceedings pursuant to such no-
2 tice and until such time as the Agency shall dis-
3 miss the charges specified in such notice, or if
4 a cease-and-desist order is issued against the
5 person, until the effective date of such order.

6 (2) APPEAL.—Within 10 days after the person
7 concerned has been served with a temporary cease-
8 and-desist order, the person may apply to the United
9 States district court for the judicial district in which
10 the home office of the person is located, or the
11 United States District Court for the District of Co-
12 lumbia, for an injunction setting aside, limiting, or
13 suspending the enforcement, operation, or effective-
14 ness of such order pending the completion of the ad-
15 ministrative proceedings pursuant to the notice of
16 charges served upon the person under subsection
17 (b), and such court shall have jurisdiction to issue
18 such injunction.

19 (3) INCOMPLETE OR INACCURATE RECORDS.—

20 (A) TEMPORARY ORDER.—If a notice of
21 charges served under subsection (b) specifies,
22 on the basis of particular facts and cir-
23 cumstances, that a person's books and records
24 are so incomplete or inaccurate that the Agency
25 is unable to determine the financial condition of

1 that person or the details or purpose of any
2 transaction or transactions that may have a
3 material effect on the financial condition of that
4 person, the Agency may issue a temporary
5 order requiring—

6 (i) the cessation of any activity or
7 practice which gave rise, whether in whole
8 or in part, to the incomplete or inaccurate
9 state of the books or records; or

10 (ii) affirmative action to restore such
11 books or records to a complete and accu-
12 rate state, until the completion of the pro-
13 ceedings under subsection (b)(1).

14 (B) EFFECTIVE PERIOD.—Any temporary
15 order issued under subparagraph (A)—

16 (i) shall take effect upon service; and

17 (ii) unless set aside, limited, or sus-
18 pended by a court in proceedings under
19 paragraph (2), shall remain in effect and
20 enforceable until the earlier of—

21 (I) the completion of the pro-
22 ceeding initiated under subsection (b)
23 in connection with the notice of
24 charges; or

1 (II) the date the Agency deter-
2 mines, by examination or otherwise,
3 that the person's books and records
4 are accurate and reflect the financial
5 condition of the person.

6 (d) SPECIAL RULES FOR ENFORCEMENT OF OR-
7 DERS.—

8 (1) IN GENERAL.—The Agency may in its dis-
9 cretion apply to the United States district court
10 within the jurisdiction of which the principal office
11 of the person is located, for the enforcement of any
12 effective and outstanding notice or order issued
13 under this section, and such court shall have juris-
14 diction and power to order and require compliance
15 herewith.

16 (2) EXCEPTION.—Except as otherwise provided
17 in this subsection, no court shall have jurisdiction to
18 affect by injunction or otherwise the issuance or en-
19 forcement of any notice or order or to review, mod-
20 ify, suspend, terminate, or set aside any such notice
21 or order.

22 (e) REGULATIONS.—The Director shall prescribe reg-
23 ulations establishing such procedures as may be necessary
24 to carry out this section.

1 **SEC. 4504. LITIGATION AUTHORITY.**

2 (a) IN GENERAL.—If any person violates a provision
3 of this title, any enumerated consumer law, any law for
4 which authorities were transferred under subtitles F and
5 H, or any regulation prescribed or order issued by the Di-
6 rector under this title or pursuant to any such authority,
7 the Agency may commence a civil action against such per-
8 son to impose a civil penalty and to seek all appropriate
9 legal and equitable relief including a permanent or tem-
10 porary injunction as permitted by law.

11 (b) REPRESENTATION.—The Agency may act in its
12 own name and through its own attorneys in enforcing any
13 provision of this title, regulations under this title, or any
14 other law or regulation, or in any action, suit, or pro-
15 ceeding to which the Agency is a party.

16 (c) COMPROMISE OF ACTIONS.—The Agency may
17 compromise or settle any action if such compromise is ap-
18 proved by the court.

19 (d) NOTICE TO THE ATTORNEY GENERAL.—When
20 commencing a civil action under this title, any enumerated
21 consumer law, any law for which authorities were trans-
22 ferred under subtitles F and H, or any regulation there-
23 under, the Agency shall notify the Attorney General.

24 (e) APPEARANCE BEFORE THE SUPREME COURT.—
25 The Agency may represent itself in its own name before
26 the Supreme Court of the United States, if—

1 (1) the Agency makes a written request to the
2 Attorney General within the 10-day period which be-
3 gins on the date of entry of the judgment which
4 would permit any party to file a petition for writ of
5 certiorari; and

6 (2) the Attorney General concurs with such re-
7 quest or fails to take action within 60 days of the
8 Agency's request.

9 (f) FORUM.—Any civil action brought under this title
10 may be brought in a United States district court or in
11 any court of competent jurisdiction of a state in a district
12 in which the defendant is located or resides or is doing
13 business, and such court shall have jurisdiction to enjoin
14 such person and to require compliance with this title, any
15 enumerated consumer law, any law for which authorities
16 were transferred under subtitles F and H, or any regula-
17 tion prescribed or order issued by the Director under this
18 title or pursuant to any such authority.

19 (g) TIME FOR BRINGING ACTION.—

20 (1) IN GENERAL.—Except as otherwise per-
21 mitted by law or equity, no action may be brought
22 under this title more than 3 years after the date of
23 the discovery of the violation to which an action re-
24 lates.

1 (2) LIMITATIONS UNDER OTHER FEDERAL
2 LAWS.—

3 (A) For purposes of this section, an action
4 arising under this title shall not include claims
5 arising solely under enumerated consumer laws.

6 (B) In any action arising solely under an
7 enumerated consumer law, the Agency may
8 commence, defend, or intervene in the action in
9 accordance with the requirements of that law,
10 as applicable.

11 (C) In any action arising solely under the
12 laws for which authorities were transferred by
13 subtitles F and H, the Agency may commence,
14 defend, or intervene in the action in accordance
15 with the requirements of that law, as applicable.

16 **SEC. 4505. RELIEF AVAILABLE.**

17 (a) ADMINISTRATIVE PROCEEDINGS OR COURT AC-
18 TIONS.—

19 (1) JURISDICTION.—The court (or Agency, as
20 the case may be) in an action or adjudication pro-
21 ceeding brought under this title, any enumerated
22 consumer law, or any law for which authorities were
23 transferred by subtitles F and H, shall have jurisdic-
24 tion to grant any appropriate legal or equitable relief
25 with respect to a violation of this title, any enumer-

1 ated consumer law, and any law for which authori-
2 ties were transferred by subtitles F and H, including
3 a violation of a regulation prescribed or order issued
4 under this title, any enumerated consumer law and
5 any law for which authorities were transferred by
6 subtitles F and H.

7 (2) RELIEF.—Such relief may include—

8 (A) rescission or reformation of contracts;

9 (B) refund of moneys or return of real
10 property;

11 (C) restitution;

12 (D) disgorgement or compensation for un-
13 just enrichment;

14 (E) payment of damages;

15 (F) public notification regarding the viola-
16 tion, including the costs of notification;

17 (G) limits on the activities or functions of
18 the person; and

19 (H) civil money penalties under subsection

20 (c).

21 (3) NO EXEMPLARY OR PUNITIVE DAMAGES.—

22 Nothing in this subsection shall be construed as au-
23 thorizing the imposition of exemplary or punitive
24 damages.

1 (b) RECOVERY OF COSTS.—In any action brought by
2 the Agency, a State attorney general, or a State bank su-
3 pervisor to enforce any provision of this title, any enumer-
4 ated consumer law, any law for which authorities were
5 transferred by subtitles F and H, or any regulation pre-
6 scribed or order issued by the Director under this title
7 or pursuant to any such authority, the Agency, State at-
8 torney general, or State bank supervisor may recover the
9 costs incurred by such Agency, attorney general, or super-
10 visor in connection with prosecuting such action if the
11 Agency, State attorney general, or State bank supervisors
12 (as the case may be) is the prevailing party in the action.

13 (c) CIVIL MONEY PENALTY IN COURT AND ADMINIS-
14 TRATIVE ACTIONS.—

15 (1) Any person that violates, through any act or
16 omission, any provision of this title, any enumerated
17 consumer law, or any regulation prescribed or order
18 issued by the Director under this title shall forfeit
19 and pay a civil penalty pursuant to this subsection
20 determined as follows:

21 (A) FIRST TIER.—For any violation of any
22 law, regulation, final order or condition imposed
23 in writing by the Agency, or for any failure to
24 pay any fee or assessment imposed by the
25 Agency (including any fee or assessment for

1 which a related person may be liable), a civil
2 penalty shall not exceed \$5,000 for each day
3 during which such violation continues.

4 (B) SECOND TIER.—Notwithstanding
5 paragraph (A), for any violation of a regulation
6 prescribed under section 4306 or for any person
7 that recklessly engages in a violation of this
8 title, any enumerated consumer law, or any reg-
9 ulation prescribed or order issued by the Direc-
10 tor under this title, relating to the provision of
11 an alternative consumer financial product or
12 service, a civil penalty shall not exceed \$25,000
13 for each day during which such violation con-
14 tinues.

15 (C) THIRD TIER.—Notwithstanding sub-
16 paragraphs (A) and (B), for any person that
17 knowingly violates this title, any enumerated
18 consumer law, or any regulation prescribed or
19 order issued by the Director under this title, a
20 civil penalty shall not exceed \$1,000,000 for
21 each day during which such violation continues.

22 (2) MITIGATING FACTORS.—In determining the
23 amount of any penalty assessed under paragraph
24 (1), the Agency or the court shall take into account
25 the appropriateness of the penalty with respect to—

1 (A) the size of financial resources and good
2 faith of the person charged;

3 (B) the gravity of the violation or failure
4 to pay;

5 (C) the severity of the risks to or losses of
6 the consumer, which may take into account the
7 number of products or services sold or provided;

8 (D) the history of previous violations; and

9 (E) such other matters as justice may re-
10 quire.

11 (3) AUTHORITY TO MODIFY OR REMIT PEN-
12 ALTY.—The Agency may compromise, modify, or
13 remit any penalty which may be assessed or had al-
14 ready been assessed under paragraph (1). The
15 amount of such penalty, when finally determined,
16 shall be exclusive of any sums owed by the person
17 to the United States in connection with the costs of
18 the proceeding, and may be deducted from any sums
19 owing by the United States to the person charged.

20 (4) NOTICE AND HEARING.—No civil penalty
21 may be assessed with respect to a violation of this
22 title, any enumerated consumer law, or any regula-
23 tion prescribed or order issued by the Director, un-
24 less—

1 (A) the Agency gives notice and an oppor-
2 tunity for a hearing to the person accused of
3 the violation; or

4 (B) the appropriate court has ordered such
5 assessment and entered judgment in favor of
6 the Agency.

7 **SEC. 4506. REFERRALS FOR CRIMINAL PROCEEDINGS.**

8 Whenever the Agency obtains evidence that any per-
9 son, either domestic or foreign, has engaged in conduct
10 that may constitute a violation of Federal criminal law,
11 the Agency may transmit such evidence to the Attorney
12 General, who may institute criminal proceedings under ap-
13 propriate law. No provision of this section shall be con-
14 strued as affecting any other authority of the Agency to
15 disclose information.

16 **SEC. 4507. EMPLOYEE PROTECTION.**

17 (a) IN GENERAL.—No covered person or service pro-
18 vider shall terminate or in any other way discriminate
19 against, or cause to be terminated or discriminated
20 against, any covered employee or any authorized rep-
21 resentative of covered employees by reason of the fact that
22 such employee or representative, whether at the employ-
23 ee’s initiative or in the ordinary course of the employee’s
24 duties (or any person acting pursuant to a request of the
25 employee)—

1 (1) has provided information to the Agency or
2 to any other State, local, or Federal Government au-
3 thority or law enforcement official information relat-
4 ing to any violation of, or any act or omission the
5 employee reasonably believes to be a violation of any
6 provision of this title or any other law that is subject
7 to the jurisdiction of the Agency, or any regulation,
8 order, standard, or prohibition prescribed by the Di-
9 rector;

10 (2) has testified or is about to testify in any
11 proceeding resulting from the administration or en-
12 forcement of any provision of this title or any other
13 law that is subject to the jurisdiction of the Agency,
14 or any regulation, order, standard, or prohibition
15 prescribed by the Director;

16 (3) has filed or instituted, or has caused to be
17 filed or instituted, any proceeding under any enu-
18 merated consumer law or any law for which authori-
19 ties were transferred by subtitles F and H; or

20 (4) has objected to, or refused to participate in,
21 any activity, policy, practice, or assigned task that
22 the employee (or other such person) reasonably be-
23 lieved to be in violation of any law, regulation, order,
24 standard, or prohibition, subject to the jurisdiction
25 of, or enforceable by, the Agency.

1 (b) COVERED EMPLOYEE DEFINED.—For the pur-
2 poses of this section, the term “covered employee” means
3 any individual performing tasks related to the provision
4 of a financial product or service to a consumer.

5 (c) TIMETABLES.—

6 (1) FILING COMPLAINT.—Any individual who
7 believes that such individual has been discharged or
8 otherwise discriminated against by any person in
9 violation of subsection (a) may, before the end of the
10 180-day period beginning on the date on which such
11 violation occurs, file (or have any person file on be-
12 half of such individual) a complaint with the Sec-
13 retary of Labor (hereafter in this subsection referred
14 to as the “Secretary”, notwithstanding section
15 4002(34)) alleging such discharge or discrimination
16 and identifying the person responsible for such act.

17 (2) SECRETARY’S ACTION ON RECEIPT OF COM-
18 PLAINT.—Upon receipt of a complaint by any indi-
19 vidual under paragraph (1), the Secretary shall no-
20 tify, in writing, the person named in the complaint
21 who is alleged to have committed the violation of—

22 (A) the filing of the complaint;

23 (B) the allegations contained in the com-
24 plaint;

1 (C) the substance of the evidence sup-
2 porting the complaint; and

3 (D) the opportunities that will be afforded
4 to such person under paragraph (3).

5 (3) INVESTIGATION, HEARING, AND ORDERS.—

6 (A) FINDINGS.—Not later than 60 days
7 after the date of receipt of a complaint filed
8 under paragraph (1) and after affording the in-
9 dividual filing the complaint and the person
10 named in the complaint who is alleged to have
11 committed the violation an opportunity to sub-
12 mit to the Secretary a written response to the
13 complaint and an opportunity to meet with a
14 representative of the Secretary to present state-
15 ments from witnesses, the Secretary shall ini-
16 tiate an investigation and determine whether
17 there is reasonable cause to believe that the
18 complaint has merit and notify, in writing, the
19 complainant and the person alleged to have
20 committed a violation of subsection (a) of the
21 Secretary's findings.

22 (B) PRELIMINARY ORDER.—If the Sec-
23 retary concludes that there is reasonable cause
24 to believe that a violation of subsection (a) has
25 occurred, the Secretary shall accompany the

1 Secretary's findings with a preliminary order
2 providing the relief prescribed by paragraph
3 (3)(B).

4 (C) OBJECTIONS TO FINDINGS OR PRE-
5 LIMINARY ORDER.—Not later than 30 days
6 after the date of notification of findings under
7 subparagraph (A), the person alleged to have
8 committed the violation or the complainant may
9 file objections to the findings or preliminary
10 order, or both, and request a hearing on the
11 record.

12 (D) OBJECTIONS DO NOT CONSTITUTE A
13 STAY.—The filing of objections under subpara-
14 graph (C) shall not operate to stay any rein-
15 statement remedy contained in the preliminary
16 order.

17 (E) EXPEDITIOUS HEARING.—Any hearing
18 requested under subparagraph (C) shall be con-
19 ducted expeditiously.

20 (F) FINALITY OF ORDER.—If a hearing is
21 not requested under subparagraph (C) with re-
22 spect to any findings of the Secretary under
23 subparagraph (A) within the 30-day period de-
24 scribed in subparagraph (C), the preliminary

1 order shall be deemed a final order that is not
2 subject to judicial review.

3 (4) STANDARDS FOR DETERMINATION.—

4 (A) PRIMA FACIE EVIDENCE OF CONTRIBU-
5 TION.—The Secretary shall dismiss a complaint
6 filed under paragraph (1) and shall not conduct
7 an investigation otherwise required under para-
8 graph (3)(A) unless the individual filing the
9 complaint makes a prima facie showing that
10 any behavior described in paragraph (1), (2),
11 (3), or (4) of subsection (a) was a contributing
12 factor in the unfavorable personnel action al-
13 leged in the complaint.

14 (B) PROHIBITION ON INVESTIGATION IN
15 CASE OF CLEAR AND CONVINCING EVIDENCE OF
16 INDEPENDENT BASIS.—Notwithstanding a find-
17 ing by the Secretary that the complainant has
18 made the showing required under subparagraph
19 (A), no investigation otherwise required under
20 paragraph (3) shall be conducted if the em-
21 ployer demonstrates, by clear and convincing
22 evidence, that the employer would have taken
23 the same unfavorable personnel action in the
24 absence of that behavior.

1 (C) CONTRIBUTING FACTOR REQUIRE-
2 MENT.—The Secretary may determine that a
3 violation of subsection (a) has occurred only if
4 the complainant demonstrates that any behavior
5 described in paragraph (1), (2), (3), or (4) of
6 subsection (a) was a contributing factor in the
7 unfavorable personnel action alleged in the com-
8 plaint.

9 (D) PROHIBITION ON FINAL ORDER IN
10 CASE OF CLEAR AND CONVINCING EVIDENCE OF
11 INDEPENDENT BASIS.—Relief may not be or-
12 dered under paragraph (3) if the employer dem-
13 onstrates by clear and convincing evidence that
14 the employer would have taken the same unfa-
15 vorable personnel action in the absence of that
16 behavior.

17 (5) FINAL ORDER.—

18 (A) IN GENERAL.—Not later than 120
19 days after the date of conclusion of any hearing
20 under paragraph (3), the Secretary shall issue
21 a final order providing the relief prescribed by
22 this subsection or denying the complaint.

23 (B) SETTLEMENT AGREEMENT.—At any
24 time before issuance of a final order, a pro-
25 ceeding under this subsection may be termi-

1 nated on the basis of a settlement agreement
2 entered into by the Secretary, the complainant,
3 and the person alleged to have committed the
4 violation.

5 (C) CONTENTS OF ORDER.—If, in response
6 to a complaint filed under paragraph (1), the
7 Secretary determines that a violation of sub-
8 section (a) has occurred, the Secretary shall
9 order the person who committed such viola-
10 tion—

11 (i) to take affirmative action to abate
12 the violation;

13 (ii) to reinstate the complainant to
14 such individual's former position together
15 with compensation (including back pay)
16 and restore the terms, conditions, and
17 privileges associated with such individual's
18 employment; and

19 (iii) to provide compensatory damages
20 to the complainant.

21 (D) COSTS AND ATTORNEYS FEES.—If an
22 order is issued under this paragraph, the Sec-
23 retary, at the request of the complainant, shall
24 assess against the person against whom the
25 order is issued a sum equal to the aggregate

1 amount of all costs and expenses (including at-
2 torneys' and expert witness fees) reasonably in-
3 curred, as determined by the Secretary, by the
4 complainant for, or in connection with, the
5 bringing of the complaint upon which the order
6 was issued.

7 (E) FRIVOLOUS OR BAD FAITH COM-
8 PLAINTS.—If the Secretary finds that a com-
9 plaint under paragraph (1) is frivolous or has
10 been brought in bad faith, the Secretary may
11 award to the prevailing employer a reasonable
12 attorneys' fee, not exceeding \$1,000, to be paid
13 by the complainant.

14 (6) DE NOVO ACTION ON CLAIM.—

15 (A) ACTION AT LAW OR EQUITY.—If the
16 Secretary has not issued a final decision within
17 210 days after the filing of the complaint, or
18 within 90 days after receiving a written deter-
19 mination, the complainant who filed such com-
20 plaint may bring an action at law or equity for
21 de novo review in the appropriate district court
22 of the United States.

23 (B) JURY TRIAL.—At the request of either
24 party to an action brought under subparagraph

1 (A), such action shall be tried by the court with
2 a jury.

3 (C) STANDARDS FOR DETERMINATION.—
4 The standards for determination established
5 under paragraph (4) shall apply in any action
6 under this paragraph.

7 (D) RELIEF.—The court shall have juris-
8 diction to grant all relief, including injunctive
9 relief and compensatory damages , that nec-
10 essary to make the complainant who sought de
11 novo review whole, including—

12 (i) reinstatement with the same se-
13 niority status that the complainant would
14 have had, but for the discharge or dis-
15 crimination;

16 (ii) the amount of back pay, with in-
17 terest; and

18 (iii) compensation for any special
19 damages sustained as a result of the dis-
20 charge or discrimination, including litiga-
21 tion costs, expert witness fees, and reason-
22 able attorney's fees.

23 (E) NOT REVIEWABLE.—The decision of
24 the court shall be final without further review.

25 (7) JUDICIAL REVIEW OF FINAL ORDER.—

1 (A) IN GENERAL.—Unless a complainant
2 brings a de novo action under paragraph (6),
3 any person adversely affected or aggrieved by a
4 final order issued under paragraph (5) may ob-
5 tain review of the order in the United States
6 Court of Appeals for the circuit in which the
7 violation, with respect to which the order was
8 issued, allegedly occurred or the circuit in which
9 the complainant resided on the date of such vio-
10 lation.

11 (B) STATUTE OF LIMITATION .—Any peti-
12 tion for review of a final order under subsection
13 shall be filed not later than 60 days after the
14 date of the issuance of the final order by the
15 Secretary.

16 (C) STANDARDS FOR REVIEW.—The stand-
17 ards for review established under chapter 7 of
18 title 5, United States Code, shall apply in any
19 review of a final order under this paragraph.

20 (D) EFFECT OF PROCEEDINGS AS STAY.—
21 The commencement of proceedings under this
22 paragraph shall not operate as a stay of the
23 final order of the Secretary under review, unless
24 so ordered by the court.

1 (E) LIMITATION ON EFFECT OF OTHER
2 PROCEEDINGS.—Except as provided in para-
3 graph (6) and this paragraph, an order of the
4 Secretary with respect to which review could
5 have been obtained under subparagraph (A)
6 shall not be subject to judicial review in any
7 criminal or other civil proceeding.

8 (8) ENFORCEMENT OF ORDERS BY SEC-
9 RETARY.—

10 (A) IN GENERAL.—Whenever any person
11 has failed to comply with an order issued under
12 paragraph (5), the Secretary may file a civil ac-
13 tion in the United States district court for the
14 district in which the violation was found to
15 occur, or in the United States district court for
16 the District of Columbia, to enforce such order.

17 (B) RELIEF.—In actions brought under
18 this paragraph, the district courts shall have ju-
19 risdiction to grant all appropriate relief includ-
20 ing injunctive relief and compensatory damages.

21 (9) ENFORCEMENT OF ORDER BY AGGRIEVED
22 PARTY .—

23 (A) IN GENERAL.—A person on whose be-
24 half an order was issued under paragraph (5)
25 may commence a civil action against the person

1 to whom such order was issued to require com-
2 pliance with such order.

3 (B) RELIEF.—The court, in issuing any
4 final order under this paragraph, may award
5 costs of litigation (including reasonable attor-
6 neys' and expert witness fees) to any party
7 whenever the court determines such award is
8 appropriate.

9 (d) ACTION IN NATURE OF MANDAMUS.—Any non-
10 discretionary duty imposed by this section shall be enforce-
11 able in a mandamus proceeding brought under section
12 1361 of title 28, United States Code.

13 (e) UNENFORCEABILITY OF CERTAIN AGREE-
14 MENTS.—

15 (1) NO WAIVER OF RIGHTS AND REMEDIES.—
16 Notwithstanding any law and except as provided
17 under paragraph (3), the rights and remedies pro-
18 vided for in this section may not be waived by any
19 agreement, policy, form, or condition of employment,
20 including by any predispute arbitration agreement.

21 (2) PREDISPUTE ARBITRATION AGREEMENTS.—
22 Notwithstanding any law and except as provided
23 under paragraph (3), no predispute arbitration
24 agreement shall be valid or enforceable and to the

1 extent the agreement requires arbitration of a dis-
2 pute arising under this section.

3 (3) EXCEPTION.—Notwithstanding paragraphs
4 (1) and (2), an arbitration provision in a collective
5 bargaining agreement shall be enforceable as to dis-
6 putes arising under subsection (a)(2) unless the Di-
7 rector determines by regulation that such provision
8 is inconsistent with the purposes of this title.

9 **SEC. 4508. EFFECTIVE DATE.**

10 This subtitle shall take effect on the designated
11 transfer date.

12 **Subtitle F—Transfer of Functions**
13 **and Personnel; Transitional**
14 **Provisions**

15 **SEC. 4601. TRANSFER OF CERTAIN FUNCTIONS.**

16 (a) IN GENERAL.—Except as provided in subsection
17 (b), consumer financial protection functions are trans-
18 ferred as follows:

19 (1) BOARD OF GOVERNORS.—

20 (A) TRANSFER OF FUNCTIONS.—All con-
21 sumer financial protection functions of the
22 Board of Governors are transferred to the Di-
23 rector.

24 (B) BOARD OF GOVERNORS' AUTHORITY.—

25 The Director shall have all powers and duties

1 that were vested in the Board of Governors, re-
2 relating to consumer financial protection func-
3 tions, on the day before the designated transfer
4 date.

5 (2) COMPTROLLER OF THE CURRENCY.—

6 (A) TRANSFER OF FUNCTIONS.—All con-
7 sumer financial protection functions of the
8 Comptroller of the Currency are transferred to
9 the Director.

10 (B) COMPTROLLER'S AUTHORITY.—The
11 Director shall have all powers and duties that
12 were vested in the Comptroller of the Currency,
13 relating to consumer financial protection func-
14 tions, on the day before the designated transfer
15 date.

16 (3) DIRECTOR OF THE OFFICE OF THRIFT SU-
17 PERVISION.—

18 (A) TRANSFER OF FUNCTIONS.—All con-
19 sumer financial protection functions of the Di-
20 rector of the Office of Thrift Supervision are
21 transferred to the Director.

22 (B) DIRECTOR'S AUTHORITY.—The Direc-
23 tor shall have all powers and duties that were
24 vested in the Director of the Office of Thrift
25 Supervision, relating to consumer financial pro-

1 tection functions, on the day before the des-
2 ignated transfer date.

3 (4) FEDERAL DEPOSIT INSURANCE CORPORA-
4 TION.—

5 (A) TRANSFER OF FUNCTIONS.—All con-
6 sumer financial protection functions of the Fed-
7 eral Deposit Insurance Corporation are trans-
8 ferred to the Director.

9 (B) CORPORATION'S AUTHORITY.—The Di-
10 rector shall have all powers and duties that
11 were vested in the Federal Deposit Insurance
12 Corporation, relating to consumer financial pro-
13 tection functions, on the day before the des-
14 ignated transfer date.

15 (5) FEDERAL TRADE COMMISSION.—

16 (A) TRANSFER OF FUNCTIONS.—Except as
17 provided in subparagraph (C), the consumer fi-
18 nancial protection functions of the Federal
19 Trade Commission that are contained within
20 the enumerated consumer laws are transferred
21 to the Agency, except as provided in section
22 4202(e).

23 (B) COMMISSION'S AUTHORITY.—Except
24 as provided in subparagraph (C), the Director
25 shall have all powers and duties that were vest-

1 ed in the Federal Trade Commission, relating
2 to consumer financial protection functions, on
3 the day before the designated transfer date.

4 (C) CONTINUATION OF CERTAIN COMMIS-
5 SION AUTHORITIES.—Notwithstanding subpara-
6 graphs (A) and (B), the Federal Trade Com-
7 mission shall continue to enforce the following
8 provisions of law and prescribe regulations
9 under such provisions:

10 (i) The Credit Repair Organizations
11 Act.

12 (ii) Section 5 of the Federal Trade
13 Commission Act.

14 (iii) The Telemarketing and Consumer
15 Fraud and Abuse Prevention Act.

16 (6) NATIONAL CREDIT UNION ADMINISTRA-
17 TION.—

18 (A) TRANSFER OF FUNCTIONS.—All con-
19 sumer financial protection functions of the Na-
20 tional Credit Union Administration are trans-
21 ferred to the Director.

22 (B) NATIONAL CREDIT UNION ADMINIS-
23 TRATION'S AUTHORITY.—The Director shall
24 have all powers and duties that were vested in
25 the National Credit Union Administration, re-

1 lating to consumer financial protection func-
2 tions, on the day before the designated transfer
3 date.

4 (7) SECRETARY OF HOUSING AND URBAN DE-
5 VELOPMENT.—

6 (A) TRANSFER OF FUNCTIONS.—All con-
7 sumer protection functions of the Secretary of
8 Housing and Urban Development relating to
9 the Real Estate Settlement Procedures Act of
10 1974 and the Secure and Fair Enforcement for
11 Mortgage Licensing Act of 2008 are transferred
12 to the Director.

13 (B) SECRETARY OF HUD'S AUTHORITY.—
14 The Director shall have all powers and duties
15 that were vested in the Secretary of Housing
16 and Urban Development relating to the Real
17 Estate Settlement Procedures Act of 1974 and
18 the Secure and Fair Enforcement for Mortgage
19 Licensing Act of 2008, on the day before the
20 designated transfer date

21 (b) TRANSFERS OF FUNCTIONS SUBJECT TO BACK-
22 STOP ENFORCEMENT AUTHORITY REMAINING WITH
23 TRANSFEROR AGENCIES.—The transfers of functions in
24 subsection (a) shall not affect the authority of the agencies
25 identified in subsection (a) from initiating enforcement

1 proceedings under the circumstances described in section
2 4202(e)(3).

3 (c) **TERMINATION OF AUTHORITY OF TRANSFEROR**
4 **AGENCIES TO COLLECT FEES FOR CONSUMER FINAN-**
5 **CIAL PROTECTION PURPOSES.**—Authorities of the agen-
6 cies identified in subsection (a) to assess and collect fees
7 to cover the cost of conducting consumer financial protec-
8 tion functions shall terminate on the day before the des-
9 ignated transfer date.

10 (d) **CONSUMER FINANCIAL PROTECTION FUNCTIONS**
11 **DEFINED.**—For purposes of this subtitle, the term “con-
12 sumer financial protection functions” means research,
13 rulemaking, issuance of orders or guidance, supervision,
14 examination, and enforcement activities, powers, and du-
15 ties relating to the provision of consumer financial prod-
16 ucts or services, including the authority to assess and col-
17 lect fees for those purposes, except that such term shall
18 not include any such function relating to an agency’s re-
19 sponsibilities under the Community Reinvestment Act of
20 1977.

21 (e) **EFFECTIVE DATE.**—Subsections (a) and (b) shall
22 take effect on the designated transfer date.

23 **SEC. 4602. DESIGNATED TRANSFER DATE.**

24 (a) **IN GENERAL.**—Not later than 60 days after the
25 date of the enactment of this title, the Secretary—

1 (1) shall, in consultation with the Chairman of
2 the Board of Governors, the Chairperson of the Fed-
3 eral Deposit Insurance Corporation, the Chairman
4 of the Federal Trade Commission, the Chairman of
5 the National Credit Union Administration Board,
6 the Comptroller of the Currency, the Director of the
7 Office of Thrift Supervision, the Secretary of Hous-
8 ing and Urban Development, and the Director of the
9 Office of Management and Budget, designate a sin-
10 gle calendar date for the transfer of functions to the
11 Director under section 4601; and

12 (2) shall publish notice of that designation in
13 the 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 Hous-
22 ing and Urban Development, and the Director of the
23 Office of Management and Budget, change the date
24 designated under subsection (a); and

1 (2) shall publish notice of any changed designa-
2 tion 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 18
7 months after the date of the enactment of this title.

8 (2) EXTENSION OF TIME.—The Secretary may
9 designate a date that is later than 18 months after
10 the date of the enactment of this title if the Sec-
11 retary transmits to appropriate committees of Con-
12 gress—

13 (A) a written determination that orderly
14 implementation of this title is not feasible on
15 the date that is 18 months after the date of the
16 enactment of this title;

17 (B) an explanation of why an extension is
18 necessary for the orderly implementation of this
19 title; and

20 (C) a description of the steps that will be
21 taken to effect an orderly and timely implemen-
22 tation of this title within the extended time pe-
23 riod.

1 (3) EXTENSION LIMITED.—In no case shall any
2 date designated under this section be later than 24
3 months after the date of the enactment of this title.

4 **SEC. 4603. SAVINGS PROVISIONS.**

5 (a) BOARD OF GOVERNORS.—

6 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
7 TIONS NOT AFFECTED.—Section 4601(a)(1) shall
8 not affect the validity of any right, duty, or obliga-
9 tion of the United States, the Board of Governors
10 (or any Federal reserve bank), or any other person
11 that—

12 (A) arises under any provision of law relat-
13 ing to any consumer financial protection func-
14 tion of the Board of Governors transferred to
15 the Director by this title; and

16 (B) existed on the day before the des-
17 ignated transfer date.

18 (2) CONTINUATION OF SUITS.—this title shall
19 not abate any proceeding commenced by or against
20 the Board of Governors (or any Federal reserve
21 bank) before the designated transfer date with re-
22 spect to any consumer financial protection function
23 of the Board of Governors (or any Federal reserve
24 bank) transferred to the Director by this title, ex-
25 cept that the Director shall be substituted for the

1 Board of Governors (or Federal reserve bank) as a
2 party to any such proceeding as of the designated
3 transfer date.

4 (b) FEDERAL DEPOSIT INSURANCE CORPORATION.—

5 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
6 TIONS NOT AFFECTED.—Section 4601(a)(4) shall
7 not affect the validity of any right, duty, or obliga-
8 tion of the United States, the Federal Deposit In-
9 surance Corporation, the Board of Directors of that
10 Corporation, or any other person, that—

11 (A) arises under any provision of law relat-
12 ing to any consumer financial protection func-
13 tion of the Federal Deposit Insurance Corpora-
14 tion transferred to the Director by this title;
15 and

16 (B) existed on the day before the des-
17 igned transfer date.

18 (2) CONTINUATION OF SUITS.—this title shall
19 not abate any proceeding commenced by or against
20 the Federal Deposit Insurance Corporation (or the
21 Board of Directors of that Corporation) before the
22 designated transfer date with respect to any con-
23 sumer financial protection function of the Federal
24 Deposit Insurance Corporation transferred to the
25 Director by this title, except that the Director shall

1 be substituted for the Federal Deposit Insurance
2 Corporation (or Board of Directors) as a party to
3 any such proceeding as of the designated transfer
4 date.

5 (c) FEDERAL TRADE COMMISSION.—

6 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
7 TIONS NOT AFFECTED.—Section 4601(a)(5) shall
8 not affect the validity of any right, duty, or obliga-
9 tion of the United States, the Federal Trade Com-
10 mission, or any other person, that—

11 (A) arises under any provision of law relat-
12 ing to any consumer financial protection func-
13 tion of the Federal Trade Commission trans-
14 ferred to the Director by this title; and

15 (B) existed on the day before the des-
16 ignated transfer date.

17 (2) CONTINUATION OF SUITS.—this title shall
18 not abate any proceeding commenced by or against
19 the Federal Trade Commission before the designated
20 transfer date with respect to any consumer financial
21 protection function of the Federal Trade Commis-
22 sion transferred to the Director by this title, except
23 that the Director shall be substituted for the Federal
24 Trade Commission as a party to any such pro-
25 ceeding as of the designated transfer date.

1 (d) NATIONAL CREDIT UNION ADMINISTRATION.—

2 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
3 TIONS NOT AFFECTED.—Section 4601(a)(6) shall
4 not affect the validity of any right, duty, or obliga-
5 tion of the United States, the National Credit Union
6 Administration, the National Credit Union Adminis-
7 tration Board, 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 National Credit Union Administra-
11 tion transferred to the Director by this title;
12 and

13 (B) existed on the day before the des-
14 igned transfer date.

15 (2) CONTINUATION OF SUITS.—this title shall
16 not abate any proceeding commenced by or against
17 the National Credit Union Administration (or the
18 National Credit Union Administration Board) before
19 the designated transfer date with respect to any con-
20 sumer financial protection function of the National
21 Credit Union Administration transferred to the Di-
22 rector by this title, except that the Director shall be
23 substituted for the National Credit Union Adminis-
24 tration (or National Credit Union Administration

1 Board) as a party to any such proceeding as of the
2 designated transfer date.

3 (e) COMPTROLLER OF THE CURRENCY.—

4 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
5 TIONS NOT AFFECTED.—Section 4601(a)(2) shall
6 not affect the validity of any right, duty, or obliga-
7 tion of the United States, the Comptroller of the
8 Currency, the Office of the Comptroller of the Cur-
9 rency, or any other person, that—

10 (A) arises under any provision of law relat-
11 ing to any consumer financial protection func-
12 tion of the Comptroller of the Currency trans-
13 ferred to the Director by this title; and

14 (B) existed on the day before the des-
15 ignated transfer date.

16 (2) CONTINUATION OF SUITS.—this title shall
17 not abate any proceeding commenced by or against
18 the Comptroller of the Currency (or the Office of the
19 Comptroller of the Currency) with respect to any
20 consumer financial protection function of the Comp-
21 troller of the Currency transferred to the Director
22 by this title before the designated transfer date, ex-
23 cept that the Director shall be substituted for the
24 Comptroller of the Currency (or the Office of the

1 Comptroller of the Currency) as a party to any such
2 proceeding as of the designated transfer date.

3 (f) DIRECTOR OF THE OFFICE OF THRIFT SUPER-
4 VISION.—

5 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
6 TIONS NOT AFFECTED.—Section 4601(a)(3) shall
7 not affect the validity of any right, duty, or obliga-
8 tion of the United States, the Director of the Office
9 of Thrift Supervision, the Office of Thrift Super-
10 vision, or any other person, that—

11 (A) arises under any provision of law relat-
12 ing to any consumer financial protection func-
13 tion of the Director of the Office of Thrift Su-
14 pervision transferred to the Director by this
15 title; and

16 (B) that existed on the day before the des-
17 ignated transfer date.

18 (2) CONTINUATION OF SUITS.—this title shall
19 not abate any proceeding commenced by or against
20 the Director of the Office of Thrift Supervision (or
21 the Office of Thrift Supervision) with respect to any
22 consumer financial protection function of the Direc-
23 tor of the Office of Thrift Supervision transferred to
24 the Director by this title before the designated
25 transfer date, except that the Director shall be sub-

1 stituted for the Director (or the Office of Thrift Su-
2 pervision) as a party to any such proceeding as of
3 the designated transfer date.

4 (g) SECRETARY OF HOUSING AND URBAN DEVELOP-
5 MENT.—

6 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
7 TIONS NOT AFFECTED.—Section 4601(a)(7) shall
8 not affect the validity of any right, duty, or obliga-
9 tion of the United States, the Secretary of Housing
10 and Urban Development, the Department of Hous-
11 ing and Urban Development, or any other person,
12 that—

13 (A) arises under any provision of law relat-
14 ing to any function of the Secretary of Housing
15 and Urban Development under the Real Estate
16 Settlement Procedures Act of 1974 and the Se-
17 cure and Fair Enforcement for Mortgage Li-
18 censing Act of 2008 transferred to the Director
19 by this title; and

20 (B) that existed on the day before the des-
21 ignated transfer date.

22 (2) CONTINUATION OF SUITS.—this title shall
23 not abate any proceeding commenced by or against
24 the Secretary of Housing and Urban Development
25 (or the Department of Housing and Urban Develop-

1 ment) with respect to any consumer financial protec-
2 tion function of the Secretary of Housing and Urban
3 Development transferred to the Director by this title
4 before the designated transfer date, except that the
5 Director shall be substituted for the Secretary of
6 Housing and Urban Development (or such Depart-
7 ment) as a party to any such proceeding as of the
8 designated transfer date.

9 (h) CONTINUATION OF EXISTING ORDERS, REGULA-
10 TIONS, DETERMINATIONS, AGREEMENTS, AND RESOLU-
11 TIONS.—All orders, resolutions, determinations, agree-
12 ments, and regulations that have been issued, made, pre-
13 scribed, or allowed to become effective by the Board of
14 Governors (or any Federal reserve bank), the Federal De-
15 posit Insurance Corporation, the Federal Trade Commis-
16 sion, the National Credit Union Administration, the
17 Comptroller of the Currency, the Director of the Office
18 of Thrift Supervision, the Secretary of Housing and
19 Urban Development, or by a court of competent jurisdic-
20 tion, in the performance of consumer financial protection
21 functions that are transferred by this title and that are
22 in effect on the day before the designated transfer date,
23 shall continue in effect according to the terms of those
24 orders, resolutions, determinations, agreements, and regu-
25 lations, and shall be enforceable by or against the Director

1 until modified, terminated, set aside, or superseded in ac-
2 cordance with applicable law by the Director, by any court
3 of competent jurisdiction, or by operation of law.

4 (i) IDENTIFICATION OF REGULATIONS CONTIN-
5 UED.—Not later than the designated transfer date, the
6 Director—

7 (1) shall, after consultation with the Chairman
8 of the Board of Governors, the Chairperson of the
9 Federal Deposit Insurance Corporation, the Chair-
10 man of the Federal Trade Commission, the Chair-
11 man of the National Credit Union Administration
12 Board, the Comptroller of the Currency, the Direc-
13 tor of the Office of Thrift Supervision, and the Sec-
14 retary of Housing and Urban Development identify
15 the regulations continued under subsection (g) that
16 will be enforced by the Director; and

17 (2) shall publish a list of such regulations in
18 the Federal Register.

19 (j) STATUS OF REGULATIONS PROPOSED OR NOT
20 YET EFFECTIVE.—

21 (1) PROPOSED REGULATIONS.—Any proposed
22 regulation of the Board of Governors, the Federal
23 Deposit Insurance Corporation, the Federal Trade
24 Commission, the National Credit Union Administra-
25 tion, the Comptroller of the Currency, the Director

1 of the Office of Thrift Supervision, or the Secretary
2 of Housing and Urban Development which that
3 agency, in performing consumer financial protection
4 functions transferred by this title, has proposed be-
5 fore the designated transfer date but has not pub-
6 lished as a final regulation before that date, shall be
7 deemed to be a proposed regulation of the Director.

8 (2) REGULATIONS NOT YET EFFECTIVE.—Any
9 interim or final regulation of Board of Governors,
10 the Federal Deposit Insurance Corporation, the Fed-
11 eral Trade Commission, the National Credit Union
12 Administration, the Comptroller of the Currency, the
13 Director of the Office of Thrift Supervision, or the
14 Secretary of Housing and Urban Development which
15 that agency, in performing consumer financial pro-
16 tection functions transferred by this title, has pub-
17 lished before the designated transfer date but which
18 has not become effective before that date, shall take
19 effect as a regulation of the Director according to its
20 terms.

21 **SEC. 4604. TRANSFER OF CERTAIN PERSONNEL.**

22 (a) IN GENERAL.—

23 (1) CERTAIN FEDERAL RESERVE SYSTEM EM-
24 PLOYEES TRANSFERRED.—

1 (A) IDENTIFYING EMPLOYEES FOR TRANS-
2 FER.—The Director and the Board of Gov-
3 ernors shall—

4 (i) jointly determine the number of
5 employees of the Board necessary to per-
6 form or support the consumer financial
7 protection functions of the Board of Gov-
8 ernors that are transferred to the Director
9 by this title; and

10 (ii) consistent with the number deter-
11 mined under clause (i), jointly identify em-
12 ployees of the Board of Governors for
13 transfer to the Agency in a manner that
14 the Director and the Board of Governors,
15 in their sole discretion, deem equitable.

16 (B) IDENTIFIED EMPLOYEES TRANS-
17 FERRED.—All employees of the Board of Gov-
18 ernors identified under subparagraph (A)(ii)
19 shall be transferred to the Agency for employ-
20 ment.

21 (C) FEDERAL RESERVE BANK EMPLOY-
22 EES.—Employees of any Federal reserve bank
23 who, on the day before the designated transfer
24 date, are performing consumer financial protec-
25 tion functions on behalf of the Board of Gov-

1 ernors shall be treated as employees of the
2 Board of Governors for purposes of subpara-
3 graphs (A) and (B).

4 (2) CERTAIN FDIC EMPLOYEES TRANS-
5 FERRED.—

6 (A) IDENTIFYING EMPLOYEES FOR TRANS-
7 FER.—The Director and the Board of Directors
8 of the Federal Deposit Insurance Corporation
9 shall—

10 (i) jointly determine the number of
11 employees of that Corporation necessary to
12 perform or support the consumer financial
13 protection functions of the Corporation
14 that are transferred to the Director by this
15 title; and

16 (ii) consistent with the number deter-
17 mined under clause (i), jointly identify em-
18 ployees of the Corporation for transfer to
19 the Agency in a manner that the Director
20 and the Board of Directors of the Corpora-
21 tion, in their discretion, deem equitable.

22 (B) IDENTIFIED EMPLOYEES TRANS-
23 FERRED.—All employees of the Corporation
24 identified under subparagraph (A)(ii) shall be
25 transferred to the Agency for employment.

1 (3) CERTAIN NCUA EMPLOYEES TRANS-
2 FERRED.—

3 (A) IDENTIFYING EMPLOYEES FOR TRANS-
4 FER.—The Director and the National Credit
5 Union Administration Board shall—

6 (i) jointly determine the number of
7 employees of the National Credit Union
8 Administration necessary to perform or
9 support the consumer financial protection
10 functions of the National Credit Union Ad-
11 ministration that are transferred to the Di-
12 rector by this title; and

13 (ii) consistent with the number deter-
14 mined under clause (i), jointly identify em-
15 ployees of the National Credit Union Ad-
16 ministration for transfer to the Agency in
17 a manner that the Director and the Na-
18 tional Credit Union Administration Board,
19 in their discretion, deem equitable.

20 (B) IDENTIFIED EMPLOYEES TRANS-
21 FERRED.—All employees of the National Credit
22 Union Administration identified under subpara-
23 graph (A)(ii) shall be transferred to the Agency
24 for employment.

1 (4) CERTAIN HUD EMPLOYEES TRANS-
2 FERRED.—

3 (A) IDENTIFYING EMPLOYEES FOR TRANS-
4 FER.—The Director and the Secretary of Hous-
5 ing and Urban Development shall—

6 (i) jointly determine the number of
7 employees of the Department of Housing
8 and Urban Development necessary to per-
9 form or support the consumer financial
10 protection functions of the Secretary of
11 Housing and Urban Development that are
12 transferred to the Director by this title;
13 and

14 (ii) consistent with the number deter-
15 mined under clause (i), jointly identify em-
16 ployees of the Department of Housing and
17 Urban Development for transfer to the
18 Agency in a manner that the Director and
19 the Secretary of Housing and Urban De-
20 velopment, in their discretion, deem equi-
21 table.

22 (B) IDENTIFIED EMPLOYEES TRANS-
23 FERRED.—All employees of the Department of
24 Housing and Urban Development identified

1 under subparagraph (A)(ii) shall be transferred
2 to the Agency for employment.

3 (5) APPOINTMENT AUTHORITY FOR EXCEPTED
4 SERVICE AND SENIOR EXECUTIVE SERVICE TRANS-
5 FERRED.—

6 (A) IN GENERAL.—In the case of employ-
7 ees occupying positions in the excepted service
8 or the Senior Executive Service, any appoint-
9 ment authority established pursuant to law or
10 regulations of the Director of the Office of Per-
11 sonnel Management for filling such positions
12 shall be transferred, subject to subparagraph
13 (B).

14 (B) DECLINING TRANSFERS ALLOWED.—
15 An agency or entity may decline to make a
16 transfer of authority under subparagraph (A)
17 (and the employees appointed pursuant to such
18 subparagraph) to the extent that such authority
19 relates to positions excepted from the competi-
20 tive service because of their confidential, policy-
21 making, policy-determining, or policy-advocating
22 character, and non-career positions in the Sen-
23 ior Executive Service (within the meaning of
24 section 3132(a)(7) of title 5, United States
25 Code).

1 (b) TIMING OF TRANSFERS AND POSITION ASSIGN-
2 MENTS.—Each employee to be transferred under this sec-
3 tion shall—

4 (1) be transferred not later than 90 days after
5 the designated transfer date; and

6 (2) receive notice of such employee’s position
7 assignment not later than 120 days after the effec-
8 tive date of the employee’s transfer.

9 (c) TRANSFER OF FUNCTION.—

10 (1) IN GENERAL.—Notwithstanding any other
11 provision of law, the transfer of employees shall be
12 deemed a transfer of functions for the purpose of
13 section 3503 of title 5, United States Code.

14 (2) PRIORITY OF THIS TITLE.—If any provi-
15 sions of this title conflict with any protection pro-
16 vided to transferred employees under section 3503 of
17 title 5, United States Code, the provisions of this
18 title shall control.

19 (d) EQUAL STATUS AND TENURE POSITIONS.—

20 (1) EMPLOYEES TRANSFERRED FROM FDIC,
21 FTC, HUD, NCUA, OCC, AND OTS.—Each employee
22 transferred from the Federal Deposit Insurance Cor-
23 poration, the Federal Trade Commission, the De-
24 partment of Housing and Urban Development, the
25 National Credit Union Administration, the Office of

1 the Comptroller of the Currency, or the Office of
2 Thrift Supervision shall be placed in a position at
3 the Agency with the same status and tenure as he
4 or she held on the day before the designated transfer
5 date.

6 (2) EMPLOYEES TRANSFERRED FROM THE
7 FEDERAL RESERVE SYSTEM.—

8 (A) COMPARABILITY.—Each employee
9 transferred from the Board of Governors or
10 from a Federal reserve bank shall be placed in
11 a position with the same status and tenure as
12 that of employees transferring to the Agency
13 from the Office of the Comptroller of the Cur-
14 rency who perform similar functions and have
15 similar periods of service.

16 (B) SERVICE PERIODS CREDITED.—For
17 purposes of this paragraph, periods of service
18 with the Board of Governors or a Federal re-
19 serve bank shall be credited as periods of serv-
20 ice with a Federal agency.

21 (e) ADDITIONAL CERTIFICATION REQUIREMENTS
22 LIMITED.—Examiners transferred to the Agency shall not
23 be subject to any additional certification requirements be-
24 fore being placed in a comparable examiner's position at
25 the Agency examining the same types of institutions as

1 the transferred examiners examined before such examiners
2 were transferred.

3 (f) PERSONNEL ACTIONS LIMITED.—

4 (1) 5-YEAR PROTECTION.—Except as provided
5 in paragraph (2), each transferred employee holding
6 a permanent position on the day before the des-
7 ignated transfer date shall not, during the 5-year pe-
8 riod beginning on the designated transfer date, be
9 involuntarily separated, or involuntarily reassigned
10 outside such transferred employee's local locality pay
11 area as defined by the Director of the Office of Per-
12 sonnel Management.

13 (2) EXCEPTIONS.—Paragraph (1) shall not be
14 construed as limiting the right of the Director to—

15 (A) separate an employee for cause or for
16 unacceptable performance;

17 (B) terminate an appointment to a position
18 excepted from the competitive service because of
19 its confidential policy-making, policy-deter-
20 mining, or policy-advocating character; or

21 (C) reassign a supervisory employee out-
22 side such employee's locality pay area as de-
23 fined by the Director of the Office of Personnel
24 Management when the Director determines that

1 the reassignment is necessary for the efficient
2 operation of the Agency.

3 (g) PAY.—

4 (1) 1-YEAR PROTECTION.—Except as provided
5 in paragraph (2), each transferred employee shall,
6 during the 1-year period beginning on the des-
7 ignated transfer date, receive pay at a rate not less
8 than the basic rate of pay (including any geographic
9 differential) that the employee received during the 1-
10 year period immediately before the transfer.

11 (2) EXCEPTIONS.—Paragraph (1) shall not be
12 construed as limiting the right of the Agency to re-
13 duce the rate of basic pay of a transferred em-
14 ployee—

15 (A) for cause;

16 (B) for unacceptable performance; or

17 (C) with the employee's consent.

18 (3) PROTECTION ONLY WHILE EMPLOYED.—
19 Paragraph (1) applies to a transferred employee
20 only while that employee remains employed by the
21 Agency.

22 (4) PAY INCREASES PERMITTED.—Paragraph
23 (1) shall not be construed as limiting the authority
24 of the Agency to increase a transferred employee's
25 pay.

1 (h) REORGANIZATION.—

2 (1) BETWEEN 1ST AND 3RD YEAR.—

3 (A) IN GENERAL.—If the Agency deter-
4 mines, during the period beginning 1 year after
5 the designated transfer date and ending 3 years
6 after the designated transfer date, that a reor-
7 ganization of the staff of the Agency is re-
8 quired—

9 (i) that reorganization shall be
10 deemed a “major reorganization” for pur-
11 poses of affording affected employees re-
12 tirement under section 8336(d)(2) or
13 8414(b)(1)(B) of title 5, United States
14 Code;

15 (ii) before the reorganization occurs,
16 all employees in the same locality pay area
17 as defined by the Director of the Office of
18 Personnel Management shall be placed in a
19 uniform position classification system; and

20 (iii) any resulting reduction in force
21 shall be governed by the provisions of
22 chapter 35 of title 5, United States Code,
23 except that the Agency shall—

24 (I) establish competitive areas
25 (as that term is defined in regulations

1 issued by the Director of the Office of
2 Personnel Management) to include at
3 a minimum all employees in the same
4 locality pay area as defined by the Of-
5 fice of Personnel Management;

6 (II) establish competitive levels
7 (as that term is defined in regulations
8 issued by the Director of the Office of
9 Personnel Management) without re-
10 gard to whether the particular em-
11 ployees have been appointed to posi-
12 tions in the competitive service or the
13 excepted service; and

14 (III) afford employees appointed
15 to positions in the excepted service
16 (other than to a position excepted
17 from the competitive service because
18 of its confidential policy-making, pol-
19 icy-determining, or policy-advocating
20 character) the same assignment rights
21 to positions within the Agency as em-
22 ployees appointed to positions in the
23 competitive service.

24 (B) SERVICE CREDIT FOR REDUCTIONS IN
25 FORCE.—For purposes of this paragraph, peri-

1 ods of service with a Federal home loan bank,
2 a joint office of the Federal home loan banks,
3 the Board of Governors, a Federal reserve
4 bank, the Federal Deposit Insurance Corpora-
5 tion, or the National Credit Union Administra-
6 tion shall be credited as periods of service with
7 a Federal agency.

8 (2) AFTER 3RD YEAR.—

9 (A) IN GENERAL.—If the Agency deter-
10 mines, at any time after the 3-year period be-
11 ginning on the designated transfer date, that a
12 reorganization of the staff of the Agency is re-
13 quired, any resulting reduction in force shall be
14 governed by the provisions of chapter 35 of title
15 5, United States Code, except that the Agency
16 shall establish competitive levels (as that term
17 is defined in regulations issued by the Office of
18 Personnel Management) without regard to
19 types of appointment held by particular employ-
20 ees transferred under this section.

21 (B) SERVICE CREDIT FOR REDUCTIONS IN
22 FORCE.—For purposes of this paragraph, peri-
23 ods of service with a Federal home loan bank,
24 a joint office of the Federal home loan banks,
25 the Board of Governors, a Federal reserve

1 bank, the Federal Deposit Insurance Corpora-
2 tion, or the National Credit Union Administra-
3 tion shall be credited as periods of service with
4 a Federal agency.

5 (i) BENEFITS.—

6 (1) RETIREMENT BENEFITS FOR TRANSFERRED
7 EMPLOYEES.—

8 (A) IN GENERAL.—

9 (i) CONTINUATION OF EXISTING RE-
10 TIREMENT PLAN.—Except as provided in
11 subparagraph (B), each transferred em-
12 ployee shall remain enrolled in such em-
13 ployee's existing retirement plan as long as
14 the employee remains employed by the
15 Agency.

16 (ii) EMPLOYER'S CONTRIBUTION.—
17 The Director shall pay any employer con-
18 tributions to the existing retirement plan
19 of each transferred employee as required
20 under that plan.

21 (B) OPTION FOR EMPLOYEES TRANS-
22 FERRED FROM FEDERAL RESERVE SYSTEM TO
23 BE SUBJECT TO FEDERAL EMPLOYEE RETIRE-
24 MENT PROGRAM.—

1 (i) ELECTION.—Any transferred em-
2 ployee who was enrolled in a Federal Re-
3 serve System retirement plan on the day
4 before the date of the employee’s transfer
5 to the Agency may, during the period be-
6 ginning 6 months after the designated
7 transfer date and ending 1 year after the
8 designated transfer date, elect to be sub-
9 ject to the Federal employee retirement
10 program.

11 (ii) EFFECTIVE DATE OF COV-
12 ERAGE.—For any employee making an
13 election under clause (i), coverage by the
14 Federal employee retirement program shall
15 begin 1 year after the designated transfer
16 date.

17 (C) AGENCY PARTICIPATION IN FEDERAL
18 RESERVE SYSTEM RETIREMENT PLAN.—

19 (i) SEPARATE ACCOUNT IN FEDERAL
20 RESERVE SYSTEM RETIREMENT PLAN ES-
21 TABLISHED.—A separate account in the
22 Federal Reserve System retirement plan
23 shall be established for Agency employees
24 who do not make the election under sub-
25 paragraph (B).

1 (ii) FUNDS ATTRIBUTABLE TO TRANS-
2 FERRED EMPLOYEES REMAINING IN FED-
3 ERAL RESERVE SYSTEM RETIREMENT
4 PLAN TRANSFERRED.—The proportionate
5 share of funds in the Federal Reserve Sys-
6 tem retirement plan, including the propor-
7 tionate share of any funding surplus in
8 that plan, attributable to a transferred em-
9 ployee who does not make the election
10 under subparagraph (B), shall be trans-
11 ferred to the account established under
12 clause (i).

13 (iii) EMPLOYER CONTRIBUTIONS DE-
14 POSITED.—The Director shall deposit into
15 the account established under clause (i)
16 the employer contributions that the Agency
17 makes on behalf of employees who do not
18 make the election under subparagraph (B).

19 (iv) ACCOUNT ADMINISTRATION.—The
20 Director shall administer the account es-
21 tablished under clause (i) as a partici-
22 pating employer in the Federal Reserve
23 System retirement plan.

24 (D) DEFINITIONS.—For purposes of this
25 paragraph, the following definitions shall apply:

1 (i) EXISTING RETIREMENT PLAN.—

2 The term “existing retirement plan”
3 means, with respect to any employee trans-
4 ferred under this section, the particular re-
5 tirement plan (including the Financial In-
6 stitutions Retirement Fund) and any asso-
7 ciated thrift savings plan of the agency or
8 Federal reserve bank from which the em-
9 ployee was transferred, which the employee
10 was enrolled in on the day before the des-
11 ignated transfer date.

12 (ii) FEDERAL EMPLOYEE RETIRE-

13 MENT PLAN.—The term “Federal employee
14 retirement program” means the retirement
15 program for Federal employees established
16 by chapters 83 and 84 of title 5, United
17 States Code.

18 (2) BENEFITS OTHER THAN RETIREMENT BEN-

19 EFITS FOR TRANSFERRED EMPLOYEES.—

20 (A) DURING 1ST YEAR.—

21 (i) EXISTING PLANS CONTINUE.—

22 Each transferred employee may, for 1 year
23 after the designated transfer date, retain
24 membership in any other employee benefit
25 program of the agency or bank from which

1 the employee transferred, including a den-
2 tal, vision, long-term care, or life insurance
3 program, to which the employee belonged
4 on the day before the designated transfer
5 date.

6 (ii) EMPLOYER'S CONTRIBUTION.—

7 The Director shall reimburse the agency or
8 bank from which an employee was trans-
9 ferred for any cost incurred by that agency
10 or bank in continuing to extend coverage
11 in the benefit program to the employee as
12 required under that program or negotiated
13 agreements.

14 (B) DENTAL, VISION, OR LIFE INSURANCE
15 AFTER 1ST YEAR.—If, after the 1-year period
16 beginning on the designated transfer date, the
17 Director decides not to continue participation in
18 any dental, vision, or life insurance program of
19 an agency or bank from which employees trans-
20 ferred, a transferred employee who is a member
21 of such a program may, before the Director's
22 decision takes effect, elect to enroll, without re-
23 gard to any regularly scheduled open season,
24 in—

1 (i) the enhanced dental benefits estab-
2 lished by chapter 89A of title 5, United
3 States Code;

4 (ii) the enhanced vision benefits estab-
5 lished by chapter 89B of title 5, United
6 States Code; and

7 (iii) the Federal Employees Group
8 Life Insurance Program established by
9 chapter 87 of title 5, United States Code,
10 without regard to any requirement of in-
11 surability.

12 (C) LONG-TERM CARE INSURANCE AFTER
13 1ST YEAR.—If, after the 1-year period begin-
14 ning on the designated transfer date, the Direc-
15 tor decides not to continue participation in any
16 long-term care insurance program of an agency
17 or bank from which employees transferred, a
18 transferred employee who is a member of such
19 a program may, before the Director’s decision
20 takes effect, elect to apply for coverage under
21 the Federal Long Term Care Insurance Pro-
22 gram established by chapter 90 of title 5,
23 United States Code, under the underwriting re-
24 quirements applicable to a new active workforce

1 member (as defined in Part 875, title 5, Code
2 of Federal Regulations).

3 (D) EMPLOYEE'S CONTRIBUTION.—An in-
4 dividual enrolled in the Federal Employees
5 Health Benefits program shall pay any em-
6 ployee contribution required by the plan.

7 (E) ADDITIONAL FUNDING.—The Director
8 shall transfer to the Federal Employees Health
9 Benefits Fund established under section 8909
10 of title 5, United States Code, an amount deter-
11 mined by the Director of the Office of Per-
12 sonnel Management, after consultation with the
13 Director and the Director of the Office of Man-
14 agement and Budget, to be necessary to reim-
15 burse the Fund for the cost to the Fund of pro-
16 viding benefits under this subparagraph.

17 (F) CREDIT FOR TIME ENROLLED IN
18 OTHER PLANS.—For employees transferred
19 under this section, enrollment in a health bene-
20 fits plan administered by the Comptroller of the
21 Currency, the Director of the Office of Thrift
22 Supervision, the Federal Deposit Insurance
23 Corporation, the National Credit Union Admin-
24 istration, the Board of Governors, the Secretary
25 of Housing and Urban Development, or a Fed-

1 eral reserve bank, immediately before enroll-
2 ment in a health benefits plan under chapter 89
3 of title 5, United States Code, shall be consid-
4 ered as enrollment in a health benefits plan
5 under that chapter for purposes of section
6 8905(b)(1)(A) of title 5, United States Code.

7 (G) SPECIAL PROVISIONS TO ENSURE CON-
8 TINUATION OF LIFE INSURANCE BENEFITS.—

9 (i) IN GENERAL.—An annuitant (as
10 defined in section 8901(3) of title 5,
11 United States Code) who is enrolled in a
12 life insurance plan administered by the
13 Board of Governors of the Federal Reserve
14 System, the Federal Deposit Insurance
15 Corporation, the Federal Trade Commis-
16 sion, the Secretary of Housing and Urban
17 Development, the National Credit Union
18 Administration, the Comptroller of the
19 Currency, or the Director of the Office of
20 Thrift Supervision on the day before the
21 designated transfer date shall be eligible
22 for coverage by a life insurance plan under
23 sections 8706(b), 8714a, 8714b, and
24 8714c of title 5, United States Code, or in
25 a life insurance plan established by the

1 Agency, without regard to any regularly
2 scheduled open season and requirement of
3 insurability.

4 (ii) EMPLOYEE'S CONTRIBUTION.—An
5 individual enrolled in a life insurance plan
6 under this clause shall pay any employee
7 contribution required by the plan.

8 (iii) ADDITIONAL FUNDING.—The Di-
9 rector shall transfer to the Employees' Life
10 Insurance Fund established under section
11 8714 of title 5, United States Code, an
12 amount determined by the Director of the
13 Office of Personnel Management, after
14 consultation with the Director and the Di-
15 rector of the Office of Management and
16 Budget, to be necessary to reimburse the
17 Fund for the cost to the Fund of providing
18 benefits under this subparagraph not oth-
19 erwise paid for by the employee under
20 clause (ii).

21 (iv) CREDIT FOR TIME ENROLLED IN
22 OTHER PLANS.—For employees transferred
23 under this section, enrollment in a life in-
24 surance plan administered by the Board of
25 Governors, the Federal Deposit Insurance

1 Corporation, the Federal Trade Commis-
2 sion, the Secretary of Housing and Urban
3 Development, the National Credit Union
4 Administration, the Comptroller of the
5 Currency, the Director of the Office of
6 Thrift Supervision, or a Federal reserve
7 bank immediately before enrollment in a
8 life insurance plan under chapter 87 of
9 title 5, United States Code, shall be con-
10 sidered as enrollment in a life insurance
11 plan under that chapter for purposes of
12 section 8706(b)(1)(A) of title 5, United
13 States Code.

14 (j) IMPLEMENTATION OF UNIFORM PAY AND CLASSI-
15 FICATION SYSTEM.—Not later than 2 years after the des-
16 ignated transfer date, the Director shall implement a uni-
17 form pay and classification system for all transferred em-
18 ployees.

19 (k) EQUITABLE TREATMENT.—In administering the
20 provisions of this section, the Director—

21 (1) shall take no action that would unfairly dis-
22 advantage transferred employees relative to each
23 other based on their prior employment by the Board
24 of Governors, the Federal Deposit Insurance Cor-
25 poration, the Federal Trade Commission, the Sec-

1 retary of Housing and Urban Development, the Na-
2 tional Credit Union Administration, the Office of the
3 Comptroller of the Currency, the Office of Thrift
4 Supervision, a Federal reserve bank, a Federal home
5 loan bank, or a joint office of the Federal home loan
6 banks; and

7 (2) may take such action as is appropriate in
8 individual cases so that employees transferred under
9 this section receive equitable treatment, with respect
10 to those employees' status, tenure, pay, benefits
11 (other than benefits under programs administered by
12 the Office of Personnel Management), and accrued
13 leave or vacation time, for prior periods of service
14 with any Federal agency, including the Board of
15 Governors of the Federal Reserve System, the Fed-
16 eral Deposit Insurance Corporation, the Federal
17 Trade Commission, the Department of Housing and
18 Urban Development, the National Credit Union Ad-
19 ministration, the Office of the Comptroller of the
20 Currency, the Office of Thrift Supervision, a Federal
21 reserve bank, a Federal home loan bank, or a joint
22 office of the Federal home loan banks.

23 (1) IMPLEMENTATION.—In implementing the provi-
24 sions of this section, the Director shall work with the Di-
25 rector of the Office of Personnel Management and other

1 entities with expertise in matters related to employment
2 to ensure a fair and orderly transition for affected employ-
3 ees.

4 **SEC. 4605. INCIDENTAL TRANSFERS.**

5 (a) INCIDENTAL TRANSFERS AUTHORIZED.—The Di-
6 rector of the Office of Management and Budget, in con-
7 sultation with the Secretary, shall make such additional
8 incidental transfers and dispositions of assets and liabil-
9 ities held, used, arising from, available, or to be made
10 available, in connection with the functions transferred by
11 this title, as the Director may determine necessary to ac-
12 complish the purposes of this title.

13 (b) SUNSET.—The authority provided in this section
14 shall terminate 5 years after the date of the enactment
15 of this title.

16 **SEC. 4606. INTERIM AUTHORITY OF THE SECRETARY.**

17 (a) IN GENERAL.—The Secretary is authorized to
18 perform the functions of the Director under this subtitle
19 until the appointment of the Director is confirmed by the
20 Senate in accordance with section 4102.

21 (b) INTERIM ADMINISTRATIVE SERVICES BY THE
22 DEPARTMENT OF THE TREASURY.—The Secretary of the
23 Treasury may provide administrative services necessary to
24 support the Agency before the designated transfer date.

1 (c) INTERIM FUNDING FOR THE DEPARTMENT OF
2 THE TREASURY.—For the purposes of carrying out the
3 authorities granted in this section, there are appropriated
4 to the Secretary of the Treasury such sums as are nec-
5 essary. Notwithstanding any other provision of law, such
6 amounts shall be subject to apportionment under section
7 1517 of title 31, United States Code, and restrictions that
8 generally apply to the use of appropriated funds in title
9 31, United States Code, and other laws.

10 **Subtitle G—Regulatory**
11 **Improvements**

12 **SEC. 4701. COLLECTION OF DEPOSIT ACCOUNT DATA.**

13 (a) PURPOSE.—The purpose of this section is to pro-
14 mote awareness and understanding of the access of indi-
15 viduals and communities to financial services, and to iden-
16 tify business and community development needs and op-
17 portunities.

18 (b) IN GENERAL.—

19 (1) RECORDS REQUIRED.—For each branch,
20 automated teller machine at which deposits are ac-
21 cepted, and other deposit taking service facility with
22 respect to any financial institution, the financial in-
23 stitution shall maintain records of the number and
24 dollar amounts of deposit accounts of customers.

1 (2) GEO-CODED ADDRESSES OF DEPOSITORS.—

2 The customers' addresses maintained pursuant to
3 paragraph (1) shall be geo-coded so that data shall
4 be collected regarding the census tracts of the resi-
5 dence or business location of the customers.

6 (3) IDENTIFICATION OF DEPOSITOR TYPE.—In
7 maintaining records on any deposit account under
8 this section, the financial institution shall also
9 record whether the deposit account is for a residen-
10 tial or commercial customer.

11 (4) PUBLIC AVAILABILITY.—

12 (A) IN GENERAL.—The following informa-
13 tion shall be publicly available on an annual
14 basis—

15 (i) the address and census tracts of
16 each branch, automated teller machine at
17 which deposits are accepted, and other de-
18 posit taking service facility with respect to
19 any financial institution;

20 (ii) the type of deposit account includ-
21 ing whether the account was a checking or
22 savings account; and

23 (iii) data on the number and dollar
24 amounts of the accounts, presented by cen-

1 sus tract location of the residential and
2 commercial customers.

3 (iv) any other data deemed appro-
4 priate by the Director.

5 (B) PROTECTION OF IDENTITY.—In the
6 publicly available data, any personally identifi-
7 able data element shall be removed so as to pro-
8 tect the identities of the commercial and resi-
9 dential customers.

10 (c) AVAILABILITY OF INFORMATION.—

11 (1) SUBMISSION TO AGENCIES.—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 Agency, or to a Federal bank-
15 ing agency, in accordance with regulations pre-
16 scribed by the Director.

17 (2) AVAILABILITY OF INFORMATION.—Informa-
18 tion compiled and maintained under this section
19 shall be retained for not less than 3 years after the
20 date of preparation and shall be made available to
21 the public, upon request, in the form required under
22 regulations prescribed by the Director.

23 (d) AGENCY USE.—The Director—

24 (1) shall assess the distribution of residential
25 and commercial accounts at such financial institu-

1 tion across income and minority level of census
2 tracts; and

3 (2) may use the data for any other purpose as
4 permitted by law.

5 (e) REGULATIONS AND GUIDANCE.—

6 (1) IN GENERAL.—The Director shall prescribe
7 such regulations and issue guidance as may be nec-
8 essary to carry out, enforce, and compile data pursu-
9 ant to this section.

10 (2) DATA COMPILATION REGULATIONS.—The
11 Director shall prescribe regulations regarding the
12 provision of data compiled under this section to the
13 Federal banking agencies to carry out the purposes
14 of this section and shall issue guidance to financial
15 institutions regarding measures to facilitate compli-
16 ance with the this section and the requirements of
17 regulations prescribed under this section.

18 (f) DEFINITIONS.—For purposes of this section, the
19 following definitions shall apply:

20 (1) AGENCY.—The term “Agency” means the
21 Consumer Financial Protection Agency.

22 (2) CREDIT UNION.—The term “credit union”
23 means a Federal credit union or a State-chartered
24 credit union (as such terms are defined in section
25 101 of the Federal Credit Union Act).

1 (3) DEPOSIT ACCOUNT.—The term “deposit ac-
2 count” includes any checking account, savings ac-
3 count, credit union share account, and other type of
4 account as defined by the Director.

5 (4) DIRECTOR.—The term “Director” means
6 the Director of the Agency.

7 (5) FEDERAL BANKING AGENCY.—The term
8 “Federal banking agency” means the Board of Gov-
9 ernors of the Federal Reserve System, the head of
10 the agency responsible for chartering and regulating
11 national banks, the Director of the Office of Thrift
12 Supervision, the Federal Deposit Insurance Corpora-
13 tion, and the National Credit Union Administration;
14 and the term “Federal banking agencies” means all
15 of those agencies.

16 (6) FINANCIAL INSTITUTION.—The term “fi-
17 nancial institution”—

18 (A) has the meaning given to the term “in-
19 sured depository institution” in section 3(e)(2)
20 of the Federal Deposit Insurance Act; and

21 (B) includes any credit union.

22 (g) EFFECTIVE DATE.—This section shall take effect
23 on the designated transfer date.

1 **SEC. 4702. SMALL BUSINESS DATA COLLECTION.**

2 (a) IN GENERAL.—The Equal Credit Opportunity
3 Act (15 U.S.C. 1691 et seq.) is amended by inserting after
4 section 704A the following new section:

5 **“§ 704B. Small business loan data collection**

6 “(a) PURPOSE.—The purpose of this section is to fa-
7 cilitate enforcement of fair lending laws and enable com-
8 munities, governmental entities, and creditors to identify
9 business and community development needs and opportu-
10 nities of women- and minority-owned small businesses.

11 “(b) IN GENERAL.—Subject to the requirements of
12 this section, in the case of any application to a financial
13 institution for credit for a small business, the financial in-
14 stitution shall—

15 “(1) inquire whether the business is a women-
16 or minority-owned business, without regard to
17 whether such application is received in person, by
18 mail, by telephone, by electronic mail or other form
19 of electronic transmission, or by any other means
20 and whether or not such application is in response
21 to a solicitation by the financial institution; and

22 “(2) maintain a record of the responses to such
23 inquiry separate from the application and accom-
24 panying information.

25 “(c) RIGHT TO REFUSE.—Any applicant for credit
26 may refuse to provide any information requested pursuant

1 to subsection (b) in connection with any application for
2 credit.

3 “(d) NO ACCESS BY UNDERWRITERS.—

4 “(1) IN GENERAL.—Where feasible, no loan un-
5 derwriter or other officer or employee of a financial
6 institution, or any affiliate of a financial institution,
7 involved in making any determination concerning an
8 application for credit shall have access to any infor-
9 mation provided by the applicant pursuant to a re-
10 quest under subsection (b) in connection with such
11 application.

12 “(2) EXCEPTION.—If a financial institution de-
13 termines that loan underwriter or other officer or
14 employee of a financial institution, or any affiliate of
15 a financial institution, involved in making any deter-
16 mination concerning an application for credit should
17 have access to any information provided by the ap-
18 plicant pursuant to a request under subsection (b),
19 the financial institution will provide notice to the ap-
20 plicant of the access of the underwriter to this infor-
21 mation, along with notice that the financial institu-
22 tion may not discriminate on this basis of this infor-
23 mation.

24 “(e) FORM AND MANNER OF INFORMATION.—

1 “(1) IN GENERAL.—Each financial institution
2 shall compile and maintain, in accordance with regu-
3 lations of the Agency, a record of the information
4 provided by any loan applicant pursuant to a request
5 under subsection (b).

6 “(2) ITEMIZATION.—Information compiled and
7 maintained under paragraph (1) shall also be
8 itemized in order to clearly and conspicuously dis-
9 close the following:

10 “(A) The number of the application and
11 the date the application was received.

12 “(B) The type and purpose of the loan or
13 other credit being applied for.

14 “(C) The amount of the credit or credit
15 limit applied for and the amount of the credit
16 transaction or the credit limit approved for such
17 applicant.

18 “(D) The type of action taken with respect
19 to such application and the date of such action.

20 “(E) The census tract in which is located
21 the principal place of business of the small busi-
22 ness loan applicant.

23 “(F) The gross annual revenue of the busi-
24 ness in the last fiscal year of the small business

1 loan applicant preceding the date of the appli-
2 cation.

3 “(G) The race, sex, and ethnicity of the
4 principal owners of the business.

5 “(H) Any additional data the Agency de-
6 termines would aid in fulfilling the purposes of
7 this section.

8 “(3) INCLUSION OF PERSONALLY IDENTIFIABLE
9 INFORMATION PROHIBITED.—In compiling and
10 maintaining any record of information under this
11 section, a financial institution may not include in
12 such record the name, specific address (other than
13 the census tract required under paragraph (1)(E)),
14 telephone number, electronic mail address, and any
15 other personally identifiable information concerning
16 any individual who is, or is connected with, the small
17 business loan applicant.

18 “(4) DISCRETION TO DELETE OR MODIFY PUB-
19 LICLY AVAILABLE DATA.—The Agency may, in the
20 discretion of the Agency, delete or modify data col-
21 lected under this section which is or will be available
22 to the public if the Agency determines that the dele-
23 tion or modification of the data would advance a
24 compelling privacy interest.

25 “(f) AVAILABILITY OF INFORMATION.—

1 “(1) SUBMISSION TO AGENCY.—The data re-
2 quired to be compiled and maintained under this
3 section by any financial institution shall be sub-
4 mitted annually to the Agency.

5 “(2) AVAILABILITY OF INFORMATION.—

6 “(A) IN GENERAL.—Information compiled
7 and maintained under this section shall be re-
8 tained for not less than 3 years after the date
9 of preparation and shall be made available to
10 the public, upon request, in the form required
11 under regulations prescribed by the Agency.

12 “(B) ANNUAL DISCLOSURE TO THE PUB-
13 LIC.—In addition to the availability by request
14 under subparagraph (A) of data compiled and
15 maintained under this section, the Agency shall
16 annually provide such data to the public.

17 “(C) PROCEDURES.—The procedures for
18 disclosing data compiled and maintained under
19 this section to the public shall be determined by
20 the Agency by regulation.

21 “(3) COMPILATION OF AGGREGATE DATA.—

22 “(A) IN GENERAL.—The Agency may, in
23 the discretion of the Agency, compile for the
24 Agency’s own use compilations of aggregate
25 data.

1 “(B) PUBLIC AVAILABILITY OF AGGRE-
2 GATE DATA.—The Agency may, in the discre-
3 tion of the Agency, make public compilations of
4 aggregate data in such manner as the Agency
5 may determine to be appropriate.

6 “(g) DEFINITIONS.—For purposes of this section, the
7 following definitions shall apply:

8 “(1) FINANCIAL INSTITUTION.—The term ‘fi-
9 nancial institution’ means any partnership, com-
10 pany, corporation, association (incorporated or unin-
11 corporated), trust, estate, cooperative organization,
12 or other entity that engages in any financial activity.

13 “(2) MINORITY-OWNED BUSINESS.—The term
14 ‘minority-owned business’ means a business—

15 “(A) more than 50 percent of the owner-
16 ship or control of which is held by 1 or more
17 minority individuals; and

18 “(B) more than 50 percent of the net prof-
19 it or loss of which accrues to 1 or more minor-
20 ity individuals.

21 “(3) WOMEN-OWNED BUSINESS.—The term
22 ‘women-owned business’ means a business—

23 “(A) more than 50 percent of the owner-
24 ship or control of which is held by 1 or more
25 women; and

1 “(B) more than 50 percent of the net prof-
2 it or loss of which accrues to 1 or more women.

3 “(4) MINORITY.—The term ‘minority’ has the
4 meaning given to such term by section 1204(c)(3) of
5 the Financial Institutions Reform, Recovery, and
6 Enforcement Act of 1989.

7 “(5) SMALL BUSINESS LOAN.—The term ‘small
8 business loan’ shall be defined by the Agency, which
9 may take into account—

10 “(A) the gross revenues of the borrower;

11 “(B) the total number of employees of the
12 borrower;

13 “(C) the industry in which the borrower
14 has its primary operations; and

15 “(D) the size of the loan.

16 “(h) AGENCY ACTION.—

17 “(1) IN GENERAL.—The Agency shall prescribe
18 such regulations and issue such guidance as may be
19 necessary to carry out, enforce, and compile data
20 pursuant to this section.

21 “(2) EXCEPTIONS.—The Agency, by regulation
22 or order, may adopt exceptions to any requirement
23 of this section and may, conditionally or uncondi-
24 tionally, exempt any financial institution or class of
25 institutions from the requirements of this section as

1 the Agency determines to be necessary or appro-
2 priate to carry out the purposes and objectives of
3 this section.

4 “(3) GUIDANCE.—The Agency shall issue guid-
5 ance designed to facilitate compliance with the re-
6 quirements of this section, including assisting finan-
7 cial institutions in working with applicants to deter-
8 mine whether the applicants are women- or minor-
9 ity-owned for the purposes of this section.”.

10 (b) TECHNICAL AND CONFORMING AMENDMENT.—
11 Section 701(b) of the Equal Credit Opportunity Act (15
12 U.S.C. 1691(b)) is amended—

13 (1) by striking “or” after the semicolon at the
14 end of paragraph (3);

15 (2) by striking the period at the end of para-
16 graph (4) and inserting “; or”; and

17 (3) by inserting after paragraph (4), the fol-
18 lowing new paragraph:

19 “(5) to make an inquiry under section 704B in
20 accordance with the requirements of such section.”.

21 (c) CLERICAL AMENDMENT.—The table of sections
22 for the Equal Credit Opportunity Act is amended by in-
23 serting after the item relating to section 704A the fol-
24 lowing new item:

“704B. Small business loan data collection.”.

1 (d) EFFECTIVE DATE.—This section shall take effect
2 on the designated transfer date.

3 **SEC. 4703. ANNUAL FINANCIAL AUTOPSY.**

4 (a) STUDY REQUIRED.—Not later than March 31 of
5 each calendar year, the Director shall—

6 (1) conduct a scientific sampling of foreclosures
7 and bankruptcies during the previous calendar year
8 in each State or territory of the United States; and

9 (2) identify any underlying causes of such
10 bankruptcies or foreclosures, including any specific
11 financial products or services that have been the
12 cause of substantial numbers of such bankruptcies
13 or foreclosures.

14 (b) REPORT.—After the completion of each study re-
15 quired under subsection (a), the Director shall submit a
16 report to the Congress containing—

17 (1) any conclusions made by the Director in
18 carrying out such study;

19 (2) any specific financial products or services
20 that the Director has identified to have caused a
21 substantial number of bankruptcies or foreclosures,
22 as well as which companies or individuals provided
23 such financial products or services; and

24 (3) any recommendations the Director has for
25 legislation that would reduce the underlying causes

1 of bankruptcies and foreclosures identified in such
2 study.

3 **Subtitle H—Conforming** 4 **Amendments**

5 **SEC. 4801. AMENDMENTS TO THE INSPECTOR GENERAL** 6 **ACT OF 1978.**

7 (a) ESTABLISHMENT.—Section 8G(a)(2) of the In-
8 spector General Act of 1978 (5 U.S.C. App.) is amended
9 by inserting “the Consumer Financial Protection Agency,”
10 before “the Consumer Product Safety Commission,”.

11 (b) EFFECTIVE DATE.—This section shall take effect
12 on the date of the enactment of this title.

13 **SEC. 4802. AMENDMENTS TO THE PRIVACY ACT OF 1974.**

14 (a) APPLICABILITY.—Section 552a of title 5, United
15 States Code, is amended by adding at the end the fol-
16 lowing new subsection:

17 “(w) APPLICABILITY TO CONSUMER FINANCIAL PRO-
18 TECTION AGENCY.—Except as provided in the Consumer
19 Financial Protection Agency Act of 2009, this section
20 shall apply with respect to the Consumer Financial Protec-
21 tion Agency.”.

22 (b) EFFECTIVE DATE.—This section shall take effect
23 on the date of the enactment of this title.

1 **SEC. 4803. AMENDMENTS TO THE ALTERNATIVE MORT-**
2 **GAGE TRANSACTION PARITY ACT OF 1982.**

3 (a) SECTION 803(1).—Section 803(1) of the Alter-
4 native Mortgage Transaction Parity Act of 1982 (12
5 U.S.C. 3802(1)) is amended by striking paragraphs (B)
6 and (C).

7 (b) SECTION 804(a).—Section 804(a) of the Alter-
8 native Mortgage Transaction Parity Act of 1982 (12
9 U.S.C. 3803(a)) is amended—

10 (1) in paragraphs (1), (2), and (3), by inserting
11 “on or before the designated transfer date, as deter-
12 mined in section 4602 of the Consumer Financial
13 Protection Agency Act of 2009” after “transactions
14 made” each place such term appears;

15 (2) in paragraph (2), by striking “and” at the
16 end;

17 (3) in paragraph (3), by striking the period at
18 the end and inserting “; and”; and

19 (4) by adding at the end the following new
20 paragraph:

21 “(4) with respect to transactions made after the
22 designated transfer date, as determined in section
23 4602 of the Consumer Financial Protection Agency
24 Act of 2009, only in accordance with regulations
25 governing alternative mortgage transactions as
26 issued by the Consumer Financial Protection Agency

1 for federally chartered housing creditors, in accord-
2 ance with the rulemaking authority granted to the
3 Consumer Financial Protection Agency with regard
4 to federally chartered housing creditors under laws
5 other than this section.”.

6 (c) SECTION 804.—Section 804 of the Alternative
7 Mortgage Transaction Parity Act of 1982 (12 U.S.C.
8 3803) is amended—

9 (1) by striking subsection (c) and inserting the
10 following new subsection:

11 “(c) EFFECT OF STATE LAW.—

12 “(1) IN GENERAL.—An alternative mortgage
13 transaction may be made by a housing creditor in
14 accordance with this section, notwithstanding any
15 State Constitution, law, or regulation that prohibits
16 an alternative mortgage transaction.

17 “(2) RULE OF CONSTRUCTION.—For purposes
18 of this subsection, a State Constitution, law, or reg-
19 ulation that prohibits an alternative mortgage trans-
20 action does not include any State Constitution, law,
21 or regulation that regulates mortgage transactions
22 generally, including any restriction on prepayment
23 penalties or late charges.”; and

24 (2) by adding at the end the following new sub-
25 section:

1 “(d) DUTIES OF CONSUMER FINANCIAL PROTECTION
2 AGENCY.—The Consumer Financial Protection Agency
3 shall—

4 “(1) review the regulations identified by the
5 Comptroller of the Currency, the National Credit
6 Union Administration, and the Director of the Office
7 of Thrift Supervision (as those regulations exist on
8 the designated transfer date, as determined in sec-
9 tion 4602 of the Consumer Financial Protection
10 Agency Act of 2009) as applicable under paragraphs
11 (1), (2), and (3) of subsection (a);

12 “(2) determine whether such regulations are
13 fair and not deceptive and otherwise meet the objec-
14 tives of section 4201 of the Consumer Financial
15 Protection Agency Act of 2009; and

16 “(3) prescribe regulations under subsection
17 (a)(4) after the designated transfer date, as deter-
18 mined under such Act.”.

19 (d) EFFECTIVE DATE AND SCOPE OF APPLICA-
20 TION.—

21 (1) EFFECTIVE DATE.—This section shall take
22 effect on the designated transfer date.

23 (2) SCOPE OF APPLICATION.—The amendments
24 made by subsection (a) shall not affect any trans-
25 action covered by the Alternative Mortgage Trans-

1 action Parity Act of 1982 which is entered into on
2 or before the designated transfer date.

3 **SEC. 4804. AMENDMENTS TO THE CONSUMER CREDIT PRO-**
4 **TECTION ACT.**

5 (a) TRUTH IN LENDING ACT.—

6 (1) SECTION 103.—Section 103 of the Truth in
7 Lending Act (15 U.S.C. 1602) is amended by strik-
8 ing subsection (b) and inserting the following new
9 subsection:

10 “(b) AGENCY DEFINITIONS.—

11 “(1) BOARD.—The term ‘Board’ means the
12 ‘Board of Governors of the Federal Reserve System’.

13 “(2) AGENCY.—The term ‘Agency’ means the
14 Consumer Financial Protection Agency.”.

15 (2) UNIVERSAL AMENDMENT RELATING TO
16 BOARD OF GOVERNORS OF THE FEDERAL RESERVE
17 SYSTEM.—

18 (A) IN GENERAL.—Except as provided in
19 subparagraph (B), the Truth in Lending Act
20 (15 U.S.C. 1601 et seq.) is amended by striking
21 “Board” each place such term appears, includ-
22 ing in chapters 4 and 5 relating to credit billing
23 and consumer leases, and inserting “Agency”.

24 (B) EXCEPTIONS.—The amendment de-
25 scribed in subparagraph (A) shall not apply to

1 sections 108(a) (as amended by paragraph (4))
2 and 140(d).

3 (3) SECTION 105.—Section 105(b) of the Truth
4 in Lending Act (15 U.S.C. 1604(b)) is amended by
5 striking the first sentence and inserting the fol-
6 lowing: “The Agency shall publish a single, inte-
7 grated disclosure for mortgage loan transactions, in-
8 cluding real estate settlement cost statements, which
9 include the disclosure requirements of this title, in
10 conjunction with the disclosure requirements of the
11 Real Estate Settlement Procedures Act that, taken
12 together, may apply to transactions subject to both
13 or either law. The purpose of such model disclosure
14 shall be to facilitate compliance with the disclosure
15 requirements of those titles, and to aid the borrower
16 or lessee in understanding the transaction by uti-
17 lizing readily understandable language to simplify
18 the technical nature of the disclosures.”.

19 (4) SECTION 108.—Section 108 of the Truth in
20 Lending Act (15 U.S.C. 1607) is amended—

21 (A) by striking subsection (a) and insert-
22 ing the following new subsection:

23 “(a) ENFORCING AGENCIES.—Subject to section
24 4202 of the Consumer Financial Protection Agency Act

1 of 2009, compliance with the requirements imposed under
2 this title shall be enforced as follows:

3 “(1) Under section 8 of the Federal Deposit In-
4 surance Act, in the case of—

5 “(A) national banks, and Federal branches
6 and Federal agencies of foreign banks, by the
7 head of the agency responsible for chartering
8 and regulating national banks;

9 “(B) member banks of the Federal Reserve
10 System (other than national banks), branches
11 and agencies of foreign banks (other than Fed-
12 eral branches, Federal agencies, and insured
13 State branches of foreign banks), commercial
14 lending companies owned or controlled by for-
15 eign banks, and organizations operating under
16 section 25 or 25(a) of the Federal Reserve Act,
17 by the Board;

18 “(C) depository institution insured by the
19 Federal Deposit Insurance Corporation (other
20 than members of the Federal Reserve System,
21 Federal savings associations, and savings and
22 loan holding companies) and insured State
23 branches of foreign banks, by the Board of Di-
24 rectors of the Federal Deposit Insurance Cor-
25 poration; and

1 “(D) Federal savings associations and sav-
2 ings and loan holding companies, by the Direc-
3 tor of the Office of Thrift Supervision.

4 “(2) Under subtitle E of the Consumer Finan-
5 cial Protection Agency Act of 2009, by the Agency.

6 “(3) Under the Federal Credit Union Act, by
7 the head of the agency responsible for chartering
8 and regulating Federal credit unions.

9 “(4) Under the Federal Aviation Act of 1958,
10 by the Secretary of Transportation with respect to
11 any air carrier or foreign air carrier subject to that
12 Act.

13 “(5) Under the Packers and Stockyards Act,
14 1921 (except as provided in section 406 of that Act),
15 by the Secretary of Agriculture with respect to any
16 activities subject to that Act.

17 “(6) Under the Farm Credit Act of 1971, by
18 the Farm Credit Administration with respect to any
19 Federal land bank, Federal land bank association,
20 Federal intermediate credit bank, or production
21 credit association.”; and

22 (B) by striking subsection (c) and insert-
23 ing the following new subsection:

24 “(c) OVERALL ENFORCEMENT AUTHORITY OF THE
25 FEDERAL TRADE COMMISSION.—Except to the extent

1 that enforcement of the requirements imposed under this
2 title is specifically committed to some other Government
3 agency under subsection (a) and subject to section 4202
4 of the Consumer Financial Protection Agency Act of 2009,
5 the Federal Trade Commission shall enforce such require-
6 ments. For the purpose of the exercise by the Federal
7 Trade Commission of its functions and powers under the
8 Federal Trade Commission Act, a violation of any require-
9 ment imposed under this title shall be deemed a violation
10 of a requirement imposed under that Act. All of the func-
11 tions and powers of the Federal Trade Commission under
12 the Federal Trade Commission Act are available to the
13 Commission to enforce compliance by any person with the
14 requirements under this title, irrespective of whether that
15 person is engaged in commerce or meets any other juris-
16 dictional tests in the Federal Trade Commission Act.”.

17 (5) UNIVERSAL AMENDMENT RELATING TO THE
18 FEDERAL TRADE COMMISSION.—

19 (A) IN GENERAL.—Except as provided in
20 subparagraph (B), the Truth in Lending Act
21 (15 U.S.C. 1601 et seq.) is amended by striking
22 “Federal Trade Commission” each place such
23 term appears and inserting “Agency”.

24 (B) EXCEPTIONS.—The amendment de-
25 scribed in subparagraph (A) shall not apply to

1 sections 108(c) (as amended by paragraph (4))
2 and 129(m) (as amended by paragraph (7)).

3 (6) SECTION 127.—Subparagraph (C) of section
4 127(b)(11) of the Truth in Lending Act (15 U.S.C.
5 1637(b)(11)) is amended to read as follows:

6 “(C) Notwithstanding subparagraphs (A)
7 and (B), in the case of a creditor with respect
8 to which compliance with this title is enforced
9 by the Agency, the following statement, in a
10 prominent location on the front of the billing
11 statement, disclosed clearly and conspicuously:
12 ‘Minimum Payment Warning: Making only the
13 required minimum payment will increase the in-
14 terest you pay and the time it takes to repay
15 your balance. For example, making only the
16 typical 5 percent minimum monthly payment on
17 a balance of \$300 at an interest rate of 17 per-
18 cent would take 24 months to repay the balance
19 in full. For an estimate of the time it would
20 take to repay your balance, making only min-
21 imum monthly payments, call the Consumer Fi-
22 nancial Protection Agency at this toll-free num-
23 ber: _____ [the blank space to
24 be filled in by the creditor].’ A creditor who is

1 subject to this subparagraph shall not be sub-
2 ject to subparagraph (A) or (B).”.

3 (7) SECTION 129.—Section 129(m) of the Truth
4 in Lending Act (15 U.S.C. 1639(m)) is amended to
5 read as follows:

6 “(m) CIVIL PENALTIES IN FEDERAL TRADE COM-
7 MISSION ENFORCEMENT ACTIONS.—For purposes of en-
8 forcement by the Federal Trade Commission, any violation
9 of a regulation issued by the Agency pursuant to sub-
10 section (l)(2) of this section shall be treated as a violation
11 of a regulation promulgated under section 18 of the Fed-
12 eral Trade Commission Act (15 U.S.C. 57a) regarding un-
13 fair or deceptive acts or practices.”.

14 (b) FAIR CREDIT REPORTING ACT.—

15 (1) SECTION 603.—Section 603 of the Fair
16 Credit Reporting Act (15 U.S.C. 1681a) is amend-
17 ed—

18 (A) by redesignating subsections (w) and
19 (x) as subsections (x) and (y), respectively; and

20 (B) by inserting after subsection (v) the
21 following new subsection:

22 “(w) AGENCY.—The term ‘Agency’ means the Con-
23 sumer Financial Protection Agency.”.

24 (2) UNIVERSAL AMENDMENTS RELATING TO
25 THE FEDERAL TRADE COMMISSION.—Other than in

1 connection with the amendment made by paragraph
2 (7)(A), the Fair Credit Reporting Act (15 U.S.C.
3 1681a) is amended—

4 (A) by striking “Federal Trade Commis-
5 sion” each place such term appears and insert-
6 ing “Agency”;

7 (B) by striking “Commission” each place
8 such term appears (other than in connection
9 with the term amended in subparagraph (A))
10 and inserting “Agency”; and

11 (C) by striking “Federal banking agencies,
12 the National Credit Union Administration, and
13 the Commission shall jointly” each place such
14 term appears in sections 605(h)(2) and
15 623(a)(8)(A) and inserting “Agency shall”.

16 (3) SECTION 603.—Section 603(k)(2) of the
17 Fair Credit Reporting Act (15 U.S.C. 1681a(k)(2))
18 is amended by striking “Board of Governors of the
19 Federal Reserve System” and inserting “Agency”.

20 (4) SECTION 604.—Subsection 604(g) of the
21 Fair Credit Reporting Act (15 U.S.C. 1681b(g)) is
22 amended—

23 (A) by striking subparagraph (C) of para-
24 graph (3) and inserting the following new sub-
25 paragraph:

1 “(C) as otherwise determined to be nec-
2 essary and appropriate, by regulation or order
3 and subject to paragraph (6), by the Agency
4 (with respect to any covered person subject to
5 the jurisdiction of such agency under paragraph
6 (2) of section 621(b)), or the applicable State
7 insurance authority (with respect to any person
8 engaged in providing insurance or annuities).”;
9 and

10 (B) by striking paragraph (5) and insert-
11 ing the following new paragraph:

12 “(5) REGULATIONS REQUIRED.—The Agency
13 may, after notice and opportunity for comment, pre-
14 scribe regulations that permit transactions under
15 paragraph (2) that are determined to be necessary
16 and appropriate to protect legitimate operational,
17 transactional, risk, consumer, and other needs (and
18 which shall include permitting actions necessary for
19 administrative verification purposes), consistent with
20 the intent of paragraph (2) to restrict the use of
21 medical information for inappropriate purposes.”.

22 (5) SECTION 611.—Section 611(e)(2) of the
23 Fair Credit Reporting Act (15 U.S.C.1681i(e)(2)) is
24 amended to read as follows:

1 “(2) EXCLUSION.—Complaints received or ob-
2 tained by the Agency pursuant to its investigative
3 authority under the Consumer Financial Protection
4 Agency Act of 2009 shall not be subject to para-
5 graph (1).”.

6 (6) SECTION 615.—Section 615(h)(6)(A) of the
7 Fair Credit Reporting Act (15 U.S.C.
8 1681m(h)(6)(A)) is amended to read as follows:

9 “(A) RULES REQUIRED.—The Agency
10 shall prescribe rules.”.

11 (7) SECTION 621.—Section 621 of the Fair
12 Credit Reporting Act (15 U.S.C. 1681s) is amend-
13 ed—

14 (A) by striking subsection (a) and insert-
15 ing the following new subsection:

16 “(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
17 SION.—

18 “(1) IN GENERAL.—Subject to section 4202 of
19 the Consumer Financial Protection Agency Act of
20 2009, compliance with the requirements imposed
21 under this title shall be enforced under the Federal
22 Trade Commission Act by the Federal Trade Com-
23 mission with respect to consumer reporting agencies
24 and all other persons subject thereto, except to the
25 extent that enforcement of the requirements imposed

1 under this title is specifically committed to some
2 other government agency under subsection (b) here-
3 of. For the purpose of the exercise by the Federal
4 Trade Commission of its functions and powers under
5 the Federal Trade Commission Act, a violation of
6 any requirement or prohibition imposed under this
7 title shall constitute an unfair or deceptive act or
8 practice in commerce in violation of section 5(a) of
9 the Federal Trade Commission Act and shall be sub-
10 ject to enforcement by the Federal Trade Commis-
11 sion under section 5(b) of such Act with respect to
12 any consumer reporting agency or person subject to
13 enforcement by the Federal Trade Commission pur-
14 suant to this subsection, irrespective of whether that
15 person is engaged in commerce or meets any other
16 jurisdictional tests in the Federal Trade Commission
17 Act. The Federal Trade Commission shall have such
18 procedural, investigative, and enforcement powers
19 (subject to section 4202 of the Consumer Financial
20 Protection Agency Act of 2009), including the power
21 to issue procedural rules in enforcing compliance
22 with the requirements imposed under this title and
23 to require the filing of reports, the production of
24 documents, and the appearance of witnesses as
25 though the applicable terms and conditions of the

1 Federal Trade Commission Act were part of this
2 title. Any person violating any of the provisions of
3 this title shall be subject to the penalties and enti-
4 tled to the privileges and immunities provided in the
5 Federal Trade Commission Act as though the appli-
6 cable terms and provisions thereof were part of this
7 title.

8 “(2) CIVIL MONEY PENALTIES.—

9 “(A) IN GENERAL.—Subject to section
10 4202 of the Consumer Financial Protection
11 Agency Act of 2009, in the event of a knowing
12 violation, which constitutes a pattern or prac-
13 tice of violations of this title, the Commission
14 may commence a civil action to recover a civil
15 penalty in a district court of the United States
16 against any person that violates this title. In
17 such action, such person shall be liable for a
18 civil penalty of not more than \$2,500 per viola-
19 tion.

20 “(B) FACTORS IN DETERMINING
21 AMOUNT.—In determining the amount of a civil
22 penalty under subparagraph (A), the court shall
23 take into account the degree of culpability, any
24 history of prior such conduct, ability to pay, ef-

1 fect on ability to continue to do business, and
2 such other matters as justice may require.

3 “(3) EXCEPTION.—Notwithstanding paragraph
4 (2), a court may not impose any civil penalty on a
5 person for a violation of section 623(a)(1) unless the
6 person has been enjoined from committing the viola-
7 tion, or ordered not to commit the violation, in an
8 action or proceeding brought by or on behalf of the
9 Federal Trade Commission or the Agency, as the
10 case may be, and has violated the injunction or
11 order, and the court may not impose any civil pen-
12 alty for any violation occurring before the date of
13 the violation of the injunction or order.”;

14 (B) by striking subsection (b) and insert-
15 ing the following new subsection:

16 “(b) ENFORCEMENT BY OTHER AGENCIES.—Subject
17 to section 4202 of the Consumer Financial Protection
18 Agency Act of 2009, compliance with the requirements im-
19 posed under this title with respect to consumer reporting
20 agencies, persons who use consumer reports from such
21 agencies, persons who furnish information to such agen-
22 cies, and users of information that are subject to sub-
23 section (d) of section 615 shall be enforced as follows:

24 “(1) Under section 8 of the Federal Deposit In-
25 surance Act, in the case of—

1 “(A) national banks, and Federal branches
2 and Federal agencies of foreign banks, by the
3 head of the agency responsible for chartering
4 and regulating national banks;

5 “(B) member banks of the Federal Reserve
6 System (other than national banks), branches
7 and agencies of foreign banks (other than Fed-
8 eral branches, Federal agencies, and insured
9 State branches of foreign banks), commercial
10 lending companies owned or controlled by for-
11 eign banks, and organizations operating under
12 section 25 or 25A of the Federal Reserve Act,
13 by the Board of Governors of the Federal Re-
14 serve System;

15 “(C) banks insured by the Federal Deposit
16 Insurance Corporation (other than members of
17 the Federal Reserve System, Federal savings
18 associations, and savings and loan holding com-
19 panies) and insured State branches of foreign
20 banks, by the Board of Directors of the Federal
21 Deposit Insurance Corporation; and

22 “(D) Federal savings associations and sav-
23 ings and loan holding companies, by the Direc-
24 tor of the Office of Thrift Supervision.

1 “(2) Under subtitle E of the Consumer Finan-
2 cial Protection Agency Act of 2009, by the Agency
3 in the case of a covered person under that Act.

4 “(3) Under the Federal Credit Union Act, by
5 the National Credit Union Administration Board
6 with respect to any Federal credit union.

7 “(4) Under subtitle IV of title 49, United
8 States Code, by the Secretary of Transportation,
9 with respect to all carriers subject to the jurisdiction
10 of the Surface Transportation Board.

11 “(5) Under the Federal Aviation Act of 1958,
12 by the Secretary of Transportation with respect to
13 any air carrier or foreign air carrier subject to that
14 Act.

15 “(6) Under the Packers and Stockyards Act,
16 1921 (except as provided in section 406 of that Act),
17 by the Secretary of Agriculture with respect to any
18 activities subject to that Act.

19 “(7) Under the Commodity Exchange Act, with
20 respect to a person subject to the jurisdiction of the
21 Commodity Futures Trading Commission.

22 “(8) Under the Federal securities law and any
23 other laws subject to the jurisdiction of the Securi-
24 ties and Exchange Commission, with respect to a

1 person subject to the jurisdiction of the Securities
2 and Exchange Commission.

3 Any term used in paragraph (1) that is not defined in
4 this title or otherwise defined in section 3(s) of the Federal
5 Deposit Insurance Act shall have the meaning given to
6 such term in section 1(b) of the International Banking Act
7 of 1978.”;

8 (C) by striking subsection (e) and inserting
9 the following new subsection:

10 “(e) REGULATORY AUTHORITY.—The Agency shall
11 prescribe such regulations as necessary to carry out the
12 purposes of this Act with respect to a covered person de-
13 scribed in subsection (b).”; and

14 (D) in the heading of subsection (g) by
15 striking “FTC”.

16 (8) SECTION 623.—Section 623 of the Fair
17 Credit Reporting Act (15 U.S.C. 1681s–2) is
18 amended—

19 (A) by amending subparagraph (a)(7)(D)
20 to read as follows:

21 “(D) MODEL DISCLOSURE.—

22 “(i) DUTY OF AGENCY TO PRE-
23 PARE.—The Agency shall prescribe a brief
24 model disclosure a financial institution

1 may use to comply with subparagraph (A),
2 which shall not exceed 30 words.

3 “(ii) USE OF MODEL NOT RE-
4 QUIRED.—No provision of this paragraph
5 shall be construed as requiring a financial
6 institution to use any such model form pre-
7 scribed by the Agency.

8 “(iii) COMPLIANCE USING MODEL.—A
9 financial institution shall be deemed to be
10 in compliance with subparagraph (A) if the
11 financial institution uses any such model
12 form prescribed by the Agency, or the fi-
13 nancial institution uses any such model
14 form and rearranges its format.”.

15 (B) by amending subsection (e) to read as
16 follows:

17 “(e) ACCURACY GUIDELINES AND REGULATIONS RE-
18 QUIRED.—

19 “(1) GUIDELINES.—The Agency shall, with re-
20 spect to the entities that are subject to its enforce-
21 ment authority under section 621—

22 “(A) establish and maintain guidelines for
23 use by each person that furnishes information
24 to a consumer reporting agency regarding the
25 accuracy and integrity of the information relat-

1 ing to consumers that such entities furnish to
2 consumer reporting agencies, and update such
3 guidelines as often as necessary; and

4 “(B) prescribe regulations requiring each
5 person that furnishes information to a con-
6 sumer reporting agency to establish reasonable
7 policies and procedures or implementing the
8 guidelines established pursuant to subpara-
9 graph (A).

10 “(2) CRITERIA.—In developing the guidelines
11 required by paragraph (1)(A), the Agency shall—

12 “(A) identify patterns, practices, and spe-
13 cific forms of activity that can compromise the
14 accuracy and integrity of information furnished
15 to consumer reporting agencies;

16 “(B) review the methods (including techno-
17 logical means) used to furnish information re-
18 lating to consumers to consumer reporting
19 agencies;

20 “(C) determine whether persons that fur-
21 nish information to consumer reporting agen-
22 cies maintain and enforce policies to ensure the
23 accuracy and integrity of information furnished
24 to consumer reporting agencies; and

1 “(D) examine the policies and processes
2 that persons that furnish information to con-
3 sumer reporting agencies employ to conduct re-
4 investigations and correct inaccurate informa-
5 tion relating to consumers that has been fur-
6 nished to consumer reporting agencies.”

7 (c) EQUAL CREDIT OPPORTUNITY ACT.—

8 (1) SECTION 701.—Section 701 of the Equal
9 Credit Opportunity Act (15 U.S.C. 1691) is amend-
10 ed by striking “Board” each place such term ap-
11 pears and inserting “Agency”.

12 (2) SECTION 702.—Section 702(c) of the Equal
13 Credit Opportunity Act (15 U.S.C. 1691a) is
14 amended to read as follows:

15 “(c) The term ‘Agency’ means the Consumer Finan-
16 cial Protection Agency.”.

17 (3) SECTION 703.—Section 703 of the Equal
18 Credit Opportunity Act (15 U.S.C. 1691b) is
19 amended—

20 (A) by striking subsection (b);

21 (B) in subsection (a)—

22 (i) by striking “(1)”; and

23 (ii) by redesignating paragraphs (2),

24 (3), (4), and (5) as subsections (b), (c),

25 (d), and (e), respectively;

1 (C) in subsection (c) (as so redesignated)—
2

3 (i) by striking “paragraph (2)” and
4 inserting “subsection (b)”; and

5 (ii) by striking “such paragraph” and
6 inserting “such subsection”;

7 (D) in subsection (d) (as so redesignated)—
8

9 (i) by striking “subsection” and inserting “section’”
10

11 (ii) by striking “Act” and inserting “title”; and
12

13 (iii) by striking “this paragraph” and inserting “this subsection”; and
14

15 (E) by striking “Board” each place such term appears in such section and inserting “Agency”.
16
17

18 (4) SECTION 704.—Section 704 of the Equal Credit Opportunity Act (15 U.S.C. 1691c) is amended—
19
20

21 (A) in subsection (a)—

22 (i) in the matter preceding paragraph (1), by striking “Compliance” and inserting “Subject to section 4202 of the Con-
23
24

1 sumer Financial Protection Agency Act of
2 2009, compliance”;

3 (ii) in paragraph (1)(A), by striking
4 “Office of the Comptroller of the Cur-
5 rency” and inserting “head of the agency
6 responsible for chartering and regulating
7 national banks”;

8 (iii) in paragraph (1)(B), by striking
9 “and” after the semicolon;

10 (iv) in paragraph (1)(C), by inserting
11 “and” after the semicolon;

12 (v) by inserting after subparagraph
13 (C) of paragraph (1) the following new
14 subparagraph:

15 “(D) savings associations and savings and
16 loan holding companies by the Director of the
17 Office of Thrift Supervision;”;

18 (vi) by amending paragraph (2) to
19 read as follows:

20 “(2) Subtitle E of the Consumer Financial Pro-
21 tection Agency Act of 2009, by the Agency.”;

22 (B) by striking subsection (c) and insert-
23 ing the following new subsection:

24 “(c) OVERALL ENFORCEMENT AUTHORITY OF FED-
25 ERAL TRADE COMMISSION.—Except to the extent that en-

1 enforcement of the requirements imposed under this title is
2 specifically committed to some other Government agency
3 under subsection (a) and subject to section 4202 of the
4 Consumer Financial Protection Agency Act of 2009, the
5 Federal Trade Commission shall enforce such require-
6 ments. For the purpose of the exercise by the Federal
7 Trade Commission of its functions and powers under the
8 Federal Trade Commission Act, a violation of any require-
9 ment imposed under this title shall be deemed a violation
10 of a requirement imposed under that Act. All of the func-
11 tions and powers of the Federal Trade Commission under
12 the Federal Trade Commission Act are available to the
13 Commission to enforce compliance by any person with the
14 requirements imposed under this title, irrespective of
15 whether that person is engaged in commerce or meets any
16 other jurisdictional tests in the Federal Trade Commission
17 Act, including the power to enforce any regulation pre-
18 scribed by the Director under this title in the same man-
19 ner as if the violation had been a violation of a Federal
20 Trade Commission trade regulation rule.”; and

21 (C) in subsection (d), by striking “Board”
22 and inserting “Agency”.

23 (5) SECTION 704a.—Section 704A(a)(1) of the
24 Equal Credit Opportunity Act (15 U.S.C. 1691c–

1 1(a)(1)) is amended in by striking “Board” and in-
2 sserting “Agency”.

3 (6) SECTION 705.—Section 705 of the Equal
4 Credit Opportunity Act (15 U.S.C. 1691d) is
5 amended—

6 (A) in subsection (f), by striking “Board”
7 each place such term appears and inserting
8 “Agency”; and

9 (B) in subsection (g), by striking “Board”
10 and inserting “Agency”.

11 (7) SECTION 706.—Section 706 of the Equal
12 Credit Opportunity Act (15 U.S.C. 1691e) is amend-
13 ed—

14 (A) in subsection (e)—

15 (i) by striking “Board” each place
16 such term appears and inserting “Agency”;
17 and

18 (ii) by striking “Federal Reserve Sys-
19 tem” and inserting “Consumer Financial
20 Protection Agency”;

21 (B) in subsection (f), by striking “two
22 years” each place such term appears and insert-
23 ing “5 years”;

24 (C) in subsection (g)—

1 (i) by striking “The agencies having”,
2 in the 1st sentence, and inserting “The
3 Agency and the agencies having”

4 (ii) by striking “Each agency re-
5 ferred”, in the 2nd sentence, and inserting
6 “The Agency and each agency referred”;

7 (iii) by striking “Each such agency”,
8 in the 3rd sentence, and inserting “The
9 Agency and each such agency”; and

10 (iv) by striking “whenever the agen-
11 cy” in the 3rd sentence, and inserting
12 “whenever the Agency or an agency having
13 responsibility for administrative enforce-
14 ment under section 704”; and

15 (D) in subsection (k)—

16 (i) by striking “Whenever an agency”
17 and inserting “Whenever the Agency or an
18 agency”; and

19 (ii) by striking “the agency shall no-
20 tify” and inserting “the Agency, or an
21 agency referred to in any such paragraph,
22 as the case may be, shall notify”.

23 (8) SECTION 707.—Section 707 of the Equal
24 Credit Opportunity Act (15 U.S.C. 1691f) is amend-

1 ed by striking “Board” each place such term ap-
2 pears and inserting “Agency”.

3 (d) FAIR DEBT COLLECTION PRACTICES ACT.—

4 (1) SECTION 803.—Section 803 of the Fair
5 Debt Collection Practices Act (15 U.S.C. 1692a) is
6 amended—

7 (A) by redesignating paragraphs (1), (2),
8 (3), (4), (5), (6), (7), and (8) as paragraphs
9 (2), (3), (4), (5), (6), (7), (8), and (9), respec-
10 tively; and

11 (B) by inserting before paragraph (2) (as
12 so redesignated) the following new paragraph:

13 “(1) The term ‘Agency’ means the Consumer
14 Financial Protection Agency.”.

15 (2) SECTION 813.—Section 813(e) of the Fair
16 Debt Collection Practices Act (15 U.S.C. 1692k(e))
17 is amended by striking “Commission” and inserting
18 “Agency”.

19 (3) SECTION 814.—Section 814 of the Fair
20 Debt Collection Practices Act (15 U.S.C. 1692l) is
21 amended—

22 (A) by striking subsection (a) and insert-
23 ing the following new subsection:

24 “(a) FEDERAL TRADE COMMISSION.—Subject to sec-
25 tion 4202 of the Consumer Financial Protection Agency

1 Act of 2009, compliance with this title shall be enforced
2 by the Commission, except to the extent that enforcement
3 of the requirements imposed under this title is specifically
4 committed to another agency under subsection (b). For
5 purpose of the exercise by the Commission of its functions
6 and powers under the Federal Trade Commission Act, a
7 violation of this title shall be deemed an unfair or decep-
8 tive act or practice in violation of that Act. All of the func-
9 tions and powers of the Commission under the Federal
10 Trade Commission Act are available to the Commission
11 to enforce compliance by any person with this title, irre-
12 spective of whether that person is engaged in commerce
13 or meets any other jurisdictional tests in the Federal
14 Trade Commission Act, including the power to enforce the
15 provisions of this title in the same manner as if the viola-
16 tion had been a violation of a Federal Trade Commission
17 trade regulation rule.”;

18 (B) in subsection (b)—

19 (i) in the matter preceding paragraph
20 (1), by striking “Compliance” and insert-
21 ing “ENFORCEMENT BY OTHER AGEN-
22 CY.—Subject to section 4202 of the Con-
23 sumer Financial Protection Agency Act of
24 2009, compliance”.

1 (ii) in paragraph (1)(A), by striking
2 “Office of the Comptroller of the Cur-
3 rency;” and inserting “head of the agency
4 responsible for chartering and regulating
5 national banks;”;

6 (iii) in paragraph (1)(B), by striking
7 “and” after the semicolon;

8 (iv) in paragraph (1)(C), by inserting
9 “and” after the semicolon;

10 (v) by inserting after subparagraph
11 (C) of paragraph (1) the following new
12 subparagraph:

13 “(D) savings associations and savings and
14 loan holding companies by the Director of the
15 Office of Thrift Supervision;”; and

16 (vi) by striking paragraph (2) and in-
17 serting the following new paragraph:

18 “(2) subtitle E of the Consumer Financial Pro-
19 tection Agency Act of 2009, by the Agency;”; and

20 (C) by striking subsection (d) and insert-
21 ing the following new subsection:

22 “(d) REGULATIONS.—The Agency may prescribe reg-
23 ulations with respect to the collection of debts by any debt
24 collector.”.

1 (4) SECTION 815.—Section 815 (15 U.S.C.
2 1692m) is amended—

3 (A) in the section heading, by striking
4 “**Commission**” and inserting “**Agency**”;
5 and

6 (B) by striking “Commission” each place
7 such term appears and inserting “Agency”.

8 (5) SECTION 817.—Section 817 (15 U.S.C.
9 1692o) is amended by striking “Commission” each
10 place such term appears and inserting “Agency”.

11 (e) ELECTRONIC FUND TRANSFER ACT.—

12 (1) SECTION 903.—Section 903 of the Elec-
13 tronic Fund Transfer Act (15 U.S.C. 1693a) is
14 amended—

15 (A) by striking paragraph (3) and insert-
16 ing the following new paragraph:

17 “(3) the term ‘Agency’ means the Consumer Fi-
18 nancial Protection Agency;” and

19 (B) in paragraph (6), by striking “Board”
20 and inserting “Agency”.

21 (2) SECTION 904.—Section 904 of the Elec-
22 tronic Fund Transfer Act (15 U.S.C. 1693b) is
23 amended by striking “Board” each place such term
24 appears and inserting “Agency”.

1 (3) SECTION 905.—Section 905 of the Elec-
2 tronic Fund Transfer Act (15 U.S.C. 1693e) is
3 amended by striking “Board” each place such term
4 appears and inserting “Agency”.

5 (4) SECTION 906.—Section 906(b) of the Elec-
6 tronic Fund Transfer Act (15 U.S.C. 1693d(b)) is
7 amended by striking “Board” and inserting “Agen-
8 cy”.

9 (5) SECTION 907.—Section 907(b) of the Elec-
10 tronic Fund Transfer Act (15 U.S.C. 1693e(b)) is
11 amended by striking “Board” and inserting “Agen-
12 cy”.

13 (6) SECTION 908.—Section 908(f)(7) of the
14 Electronic Fund Transfer Act (15 U.S.C.
15 1693f(f)(7)) is amended by striking “Board” and in-
16 serting “Agency”.

17 (7) SECTION 910.—Section 910(a)(1)(E) of the
18 Electronic Fund Transfer Act (15 U.S.C.
19 1693h(a)(1)(E)) is amended by striking “Board”
20 and inserting “Agency”.

21 (8) SECTION 911.—Section 911(b)(3) of the
22 Electronic Fund Transfer Act (15 U.S.C.
23 1693i(b)(3)) is amended by striking “Board” and in-
24 serting “Agency”.

1 (9) SECTION 915.—Section 915(d) of the Elec-
2 tronic Fund Transfer Act (15 U.S.C. 1693m(d)) is
3 amended—

4 (A) by striking “Board” each place such
5 term appears and inserting “Agency”; and

6 (B) by striking “Federal Reserve System”
7 and inserting “Consumer Financial Protection
8 Agency”.

9 (10) SECTION 917.—Section 917 of the Elec-
10 tronic Fund Transfer Act (15 U.S.C. 1693o) is
11 amended—

12 (A) in subsection (a)—

13 (i) by striking “Compliance” and in-
14 serting “Subject to section 4202 of the
15 Consumer Financial Protection Agency Act
16 of 2009, compliance”;

17 (ii) in paragraph (1)(A), by striking
18 “Office of the Comptroller of the Cur-
19 rency” and inserting “head of the agency
20 responsible for chartering and regulating
21 national banks”; and

22 (iii) by striking paragraph (2) and in-
23 serting:

24 “(2) subtitle E of the Consumer Financial Pro-
25 tection Agency Act of 2009, by the Agency;”; and

1 (B) by striking subsection (c) and insert-
2 ing the following new subsection:

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 subsection (a) and subject to section 4202
8 of the Consumer Financial Protection Agency Act of 2009,
9 the Federal Trade Commission shall enforce such require-
10 ments. For the purpose of the exercise by the Federal
11 Trade Commission of its functions and powers under the
12 Federal Trade Commission Act, a violation of any require-
13 ment imposed under this title shall be deemed a violation
14 of a requirement imposed under that Act. All of the func-
15 tions and powers of the Federal Trade Commission under
16 the Federal Trade Commission Act are available to the
17 Commission to enforce compliance by any person subject
18 to the jurisdiction of the Commission with the require-
19 ments imposed under this title, irrespective of whether
20 that person is engaged in commerce or meets any other
21 jurisdictional tests in the Federal Trade Commission
22 Act.”.

23 (11) SECTION 918.—Section 918 of the Elec-
24 tronic Fund Transfer Act (15 U.S.C. 1693p) is

1 amended by striking “Board” each place such term
2 appears and inserting “Agency”.

3 (12) SECTION 919.—Section 919 of the Elec-
4 tronic Fund Transfer Act (15 U.S.C. 1693q) is
5 amended by striking “Board” each place such term
6 appears and inserting “Agency”.

7 (13) SECTION 920.—Section 920 of the Elec-
8 tronic Fund Transfer Act (15 U.S.C. 1693r) is
9 amended by striking “Board” each place such term
10 appears and inserting “Agency”.

11 (f) AMENDMENTS TO HOEPA RELATING TO THE
12 TRUTH IN LENDING ACT.—Section 158 of the Home
13 Ownership and Equity Protection Act of 1994 (15 U.S.C.
14 1601 nt.) (relating to hearings on home equity lending)
15 is amended—

16 (1) in subsection (a), by striking “Board of
17 Governors of the Federal Reserve System, in con-
18 sultation with the Consumer Advisory Council of the
19 Board,” and inserting “Consumer Financial Protec-
20 tion Agency, in consultation with the Advisory
21 Board to the Agency”; and

22 (2) in subsection (b), by striking “Board of
23 Governors of the Federal Reserve System” and in-
24 serting “Consumer Financial Protection Agency”.

1 (g) AMENDMENT TO THE FAIR AND ACCURATE
2 CREDIT TRANSACTIONS ACT OF 2003 RELATING TO THE
3 FAIR CREDIT REPORTING ACT.—Section 214(b)(1) of the
4 Fair and Accurate Credit Transactions Act of 2003 (15
5 U.S.C. 1681s–3 nt.) is amended by striking “The Federal
6 banking agencies, the National Credit Union Administra-
7 tion, and the Commission, with respect to the entities that
8 are subject to their respective enforcement authority under
9 section 621 of the Fair Credit Reporting Act and” and
10 inserting “The Consumer Financial Protection Agency,
11 with respect to a person subject to the enforcement au-
12 thority of the Agency, the Commodity Futures Trading
13 Commission, and”.

14 **SEC. 4805. AMENDMENTS TO THE EXPEDITED FUNDS**
15 **AVAILABILITY ACT.**

16 (a) SECTION 605.—Section 605(f)(1) of the Expe-
17 dited Funds Availability Act (12 U.S.C. 4004(f)(1)) is
18 amended by inserting “, in consultation with the Director
19 of the Consumer Financial Protection Agency,” after
20 “Board”.

21 (b) SECTION 609.—Section 609(a) of the Expedited
22 Funds Availability Act (12 U.S.C. 4008(a)) is amended
23 by inserting “, in consultation with the Director of the
24 Consumer Financial Protection Agency,” after “Board”.

1 **SEC. 4806. AMENDMENTS TO THE FEDERAL DEPOSIT IN-**
2 **SURANCE ACT.**

3 (a) SECTION 8.—Section 8(t) the Federal Deposit In-
4 surance Act (12 U.S.C. 1818(t)), as amended by section
5 1111(b)(2), is further amended by adding at the end the
6 following new paragraph:

7 “(7) REFERRAL TO CONSUMER FINANCIAL PRO-
8 TECTION COMMISSION.—Each appropriate Federal
9 banking agency shall make a referral to the Con-
10 sumer Financial Protection Agency when the Fed-
11 eral banking agency has a reasonable belief that a
12 violation of an enumerated consumer law, as defined
13 in section 4202(e)(2) of the Consumer Financial
14 Protection Agency Act of 2009, by any insured de-
15 pository institution or institution-affiliated party
16 within the jurisdiction of that appropriate Federal
17 banking agency.”.

18 (b) SECTION 43.—Section 43 of the Federal Deposit
19 Insurance Act (12 U.S.C. 1831t) is amended—

20 (1) in subsection (c), by striking “Federal
21 Trade Commission” and inserting “Agency”;

22 (2) in subsection (d), by striking “Federal
23 Trade Commission” and inserting “Agency”;

24 (3) in subsection (e)—

1 (A) in paragraph (2)(B), by striking “Fed-
2 eral Trade Commission” and inserting “Agen-
3 cy”; and

4 (B) by adding at the end the following new
5 paragraph:

6 “(5) AGENCY.—The term ‘Agency’ means the
7 Consumer Financial Protection Agency.”.

8 (c) SECTION 43(f).—Section 43(f) of the Federal De-
9 posit Insurance Act (12 U.S.C. 1831t(f)) is amended—

10 (1) by striking paragraph (1) and inserting the
11 following new paragraph:

12 “(1) LIMITED ENFORCEMENT AUTHORITY.—
13 Compliance with the requirements of subsections (b),
14 (c) and (e), and any regulation prescribed or order
15 issued under such subsection, shall be enforced
16 under the Consumer Financial Protection Agency
17 Act of 2009 by the Agency with respect to any per-
18 son (and without regard to the provision of a con-
19 sumer financial product or service).”; and

20 (2) in paragraph (2), by striking subparagraph
21 (C) and inserting the following new subparagraph:

22 “(C) LIMITATION ON STATE ACTION
23 WHILE FEDERAL ACTION PENDING.—If the
24 Agency has instituted an enforcement action for
25 a violation of this section, no appropriate State

1 supervisory may, during the pendency of such
2 action, bring an action under this section
3 against any defendant named in the complaint
4 of the Agency for any violation of this section
5 that is alleged in that complaint.”.

6 **SEC. 4807. AMENDMENTS TO THE GRAMM-LEACH-BLILEY**
7 **ACT.**

8 (a) SECTION 504.—Section 504(a)(1) of the Gramm-
9 Leach-Bliley Act (15 U.S.C. 6804(a)(1)) is amended—

10 (1) by striking “The Federal banking agencies,
11 the National Credit Union Administration, the Sec-
12 retary of the Treasury,” and inserting “The Con-
13 sumer Financial Protection Agency and”; and

14 (2) by striking “, and the Federal Trade Com-
15 mission”.

16 (b) SECTION 505.—

17 (1) Section 505(a) of the Gramm-Leach-Bliley
18 Act (15 U.S.C. 6805(a)) is amended—

19 (A) in the matter preceding paragraph (1),
20 by striking “This subtitle and the regulations
21 prescribed thereunder shall be enforced by” and
22 inserting “Subject to section 4202 of the Con-
23 sumer Financial Protection Agency Act of
24 2009, this subtitle and the regulations pre-

1 scribed under this title shall be enforced by the
2 Consumer Financial Protection Agency,”; and

3 (B) by inserting after paragraph (7) the
4 following new paragraph:

5 “(8) Under the Consumer Financial Protection
6 Agency Act of 2009, by the Consumer Financial
7 Protection Agency in the case of financial institu-
8 tions and other covered persons and service pro-
9 viders subject to the jurisdiction of the Agency
10 under that Act, but not with respect to the stand-
11 ards under section 501.”.

12 (2) Section 505(b)(1) of the Gramm-Leach-Bliley
13 Act (15 U.S.C. 6805(b)(1)) is amended by in-
14 serting “, other than the Consumer Financial Pro-
15 tection Agency,” after “described in subsection (a)”.

16 **SEC. 4808. AMENDMENTS TO THE HOME MORTGAGE DIS-**
17 **CLOSURE ACT OF 1975.**

18 (a) SECTION 303.—Section 303 of the Home Mort-
19 gage Disclosure Act of 1975 (12 U.S.C. 2802) is amend-
20 ed—

21 (1) by redesignating paragraphs (1), (2), (3),
22 (4), (5), and (6) as paragraphs (2), (3), (4), (5),
23 (6), and (7), respectively; and

24 (2) by inserting before paragraph (2) (as so re-
25 designated) the following new paragraph:

1 “(1) The term ‘Agency’ means the Consumer
2 Financial Protection Agency.”.

3 (b) UNIVERSAL AMENDMENT RELATING TO AGEN-
4 CY.—Except as provided in subsections (c), (d), (e), and
5 (f), the Home Mortgage Disclosure Act of 1975 (12
6 U.S.C. 2801–11) is amended by striking “Board” each
7 place such term appears and inserting “Agency”.

8 (c) SECTION 304.—Section 304 of the Home Mort-
9 gage Disclosure Act of 1975 (12 U.S.C. 2803(h)) is
10 amended—

11 (1) in subsection (b)—

12 (A) by striking “and” after the semicolon
13 at the end of paragraph (3);

14 (B) by striking “and gender” in paragraph
15 (4), and inserting “age, and gender”;

16 (C) by striking the period at the end of
17 paragraph (4) and inserting a semicolon; and

18 (D) by inserting after paragraph (4) the
19 following new paragraphs:

20 “(5) the number and dollar amount of mort-
21 gage loans grouped according to the following meas-
22 urements:

23 “(A) the total points and fees payable at
24 origination in connection with the mortgage as
25 determined by the Agency, taking into account

1 section 103(aa)(4) of the Truth in Lending Act
2 (15 U.S.C. 1602(aa)(4));

3 “(B) the difference between the annual
4 percentage rate associated with the loan and a
5 benchmark rate or rates for all loans;

6 “(C) the term in months of any prepay-
7 ment penalty or other fee or charge payable on
8 repayment of some portion of principal or the
9 entire principal in advance of scheduled pay-
10 ments; and

11 “(D) such other information as the Agency
12 may require; and

13 “(6) the number and dollar amount of mort-
14 gage loans and completed applications grouped ac-
15 cording to the following measurements:

16 “(A) the value of the real property pledged
17 or proposed to be pledged as collateral;

18 “(B) the actual or proposed term in
19 months of any introductory period after which
20 the rate of interest may change;

21 “(C) the presence of contractual terms or
22 proposed contractual terms that would allow the
23 mortgagor or applicant to make payments other
24 than fully-amortizing payments during any por-
25 tion of the loan term;

1 “(D) the actual or proposed term in
2 months of the mortgage loan;

3 “(E) the channel through which applica-
4 tion was made, including retail, broker, and
5 other relevant categories;

6 “(F) as the Agency may determine to be
7 appropriate, a unique identifier that identifies
8 the loan originator as set forth in section 1503
9 of the Secure and Fair Enforcement for Mort-
10 gage Licensing Act of 2008;

11 “(G) as the Agency may determine to be
12 appropriate, a universal loan identifier;

13 “(H) as the Agency may determine to be
14 appropriate, the parcel number that cor-
15 responds to the real property pledged or pro-
16 posed to be pledged as collateral;

17 “(I) the credit score of mortgage appli-
18 cants and mortgagors in such form as the
19 Agency may prescribe, except that the Agency
20 shall modify or require modification of credit
21 score data that is or will be available to the
22 public to protect the compelling privacy interest
23 of the mortgage applicant or mortgagors; and

24 “(J) such other information as the Agency
25 may require.”;

1 (2) by striking subsection (h) and inserting the
2 following new subsection:

3 “(h) SUBMISSION TO AGENCIES.—

4 “(1) IN GENERAL.—The data required to be
5 disclosed under subsection (b) shall be submitted to
6 the Agency or to the appropriate agency for any in-
7 stitution reporting under this title, in accordance
8 with regulations prescribed by the Agency. Institu-
9 tions will not be required to report new data re-
10 quired under section 4808(c) before the first Janu-
11 ary 1 that occurs after the end of the 9-month pe-
12 riod beginning on the date that regulations pre-
13 scribed by the Agency are prescribed in final form.

14 “(2) REGULATIONS.—Notwithstanding the re-
15 quirement of section 304(a)(2)(A) for disclosure by
16 census tract, the Agency, in cooperation with other
17 appropriate regulators, including—

18 “(A) the head of the agency responsible for
19 chartering and regulating national banks for
20 national banks and Federal branches, Federal
21 agencies of foreign banks, and savings associa-
22 tions;

23 “(B) the Federal Deposit Insurance Cor-
24 poration for depository institutions insured by
25 the Federal Deposit Insurance Corporation

1 (other than members of the Federal Reserve
2 System, Federal savings associations, and sav-
3 ings and loan holding companies) and insured
4 State branches of foreign banks;

5 “(C) the Director of the Office of Thrift
6 Supervision for Federal savings associations
7 and savings and loan holding companies;

8 “(D) the National Credit Union Adminis-
9 tration Board for credit unions; and

10 “(E) the Secretary of Housing and Urban
11 Development for other lending institutions not
12 regulated by an agency referred to in subpara-
13 graphs (A), (B), (C), or (D),

14 shall develop regulations prescribing the format for
15 such disclosures, the method for submission of the
16 data to the appropriate regulatory agency, and the
17 procedures for disclosing the information to the pub-
18 lic.

19 “(3) REQUIRED DISCLOSURES.—The regula-
20 tions prescribed under paragraph (2) shall require
21 the collection of data required to be disclosed under
22 subsection (b) with respect to loans sold by each in-
23 stitution reporting under this title, and, in addition,
24 shall require disclosure of the class of the purchaser
25 of such loans.

1 “(4) ADDITIONAL DATA OR EXPLANATIONS.—
2 Any reporting institution may submit in writing to
3 the Agency or to the appropriate agency such addi-
4 tional data or explanations as it deems relevant to
5 the decision to originate or purchase mortgage
6 loans.”;

7 (3) in subsection (i), by striking “subsection
8 (b)(4)” and inserting “paragraphs (4), (5), and (6)
9 of subsection (b)”;

10 (4) in subsection (j)—

11 (A) by striking “(as” where such term ap-
12 pears in paragraph (1) and inserting “(con-
13 taining loan-level and application-level informa-
14 tion relating to disclosures required under sub-
15 sections (a) and (b) and as otherwise”;

16 (B) by striking “in the format in which
17 such information is maintained by the institu-
18 tion” where such term appears in paragraph
19 (2)(A), and inserting “in such formats as the
20 Agency may require”; and

21 (C) by striking paragraph (3) and insert-
22 ing the following new paragraph:

23 “(3) CHANGE OF FORM NOT REQUIRED.—A de-
24 pository institution meets the disclosure requirement
25 of paragraph (1) if the institution provides the infor-

1 information required under such paragraph in such for-
2 mats as the Agency may require.”; and

3 (5) by striking paragraph (2) of subsection (m)
4 and inserting the following new paragraph:

5 “(2) FORM OF INFORMATION.—In complying
6 with paragraph (1), a depository institution shall
7 provide the person requesting the information with
8 a copy of the information requested in such formats
9 as the Agency may require.”.

10 (d) SECTION 305.—Section 305 of the Home Mort-
11 gage Disclosure Act of 1975 (12 U.S.C. 2804) is amend-
12 ed—

13 (1) by striking subsection (b) and inserting the
14 following new subsection:

15 “(b) POWERS OF CERTAIN OTHER AGENCIES.—Com-
16 pliance with the requirements imposed under this title
17 shall be enforced under—

18 “(1) section 8 of the Federal Deposit Insurance
19 Act, in the case of—

20 “(A) national banks, and Federal branches
21 and Federal agencies of foreign banks, by the
22 head of the agency responsible for chartering
23 and regulating national banks;

24 “(B) member banks of the Federal Reserve
25 System (other than national banks), branches

1 and agencies of foreign banks (other than Fed-
2 eral branches, Federal agencies, and insured
3 State branches of foreign banks), commercial
4 lending companies owned or controlled by for-
5 eign banks, and organizations operating under
6 section 25 or 25(a) of the Federal Reserve Act,
7 by the Board;

8 “(C) depository institutions insured by the
9 Federal Deposit Insurance Corporation (other
10 than members of the Federal Reserve System,
11 Federal savings associations, and savings and
12 loan holding companies) and insured State
13 branches of foreign banks, by the Board of Di-
14 rectors of the Federal Deposit Insurance Cor-
15 poration; and

16 “(D) Federal savings associations, and
17 savings and loan holding companies, by the Di-
18 rector of the Office of Thrift Supervision;

19 “(2) subtitle E of the Consumer Financial Pro-
20 tection Agency Act of 2009, by the Agency;

21 “(3) the Federal Credit Union Act, by the Ad-
22 ministrator of the National Credit Union Adminis-
23 tration with respect to any credit union; and

24 “(4) other lending institutions, by the Secretary
25 of Housing and Urban Development. The terms

1 used in paragraph (1) that are not defined in this
2 title or otherwise defined in section 3(s) of the Fed-
3 eral Deposit Insurance Act (12 U.S.C. 1813(s))
4 shall have the meaning given to them in section 1(b)
5 of the International Banking Act of 1978 (12 U.S.C.
6 3101).

7 The terms used in paragraph (1) that are not defined in
8 this title or otherwise defined in section 3(s) of the Federal
9 Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the
10 meaning given to them in section 1(b) of the International
11 Banking Act of 1978.”; and

12 (2) by inserting at the end of section 305 the
13 following new subsection:

14 “(d) OVERALL ENFORCEMENT AUTHORITY OF THE
15 CONSUMER FINANCIAL PROTECTION AGENCY.—Subject
16 to section 4202 of the Consumer Financial Protection
17 Agency Act of 2009, enforcement of the requirements im-
18 posed under this title is committed to each of the agencies
19 under subsection (b). The Agency may exercise its authori-
20 ties under the Consumer Financial Protection Agency Act
21 of 2009 to exercise principal authority to examine and en-
22 force compliance by any person with the requirements
23 under this title.”.

1 (e) SECTION 306.—Subsection 306(b) of the Home
2 Mortgage Disclosure Act of 1975 (12 U.S.C. 2805(b)) is
3 amended to read as follows:

4 “(b) The Agency may, by regulation, exempt from the
5 requirements of this title any State chartered depository
6 institution within any State or subdivision of any state if
7 the Agency determines that, under the law of such State
8 or subdivision, that institution is subject to requirements
9 substantially similar to those imposed under this title, and
10 that such law contains adequate provisions for enforce-
11 ment. Notwithstanding any other provision of this sub-
12 section, compliance with the requirements imposed under
13 this subsection shall be enforced by the head of the agency
14 responsible for chartering and regulating national banks
15 under section 8 of the Federal Deposit Insurance Act in
16 the case of national banks and savings association the de-
17 posits of which are insured by the Federal Deposit Insur-
18 ance Corporation.”.

19 (f) SECTION 307.—Section 307 of the Home Mort-
20 gage Disclosure Act of 1975 (12 U.S.C. 2806) is amended
21 to read as follows:

22 **“SEC. 307. RESEARCH AND IMPROVED METHODS.**

23 “(a) ENHANCED COMPLIANCE IN ECONOMICAL MAN-
24 NER.—

1 “(1) IN GENERAL.—The Director of the Con-
2 sumer Financial Protection Agency, with the assist-
3 ance of the Secretary, the Director of the Bureau of
4 the Census, the Board of Governors of the Federal
5 Reserve System, the Federal Deposit Insurance Cor-
6 poration, and such other persons as the Consumer
7 Financial Protection Agency deems appropriate,
8 shall develop or assist in the improvement of, meth-
9 ods of matching addresses and census tracts to fa-
10 cilitate compliance by depository institutions in as
11 economical a manner as possible with the require-
12 ments of this title.

13 “(2) AUTHORIZATION OF APPROPRIATION.—
14 There is authorized to be appropriated such sums as
15 may be necessary to carry out this subsection.

16 “(3) AUTHORITY OF AGENCY.—The Director of
17 the Consumer Financial Protection Agency is au-
18 thorized to utilize, contract with, act through, or
19 compensate any person or agency in order to carry
20 out this subsection.

21 “(b) RECOMMENDATIONS TO THE CONGRESS.—The
22 Director of the Consumer Financial Protection Agency
23 shall recommend to the Committee on Financial Services
24 of the House of Representatives and the Committee on
25 Banking, Housing, and Urban Affairs of the Senate such

1 additional legislation as the Director of the Consumer Fi-
2 nancial Protection Agency deems appropriate to carry out
3 the purpose of this title.”.

4 **SEC. 4809. AMENDMENTS TO DIVISION D OF THE OMNIBUS**
5 **APPROPRIATIONS ACT, 2009.**

6 (a) Section 626(a) of title VI of division D of the
7 Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 nt.)
8 (as amended by the Credit Card Accountability Responsi-
9 bility and Disclosure Act of 2009) is amended—

10 (1) by striking by paragraph (1) and inserting
11 the following new paragraph: “(1) The Director of
12 the Consumer Financial Protection Agency shall
13 have authority to prescribe regulations with respect
14 to mortgage loans in accordance with section 553 of
15 title 5, United States Code. Such rulemaking shall
16 relate to unfair or deceptive acts or practices regard-
17 ing mortgage loans, which may include unfair or de-
18 ceptive acts or practices involving loan modification
19 and foreclosure rescue services. Any violation of a
20 regulation prescribed under this subsection shall be
21 treated as a violation of a regulation prohibiting un-
22 fair, deceptive, or abusive acts or practices under the
23 Consumer Financial Protection Agency Act of
24 2009.”;

25 (2) by striking paragraph (2);

1 (3) by striking paragraph (3); and

2 (4) by striking paragraph (4) and inserting the
3 following new paragraph:

4 “(2) The Director of the Consumer Financial Protec-
5 tion Agency shall enforce the regulations issued under
6 paragraph (1) in the same manner, by the same means,
7 and with the same jurisdiction, powers, and duties as
8 though all applicable terms and provisions of the Con-
9 sumer Financial Protection Agency Act of 2009 were in-
10 corporated into and made part of this section.”.

11 (b) Section 626(b) of title VI of division D of the
12 Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 nt.)
13 (as amended by the Credit Card Accountability Responsi-
14 bility and Disclosure Act of 2009) is amended by striking
15 “primary Federal regulator” each place it appears and in-
16 serting “Consumer Financial Protection Agency”.

17 **SEC. 4810. AMENDMENTS TO THE HOMEOWNERS PROTEC-**
18 **TION ACT OF 1998.**

19 Section 10 of the Homeowners Protection Act of
20 1998 (12 U.S.C. 4909) is amended—

21 (1) in the matter preceding paragraph (1) of
22 subsection (a), by striking “Compliance” and insert-
23 ing “Subject to section 4202 of the Consumer Fi-
24 nancial Protection Agency Act of 2009, compliance”;

1 (2) in subsection (a)(2), by striking “and” after
2 the semicolon at the end;

3 (3) in subsection (a)(3), by striking the period
4 at the end and inserting “; and”;

5 (4) by inserting after subsection (a)(3), the fol-
6 lowing new paragraph:

7 “(4) subtitle E of the Consumer Financial Pro-
8 tection Agency Act of 2009, by the Consumer Fi-
9 nancial Protection Agency.”; and.

10 (5) in subsection (b)(2), by inserting “, subject
11 to section 4202 of the Consumer Financial Protec-
12 tion Agency Act of 2009” before the period at the
13 end.

14 **SEC. 4811. AMENDMENTS TO THE REAL ESTATE SETTLE-**
15 **MENT PROCEDURES ACT OF 1974.**

16 (a) SECTION 3.—Section 3 of the Real Estate Settle-
17 ment Procedures Act of 1974 (12 U.S.C. 2602) is amend-
18 ed—

19 (1) in paragraph (7), by striking “and” after
20 the semicolon at the end;

21 (2) in paragraph (8), by striking the period at
22 the end and inserting “; and”; and

23 (3) by adding at the end the following new
24 paragraph

1 “(9) the term ‘Agency’ means the Consumer Fi-
2 nancial Protection Agency.”.

3 (b) SECTION 4.—Section 4 of the Real Estate Settle-
4 ment Procedures Act of 1974 (12 U.S.C. 2603) is amend-
5 ed—

6 (1) in subsection (a), by striking the first sen-
7 tence and inserting the following: “The Agency shall
8 publish a single, integrated disclosure for mortgage
9 loan transactions, including real estate settlement
10 cost statements, which include the disclosure re-
11 quirements of this title, in conjunction with the dis-
12 closure requirements of the Truth in Lending Act
13 (15 U.S.C. 1601 note et seq.) that, taken together,
14 may apply to transactions subject to both or either
15 law. The purpose of such model disclosure shall be
16 to facilitate compliance with the disclosure require-
17 ments of those titles, and to aid the borrower or les-
18 see in understanding the transaction by utilizing
19 readily understandable language to simplify the tech-
20 nical nature of the disclosures.”;

21 (2) by striking “Secretary” each place such
22 term appears and inserting “Agency”; and

23 (3) by striking “form” each place such term ap-
24 pears and inserting “forms”.

1 (c) SECTION 5.—Section 5 of the Real Estate Settle-
2 ment Procedures Act of 1974 (12 U.S.C. 2604) is amend-
3 ed—

4 (1) by striking “Secretary” each place such
5 term appears, and inserting “Agency”; and

6 (2) by striking the first sentence of subsection
7 (a), and inserting “The Agency shall prepare and
8 distribute booklets jointly complying with the re-
9 quirements of the Truth in Lending Act (15 U.S.C.
10 1601 note et seq.) and the provisions of this title,
11 in order to help persons borrowing money to finance
12 the purchase of residential real estate better to un-
13 derstand the nature and costs of real estate settle-
14 ment services.”.

15 (d) SECTION 6.—Section 6(j)(3) of the Real Estate
16 Settlement Procedures Act of 1974 (12 U.S.C. 2605(j)(3))
17 is amended—

18 (1) by striking “Secretary” and inserting “Di-
19 rector of the Agency”; and

20 (2) by striking “by regulations that shall take
21 effect not later than April 20, 1991,” and inserting
22 “by regulation,”.

23 (e) SECTION 7.—Section 7 of the Real Estate Settle-
24 ment Procedures Act of 1974 (12 U.S.C. 2606) is amend-

1 ed by striking “Secretary” and inserting “the Director of
2 the Agency”.

3 (f) SECTION 8.—Section 8 of the Real Estate Settle-
4 ment Procedures Act of 1974 (12 U.S.C. 2607) is amend-
5 ed—

6 (1) in subsection (c)(5), by striking “prescribed
7 by the Secretary” and inserting “prescribed by the
8 Director of the Agency”; and

9 (2) in subsection (d)(4)—

10 (A) by striking “The Secretary,” and in-
11 serting “The Agency, the Secretary,”; and

12 (B) by adding at the end the following new
13 sentence: “However, to the extent that a Fed-
14 eral law authorizes the Agency and other Fed-
15 eral and State agencies to enforce or administer
16 the law, the Agency shall have primary author-
17 ity to enforce or administer that Federal law in
18 accordance with section 4202 of the Consumer
19 Financial Protection Agency Act of 2009.”.

20 (g) SECTION 10.—Section 10(d) of the Real Estate
21 Settlement Procedures Act of 1974 (12 U.S.C. 2609(d))
22 is amended by striking “Secretary” and inserting “Agen-
23 cy”.

24 (h) SECTION 16.—Section 16 of the Real Estate Set-
25 tlement Procedures Act of 1974 (12 U.S.C. 2614) is

1 amended by inserting “the Agency,” before “the Sec-
2 retary”.

3 (i) SECTION 18.—Section 18 of the Real Estate Set-
4 tlement Procedures Act of 1974 (12 U.S.C. 2616) is
5 amended by striking “Secretary” each place such term ap-
6 pears and inserting “Agency”.

7 (j) SECTION 19.—Section 19 of the Real Estate Set-
8 tlement Procedures Act of 1974 (12 U.S.C. 2617) is
9 amended—

10 (1) in the section heading, by striking “SEC-
11 RETARY” and inserting “AGENCY”; and

12 (2) by striking “Secretary” each place such
13 term appears and inserting “Agency”.

14 **SEC. 4812. AMENDMENTS TO THE RIGHT TO FINANCIAL**
15 **PRIVACY ACT OF 1978.**

16 (a) AMENDMENTS TO SECTION 1101.—Section 1101
17 of the Right to Financial Privacy Act of 1978 (12 U.S.C.
18 3401) is amended—

19 (1) by striking paragraph (1) and inserting the
20 following new paragraph:

21 “(1) ‘financial institution’ means any bank, sav-
22 ings association, card issuer as defined in section
23 103(n) of the Truth in Lending Act, credit union, or
24 consumer finance institution located in any State or
25 territory of the United States, the District of Colum-

1 bia, Puerto Rico, Guam, American Samoa, or the
2 Virgin Islands;” and

3 (2) in paragraph (7), by inserting after sub-
4 paragraph (A) the following new subparagraph:

5 “(B) the Consumer Financial Protection
6 Agency;”.

7 (b) AMENDMENTS TO SECTION 1112.—Section
8 1112(e) of the Right to Financial Privacy Act of 1978
9 (12 U.S.C. 3412) is amended by striking “and the Com-
10 modity Futures Trading Commission is permitted” and in-
11 serting “the Commodity Futures Trading Commission,
12 and the Consumer Financial Protection Agency is per-
13 mitted”.

14 (c) AMENDMENTS TO SECTION 1113.—Section 1113
15 of the Right to Financial Privacy Act of 1978 (12 U.S.C.
16 3413) is amended by adding at the end the following new
17 subsection—

18 “(r) DISCLOSURE TO THE CONSUMER FINANCIAL
19 PROTECTION AGENCY.—Nothing in this chapter shall
20 apply to the examination by or disclosure to the Consumer
21 Financial Protection Agency of financial records or infor-
22 mation in the exercise of its authority with respect to a
23 financial institution.”.

1 **SEC. 4813. AMENDMENTS TO THE SECURE AND FAIR EN-**
2 **FORCEMENT FOR MORTGAGE LICENSING ACT**
3 **OF 2008.**

4 (a) SECTION 1503.—Section 1503 of the Secure and
5 Fair Enforcement for Mortgage Licensing Act of 2008 (12
6 U.S.C. 5102) is amended—

7 (1) by striking paragraph (9);

8 (2) by redesignating paragraph (1) as para-
9 graph (4), and transferring paragraph (4) (as so re-
10 designated) and inserting such paragraph after
11 paragraph (3) (as added by paragraph (5));

12 (3) by redesignating paragraphs (3), (4), (5),
13 (6), (7), (8), (10), (11), and (12) as paragraphs (5),
14 (6), (7), (8), (9), (10), (11), (12), and (13), respec-
15 tively;

16 (4) by inserting before paragraph (2) the fol-
17 lowing new paragraph:

18 “(1) AGENCY.—The term ‘Agency’ means the
19 Consumer Financial Protection Agency.”; and

20 (5) by inserting after paragraph (2) the fol-
21 lowing new paragraph:

22 “(3) DIRECTOR.—The term ‘Director’ means
23 the Director of the Agency.”.

24 (b) UNIVERSAL AMENDMENTS RELATING TO AGEN-
25 CY.—The Secure and Fair Enforcement for Mortgage Li-

1 censing Act of 2008 (12 U.S.C. 5101 et seq.) is amend-
2 ed—

3 (1) by striking “Federal banking agencies”
4 each place such term appears (other than in sub-
5 section (a)(4) (as so redesignated by subsection (a),
6 relating to the definition of Federal banking agen-
7 cies) or in connection with a reference that is specifi-
8 cally amended by another provision of this section)
9 and inserting “Agency”; and

10 (2) by striking “Secretary” each place such
11 term appears (other than in connection with a ref-
12 erence that is specifically amended by another provi-
13 sion of this section) and inserting “Director”.

14 (c) SECTION 1507.—Section 1507 of the Secure and
15 Fair Enforcement for Mortgage Licensing Act of 2008 (12
16 U.S.C. 5106) is amended—

17 (1) in subsection (a)—

18 (A) by striking paragraph (1) and insert-
19 ing the following new paragraph:

20 “(1) IN GENERAL.—The Agency shall develop
21 and maintain a system for registering employees of
22 any depository institution, employees of a subsidiary
23 that is owned and controlled by a depository institu-
24 tion and regulated by a Federal banking agency, or
25 employees of an institution regulated by the Farm

1 Credit Administration, as registered loan originators
2 with the Nationwide Mortgage Licensing System and
3 Registry. The system shall be implemented before
4 July 30, 2010.”; and

5 (B) by striking “appropriate Federal bank-
6 ing agency and the Farm Credit Administra-
7 tion” in paragraph (2) and inserting “Agency”;
8 and

9 (2) in subsection (b), by striking “Federal
10 banking agencies, through the Financial Institutions
11 Examination Council, and the Farm Credit Adminis-
12 tration” each place such term appears and inserting
13 “Agency”.

14 (d) SECTION 1508.—

15 (1) IN GENERAL.—Section 1508 of the Secure
16 and Fair Enforcement for Mortgage Licensing Act
17 of 2008 (12 U.S.C. 5107) is amended by adding at
18 the end the following new subsection—

19 “(f) REGULATIONS.—

20 “(1) IN GENERAL.—The Agency may prescribe
21 regulations setting minimum net worth or surety
22 bond requirements for residential mortgage loan
23 originators and minimum requirements for recovery
24 funds paid into by loan originators.

1 “(2) **FACTORS TAKEN INTO ACCOUNT.**—Such
2 regulations shall take into account the need to pro-
3 vide originators adequate incentives to originate af-
4 fordable and sustainable mortgage loans as well as
5 the need to ensure a competitive origination market
6 that maximizes consumers’ access to affordable and
7 sustainable mortgage loans.”.

8 (2) **CLERICAL AMENDMENT.**—The heading for
9 section 1508 of the Secure and Fair Enforcement
10 for Mortgage Licensing Act of 2008 is amended by
11 striking “**SECRETARY OF HOUSING AND URBAN**
12 **DEVELOPMENT**” and inserting “**CONSUMER FI-**
13 **NANCIAL PROTECTION AGENCY**”.

14 (e) **SECTION 1510.**—Section 1510 of the Secure and
15 Fair Enforcement for Mortgage Licensing Act of 2008 (12
16 U.S.C. 5109) is amended to read as follows:

17 **“SEC. 1510. FEES.**

18 “The Agency and the Nationwide Mortgage Licensing
19 System and Registry may charge reasonable fees to cover
20 the costs of maintaining and providing access to informa-
21 tion from the Nationwide Mortgage Licensing System and
22 Registry, to the extent that such fees are not charged to
23 consumers for access to such system and registry.”.

1 (f) SECTION 1513.—Section 1513 of the Secure and
2 Fair Enforcement for Mortgage Licensing Act of 2008 (12
3 U.S.C. 5112) is amended to read as follows:

4 **“SEC. 1513. LIABILITY PROVISIONS.**

5 “The Agency, any State official or agency, or any or-
6 ganization serving as the administrator of the Nationwide
7 Mortgage Licensing System and Registry or a system es-
8 tablished by the Director under section 1509, or any offi-
9 cer or employee of any such entity, shall not be subject
10 to any civil action or proceeding for monetary damages
11 by reason of the good faith action or omission of any offi-
12 cer or employee of any such entity, while acting within
13 the scope of office or employment, relating to the collec-
14 tion, furnishing, or dissemination of information con-
15 cerning persons who are loan originators or are applying
16 for licensing or registration as loan originators.”.

17 (g) SECTION 1514.—The heading for section 1514
18 of the Secure and Fair Enforcement for Mortgage Licens-
19 ing Act of 2008 (12 U.S.C. 5113) is amended by striking
20 **“UNDER HUD BACKUP LICENSING SYSTEM”** and in-
21 serting **“BY THE AGENCY”**.

22 **SEC. 4814. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.**

23 (a) SECTION 263.—Section 263 of the Truth in Sav-
24 ings Act (12 U.S.C. 4302) is amended in subsection (b)

1 by striking “Board” each place such term appears and
2 inserting “Agency”.

3 (b) SECTION 265.—Section 265 of the Truth in Sav-
4 ings Act (12 U.S.C. 4304) is amended by striking
5 “Board” each place such term appears and inserting
6 “Agency”.

7 (c) SECTION 266.—Section 266(e) of the Truth in
8 Savings Act is amended (12 U.S.C. 4305) by striking
9 “Board” and inserting “Agency”.

10 (d) SECTION 269.—Section 269 of the Truth in Sav-
11 ings Act (12 U.S.C. 4308) is amended by striking
12 “Board” each place such term appears and inserting
13 “Agency”.

14 (e) SECTION 270.—Section 270 of the Truth in Sav-
15 ings Act (12 U.S.C. 4309) is amended—

16 (1) in subsection (a)—

17 (A) by striking “Compliance” and insert-
18 ing “Subject to section 4202 of the Consumer
19 Financial Protection Agency Act of 2009, com-
20 pliance”;

21 (B) by striking subparagraph (A) of para-
22 graph (1) and inserting the following new sub-
23 paragraph:

24 “(A) by the head of the agency responsible
25 for chartering and regulating national banks for

1 national banks, and Federal branches and Fed-
2 eral agencies of foreign banks;” and

3 (C) by adding at the end, the following
4 new paragraph:

5 “(3) subtitle E of the Consumer Financial Pro-
6 tection Agency Act of 2009, by the Agency.”; and

7 (2) in subsection (c)—

8 (A) in the subsection heading, by striking
9 “BOARD” and insert “AGENCY”; and

10 (B) by striking “Board” and inserting
11 “Agency”.

12 (f) SECTION 272.—Section 272 of the Truth in Sav-
13 ings Act (12 U.S.C. 4311) is amended—

14 (1) in subsection (a), by striking “Board” and
15 inserting “Agency”; and

16 (2) in subsection (b), by striking “regulation
17 prescribed by the Board” each place such term ap-
18 pears and inserting “regulation prescribed by the
19 Agency”.

20 (g) SECTION 273.—Section 273 of the Truth in Sav-
21 ings Act (12 U.S.C. 4312) is amended in the last sentence

22 by striking “Board” and inserting “Agency”.

23 (h) SECTION 274.—Section 274 of the Truth in Sav-
24 ings Act (12 U.S.C. 4313) is amended—

1 (1) in paragraph (2) by striking “Board” and
2 inserting “Agency”; and

3 (2) by striking paragraph (4) and inserting the
4 following new paragraph:

5 “(4) AGENCY.—The term ‘Agency’ means the
6 Consumer Financial Protection Agency.”.

7 **SEC. 4815. AMENDMENTS TO THE TELEMARKETING AND**
8 **CONSUMER FRAUD AND ABUSE PREVENTION**
9 **ACT.**

10 (a) SECTION 3.—Section 3 of the Telemarketing and
11 Consumer Fraud and Abuse Prevention Act (15 U.S.C.
12 6102) is amended—

13 (1) in subsection (b), by inserting after the 2nd
14 sentence “In prescribing a regulation under this Act
15 that relates to the provision of a consumer financial
16 product or service that is subject to the Consumer
17 Financial Protection Agency Act, including any enu-
18 merated consumer law thereunder, the Commission
19 shall consult with the Consumer Financial Protec-
20 tion Agency regarding the consistency of a proposed
21 regulation with standards, purposes, or objectives
22 administered by the Consumer Financial Protection
23 Agency.”; and

24 (2) in subsection (c), by adding at the end
25 “Any violation of any regulation prescribed under

1 subsection (a) committed by a person subject to the
2 Consumer Financial Protection Agency Act shall be
3 treated as a violation of a regulation under section
4 4301 of the Consumer Financial Protection Agency
5 Act regarding unfair, deceptive, or abusive acts or
6 practices.”.

7 (b) AMENDMENTS TO SECTION 4.—Section 4(d) of
8 the Telemarketing and Consumer Fraud and Abuse Pre-
9 vention Act (15 U.S.C. 6103(d)) is amended—

10 (1) in the subsection heading, by inserting after
11 “COMMISSION” the following: “OR THE CONSUMER
12 FINANCIAL PROTECTION AGENCY”; and

13 (2) by inserting after “Commission” each place
14 such term appears “or the Consumer Financial Pro-
15 tection Agency”.

16 (c) AMENDMENTS TO SECTION 5.—Section 5(c) of
17 the Telemarketing and Consumer Fraud and Abuse Pre-
18 vention Act (15 U.S.C. 6104(c)) is amended by inserting
19 after “Commission” each place such term appears “or the
20 Consumer Financial Protection Agency”.

21 (d) AMENDMENT TO SECTION 6.—Section 6 of the
22 Telemarketing and Consumer Fraud and Abuse Preven-
23 tion Act (15 U.S.C. 6105) is amended by adding at the
24 end the following new subsection:

1 “(d) ENFORCEMENT BY CONSUMER FINANCIAL PRO-
2 TECTION AGENCY.—Except as otherwise provided in sec-
3 tions 3(d), 3(e), 4, and 5, this Act shall be enforced by
4 the Consumer Financial Protection Agency under subtitle
5 E of the Consumer Financial Protection Agency Act.”.

6 **SEC. 4816. MEMBERSHIP IN FINANCIAL LITERACY AND**
7 **EDUCATION COMMISSION.**

8 Section 513(c)(1) of the Financial Literacy and Edu-
9 cation Improvement Act (20 U.S.C. 9702(c)(1)) is amend-
10 ed—

11 (1) in subparagraph (B), by striking “and” at
12 the end;

13 (2) by redesignating subparagraph (C) as sub-
14 paragraph (D); and

15 (3) by inserting after subparagraph (B) the fol-
16 lowing new subparagraph:

17 “(C) the Director of the Consumer Finan-
18 cial Protection Agency; and”.

19 **SEC. 4817. EFFECTIVE DATE.**

20 The amendments made by sections 4803 through
21 4815 shall take effect on the designated transfer date.

1 **Subtitle I—Improvements to the**
2 **Federal Trade Commission Act**

3 **SEC. 4901. AMENDMENTS TO THE FEDERAL TRADE COM-**
4 **MISSION ACT.**

5 (a) Section 5(m)(1)(A) of the Federal Trade Com-
6 mission Act (15 U.S.C. 45(m)(1)(A)) is amended—

7 (1) by inserting “this Act or” after “violates”
8 the first place such term appears; and

9 (2) by inserting “a violation of this Act or is”
10 before “prohibited”.

11 (b) Section 5 of the Federal Trade Commission Act
12 (15 U.S.C. 45) is amended by adding at the end thereof
13 the following new subsection:

14 “(o) UNLAWFUL ASSISTANCE.—It is unlawful for any
15 person, knowingly or recklessly, to provide substantial as-
16 sistance to another in violating any provision of this Act
17 or of any other Act enforceable by the Commission that
18 relates to unfair or deceptive acts or practices. Any such
19 violation shall constitute an unfair or deceptive act or
20 practice described in section 5(a)(1) of this Act.”.

21 (c) Section 18 of the Federal Trade Commission Act
22 (15 U.S.C. 57a(b)) is amended—

23 (1) by amending subsection (b) to read as fol-
24 lows:

1 “(b) PROCEDURE APPLICABLE.—When prescribing a
2 rule under subsection (a)(1)(B) of this section, the Com-
3 mission shall proceed in accordance with section 553 of
4 Title 5 (without regard to any reference in such section
5 to sections 556 and 557 of such title).”;

6 (2)(A) in subsection (d), by striking all that
7 precedes paragraph (3);

8 (B) by striking subsections (c), (f), (i), and (j);
9 and

10 (C) by redesignating subsections (e), (g) and
11 (h) as subsections (d), (e) and (f);

12 (3) by redesignating paragraph (3) of sub-
13 section (d) as subsection (c); and

14 (4) in subsection (d) (as redesignated)—

15 (A) in paragraph (1)(B), by striking “the
16 transcript required by subsection (c)(5),”;

17 (B) in paragraph (3), by striking “error)”
18 all that follows and inserting “error).”; and

19 (C) in paragraph (5), by striking subpara-
20 graph (C).

1 **TITLE V—CAPITAL MARKETS**
2 **Subtitle A—Private Fund Invest-**
3 **ment Advisers Registration Act**

4 **SEC. 5001. SHORT TITLE.**

5 This subtitle may be cited as the “Private Fund In-

6 vestment Advisers Registration Act of 2009”.

7 **SEC. 5002. DEFINITIONS.**

8 Section 202(a) of the Investment Advisers Act of

9 1940 (15 U.S.C. 80b-2(a)) is amended by adding at the

10 end the following new paragraphs:

11 “(29) PRIVATE FUND.—The term ‘private fund’

12 means an issuer that would be an investment com-

13 pany under section 3(a) of the Investment Company

14 Act of 1940 (15 U.S.C. 80a-3(a)) but for the excep-

15 tion provided from that definition by either section

16 3(c)(1) or section 3(c)(7) of such Act.

17 “(30) FOREIGN PRIVATE FUND ADVISER.—The

18 term ‘foreign private fund adviser’ means an invest-

19 ment adviser who—

20 “(A) has no place of business in the

21 United States;

22 “(B) during the preceding 12 months has

23 had—

24 “(i) fewer than 15 clients in the

25 United States; and

1 “(ii) assets under management attrib-
2 utable to clients in the United States of
3 less than \$25,000,000, or such higher
4 amount as the Commission may, by rule,
5 deem appropriate in the public interest or
6 for the protection of investors; and

7 “(C) neither holds itself out generally to
8 the public in the United States as an invest-
9 ment adviser, nor acts as an investment adviser
10 to any investment company registered under the
11 Investment Company Act of 1940, or a com-
12 pany which has elected to be a business devel-
13 opment company pursuant to section 54 of the
14 Investment Company Act of 1940 (15 U.S.C.
15 80a-53) and has not withdrawn such election.”.

16 **SEC. 5003. ELIMINATION OF PRIVATE ADVISER EXEMPTION;**
17 **LIMITED EXEMPTION FOR FOREIGN PRIVATE**
18 **FUND ADVISERS; LIMITED INTRASTATE EX-**
19 **EMPTION.**

20 Section 203(b) of the Investment Advisers Act of
21 1940 (15 U.S.C. 80b-3(b)) is amended—

22 (1) in paragraph (1), by inserting “, except an
23 investment adviser who acts as an investment ad-
24 viser to any private fund,” after “any investment ad-
25 viser”;

1 (2) by amending paragraph (3) to read as fol-
2 lows:

3 “(3) any investment adviser that is a foreign
4 private fund adviser;”;

5 (3) in paragraph (5), by striking “or” at the
6 end;

7 (4) in paragraph (6)—

8 (A) in subparagraph (A), by striking “or”;

9 (B) in subparagraph (B), by striking the
10 period at the end and adding “; or”; and

11 (C) by adding at the end the following new
12 subparagraph:

13 “(C) a private fund; or”; and

14 (5) by adding at the end the following:

15 “(7) any investment adviser who solely ad-
16 vises—

17 “(A) small business investment companies
18 licensed under the Small Business Investment
19 Act of 1958;

20 “(B) entities that have received from the
21 Small Business Administration notice to pro-
22 ceed to qualify for a license, which notice or li-
23 cense has not been revoked; or

24 “(C) applicants, related to one or more li-
25 censed small business investment companies

1 covered in subparagraph (A), that have applied
2 for another license, which application remains
3 pending.”.

4 **SEC. 5004. COLLECTION OF SYSTEMIC RISK DATA.**

5 Section 204 of the Investment Advisers Act of 1940
6 (15 U.S.C. 80b-4) is amended—

7 (1) by redesignating subsections (b) and (c) as
8 subsections (c) and (d), respectively; and

9 (2) by inserting after subsection (a) the fol-
10 lowing new subsection:

11 “(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

12 “(1) IN GENERAL.—The Commission is author-
13 ized to require any investment adviser registered
14 under this Act to maintain such records of and file
15 with the Commission such reports regarding private
16 funds advised by the investment adviser as are nec-
17 essary or appropriate in the public interest and for
18 the protection of investors or for the assessment of
19 systemic risk as the Commission determines in con-
20 sultation with the Board of Governors of the Federal
21 Reserve System. The Commission is authorized to
22 provide or make available to the Board of Governors
23 of the Federal Reserve System, and to any other en-
24 tity that the Commission identifies as having sys-
25 temic risk responsibility, those reports or records or

1 the information contained therein. The records and
2 reports of any private fund, to which any such in-
3 vestment adviser provides investment advice, main-
4 tained or filed by an investment adviser registered
5 under this Act, shall be deemed to be the records
6 and reports of the investment adviser.

7 “(2) REQUIRED INFORMATION.—The records
8 and reports required to be maintained or filed with
9 the Commission under this subsection shall include,
10 for each private fund advised by the investment ad-
11 viser—

12 “(A) the amount of assets under manage-
13 ment;

14 “(B) the use of leverage (including off-bal-
15 ance sheet leverage);

16 “(C) counterparty credit risk exposures;

17 “(D) trading and investment positions;

18 “(E) trading practices; and

19 “(F) such other information as the Com-
20 mission, in consultation with the Board of Gov-
21 ernors of the Federal Reserve System, deter-
22 mines necessary or appropriate in the public in-
23 terest and for the protection of investors or for
24 the assessment of systemic risk.

1 “(3) OPTIONAL INFORMATION.—The Commis-
2 sion may require the reporting of such additional in-
3 formation from private fund advisers as the Com-
4 mission determines necessary. In making such deter-
5 mination, the Commission, taking into account the
6 public interest and potential to contribute to sys-
7 temic risk, may set different reporting requirements
8 for different classes of private fund advisers, based
9 on the particular types or sizes of private funds ad-
10 vised by such advisers.

11 “(4) MAINTENANCE OF RECORDS.—An invest-
12 ment adviser registered under this Act is required to
13 maintain and keep such records of private funds ad-
14 vised by the investment adviser for such period or
15 periods as the Commission, by rule or regulation,
16 may prescribe as necessary or appropriate in the
17 public interest and for the protection of investors or
18 for the assessment of systemic risk.

19 “(5) EXAMINATION OF RECORDS.—

20 “(A) PERIODIC AND SPECIAL EXAMINA-
21 TIONS.—All records of a private fund main-
22 tained by an investment adviser registered
23 under this Act shall be subject at any time and
24 from time to time to such periodic, special, and
25 other examinations by the Commission, or any

1 member or representative thereof, as the Com-
2 mission may prescribe.

3 “(B) AVAILABILITY OF RECORDS.—An in-
4 vestment adviser registered under this Act shall
5 make available to the Commission or its rep-
6 resentatives any copies or extracts from such
7 records as may be prepared without undue ef-
8 fort, expense, or delay as the Commission or its
9 representatives may reasonably request.

10 “(6) INFORMATION SHARING.—The Commission
11 shall make available to the Board of Governors of
12 the Federal Reserve System, and to any other entity
13 that the Commission identifies as having systemic
14 risk responsibility, copies of all reports, documents,
15 records, and information filed with or provided to
16 the Commission by an investment adviser under this
17 subsection as the Board, or such other entity, may
18 consider necessary for the purpose of assessing the
19 systemic risk of a private fund. All such reports,
20 documents, records, and information obtained by the
21 Board, or such other entity, from the Commission
22 under this subsection shall be kept confidential in a
23 manner consistent with confidentiality established by
24 the Commission pursuant to paragraph (8).

1 “(7) DISCLOSURES OF CERTAIN PRIVATE FUND
2 INFORMATION.—An investment adviser registered
3 under this Act shall provide such reports, records,
4 and other documents to investors, prospective inves-
5 tors, counterparties, and creditors, of any private
6 fund advised by the investment adviser as the Com-
7 mission, by rule or regulation, may prescribe as nec-
8 essary or appropriate in the public interest and for
9 the protection of investors or for the assessment of
10 systemic risk.

11 “(8) CONFIDENTIALITY OF REPORTS.—Not-
12 withstanding any other provision of law, the Com-
13 mission shall not be compelled to disclose any report
14 or information contained therein required to be filed
15 with the Commission under this subsection. Nothing
16 in this paragraph shall authorize the Commission to
17 withhold information from the Congress or prevent
18 the Commission from complying with a request for
19 information from any other Federal department or
20 agency or any self-regulatory organization requesting
21 the report or information for purposes within the
22 scope of its jurisdiction, or complying with an order
23 of a court of the United States in an action brought
24 by the United States or the Commission. For pur-
25 poses 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 **SEC. 5005. ELIMINATION OF DISCLOSURE PROVISION.**

4 Section 210 of the Investment Advisers Act of 1940
5 (15 U.S.C. 80b-10) is amended by striking subsection (c).

6 **SEC. 5006. EXEMPTION OF AND REPORTING BY VENTURE**
7 **CAPITAL FUND ADVISERS.**

8 Section 203 of the Investment Advisers Act of 1940
9 (15 U.S.C. 80b-3) is amended by adding at the end the
10 following new subsection:

11 “(1) EXEMPTION OF AND REPORTING BY VENTURE
12 CAPITAL FUND ADVISERS.—The Commission shall iden-
13 tify and define the term ‘venture capital fund’ and shall
14 provide an adviser to such a fund an exemption from the
15 registration requirements under this section (excluding
16 any such fund whose adviser is exempt from registration
17 pursuant to paragraph (7) of subsection (b)). The Com-
18 mission shall require such advisers to maintain such
19 records and provide to the Commission such annual or
20 other reports as the Commission determines necessary or
21 appropriate in the public interest or for the protection of
22 investors.”.

1 **SEC. 5007. EXEMPTION OF AND REPORTING BY CERTAIN**
2 **PRIVATE FUND ADVISERS.**

3 Section 203 of the Investment Advisers Act of 1940
4 (15 U.S.C. 80b-3), as amended by section 5006, is further
5 amended by adding at the end the following new sub-
6 sections:

7 “(m) **EXEMPTION OF AND REPORTING BY CERTAIN**
8 **PRIVATE FUND ADVISERS.—**

9 “(1) **IN GENERAL.—**The Commission shall pro-
10 vide an exemption from the registration require-
11 ments under this section to any investment adviser
12 of private funds, if each of such private funds has
13 assets under management in the United States of
14 less than \$150,000,000.

15 “(2) **REPORTING.—**The Commission shall re-
16 quire investment advisers exempted by reason of this
17 subsection to maintain such records and provide to
18 the Commission such annual or other reports as the
19 Commission determines necessary or appropriate in
20 the public interest or for the protection of investors.

21 “(n) **REGISTRATION AND EXAMINATION OF MID-**
22 **SIZED PRIVATE FUND ADVISERS.—**In prescribing regula-
23 tions to carry out the requirements of this section with
24 respect to investment advisers acting as investment advis-
25 ers to mid-sized private funds, the Commission shall take
26 into account the size, governance, and investment strategy

1 of such funds to determine whether they pose systemic
2 risk, and shall provide for registration and examination
3 procedures with respect to the investment advisers of such
4 funds which reflect the level of systemic risk posed by such
5 funds.”.

6 **SEC. 5008. CLARIFICATION OF RULEMAKING AUTHORITY.**

7 Section 211 of the Investment Advisers Act of 1940
8 (15 U.S.C. 80b-11) is amended—

9 (1) by amending subsection (a) to read as fol-
10 lows:

11 “(a) The Commission shall have authority from time
12 to time to make, issue, amend, and rescind such rules and
13 regulations and such orders as are necessary or appro-
14 priate to the exercise of the functions and powers con-
15 ferred upon the Commission elsewhere in this title, includ-
16 ing rules and regulations defining technical, trade, and
17 other terms used in this title. For the purposes of its rules
18 and regulations, the Commission may—

19 “(1) classify persons and matters within its ju-
20 risdiction based upon, but not limited to—

21 “(A) size;

22 “(B) scope;

23 “(C) business model;

24 “(D) compensation scheme; or

1 “(E) potential to create or increase sys-
2 temic risk;

3 “(2) prescribe different requirements for dif-
4 ferent classes of persons or matters; and

5 “(3) ascribe different meanings to terms (in-
6 cluding the term ‘client’, except the Commission
7 shall not ascribe a meaning to the term ‘client’ that
8 would include an investor in a private fund managed
9 by an investment adviser, where such private fund
10 has entered into an advisory contract with such ad-
11 viser) used in different sections of this title as the
12 Commission determines necessary to effect the pur-
13 poses of this title.”; and

14 (2) by adding at the end the following new sub-
15 section:

16 “(e) The Commission and the Commodity Futures
17 Trading Commission shall, after consultation with the
18 Board of Governors of the Federal Reserve System, within
19 12 months after the date of enactment of the Private
20 Fund Investment Advisers Registration Act of 2009, joint-
21 ly promulgate rules to establish the form and content of
22 the reports required to be filed with the Commission under
23 sections 203(l) and 204(b) and with the Commodity Fu-
24 tures Trading Commission by investment advisers that are
25 registered both under the Investment Advisers Act of 1940

1 (15 U.S.C. 80b-1 et seq.) and the Commodity Exchange
2 Act (7 U.S.C. 1 et seq.).”.

3 **SEC. 5009. GAO STUDY.**

4 (a) **STUDY REQUIRED.**—The Comptroller General of
5 the United States shall carry out a study to assess the
6 annual costs on industry members and their investors due
7 to the registration requirements and ongoing reporting re-
8 quirements under this subtitle and the amendments made
9 by this subtitle.

10 (b) **REPORT TO THE CONGRESS.**—Not later than the
11 end of the 2-year period beginning on the date of the en-
12 actment of this title, the Comptroller General of the
13 United States shall submit a report to the Congress con-
14 taining the findings and determinations made by the
15 Comptroller General in carrying out the study required
16 under subsection (a).

17 **SEC. 5010. EFFECTIVE DATE; TRANSITION PERIOD.**

18 (a) **EFFECTIVE DATE.**—This subtitle, and the
19 amendments made by this subtitle, shall take effect with
20 respect to investment advisers after the end of the 1-year
21 period beginning on the date of the enactment of this title.

22 (b) **TRANSITION PERIOD.**—The Securities and Ex-
23 change Commission shall prescribe rules and regulations
24 to permit an investment adviser who will be required to
25 register with the Securities and Exchange Commission by

1 reason of this subtitle with the option of registering with
2 the Securities and Exchange Commission before the date
3 described under subsection (a).

4 **SEC. 5011. QUALIFIED CLIENT STANDARD.**

5 Section 205(e) of the Investment Advisers Act of
6 1940 (15 U.S.C. 80b-5(e)) is amended by adding at the
7 end the following: “With respect to any factor used by the
8 Commission in making a determination under this sub-
9 section, if the Commission uses a dollar amount test in
10 connection with such factor, such as a net asset threshold,
11 the Commission shall, not later than one year after the
12 date of the enactment of the Private Fund Investment Ad-
13 visers Registration Act of 2009, and every 5 years there-
14 after, adjust for the effects of inflation on such test. Any
15 such adjustment that is not a multiple of \$1,000 shall be
16 rounded to the nearest multiple of \$1,000.”.

17 **Subtitle B—Accountability and**
18 **Transparency in Rating Agen-**
19 **cies Act**

20 **SEC. 6001. SHORT TITLE.**

21 This subtitle may be cited as the “Accountability and
22 Transparency in Rating Agencies Act of 2009”.

1 **SEC. 6002. ENHANCED REGULATION OF NATIONALLY REC-**
2 **OGNIZED STATISTICAL RATING ORGANIZA-**
3 **TIONS.**

4 Section 15E of the Securities Exchange Act of 1934
5 (15 U.S.C. 78o–7) is amended—

6 (1) in subsection (a)—

7 (A) in paragraph (1)(A), by striking “fur-
8 nish to” and inserting “file with”;

9 (B) in paragraph (2)(A), by striking “fur-
10 nished to” and inserting “filed with”; and

11 (C) in paragraph (2)(B)(i)(II), by striking
12 “furnished to” and inserting “filed with”;

13 (2) in subsection (b)—

14 (A) in paragraph (1)(A), by striking “fur-
15 nished” and inserting “filed” and by striking
16 “furnishing” and inserting “filing”;

17 (B) in paragraph (1)(B), by striking “fur-
18 nishing” and inserting “filing”; and

19 (C) in the first sentence of paragraph (2),
20 by striking “furnish to” and inserting “file
21 with”;

22 (3) in subsection (c)—

23 (A) paragraph (2)—

24 (i) in the second sentence by inserting
25 “including the requirements of this sec-

1 tion,” after “Notwithstanding any other
2 provision of law,”; and

3 (ii) by inserting before the period at
4 the end of the last sentence “, provided
5 that this paragraph does not afford a de-
6 fense against any action or proceeding
7 brought by the Commission to enforce the
8 antifraud provision of the securities laws”;

9 (B) by adding at the end the following new
10 paragraph:

11 “(3) REVIEW OF INTERNAL PROCESSES FOR
12 DETERMINING CREDIT RATINGS.—

13 “(A) IN GENERAL.—The Commission shall
14 examine credit ratings issued by, and the poli-
15 cies, procedures, and methodologies employed
16 by, each nationally recognized statistical rating
17 organization to review whether—

18 “(i) the nationally recognized statis-
19 tical rating organization has established
20 and documented a system of internal con-
21 trols, due diligence and implementation of
22 methodologies for determining credit rat-
23 ings, taking into consideration such factors
24 as the Commission may prescribe by rule;

1 “(ii) the nationally recognized statis-
2 tical rating organization adheres to such
3 system; and

4 “(iii) the public disclosures of the na-
5 tionally recognized statistical rating orga-
6 nization required under this section about
7 its credit ratings, methodologies, and pro-
8 cedures are consistent with such system.

9 “(B) MANNER AND FREQUENCY.—The
10 Commission shall conduct reviews required by
11 this paragraph no less frequently than annually
12 in a manner to be determined by the Commis-
13 sion.

14 “(4) PROVISION OF INFORMATION TO THE COM-
15 MISSION.—Each nationally recognized statistical rat-
16 ing organization shall make available and maintain
17 such records and information, for such a period of
18 time, as the Commission may prescribe, by rule, as
19 necessary for the Commission to conduct the reviews
20 under paragraph (3).

21 “(5) DISCLOSURES WITH RESPECT TO STRUC-
22 TURED SECURITIES.—

23 “(A) REGULATIONS REQUIRED.—The rules
24 and regulations prescribed by the Commission
25 pursuant to this section with respect to nation-

1 ally recognized statistical rating organizations
2 shall, with respect to the procedures and meth-
3 odologies by which any nationally recognized
4 statistical rating organization determines credit
5 ratings for structured securities—

6 “(i) specify the information required
7 to be disclosed to such rating organizations
8 by the sponsor, issuers, and underwriters
9 of such structured securities on the collat-
10 eral underlying such structured securities;
11 and

12 “(ii) establish and implement proce-
13 dures to collect and disclose information
14 about the processes used by such sponsor,
15 issuers, and underwriters to assess the ac-
16 curacy and integrity of their data and
17 fraud detection.

18 “(B) DEFINITION.—For purposes of this
19 paragraph, the Commission shall, by rule or
20 regulation, define the term ‘structured securi-
21 ties’ as appropriate in the public interest and
22 for the protection of investors.

23 “(6) HISTORICAL DEFAULT RATE DISCLO-
24 SURES.—The rules and regulations prescribed by the
25 Commission pursuant to this section with respect to

1 nationally recognized statistical rating organizations
2 shall require each nationally recognized statistical
3 rating organization to establish and maintain, on a
4 publicly accessible Internet site, a facility to disclose,
5 in a central database, the historical default rates of
6 all classes of financial products rated by such orga-
7 nization.”

8 (4) in subsection (d)—

9 (A) in the heading, by inserting “FINE,”
10 after “CENSURE,”;

11 (B) by striking “shall censure” and all
12 that follows through “revocation” and inserting
13 the following: “shall censure, fine in accordance
14 with section 21B(a), place limitations on the ac-
15 tivities, functions, or operations of, suspend for
16 a period not exceeding 12 months, or revoke the
17 registration of any nationally recognized statis-
18 tical rating organization (or with respect to any
19 person who is associated, who is seeking to be-
20 come associated, or, at the time of the alleged
21 misconduct, who was associated or was seeking
22 to become associated with a nationally recog-
23 nized statistical rating organization, the Com-
24 mission, by order, shall censure, fine in accord-
25 ance with section 21B(a), place limitations on

1 the activities or functions of such person, sus-
2 pend for a period not exceeding 12 months, or
3 bar such person from being associated with a
4 nationally recognized statistical rating organiza-
5 tion), if the Commission finds, on the record
6 after notice and opportunity for hearing, that
7 such censure, fine, placing of limitations, bar,
8 suspension, or revocation”;

9 (C) in paragraph (2), by striking “fur-
10 nished to” and inserting “filed with”;

11 (D) in paragraph (4)—

12 (i) by striking “furnish” and inserting
13 “file”;

14 (ii) by striking “or” at the end;

15 (E) in paragraph (5), by striking the pe-
16 riod at the end and inserting a semicolon; and

17 (F) by adding at the end the following:

18 “(6) has failed reasonably to supervise another
19 person who commits a violation of the securities
20 laws, the rules or regulations thereunder, or any
21 rules of the Municipal Securities Rulemaking Board
22 if such other person is subject to his or her super-
23 vision, except that no person shall be deemed to have
24 failed reasonably to supervise any other person
25 under this paragraph, if—

1 “(A) there have been established proce-
2 dures, and a system for applying such proce-
3 dures, which would reasonably be expected to
4 prevent and detect, insofar as practicable, any
5 such violation by such other person, and

6 “(B) such person has reasonably dis-
7 charged the duties and obligations incumbent
8 upon him or her by reason of such procedures
9 and system without reasonable cause to believe
10 that such procedures and system were not being
11 complied with; or

12 “(7) fails to conduct sufficient surveillance to
13 ensure that credit ratings remain current and reli-
14 able, as applicable.”;

15 (5) in subsection (e)—

16 (A) by striking paragraph (1); and

17 (B) in paragraph (2), by striking “(2)
18 COMMISSION AUTHORITY.—” and moving the
19 text of such paragraph to follow the heading of
20 subsection (e);

21 (6) by amending subsection (h) to read as fol-
22 lows:

23 “(h) CORPORATE GOVERNANCE, ORGANIZATION, AND
24 MANAGEMENT OF CONFLICTS OF INTEREST.—

25 “(1) BOARD OF DIRECTORS.—

1 “(A) IN GENERAL.—Each nationally recog-
2 nized statistical rating organization or its ulti-
3 mate holding company shall have a board of di-
4 rectors.

5 “(B) INDEPENDENT DIRECTORS.—At least
6 $\frac{1}{3}$ of such board, but no less than 2 of the
7 members of the board of directors, shall be
8 independent directors. In order to be considered
9 independent for purposes of this subsection, a
10 director of a nationally recognized statistical
11 rating organization may not, other than in his
12 or her capacity as a member of the board of di-
13 rectors or any committee thereof—

14 “(i) accept any consulting, advisory,
15 or other compensatory fee from the nation-
16 ally recognized statistical rating organiza-
17 tion; or

18 “(ii) be a person associated with the
19 nationally recognized statistical rating or-
20 ganization or with any affiliated company
21 thereof.

22 “(C) COMPENSATION AND TERM.—The
23 compensation of the independent directors shall
24 not be linked to the business performance of the
25 nationally recognized statistical rating organiza-

1 tion and shall be arranged so as to ensure the
2 independence of their judgment. The term of
3 office of the independent directors shall be for
4 a pre-agreed fixed period not exceeding 5 years
5 and shall not be renewable.

6 “(D) DUTIES.—In addition to the overall
7 responsibility of the board of directors, the
8 board shall oversee—

9 “(i) the establishment, maintenance,
10 and enforcement of policies and procedures
11 for determining credit ratings;

12 “(ii) the establishment, maintenance,
13 and enforcement of policies and procedures
14 to address, manage, and disclose any con-
15 flicts of interest;

16 “(iii) the effectiveness of the internal
17 control system with respect to policies and
18 procedures for determining credit ratings;
19 and

20 “(iv) the compensation and promotion
21 policies and practices of the nationally rec-
22 ognized statistical rating organization.

23 “(2) ORGANIZATION POLICIES AND PROCE-
24 DURES.—Each nationally recognized statistical rat-
25 ing organization shall establish, maintain, and en-

1 force written policies and procedures reasonably de-
2 signed, taking into consideration the nature of the
3 business of the nationally recognized statistical rat-
4 ing organization and affiliated persons and affiliated
5 companies thereof, to address, manage, and disclose
6 any conflicts of interest that can arise from such
7 business.

8 “(3) COMMISSION RULES.—The Commission
9 shall issue rules to prohibit, or require the manage-
10 ment and disclosure of, any conflicts of interest re-
11 lating to the issuance of credit ratings by a nation-
12 ally recognized statistical rating organization, includ-
13 ing rules regarding—

14 “(A) conflicts of interest relating to the
15 manner in which a nationally recognized statis-
16 tical rating organization is compensated by the
17 obligor, or any affiliate of the obligor, for
18 issuing credit ratings or providing related serv-
19 ices;

20 “(B) conflicts of interest relating to busi-
21 ness relationships, ownership interests, and af-
22 filiations of nationally recognized statistical rat-
23 ing organization board members with obligors,
24 or any other financial or personal interests be-
25 tween a nationally recognized statistical rating

1 organization, or any person associated with
2 such nationally recognized statistical rating or-
3 ganization, and the obligor, or any affiliate of
4 the obligor;

5 “(C) conflicts of interest relating to any af-
6 filiation of a nationally recognized statistical
7 rating organization, or any person associated
8 with such nationally recognized statistical rat-
9 ing organization, with any person who under-
10 writes securities, money market instruments, or
11 other instruments that are the subject of a
12 credit rating;

13 “(D) a requirement that each nationally
14 recognized statistical rating organization dis-
15 close on such organization’s website a consoli-
16 dated report at the end of each fiscal year that
17 shows—

18 “(i) the percent of net revenue earned
19 by the nationally recognized statistical rat-
20 ing organization or an affiliate of a nation-
21 ally recognized statistical rating organiza-
22 tion, or any person associated with a na-
23 tionally recognized statistical rating orga-
24 nization, to the extent determined appro-
25 priate by the Commission, for that fiscal

1 year for providing services and products
2 other than credit rating services to each
3 person who paid for a credit rating; and

4 “(ii) the relative standing of each per-
5 son who paid for a credit rating that was
6 outstanding as of the end of the fiscal year
7 in terms of the amount of net revenue
8 earned by the nationally recognized statis-
9 tical rating organization attributable to
10 each such person and classified by the
11 highest 5, 10, 25, and 50 percentiles and
12 lowest 50 and 25 percentiles;

13 “(E) the establishment of a system of pay-
14 ment for credit ratings issued by each nation-
15 ally recognized statistical rating organization
16 that requires that payments are structured in a
17 manner designed to ensure that the nationally
18 recognized statistical rating organization con-
19 ducts accurate and reliable surveillance of credit
20 ratings over time, as applicable, and that incen-
21 tives for reliable credit ratings are in place;

22 “(F) a requirement that a nationally rec-
23 ognized statistical rating organization disclose
24 with the publication of a credit rating the type
25 and number of credit ratings it has provided to

1 the person being rated or affiliates of such per-
2 son, the fees it has billed for the credit rating,
3 and the aggregate amount of net revenue
4 earned by the nationally recognized statistical
5 rating organization in the preceding 2 fiscal
6 years attributable to the person being rated and
7 its affiliates; and

8 “(G) any other potential conflict of inter-
9 est, as the Commission determines necessary or
10 appropriate in the public interest or for the pro-
11 tection of investors.

12 “(4) LOOK-BACK REQUIREMENT.—

13 “(A) REVIEW BY THE NATIONALLY RECOG-
14 NIZED STATISTICAL RATING ORGANIZATION.—

15 Each nationally recognized statistical rating or-
16 ganization shall establish, maintain, and enforce
17 policies and procedures reasonably designed to
18 ensure that, in any case in which an employee
19 of a person subject to a credit rating of the na-
20 tionally recognized statistical rating organiza-
21 tion or the issuer, underwriter, or sponsor of a
22 security or money market instrument subject to
23 a credit rating of the nationally recognized sta-
24 tistical rating organization was employed by the
25 nationally recognized statistical rating organiza-

1 tion and participated in any capacity in deter-
2 mining credit ratings for the person or the se-
3 curities or money market instruments during
4 the 1-year period preceding the date an action
5 was taken with respect to the credit rating, the
6 nationally recognized statistical rating organiza-
7 tion shall—

8 “(i) conduct a review to determine
9 whether any conflicts of interest of the em-
10 ployee influenced the credit rating; and

11 “(ii) take action to revise the rating if
12 appropriate, in accordance with such rules
13 as the Commission shall prescribe.

14 “(B) REVIEW BY COMMISSION.—

15 “(i) IN GENERAL.—The Commission
16 shall conduct periodic reviews of the poli-
17 cies described in subparagraph (A) and the
18 implementation of the policies at each na-
19 tionally recognized statistical rating orga-
20 nization to ensure they are reasonably de-
21 signed and implemented to most effectively
22 eliminate conflicts of interest.

23 “(ii) TIMING OF REVIEWS.—The Com-
24 mission shall review the code of ethics and

1 conflict of interest policy of each nationally
2 recognized statistical rating organization—

3 “(I) not less frequently than an-
4 nually; and

5 “(II) whenever such policies are
6 materially modified or amended.

7 “(5) REPORT TO COMMISSION ON CERTAIN EM-
8 PLOYMENT TRANSITIONS.—

9 “(A) REPORT REQUIRED.—Each nationally
10 recognized statistical rating organization shall
11 report to the Commission any case such organi-
12 zation knows or can reasonably be expected to
13 know where a person associated with such orga-
14 nization within the previous 5 years obtains em-
15 ployment with any obligor, issuer, underwriter,
16 or sponsor of a security or money market in-
17 strument for which the organization issued a
18 credit rating during the 12-month period prior
19 to such employment, if such employee—

20 “(i) was a senior officer of such orga-
21 nization;

22 “(ii) participated in any capacity in
23 determining credit ratings for such obligor,
24 issuer, underwriter, or sponsor; or

1 “(iii) supervised an employee de-
2 scribed in clause (ii).

3 “(B) PUBLIC DISCLOSURE.—Upon receiv-
4 ing such a report, the Commission shall make
5 such information publicly available.”;

6 (7) by amending subsection (j) to read as fol-
7 lows:

8 “(j) DESIGNATION OF COMPLIANCE OFFICER.—

9 “(1) IN GENERAL.—Each nationally recognized
10 statistical rating organization shall designate an in-
11 dividual to serve as a compliance officer.

12 “(2) DUTIES.—The compliance officer shall—

13 “(A) report directly to the board of the na-
14 tionally recognized statistical rating organiza-
15 tion;

16 “(B) review compliance with policies and
17 procedures to manage conflicts of interest and
18 assess the risk that the compliance (or lack of
19 such compliance) may compromise the integrity
20 of the credit rating process;

21 “(C) review compliance with the internal
22 control system with respect to the procedures
23 and methodologies for determining credit rat-
24 ings, including qualitative methodologies and
25 quantitative inputs used in the rating process,

1 and assess the risk that such internal control
2 system is reasonably designed to ensure the in-
3 tegrity and quality of the credit rating process;

4 “(D) in consultation with the board of the
5 nationally recognized statistical rating organiza-
6 tion, resolve any conflicts of interest that may
7 arise;

8 “(E) be responsible for administering the
9 policies and procedures required to be estab-
10 lished pursuant to this section;

11 “(F) ensure compliance with securities
12 laws and the rules and regulations issued there-
13 under, including rules prescribed by the Com-
14 mission pursuant to this section; and

15 “(G) establish procedures—

16 “(i) for the receipt, retention, and
17 treatment of complaints regarding credit
18 ratings, models, methodologies, and com-
19 pliance with the securities laws and the
20 policies and procedures required under this
21 section;

22 “(ii) for the receipt, retention, and
23 treatment of confidential, anonymous com-
24 plaints by employees, obligors, issuers, and
25 investors;

1 “(iii) for the remediation of non-com-
2 pliance issues found during compliance of-
3 fice reviews, the reviews required under
4 paragraph (7), internal or external audit
5 findings, self-reported errors, or through
6 validated complaints; and

7 “(iv) designed so that ratings that the
8 nationally recognized statistical rating or-
9 ganization disseminates reflect consider-
10 ation of all information in a manner gen-
11 erally consistent with the nationally recog-
12 nized statistical rating organization’s pub-
13 lished rating methodology, including infor-
14 mation which is provided, received, or oth-
15 erwise obtained from obligor, issuer and
16 non-issuer sources, such as investors, the
17 media, and other interested or informed
18 parties.

19 “(3) LIMITATIONS.—The compliance officer
20 shall not, while serving in that capacity—

21 “(A) determine credit ratings;

22 “(B) participate in the establishment of
23 the procedures and methodologies or the quali-
24 tative methodologies and quantitative inputs
25 used to determine credit ratings;

1 “(C) perform marketing or sales functions;

2 or

3 “(D) participate in establishing compensa-
4 tion levels, other than for employees working
5 for the compliance officer.

6 “(4) ANNUAL REPORTS REQUIRED.—The com-
7 pliance officer shall annually prepare and sign a re-
8 port on the compliance of the nationally recognized
9 statistical rating organization with the securities
10 laws and such organization’s internal policies and
11 procedures, including its code of ethics and conflict
12 of interest policies, in accordance with rules pre-
13 scribed by the Commission. Such compliance report
14 shall accompany the financial reports of the nation-
15 ally recognized statistical rating organization that
16 are required to be filed with the Commission pursu-
17 ant to this section and shall include a certification
18 that, under penalty of law, the report is accurate
19 and complete.

20 “(5) COMPENSATION.—The compensation of
21 the compliance officer shall not be linked to the
22 business performance of the nationally recognized
23 statistical rating organization and shall be arranged
24 so as to ensure the independence of the officer’s
25 judgment.”;

1 (8) in subsection (k)—

2 (A) by striking “, on a confidential basis,”;

3 (B) by striking “furnish to” and inserting
4 “file with”;

5 (C) by striking “Each nationally” and in-
6 serting the following:

7 “(1) IN GENERAL.—Each nationally”; and

8 (D) by adding at the end the following new
9 paragraph:

10 “(2) EXCEPTION.—The Commission may treat
11 as confidential any information provided by a na-
12 tionally recognized statistical rating organization
13 under this section consistent with applicable Federal
14 laws or Commission rules.”;

15 (9) in subsection (l)(2)(A)(i), by striking “fur-
16 nished” and inserting “filed”;

17 (10) by amending subsection (p) to read as fol-
18 lows:

19 “(p) ESTABLISHMENT OF SEC OFFICE.—

20 “(1) IN GENERAL.—The Commission shall es-
21 tablish an office that administers the rules of the
22 Commission with respect to the practices of nation-
23 ally recognized statistical rating organizations.

24 “(2) STAFFING.—The office of the Commission
25 established under this subsection shall be staffed

1 sufficiently to carry out fully the requirements of
2 this section.

3 “(3) RULEMAKING AUTHORITY.—The Commis-
4 sion shall—

5 “(A) establish, by rule, fines and other
6 penalties for any nationally recognized statis-
7 tical rating organization that violates the appli-
8 cable requirements of this title; and

9 “(B) issue such rules as may be necessary
10 to carry out this section with respect to nation-
11 ally recognized statistical rating organiza-
12 tions.”; and

13 (11) by adding after subsection (p) the fol-
14 lowing new subsections:

15 “(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

16 “(1) RULEMAKING REQUIRED.—The Commis-
17 sion shall, by rule, require each nationally recognized
18 statistical rating organization to publicly disclose in-
19 formation on initial ratings and subsequent changes
20 to such ratings for the purpose of providing a gauge
21 of the performance of ratings and allowing investors
22 to compare performance of ratings by different na-
23 tionally recognized statistical rating organizations.

1 “(2) CONTENT.—The rules of the Commission
2 under this subsection shall require, at a minimum,
3 disclosures that—

4 “(A) are comparable among nationally rec-
5 ognized statistical rating organizations, so that
6 investors can compare rating performance
7 across rating organizations;

8 “(B) are clear and informative for a wide
9 range of investor sophistication;

10 “(C) include performance information over
11 a range of years and for a variety of classes of
12 credit ratings, as determined by the Commis-
13 sion;

14 “(D) are published and made freely avail-
15 able by the nationally recognized statistical rat-
16 ing organization, on an easily accessible portion
17 of its website and in written form when re-
18 quested by investors; and

19 “(E) each nationally recognized statistical
20 rating organization include an attestation with
21 any credit rating it issues affirming that no
22 part of the rating was influenced by any other
23 business activities, that the rating was based
24 solely on the merits of the instruments being
25 rated, and that such rating was an independent

1 evaluation of the risks and merits of the instru-
2 ment.

3 “(r) CREDIT RATINGS METHODOLOGIES.—

4 “(1) IN GENERAL.—The Commission shall pre-
5 scribe rules, in the public interest and for the pro-
6 tection of investors, that require each nationally rec-
7 ognized statistical rating organization to establish,
8 maintain, and enforce written procedures and meth-
9 odologies and an internal control system with respect
10 to such procedures and methodologies that are rea-
11 sonably designed to—

12 “(A) ensure that credit ratings are deter-
13 mined using procedures and methodologies, in-
14 cluding qualitative methodologies and quan-
15 titative inputs that are determined in accord-
16 ance with the policies and procedures of the na-
17 tionally recognized statistical rating organiza-
18 tion for developing and modifying credit rating
19 procedures and methodologies;

20 “(B) ensure that when major changes to
21 credit rating procedures and methodologies, in-
22 cluding to qualitative methodologies and quan-
23 titative inputs, are made, that the changes are
24 applied consistently to all credit ratings to
25 which the changed procedures and methodolo-

1 gies apply and, to the extent the changes are
2 made to credit rating surveillance procedures
3 and methodologies, they are applied to current
4 credit ratings within a time period to be deter-
5 mined by the Commission by rule, and that the
6 reason for the change is publicly disclosed;

7 “(C) notify persons who have access to the
8 credit ratings of the nationally recognized sta-
9 tistical rating organization, regardless of wheth-
10 er they are made readily accessible for free or
11 a reasonable fee, of the procedure or method-
12 ology, including qualitative methodologies and
13 quantitative inputs, used with respect to a par-
14 ticular credit rating;

15 “(D) notify persons who have access to the
16 credit ratings of the nationally recognized sta-
17 tistical rating organization, regardless of wheth-
18 er they are made readily accessible for free or
19 a reasonable fee, when a change is made to a
20 procedure or methodology, including to quali-
21 tative methodologies and quantitative inputs, or
22 an error is identified in a procedure or method-
23 ology that may result in credit rating actions,
24 and the likelihood of the change resulting in

1 current credit ratings being subject to rating
2 actions; and

3 “(E) use credit rating symbols that distin-
4 guish credit ratings for structured products
5 from credit ratings for other products that the
6 Commission determines appropriate or nec-
7 essary in the public interest and for the protec-
8 tion of investors.

9 “(2) RATING CLARITY AND CONSISTENCY.—

10 “(A) COMMISSION OBLIGATION.—Subject
11 to subparagraphs (B) and (C), the Commission
12 shall require, by rule, each nationally recognized
13 statistical rating organization to establish,
14 maintain, and enforce written policies and pro-
15 cedures reasonably designed—

16 “(i) with respect to credit ratings of
17 securities and money market instruments,
18 to assess the risk that investors in securi-
19 ties and money market instruments may
20 not receive payment in accordance with the
21 terms of such securities and instruments;

22 “(ii) to define clearly any credit rating
23 symbol used by that organization; and

1 “(iii) to apply such credit rating sym-
2 bol in a consistent manner for all types of
3 securities and money market instruments.

4 “(B) ADDITIONAL CREDIT FACTORS.—
5 Nothing in subparagraph (A)—

6 “(i) prohibits a nationally recognized
7 statistical rating organization from using
8 additional credit factors that are docu-
9 mented and disclosed by the organization
10 and that have a demonstrated impact on
11 the risk an investor in a security or money
12 market instrument will not receive repay-
13 ment in accordance with the terms of
14 issuance;

15 “(ii) prohibits a nationally recognized
16 statistical rating organization from consid-
17 ering credit factors that are unique to mu-
18 nicipal securities; or

19 “(iii) prohibits a nationally recognized
20 statistical rating organization from using
21 an additional symbol with respect to the
22 ratings described in subparagraph (A)(i)
23 for the purpose of distinguishing the rat-
24 ings of a certain type of security or money
25 market instrument from ratings of any

1 other types of securities or money market
2 instruments.

3 “(C) COMPLEMENTARY RATINGS.—The
4 Commission shall not impose any requirement
5 under subparagraph (A) that prevents nation-
6 ally recognized statistical rating organizations
7 from establishing ratings that are complemen-
8 tary to the ratings described in subparagraph
9 (A)(i) and that are created to measure a dis-
10 crete aspect of the security’s or instrument’s
11 risk.

12 “(s) TRANSPARENCY OF CREDIT RATING METH-
13 ODOLOGIES AND INFORMATION REVIEWED.—

14 “(1) IN GENERAL.—The Commission shall re-
15 quire, by rule, a nationally recognized statistical rat-
16 ing organization to include with the publication of
17 each credit rating regardless of whether the credit
18 rating is made readily accessible for free or a rea-
19 sonable fee a form that discloses information about
20 the assumptions underlying the procedures and
21 methodologies used, and the data relied on, to deter-
22 mine the credit rating in the format prescribed in
23 paragraph (2) and containing the information de-
24 scribed in paragraph (3).

1 “(2) FORMAT.—The Commission shall prescribe
2 a form for use under paragraph (1) that—

3 “(A) is designed in a user-friendly and
4 helpful manner for investors to understand the
5 information contained in the report;

6 “(B) requires the nationally recognized
7 statistical rating organization to provide the
8 content, as required by paragraph (3), in a
9 manner that is directly comparable across secu-
10 rities; and

11 “(C) the nationally recognized statistical
12 rating organization certifies the information on
13 the form as true and accurate.

14 “(3) CONTENT.—The Commission shall pre-
15 scribe a form that requires a nationally recognized
16 statistical rating organization to disclose —

17 “(A) the main assumptions included in
18 constructing procedures and methodologies, in-
19 cluding qualitative methodologies and quan-
20 titative inputs and assumptions about the cor-
21 relation of defaults across underlying assets
22 used in rating certain structured products;

23 “(B) the potential shortcomings of the
24 credit ratings, and the types of risks not meas-
25 ured in the credit ratings that the nationally

1 recognized statistical rating organization is not
2 commenting on, such as liquidity, market, and
3 other risks;

4 “(C) information on the certainty of the
5 rating, including information on the reliability,
6 accuracy, and quality of the data relied on in
7 determining the ultimate credit rating and a
8 statement on the extent to which key data in-
9 puts for the credit rating were reliable or lim-
10 ited, including any limits on the reach of histor-
11 ical data, limits in accessibility to certain docu-
12 ments or other forms of information that would
13 have better informed the credit rating, and the
14 completeness of certain information considered;

15 “(D) whether and to what extent third
16 party due diligence services have been utilized,
17 and a description of the information that such
18 third party reviewed in conducting due diligence
19 services;

20 “(E) a description of relevant data about
21 any obligor, issuer, security, or money market
22 instrument that was used and relied on for the
23 purpose of determining the credit rating;

24 “(F) a statement containing an overall as-
25 sessment of the quality of information available

1 and considered in producing a credit rating for
2 a security in relation to the quality of informa-
3 tion available to the nationally recognized sta-
4 tistical rating organization in rating similar ob-
5 ligors, securities, or money market instruments;

6 “(G) an explanation or measure of the po-
7 tential volatility for the credit rating, including
8 any factors that might lead to a change in the
9 credit rating, and the extent of the change that
10 might be anticipated under different conditions;

11 “(H) information on the content of the
12 credit rating, including—

13 “(i) the expected default probability;

14 and

15 “(ii) the loss given default;

16 “(I) information on the sensitivity of the
17 rating to assumptions made by the nationally
18 recognized statistical rating organization, in-
19 cluding—

20 “(i) 5 assumptions made in the rat-
21 ings process that, without accounting for
22 any other factor, would have the greatest
23 impact on a rating if such assumptions
24 were proven false or inaccurate; and

1 “(ii) an analysis, using concrete exam-
2 ples, on how each of the 5 assumptions
3 identified under clause (i) impacts a rat-
4 ing.

5 “(J) where applicable, how the nationally
6 recognized statistical rating organization used
7 servicer or remittance reports, and with what
8 frequency, to conduct surveillance of the credit
9 rating; and

10 “(K) such additional information as may
11 be required by the Commission.

12 “(4) DUE DILIGENCE SERVICES.—

13 “(A) CERTIFICATION REQUIRED.—In any
14 case in which third-party due diligence services
15 are employed by a nationally recognized statis-
16 tical rating organization or an issuer, under-
17 writer, or sponsor in connection with the
18 issuance of a credit rating, the firm providing
19 the due diligence services shall provide to the
20 nationally recognized statistical rating organiza-
21 tion written certification of such due diligence,
22 which shall be subject to review by the Commis-
23 sion, and the issuer, underwriter, or sponsor
24 shall provide any reports issued by the provider

1 of such due diligence services to the nationally
2 recognized statistical rating organization.

3 “(B) FORMAT AND CONTENT.—The Com-
4 mission shall establish the appropriate format
5 and content for written certifications required
6 under subparagraph (A) to ensure that pro-
7 viders of due diligence services have conducted
8 a thorough review of data, documentation, and
9 other relevant information necessary for the na-
10 tionally recognized statistical rating organiza-
11 tion to provide a reliable rating.

12 “(C) DISCLOSURE OF CERTIFICATION.—
13 The Commission shall adopt rules requiring a
14 nationally recognized statistical rating organiza-
15 tion to disclose to persons who have access to
16 the credit ratings of the nationally recognized
17 statistical rating organization regardless of
18 whether they are made readily accessible for
19 free or a reasonable fee the certification de-
20 scribed in subparagraph (A) with the publica-
21 tion of the applicable credit rating in a manner
22 that may permit the persons to determine the
23 adequacy and level of due diligence services pro-
24 vided by the third party.

1 “(t) PROHIBITED ACTIVITIES.—Beginning 180 days
2 from the date of enactment of the Accountability, Reli-
3 ability, and Transparency in Rating Agencies Act, it shall
4 be unlawful for a nationally recognized statistical rating
5 organization, or an affiliate of a nationally recognized sta-
6 tistical rating organization, or any person associated with
7 a nationally recognized statistical rating organization, that
8 provides a credit rating for an issuer, underwriter, or
9 placement agent of a security to provide any non-rating
10 service, including—

11 “(1) risk management advisory services;

12 “(2) advice or consultation relating to any
13 merger, sales, or disposition of assets of the issuer;

14 “(3) ancillary assistance, advice, or consulting
15 services unrelated to any specific credit rating
16 issuance; and

17 “(4) such further activities or services as the
18 Commission may determine as necessary or appro-
19 priate in the public interest or for the protection of
20 investors.”.

21 **SEC. 6003. STANDARDS FOR PRIVATE ACTIONS.**

22 (a) IN GENERAL.—Section 21D(b)(2) of the Securi-
23 ties Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2)) is
24 amended by inserting before the period at the end of the
25 following: “, and in the case of an action brought under

1 this title for money damages against a nationally recog-
2 nized statistical rating organization, it shall be sufficient
3 for purposes of pleading any required state of mind for
4 purposes of such action that the complaint shall state with
5 particularity facts giving rise to a strong inference that
6 the nationally recognized statistical rating organization
7 knowingly or recklessly violated the securities laws”.

8 (b) PLEADING STANDARD.—Section 15E(m) of the
9 Securities Exchange Act of 1934 (15 U.S.C. 78o-7(m))
10 amended to read as follows:

11 “(m) APPLICATION OF ENFORCEMENT PROVISIONS;
12 PLEADING STANDARD IN PRIVATE RIGHTS OF ACTION.—
13 Statements made by nationally recognized statistical rat-
14 ing organizations shall not be deemed forward looking
15 statements for purposes of section 21E. In any private
16 right of action commenced against a nationally recognized
17 statistical rating organization under this title, the same
18 pleading standards with respect to knowledge and reck-
19 lessness shall apply to the nationally recognized statistical
20 rating organization as would apply to any other person
21 in the same or a similar private right of action against
22 such person.”.

23 **SEC. 6004. ISSUER DISCLOSURE OF PRELIMINARY RATINGS.**

24 The Securities and Exchange Commission shall adopt
25 rules under authority of the Securities Act of 1933 (15

1 U.S.C. 77a, et seq.) to require issuers to disclose prelimi-
2 nary credit ratings received from nationally recognized
3 statistical rating agencies on structured products and all
4 forms of corporate debt.

5 **SEC. 6005. CHANGE TO DESIGNATION.**

6 The Securities Act of 1933 and the Securities Ex-
7 change Act of 1934 are each amended by striking “nation-
8 ally recognized statistical rating” each place it appears
9 and inserting “nationally registered statistical rating”.

10 **SEC. 6006. TIMELINE FOR REGULATIONS.**

11 Unless otherwise specified in this subtitle, the Securi-
12 ties and Exchange Commission shall adopt rules and regu-
13 lations, as required by the amendments made by this sub-
14 title, not later than 365 days after the date of enactment.

15 **SEC. 6007. ELIMINATION OF EXEMPTION FROM FAIR DIS-**
16 **CLOSURE RULE.**

17 Not later than 90 days after the date of enactment
18 of this subtitle, the Securities Exchange Commission shall
19 revise Regulation FD (17 C.F.R. 243.100) to remove from
20 such regulation the exemption for entities whose primary
21 business is the issuance of credit ratings (17 C.F.R.
22 243.100(b)(2)(iii)).

23 **SEC. 6008. ADVISORY BOARD.**

24 (a) ESTABLISHMENT.—Not later than 90 days after
25 the date of the enactment of this subtitle, the Securities

1 and Exchange Commission shall establish an advisory
2 board to be known as the Credit Ratings Agency Advisory
3 Board (in this section referred to as “the Board”).

4 (b) APPOINTMENT AND TERMS OF SERVICE.—The
5 Board shall consist of 7 members appointed by the Com-
6 mission, no more than 2 of whom may be former employ-
7 ees of a credit rating agency. Members of the Board shall
8 be prominent individuals of integrity and reputation who
9 have a demonstrated commitment to the interests of inves-
10 tors and the public, and an understanding of the role that
11 credit ratings play to a broad range of investors. Terms
12 of service shall be staggered as determined by the Com-
13 mission.

14 (c) DUTIES.—The Board shall—

15 (1) advise the Commission concerning the rules
16 and regulations required by the amendments made
17 by this subtitle;

18 (2) ensure that the Commission properly and
19 fully executes its oversight functions and responsibil-
20 ities with the respect to nationally recognized statis-
21 tical rating organizations and individual partici-
22 pants; and

23 (3) issue an annual report to Congress detailing
24 its work and recommending any additional Congres-
25 sional actions necessary to aid the Commission and

1 such additional reports from time to time as appro-
2 priate when it feels that the Commission is not prop-
3 erly executing its oversight functions.

4 **SEC. 6009. REMOVAL OF STATUTORY REFERENCES TO**
5 **CREDIT RATINGS.**

6 (a) FEDERAL DEPOSIT INSURANCE ACT.—The Fed-
7 eral Deposit Insurance Act (12 U.S.C. 1811 et seq.) is
8 amended—

9 (1) in section 28(d)—

10 (A) in the subsection heading, by striking
11 “NOT OF INVESTMENT GRADE”;

12 (B) in paragraph (1), by striking “not of
13 investment grade” and inserting “that does not
14 meet standards of credit-worthiness as estab-
15 lished by the Corporation”;

16 (C) in paragraph (2), by striking “not of
17 investment grade”;

18 (D) by striking paragraph (3) and redesign-
19 ating paragraph (4) as paragraph (3); and

20 (E) in paragraph (3) (as so redesign-
21 ated)—

22 (i) by striking subparagraph (A) and
23 redesignating subparagraphs (B) and (C)
24 as subparagraphs (A) and (B), respec-
25 tively; and

1 (ii) in subparagraph (B) (as so reded-
2 ignated), by striking “not of investment
3 grade” and inserting “that does not meet
4 standards of credit-worthiness as estab-
5 lished by the Corporation”;

6 (2) in section 28(e)—

7 (A) in the subsection heading, by striking
8 “NOT OF INVESTMENT GRADE”;

9 (B) in paragraph (1), by striking “not of
10 investment grade” and inserting “that does not
11 meet standards of credit-worthiness as estab-
12 lished by the Corporation”; and

13 (C) in paragraphs (2) and (3), by striking
14 “not of investment grade” each place that it ap-
15 pears and inserting “that does not meet stand-
16 ards of credit-worthiness established by the
17 Corporation”; and

18 (3) in section 7(b)(1)(E)(i), by striking “credit
19 rating entities, and other private economic” and in-
20 sert “private economic, credit,”.

21 (b) FEDERAL HOUSING ENTERPRISES FINANCIAL
22 SAFETY AND SOUNDNESS ACT OF 1992.—Section 1319
23 of the Federal Housing Enterprises Financial Safety and
24 Soundness Act of 1992 (12 U.S.C. 4519) is amended—

1 (1) in the section heading, by striking “**BY**
2 **RATING ORGANIZATION**”; and

3 (2) by striking “that is a nationally recognized
4 statistical rating organization, as such term is de-
5 fined in section 3(a) of the Securities Exchange Act
6 of 1934,”.

7 (c) INVESTMENT COMPANY ACT OF 1940.—Section
8 6(a)(5)(A)(iv)(I) Investment Company Act of 1940 (15
9 U.S.C. 80a-6(a)(5)(A)(iv)(I)) is amended by striking “is
10 rated investment grade by not less than 1 nationally recog-
11 nized statistical rating organization” and inserting “meets
12 such standards of credit-worthiness that the Commission
13 shall adopt”.

14 (d) REVISED STATUTES.—Section 5136A of title
15 LXII of the Revised Statutes of the United States (12
16 U.S.C. 24a) is amended—

17 (1) in subsection (a)(2)(E), by striking “any
18 applicable rating” and inserting “standards of cred-
19 it-worthiness established by the Comptroller of the
20 Currency”;

21 (2) in the heading for subsection (a)(3) by
22 striking “RATING OR COMPARABLE REQUIREMENT”
23 and inserting “REQUIREMENT”;

24 (3) subsection (a)(3), by amending subpara-
25 graph (A) to read as follows:

1 “(A) IN GENERAL.—A national bank meets
2 the requirements of this paragraph if the bank
3 is one of the 100 largest insured banks and has
4 not fewer than 1 issue of outstanding debt that
5 meets standards of credit-worthiness or other
6 criteria as the Secretary of the Treasury and
7 the Board of Governors of the Federal Reserve
8 System may jointly establish.”.

9 (4) in the heading for subsection (f), by striking
10 “MAINTAIN PUBLIC RATING OR” and inserting
11 “MEET STANDARDS OF CREDIT-WORTHINESS”; and

12 (5) in subsection (f)(1), by striking “any appli-
13 cable rating” and inserting “standards of credit-wor-
14 thiness established by the Comptroller of the Cur-
15 rency”.

16 (e) SECURITIES EXCHANGE ACT OF 1934.—Section
17 3(a) Securities Exchange Act of 1934 (15 U.S.C.
18 78a(3)(a)) is amended—

19 (1) in paragraph (41), by striking “is rated in
20 one of the two highest rating categories by at least
21 one nationally recognized statistical rating organiza-
22 tion” and inserting “meets standards of credit-wor-
23 thiness as defined by the Commission”; and

24 (2) in paragraph (53)(A), by striking “is rated
25 in 1 of the 4 highest rating categories by at least 1

1 nationally recognized statistical rating organization”
2 and inserting “meets standards of credit-worthiness
3 as defined by the Commission”.

4 (f) **WORLD BANK DISCUSSIONS.**—Section 3(a)(6) of
5 the amendment in the nature of a substitute to the text
6 of H.R. 4645, as ordered reported from the Committee
7 on Banking, Finance and Urban Affairs on September 22,
8 1988, as enacted into law by section 555 of Public Law
9 100-461, (22 U.S.C. 286hh(a)(6)), is amended by striking
10 “rating” and inserting “worthiness”.

11 (g) **EFFECTIVE DATE.**—The amendments made by
12 this section shall take effect after the end of the 6-month
13 period beginning on the date of the enactment of this sub-
14 title.

15 **SEC. 6010. REVIEW OF RELIANCE ON RATINGS.**

16 (a) **AGENCY REVIEW.**—

17 (1) **REVIEW.**—Not later than 1 year after the
18 date of the enactment of this subtitle, each Federal
19 agency listed in paragraph (4) shall, to the extent
20 applicable, review—

21 (A) any regulation issued by such agency
22 that requires the use of an assessment of the
23 credit-worthiness of a security or money market
24 instrument, and

1 (B) any references to or requirements in
2 such regulations regarding credit ratings.

3 (2) MODIFICATIONS REQUIRED.—Each such
4 agency shall modify any such regulations identified
5 by the review conducted under paragraph (1) to re-
6 move any reference to or requirement of reliance on
7 credit ratings and to substitute in such regulations
8 such standard of credit-worthiness as each respective
9 agency shall determine as appropriate for such regu-
10 lations. In making such determination, such agencies
11 shall seek to establish, to the extent feasible, uni-
12 form standards of credit-worthiness for use by each
13 such agency, taking into account the entities regu-
14 lated by each such agency and the purposes for
15 which such entities would rely on such standards of
16 credit-worthiness.

17 (3) REPORT.—Upon conclusion of the review
18 required under paragraph (1), each Federal agency
19 listed in paragraph (4) shall transmit a report to
20 Congress containing a description of any modifica-
21 tion of any regulation such agency made pursuant to
22 paragraph (2).

23 (4) APPLICABLE AGENCIES.—The agencies re-
24 quired to conduct the review and report required by
25 this subsection are—

1 (A) the Securities and Exchange Commis-
2 sion;

3 (B) the Federal Deposit Insurance Cor-
4 poration;

5 (C) the Office of Thrift Supervision;

6 (D) the Office of the Comptroller of the
7 Currency;

8 (E) the Board of Governors of the Federal
9 Reserve;

10 (F) the National Credit Union Administra-
11 tion; and

12 (G) the Federal Housing Finance Agency.

13 (b) GAO REVIEW OF OTHER AGENCIES.—

14 (1) REVIEW.—The Comptroller General shall
15 conduct a comprehensive review of the use of credit
16 ratings by Federal agencies other than those listed
17 in subsection (a)(3), including an analysis of the
18 provisions of law or regulation applicable to each
19 such agency that refer to and require the use of
20 credit ratings by the agency, and the policies and
21 practices of each agency with respect to credit rat-
22 ings.

23 (2) REPORT.—Not later than 1 year after the
24 date of the enactment of this subtitle, the Comp-
25 troller General shall transmit to Congress a report

1 on the findings of the study conducted pursuant to
2 paragraph (1), including recommendations for any
3 legislation or rulemaking necessary or appropriate in
4 order for such agencies to reduce their reliance on
5 credit ratings.

6 **SEC. 6011. PUBLICATION OF RATING HISTORIES ON THE**
7 **EDGAR SYSTEM.**

8 Not later than 180 days after the date of the enact-
9 ment of this subtitle, the Securities and Exchange Com-
10 mission shall revise its rules in section 240.17g-2(a) and
11 (d) of title 17, Code of Federal Regulations, to require
12 that the random sample of ratings histories of credit rat-
13 ings required under such rules to be disclosed on the
14 website of a nationally recognized statistical rating organi-
15 zation also be provided to the Commission in a format con-
16 sistent with publication by the Commission on the
17 EDGAR system.

18 **SEC. 6012. EFFECT OF RULE 436(G).**

19 Rule 436(g), promulgated by the Securities and Ex-
20 change Commission under the Securities Act of 1933,
21 shall have no force or effect.

22 **SEC. 6013. STUDIES.**

23 (a) GAO STUDY.—

24 (1) IN GENERAL.—The Comptroller General
25 shall conduct a study of—

1 (A) the implementation of this subtitle and
2 the amendments made by this subtitle by the
3 Securities and Exchange Commission;

4 (B) the appropriateness of relying on rat-
5 ings for use in Federal, State, and local securi-
6 ties and banking regulations, including for de-
7 termining capital requirements; and

8 (C) the effect of liability in private actions
9 arising under the Securities Exchange Act of
10 1934;

11 (D) alternative means for compensating
12 credit rating agencies that would create incen-
13 tives for accurate credit ratings and what, if
14 any, statutory changes would be required to
15 permit or facilitate the use of such alternative
16 means of compensation; and

17 (E) alternative methodologies to assess
18 credit risk, including market-based measures.

19 (2) REPORT.—Not later than 30 months after
20 the date of enactment of this subtitle, the Comp-
21 troller General shall submit to Congress and the Se-
22 curities Exchange Commission, a report containing
23 the findings under the study required by subsection
24 (a).

1 (b) SEC STUDY ON ASSIGNING CREDIT RATING
2 AGENCIES ON A ROTATING BASIS.—The Securities and
3 Exchange Commission shall undertake a study on creating
4 a system whereby nationally recognized statistical rating
5 organizations are assigned on a rotating basis to issuers
6 and obligors seeking a credit rating. Not later than 1 year
7 after the date of enactment of this subtitle, the Securities
8 and Exchange Commission shall transmit to Congress a
9 report containing the findings of the study.

10 (c) SEC STUDY ON EFFECT OF NEW REQUIRE-
11 MENTS ON NRSRO REGISTRATION.—The Securities and
12 Exchange Commission shall conduct a study on the effect
13 of the amendments made by section 2 on credit rating
14 agencies seeking to register as nationally recognized sta-
15 tistical rating organizations, including whether the new re-
16 quirements in such amendments deter credit rating agen-
17 cies from registering as nationally recognized statistical
18 rating organizations. Not later than 1 year after the date
19 of enactment of this subtitle, the Commission shall trans-
20 mit to the Committee on Financial Services of the House
21 of Representatives and the Committee on Banking, Hous-
22 ing, and Urban Affairs of the Senate a report on the find-
23 ings of such study.

24 (d) STUDY OF CREDIT RATINGS OF DIFFERENT
25 CLASSES OF BONDS.—

1 (1) STUDY.—The Securities and Exchange
2 Commission shall conduct a study of the treatment
3 of different classes of bonds (municipal versus cor-
4 porate) by the nationally recognized statistical rating
5 organizations. Such study shall examine—

6 (A) whether there are fundamental dif-
7 ferences in the treatment of different classes of
8 bonds by such rating organizations that cause
9 some classes of bonds to suffer from undue dis-
10 crimination;

11 (B) if there are such differences, what are
12 the causes of such differences and how can they
13 be alleviated;

14 (C) whether there are factors other than
15 risk of loss that are appropriate for the credit
16 ratings agencies to consider when rating bonds,
17 and do those factors vary across different sec-
18 tors

19 (D) the types of financing arrangement
20 used by municipal issuers

21 (E) the differing legal and regulatory re-
22 gimes governing disclosures for corporate bonds
23 and municipal bonds;

1 (F) the extent to which retail investors
2 could be disadvantaged by a single ratings
3 scale; and

4 (G) practices, policies, and methodologies
5 by the nationally recognized statistical rating
6 organizations with respect to rating municipal
7 bonds.

8 (2) REPORT.—Within 6 months after the date
9 of enactment of this subtitle, the Securities and Ex-
10 change Commission shall submit a report on the re-
11 sults of the study required by paragraph (1) to the
12 Committee on Financial Services of the House of
13 Representatives and the Committee on Banking,
14 Housing, and Urban Development of the Senate.
15 Such report shall include as assessment of each of
16 the issues and subjects described in subparagraphs
17 (A) through (G) of paragraph (1).

18 (e) SEC STUDY ON MEANINGFUL MULTI DIGIT RAT-
19 ING SYMBOLS.—

20 (1) STUDY.—The Securities and Exchange
21 Commission shall conduct a study on the feasibility
22 and desirability of implementing a standardized rat-
23 ing system whereby ratings symbols contain multiple
24 characters, each representing a range of default
25 probabilities and loss expectations under standard-

1 ized and increasingly severe levels of market stress.
2 The study shall optimize the definitions of the sym-
3 bols to maximize their overall usefulness for users of
4 credit ratings.

5 (2) INITIAL EXAMPLE FOR GUIDANCE.—An ex-
6 ample to provide initial guidance for the study is a
7 ratings symbol consisting of three digits, each of
8 which corresponds to default probabilities under dif-
9 ferent levels of market stress as follows:

10 (A) The first digit represents the default
11 probability under “normal” market stress, char-
12 acterized by normal economic fluctuations in
13 addition to a 5 percent decline in asset value
14 and 2 percent increase in unemployment.

15 (B) The second digit represents the default
16 probability under more severe market stress,
17 characterized a 20 percent decline in asset
18 value and 5 percent increase in unemployment.

19 (C) The third digit represents the default
20 probability under extreme market stress, char-
21 acterized by a 50 percent decline in asset value
22 and 10 percent increase in unemployment.

23 (3) REPORT.—Not later than 1 year after the
24 date of the enactment of this subtitle, the Commis-
25 sion shall transmit to Congress a report of the study

1 conducted pursuant to paragraph (1), including rec-
2 ommendations on whether the system similar to that
3 described in paragraph (2) should be implemented
4 and, if so, any necessary legislation required to im-
5 plement such a system.

6 (f) SEC STUDY ON RATINGS STANDARDIZATION.—

7 (1) IN GENERAL.—The Securities and Ex-
8 change Commission shall undertake a study on the
9 feasibility and desirability of—

10 (A) standardizing credit ratings termi-
11 nology, so that all credit rating agencies issue
12 credit ratings using identical terms;

13 (B) standardizing the market stress condi-
14 tions under which ratings are evaluated;

15 (C) requiring a quantitative correspond-
16 ence between credit ratings and a range of de-
17 fault probabilities and loss expectations under
18 standardized conditions of economic stress; and

19 (D) standardizing credit rating termi-
20 nology across asset classes, so that named rat-
21 ings shall correspond to a standard range of de-
22 fault probabilities and expected losses inde-
23 pendent of asset class and issuing entity.

24 (2) REPORT.—Not later than 1 year after the
25 date of enactment of this subtitle, the Securities and

1 Exchange Commission shall transmit to Congress a
2 report containing the findings of the study and the
3 recommendations of the Commission.

4 **Subtitle C—Investor Protection Act**

5 **SEC. 7001. SHORT TITLE.**

6 This subtitle may be cited as the “Investor Protection
7 Act of 2009”.

8 **PART 1—DISCLOSURE**

9 **SEC. 7101. INVESTOR ADVISORY COMMITTEE ESTAB-** 10 **LISHED.**

11 The Securities Exchange Act of 1934 (15 U.S.C. 78a
12 et seq.) is amended by adding after section 4C the fol-
13 lowing new section:

14 **“SEC. 4D. INVESTOR ADVISORY COMMITTEE.**

15 “(a) ESTABLISHMENT AND PURPOSE.—There is es-
16 tablished an Investor Advisory Committee (in this section
17 referred to as the ‘Committee’) to advise and consult with
18 the Commission on—

19 “(1) regulatory priorities and issues regarding
20 new products, trading strategies, fee structures and
21 the effectiveness of disclosures;

22 “(2) initiatives to protect investor interest; and

23 “(3) initiatives to promote investor confidence
24 in the integrity of the marketplace.

25 “(b) MEMBERSHIP.—

1 “(1) APPOINTMENT.—The Chairman of the
2 Commission shall appoint the members of the Com-
3 mittee, which members shall—

4 “(A) represent the interests of individual
5 investors;

6 “(B) represent the interests of institutional
7 investors; and

8 “(C) use a wide range of investment ap-
9 proaches.

10 “(2) MEMBERS NOT COMMISSION EMPLOY-
11 EES.—Members shall not be considered employees or
12 agents of the Commission solely because of member-
13 ship on the Committee.

14 “(c) MEETINGS.—The Committee shall meet from
15 time to time at the call of the Commission, but, at a min-
16 imum, shall meet at least twice each year.

17 “(d) COMPENSATION AND TRAVEL EXPENSES.—
18 Members of the Committee who are not full-time employ-
19 ees of the United States shall—

20 “(1) be entitled to receive compensation at a
21 rate fixed by the Commission while attending meet-
22 ings of the Committee, including travel time; and

23 “(2) be allowed travel expenses, including trans-
24 portation and subsistence, while away from their
25 homes or regular places of business.

1 “(e) COMMITTEE FINDINGS.—Nothing in this section
2 requires the Commission to accept, agree, or act upon the
3 findings or recommendations of the Committee.

4 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
5 is authorized to be appropriated to the Commission such
6 sums as are necessary for the activities of the Com-
7 mittee.”.

8 **SEC. 7102. CLARIFICATION OF THE COMMISSION’S AUTHOR-**
9 **ITY TO ENGAGE IN CONSUMER TESTING.**

10 (a) AMENDMENT TO SECURITIES ACT OF 1933.—
11 Section 19 of the Securities Act of 1933 (15 U.S.C. 77s)
12 is amended by adding at the end the following new sub-
13 section:

14 “(e) For the purposes of evaluating its rules and pro-
15 grams and for considering, proposing, adopting, or engag-
16 ing in rules or programs, the Commission is authorized
17 to gather information, communicate with investors or
18 other members of the public, and engage in such tem-
19 porary or experimental programs as the Commission in its
20 discretion determines is in the public interest or for the
21 protection of investors. The Commission may delegate to
22 its staff some or all of the authority conferred by this sub-
23 section.”.

24 (b) AMENDMENT TO SECURITIES EXCHANGE ACT OF
25 1934.—Section 23 of the Securities Exchange Act of 1934

1 (15 U.S.C. 78w) is amended by redesignating subsections
2 (b), (c), and (d) as subsections (c), (d), and (e), respec-
3 tively, and inserting after subsection (a) the following:

4 “(b) For the purposes of evaluating its rules and pro-
5 grams and for considering proposing, adopting, or engag-
6 ing in rules or programs, the Commission is authorized
7 to gather information, communicate with investors or
8 other members of the public, and engage in such tem-
9 porary or experimental programs as the Commission in its
10 discretion determines is in the public interest or for the
11 protection of investors. The Commission may delegate to
12 its staff some or all of the authority conferred by this sub-
13 section.”.

14 (c) AMENDMENT TO INVESTMENT COMPANY ACT OF
15 1940.—Section 38 of the Investment Company Act of
16 1940 (15 U.S.C. 80a–38) is amended by adding at the
17 end the following new subsection:

18 “(d) GATHERING INFORMATION.—For the purposes
19 of evaluating its rules and programs and for considering
20 proposing, adopting, or engaging in rules or programs, the
21 Commission is authorized to gather information, commu-
22 nicate with investors or other members of the public, and
23 engage in such temporary or experimental programs as
24 the Commission in its discretion determines is in the pub-
25 lic interest or for the protection of investors. The Commis-

1 sion may delegate to its staff some or all of the authority
2 conferred by this subsection.”.

3 (d) AMENDMENT TO THE INVESTMENT ADVISERS
4 ACT OF 1940.—Section 211 of the Investment Advisers
5 Act of 1940 (15 U.S.C. 80b–11) (as amended by section
6 5008(2)) is further amended by adding at the end the fol-
7 lowing new subsection:

8 “(f) For the purposes of evaluating its rules and pro-
9 grams and for considering proposing, adopting, or engag-
10 ing in rules or programs, the Commission is authorized
11 to gather information, communicate with investors or
12 other members of the public, and engage in such tem-
13 porary or experimental programs as the Commission in its
14 discretion determines is in the public interest or for the
15 protection of investors. The Commission may delegate to
16 its staff some or all of the authority conferred by this sub-
17 section.”.

18 **SEC. 7103. ESTABLISHMENT OF A FIDUCIARY DUTY FOR**
19 **BROKERS, DEALERS, AND INVESTMENT AD-**
20 **VISERS, AND HARMONIZATION OF REGULA-**
21 **TION.**

22 (a) IN GENERAL.—

23 (1) SECURITIES EXCHANGE ACT OF 1934.—Sec-
24 tion 15 of the Securities Exchange Act of 1934 (15
25 U.S.C. 78o) (as amended by section 1951(c)) is fur-

1 ther amended by adding at the end the following
2 new subsections:

3 “(m) STANDARD OF CONDUCT.—

4 “(1) IN GENERAL.—Notwithstanding any other
5 provision of this Act or the Investment Advisers Act
6 of 1940, the Commission shall promulgate rules to
7 provide that, with respect to a broker or dealer,
8 when providing personalized investment advice about
9 securities to a retail customer (and such other cus-
10 tomers as the Commission may by rule provide), the
11 standard of conduct for such broker or dealer with
12 respect to such customer shall be the same as the
13 standard of conduct applicable to an investment ad-
14 viser under the Investment Advisers Act of 1940.
15 The receipt of compensation based on commission or
16 other standard compensation for the sale of securi-
17 ties shall not, in and of itself, be considered a viola-
18 tion of such standard applied to a broker or dealer.

19 “(2) DISCLOSURE OF RANGE OF PRODUCTS OF-
20 FERED.—Where a broker or dealer sells only propri-
21 etary or other limited range of products, as deter-
22 mined by the Commission, the Commission shall by
23 rule require that such broker or dealer provide no-
24 tice to each retail customer and obtain the consent
25 or acknowledgment of the customer. The sale of only

1 proprietary or other limited range of products by a
2 broker or dealer shall not, in and of itself, be consid-
3 ered a violation of the standard set forth in para-
4 graph (1).

5 “(3) RETAIL CUSTOMER DEFINED.—For pur-
6 poses of this subsection, the term ‘retail customer’
7 means a natural person, or the legal representative
8 of such natural person, who—

9 “(A) receives personalized investment ad-
10 vice about securities from a broker or dealer;
11 and

12 “(B) uses such advice primarily for per-
13 sonal, family, or household purposes.

14 “(n) OTHER MATTERS.—The Commission shall—

15 “(1) facilitate the provision of simple and clear
16 disclosures to investors regarding the terms of their
17 relationships with brokers, dealers, and investment
18 advisers, including any material conflicts of interest;
19 and

20 “(2) examine and, where appropriate, promul-
21 gate rules prohibiting or restricting certain sales
22 practices, conflicts of interest, and compensation
23 schemes for brokers, dealers, and investment advis-
24 ers that the Commission deems contrary to the pub-
25 lic interest and the protection of investors.”.

1 (3) INVESTMENT ADVISERS ACT OF 1940.—Sec-
2 tion 211 of the Investment Advisers Act of 1940, as
3 amended by section 7102(d), is further amended by
4 adding at the end the following new subsections:

5 “(g) STANDARD OF CONDUCT.—

6 “(1) IN GENERAL.—The Commission shall pro-
7 mulgate rules to provide that the standard of con-
8 duct for all brokers, dealers, and investment advis-
9 ers, when providing personalized investment advice
10 about securities to retail customers (and such other
11 customers as the Commission may by rule provide),
12 shall be to act in the best interest of the customer
13 without regard to the financial or other interest of
14 the broker, dealer, or investment adviser providing
15 the advice. In accordance with such rules, any mate-
16 rial conflicts of interest shall be disclosed and may
17 be consented to by the customer. Such rules shall
18 provide that such standard of conduct shall be no
19 less stringent than the standard applicable to invest-
20 ment advisers under section 206(1) and (2) of this
21 Act when providing personalized investment advice
22 about securities, except the Commission shall not as-
23 cribe a meaning to the term ‘customer’ that would
24 include an investor in a private fund managed by an
25 investment adviser, where such private fund has en-

1 tered into an advisory contract with such adviser.
2 The receipt of compensation based on commission or
3 fees shall not, in and of itself, be considered a viola-
4 tion of such standard applied to a broker, dealer, or
5 investment adviser.

6 “(2) RETAIL CUSTOMER DEFINED.—For pur-
7 poses of this subsection, the term ‘retail customer’
8 means a natural person, or the legal representative
9 of such natural person, who—

10 “(A) receives personalized investment ad-
11 vice about securities from a broker, dealer, or
12 investment adviser; and

13 “(B) uses such advice primarily for per-
14 sonal, family, or household purposes.

15 “(h) OTHER MATTERS.—The Commission shall—

16 “(1) facilitate the provision of simple and clear
17 disclosures to investors regarding the terms of their
18 relationships with brokers, dealers, and investment
19 advisers, including any material conflicts of interest;
20 and

21 “(2) examine and, where appropriate, promul-
22 gate rules prohibiting or restricting certain sales
23 practices, conflicts of interest, and compensation
24 schemes for brokers, dealers, and investment advis-

1 ers that the Commission deems contrary to the pub-
2 lic interest and the protection of investors.”.

3 (b) HARMONIZATION OF ENFORCEMENT.—

4 (1) SECURITIES EXCHANGE ACT OF 1934.—Sec-
5 tion 15 of the Securities Exchange Act of 1934, as
6 amended by subsection (a)(1), is further amended by
7 adding at the end the following new subsection:

8 “(o) HARMONIZATION OF ENFORCEMENT.—The en-
9 forcement authority of the Commission with respect to vio-
10 lations of the standard of conduct applicable to a broker
11 or dealer providing personalized investment advice about
12 securities to a retail customer shall include—

13 “(1) the enforcement authority of the Commis-
14 sion with respect to such violations provided under
15 this Act, and

16 “(2) the enforcement authority of the Commis-
17 sion with respect to violations of the standard of
18 conduct applicable to an investment advisor under
19 the Investment Advisers Act of 1940, including the
20 authority to impose sanctions for such violations,
21 and

22 the Commission shall seek to prosecute and sanction viola-
23 tors of the standard of conduct applicable to a broker or
24 dealer providing personalized investment advice about se-
25 curities to a retail customer under this Act to same extent

1 as the Commission prosecutes and sanctions violators of
2 the standard of conduct applicable to an investment advi-
3 sor under the Investment Advisers Act of 1940.”.

4 (2) INVESTMENT ADVISERS ACT OF 1940.—Sec-
5 tion 211 of the Investment Advisers Act of 1940, as
6 amended by subsection (a)(2), is further amended by
7 adding at the end the following new subsection:

8 “(i) HARMONIZATION OF ENFORCEMENT.—The en-
9 forcement authority of the Commission with respect to vio-
10 lations of the standard of conduct applicable to an invest-
11 ment adviser shall include—

12 “(1) the enforcement authority of the Commis-
13 sion with respect to such violations provided under
14 this Act, and

15 “(2) the enforcement authority of the Commis-
16 sion with respect to violations of the standard of
17 conduct applicable to a broker or dealer providing
18 personalized investment advice about securities to a
19 retail customer under the Securities Exchange Act
20 of 1934, including the authority to impose sanctions
21 for such violations, and

22 the Commission shall seek to prosecute and sanction viola-
23 tors of the standard of conduct applicable to an invest-
24 ment advisor under this Act to same extent as the Com-
25 mission prosecutes and sanctions violators of the standard

1 of conduct applicable to a broker or dealer providing per-
2 sonalized investment advice about securities to a retail
3 customer under the Securities Exchange Act of 1934.”.

4 **SEC. 7104. COMMISSION STUDY ON DISCLOSURE TO RETAIL**
5 **CUSTOMERS BEFORE PURCHASE OF PROD-**
6 **UCTS OR SERVICES.**

7 (a) **STUDY REQUIRED.**—Prior to proposing any rules
8 or regulations pursuant to subsection (b)(1) regarding the
9 manner in which investment products or services are sold
10 or provided in the United States to retail customers or
11 the information that must be provided to retail customers
12 prior to the purchase of such products or services, and
13 within 180 days after the date of the enactment of this
14 subtitle, the Securities and Exchange Commission shall
15 publish a study that examines—

16 (1) the nature of a “retail customer”, taking
17 into consideration the definition in section 15(k) of
18 the Securities Exchange Act of 1934 (15 U.S.C.
19 78o), as amended by section 7103 of this subtitle;

20 (2) the range of products and services sold or
21 provided to retail customers, and the sellers or pro-
22 viders of such products and services, that are within
23 the Commission’s jurisdiction;

24 (3) how such products and services are sold or
25 provided to retail customers, the fees charged for

1 such products and services, and the conflicts of in-
2 terest that may arise during the sales process or
3 provision of services;

4 (4) information that retail customers should re-
5 ceive prior to purchasing each product or service,
6 and the appropriate person or entity to provide such
7 information; and

8 (5) ways to ensure that, where possible, reason-
9 ably similar products and services are subject to
10 similar regulatory treatment, including with respect
11 to information that must be provided to retail cus-
12 tomers prior to the purchase of such products or
13 services and how such information is provided.

14 (b) RULEMAKING.—

15 (1) Notwithstanding any other provision of the
16 Securities Act of 1933 (15 U.S.C. 77a et seq.) or
17 the Investment Company Act of 1940 (15 U.S.C.
18 80a–1 et seq.), following completion of the study re-
19 quired by subsection (a), the Commission is author-
20 ized to promulgate rules to require that the appro-
21 priate persons or entities provide designated docu-
22 ments or information to retail customers prior to the
23 purchase of identified investment products or serv-
24 ices. Any such rules shall—

1 (A) take into account the findings of the
2 study conducted pursuant to subsection (a);

3 (B) take into consideration, to the extent
4 possible, the need for such documents and in-
5 formation to be consistent and comparable
6 across investment products or services sold or
7 provided to retail customers; and

8 (C) reduce, to the extent possible, disrup-
9 tions to the purchase process for investment
10 products and services sold or provided to retail
11 customers, by means such as permitting re-
12 quired disclosures to be made via the Internet.

13 (2) Notwithstanding paragraph (1), the Com-
14 mission is authorized to promulgate rules in connec-
15 tion with—

16 (A) the implementation of section 7103;
17 and

18 (B) disclosure to retail customers other
19 than in connection with the purchase of invest-
20 ment products or services.

21 **SEC. 7105. BENEFICIAL OWNERSHIP AND SHORT-SWING**
22 **PROFIT REPORTING.**

23 (a) BENEFICIAL OWNERSHIP REPORTING.—Section
24 13 of the Securities Exchange Act of 1934 (15 U.S.C.
25 78m) is amended—

1 (1) in subsection (d)(1)—

2 (A) by inserting after “within ten days
3 after such acquisition” the following: “or within
4 such shorter time as the Commission may es-
5 tablish by rule”; and

6 (B) by striking “send to the issuer of the
7 security at its principal executive office, by reg-
8 istered or certified mail, send to each exchange
9 where the security is traded, and”;

10 (2) in subsection (d)(2)—

11 (A) by striking “in the statements to the
12 issuer and the exchange, and”; and

13 (B) by striking “shall be transmitted to
14 the issuer and the exchange and”;

15 (3) in subsection (g)(1), by striking “shall send
16 to the issuer of the security and”; and

17 (4) in subsection (g)(2)—

18 (A) by striking “sent to the issuer and”;

19 and

20 (B) by striking “shall be transmitted to
21 the issuer and”.

22 (b) SHORT-SWING PROFIT REPORTING.—Section
23 16(a) of the Securities Exchange Act of 1934 (15 U.S.C.
24 78p(a)) is amended—

1 (1) in paragraph (1), by striking “(and, if such
2 security is registered on a national securities ex-
3 change, also with the exchange)”; and

4 (2) in paragraph (2)(B), by inserting after “of-
5 ficer” the following: “, or within such shorter time
6 as the Commission may establish by rule”.

7 **SEC. 7106. REVISION TO RECORDKEEPING RULES.**

8 (a) INVESTMENT COMPANY ACT OF 1940 AMEND-
9 MENTS.—Section 31 of the Investment Company Act of
10 1940 (15 U.S.C. 80a–30) is amended—

11 (1) in subsection (a)(1), by adding at the end
12 the following: “Each person with custody or use of
13 a registered investment company’s securities, depos-
14 its, or credits shall maintain and preserve all records
15 that relate to the person’s custody or use of the reg-
16 istered investment company’s securities, deposits, or
17 credits for such period or periods as the Commis-
18 sion, by rules and regulations, may prescribe as nec-
19 essary or appropriate in the public interest or for
20 the protection of investors.”; and

21 (2) in subsection (b), by adding at the end the
22 following new paragraph:

23 “(4) RECORDS OF PERSONS WITH CUSTODY OR
24 USE.—

1 “(A) IN GENERAL.—Notwithstanding para-
2 graph (1), records of persons with custody or
3 use of a registered investment company’s secu-
4 rities, deposits, or credits, that relate to such
5 custody or use, are subject at any time, or from
6 time to time, to such reasonable periodic, spe-
7 cial, or other examinations and other informa-
8 tion and document requests by representatives
9 of the Commission as the Commission deems
10 necessary or appropriate in the public interest
11 or for the protection of investors.

12 “(B) CERTAIN PERSONS SUBJECT TO
13 OTHER REGULATION.—Persons subject to regu-
14 lation and examination by a Federal financial
15 institution regulatory agency (as such term is
16 defined under section 212(c)(2) of title 18,
17 United States Code) may satisfy any examina-
18 tion request, information request, or document
19 request described under subparagraph (A), by
20 providing the Commission with a detailed list-
21 ing, in writing, of the registered investment
22 company’s securities, deposits, or credits within
23 such person’s custody or use.”.

24 (b) INVESTMENT ADVISERS ACT OF 1940 AMEND-
25 MENT.—Section 204 of the Investment Advisers Act of

1 1940 (15 U.S.C. 80b–4) is amended by adding at the end
2 the following new subsection:

3 “(d) RECORDS OF PERSONS WITH CUSTODY OR
4 USE.—

5 “(1) IN GENERAL.—Records of persons with
6 custody or use of a client’s securities, deposits, or
7 credits, that relate to such custody or use, are sub-
8 ject at any time, or from time to time, to such rea-
9 sonable periodic, special, or other examinations and
10 other information and document requests by rep-
11 resentatives of the Commission as the Commission
12 deems necessary or appropriate in the public interest
13 or for the protection of investors.

14 “(2) CERTAIN PERSONS SUBJECT TO OTHER
15 REGULATION.—Persons subject to regulation and ex-
16 amination by a Federal financial institution regu-
17 latory agency (as such term is defined under section
18 212(c)(2) of title 18, United States Code) may sat-
19 isfy any examination request, information request,
20 or document request described under paragraph (1),
21 by providing the Commission with a detailed listing,
22 in writing, of the client’s securities, deposits, or
23 credits within such person’s custody or use.”.

1 **SEC. 7107. STUDY ON ENHANCING INVESTMENT ADVISOR**
2 **EXAMINATIONS.**

3 (a) **STUDY REQUIRED.**—

4 (1) **IN GENERAL.**—The Commission shall review
5 and analyze the need for enhanced examination and
6 enforcement resources for investment advisers.

7 (2) **AREAS OF CONSIDERATION.**—The study re-
8 quired by this subsection shall examine—

9 (A) the number and frequency of examina-
10 tions of investment advisers by the Commission
11 over the 5 years preceding the date of the en-
12 actment of this subtitle;

13 (B) the extent to which having Congress
14 authorize the Commission to designate one or
15 more self-regulatory organizations to augment
16 the Commission's efforts in overseeing invest-
17 ment advisers would improve the frequency of
18 examinations of investment advisers; and

19 (C) current and potential approaches to ex-
20 amining the investment advisory activities of
21 dually registered broker-dealers and investment
22 advisers or affiliated broker-dealers and invest-
23 ment advisers.

24 (b) **REPORT REQUIRED.**—The Commission shall re-
25 port its findings to the Committee on Financial Services
26 of the House of Representatives and the Committee on

1 Banking, Housing, and Urban Affairs of the Senate, not
2 later than 180 days after the date of enactment of this
3 subtitle, and shall use such findings to revise its rules and
4 regulations, as necessary. The report shall include a dis-
5 cussion of regulatory or legislative steps that are rec-
6 ommended or that may be necessary to address concerns
7 identified in the study.

8 **SEC. 7108. GAO STUDY OF FINANCIAL PLANNING.**

9 (a) **STUDY REQUIRED.**—The Comptroller General of
10 the United States shall conduct a study on the regulation
11 and oversight of financial planning. The study shall con-
12 sider—

13 (1) the unique role of financial planners in pro-
14 viding comprehensive advice in investment planning,
15 income tax planning, education planning, retirement
16 planning, estate planning, risk management, and
17 other areas with respect to the management of fi-
18 nancial resources; and

19 (2) any gaps in the regulation of financial plan-
20 ners given existing State and Federal regulation of
21 financial planning activities and the need to provide
22 related consumer protections for such financial plan-
23 ning activities.

24 (b) **REPORT.**—Not later than the end of the 180-day
25 period beginning on the date of the enactment of this sub-

1 title, the Comptroller General of the United States shall
2 submit to the Congress a report containing the findings
3 and determinations made by the Comptroller General in
4 carrying out the study required under subsection (a), in-
5 cluding recommendations for the appropriate regulation
6 of, or standards for, financial planners as a profession and
7 how such regulations or standards should be established.

8 **PART 2—ENFORCEMENT AND REMEDIES**

9 **SEC. 7201. AUTHORITY TO RESTRICT MANDATORY PRE-DIS-**
10 **PUTE ARBITRATION.**

11 (a) AMENDMENT TO SECURITIES EXCHANGE ACT OF
12 1934.—Section 15 of the Securities Exchange Act of 1934
13 (15 U.S.C. 78o), as amended by section 7103, is further
14 amended by adding at the end the following new sub-
15 section:

16 “(p) AUTHORITY TO RESTRICT MANDATORY PRE-
17 DISPUTE ARBITRATION.—The Commission, by rule, may
18 prohibit, or impose conditions or limitations on the use
19 of, agreements that require customers or clients of any
20 broker, dealer, or municipal securities dealer to arbitrate
21 any future dispute between them arising under the Fed-
22 eral securities laws, the rules and regulations thereunder,
23 or the rules of a self-regulatory organization if it finds
24 that such prohibition, imposition of conditions, or limita-

1 tions are in the public interest and for the protection of
2 investors.”.

3 (b) AMENDMENT TO INVESTMENT ADVISERS ACT OF
4 1940.—Section 205 of the Investment Advisers Act of
5 1940 (15 U.S.C. 80b–5) is amended by adding at the end
6 the following new subsection:

7 “(f) AUTHORITY TO RESTRICT MANDATORY PRE-
8 DISPUTE ARBITRATION.—The Commission, by rule, may
9 prohibit, or impose conditions or limitations on the use
10 of, agreements that require customers or clients of any
11 investment adviser to arbitrate any future dispute between
12 them arising under the Federal securities laws, the rules
13 and regulations thereunder, or the rules of a self-regu-
14 latory organization if it finds that such prohibition, im-
15 position of conditions, or limitations are in the public inter-
16 est and for the protection of investors.”.

17 **SEC. 7202. COMPTROLLER GENERAL STUDY TO REVIEW SE-**
18 **CURITIES ARBITRATION SYSTEM.**

19 (a) STUDY.—The Comptroller General of the United
20 States shall conduct a study to review—

21 (1) the costs to parties of an arbitration pro-
22 ceeding using the arbitration system operated by the
23 Financial Industry Regulatory Authority and over-
24 seen by the Securities and Exchange Commission as
25 compared to litigation;

1 (2) the percentage of recovery of the total
2 amount of a claim in an arbitration proceeding using
3 the arbitration system operated by the Financial In-
4 dustry Regulatory Authority and overseen by the Se-
5 curities and Exchange Commission; and

6 (3) other additional issues as may be raised
7 during the course of the study conducted under this
8 subsection.

9 (b) REPORT.—Not later than 1 year after the date
10 of enactment of this subtitle, the Comptroller General of
11 the United States shall submit to the Committee on Fi-
12 nancial Services of the House of Representatives and the
13 Committee on Banking, Housing, and Urban Affairs of
14 the Senate a report on the results of the study required
15 by subsection (a), including in such report recommenda-
16 tions for improvements to the arbitration system ref-
17 erenced in such subsection.

18 **SEC. 7203. WHISTLEBLOWER PROTECTION.**

19 (a) IN GENERAL.—The Securities Exchange Act of
20 1934 (15 U.S.C. 78a et seq.) is amended by adding after
21 section 21E the following new section:

22 **“SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND**
23 **PROTECTION.**

24 “(a) IN GENERAL.—In any judicial or administrative
25 action brought by the Commission under the securities

1 laws that results in monetary sanctions exceeding
2 \$1,000,000, the Commission, under regulations prescribed
3 by the Commission and subject to subsection (b), may pay
4 an award or awards not exceeding an amount equal to 30
5 percent, in total, of the monetary sanctions imposed in the
6 action or related actions to one or more whistleblowers
7 who voluntarily provided original information to the Com-
8 mission that led to the successful enforcement of the ac-
9 tion. Any amount payable under the preceding sentence
10 shall be paid from the fund described in subsection (f).

11 “(b) DETERMINATION OF AMOUNT OF AWARD; DE-
12 NIAL OF AWARD.—

13 “(1) DETERMINATION OF AMOUNT OF
14 AWARD.—The determination of the amount of an
15 award, within the limit specified in subsection (a),
16 shall be in the sole discretion of the Commission.
17 The Commission may take into account the signifi-
18 cance of the whistleblower’s information to the suc-
19 cess of the judicial or administrative action described
20 in subsection (a), the degree of assistance provided
21 by the whistleblower and any legal representative of
22 the whistleblower in such action, the Commission’s
23 programmatic interest in deterring violations of the
24 securities laws by making awards to whistleblowers
25 who provide information that leads to the successful

1 enforcement of such laws, and such additional fac-
2 tors as the Commission may establish by rules or
3 regulations.

4 “(2) DENIAL OF AWARD.—No award under
5 subsection (a) shall be made—

6 “(A) to any whistleblower who is, or was at
7 the time he or she acquired the original infor-
8 mation submitted to the Commission, a mem-
9 ber, officer, or employee of any appropriate reg-
10 ulatory agency, the Department of Justice, the
11 Public Company Accounting Oversight Board,
12 or a self-regulatory organization;

13 “(B) to any whistleblower who is convicted
14 of a criminal violation related to the judicial or
15 administrative action for which the whistle-
16 blower otherwise could receive an award under
17 this section; or

18 “(C) to any whistleblower who fails to sub-
19 mit information to the Commission in such
20 form as the Commission may, by rule, require.

21 “(c) REPRESENTATION.—

22 “(1) PERMITTED REPRESENTATION.—Any
23 whistleblower who makes a claim for an award under
24 subsection (a) may be represented by counsel.

1 “(2) REQUIRED REPRESENTATION.—Any whis-
2 tleblower who makes a claim for an award under
3 subsection (a) must be represented by counsel if the
4 whistleblower submits the information upon which
5 the claim is based anonymously. Prior to the pay-
6 ment of an award, the whistleblower must disclose
7 his or her identity and provide such other informa-
8 tion as the Commission may require.

9 “(d) NO CONTRACT NECESSARY.—No contract with
10 the Commission is necessary for any whistleblower to re-
11 ceive an award under subsection (a), unless the Commis-
12 sion, by rule or regulation, so requires.

13 “(e) APPEALS.—Any determinations under this sec-
14 tion, including whether, to whom, or in what amounts to
15 make awards, shall be in the sole discretion of the Com-
16 mission, and any such determinations shall be final and
17 not subject to judicial review.

18 “(f) INVESTOR PROTECTION FUND.—

19 “(1) FUND ESTABLISHED.—There is estab-
20 lished in the Treasury of the United States a fund
21 to be known as the ‘Securities and Exchange Com-
22 mission Investor Protection Fund’ (referred to in
23 this section as the ‘Fund’).

24 “(2) USE OF FUND.—The Fund shall be avail-
25 able to the Commission, without further appropria-

1 tion or fiscal year limitation, for the following pur-
2 poses:

3 “(A) Paying awards to whistleblowers as
4 provided in subsection (a).

5 “(B) Funding investor education initiatives
6 designed to help investors protect themselves
7 against securities fraud or other violations of
8 the securities laws, or the rules and regulations
9 thereunder.

10 “(3) DEPOSITS AND CREDITS.—There shall be
11 deposited into or credited to the Fund—

12 “(A) any monetary sanction collected by
13 the Commission in any judicial or administra-
14 tive action brought by the Commission under
15 the securities laws that is not added to a
16 disgorgement fund or other fund pursuant to
17 section 308 of the Sarbanes-Oxley Act of 2002
18 or otherwise distributed to victims of a violation
19 of the securities laws, or the rules and regula-
20 tions thereunder, underlying such action, unless
21 the balance of the Fund at the time the mone-
22 etary sanction is collected exceeds \$100,000,000;

23 “(B) any monetary sanction added to a
24 disgorgement fund or other fund pursuant to
25 section 308 of the Sarbanes-Oxley Act of 2002

1 that is not distributed to the victims for whom
2 the disgorgement fund or other fund was estab-
3 lished, unless the balance of the Fund at the
4 time the determination is made not to dis-
5 tribute the monetary sanction to such victims
6 exceeds \$100,000,000; and

7 “(C) all income from investments made
8 under paragraph (4).

9 “(4) INVESTMENTS.—

10 “(A) AMOUNTS IN FUND MAY BE IN-
11 VESTED.—The Commission may request the
12 Secretary of the Treasury to invest the portion
13 of the Fund that is not, in the Commission’s
14 judgment, required to meet the current needs of
15 the Fund.

16 “(B) ELIGIBLE INVESTMENTS.—Invest-
17 ments shall be made by the Secretary of the
18 Treasury in obligations of the United States or
19 obligations that are guaranteed as to principal
20 and interest by the United States, with matu-
21 rities suitable to the needs of the Fund as de-
22 termined by the Commission.

23 “(C) INTEREST AND PROCEEDS CRED-
24 ITED.—The interest on, and the proceeds from
25 the sale or redemption of, any obligations held

1 in the Fund shall be credited to, and form a
2 part of, the Fund.

3 “(5) REPORTS TO CONGRESS.—Not later than
4 October 30 of each year, the Commission shall
5 transmit to the Committee on Banking, Housing,
6 and Urban Affairs of the Senate, and the Committee
7 on Financial Services of the House of Representa-
8 tives a report on—

9 “(A) the Commission’s whistleblower
10 award program under this section, including a
11 description of the number of awards that were
12 granted and the types of cases in which awards
13 were granted during the preceding fiscal year;

14 “(B) investor education initiatives de-
15 scribed in paragraph (2)(B) that were funded
16 by the Fund during the preceding fiscal year;

17 “(C) the balance of the Fund at the begin-
18 ning of the preceding fiscal year;

19 “(D) the amounts deposited into or cred-
20 ited to the Fund during the preceding fiscal
21 year;

22 “(E) the amount of earnings on invest-
23 ments of amounts in the Fund during the pre-
24 ceding fiscal year;

1 “(F) the amount paid from the Fund dur-
2 ing the preceding fiscal year to whistleblowers
3 pursuant to subsection (a);

4 “(G) the amount paid from the Fund dur-
5 ing the preceding fiscal year for investor edu-
6 cation initiatives described in paragraph (1)(B);

7 “(H) the balance of the Fund at the end
8 of the preceding fiscal year; and

9 “(I) a complete set of audited financial
10 statements, including a balance sheet, income
11 statement, and cash flow analysis.

12 “(g) PROTECTION OF WHISTLEBLOWERS.—

13 “(1) PROHIBITION AGAINST RETALIATION.—

14 “(A) IN GENERAL.—No employer may dis-
15 charge, demote, suspend, threaten, harass, or in
16 any other manner discriminate against an em-
17 ployee, contractor, or agent in the terms and
18 conditions of employment because of any lawful
19 act done by the employee, contractor, or agent
20 in providing information to the Commission in
21 accordance with subsection (a), or in assisting
22 in any investigation or judicial or administrative
23 action of the Commission based upon or related
24 to such information.

25 “(B) ENFORCEMENT.—

1 “(i) CAUSE OF ACTION.—An indi-
2 vidual who alleges discharge or other dis-
3 crimination in violation of subparagraph
4 (A) may bring an action under this sub-
5 section in the appropriate district court of
6 the United States for the relief provided in
7 subparagraph (C).

8 “(ii) SUBPOENAS.—A subpoena re-
9 quiring the attendance of a witness at a
10 trial or hearing conducted under this sec-
11 tion 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 6 years after the date
16 on which the violation of subparagraph (A)
17 occurred, or more than 3 years after the
18 date when facts material to the right of ac-
19 tion are known or reasonably should have
20 been known by the employee alleging a vio-
21 lation of subparagraph (A), but in no event
22 after 10 years after the date on which the
23 violation occurs.

24 “(C) RELIEF.—An employee, contractor,
25 or agent prevailing in any action brought under

1 subparagraph (B) shall be entitled to all relief
2 necessary to make that employee, contractor, or
3 agent whole, including reinstatement with the
4 same seniority status that the employee, con-
5 tractor, or agent would have had, but for the
6 discrimination, 2 times the amount of back pay,
7 with interest, and compensation for any special
8 damages sustained as a result of the discrimi-
9 nation, including litigation costs, expert witness
10 fees, and reasonable attorneys' fees.

11 “(2) CONFIDENTIALITY.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), all information provided to
14 the Commission by a whistleblower shall be con-
15 fidential and privileged as an evidentiary matter
16 (and shall not be subject to civil discovery or
17 other legal process) in any proceeding in any
18 Federal or State court or administrative agen-
19 cy, and shall be exempt from disclosure, in the
20 hands of an agency or establishment of the
21 Federal Government, under the Freedom of In-
22 formation Act (5 U.S.C. 552), or otherwise, un-
23 less and until required to be disclosed to a de-
24 fendant or respondent in connection with a pro-
25 ceeding instituted by the Commission or any

1 entity described in subparagraph (B). For pur-
2 poses of section 552 of title 5, United States
3 Code, this paragraph shall be considered a stat-
4 ute described in subsection (b)(3)(B) of such
5 section 552. Nothing herein is intended to limit
6 the Attorney General’s ability to present such
7 evidence to a grand jury or to share such evi-
8 dence with potential witnesses or defendants in
9 the course of an ongoing criminal investigation.

10 “(B) AVAILABILITY TO GOVERNMENT
11 AGENCIES.—Without the loss of its status as
12 confidential and privileged in the hands of the
13 Commission, all information referred to in sub-
14 paragraph (A) may, in the discretion of the
15 Commission, when determined by the Commis-
16 sion to be necessary to accomplish the purposes
17 of this Act and protect investors, be made avail-
18 able to—

19 “(i) the Attorney General of the
20 United States,

21 “(ii) an appropriate regulatory au-
22 thority,

23 “(iii) a self-regulatory organization,

24 “(iv) the Public Company Accounting
25 Oversight Board,

1 “(v) State attorneys general in con-
2 nection with any criminal investigation,
3 and

4 “(vi) any appropriate State regulatory
5 authority,

6 each of which shall maintain such information
7 as confidential and privileged, in accordance
8 with the requirements in subparagraph (A).

9 “(3) RIGHTS RETAINED.—Nothing in this sec-
10 tion shall be deemed to diminish the rights, privi-
11 leges, or remedies of any whistleblower under any
12 Federal or State law, or under any collective bar-
13 gaining agreement.

14 “(h) PROVISION OF FALSE INFORMATION.—Any
15 whistleblower who knowingly and willfully makes any
16 false, fictitious, or fraudulent statement or representation,
17 or makes or uses any false writing or document knowing
18 the same to contain any false, fictitious, or fraudulent
19 statement or entry, shall not be entitled to an award under
20 this section and shall be subject to prosecution under sec-
21 tion 1001 of title 18, United States Code.

22 “(i) RULEMAKING AUTHORITY.—The Commission
23 shall have the authority to issue such rules and regulations
24 as may be necessary or appropriate to implement the pro-
25 visions of this section.

1 “(j) DEFINITIONS.—For purposes of this section, the
2 following terms have the following meanings:

3 “(1) ORIGINAL INFORMATION.—The term
4 ‘original information’ means information that—

5 “(A) is based on the direct and inde-
6 pendent knowledge or analysis of a whistle-
7 blower;

8 “(B) is not known to the Commission from
9 any other source, unless the whistleblower is the
10 initial source of the information; and

11 “(C) is not based on allegations in a judi-
12 cial or administrative hearing, in a govern-
13 mental report, hearing, audit, or investigation,
14 or from the news media, unless the whistle-
15 blower is the initial source of the information
16 that resulted in the judicial or administrative
17 hearing, governmental report, hearing, audit, or
18 investigation, or the news media’s report on the
19 allegations.

20 “(2) MONETARY SANCTIONS.—The term ‘mone-
21 tary sanctions’, when used with respect to any judi-
22 cial or administrative action, means any monies, in-
23 cluding but not limited to penalties, disgorgement,
24 and interest, ordered to be paid, and any monies de-
25 posited into a disgorgement fund or other fund pur-

1 suant to section 308(b) of the Sarbanes-Oxley Act of
2 2002 (15 U.S.C. 7246(b)), as a result of such action
3 or any settlement of such action.

4 “(3) RELATED ACTION.—The term ‘related ac-
5 tion’, when used with respect to any judicial or ad-
6 ministrative action brought by the Commission
7 under the securities laws, means any judicial or ad-
8 ministrative action brought by an entity described in
9 subsection (g)(2)(B) that is based upon the same
10 original information provided by a whistleblower
11 pursuant to subsection (a) that led to the successful
12 enforcement of the Commission action.

13 “(4) WHISTLEBLOWER.—The term ‘whistle-
14 blower’ means an individual, or two or more individ-
15 uals acting jointly, who submit information to the
16 Commission as provided in this section.”.

17 (b) ADMINISTRATION AND ENFORCEMENT.—The Se-
18 curities and Exchange Commission shall establish a sepa-
19 rate office within the Commission to administer and en-
20 force the provisions of section 21F of the Securities Ex-
21 change Act of 1934, as added by subsection (a). Such of-
22 fice shall report annually to Congress on its activities,
23 whistleblower complaints, and the response of the Com-
24 mission to such complaints.

1 **SEC. 7204. CONFORMING AMENDMENTS FOR WHISTLE-**
2 **BLOWER PROTECTION.**

3 (a) IN GENERAL.—Each of the following provisions
4 is amended by inserting “and section 21F of the Securities
5 Exchange Act of 1934” after “the Sarbanes-Oxley Act of
6 2002”:

7 (1) Section 20(d)(3)(A) of the Securities Act of
8 1933 (15 U.S.C. 77t(d)(3)(A)).

9 (2) Section 42(e)(3)(A) of the Investment Com-
10 pany Act of 1940 (15 U.S.C. 80a-41(e)(3)(A)).

11 (3) Section 209(e)(3)(A) of the Investment Ad-
12 visers Act of 1940 (15 U.S.C. 80b-9(e)(3)(A)).

13 (b) SECURITIES EXCHANGE ACT.—The Securities
14 Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amend-
15 ed—

16 (1) in section 21(d)(3)(C)(i) (15 U.S.C.
17 78u(d)(3)(C)(i)), by inserting “and section 21F of
18 this title” after “the Sarbanes-Oxley Act of 2002”;

19 (2) in section 21A(d)(1) (15 U.S.C. 78u-
20 1(d)(1))—

21 (A) by striking “(subject to subsection
22 (e))”; and

23 (B) by inserting “and section 21F of this
24 title” after “the Sarbanes-Oxley Act of 2002”;

25 and

1 (3) in section 21A, by striking subsection (e)
2 and redesignating subsections (f) and (g) as sub-
3 section (e) and (f), respectively.

4 **SEC. 7205. IMPLEMENTATION AND TRANSITION PROVI-**
5 **SIONS FOR WHISTLEBLOWER PROTECTIONS.**

6 (a) **IMPLEMENTING RULES.**—The Securities and Ex-
7 change Commission shall issue final regulations imple-
8 menting the provisions of section 21F of the Securities
9 Exchange Act of 1934, as added by this part, no later
10 than 270 days after the date of enactment of this subtitle.

11 (b) **ORIGINAL INFORMATION.**—Information sub-
12 mitted to the Commission by a whistleblower in accord-
13 ance with regulations implementing the provisions of sec-
14 tion 21F of the Securities Exchange Act of 1934, as added
15 by this part, shall not lose its status as original informa-
16 tion, as defined in subsection (i)(1) of such section, solely
17 because the whistleblower submitted such information
18 prior to the effective date of such regulations, provided
19 such information was submitted after the date of enact-
20 ment of this subtitle, or related to insider trading viola-
21 tions for which a bounty could have been paid at the time
22 such information was submitted.

23 (c) **AWARDS.**—A whistleblower may receive an award
24 pursuant to section 21F of the Securities Exchange Act
25 of 1934, as added by this part, regardless of whether any

1 violation of a provision of the securities laws, or a rule
2 or regulation thereunder, underlying the judicial or admin-
3 istrative action upon which the award is based occurred
4 prior to the date of enactment of this subtitle.

5 **SEC. 7206. COLLATERAL BARS.**

6 (a) SECTION 15 OF THE SECURITIES EXCHANGE ACT
7 OF 1934.—Section 15(b)(6)(A) of the Securities Ex-
8 change Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is amended
9 by striking “12 months, or bar such person from being
10 associated with a broker or dealer,” and inserting “12
11 months, or bar any such person from being associated with
12 a broker, dealer, investment adviser, municipal securities
13 dealer, transfer agent, or nationally recognized statistical
14 rating organization,”.

15 (b) SECTION 15B OF THE SECURITIES EXCHANGE
16 ACT OF 1934.—Section 15B(c)(4) of the Securities Ex-
17 change Act of 1934 (15 U.S.C. 78o–4(c)(4)) is amended
18 by striking “twelve months or bar any such person from
19 being associated with a municipal securities dealer,” and
20 inserting “12 months or bar any such person from being
21 associated with a broker, dealer, investment adviser, mu-
22 nicipal securities dealer, transfer agent, or nationally rec-
23 ognized statistical rating organization,”.

24 (c) SECTION 17A OF THE SECURITIES EXCHANGE
25 ACT OF 1934.—Section 17A(c)(4)(C) of the Securities

1 Exchange Act of 1934 (15 U.S.C. 78q-1(e)(4)(C)) is
2 amended by striking “twelve months or bar any such per-
3 son from being associated with the transfer agent,” and
4 inserting “12 months or bar any such person from being
5 associated with any transfer agent, broker, dealer, invest-
6 ment adviser, municipal securities dealer, or nationally
7 recognized statistical rating organization,”.

8 (d) SECTION 203 OF THE INVESTMENT ADVISERS
9 ACT OF 1940.—Section 203(f) of the Investment Advisers
10 Act of 1940 (15 U.S.C. 80b-3(f)) is amended by striking
11 “twelve months or bar any such person from being associ-
12 ated with an investment adviser,” and inserting “12
13 months or bar any such person from being associated with
14 an investment adviser, broker, dealer, municipal securities
15 dealer, transfer agent, or nationally recognized statistical
16 rating organization,”.

17 **SEC. 7207. AIDING AND ABETTING AUTHORITY UNDER THE**
18 **SECURITIES ACT AND THE INVESTMENT COM-**
19 **PANY ACT.**

20 (a) UNDER THE SECURITIES ACT OF 1933.—Section
21 15 of the Securities Act of 1933 (15 U.S.C. 77o) is
22 amended—

23 (1) by striking “Every person who” and insert-
24 ing “(a) CONTROLLING PERSONS.—Every person
25 who”; and

1 (2) by adding at the end the following:

2 “(b) PROSECUTION OF PERSONS WHO AID AND
3 ABET VIOLATIONS.—For purposes of any action brought
4 by the Commission under subparagraph (b) or (d) of sec-
5 tion 20, any person that knowingly or recklessly provides
6 substantial assistance to another person in violation of a
7 provision of this Act, or of any rule or regulation issued
8 under this Act, shall be deemed to be in violation of such
9 provision to the same extent as the person to whom such
10 assistance is provided.”.

11 (c) UNDER THE INVESTMENT COMPANY ACT OF
12 1940.—Section 48 of the Investment Company Act of
13 1940 (15 U.S.C. 80a–48) is amended by redesignating
14 subsection (b) as subsection (c) and inserting after sub-
15 section (a) the following:

16 “(b) For purposes of any action brought by the Com-
17 mission under subsection (d) or (e) of section 42, any per-
18 son that knowingly or recklessly provides substantial as-
19 sistance to another person in violation of a provision of
20 this Act, or of any rule or regulation issued under this
21 Act, shall be deemed to be in violation of such provision
22 to the same extent as the person to whom such assistance
23 is provided.”.

1 **SEC. 7208. AUTHORITY TO IMPOSE PENALTIES FOR AIDING**
2 **AND ABETTING VIOLATIONS OF THE INVEST-**
3 **MENT ADVISERS ACT.**

4 Section 209 of the Investment Advisers Act of 1940
5 (15 U.S.C. 80b-9) is amended by inserting at the end the
6 following new subsections:

7 “(f) AIDING AND ABETTING.—For purposes of any
8 action brought by the Commission under subsection (e),
9 any person that knowingly or recklessly has aided, abetted,
10 counseled, commanded, induced, or procured a violation
11 of any provision of this Act, or of any rule, regulation,
12 or order hereunder, shall be deemed to be in violation of
13 such provision, rule, regulation, or order to the same ex-
14 tent as the person that committed such violation.

15 “(g) ENFORCEMENT BY NATIONAL SECURITIES AS-
16 SOCIATIONS.—The Commission may permit or require a
17 national securities association registered under the Securi-
18 ties Exchange Act of 1934 to enforce compliance by its
19 members and persons associated with its members with
20 the provisions of this Act, the rules and regulations there-
21 under, and to adopt such rules (subject to any rule or
22 order of the Commission pursuant to the Securities Ex-
23 change Act of 1934) as the association may deem nec-
24 essary and in the public interest to further the purposes
25 of this Act.”.

1 **SEC. 7209. DEADLINE FOR COMPLETING EXAMINATIONS,**
2 **INSPECTIONS AND ENFORCEMENT ACTIONS.**

3 The Securities Exchange Act of 1934 (15 U.S.C. 78a
4 et seq.) is amended by inserting after section 4D (as added
5 by section 7101) the following new section:

6 **“SEC. 4E. DEADLINE FOR COMPLETING ENFORCEMENT IN-**
7 **VESTIGATIONS AND COMPLIANCE EXAMINA-**
8 **TIONS AND INSPECTIONS.**

9 “(a) ENFORCEMENT INVESTIGATIONS.—

10 “(1) IN GENERAL.—Not later than 180 days
11 after the date on which Commission staff provide a
12 written Wells notification to any person, the Com-
13 mission staff shall either file an action against such
14 person or provide notice to the Director of the Divi-
15 sion of Enforcement of its intent to not file an ac-
16 tion.

17 “(2) EXCEPTIONS FOR CERTAIN COMPLEX AC-
18 TIONS.—Notwithstanding paragraph (1), if the head
19 of any division or office within the Commission or
20 his designee determines that a particular enforce-
21 ment investigation is sufficiently complex such that
22 a determination regarding the filing of an action
23 against a person cannot be completed within the
24 deadline specified in paragraph (1), the head of any
25 division or office within the Commission or his des-
26 ignee may, after providing notice to the Chairman of

1 the Commission, extend such deadline as needed for
2 one additional 180-day period. If after the additional
3 180-day period the head of any division or office
4 within the Commission or his designee determines
5 that a particular enforcement investigation is suffi-
6 ciently complex such that a determination regarding
7 the filing of an action against a person cannot be
8 completed within the additional 180-day period, the
9 head of any division or office within the Commission
10 or his designee may, after providing notice to and
11 receiving approval of the Commission, extend such
12 deadline as needed for one or more additional suc-
13 cessive 180-day periods.

14 “(b) COMPLIANCE EXAMINATIONS AND INSPEC-
15 TIONS.—

16 “(1) IN GENERAL.—Not later than 180 days
17 after the date on which Commission staff completes
18 the on-site portion of its compliance examination or
19 inspection or receives all records requested from the
20 entity being examined or inspected, whichever is
21 later, Commission staff shall provide the entity being
22 examined or inspected with written notification indi-
23 cating either that the examination or inspection has
24 concluded without findings or that the staff requests
25 the entity undertake corrective action.

1 “(2) EXCEPTION FOR CERTAIN COMPLEX AC-
2 TIONS.—Notwithstanding paragraph (1), if the head
3 of any division or office within the Commission or
4 his designee determines that a particular compliance
5 examination or inspection is sufficiently complex
6 such that a determination regarding concluding the
7 examination or inspection or regarding the staff re-
8 quests the entity undertake corrective action cannot
9 be completed within the deadline specified in para-
10 graph (1), the head of any division or office within
11 the Commission or his designee may, after providing
12 notice to the Chairman of the Commission, extend
13 such deadline as needed for one additional 180-day
14 period.”.

15 **SEC. 7210. NATIONWIDE SERVICE OF SUBPOENAS.**

16 (a) SECURITIES ACT OF 1933.—Section 22(a) of the
17 Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by
18 inserting after the second sentence the following: “In any
19 action or proceeding instituted by the Commission under
20 this title in a United States district court for any judicial
21 district, subpoenas issued to compel the attendance of wit-
22 nesses or the production of documents or tangible things
23 (or both) at a hearing or trial may be served at any place
24 within the United States.”.

1 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
2 27 of the Securities Exchange Act of 1934 (15 U.S.C.
3 78aa) is amended by inserting after the third sentence the
4 following: “In any action or proceeding instituted by the
5 Commission under this title in a United States district
6 court for any judicial district, subpoenas issued to compel
7 the attendance of witnesses or the production of docu-
8 ments or tangible things (or both) at a hearing or trial
9 may be served at any place within the United States.”.

10 (c) INVESTMENT COMPANY ACT OF 1940.—Section
11 44 of the Investment Company Act of 1940 (15 U.S.C.
12 80a–43) is amended by inserting after the fourth sentence
13 the following: “In any action or proceeding instituted by
14 the Commission under this title in a United States district
15 court for any judicial district, subpoenas issued to compel
16 the attendance of witnesses or the production of docu-
17 ments or tangible things (or both) at a hearing or trial
18 may be served at any place within the United States.”.

19 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
20 214 of the Investment Advisers Act of 1940 (15 U.S.C.
21 80b–14) is amended by inserting after the third sentence
22 the following: “In any action or proceeding instituted by
23 the Commission under this title in a United States district
24 court for any judicial district, subpoenas issued to compel
25 the attendance of witnesses or the production of docu-

1 ments or tangible things (or both) at a hearing or trial
2 may be served at any place within the United States.”.

3 **SEC. 7211. AUTHORITY TO IMPOSE CIVIL PENALTIES IN**
4 **CEASE AND DESIST PROCEEDINGS.**

5 (a) UNDER THE SECURITIES ACT OF 1933.—Section
6 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is
7 amended by adding at the end the following new sub-
8 section:

9 “(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

10 “(1) GROUNDS FOR IMPOSING.—In any cease-
11 and-desist proceeding under subsection (a), the
12 Commission may impose a civil penalty on a person
13 if it finds, on the record after notice and opportunity
14 for hearing, that—

15 “(A) such person—

16 “(i) is violating or has violated any
17 provision of this title, or any rule or regu-
18 lation thereunder; or

19 “(ii) is or was a cause of the violation
20 of any provision of this title, or any rule or
21 regulation thereunder; and

22 “(B) such penalty is in the public interest.

23 “(2) MAXIMUM AMOUNT OF PENALTY.—

24 “(A) FIRST TIER.—The maximum amount
25 of penalty for each act or omission described in

1 paragraph (1) shall be \$7,500 for a natural
2 person or \$75,000 for any other person.

3 “(B) SECOND TIER.—Notwithstanding
4 paragraph (A), the maximum amount of pen-
5 alty for each such act or omission shall be
6 \$75,000 for a natural person or \$375,000 for
7 any other person if the act or omission de-
8 scribed in paragraph (1) involved fraud, deceit,
9 manipulation, or deliberate or reckless dis-
10 regard of a regulatory requirement.

11 “(C) THIRD TIER.—Notwithstanding para-
12 graphs (A) and (B), the maximum amount of
13 penalty for each such act or omission shall be
14 \$150,000 for a natural person or \$725,000 for
15 any other person if—

16 “(i) the act or omission described in
17 paragraph (1) involved fraud, deceit, ma-
18 nipulation, or deliberate or reckless dis-
19 regard of a regulatory requirement; and

20 “(ii) such act or omission directly or
21 indirectly resulted in substantial losses or
22 created a significant risk of substantial
23 losses to other persons or resulted in sub-
24 stantial pecuniary gain to the person who
25 committed the act or omission.

1 “(3) EVIDENCE CONCERNING ABILITY TO
2 PAY.—In any proceeding in which the Commission
3 may impose a penalty under this section, a respond-
4 ent may present evidence of the respondent’s ability
5 to pay such penalty. The Commission may, in its
6 discretion, consider such evidence in determining
7 whether such penalty is in the public interest. Such
8 evidence may relate to the extent of such person’s
9 ability to continue in business and the collectability
10 of a penalty, taking into account any other claims of
11 the United States or third parties upon such per-
12 son’s assets and the amount of such person’s as-
13 sets.”.

14 (b) UNDER THE SECURITIES EXCHANGE ACT OF
15 1934.—Subsection (a) of section 21B of the Securities
16 Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amend-
17 ed—

18 (1) by striking “(a) COMMISSION AUTHORITY
19 TO ASSESS MONEY PENALTIES.—In any pro-
20 ceeding” and inserting the following:

21 “(a) COMMISSION AUTHORITY TO ASSESS MONEY
22 PENALTIES.—

23 “(1) IN GENERAL.—In any proceeding”;

24 (2) by redesignating paragraphs (1) through
25 (4) of such subsection as subparagraphs (A) through

1 (D), respectively, and moving such redesignated sub-
 2 paragraphs and the matter following such subpara-
 3 graphs 2 ems to the right; and

4 (3) by adding at the end of such subsection the
 5 following new paragraph:

6 “(2) CEASE-AND-DESIST PROCEEDINGS.—In
 7 any proceeding instituted pursuant to section 21C of
 8 this title against any person, the Commission may
 9 impose a civil penalty if it finds, on the record after
 10 notice and opportunity for hearing, that such per-
 11 son—

12 “(A) is violating or has violated any provi-
 13 sion of this title, or any rule or regulation
 14 thereunder; or

15 “(B) is or was a cause of the violation of
 16 any provision of this title, or any rule or regula-
 17 tion thereunder.”.

18 (c) UNDER THE INVESTMENT COMPANY ACT OF
 19 1940.—Paragraph (1) of section 9(d) of the Investment
 20 Company Act of 1940 (15 U.S.C. 80a-9(d)(1)) is amend-
 21 ed—

22 (1) by striking “(1) AUTHORITY OF COMMIS-
 23 SION.—In any proceeding” and inserting the fol-
 24 lowing:

25 “(1) AUTHORITY OF COMMISSION.—

1 “(A) IN GENERAL.—In any proceeding”;
2 (2) by redesignating subparagraphs (A) through
3 (C) of such paragraph as clauses (i) through (iii),
4 respectively, and by moving such redesignated
5 clauses and the matter following such subparagraphs
6 2 ems to the right; and

7 (3) by adding at the end of such paragraph the
8 following new subparagraph:

9 “(B) CEASE-AND-DESIST PROCEEDINGS.—
10 In any proceeding instituted pursuant to sub-
11 section (f) against any person, the Commission
12 may impose a civil penalty if it finds, on the
13 record after notice and opportunity for hearing,
14 that such person—

15 “(i) is violating or has violated any
16 provision of this title, or any rule or regu-
17 lation thereunder; or

18 “(ii) is or was a cause of the violation
19 of any provision of this title, or any rule or
20 regulation thereunder.”.

21 (d) UNDER THE INVESTMENT ADVISERS ACT OF
22 1940.—Paragraph (1) of section 203(i) of the Investment
23 Advisers Act of 1940 (15 U.S.C. 80b-3(i)(1)) is amend-
24 ed—

1 (1) by striking “(1) AUTHORITY OF COMMIS-
2 SION.—In any proceeding” and inserting the fol-
3 lowing:

4 “(1) AUTHORITY OF COMMISSION.—

5 “(A) IN GENERAL.—In any proceeding”;

6 (2) by redesignating subparagraphs (A) through
7 (D) of such paragraph as clauses (i) through (iv),
8 respectively, and moving such redesignated clauses
9 and the matter following such subparagraphs 2 ems
10 to the right; and

11 (3) by adding at the end of such paragraph the
12 following new subparagraph:

13 “(B) CEASE-AND-DESIST PROCEEDINGS.—

14 In any proceeding instituted pursuant to sub-
15 section (k) against any person, the Commission
16 may impose a civil penalty if it finds, on the
17 record after notice and opportunity for hearing,
18 that such person—

19 “(i) is violating or has violated any
20 provision of this title, or any rule or regu-
21 lation thereunder; or

22 “(ii) is or was a cause of the violation
23 of any provision of this title, or any rule or
24 regulation thereunder.”.

1 **SEC. 7212. FORMERLY ASSOCIATED PERSONS.**

2 (a) MEMBER OR EMPLOYEE OF THE MUNICIPAL SE-
3 CURITIES RULEMAKING BOARD.—Section 15B(c)(8) of
4 the Securities Exchange Act of 1934 (15 U.S.C. 78o–
5 4(c)(8)) is amended by striking “any member or em-
6 ployee” and inserting “any person who is, or at the time
7 of the alleged misconduct was, a member or employee”.

8 (b) PERSON ASSOCIATED WITH A GOVERNMENT SE-
9 CURITIES BROKER OR DEALER.—Section 15C of the Se-
10 curities Exchange Act of 1934 (15 U.S.C. 78o–5) is
11 amended—

12 (1) in subsection (c)(1)(C), by striking “or
13 seeking to become associated,” and inserting “seek-
14 ing to become associated, or, at the time of the al-
15 leged misconduct, associated or seeking to become
16 associated”;

17 (2) in subsection (c)(2)(A), by inserting “, seek-
18 ing to become associated, or, at the time of the al-
19 leged misconduct, associated or seeking to become
20 associated” after “any person associated”; and

21 (3) in subsection (c)(2)(B), by inserting “,
22 seeking to become associated, or, at the time of the
23 alleged misconduct, associated or seeking to become
24 associated” after “any person associated”.

25 (c) PERSON ASSOCIATED WITH A MEMBER OF A NA-
26 TIONAL SECURITIES EXCHANGE OR REGISTERED SECURI-

1 TIES ASSOCIATION.—Section 21(a)(1) of the Securities
2 Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended
3 by inserting “, or, as to any act or practice, or omission
4 to act, while associated with a member, formerly associ-
5 ated” after “member or a person associated”.

6 (d) PARTICIPANT OF A REGISTERED CLEARING
7 AGENCY.—Section 21(a)(1) of the Securities Exchange
8 Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by insert-
9 ing “or, as to any act or practice, or omission to act, while
10 a participant, was a participant,” after “in which such
11 person is a participant,”.

12 (e) OFFICER OR DIRECTOR OF A SELF-REGULATORY
13 ORGANIZATION.—Section 19(h)(4) of the Securities Ex-
14 change Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

15 (1) by striking “any officer or director” and in-
16 serting “any person who is, or at the time of the al-
17 leged misconduct was, an officer or director”; and

18 (2) by striking “such officer or director” and
19 inserting “such person”.

20 (f) OFFICER OR DIRECTOR OF AN INVESTMENT COM-
21 PANY.—Section 36(a) of the Investment Company Act of
22 1940 (15 U.S.C. 80a-35(a)) is amended—

23 (1) by striking “a person serving or acting” and
24 inserting “a person who is, or at the time of the al-
25 leged misconduct was, serving or acting”; and

1 (2) by striking “such person so serves or acts”
2 and inserting “such person so serves or acts, or at
3 the time of the alleged misconduct, so served or
4 acted”.

5 (g) PERSON ASSOCIATED WITH A PUBLIC ACCOUNT-
6 ING FIRM.—

7 (1) SARBANES-OXLEY ACT OF 2002 AMEND-
8 MENT.—Section 2(a)(9) of the Sarbanes-Oxley Act
9 of 2002 (15 U.S.C. 7201(9)) is amended by adding
10 at the end the following new subparagraph:

11 “(C) INVESTIGATIVE AND ENFORCEMENT
12 AUTHORITY.—For purposes of the provisions of
13 sections 3(c), 101(c), 105, and 107(c) and
14 Board or Commission rules thereunder, except
15 to the extent specifically excepted by such rules,
16 the terms defined in subparagraph (A) shall in-
17 clude any person associated, seeking to become
18 associated, or formerly associated with a public
19 accounting firm, except—

20 “(i) the authority to conduct an inves-
21 tigation of such person under section
22 105(b) shall apply only with respect to any
23 act or practice, or omission to act, while
24 such person was associated or seeking to

1 become associated with a registered public
2 accounting firm; and

3 “(ii) the authority to commence a pro-
4 ceeding under section 105(e)(1), or impose
5 disciplinary sanctions under section
6 105(e)(4), against such person shall apply
7 only on—

8 “(I) the basis of conduct occur-
9 ring while such person was associated
10 or seeking to become associated with
11 a registered public accounting firm; or

12 “(II) non-cooperation as de-
13 scribed in section 105(b)(3) with re-
14 spect to a demand in a Board inves-
15 tigation for testimony, documents, or
16 other information relating to a period
17 when such person was associated or
18 seeking to become associated with a
19 registered public accounting firm.”.

20 (2) SECURITIES EXCHANGE ACT OF 1934
21 AMENDMENT.—Section 21(a)(1) of the Securities
22 Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is
23 amended by striking “or a person associated with
24 such a firm” and inserting “, a person associated
25 with such a firm, or, as to any act, practice, or omis-

1 sion to act while associated with such firm, a person
2 formerly associated with such a firm”.

3 (h) SUPERVISORY PERSONNEL OF AN AUDIT
4 FIRM.—Section 105(c)(6) of the Sarbanes-Oxley Act of
5 2002 (15 U.S.C. 7215(c)(6)) is amended—

6 (1) in subparagraph (A), by striking “the su-
7 pervisory personnel” and inserting “any person who
8 is, or at the time of the alleged failure reasonably to
9 supervise was, a supervisory person”; and

10 (2) in subparagraph (B)—

11 (A) by striking “No associated person”
12 and inserting “No current or former super-
13 visory person”; and

14 (B) by striking “any other person” and in-
15 serting “any associated person”.

16 (i) MEMBER OF THE PUBLIC COMPANY ACCOUNTING
17 OVERSIGHT BOARD.—Section 107(d)(3) of the Sarbanes-
18 Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by
19 striking “any member” and inserting “any person who is,
20 or at the time of the alleged misconduct was, a member”.

21 **SEC. 7213. SHARING PRIVILEGED INFORMATION WITH**
22 **OTHER AUTHORITIES.**

23 Section 24 of the Securities Exchange Act of 1934
24 (15 U.S.C. 78x) is amended—

1 (1) by redesignating subsections (d) and (e) as
2 subsections (e) and (f), respectively;

3 (2) in subsection (e), as redesignated, by strik-
4 ing “as provided in subsection (e)” and inserting “as
5 provided in subsection (f)”;

6 (3) by inserting after subsection (c) the fol-
7 lowing new subsection:

8 “(d) 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) any foreign securities authority;

18 “(C) the Public Company Accounting
19 Oversight Board;

20 “(D) any self-regulatory organization;

21 “(E) any foreign law enforcement author-
22 ity; or

23 “(F) any State securities or law enforce-
24 ment authority.

1 “(2) NON-DISCLOSURE OF PRIVILEGED INFOR-
2 MATION PROVIDED TO THE COMMISSION.—Except as
3 provided in subsection (f), the Commission shall not
4 be compelled to disclose privileged information ob-
5 tained from any foreign securities authority, or for-
6 eign law enforcement authority, if the authority has
7 in good faith determined and represented to the
8 Commission that the information is privileged.

9 “(3) NON-WAIVER OF PRIVILEGED INFORMA-
10 TION 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 WITH RESPECT TO CER-
20 TAIN ACTIONS.—The provisions of subpara-
21 graph (A) shall not apply to a self-regulatory
22 organization or the Public Company Accounting
23 Oversight Board with respect to information
24 used by the Commission in an action against
25 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, foreign, or State law.

7 “(B) The term ‘foreign law enforcement
8 authority’ means any foreign authority that is
9 empowered under foreign law to detect, inves-
10 tigate or prosecute potential violations of law.

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. 7214. EXPANDED ACCESS TO GRAND JURY MATERIAL.**

17 (a) IN GENERAL.—Title VI of the Sarbanes-Oxley
18 Act of 2002 is amended by adding at the end the following
19 new section:

20 **“SEC. 605. ACCESS TO GRAND JURY INFORMATION.**

21 “(a) DISCLOSURE.—

22 “(1) IN GENERAL.—Upon motion of an attor-
23 ney for the government, a court may direct disclo-
24 sure of matters occurring before a grand jury during
25 an investigation of conduct that may constitute a

1 violation of any provision of the securities laws to
2 the Commission for use in relation to any matter
3 within the jurisdiction of the Commission.

4 “(2) SUBSTANTIAL NEED REQUIRED.—A court
5 may issue an order under paragraph (1) only upon
6 a finding of a substantial need in the public interest.

7 “(b) USE OF MATTER.—A person to whom a matter
8 has been disclosed under this section shall not use such
9 matter other than for the purpose for which such dislo-
10 sure was authorized.

11 “(c) DEFINITIONS.—As used in this section, the
12 terms ‘attorney for the government’ and ‘grand jury infor-
13 mation’ have the meanings given to those terms in section
14 3322 of title 18, United States Code.”.

15 (b) CONFORMING AMENDMENT.—The table of con-
16 tents in section 1(b) of the Sarbanes-Oxley Act of 2002
17 is amended by inserting after the item relating to section
18 604 the following:

“Sec. 605. Access to grand jury information.”.

19 **SEC. 7215. AIDING AND ABETTING STANDARD OF KNOWL-**
20 **EDGE SATISFIED BY RECKLESSNESS.**

21 Section 20(e) of the Securities Exchange Act of 1934
22 (15 U.S.C. 78t(e)) is amended by inserting “or recklessly”
23 after “knowingly”.

1 **SEC. 7216. EXTRATERRITORIAL JURISDICTION OF THE**
2 **ANTIFRAUD PROVISIONS OF THE FEDERAL**
3 **SECURITIES LAWS.**

4 (a) UNDER THE SECURITIES ACT OF 1933.—Section
5 22 of the Securities Act of 1933 (15 U.S.C. 77v(a)) is
6 amended by adding at the end the following new sub-
7 section:

8 “(c) EXTRATERRITORIAL JURISDICTION.—The juris-
9 diction of the district courts of the United States and the
10 United States courts of any Territory described under
11 subsection (a) includes violations of section 17(a), and all
12 suits in equity and actions at law under that section, in-
13 volving—

14 “(1) conduct within the United States that con-
15 stitutes significant steps in furtherance of the viola-
16 tion, even if the securities transaction occurs outside
17 the United States and involves only foreign inves-
18 tors; or

19 “(2) conduct occurring outside the United
20 States that has a foreseeable substantial effect with-
21 in the United States.”.

22 (b) UNDER THE SECURITIES EXCHANGE ACT OF
23 1934.—Section 27 of the Securities Exchange Act of 1934
24 (15 U.S.C. 78aa) is amended—

25 (1) by striking “The district” and inserting the
26 following:

1 “(a) IN GENERAL.—The district”; and

2 (2) by inserting at the end the following new
3 subsection:

4 “(b) EXTRATERRITORIAL JURISDICTION.—The juris-
5 diction of the district courts of the United States and the
6 United States courts of any Territory or other place sub-
7 ject to the jurisdiction of the United States described
8 under subsection (a) includes violations of the antifraud
9 provisions of this title, and all suits in equity and actions
10 at law under those provisions, involving—

11 “(1) conduct within the United States that con-
12 stitutes significant steps in furtherance of the viola-
13 tion, even if the securities transaction occurs outside
14 the United States and involves only foreign inves-
15 tors; or

16 “(2) conduct occurring outside the United
17 States that has a foreseeable substantial effect with-
18 in the United States.”.

19 (c) UNDER THE INVESTMENT ADVISERS ACT OF
20 1940.—Section 214 of the Investment Advisers Act of
21 1940 (15 U.S.C. 80b–14) is amended—

22 (1) by striking “The district” and inserting the
23 following:

24 “(a) IN GENERAL.—The district”; and

1 (2) by inserting at the end the following new
2 subsection:

3 “(b) EXTRATERRITORIAL JURISDICTION.—The juris-
4 diction of the district courts of the United States and the
5 United States courts of any Territory or other place sub-
6 ject to the jurisdiction of the United States described
7 under subsection (a) includes violations of section 206,
8 and all suits in equity and actions at law under that sec-
9 tion, involving—

10 “(1) conduct within the United States that con-
11 stitutes significant steps in furtherance of the viola-
12 tion, even if the violation is committed by a foreign
13 adviser and involves only foreign investors; or

14 “(2) conduct occurring outside the United
15 States that has a foreseeable substantial effect with-
16 in the United States.”.

17 **SEC. 7217. FIDELITY BONDING.**

18 Section 17(g) of the Investment Company Act of
19 1940 (15 U.S.C. 80a–17(g)) is amended to read as fol-
20 lows:

21 “(g) FIDELITY BONDING.—

22 “(1) IN GENERAL.—The Commission is author-
23 ized to require that a registered management com-
24 pany provide and maintain a fidelity bond against
25 loss as to any officer or employee who has access to

1 securities or funds of the company, either directly or
2 through authority to draw upon such funds or to di-
3 rect generally the disposition of such securities (un-
4 less the officer or employee has such access solely
5 through his position as an officer or employee of a
6 bank), in such form and amount as the Commission
7 may prescribe by rule, regulation, or order for the
8 protection of investors.

9 “(2) DEFINITIONS.—For purposes of this sub-
10 section:

11 “(A) MANAGEMENT COMPANY.—The term
12 ‘management company’ has the meaning given
13 such term under section 4 of the Investment
14 Company Act of 1940.

15 “(B) OFFICER OR EMPLOYEE.—The term
16 ‘officer or employee’ means—

17 “(i) any officer or employee of the
18 management company; and;

19 “(ii) any officer or employee of any
20 investment adviser to the management
21 company, or of any affiliated company of
22 any such investment adviser, as the Com-
23 mission may prescribe by rule, regulation,
24 or order for the protection of investors.

1 “(C) OTHER DEFINITIONS.—The terms
2 ‘affiliated company’ and ‘investment adviser’
3 shall have the meaning given such terms under
4 section 2 of the Investment Company Act of
5 1940.”.

6 **SEC. 7218. ENHANCED SEC AUTHORITY TO CONDUCT SUR-**
7 **VEILLANCE AND RISK ASSESSMENT.**

8 (a) SECURITIES EXCHANGE ACT OF 1934 AMEND-
9 MENTS.—Section 17(b) of the Securities Exchange Act of
10 1934 (15 U.S.C. 78q(b)) is amended by adding at the end
11 the following new paragraph:

12 “(5) SURVEILLANCE AND RISK ASSESSMENT.—
13 All persons described in subsection (a) of this sec-
14 tion are subject at any time, or from time to time,
15 to such reasonable periodic, special, or other infor-
16 mation and document requests by representatives of
17 the Commission as the Commission by rule or order
18 deems necessary or appropriate to conduct surveil-
19 lance or risk assessments of the securities markets,
20 persons registered with the Commission under this
21 title, or otherwise in furtherance of the purposes of
22 this title.”.

23 (b) INVESTMENT COMPANY ACT OF 1940 AMEND-
24 MENTS.—Section 31(b) of the Investment Company Act
25 of 1940 (15 U.S.C. 80a-30(b)), as amended by section

1 7106(a)(2), is further amended by adding at the end the
2 following new paragraph:

3 “(5) SURVEILLANCE AND RISK ASSESSMENT.—

4 All persons described in paragraph (1) are subject at
5 any time, or from time to time, to such reasonable
6 periodic, special, or other information and document
7 requests by representatives of the Commission as the
8 Commission by rule or order deems necessary or ap-
9 propriate to conduct surveillance or risk assessments
10 of the securities markets, persons registered with the
11 Commission under this title, or otherwise in further-
12 ance of the purposes of this title.”.

13 (c) INVESTMENT ADVISERS ACT OF 1940 AMEND-
14 MENTS.—Section 204 of the Investment Advisers Act of
15 1940 (15 U.S.C. 80b–4), as amended by section 7106(b),
16 is further amended by adding at the end the following new
17 subsection:

18 “(e) SURVEILLANCE AND RISK ASSESSMENT.—All
19 persons described in subsection (a) are subject at any
20 time, or from time to time, to such reasonable periodic,
21 special, or other information and document requests by
22 representatives of the Commission as the Commission by
23 rule or order deems necessary or appropriate to conduct
24 surveillance or risk assessments of the securities markets,

1 persons registered with the Commission under this title,
2 or otherwise in furtherance of the purposes of this title.”.

3 **SEC. 7219. INVESTMENT COMPANY EXAMINATIONS.**

4 Section 31(b)(1) of the Investment Company Act of
5 1940 (15 U.S.C. 80a–30) is amended to read as follows:

6 “(1) IN GENERAL.—All records of each reg-
7 istered investment company, and each underwriter,
8 broker, dealer, or investment adviser that is a major-
9 ity-owned subsidiary of such a company, shall be
10 subject at any time, or from time to time, to such
11 reasonable periodic, special, or other examinations
12 by representatives of the Commission as the Com-
13 mission deems necessary or appropriate in the public
14 interest or for the protection of investors.”.

15 **SEC. 7220. CONTROL PERSON LIABILITY UNDER THE SECURITIES EXCHANGE ACT.**

17 Section 20(a) of the Securities Exchange Act of 1934
18 (15 U.S.C. 78t(a)) is amended by inserting after “con-
19 trolled person is liable,” the following: “including to the
20 Commission in any action brought under paragraph (1)
21 or (3) of section 21(d),”.

22 **SEC. 7221. ENHANCED APPLICATION OF ANTI-FRAUD PROVISIONS.**

24 The Securities Exchange Act of 1934 (15 U.S.C. 78a
25 et seq.) is amended—

1 (1) in section 9—

2 (A) by striking “registered on a national
3 securities exchange” each place it appears and
4 inserting “other than a government security”;

5 (B) in subsection (b), by striking “by use
6 of any facility of a national securities ex-
7 change,”; and

8 (C) in subsection (c), by inserting after
9 “unlawful for any” the following: “broker, deal-
10 er, or”;

11 (2) in section 10(a)(1), by striking “registered
12 on a national securities exchange” and inserting
13 “other than a government security”; and

14 (3) in section 15(c)(1)(A), by striking “other-
15 wise than on a national securities exchange of which
16 it is a member”.

17 **SEC. 7222. SEC AUTHORITY TO ISSUE RULES ON PROXY AC-**
18 **CESS.**

19 Section 14(a) of the Securities Exchange Act of 1934
20 (15 U.S.C. 78n(a)) is amended—

21 (1) by inserting “(1)” after “(a)”; and

22 (2) by adding at the end the following:

23 “(2) The authority of the Commission to prescribe
24 rules and regulations under paragraph (1) includes rules
25 and regulations that require the inclusion and set proce-

1 dures relating to the inclusion, in a solicitation of a proxy
2 or consent or authorization by or on behalf of an issuer,
3 of a nominee or nominees submitted by shareholders to
4 serve on the issuer’s board of directors.”.

5 **PART 3—COMMISSION FUNDING AND**
6 **ORGANIZATION**

7 **SEC. 7301. AUTHORIZATION OF APPROPRIATIONS.**

8 Section 35 of the Securities Exchange Act of 1934
9 (15 U.S.C. 78kk) is amended to read as follows:

10 **“SEC. 35. AUTHORIZATION OF APPROPRIATIONS.**

11 “In addition to any other funds authorized to be ap-
12 propriated to the Commission, there are authorized to be
13 appropriated to carry out the functions, powers, and du-
14 ties of the Commission—

15 “(1) for fiscal year 2010, \$1,115,000,000;

16 “(2) for fiscal year 2011, \$1,300,000,000;

17 “(3) for fiscal year 2012, \$1,500,000,000;

18 “(4) for fiscal year 2013, \$1,750,000,000;

19 “(5) for fiscal year 2014, \$2,000,000,000; and

20 “(6) for fiscal year 2015, \$2,250,000,000.”.

21 **SEC. 7302. INVESTMENT ADVISER REGULATION FUNDING.**

22 Section 203 of the Investment Advisers Act of 1940
23 (15 U.S.C. 80b–3) (as amended by sections 5006 and
24 5007) is further amended by adding at the end the fol-
25 lowing new subsection:

1 “(o) ANNUAL ASSESSMENT.—

2 “(1) IN GENERAL.—The Commission shall, in
3 accordance with this subsection, promulgate rules
4 pursuant to which it may collect from investment
5 advisers required to register with the Commission
6 under this title, fees designed to help recover the
7 cost of inspections and examinations of registered
8 investment advisers conducted by the Commission
9 pursuant to this title.

10 “(2) FEE PAYMENT REQUIRED.—An investment
11 adviser shall, at the time of registration with the
12 Commission, and each fiscal year thereafter during
13 which such adviser is so registered, pay to the Com-
14 mission a fair and reasonable fee determined by the
15 Commission. In determining such fee, the Commis-
16 sion shall consider objective factors such as—

17 “(A) the investment adviser’s size;

18 “(B) the number of clients of the invest-
19 ment adviser;

20 “(C) the types of clients of the investment
21 adviser; and

22 “(D) such other relevant factors as the
23 Commission determines to be appropriate.

24 “(3) AMOUNT AND USE OF FEES.—

1 “(A) MINIMUM AGGREGATE AMOUNT.—

2 The aggregate amount of fees determined by
3 the Commission under this subsection for any
4 fiscal year shall be greater than the amount the
5 Commission spent on inspections and examina-
6 tions of registered investment advisers during
7 the 2009 fiscal year.

8 “(B) EXCESS FEES.—The Commission

9 may retain any excess fees collected under this
10 subsection during a fiscal year for application
11 towards the costs of inspections and examina-
12 tions of investment advisers in future fiscal
13 years.

14 “(4) REVIEW AND ADJUSTMENT OF FEES.—

15 The Commission may review fee rates established
16 pursuant to this section before the end of any fiscal
17 year and make any appropriate adjustments prior to
18 collecting any such fee in the following fiscal year.

19 “(5) PENALTY FEE.—The Commission shall

20 prescribe by rule or regulation an additional fee to
21 be assessed as a penalty for late payment of fees re-
22 quired by this subsection.

23 “(6) JUDICIAL REVIEW.—Increases or decreases

24 in fees made pursuant to this section shall not be
25 subject to judicial review.”.

1 **SEC. 7303. AMENDMENTS TO SECTION 31 OF THE SECURI-**
2 **TIES EXCHANGE ACT OF 1934.**

3 Section 31 of the Securities Exchange Act of 1934
4 (15 U.S.C. 78ee) is amended—

5 (1) in subsection (e)(2), by striking “September
6 30” and inserting “September 25”;

7 (2) in subsection (g), by striking “April 30”
8 and inserting “August 31”; and

9 (3) in subsection (j)(2)—

10 (A) by striking “5 months” and inserting
11 “4 months”; and

12 (B) by striking “(including fees collected
13 during such 5-month period and assessments
14 collected under subsection (d))” and inserting
15 “(including fees estimated to be collected under
16 subsections (b) and (c) prior to the effective
17 date of the uniform adjusted rate and assess-
18 ments estimated to be collected under sub-
19 section (d))”.

20 **SEC. 7304. COMMISSION ORGANIZATIONAL STUDY AND RE-**
21 **FORM.**

22 (a) STUDY REQUIRED.—

23 (1) IN GENERAL.—Not later than the end of
24 the 90-day period beginning on the date of the en-
25 actment of this subtitle, the Securities and Ex-
26 change Commission (hereinafter in this section re-

1 ferred to as the “SEC”) shall hire an independent
2 consultant of high caliber and with expertise in orga-
3 nizational restructuring and the operations of capital
4 markets to examine the internal operations, struc-
5 ture, funding, and the need for comprehensive re-
6 form of the SEC, as well as the SEC’s relationship
7 with the reliance on self-regulatory organizations
8 and other entities relevant to the regulation of secu-
9 rities and the protection of securities investors that
10 are under the SEC’s oversight.

11 (2) SPECIFIC AREAS FOR STUDY.—The study
12 required under paragraph (1) shall, at a minimum,
13 include the study of—

14 (A) the possible elimination of unnecessary
15 or redundant units at the SEC;

16 (B) improving communications between
17 SEC offices and divisions;

18 (C) the need to put in place a clear chain-
19 of-command structure, particularly for enforce-
20 ment examinations and compliance inspections;

21 (D) the effect of high-frequency trading
22 and other technological advances on the market
23 and what the SEC requires to monitor the ef-
24 fect of such trading and advances on the mar-
25 ket;

1 (E) the SEC's hiring authorities, work-
2 place policies, and personal practices, includ-
3 ing—

4 (i) whether there is a need to further
5 streamline hiring authorities for those who
6 are not lawyers, accountants, compliance
7 examiners, or economists;

8 (ii) whether there is a need for further
9 pay reforms;

10 (iii) the diversity of skill sets of SEC
11 employees and whether the present skill set
12 diversity efficiently and effectively fosters
13 the SEC's mission of investor protection;
14 and

15 (iv) the application of civil service
16 laws by the SEC;

17 (F) whether the SEC's oversight and reli-
18 ance on self-regulatory organizations promotes
19 efficient and effective governance for the securi-
20 ties markets; and

21 (G) whether adjusting the SEC's reliance
22 on self-regulatory organizations is necessary to
23 promote more efficient and effective governance
24 for the securities markets.

1 (b) CONSULTANT REPORT.—Not later than the end
2 of the 150-day period after being retained, the inde-
3 pendent consultant hired pursuant to subsection (a)(1)
4 shall issue a report to the SEC and the Congress con-
5 taining—

6 (1) a detailed description of any findings and
7 conclusions made while carrying out the study re-
8 quired under subsection (a)(1);

9 (2) recommendations for legislative, regulatory,
10 or administrative action that the consultant deter-
11 mines appropriate to enable the SEC and other enti-
12 ties on which it reports to perform their statutorily
13 or otherwise mandated missions.

14 (c) SEC REPORT.—Not later than the end of the 6-
15 month period beginning on the date the consultant issues
16 the report under subsection (b), and every 6-months there-
17 after during the 2-year period following the date on which
18 the consultant issues such report, the SEC shall issue a
19 report to the Committee on Financial Services of the
20 House of Representatives and the Committee on Banking,
21 Housing, and Urban Affairs of the Senate describing the
22 SEC's implementation of the regulatory and administra-
23 tive recommendations contained in the consultant's report.

1 **SEC. 7305. CAPITAL MARKETS SAFETY BOARD.**

2 There is established within the Securities and Ex-
3 change Commission an office to be known as the Capital
4 Markets Safety Board whose purpose shall be to conduct
5 investigations, at the direction of the Commission, of
6 failed institutions registered with the Commission, to de-
7 termine what caused such institutions to fail. Upon the
8 conclusion of an investigation, the Board shall make avail-
9 able on the Commission's website a report of its findings,
10 including recommendations regarding how others can
11 avoid similar mistakes. No information that may com-
12 promise an ongoing Federal investigation shall be made
13 available in any such report.

14 **SEC. 7306. REPORT ON IMPLEMENTATION OF "POST-**
15 **MADOFF REFORMS".**

16 (a) **IN GENERAL.**—Not later than 6 months after the
17 date of the enactment of this subtitle, the Securities and
18 Exchange Commission shall provide to the Committee on
19 Financial Services of the House of Representatives and
20 the Committee on Banking, Housing, and Urban Affairs
21 of the Senate a report describing the implementation of
22 reforms outlined by the Commission in the wake of the
23 discovery of fraud by Bernie Madoff.

24 (b) **CONTENTS OF REPORT.**—The report required by
25 subsection (a) shall include an analysis of—

1 (1) how many of the post-Madoff reforms have
2 been implemented and to what extent; and

3 (2) whether there is overlap between any of the
4 Commission's reform proposals and those rec-
5 ommended by the Inspector General of the Commis-
6 sion.

7 (c) PUBLICATION OF REPORT.—The Commission and
8 the Committees referred to in subsection (a) shall publish
9 the report required by such subsection on their Web sites.

10 **SEC. 7307. JOINT ADVISORY COMMITTEE.**

11 The Securities and Exchange Commission and the
12 Commodities Futures Trading Commission may jointly
13 form and operate a joint advisory committee composed of
14 members of each Commission and industry experts and
15 participants. The purposes of such an advisory committee
16 include—

17 (1) considering and developing solutions to
18 emerging and ongoing issues of common interest in
19 the futures and securities markets;

20 (2) identifying emerging regulatory risks and
21 assess and quantify their implications for investors
22 and other market participants, and provide rec-
23 ommendations for solutions;

24 (3) serving as a vehicle for discussion and com-
25 munication on regulatory issues of mutual concerns

1 affecting each Commission, the regulated markets,
2 and the industry generally; and

3 (4) reporting regularly to each Commission and
4 to Congress on its activities.

5 **PART 4—ADDITIONAL COMMISSION REFORMS**

6 **SEC. 7401. REGULATION OF SECURITIES LENDING.**

7 Section 10 of the Securities Exchange Act of 1934
8 (15 U.S.C. 78j) is amended by adding at the end the fol-
9 lowing new subsection:

10 “(c)(1) To effect, accept, or facilitate a transaction
11 involving the loan or borrowing of securities in contraven-
12 tion of such rules and regulations as the Commission may
13 prescribe as necessary or appropriate in the public interest
14 or for the protection of investors.

15 “(2) Nothing in paragraph (1) shall be construed to
16 limit the authority of an appropriate Federal banking
17 agency (as defined in section 3 of the Federal Deposit In-
18 surance Act (12 U.S.C. 1813(q))), the National Credit
19 Union Administration, or any other Federal department
20 or agency identified under law as having a systemic risk
21 responsibility from prescribing rules or regulations to im-
22 pose restrictions on transactions involving the loan or bor-
23 rowing of securities in order to protect the safety and
24 soundness of a financial institution or to protect the finan-
25 cial system from systemic risk.”.

1 **SEC. 7402. LOST AND STOLEN SECURITIES.**

2 Section 17(f)(1) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78q(f)(1)) is amended—

4 (1) in subparagraph (A), by striking “missing,
5 lost, counterfeit, or stolen securities” and inserting
6 “securities that are missing, lost, counterfeit, stolen,
7 cancelled, or any other category of securities as the
8 Commission, by rule, may prescribe”; and

9 (2) in subparagraph (B), by striking “or sto-
10 len” and inserting “stolen, cancelled, or reported in
11 such other manner as the Commission, by rule, may
12 prescribe”.

13 **SEC. 7403. FINGERPRINTING.**

14 Section 17(f)(2) of the Securities Exchange Act of
15 1934 (15 U.S.C. 78q(f)(2)) is amended—

16 (1) by striking “and registered clearing agen-
17 cy,” and inserting “registered clearing agency, reg-
18 istered securities information processor, national se-
19 curities exchange, and national securities associa-
20 tion”; and

21 (2) by striking “or clearing agency,” and insert-
22 ing “clearing agency, securities information proc-
23 essor, national securities exchange, or national secu-
24 rities association,”.

1 **SEC. 7404. EQUAL TREATMENT OF SELF-REGULATORY OR-**
2 **GANIZATION RULES.**

3 Section 29(a) of the Securities Exchange Act of 1934
4 (15 U.S.C. 78cc(a)) is amended by striking “an exchange
5 required thereby” and inserting “a self-regulatory organi-
6 zation,”.

7 **SEC. 7405. CLARIFICATION THAT SECTION 205 OF THE IN-**
8 **VESTMENT ADVISERS ACT OF 1940 DOES NOT**
9 **APPLY TO STATE-REGISTERED ADVISERS.**

10 Section 205(a) of the Investment Advisers Act of
11 1940 (15 U.S.C. 80b-5(a)) is amended—

12 (1) by striking “, unless exempt from registra-
13 tion pursuant to section 203(b),” and inserting
14 “registered or required to be registered with the
15 Commission”;

16 (2) by striking “make use of the mails or any
17 means or instrumentality of interstate commerce, di-
18 rectly or indirectly, to”; and

19 (3) by striking “to” after “in any way”.

20 **SEC. 7406. CONFORMING AMENDMENTS FOR THE REPEAL**
21 **OF THE PUBLIC UTILITY HOLDING COMPANY**
22 **ACT OF 1935.**

23 (a) SECURITIES EXCHANGE ACT OF 1934.—The Se-
24 curities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is
25 amended—

1 (1) in section 3(a)(47) (15 U.S.C. 78c(a)(47)),
2 by striking “the Public Utility Holding Company
3 Act of 1935 (15 U.S.C. 79a et seq.)”; and

4 (2) in section 12(k) (15 U.S.C. 78l(k)), by
5 amending paragraph (7) to read as follows:

6 “(7) DEFINITION.—For purposes of this sub-
7 section, the term ‘emergency’ means—

8 “(A) a major market disturbance charac-
9 terized by or constituting—

10 “(i) sudden and excessive fluctuations
11 of securities prices generally, or a substan-
12 tial threat thereof, that threaten fair and
13 orderly markets; or

14 “(ii) a substantial disruption of the
15 safe or efficient operation of the national
16 system for clearance and settlement of
17 transactions in securities, or a substantial
18 threat thereof; or

19 “(B) a major disturbance that substan-
20 tially disrupts, or threatens to substantially dis-
21 rupt—

22 “(i) the functioning of securities mar-
23 kets, investment companies, or any other
24 significant portion or segment of the secu-
25 rities markets; or

1 “(ii) the transmission or processing of
2 securities transactions.”.

3 (3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)),
4 by striking “section 18(c) of the Public Utility Hold-
5 ing Company Act of 1935,”.

6 (b) TRUST INDENTURE ACT OF 1939.—The Trust
7 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is
8 amended—

9 (1) in section 303 (15 U.S.C. 77ccc), by
10 amending paragraph (17) to read as follows:

11 “(17) The terms ‘Securities Act of 1933’ and
12 ‘Securities Exchange Act of 1934’ shall be deemed
13 to refer, respectively, to such Acts, as amended,
14 whether amended prior to or after the enactment of
15 this title.”;

16 (2) in section 308 (15 U.S.C. 77hhh), by strik-
17 ing “Securities Act of 1933, the Securities Exchange
18 Act of 1934, or the Public Utility Holding Company
19 Act of 1935” each place it appears and inserting
20 “Securities Act of 1933 or the Securities Exchange
21 Act of 1934”;

22 (3) in section 310 (15 U.S.C. 77jjj), by striking
23 subsection (c);

24 (4) in section 311 (15 U.S.C. 77kkk) by strik-
25 ing subsection (c);

1 (5) in section 323(b) (15 U.S.C. 77www(b)), by
2 striking “Securities Act of 1933, or the Securities
3 Exchange Act of 1934, or the Public Utility Holding
4 Company Act of 1935” and inserting “Securities Act
5 of 1933 or the Securities Exchange Act of 1934”;
6 and

7 (6) in section 326 (15 U.S.C. 77zzz), by strik-
8 ing “Securities Act of 1933, or the Securities Ex-
9 change Act of 1934, or the Public Utility Holding
10 Company Act of 1935,” and inserting “Securities
11 Act of 1933 or the Securities Exchange Act of
12 1934”.

13 (c) INVESTMENT COMPANY ACT OF 1940.—The In-
14 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
15 is amended—

16 (1) in section 2(a)(44) (15 U.S.C. 80a–
17 2(a)(44)), by striking “‘Public Utility Holding Com-
18 pany Act of 1935’,”;

19 (2) in section 3(c) (15 U.S.C. 80a–3(c)), by
20 amending paragraph (8) to read as follows:

21 “(8) [Repealed]”;

22 (3) in section 38(b) (15 U.S.C. 80a–37(b)), by
23 striking “the Public Utility Holding Company Act of
24 1935,”; and

1 (4) in section 50 (15 U.S.C. 80a-49), by strik-
2 ing “the Public Utility Holding Company Act of
3 1935,”.

4 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
5 202(a)(21) of the Investment Advisers Act of 1940 (15
6 U.S.C. 80b-2(a)(21)) is amended by striking “‘Public
7 Utility Holding Company Act of 1935’,”.

8 **SEC. 7407. PROMOTING TRANSPARENCY IN FINANCIAL RE-**
9 **PORTING.**

10 (a) FINDINGS.—Congress finds the following:

11 (1) Transparent and clear financial reporting is
12 integral to the continued growth and strength of our
13 capital markets and the confidence of investors.

14 (2) The increasing detail and volume of ac-
15 counting, auditing, and reporting guidance pose a
16 major challenge.

17 (3) The complexity of accounting and auditing
18 standards in the United States has added to the
19 costs and effort involved in financial reporting.

20 (b) TESTIMONY REQUIRED ON REDUCING COM-
21 PLEXITY IN FINANCIAL REPORTING.—The Securities and
22 Exchange Commission, the Public Company Accounting
23 Oversight Board, and the standard setting body des-
24 ignated pursuant to section 19(b) of the Securities Act
25 of 1933 shall annually provide oral testimony by their re-

1 spective Chairpersons or a designee of the Chairperson,
2 beginning in 2010, and for 5 years thereafter, to the Com-
3 mittee on Financial Services of the House of Representa-
4 tives on their efforts to reduce the complexity in financial
5 reporting to provide more accurate and clear financial in-
6 formation to investors, including—

7 (1) reassessing complex and outdated account-
8 ing standards;

9 (2) improving the understandability, consist-
10 ency, and overall usability of the existing accounting
11 and auditing literature;

12 (3) developing principles-based accounting
13 standards;

14 (4) encouraging the use and acceptance of
15 interactive data; and

16 (5) promoting disclosures in “plain English”.

17 **SEC. 7408. 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. 7409. PROTECTING CONFIDENTIALITY OF MATERIALS**

22 **SUBMITTED TO THE COMMISSION.**

23 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
24 17(i) of the Securities Exchange Act of 1934 (as amended
25 by section 1314(2)) is amended to read as follows:

1 “(i) AUTHORITY TO LIMIT DISCLOSURE OF INFOR-
2 MATION.—

3 “(1) IN GENERAL.—Notwithstanding any other
4 provision of law, the Commission shall not be com-
5 pelled to disclose any information, documents,
6 records, or reports that relate to an examination,
7 surveillance, or risk assessment of a person subject
8 to or described in this section, or the financial or
9 operational condition of such persons, or any infor-
10 mation supplied to the Commission by any domestic
11 or foreign regulatory agency or self-regulatory orga-
12 nization that relates to the financial or operational
13 condition of such persons, of any associated person
14 of such persons, or any affiliate of an investment
15 bank holding company.

16 “(2) CERTAIN EXCEPTIONS.—Nothing in this
17 subsection shall authorize the Commission to with-
18 hold information from the Congress, prevent the
19 Commission from complying with a request for infor-
20 mation from any other Federal department or agen-
21 cy, the Public Company Accounting Oversight
22 Board, or any self-regulatory organization request-
23 ing the information for purposes within the scope of
24 its jurisdiction, or prevent the Commission from
25 complying with an order of a court of the United

1 States in an action brought by the United States or
2 the Commission against a person subject to or de-
3 scribed in this section to produce information, docu-
4 ments, records, or reports relating directly to the ex-
5 amination, surveillance, or risk assessment of that
6 person or the financial or operational condition of
7 that person or an associated or affiliated person of
8 that person.

9 “(3) TREATMENT UNDER SECTION 552 OF
10 TITLE 5, UNITED STATES CODE.—For purposes of
11 section 552 of title 5, United States Code, this sub-
12 section shall be considered a statute described in
13 subsection (b)(3)(B) of that section.

14 “(4) CERTAIN INFORMATION TO BE CONFIDEN-
15 TIAL.—In prescribing regulations to carry out the
16 requirements of this subsection, the Commission
17 shall designate information described in or obtained
18 pursuant to subparagraphs (A), (B), and (C) of sub-
19 section (i)(3) as confidential information for pur-
20 poses of section 24(b)(2) of this title.”.

21 (b) INVESTMENT COMPANY ACT OF 1940.—Section
22 31(b) of the Investment Company Act of 1940 (15 U.S.C.
23 80a–30(b)), as amended by sections 7106(a)(2) and
24 7218(b)(4), is further amended by adding at the end the
25 following new paragraph:

1 “(6) CONFIDENTIALITY.—

2 “(A) IN GENERAL.—Notwithstanding any
3 other provision of law, the Commission shall not
4 be compelled to disclose any information, docu-
5 ments, records, or reports that relate to an ex-
6 amination, surveillance, or risk assessment of a
7 person subject to or described in this section.

8 “(B) CERTAIN EXCEPTIONS.—Nothing in
9 this subsection shall authorize the Commission
10 to withhold information from the Congress, pre-
11 vent the Commission from complying with a re-
12 quest for information from any other Federal
13 department or agency, or the Public Company
14 Accounting Oversight Board requesting the in-
15 formation for purposes within the scope of its
16 jurisdiction, or prevent the Commission from
17 complying with an order of a court of the
18 United States in an action brought by the
19 United States or the Commission against a per-
20 son subject to or described in this section to
21 produce information, documents, records, or re-
22 ports relating directly to the examination of
23 that person or the financial or operational con-
24 dition of that person or an associated or affili-
25 ated person of that person.

1 “(C) TREATMENT UNDER SECTION 552 OF
2 TITLE 5, UNITED STATES CODE.—For purposes
3 of section 552 of title 5, United States Code,
4 this subsection shall be considered a statute de-
5 scribed in subsection (b)(3)(B) of that sec-
6 tion.”.

7 (c) INVESTMENT ADVISERS ACT OF 1940.—Section
8 204 of the Investment Advisers Act of 1940 (15 U.S.C.
9 80b-4), as amended by sections 7106(b) and 7218(c), is
10 further amended by adding at the end the following new
11 subsection:

12 “(f) CONFIDENTIALITY.—

13 “(1) IN GENERAL.—Notwithstanding any other
14 provision of law, the Commission shall not be com-
15 pelled to disclose any information, documents,
16 records, or reports that relate to an examination of
17 a person subject to or described in this section.

18 “(2) CERTAIN EXCEPTIONS.—Nothing in this
19 subsection shall authorize the Commission to with-
20 hold information from Congress, prevent the Com-
21 mission from complying with a request for informa-
22 tion from any other Federal department or agency,
23 the Public Company Accounting Oversight Board, or
24 a self-regulatory organization requesting the infor-
25 mation for purposes within the scope of its jurisdic-

1 tion, or prevent the Commission from complying
2 with an order of a court of the United States in an
3 action brought by the United States or the Commis-
4 sion against a person subject to or described in this
5 section to produce information, documents, records,
6 or reports relating directly to the examination of
7 that person or the financial or operational condition
8 of that person or an associated or affiliated person
9 of that person.

10 “(3) TREATMENT UNDER SECTION 552 OF
11 TITLE 5, UNITED STATES CODE.—For purposes of
12 section 552 of title 5, United States Code, this sub-
13 section shall be considered a statute described in
14 subsection (b)(3)(B) of that section.”.

15 **SEC. 7410. TECHNICAL CORRECTIONS.**

16 (a) SECURITIES ACT OF 1933.—The Securities Act
17 of 1933 (15 U.S.C. 77a et seq.) is amended—

18 (1) in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by
19 striking “individual;” and inserting “individual;”;

20 (2) in the matter following paragraph (5) of
21 section 11(a), by striking “earning statement” and
22 inserting “earnings statement”.

23 (3) in section 18(b)(1)(C) (15 U.S.C.
24 77r(b)(1)(C)), by striking “is a security” and insert-
25 ing “a security”;

1 (4) in section 18(c)(2)(B)(i) (15 U.S.C.
2 77r(c)(2)(B)(i)), by striking “State, or” and insert-
3 ing “State or”;

4 (5) in section 19(d)(6)(A) (15 U.S.C.
5 77s(d)(6)(A)), by striking “in paragraph (1) of (3)”
6 and inserting “in paragraph (1) or (3)”; and

7 (6) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z-
8 2(c)(1)(B)(ii)), by striking “business entity;” and in-
9 serting “business entity,”.

10 (b) SECURITIES EXCHANGE ACT OF 1934.—The Se-
11 curities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is
12 amended—

13 (1) in section 2(1)(a) (15 U.S.C. 78b(1)(a)), by
14 striking “affected” and inserting “effected”;

15 (2) in section 3(a)(55)(A) (15 U.S.C.
16 78c(a)(55)(A)), by striking “section 3(a)(12) of the
17 Securities Exchange Act of 1934” and inserting
18 “section 3(a)(12) of this Act”;

19 (3) in section 3(g) (15 U.S.C. 78c(g)), by strik-
20 ing “company, account person, or entity” and insert-
21 ing “company, account, person, or entity”;

22 (4) in section 10A(i)(1)(B)(i) (15 U.S.C. 78j-
23 1(i)(1)(B)(i)), by striking “nonaudit” and inserting
24 “non-audit”;

1 (5) in section 13(b)(1) (15 U.S.C. 78m(b)(1)),
2 by striking “earning statement” and inserting
3 “earnings statement”;

4 (6) in section 15(b)(1) (15 U.S.C. 78o(b)(1))—

5 (A) by striking the sentence beginning
6 “The order granting” and ending “from such
7 membership.” in subparagraph (B); and

8 (B) by inserting such sentence in the mat-
9 ter following such subparagraph after “are sat-
10 isfied.”;

11 (7) in section 15C(a)(2) (15 U.S.C. 78o-
12 5(a)(2))—

13 (A) by redesignating clauses (i) and (ii) as
14 subparagraphs (A) and (B), respectively;

15 (B) by striking the sentence beginning
16 “The order granting” and ending “from such
17 membership.” in such subparagraph (B), as re-
18 designated; and

19 (C) by inserting such sentence in the mat-
20 ter following such redesignated subparagraph
21 after “are satisfied.”;

22 (8) in section 17(b)(1)(B) (15 U.S.C.
23 78q(b)(1)(B)), by striking “15A(k) gives” and in-
24 serting “15A(k), give”; and

1 (9) in section 21C(c)(2) (15 U.S.C. 78u–
2 3(c)(2)), by striking “paragraph (1) subsection” and
3 inserting “Paragraph (1)”.

4 (c) TRUST INDENTURE ACT OF 1939.—The Trust
5 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is
6 amended—

7 (1) in section 304(b) (15 U.S.C. 77ddd(b)), by
8 striking “section 2 of such Act” and inserting “sec-
9 tion 2(a) of such Act”;

10 (2) in section 313(a)(4) (15 U.S.C.
11 77mmm(a)(4)) by striking “subsection (b) of section
12 311” and inserting “section 311(b)”; and

13 (3) in section 317(a)(1) (15 U.S.C.
14 77qqq(a)(1)), by striking “(1),” and inserting “(1)”.

15 (d) INVESTMENT COMPANY ACT OF 1940.—The In-
16 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
17 is amended—

18 (1) in section 2(a)(19)(B) (15 U.S.C. 80a–
19 2(a)(19)(B)) by striking “clause (vi)” both places it
20 appears in the last two sentences and inserting
21 “clause (vii)”;

22 (2) in section 9(b)(4)(B) (15 U.S.C. 80a–
23 9(b)(4)(B)), by inserting “or” after the semicolon at
24 the end;

1 (3) in section 12(d)(1)(J) (15 U.S.C. 80a–
2 12(d)(1)(J)), by striking “any provision of this sub-
3 section” and inserting “any provision of this para-
4 graph”;

5 (4) in section 13(a)(3) (15 U.S.C. 80a–
6 13(a)(3)), by inserting “or” after the semicolon at
7 the end;

8 (5) in section 17(f)(4) (15 U.S.C. 80a–
9 17(f)(4)), by striking “No such member” and insert-
10 ing “No member of a national securities exchange”;

11 (6) in section 17(f)(6) (15 U.S.C. 80a–
12 17(f)(6)), by striking “company may serve” and in-
13 serting “company, may serve”; and

14 (7) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a–
15 60(a)(3)(B)(iii))—

16 (A) by striking “paragraph (1) of section
17 205” and inserting “section 205(a)(1)”; and

18 (B) by striking “clause (A) or (B) of that
19 section” and inserting “section 205(b)(1) or
20 (2)”.

21 (e) INVESTMENT ADVISERS ACT OF 1940.—The In-
22 vestment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.)
23 is amended—

24 (1) in each of the following sections, by striking
25 “principal business office” or “principal place of

1 business” (whichever and wherever it appears) and
2 inserting “principal office and place of business”:
3 sections 203(c)(1)(A), 203(k)(4)(B), 213(a), 222(b),
4 and 222(c) (15 U.S.C. 80b-3(c)(1)(A), 80b-
5 3(k)(4)(B), 80b-13(a), 80b-18a(b), and 80b-
6 18a(c)); and

7 (2) in section 206(3) (15 U.S.C. 80b-6(3)), by
8 inserting “or” after the semicolon at the end.

9 **SEC. 7411. MUNICIPAL SECURITIES.**

10 Section 15B(b) of the Securities Exchange Act of
11 1934 (15 U.S.C. 78o-4(b)) is amended—

12 (1) by amending paragraph (1) to read as fol-
13 lows:

14 “(1) COMPOSITION OF THE MUNICIPAL SECURI-
15 TIES RULEMAKING BOARD.—Not later than October
16 1, 2010, the Municipal Securities Rulemaking Board
17 (hereinafter in this section referred to as the
18 ‘Board’), shall be composed of members which shall
19 perform the duties set forth in this section and shall
20 consist of—

21 “(A) a majority of independent public rep-
22 resentatives, at least one of whom shall be rep-
23 resentative of investors in municipal securities
24 and at least one of whom shall be representative
25 of issuers of municipal securities (which mem-

1 bers are hereinafter referred to as ‘public rep-
2 resentatives’);

3 “(B) at least one individual who is rep-
4 resentative of municipal securities brokers and
5 municipal securities dealers which are not
6 banks or subsidiaries or departments or divi-
7 sions of banks (which members are hereinafter
8 referred to as ‘broker-dealer representatives’);
9 and

10 “(C) at least one individual who is rep-
11 resentative of municipal securities dealers which
12 are banks or subsidiaries or departments or di-
13 visions of banks (which members are herein-
14 after referred to as ‘bank representatives’).”;
15 and

16 (2) by amending paragraph (2)(B) to read as
17 follows:

18 “(B) Establish fair procedures for the nomina-
19 tion and election of members of the Board and as-
20 sure fair representation in such nominations and
21 elections of municipal securities brokers and munic-
22 ipal securities dealers. Such rules—

23 “(i) shall establish requirements regarding
24 the independence of public representatives;

1 “(ii) shall provide that the number of pub-
2 lic representatives of the Board shall at all
3 times exceed the total number of broker-dealer
4 representatives and bank representatives;

5 “(iii) shall establish minimum knowledge,
6 experience, and other appropriate qualifications
7 for individuals to serve as public representa-
8 tives, which may include, among other things,
9 prior work experience in the securities, munic-
10 ipal finance, or municipal securities industries;

11 “(iv) shall specify the term members shall
12 serve; and

13 “(v) may increase or decrease the number
14 of members which shall constitute the whole
15 Board, but in no case may such number be an
16 even number.”.

17 **SEC. 7412. INTERESTED PERSON DEFINITION.**

18 Section 2(a)(19)(A) of the Investment Company Act
19 of 1940 (15 U.S.C. 80a-2(a)(19)(A)) is amended—

20 (1) by striking clauses (v) and (vi);

21 (2) by inserting after clause (iv) the following
22 new clause:

23 “(v) any natural person who is a
24 member of a class of persons who the
25 Commission, by rule or regulation, deter-

1 mines are unlikely to exercise an appro-
2 priate degree of independence as a result
3 of—

4 “(I) a material business or pro-
5 fessional relationship with such com-
6 pany or any affiliated person of such
7 company; or

8 “(II) a close familial relationship
9 with any natural person who is an af-
10 filiated person of such company;”;

11 (3) by redesignating clause (vii) as clause (vi);

12 and

13 (4) in clause (vi), as redesignated, by striking
14 “two completed fiscal years” and inserting “five
15 completed fiscal years”.

16 **SEC. 7413. RULEMAKING AUTHORITY TO PROTECT RE-**
17 **DEEMING INVESTORS.**

18 Section 22(e) of the Investment Company Act of
19 1940 (15 U.S.C. 80a-22(e)) is amended by adding at the
20 end the following: “The Commission may, by rules and
21 regulations, limit the extent to which a registered open-
22 end investment company may own, hold, or invest in il-
23 liquid securities or other illiquid property.”.

1 **SEC. 7414. STUDY ON SEC REVOLVING DOOR.**

2 (a) GOVERNMENT ACCOUNTABILITY OFFICE

3 STUDY.—The Comptroller General of the United States
4 shall conduct a study that will—

5 (1) review the number of employees who leave
6 the Securities and Exchange Commission to work
7 for financial institutions regulated by such Commis-
8 sion;

9 (2) determine how many employees who leave
10 the Securities and Exchange Commission worked on
11 cases that involved financial institutions regulated by
12 such Commission;

13 (3) review the length of time employees work
14 for the Securities and Exchange Commission before
15 leaving to be employed by financial institutions regu-
16 lated by such Commission;

17 (4) review existing internal controls and make
18 recommendations on strengthening such controls to
19 ensure that employees of the Securities and Ex-
20 change Commission who are later employed by fi-
21 nancial institutions did not assist such institutions
22 in violating any rules or regulations of the Commis-
23 sion during the course of their employment with
24 such Commission;

25 (5) determine if greater post-employment re-
26 strictions are necessary to prevent employees of the

1 Securities and Exchange Commission from being
2 employed by financial institutions after employment
3 with such Commission;

4 (6) determine if the volume of employees of the
5 Securities and Exchange Commission who are later
6 employed by financial institutions has led to ineffi-
7 ciencies in enforcement;

8 (7) determine if employees of the Securities and
9 Exchange Commission who are later employed by fi-
10 nancial institutions have engaged in information
11 sharing or assisted such institutions in circum-
12 venting Federal rules and regulations while em-
13 ployed by such Commission;

14 (8) review any information that may address
15 the volume of employees of the Securities and Ex-
16 change Commission who are later employed by fi-
17 nancial institutions, and make recommendations to
18 Congress; and

19 (9) review other additional issues as may be
20 raised during the course of the study conducted
21 under this subsection.

22 (b) REPORT.—Not later than 1 year after the date
23 of the enactment of this subtitle, the Comptroller General
24 of the United States shall submit to the Committee on
25 Financial Services of the House of Representatives and

1 the Committee on Banking, Housing, and Urban Affairs
2 of the Senate a report on the results of the study required
3 by subsection (a).

4 **SEC. 7415. STUDY ON INTERNAL CONTROL EVALUATION**
5 **AND REPORTING COST BURDENS ON SMALL-**
6 **ER ISSUERS.**

7 (a) **STUDY REQUIRED.**—The Government Account-
8 ability Office and the Securities and Exchange Commis-
9 sion shall each conduct a study evaluating the costs and
10 benefits of complying with section 404(b) of the Sarbanes-
11 Oxley Act of 2002 (15 U.S.C. § 7262(b)) on issuers who
12 are not accelerated or large accelerated filers as defined
13 by Commission Rule 12b-2. The study shall—

14 (1) include recommendations, administrative re-
15 forms, and legislative proposals on implementation
16 steps that could be taken to reduce compliance bur-
17 dens on these issuers; and

18 (2) determine the efficacy of the Securities and
19 Exchange Commission’s measures to limit the cost
20 of compliance on smaller issuers.

21 (b) **REPORTS REQUIRED.**—On or before June 1,
22 2010, the Government Accountability Office and the Secu-
23 rities and Exchange Commission shall submit separate re-
24 ports to Congress containing the findings and conclusions
25 of the studies required under subsection (a), together with

1 such recommendations for regulatory, legislative, or ad-
2 ministrative action as may be appropriate.

3 (c) EFFECTIVE DATE CONTINGENT ON REPORTS.—
4 Requirements under section 404(b) of the Sarbanes-Oxley
5 Act of 2002 on issuers described under subsection (a) shall
6 not become effective until the results of the report are de-
7 livered, but in no case before June 1, 2011.

8 **SECTION 7416. ANALYSIS OF RULE REGARDING SMALLER**
9 **REPORTING COMPANIES.**

10 (a) FINDINGS.—Congress finds the following:

11 (1) Many small businesses in cutting-edge tech-
12 nology sectors require significant capital investment
13 to develop new technologies related to clean energy,
14 drug treatments for terminal diseases and food pro-
15 duction in hunger-stricken areas of the World.

16 (2) Many technology companies conducting re-
17 search do not meet the definition of “smaller report-
18 ing company” under the Securities and Exchange
19 Commission’s Rule 12b–2 due to unusually high
20 public floats despite low or zero revenue.

21 (3) The Final Report of the Advisory Com-
22 mittee on Smaller Public Companies to the Securi-
23 ties and Exchange Commission recommended that a
24 company with a market capitalization of less than
25 about \$787,000,000 be considered a smallcap com-

1 pany and that the Commission provide exemptions
2 from section 404(b) of the Sarbanes-Oxley Act to
3 companies with less than \$250,000,000 in annual
4 revenues.

5 (b) STUDY OF USING REVENUE AS CRITERIA TO DE-
6 FINE SMALLER REPORTING COMPANY.—The Securities
7 and Exchange Commission shall conduct a study of the
8 inclusion of revenue as a criteria used in defining smaller
9 reporting company as defined under the Commission’s
10 Rule 12b-2 to account for smaller public companies with
11 public floats less than \$700,000,000 and revenues less
12 than \$250,000,000. Not later than 180 days after the date
13 of enactment of this subtitle, the Commission shall provide
14 the Committee on Financial Services of the House of Rep-
15 resentatives and the Committee on Banking, Housing and
16 Urban Affairs of the Senate a report of the findings of
17 the study.

18 **SEC. 7417. FINANCIAL REPORTING FORUM.**

19 (a) ESTABLISHMENT.—There is hereby established a
20 Financial Reporting Forum (hereinafter referred to as the
21 “Forum”), which shall consist of—

- 22 (1) the Chairman of the Securities Exchange
23 Commission (hereinafter referred to as the “SEC”);
- 24 (2) the head of the Financial Accounting
25 Standards Board;

1 (3) the Chairman of the Public Company Ac-
2 counting Oversight Board;

3 (4) the head of each appropriate Federal bank-
4 ing agency, as such term is defined under section
5 3(q) of the Federal Deposit Insurance Act (12
6 U.S.C. 1813(q));

7 (5) the Administrator of the National Credit
8 Union Administration;

9 (6) the Secretary of the Treasury;

10 (7) a representative of a non-financial institu-
11 tion, appointed by the SEC;

12 (8) a representative of a financial institution,
13 appointed by the SEC;

14 (9) a representative of auditors, appointed by
15 the SEC; and

16 (10) a representative of investors, appointed by
17 the SEC.

18 (b) MEETINGS.—The Forum shall meet no less often
19 than quarterly.

20 (c) DUTIES.—The Forum shall meet to discuss im-
21 mediate and long-term issues critical to financial report-
22 ing.

23 (d) REPORTING.—The Forum shall issue an annual
24 report to the Congress detailing any determinations or
25 findings made by the Forum during the previous year, in-

1 cluding any legislative recommendations the Forum may
2 have related to financial reporting matters.

3 **SEC. 7418. INVESTMENT ADVISERS SUBJECT TO STATE AU-**
4 **THORITIES.**

5 Section 203A(a) of the Investment Advisers Act of
6 1940 (15 U.S.C. 80b-3a(a)) is amended—

7 (1) by redesignating paragraph (2) as para-
8 graph (3); and

9 (2) by inserting after paragraph (1) the fol-
10 lowing new paragraph:

11 “(2) TREATMENT OF CERTAIN MID-SIZED IN-
12 VESTMENT ADVISERS.—Notwithstanding paragraph
13 (1), an investment adviser that—

14 “(A) is regulated and examined, or re-
15 quired to be regulated and examined, by a
16 State; and

17 “(B) has assets under management be-
18 tween—

19 “(i) the amount specified under sub-
20 paragraph (A) of paragraph (1), as such
21 amount may have been adjusted by the
22 Commission pursuant to that subpara-
23 graph, and

24 “(ii) \$100,000,000, or such higher
25 amount as the Commission may, by rule,

1 deem appropriate in accordance with the
2 purposes of this title,
3 shall register with, and be subject to examina-
4 tion by, such State. The Commission shall pub-
5 lish a list of the States that regulate and exam-
6 ine, or require regulation and examination of,
7 investment advisers to which the requirements
8 of this paragraph apply.”.

9 **SEC. 7419. CUSTODIAL REQUIREMENTS.**

10 Not later than 180 days after the date of the enact-
11 ment of this subtitle, the Securities and Exchange Com-
12 mission shall adopt a rule pursuant to its authority under
13 section 211(a) of the Investment Advisers Act of 1940
14 making it unlawful under section 206(4) of such Act for
15 an investment adviser registered under the Act to have
16 custody of funds or securities of a client the value of which
17 exceeds \$10,000,000, subject to such exception the Com-
18 mission determines in such rule are in the public interest
19 and consistent with the protection of investors, unless—

20 (1) the funds and securities are maintained
21 with a qualified custodian either in a separate ac-
22 count for each client under the client’s name, or in
23 accounts that contain only client funds and securi-
24 ties under the name of the investment adviser as
25 agent or trustee for the client; and

1 (2) the qualified custodian does not directly or
2 indirectly provide investment advice with respect to
3 such funds or securities.

4 **SEC. 7420. OMBUDSMAN.**

5 (a) APPOINTMENT.—Not later than 180 days after
6 the date of the enactment of this subtitle, the Chairman
7 of the Securities and Exchange Commission shall appoint
8 an Ombudsman who shall report directly to the Chairman.

9 (b) DUTIES.—The Ombudsman appointed under sub-
10 section (a) shall—

11 (1) act as a liaison between the Commission
12 and any affected person with respect to any problem
13 such person may have in dealing with the Commis-
14 sion resulting from the regulatory activities of the
15 Commission;

16 (2) review and make recommendations regard-
17 ing Commission policies and procedures to encour-
18 age persons to present questions to the Commission
19 regarding compliance with Federal securities laws;
20 and

21 (3) maintain confidentiality of communications
22 between such persons and the Ombudsman.

23 (c) LIMITATION.—In carrying out the duties under
24 subsection (b), the Ombudsman shall utilize personnel of
25 the Commission to the extent practicable. Nothing in this

1 section shall be construed as replacing, altering, or dimin-
2 ishing the activities of any ombudsman or similar office
3 in any other agency.

4 (d) REPORT.—Each year, the Ombudsman shall sub-
5 mit a report to the Commission for inclusion in the annual
6 report that describes the activities and evaluates the effec-
7 tiveness of the Ombudsman during the preceding year. In
8 that report, the Ombudsman shall include solicited com-
9 ments and evaluations from registrants in regards to the
10 effectiveness of the Ombudsman.

11 **PART 5—SECURITIES INVESTOR PROTECTION**

12 **ACT AMENDMENTS**

13 **SEC. 7501. INCREASING THE MINIMUM ASSESSMENT PAID**

14 **BY SIPC MEMBERS.**

15 Section 4(d)(1)(C) of the Securities Investor Protec-
16 tion Act of 1970 (15 U.S.C. 78ddd(d)(1)(C)) is amended
17 by striking “\$150 per annum” and inserting the following:
18 “0.02 percent of the gross revenues from the securities
19 business of such member of SIPC”.

20 **SEC. 7502. INCREASING THE BORROWING LIMIT ON TREAS-**

21 **URY LOANS.**

22 Section 4(h) of the Securities Investor Protection Act
23 of 1970 (15 U.S.C. 78ddd(h)) is amended by striking “of
24 not to exceed \$1,000,000,000” and inserting “the lesser

1 of \$2,500,000,000 or the target amount of the SIPC Fund
2 specified in the bylaws of SIPC”.

3 **SEC. 7503. INCREASING THE CASH LIMIT OF PROTECTION.**

4 Section 9 of the Securities Investor Protection Act
5 of 1970 (15 U.S.C. 78fff-3) is amended—

6 (1) in subsection (a)(1), by striking “\$100,000
7 for each such customer” and inserting “the standard
8 maximum cash advance amount for each such cus-
9 tomer, as determined in accordance with subsection
10 (d)”;

11 (2) by adding the following new subsections:

12 “(d) STANDARD MAXIMUM CASH ADVANCE AMOUNT
13 DEFINED.—For purposes of this section, the term ‘stand-
14 ard maximum cash advance amount’ means \$250,000, as
15 such amount may be adjusted after March 31, 2010, as
16 provided under subsection (e).

17 “(e) INFLATION ADJUSTMENT.—

18 “(1) IN GENERAL.—No later than April 1,
19 2010, and every 5 years thereafter, and subject to
20 the approval of the Commission as provided under
21 section 3(e)(2), the Board of Directors of SIPC shall
22 determine whether an inflation adjustment to the
23 standard maximum cash advance amount is appro-
24 priate. If the Board of Directors of SIPC determines
25 such an adjustment is appropriate, then the stand-

1 ard maximum cash advance amount shall be an
2 amount equal to—

3 “(A) \$250,000 multiplied by,

4 “(B) the ratio of the annual value of the
5 Personal Consumption Expenditures Chain-
6 Type Price Index (or any successor index there-
7 to), published by the Department of Commerce,
8 for the calendar year preceding the year in
9 which such determination is made, to the pub-
10 lished annual value of such index for the cal-
11 endar year preceding the year in which this
12 subsection was enacted.

13 The index values used in calculations under this
14 paragraph shall be, as of the date of the calculation,
15 the values most recently published by the Depart-
16 ment of Commerce.

17 “(2) ROUNDING.—If the standard maximum
18 cash advance amount determined under paragraph
19 (1) for any period is not a multiple of \$10,000, the
20 amount so determined shall be rounded down to the
21 nearest \$10,000.

22 “(3) PUBLICATION AND REPORT TO THE CON-
23 GRESS.—Not later than April 5 of any calendar year
24 in which a determination is required to be made
25 under paragraph (1)—

1 “(A) the Commission shall publish in the
2 Federal Register the standard maximum cash
3 advance amount; and

4 “(B) the Board of Directors of SIPC shall
5 submit a report to the Congress containing
6 stating the standard maximum cash advance
7 amount.

8 “(4) IMPLEMENTATION PERIOD.—Any adjust-
9 ment to the standard maximum cash advance
10 amount shall take effect on January 1 of the year
11 immediately succeeding the calendar year in which
12 such adjustment is made.

13 “(5) INFLATION ADJUSTMENT CONSIDER-
14 ATIONS.—In making any determination under para-
15 graph (1) to increase the standard maximum cash
16 advance amount, the Board of Directors of SIPC
17 shall consider—

18 “(A) the overall state of the fund and the
19 economic conditions affecting members of
20 SIPC;

21 “(B) the potential problems affecting mem-
22 bers of SIPC; and

23 “(C) such other factors as the Board of
24 Directors of SIPC may determine appro-
25 priate.”.

1 **SEC. 7504. SIPC AS TRUSTEE IN SIPA LIQUIDATION PRO-**
2 **CEEDINGS.**

3 Section 5(b)(3) of the Securities Investor Protection
4 Act of 1970 (15 U.S.C. 78eee(b)(3)) is amended—

5 (1) by striking “SIPC has determined that the
6 liabilities of the debtor to unsecured general credi-
7 tors and to subordinated lenders appear to aggre-
8 gate less than \$750,000 and that”; and

9 (2) by striking “five hundred” and inserting
10 “five thousand”.

11 **SEC. 7505. INSIDERS INELIGIBLE FOR SIPC ADVANCES.**

12 Section 9(a)(4) of the Securities Investor Protection
13 Act of 1970 (15 U.S.C. 78fff-3(a)(4)) is amended by in-
14 serting “an insider,” after “or net profits of the debtor,”.

15 **SEC. 7506. ELIGIBILITY FOR DIRECT PAYMENT PROCE-**
16 **DURE.**

17 Section 10(a)(4) of the Securities Investor Protection
18 Act of 1970 (15 U.S.C. 78fff-4(a)(4)) is amended by
19 striking “\$250,000” and inserting “\$850,000”.

20 **SEC. 7507. INCREASING THE FINE FOR PROHIBITED ACTS**
21 **UNDER SIPA.**

22 Section 14(c) of the Securities Investor Protection
23 Act of 1970 (15 U.S.C. 78jjj(c)) is amended—

24 (1) in paragraph (1), by striking “\$50,000”
25 and inserting “\$250,000”; and

1 (2) in paragraph (2), by striking “\$50,000”
2 and inserting “\$250,000”.

3 **SEC. 7508. PENALTY FOR MISREPRESENTATION OF SIPC**
4 **MEMBERSHIP OR PROTECTION.**

5 Section 14 of the Securities Investor Protection Act
6 of 1970 (15 U.S.C. 78jjj) is amended by adding at the
7 end the following new subsection:

8 “(d) MISREPRESENTATION OF SIPC MEMBERSHIP
9 OR PROTECTION.—

10 “(1) IN GENERAL.—Any person who falsely
11 represents by any means (including, without limita-
12 tion, through the Internet or any other medium of
13 mass communication), with actual knowledge of the
14 falsity of the representation and with an intent to
15 deceive or cause injury to another, that such person,
16 or another person, is a member of SIPC or that any
17 person or account is protected or is eligible for pro-
18 tection under this Act or by SIPC, shall be liable for
19 any damages caused thereby and shall be fined not
20 more than \$250,000 or imprisoned for not more
21 than five years.

22 “(2) INTERNET SERVICE PROVIDERS.—Any
23 Internet service provider that, on or through a sys-
24 tem or network controlled or operated by the Inter-
25 net service provider, transmits, routes, provides con-

1 nections for, or stores any material containing any
2 misrepresentation of the kind prohibited in para-
3 graph (1) shall be liable for any damages caused
4 thereby, including damages suffered by SIPC, if the
5 Internet service provider—

6 “(A) has actual knowledge that the mate-
7 rial contains a misrepresentation of the kind
8 prohibited in paragraph (1), or

9 “(B) in the absence of actual knowledge, is
10 aware of facts or circumstances from which it
11 is apparent that the material contains a mis-
12 representation of the kind prohibited in para-
13 graph (1), and

14 upon obtaining such knowledge or awareness, fails to
15 act expeditiously to remove, or disable access to, the
16 material.

17 “(3) INJUNCTIONS.—Any court having jurisdic-
18 tion of a civil action arising under this Act may
19 grant temporary injunctions and final injunctions on
20 such terms as the court deems reasonable to prevent
21 or restrain any violation of paragraph (1) or (2).
22 Any such injunction may be served anywhere in the
23 United States on the person enjoined, shall be oper-
24 ative throughout the United States, and shall be en-
25 forceable, by proceedings in contempt or otherwise,

1 by any United States court having jurisdiction over
2 that person. The clerk of the court granting the in-
3 junction shall, when requested by any other court in
4 which enforcement of the injunction is sought, trans-
5 mit promptly to the other court a certified copy of
6 all papers in the case on file in such clerk's office.”.

7 **SEC. 7509. FUTURES HELD IN A PORTFOLIO MARGIN SECURITIES ACCOUNT PROTECTION.**
8

9 (a) SIPC ADVANCES.—Section 9(a)(1) of the Securi-
10 ties Investor Protection Act of 1970 (15 U.S.C. 78fff–
11 3(a)(1)) is amended by inserting “or options on futures
12 contracts” after “claim for securities”.

13 (b) DEFINITIONS.—Section 16 of such Act (15
14 U.S.C. 78lll) is amended—

15 (1) by amending paragraph (2) to read as fol-
16 lows:

17 “(2) CUSTOMER.—

18 “(A) IN GENERAL.—The term ‘customer’
19 of a debtor means any person (including any
20 person with whom the debtor deals as principal
21 or agent) who has a claim on account of securi-
22 ties received, acquired, or held by the debtor in
23 the ordinary course of its business as a broker
24 or dealer from or for the securities accounts of
25 such person for safekeeping, with a view to sale,

1 to cover consummated sales, pursuant to pur-
2 chases, as collateral, security, or for purposes of
3 effecting transfer. The term ‘customer’ includes
4 any person who has a claim against the debtor
5 arising out of sales or conversions of such secu-
6 rities.

7 “(B) INCLUDED PERSONS.—The term
8 ‘customer’ includes—

9 “(i) any person who has deposited
10 cash with the debtor for the purpose of
11 purchasing securities; and

12 “(ii) any person who has a claim
13 against the debtor for, or a claim against
14 the debtor arising out of sales or conver-
15 sions of, cash, securities, futures contracts,
16 or options on futures contracts received,
17 acquired, or held in a portfolio margining
18 account carried as a securities account
19 pursuant to a portfolio margining program
20 approved by the Commission.

21 “(C) EXCLUDED PERSONS.—The term
22 ‘customer’ does not include—

23 “(i) any person to the extent that the
24 claim of such person arises out of trans-

1 actions with a foreign subsidiary of a mem-
2 ber of SIPC;

3 “(ii) any person to the extent that
4 such person has a claim for cash or securi-
5 ties which by contract, agreement, or un-
6 derstanding, or by operation of law, is part
7 of the capital of the debtor, or is subordi-
8 nated to the claims of any or all creditors
9 of the debtor, notwithstanding that some
10 ground exists for declaring such contract,
11 agreement, or understanding void or void-
12 able in a suit between the claimant and the
13 debtor; or

14 “(iii) any person to the extent such
15 person has a claim relating to any open re-
16 purchase or open reverse repurchase agree-
17 ment.

18 For purposes of this paragraph, the term ‘re-
19 purchase agreement’ means the sale of a secu-
20 rity at a specified price with a simultaneous
21 agreement or obligation to repurchase the secu-
22 rity at a specified price on a specified future
23 date.”;

24 (2) in paragraph (4), by inserting after the first
25 sentence the following new sentence: “In the case of

1 portfolio margining accounts of customers that are
2 carried as securities accounts pursuant to a portfolio
3 margining program approved by the Commission,
4 such term shall also include futures contracts and
5 options on futures contracts received, acquired, or
6 held by or for the account of a debtor from or for
7 such accounts, and the proceeds thereof.”;

8 (3) in paragraph (9), by inserting before “Such
9 term” in the matter following subparagraph (L) the
10 following: “The term includes revenues earned by a
11 broker or dealer in connection with transactions in
12 customers’ portfolio margining accounts carried as
13 securities accounts pursuant to a portfolio margining
14 program approved by the Commission.”; and

15 (4) in paragraph (11)—

16 (A) by amending subparagraph (A) to read
17 as follows:

18 “(A) calculating the sum which would have
19 been owed by the debtor to such customer if the
20 debtor had liquidated, by sale or purchase on
21 the filing date—

22 “(i) all securities positions of such
23 customer (other than customer name secu-
24 rities reclaimed by such customer); and

1 “(ii) all positions in futures contracts
2 and options on futures contracts held in a
3 portfolio margining account carried as a
4 securities account pursuant to a portfolio
5 margining program approved by the Com-
6 mission; minus”; and

7 (B) by inserting before “In determining”
8 in the matter following subparagraph (C) the
9 following: “A claim for a commodity futures
10 contract received, acquired, or held in a port-
11 folio margining account pursuant to a portfolio
12 margining program approved by the Commis-
13 sion, or a claim for a security futures contract,
14 shall be deemed to be a claim for the mark-to-
15 market (variation) payments due with respect
16 to such contract as of the filing date, and such
17 claim shall be treated as a claim for cash.”.

18 **SEC. 7510. STUDY AND REPORT ON THE FEASIBILITY OF**
19 **RISK-BASED ASSESSMENTS FOR SIPC MEM-**
20 **BERS.**

21 (a) **STUDY REQUIRED.**—The Comptroller General of
22 the United States shall conduct a study on whether the
23 Securities Investor Protection Corporation (hereafter in
24 this section referred to as “SIPC”) should be required to
25 impose assessments, on its member brokers and dealers,

1 based on risk for the purpose of adequately maintaining
2 the SIPC Fund.

3 (b) CONTENT.—The Comptroller General in con-
4 ducting this study shall—

5 (1) identify and examine available approaches,
6 including modeling, to measure broker and dealer
7 operational risk;

8 (2) analyze whether the available approaches to
9 measure broker and dealer operational risk can be
10 used in managing the aggregate risk to the SIPC
11 Fund;

12 (3) explore whether objective measures like the
13 volume of assets of the SIPC member, previous en-
14 forcement and compliance actions taken by regu-
15 latory bodies against the SIPC member, or the num-
16 ber of years the SIPC member has been in oper-
17 ation, among other factors, can be used to assess the
18 probability the fund will incur a loss with respect to
19 the SIPC member;

20 (4) examine the impact that risk-based assess-
21 ments could have on large and small brokers and
22 dealers; and

23 (5) examine the impact that risk-based assess-
24 ments could have on institutional and retail brokers
25 and dealers.

1 (c) CONSULTATION.—The Comptroller General in
2 planning and conducting this study shall consult with the
3 Securities and Exchange Commission, the Federal Deposit
4 Insurance Corporation, SIPC, the Financial Industry Reg-
5 ulatory Authority, and any other public or private sector
6 organization that the Comptroller General considers ap-
7 propriate.

8 (d) REPORT REQUIRED.—Not later than one year
9 after the date of enactment of this subtitle, the Comp-
10 troller general shall submit a report of the results of the
11 study required by this section to the Committee on Bank-
12 ing, Housing, and Urban Affairs of the Senate and the
13 Committee on Financial Services of the House of Rep-
14 resentatives.

15 **SEC. 7511. BUDGETARY TREATMENT OF COMMISSION**
16 **LOANS TO SIPC.**

17 Section 4(g) of the Securities Investor Protection Act
18 of 1970 (15 U.S.C. 78ddd(g)) is amended by adding at
19 the end the following: “Any loan made by the Commission
20 to SIPC under this subsection shall not be considered to
21 result in a new direct loan obligation or a new loan guar-
22 antee commitment for purposes of section 504 of the Fed-
23 eral Credit Reform Act of 1990.”.

1 **PART 6—SARBANES-OXLEY ACT AMENDMENTS**

2 **SEC. 7601. PUBLIC COMPANY ACCOUNTING OVERSIGHT**

3 **BOARD OVERSIGHT OF AUDITORS OF BRO-**

4 **KERS AND DEALERS.**

5 (a) DEFINITIONS.—(1) Title I of the Sarbanes-Oxley
6 Act of 2002 is amended by adding at the end the following
7 new section:

8 **“SEC. 110. DEFINITIONS.**

9 “For the purposes of this title, and notwithstanding
10 section 2:

11 “(1) AUDIT.—The term ‘audit’ means an exam-
12 ination of the financial statements, reports, docu-
13 ments, procedures or controls, or notices, of any
14 issuer, broker, or dealer by an independent public
15 accounting firm in accordance with the rules of the
16 Board or the Commission (or, for the period pre-
17 ceding the adoption of applicable rules of the Board
18 under section 103, in accordance with then-applica-
19 ble generally accepted auditing and related stand-
20 ards for such purposes), for the purpose of express-
21 ing an opinion on such financial statements, reports,
22 documents, procedures or controls, or notices.

23 “(2) AUDIT REPORT.—The term ‘audit report’
24 means a document, report, notice, or other record—

25 “(A) prepared following an audit per-
26 formed for purposes of compliance by an issuer,

1 broker, or dealer with the requirements of the
2 securities laws; and

3 “(B) in which a public accounting firm ei-
4 ther—

5 “(i) sets forth the opinion of that firm
6 regarding a financial statement, report, no-
7 tice, other document, procedures, or con-
8 trols; or

9 “(ii) asserts that no such opinion can
10 be expressed.

11 “(3) PROFESSIONAL STANDARDS.—The term
12 ‘professional standards’ means—

13 “(A) accounting principles that are—

14 “(i) established by the standard set-
15 ting body described in section 19(b) of the
16 Securities Act of 1933, as amended by this
17 Act, or prescribed by the Commission
18 under section 19(a) of that Act (15 U.S.C.
19 17a(s)) or section 13(b) of the Securities
20 Exchange Act of 1934 (15 U.S.C. 78a(m));
21 and

22 “(ii) relevant to audit reports for par-
23 ticular issuers, brokers, or dealers, or dealt
24 with in the quality control system of a par-

1 ticular registered public accounting firm;
2 and

3 “(B) auditing standards, standards for at-
4 testation engagements, quality control policies
5 and procedures, ethical and competency stand-
6 ards, and independence standards (including
7 rules implementing title II) that the Board or
8 the Commission determines—

9 “(i) relate to the preparation or
10 issuance of audit reports for issuers, bro-
11 kers, or dealers; and

12 “(ii) are established or adopted by the
13 Board under section 103(a), or are pro-
14 mulgated as rules of the Commission.

15 “(4) BROKER.—The term ‘broker’ means a
16 broker (as such term is defined in section 3(a)(4) of
17 the Securities Exchange Act of 1934 (15 U.S.C.
18 78c(a)(4))) that is required to file a balance sheet,
19 income statement, or other financial statement
20 under section 17(e)(1)(A) of such Act (15 U.S.C.
21 78q(e)(1)(A)), where such balance sheet, income
22 statement, or financial statement is required to be
23 certified by a registered public accounting firm.

24 “(5) DEALER.—The term ‘dealer’ means a
25 dealer (as such term is defined in section 3(a)(5) of

1 the Securities Exchange Act of 1934 (15 U.S.C.
2 78c(a)(5))) that is required to file a balance sheet,
3 income statement, or other financial statement
4 under section 17(e)(1)(A) of such Act (15 U.S.C.
5 78q(e)(1)(A)), where such balance sheet, income
6 statement, or financial statement is required to be
7 certified by a registered public accounting firm.

8 “(6) SELF-REGULATORY ORGANIZATION.—The
9 term ‘self-regulatory organization’ has the same
10 meaning as in section 3(a)(26) of the Securities Ex-
11 change Act of 1934 (15 U.S.C. 78c(a)(26)).”.

12 (2) The table of sections in section 1(b) of such Act
13 is amended, by inserting after the item relating to section
14 109 the following new item:

“Sec. 110. Definitions.”.

15 (b) ESTABLISHMENT AND ADMINISTRATION OF THE
16 PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—
17 Section 101 of such Act is amended—

18 (1) by striking “issuers” each place it appears
19 and inserting “issuers, brokers, and dealers”;

20 (2) in subsection (a), by striking “public com-
21 panies” and inserting “companies”; and

22 (3) in subsection (a), by striking “for compa-
23 nies the securities of which are sold to, and held by
24 and for, public investors”.

1 (c) REGISTRATION WITH THE BOARD.—Section 102
2 of such Act is amended—

3 (1) in subsection (a), by striking “Beginning
4 180 days after the date of the determination of the
5 Commission under section 101(d), it” and inserting
6 “It”;

7 (2) in subsections (a) and (b)(2)(G), by striking
8 “issuer” each place it appears and inserting “issuer,
9 broker, or dealer”; and

10 (3) in subsection (b)(2)(A), by striking
11 “issuers” and inserting “issuers, brokers, and deal-
12 ers”.

13 (d) AUDITING AND INDEPENDENCE.—Section 103(a)
14 of such Act is amended—

15 (1) in paragraph (1), by striking “and such eth-
16 ics standards” and inserting “such ethics standards,
17 and such independence standards”;

18 (2) in paragraph (2)(A)(iii), by striking “de-
19 scribe in each audit report” and inserting “in each
20 audit report for an issuer, describe”; and

21 (3) in paragraph (2)(B)(i), by striking
22 “issuers” and inserting “issuers, brokers, and deal-
23 ers”.

24 (e) INSPECTIONS OF REGISTERED PUBLIC ACCOUNT-
25 ING FIRMS.—Section 104 of such Act is amended—

1 (1) in subsection (a), by striking “issuers” and
2 inserting “issuers, brokers, and dealers”;

3 (2) in subsection (b)(1)(A)—

4 (A) by striking “audit reports” and insert-
5 ing “audit reports on annual financial state-
6 ments”; and

7 (B) by striking “and”;

8 (3) in subsection (b)(1)(B)—

9 (A) by striking “audit reports” and insert-
10 ing “audit reports on annual financial state-
11 ments”; and

12 (B) by striking the period at the end and
13 inserting “; and”; and

14 (4) by adding at the end of subsection (b)(1)
15 the following new subparagraph:

16 “(C) with respect to each registered public
17 accounting firm that regularly provides audit
18 reports and is not described under subpara-
19 graph (A) or (B), on a basis to be determined
20 by the Board, by rule, consistent with the pub-
21 lic interest and protection of investors.”.

22 (f) INVESTIGATIONS AND DISCIPLINARY PRO-
23 CEEDINGS.—Section 105(c)(7)(B) of such Act is amend-
24 ed—

1 (1) in the subparagraph heading, by inserting
2 “, BROKER, OR DEALER” after “ISSUER”;

3 (2) by striking “any issuer” each place it ap-
4 pears and inserting “any issuer, broker, or dealer”;
5 and

6 (3) by striking “an issuer under this sub-
7 section” and inserting “a registered public account-
8 ing firm under this subsection”.

9 (g) FOREIGN PUBLIC ACCOUNTING FIRMS.—Section
10 106 of such Act is amended—

11 (1) in subsection (a)(1), by striking “issuer”
12 and inserting “issuer, broker, or dealer”; and

13 (2) in subsection (a)(2), by striking “issuers”
14 and inserting “issuers, brokers, or dealers”.

15 (h) FUNDING.—Section 109 of such Act is amend-
16 ed—

17 (1) in subsection (e)(2), by striking “subsection
18 (i)” and inserting “subsection (j)”;

19 (2) in subsection (d)(2), by striking “allowing
20 for differentiation among classes of issuers, as ap-
21 propriate” and inserting “and among brokers and
22 dealers in accordance with subsection (h), and allow-
23 ing for differentiation among classes of issuers and
24 brokers and dealers, as appropriate”;

1 (3) in subsection (d), by inserting at the end
2 the following new paragraph:

3 “(3) BROKERS AND DEALERS.—The rules of
4 the Board under paragraph (1) shall provide that
5 the allocation, assessment, and collection by the
6 Board (or an agent appointed by the Board) of the
7 fee established under paragraph (1) with respect to
8 brokers and dealers shall not begin until the first
9 day of the first full fiscal year beginning after the
10 date of the enactment of this paragraph.”;

11 (4) by redesignating subsections (h), (i), and (j)
12 as subsections (i), (j), and (k), respectively; and

13 (5) by inserting after subsection (g) the fol-
14 lowing new subsection:

15 “(h) ALLOCATION OF ACCOUNTING SUPPORT FEES
16 AMONG BROKERS AND DEALERS.—

17 “(1) IN GENERAL.—Any amount due from bro-
18 kers and dealers (or a particular class of such bro-
19 kers and dealers) under this section to fund the
20 budget of the Board shall be allocated among and
21 payable by such brokers and dealers (or such bro-
22 kers and dealers in a particular class, as applicable).
23 A broker or dealer’s allocation shall be in proportion
24 to the broker or dealer’s net capital compared to the

1 total net capital of all brokers and dealer, in accord-
2 ance with the rules of the Board.

3 “(2) OBLIGATION TO PAY.—Every broker or
4 dealer shall pay the share of a reasonable annual ac-
5 counting support fee or fees allocated to such broker
6 or dealer under this section.”.

7 (i) REFERRAL OF INVESTIGATIONS TO A SELF-REGU-
8 LATORY ORGANIZATION.—Section 105(b)(4)(B) of the
9 Sarbanes-Oxley Act of 2002 is amended—

10 (1) by redesignating clauses (ii) and (iii) as
11 clauses (iii) and (iv), respectively; and

12 (2) by inserting after clause (i) the following
13 new clause:

14 “(ii) to a self-regulatory organization,
15 in the case of an investigation that con-
16 cerns an audit report for a broker or deal-
17 er that is subject to the jurisdiction of
18 such self-regulatory organization;”.

19 (j) USE OF DOCUMENTS RELATED TO AN INSPEC-
20 TION OR INVESTIGATION.—Section 105(b)(5)(B)(ii) of
21 such Act is amended—

22 (1) in subclause (III), by striking “and”;

23 (2) in subclause (IV), by striking the comma
24 and inserting “; and”; and

1 (3) by inserting after subclause (IV) the fol-
2 lowing new subclause:

3 “(V) a self-regulatory organiza-
4 tion, with respect to an audit report
5 for a broker or dealer that is subject
6 to the jurisdiction of such self-regu-
7 latory organization.”.

8 **SEC. 7602. FOREIGN REGULATORY INFORMATION SHARING.**

9 (a) DEFINITION.—Section 2(a) of the Sarbanes-
10 Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended by
11 inserting after paragraph (16) the following:

12 “(17) FOREIGN AUDITOR OVERSIGHT AUTHOR-
13 ITY.—The term ‘foreign auditor oversight authority’
14 means any governmental body or other entity em-
15 powered by a foreign government to conduct inspec-
16 tions of public accounting firms or otherwise to ad-
17 minister or enforce laws related to the regulation of
18 public accounting firms.”.

19 (b) AVAILABILITY TO SHARE INFORMATION.—Sec-
20 tion 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15
21 U.S.C. 7215(b)(5)) is amended by adding at the end the
22 following:

23 “(C) AVAILABILITY TO FOREIGN OVER-
24 SIGHT AUTHORITIES.—When in the Board’s
25 discretion it is necessary to accomplish the pur-

1 poses of this Act or to protect investors, and
2 without the loss of its status as confidential and
3 privileged in the hands of the Board, all infor-
4 mation referred to in subparagraph (A) that re-
5 lates to a public accounting firm within the in-
6 spection authority, or other regulatory or law
7 enforcement jurisdiction, of a foreign auditor
8 oversight authority may be made available to
9 the foreign auditor oversight authority if the
10 foreign auditor oversight authority provides
11 such assurances of confidentiality as the Board
12 determines appropriate.”.

13 (c) CONFORMING AMENDMENT.—Section
14 105(b)(5)(A) of the Sarbanes-Oxley Act of 2002 (15
15 U.S.C. 7215(b)(5)(A)) is amended by striking “subpara-
16 graph (B)” and inserting “subparagraphs (B) and (C)”.

17 **SEC. 7603. EXPANSION OF AUDIT INFORMATION TO BE PRO-**
18 **DUCED AND EXCHANGED WITH FOREIGN**
19 **COUNTERPARTS.**

20 Section 106 of the Sarbanes-Oxley Act of 2002 (15
21 U.S.C. 7216) is amended—

22 (1) by amending subsection (b) to read as fol-
23 lows:

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 produce its audit work papers
8 and all other documents related to any such audit
9 work or interim review to the Commission or the
10 Board when requested by the Commission or the
11 Board and the foreign public accounting firm shall
12 be subject to the jurisdiction of the courts of the
13 United States for purposes of enforcement of any re-
14 quest of 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 foreign public accounting
21 firm’s audit work papers and all other docu-
22 ments related to any such work in response to
23 a request for production by the Commission or
24 the Board; and

1 “(B) secure the agreement of any foreign
2 public accounting firm to such production, as a
3 condition of its reliance on the work of that for-
4 eign public accounting firm.”;

5 (2) by redesignating subsection (d) as sub-
6 section (g); and

7 (3) by inserting after subsection (c) the fol-
8 lowing new subsections:

9 “(d) SERVICE OF REQUESTS OR PROCESS.—Any for-
10 eign public accounting firm that performs work for a do-
11 mestic registered public accounting firm shall furnish to
12 the domestic firm a written irrevocable consent and power
13 of attorney that designates the domestic firm as an agent
14 upon whom may be served any process, pleadings, or other
15 papers in any action brought to enforce this section. Any
16 foreign public accounting firm that issues an audit report,
17 performs audit work, performs interim reviews, or per-
18 forms other material services upon which a registered pub-
19 lic accounting firm relies in the conduct of an audit or
20 interim review, shall designate to the Commission or the
21 Board an agent in the United States upon whom may be
22 served any process, pleading, or other papers in any action
23 brought to enforce this section or any request by the Com-
24 mission or the Board under this section.

1 “(e) SANCTIONS.—A willful refusal to comply, in
2 whole in or in part, with any request by the Commission
3 or the Board under this section, shall be a violation of
4 this Act.

5 “(f) OTHER MEANS OF SATISFYING PRODUCTION
6 OBLIGATIONS.—Notwithstanding any other provision of
7 this section, the staff of the Commission or Board may
8 allow foreign public accounting firms subject to this sec-
9 tion to meet production obligations under this section
10 though alternate means, such as through foreign counter-
11 parts of the Commission or Board.”.

12 **SEC. 7604. CONFORMING AMENDMENT RELATED TO REG-**
13 **ISTRATION.**

14 Section 102(b)(3)(A) of the Sarbanes-Oxley Act of
15 2002 (15 U.S. Code 7212(b)(3)(A)) is amended by strik-
16 ing “by the Board” and inserting “by the Commission or
17 the Board”.

18 **SEC. 7605. FAIR FUND AMENDMENTS.**

19 Section 308 of the Sarbanes-Oxley Act of 2002 (15
20 U.S.C. 7246(a)) is amended—

21 (1) by amending subsection (a) to read as fol-
22 lows:

23 “(a) CIVIL PENALTIES TO BE USED FOR THE RE-
24 LIEF OF VICTIMS.—If in any judicial or administrative ac-
25 tion brought by the Commission under the securities laws

1 (as such term is defined in section 3(a)(47) of the Securi-
2 ties Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the
3 Commission obtains a civil penalty against any person for
4 a violation of such laws or the rules and regulations there-
5 under, or such person agrees in settlement of any such
6 action to such civil penalty, the amount of such civil pen-
7 alty or settlement shall, on the motion or at the direction
8 of the Commission, be added to and become part of a
9 disgorgement fund or other fund established for the ben-
10 efit of the victims of such violation.”;

11 (2) in subsection (b), by—

12 (A) striking “for a disgorgement fund de-
13 scribed in subsection (a)” and inserting “for a
14 disgorgement fund or other fund described in
15 subsection (a)”;

16 (B) striking “in the disgorgement fund”
17 and inserting “in such fund”;

18 (3) by striking subsection (e).

19 **SEC. 7606. EXEMPTION FOR NONACCELERATED FILERS.**

20 (a) EXEMPTION.—Section 404 of the Sarbanes-Oxley
21 Act of 2002 is amended by adding at the end the fol-
22 lowing:

23 “(c) EXEMPTION FOR SMALLER ISSUERS.—Sub-
24 section (b) shall not apply with respect to any audit report
25 prepared for an issuer that is not an accelerated filer with-

1 in the meaning Rule 12b-2 of the Commission (17 C.F.R.
2 240.12b-2).”.

3 (b) STUDY.—The Securities and Exchange Commis-
4 sion and the Comptroller General shall jointly conduct a
5 study to determine how the Commission could reduce the
6 burden of complying with section 404(b) of the Sarbanes-
7 Oxley Act of 2002 for companies whose market capitaliza-
8 tion is between \$75,000,000 and \$250,000,000 for the rel-
9 evant reporting period while maintaining investor protec-
10 tions for such companies. The study shall also consider
11 whether any such methods of reducing the compliance bur-
12 den or a complete exemption for such companies from
13 compliance with such section would encourage companies
14 to list on exchanges in the United States in their initial
15 public offerings. Not later than 180 days after the date
16 of the enactment of this subtitle, the Commission and the
17 Comptroller General shall transmit a report of such study
18 to Congress.

19 **SEC. 7607. WHISTLEBLOWER PROTECTION AGAINST RETAL-**
20 **IATION BY A SUBSIDIARY OF AN ISSUER.**

21 Section 1514A(a) of title 18, United States Code, is
22 amended by inserting “including any subsidiary or affil-
23 iate whose financial information is included in the consoli-
24 dated financial statements of such company,” after “(15
25 U.S.C. 78o(d)),”.

1 **SEC. 7608. CONGRESSIONAL ACCESS TO INFORMATION.**

2 Section 101 of the Sarbanes-Oxley Act of 2002 is
3 amended by adding at the end the following:

4 “(i) CONGRESSIONAL ACCESS TO INFORMATION.—

5 Nothing in this section shall—

6 “(1) affect the Boards obligations, if any, to
7 provide access to records under the Right to Finan-
8 cial Privacy Act; or

9 “(2) authorize the Board to withhold informa-
10 tion from Congress or prevent the Board from com-
11 plying with an order of a court of the United States
12 in an action commenced by the United States or the
13 Board.”.

14 **SEC. 7609. CREATION OF OMBUDSMAN FOR THE PCAOB.**

15 (a) OMBUDSMAN.—Title I of the Sarbanes-Oxley Act
16 of 2002 (15 U.S.C. 7211 et seq.), as amended by section
17 7601(a)(1), is further amended by adding at the end the
18 following new section:

19 **“SEC. 111. OMBUDSMAN.**

20 “(a) ESTABLISHMENT REQUIRED.—Not later than
21 180 days after the date of enactment of the Investor Pro-
22 tection Act, the Board shall appoint an ombudsman for
23 the Board. The Ombudsman shall report directly to the
24 Chairman.

1 “(b) DUTIES OF OMBUDSMAN.—The ombudsman ap-
2 pointed in accordance with subsection (a) for the Board
3 shall—

4 “(1) act as a liaison between the Board and—

5 “(A) any registered public accounting firm
6 or issuer with respect to issues or disputes con-
7 cerning the preparation or issuance of any audit
8 report with respect to that issuer; and

9 “(B) any affected registered public ac-
10 counting firm or issuer with respect to—

11 “(i) any problem such firm or issuer
12 may have in dealing with the Board result-
13 ing from the regulatory activities of the
14 Board, particularly with regard to the im-
15 plementation of section 404; and

16 “(ii) issues caused by the relationships
17 of registered public accounting firms and
18 issuers generally; and

19 “(2) assure that safeguards exist to encourage
20 complainants to come forward and to preserve con-
21 fidentiality; and

22 “(3) carry out such activities, and any other ac-
23 tivities assigned by the Board, in accordance with
24 guidelines prescribed by the Board.”.

1 (b) CONFORMING AMENDMENT.—The table of sec-
2 tions in section 1(b) of such Act is amended, by inserting
3 after the item relating to section 110 (as added by section
4 601(a)(2)) the following new item:

“Sec. 111. Ombudsman.”.

5 **SEC. 7610. AUDITING OVERSIGHT BOARD.**

6 The Sarbanes-Oxley Act of 2002 is amended—

7 (1) in section 2(a)(5), by striking “Public Com-
8 pany Accounting Oversight Board” and inserting
9 “Auditing Oversight Board”;

10 (2) in section 101(a), by striking “Public Com-
11 pany Accounting Oversight Board” and inserting
12 “Auditing Oversight Board”; and

13 (3) in the heading of title I, by striking “**PUB-**
14 **LIC COMPANY ACCOUNTING OVER-**
15 **SIGHT BOARD**” and inserting “**AUDITING**
16 **OVERSIGHT BOARD**”.

17 **PART 7—SENIOR INVESTMENT PROTECTION**

18 **SEC. 7701. FINDINGS.**

19 Congress finds that—

20 (1) many seniors are targeted by salespersons
21 and advisers using misleading certifications and pro-
22 fessional designations;

23 (2) many certifications and professional des-
24 ignations used by salespersons and advisers rep-
25 resent limited training or expertise, and may in fact

1 be of no value with respect to advising seniors on fi-
2 nancial and estate planning matters, and far too
3 often, such designations are obtained simply by at-
4 tending a weekend seminar and passing an open
5 book, multiple choice test;

6 (3) many seniors have lost their life savings be-
7 cause salespersons and advisers holding a misleading
8 designation have steered them toward products that
9 were unsuitable for them, given their retirement
10 needs and life expectancies;

11 (4) seniors have a right to clearly know whether
12 they are working with a qualified adviser who under-
13 stands the products and is working in their best in-
14 terest or a self-interested salesperson or adviser ad-
15 vocating particular products; and

16 (5) many existing State laws and enforcement
17 measures addressing the use of certifications, profes-
18 sional designations, and suitability standards in sell-
19 ing financial products to seniors are inadequate to
20 protect senior investors from salespersons and advis-
21 ers using such designations.

22 **SEC. 7702. DEFINITIONS.**

23 For purposes of this part:

24 (1) MISLEADING DESIGNATION.—The term
25 “misleading designation”—

1 (A) means the use of a purported certifi-
2 cation, professional designation, or other cre-
3 dential, that indicates or implies that a sales-
4 person or adviser has special certification or
5 training in advising or servicing seniors; and

6 (B) does not include any legitimate certifi-
7 cation, professional designation, license, or
8 other credential, if—

9 (i) it has been offered by an academic
10 institution having regional accreditation; or

11 (ii) it meets the standards for certifi-
12 cations, licenses, and professional designa-
13 tions outlined by the North American Se-
14 curities Administrators Association (in this
15 part referred to as the “NASAA”) Model
16 Rule on the Use of Senior-Specific Certifi-
17 cations and Professional Designations, as
18 in effect on the date of the enactment of
19 this subtitle, or any successor thereto, or it
20 was issued by or obtained from any State.

21 (2) FINANCIAL PRODUCT.—The term “financial
22 product” means securities, insurance products (in-
23 cluding insurance products which pay a return,
24 whether fixed or variable), and bank and loan prod-
25 ucts.

1 (3) MISLEADING OR FRAUDULENT MAR-
2 KETING.—The term “misleading or fraudulent mar-
3 keting” means the use of a misleading designation
4 when selling to or advising a senior about the sale
5 of a financial product.

6 (4) SENIOR.—The term “senior” means any in-
7 dividual who has attained the age of 62 years or
8 more.

9 (5) STATE.—The term “State” means each of
10 the 50 States, the District of Columbia, and the un-
11 incorporated territories of Puerto Rico and the U.S.
12 Virgin Islands.

13 **SEC. 7703. GRANTS TO STATES FOR ENHANCED PROTEC-**
14 **TION OF SENIORS FROM BEING MISLEAD BY**
15 **FALSE DESIGNATIONS.**

16 (a) GRANT PROGRAM.—The Securities and Exchange
17 Commission (in this part referred to as the “Commis-
18 sion”)—

19 (1) shall establish a program in accordance with
20 this part to provide grants to States—

21 (A) to investigate and prosecute misleading
22 and fraudulent marketing practices; or

23 (B) to develop educational materials and
24 training aimed at reducing misleading and

1 fraudulent marketing of financial products to-
2 ward seniors; and

3 (2) may establish such performance objectives,
4 reporting requirements, and application procedures
5 for States and State agencies receiving grants under
6 this part as the Commission determines are nec-
7 essary to carry out and assess the effectiveness of
8 the program under this part.

9 (b) USE OF GRANT AMOUNTS.—A grant under this
10 part may be used (including through subgrants) by the
11 State or the appropriate State agency designated by the
12 State—

13 (1) to fund additional staff to identify, inves-
14 tigate, and prosecute (through civil, administrative,
15 or criminal enforcement actions) cases involving mis-
16 leading or fraudulent marketing of financial prod-
17 ucts to seniors;

18 (2) to fund technology, equipment, and training
19 for regulators, prosecutors, and law enforcement in
20 order to identify salespersons and advisers who tar-
21 get seniors through the use of misleading designa-
22 tions;

23 (3) to fund technology, equipment, and training
24 for prosecutors to increase the successful prosecution

1 of those targeting seniors with the use of misleading
2 designations;

3 (4) to provide educational materials and train-
4 ing to regulators on the appropriateness of the use
5 of designations by salespersons and advisers of fi-
6 nancial products;

7 (5) to provide educational materials and train-
8 ing to seniors to increase their awareness and under-
9 standing of designations; and

10 (6) to develop comprehensive plans to combat
11 misleading or fraudulent marketing of financial
12 products to seniors.

13 (c) GRANT REQUIREMENTS.—

14 (1) MAXIMUM.—The amount of a grant under
15 this part may not exceed \$500,000 per fiscal year
16 per State, if all requirements of paragraphs (2), (3),
17 (4), and (5) are met. Such amount shall be limited
18 to \$100,000 per fiscal year per State in any case in
19 which the State meets the requirements of—

20 (A) paragraphs (2) and (3), but not each
21 of paragraphs (4) and (5); or

22 (B) paragraphs (4) and (5), but not each
23 of paragraphs (2) and (3).

24 (2) STANDARD DESIGNATION RULES FOR SECURITIES.—A State shall have adopted rules on the ap-
25

1 appropriate use of designations in the offer or sale of
2 securities or investment advice, which shall meet or
3 exceed the minimum requirements of the NASAA
4 Model Rule on the Use of Senior-Specific Certifi-
5 cations and Professional Designations, as in effect
6 on the date of the enactment of this subtitle, or any
7 successor thereto.

8 (3) SUITABILITY RULES FOR SECURITIES.—A
9 State shall have adopted standard rules on the suit-
10 ability requirements in the sale of securities, which
11 shall, to the extent practicable, conform to the min-
12 imum requirements on suitability imposed by self-
13 regulatory organization rules under the securities
14 laws (as defined in section 3 of the Securities Ex-
15 change Act of 1934).

16 (4) STANDARD DESIGNATION RULES FOR IN-
17 SURANCE PRODUCTS.—A State shall have adopted
18 standard rules on the appropriate use of designa-
19 tions in the sale of insurance products, which shall,
20 to the extent practicable, conform to the minimum
21 requirements of the National Association of Insur-
22 ance Commissioners Model Regulation on the Use of
23 Senior-Specific Certifications and Professional Des-
24 ignations in the Sale of Life Insurance and Annu-

1 ities, as in effect on the date of the enactment of
2 this subtitle, or any successor thereto.

3 (5) SUITABILITY AND SUPERVISION RULES FOR
4 ANNUITY PRODUCTS.—

5 (A) IN GENERAL.—A State shall have
6 adopted rules governing insurer supervision of,
7 suitability of, and insurer and insurance pro-
8 ducer conduct relating to, the sale of annuity
9 products, including fixed and index annuities.

10 (B) ANNUITY PRODUCTS CRITERIA.—The
11 rules required by subparagraph (A) shall, to the
12 extent practicable, provide—

13 (i) that insurers, and insurance pro-
14 ducers are responsible for, and liable for
15 penalties for, the suitability of each rec-
16 ommended annuity transaction;

17 (ii) that insurers and insurance pro-
18 ducers are required to apply a standard for
19 determining the suitability of each rec-
20 ommended annuity transaction, including
21 fixed and index annuities, that is at least
22 as protective of the interests of the con-
23 sumer as rule 2821(b) of the Financial In-
24 dustry Regulatory Authority (in this para-
25 graph referred to as “FINRA”), as in ef-

1 fect on the date of the enactment of this
2 subtitle, or any successor to such rule;

3 (iii) that insurers and insurance pro-
4 ducers are required to maintain a process
5 for review of the suitability, and approval
6 or disapproval, of each recommended annu-
7 ity transaction that is at least as protective
8 of the interests of the consumer as the
9 principal review required under rule
10 2821(c) of FINRA, as in effect on the date
11 of the enactment of this subtitle, or any
12 successor to such rule;

13 (iv) that insurers and insurance pro-
14 ducers are required to maintain processes
15 for the supervision of direct annuity sales
16 and insurance producer-recommended an-
17 nuity sales (including procedures for the
18 insurer to obtain and confirm consumer
19 suitability information and for the insurer
20 to confirm consumer understanding of the
21 annuity transaction) that are at least as
22 protective of the interests of the consumer
23 as member broker and dealer supervision
24 requirements of FINRA, as in effect on

1 the date of the enactment of this subtitle,
2 or any successor to such requirements;

3 (v) that insurers are required to verify
4 that each insurance producer successfully
5 completes, and each insurance producer is
6 required to receive, training designed to
7 ensure that the insurance producer is com-
8 petent to recommend each class of annuity;

9 (vi) that insurers are required to
10 verify that insurance producers receive,
11 and insurance producers are required to
12 receive, training regarding the features of
13 each offered annuity product, to an extent
14 that is at least as protective of the inter-
15 ests of the consumer as the FINRA firm
16 element training requirements, as in effect
17 on the date of the enactment of this sub-
18 title, or any successor to such require-
19 ments;

20 (vii) for coordination of such rules
21 with the rules of FINRA governing mem-
22 ber brokers, dealers, and security rep-
23 resentatives, to the extent appropriate,
24 consistent with protecting the interests of
25 consumers, for State insurance regulators

1 to rely on, or to avoid duplication of
2 FINRA rules; and
3 (viii) for exemption from such rules
4 only if such exemption is consistent with
5 the protection of consumers.

6 **SEC. 7704. APPLICATIONS.**

7 To be eligible for a grant under this part, the State
8 or appropriate State agency shall submit to the Commis-
9 sion a proposal to use the grant money to protect seniors
10 from misleading or fraudulent marketing techniques in the
11 offer and sale of financial products, which application
12 shall—

13 (1) identify the scope of the problem;

14 (2) describe how the proposed program will help
15 to protect seniors from misleading or fraudulent
16 marketing in the sale of financial products, includ-
17 ing, at a minimum—

18 (A) by proactively identifying senior vic-
19 tims of misleading and fraudulent marketing in
20 the offer and sale of financial products;

21 (B) how the proposed program can assist
22 in the investigation and prosecution of those
23 using misleading or fraudulent marketing in the
24 offer and sale of financial products to seniors;
25 and

1 (C) how the proposed program can help
2 discourage and reduce future cases of mis-
3 leading or fraudulent marketing in the offer
4 and sale of financial products to seniors; and
5 (3) describe how the proposed program is to be
6 integrated with other existing State efforts.

7 **SEC. 7705. LENGTH OF PARTICIPATION.**

8 A State receiving a grant under this part shall be
9 provided assistance funds for a period of 3 years, after
10 which the State may reapply for additional funding.

11 **SEC. 7706. AUTHORIZATION OF APPROPRIATIONS.**

12 There are authorized to be appropriated to carry out
13 this part, \$8,000,000 for each of the fiscal years 2011
14 through 2015.

15 **PART 8—REGISTRATION OF MUNICIPAL**
16 **FINANCIAL ADVISORS**

17 **SEC. 7801. MUNICIPAL FINANCIAL ADVISER REGISTRATION**
18 **REQUIREMENT.**

19 (a) IN GENERAL.—The Securities Exchange Act of
20 1934 (as amended by section 3204) is amended by insert-
21 ing after section 15F (15 U.S.C. 78o–7) the following new
22 section:

1 **“SEC. 15G. MUNICIPAL FINANCIAL ADVISER REGISTRATION**
2 **REQUIREMENT.**

3 “(a)(1)(A) It shall be unlawful for any person to
4 make use of the mails or any means or instrumentality
5 of interstate commerce to act as a municipal financial ad-
6 viser unless such person is registered as a municipal finan-
7 cial adviser in accordance with subsection (b).

8 “(B) Subparagraph (A) shall not apply to a natural
9 person associated with a municipal financial adviser, as
10 long as such adviser is registered in accordance with sub-
11 section (b) and is not a natural person.

12 “(2) The Commission, by rule or order, as it deems
13 consistent with the public interest and the protection of
14 investors, may conditionally or unconditionally exempt
15 from paragraph (1) of this section any municipal financial
16 adviser or class of municipal financial advisers specified
17 in such rule or order.

18 “(b)(1) A municipal financial adviser may be reg-
19 istered by filing with the Commission an application for
20 registration in such form and containing such information
21 and documents concerning such municipal financial ad-
22 viser and any persons associated with such municipal fi-
23 nancial adviser as the Commission, by rule, may prescribe
24 as necessary or appropriate in the public interest or for
25 the protection of investors. Within 45 days of the date of
26 the filing of such application (or within such longer period

1 as to which the applicant consents), the Commission
2 shall—

3 “(A) by order grant registration, or

4 “(B) institute proceedings to determine whether reg-
5 istration should be denied. Such proceedings shall include
6 notice of the grounds for denial under consideration and
7 opportunity for hearing and shall be concluded within 120
8 days of the date of the filing of the application for reg-
9 istration. At the conclusion of such proceedings, the Com-
10 mission, by order, shall grant or deny such registration.
11 The Commission may extend the time for conclusion of
12 such proceedings for up to 90 days if it finds good cause
13 for such extension and publishes its reasons for so finding
14 or for such longer period as to which the applicant con-
15 sents.

16 The Commission shall grant such registration if the Com-
17 mission finds that the requirements of this section are sat-
18 isfied. The Commission shall deny such registration if it
19 does not make such a finding or if it finds that if the
20 applicant were so registered, its registration would be sub-
21 ject to suspension or revocation under paragraph (4).

22 “(2) An application for registration of a municipal
23 financial adviser to be formed or organized may be made
24 by a municipal financial adviser to which the municipal
25 financial adviser to be formed or organized is to be the

1 successor. Such application, in such form as the Commis-
2 sion, by rule, may prescribe, shall contain such informa-
3 tion and documents concerning the applicant, the suc-
4 cessor, and any persons associated with the applicant or
5 the successor, as the Commission, by rule, may prescribe
6 as necessary or appropriate in the public interest or for
7 the protection of investors. The grant or denial of registra-
8 tion to such an applicant shall be in accordance with the
9 procedures set forth in paragraph (1) of this subsection.
10 If the Commission grants such registration, the registra-
11 tion shall terminate on the 45th day after the effective
12 date thereof, unless prior thereto the successor shall, in
13 accordance with such rules and regulations as the Com-
14 mission may prescribe, adopt the application for registra-
15 tion as its own.

16 “(3) Any provision of this title (other than section
17 5 and subsection (a) of this section) which prohibits any
18 act, practice, or course of business if the mails or any
19 means or instrumentality of interstate commerce is used
20 in connection therewith shall also prohibit any such act,
21 practice, or course of business by any registered municipal
22 financial adviser or any person acting on behalf of such
23 a municipal financial adviser, irrespective of any use of
24 the mails or any means or instrumentality of interstate
25 commerce in connection therewith.

1 “(4) The Commission, by order, shall censure, place
2 limitations on the activities, functions, or operations of,
3 suspend for a period not exceeding 12 months, or revoke
4 the registration of any municipal financial adviser if it
5 finds, on the record after notice and opportunity for hear-
6 ing, that such censure, placing of limitations, suspension,
7 or revocation is in the public interest and that such munic-
8 ipal financial adviser, whether prior or subsequent to be-
9 coming such, or any person associated with such municipal
10 financial adviser, whether prior or subsequent to becoming
11 so associated—

12 “(A) has willfully made or caused to be made
13 in any application for registration or report required
14 to be filed with the Commission or with any other
15 appropriate regulatory agency under this title, or in
16 any proceeding before the Commission with respect
17 to registration, any statement which was at the time
18 and in the light of the circumstances under which it
19 was made false or misleading with respect to any
20 material fact, or has omitted to state in any such
21 application or report any material fact which is re-
22 quired to be stated therein;

23 “(B) has been convicted within 10 years pre-
24 ceding the filing of any application for registration
25 or at any time thereafter of any felony or mis-

1 demeanor or of a substantially equivalent crime by
2 a foreign court of competent jurisdiction which the
3 Commission finds—

4 “(i) involves the purchase or sale of any
5 security, the taking of a false oath, the making
6 of a false report, bribery, perjury, burglary, any
7 substantially equivalent activity however de-
8 nominated by the laws of the relevant foreign
9 government, or conspiracy to commit any such
10 offense;

11 “(ii) arises out of the conduct of the busi-
12 ness of a municipal financial adviser, broker,
13 dealer, municipal securities dealer, government
14 securities broker, government securities dealer,
15 investment adviser, bank, insurance company,
16 fiduciary, transfer agent, nationally recognized
17 statistical rating organization, foreign person
18 performing a function substantially equivalent
19 to any of the above, or entity or person required
20 to be registered under the Commodity Ex-
21 change Act (7 U.S.C. 1 et seq.) or any substan-
22 tially equivalent foreign statute or regulation;

23 “(iii) involves the larceny, theft, robbery,
24 extortion, forgery, counterfeiting, fraudulent
25 concealment, embezzlement, fraudulent conver-

1 sion, or misappropriation of funds, or securities,
2 or substantially equivalent activity however de-
3 nominated by the laws of the relevant foreign
4 government; or

5 “(iv) involves the violation of section 152,
6 1341, 1342, or 1343 or chapter 25 or 47 of
7 title 18, or a violation of a substantially equiva-
8 lent foreign statute;

9 “(C) is permanently or temporarily enjoined by
10 order, judgment, or decree of any court of competent
11 jurisdiction from acting as a municipal financial ad-
12 viser, investment adviser, underwriter, broker, deal-
13 er, municipal securities dealer, government securities
14 broker, government securities dealer, transfer agent,
15 nationally recognized statistical rating organization,
16 foreign person performing a function substantially
17 equivalent to any of the above, or entity or person
18 required to be registered under the Commodity Ex-
19 change Act or any substantially equivalent foreign
20 statute or regulation, or as an affiliated person or
21 employee of any investment company, bank, insur-
22 ance company, foreign entity substantially equivalent
23 to any of the above, or entity or person required to
24 be registered under the Commodity Exchange Act or
25 any substantially equivalent foreign statute or regu-

1 lation or from engaging in or continuing any con-
2 duct or practice in connection with any such activity,
3 or in connection with the purchase or sale of any se-
4 curity;

5 “(D) has willfully violated any provision of the
6 Securities Act of 1933, the Investment Advisers Act
7 of 1940, the Investment Company Act of 1940, the
8 Commodity Exchange Act, this title, the rules or
9 regulations under any of such statutes, or is unable
10 to comply with any such provision;

11 “(E) has willfully aided, abetted, counseled,
12 commanded, induced, or procured the violation by
13 any other person of any provision of the Securities
14 Act of 1933, the Investment Advisers Act of 1940,
15 the Investment Company Act of 1940, the Com-
16modity Exchange Act, this title, the rules or regula-
17 tions under any of such statutes, or has failed rea-
18 sonably to supervise, with a view to preventing viola-
19 tions of the provisions of such statutes, rules, and
20 regulations, another person who commits such a vio-
21 lation, if such other person is subject to his super-
22 vision. For the purposes of this subparagraph, no
23 person shall be deemed to have failed reasonably to
24 supervise any other person, if—

1 “(i) there have been established proce-
2 dures, and a system for applying such proce-
3 dures, which would reasonably be expected to
4 prevent and detect, insofar as practicable, any
5 such violation by such other person, and

6 “(ii) such person has reasonably dis-
7 charged the duties and obligations incumbent
8 upon him by reason of such procedures and sys-
9 tem without reasonable cause to believe that
10 such procedures and system were not being
11 complied with;

12 “(F) is subject to any order of the Commission
13 barring or suspending the right of the person to be
14 associated with a municipal financial adviser;

15 “(G) has been found by a foreign financial reg-
16 ulatory authority to have—

17 “(i) made or caused to be made in any ap-
18 plication for registration or report required to
19 be filed with a foreign financial regulatory au-
20 thority, or in any proceeding before a foreign fi-
21 nancial regulatory authority with respect to reg-
22 istration, any statement that was at the time
23 and in the light of the circumstances under
24 which it was made false or misleading with re-
25 spect to any material fact, or has omitted to

1 state in any application or report to the foreign
2 financial regulatory authority any material fact
3 that is required to be stated therein;

4 “(ii) violated any foreign statute or regula-
5 tion regarding transactions in securities, or con-
6 tracts of sale of a commodity for future deliv-
7 ery, traded on or subject to the rules of a con-
8 tract market or any board of trade; or

9 “(iii) aided, abetted, counseled, com-
10 manded, induced, or procured the violation by
11 any person of any provision of any statutory
12 provisions enacted by a foreign government, or
13 rules or regulations thereunder, empowering a
14 foreign financial regulatory authority regarding
15 transactions in securities, or contracts of sale of
16 a commodity for future delivery, traded on or
17 subject to the rules of a contract market or any
18 board of trade, or has been found, by a foreign
19 financial regulatory authority, to have failed
20 reasonably to supervise, with a view to pre-
21 venting violations of such statutory provisions,
22 rules, and regulations, another person who com-
23 mits such a violation, if such other person is
24 subject to his supervision; or

1 “(H) is subject to any final order of a State se-
2 curities commission (or any agency or officer per-
3 forming like functions), State authority that super-
4 vises or examines banks, savings associations, or
5 credit unions, State insurance commission (or any
6 agency or office performing like functions), an ap-
7 propriate Federal banking agency (as defined in sec-
8 tion 3 of the Federal Deposit Insurance Act (12
9 U.S.C. 1813(q))), or the National Credit Union Ad-
10 ministration, that—

11 “(i) bars such person from association with
12 an entity regulated by such commission, author-
13 ity, agency, or officer, or from engaging in the
14 business of securities, insurance, banking, sav-
15 ings association activities, or credit union activi-
16 ties; or

17 “(ii) constitutes a final order based on vio-
18 lations of any laws or regulations that prohibit
19 fraudulent, manipulative, or deceptive conduct.

20 “(5) Pending final determination whether any reg-
21 istration under this subsection shall be revoked, the Com-
22 mission, by order, may suspend such registration, if such
23 suspension appears to the Commission, after notice and
24 opportunity for hearing, to be necessary or appropriate in
25 the public interest or for the protection of investors. Any

1 registered municipal financial adviser may, upon such
2 terms and conditions as the Commission deems necessary
3 or appropriate in the public interest or for the protection
4 of investors, withdraw from registration by filing a written
5 notice of withdrawal with the Commission. If the Commis-
6 sion finds that any registered municipal financial adviser
7 is no longer in existence or has ceased to do business as
8 a municipal financial adviser, the Commission, by order,
9 shall cancel the registration of such municipal financial
10 adviser.

11 “(6)(A) With respect to any person who is associated,
12 who is seeking to become associated, or, at the time of
13 the alleged misconduct, who was associated or was seeking
14 to become associated with a municipal financial adviser,
15 the Commission, by order, shall censure, place limitations
16 on the activities or functions of such person, or suspend
17 for a period not exceeding 12 months, or bar such person
18 from being associated with a municipal financial adviser,
19 if the Commission finds, on the record after notice and
20 opportunity for a hearing, that such censure, placing of
21 limitations, suspension, or bar is in the public interest and
22 that such person—

23 “(i) has committed or omitted any act, or is
24 subject to an order or finding, enumerated in sub-

1 paragraph (A), (D), or (E) of paragraph (4) of this
2 subsection;

3 “(ii) has been convicted of any offense specified
4 in subparagraph (B) of such paragraph (4) within
5 10 years of the commencement of the proceedings
6 under this paragraph; or

7 “(iii) is enjoined from any action, conduct, or
8 practice specified in subparagraph (C) of such para-
9 graph (4).

10 “(B) It shall be unlawful—

11 “(i) for any person as to whom an order under
12 subparagraph (A) is in effect, without the consent of
13 the Commission, willfully to become, or to be, associ-
14 ated with a municipal financial adviser in contraven-
15 tion of such order; or

16 “(ii) for any municipal financial adviser to per-
17 mit such a person, without the consent of the Com-
18 mission, to become or remain, a person associated
19 with the municipal financial adviser in contravention
20 of such order, if such municipal financial adviser
21 knew, or in the exercise of reasonable care should
22 have known, of such order.

23 “(7) No registered municipal financial adviser shall
24 act as such unless it meets such standards of operational
25 capability and such municipal financial adviser and all

1 natural persons associated with such municipal financial
2 adviser meet such standards of training, experience, com-
3 petence, and such other qualifications as the Commission
4 finds necessary or appropriate in the public interest or for
5 the protection of investors. The Commission shall establish
6 such standards by rules and regulations, which may—

7 “(A) specify that all or any portion of such
8 standards shall be applicable to any class of munic-
9 ipal financial advisers and persons associated with
10 municipal financial advisers;

11 “(B) require persons in any such class to pass
12 tests prescribed in accordance with such rules and
13 regulations, which tests shall, with respect to any
14 class of partners, officers, or supervisory employees
15 (which latter term may be defined by the Commis-
16 sion’s rules and regulations) engaged in the manage-
17 ment of the municipal financial adviser, include
18 questions relating to bookkeeping, accounting, super-
19 vision of employees, maintenance of records, and
20 other appropriate matters; and

21 “(C) provide that persons in any such class
22 other than municipal financial advisers and partners,
23 officers, and supervisory employees of municipal fi-
24 nancial advisers, may be qualified solely on the basis
25 of compliance with such standards of training and

1 such other qualifications as the Commission finds
2 appropriate.

3 The Commission, by rule, may prescribe reasonable fees
4 and charges to defray its costs in carrying out this para-
5 graph, including, but not limited to, fees for any test ad-
6 ministered by it or under its direction.

7 “(c)(1)(A) No municipal financial adviser shall make
8 use of the mails or any means or instrumentality of inter-
9 state commerce in connection with which such municipal
10 financial adviser engages in any fraudulent, deceptive, or
11 manipulative act or practice or violates such rules and reg-
12 ulations regarding conflicts of interest or fair practices,
13 including but not limited to rules and regulations related
14 to political contributions, as the Commission shall pre-
15 scribe in the public interest or for the protection of inves-
16 tors or to maintain fair and orderly markets.

17 “(B) The Commission shall, for the purposes of this
18 paragraph as the Commission finds necessary or appro-
19 priate in the public interest or for the protection of inves-
20 tors, by rules and regulations define, and prescribe means
21 reasonably designed to prevent, such acts and practices
22 as are fraudulent, deceptive, or manipulative.

23 “(2) If the Commission finds, after notice and oppor-
24 tunity for a hearing, that any person subject to the provi-
25 sions of this section or any rule or regulation thereunder

1 has failed to comply with any such provision, rule, or regu-
2 lation in any material respect, the Commission may pub-
3 lish its findings and issue an order requiring such person,
4 and any person who was a cause of the failure to comply
5 due to an act or omission the person knew or should have
6 known would contribute to the failure to comply, to com-
7 ply, or to take steps to effect compliance, with such provi-
8 sion or such rule or regulation thereunder upon such
9 terms and conditions and within such time as the Commis-
10 sion may specify in such order.

11 “(d) Every registered municipal financial adviser
12 shall establish, maintain, and enforce written policies and
13 procedures reasonably designed, taking into consideration
14 the nature of such municipal financial adviser’s business,
15 to prevent the misuse in violation of this title, or the rules
16 or regulations thereunder, of material, nonpublic informa-
17 tion by such municipal financial adviser or any person as-
18 sociated with such municipal financial adviser. The Com-
19 mission, as it deems necessary or appropriate in the public
20 interest or for the protection of investors, shall adopt rules
21 or regulations to require specific policies or procedures
22 reasonably designed to prevent misuse in violation of this
23 title (or the rules or regulations thereunder) of material,
24 nonpublic information.

1 “(e) A municipal financial adviser and any person as-
2 sociated with such municipal financial adviser shall be
3 deemed to have a fiduciary duty to any municipal securi-
4 ties issuer for whom such municipal financial adviser acts
5 as a municipal financial adviser. A municipal financial ad-
6 viser may not engage in any act, practice, or course of
7 business which is not consistent with a municipal financial
8 adviser’s fiduciary duty. The Commission shall, for the
9 purposes of this paragraph, by rules and regulations de-
10 fine, and prescribe means reasonably designed to prevent,
11 such acts, practices, and courses of business as are not
12 consistent with a municipal financial adviser’s fiduciary
13 duty to its clients.”.

14 (b) DEFINITION.—Section 3(a) of the Securities Ex-
15 change Act of 1934 (15 U.S.C. 78c(a)) (as amended by
16 section 3201(6)) is amended by adding at the end the fol-
17 lowing new paragraphs:

18 “(78) MUNICIPAL FINANCIAL ADVISER.—

19 “(A) The term ‘municipal financial adviser’
20 means a person who, for compensation, engages
21 in the business of—

22 “(i) providing advice to a municipal
23 securities issuer with respect to—

24 “(I) the issuance or proposed
25 issuance of securities, including any

1 remarketing of municipal securities
2 directly or indirectly by or on behalf
3 of a municipal securities issuer;

4 “(II) the investment of proceeds
5 from securities issued by such munic-
6 ipal securities issuer;

7 “(III) the hedging of any risks
8 associated with subclauses (I) or (II),
9 including advice as to swap agree-
10 ments (as defined in section 206A of
11 the Gramm-Leach-Bliley Act regard-
12 less of whether the counterparties
13 constitute eligible contract partici-
14 pants); or

15 “(IV) preparation of disclosure
16 documents in connection with the
17 issuance, proposed issuance, or pre-
18 vious issuance of securities issued by
19 a municipal securities issuer, includ-
20 ing, without limitation, official state-
21 ments and documents prepared in
22 connection with a written agreement
23 or contract for the benefit of holders
24 of such securities described in section

1 240.15c2–12 of title 17, Code of Fed-
2 eral Regulations;

3 “(ii) assisting a municipal securities
4 issuer in selecting or negotiating guaran-
5 teed investment contracts or other invest-
6 ment products; or

7 “(iii) assisting any municipal securi-
8 ties issuer in the primary offering of secu-
9 rities not involving a public offering.

10 “(B) Such term does not include—

11 “(i) an attorney, if the attorney is of-
12 fering advice or providing services that are
13 of a traditional legal nature;

14 “(ii) a nationally recognized statistical
15 rating organization to the extent it is in-
16 volved in the process of developing credit
17 ratings;

18 “(iii) a registered broker-dealer when
19 acting as an underwriter, as such term is
20 defined in section 2(a)(11) of the Securi-
21 ties Act of 1933 (15 U.S.C. section
22 77b(a)(11)); or

23 “(iv) a State or any political subdivi-
24 sion thereof.

1 “(79) MUNICIPAL SECURITIES ISSUER.—The
2 term ‘municipal securities issuer’ means—

3 “(A) any entity that has the ability to
4 issue a security the interest on which is exclud-
5 able from gross income under section 103 of the
6 Internal Revenue Code of 1986 and the regula-
7 tions thereunder; or

8 “(B) any person who receives the proceeds
9 generated from the issuance of municipal secu-
10 rities.

11 “(80) PERSON ASSOCIATED WITH A MUNICIPAL
12 FINANCIAL ADVISER; ASSOCIATED PERSON OF A MU-
13 NICIPAL FINANCIAL ADVISER.—The term ‘person as-
14 sociated with a municipal financial adviser’ or ‘asso-
15 ciated person of a municipal financial adviser’ means
16 any partner, officer, director, or branch manager of
17 such municipal financial adviser (or any person oc-
18 cupying a similar status or performing similar func-
19 tions), any person directly or indirectly controlling,
20 controlled by, or under common control with such
21 municipal financial adviser, or any employee of such
22 municipal financial adviser, except that any person
23 associated with a municipal financial adviser whose
24 functions are solely clerical or ministerial shall not
25 be included in the meaning of such term for pur-

1 poses of section 15G(b) (other than paragraph (6)
2 thereof).”.

3 **SEC. 7802. CONFORMING AMENDMENTS.**

4 (a) SECURITIES EXCHANGE ACT OF 1934.—The Se-
5 curities Exchange Act of 1934 is amended—

6 (1) in section 15(b)(4)(B)(ii) (15 U.S.C.
7 78o(b)(4)(B)(ii)), by inserting “municipal finance
8 adviser,” after “nationally recognized statistical rat-
9 ing organization,”;

10 (2) in section 15(b)(4)(C) (15 U.S.C.
11 78o(b)(4)(C)), by inserting “municipal finance ad-
12 viser,” after “nationally recognized statistical rating
13 organization,”; and

14 (3) in section 17(a)(1) (15 U.S.C. 78q(a)(1)),
15 by inserting “registered municipal financial adviser,”
16 after “nationally recognized statistical rating organi-
17 zation,”.

18 (b) INVESTMENT COMPANY ACT OF 1940.—The In-
19 vestment Company Act of 1940 is amended—

20 (1) in section 2(a) (15 U.S.C. 80a-2(a)), by in-
21 serting at the end the following new paragraph:

22 “(54) The term ‘municipal finance adviser’ has
23 the same meaning as in section 3 of the Securities
24 Exchange Act of 1934.”;

1 (2) in section 9(a)(1) (15 U.S.C. 80a–9(a)(1)),
2 by inserting “municipal finance adviser,” after
3 “credit rating agency,”; and

4 (3) in section 9(a)(2) (15 U.S.C. 80a–9(a)(2)),
5 by inserting “municipal finance adviser,” after
6 “credit rating agency,”.

7 (c) INVESTMENT ADVISERS ACT OF 1940.—The In-
8 vestment Advisers Act of 1940 is amended—

9 (1) in section 202(a) (15 U.S.C. 80b–2(a)), by
10 inserting at the end the following new paragraph:

11 “(31) The term ‘municipal finance adviser’ has
12 the same meaning as in section 3 of the Securities
13 Exchange Act of 1934.”;

14 (2) in section 203(e)(2)(B) (15 U.S.C. 80b–
15 3(e)(2)(B)), by inserting “municipal finance ad-
16 viser,” after “credit rating agency,”; and

17 (3) in section 203(e)(4) (15 U.S.C. 80b–
18 3(e)(4)) is amended by inserting “municipal finance
19 adviser,” after “credit rating agency,”.

20 **SEC. 7803. EFFECTIVE DATES.**

21 (a) IN GENERAL.—The amendments made by this
22 part shall take effect 30 days after the date of the enact-
23 ment of this subtitle.

24 (b) EFFECTIVE DATE AND REQUIREMENTS FOR
25 REGULATIONS.—Notwithstanding subsection (a), the Se-

1 curities and Exchange Commission shall, within 120 days
2 after the date of the enactment of this subtitle, publish
3 for notice and public comment such regulations as are ini-
4 tially required to implement this part, and shall take final
5 action with respect to such regulations not later than 270
6 days after the date of enactment of this subtitle.

7 (c) REGISTRATION DATE.—No person may continue
8 to act as a municipal financial adviser, as such term is
9 defined in section 3(a)(65) of the Securities Exchange Act
10 of 1934 (as added by this part), after 30 days after the
11 date the regulations described in subsection (b) become
12 effective unless such person has been registered as re-
13 quired by the amendment made by section 7701 of this
14 part.

15 **TITLE VI—FEDERAL INSURANCE** 16 **OFFICE**

17 **SEC. 8001. SHORT TITLE.**

18 This title may be cited as the “Federal Insurance Of-
19 fice Act of 2009”.

20 **SEC. 8002. FEDERAL INSURANCE OFFICE ESTABLISHED.**

21 (a) ESTABLISHMENT OF OFFICE.—Subchapter I of
22 chapter 3 of title 31, United States Code, is amended—

23 (1) by transferring and inserting section 312
24 after section 313;

1 (2) by redesignating sections 313 and 312 (as
2 so transferred) as sections 312 and 315, respec-
3 tively; and

4 (3) by inserting after section 312 (as so redesi-
5 gnated) the following new sections:

6 **“SEC. 313. FEDERAL INSURANCE OFFICE.**

7 “(a) ESTABLISHMENT OF OFFICE.—There is estab-
8 lished the Federal Insurance Office as an office in the De-
9 partment of the Treasury.

10 “(b) LEADERSHIP.—The Office shall be headed by a
11 Director, who shall be appointed by the Secretary of the
12 Treasury. The position of such Director shall be a career
13 reserved position in the Senior Executive Service.

14 “(c) FUNCTIONS.—

15 “(1) AUTHORITY PURSUANT TO DIRECTION OF
16 SECRETARY.—The Office shall have the authority,
17 pursuant to the direction of the Secretary, as fol-
18 lows:

19 “(A) To monitor the insurance industry to
20 gain expertise.

21 “(B) To identify issues or gaps in the reg-
22 ulation of insurers that could contribute to a
23 systemic crisis in the insurance industry or the
24 United States financial system.

1 “(C) To recommend to the Financial Serv-
2 ices Oversight Council that it designate an in-
3 surer, including its affiliates, as an entity sub-
4 ject to stricter standards.

5 “(D) To assist the Secretary in admin-
6 istering the Terrorism Insurance Program es-
7 tablished in the Department of the Treasury
8 under the Terrorism Risk Insurance Act of
9 2002 (15 U.S.C. 6701 note).

10 “(E) To coordinate Federal efforts and de-
11 velop Federal policy on prudential aspects of
12 international insurance matters, including rep-
13 resenting the United States as appropriate in
14 the International Association of Insurance Su-
15 pervisors or any successor organization and as-
16 sisting the Secretary in negotiating covered
17 agreements.

18 “(F) To determine, in accordance with
19 subsection (f), whether State insurance meas-
20 ures are preempted by covered agreements.

21 “(G) To consult with the States regarding
22 insurance matters of national importance and
23 prudential insurance matters of international
24 importance.

1 “(H) To perform such other related duties
2 and authorities as may be assigned to it by the
3 Secretary.

4 “(2) ADVISORY FUNCTIONS.—The Office shall
5 advise the Secretary on major domestic and pruden-
6 tial international insurance policy issues.

7 “(d) SCOPE.—The authority of the Office shall ex-
8 tend to all lines of insurance except health insurance, as
9 determined by the Secretary based on section 2791 of the
10 Public Health Service Act (42 U.S.C. 300gg-91).

11 “(e) GATHERING OF INFORMATION.—

12 “(1) GENERAL.—In carrying out its functions
13 under subsection (c), the Office may request, receive,
14 and collect data and information on and from the in-
15 surance industry and insurers, enter into informa-
16 tion-sharing agreements, analyze and disseminate
17 data and information, and issue reports regarding
18 all lines of insurance except health insurance.

19 “(2) COLLECTION OF INFORMATION FROM IN-
20 SURERS AND AFFILIATES.—Except as provided in
21 paragraph (3) and subject to paragraph (4), the Of-
22 fice may require an insurer, or affiliate of an in-
23 surer, to submit such data or information that the
24 Office may reasonably require in carrying out its
25 functions under subsection (c). Notwithstanding sub-

1 section (p) and for the purposes of this paragraph
2 only, the term ‘insurer’ means any entity that is au-
3 thorized to write insurance or reinsure risks and
4 issue contracts or policies in one or more States.

5 “(3) EXCEPTION FOR SMALL INSURERS.—Para-
6 graph (2) shall not apply with respect to any insurer
7 or affiliate thereof that meets a minimum size
8 threshold that may be established by the Office by
9 order or rule. Such threshold shall be appropriate to
10 the particular request and need for the data or in-
11 formation.

12 “(4) ADVANCE COORDINATION.—Before col-
13 lecting any data or information under paragraph (2)
14 from an insurer, or affiliate of an insurer, the Office
15 shall coordinate with each relevant Federal agency
16 and State insurance regulator (or other relevant
17 Federal or State regulatory agency, if any, in the
18 case of an affiliate of an insurer) and any publicly
19 available sources to determine if the information to
20 be collected is available from, or may be obtained in
21 a timely manner by, such Federal agency or State
22 insurance regulator, individually or collectively, other
23 regulatory agency, or publicly available sources. If
24 the Director determines that such data or informa-
25 tion is available, or may be obtained in a timely

1 manner, from such an agency, regulator, regulatory
2 agency, or source, the Director shall obtain the data
3 or information from such agency, regulator, regu-
4 latory agency, or source. If the Director determines
5 that such data or information is not so available, the
6 Director may collect such data or information from
7 an insurer (or affiliate) only if the Director complies
8 with the requirements of subchapter I of chapter 35
9 of title 44, United States Code (relating to Federal
10 information policy; commonly known as the Paper-
11 work Reduction Act) in collecting such data or infor-
12 mation. Notwithstanding any other provision of law,
13 each such relevant Federal agency and State insur-
14 ance regulator or other Federal or State regulatory
15 agency is authorized to provide to the Office such
16 data or information.

17 “(5) CONFIDENTIALITY.—

18 “(A) The submission of any non-publicly
19 available data and information to the Office
20 under this subsection shall not constitute a
21 waiver of, or otherwise affect, any privilege aris-
22 ing under Federal or State law (including the
23 rules of any Federal or State Court) to which
24 the data or information is otherwise subject.

1 “(B) Any requirement under Federal or
2 State law to the extent otherwise applicable, or
3 any requirement pursuant to a written agree-
4 ment in effect between the original source of
5 any non-publicly available data or information
6 and the source of such data or information to
7 the Office, regarding the privacy or confiden-
8 tiality of any data or information in the posses-
9 sion of the source to the Office, shall continue
10 to apply to such data or information after the
11 data or information has been provided pursuant
12 to this subsection to the Office.

13 “(C) Any data or information obtained by
14 the Office may be made available to State in-
15 surance regulators individually or collectively
16 through an information sharing agreement that
17 shall comply with applicable Federal law and
18 that shall not constitute a waiver of, or other-
19 wise affect, any privilege under Federal or
20 State law (including the rules of any Federal or
21 State Court) to which the data or information
22 is otherwise subject.

23 “(D) Section 552 of title 5, United States
24 Code, shall apply to any data or information

1 submitted by an insurer or affiliate of an in-
2 surer.

3 “(f) PREEMPTION OF STATE INSURANCE MEAS-
4 URES.—

5 “(1) STANDARD.—A State insurance measure
6 shall be preempted pursuant to this section or sec-
7 tion 314 if, and only to the extent that the Director
8 determines, in accordance with this subsection, that
9 the measure—

10 “(A) directly results in less favorable treat-
11 ment of a non-United States insurer domiciled
12 in a foreign jurisdiction that is subject to a cov-
13 ered agreement than a United States insurer
14 domiciled, licensed, admitted, or otherwise au-
15 thorized in that State; and

16 “(B) is inconsistent with a covered agree-
17 ment that is entered into on a date after the
18 date of the enactment of this Act.

19 “(2) DETERMINATION.—

20 “(A) NOTICE OF POTENTIAL INCONSIST-
21 ENCY.—Before making any determination of in-
22 consistency, the Director shall—

23 “(i) notify and consult with the appro-
24 priate State regarding any potential incon-
25 sistency or preemption;

1 “(ii) notify and consult with the
2 United States Trade Representative re-
3 garding any potential inconsistency or pre-
4 emptation;

5 “(iii) cause to be published in the
6 Federal Register notice of the issue re-
7 garding the potential inconsistency or pre-
8 emptation, including a description of each
9 State insurance measure at issue and any
10 applicable covered agreement;

11 “(iv) provide interested parties a rea-
12 sonable opportunity to submit written com-
13 ments to the Office;

14 “(v) consider the effect of preemption
15 on—

16 “(I) the protection of policy-
17 holders and policy claimants;

18 “(II) the maintenance of the
19 safety, soundness, integrity, and fi-
20 nancial responsibility of any entity in-
21 volved in the business of insurance or
22 insurance operations;

23 “(III) ensuring the integrity and
24 stability of the United States financial
25 system; and

1 “(IV) the creation of a gap or
2 void in financial or market conduct
3 regulation of any entity involved in
4 the business of insurance or insurance
5 operations in the United States; and
6 “(vi) consider any comments received.

7 The Director shall provide the notifications re-
8 quired under clauses (i), (ii), and (iii) contem-
9 poraneously.

10 “(B) SCOPE OF REVIEW.—For purposes of
11 this section, the Director’s determination of
12 State insurance measures shall be limited to the
13 subject matter of the prudential measures ap-
14 plicable to the business of insurance contained
15 within the covered agreement involved.

16 “(C) NOTICE OF DETERMINATION OF IN-
17 CONSISTENCY.—Upon making any determina-
18 tion of inconsistency, the Director shall—

19 “(i) notify the appropriate State of
20 the determination and the extent of the in-
21 consistency;

22 “(ii) establish a reasonable period of
23 time, which shall not be shorter than 90
24 days, before the determination shall be-
25 come effective; and

1 “(iii) notify the Committee on Finan-
2 cial Services of the House of Representa-
3 tives and the Committee on Banking,
4 Housing, and Urban Affairs of the Senate
5 of the inconsistency.

6 “(3) NOTICE OF EFFECTIVENESS.—Upon the
7 conclusion of the period referred to in paragraph
8 (2)(C)(ii), if the basis for the determination of in-
9 consistency still exists, the determination shall be-
10 come effective and the Director shall—

11 “(A) cause to be published notice in the
12 Federal Register that the preemption has be-
13 come effective, as well as the effective date; and

14 “(B) notify the appropriate State.

15 “(4) LIMITATION.—No State may enforce a
16 State insurance measure to the extent that it has
17 been preempted under this subsection.

18 “(g) APPLICABILITY OF ADMINISTRATIVE PROCE-
19 DURE ACT.—Determinations of inconsistency pursuant to
20 subsection (f)(2) shall be subject to the applicable provi-
21 sions of subchapter II of chapter 5 of title 5, United
22 States Code (relating to administrative procedure), and
23 chapter 7 of such title (relating to judicial review), except
24 that in any action for judicial review of a determination

1 of inconsistency, the court shall determine the matter de
2 novo.

3 “(h) REGULATIONS, POLICIES, AND PROCEDURES.—

4 The Secretary may issue orders, regulations, policies and
5 procedures to implement this section.

6 “(i) CONSULTATION.—The Director shall consult
7 with State insurance regulators, individually and collec-
8 tively, to the extent the Director determines appropriate,
9 in carrying out the functions of the Office.

10 “(j) SAVINGS PROVISIONS.—Nothing in this section
11 shall—

12 “(1) preempt any State insurance measure that
13 governs any insurer’s rates, premiums, underwriting
14 or sales practices, or State coverage requirements
15 for insurance, or to the application of the antitrust
16 laws of any State to the business of insurance;

17 “(2) preempt any State insurance measure gov-
18 erning the capital or solvency of an insurer, except
19 to the extent that such State insurance measure di-
20 rectly results in less favorable treatment of a non-
21 United States insurer than a United States insurer;

22 “(3) be construed to alter, amend, or limit the
23 responsibility of the Consumer Financial Protection
24 Agency;

1 “(4) preempt any State insurance measure be-
2 cause of inconsistency with any agreement that is
3 not a covered agreement (as such term is defined in
4 subsection (p)); or

5 “(5) affect the preemption of any State insur-
6 ance measure otherwise inconsistent with and pre-
7 empted by Federal law.

8 “(k) RETENTION OF EXISTING STATE REGULATORY
9 AUTHORITY.—Nothing in this section or section 314 shall
10 be construed to establish a general supervisory or regu-
11 latory authority of the Office or the Department of the
12 Treasury over the business of insurance.

13 “(l) RETENTION OF AUTHORITY OF FEDERAL FI-
14 NANCIAL REGULATORY AGENCIES.—Nothing in this sec-
15 tion or section 314 shall be construed to limit the author-
16 ity of any Federal financial regulatory agency, including
17 the authority to develop and coordinate policy, negotiate,
18 and enter into agreements with foreign governments, au-
19 thorities, regulators, and multi-national regulatory com-
20 mittees and to preempt State measures to affect uni-
21 formity with international regulatory agreements.

22 “(m) RETENTION OF AUTHORITY OF UNITED
23 STATES TRADE REPRESENTATIVE.—Nothing in this sec-
24 tion or section 314 shall be construed to affect the author-
25 ity of the Office of the United States Trade Representative

1 pursuant to section 141 of the Trade Act of 1974 (19
2 U.S.C. 2171) or any other provision of law, including au-
3 thority over the development and coordination of United
4 States international trade policy and the administration
5 of the United States trade agreements program.

6 “(n) REPORTS TO CONGRESS.—

7 “(1) ANNUAL REPORT.—Beginning September
8 30, 2011, the Director shall submit a report on or
9 before September 30 of each calendar year to the
10 President and to the Committees on Financial Serv-
11 ices and Ways and Means of the House of Rep-
12 resentatives and the Committees on Banking, Hous-
13 ing, and Urban Affairs and Finance of the Senate
14 on the insurance industry, any actions taken by the
15 office pursuant to subsection (f) (regarding preemp-
16 tion of inconsistent State insurance measures).

17 “(2) OTHER REPORTS.—The Director shall sub-
18 mit to the President and the Committees referred to
19 in paragraph (1) any other information or reports as
20 deemed relevant by the Director or as requested by
21 the Chairman or Ranking Member of any of such
22 Committees.

23 “(o) USE OF EXISTING RESOURCES.—To carry out
24 this section, the Office may employ personnel, facilities,
25 and other Department of the Treasury resources available

1 to the Secretary and the Secretary shall dedicate specific
2 personnel to the Office.

3 “(p) DEFINITIONS.—For purposes of this section and
4 section 314, the following definitions shall apply:

5 “(1) AFFILIATE.—The term ‘affiliate’ means,
6 with respect to an insurer, any person that controls,
7 is controlled by, or is under common control with the
8 insurer.

9 “(2) COVERED AGREEMENT.—The term ‘cov-
10 ered agreement’ means a written bilateral or multi-
11 lateral recognition agreement that—

12 “(A) is entered into between the United
13 States and one or more foreign governments,
14 authorities, or regulatory entities; and

15 “(B) provides for recognition of prudential
16 measures with respect to the business of insur-
17 ance or reinsurance that achieves a level of pro-
18 tection for insurance or reinsurance consumers
19 that is substantially equivalent to the level of
20 protection achieved under State insurance or re-
21 insurance regulation.

22 “(3) DETERMINATION OF INCONSISTENCY.—
23 The term ‘determination of inconsistency’ means a
24 determination that a State insurance measure is pre-
25 empted under subsection (f).

1 “(4) FEDERAL FINANCIAL REGULATORY AGEN-
2 CY.—The term ‘Federal financial regulatory agency’
3 means the Department of the Treasury, the Board
4 of Governors of the Federal Reserve System, the Of-
5 fice of the Comptroller of the Currency, the Office
6 of Thrift Supervision, the Securities and Exchange
7 Commission, the Commodity Futures Trading Com-
8 mission, the Federal Deposit Insurance Corporation,
9 the Federal Housing Finance Agency, or the Na-
10 tional Credit Union Administration.

11 “(5) INSURER.—The term ‘insurer’ means any
12 person engaged in the business of insurance, includ-
13 ing reinsurance.

14 “(6) NON-UNITED STATES INSURER.—The term
15 ‘non-United States insurer’ means an insurer that is
16 organized under the laws of a jurisdiction other than
17 a State, but does not include any United States
18 branch of such an insurer.

19 “(7) OFFICE.—The term ‘Office’ means the
20 Federal Insurance Office established by this section.

21 “(8) SECRETARY.—The term ‘Secretary’ means
22 the Secretary of the Treasury.

23 “(9) STATE.—The term ‘State’ means any
24 State, commonwealth, territory, or possession of the
25 United States, the District of Columbia, the Com-

1 monwealth of Puerto Rico, the Commonwealth of the
2 Northern Mariana Islands, American Samoa, Guam,
3 or the United States Virgin Islands.

4 “(10) STATE INSURANCE MEASURE.—The term
5 ‘State insurance measure’ means any State law, reg-
6 ulation, administrative ruling, bulletin, guideline, or
7 practice relating to or affecting prudential measures
8 applicable to insurance or reinsurance.

9 “(11) STATE INSURANCE REGULATOR.—The
10 term ‘State insurance regulator’ means any State
11 regulatory authority responsible for the supervision
12 of insurers.

13 “(12) UNITED STATES INSURER.—The term
14 ‘United States insurer’ means—

15 “(A) an insurer that is organized under
16 the laws of a State; or

17 “(B) a United States branch of a non-
18 United States insurer.

19 “(q) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated for the Office such sums
21 as may be necessary for each fiscal year.

22 **“SEC. 314. COVERED AGREEMENTS.**

23 “(a) AUTHORITY.—The Secretary and the United
24 States Trade Representative are authorized, jointly, to ne-

1 negotiate and enter into covered agreements on behalf of the
2 United States.

3 “(b) REQUIREMENTS FOR CONSULTATION WITH
4 CONGRESS.—

5 “(1) IN GENERAL.—Before initiating negotia-
6 tions to enter into a covered agreement under sub-
7 section (a), during such negotiations, and before en-
8 tering into any such agreement, the Secretary and
9 the United States Trade Representative shall jointly
10 consult with the Committee on Financial Services
11 and the Committee on Ways and Means of the
12 House of Representatives and the Committee on
13 Banking, Housing, and Urban Affairs and the Com-
14 mittee on Finance of the Senate.

15 “(2) SCOPE.—The consultation described in
16 paragraph (1) shall include consultation with respect
17 to—

18 “(A) the nature of the agreement;

19 “(B) how and to what extent the agree-
20 ment will achieve the applicable purposes, poli-
21 cies, priorities, and objectives of section 313
22 and this section; and

23 “(C) the implementation of the agreement,
24 including the general effect of the agreement on
25 existing State laws.

1 “(c) SUBMISSION AND LAYOVER PROVISIONS.—A
2 covered agreement under subsection (a) may enter into
3 force with respect to the United States only if—

4 “(1) the Secretary and the United States Trade
5 Representative jointly submit to the congressional
6 committees specified in subsection (b)(1), on a day
7 on which both Houses of Congress are in session, a
8 copy of the final legal text of the agreement; and

9 “(2) a period of 90 calendar days beginning on
10 the date on which the copy of the final legal text of
11 the agreement is submitted to the congressional
12 committees under paragraph (1) has expired.”.

13 (b) DUTIES OF SECRETARY.—Section 321(a) of title
14 31, United States Code, is amended—

15 (1) in paragraph (7), by striking “and” at the
16 end;

17 (2) in paragraph (8)(C), by striking the period
18 at the end and inserting “; and”; and

19 (3) by adding at the end the following new
20 paragraph:

21 “(9) advise the President on major domestic
22 and international prudential policy issues in connec-
23 tion with all lines of insurance except health insur-
24 ance.”.

1 (c) CLERICAL AMENDMENT.—The table of sections
2 for subchapter I of chapter 3 of title 31, United States
3 Code, is amended by striking the item relating to section
4 312 and inserting the following new items:

“Sec. 312. Terrorism and Financial Intelligence.

“Sec. 313. Federal Insurance Office.

“Sec. 314. Covered agreements.

“Sec. 315. Continuing in office.”.

5 **SEC. 8003. REPORT ON GLOBAL REINSURANCE MARKET.**

6 Not later than September 30, 2011, the Director of
7 the Federal Insurance Office appointed under section
8 313(b) of title 31, United States Code (as amended by
9 section 8002(a)(3) of this title) shall submit to the Com-
10 mittee on Financial Services of the House of Representa-
11 tives and the Committee on Banking, Housing, and Urban
12 Affairs of the Senate a report describing the breadth and
13 scope of the global reinsurance market and the critical role
14 such market plays in supporting insurance in the United
15 States.

16 **SEC. 8004. STUDY ON MODERNIZATION AND IMPROVEMENT**
17 **OF INSURANCE REGULATION IN THE UNITED**
18 **STATES.**

19 (a) STUDY.—The Director of the Federal Insurance
20 Office appointed under section 313(b) of title 31, United
21 States Code (as amended by section 8002(a)(3) of this
22 title) shall conduct a study on how to modernize and im-
23 prove the system of insurance regulation in the United

1 States. Such study shall include consideration of the fol-
2 lowing:

3 (1) Effective systemic risk regulation with re-
4 spect to insurance.

5 (2) Strong capital standards and an appro-
6 priate match between capital allocation and liabil-
7 ities for all risk.

8 (3) Meaningful and consistent consumer protec-
9 tion for insurance products and practices.

10 (4) Increased national uniformity through ei-
11 ther a Federal charter or effective action by the
12 States.

13 (5) Improved and broadened regulation of in-
14 surance companies and affiliates on a consolidated
15 basis, including affiliates outside of the traditional
16 insurance business.

17 (6) International coordination.

18 (b) REPORT.—Not later than one year after the date
19 of the enactment of this Act, the Director shall submit
20 to the Committee on Financial Services of the House of
21 Representatives and the Committee on Banking, Housing,
22 and Urban Affairs of the Senate a report containing—

23 (1) the results of the study conducted under
24 subsection (a); and

1 (2) any legislative, administrative, or regulatory
2 recommendations that the Director considers appro-
3 priate to modernize and improve the system of in-
4 surance regulation in the United States.

5 (c) CONSULTATION.—In carrying out subsections (a)
6 and (b), the Director shall consult with State insurance
7 commissioners, consumer organizations, representatives of
8 the insurance industry, policyholders, and other persons,
9 as the Director considers appropriate.

○