

DODD-FRANK CONFERENCE REPORT

[H.R. 4173]

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Dodd-Frank Wall Street Reform and Consumer Protec-
4 tion Act”.

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

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Subtitle C—High-Cost Mortgages

- Sec. 1431. Definitions relating to high-cost mortgages.
- Sec. 1432. Amendments to existing requirements for certain mortgages.
- Sec. 1433. Additional requirements for certain mortgages.

Subtitle D—Office of Housing Counseling

- Sec. 1441. Short title.
- Sec. 1442. Establishment of Office of Housing Counseling.
- Sec. 1443. Counseling procedures.
- Sec. 1444. Grants for housing counseling assistance.
- Sec. 1445. Requirements to use HUD-certified counselors under HUD programs.
- Sec. 1446. Study of defaults and foreclosures.
- Sec. 1447. Default and foreclosure database.
- Sec. 1448. Definitions for counseling-related programs.
- Sec. 1449. Accountability and transparency for grant recipients.
- Sec. 1450. Updating and simplification of mortgage information booklet.
- Sec. 1451. Home inspection counseling.
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Subtitle E—Mortgage Servicing

- Sec. 1461. Escrow and impound accounts relating to certain consumer credit transactions.
- Sec. 1462. Disclosure notice required for consumers who waive escrow services.
- Sec. 1463. Real Estate Settlement Procedures Act of 1974 amendments.
- Sec. 1464. Truth in Lending Act amendments.
- Sec. 1465. Escrows included in repayment analysis.

15

Subtitle F—Appraisal Activities

- Sec. 1471. Property appraisal requirements.
- Sec. 1472. Appraisal independence requirements.
- Sec. 1473. Amendments relating to Appraisal Subcommittee of FFIEC, Appraiser Independence Monitoring, Approved Appraiser Education, Appraisal Management Companies, Appraiser Complaint Hotline, Automated Valuation Models, and Broker Price Opinions.
- Sec. 1474. Equal Credit Opportunity Act amendment.
- Sec. 1475. Real Estate Settlement Procedures Act of 1974 amendment relating to certain appraisal fees.
- Sec. 1476. GAO study on the effectiveness and impact of various appraisal methods, valuation models and distributions channels, and on the Home Valuation Code of conduct and the Appraisal Subcommittee.

Subtitle G—Mortgage Resolution and Modification

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

Subtitle H—Miscellaneous Provisions

- Sec. 1491. Sense of Congress regarding the importance of government-sponsored enterprises reform to enhance the protection, limitation, and regulation of the terms of residential mortgage credit.
- Sec. 1492. GAO study report on government efforts to combat mortgage foreclosure rescue seams and loan modification fraud.
- Sec. 1493. Reporting of mortgage data by State.
- Sec. 1494. Study of effect of drywall presence on foreclosures.
- Sec. 1495. Definition.
- Sec. 1496. Emergency mortgage relief.
- Sec. 1497. Additional assistance for Neighborhood Stabilization Program.
- Sec. 1498. Legal assistance for foreclosure-related issues.

TITLE XV—MISCELLANEOUS PROVISIONS

- Sec. 1501. Restrictions on use of United States funds for foreign governments; protection of American taxpayers.
- Sec. 1502. Conflict minerals.
- Sec. 1503. Reporting requirements regarding coal or other mine safety.
- Sec. 1504. Disclosure of payments by resource extraction issuers.
- Sec. 1505. Study by the Comptroller General.
- Sec. 1506. Study on core deposits and brokered deposits.

TITLE XVI—FINANCIAL CRISIS ASSESSMENT AND FUND

- Sec. 1601. Financial crisis special assessment.
- Sec. 1602. Financial Crisis Special Assessment Fund.
- Sec. 1603. Certain swaps, etc., not treated as section 1256 contracts.

1 **SEC. 2. DEFINITIONS.**

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

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

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

14 (3) **BOARD OF GOVERNORS.**—The term “Board
15 of Governors” means the Board of Governors of the
16 Federal Reserve System.

17 (4) **BUREAU.**—The term “Bureau” means the
18 Bureau of Consumer Financial Protection estab-
19 lished under title X.

20 (5) **COMMISSION.**—The term “Commission”
21 means the Securities and Exchange Commission, ex-
22 cept in the context of the Commodity Futures Trad-
23 ing Commission.

24 (6) **COMMODITY FUTURES TERMS.**—The terms
25 “futures commission merchant”, “swap”, “swap
26 dealer”, “swap execution facility”, “derivatives clear-

1 ing organization”, “board of trade”, “commodity
2 trading advisor”, “commodity pool”, and “com-
3 modity pool operator” have the same meanings as
4 given the terms in section 1a of the Commodity Ex-
5 change Act (7 U.S.C. 1 et seq.).

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

8 (8) COUNCIL.—The term “Council” means the
9 Financial Stability Oversight Council established
10 under title I.

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

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

17 (A) “Federal banking agency” means, indi-
18 vidually, the Board of Governors, the Office of
19 the Comptroller of the Currency, and the Cor-
20 poration; and

21 (B) “Federal banking agencies” means all
22 of the agencies referred to in subparagraph (A),
23 collectively.

24 (11) FUNCTIONALLY REGULATED SUB-
25 SIDIARY.—The term “functionally regulated sub-

1 subsidiary” has the same meaning as in section 5(e)(5)
2 of the Bank Holding Company Act of 1956 (12
3 U.S.C. 1844(e)(5)).

4 (12) PRIMARY FINANCIAL REGULATORY AGEN-
5 CY.—The term “primary financial regulatory agen-
6 cy” means—

7 (A) the appropriate Federal banking agen-
8 cy, with respect to institutions described in sec-
9 tion 3(q) of the Federal Deposit Insurance Act,
10 except to the extent that an institution is or the
11 activities of an institution are otherwise de-
12 scribed in subparagraph (B), (C), (D), or (E);

13 (B) the Securities and Exchange Commis-
14 sion, with respect to—

15 (i) any broker or dealer that is reg-
16 istered with the Commission under the Se-
17 curities Exchange Act of 1934, with re-
18 spect to the activities of the broker or deal-
19 er that require the broker or dealer to be
20 registered under that Act;

21 (ii) any investment company that is
22 registered with the Commission under the
23 Investment Company Act of 1940, with re-
24 spect to the activities of the investment

1 company that require the investment com-
2 pany to be registered under that Act;

3 (iii) any investment adviser that is
4 registered with the Commission under the
5 Investment Advisers Act of 1940, with re-
6 spect to the investment advisory activities
7 of such company and activities that are in-
8 cidental to such advisory activities;

9 (iv) any clearing agency registered
10 with the Commission under the Securities
11 Exchange Act of 1934, with respect to the
12 activities of the clearing agency that re-
13 quire the agency to be registered under
14 such Act;

15 (v) any nationally recognized statis-
16 tical rating organization registered with
17 the Commission under the Securities Ex-
18 change Act of 1934;

19 (vi) any transfer agent registered with
20 the Commission under the Securities Ex-
21 change Act of 1934;

22 (vii) any exchange registered as a na-
23 tional securities exchange with the Com-
24 mission under the Securities Exchange Act
25 of 1934;

1 (viii) any national securities associa-
2 tion registered with the Commission under
3 the Securities Exchange Act of 1934;

4 (ix) any securities information proc-
5 essor registered with the Commission
6 under the Securities Exchange Act of
7 1934;

8 (x) the Municipal Securities Rule-
9 making Board established under the Secu-
10 rities Exchange Act of 1934;

11 (xi) the Public Company Accounting
12 Oversight Board established under the
13 Sarbanes-Oxley Act of 2002 (15 U.S.C.
14 7211 et seq.);

15 (xii) the Securities Investor Protection
16 Corporation established under the Securi-
17 ties Investor Protection Act of 1970 (15
18 U.S.C. 78aaa et seq.); and

19 (xiii) any security-based swap execu-
20 tion facility, security-based swap data re-
21 pository, security-based swap dealer or
22 major security-based swap participant reg-
23 istered with the Commission under the Se-
24 curities Exchange Act of 1934, with re-
25 spect to the security-based swap activities

1 of the person that require such person to
2 be registered under such Act;

3 (C) the Commodity Futures Trading Com-
4 mission, with respect to—

5 (i) any futures commission merchant
6 registered with the Commodity Futures
7 Trading Commission under the Commodity
8 Exchange Act (7 U.S.C. 1 et seq.), with
9 respect to the activities of the futures com-
10 mission merchant that requires the futures
11 commission merchant to be registered
12 under that Act;

13 (ii) any commodity pool operator reg-
14 istered with the Commodity Futures Trad-
15 ing Commission under the Commodity Ex-
16 change Act (7 U.S.C. 1 et seq.), with re-
17 spect to the activities of the commodity
18 pool operator that requires the commodity
19 pool operator to be registered under that
20 Act, or a commodity pool, as defined in
21 that Act;

22 (iii) any commodity trading advisor or
23 introducing broker registered with the
24 Commodity Futures Trading Commission
25 under the Commodity Exchange Act (7

1 U.S.C. 1 et seq.), with respect to the ac-
2 tivities of the commodity trading advisor or
3 introducing broker that require the com-
4modity trading adviser or introducing
5 broker to be registered under that Act;

6 (iv) any derivatives clearing organiza-
7 tion registered with the Commodity Fu-
8 tures Trading Commission under the Com-
9modity Exchange Act (7 U.S.C. 1 et seq.),
10 with respect to the activities of the deriva-
11 tives clearing organization that require the
12 derivatives clearing organization to be reg-
13 istered under that Act;

14 (v) any board of trade designated as
15 a contract market by the Commodity Fu-
16 tures Trading Commission under the Com-
17modity Exchange Act (7 U.S.C. 1 et seq.);

18 (vi) any futures association registered
19 with the Commodity Futures Trading
20 Commission under the Commodity Ex-
21 change Act (7 U.S.C. 1 et seq.);

22 (vii) any retail foreign exchange dealer
23 registered with the Commodity Futures
24 Trading Commission under the Commodity
25 Exchange Act (7 U.S.C. 1 et seq.), with

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

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

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

13 (15) SECURITIES TERMS.—The—

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

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

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

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

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

9 (18) OTHER INCORPORATED DEFINITIONS.—

10 (A) FEDERAL DEPOSIT INSURANCE ACT.—

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

25 (B) HOLDING COMPANIES.—The term—

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

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

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

13 **SEC. 3. SEVERABILITY.**

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

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

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

1 SEC. 5. BUDGETARY EFFECTS.

2 The budgetary effects of this Act, for the purpose of
3 complying with the Statutory Pay-As-You-Go-Act of 2010,
4 shall be determined by reference to the latest statement
5 titled “Budgetary Effects of PAYGO Legislation” for this
6 Act, jointly submitted for printing in the Congressional
7 Record by the Chairmen of the House and Senate Budget
8 Committees, provided that such statement has been sub-
9 mitted prior to the vote on passage in the House acting
10 first on this conference report or amendment between the
11 Houses.

12 SEC. 6. ANTITRUST SAVINGS CLAUSE.

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

22 TITLE I—FINANCIAL STABILITY**23 SEC. 101. SHORT TITLE.**

24 This title may be cited as the “Financial Stability Act
25 of 2010”.

1 **SEC. 102. DEFINITIONS.**

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

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

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

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

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

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

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

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

7 (B) U.S. NONBANK FINANCIAL COM-
8 PANY.—The term “U.S. nonbank financial com-
9 pany” means a company (other than a bank
10 holding company or a Farm Credit System in-
11 stitution chartered and subject to the provisions
12 of the Farm Credit Act of 1971 (12 U.S.C.
13 2001 et seq.), or a national securities exchange
14 (or parent thereof), clearing agency (or parent
15 thereof, unless the parent is a bank holding
16 company), security-based swap execution facil-
17 ity, or security-based swap data repository reg-
18 istered with the Commission, or a board of
19 trade designated as a contract market (or par-
20 ent thereof), or a derivatives clearing organiza-
21 tion (or parent thereof, unless the parent is a
22 bank holding company), swap execution facility
23 or a swap data repository registered with the
24 Commodity Futures Trading Commission), that
25 is—

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

4 (ii) predominantly engaged in finan-
5 cial activities, as defined in paragraph (6).

6 (C) NONBANK FINANCIAL COMPANY.—The
7 term “nonbank financial company” means a
8 U.S. nonbank financial company and a foreign
9 nonbank financial company.

10 (D) NONBANK FINANCIAL COMPANY SU-
11 PERVISED BY THE BOARD OF GOVERNORS.—
12 The term “nonbank financial company super-
13 vised by the Board of Governors” means a
14 nonbank financial company that the Council
15 has determined under section 113 shall be su-
16 pervised by the Board of Governors.

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

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

22 (A) the annual gross revenues derived by
23 the company and all of its subsidiaries from ac-
24 tivities that are financial in nature (as defined
25 in section 4(k) of the Bank Holding Company

1 Act of 1956) and, if applicable, from the owner-
2 ship or control of one or more insured deposi-
3 tory institutions, represents 85 percent or more
4 of the consolidated annual gross revenues of the
5 company; or

6 (B) the consolidated assets of the company
7 and all of its subsidiaries related to activities
8 that are financial in nature (as defined in sec-
9 tion 4(k) of the Bank Holding Company Act of
10 1956) and, if applicable, related to the owner-
11 ship or control of one or more insured deposi-
12 tory institutions, represents 85 percent or more
13 of the consolidated assets of the company.

14 (7) SIGNIFICANT INSTITUTIONS.—The terms
15 “significant nonbank financial company” and “sig-
16 nificant bank holding company” have the meanings
17 given those terms by rule of the Board of Governors,
18 but in no instance shall the terms include those enti-
19 ties that are excluded under paragraph (4)(B).

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

24 (c) FOREIGN NONBANK FINANCIAL COMPANIES.—
25 For purposes of the application of subtitles A and C (other

1 (G) the Chairperson of the Commodity Fu-
2 tures Trading Commission;

3 (H) the Director of the Federal Housing
4 Finance Agency;

5 (I) the Chairman of the National Credit
6 Union Administration Board; and

7 (J) an independent member appointed by
8 the President, by and with the advice and con-
9 sent of the Senate, having insurance expertise.

10 (2) NONVOTING MEMBERS.—The nonvoting
11 members, who shall serve in an advisory capacity as
12 a nonvoting member of the Council, shall be—

13 (A) the Director of the Office of Financial
14 Research;

15 (B) the Director of the Federal Insurance
16 Office;

17 (C) a State insurance commissioner, to be
18 designated by a selection process determined by
19 the State insurance commissioners;

20 (D) a State banking supervisor, to be des-
21 ignated by a selection process determined by
22 the State banking supervisors; and

23 (E) a State securities commissioner (or an
24 officer performing like functions), to be des-

1 ignated by a selection process determined by
2 such State securities commissioners.

3 (3) NONVOTING MEMBER PARTICIPATION.—The
4 nonvoting members of the Council shall not be ex-
5 cluded from any of the proceedings, meetings, dis-
6 cussions, or deliberations of the Council, except that
7 the Chairperson may, upon an affirmative vote of
8 the member agencies, exclude the nonvoting mem-
9 bers from any of the proceedings, meetings, discus-
10 sions, or deliberations of the Council, when nec-
11 essary to safeguard and promote the free exchange
12 of confidential supervisory information.

13 (c) TERMS; VACANCY.—

14 (1) TERMS.—The independent member of the
15 Council shall serve for a term of 6 years, and each
16 nonvoting member described in subparagraphs (C),
17 (D), and (E) of subsection (b)(2) shall serve for a
18 term of 2 years.

19 (2) VACANCY.—Any vacancy on the Council
20 shall be filled in the manner in which the original
21 appointment was made.

22 (3) ACTING OFFICIALS MAY SERVE.—In the
23 event of a vacancy in the office of the head of a
24 member agency or department, and pending the ap-
25 pointment of a successor, or during the absence or

1 disability of the head of a member agency or depart-
2 ment, the acting head of the member agency or de-
3 partment shall serve as a member of the Council in
4 the place of that agency or department head.

5 (d) TECHNICAL AND PROFESSIONAL ADVISORY COM-
6 MITTEES.—The Council may appoint such special advi-
7 sory, technical, or professional committees as may be use-
8 ful in carrying out the functions of the Council, including
9 an advisory committee consisting of State regulators, and
10 the members of such committees may be members of the
11 Council, or other persons, or both.

12 (e) MEETINGS.—

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

16 (2) RULES FOR CONDUCTING BUSINESS.—The
17 Council shall adopt such rules as may be necessary
18 for the conduct of the business of the Council. Such
19 rules shall be rules of agency organization, proce-
20 dure, or practice for purposes of section 553 of title
21 5, United States Code.

22 (f) VOTING.—Unless otherwise specified, the Council
23 shall make all decisions that it is authorized or required
24 to make by a majority vote of the voting members then
25 serving.

1 (g) NONAPPLICABILITY OF FACCA.—The Federal Ad-
2 visory Committee Act (5 U.S.C. App.) shall not apply to
3 the Council, or to any special advisory, technical, or pro-
4 fessional committee appointed by the Council, except that,
5 if an advisory, technical, or professional committee has
6 one or more members who are not employees of or affili-
7 ated with the United States Government, the Council shall
8 publish a list of the names of the members of such com-
9 mittee.

10 (h) ASSISTANCE FROM FEDERAL AGENCIES.—Any
11 department or agency of the United States may provide
12 to the Council and any special advisory, technical, or pro-
13 fessional committee appointed by the Council, such serv-
14 ices, funds, facilities, staff, and other support services as
15 the Council may determine advisable.

16 (i) COMPENSATION OF MEMBERS.—

17 (1) FEDERAL EMPLOYEE MEMBERS.—All mem-
18 bers of the Council who are officers or employees of
19 the United States shall serve without compensation
20 in addition to that received for their services as offi-
21 cers or employees of the United States.

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

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

3 (j) **DETAIL OF GOVERNMENT EMPLOYEES.**—Any em-
4 ployee of the Federal Government may be detailed to the
5 Council without reimbursement, and such detail shall be
6 without interruption or loss of civil service status or privi-
7 lege. An employee of the Federal Government detailed to
8 the Council shall report to and be subject to oversight by
9 the Council during the assignment to the Council, and
10 shall be compensated by the department or agency from
11 which the employee was detailed.

12 **SEC. 112. COUNCIL AUTHORITY.**

13 (a) **PURPOSES AND DUTIES OF THE COUNCIL.**—

14 (1) **IN GENERAL.**—The purposes of the Council
15 are—

16 (A) to identify risks to the financial sta-
17 bility of the United States that could arise from
18 the material financial distress or failure, or on-
19 going activities, of large, interconnected bank
20 holding companies or nonbank financial compa-
21 nies, or that could arise outside the financial
22 services marketplace;

23 (B) to promote market discipline, by elimi-
24 nating expectations on the part of shareholders,
25 creditors, and counterparties of such companies

1 that the Government will shield them from
2 losses in the event of failure; and

3 (C) to respond to emerging threats to the
4 stability of the United States financial system.

5 (2) DUTIES.—The Council shall, in accordance
6 with this title—

7 (A) collect information from member agen-
8 cies, other Federal and State financial regu-
9 latory agencies, the Federal Insurance Office
10 and, if necessary to assess risks to the United
11 States financial system, direct the Office of Fi-
12 nancial Research to collect information from
13 bank holding companies and nonbank financial
14 companies;

15 (B) provide direction to, and request data
16 and analyses from, the Office of Financial Re-
17 search to support the work of the Council;

18 (C) monitor the financial services market-
19 place in order to identify potential threats to
20 the financial stability of the United States;

21 (D) to monitor domestic and international
22 financial regulatory proposals and develop-
23 ments, including insurance and accounting
24 issues, and to advise Congress and make rec-
25 ommendations in such areas that will enhance

1 the integrity, efficiency, competitiveness, and
2 stability of the U.S. financial markets;

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

9 (F) recommend to the member agencies
10 general supervisory priorities and principles re-
11 flecting the outcome of discussions among the
12 member agencies;

13 (G) identify gaps in regulation that could
14 pose risks to the financial stability of the
15 United States;

16 (H) require supervision by the Board of
17 Governors for nonbank financial companies that
18 may pose risks to the financial stability of the
19 United States in the event of their material fi-
20 nancial distress or failure, pursuant to section
21 113;

22 (I) make recommendations to the Board of
23 Governors concerning the establishment of
24 heightened prudential standards for risk-based
25 capital, leverage, liquidity, contingent capital,

1 resolution plans and credit exposure reports,
2 concentration limits, enhanced public disclo-
3 sures, and overall risk management for
4 nonbank financial companies and large, inter-
5 connected bank holding companies supervised
6 by the Board of Governors;

7 (J) identify systemically important finan-
8 cial market utilities and payment, clearing, and
9 settlement activities (as that term is defined in
10 title VIII);

11 (K) make recommendations to primary fi-
12 nancial regulatory agencies to apply new or
13 heightened standards and safeguards for finan-
14 cial activities or practices that could create or
15 increase risks of significant liquidity, credit, or
16 other problems spreading among bank holding
17 companies, nonbank financial companies, and
18 United States financial markets;

19 (L) review and, as appropriate, may sub-
20 mit comments to the Commission and any
21 standard-setting body with respect to an exist-
22 ing or proposed accounting principle, standard,
23 or procedure;

24 (M) provide a forum for—

1 (i) discussion and analysis of emerg-
2 ing market developments and financial reg-
3 ulatory issues; and

4 (ii) resolution of jurisdictional dis-
5 putes among the members of the Council;
6 and

7 (N) annually report to and testify before
8 Congress on—

9 (i) the activities of the Council;

10 (ii) significant financial market and
11 regulatory developments, including insur-
12 ance and accounting regulations and
13 standards, along with an assessment of
14 those developments on the stability of the
15 financial system;

16 (iii) potential emerging threats to the
17 financial stability of the United States;

18 (iv) all determinations made under
19 section 113 or title VIII, and the basis for
20 such determinations;

21 (v) all recommendations made under
22 section 119 and the result of such rec-
23 ommendations; and

24 (vi) recommendations—

- 1 (I) to enhance the integrity, effi-
2 ciency, competitiveness, and stability
3 of United States financial markets;
4 (II) to promote market discipline;
5 and
6 (III) to maintain investor con-
7 fidence.

8 (b) STATEMENTS BY VOTING MEMBERS OF THE
9 COUNCIL.—At the time at which each report is submitted
10 under subsection (a), each voting member of the Council
11 shall—

12 (1) if such member believes that the Council,
13 the Government, and the private sector are taking
14 all reasonable steps to ensure financial stability and
15 to mitigate systemic risk that would negatively affect
16 the economy, submit a signed statement to Congress
17 stating such belief; or

18 (2) if such member does not believe that all rea-
19 sonable steps described under paragraph (1) are
20 being taken, submit a signed statement to Congress
21 stating what actions such member believes need to
22 be taken in order to ensure that all reasonable steps
23 described under paragraph (1) are taken.

24 (c) TESTIMONY BY THE CHAIRPERSON.—The Chair-
25 person shall appear before the Committee on Financial

1 Services of the House of Representatives and the Com-
2 mittee on Banking, Housing, and Urban Affairs of the
3 Senate at an annual hearing, after the report is submitted
4 under subsection (a)—

5 (1) to discuss the efforts, activities, objectives,
6 and plans of the Council; and

7 (2) to discuss and answer questions concerning
8 such report.

9 (d) AUTHORITY TO OBTAIN INFORMATION.—

10 (1) IN GENERAL.—The Council may receive,
11 and may request the submission of, any data or in-
12 formation from the Office of Financial Research,
13 member agencies, and the Federal Insurance Office,
14 as necessary—

15 (A) to monitor the financial services mar-
16 ketplace to identify potential risks to the finan-
17 cial stability of the United States; or

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

20 (2) SUBMISSIONS BY THE OFFICE AND MEMBER
21 AGENCIES.—Notwithstanding any other provision of
22 law, the Office of Financial Research, any member
23 agency, and the Federal Insurance Office, are au-
24 thorized to submit information to the Council.

25 (3) FINANCIAL DATA COLLECTION.—

1 (A) IN GENERAL.—The Council, acting
2 through the Office of Financial Research, may
3 require the submission of periodic and other re-
4 ports from any nonbank financial company or
5 bank holding company for the purpose of as-
6 sessing the extent to which a financial activity
7 or financial market in which the nonbank finan-
8 cial company or bank holding company partici-
9 pates, or the nonbank financial company or
10 bank holding company itself, poses a threat to
11 the financial stability of the United States.

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

22 (C) MITIGATION IN CASE OF FOREIGN FI-
23 NANCIAL COMPANIES.—Before requiring the
24 submission of reports from a company that is
25 a foreign nonbank financial company or foreign-

1 based bank holding company, the Council shall,
2 acting through the Office of Financial Re-
3 search, to the extent appropriate, consult with
4 the appropriate foreign regulator of such com-
5 pany and, whenever possible, rely on informa-
6 tion already being collected by such foreign reg-
7 ulator, with English translation.

8 (4) BACK-UP EXAMINATION BY THE BOARD OF
9 GOVERNORS.—If the Council is unable to determine
10 whether the financial activities of a U.S. nonbank fi-
11 nancial company pose a threat to the financial sta-
12 bility of the United States, based on information or
13 reports obtained under paragraphs (1) and (3), dis-
14 cussions with management, and publicly available in-
15 formation, the Council may request the Board of
16 Governors, and the Board of Governors is author-
17 ized, to conduct an examination of the U.S. nonbank
18 financial company for the sole purpose of deter-
19 mining whether the nonbank financial company
20 should be supervised by the Board of Governors for
21 purposes of this title.

22 (5) CONFIDENTIALITY.—

23 (A) IN GENERAL.—The Council, the Office
24 of Financial Research, and the other member
25 agencies shall maintain the confidentiality of

1 any data, information, and reports submitted
2 under this title.

3 (B) RETENTION OF PRIVILEGE.—The sub-
4 mission of any nonpublicly available data or in-
5 formation under this subsection and subtitle B
6 shall not constitute a waiver of, or otherwise af-
7 fect, any privilege arising under Federal or
8 State law (including the rules of any Federal or
9 State court) to which the data or information is
10 otherwise subject.

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

16 **SEC. 113. AUTHORITY TO REQUIRE SUPERVISION AND REG-**
17 **ULATION OF CERTAIN NONBANK FINANCIAL**
18 **COMPANIES.**

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

21 (1) DETERMINATION.—The Council, on a non-
22 delegable basis and by a vote of not fewer than $\frac{2}{3}$
23 of the voting members then serving, including an af-
24 firmative vote by the Chairperson, may determine
25 that a U.S. nonbank financial company shall be su-

1 supervised by the Board of Governors and shall be
2 subject to prudential standards, in accordance with
3 this title, if the Council determines that material fi-
4 nancial distress at the U.S. nonbank financial com-
5 pany, or the nature, scope, size, scale, concentration,
6 interconnectedness, or mix of the activities of the
7 U.S. nonbank financial company, could pose a threat
8 to the financial stability of the United States.

9 (2) CONSIDERATIONS.—In making a determina-
10 tion under paragraph (1), the Council shall con-
11 sider—

12 (A) the extent of the leverage of the com-
13 pany;

14 (B) the extent and nature of the off-bal-
15 ance-sheet exposures of the company;

16 (C) the extent and nature of the trans-
17 actions and relationships of the company with
18 other significant nonbank financial companies
19 and significant bank holding companies;

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

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

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

4 (F) the extent to which assets are man-
5 aged rather than owned by the company, and
6 the extent to which ownership of assets under
7 management is diffuse;

8 (G) the nature, scope, size, scale, con-
9 centration, interconnectedness, and mix of the
10 activities of the company;

11 (H) the degree to which the company is al-
12 ready regulated by 1 or more primary financial
13 regulatory agencies;

14 (I) the amount and nature of the financial
15 assets of the company;

16 (J) the amount and types of the liabilities
17 of the company, including the degree of reliance
18 on short-term funding; and

19 (K) any other risk-related factors that the
20 Council deems appropriate.

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

23 (1) DETERMINATION.—The Council, on a non-
24 delegable basis and by a vote of not fewer than $\frac{2}{3}$
25 of the voting members then serving, including an af-

1 firmative vote by the Chairperson, may determine
2 that a foreign nonbank financial company shall be
3 supervised by the Board of Governors and shall be
4 subject to prudential standards, in accordance with
5 this title, if the Council determines that material fi-
6 nancial distress at the foreign nonbank financial
7 company, or the nature, scope, size, scale, concentra-
8 tion, interconnectedness, or mix of the activities of
9 the foreign nonbank financial company, could pose a
10 threat to the financial stability of the United States.

11 (2) CONSIDERATIONS.—In making a determina-
12 tion under paragraph (1), the Council shall con-
13 sider—

14 (A) the extent of the leverage of the com-
15 pany;

16 (B) the extent and nature of the United
17 States related off-balance-sheet exposures of the
18 company;

19 (C) the extent and nature of the trans-
20 actions and relationships of the company with
21 other significant nonbank financial companies
22 and significant bank holding companies;

23 (D) the importance of the company as a
24 source of credit for United States households,
25 businesses, and State and local governments

1 and as a source of liquidity for the United
2 States financial system;

3 (E) the importance of the company as a
4 source of credit for low-income, minority, or un-
5 derserved communities in the United States,
6 and the impact that the failure of such com-
7 pany would have on the availability of credit in
8 such communities;

9 (F) the extent to which assets are man-
10 aged rather than owned by the company and
11 the extent to which ownership of assets under
12 management is diffuse;

13 (G) the nature, scope, size, scale, con-
14 centration, interconnectedness, and mix of the
15 activities of the company;

16 (H) the extent to which the company is
17 subject to prudential standards on a consoli-
18 dated basis in the home country of such foreign
19 financial parent that are administered and en-
20 forced by a comparable foreign supervisory au-
21 thority;

22 (I) the amount and nature of the United
23 States financial assets of the company;

24 (J) the amount and nature of the liabilities
25 of the company used to fund activities and op-

1 erations in the United States, including the de-
2 gree of reliance on short-term funding; and

3 (K) any other risk-related factors that the
4 Council deems appropriate.

5 (c) ANTI-EVASION.—

6 (1) DETERMINATIONS.—In order to avoid eva-
7 sion of this title, the Council, on its own initiative
8 or at the request of the Board of Governors, may de-
9 termine, on a nondelegable basis and by a vote of
10 not fewer than $\frac{2}{3}$ of the voting members then serv-
11 ing, including an affirmative vote by the Chair-
12 person, that—

13 (A) material financial distress related to,
14 or the nature, scope, size, scale, concentration,
15 interconnectedness, or mix of, the financial ac-
16 tivities conducted directly or indirectly by a
17 company incorporated or organized under the
18 laws of the United States or any State or the
19 financial activities in the United States of a
20 company incorporated or organized in a country
21 other than the United States would pose a
22 threat to the financial stability of the United
23 States, based on consideration of the factors in
24 subsection (a)(2) or (b)(2), as applicable;

1 (B) the company is organized or operates
2 in such a manner as to evade the application of
3 this title; and

4 (C) such financial activities of the company
5 shall be supervised by the Board of Governors
6 and subject to prudential standards in accord-
7 ance with this title, consistent with paragraph
8 (3).

9 (2) REPORT.—Upon making a determination
10 under paragraph (1), the Council shall submit a re-
11 port to the appropriate committees of Congress de-
12 tailing the reasons for making such determination.

13 (3) CONSOLIDATED SUPERVISION OF ONLY FI-
14 NANCIAL ACTIVITIES; ESTABLISHMENT OF AN IN-
15 TERMEDIATE HOLDING COMPANY.—

16 (A) ESTABLISHMENT OF AN INTER-
17 MEDIATE HOLDING COMPANY.—Upon a deter-
18 mination under paragraph (1), the company
19 that is the subject of the determination may es-
20 tablish an intermediate holding company in
21 which the financial activities of such company
22 and its subsidiaries shall be conducted (other
23 than the activities described in section
24 167(b)(2)) in compliance with any regulations
25 or guidance provided by the Board of Gov-

1 errors. Such intermediate holding company
2 shall be subject to the supervision of the Board
3 of Governors and to prudential standards under
4 this title as if the intermediate holding company
5 were a nonbank financial company supervised
6 by the Board of Governors.

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

18 (4) NOTICE AND OPPORTUNITY FOR HEARING
19 AND FINAL DETERMINATION; JUDICIAL REVIEW.—
20 Subsections (d), (f), and (g) shall apply to deter-
21 minations made by the Council pursuant to para-
22 graph (1) in the same manner as such subsections
23 apply to nonbank financial companies.

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

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

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

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

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

1 (d) REEVALUATION AND RESCISSION.—The Council
2 shall—

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

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

13 (e) NOTICE AND OPPORTUNITY FOR HEARING AND
14 FINAL DETERMINATION.—

15 (1) IN GENERAL.—The Council shall provide to
16 a nonbank financial company written notice of a
17 proposed determination of the Council, including an
18 explanation of the basis of the proposed determina-
19 tion of the Council, that a nonbank financial com-
20 pany shall be supervised by the Board of Governors
21 and shall be subject to prudential standards in ac-
22 cordance with this title.

23 (2) HEARING.—Not later than 30 days after
24 the date of receipt of any notice of a proposed deter-
25 mination under paragraph (1), the nonbank finan-

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

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

16 (4) NO HEARING REQUESTED.—If a nonbank
17 financial company does not make a timely request
18 for a hearing, the Council shall notify the nonbank
19 financial company, in writing, of the final determina-
20 tion of the Council under subsection (a) or (b), as
21 applicable, not later than 10 days after the date by
22 which the company may request a hearing under
23 paragraph (2).

24 (f) EMERGENCY EXCEPTION.—

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

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

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

22 (4) OPPORTUNITY FOR HEARING.—The Council
23 shall allow a nonbank financial company to request,
24 in writing, an opportunity for a written or oral hear-
25 ing before the Council to contest a waiver or modi-

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

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

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

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

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

1 **SEC. 114. REGISTRATION OF NONBANK FINANCIAL COMPA-**
2 **NIES SUPERVISED BY THE BOARD OF GOV-**
3 **ERNORS.**

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

12 **SEC. 115. ENHANCED SUPERVISION AND PRUDENTIAL**
13 **STANDARDS FOR NONBANK FINANCIAL COM-**
14 **PANIES SUPERVISED BY THE BOARD OF GOV-**
15 **ERNORS AND CERTAIN BANK HOLDING COM-**
16 **PANIES.**

17 (a) IN GENERAL.—

18 (1) PURPOSE.—In order to prevent or mitigate
19 risks to the financial stability of the United States
20 that could arise from the material financial distress,
21 failure, or ongoing activities of large, interconnected
22 financial institutions, the Council may make rec-
23 ommendations to the Board of Governors concerning
24 the establishment and refinement of prudential
25 standards and reporting and disclosure requirements
26 applicable to nonbank financial companies super-

1 vised by the Board of Governors and large, inter-
2 connected bank holding companies, that—

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

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

10 (2) RECOMMENDED APPLICATION OF REQUIRED
11 STANDARDS.—In making recommendations under
12 this section, the Council may—

13 (A) differentiate among companies that are
14 subject to heightened standards on an indi-
15 vidual basis or by category, taking into consid-
16 eration their capital structure, riskiness, com-
17 plexity, financial activities (including the finan-
18 cial activities of their subsidiaries), size, and
19 any other risk-related factors that the Council
20 deems appropriate; or

21 (B) recommend an asset threshold that is
22 higher than \$50,000,000,000 for the applica-
23 tion of any standard described in subsections
24 (c) through (g).

25 (b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

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

3 (A) risk-based capital requirements;

4 (B) leverage limits;

5 (C) liquidity requirements;

6 (D) resolution plan and credit exposure re-
7 port requirements;

8 (E) concentration limits;

9 (F) a contingent capital requirement;

10 (G) enhanced public disclosures;

11 (H) short-term debt limits; and

12 (I) overall risk management requirements.

13 (2) PRUDENTIAL STANDARDS FOR FOREIGN FI-
14 NANCIAL COMPANIES.—In making recommendations
15 concerning the standards set forth in paragraph (1)
16 that would apply to foreign nonbank financial com-
17 panies supervised by the Board of Governors or for-
18 eign-based bank holding companies, the Council
19 shall—

20 (A) give due regard to the principle of na-
21 tional treatment and equality of competitive op-
22 portunity; and

23 (B) take into account the extent to which
24 the foreign nonbank financial company or for-
25 eign-based bank holding company is subject on

1 a consolidated basis to home country standards
2 that are comparable to those applied to finan-
3 cial companies in the United States.

4 (3) CONSIDERATIONS.—In making rec-
5 ommendations concerning prudential standards
6 under paragraph (1), the Council shall—

7 (A) take into account differences among
8 nonbank financial companies supervised by the
9 Board of Governors and bank holding compa-
10 nies described in subsection (a), based on—

11 (i) the factors described in subsections
12 (a) and (b) of section 113;

13 (ii) whether the company owns an in-
14 sured depository institution;

15 (iii) nonfinancial activities and affili-
16 ations of the company; and

17 (iv) any other factors that the Council
18 determines appropriate;

19 (B) to the extent possible, ensure that
20 small changes in the factors listed in sub-
21 sections (a) and (b) of section 113 would not
22 result in sharp, discontinuous changes in the
23 prudential standards established under section
24 165; and

1 (C) adapt its recommendations as appro-
2 priate in light of any predominant line of busi-
3 ness of such company, including assets under
4 management or other activities for which par-
5 ticular standards may not be appropriate.

6 (c) CONTINGENT CAPITAL.—

7 (1) STUDY REQUIRED.—The Council shall con-
8 duct a study of the feasibility, benefits, costs, and
9 structure of a contingent capital requirement for
10 nonbank financial companies supervised by the
11 Board of Governors and bank holding companies de-
12 scribed in subsection (a), which study shall in-
13 clude—

14 (A) an evaluation of the degree to which
15 such requirement would enhance the safety and
16 soundness of companies subject to the require-
17 ment, promote the financial stability of the
18 United States, and reduce risks to United
19 States taxpayers;

20 (B) an evaluation of the characteristics
21 and amounts of contingent capital that should
22 be required;

23 (C) an analysis of potential prudential
24 standards that should be used to determine
25 whether the contingent capital of a company

1 would be converted to equity in times of finan-
2 cial stress;

3 (D) an evaluation of the costs to compa-
4 nies, the effects on the structure and operation
5 of credit and other financial markets, and other
6 economic effects of requiring contingent capital;

7 (E) an evaluation of the effects of such re-
8 quirement on the international competitiveness
9 of companies subject to the requirement and
10 the prospects for international coordination in
11 establishing such requirement; and

12 (F) recommendations for implementing
13 regulations.

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

18 (3) RECOMMENDATIONS.—

19 (A) IN GENERAL.—Subsequent to submit-
20 ting a report to Congress under paragraph (2),
21 the Council may make recommendations to the
22 Board of Governors to require any nonbank fi-
23 nancial company supervised by the Board of
24 Governors and any bank holding company de-
25 scribed in subsection (a) to maintain a min-

1 imum amount of contingent capital that is con-
2 vertible to equity in times of financial stress.

3 (B) FACTORS TO CONSIDER.—In making
4 recommendations under this subsection, the
5 Council shall consider—

6 (i) an appropriate transition period
7 for implementation of a conversion under
8 this subsection;

9 (ii) the factors described in subsection
10 (b)(3);

11 (iii) capital requirements applicable to
12 a nonbank financial company supervised by
13 the Board of Governors or a bank holding
14 company described in subsection (a), and
15 subsidiaries thereof;

16 (iv) results of the study required by
17 paragraph (1); and

18 (v) any other factor that the Council
19 deems appropriate.

20 (d) RESOLUTION PLAN AND CREDIT EXPOSURE RE-
21 PORTS.—

22 (1) RESOLUTION PLAN.—The Council may
23 make recommendations to the Board of Governors
24 concerning the requirement that each nonbank fi-
25 nancial company supervised by the Board of Gov-

1 errors and each bank holding company described in
2 subsection (a) report periodically to the Council, the
3 Board of Governors, and the Corporation, the plan
4 of such company for rapid and orderly resolution in
5 the event of material financial distress or failure.

6 (2) CREDIT EXPOSURE REPORT.—The Council
7 may make recommendations to the Board of Gov-
8 ernors concerning the advisability of requiring each
9 nonbank financial company supervised by the Board
10 of Governors and bank holding company described in
11 subsection (a) to report periodically to the Council,
12 the Board of Governors, and the Corporation on—

13 (A) the nature and extent to which the
14 company has credit exposure to other signifi-
15 cant nonbank financial companies and signifi-
16 cant bank holding companies; and

17 (B) the nature and extent to which other
18 such significant nonbank financial companies
19 and significant bank holding companies have
20 credit exposure to that company.

21 (e) CONCENTRATION LIMITS.—In order to limit the
22 risks that the failure of any individual company could pose
23 to nonbank financial companies supervised by the Board
24 of Governors or bank holding companies described in sub-
25 section (a), the Council may make recommendations to the

1 Board of Governors to prescribe standards to limit such
2 risks, as set forth in section 165.

3 (f) **ENHANCED PUBLIC DISCLOSURES.**—The Council
4 may make recommendations to the Board of Governors
5 to require periodic public disclosures by bank holding com-
6 panies described in subsection (a) and by nonbank finan-
7 cial companies supervised by the Board of Governors, in
8 order to support market evaluation of the risk profile, cap-
9 ital adequacy, and risk management capabilities thereof.

10 (g) **SHORT-TERM DEBT LIMITS.**—The Council may
11 make recommendations to the Board of Governors to re-
12 quire short-term debt limits to mitigate the risks that an
13 over-accumulation of such debt could pose to bank holding
14 companies described in subsection (a), nonbank financial
15 companies supervised by the Board of Governors, or the
16 financial system.

17 **SEC. 116. REPORTS.**

18 (a) **IN GENERAL.**—Subject to subsection (b), the
19 Council, acting through the Office of Financial Research,
20 may require a bank holding company with total consoli-
21 dated assets of \$50,000,000,000 or greater or a nonbank
22 financial company supervised by the Board of Governors,
23 and any subsidiary thereof, to submit certified reports to
24 keep the Council informed as to—

25 (1) the financial condition of the company;

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

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

5 (4) the extent to which the activities and oper-
6 ations of the company and any subsidiary thereof,
7 could, under adverse circumstances, have the poten-
8 tial to disrupt financial markets or affect the overall
9 financial stability of the United States.

10 (b) USE OF EXISTING REPORTS.—

11 (1) IN GENERAL.—For purposes of compliance
12 with subsection (a), the Council, acting through the
13 Office of Financial Research, shall, to the fullest ex-
14 tent possible, use—

15 (A) reports that a bank holding company,
16 nonbank financial company supervised by the
17 Board of Governors, or any functionally regu-
18 lated subsidiary of such company has been re-
19 quired to provide to other Federal or State reg-
20 ulatory agencies or to a relevant foreign super-
21 visory authority;

22 (B) information that is otherwise required
23 to be reported publicly; and

24 (C) externally audited financial statements.

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

7 (3) CONFIDENTIALITY.—The Council shall
8 maintain the confidentiality of the reports obtained
9 under subsection (a) and paragraph (1)(A) of this
10 subsection.

11 **SEC. 117. TREATMENT OF CERTAIN COMPANIES THAT**
12 **CEASE TO BE BANK HOLDING COMPANIES.**

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

14 (1) any entity that—

15 (A) was a bank holding company having
16 total consolidated assets equal to or greater
17 than \$50,000,000,000 as of January 1, 2010;
18 and

19 (B) received financial assistance under or
20 participated in the Capital Purchase Program
21 established under the Troubled Asset Relief
22 Program authorized by the Emergency Eco-
23 nomic Stabilization Act of 2008; and

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

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

10 (c) APPEAL.—

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

22 (2) DECISION.—

23 (A) PROPOSED DECISION.—A Council deci-
24 sion to grant an appeal under this subsection
25 shall be made by a vote of not fewer than $\frac{2}{3}$

1 of the voting members then serving, including
2 an affirmative vote by the Chairperson. Not
3 later than 60 days after the date of a hearing
4 under paragraph (1), the Council shall submit
5 a report to, and may testify before, the Com-
6 mittee on Banking, Housing, and Urban Affairs
7 of the Senate and the Committee on Financial
8 Services of the House of Representatives on the
9 proposed decision of the Council regarding an
10 appeal under paragraph (1), which report shall
11 include a statement of the basis for the pro-
12 posed decision of the Council.

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

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

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

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

5 (C) CONSIDERATIONS.—In making a deci-
6 sion regarding an appeal under paragraph (1),
7 the Council shall consider whether the company
8 meets the standards under section 113(a) or
9 113(b), as applicable, and the definition of the
10 term “nonbank financial company” under sec-
11 tion 102. The decision of the Council shall be
12 final, subject to the review under paragraph
13 (3).

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

18 **SEC. 118. COUNCIL FUNDING.**

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

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

23 (a) REQUEST FOR COUNCIL RECOMMENDATION.—
24 The Council shall seek to resolve a dispute among 2 or
25 more member agencies, if—

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

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

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

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

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

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

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

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

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

6 (c) FORM OF RECOMMENDATION.—Any Council rec-
7 ommendation under this section shall—

8 (1) be in writing;

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

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

13 (d) NONBINDING EFFECT.—Any recommendation
14 made by the Council under subsection (c) shall not be
15 binding on the Federal agencies that are parties to the
16 dispute.

17 **SEC. 120. ADDITIONAL STANDARDS APPLICABLE TO ACTIVI-**

18 **TIES OR PRACTICES FOR FINANCIAL STA-**

19 **BILITY PURPOSES.**

20 (a) IN GENERAL.—The Council may provide for more
21 stringent regulation of a financial activity by issuing rec-
22 ommendations to the primary financial regulatory agen-
23 cies to apply new or heightened standards and safeguards,
24 including standards enumerated in section 115, for a fi-
25 nancial activity or practice conducted by bank holding

1 companies or nonbank financial companies under their re-
2 spective jurisdictions, if the Council determines that the
3 conduct, scope, nature, size, scale, concentration, or inter-
4 connectedness of such activity or practice could create or
5 increase the risk of significant liquidity, credit, or other
6 problems spreading among bank holding companies and
7 nonbank financial companies, financial markets of the
8 United States, or low-income, minority, or underserved
9 communities.

10 (b) PROCEDURE FOR RECOMMENDATIONS TO REGU-
11 LATORS.—

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

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

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

1 (B) may include prescribing the conduct of
2 the activity or practice in specific ways (such as
3 by limiting its scope, or applying particular cap-
4 ital or risk management requirements to the
5 conduct of the activity) or prohibiting the activ-
6 ity or practice.

7 (c) IMPLEMENTATION OF RECOMMENDED STAND-
8 ARDS.—

9 (1) ROLE OF PRIMARY FINANCIAL REGULATORY
10 AGENCY.—

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

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

1 tity, as if the agency action were taken under
2 those statutes.

3 (2) IMPOSITION OF STANDARDS.—The primary
4 financial regulatory agency shall impose the stand-
5 ards recommended by the Council in accordance
6 with subsection (a), or similar standards that the
7 Council deems acceptable, or shall explain in writing
8 to the Council, not later than 90 days after the date
9 on which the Council issues the recommendation,
10 why the agency has determined not to follow the rec-
11 ommendation of the Council.

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

14 (1) any recommendations issued by the Council
15 under this section;

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

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

1 (e) EFFECT OF RESCISSION OF IDENTIFICATION.—

2 (1) NOTICE.—The Council may recommend to
3 the relevant primary financial regulatory agency that
4 a financial activity or practice no longer requires any
5 standards or safeguards implemented under this sec-
6 tion.

7 (2) DETERMINATION OF PRIMARY FINANCIAL
8 REGULATORY AGENCY TO CONTINUE.—

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

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

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

23 (a) MITIGATORY ACTIONS.—If the Board of Gov-
24 ernors determines that a bank holding company with total
25 consolidated assets of \$50,000,000,000 or more, or a

1 nonbank financial company supervised by the Board of
2 Governors, poses a grave threat to the financial stability
3 of the United States, the Board of Governors, upon an
4 affirmative vote of not fewer than $\frac{2}{3}$ of the voting mem-
5 bers of the Council then serving, shall require the subject
6 company—

7 (1) to limit the ability of the company to merge
8 with, acquire, consolidate with, or otherwise become
9 affiliated with another company;

10 (2) to restrict the ability to offer a financial
11 product or products;

12 (3) to terminate one or more activities;

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

15 (5) if the Board of Governors determines that
16 such action is inadequate to mitigate a threat to the
17 financial stability of the United States in its rec-
18 ommendation, to sell or otherwise transfer assets or
19 off-balance-sheet items to unaffiliated entities.

20 (b) NOTICE AND HEARING.—

21 (1) IN GENERAL.—The Board of Governors, in
22 consultation with the Council, shall provide to a
23 company described in subsection (a) written notice
24 that such company is being considered for mitiga-
25 tory action pursuant to this section, including an ex-

1 planation of the basis for, and description of, the
2 proposed mitigatory action.

3 (2) HEARING.—Not later than 30 days after
4 the date of receipt of notice under paragraph (1),
5 the company may request, in writing, an opportunity
6 for a written or oral hearing before the Board of
7 Governors to contest the proposed mitigatory action.
8 Upon receipt of a timely request, the Board of Gov-
9 ernors shall fix a time (not later than 30 days after
10 the date of receipt of the request) and place at
11 which such company may appear, personally or
12 through counsel, to submit written materials (or, at
13 the discretion of the Board of Governors, in con-
14 sultation with the Council, oral testimony and oral
15 argument).

16 (3) DECISION.—Not later than 60 days after
17 the date of a hearing under paragraph (2), or not
18 later than 60 days after the provision of a notice
19 under paragraph (1) if no hearing was held, the
20 Board of Governors shall notify the company of the
21 final decision of the Board of Governors, including
22 the results of the vote of the Council, as described
23 in subsection (a).

24 (c) FACTORS FOR CONSIDERATION.—The Board of
25 Governors and the Council shall take into consideration

1 the factors set forth in subsection (a) or (b) of section
2 113, as applicable, in making any determination under
3 subsection (a).

4 (d) APPLICATION TO FOREIGN FINANCIAL COMPA-
5 NIES.—The Board of Governors may prescribe regulations
6 regarding the application of this section to foreign
7 nonbank financial companies supervised by the Board of
8 Governors and foreign-based bank holding companies—

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

12 (2) taking into account the extent to which the
13 foreign nonbank financial company or foreign-based
14 bank holding company is subject on a consolidated
15 basis to home country standards that are com-
16 parable to those applied to financial companies in
17 the United States.

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

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

21 (1) the Council; and

22 (2) any person or entity acting on behalf of or
23 under the authority of the Council, to the extent
24 that such activities relate to work for the Council by
25 such person or entity.

1 (b) ACCESS TO INFORMATION.—

2 (1) IN GENERAL.—Notwithstanding any other
3 provision of law, the Comptroller General shall, upon
4 request and at such reasonable time and in such rea-
5 sonable form as the Comptroller General may re-
6 quest, have access to—

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

9 (B) any records or other information under
10 the control of a person or entity acting on be-
11 half of or under the authority of the Council, to
12 the extent that such records or other informa-
13 tion is relevant to an audit under subsection
14 (a); and

15 (C) the officers, directors, employees, fi-
16 nancial advisors, staff, working groups, and
17 agents and representatives of the Council (as
18 related to the activities on behalf of the Council
19 of such agent or representative), at such rea-
20 sonable times as the Comptroller General may
21 request.

22 (2) COPIES.—The Comptroller General may
23 make and retain copies of such books, accounts, and
24 other records, access to which is granted under this

1 section, as the Comptroller General considers appro-
2 priate.

3 **SEC. 123. STUDY OF THE EFFECTS OF SIZE AND COM-**
4 **PLEXITY OF FINANCIAL INSTITUTIONS ON**
5 **CAPITAL MARKET EFFICIENCY AND ECO-**
6 **NOMIC GROWTH.**

7 (a) STUDY REQUIRED.—

8 (1) IN GENERAL.—The Chairman of the Coun-
9 cil shall carry out a study of the economic impact of
10 possible financial services regulatory limitations in-
11 tended to reduce systemic risk. Such study shall es-
12 timate the benefits and costs on the efficiency of
13 capital markets, on the financial sector, and on na-
14 tional economic growth, of—

15 (A) explicit or implicit limits on the max-
16 imum size of banks, bank holding companies,
17 and other large financial institutions;

18 (B) limits on the organizational complexity
19 and diversification of large financial institu-
20 tions;

21 (C) requirements for operational separa-
22 tion between business units of large financial
23 institutions in order to expedite resolution in
24 case of failure;

1 (D) limits on risk transfer between busi-
2 ness units of large financial institutions;

3 (E) requirements to carry contingent cap-
4 ital or similar mechanisms;

5 (F) limits on commingling of commercial
6 and financial activities by large financial insti-
7 tutions;

8 (G) segregation requirements between tra-
9 ditional financial activities and trading or other
10 high-risk operations in large financial institu-
11 tions; and

12 (H) other limitations on the activities or
13 structure of large financial institutions that
14 may be useful to limit systemic risk.

15 (2) RECOMMENDATIONS.—The study required
16 by this section shall include recommendations for the
17 optimal structure of any limits considered in sub-
18 paragraphs (A) through (E), in order to maximize
19 their effectiveness and minimize their economic im-
20 pact.

21 (b) REPORT.—Not later than the end of the 180-day
22 period beginning on the date of enactment of this title,
23 and not later than every 5 years thereafter, the Chairman
24 shall issue a report to the Congress containing any find-

1 ings and determinations made in carrying out the study
2 required under subsection (a).

3 **Subtitle B—Office of Financial**
4 **Research**

5 **SEC. 151. DEFINITIONS.**

6 For purposes of this subtitle—

7 (1) the terms “Office” and “Director” mean
8 the Office of Financial Research established under
9 this subtitle and the Director thereof, respectively;

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

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

15 (4) the term “Research and Analysis Center”
16 means the research and analysis center established
17 under section 154;

18 (5) the term “financial transaction data” means
19 the structure and legal description of a financial
20 contract, with sufficient detail to describe the rights
21 and obligations between counterparties and make
22 possible an independent valuation;

23 (6) the term “position data”—

24 (A) means data on financial assets or li-
25 abilities held on the balance sheet of a financial

1 company, where positions are created or
2 changed by the execution of a financial trans-
3 action; and

4 (B) includes information that identifies
5 counterparties, the valuation by the financial
6 company of the position, and information that
7 makes possible an independent valuation of the
8 position;

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

14 (8) the term “financial instrument” means a fi-
15 nancial contract in which the terms and conditions
16 are publicly available, and the roles of one or more
17 of the counterparties are assignable without the con-
18 sent of any of the other counterparties (including
19 common stock of a publicly traded company, govern-
20 ment bonds, or exchange traded futures and options
21 contracts).

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

23 (a) ESTABLISHMENT.—There is established within
24 the Department of the Treasury the Office of Financial
25 Research.

1 (b) DIRECTOR.—

2 (1) IN GENERAL.—The Office shall be headed
3 by a Director, who shall be appointed by the Presi-
4 dent, by and with the advice and consent of the Sen-
5 ate.

6 (2) TERM OF SERVICE.—The Director shall
7 serve for a term of 6 years, except that, in the event
8 that a successor is not nominated and confirmed by
9 the end of the term of service of a Director, the Di-
10 rector may continue to serve until such time as the
11 next Director is appointed and confirmed.

12 (3) EXECUTIVE LEVEL.—The Director shall be
13 compensated at Level III of the Executive Schedule.

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

18 (5) RESPONSIBILITIES, DUTIES, AND AUTHOR-
19 ITY.—The Director shall have sole discretion in the
20 manner in which the Director fulfills the responsibil-
21 ities and duties and exercises the authorities de-
22 scribed in this subtitle.

23 (c) BUDGET.—The Director, in consultation with the
24 Chairperson, shall establish the annual budget of the Of-
25 fice.

1 (d) OFFICE PERSONNEL.—

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

5 (2) COMPENSATION.—The Director, in con-
6 sultation with the Chairperson, shall fix, adjust, and
7 administer the pay for all employees of the Office,
8 without regard to chapter 51 or subchapter III of
9 chapter 53 of title 5, United States Code, relating
10 to classification of positions and General Schedule
11 pay rates.

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

16 (A) by striking “Finance Board,” and in-
17 serting “Finance Board, the Office of Financial
18 Research, and the Bureau of Consumer Finan-
19 cial Protection”; and

20 (B) by striking “and the Office of Thrift
21 Supervision,”.

22 (4) SENIOR EXECUTIVES.—Section
23 3132(a)(1)(D) of title 5, United States Code, is
24 amended by striking “and the National Credit Union
25 Administration;” and inserting “the National Credit

1 Union Administration, the Bureau of Consumer Fi-
2 nancial Protection, and the Office of Financial Re-
3 search;”.

4 (e) ASSISTANCE FROM FEDERAL AGENCIES.—Any
5 department or agency of the United States may provide
6 to the Office and any special advisory, technical, or profes-
7 sional committees appointed by the Office, such services,
8 funds, facilities, staff, and other support services as the
9 Office may determine advisable. Any Federal Government
10 employee may be detailed to the Office without reimburse-
11 ment, and such detail shall be without interruption or loss
12 of civil service status or privilege.

13 (f) PROCUREMENT OF TEMPORARY AND INTERMIT-
14 TENT SERVICES.—The Director may procure temporary
15 and intermittent services under section 3109(b) of title 5,
16 United States Code, at rates for individuals which do not
17 exceed the daily equivalent of the annual rate of basic pay
18 prescribed for Level V of the Executive Schedule under
19 section 5316 of such title.

20 (g) POST-EMPLOYMENT PROHIBITIONS.—The Sec-
21 retary, with the concurrence of the Director of the Office
22 of Government Ethics, shall issue regulations prohibiting
23 the Director and any employee of the Office who has had
24 access to the transaction or position data maintained by
25 the Data Center or other business confidential information

1 about financial entities required to report to the Office
2 from being employed by or providing advice or consulting
3 services to a financial company, for a period of 1 year
4 after last having had access in the course of official duties
5 to such transaction or position data or business confiden-
6 tial information, regardless of whether that entity is re-
7 quired to report to the Office. For employees whose access
8 to business confidential information was limited, the regu-
9 lations may provide, on a case-by-case basis, for a shorter
10 period of post-employment prohibition, provided that the
11 shorter period does not compromise business confidential
12 information.

13 (h) TECHNICAL AND PROFESSIONAL ADVISORY COM-
14 MITTEES.—The Office, in consultation with the Chair-
15 person, may appoint such special advisory, technical, or
16 professional committees as may be useful in carrying out
17 the functions of the Office, and the members of such com-
18 mittees may be staff of the Office, or other persons, or
19 both.

20 (i) FELLOWSHIP PROGRAM.—The Office, in consulta-
21 tion with the Chairperson, may establish and maintain an
22 academic and professional fellowship program, under
23 which qualified academics and professionals shall be in-
24 vited to spend not longer than 2 years at the Office, to

1 perform research and to provide advanced training for Of-
2 fice personnel.

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

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

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

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

12 (1) collecting data on behalf of the Council, and
13 providing such data to the Council and member
14 agencies;

15 (2) standardizing the types and formats of data
16 reported and collected;

17 (3) performing applied research and essential
18 long-term research;

19 (4) developing tools for risk measurement and
20 monitoring;

21 (5) performing other related services;

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

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

4 (b) ADMINISTRATIVE AUTHORITY.—The Office
5 may—

6 (1) share data and information, including soft-
7 ware developed by the Office, with the Council,
8 member agencies, and the Bureau of Economic
9 Analysis, which shared data, information, and soft-
10 ware—

11 (A) shall be maintained with at least the
12 same level of security as is used by the Office;
13 and

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

16 (2) sponsor and conduct research projects; and

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

20 (c) RULEMAKING AUTHORITY.—

21 (1) SCOPE.—The Office, in consultation with
22 the Chairperson, shall issue rules, regulations, and
23 orders only to the extent necessary to carry out the
24 purposes and duties described in paragraphs (1),
25 (2), and (7) of subsection (a).

1 (2) STANDARDIZATION.—Member agencies, in
2 consultation with the Office, shall implement regula-
3 tions promulgated by the Office under paragraph (1)
4 to standardize the types and formats of data re-
5 ported and collected on behalf of the Council, as de-
6 scribed in subsection (a)(2). If a member agency
7 fails to implement such regulations prior to the expi-
8 ration of the 3-year period following the date of pub-
9 lication of final regulations, the Office, in consulta-
10 tion with the Chairperson, may implement such reg-
11 ulations with respect to the financial entities under
12 the jurisdiction of the member agency. This para-
13 graph shall not supersede or interfere with the inde-
14 pendent authority of a member agency under other
15 law to collect data, in such format and manner as
16 the member agency requires.

17 (d) TESTIMONY.—

18 (1) IN GENERAL.—The Director of the Office
19 shall report to and testify before the Committee on
20 Banking, Housing, and Urban Affairs of the Senate
21 and the Committee on Financial Services of the
22 House of Representatives annually on the activities
23 of the Office, including the work of the Data Center
24 and the Research and Analysis Center, and the as-
25 sessment of the Office of significant financial market

1 developments and potential emerging threats to the
2 financial stability of the United States.

3 (2) NO PRIOR REVIEW.—No officer or agency of
4 the United States shall have any authority to require
5 the Director to submit the testimony required under
6 paragraph (1) or other congressional testimony to
7 any officer or agency of the United States for ap-
8 proval, comment, or review prior to the submission
9 of such testimony. Any such testimony to Congress
10 shall include a statement that the views expressed
11 therein are those of the Director and do not nec-
12 essarily represent the views of the President.

13 (e) ADDITIONAL REPORTS.—The Director may pro-
14 vide additional reports to Congress concerning the finan-
15 cial stability of the United States. The Director shall no-
16 tify the Council of any such additional reports provided
17 to Congress.

18 (f) SUBPOENA.—

19 (1) IN GENERAL.—The Director may require
20 from a financial company, by subpoena, the produc-
21 tion of the data requested under subsection (a)(1)
22 and section 154(b)(1), but only upon a written find-
23 ing by the Director that—

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

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

4 (2) **FORMAT.**—Subpoenas under paragraph (1)
5 shall bear the signature of the Director, and shall be
6 served by any person or class of persons designated
7 by the Director for that purpose.

8 (3) **ENFORCEMENT.**—In the case of contumacy
9 or failure to obey a subpoena, the subpoena shall be
10 enforceable by order of any appropriate district
11 court of the United States. Any failure to obey the
12 order of the court may be punished by the court as
13 a contempt of court.

14 **SEC. 154. ORGANIZATIONAL STRUCTURE; RESPONSIBIL-**
15 **ITIES OF PRIMARY PROGRAMMATIC UNITS.**

16 (a) **IN GENERAL.**—There are established within the
17 Office, to carry out the programmatic responsibilities of
18 the Office—

19 (1) the Data Center; and

20 (2) the Research and Analysis Center.

21 (b) **DATA CENTER.**—

22 (1) **GENERAL DUTIES.**—

23 (A) **DATA COLLECTION.**—The Data Cen-
24 ter, on behalf of the Council, shall collect, vali-
25 date, and maintain all data necessary to carry

1 out the duties of the Data Center, as described
2 in this subtitle. The data assembled shall be ob-
3 tained from member agencies, commercial data
4 providers, publicly available data sources, and
5 financial entities under subparagraph (B).

6 (B) AUTHORITY.—

7 (i) IN GENERAL.—The Office may, as
8 determined by the Council or by the Direc-
9 tor in consultation with the Council, re-
10 quire the submission of periodic and other
11 reports from any financial company for the
12 purpose of assessing the extent to which a
13 financial activity or financial market in
14 which the financial company participates,
15 or the financial company itself, poses a
16 threat to the financial stability of the
17 United States.

18 (ii) MITIGATION OF REPORT BUR-
19 DEN.—Before requiring the submission of
20 a report from any financial company that
21 is regulated by a member agency, any pri-
22 mary financial regulatory agency, a foreign
23 supervisory authority, or the Office shall
24 coordinate with such agencies or authority,
25 and shall, whenever possible, rely on infor-

1 mation available from such agencies or au-
2 thority.

3 (iii) COLLECTION OF FINANCIAL
4 TRANSACTION AND POSITION DATA.—The
5 Office shall collect, on a schedule deter-
6 mined by the Director, in consultation with
7 the Council, financial transaction data and
8 position data from financial companies.

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

15 (2) RESPONSIBILITIES.—

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

19 (i) a financial company reference
20 database;

21 (ii) a financial instrument reference
22 database; and

23 (iii) formats and standards for Office
24 data, including standards for reporting fi-

1 nancial transaction and position data to
2 the Office.

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

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

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

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

19 (6) OTHER AUTHORITY.—The Office shall,
20 after consultation with the member agencies, provide
21 certain data to financial industry participants and to
22 the general public to increase market transparency
23 and facilitate research on the financial system, to
24 the extent that intellectual property rights are not
25 violated, business confidential information is prop-

1 erly protected, and the sharing of such information
2 poses no significant threats to the financial system
3 of the United States.

4 (c) RESEARCH AND ANALYSIS CENTER.—

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

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

12 (B) to monitor, investigate, and report on
13 changes in systemwide risk levels and patterns
14 to the Council and Congress;

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

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

21 (E) to maintain expertise in such areas as
22 may be necessary to support specific requests
23 for advice and assistance from financial regu-
24 lators;

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

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

8 (H) to promote best practices for financial
9 risk management.

10 (d) REPORTING RESPONSIBILITIES.—

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

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

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

21 (B) the status of the efforts of the Office
22 in meeting the mission of the Office; and

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

1 **SEC. 155. FUNDING.**

2 (a) FINANCIAL RESEARCH FUND.—

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

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

10 (3) INVESTMENTS AUTHORIZED.—

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

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

24 (4) INTEREST AND PROCEEDS CREDITED.—The
25 interest on, and the proceeds from the sale or re-
26 demption of, any obligations held in the Financial

1 Research Fund shall be credited to and form a part
2 of the Financial Research Fund.

3 (b) USE OF FUNDS.—

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

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

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

21 (c) INTERIM FUNDING.—During the 2-year period
22 following the date of enactment of this Act, the Board of
23 Governors shall provide to the Office an amount sufficient
24 to cover the expenses of the Office.

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

12 **SEC. 156. TRANSITION OVERSIGHT.**

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

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

20 (b) REPORTING REQUIREMENT.—

21 (1) IN GENERAL.—The Office shall submit an
22 annual report to the Committee on Banking, Hous-
23 ing, and Urban Affairs of the Senate and the Com-
24 mittee on Financial Services of the House of Rep-

1 representatives that includes the plans described in
2 paragraph (2).

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

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

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

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

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

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

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

21 (i) telework;

22 (ii) flexible work schedules;

23 (iii) phased retirement;

24 (iv) reemployed annuitants;

25 (v) part-time work;

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

8 (C) RECRUITMENT AND RETENTION

9 PLAN.—The Office shall submit a recruitment

10 and retention plan that includes, to the extent

11 practicable, provisions relating to—

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

22 (c) EXPIRATION.—The reporting requirement under

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

24 enactment of this Act.

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

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

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

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

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

16 (a) REPORTS.—

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

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

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

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

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

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

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

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

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

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

25 (b) EXAMINATIONS.—

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

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

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

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

16 (D) compliance by the company or such
17 subsidiary with the requirements of this title.

18 (2) USE OF EXAMINATION REPORTS AND IN-
19 FORMATION.—For purposes of this subsection, the
20 Board of Governors shall, to the fullest extent pos-
21 sible, rely on reports of examination of any sub-
22 sidiary depository institution or functionally regu-
23 lated subsidiary made by the primary financial regu-
24 latory agency for that subsidiary, and on informa-
25 tion described in subsection (a)(2).

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

3 (1) provide reasonable notice to, and consult
4 with, the primary financial regulatory agency for
5 any subsidiary before requiring a report or com-
6 mencing an examination of such subsidiary under
7 this section; and

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

11 **SEC. 162. ENFORCEMENT.**

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

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

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

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

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

1 **SEC. 163. ACQUISITIONS.**

2 (a) ACQUISITIONS OF BANKS; TREATMENT AS A
3 BANK HOLDING COMPANY.—For purposes of section 3 of
4 the Bank Holding Company Act of 1956 (12 U.S.C.
5 1842), a nonbank financial company supervised by the
6 Board of Governors shall be deemed to be, and shall be
7 treated as, a bank holding company.

8 (b) ACQUISITION OF NONBANK COMPANIES.—

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

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

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

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

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

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

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

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

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

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

6 (a) IN GENERAL.—

7 (1) PURPOSE.—In order to prevent or mitigate
8 risks to the financial stability of the United States
9 that could arise from the material financial distress
10 or failure, or ongoing activities, of large, inter-
11 connected financial institutions, the Board of Gov-
12 ernors shall, on its own or pursuant to recommenda-
13 tions by the Council under section 115, establish
14 prudential standards for nonbank financial compa-
15 nies supervised by the Board of Governors and bank
16 holding companies with total consolidated assets
17 equal to or greater than \$50,000,000,000 that—

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

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

25 (2) TAILORED APPLICATION.—

1 (A) IN GENERAL.—In prescribing more
2 stringent prudential standards under this sec-
3 tion, the Board of Governors may, on its own
4 or pursuant to a recommendation by the Coun-
5 cil in accordance with section 115, differentiate
6 among companies on an individual basis or by
7 category, taking into consideration their capital
8 structure, riskiness, complexity, financial activi-
9 ties (including the financial activities of their
10 subsidiaries), size, and any other risk-related
11 factors that the Board of Governors deems ap-
12 propriate.

13 (B) ADJUSTMENT OF THRESHOLD FOR AP-
14 PPLICATION OF CERTAIN STANDARDS.—The
15 Board of Governors may, pursuant to a rec-
16 ommendation by the Council in accordance with
17 section 115, establish an asset threshold above
18 \$50,000,000,000 for the application of any
19 standard established under subsections (c)
20 through (g).

21 (b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

22 (1) IN GENERAL.—

23 (A) REQUIRED STANDARDS.—The Board
24 of Governors shall establish prudential stand-
25 ards for nonbank financial companies super-

1 vised by the Board of Governors and bank hold-
2 ing companies described in subsection (a), that
3 shall include—

4 (i) risk-based capital requirements
5 and leverage limits, unless the Board of
6 Governors, in consultation with the Coun-
7 cil, determines that such requirements are
8 not appropriate for a company subject to
9 more stringent prudential standards be-
10 cause of the activities of such company
11 (such as investment company activities or
12 assets under management) or structure, in
13 which case, the Board of Governors shall
14 apply other standards that result in simi-
15 larly stringent risk controls;

16 (ii) liquidity requirements;

17 (iii) overall risk management require-
18 ments;

19 (iv) resolution plan and credit expo-
20 sure report requirements; and

21 (v) concentration limits.

22 (B) **ADDITIONAL STANDARDS AUTHOR-**
23 **IZED.**—The Board of Governors may establish
24 additional prudential standards for nonbank fi-
25 nancial companies supervised by the Board of

1 Governors and bank holding companies de-
2 scribed in subsection (a), that include—

3 (i) a contingent capital requirement;

4 (ii) enhanced public disclosures;

5 (iii) short-term debt limits; and

6 (iv) such other prudential standards

7 as the Board or Governors, on its own or

8 pursuant to a recommendation made by

9 the Council in accordance with section 115,

10 determines are appropriate.

11 (2) STANDARDS FOR FOREIGN FINANCIAL COM-

12 PANIES.—In applying the standards set forth in

13 paragraph (1) to any foreign nonbank financial com-

14 pany supervised by the Board of Governors or for-

15 eign-based bank holding company, the Board of Gov-

16 ernors shall—

17 (A) give due regard to the principles of na-

18 tional treatment and equality of competitive op-

19 portunity; and

20 (B) take into account the extent to which

21 the foreign financial company is subject on a

22 consolidated basis to home country standards

23 that are comparable to those applied to finan-

24 cial companies in the United States.

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

4 (A) take into account differences among
5 nonbank financial companies supervised by the
6 Board of Governors and bank holding compa-
7 nies described in subsection (a), based on—

8 (i) the factors described in subsections
9 (a) and (b) of section 113;

10 (ii) whether the company owns an in-
11 sured depository institution;

12 (iii) nonfinancial activities and affili-
13 ations of the company; and

14 (iv) any other risk-related factors that
15 the Board of Governors determines appro-
16 priate;

17 (B) to the extent possible, ensure that
18 small changes in the factors listed in sub-
19 sections (a) and (b) of section 113 would not
20 result in sharp, discontinuous changes in the
21 prudential standards established under para-
22 graph (1) of this subsection;

23 (C) take into account any recommenda-
24 tions of the Council under section 115; and

1 (D) adapt the required standards as appro-
2 priate in light of any predominant line of busi-
3 ness of such company, including assets under
4 management or other activities for which par-
5 ticular standards may not be appropriate.

6 (4) CONSULTATION.—Before imposing pruden-
7 tial standards or any other requirements pursuant to
8 this section, including notices of deficiencies in reso-
9 lution plans and more stringent requirements or di-
10 vestiture orders resulting from such notices, that are
11 likely to have a significant impact on a functionally
12 regulated subsidiary or depository institution sub-
13 sidiary of a nonbank financial company supervised
14 by the Board of Governors or a bank holding com-
15 pany described in subsection (a), the Board of Gov-
16 ernors shall consult with each Council member that
17 primarily supervises any such subsidiary with re-
18 spect to any such standard or requirement.

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

25 (c) CONTINGENT CAPITAL.—

1 (1) IN GENERAL.—Subsequent to submission by
2 the Council of a report to Congress under section
3 115(c), the Board of Governors may issue regula-
4 tions that require each nonbank financial company
5 supervised by the Board of Governors and bank
6 holding companies described in subsection (a) to
7 maintain a minimum amount of contingent capital
8 that is convertible to equity in times of financial
9 stress.

10 (2) FACTORS TO CONSIDER.—In issuing regula-
11 tions under this subsection, the Board of Governors
12 shall consider—

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

16 (B) an appropriate transition period for
17 implementation of contingent capital under this
18 subsection;

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

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

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

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

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

14 (A) information regarding the manner and
15 extent to which any insured depository institu-
16 tion affiliated with the company is adequately
17 protected from risks arising from the activities
18 of any nonbank subsidiaries of the company;

19 (B) full descriptions of the ownership
20 structure, assets, liabilities, and contractual ob-
21 ligations of the company;

22 (C) identification of the cross-guarantees
23 tied to different securities, identification of
24 major counterparties, and a process for deter-

1 mining to whom the collateral of the company
2 is pledged; and

3 (D) any other information that the Board
4 of Governors and the Corporation jointly re-
5 quire by rule or order.

6 (2) CREDIT EXPOSURE REPORT.—The Board of
7 Governors shall require each nonbank financial com-
8 pany supervised by the Board of Governors and
9 bank holding companies described in subsection (a)
10 to report periodically to the Board of Governors, the
11 Council, and the Corporation on—

12 (A) the nature and extent to which the
13 company has credit exposure to other signifi-
14 cant nonbank financial companies and signifi-
15 cant bank holding companies; and

16 (B) the nature and extent to which other
17 significant nonbank financial companies and
18 significant bank holding companies have credit
19 exposure to that company.

20 (3) REVIEW.—The Board of Governors and the
21 Corporation shall review the information provided in
22 accordance with this subsection by each nonbank fi-
23 nancial company supervised by the Board of Gov-
24 ernors and bank holding company described in sub-
25 section (a).

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

9 (A) the Board of Governors and the Cor-
10 poration shall notify the company, as applica-
11 ble, of the deficiencies in the resolution plan;
12 and

13 (B) the company shall resubmit the resolu-
14 tion plan within a timeframe determined by the
15 Board of Governors and the Corporation, with
16 revisions demonstrating that the plan is credible
17 and would result in an orderly resolution under
18 title 11, United States Code, including any pro-
19 posed changes in business operations and cor-
20 porate structure to facilitate implementation of
21 the plan.

22 (5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

23 (A) IN GENERAL.—If a nonbank financial
24 company supervised by the Board of Governors
25 or a bank holding company described in sub-

1 section (a) fails to timely resubmit the resolu-
2 tion plan as required under paragraph (4), with
3 such revisions as are required under subpara-
4 graph (B), the Board of Governors and the
5 Corporation may jointly impose more stringent
6 capital, leverage, or liquidity requirements, or
7 restrictions on the growth, activities, or oper-
8 ations of the company, or any subsidiary there-
9 of, until such time as the company resubmits a
10 plan that remedies the deficiencies.

11 (B) DIVESTITURE.—The Board of Gov-
12 ernors and the Corporation, in consultation
13 with the Council, may direct a nonbank finan-
14 cial company supervised by the Board of Gov-
15 ernors or a bank holding company described in
16 subsection (a), by order, to divest certain assets
17 or operations identified by the Board of Gov-
18 ernors and the Corporation, to facilitate an or-
19 derly resolution of such company under title 11,
20 United States Code, in the event of the failure
21 of such company, in any case in which—

22 (i) the Board of Governors and the
23 Corporation have jointly imposed more
24 stringent requirements on the company
25 pursuant to subparagraph (A); and

1 (ii) the company has failed, within the
2 2-year period beginning on the date of the
3 imposition of such requirements under sub-
4 paragraph (A), to resubmit the resolution
5 plan with such revisions as were required
6 under paragraph (4)(B).

7 (6) NO LIMITING EFFECT.—A resolution plan
8 submitted in accordance with this subsection shall
9 not be binding on a bankruptcy court, a receiver ap-
10 pointed under title II, or any other authority that is
11 authorized or required to resolve the nonbank finan-
12 cial company supervised by the Board, any bank
13 holding company, or any subsidiary or affiliate of
14 the foregoing.

15 (7) NO PRIVATE RIGHT OF ACTION.—No pri-
16 vate right of action may be based on any resolution
17 plan submitted in accordance with this subsection.

18 (8) RULES.—Not later than 18 months after
19 the date of enactment of this Act, the Board of Gov-
20 ernors and the Corporation shall jointly issue final
21 rules implementing this subsection.

22 (e) CONCENTRATION LIMITS.—

23 (1) STANDARDS.—In order to limit the risks
24 that the failure of any individual company could
25 pose to a nonbank financial company supervised by

1 the Board of Governors or a bank holding company
2 described in subsection (a), the Board of Governors,
3 by regulation, shall prescribe standards that limit
4 such risks.

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

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

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

20 (B) all repurchase agreements and reverse
21 repurchase agreements with the company, and
22 all securities borrowing and lending trans-
23 actions with the company, to the extent that
24 such transactions create credit exposure for the
25 nonbank financial company supervised by the

1 Board of Governors or a bank holding company
2 described in subsection (a);

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

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

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

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

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

1 (5) RULEMAKING.—The Board of Governors
2 may issue such regulations and orders, including
3 definitions consistent with this section, as may be
4 necessary to administer and carry out this sub-
5 section.

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

14 (7) TRANSITION PERIOD.—

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

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

24 (f) ENHANCED PUBLIC DISCLOSURES.—The Board
25 of Governors may prescribe, by regulation, periodic public

1 disclosures by nonbank financial companies supervised by
2 the Board of Governors and bank holding companies de-
3 scribed in subsection (a) in order to support market eval-
4 uation of the risk profile, capital adequacy, and risk man-
5 agement capabilities thereof.

6 (g) SHORT-TERM DEBT LIMITS.—

7 (1) IN GENERAL.—In order to mitigate the
8 risks that an over-accumulation of short-term debt
9 could pose to financial companies and to the stability
10 of the United States financial system, the Board of
11 Governors may, by regulation, prescribe a limit on
12 the amount of short-term debt, including off-balance
13 sheet exposures, that may be accumulated by any
14 bank holding company described in subsection (a)
15 and any nonbank financial company supervised by
16 the Board of Governors.

17 (2) BASIS OF LIMIT.—Any limit prescribed
18 under paragraph (1) shall be based on the short-
19 term debt of the company described in paragraph
20 (1) as a percentage of capital stock and surplus of
21 the company or on such other measure as the Board
22 of Governors considers appropriate.

23 (3) SHORT-TERM DEBT DEFINED.—For pur-
24 poses of this subsection, the term “short-term debt”
25 means such liabilities with short-dated maturity that

1 the Board of Governors identifies, by regulation, ex-
2 cept that such term does not include insured depos-
3 its.

4 (4) RULEMAKING AUTHORITY.—In addition to
5 prescribing regulations under paragraphs (1) and
6 (3), the Board of Governors may prescribe such reg-
7 ulations, including definitions consistent with this
8 subsection, and issue such orders, as may be nec-
9 essary to carry 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 of Governors may, if it determines such ac-
14 tion is necessary to ensure appropriate heightened
15 prudential supervision, with respect to a company
16 described in paragraph (1) that does not control an
17 insured depository institution, issue to such company
18 an exemption from or adjustment to the limit pre-
19 scribed under paragraph (1).

20 (h) RISK COMMITTEE.—

21 (1) NONBANK FINANCIAL COMPANIES SUPER-
22 VISED BY THE BOARD OF GOVERNORS.—The Board
23 of Governors shall require each nonbank financial
24 company supervised by the Board of Governors that
25 is a publicly traded company to establish a risk com-

1 mittee, as set forth in paragraph (3), not later than
2 1 year after the date of receipt of a notice of final
3 determination under section 113(d)(3) with respect
4 to such nonbank financial company supervised by
5 the Board of Governors.

6 (2) CERTAIN BANK HOLDING COMPANIES.—

7 (A) MANDATORY REGULATIONS.—The
8 Board of Governors shall issue regulations re-
9 quiring each bank holding company that is a
10 publicly traded company and that has total con-
11 solidated assets of not less than
12 \$10,000,000,000 to establish a risk committee,
13 as set forth in paragraph (3).

14 (B) PERMISSIVE REGULATIONS.—The
15 Board of Governors may require each bank
16 holding company that is a publicly traded com-
17 pany and that has total consolidated assets of
18 less than \$10,000,000,000 to establish a risk
19 committee, as set forth in paragraph (3), as de-
20 termined necessary or appropriate by the Board
21 of Governors to promote sound risk manage-
22 ment practices.

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

1 (A) be responsible for the oversight of the
2 enterprise-wide risk management practices of
3 the nonbank financial company supervised by
4 the Board of Governors or bank holding com-
5 pany described in subsection (a), as applicable;

6 (B) include such number of independent
7 directors as the Board of Governors may deter-
8 mine appropriate, based on the nature of oper-
9 ations, size of assets, and other appropriate cri-
10 teria related to the nonbank financial company
11 supervised by the Board of Governors or a bank
12 holding company described in subsection (a), as
13 applicable; and

14 (C) include at least 1 risk management ex-
15 pert having experience in identifying, assessing,
16 and managing risk exposures of large, complex
17 firms.

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

23 (i) STRESS TESTS.—

24 (1) BY THE BOARD OF GOVERNORS.—

1 (A) ANNUAL TESTS REQUIRED.—The
2 Board of Governors, in coordination with the
3 appropriate primary financial regulatory agen-
4 cies and the Federal Insurance Office, shall
5 conduct annual analyses in which nonbank fi-
6 nancial companies supervised by the Board of
7 Governors and bank holding companies de-
8 scribed in subsection (a) are subject to evalua-
9 tion of whether such companies have the cap-
10 ital, on a total consolidated basis, necessary to
11 absorb losses as a result of adverse economic
12 conditions.

13 (B) TEST PARAMETERS AND CON-
14 SEQUENCES.—The Board of Governors—

15 (i) shall provide for at least 3 dif-
16 ferent sets of conditions under which the
17 evaluation required by this subsection shall
18 be conducted, including baseline, adverse,
19 and severely adverse;

20 (ii) may require the tests described in
21 subparagraph (A) at bank holding compa-
22 nies and nonbank financial companies, in
23 addition to those for which annual tests
24 are required under subparagraph (A);

1 (iii) may develop and apply such other
2 analytic techniques as are necessary to
3 identify, measure, and monitor risks to the
4 financial stability of the United States;

5 (iv) shall require the companies de-
6 scribed in subparagraph (A) to update
7 their resolution plans required under sub-
8 section (d)(1), as the Board of Governors
9 determines appropriate, based on the re-
10 sults of the analyses; and

11 (v) shall publish a summary of the re-
12 sults of the tests required under subpara-
13 graph (A) or clause (ii) of this subpara-
14 graph.

15 (2) BY THE COMPANY.—

16 (A) REQUIREMENT.—A nonbank financial
17 company supervised by the Board of Governors
18 and a bank holding company described in sub-
19 section (a) shall conduct semiannual stress
20 tests. All other financial companies that have
21 total consolidated assets of more than
22 \$10,000,000,000 and are regulated by a pri-
23 mary Federal financial regulatory agency shall
24 conduct annual stress tests. The tests required
25 under this subparagraph shall be conducted in

1 accordance with the regulations prescribed
2 under subparagraph (C).

3 (B) REPORT.—A company required to con-
4 duct stress tests under subparagraph (A) shall
5 submit a report to the Board of Governors and
6 to its primary financial regulatory agency at
7 such time, in such form, and containing such
8 information as the primary financial regulatory
9 agency shall require.

10 (C) REGULATIONS.—Each Federal pri-
11 mary financial regulatory agency, in coordina-
12 tion with the Board of Governors and the Fed-
13 eral Insurance Office, shall issue consistent and
14 comparable regulations to implement this para-
15 graph that shall—

16 (i) define the term “stress test” for
17 purposes of this paragraph;

18 (ii) establish methodologies for the
19 conduct of stress tests required by this
20 paragraph that shall provide for at least 3
21 different sets of conditions, including base-
22 line, adverse, and severely adverse;

23 (iii) establish the form and content of
24 the report required by subparagraph (B);
25 and

1 (iv) require companies subject to this
2 paragraph to publish a summary of the re-
3 sults of the required quarterly stress tests.

4 (j) LEVERAGE LIMITATION.—

5 (1) REQUIREMENT.—The Board of Governors
6 shall require a bank holding company with total con-
7 solidated assets equal to or greater than
8 \$50,000,000,000 or a nonbank financial company
9 supervised by the Board of Governors to maintain a
10 debt to equity ratio of no more than 15 to 1, upon
11 a determination by the Council that such company
12 poses a grave threat to the financial stability of the
13 United States and that the imposition of such re-
14 quirement is necessary to mitigate the risk that such
15 company poses to the financial stability of the
16 United States. Nothing in this paragraph shall apply
17 to a Federal home loan bank.

18 (2) CONSIDERATIONS.—In making a determina-
19 tion under this subsection, the Council shall consider
20 the factors described in subsections (a) and (b) of
21 section 113 and any other risk-related factors that
22 the Council deems appropriate.

23 (3) REGULATIONS.—The Board of Governors
24 shall promulgate regulations to establish procedures

1 and timelines for complying with the requirements of
2 this subsection.

3 (k) INCLUSION OF OFF-BALANCE-SHEET ACTIVITIES
4 IN COMPUTING CAPITAL REQUIREMENTS.—

5 (1) IN GENERAL.—In the case of any bank
6 holding company described in subsection (a) or
7 nonbank financial company supervised by the Board
8 of Governors, the computation of capital for pur-
9 poses of meeting capital requirements shall take into
10 account any off-balance-sheet activities of the com-
11 pany.

12 (2) EXEMPTIONS.—If the appropriate Federal
13 banking agencies determine that an exemption from
14 the requirement under paragraph (1) is appropriate,
15 the Federal banking agencies may exempt a com-
16 pany, or any transaction or transactions engaged in
17 by such company, from the requirements of para-
18 graph (1).

19 (3) OFF-BALANCE-SHEET ACTIVITIES DE-
20 FINED.—For purposes of this subsection, the term
21 “off-balance-sheet activities” means an existing li-
22 ability of a company that is not currently a balance
23 sheet liability, but may become one upon the hap-
24 pening of some future event, including the following

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

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

6 (B) Irrevocable letters of credit that guar-
7 antee repayment of commercial paper or tax-ex-
8 empt securities.

9 (C) Risk participations in bankers' accept-
10 ances.

11 (D) Sale and repurchase agreements.

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

14 (F) Interest rate swaps.

15 (G) Credit swaps.

16 (H) Commodities contracts.

17 (I) Forward contracts.

18 (J) Securities contracts.

19 (K) Such other activities or transactions as
20 the Federal banking agencies may, by rule, de-
21 fine.

22 **SEC. 166. EARLY REMEDIATION REQUIREMENTS.**

23 (a) IN GENERAL.—The Board of Governors, in con-
24 sultation with the Council and the Corporation, shall pre-
25 scribe regulations establishing requirements to provide for

1 the early remediation of financial distress of a nonbank
2 financial company supervised by the Board of Governors
3 or a bank holding company described in section 165(a),
4 except that nothing in this subsection authorizes the provi-
5 sion of financial assistance from the Federal Government.

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

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

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

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

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

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

9 **SEC. 167. AFFILIATIONS.**

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

17 (b) REQUIREMENT.—

18 (1) IN GENERAL.—

19 (A) BOARD AUTHORITY.—If a nonbank fi-
20 nancial company supervised by the Board of
21 Governors conducts activities other than those
22 that are determined to be financial in nature or
23 incidental thereto under section 4(k) of the
24 Bank Holding Company Act of 1956, the Board
25 of Governors may require such company to es-

1 tablish and conduct all or a portion of such ac-
2 tivities that are determined to be financial in
3 nature or incidental thereto in or through an
4 intermediate holding company established pur-
5 suant to regulation of the Board of Governors,
6 not later than 90 days (or such longer period
7 as the Board of Governors may deem appro-
8 priate) after the date on which the nonbank fi-
9 nancial company supervised by the Board of
10 Governors is notified of the determination of
11 the Board of Governors under this section.

12 (B) NECESSARY ACTIONS.—Notwith-
13 standing subparagraph (A), the Board of Gov-
14 ernors shall require a nonbank financial com-
15 pany supervised by the Board of Governors to
16 establish an intermediate holding company if
17 the Board of Governors makes a determination
18 that the establishment of such intermediate
19 holding company is necessary to—

20 (i) appropriately supervise activities
21 that are determined to be financial in na-
22 ture or incidental thereto; or

23 (ii) to ensure that supervision by the
24 Board of Governors does not extend to the

1 commercial activities of such nonbank fi-
2 nancial company.

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

24 (3) SOURCE OF STRENGTH.—A company that
25 directly or indirectly controls an intermediate hold-

1 ing company established under this section shall
2 serve as a source of strength to its subsidiary inter-
3 mediate holding company.

4 (4) PARENT COMPANY REPORTS.—The Board
5 of Governors may, from time to time, require reports
6 under oath from a company that controls an inter-
7 mediate holding company, and from the appropriate
8 officers or directors of such company, solely for pur-
9 poses of ensuring compliance with the provisions of
10 this section, including assessing the ability of the
11 company to serve as a source of strength to its sub-
12 sidiary intermediate holding company pursuant to
13 paragraph (3) and enforcing such compliance.

14 (5) LIMITED PARENT COMPANY ENFORCE-
15 MENT.—

16 (A) IN GENERAL.—In addition to any
17 other authority of the Board of Governors, the
18 Board of Governors may enforce compliance
19 with the provisions of this subsection that are
20 applicable to any company described in para-
21 graph (1) that controls an intermediate holding
22 company under section 8 of the Federal Deposit
23 Insurance Act, and such company shall be sub-
24 ject to such section (solely for such purposes) in

1 the same manner and to the same extent as if
2 such company were a bank holding company.

3 (B) APPLICATION OF OTHER ACT.—Any
4 violation of this subsection by any company
5 that controls an intermediate holding company
6 may also be treated as a violation of the Fed-
7 eral Deposit Insurance Act for purposes of sub-
8 paragraph (A).

9 (C) NO EFFECT ON OTHER AUTHORITY.—
10 No provision of this paragraph shall be con-
11 strued as limiting any authority of the Board of
12 Governors or any other Federal agency under
13 any other provision of law.

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

15 (1) shall promulgate regulations to establish the
16 criteria for determining whether to require a
17 nonbank financial company supervised by the Board
18 of Governors to establish an intermediate holding
19 company under subsection (b); and

20 (2) may promulgate regulations to establish any
21 restrictions or limitations on transactions between
22 an intermediate holding company or a nonbank fi-
23 nancial company supervised by the Board of Gov-
24 ernors and its affiliates, as necessary to prevent un-
25 safe and unsound practices in connection with trans-

1 actions between such company, or any subsidiary
2 thereof, and its parent company or affiliates that are
3 not subsidiaries of such company, except that such
4 regulations shall not restrict or limit any transaction
5 in connection with the bona fide acquisition or lease
6 by an unaffiliated person of assets, goods, or serv-
7 ices.

8 **SEC. 168. REGULATIONS.**

9 The Board of Governors shall have authority to issue
10 regulations to implement subtitles A and C and the
11 amendments made thereunder. Except as otherwise speci-
12 fied in subtitle A or C, not later than 18 months after
13 the effective date of this Act, the Board of Governors shall
14 issue final regulations to implement subtitles A and C, and
15 the amendments made thereunder.

16 **SEC. 169. AVOIDING DUPLICATION.**

17 The Board of Governors shall take any action that
18 the Board of Governors deems appropriate to avoid impos-
19 ing requirements under this subtitle that are duplicative
20 of requirements applicable to bank holding companies and
21 nonbank financial companies under other provisions of
22 law.

23 **SEC. 170. SAFE HARBOR.**

24 (a) REGULATIONS.—The Board of Governors shall
25 promulgate regulations on behalf of, and in consultation

1 with, the Council setting forth the criteria for exempting
2 certain types or classes of U.S. nonbank financial compa-
3 nies or foreign nonbank financial companies from super-
4 vision by the Board of Governors.

5 (b) CONSIDERATIONS.—In developing the criteria
6 under subsection (a), the Board of Governors shall take
7 into account the factors for consideration described in sub-
8 sections (a) and (b) of section 113 in determining whether
9 a U.S. nonbank financial company or foreign nonbank fi-
10 nancial company shall be supervised by the Board of Gov-
11 ernors.

12 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
13 tion shall be construed to require supervision by the Board
14 of Governors of a U.S. nonbank financial company or for-
15 eign nonbank financial company, if such company does not
16 meet the criteria for exemption established under sub-
17 section (a).

18 (d) REVISIONS.—

19 (1) IN GENERAL.—The Board of Governors
20 shall, in consultation with the Council, review the
21 regulations promulgated under subsection (a), not
22 less frequently than every 5 years, and based upon
23 the review, the Board of Governors may revise such
24 regulations on behalf of, and in consultation with,

1 the Council to update as necessary the criteria set
2 forth in such regulations.

3 (2) TRANSITION PERIOD.—No revisions under
4 paragraph (1) shall take effect before the end of the
5 2-year period after the date of publication of such
6 revisions in final form.

7 (e) REPORT.—The Chairperson of the Board of Gov-
8 ernors and the Chairperson of the Council shall submit
9 a joint report to the Committee on Banking, Housing, and
10 Urban Affairs of the Senate and the Committee on Finan-
11 cial Services of the House of Representatives not later
12 than 30 days after the date of the issuance in final form
13 of regulations under subsection (a), or any subsequent re-
14 vision to such regulations under subsection (d), as applica-
15 ble. Such report shall include, at a minimum, the rationale
16 for exemption and empirical evidence to support the cri-
17 teria for exemption.

18 **SEC. 171. LEVERAGE AND RISK-BASED CAPITAL REQUIRE-**
19 **MENTS.**

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

22 (1) GENERALLY APPLICABLE LEVERAGE CAP-
23 ITAL REQUIREMENTS.—The term “generally applica-
24 ble leverage capital requirements” means—

1 (A) the minimum ratios of tier 1 capital to
2 average total assets, as established by the ap-
3 propriate Federal banking agencies to apply to
4 insured depository institutions under the
5 prompt corrective action regulations imple-
6 menting section 38 of the Federal Deposit In-
7 surance Act, regardless of total consolidated
8 asset size or foreign financial exposure; and

9 (B) includes the regulatory capital compo-
10 nents in the numerator of that capital require-
11 ment, average total assets in the denominator
12 of that capital requirement, and the required
13 ratio of the numerator to the denominator.

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

17 (A) the risk-based capital requirements, as
18 established by the appropriate Federal banking
19 agencies to apply to insured depository institu-
20 tions under the prompt corrective action regula-
21 tions implementing section 38 of the Federal
22 Deposit Insurance Act, regardless of total con-
23 solidated asset size or foreign financial expo-
24 sure; and

1 (B) includes the regulatory capital compo-
2 nents in the numerator of those capital require-
3 ments, the risk-weighted assets in the denomi-
4 nator of those capital requirements, and the re-
5 quired ratio of the numerator to the denomi-
6 nator.

7 (3) DEFINITION OF DEPOSITORY INSTITUTION
8 HOLDING COMPANY.—The term “depository institu-
9 tion holding company” means a bank holding com-
10 pany or a savings and loan holding company (as
11 those terms are defined in section 3 of the Federal
12 Deposit Insurance Act) that is organized in the
13 United States, including any bank or savings and
14 loan holding company that is owned or controlled by
15 a foreign organization, but does not include the for-
16 eign organization.

17 (b) MINIMUM CAPITAL REQUIREMENTS.—

18 (1) MINIMUM LEVERAGE CAPITAL REQUIRE-
19 MENTS.—The appropriate Federal banking agencies
20 shall establish minimum leverage capital require-
21 ments on a consolidated basis for insured depository
22 institutions, depository institution holding compa-
23 nies, and nonbank financial companies supervised by
24 the Board of Governors. The minimum leverage cap-
25 ital requirements established under this paragraph

1 shall not be less than the generally applicable lever-
2 age capital requirements, which shall serve as a floor
3 for any capital requirements that the agency may re-
4 quire, nor quantitatively lower than the generally ap-
5 plicable leverage capital requirements that were in
6 effect for insured depository institutions as of the
7 date of enactment of this Act.

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

23 (3) INVESTMENTS IN FINANCIAL SUBSIDI-
24 ARIES.—For purposes of this section, investments in
25 financial subsidiaries that insured depository institu-

1 tions are required to deduct from regulatory capital
2 under section 5136A of the Revised Statutes of the
3 United States or section 46(a)(2) of the Federal De-
4 posit Insurance Act need not be deducted from regu-
5 latory capital by depository institution holding com-
6 panies or nonbank financial companies supervised by
7 the Board of Governors, unless such capital deduc-
8 tion is required by the Board of Governors or the
9 primary financial regulatory agency in the case of
10 nonbank financial companies supervised by the
11 Board of Governors.

12 (4) EFFECTIVE DATES AND PHASE-IN PERI-
13 ODS.—

14 (A) DEBT OR EQUITY INSTRUMENTS ON
15 OR AFTER MAY 19, 2010.—For debt or equity in-
16 struments issued on or after May 19, 2010, by
17 depository institution holding companies or by
18 nonbank financial companies supervised by the
19 Board of Governors, this section shall be
20 deemed to have become effective as of May 19,
21 2010.

22 (B) DEBT OR EQUITY INSTRUMENTS
23 ISSUED BEFORE MAY 19, 2010.—For debt or eq-
24 uity instruments issued before May 19, 2010,
25 by depository institution holding companies or

1 by nonbank financial companies supervised by
2 the Board of Governors, any regulatory capital
3 deductions required under this section shall be
4 phased in incrementally over a period of 3
5 years, with the phase-in period to begin on Jan-
6 uary 1, 2013, except as set forth in subpara-
7 graph (C).

8 (C) DEBT OR EQUITY INSTRUMENTS OF
9 SMALLER INSTITUTIONS.—For debt or equity
10 instruments issued before May 19, 2010, by de-
11 pository institution holding companies with
12 total consolidated assets of less than
13 \$15,000,000,000 as of December 31, 2009, and
14 by organizations that were mutual holding com-
15 panies on May 19, 2010, the capital deductions
16 that would be required for other institutions
17 under this section are not required as a result
18 of this section.

19 (D) DEPOSITORY INSTITUTION HOLDING
20 COMPANIES NOT PREVIOUSLY SUPERVISED BY
21 THE BOARD OF GOVERNORS.—For any deposi-
22 tory institution holding company that was not
23 supervised by the Board of Governors as of
24 May 19, 2010, the requirements of this section,
25 except as set forth in subparagraphs (A) and

1 (B), shall be effective 5 years after the date of
2 enactment of this Act

3 (E) CERTAIN BANK HOLDING COMPANY
4 SUBSIDIARIES OF FOREIGN BANKING ORGANIZA-
5 TIONS.—For bank holding company subsidi-
6 aries of foreign banking organizations that have
7 relied on Supervision and Regulation Letter
8 SR-01-1 issued by the Board of Governors (as
9 in effect on May 19, 2010), the requirements of
10 this section, except as set forth in subparagraph
11 (A), shall be effective 5 years after the date of
12 enactment of this Act.

13 (5) EXCEPTIONS.—This section shall not apply
14 to—

15 (A) debt or equity instruments issued to
16 the United States or any agency or instrumen-
17 tality thereof pursuant to the Emergency Eco-
18 nomic Stabilization Act of 2008, and prior to
19 October 4, 2010;

20 (B) any Federal home loan bank; or

21 (C) any small bank holding company that
22 is subject to the Small Bank Holding Company
23 Policy Statement of the Board of Governors, as
24 in effect on May 19, 2010.

1 (6) STUDY AND REPORT ON SMALL INSTITU-
2 TION ACCESS TO CAPITAL.—

3 (A) STUDY REQUIRED.—The Comptroller
4 General of the United States, after consultation
5 with the Federal banking agencies, shall con-
6 duct a study of access to capital by smaller in-
7 sured depository institutions.

8 (B) SCOPE.—For purposes of this study
9 required by subparagraph (A), the term “small-
10 er insured depository institution” means an in-
11 sured depository institution with total consoli-
12 dated assets of \$5,000,000,000 or less.

13 (C) REPORT TO CONGRESS.—Not later
14 than 18 months after the date of enactment of
15 this Act, the Comptroller General of the United
16 States shall submit to the Committee on Bank-
17 ing, Housing, and Urban Affairs of the Senate
18 and the Committee on Financial Services of the
19 House of Representatives a report summarizing
20 the results of the study conducted under sub-
21 paragraph (A), together with any recommenda-
22 tions for legislative or regulatory action that
23 would enhance the access to capital of smaller
24 insured depository institutions, in a manner

1 that is consistent with safe and sound banking
2 operations.

3 (7) CAPITAL REQUIREMENTS TO ADDRESS AC-
4 TIVITIES THAT POSE RISKS TO THE FINANCIAL SYS-
5 TEM.—

6 (A) IN GENERAL.—Subject to the rec-
7 ommendations of the Council, in accordance
8 with section 120, the Federal banking agencies
9 shall develop capital requirements applicable to
10 insured depository institutions, depository insti-
11 tution holding companies, and nonbank finan-
12 cial companies supervised by the Board of Gov-
13 ernors that address the risks that the activities
14 of such institutions pose, not only to the insti-
15 tution engaging in the activity, but to other
16 public and private stakeholders in the event of
17 adverse performance, disruption, or failure of
18 the institution or the activity.

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

21 (i) significant volumes of activity in
22 derivatives, securitized products purchased
23 and sold, financial guarantees purchased
24 and sold, securities borrowing and lending,

1 and repurchase agreements and reverse re-
2 purchase agreements;

3 (ii) concentrations in assets for which
4 the values presented in financial reports
5 are based on models rather than historical
6 cost or prices deriving from deep and liq-
7 uid 2-way markets; and

8 (iii) concentrations in market share
9 for any activity that would substantially
10 disrupt financial markets if the institution
11 is forced to unexpectedly cease the activity.

12 **SEC. 172. EXAMINATION AND ENFORCEMENT ACTIONS FOR**
13 **INSURANCE AND ORDERLY LIQUIDATION**
14 **PURPOSES.**

15 (a) EXAMINATIONS FOR INSURANCE AND RESOLU-
16 TION PURPOSES.—Section 10(b)(3) of the Federal De-
17 posit Insurance Act (12 U.S.C. 1820(b)(3)) is amended—

18 (1) by striking “In addition” and inserting the
19 following:

20 “(A) IN GENERAL.—In addition”; and

21 (2) by striking “whenever the board of directors
22 determines” and all that follows through the period
23 and inserting the following: “or nonbank financial
24 company supervised by the Board of Governors or a
25 bank holding company described in section 165(a) of

1 the Restoring American Financial Stability Act of
2 2010, whenever the Board of Directors determines
3 that a special examination of any such depository in-
4 stitution is necessary to determine the condition of
5 such depository institution for insurance purposes,
6 or of such nonbank financial company supervised by
7 the Board of Governors or bank holding company
8 described in section 165(a) of the Restoring Amer-
9 ican Financial Stability Act of 2010, for the purpose
10 of implementing its authority to provide for orderly
11 liquidation of any such company under title II of
12 that Act, provided that such authority may not be
13 used with respect to such company that is in a gen-
14 erally sound condition.

15 “(B) LIMITATION.—Before conducting a
16 special examination of a nonbank financial com-
17 pany supervised by the Board of Governors or
18 a bank holding company described in section
19 165(a) of the Restoring American Financial
20 Stability Act of 2010, the Corporation shall re-
21 view any available and acceptable resolution
22 plan that the company has submitted in accord-
23 ance with section 165(d) of that Act, consistent
24 with the nonbinding effect of such plan, and
25 available reports of examination, and shall co-

1 ordinate to the maximum extent practicable
2 with the Board of Governors, in order to mini-
3 mize duplicative or conflicting examinations.”.

4 (b) ENFORCEMENT AUTHORITY.—Section 8(t) of the
5 Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is
6 amended—

7 (1) in paragraph (1), by inserting “, any deposi-
8 tory institution holding company,” before “or any
9 institution-affiliated party”;

10 (2) in paragraph (2)—

11 (A) by striking “or” at the end of subpara-
12 graph (B);

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

15 (C) by inserting at the end the following
16 new subparagraph:

17 “(D) the conduct or threatened conduct
18 (including any acts or omissions) of the deposi-
19 tory institution holding company poses a risk to
20 the Deposit Insurance Fund, provided that such
21 authority may not be used with respect to a de-
22 pository institution holding company that is in
23 generally sound condition and whose conduct
24 does not pose a foreseeable and material risk of
25 loss to the Deposit Insurance Fund;” and

1 (3) by adding at the end the following:

2 “(6) POWERS AND DUTIES WITH RESPECT TO
3 DEPOSITORY INSTITUTION HOLDING COMPANIES.—

4 For purposes of exercising the backup authority pro-
5 vided in this subsection—

6 “(A) the Corporation shall have the same
7 powers with respect to a depository institution
8 holding company and its affiliates as the appro-
9 priate Federal banking agency has with respect
10 to the holding company and its affiliates; and

11 “(B) the holding company and its affiliates
12 shall have the same duties and obligations with
13 respect to the Corporation as the holding com-
14 pany and its affiliates have with respect to the
15 appropriate Federal banking agency.”.

16 (c) RULE OF CONSTRUCTION.—Nothing in this Act
17 shall be construed to limit or curtail the Corporation’s cur-
18 rent authority to examine or bring enforcement actions
19 with respect to any insured depository institution or insti-
20 tution-affiliated party.

21 **SEC. 173. ACCESS TO UNITED STATES FINANCIAL MARKET**
22 **BY FOREIGN INSTITUTIONS.**

23 (a) ESTABLISHMENT OF FOREIGN BANK OFFICES IN
24 THE UNITED STATES.—Section 7(d)(3) of the Inter-

1 national Banking Act of 1978 (12 U.S.C. 3105(d)(3)) is
2 amended—

3 (1) in subparagraph (C), by striking “and” at
4 the end;

5 (2) in subparagraph (D), by striking the period
6 at the end of and inserting “; and”; and

7 (3) by adding at the end the following new sub-
8 paragraph:

9 “(E) for a foreign bank that presents a
10 risk to the stability of United States financial
11 system, whether the home country of the for-
12 eign bank has adopted, or is making demon-
13 strable progress toward adopting, an appro-
14 priate system of financial regulation for the fi-
15 nancial system of such home country to miti-
16 gate such risk.”.

17 (b) TERMINATION OF FOREIGN BANK OFFICES IN
18 THE UNITED STATES.—Section 7(e)(1) of the Inter-
19 national Banking Act of 1978 (12 U.S.C. 3105(e)(1)) is
20 amended—

21 (1) in subparagraph (A), by striking “or” at
22 the end;

23 (2) in subparagraph (B), by striking the period
24 at the end of and inserting “; or”; and

1 (3) by inserting after subparagraph (B), the
2 following new subparagraph:

3 “(C) for a foreign bank that presents a
4 risk to the stability of the United States finan-
5 cial system, the home country of the foreign
6 bank has not adopted, or made demonstrable
7 progress toward adopting, an appropriate sys-
8 tem of financial regulation to mitigate such
9 risk.”.

10 (c) REGISTRATION OR SUCCESSION TO A UNITED
11 STATES BROKER OR DEALER AND TERMINATION OF
12 SUCH REGISTRATION.—Section 15 of the Securities Ex-
13 change Act of 1934 (15 U.S.C. 78o) is amended by adding
14 at the end the following new subsections:

15 “(k) REGISTRATION OR SUCCESSION TO A UNITED
16 STATES BROKER OR DEALER.—In determining whether
17 to permit a foreign person or an affiliate of a foreign per-
18 son to register as a United States broker or dealer, or
19 succeed to the registration of a United States broker or
20 dealer, the Commission may consider whether, for a for-
21 eign person, or an affiliate of a foreign person that pre-
22 sents a risk to the stability of the United States financial
23 system, the home country of the foreign person has adopt-
24 ed, or made demonstrable progress toward adopting, an

1 appropriate system of financial regulation to mitigate such
2 risk.

3 “(l) **TERMINATION OF A UNITED STATES BROKER**
4 **OR DEALER.**—For a foreign person or an affiliate of a
5 foreign person that presents such a risk to the stability
6 of the United States financial system, the Commission
7 may determine to terminate the registration of such for-
8 eign person or an affiliate of such foreign person as a
9 broker or dealer in the United States, if the Commission
10 determines that the home country of the foreign person
11 has not adopted, or made demonstrable progress toward
12 adopting, an appropriate system of financial regulation to
13 mitigate such risk.”.

14 **SEC. 174. STUDIES AND REPORTS ON HOLDING COMPANY**
15 **CAPITAL REQUIREMENTS.**

16 (a) **STUDY OF HYBRID CAPITAL INSTRUMENTS.**—
17 The Comptroller General of the United States, in con-
18 sultation with the Board of Governors, the Comptroller of
19 the Currency, and the Corporation, shall conduct a study
20 of the use of hybrid capital instruments as a component
21 of Tier 1 capital for banking institutions and bank holding
22 companies. The study shall consider—

23 (1) the current use of hybrid capital instru-
24 ments, such as trust preferred shares, as a compo-
25 nent of Tier 1 capital;

1 (2) the differences between the components of
2 capital permitted for insured depository institutions
3 and those permitted for companies that control in-
4 sured depository institutions;

5 (3) the benefits and risks of allowing such in-
6 struments to be used to comply with Tier 1 capital
7 requirements;

8 (4) the economic impact of prohibiting the use
9 of such capital instruments for Tier 1;

10 (5) a review of the consequences of disquali-
11 fying trust preferred instruments, and whether it
12 could lead to the failure or undercapitalization of ex-
13 isting banking organizations;

14 (6) the international competitive implications
15 prohibiting hybrid capital instruments for Tier 1;

16 (7) the impact on the cost and availability of
17 credit in the United States from such a prohibition;

18 (8) the availability of capital for financial insti-
19 tutions with less than \$10,000,000,000 in total as-
20 sets; and

21 (9) any other relevant factors relating to the
22 safety and soundness of our financial system and po-
23 tential economic impact of such a prohibition.

24 (b) STUDY OF FOREIGN BANK INTERMEDIATE
25 HOLDING COMPANY CAPITAL REQUIREMENTS.—The

1 Comptroller General of the United States, in consultation
2 with the Secretary, the Board of Governors, the Comp-
3 troller of the Currency, and the Corporation, shall conduct
4 a study of capital requirements applicable to United
5 States intermediate holding companies of foreign banks
6 that are bank holding companies or savings and loan hold-
7 ing companies. The study shall consider—

8 (1) current Board of Governors policy regarding
9 the treatment of intermediate holding companies;

10 (2) the principle of national treatment and
11 equality of competitive opportunity for foreign banks
12 operating in the United States;

13 (3) the extent to which foreign banks are sub-
14 ject on a consolidated basis to home country capital
15 standards comparable to United States capital
16 standards;

17 (4) potential effects on United States banking
18 organizations operating abroad of changes to United
19 States policy regarding intermediate holding compa-
20 nies;

21 (5) the impact on the cost and availability of
22 credit in the United States from a change in United
23 States policy regarding intermediate holding compa-
24 nies; and

1 (6) any other relevant factors relating to the
2 safety and soundness of our financial system and po-
3 tential economic impact of such a prohibition.

4 (c) REPORT.—Not later than 18 months after the
5 date of enactment of this Act, the Comptroller General
6 of the United States shall submit reports to the Com-
7 mittee on Banking, Housing, and Urban Affairs of the
8 Senate and the Committee on Financial Services of the
9 House of Representatives summarizing the results of the
10 studies required under subsection (a). The reports shall
11 include specific recommendations for legislative or regu-
12 latory action regarding the treatment of hybrid capital in-
13 struments, including trust preferred shares, and shall ex-
14 plain the basis for such recommendations.

15 **SEC. 175. INTERNATIONAL POLICY COORDINATION.**

16 (a) BY THE PRESIDENT.—The President, or a des-
17 ignee of the President, may coordinate through all avail-
18 able international policy channels, similar policies as those
19 found in United States law relating to limiting the scope,
20 nature, size, scale, concentration, and interconnectedness
21 of financial companies, in order to protect financial sta-
22 bility and the global economy.

23 (b) BY THE COUNCIL.—The Chairperson of the
24 Council, in consultation with the other members of the
25 Council, shall regularly consult with the financial regu-

1 latory entities and other appropriate organizations of for-
2 eign governments or international organizations on mat-
3 ters relating to systemic risk to the international financial
4 system.

5 (c) BY THE BOARD OF GOVERNORS AND THE SEC-
6 RETARY.—The Board of Governors and the Secretary
7 shall consult with their foreign counterparts and through
8 appropriate multilateral organizations to encourage com-
9 prehensive and robust prudential supervision and regula-
10 tion to all highly leveraged and interconnected financial
11 companies.

12 **SEC. 176. RULE OF CONSTRUCTION.**

13 No regulation or standard imposed under this title
14 may be construed in a manner that would lessen the strin-
15 gency of the requirements of any applicable primary finan-
16 cial regulatory agency or any other Federal or State agen-
17 cy that are otherwise applicable. This title, and the rules
18 and regulations or orders prescribed pursuant to this title,
19 do not divest any such agency of any authority derived
20 from any other applicable law.

21 **TITLE II—ORDERLY**
22 **LIQUIDATION AUTHORITY**

23 **SEC. 201. DEFINITIONS.**

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

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

4 (A) the actual, necessary costs and ex-
5 penses incurred by the Corporation as receiver
6 for a covered financial company in liquidating a
7 covered financial company; and

8 (B) any obligations that the Corporation
9 as receiver for a covered financial company de-
10 termines are necessary and appropriate to fa-
11 cilitate the smooth and orderly liquidation of
12 the covered financial company.

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

15 (3) BRIDGE FINANCIAL COMPANY.—The term
16 “bridge financial company” means a new financial
17 company organized by the Corporation in accordance
18 with section 210(h) for the purpose of resolving a
19 covered financial company.

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

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

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

10 (7) COVERED BROKER OR DEALER.—The term
11 “covered broker or dealer” means a covered financial
12 company that is a broker or dealer that—

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

16 (B) is a member of SIPC.

17 (8) COVERED FINANCIAL COMPANY.—The term
18 “covered financial company”—

19 (A) means a financial company for which
20 a determination has been made under section
21 203(b); and

22 (B) does not include an insured depository
23 institution.

1 (9) COVERED SUBSIDIARY.—The term “covered
2 subsidiary” means a subsidiary of a covered finan-
3 cial company, other than—

4 (A) an insured depository institution;

5 (B) an insurance company; or

6 (C) a covered broker or dealer.

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

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

16 (A) is incorporated or organized under any
17 provision of Federal law or the laws of any
18 State;

19 (B) is—

20 (i) a bank holding company, as de-
21 fined in section 2(a) of the Bank Holding
22 Company Act of 1956 (12 U.S.C.
23 1841(a)), and including any company de-
24 scribed in paragraph (5);

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

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

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

21 (C) is not a Farm Credit System institu-
22 tion chartered under and subject to the provi-
23 sions of the Farm Credit Act of 1971, as
24 amended (12 U.S.C. 2001 et seq.), a govern-
25 mental entity, or a regulated entity, as defined

1 under section 1303(20) of the Federal Housing
2 Enterprises Financial Safety and Soundness
3 Act of 1992 (12 U.S.C. 4502(20)).

4 (12) FUND.—The term “Fund” means the Or-
5 derly Liquidation Fund established under section
6 210(n).

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

9 (A) engaged in the business of insurance;

10 (B) subject to regulation by a State insur-
11 ance regulator; and

12 (C) covered by a State law that is designed
13 to specifically deal with the rehabilitation, liq-
14 uidation, or insolvency of an insurance com-
15 pany.

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

19 (15) NONBANK FINANCIAL COMPANY SUPER-
20 VISED BY THE BOARD OF GOVERNORS.—The term
21 “nonbank financial company supervised by the
22 Board of Governors” has the same meaning as in
23 section 102(a)(3)(D).

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

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

16 **SEC. 202. JUDICIAL REVIEW.**

17 (a) COMMENCEMENT OF ORDERLY LIQUIDATION.—

18 (1) PETITION TO DISTRICT COURT.—

19 (A) DISTRICT COURT REVIEW.—

20 (i) PETITION TO DISTRICT COURT.—

21 Subsequent to a determination by the Sec-
22 retary under section 203 that a financial
23 company satisfies the criteria in section
24 203(b), the Secretary shall notify the Cor-
25 poration and the covered financial com-

1 pany. If the board of directors (or body
2 performing similar functions) of the cov-
3 ered financial company acquiesces or con-
4 sents to the appointment of the Corpora-
5 tion as receiver, the Secretary shall ap-
6 point the Corporation as receiver. If the
7 board of directors (or body performing
8 similar functions) of the covered financial
9 company does not acquiesce or consent to
10 the appointment of the Corporation as re-
11 ceiver, the Secretary shall petition the
12 United States District Court for the Dis-
13 trict of Columbia for an order authorizing
14 the Secretary to appoint the Corporation
15 as receiver.

16 (ii) FORM AND CONTENT OF
17 ORDER.—The Secretary shall present all
18 relevant findings and the recommendation
19 made pursuant to section 203(a) to the
20 Court. The petition shall be filed under
21 seal.

22 (iii) DETERMINATION.—On a strictly
23 confidential basis, and without any prior
24 public disclosure, the Court, after notice to
25 the covered financial company and a hear-

1 ing in which the covered financial company
2 may oppose the petition, shall determine
3 whether the determination of the Secretary
4 that the covered financial company is in
5 default or in danger of default and satis-
6 fies the definition of a financial company
7 under section 201(a)(11) is arbitrary and
8 capricious.

9 (iv) ISSUANCE OF ORDER.—If the
10 Court determines that the determination of
11 the Secretary that the covered financial
12 company is in default or in danger of de-
13 fault and satisfies the definition of a finan-
14 cial company under section 201(a)(11)—

15 (I) is not arbitrary and capri-
16 cious, the Court shall issue an order
17 immediately authorizing the Secretary
18 to appoint the Corporation as receiver
19 of the covered financial company; or

20 (II) is arbitrary and capricious,
21 the Court shall immediately provide to
22 the Secretary a written statement of
23 each reason supporting its determina-
24 tion, and afford the Secretary an im-

1 mediate opportunity to amend and
2 refile the petition under clause (i).

3 (v) PETITION GRANTED BY OPER-
4 ATION OF LAW.—If the Court does not
5 make a determination within 24 hours of
6 receipt of the petition—

7 (I) the petition shall be granted
8 by operation of law;

9 (II) the Secretary shall appoint
10 the Corporation as receiver; and

11 (III) liquidation under this title
12 shall automatically and without fur-
13 ther notice or action be commenced
14 and the Corporation may immediately
15 take all actions authorized under this
16 title.

17 (B) EFFECT OF DETERMINATION.—The
18 determination of the Court under subparagraph
19 (A) shall be final, and shall be subject to appeal
20 only in accordance with paragraph (2). The de-
21 cision shall not be subject to any stay or injunc-
22 tion pending appeal. Upon conclusion of its pro-
23 ceedings under subparagraph (A), the Court
24 shall provide immediately for the record a writ-
25 ten statement of each reason supporting the de-

1 cision of the Court, and shall provide copies
2 thereof to the Secretary and the covered finan-
3 cial company.

4 (C) CRIMINAL PENALTIES.—A person who
5 recklessly discloses a determination of the Sec-
6 retary under section 203(b) or a petition of the
7 Secretary under subparagraph (A), or the pend-
8 ency of court proceedings as provided for under
9 subparagraph (A), shall be fined not more than
10 \$250,000, or imprisoned for not more than 5
11 years, or both.

12 (2) APPEAL OF DECISIONS OF THE DISTRICT
13 COURT.—

14 (A) APPEAL TO COURT OF APPEALS.—

15 (i) IN GENERAL.—Subject to clause
16 (ii), the United States Court of Appeals for
17 the District of Columbia Circuit shall have
18 jurisdiction of an appeal of a final decision
19 of the Court filed by the Secretary or a
20 covered financial company, through its
21 board of directors, notwithstanding section
22 210(a)(1)(A)(i), not later than 30 days
23 after the date on which the decision of the
24 Court is rendered or deemed rendered
25 under this subsection.

1 (ii) CONDITION OF JURISDICTION.—

2 The Court of Appeals shall have jurisdic-
3 tion of an appeal by a covered financial
4 company only if the covered financial com-
5 pany did not acquiesce or consent to the
6 appointment of a receiver by the Secretary
7 under paragraph (1)(A).

8 (iii) EXPEDITION.—The Court of Ap-
9 peals shall consider any appeal under this
10 subparagraph on an expedited basis.

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

19 (B) APPEAL TO THE SUPREME COURT.—

20 (i) IN GENERAL.—A petition for a
21 writ of certiorari to review a decision of
22 the Court of Appeals under subparagraph
23 (A) may be filed by the Secretary or the
24 covered financial company, through its
25 board of directors, notwithstanding section

1 210(a)(1)(A)(i), with the Supreme Court
2 of the United States, not later than 30
3 days after the date of the final decision of
4 the Court of Appeals, and the Supreme
5 Court shall have discretionary jurisdiction
6 to review such decision.

7 (ii) WRITTEN STATEMENT.—In the
8 event of a petition under clause (i), the
9 Court of Appeals shall immediately provide
10 for the record a written statement of each
11 reason for its decision.

12 (iii) EXPEDITION.—The Supreme
13 Court shall consider any petition under
14 this subparagraph on an expedited basis.

15 (iv) SCOPE OF REVIEW.—Review by
16 the Supreme Court under this subpara-
17 graph shall be limited to whether the de-
18 termination of the Secretary that the cov-
19 ered financial company is in default or in
20 danger of default and satisfies the defini-
21 tion of a financial company under section
22 201(a)(11) is arbitrary and capricious.

23 (b) ESTABLISHMENT AND TRANSMITTAL OF RULES
24 AND PROCEDURES.—

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

9 (2) PUBLICATION OF RULES.—The rules and
10 procedures established under paragraph (1), and any
11 modifications of such rules and procedures, shall be
12 recorded and shall be transmitted to—

13 (A) the Committee on the Judiciary of the
14 Senate;

15 (B) the Committee on Banking, Housing,
16 and Urban Affairs of the Senate;

17 (C) the Committee on the Judiciary of the
18 House of Representatives; and

19 (D) the Committee on Financial Services
20 of the House of Representatives.

21 (c) PROVISIONS APPLICABLE TO FINANCIAL COMPA-
22 NIES.—

23 (1) BANKRUPTCY CODE.—Except as provided in
24 this subsection, the provisions of the Bankruptcy
25 Code and rules issued thereunder, and not the provi-

1 sions of this title, shall apply to financial companies
2 that are not covered financial companies for which
3 the Corporation has been appointed as receiver, ex-
4 cept as expressly provided in this title.

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

11 (d) TIME LIMIT ON RECEIVERSHIP AUTHORITY.—

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

16 (2) EXTENSION OF TIME LIMIT.—The time
17 limit established in paragraph (1) may be extended
18 by the Corporation for up to 1 additional year, if the
19 Chairperson of the Corporation determines and cer-
20 tifies in writing to the Committee on Banking,
21 Housing, and Urban Affairs of the Senate and the
22 Committee on Financial Services of the House of
23 Representatives that continuation of the receivership
24 is necessary—

25 (A) to—

1 (i) maximize the net present value re-
2 turn from the sale or other disposition of
3 the assets of the covered financial com-
4 pany; or

5 (ii) minimize the amount of loss real-
6 ized upon the sale or other disposition of
7 the assets of the covered financial com-
8 pany; and

9 (B) to protect the stability of the financial
10 system of the United States.

11 (3) SECOND EXTENSION OF TIME LIMIT.—

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

18 (B) ADDITIONAL REPORT REQUIRED.—Not
19 later than 30 days after the date of commence-
20 ment of the extension under subparagraph (A),
21 the Corporation shall submit a report to the
22 Committee on Banking, Housing, and Urban
23 Affairs of the Senate and the Committee on Fi-
24 nancial Services of the House of Representa-
25 tives describing the need for the extension and

1 the specific plan of the Corporation to conclude
2 the receivership before the end of the second ex-
3 tension.

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

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

17 (B) the Council determines that the com-
18 pletion of longer-term responsibilities in the
19 form of ongoing litigation justifies the need for
20 an extension; and

21 (C) the Corporation submits a report ap-
22 proved by the Council not later than 30 days
23 after the date of the determinations by the
24 Council under subparagraphs (A) and (B) to
25 the Committee on Banking, Housing, and

1 Urban Affairs of the Senate and the Committee
2 on Financial Services of the House of Rep-
3 resentatives, describing—

4 (i) the ongoing litigation justifying the
5 need for an extension; and

6 (ii) the specific plan of the Corpora-
7 tion to complete the litigation and conclude
8 the receivership.

9 (5) REGULATIONS.—The Corporation may issue
10 regulations governing the termination of receiver-
11 ships under this title.

12 (6) NO LIABILITY.—The Corporation and the
13 Deposit Insurance Fund shall not be liable for unre-
14 solved claims arising from the receivership after the
15 termination of the receivership.

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

18 (1) STUDY.—

19 (A) IN GENERAL.—The Administrative Of-
20 fice of the United States Courts and the Comp-
21 troller General of the United States shall each
22 monitor the activities of the Court, and each
23 such Office shall conduct separate studies re-
24 garding the bankruptcy and orderly liquidation

1 process for financial companies under the
2 Bankruptcy Code.

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

8 (i) the effectiveness of chapter 7 or
9 chapter 11 of the Bankruptcy Code in fa-
10 cilitating the orderly liquidation or reorga-
11 nization of financial companies;

12 (ii) ways to maximize the efficiency
13 and effectiveness of the Court; and

14 (iii) ways to make the orderly liquida-
15 tion process under the Bankruptcy Code
16 for financial companies more effective.

17 (2) REPORTS.—Not later than 1 year after the
18 date of enactment of this Act, in each successive
19 year until the third year, and every fifth year after
20 that date of enactment, the Administrative Office of
21 the United States Courts and the Comptroller Gen-
22 eral of the United States shall submit to the Com-
23 mittee on Banking, Housing, and Urban Affairs and
24 the Committee on the Judiciary of the Senate and
25 the Committee on Financial Services and the Com-

1 mittee on the Judiciary of the House of Representa-
2 tives separate reports summarizing the results of the
3 studies conducted under paragraph (1).

4 (f) STUDY OF INTERNATIONAL COORDINATION RE-
5 LATING TO BANKRUPTCY PROCESS FOR FINANCIAL COM-
6 PANIES.—

7 (1) STUDY.—

8 (A) IN GENERAL.—The Comptroller Gen-
9 eral of the United States shall conduct a study
10 regarding international coordination relating to
11 the orderly liquidation of financial companies
12 under the Bankruptcy Code.

13 (B) ISSUES TO BE STUDIED.—In con-
14 ducting the study under subparagraph (A), the
15 Comptroller General of the United States shall
16 evaluate, with respect to the bankruptcy process
17 for financial companies—

18 (i) the extent to which international
19 coordination currently exists;

20 (ii) current mechanisms and struc-
21 tures for facilitating international coopera-
22 tion;

23 (iii) barriers to effective international
24 coordination; and

1 (iv) ways to increase and make more
2 effective international coordination.

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

12 (g) STUDY OF PROMPT CORRECTIVE ACTION IMPLE-
13 MENTATION BY THE APPROPRIATE FEDERAL AGEN-
14 CIES.—

15 (1) STUDY.—The Comptroller General of the
16 United States shall conduct a study regarding the
17 implementation of prompt corrective action by the
18 appropriate Federal banking agencies.

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

22 (A) the effectiveness of implementation of
23 prompt corrective action by the appropriate
24 Federal banking agencies and the resolution of

1 insured depository institutions by the Corpora-
2 tion; and

3 (B) ways to make prompt corrective action
4 a more effective tool to resolve the insured de-
5 pository institutions at the least possible long-
6 term cost to the Deposit Insurance Fund.

7 (3) REPORT TO COUNCIL.—Not later than 1
8 year after the date of enactment of this Act, the
9 Comptroller General shall submit a report to the
10 Council on the results of the study conducted under
11 this subsection.

12 (4) COUNCIL REPORT OF ACTION.—Not later
13 than 6 months after the date of receipt of the report
14 from the Comptroller General under paragraph (3),
15 the Council shall submit a report to the Committee
16 on Banking, Housing, and Urban Affairs of the Sen-
17 ate and the Committee on Financial Services of the
18 House of Representatives on actions taken in re-
19 sponse to the report, including any recommendations
20 made to the Federal primary financial regulatory
21 agencies under section 120.

22 **SEC. 203. SYSTEMIC RISK DETERMINATION.**

23 (a) WRITTEN RECOMMENDATION AND DETERMINA-
24 TION.—

25 (1) VOTE REQUIRED.—

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

13 (B) CASES INVOLVING BROKERS OR DEAL-
14 ERS.—In the case of a broker or dealer, or in
15 which the largest United States subsidiary (as
16 measured by total assets as of the end of the
17 previous calendar quarter) of a financial com-
18 pany is a broker or dealer, the Commission and
19 the Board of Governors, at the request of the
20 Secretary, or on their own initiative, shall con-
21 sider whether to make the written recommenda-
22 tion described in paragraph (2) with respect to
23 the financial company. Subject to the require-
24 ments in paragraph (2), such recommendation
25 shall be made upon a vote of not fewer than $\frac{2}{3}$

1 of the members of the Board of Governors then
2 serving and the members of the Commission
3 then serving, and in consultation with the Cor-
4 poration.

5 (C) CASES INVOLVING INSURANCE COMPA-
6 NIES.—In the case of an insurance company, or
7 in which the largest United States subsidiary
8 (as measured by total assets as of the end of
9 the previous calendar quarter) of a financial
10 company is an insurance company, the Director
11 of the Federal Insurance Office and the Board
12 of Governors, at the request of the Secretary or
13 on their own initiative, shall consider whether
14 to make the written recommendation described
15 in paragraph (2) with respect to the financial
16 company. Subject to the requirements in para-
17 graph (2), such recommendation shall be made
18 upon a vote of not fewer than $\frac{2}{3}$ of the Board
19 of Governors then serving and the affirmative
20 approval of the Director of the Federal Insur-
21 ance Office, and in consultation with the Cor-
22 poration.

23 (2) RECOMMENDATION REQUIRED.—Any writ-
24 ten recommendation pursuant to paragraph (1) shall
25 contain—

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

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

6 (C) a description of the effect that the de-
7 fault of the financial company would have on
8 economic conditions or financial stability for
9 low income, minority, or underserved commu-
10 nities;

11 (D) a recommendation regarding the na-
12 ture and the extent of actions to be taken under
13 this title regarding the financial company;

14 (E) an evaluation of the likelihood of a pri-
15 vate sector alternative to prevent the default of
16 the financial company;

17 (F) an evaluation of why a case under the
18 Bankruptcy Code is not appropriate for the fi-
19 nancial company;

20 (G) an evaluation of the effects on credi-
21 tors, counterparties, and shareholders of the fi-
22 nancial company and other market participants;
23 and

1 (H) an evaluation of whether the company
2 satisfies the definition of a financial company
3 under section 201.

4 (b) DETERMINATION BY THE SECRETARY.—Notwith-
5 standing any other provision of Federal or State law, the
6 Secretary shall take action in accordance with section
7 202(a)(1)(A), if, upon the written recommendation under
8 subsection (a), the Secretary (in consultation with the
9 President) determines that—

10 (1) the financial company is in default or in
11 danger of default;

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

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

18 (4) any effect on the claims or interests of
19 creditors, counterparties, and shareholders of the fi-
20 nancial company and other market participants as a
21 result of actions to be taken under this title is ap-
22 propriate, given the impact that any action taken
23 under this title would have on financial stability in
24 the United States;

1 (5) any action under section 204 would avoid or
2 mitigate such adverse effects, taking into consider-
3 ation the effectiveness of the action in mitigating po-
4 tential adverse effects on the financial system, the
5 cost to the general fund of the Treasury, and the po-
6 tential to increase excessive risk taking on the part
7 of creditors, counterparties, and shareholders in the
8 financial company;

9 (6) a Federal regulatory agency has ordered the
10 financial company to convert all of its convertible
11 debt instruments that are subject to the regulatory
12 order; and

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

15 (c) DOCUMENTATION AND REVIEW.—

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

17 (A) document any determination under
18 subsection (b);

19 (B) retain the documentation for review
20 under paragraph (2); and

21 (C) notify the covered financial company
22 and the Corporation of such determination.

23 (2) REPORT TO CONGRESS.—Not later than 24
24 hours after the date of appointment of the Corpora-
25 tion as receiver for a covered financial company, the

1 Secretary shall provide written notice of the rec-
2 ommendations and determinations reached in ac-
3 cordance with subsections (a) and (b) to the Major-
4 ity Leader and the Minority Leader of the Senate
5 and the Speaker and the Minority Leader of the
6 House of Representatives, the Committee on Bank-
7 ing, Housing, and Urban Affairs of the Senate, and
8 the Committee on Financial Services of the House of
9 Representatives, which shall consist of a summary of
10 the basis for the determination, including, to the ex-
11 tent available at the time of the determination—

12 (A) the size and financial condition of the
13 covered financial company;

14 (B) the sources of capital and credit sup-
15 port that were available to the covered financial
16 company;

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

20 (D) identification of the banks and finan-
21 cial companies which may be able to provide the
22 services offered by the covered financial com-
23 pany;

1 (E) any potential international ramifica-
2 tions of resolution of the covered financial com-
3 pany under other applicable insolvency law;

4 (F) an estimate of the potential effect of
5 the resolution of the covered financial company
6 under other applicable insolvency law on the fi-
7 nancial stability of the United States;

8 (G) the potential effect of the appointment
9 of a receiver by the Secretary on consumers;

10 (H) the potential effect of the appointment
11 of a receiver by the Secretary on the financial
12 system, financial markets, and banks and other
13 financial companies; and

14 (I) whether resolution of the covered finan-
15 cial company under other applicable insolvency
16 law would cause banks or other financial com-
17 panies to experience severe liquidity distress.

18 (3) REPORTS TO CONGRESS AND THE PUB-
19 LIC.—

20 (A) IN GENERAL.—Not later than 60 days
21 after the date of appointment of the Corpora-
22 tion as receiver for a covered financial company,
23 the Corporation shall file a report with the
24 Committee on Banking, Housing, and Urban
25 Affairs of the Senate and the Committee on Fi-

1 nancial Services of the House of Representa-
2 tives—

3 (i) setting forth information on the fi-
4 nancial condition of the covered financial
5 company as of the date of the appoint-
6 ment, including a description of its assets
7 and liabilities;

8 (ii) describing the plan of, and actions
9 taken by, the Corporation to wind down
10 the covered financial company;

11 (iii) explaining each instance in which
12 the Corporation waived any applicable re-
13 quirements of part 366 of title 12, Code of
14 Federal Regulations (or any successor
15 thereto) with respect to conflicts of interest
16 by any person in the private sector who
17 was retained to provide services to the Cor-
18 poration in connection with such receiver-
19 ship;

20 (iv) describing the reasons for the
21 provision of any funding to the receivership
22 out of the Fund;

23 (v) setting forth the expected costs of
24 the orderly liquidation of the covered fi-
25 nancial company;

1 (vi) setting forth the identity of any
2 claimant that is treated in a manner dif-
3 ferent from other similarly situated claim-
4 ants under subsection (b)(4), (d)(4), or
5 (h)(5)(E), the amount of any additional
6 payment to such claimant under subsection
7 (d)(4), and the reason for any such action;
8 and

9 (vii) which report the Corporation
10 shall publish on an online website main-
11 tained by the Corporation, subject to main-
12 taining appropriate confidentiality.

13 (B) AMENDMENTS.—The Corporation
14 shall, on a timely basis, not less frequently than
15 quarterly, amend or revise and resubmit the re-
16 ports prepared under this paragraph, as nec-
17 essary.

18 (C) CONGRESSIONAL TESTIMONY.—The
19 Corporation and the primary financial regu-
20 latory agency, if any, of the financial company
21 for which the Corporation was appointed re-
22 ceiver under this title shall appear before Con-
23 gress, if requested, not later than 30 days after
24 the date on which the Corporation first files the
25 reports required under subparagraph (A).

1 (4) DEFAULT OR IN DANGER OF DEFAULT.—

2 For purposes of this title, a financial company shall
3 be considered to be in default or in danger of default
4 if, as determined in accordance with subsection
5 (b)—

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

9 (B) the financial company has incurred, or
10 is likely to incur, losses that will deplete all or
11 substantially all of its capital, and there is no
12 reasonable prospect for the company to avoid
13 such depletion;

14 (C) the assets of the financial company
15 are, or are likely to be, less than its obligations
16 to creditors and others; or

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

21 (5) GAO REVIEW.—The Comptroller General of
22 the United States shall review and report to Con-
23 gress on any determination under subsection (b),
24 that results in the appointment of the Corporation
25 as receiver, including—

1 (A) the basis for the determination;

2 (B) the purpose for which any action was
3 taken pursuant thereto;

4 (C) the likely effect of the determination
5 and such action on the incentives and conduct
6 of financial companies and their creditors,
7 counterparties, and shareholders; and

8 (D) the likely disruptive effect of the deter-
9 mination and such action on the reasonable ex-
10 pectations of creditors, counterparties, and
11 shareholders, taking into account the impact
12 any action under this title would have on finan-
13 cial stability in the United States, including
14 whether the rights of such parties will be dis-
15 rupted.

16 (d) CORPORATION POLICIES AND PROCEDURES.—As
17 soon as is practicable after the date of enactment of this
18 Act, the Corporation shall establish policies and proce-
19 dures that are acceptable to the Secretary governing the
20 use of funds available to the Corporation to carry out this
21 title, including the terms and conditions for the provision
22 and use of funds under sections 204(d), 210(h)(2)(G)(iv),
23 and 210(h)(9).

24 (e) TREATMENT OF INSURANCE COMPANIES AND IN-
25 SURANCE COMPANY SUBSIDIARIES.—

1 (1) IN GENERAL.—Notwithstanding subsection
2 (b), if an insurance company is a covered financial
3 company or a subsidiary or affiliate of a covered fi-
4 nancial company, the liquidation or rehabilitation of
5 such insurance company, and any subsidiary or affil-
6 iate of such company that is not excepted under
7 paragraph (2), shall be conducted as provided under
8 such State law.

9 (2) EXCEPTION FOR SUBSIDIARIES AND AFFILI-
10 ATES.—The requirement of paragraph (1) shall not
11 apply with respect to any subsidiary or affiliate of
12 an insurance company that is not itself an insurance
13 company.

14 (3) BACKUP AUTHORITY.—Notwithstanding
15 paragraph (1), with respect to a covered financial
16 company described in paragraph (1), if, after the
17 end of the 60-day period beginning on the date on
18 which a determination is made under section 202(a)
19 with respect to such company, the appropriate regu-
20 latory agency has not filed the appropriate judicial
21 action in the appropriate State court to place such
22 company into orderly liquidation under the laws and
23 requirements of the State, the Corporation shall
24 have the authority to stand in the place of the ap-
25 propriate regulatory agency and file the appropriate

1 judicial action in the appropriate State court to
2 place such company into orderly liquidation under
3 the laws and requirements of the State.

4 **SEC. 204. ORDERLY LIQUIDATION OF COVERED FINANCIAL**
5 **COMPANIES.**

6 (a) PURPOSE OF ORDERLY LIQUIDATION AUTHOR-
7 ITY.—It is the purpose of this title to provide the nec-
8 essary authority to liquidate failing financial companies
9 that pose a significant risk to the financial stability of the
10 United States in a manner that mitigates such risk and
11 minimizes moral hazard. The authority provided in this
12 title shall be exercised in the manner that best fulfills such
13 purpose, so that—

14 (1) creditors and shareholders will bear the
15 losses of the financial company;

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

18 (3) the Corporation and other appropriate
19 agencies will take all steps necessary and appro-
20 priate to assure that all parties, including manage-
21 ment and third parties, having responsibility for the
22 condition of the financial company bear losses con-
23 sistent with their responsibility, including actions for
24 damages, restitution, and recoupment of compensa-

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1 tion and other gains not compatible with such re-
2 sponsibility.

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

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

9 (1) shall consult with the primary financial reg-
10 ulatory agency or agencies of the covered financial
11 company and its covered subsidiaries for purposes of
12 ensuring an orderly liquidation of the covered finan-
13 cial company;

14 (2) may consult with, or under subsection
15 (a)(1)(B)(v) or (a)(1)(L) of section 210, acquire the
16 services of, any outside experts, as appropriate to in-
17 form and aid the Corporation in the orderly liquida-
18 tion process;

19 (3) shall consult with the primary financial reg-
20 ulatory agency or agencies of any subsidiaries of the
21 covered financial company that are not covered sub-
22 sidiaries, and coordinate with such regulators re-
23 garding the treatment of such solvent subsidiaries
24 and the separate resolution of any such insolvent

1 subsidiaries under other governmental authority, as
2 appropriate; and

3 (4) shall consult with the Commission and the
4 Securities Investor Protection Corporation in the
5 case of any covered financial company for which the
6 Corporation has been appointed as receiver that is a
7 broker or dealer registered with the Commission
8 under section 15(b) of the Securities Exchange Act
9 of 1934 (15 U.S.C. 78o(b)) and is a member of the
10 Securities Investor Protection Corporation, for the
11 purpose of determining whether to transfer to a
12 bridge financial company organized by the Corpora-
13 tion as receiver, without consent of any customer,
14 customer accounts of the covered financial company.

15 (d) FUNDING FOR ORDERLY LIQUIDATION.—Upon
16 its appointment as receiver for a covered financial com-
17 pany, and thereafter as the Corporation may, in its discre-
18 tion, determine to be necessary or appropriate, the Cor-
19 poration may make available to the receivership, subject
20 to the conditions set forth in section 206 and subject to
21 the plan described in section 210(n)(11), funds for the or-
22 derly liquidation of the covered financial company. All
23 funds provided by the Corporation under this subsection
24 shall have a priority of claims under subparagraph (A) or

1 (B) of section 210(b)(1), as applicable, including funds
2 used for—

3 (1) making loans to, or purchasing any debt ob-
4 ligation of, the covered financial company or any
5 covered subsidiary;

6 (2) purchasing or guaranteeing against loss the
7 assets of the covered financial company or any cov-
8 ered subsidiary, directly or through an entity estab-
9 lished by the Corporation for such purpose;

10 (3) assuming or guaranteeing the obligations of
11 the covered financial company or any covered sub-
12 sidiary to 1 or more third parties;

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

19 (5) selling or transferring all, or any part, of
20 such acquired assets, liabilities, or obligations of the
21 covered financial company or any covered subsidiary;
22 and

23 (6) making payments pursuant to subsections
24 (b)(4), (d)(4), and (h)(5)(E) of section 210.

1 **SEC. 205. ORDERLY LIQUIDATION OF COVERED BROKERS**
2 **AND DEALERS.**

3 (a) APPOINTMENT OF SIPC AS TRUSTEE.—

4 (1) APPOINTMENT.—Upon the appointment of
5 the Corporation as receiver for any covered broker
6 or dealer, the Corporation shall appoint, without any
7 need for court approval, the Securities Investor Pro-
8 tection Corporation to act as trustee for the liquida-
9 tion under the Securities Investor Protection Act of
10 1970 (15 U.S.C. 78aaa et seq.) of the covered
11 broker or dealer.

12 (2) ACTIONS BY SIPC.—

13 (A) FILING.—Upon appointment of SIPC
14 under paragraph (1), SIPC shall promptly file
15 with any Federal district court of competent ju-
16 risdiction specified in section 21 or 27 of the
17 Securities Exchange Act of 1934 (15 U.S.C.
18 78u, 78aa), an application for a protective de-
19 cree under the Securities Investor Protection
20 Act of 1970 (15 U.S.C. 78aaa et seq.) as to the
21 covered broker or dealer. The Federal district
22 court shall accept and approve the filing, in-
23 cluding outside of normal business hours, and
24 shall immediately issue the protective decree as
25 to the covered broker or dealer.

1 (B) ADMINISTRATION BY SIPC.—Following
2 entry of the protective decree, and except as
3 otherwise provided in this section, the deter-
4 mination of claims and the liquidation of assets
5 retained in the receivership of the covered
6 broker or dealer and not transferred to the
7 bridge financial company shall be administered
8 under the Securities Investor Protection Act of
9 1970 (15 U.S.C. 78aaa et seq.) by SIPC, as
10 trustee for the covered broker or dealer.

11 (C) DEFINITION OF FILING DATE.—For
12 purposes of the liquidation proceeding, the term
13 “filing date” means the date on which the Cor-
14 poration is appointed as receiver of the covered
15 broker or dealer.

16 (D) DETERMINATION OF CLAIMS.—As
17 trustee for the covered broker or dealer, SIPC
18 shall determine and satisfy, consistent with this
19 title and with the Securities Investor Protection
20 Act of 1970 (15 U.S.C. 78aaa et seq.), all
21 claims against the covered broker or dealer aris-
22 ing on or before the filing date.

23 (b) POWERS AND DUTIES OF SIPC.—

24 (1) IN GENERAL.—Except as provided in this
25 section, upon its appointment as trustee for the liq-

1 liquidation of a covered broker or dealer, SIPC shall
2 have all of the powers and duties provided by the Se-
3 curities Investor Protection Act of 1970 (15 U.S.C.
4 78aaa et seq.), including, without limitation, all
5 rights of action against third parties, and shall con-
6 duct such liquidation in accordance with the terms
7 of the Securities Investor Protection Act of 1970 (15
8 U.S.C. 78aaa et seq.), except that SIPC shall have
9 no powers or duties with respect to assets and liabil-
10 ities transferred by the Corporation from the covered
11 broker or dealer to any bridge financial company es-
12 tablished in accordance with this title.

13 (2) LIMITATION OF POWERS.—The exercise by
14 SIPC of powers and functions as trustee under sub-
15 section (a) shall not impair or impede the exercise
16 of the powers and duties of the Corporation with re-
17 gard to—

18 (A) any action, except as otherwise pro-
19 vided in this title—

20 (i) to make funds available under sec-
21 tion 204(d);

22 (ii) to organize, establish, operate, or
23 terminate any bridge financial company;

24 (iii) to transfer assets and liabilities;

1 (iv) to enforce or repudiate contracts;
2 or
3 (v) to take any other action relating
4 to such bridge financial company under
5 section 210; or
6 (B) determining claims under subsection
7 (e).

8 (3) PROTECTIVE DECREE.—SIPC and the Cor-
9 poration, in consultation with the Commission, shall
10 jointly determine the terms of the protective decree
11 to be filed by SIPC with any court of competent ju-
12 risdiction under section 21 or 27 of the Securities
13 Exchange Act of 1934 (15 U.S.C. 78u, 78aa), as re-
14 quired by subsection (a).

15 (4) QUALIFIED FINANCIAL CONTRACTS.—Not-
16 withstanding any provision of the Securities Investor
17 Protection Act of 1970 to the contrary (including
18 section 5(b)(2)(C) of that Act (15 U.S.C.
19 78eee(b)(2)(C))), the rights and obligations of any
20 party to a qualified financial contract (as that term
21 is defined in section 210(c)(8)) to which a covered
22 broker or dealer for which the Corporation has been
23 appointed receiver is a party shall be governed exclu-
24 sively by section 210, including the limitations and
25 restrictions contained in section 210(c)(10)(B).

1 (c) LIMITATION ON COURT ACTION.—Except as oth-
2 erwise provided in this title, no court may take any action,
3 including any action pursuant to the Securities Investor
4 Protection Act of 1970 or the Bankruptcy Code, to re-
5 strain or affect the exercise of powers or functions of the
6 Corporation as receiver for a covered broker or dealer and
7 any claims against the Corporation as such receiver shall
8 be determined in accordance with subsection (e) and such
9 claims shall be limited to money damages.

10 (d) ACTIONS BY CORPORATION AS RECEIVER.—

11 (1) IN GENERAL.—Notwithstanding any other
12 provision of this title, no action taken by the Cor-
13 poration as receiver with respect to a covered broker
14 or dealer shall—

15 (A) adversely affect the rights of a cus-
16 tomer to customer property or customer name
17 securities;

18 (B) diminish the amount or timely pay-
19 ment of net equity claims of customers; or

20 (C) otherwise impair the recoveries pro-
21 vided to a customer under the Securities Inves-
22 tor Protection Act of 1970 (15 U.S.C. 78aaa et
23 seq.).

24 (2) NET PROCEEDS.—The net proceeds from
25 any transfer, sale, or disposition of assets of the cov-

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1 ered broker or dealer, or proceeds thereof by the
2 Corporation as receiver for the covered broker or
3 dealer shall be for the benefit of the estate of the
4 covered broker or dealer, as provided in this title.

5 (e) CLAIMS AGAINST THE CORPORATION AS RE-
6 CEIVER.—Any claim against the Corporation as receiver
7 for a covered broker or dealer for assets transferred to
8 a bridge financial company established with respect to
9 such covered broker or dealer—

10 (1) shall be determined in accordance with sec-
11 tion 210(a)(2); and

12 (2) may be reviewed by the appropriate district
13 or territorial court of the United States in accord-
14 ance with section 210(a)(5).

15 (f) SATISFACTION OF CUSTOMER CLAIMS.—

16 (1) OBLIGATIONS TO CUSTOMERS.—Notwith-
17 standing any other provision of this title, all obliga-
18 tions of a covered broker or dealer or of any bridge
19 financial company established with respect to such
20 covered broker or dealer to a customer relating to,
21 or net equity claims based upon, customer property
22 or customer name securities shall be promptly dis-
23 charged by SIPC, the Corporation, or the bridge fi-
24 nancial company, as applicable, by the delivery of se-
25 curities or the making of payments to or for the ac-

1 count of such customer, in a manner and in an
2 amount at least as beneficial to the customer as
3 would have been the case had the actual proceeds re-
4 alized from the liquidation of the covered broker or
5 dealer under this title been distributed in a pro-
6 ceeding under the Securities Investor Protection Act
7 of 1970 (15 U.S.C. 78aaa et seq.) without the ap-
8 pointment of the Corporation as receiver and with-
9 out any transfer of assets or liabilities to a bridge
10 financial company, and with a filing date as of the
11 date on which the Corporation is appointed as re-
12 ceiver.

13 (2) SATISFACTION OF CLAIMS BY SIPC.—SIPC,
14 as trustee for a covered broker or dealer, shall sat-
15 isfy customer claims in the manner and amount pro-
16 vided under the Securities Investor Protection Act of
17 1970 (15 U.S.C. 78aaa et seq.), as if the appoint-
18 ment of the Corporation as receiver had not oc-
19 curred, and with a filing date as of the date on
20 which the Corporation is appointed as receiver. The
21 Corporation shall satisfy customer claims, to the ex-
22 tent that a customer would have received more secu-
23 rities or cash with respect to the allocation of cus-
24 tomer property had the covered financial company
25 been subject to a proceeding under the Securities In-

1 investor Protection Act (15 U.S.C. 78aaa et seq.)
2 without the appointment of the Corporation as re-
3 ceiver, and with a filing date as of the date on which
4 the Corporation is appointed as receiver.

5 (g) PRIORITIES.—

6 (1) CUSTOMER PROPERTY.—As trustee for a
7 covered broker or dealer, SIPC shall allocate cus-
8 tomer property and deliver customer name securities
9 in accordance with section 8(c) of the Securities In-
10 vestor Protection Act of 1970 (15 U.S.C. 78fff-
11 2(c)).

12 (2) OTHER CLAIMS.—All claims other than
13 those described in paragraph (1) (including any un-
14 paid claim by a customer for the allowed net equity
15 claim of such customer from customer property)
16 shall be paid in accordance with the priorities in sec-
17 tion 210(b).

18 (h) RULEMAKING.—The Commission and the Cor-
19 poration, after consultation with SIPC, shall jointly issue
20 rules to implement this section.

21 **SEC. 206. MANDATORY TERMS AND CONDITIONS FOR ALL**
22 **ORDERLY LIQUIDATION ACTIONS.**

23 In taking action under this title, the Corporation
24 shall—

1 (1) determine that such action is necessary for
2 purposes of the financial stability of the United
3 States, and not for the purpose of preserving the
4 covered financial company;

5 (2) ensure that the shareholders of a covered fi-
6 nancial company do not receive payment until after
7 all other claims and the Fund are fully paid;

8 (3) ensure that unsecured creditors bear losses
9 in accordance with the priority of claim provisions in
10 section 210;

11 (4) ensure that management responsible for the
12 failed condition of the covered financial company is
13 removed (if such management has not already been
14 removed at the time at which the Corporation is ap-
15 pointed receiver);

16 (5) ensure that the members of the board of di-
17 rectors (or body performing similar functions) re-
18 sponsible for the failed condition of the covered fi-
19 nancial company are removed, if such members have
20 not already been removed at the time the Corpora-
21 tion is appointed as receiver; and

22 (6) not take an equity interest in or become a
23 shareholder of any covered financial company or any
24 covered subsidiary.

1 **SEC. 207. DIRECTORS NOT LIABLE FOR ACQUIESCING IN**
2 **APPOINTMENT OF RECEIVER.**

3 The members of the board of directors (or body per-
4 forming similar functions) of a covered financial company
5 shall not be liable to the shareholders or creditors thereof
6 for acquiescing in or consenting in good faith to the ap-
7 pointment of the Corporation as receiver for the covered
8 financial company under section 203.

9 **SEC. 208. DISMISSAL AND EXCLUSION OF OTHER ACTIONS.**

10 (a) IN GENERAL.—Effective as of the date of the ap-
11 pointment of the Corporation as receiver for the covered
12 financial company under section 202 or the appointment
13 of SIPC as trustee for a covered broker or dealer under
14 section 205, as applicable, any case or proceeding com-
15 menced with respect to the covered financial company
16 under the Bankruptcy Code or the Securities Investor
17 Protection Act of 1970 shall be dismissed, upon notice to
18 the Bankruptcy Court (with respect to a case commenced
19 under the Bankruptcy Code), and upon notice to SIPC
20 (with respect to a covered broker or dealer) and no such
21 case or proceeding may be commenced with respect to a
22 covered financial company at any time while the orderly
23 liquidation is pending.

24 (b) REVESTING OF ASSETS.—Effective as of the date
25 of appointment of the Corporation as receiver, the assets
26 of a covered financial company shall, to the extent they

1 have vested in any entity other than the covered financial
2 company as a result of any case or proceeding commenced
3 with respect to the covered financial company under the
4 Bankruptcy Code, the Securities Investor Protection Act
5 of 1970, or any similar provision of State liquidation or
6 insolvency law applicable to the covered financial company,
7 re-vest in the covered financial company.

8 (c) LIMITATION.—Notwithstanding subsections (a)
9 and (b), any order entered or other relief granted by a
10 bankruptcy court prior to the date of appointment of the
11 Corporation as receiver shall continue with the same valid-
12 ity as if an orderly liquidation had not been commenced.

13 **SEC. 209. RULEMAKING; NON-CONFLICTING LAW.**

14 The Corporation shall, in consultation with the Coun-
15 cil, prescribe such rules or regulations as the Corporation
16 considers necessary or appropriate to implement this title,
17 including rules and regulations with respect to the rights,
18 interests, and priorities of creditors, counterparties, secu-
19 rity entitlement holders, or other persons with respect to
20 any covered financial company or any assets or other prop-
21 erty of or held by such covered financial company, and
22 address the potential for conflicts of interest between or
23 among individual receiverships established under this title
24 or under the Federal Deposit Insurance Act. To the extent
25 possible, the Corporation shall seek to harmonize applica-

1 ble rules and regulations promulgated under this section
2 with the insolvency laws that would otherwise apply to a
3 covered financial company.

4 **SEC. 210. POWERS AND DUTIES OF THE CORPORATION.**

5 (a) POWERS AND AUTHORITIES.—

6 (1) GENERAL POWERS.—

7 (A) SUCCESSOR TO COVERED FINANCIAL
8 COMPANY.—The Corporation shall, upon ap-
9 pointment as receiver for a covered financial
10 company under this title, succeed to—

11 (i) all rights, titles, powers, and privi-
12 leges of the covered financial company and
13 its assets, and of any stockholder, member,
14 officer, or director of such company; and

15 (ii) title to the books, records, and as-
16 sets of any previous receiver or other legal
17 custodian of such covered financial com-
18 pany.

19 (B) OPERATION OF THE COVERED FINAN-
20 CIAL COMPANY DURING THE PERIOD OF OR-
21 DERLY LIQUIDATION.—The Corporation, as re-
22 ceiver for a covered financial company, may—

23 (i) take over the assets of and operate
24 the covered financial company with all of
25 the powers of the members or share-

1 holders, the directors, and the officers of
2 the covered financial company, and con-
3 duct all business of the covered financial
4 company;

5 (ii) collect all obligations and money
6 owed to the covered financial company;

7 (iii) perform all functions of the cov-
8 ered financial company, in the name of the
9 covered financial company;

10 (iv) manage the assets and property
11 of the covered financial company, con-
12 sistent with maximization of the value of
13 the assets in the context of the orderly liq-
14 uidation; and

15 (v) provide by contract for assistance
16 in fulfilling any function, activity, action,
17 or duty of the Corporation as receiver.

18 (C) FUNCTIONS OF COVERED FINANCIAL
19 COMPANY OFFICERS, DIRECTORS, AND SHARE-
20 HOLDERS.—The Corporation may provide for
21 the exercise of any function by any member or
22 stockholder, director, or officer of any covered
23 financial company for which the Corporation
24 has been appointed as receiver under this title.

1 (D) ADDITIONAL POWERS AS RECEIVER.—

2 The Corporation shall, as receiver for a covered
3 financial company, and subject to all legally en-
4 forceable and perfected security interests and
5 all legally enforceable security entitlements in
6 respect of assets held by the covered financial
7 company, liquidate, and wind-up the affairs of
8 a covered financial company, including taking
9 steps to realize upon the assets of the covered
10 financial company, in such manner as the Cor-
11 poration deems appropriate, including through
12 the sale of assets, the transfer of assets to a
13 bridge financial company established under sub-
14 section (h), or the exercise of any other rights
15 or privileges granted to the receiver under this
16 section.

17 (E) ADDITIONAL POWERS WITH RESPECT
18 TO FAILING SUBSIDIARIES OF A COVERED FI-
19 NANCIAL COMPANY.—

20 (i) IN GENERAL.—In any case in
21 which a receiver is appointed for a covered
22 financial company under section 202, the
23 Corporation may appoint itself as receiver
24 of any covered subsidiary of the covered fi-
25 nancial company that is organized under

1 Federal law or the laws of any State, if the
2 Corporation and the Secretary jointly de-
3 termine that—

4 (I) the covered subsidiary is in
5 default or in danger of default;

6 (II) such action would avoid or
7 mitigate serious adverse effects on the
8 financial stability or economic condi-
9 tions of the United States; and

10 (III) such action would facilitate
11 the orderly liquidation of the covered
12 financial company.

13 (ii) TREATMENT AS COVERED FINAN-
14 CIAL COMPANY.—If the Corporation is ap-
15 pointed as receiver of a covered subsidiary
16 of a covered financial company under
17 clause (i), the covered subsidiary shall
18 thereafter be considered a covered financial
19 company under this title, and the Corpora-
20 tion shall thereafter have all the powers
21 and rights with respect to that covered
22 subsidiary as it has with respect to a cov-
23 ered financial company under this title.

24 (F) ORGANIZATION OF BRIDGE COMPA-
25 NIES.—The Corporation, as receiver for a cov-

1 ered financial company, may organize a bridge
2 financial company under subsection (h).

3 (G) MERGER; TRANSFER OF ASSETS AND
4 LIABILITIES.—

5 (i) IN GENERAL.—Subject to clauses
6 (ii) and (iii), the Corporation, as receiver
7 for a covered financial company, may—

8 (I) merge the covered financial
9 company with another company; or

10 (II) transfer any asset or liability
11 of the covered financial company (in-
12 cluding any assets and liabilities held
13 by the covered financial company for
14 security entitlement holders, any cus-
15 tomer property, or any assets and li-
16 abilities associated with any trust or
17 custody business) without obtaining
18 any approval, assignment, or consent
19 with respect to such transfer.

20 (ii) FEDERAL AGENCY APPROVAL;
21 ANTITRUST REVIEW.—With respect to a
22 transaction described in clause (i)(I) that
23 requires approval by a Federal agency—

24 (I) the transaction may not be
25 consummated before the 5th calendar

1 day after the date of approval by the
2 Federal agency responsible for such
3 approval;

4 (II) if, in connection with any
5 such approval, a report on competitive
6 factors is required, the Federal agency
7 responsible for such approval shall
8 promptly notify the Attorney General
9 of the United States of the proposed
10 transaction, and the Attorney General
11 shall provide the required report not
12 later than 10 days after the date of
13 the request; and

14 (III) if notification under section
15 7A of the Clayton Act is required with
16 respect to such transaction, then the
17 required waiting period shall end on
18 the 15th day after the date on which
19 the Attorney General and the Federal
20 Trade Commission receive such notifi-
21 cation, unless the waiting period is
22 terminated earlier under subsection
23 (b)(2) of such section 7A, or is ex-
24 tended pursuant to subsection (e)(2)
25 of such section 7A.

1 (iii) SETOFF.—Subject to the other
2 provisions of this title, any transferee of
3 assets from a receiver, including a bridge
4 financial company, shall be subject to such
5 claims or rights as would prevail over the
6 rights of such transferee in such assets
7 under applicable noninsolvency law.

8 (H) PAYMENT OF VALID OBLIGATIONS.—
9 The Corporation, as receiver for a covered fi-
10 nancial company, shall, to the extent that funds
11 are available, pay all valid obligations of the
12 covered financial company that are due and
13 payable at the time of the appointment of the
14 Corporation as receiver, in accordance with the
15 prescriptions and limitations of this title.

16 (I) APPLICABLE NONINSOLVENCY LAW.—
17 Except as may otherwise be provided in this
18 title, the applicable noninsolvency law shall be
19 determined by the noninsolvency choice of law
20 rules otherwise applicable to the claims, rights,
21 titles, persons, or entities at issue.

22 (J) SUBPOENA AUTHORITY.—

23 (i) IN GENERAL.—The Corporation,
24 as receiver for a covered financial com-
25 pany, may, for purposes of carrying out

1 any power, authority, or duty with respect
2 to the covered financial company (includ-
3 ing determining any claim against the cov-
4 ered financial company and determining
5 and realizing upon any asset of any person
6 in the course of collecting money due the
7 covered financial company), exercise any
8 power established under section 8(n) of the
9 Federal Deposit Insurance Act, as if the
10 Corporation were the appropriate Federal
11 banking agency for the covered financial
12 company, and the covered financial com-
13 pany were an insured depository institu-
14 tion.

15 (ii) RULE OF CONSTRUCTION.—This
16 subparagraph may not be construed as
17 limiting any rights that the Corporation, in
18 any capacity, might otherwise have to exer-
19 cise any powers described in clause (i) or
20 under any other provision of law.

21 (K) INCIDENTAL POWERS.—The Corpora-
22 tion, as receiver for a covered financial com-
23 pany, may exercise all powers and authorities
24 specifically granted to receivers under this title,

1 and such incidental powers as shall be nec-
2 essary to carry out such powers under this title.

3 (L) UTILIZATION OF PRIVATE SECTOR.—

4 In carrying out its responsibilities in the man-
5 agement and disposition of assets from the cov-
6 ered financial company, the Corporation, as re-
7 ceiver for a covered financial company, may uti-
8 lize the services of private persons, including
9 real estate and loan portfolio asset manage-
10 ment, property management, auction mar-
11 keting, legal, and brokerage services, if such
12 services are available in the private sector, and
13 the Corporation determines that utilization of
14 such services is practicable, efficient, and cost
15 effective.

16 (M) SHAREHOLDERS AND CREDITORS OF
17 COVERED FINANCIAL COMPANY.—Notwith-
18 standing any other provision of law, the Cor-
19 poration, as receiver for a covered financial
20 company, shall succeed by operation of law to
21 the rights, titles, powers, and privileges de-
22 scribed in subparagraph (A), and shall termi-
23 nate all rights and claims that the stockholders
24 and creditors of the covered financial company
25 may have against the assets of the covered fi-

1 nancial company or the Corporation arising out
2 of their status as stockholders or creditors, ex-
3 cept for their right to payment, resolution, or
4 other satisfaction of their claims, as permitted
5 under this section. The Corporation shall en-
6 sure that shareholders and unsecured creditors
7 bear losses, consistent with the priority of
8 claims provisions under this section.

9 (N) COORDINATION WITH FOREIGN FINAN-
10 CIAL AUTHORITIES.—The Corporation, as re-
11 ceiver for a covered financial company, shall co-
12 ordinate, to the maximum extent possible, with
13 the appropriate foreign financial authorities re-
14 garding the orderly liquidation of any covered
15 financial company that has assets or operations
16 in a country other than the United States.

17 (O) RESTRICTION ON TRANSFERS.—

18 (i) SELECTION OF ACCOUNTS FOR
19 TRANSFER.—If the Corporation establishes
20 one or more bridge financial companies
21 with respect to a covered broker or dealer,
22 the Corporation shall transfer to one of
23 such bridge financial companies, all cus-
24 tomer accounts of the covered broker or
25 dealer, and all associated customer name

1 securities and customer property, unless
2 the Corporation, after consulting with the
3 Commission and SIPC, determines that—

4 (I) the customer accounts, cus-
5 tomer name securities, and customer
6 property are likely to be promptly
7 transferred to another broker or deal-
8 er that is registered with the Commis-
9 sion under section 15(b) of the Secu-
10 rities Exchange Act of 1934 (15
11 U.S.C. 73o(b)) and is a member of
12 SIPC; or

13 (II) the transfer of the accounts
14 to a bridge financial company would
15 materially interfere with the ability of
16 the Corporation to avoid or mitigate
17 serious adverse effects on financial
18 stability or economic conditions in the
19 United States.

20 (ii) TRANSFER OF PROPERTY.—SIPC,
21 as trustee for the liquidation of the covered
22 broker or dealer, and the Commission shall
23 provide any and all reasonable assistance
24 necessary to complete such transfers by
25 the Corporation.

1 (iii) CUSTOMER CONSENT AND COURT
2 APPROVAL NOT REQUIRED.—Neither cus-
3 tomer consent nor court approval shall be
4 required to transfer any customer accounts
5 or associated customer name securities or
6 customer property to a bridge financial
7 company in accordance with this section.

8 (iv) NOTIFICATION OF SIPC AND
9 SHARING OF INFORMATION.—The Corpora-
10 tion shall identify to SIPC the customer
11 accounts and associated customer name se-
12 curities and customer property transferred
13 to the bridge financial company. The Cor-
14 poration and SIPC shall cooperate in the
15 sharing of any information necessary for
16 each entity to discharge its obligations
17 under this title and under the Securities
18 Investor Protection Act of 1970 (15 U.S.C.
19 78aaa et seq.) including by providing ac-
20 cess to the books and records of the cov-
21 ered financial company and any bridge fi-
22 nancial company established in accordance
23 with this title.

24 (2) DETERMINATION OF CLAIMS.—

1 (A) IN GENERAL.—The Corporation, as re-
2 ceiver for a covered financial company, shall re-
3 port on claims, as set forth in section 203(c)(3).
4 Subject to paragraph (4) of this subsection, the
5 Corporation, as receiver for a covered financial
6 company, shall determine claims in accordance
7 with the requirements of this subsection and
8 regulations prescribed under section 209.

9 (B) NOTICE REQUIREMENTS.—The Cor-
10 poration, as receiver for a covered financial
11 company, in any case involving the liquidation
12 or winding up of the affairs of a covered finan-
13 cial company, shall—

14 (i) promptly publish a notice to the
15 creditors of the covered financial company
16 to present their claims, together with
17 proof, to the receiver by a date specified in
18 the notice, which shall be not earlier than
19 90 days after the date of publication of
20 such notice; and

21 (ii) republish such notice 1 month and
22 2 months, respectively, after the date of
23 publication under clause (i).

24 (C) MAILING REQUIRED.—The Corpora-
25 tion as receiver shall mail a notice similar to

1 the notice published under clause (i) or (ii) of
2 subparagraph (B), at the time of such publica-
3 tion, to any creditor shown on the books and
4 records of the covered financial company—

5 (i) at the last address of the creditor
6 appearing in such books;

7 (ii) in any claim filed by the claimant;

8 or

9 (iii) upon discovery of the name and
10 address of a claimant not appearing on the
11 books and records of the covered financial
12 company, not later than 30 days after the
13 date of the discovery of such name and ad-
14 dress.

15 (3) PROCEDURES FOR RESOLUTION OF
16 CLAIMS.—

17 (A) DECISION PERIOD.—

18 (i) IN GENERAL.—Prior to the 180th
19 day after the date on which a claim
20 against a covered financial company is
21 filed with the Corporation as receiver, or
22 such later date as may be agreed as pro-
23 vided in clause (ii), the Corporation shall
24 notify the claimant whether it accepts or

1 objects to the claim, in accordance with
2 subparagraphs (B), (C), and (D).

3 (ii) EXTENSION OF TIME.—By written
4 agreement executed not later than 180
5 days after the date on which a claim
6 against a covered financial company is
7 filed with the Corporation, the period de-
8 scribed in clause (i) may be extended by
9 written agreement between the claimant
10 and the Corporation. Failure to notify the
11 claimant of any disallowance within the
12 time period set forth in clause (i), as it
13 may be extended by agreement under this
14 clause, shall be deemed to be a disallow-
15 ance of such claim, and the claimant may
16 file or continue an action in court, as pro-
17 vided in paragraph (4).

18 (iii) MAILING OF NOTICE SUFFI-
19 CIENT.—The requirements of clause (i)
20 shall be deemed to be satisfied if the notice
21 of any decision with respect to any claim
22 is mailed to the last address of the claim-
23 ant which appears—

24 (I) on the books, records, or both
25 of the covered financial company;

1 (II) in the claim filed by the
2 claimant; or

3 (III) in documents submitted in
4 proof of the claim.

5 (iv) CONTENTS OF NOTICE OF DIS-
6 ALLOWANCE.—If the Corporation as re-
7 ceiver objects to any claim filed under
8 clause (i), the notice to the claimant shall
9 contain—

10 (I) a statement of each reason
11 for the disallowance; and

12 (II) the procedures required to
13 file or continue an action in court, as
14 provided in paragraph (4).

15 (B) ALLOWANCE OF PROVEN CLAIM.—The
16 receiver shall allow any claim received by the
17 receiver on or before the date specified in the
18 notice under paragraph (2)(B)(i), which is
19 proved to the satisfaction of the receiver.

20 (C) DISALLOWANCE OF CLAIMS FILED
21 AFTER END OF FILING PERIOD.—

22 (i) IN GENERAL.—Except as provided
23 in clause (ii), claims filed after the date
24 specified in the notice published under

1 paragraph (2)(B)(i) shall be disallowed,
2 and such disallowance shall be final.

3 (ii) CERTAIN EXCEPTIONS.—Clause
4 (i) shall not apply with respect to any
5 claim filed by a claimant after the date
6 specified in the notice published under
7 paragraph (2)(B)(i), and such claim may
8 be considered by the receiver under sub-
9 paragraph (B), if—

10 (I) the claimant did not receive
11 notice of the appointment of the re-
12 ceiver in time to file such claim before
13 such date; and

14 (II) such claim is filed in time to
15 permit payment of such claim.

16 (D) AUTHORITY TO DISALLOW CLAIMS.—

17 (i) IN GENERAL.—The Corporation
18 may object to any portion of any claim by
19 a creditor or claim of a security, pref-
20 erence, setoff, or priority which is not
21 proved to the satisfaction of the Corpora-
22 tion.

23 (ii) PAYMENTS TO UNDERSECURED
24 CREDITORS.—In the case of a claim
25 against a covered financial company that is

1 ered financial company securing any
2 such extension of credit.

3 (E) LEGAL EFFECT OF FILING.—

4 (i) STATUTE OF LIMITATIONS
5 TOLLED.—For purposes of any applicable
6 statute of limitations, the filing of a claim
7 with the receiver shall constitute a com-
8 mencement of an action.

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

16 (4) JUDICIAL DETERMINATION OF CLAIMS.—

17 (A) IN GENERAL.—Subject to subpara-
18 graph (B), a claimant may file suit on a claim
19 (or continue an action commenced before the
20 date of appointment of the Corporation as re-
21 ceiver) in the district or territorial court of the
22 United States for the district within which the
23 principal place of business of the covered finan-
24 cial company is located (and such court shall
25 have jurisdiction to hear such claim).

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

4 (i) the end of the period described in
5 paragraph (3)(A)(i) (or, if extended by
6 agreement of the Corporation and the
7 claimant, the period described in para-
8 graph (3)(A)(ii)) with respect to any claim
9 against a covered financial company for
10 which the Corporation is receiver; or

11 (ii) the date of any notice of disallow-
12 ance of such claim pursuant to paragraph
13 (3)(A)(i).

14 (C) STATUTE OF LIMITATIONS.—If any
15 claimant fails to file suit on such claim (or to
16 continue an action on such claim commenced
17 before the date of appointment of the Corpora-
18 tion as receiver) prior to the end of the 60-day
19 period described in subparagraph (B), the claim
20 shall be deemed to be disallowed (other than
21 any portion of such claim which was allowed by
22 the receiver) as of the end of such period, such
23 disallowance shall be final, and the claimant
24 shall have no further rights or remedies with re-
25 spect to such claim.

1 (5) EXPEDITED DETERMINATION OF CLAIMS.—

2 (A) PROCEDURE REQUIRED.—The Cor-
3 poration shall establish a procedure for expe-
4 dited relief outside of the claims process estab-
5 lished under paragraph (3), for any claimant
6 that alleges—

7 (i) the existence of a legally valid and
8 enforceable or perfected security interest in
9 property of a covered financial company, or
10 is an entitlement holder that has obtained
11 control of any legally valid and enforceable
12 security entitlement in respect of any asset
13 held by the covered financial company for
14 which the Corporation has been appointed
15 receiver; and

16 (ii) that irreparable injury will occur
17 if the claims procedure established under
18 paragraph (3) is followed.

19 (B) DETERMINATION PERIOD.—Prior to
20 the end of the 90-day period beginning on the
21 date on which a claim is filed in accordance
22 with the procedures established pursuant to
23 subparagraph (A), the Corporation shall—

24 (i) determine—

1 (I) whether to allow or disallow
2 such claim, or any portion thereof; or

3 (II) whether such claim should be
4 determined pursuant to the proce-
5 dures established pursuant to para-
6 graph (3);

7 (ii) notify the claimant of the deter-
8 mination; and

9 (iii) if the claim is disallowed, provide
10 a statement of each reason for the dis-
11 allowance and the procedure for obtaining
12 a judicial determination.

13 (C) PERIOD FOR FILING OR RENEWING
14 SUIT.—Any claimant who files a request for ex-
15 pedited relief shall be permitted to file suit (or
16 continue a suit filed before the date of appoint-
17 ment of the Corporation as receiver seeking a
18 determination of the rights of the claimant with
19 respect to such security interest (or such secu-
20 rity entitlement) after the earlier of—

21 (i) the end of the 90-day period begin-
22 ning on the date of the filing of a request
23 for expedited relief; or

24 (ii) the date on which the Corporation
25 denies the claim or a portion thereof.

1 (D) STATUTE OF LIMITATIONS.—If an ac-
2 tion described in subparagraph (C) is not filed,
3 or the motion to renew a previously filed suit is
4 not made, before the end of the 30-day period
5 beginning on the date on which such action or
6 motion may be filed in accordance with sub-
7 paragraph (C), the claim shall be deemed to be
8 disallowed as of the end of such period (other
9 than any portion of such claim which was al-
10 lowed by the receiver), such disallowance shall
11 be final, and the claimant shall have no further
12 rights or remedies with respect to such claim.

13 (E) LEGAL EFFECT OF FILING.—

14 (i) STATUTE OF LIMITATIONS
15 TOLLED.—For purposes of any applicable
16 statute of limitations, the filing of a claim
17 with the receiver shall constitute a com-
18 mencement of an action.

19 (ii) NO PREJUDICE TO OTHER AC-
20 TIONS.—Subject to paragraph (8), the fil-
21 ing of a claim with the receiver shall not
22 prejudice any right of the claimant to con-
23 tinue any action which was filed before the
24 appointment of the Corporation as receiver
25 for the covered financial company.

1 (6) AGREEMENTS AGAINST INTEREST OF THE
2 RECEIVER.—No agreement that tends to diminish or
3 defeat the interest of the Corporation as receiver in
4 any asset acquired by the receiver under this section
5 shall be valid against the receiver, unless such agree-
6 ment—

7 (A) is in writing;

8 (B) was executed by an authorized officer
9 or representative of the covered financial com-
10 pany, or confirmed in the ordinary course of
11 business by the covered financial company; and

12 (C) has been, since the time of its execu-
13 tion, an official record of the company or the
14 party claiming under the agreement provides
15 documentation, acceptable to the receiver, of
16 such agreement and its authorized execution or
17 confirmation by the covered financial company.

18 (7) PAYMENT OF CLAIMS.—

19 (A) IN GENERAL.—Subject to subpara-
20 graph (B), the Corporation as receiver may, in
21 its discretion and to the extent that funds are
22 available, pay creditor claims, in such manner
23 and amounts as are authorized under this sec-
24 tion, which are—

25 (i) allowed by the receiver;

1 (ii) approved by the receiver pursuant
2 to a final determination pursuant to para-
3 graph (3) or (5), as applicable; or

4 (iii) determined by the final judgment
5 of a court of competent jurisdiction.

6 (B) LIMITATION.—A creditor shall, in no
7 event, receive less than the amount that the
8 creditor is entitled to receive under paragraphs
9 (2) and (3) of subsection (d), as applicable.

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

19 (D) RULEMAKING BY THE CORPORA-
20 TION.—The Corporation may prescribe such
21 rules, including definitions of terms, as the Cor-
22 poration deems appropriate to establish an in-
23 terest rate for or to make payments of post-in-
24 solvency interest to creditors holding proven
25 claims against the receivership estate of a cov-

1 ered financial company, except that no such in-
2 terest shall be paid until the Corporation as re-
3 ceiver has satisfied the principal amount of all
4 creditor claims.

5 (8) SUSPENSION OF LEGAL ACTIONS.—

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

13 (B) GRANT OF STAY BY ALL COURTS RE-
14 QUIRED.—Upon receipt of a request by the Cor-
15 poration pursuant to subparagraph (A), the
16 court shall grant such stay as to all parties.

17 (9) ADDITIONAL RIGHTS AND DUTIES.—

18 (A) PRIOR FINAL ADJUDICATION.—The
19 Corporation shall abide by any final, non-ap-
20 pealable judgment of any court of competent ju-
21 risdiction that was rendered before the appoint-
22 ment of the Corporation as receiver.

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

1 (i) have all the rights and remedies
2 available to the covered financial company
3 (before the date of appointment of the Cor-
4 poration as receiver under section 202)
5 and the Corporation, including 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 be issued by any
11 court upon assets in the possession of the Cor-
12 poration as receiver for a covered financial com-
13 pany.

14 (D) LIMITATION ON JUDICIAL REVIEW.—
15 Except as otherwise provided in this title, no
16 court shall have jurisdiction over—

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

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

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

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

15 (ii) minimizes the amount of any loss
16 realized in the resolution of cases;

17 (iii) mitigates the potential for serious
18 adverse effects to the financial system;

19 (iv) ensures timely and adequate com-
20 petition and fair and consistent treatment
21 of offerors; and

22 (v) prohibits discrimination on the
23 basis of race, sex, or ethnic group in the
24 solicitation and consideration of offers.

1 (10) 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 for a covered fi-
7 nancial company shall be—

8 (i) in the case of any contract claim,
9 the longer of—

10 (I) the 6-year period beginning
11 on the date on which the claim ac-
12 crues; or

13 (II) the period applicable under
14 State law; and

15 (ii) in the case of any tort claim, the
16 longer of—

17 (I) the 3-year period beginning
18 on the date on which the claim ac-
19 crues; or

20 (II) the period applicable under
21 State law.

22 (B) DATE ON WHICH A CLAIM ACCRUES.—
23 For purposes of subparagraph (A), the date on
24 which the statute of limitations begins to run

1 on any claim described in subparagraph (A)
2 shall be the later of—

3 (i) the date of the appointment of the
4 Corporation as receiver under this title; or
5 (ii) the date on which the cause of ac-
6 tion accrues.

7 (C) REVIVAL OF EXPIRED STATE CAUSES
8 OF ACTION.—

9 (i) IN GENERAL.—In the case of any
10 tort claim described in clause (ii) for which
11 the applicable statute of limitations under
12 State law has expired not more than 5
13 years before the date of appointment of the
14 Corporation as receiver for a covered fi-
15 nancial company, the Corporation may
16 bring an action as receiver on such claim
17 without regard to the expiration of the
18 statute of limitations.

19 (ii) CLAIMS DESCRIBED.—A tort
20 claim referred to in clause (i) is a claim
21 arising from fraud, intentional misconduct
22 resulting in unjust enrichment, or inten-
23 tional misconduct resulting in substantial
24 loss to the covered financial company.

25 (11) AVOIDABLE TRANSFERS.—

1 (A) FRAUDULENT TRANSFERS.—The Cor-
2 poration, as receiver for any covered financial
3 company, may avoid a transfer of any interest
4 of the covered financial company in property, or
5 any obligation incurred by the covered financial
6 company, that was made or incurred at or with-
7 in 2 years before the time of commencement,
8 if—

9 (i) the covered financial company vol-
10 untarily or involuntarily—

11 (I) made such transfer or in-
12 curred such obligation with actual in-
13 tent to hinder, delay, or defraud any
14 entity to which the covered financial
15 company was or became, on or after
16 the date on which such transfer was
17 made or such obligation was incurred,
18 indebted; or

19 (II) received less than a reason-
20 ably equivalent value in exchange for
21 such transferor obligation; and

22 (ii) the covered financial company vol-
23 untarily or involuntarily—

24 (I) was insolvent on the date that
25 such transfer was made or such obli-

1 gation was incurred, or became insol-
2 vent as a result of such transfer or
3 obligation;

4 (II) was engaged in business or a
5 transaction, or was about to engage in
6 business or a transaction, for which
7 any property remaining with the cov-
8 ered financial company was an unrea-
9 sonably small capital;

10 (III) intended to incur, or be-
11 lieved that the covered financial com-
12 pany would incur, debts that would be
13 beyond the ability of the covered fi-
14 nancial company to pay as such debts
15 matured; or

16 (IV) made such transfer to or for
17 the benefit of an insider, or incurred
18 such obligation to or for the benefit of
19 an insider, under an employment con-
20 tract and not in the ordinary course
21 of business.

22 (B) PREFERENTIAL TRANSFERS.—The
23 Corporation as receiver for any covered finan-
24 cial company may avoid a transfer of an inter-

1 est of the covered financial company in prop-
2 erty—

3 (i) to or for the benefit of a creditor;

4 (ii) for or on account of an antecedent
5 debt that was owed by the covered finan-
6 cial company before the transfer was made;

7 (iii) that was made while the covered
8 financial company was insolvent;

9 (iv) that was made—

10 (I) 90 days or less before the
11 date on which the Corporation was
12 appointed receiver; or

13 (II) more than 90 days, but less
14 than 1 year before the date on which
15 the Corporation was appointed re-
16 ceiver, if such creditor at the time of
17 the transfer was an insider; and

18 (v) that enables the creditor to receive
19 more than the creditor would receive if—

20 (I) the covered financial company
21 had been liquidated under chapter 7
22 of the Bankruptcy Code;

23 (II) the transfer had not been
24 made; and

1 (III) the creditor received pay-
2 ment of such debt to the extent pro-
3 vided by the provisions of chapter 7 of
4 the Bankruptcy Code.

5 (C) POST-RECEIVERSHIP TRANSACTIONS.—
6 The Corporation as receiver for any covered fi-
7 nancial company may avoid a transfer of prop-
8 erty of the receivership that occurred after the
9 Corporation was appointed receiver that was
10 not authorized under this title by the Corpora-
11 tion as receiver.

12 (D) RIGHT OF RECOVERY.—To the extent
13 that a transfer is avoided under subparagraph
14 (A), (B), or (C), the Corporation may recover,
15 for the benefit of the covered financial com-
16 pany, the property transferred or, if a court so
17 orders, the value of such property (at the time
18 of such transfer) from—

19 (i) the initial transferee of such trans-
20 fer or the person for whose benefit such
21 transfer was made; or

22 (ii) any immediate or mediate trans-
23 feree of any such initial transferee.

1 (E) RIGHTS OF TRANSFEREE OR OBLI-
2 GEE.—The Corporation may not recover under
3 subparagraph (D)(ii) from—

4 (i) any transferee that takes for value,
5 including in satisfaction of or to secure a
6 present or antecedent debt, in good faith,
7 and without knowledge of the voidability of
8 the transfer avoided; or

9 (ii) any immediate or mediate good
10 faith transferee of such transferee.

11 (F) DEFENSES.—Subject to the other pro-
12 visions of this title—

13 (i) a transferee or obligee from which
14 the Corporation seeks to recover a transfer
15 or to avoid an obligation under subpara-
16 graph (A), (B), (C), or (D) shall have the
17 same defenses available to a transferee or
18 obligee from which a trustee seeks to re-
19 cover a transfer or avoid an obligation
20 under; and

21 (ii) the authority of the Corporation
22 to recover a transfer or avoid an obligation
23 shall be subject to subsections (b) and (c)
24 of section 546, section 547(c), and section
25 548(c) of the Bankruptcy Code.

1 (G) RIGHTS UNDER THIS SECTION.—The
2 rights of the Corporation as receiver under this
3 section shall be superior to any rights of a
4 trustee or any other party (other than a Fed-
5 eral agency) under the Bankruptcy Code.

6 (H) RULES OF CONSTRUCTION; DEFINI-
7 TIONS.—For purposes of—

8 (i) subparagraphs (A) and (B)—

9 (I) the term “insider” has the
10 same meaning as in section 101(31)
11 of the Bankruptcy Code;

12 (II) a transfer is made when
13 such transfer is so perfected that a
14 bona fide purchaser from the covered
15 financial company against whom ap-
16 plicable law permits such transfer to
17 be perfected cannot acquire an inter-
18 est in the property transferred that is
19 superior to the interest in such prop-
20 erty of the transferee, but if such
21 transfer is not so perfected before the
22 date on which the Corporation is ap-
23 pointed as receiver for the covered fi-
24 nancial company, such transfer is

1 made immediately before the date of
2 such appointment; and

3 (III) the term “value” means
4 property, or satisfaction or securing of
5 a present or antecedent debt of the
6 covered financial company, but does
7 not include an unperformed promise
8 to furnish support to the covered fi-
9 nancial company; and

10 (ii) subparagraph (B)—

11 (I) the covered financial company
12 is presumed to have been insolvent on
13 and during the 90-day period imme-
14 diately preceding the date of appoint-
15 ment of the Corporation as receiver;
16 and

17 (II) the term “insolvent” has the
18 same meaning as in section 101(32)
19 of the Bankruptcy Code.

20 (12) SETOFF.—

21 (A) GENERALLY.—Except as otherwise
22 provided in this title, any right of a creditor to
23 offset a mutual debt owed by the creditor to
24 any covered financial company that arose before
25 the Corporation was appointed as receiver for

1 the covered financial company against a claim
2 of such creditor may be asserted if enforceable
3 under applicable noninsolvency law, except to
4 the extent that—

5 (i) the claim of the creditor against
6 the covered financial company is dis-
7 allowed;

8 (ii) the claim was transferred, by an
9 entity other than the covered financial
10 company, to the creditor—

11 (I) after the Corporation was ap-
12 pointed as receiver of the covered fi-
13 nancial company; or

14 (II)(aa) after the 90-day period
15 preceding the date on which the Cor-
16 poration was appointed as receiver for
17 the covered financial company; and

18 (bb) while the covered financial
19 company was insolvent (except for a
20 setoff in connection with a qualified
21 financial contract); or

22 (iii) the debt owed to the covered fi-
23 nancial company was incurred by the cov-
24 ered financial company—

1 (I) after the 90-day period pre-
2 ceding the date on which the Corpora-
3 tion was appointed as receiver for the
4 covered financial company;

5 (II) while the covered financial
6 company was insolvent; and

7 (III) for the purpose of obtaining
8 a right of setoff against the covered
9 financial company (except for a setoff
10 in connection with a qualified finan-
11 cial contract).

12 (B) INSUFFICIENCY.—

13 (i) IN GENERAL.—Except with respect
14 to a setoff in connection with a qualified fi-
15 nancial contract, if a creditor offsets a mu-
16 tual debt owed to the covered financial
17 company against a claim of the covered fi-
18 nancial company on or within the 90-day
19 period preceding the date on which the
20 Corporation is appointed as receiver for
21 the covered financial company, the Cor-
22 poration may recover from the creditor the
23 amount so offset, to the extent that any in-
24 sufficiency on the date of such setoff is less
25 than the insufficiency on the later of—

1 (I) the date that is 90 days be-
2 fore the date on which the Corpora-
3 tion is appointed as receiver for the
4 covered financial company; or

5 (II) the first day on which there
6 is an insufficiency during the 90-day
7 period preceding the date on which
8 the Corporation is appointed as re-
9 ceiver for the covered financial com-
10 pany.

11 (ii) DEFINITION OF INSUFFI-
12 CIENCY.—In this subparagraph, the term
13 “insufficiency” means the amount, if any,
14 by which a claim against the covered finan-
15 cial company exceeds a mutual debt owed
16 to the covered financial company by the
17 holder of such claim.

18 (C) INSOLVENCY.—The term “insolvent”
19 has the same meaning as in section 101(32) of
20 the Bankruptcy Code.

21 (D) PRESUMPTION OF INSOLVENCY.—For
22 purposes of this paragraph, the covered finan-
23 cial company is presumed to have been insol-
24 vent on and during the 90-day period preceding

1 the date of appointment of the Corporation as
2 receiver.

3 (E) LIMITATION.—Nothing in this para-
4 graph (12) shall be the basis for any right of
5 setoff where no such right exists under applica-
6 ble noninsolvency law.

7 (F) PRIORITY CLAIM.—Except as other-
8 wise provided in this title, the Corporation as
9 receiver for the covered financial company may
10 sell or transfer any assets free and clear of the
11 setoff rights of any party, except that such
12 party shall be entitled to a claim, subordinate
13 to the claims payable under subparagraphs (A),
14 (B), (C), and (D) of subsection (b)(1), but sen-
15 ior to all other unsecured liabilities defined in
16 subsection (b)(1)(E), in an amount equal to the
17 value of such setoff rights.

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 as receiver for a covered financial
22 company, issue an order in accordance with Rule 65
23 of the Federal Rules of Civil Procedure, including an
24 order placing the assets of any person designated by

1 the Corporation under the control of the court and
2 appointing a trustee to hold 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 that the ap-
8 plicant show that the injury, loss, or damage is
9 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 the State provide sub-
14 stantially similar protections of the right of the
15 parties to due process as provided under Rule
16 65 (as modified with respect to such proceeding
17 by subparagraph (A)), the relief sought by the
18 Corporation pursuant to paragraph (14) may be
19 requested 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 title, any final and non-ap-
24 pealable judgment for monetary damages entered
25 against the Corporation as receiver for a covered fi-

1 nancial company for the breach of an agreement exe-
2 cuted or approved by the Corporation after the date
3 of its appointment shall be paid as an administrative
4 expense of the receiver. Nothing in this paragraph
5 shall be construed to limit the power of a receiver
6 to exercise any rights under contract or law, includ-
7 ing to terminate, breach, cancel, or otherwise dis-
8 continue such agreement.

9 (16) ACCOUNTING AND RECORDKEEPING RE-
10 QUIREMENTS.—

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

18 (B) ANNUAL ACCOUNTING OR REPORT.—
19 With respect to each receivership to which the
20 Corporation is appointed, the Corporation shall
21 make an annual accounting or report, as appro-
22 priate, available to the Secretary and the Comp-
23 troller General of the United States.

24 (C) AVAILABILITY OF REPORTS.—Any re-
25 port prepared pursuant to subparagraph (B)

1 and section 203(c)(3) shall be made available to
2 the public by the Corporation.

3 (D) RECORDKEEPING REQUIREMENT.—

4 (i) IN GENERAL.—The Corporation
5 shall prescribe such regulations and estab-
6 lish such retention schedules as are nec-
7 essary to maintain the documents and
8 records of the Corporation generated in ex-
9 ercising the authorities of this title and the
10 records of a covered financial company for
11 which the Corporation is appointed re-
12 ceiver, with due regard for—

13 (I) the avoidance of duplicative
14 record retention; and

15 (II) the expected evidentiary
16 needs of the Corporation as receiver
17 for a covered financial company and
18 the public regarding the records of
19 covered financial companies.

20 (ii) RETENTION OF RECORDS.—Un-
21 less otherwise required by applicable Fed-
22 eral law or court order, the Corporation
23 may not, at any time, destroy any records
24 that are subject to clause (i).

1 (iii) RECORDS DEFINED.—As used in
2 this subparagraph, the terms “records”
3 and “records of a covered financial com-
4 pany” mean any document, book, paper,
5 map, photograph, microfiche, microfilm,
6 computer or electronically-created record
7 generated or maintained by the covered fi-
8 nancial company in the course of and nec-
9 essary to its transaction of business.

10 (b) PRIORITY OF EXPENSES AND UNSECURED
11 CLAIMS.—

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

17 (A) Administrative expenses of the re-
18 ceiver.

19 (B) Any amounts owed to the United
20 States, unless the United States agrees or con-
21 sents otherwise.

22 (C) Wages, salaries, or commissions, in-
23 cluding vacation, severance, and sick leave pay
24 earned by an individual (other than an indi-
25 vidual described in subparagraph (G)), but only

1 to the extent of \$11,725 for each individual (as
2 indexed for inflation, by regulation of the Cor-
3 poration) earned not later than 180 days before
4 the date of appointment of the Corporation as
5 receiver.

6 (D) Contributions owed to employee ben-
7 efit plans arising from services rendered not
8 later than 180 days before the date of appoint-
9 ment of the Corporation as receiver, to the ex-
10 tent of the number of employees covered by
11 each such plan, multiplied by \$11,725 (as in-
12 dexed for inflation, by regulation of the Cor-
13 poration), less the aggregate amount paid to
14 such employees under subparagraph (C), plus
15 the aggregate amount paid by the receivership
16 on behalf of such employees to any other em-
17 ployee benefit plan.

18 (E) Any other general or senior liability of
19 the covered financial company (which is not a
20 liability described under subparagraph (F), (G),
21 or (H)).

22 (F) Any obligation subordinated to general
23 creditors (which is not an obligation described
24 under subparagraph (G) or (H)).

1 (G) Any wages, salaries, or commissions,
2 including vacation, severance, and sick leave
3 pay earned, owed to senior executives and direc-
4 tors of the covered financial company.

5 (H) Any obligation to shareholders, mem-
6 bers, general partners, limited partners, or
7 other persons, with interests in the equity of
8 the covered financial company arising as a re-
9 sult of their status as shareholders, members,
10 general partners, limited partners, or other per-
11 sons with interests in the equity of the covered
12 financial company.

13 (2) POST-RECEIVERSHIP FINANCING PRI-
14 ORITY.—In the event that the Corporation, as re-
15 ceiver for a covered financial company, is unable to
16 obtain unsecured credit for the covered financial
17 company from commercial sources, the Corporation
18 as receiver may obtain credit or incur debt on the
19 part of the covered financial company, which shall
20 have priority over any or all administrative expenses
21 of the receiver under paragraph (1)(A).

22 (3) CLAIMS OF THE UNITED STATES.—Unse-
23 cured claims of the United States shall, at a min-
24 imum, have a higher priority than liabilities of the

1 covered financial company that count as regulatory
2 capital.

3 (4) CREDITORS SIMILARLY SITUATED.—All
4 claimants of a covered financial company that are
5 similarly situated under paragraph (1) shall be
6 treated in a similar manner, except that the Cor-
7 poration may take any action (including making
8 payments, subject to subsection (o)(1)(E)(ii)) that
9 does not comply with this subsection, if—

10 (A) the Corporation determines that such
11 action is necessary—

12 (i) to maximize the value of the assets
13 of the covered financial company;

14 (ii) to initiate and continue operations
15 essential to implementation of the receiver-
16 ship or any bridge financial company;

17 (iii) to maximize the present value re-
18 turn from the sale or other disposition of
19 the assets of the covered financial com-
20 pany; or

21 (iv) to minimize the amount of any
22 loss realized upon the sale or other disposi-
23 tion of the assets of the covered financial
24 company; and

1 (B) all claimants that are similarly situ-
2 ated under paragraph (1) receive not less than
3 the amount provided in paragraphs (2) and (3)
4 of subsection (d).

5 (5) SECURED CLAIMS UNAFFECTED.—This sec-
6 tion shall not affect secured claims or security enti-
7 tlements in respect of assets or property held by the
8 covered financial company, except to the extent that
9 the security is insufficient to satisfy the claim, and
10 then only with regard to the difference between the
11 claim and the amount realized from the security.

12 (6) PRIORITY OF EXPENSES AND UNSECURED
13 CLAIMS IN THE ORDERLY LIQUIDATION OF SIPC
14 MEMBER.—Where the Corporation is appointed as
15 receiver for a covered broker or dealer, unsecured
16 claims against such covered broker or dealer, or the
17 Corporation as receiver for such covered broker or
18 dealer under this section, that are proven to the sat-
19 isfaction of the receiver under section 205(e), shall
20 have the priority prescribed in paragraph (1), except
21 that—

22 (A) SIPC shall be entitled to recover ad-
23 ministrative expenses incurred in performing its
24 responsibilities under section 205 on an equal

1 basis with the Corporation, in accordance with
2 paragraph (1)(A);

3 (B) the Corporation shall be entitled to re-
4 cover any amounts paid to customers or to
5 SIPC pursuant to section 205(f), in accordance
6 with paragraph (1)(B);

7 (C) SIPC shall be entitled to recover any
8 amounts paid out of the SIPC Fund to meet its
9 obligations under section 205 and under the Se-
10 curities Investor Protection Act of 1970 (15
11 U.S.C. 78aaa et seq.), which claim shall be sub-
12 ordinate to the claims payable under subpara-
13 graphs (A) and (B) of paragraph (1), but sen-
14 ior to all other claims; and

15 (D) the Corporation may, after paying any
16 proven claims to customers under section 205
17 and the Securities Investor Protection Act of
18 1970 (15 U.S.C. 78aaa et seq.), and as pro-
19 vided above, pay dividends on other proven
20 claims, in its discretion, and to the extent that
21 funds are available, in accordance with the pri-
22 orities set forth in paragraph (1).

23 (c) PROVISIONS RELATING TO CONTRACTS ENTERED
24 INTO BEFORE APPOINTMENT OF RECEIVER.—

1 (1) AUTHORITY TO REPUDIATE CONTRACTS.—

2 In addition to any other rights that a receiver may
3 have, the Corporation as receiver for any covered fi-
4 nancial company may disaffirm or repudiate any
5 contract or lease—

6 (A) to which the covered financial company
7 is a party;

8 (B) the performance of which the Corpora-
9 tion as receiver, in the discretion of the Cor-
10 poration, determines to be burdensome; and

11 (C) the disaffirmance or repudiation of
12 which the Corporation as receiver determines,
13 in the discretion of the Corporation, will pro-
14 mote the orderly administration of the affairs of
15 the covered financial company.

16 (2) TIMING OF REPUDIATION.—The Corpora-
17 tion, as receiver for any covered financial company,
18 shall determine whether or not to exercise the rights
19 of repudiation under this section within a reasonable
20 period of time.

21 (3) CLAIMS FOR DAMAGES FOR REPUDI-
22 ATION.—

23 (A) IN GENERAL.—Except as provided in
24 paragraphs (4), (5), and (6) and in subpara-
25 graphs (C), (D), and (E) of this paragraph, the

1 liability of the Corporation as receiver for a cov-
2 ered financial company for the disaffirmance or
3 repudiation of any contract pursuant to para-
4 graph (1) shall be—

5 (i) limited to actual direct compen-
6 satory damages; and

7 (ii) determined as of—

8 (I) the date of the appointment
9 of the Corporation as receiver; or

10 (II) in the case of any contract
11 or agreement referred to in paragraph
12 (8), the date of the disaffirmance or
13 repudiation of such contract or agree-
14 ment.

15 (B) NO LIABILITY FOR OTHER DAM-
16 AGES.—For purposes of subparagraph (A), the
17 term “actual direct compensatory damages”
18 does not include—

19 (i) punitive or exemplary damages;

20 (ii) damages for lost profits or oppor-
21 tunity; or

22 (iii) damages for pain and suffering.

23 (C) MEASURE OF DAMAGES FOR REPUDI-
24 ATION OF QUALIFIED FINANCIAL CONTRACTS.—

25 In the case of any qualified financial contract

1 or agreement to which paragraph (8) applies,
2 compensatory damages shall be—

3 (i) deemed to include normal and rea-
4 sonable costs of cover or other reasonable
5 measures of damages utilized in the indus-
6 tries for such contract and agreement
7 claims; and

8 (ii) paid in accordance with this para-
9 graph and subsection (d), except as other-
10 wise specifically provided in this sub-
11 section.

12 (D) MEASURE OF DAMAGES FOR REPUDI-
13 ATION OR DISAFFIRMANCE OF DEBT OBLIGA-
14 TION.—In the case of any debt for borrowed
15 money or evidenced by a security, actual direct
16 compensatory damages shall be no less than the
17 amount lent plus accrued interest plus any
18 accreted original issue discount as of the date
19 the Corporation was appointed receiver of the
20 covered financial company and, to the extent
21 that an allowed secured claim is secured by
22 property the value of which is greater than the
23 amount of such claim and any accrued interest
24 through the date of repudiation or

1 disaffirmance, such accrued interest pursuant
2 to paragraph (1).

3 (E) MEASURE OF DAMAGES FOR REPUDI-
4 ATION OR DISAFFIRMANCE OF CONTINGENT OB-
5 LIGATION.—In the case of any contingent obli-
6 gation of a covered financial company con-
7 sisting of any obligation under a guarantee, let-
8 ter of credit, loan commitment, or similar credit
9 obligation, the Corporation may, by rule or reg-
10 ulation, prescribe that actual direct compen-
11 satory damages shall be no less than the esti-
12 mated value of the claim as of the date the Cor-
13 poration was appointed receiver of the covered
14 financial company, as such value is measured
15 based on the likelihood that such contingent
16 claim would become fixed and the probable
17 magnitude thereof.

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

20 (A) IN GENERAL.—If the Corporation as
21 receiver disaffirms or repudiates a lease under
22 which the covered financial company is the les-
23 see, the receiver shall not be liable for any dam-
24 ages (other than damages determined pursuant

1 to subparagraph (B)) for the disaffirmance or
2 repudiation of such lease.

3 (B) PAYMENTS OF RENT.—Notwith-
4 standing subparagraph (A), the lessor under a
5 lease to which subparagraph (A) would other-
6 wise apply shall—

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

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

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

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

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

24 (5) LEASES UNDER WHICH THE COVERED FI-
25 NANCIAL COMPANY IS THE LESSOR.—

1 (A) IN GENERAL.—If the Corporation as
2 receiver for a covered financial company repudi-
3 ates an unexpired written lease of real property
4 of the covered financial company under which
5 the covered financial company is the lessor and
6 the lessee is not, as of the date of such repudi-
7 ation, in default, the lessee under such lease
8 may either—

9 (i) treat the lease as terminated by
10 such repudiation; or

11 (ii) remain in possession of the lease-
12 hold interest for the balance of the term of
13 the lease, unless the lessee defaults under
14 the terms of the lease after the date of
15 such repudiation.

16 (B) PROVISIONS APPLICABLE TO LESSEE
17 REMAINING IN POSSESSION.—If any lessee
18 under a lease described in subparagraph (A) re-
19 mains in possession of a leasehold interest pur-
20 suant to clause (ii) of subparagraph (A)—

21 (i) the lessee—

22 (I) shall continue to pay the con-
23 tractual rent pursuant to the terms of
24 the lease after the date of the repudi-
25 ation of such lease; and

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

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

14 (6) CONTRACTS FOR THE SALE OF REAL PROP-
15 erty.—

16 (A) IN GENERAL.—If the receiver repudi-
17 ates any contract (which meets the require-
18 ments of subsection (a)(6)) for the sale of real
19 property, and the purchaser of such real prop-
20 erty under such contract is in possession and is
21 not, as of the date of such repudiation, in de-
22 fault, such purchaser may either—

23 (i) treat the contract as terminated by
24 such repudiation; or

1 (ii) remain in possession of such real
2 property.

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

9 (i) the purchaser—

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

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

20 (ii) the Corporation as receiver shall—

21 (I) not be liable to the purchaser
22 for any damages arising after such
23 date as a result of the repudiation,
24 other than the amount of any offset
25 allowed under clause (i)(II);

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

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

7 (C) ASSIGNMENT AND SALE ALLOWED.—

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

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

23 (7) PROVISIONS APPLICABLE TO SERVICE CON-
24 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 date of
7 appointment 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 on which 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 Corporation as
16 receiver accepts performance by the other per-
17 son before making 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 the Corporation as receiver for
4 services referred to in subparagraph (B) in con-
5 nection with a contract described in subpara-
6 graph (B) shall not affect the right of the Cor-
7 poration as receiver to repudiate such contract
8 under this section at any time after such per-
9 formance.

10 (8) CERTAIN QUALIFIED FINANCIAL CON-
11 TRACTS.—

12 (A) RIGHTS OF PARTIES TO CONTRACTS.—
13 Subject to subsection (a)(8) and paragraphs (9)
14 and (10) of this subsection, and notwith-
15 standing any other provision of this section, any
16 other provision of Federal law, or the law of
17 any State, no person shall be stayed or prohib-
18 ited from exercising—

19 (i) any right that such person has to
20 cause the termination, liquidation, or accel-
21 eration of any qualified financial contract
22 with a covered financial company which
23 arises upon the date of appointment of the
24 Corporation as receiver for such covered fi-

1 nancial company at any time after such
2 appointment;

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

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

15 (B) APPLICABILITY OF OTHER PROVI-
16 SIONS.—Subsection (a)(8) shall apply in the
17 case of any judicial action or proceeding
18 brought against the Corporation as receiver re-
19 ferred to in subparagraph (A), or the subject
20 covered financial company, by any party to a
21 contract or agreement described in subpara-
22 graph (A)(i) with such covered financial com-
23 pany.

24 (C) CERTAIN TRANSFERS NOT AVOID-
25 ABLE.—

1 (i) IN GENERAL.—Notwithstanding
2 subsection (a)(11), (a)(12), or (c)(12), sec-
3 tion 5242 of the Revised Statutes of the
4 United States, or any other provision of
5 Federal or State law relating to the avoid-
6 ance of preferential or fraudulent trans-
7 fers, the Corporation, whether acting as
8 the Corporation or as receiver for a cov-
9 ered financial company, may not avoid any
10 transfer of money or other property in con-
11 nection with any qualified financial con-
12 tract with a covered financial company.

13 (ii) EXCEPTION FOR CERTAIN TRANS-
14 FERS.—Clause (i) shall not apply to any
15 transfer of money or other property in con-
16 nection with any qualified financial con-
17 tract with a covered financial company if
18 the transferee had actual intent to hinder,
19 delay, or defraud such company, the credi-
20 tors of such company, or the Corporation
21 as receiver appointed for such company.

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

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

10 (ii) SECURITIES CONTRACT.—The
11 term “securities contract”—

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

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

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

16 (III) means any option entered
17 into on a national securities exchange
18 relating to foreign currencies;

19 (IV) means the guarantee (in-
20 cluding by novation) by or to any se-
21 curities clearing agency of any settle-
22 ment of cash, securities, certificates of
23 deposit, mortgage loans or interests
24 therein, group or index of securities,
25 certificates of deposit or mortgage

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

13 (V) means any margin loan;

14 (VI) means any extension of
15 credit for the clearance or settlement
16 of securities transactions;

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

23 (VIII) means any other agree-
24 ment or transaction that is similar to

1 any agreement or transaction referred
2 to in this clause;

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

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

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

1 clauses (I) through (X), other than
2 subclause (II); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 or transaction referred to in any such
2 subclause.

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

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

1 obligations of, or that are fully guar-
2 anteed by, the United States or any
3 agency of the United States against
4 the transfer of funds by the transferee
5 of such certificates of deposit, eligible
6 bankers' acceptances, securities, mort-
7 gage loans, or interests with a simul-
8 taneous agreement by such transferee
9 to transfer to the transferor thereof
10 certificates of deposit, eligible bank-
11 ers' acceptances, securities, mortgage
12 loans, or interests as described above,
13 at a date certain not later than 1 year
14 after such transfers or on demand,
15 against the transfer of funds, or any
16 other similar agreement;

17 (II) does not include any repur-
18 chase obligation under a participation
19 in a commercial mortgage loan, unless
20 the Corporation determines, by regu-
21 lation, resolution, or order to include
22 any such participation within the
23 meaning of such term;

1 (III) means any combination of
2 agreements or transactions referred to
3 in subclauses (I) and (IV);

4 (IV) means any option to enter
5 into any agreement or transaction re-
6 ferred to in subclause (I) or (III);

7 (V) means a master agreement
8 that provides for an agreement or
9 transaction referred to in subclause
10 (I), (III), or (IV), together with all
11 supplements to any such master
12 agreement, without regard to whether
13 the master agreement provides for an
14 agreement or transaction that is not a
15 repurchase agreement under this
16 clause, except that the master agree-
17 ment shall be considered to be a re-
18 purchase agreement under this sub-
19 clause only with respect to each agree-
20 ment or transaction under the master
21 agreement that is referred to in sub-
22 clause (I), (III), or (IV); and

23 (VI) means any security agree-
24 ment or arrangement or other credit
25 enhancement related to any agree-

1 ment or transaction referred to in
2 subclause (I), (III), (IV), or (V), in-
3 cluding any guarantee or reimburse-
4 ment obligation in connection with
5 any agreement or transaction referred
6 to in any such subclause.

7 (vi) SWAP AGREEMENT.—The term
8 “swap agreement” means—

9 (I) any agreement, including the
10 terms and conditions incorporated by
11 reference in any such agreement,
12 which is an interest rate swap, option,
13 future, or forward agreement, includ-
14 ing a rate floor, rate cap, rate collar,
15 cross-currency rate swap, and basis
16 swap; a spot, same day-tomorrow, to-
17 morrow-next, forward, or other for-
18 eign exchange, precious metals, or
19 other commodity agreement; a cur-
20 rency swap, option, future, or forward
21 agreement; an equity index or equity
22 swap, option, future, or forward
23 agreement; a debt index or debt swap,
24 option, future, or forward agreement;
25 a total return, credit spread or credit

1 swap, option, future, or forward
2 agreement; a commodity index or
3 commodity swap, option, future, or
4 forward agreement; weather swap, op-
5 tion, future, or forward agreement; an
6 emissions swap, option, future, or for-
7 ward agreement; or an inflation swap,
8 option, future, or forward agreement;

9 (II) any agreement or transaction
10 that is similar to any other agreement
11 or transaction referred to in this
12 clause and that is of a type that has
13 been, is presently, or in the future be-
14 comes, the subject of recurrent deal-
15 ings in the swap or other derivatives
16 markets (including terms and condi-
17 tions incorporated by reference in
18 such agreement) and that is a for-
19 ward, swap, future, option, or spot
20 transaction on one or more rates, cur-
21 rencies, commodities, equity securities
22 or other equity instruments, debt se-
23 curities or other debt instruments,
24 quantitative measures associated with
25 an occurrence, extent of an occur-

1 rence, or contingency associated with
2 a financial, commercial, or economic
3 consequence, or economic or financial
4 indices or measures of economic or fi-
5 nancial risk or value;

6 (III) any combination of agree-
7 ments or transactions referred to in
8 this clause;

9 (IV) any option to enter into any
10 agreement or transaction referred to
11 in this clause;

12 (V) a master agreement that pro-
13 vides for an agreement or transaction
14 referred to in subclause (I), (II), (III),
15 or (IV), together with all supplements
16 to any such master agreement, with-
17 out regard to whether the master
18 agreement contains an agreement or
19 transaction that is not a swap agree-
20 ment under this clause, except that
21 the master agreement shall be consid-
22 ered to be a swap agreement under
23 this clause only with respect to each
24 agreement or transaction under the
25 master agreement that is referred to

1 in subclause (I), (II), (III), or (IV);
2 and

3 (VI) any security agreement or
4 arrangement or other credit enhance-
5 ment related to any agreement or
6 transaction referred to in any of
7 clauses (I) through (V), including any
8 guarantee or reimbursement obliga-
9 tion in connection with any agreement
10 or transaction referred to in any such
11 clause.

12 (vii) DEFINITIONS RELATING TO DE-
13 FAULT.—When used in this paragraph and
14 paragraph (10)—

15 (I) the term “default” means,
16 with respect to a covered financial
17 company, any adjudication or other
18 official decision by any court of com-
19 petent jurisdiction, or other public au-
20 thority pursuant to which the Cor-
21 poration has been appointed receiver;
22 and

23 (II) the term “in danger of de-
24 fault” means a covered financial com-
25 pany with respect to which the Cor-

1 capital will be replenished
2 without Federal assistance.

3 (viii) TREATMENT OF MASTER AGREE-
4 MENT AS ONE AGREEMENT.—Any master
5 agreement for any contract or agreement
6 described in any of clauses (i) through (vi)
7 (or any master agreement for such master
8 agreement or agreements), together with
9 all supplements to such master agreement,
10 shall be treated as a single agreement and
11 a single qualified financial contract. If a
12 master agreement contains provisions re-
13 lating to agreements or transactions that
14 are not themselves qualified financial con-
15 tracts, the master agreement shall be
16 deemed to be a qualified financial contract
17 only with respect to those transactions that
18 are themselves qualified financial con-
19 tracts.

20 (ix) TRANSFER.—The term “transfer”
21 means every mode, direct or indirect, abso-
22 lute or conditional, voluntary or involun-
23 tary, of disposing of or parting with prop-
24 erty or with an interest in property, includ-
25 ing retention of title as a security interest

1 and foreclosure of the equity of redemption
2 of the covered financial company.

3 (x) PERSON.—The term “person” in-
4 cludes any governmental entity in addition
5 to any entity included in the definition of
6 such term in section 1, title 1, United
7 States Code.

8 (E) CLARIFICATION.—No provision of law
9 shall be construed as limiting the right or
10 power of the Corporation, or authorizing any
11 court or agency to limit or delay, in any man-
12 ner, the right or power of the Corporation to
13 transfer any qualified financial contract or to
14 disaffirm or repudiate any such contract in ac-
15 cordance with this subsection.

16 (F) WALKAWAY CLAUSES NOT EFFEC-
17 TIVE.—

18 (i) IN GENERAL.—Notwithstanding
19 the provisions of subparagraph (A) of this
20 paragraph and sections 403 and 404 of the
21 Federal Deposit Insurance Corporation
22 Improvement Act of 1991, no walkaway
23 clause shall be enforceable in a qualified fi-
24 nancial contract of a covered financial
25 company in default.

1 (ii) LIMITED SUSPENSION OF CERTAIN
2 OBLIGATIONS.—In the case of a qualified
3 financial contract referred to in clause (i),
4 any payment or delivery obligations other-
5 wise due from a party pursuant to the
6 qualified financial contract shall be sus-
7 pended from the time at which the Cor-
8 poration is appointed as receiver until the
9 earlier of—

10 (I) the time at which such party
11 receives notice that such contract has
12 been transferred pursuant to para-
13 graph (10)(A); or

14 (II) 5:00 p.m. (eastern time) on
15 the business day following the date of
16 the appointment of the Corporation as
17 receiver.

18 (iii) WALKAWAY CLAUSE DEFINED.—
19 For purposes of this subparagraph, the
20 term “walkaway clause” means any provi-
21 sion in a qualified financial contract that
22 suspends, conditions, or extinguishes a
23 payment obligation of a party, in whole or
24 in part, or does not create a payment obli-
25 gation of a party that would otherwise

1 exist, solely because of the status of such
2 party as a nondefaulting party in connec-
3 tion with the insolvency of a covered finan-
4 cial company that is a party to the con-
5 tract or the appointment of or the exercise
6 of rights or powers by the Corporation as
7 receiver for such covered financial com-
8 pany, and not as a result of the exercise by
9 a party of any right to offset, setoff, or net
10 obligations that exist under the contract,
11 any other contract between those parties,
12 or applicable law.

13 (G) CERTAIN OBLIGATIONS TO CLEARING
14 ORGANIZATIONS.—In the event that the Cor-
15 poration has been appointed as receiver for a
16 covered financial company which is a party to
17 any qualified financial contract cleared by or
18 subject to the rules of a clearing organization
19 (as defined in paragraph (9)(D)), the receiver
20 shall use its best efforts to meet all margin, col-
21 lateral, and settlement obligations of the cov-
22 ered financial company that arise under quali-
23 fied financial contracts (other than any margin,
24 collateral, or settlement obligation that is not
25 enforceable against the receiver under para-

1 graph (8)(F)(i) or paragraph (10)(B)), as re-
2 quired by the rules of the clearing organization
3 when due. Notwithstanding any other provision
4 of this title, if the receiver fails to satisfy any
5 such margin, collateral, or settlement obliga-
6 tions under the rules of the clearing organiza-
7 tion, the clearing organization shall have the
8 immediate right to exercise, and shall not be
9 stayed from exercising, all of its rights and
10 remedies under its rules and applicable law with
11 respect to any qualified financial contract of the
12 covered financial company, including, without
13 limitation, the right to liquidate all positions
14 and collateral of such covered financial com-
15 pany under the company's qualified financial
16 contracts, and suspend or cease to act for such
17 covered financial company, all in accordance
18 with the rules of the clearing organization.

19 (H) RECORDKEEPING.—

20 (i) JOINT RULEMAKING.—The Federal
21 primary financial regulatory agencies shall
22 jointly prescribe regulations requiring that
23 financial companies maintain such records
24 with respect to qualified financial contracts
25 (including market valuations) that the

1 Federal primary financial regulatory agen-
2 cies determine to be necessary or appro-
3 priate in order to assist the Corporation as
4 receiver for a covered financial company in
5 being able to exercise its rights and fulfill
6 its obligations under this paragraph or
7 paragraph (9) or (10).

8 (ii) TIME FRAME.—The Federal pri-
9 mary financial regulatory agencies shall
10 prescribe joint final or interim final regula-
11 tions not later than 24 months after the
12 date of enactment of this Act.

13 (iii) BACK-UP RULEMAKING AUTHOR-
14 ITY.—If the Federal primary financial reg-
15 ulatory agencies do not prescribe joint final
16 or interim final regulations within the time
17 frame in clause (ii), the Chairperson of the
18 Council shall prescribe, in consultation
19 with the Corporation, the regulations re-
20 quired by clause (i).

21 (iv) CATEGORIZATION AND
22 TIERING.—The joint regulations prescribed
23 under clause (i) shall, as appropriate, dif-
24 ferentiate among financial companies by
25 taking into consideration their size, risk,

1 complexity, leverage, frequency and dollar
2 amount of qualified financial contracts,
3 interconnectedness to the financial system,
4 and any other factors deemed appropriate.

5 (9) TRANSFER OF QUALIFIED FINANCIAL CON-
6 TRACTS.—

7 (A) IN GENERAL.—In making any transfer
8 of assets or liabilities of a covered financial
9 company in default, which includes any quali-
10 fied financial contract, the Corporation as re-
11 ceiver for such covered financial company shall
12 either—

13 (i) transfer to one financial institu-
14 tion, other than a financial institution for
15 which a conservator, receiver, trustee in
16 bankruptcy, or other legal custodian has
17 been appointed or which is otherwise the
18 subject of a bankruptcy or insolvency pro-
19 ceeding—

20 (I) all qualified financial con-
21 tracts between any person or any af-
22 filiate of such person and the covered
23 financial company in default;

24 (II) all claims of such person or
25 any affiliate of such person against

1 such covered financial company under
2 any such contract (other than any
3 claim which, under the terms of any
4 such contract, is subordinated to the
5 claims of general unsecured creditors
6 of such company);

7 (III) all claims of such covered fi-
8 nancial company against such person
9 or any affiliate of such person under
10 any such contract; and

11 (IV) all property securing or any
12 other credit enhancement for any con-
13 tract described in subclause (I) or any
14 claim described in subclause (II) or
15 (III) under any such contract; or

16 (ii) transfer none of the qualified fi-
17 nancial contracts, claims, property or other
18 credit enhancement referred to in clause (i)
19 (with respect to such person and any affil-
20 iate of such person).

21 (B) TRANSFER TO FOREIGN BANK, FINAN-
22 CIAL INSTITUTION, OR BRANCH OR AGENCY
23 THEREOF.—In transferring any qualified finan-
24 cial contracts and related claims and property
25 under subparagraph (A)(i), the Corporation as

1 receiver for the covered financial company shall
2 not make such transfer to a foreign bank, fi-
3 nancial institution organized under the laws of
4 a foreign country, or a branch or agency of a
5 foreign bank or financial institution unless,
6 under the law applicable to such bank, financial
7 institution, branch or agency, to the qualified
8 financial contracts, and to any netting contract,
9 any security agreement or arrangement or other
10 credit enhancement related to one or more
11 qualified financial contracts, the contractual
12 rights of the parties to such qualified financial
13 contracts, netting contracts, security agree-
14 ments or arrangements, or other credit en-
15 hancements are enforceable substantially to the
16 same extent as permitted under this section.

17 (C) TRANSFER OF CONTRACTS SUBJECT
18 TO THE RULES OF A CLEARING ORGANIZA-
19 TION.—In the event that the Corporation as re-
20 ceiver for a financial institution transfers any
21 qualified financial contract and related claims,
22 property, or credit enhancement pursuant to
23 subparagraph (A)(i) and such contract is
24 cleared by or subject to the rules of a clearing
25 organization, the clearing organization shall not

1 be required to accept the transferee as a mem-
2 ber by virtue of the transfer.

3 (D) DEFINITIONS.—For purposes of this
4 paragraph—

5 (i) the term “financial institution”
6 means a broker or dealer, a depository in-
7 stitution, a futures commission merchant,
8 a bridge financial company, or any other
9 institution determined by the Corporation,
10 by regulation, to be a financial institution;
11 and

12 (ii) the term “clearing organization”
13 has the same meaning as in section 402 of
14 the Federal Deposit Insurance Corporation
15 Improvement Act of 1991.

16 (10) NOTIFICATION OF TRANSFER.—

17 (A) IN GENERAL.—

18 (i) NOTICE.—The Corporation shall
19 provide notice in accordance with clause

20 (ii), if—

21 (I) the Corporation as receiver
22 for a covered financial company in de-
23 fault or in danger of default transfers
24 any assets or liabilities of the covered
25 financial company; and

1 (II) the transfer includes any
2 qualified financial contract.

3 (ii) TIMING.—The Corporation as re-
4 ceiver for a covered financial company
5 shall notify any person who is a party to
6 any contract described in clause (i) of such
7 transfer not later than 5:00 p.m. (eastern
8 time) on the business day following the
9 date of the appointment of the Corporation
10 as receiver.

11 (B) CERTAIN RIGHTS NOT ENFORCE-
12 ABLE.—

13 (i) RECEIVERSHIP.—A person who is
14 a party to a qualified financial contract
15 with a covered financial company may not
16 exercise any right that such person has to
17 terminate, liquidate, or net such contract
18 under paragraph (8)(A) solely by reason of
19 or incidental to the appointment under this
20 section of the Corporation as receiver for
21 the covered financial company (or the in-
22 solvency or financial condition of the cov-
23 ered financial company for which the Cor-
24 poration has been appointed as receiver)—

1 (I) until 5:00 p.m. (eastern time)
2 on the business day following the date
3 of the appointment; 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 Corporation as receiver for
10 a covered financial company shall be
11 deemed to have notified a person who is a
12 party to a qualified financial contract with
13 such covered financial company, if the Cor-
14 poration has taken steps reasonably cal-
15 culated to provide notice to such person by
16 the time specified in 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 covered financial company for
21 which a conservator, receiver, trustee in bank-
22 ruptcy, or other legal custodian has been ap-
23 pointed, or which is otherwise the subject of a
24 bankruptcy 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 the
10 Corporation as receiver with respect to any qualified
11 financial contract to which a covered financial com-
12 pany is a party, the Corporation 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 AVOIDABLE.—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 in accordance with
6 subsection (a)(11); or

7 (B) legally enforceable interest in customer
8 property, security entitlements in respect of as-
9 sets or property held by the covered financial
10 company for any security entitlement holder.

11 (13) AUTHORITY TO ENFORCE CONTRACTS.—

12 (A) IN GENERAL.—The Corporation, as re-
13 ceiver for a covered financial company, may en-
14 force any contract, other than a liability insur-
15 ance contract of a director or officer, 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, the appointment
21 of or the exercise of rights or powers by the
22 Corporation as receiver, the filing of the peti-
23 tion pursuant to section 202(a)(1), or the
24 issuance of the recommendations or determina-
25 tion, or any actions or events occurring in con-

1 nection therewith or as a result thereof, pursu-
2 ant to section 203.

3 (B) CERTAIN RIGHTS NOT AFFECTED.—

4 No provision of this paragraph may be con-
5 strued as impairing or affecting any right of the
6 Corporation as receiver to enforce or recover
7 under a liability insurance contract of a director
8 or officer or financial institution bond under
9 other applicable law.

10 (C) CONSENT REQUIREMENT AND IPSO
11 FACTO CLAUSES.—

12 (i) IN GENERAL.—Except as otherwise
13 provided by this section, no person may ex-
14 ercise any right or power to terminate, ac-
15 celerate, or declare a default under any
16 contract to which the covered financial
17 company is a party (and no provision in
18 any such contract providing for such de-
19 fault, termination, or acceleration shall be
20 enforceable), or to obtain possession of or
21 exercise control over any property of the
22 covered financial company or affect any
23 contractual rights of the covered financial
24 company, without the consent of the Cor-
25 poration as receiver for the covered finan-

1 cial company during the 90 day period be-
2 ginning from the appointment of the Cor-
3 poration as receiver.

4 (ii) EXCEPTIONS.—No provision of
5 this subparagraph shall apply to a director
6 or officer liability insurance contract or a
7 financial institution bond, to the rights of
8 parties to certain qualified financial con-
9 tracts pursuant to paragraph (8), or to the
10 rights of parties to netting contracts pur-
11 suant to subtitle A of title IV of the Fed-
12 eral Deposit Insurance Corporation Im-
13 provement Act of 1991 (12 U.S.C. 4401 et
14 seq.), or shall be construed as permitting
15 the Corporation as receiver to fail to com-
16 ply with otherwise enforceable provisions of
17 such contract.

18 (D) CONTRACTS TO EXTEND CREDIT.—
19 Notwithstanding any other provision in this
20 title, if the Corporation as receiver enforces any
21 contract to extend credit to the covered finan-
22 cial company or bridge financial company, any
23 valid and enforceable obligation to repay such
24 debt shall be paid by the Corporation as re-

1 ceiver, as an administrative expense of the re-
2 ceivership.

3 (14) EXCEPTION FOR FEDERAL RESERVE
4 BANKS AND CORPORATION SECURITY INTEREST.—
5 No provision of this subsection shall apply with re-
6 spect to—

7 (A) any extension of credit from any Fed-
8 eral reserve bank or the Corporation to any cov-
9 ered financial company; or

10 (B) any security interest in the assets of
11 the covered financial company securing any
12 such extension of credit.

13 (15) SAVINGS CLAUSE.—The meanings of terms
14 used in this subsection are applicable for purposes of
15 this subsection only, and shall not be construed or
16 applied so as to challenge or affect the characteriza-
17 tion, definition, or treatment of any similar terms
18 under any other statute, regulation, or rule, includ-
19 ing the Gramm-Leach-Bliley Act, the Legal Cer-
20 tainty for Bank Products Act of 2000, the securities
21 laws (as that term is defined in section 3(a)(47) of
22 the Securities Exchange Act of 1934), and the Com-
23 modity Exchange Act.

24 (16) ENFORCEMENT OF CONTRACTS GUARAN-
25 TEED BY THE COVERED FINANCIAL COMPANY.—

1 (A) IN GENERAL.—The Corporation, as re-
2 ceiver for a covered financial company or as re-
3 ceiver for a subsidiary of a covered financial
4 company (including an insured depository insti-
5 tution) shall have the power to enforce con-
6 tracts of subsidiaries or affiliates of the covered
7 financial company, the obligations under which
8 are guaranteed or otherwise supported by or
9 linked to the covered financial company, not-
10 withstanding any contractual right to cause the
11 termination, liquidation, or acceleration of such
12 contracts based solely on the insolvency, finan-
13 cial condition, or receivership of the covered fi-
14 nancial company, if—

15 (i) such guaranty or other support
16 and all related assets and liabilities are
17 transferred to and assumed by a bridge fi-
18 nancial company or a third party (other
19 than a third party for which a conservator,
20 receiver, trustee in bankruptcy, or other
21 legal custodian has been appointed, or
22 which is otherwise the subject of a bank-
23 ruptcy or insolvency proceeding) within the
24 same period of time as the Corporation is
25 entitled to transfer the qualified financial

1 contracts of such covered financial com-
2 pany; or

3 (ii) the Corporation, as receiver, oth-
4 erwise provides adequate protection with
5 respect to such obligations.

6 (B) RULE OF CONSTRUCTION.—For pur-
7 poses of this paragraph, a bridge financial com-
8 pany shall not be considered to be a third party
9 for which a conservator, receiver, trustee in
10 bankruptcy, or other legal custodian has been
11 appointed, or which is otherwise the subject of
12 a bankruptcy or insolvency proceeding.

13 (d) VALUATION OF CLAIMS IN DEFAULT.—

14 (1) IN GENERAL.—Notwithstanding any other
15 provision of Federal law or the law of any State, and
16 regardless of the method utilized by the Corporation
17 for a covered financial company, including trans-
18 actions authorized under subsection (h), this sub-
19 section shall govern the rights of the creditors of any
20 such covered financial company.

21 (2) MAXIMUM LIABILITY.—The maximum li-
22 ability of the Corporation, acting as receiver for a
23 covered financial company or in any other capacity,
24 to any person having a claim against the Corpora-
25 tion as receiver or the covered financial company for

1 which the Corporation is appointed shall equal the
2 amount that such claimant would have received if—

3 (A) the Corporation had not been ap-
4 pointed receiver with respect to the covered fi-
5 nancial company; and

6 (B) the covered financial company had
7 been liquidated under chapter 7 of the Bank-
8 ruptcy Code, or any similar provision of State
9 insolvency law applicable to the covered finan-
10 cial company.

11 (3) SPECIAL PROVISION FOR ORDERLY LIQ-
12 UIDATION BY SIPC.—The maximum liability of the
13 Corporation, acting as receiver or in its corporate
14 capacity for any covered broker or dealer to any cus-
15 tomer of such covered broker or dealer, with respect
16 to customer property of such customer, shall be—

17 (A) equal to the amount that such cus-
18 tomer would have received with respect to such
19 customer property in a case initiated by SIPC
20 under the Securities Investor Protection Act of
21 1970 (15 U.S.C. 78aaa et seq.); and

22 (B) determined as of the close of business
23 on the date on which the Corporation is ap-
24 pointed as receiver.

25 (4) ADDITIONAL PAYMENTS AUTHORIZED.—

1 (A) IN GENERAL.—Subject to subsection
2 (o)(1)(E)(ii), the Corporation, with the approval
3 of the Secretary, may make additional pay-
4 ments or credit additional amounts to or with
5 respect to or for the account of any claimant or
6 category of claimants of the covered financial
7 company, if the Corporation determines that
8 such payments or credits are necessary or ap-
9 propriate to minimize losses to the Corporation
10 as receiver from the orderly liquidation of the
11 covered financial company under this section.

12 (B) LIMITATIONS.—

13 (i) PROHIBITION.—The Corporation
14 shall not make any payments or credit
15 amounts to any claimant or category of
16 claimants that would result in any claim-
17 ant receiving more than the face value
18 amount of any claim that is proven to the
19 satisfaction of the Corporation.

20 (ii) NO OBLIGATION.—Notwith-
21 standing any other provision of Federal or
22 State law, or the Constitution of any State,
23 the Corporation shall not be obligated, as
24 a result of having made any payment
25 under subparagraph (A) or credited any

1 amount described in subparagraph (A) to
2 or with respect to, or for the account, of
3 any claimant or category of claimants, to
4 make payments to any other claimant or
5 category of claimants.

6 (C) MANNER OF PAYMENT.—The Corpora-
7 tion may make payments or credit amounts
8 under subparagraph (A) directly to the claim-
9 ants or may make such payments or credit such
10 amounts to a company other than a covered fi-
11 nancial company or a bridge financial company
12 established with respect thereto in order to in-
13 duce such other company to accept liability for
14 such claims.

15 (e) LIMITATION ON COURT ACTION.—Except as pro-
16 vided in this title, no court may take any action to restrain
17 or affect the exercise of powers or functions of the receiver
18 hereunder, and any remedy against the Corporation or re-
19 ceiver shall be limited to money damages determined in
20 accordance with this title.

21 (f) LIABILITY OF DIRECTORS AND OFFICERS.—

22 (1) IN GENERAL.—A director or officer of a
23 covered financial company may be held personally
24 liable for monetary damages in any civil action de-
25 scribed in paragraph (2) by, on behalf of, or at the

1 request or direction of the Corporation, which action
2 is prosecuted wholly or partially for the benefit of
3 the Corporation—

4 (A) acting as receiver for such covered fi-
5 nancial company;

6 (B) acting based upon a suit, claim, or
7 cause of action purchased from, assigned by, or
8 otherwise conveyed by the Corporation as re-
9 ceiver; or

10 (C) acting based upon a suit, claim, or
11 cause of action purchased from, assigned by, or
12 otherwise conveyed in whole or in part by a cov-
13 ered financial company or its affiliate in con-
14 nection with assistance provided under this
15 title.

16 (2) ACTIONS COVERED.—Paragraph (1) shall
17 apply with respect to actions for gross negligence,
18 including any similar conduct or conduct that dem-
19 onstrates a greater disregard of a duty of care (than
20 gross negligence) including intentional tortious con-
21 duct, as such terms are defined and determined
22 under applicable State law.

23 (3) SAVINGS CLAUSE.—Nothing in this sub-
24 section shall impair or affect any right of the Cor-
25 poration under other applicable law.

1 (g) DAMAGES.—In any proceeding related to any
2 claim against a director, officer, employee, agent, attorney,
3 accountant, or appraiser of a covered financial company,
4 or any other party employed by or providing services to
5 a covered financial company, recoverable damages deter-
6 mined to result from the improvident or otherwise im-
7 proper use or investment of any assets of the covered fi-
8 nancial company shall include principal losses and appro-
9 priate interest.

10 (h) BRIDGE FINANCIAL COMPANIES.—

11 (1) ORGANIZATION.—

12 (A) PURPOSE.—The Corporation, as re-
13 ceiver for one or more covered financial compa-
14 nies or in anticipation of being appointed re-
15 ceiver for one or more covered financial compa-
16 nies, may organize one or more bridge financial
17 companies in accordance with this subsection.

18 (B) AUTHORITIES.—Upon the creation of
19 a bridge financial company under subparagraph
20 (A) with respect to a covered financial com-
21 pany, such bridge financial company may—

22 (i) assume such liabilities (including
23 liabilities associated with any trust or cus-
24 tody business, but excluding any liabilities
25 that count as regulatory capital) of such

1 covered financial company as the Corpora-
2 tion may, in its discretion, determine to be
3 appropriate;

4 (ii) purchase such assets (including
5 assets associated with any trust or custody
6 business) of such covered financial com-
7 pany as the Corporation may, in its discre-
8 tion, determine to be appropriate; and

9 (iii) perform any other temporary
10 function which the Corporation may, in its
11 discretion, prescribe in accordance with
12 this section.

13 (2) CHARTER AND ESTABLISHMENT.—

14 (A) ESTABLISHMENT.—Except as provided
15 in subparagraph (H), where the covered finan-
16 cial company is a covered broker or dealer, the
17 Corporation, as receiver for a covered financial
18 company, may grant a Federal charter to and
19 approve articles of association for one or more
20 bridge financial company or companies, with re-
21 spect to such covered financial company which
22 shall, by operation of law and immediately upon
23 issuance of its charter and approval of its arti-
24 cles of association, be established and operate

1 in accordance with, and subject to, such char-
2 ter, articles, and this section.

3 (B) MANAGEMENT.—Upon its establish-
4 ment, a bridge financial company shall be under
5 the management of a board of directors ap-
6 pointed by the Corporation.

7 (C) ARTICLES OF ASSOCIATION.—The arti-
8 cles of association and organization certificate
9 of a bridge financial company shall have such
10 terms as the Corporation may provide, and
11 shall be executed by such representatives as the
12 Corporation may designate.

13 (D) TERMS OF CHARTER; RIGHTS AND
14 PRIVILEGES.—Subject to and in accordance
15 with the provisions of this subsection, the Cor-
16 poration shall—

17 (i) establish the terms of the charter
18 of a bridge financial company and the
19 rights, powers, authorities, and privileges
20 of a bridge financial company granted by
21 the charter or as an incident thereto; and

22 (ii) provide for, and establish the
23 terms and conditions governing, the man-
24 agement (including the bylaws and the
25 number of directors of the board of direc-

1 tors) and operations of the bridge financial
2 company.

3 (E) TRANSFER OF RIGHTS AND PRIVI-
4 LEGES OF COVERED FINANCIAL COMPANY.—

5 (i) IN GENERAL.—Notwithstanding
6 any other provision of Federal or State
7 law, the Corporation may provide for a
8 bridge financial company to succeed to and
9 assume any rights, powers, authorities, or
10 privileges of the covered financial company
11 with respect to which the bridge financial
12 company was established and, upon such
13 determination by the Corporation, the
14 bridge financial company shall immediately
15 and by operation of law succeed to and as-
16 sume such rights, powers, authorities, and
17 privileges.

18 (ii) EFFECTIVE WITHOUT AP-
19 PROVAL.—Any succession to or assumption
20 by a bridge financial company of rights,
21 powers, authorities, or privileges of a cov-
22 ered financial company under clause (i) or
23 otherwise shall be effective without any
24 further approval under Federal or State

1 law, assignment, or consent with respect
2 thereto.

3 (F) CORPORATE GOVERNANCE AND ELEC-
4 TION AND DESIGNATION OF BODY OF LAW.—To
5 the extent permitted by the Corporation and
6 consistent with this section and any rules, regu-
7 lations, or directives issued by the Corporation
8 under this section, a bridge financial company
9 may elect to follow the corporate governance
10 practices and procedures that are applicable to
11 a corporation incorporated under the general
12 corporation law of the State of Delaware, or the
13 State of incorporation or organization of the
14 covered financial company with respect to which
15 the bridge financial company was established,
16 as such law may be amended from time to time.

17 (G) CAPITAL.—

18 (i) CAPITAL NOT REQUIRED.—Not-
19 withstanding any other provision of Fed-
20 eral or State law, a bridge financial com-
21 pany may, if permitted by the Corporation,
22 operate without any capital or surplus, or
23 with such capital or surplus as the Cor-
24 poration may in its discretion determine to
25 be appropriate.

1 (ii) NO CONTRIBUTION BY THE COR-
2 PORATION REQUIRED.—The Corporation is
3 not required to pay capital into a bridge fi-
4 nancial company or to issue any capital
5 stock on behalf of a bridge financial com-
6 pany established under this subsection.

7 (iii) AUTHORITY.—If the Corporation
8 determines that such action is advisable,
9 the Corporation may cause capital stock or
10 other securities of a bridge financial com-
11 pany established with respect to a covered
12 financial company to be issued and offered
13 for sale in such amounts and on such
14 terms and conditions as the Corporation
15 may, in its discretion, determine.

16 (iv) OPERATING FUNDS IN LIEU OF
17 CAPITAL AND IMPLEMENTATION PLAN.—
18 Upon the organization of a bridge financial
19 company, and thereafter as the Corpora-
20 tion may, in its discretion, determine to be
21 necessary or advisable, the Corporation
22 may make available to the bridge financial
23 company, subject to the plan described in
24 subsection (n)(11), funds for the operation

1 of the bridge financial company in lieu of
2 capital.

3 (H) BRIDGE BROKERS OR DEALERS.—

4 (i) IN GENERAL.—The Corporation,
5 as receiver for a covered broker or dealer,
6 may approve articles of association for one
7 or more bridge financial companies with
8 respect to such covered broker or dealer,
9 which bridge financial company or compa-
10 nies shall, by operation of law and imme-
11 diately upon approval of its articles of as-
12 sociation—

13 (I) be established and deemed
14 registered with the Commission under
15 the Securities Exchange Act of 1934
16 and a member of SIPC;

17 (II) operate in accordance with
18 such articles and this section; and

19 (III) succeed to any and all reg-
20 istrations and memberships of the
21 covered financial company with or in
22 any self-regulatory organizations.

23 (ii) OTHER REQUIREMENTS.—Except
24 as provided in clause (i), and notwith-
25 standing any other provision of this sec-

1 tion, the bridge financial company shall be
2 subject to the Federal securities laws and
3 all requirements with respect to being a
4 member of a self-regulatory organization,
5 unless exempted from any such require-
6 ments by the Commission, as is necessary
7 or appropriate in the public interest or for
8 the protection of investors.

9 (iii) TREATMENT OF CUSTOMERS.—
10 Except as otherwise provided by this title,
11 any customer of the covered broker or
12 dealer whose account is transferred to a
13 bridge financial company shall have all the
14 rights, privileges, and protections under
15 section 205(f) and under the Securities In-
16 vestor Protection Act of 1970 (15 U.S.C.
17 78aaa et seq.), that such customer would
18 have had if the account were not trans-
19 ferred from the covered financial company
20 under this subparagraph.

21 (iv) OPERATION OF BRIDGE BROKERS
22 OR DEALERS.—Notwithstanding any other
23 provision of this title, the Corporation shall
24 not operate any bridge financial company
25 created by the Corporation under this title

1 with respect to a covered broker or dealer
2 in such a manner as to adversely affect the
3 ability of customers to promptly access
4 their customer property in accordance with
5 applicable law.

6 (3) INTERESTS IN AND ASSETS AND OBLIGA-
7 TIONS OF COVERED FINANCIAL COMPANY.—Notwith-
8 standing paragraph (1) or (2) or any other provision
9 of law—

10 (A) a bridge financial company shall as-
11 sume, acquire, or succeed to the assets or liabil-
12 ities of a covered financial company (including
13 the assets or liabilities associated with any trust
14 or custody business) only to the extent that
15 such assets or liabilities are transferred by the
16 Corporation to the bridge financial company in
17 accordance with, and subject to the restrictions
18 set forth in, paragraph (1)(B); and

19 (B) a bridge financial company shall not
20 assume, acquire, or succeed to any obligation
21 that a covered financial company for which the
22 Corporation has been appointed receiver may
23 have to any shareholder, member, general part-
24 ner, limited partner, or other person with an in-
25 terest in the equity of the covered financial

1 company that arises as a result of the status of
2 that person having an equity claim in the cov-
3 ered financial company.

4 (4) BRIDGE FINANCIAL COMPANY TREATED AS
5 BEING IN DEFAULT FOR CERTAIN PURPOSES.—A
6 bridge financial company shall be treated as a cov-
7 ered financial company in default at such times and
8 for such purposes as the Corporation may, in its dis-
9 cretion, determine.

10 (5) TRANSFER OF ASSETS AND LIABILITIES.—

11 (A) AUTHORITY OF CORPORATION.—The
12 Corporation, as receiver for a covered financial
13 company, may transfer any assets and liabilities
14 of a covered financial company (including any
15 assets or liabilities associated with any trust or
16 custody business) to one or more bridge finan-
17 cial companies, in accordance with and subject
18 to the restrictions of paragraph (1).

19 (B) SUBSEQUENT TRANSFERS.—At any
20 time after the establishment of a bridge finan-
21 cial company with respect to a covered financial
22 company, the Corporation, as receiver, may
23 transfer any assets and liabilities of such cov-
24 ered financial company as the Corporation may,
25 in its discretion, determine to be appropriate in

1 accordance with and subject to the restrictions
2 of paragraph (1).

3 (C) TREATMENT OF TRUST OR CUSTODY
4 BUSINESS.—For purposes of this paragraph,
5 the trust or custody business, including fidu-
6 ciary appointments, held by any covered finan-
7 cial company is included among its assets and
8 liabilities.

9 (D) EFFECTIVE WITHOUT APPROVAL.—
10 The transfer of any assets or liabilities, includ-
11 ing those associated with any trust or custody
12 business of a covered financial company, to a
13 bridge financial company shall be effective with-
14 out any further approval under Federal or
15 State law, assignment, or consent with respect
16 thereto.

17 (E) EQUITABLE TREATMENT OF SIMI-
18 LARLY SITUATED CREDITORS.—The Corpora-
19 tion shall treat all creditors of a covered finan-
20 cial company that are similarly situated under
21 subsection (b)(1), in a similar manner in exer-
22 cising the authority of the Corporation under
23 this subsection to transfer any assets or liabil-
24 ities of the covered financial company to one or
25 more bridge financial companies established

1 with respect to such covered financial company,
2 except that the Corporation may take any ac-
3 tion (including making payments, subject to
4 subsection (o)(1)(D)(ii)) that does not comply
5 with this subparagraph, if—

6 (i) the Corporation determines that
7 such action is necessary—

8 (I) to maximize the value of the
9 assets of the covered financial com-
10 pany;

11 (II) to maximize the present
12 value return from the sale or other
13 disposition of the assets of the covered
14 financial company; or

15 (III) to minimize the amount of
16 any loss realized upon the sale or
17 other disposition of the assets of the
18 covered financial company; and

19 (ii) all creditors that are similarly sit-
20 uated under subsection (b)(1) receive not
21 less than the amount provided under para-
22 graphs (2) and (3) of subsection (d).

23 (F) LIMITATION ON TRANSFER OF LIABIL-
24 ITIES.—Notwithstanding any other provision of
25 law, the aggregate amount of liabilities of a cov-

1 ered financial company that are transferred to,
2 or assumed by, a bridge financial company from
3 a covered financial company may not exceed the
4 aggregate amount of the assets of the covered
5 financial company that are transferred to, or
6 purchased by, the bridge financial company
7 from the covered financial company.

8 (6) STAY OF JUDICIAL ACTION.—Any judicial
9 action to which a bridge financial company becomes
10 a party by virtue of its acquisition of any assets or
11 assumption of any liabilities of a covered financial
12 company shall be stayed from further proceedings
13 for a period of not longer than 45 days (or such
14 longer period as may be agreed to upon the consent
15 of all parties) at the request of the bridge financial
16 company.

17 (7) AGREEMENTS AGAINST INTEREST OF THE
18 BRIDGE FINANCIAL COMPANY.—No agreement that
19 tends to diminish or defeat the interest of the bridge
20 financial company in any asset of a covered financial
21 company acquired by the bridge financial company
22 shall be valid against the bridge financial company,
23 unless such agreement—

24 (A) is in writing;

1 (B) was executed by an authorized officer
2 or representative of the covered financial com-
3 pany or confirmed in the ordinary course of
4 business by the covered financial company; and

5 (C) has been on the official record of the
6 company, since the time of its execution, or
7 with which, the party claiming under the agree-
8 ment provides documentation of such agreement
9 and its authorized execution or confirmation by
10 the covered financial company that is acceptable
11 to the receiver.

12 (8) NO FEDERAL STATUS.—

13 (A) AGENCY STATUS.—A bridge financial
14 company is not an agency, establishment, or in-
15 strumentality of the United States.

16 (B) EMPLOYEE STATUS.—Representatives
17 for purposes of paragraph (1)(B), directors, of-
18 ficers, employees, or agents of a bridge financial
19 company are not, solely by virtue of service in
20 any such capacity, officers or employees of the
21 United States. Any employee of the Corporation
22 or of any Federal instrumentality who serves at
23 the request of the Corporation as a representa-
24 tive for purposes of paragraph (1)(B), director,

1 officer, employee, or agent of a bridge financial
2 company shall not—

3 (i) solely by virtue of service in any
4 such capacity lose any existing status as
5 an officer or employee of the United States
6 for purposes of title 5, United States Code,
7 or any other provision of law; or

8 (ii) receive any salary or benefits for
9 service in any such capacity with respect to
10 a bridge financial company in addition to
11 such salary or benefits as are obtained
12 through employment with the Corporation
13 or such Federal instrumentality.

14 (9) FUNDING AUTHORIZED.—The Corporation
15 may, subject to the plan described in subsection
16 (n)(11), provide funding to facilitate any transaction
17 described in subparagraph (A), (B), (C), or (D) of
18 paragraph (13) with respect to any bridge financial
19 company, or facilitate the acquisition by a bridge fi-
20 nancial company of any assets, or the assumption of
21 any liabilities, of a covered financial company for
22 which the Corporation has been appointed receiver.

23 (10) EXEMPT TAX STATUS.—Notwithstanding
24 any other provision of Federal or State law, a bridge
25 financial company, its franchise, property, and in-

1 come shall be exempt from all taxation now or here-
2 after imposed by the United States, by any territory,
3 dependency, or possession thereof, or by any State,
4 county, municipality, or local taxing authority.

5 (11) FEDERAL AGENCY APPROVAL; ANTITRUST
6 REVIEW.—If a transaction involving the merger or
7 sale of a bridge financial company requires approval
8 by a Federal agency, the transaction may not be
9 consummated before the 5th calendar day after the
10 date of approval by the Federal agency responsible
11 for such approval with respect thereto. If, in connec-
12 tion with any such approval a report on competitive
13 factors from the Attorney General is required, the
14 Federal agency responsible for such approval shall
15 promptly notify the Attorney General of the pro-
16 posed transaction and the Attorney General shall
17 provide the required report within 10 days of the re-
18 quest. If a notification is required under section 7A
19 of the Clayton Act with respect to such transaction,
20 the required waiting period shall end on the 15th
21 day after the date on which the Attorney General
22 and the Federal Trade Commission receive such no-
23 tification, unless the waiting period is terminated
24 earlier under section 7A(b)(2) of the Clayton Act, or
25 extended under section 7A(e)(2) of that Act.

1 (12) DURATION OF BRIDGE FINANCIAL COM-
2 PANY.—Subject to paragraphs (13) and (14), the
3 status of a bridge financial company as such shall
4 terminate at the end of the 2-year period following
5 the date on which it was granted a charter. The
6 Corporation may, in its discretion, extend the status
7 of the bridge financial company as such for no more
8 than 3 additional 1-year periods.

9 (13) TERMINATION OF BRIDGE FINANCIAL COM-
10 PANY STATUS.—The status of any bridge financial
11 company as such shall terminate upon the earliest
12 of—

13 (A) the date of the merger or consolidation
14 of the bridge financial company with a company
15 that is not a bridge financial company;

16 (B) at the election of the Corporation, the
17 sale of a majority of the capital stock of the
18 bridge financial company to a company other
19 than the Corporation and other than another
20 bridge financial company;

21 (C) the sale of 80 percent, or more, of the
22 capital stock of the bridge financial company to
23 a person other than the Corporation and other
24 than another bridge financial company;

1 (D) at the election of the Corporation, ei-
2 ther the assumption of all or substantially all of
3 the liabilities of the bridge financial company by
4 a company that is not a bridge financial com-
5 pany, or the acquisition of all or substantially
6 all of the assets of the bridge financial company
7 by a company that is not a bridge financial
8 company, or other entity as permitted under
9 applicable law; and

10 (E) the expiration of the period provided in
11 paragraph (12), or the earlier dissolution of the
12 bridge financial company, as provided in para-
13 graph (15).

14 (14) EFFECT OF TERMINATION EVENTS.—

15 (A) MERGER OR CONSOLIDATION.—A
16 merger or consolidation, described in paragraph
17 (12)(A) shall be conducted in accordance with,
18 and shall have the effect provided in, the provi-
19 sions of applicable law. For the purpose of ef-
20 fecting such a merger or consolidation, the
21 bridge financial company shall be treated as a
22 corporation organized under the laws of the
23 State of Delaware (unless the law of another
24 State has been selected by the bridge financial
25 company in accordance with paragraph (2)(F)),

1 and the Corporation shall be treated as the sole
2 shareholder thereof, notwithstanding any other
3 provision of State or Federal law.

4 (B) CHARTER CONVERSION.—Following
5 the sale of a majority of the capital stock of the
6 bridge financial company, as provided in para-
7 graph (13)(B), the Corporation may amend the
8 charter of the bridge financial company to re-
9 flect the termination of the status of the bridge
10 financial company as such, whereupon the com-
11 pany shall have all of the rights, powers, and
12 privileges under its constituent documents and
13 applicable Federal or State law. In connection
14 therewith, the Corporation may take such steps
15 as may be necessary or convenient to reincor-
16 porate the bridge financial company under the
17 laws of a State and, notwithstanding any provi-
18 sions of Federal or State law, such State-char-
19 tered corporation shall be deemed to succeed by
20 operation of law to such rights, titles, powers,
21 and interests of the bridge financial company as
22 the Corporation may provide, with the same ef-
23 fect as if the bridge financial company had
24 merged with the State-chartered corporation

1 under provisions of the corporate laws of such
2 State.

3 (C) SALE OF STOCK.—Following the sale
4 of 80 percent or more of the capital stock of a
5 bridge financial company, as provided in para-
6 graph (13)(C), the company shall have all of
7 the rights, powers, and privileges under its con-
8 stituent documents and applicable Federal or
9 State law. In connection therewith, the Cor-
10 poration may take such steps as may be nec-
11 essary or convenient to reincorporate the bridge
12 financial company under the laws of a State
13 and, notwithstanding any provisions of Federal
14 or State law, the State-chartered corporation
15 shall be deemed to succeed by operation of law
16 to such rights, titles, powers and interests of
17 the bridge financial company as the Corpora-
18 tion may provide, with the same effect as if the
19 bridge financial company had merged with the
20 State-chartered corporation under provisions of
21 the corporate laws of such State.

22 (D) ASSUMPTION OF LIABILITIES AND
23 SALE OF ASSETS.—Following the assumption of
24 all or substantially all of the liabilities of the
25 bridge financial company, or the sale of all or

1 substantially all of the assets of the bridge fi-
2 nancial company, as provided in paragraph
3 (13)(D), at the election of the Corporation, the
4 bridge financial company may retain its status
5 as such for the period provided in paragraph
6 (12) or may be dissolved at the election of the
7 Corporation.

8 (E) AMENDMENTS TO CHARTER.—Fol-
9 lowing the consummation of a transaction de-
10 scribed in subparagraph (A), (B), (C), or (D)
11 of paragraph (13), the charter of the resulting
12 company shall be amended to reflect the termi-
13 nation of bridge financial company status, if ap-
14 propriate.

15 (15) DISSOLUTION OF BRIDGE FINANCIAL COM-
16 PANY.—

17 (A) IN GENERAL.—Notwithstanding any
18 other provision of Federal or State law, if the
19 status of a bridge financial company as such
20 has not previously been terminated by the oc-
21 currence of an event specified in subparagraph
22 (A), (B), (C), or (D) of paragraph (13)—

23 (i) the Corporation may, in its discre-
24 tion, dissolve the bridge financial company

1 in accordance with this paragraph at any
2 time; and

3 (ii) the Corporation shall promptly
4 commence dissolution proceedings in ac-
5 cordance with this paragraph upon the ex-
6 piration of the 2-year period following the
7 date on which the bridge financial com-
8 pany was chartered, or any extension
9 thereof, as provided in paragraph (12).

10 (B) PROCEDURES.—The Corporation shall
11 remain the receiver for a bridge financial com-
12 pany for the purpose of dissolving the bridge fi-
13 nancial company. The Corporation as receiver
14 for a bridge financial company shall wind up
15 the affairs of the bridge financial company in
16 conformity with the provisions of law relating to
17 the liquidation of covered financial companies
18 under this title. With respect to any such bridge
19 financial company, the Corporation as receiver
20 shall have all the rights, powers, and privileges
21 and shall perform the duties related to the exer-
22 cise of such rights, powers, or privileges granted
23 by law to the Corporation as receiver for a cov-
24 ered financial company under this title and,
25 notwithstanding any other provision of law, in

1 the exercise of such rights, powers, and privi-
2 leges, the Corporation shall not be subject to
3 the direction or supervision of any State agency
4 or other Federal agency.

5 (16) AUTHORITY TO OBTAIN CREDIT.—

6 (A) IN GENERAL.—A bridge financial com-
7 pany may obtain unsecured credit and issue un-
8 secured debt.

9 (B) INABILITY TO OBTAIN CREDIT.—If a
10 bridge financial company is unable to obtain
11 unsecured credit or issue unsecured debt, the
12 Corporation may authorize the obtaining of
13 credit or the issuance of debt by the bridge fi-
14 nancial company—

15 (i) with priority over any or all of the
16 obligations of the bridge financial com-
17 pany;

18 (ii) secured by a lien on property of
19 the bridge financial company that is not
20 otherwise subject to a lien; or

21 (iii) secured by a junior lien on prop-
22 erty of the bridge financial company that
23 is subject to a lien.

24 (C) LIMITATIONS.—

1 (i) IN GENERAL.—The Corporation,
2 after notice and a hearing, may authorize
3 the obtaining of credit or the issuance of
4 debt by a bridge financial company that is
5 secured by a senior or equal lien on prop-
6 erty of the bridge financial company that
7 is subject to a lien, only if—

8 (I) the bridge financial company
9 is unable to otherwise obtain such
10 credit or issue such debt; and

11 (II) there is adequate protection
12 of the interest of the holder of the lien
13 on the property with respect to which
14 such senior or equal lien is proposed
15 to be granted.

16 (ii) HEARING.—The hearing required
17 pursuant to this subparagraph shall be be-
18 fore a court of the United States, which
19 shall have jurisdiction to conduct such
20 hearing and to authorize a bridge financial
21 company to obtain secured credit under
22 clause (i).

23 (D) BURDEN OF PROOF.—In any hearing
24 under this paragraph, the Corporation has the

1 burden of proof on the issue of adequate protec-
2 tion.

3 (E) QUALIFIED FINANCIAL CONTRACTS.—

4 No credit or debt obtained or issued by a bridge
5 financial company may contain terms that im-
6 pair the rights of a counterparty to a qualified
7 financial contract upon a default by the bridge
8 financial company, other than the priority of
9 such counterparty's unsecured claim (after the
10 exercise of rights) relative to the priority of the
11 bridge financial company's obligations in re-
12 spect of such credit or debt, unless such
13 counterparty consents in writing to any such
14 impairment.

15 (17) EFFECT ON DEBTS AND LIENS.—The re-
16 versal or modification on appeal of an authorization
17 under this subsection to obtain credit or issue debt,
18 or of a grant under this section of a priority or a
19 lien, does not affect the validity of any debt so
20 issued, or any priority or lien so granted, to an enti-
21 ty that extended such credit in good faith, whether
22 or not such entity knew of the pendency of the ap-
23 peal, unless such authorization and the issuance of
24 such debt, or the granting of such priority or lien,
25 were stayed pending appeal.

1 (i) SHARING RECORDS.—If the Corporation has been
2 appointed as receiver for a covered financial company,
3 other Federal regulators shall make all records relating
4 to the covered financial company available to the Corpora-
5 tion, which may be used by the Corporation in any manner
6 that the Corporation determines to be appropriate.

7 (j) EXPEDITED PROCEDURES FOR CERTAIN
8 CLAIMS.—

9 (1) TIME FOR FILING NOTICE OF APPEAL.—

10 The notice of appeal of any order, whether interlocu-
11 tory or final, entered in any case brought by the
12 Corporation against a director, officer, employee,
13 agent, attorney, accountant, or appraiser of the cov-
14 ered financial company, or any other person em-
15 ployed by or providing services to a covered financial
16 company, shall be filed not later than 30 days after
17 the date of entry of the order. The hearing of the
18 appeal shall be held not later than 120 days after
19 the date of the notice of appeal. The appeal shall be
20 decided not later than 180 days after the date of the
21 notice of appeal.

22 (2) SCHEDULING.—The court shall expedite the
23 consideration of any case brought by the Corpora-
24 tion against a director, officer, employee, agent, at-
25 torney, accountant, or appraiser of a covered finan-

1 cial company or any other person employed by or
2 providing services to a covered financial company.
3 As far as practicable, the court shall give such case
4 priority on its docket.

5 (3) JUDICIAL DISCRETION.—The court may
6 modify the schedule and limitations stated in para-
7 graphs (1) and (2) in a particular case, based on a
8 specific finding that the ends of justice that would
9 be served by making such a modification would out-
10 weigh the best interest of the public in having the
11 case resolved expeditiously.

12 (k) FOREIGN INVESTIGATIONS.—The Corporation, as
13 receiver for any covered financial company, and for pur-
14 poses of carrying out any power, authority, or duty with
15 respect to a covered financial company—

16 (1) may request the assistance of any foreign fi-
17 nancial authority and provide assistance to any for-
18 eign financial authority in accordance with section
19 8(v) of the Federal Deposit Insurance Act, as if the
20 covered financial company were an insured deposi-
21 tory institution, the Corporation were the appro-
22 priate Federal banking agency for the company, and
23 any foreign financial authority were the foreign
24 banking authority; and

1 (2) may maintain an office to coordinate for-
2 eign investigations or investigations on behalf of for-
3 eign financial authorities.

4 (1) PROHIBITION ON ENTERING SECRECY AGREE-
5 MENTS AND PROTECTIVE ORDERS.—The Corporation
6 may not enter into any agreement or approve any protec-
7 tive order which prohibits the Corporation from disclosing
8 the terms of any settlement of an administrative or other
9 action for damages or restitution brought by the Corpora-
10 tion in its capacity as receiver for a covered financial com-
11 pany.

12 (m) LIQUIDATION OF CERTAIN COVERED FINANCIAL
13 COMPANIES OR BRIDGE FINANCIAL COMPANIES.—

14 (1) IN GENERAL.—Except as specifically pro-
15 vided in this section, and notwithstanding any other
16 provision of law, the Corporation, in connection with
17 the liquidation of any covered financial company or
18 bridge financial company with respect to which the
19 Corporation has been appointed as receiver, shall—

20 (A) in the case of any covered financial
21 company or bridge financial company that is or
22 has a subsidiary that is a stockbroker, but is
23 not a member of the Securities Investor Protec-
24 tion Corporation, apply the provisions of sub-
25 chapter III of chapter 7 of the Bankruptcy

1 Code, in respect of the distribution to any cus-
2 tomer of all customer name securities and cus-
3 tomer property, as if such covered financial
4 company or bridge financial company were a
5 debtor for purposes of such subchapter; or

6 (B) in the case of any covered financial
7 company or bridge financial company that is a
8 commodity broker, apply the provisions of sub-
9 chapter IV of chapter 7 the Bankruptcy Code,
10 in respect of the distribution to any customer of
11 all customer property, as if such covered finan-
12 cial company or bridge financial company were
13 a debtor for purposes of such subchapter.

14 (2) DEFINITIONS.—For purposes of this sub-
15 section—

16 (A) the terms “customer”, “customer
17 name securities”, and “customer property”
18 have the same meanings as in section 741 of
19 title 11, United States Code; and

20 (B) the terms “commodity broker” and
21 “stockbroker” have the same meanings as in
22 section 101 of the Bankruptcy Code.

23 (n) ORDERLY LIQUIDATION FUND.—

24 (1) ESTABLISHMENT.—There is established in
25 the Treasury of the United States a separate fund

1 to be known as the “Orderly Liquidation Fund”,
2 which shall be available to the Corporation to carry
3 out the authorities contained in this title, for the
4 cost of actions authorized by this title, including the
5 orderly liquidation of covered financial companies,
6 payment of administrative expenses, the payment of
7 principal and interest by the Corporation on obliga-
8 tions issued under paragraph (5), and the exercise
9 of the authorities of the Corporation under this title.

10 (2) PROCEEDS.—Amounts received by the Cor-
11 poration, including assessments received under sub-
12 section (o), proceeds of obligations issued under
13 paragraph (5), interest and other earnings from in-
14 vestments, and repayments to the Corporation by
15 covered financial companies, shall be deposited into
16 the Fund.

17 (3) MANAGEMENT.—The Corporation shall
18 manage the Fund in accordance with this subsection
19 and the policies and procedures established under
20 section 203(d).

21 (4) INVESTMENTS.—At the request of the Cor-
22 poration, the Secretary may invest such portion of
23 amounts held in the Fund that are not, in the judg-
24 ment of the Corporation, required to meet the cur-
25 rent needs of the Corporation, in obligations of the

1 United States having suitable maturities, as deter-
2 mined by the Corporation. The interest on and the
3 proceeds from the sale or redemption of such obliga-
4 tions shall be credited to the Fund.

5 (5) AUTHORITY TO ISSUE OBLIGATIONS.—

6 (A) CORPORATION AUTHORIZED TO ISSUE
7 OBLIGATIONS.—Upon appointment by the Sec-
8 retary of the Corporation as receiver for a cov-
9 ered financial company, the Corporation is au-
10 thorized to issue obligations to the Secretary.

11 (B) SECRETARY AUTHORIZED TO PUR-
12 CHASE OBLIGATIONS.—The Secretary may,
13 under such terms and conditions as the Sec-
14 retary may require, purchase or agree to pur-
15 chase any obligations issued under subpara-
16 graph (A), and for such purpose, the Secretary
17 is authorized to use as a public debt transaction
18 the proceeds of the sale of any securities issued
19 under chapter 31 of title 31, United States
20 Code, and the purposes for which securities
21 may be issued under chapter 31 of title 31,
22 United States Code, are extended to include
23 such purchases.

24 (C) INTEREST RATE.—Each purchase of
25 obligations by the Secretary under this para-

1 graph shall be upon such terms and conditions
2 as to yield a return at a rate determined by the
3 Secretary, taking into consideration the current
4 average yield on outstanding marketable obliga-
5 tions of the United States of comparable matu-
6 rity, plus an interest rate surcharge to be deter-
7 mined by the Secretary, which shall be greater
8 than the difference between—

9 (i) the current average rate on an
10 index of corporate obligations of com-
11 parable maturity; and

12 (ii) the current average rate on out-
13 standing marketable obligations of the
14 United States of comparable maturity.

15 (D) SECRETARY AUTHORIZED TO SELL OB-
16 LIGATIONS.—The Secretary may sell, upon such
17 terms and conditions as the Secretary shall de-
18 termine, any of the obligations acquired under
19 this paragraph.

20 (E) PUBLIC DEBT TRANSACTIONS.—All
21 purchases and sales by the Secretary of such
22 obligations under this paragraph shall be treat-
23 ed as public debt transactions of the United
24 States, and the proceeds from the sale of any
25 obligations acquired by the Secretary under this

1 paragraph shall be deposited into the Treasury
2 of the United States as miscellaneous receipts.

3 (6) MAXIMUM OBLIGATION LIMITATION.—The
4 Corporation may not, in connection with the orderly
5 liquidation of a covered financial company, issue or
6 incur any obligation, if, after issuing or incurring
7 the obligation, the aggregate amount of such obliga-
8 tions outstanding under this subsection for each cov-
9 ered financial company would exceed—

10 (A) an amount that is equal to 10 percent
11 of the total consolidated assets of the covered
12 financial company, based on the most recent fi-
13 nancial statement available, during the 30-day
14 period immediately following the date of ap-
15 pointment of the Corporation as receiver (or a
16 shorter time period if the Corporation has cal-
17 culated the amount described under subpara-
18 graph (B)); and

19 (B) the amount that is equal to 90 percent
20 of the fair value of the total consolidated assets
21 of each covered financial company that are
22 available for repayment, after the time period
23 described in subparagraph (A).

24 (7) RULEMAKING.—The Corporation and the
25 Secretary shall jointly, in consultation with the

1 Council, prescribe regulations governing the calcula-
2 tion of the maximum obligation limitation defined in
3 this paragraph.

4 (8) RULE OF CONSTRUCTION.—

5 (A) IN GENERAL.—Nothing in this section
6 shall be construed to affect the authority of the
7 Corporation under subsection (a) or (b) of sec-
8 tion 14 or section 15(c)(5) of the Federal De-
9 posit Insurance Act (12 U.S.C. 1824,
10 1825(c)(5)), the management of the Deposit In-
11 surance Fund by the Corporation, or the resolu-
12 tion of insured depository institutions, provided
13 that—

14 (i) the authorities of the Corporation
15 contained in this title shall not be used to
16 assist the Deposit Insurance Fund or to
17 assist any financial company under appli-
18 cable law other than this Act;

19 (ii) the authorities of the Corporation
20 relating to the Deposit Insurance Fund, or
21 any other responsibilities of the Corpora-
22 tion under applicable law other than this
23 title, shall not be used to assist a covered
24 financial company pursuant to this title;
25 and

1 (iii) the Deposit Insurance Fund may
2 not be used in any manner to otherwise
3 circumvent the purposes of this title.

4 (B) VALUATION.—For purposes of deter-
5 mining the amount of obligations under this
6 subsection—

7 (i) the Corporation shall include as an
8 obligation any contingent liability of the
9 Corporation pursuant to this title; and

10 (ii) the Corporation shall value any
11 contingent liability at its expected cost to
12 the Corporation.

13 (9) ORDERLY LIQUIDATION AND REPAYMENT
14 PLANS.—

15 (A) ORDERLY LIQUIDATION PLAN.—
16 Amounts in the Fund shall be available to the
17 Corporation with regard to a covered financial
18 company for which the Corporation is appointed
19 receiver after the Corporation has developed an
20 orderly liquidation plan that is acceptable to the
21 Secretary with regard to such covered financial
22 company, including the provision and use of
23 funds, including taking any actions specified
24 under section 204(d) and subsection
25 (h)(2)(G)(iv) and (h)(9) of this section, and

1 assets of the covered financial com-
2 pany and assessments under sub-
3 section (o) will be sufficient to amor-
4 tize the outstanding balance within
5 the period established in the repay-
6 ment schedule and pay the interest
7 accruing on such balance within the
8 time provided in subsection (o)(1)(B).

9 (ii) CONSULTATION WITH AND RE-
10 PORT TO CONGRESS.—The Secretary and
11 the Corporation shall—

12 (I) consult with the Committee
13 on Banking, Housing, and Urban Af-
14 fairs of the Senate and the Committee
15 on Financial Services of the House of
16 Representatives on the terms of any
17 repayment schedule agreement; and

18 (II) submit a copy of the repay-
19 ment schedule agreement to the Com-
20 mittees described in subclause (I) be-
21 fore the end of the 30-day period be-
22 ginning on the date on which any
23 amount is provided by the Secretary
24 to the Corporation under paragraph
25 (5).

1 (10) IMPLEMENTATION EXPENSES.—

2 (A) IN GENERAL.—Reasonable implemen-
3 tation expenses of the Corporation incurred
4 after the date of enactment of this Act shall be
5 treated as expenses of the Council.

6 (B) REQUESTS FOR REIMBURSEMENT.—
7 The Corporation shall periodically submit a re-
8 quest for reimbursement for implementation ex-
9 penses to the Chairperson of the Council, who
10 shall arrange for prompt reimbursement to the
11 Corporation of reasonable implementation ex-
12 penses.

13 (C) DEFINITION.—As used in this para-
14 graph, the term “implementation expenses”—

15 (i) means costs incurred by the Cor-
16 poration beginning on the date of enact-
17 ment of this Act, as part of its efforts to
18 implement this title that do not relate to a
19 particular covered financial company; and

20 (ii) includes the costs incurred in con-
21 nection with the development of policies,
22 procedures, rules, and regulations and
23 other planning activities of the Corporation
24 consistent with carrying out this title.

25 (o) ASSESSMENTS.—

1 (1) RISK-BASED ASSESSMENTS.—

2 (A) ELIGIBLE FINANCIAL COMPANIES DE-
3 FINED.—For purposes of this subsection, the
4 term “eligible financial company” means any
5 bank holding company with total consolidated
6 assets equal to or greater than
7 \$50,000,000,000 and any nonbank financial
8 company supervised by the Board of Governors.

9 (B) ASSESSMENTS.—The Corporation shall
10 charge one or more risk-based assessments in
11 accordance with the provisions of subparagraph
12 (D), if such assessments are necessary to pay
13 in full the obligations issued by the Corporation
14 to the Secretary within 60 months of the date
15 of issuance of such obligations.

16 (C) EXTENSIONS AUTHORIZED.—The Cor-
17 poration may, with the approval of the Sec-
18 retary, extend the time period under subpara-
19 graph (B), if the Corporation determines that
20 an extension is necessary to avoid a serious ad-
21 verse effect on the financial system of the
22 United States.

23 (D) APPLICATION OF ASSESSMENTS.—To
24 meet the requirements of subparagraph (B), the
25 Corporation shall—

1 (i) impose assessments, as soon as
2 practicable, on any claimant that received
3 additional payments or amounts from the
4 Corporation pursuant to subsection (b)(4),
5 (d)(4), or (h)(5)(E), except for payments
6 or amounts necessary to initiate and con-
7 tinue operations essential to implementa-
8 tion of the receivership or any bridge fi-
9 nancial company, to recover on a cumu-
10 lative basis, the entire difference be-
11 tween—

12 (I) the aggregate value the claim-
13 ant received from the Corporation on
14 a claim pursuant to this title (includ-
15 ing pursuant to subsection (b)(4),
16 (d)(4), and (h)(5)(E)), as of the date
17 on which such value was received; and

18 (II) the value the claimant was
19 entitled to receive from the Corpora-
20 tion on such claim solely from the
21 proceeds of the liquidation of the cov-
22 ered financial company under this
23 title; and

24 (ii) if the amounts to be recovered on
25 a cumulative basis under clause (i) are in-

1 sufficient to meet the requirements of sub-
2 paragraph (B), after taking into account
3 the considerations set forth in paragraph
4 (4), impose assessments on—

5 (I) eligible financial companies;

6 and

7 (II) financial companies with
8 total consolidated assets equal to or
9 greater than \$50,000,000,000 that
10 are not eligible financial companies.

11 (E) PROVISION OF FINANCING.—Payments
12 or amounts necessary to initiate and continue
13 operations essential to implementation of the
14 receivership or any bridge financial company
15 described in subparagraph (E)(i) shall not in-
16 clude the provision of financing, as defined by
17 rule of the Corporation, to third parties.

18 (2) GRADUATED ASSESSMENT RATE.—The Cor-
19 poration shall impose assessments on a graduated
20 basis, with financial companies having greater assets
21 and risk being assessed at a higher rate.

22 (3) NOTIFICATION AND PAYMENT.—The Cor-
23 poration shall notify each financial company of that
24 company's assessment under this subsection. Any fi-
25 nancial company subject to assessment under this

1 subsection shall pay such assessment in accordance
2 with the regulations prescribed pursuant to para-
3 graph (6).

4 (4) RISK-BASED ASSESSMENT CONSIDER-
5 ATIONS.—In imposing assessments under paragraph
6 (1)(D)(ii), the Corporation shall use a risk matrix.
7 The Council shall make a recommendation to the
8 Corporation on the risk matrix to be used in impos-
9 ing such assessments, and the Corporation shall take
10 into account any such recommendation in the estab-
11 lishment of the risk matrix to be used to impose
12 such assessments. In recommending or establishing
13 such risk matrix, the Council and the Corporation,
14 respectively, shall take into account—

15 (A) economic conditions generally affecting
16 financial companies so as to allow assessments
17 to increase during more favorable economic con-
18 ditions and to decrease during less favorable
19 economic conditions;

20 (B) any assessments imposed on a finan-
21 cial company or an affiliate of a financial com-
22 pany that—

23 (i) is an insured depository institu-
24 tion, assessed pursuant to section 7 or

1 13(c)(4)(G) of the Federal Deposit Insur-
2 ance Act;

3 (ii) is a member of the Securities In-
4 vestor Protection Corporation, assessed
5 pursuant to section 4 of the Securities In-
6 vestor Protection Act of 1970 (15 U.S.C.
7 78ddd);

8 (iii) is an insured credit union, as-
9 sessed pursuant to section 202(c)(1)(A)(i)
10 of the Federal Credit Union Act (12
11 U.S.C. 1782(c)(1)(A)(i)); or

12 (iv) is an insurance company, assessed
13 pursuant to applicable State law to cover
14 (or reimburse payments made to cover) the
15 costs of the rehabilitation, liquidation, or
16 other State insolvency proceeding with re-
17 spect to 1 or more insurance companies;

18 (C) the risks presented by the financial
19 company to the financial system and the extent
20 to which the financial company has benefitted,
21 or likely would benefit, from the orderly liquida-
22 tion of a financial company under this title, in-
23 cluding—

24 (i) the amount, different categories,
25 and concentrations of assets of the finan-

1 cial company and its affiliates, including
2 both on-balance sheet and off-balance sheet
3 assets;

4 (ii) the activities of the financial com-
5 pany and its affiliates;

6 (iii) the relevant market share of the
7 financial company and its affiliates;

8 (iv) the extent to which the financial
9 company is leveraged;

10 (v) the potential exposure to sudden
11 calls on liquidity precipitated by economic
12 distress;

13 (vi) the amount, maturity, volatility,
14 and stability of the company's financial ob-
15 ligations to, and relationship with, other fi-
16 nancial companies;

17 (vii) the amount, maturity, volatility,
18 and stability of the liabilities of the com-
19 pany, including the degree of reliance on
20 short-term funding, taking into consider-
21 ation existing systems for measuring a
22 company's risk-based capital;

23 (viii) the stability and variety of the
24 company's sources of funding;

1 (ix) the company's importance as a
2 source of credit for households, businesses,
3 and State and local governments and as a
4 source of liquidity for the financial system;

5 (x) the extent to which assets are sim-
6 ply managed and not owned by the finan-
7 cial company and the extent to which own-
8 ership of assets under management is dif-
9 fuse; and

10 (xi) the amount, different categories,
11 and concentrations of liabilities, both in-
12 sured and uninsured, contingent and non-
13 contingent, including both on-balance sheet
14 and off-balance sheet liabilities, of the fi-
15 nancial company and its affiliates;

16 (D) any risks presented by the financial
17 company during the 10-year period immediately
18 prior to the appointment of the Corporation as
19 receiver for the covered financial company that
20 contributed to the failure of the covered finan-
21 cial company; and

22 (E) such other risk-related factors as the
23 Corporation, or the Council, as applicable, may
24 determine to be appropriate.

1 (5) COLLECTION OF INFORMATION.—The Cor-
2 poration may impose on covered financial companies
3 such collection of information requirements as the
4 Corporation deems necessary to carry out this sub-
5 section after the appointment of the Corporation as
6 receiver under this title.

7 (6) RULEMAKING.—

8 (A) IN GENERAL.—The Corporation shall
9 prescribe regulations to carry out this sub-
10 section. The Corporation shall consult with the
11 Secretary in the development and finalization of
12 such regulations.

13 (B) EQUITABLE TREATMENT.—The regu-
14 lations prescribed under subparagraph (A) shall
15 take into account the differences in risks posed
16 to the financial stability of the United States by
17 financial companies, the differences in the li-
18 ability structures of financial companies, and
19 the different bases for other assessments that
20 such financial companies may be required to
21 pay, to ensure that assessed financial compa-
22 nies are treated equitably and that assessments
23 under this subsection reflect such differences.

24 (p) UNENFORCEABILITY OF CERTAIN AGREE-
25 MENTS.—

1 (1) IN GENERAL.—No provision described in
2 paragraph (2) shall be enforceable against or impose
3 any liability on any person, as such enforcement or
4 liability shall be contrary to public policy.

5 (2) PROHIBITED PROVISIONS.—A provision de-
6 scribed in this paragraph is any term contained in
7 any existing or future standstill, confidentiality, or
8 other agreement that, directly or indirectly—

9 (A) affects, restricts, or limits the ability
10 of any person to offer to acquire or acquire;

11 (B) prohibits any person from offering to
12 acquire or acquiring; or

13 (C) prohibits any person from using any
14 previously disclosed information in connection
15 with any such offer to acquire or acquisition of,
16 all or part of any covered financial company, includ-
17 ing any liabilities, assets, or interest therein, in con-
18 nection with any transaction in which the Corpora-
19 tion exercises its authority under this title.

20 (q) OTHER EXEMPTIONS.—

21 (1) IN GENERAL.—When acting as a receiver
22 under this title—

23 (A) the Corporation, including its fran-
24 chise, its capital, reserves and surplus, and its
25 income, shall be exempt from all taxation im-

1 posed by any State, county, municipality, or
2 local taxing authority, except that any real
3 property of the Corporation shall be subject to
4 State, territorial, county, municipal, or local
5 taxation to the same extent according to its
6 value as other real property is taxed, except
7 that, notwithstanding the failure of any person
8 to challenge an assessment under State law of
9 the value of such property, such value, and the
10 tax thereon, shall be determined as of the pe-
11 riod for which such tax is imposed;

12 (B) no property of the Corporation shall be
13 subject to levy, attachment, garnishment, fore-
14 closure, or sale without the consent of the Cor-
15 poration, nor shall any involuntary lien attach
16 to the property of the Corporation; and

17 (C) the Corporation shall not be liable for
18 any amounts in the nature of penalties or fines,
19 including those arising from the failure of any
20 person to pay any real property, personal prop-
21 erty, probate, or recording tax or any recording
22 or filing fees when due; and

23 (D) the Corporation shall be exempt from
24 all prosecution by the United States or any
25 State, county, municipality, or local authority

1 for any criminal offense arising under Federal,
2 State, county, municipal, or local law, which
3 was allegedly committed by the covered finan-
4 cial company, or persons acting on behalf of the
5 covered financial company, prior to the appoint-
6 ment of the Corporation as receiver.

7 (2) LIMITATION.—Paragraph (1) shall not
8 apply with respect to any tax imposed (or other
9 amount arising) under the Internal Revenue Code of
10 1986.

11 (r) CERTAIN SALES OF ASSETS PROHIBITED.—

12 (1) PERSONS WHO ENGAGED IN IMPROPER CON-
13 DUCT WITH, OR CAUSED LOSSES TO, COVERED FI-
14 NANCIAL COMPANIES.—The Corporation shall pre-
15 scribe regulations which, at a minimum, shall pro-
16 hibit the sale of assets of a covered financial com-
17 pany by the Corporation to—

18 (A) any person who—

19 (i) has defaulted, or was a member of
20 a partnership or an officer or director of a
21 corporation that has defaulted, on 1 or
22 more obligations, the aggregate amount of
23 which exceeds \$1,000,000, to such covered
24 financial company;

1 (ii) has been found to have engaged in
2 fraudulent activity in connection with any
3 obligation referred to in clause (i); and

4 (iii) proposes to purchase any such
5 asset in whole or in part through the use
6 of the proceeds of a loan or advance of
7 credit from the Corporation or from any
8 covered financial company;

9 (B) any person who participated, as an of-
10 ficer or director of such covered financial com-
11 pany or of any affiliate of such company, in a
12 material way in any transaction that resulted in
13 a substantial loss to such covered financial com-
14 pany; or

15 (C) any person who has demonstrated a
16 pattern or practice of defalcation regarding ob-
17 ligations to such covered financial company.

18 (2) CONVICTED DEBTORS.—Except as provided
19 in paragraph (3), a person may not purchase any
20 asset of such institution from the receiver, if that
21 person—

22 (A) has been convicted of an offense under
23 section 215, 656, 657, 1005, 1006, 1007, 1008,
24 1014, 1032, 1341, 1343, or 1344 of title 18,
25 United States Code, or of conspiring to commit

1 such an offense, affecting any covered financial
2 company; and

3 (B) is in default on any loan or other ex-
4 tension of credit from such covered financial
5 company which, if not paid, will cause substan-
6 tial loss to the Fund or the Corporation.

7 (3) SETTLEMENT OF CLAIMS.—Paragraphs (1)
8 and (2) shall not apply to the sale or transfer by the
9 Corporation of any asset of any covered financial
10 company to any person, if the sale or transfer of the
11 asset resolves or settles, or is part of the resolution
12 or settlement, of 1 or more claims that have been,
13 or could have been, asserted by the Corporation
14 against the person.

15 (4) DEFINITION OF DEFAULT.—For purposes
16 of this subsection, the term “default” means a fail-
17 ure to comply with the terms of a loan or other obli-
18 gation to such an extent that the property securing
19 the obligation is foreclosed upon.

20 (s) RECOUPMENT OF COMPENSATION FROM SENIOR
21 EXECUTIVES AND DIRECTORS.—

22 (1) IN GENERAL.—The Corporation, as receiver
23 of a covered financial company, may recover from
24 any current or former senior executive or director
25 substantially responsible for the failed condition of

1 the covered financial company any compensation re-
2 ceived during the 2-year period preceding the date
3 on which the Corporation was appointed as the re-
4 ceiver of the covered financial company, except that,
5 in the case of fraud, no time limit shall apply.

6 (2) COST CONSIDERATIONS.—In seeking to re-
7 cover any such compensation, the Corporation shall
8 weigh the financial and deterrent benefits of such re-
9 covery against the cost of executing the recovery.

10 (3) RULEMAKING.—The Corporation shall pro-
11 mulgate regulations to implement the requirements
12 of this subsection, including defining the term “com-
13 pensation” to mean any financial remuneration, in-
14 cluding salary, bonuses, incentives, benefits, sever-
15 ance, deferred compensation, or golden parachute
16 benefits, and any profits realized from the sale of
17 the securities of the covered financial company.

18 **SEC. 211. MISCELLANEOUS PROVISIONS.**

19 (a) CLARIFICATION OF PROHIBITION REGARDING
20 CONCEALMENT OF ASSETS FROM RECEIVER OR LIQUI-
21 DATING AGENT.—Section 1032(1) of title 18, United
22 States Code, is amended by inserting “the Federal Deposit
23 Insurance Corporation acting as receiver for a covered fi-
24 nancial company, in accordance with title II of the Dodd-

1 Frank Wall Street Reform and Consumer Protection Act,”
2 before “or the National Credit”.

3 (b) CONFORMING AMENDMENT.—Section 1032 of
4 title 18, United States Code, is amended in the section
5 heading, by striking “**of financial institution**”.

6 (c) FEDERAL DEPOSIT INSURANCE CORPORATION
7 IMPROVEMENT ACT OF 1991.—Section 403(a) of the Fed-
8 eral Deposit Insurance Corporation Improvement Act of
9 1991 (12 U.S.C. 4403(a)) is amended by inserting “sec-
10 tion 210(c) of the Dodd-Frank Wall Street Reform and
11 Consumer Protection Act, section 1367 of the Federal
12 Housing Enterprises Financial Safety and Soundness Act
13 of 1992 (12 U.S.C. 4617(d)),” after “section 11(e) of the
14 Federal Deposit Insurance Act,”.

15 (d) FDIC INSPECTOR GENERAL REVIEWS.—

16 (1) SCOPE.—The Inspector General of the Cor-
17 poration shall conduct, supervise, and coordinate au-
18 dits and investigations of the liquidation of any cov-
19 ered financial company by the Corporation as re-
20 ceiver under this title, including collecting and sum-
21 marizing—

22 (A) a description of actions taken by the
23 Corporation as receiver;

24 (B) a description of any material sales,
25 transfers, mergers, obligations, purchases, and

1 other material transactions entered into by the
2 Corporation;

3 (C) an evaluation of the adequacy of the
4 policies and procedures of the Corporation
5 under section 203(d) and orderly liquidation
6 plan under section 210(n)(14);

7 (D) an evaluation of the utilization by the
8 Corporation of the private sector in carrying
9 out its functions, including the adequacy of any
10 conflict-of-interest reviews; and

11 (E) an evaluation of the overall perform-
12 ance of the Corporation in liquidating the cov-
13 ered financial company, including administra-
14 tive costs, timeliness of liquidation process, and
15 impact on the financial system.

16 (2) FREQUENCY.—Not later than 6 months
17 after the date of appointment of the Corporation as
18 receiver under this title and every 6 months there-
19 after, the Inspector General of the Corporation shall
20 conduct the audit and investigation described in
21 paragraph (1).

22 (3) REPORTS AND TESTIMONY.—The Inspector
23 General of the Corporation shall include in the semi-
24 annual reports required by section 5(a) of the In-
25 spector General Act of 1978 (5 U.S.C. App.), a sum-

1 mary of the findings and evaluations under para-
2 graph (1), and shall appear before the appropriate
3 committees of Congress, if requested, to present
4 each such report.

5 (4) FUNDING.—

6 (A) INITIAL FUNDING.—The expenses of
7 the Inspector General of the Corporation in car-
8 rying out this subsection shall be considered ad-
9 ministrative expenses of the receivership.

10 (B) ADDITIONAL FUNDING.—If the max-
11 imum amount available to the Corporation as
12 receiver under this title is insufficient to enable
13 the Inspector General of the Corporation to
14 carry out the duties under this subsection, the
15 Corporation shall pay such additional amounts
16 from assessments imposed under section 210.

17 (5) TERMINATION OF RESPONSIBILITIES.—The
18 duties and responsibilities of the Inspector General
19 of the Corporation under this subsection shall termi-
20 nate 1 year after the date of termination of the re-
21 ceivership under this title.

22 (e) TREASURY INSPECTOR GENERAL REVIEWS.—

23 (1) SCOPE.—The Inspector General of the De-
24 partment of the Treasury shall conduct, supervise,
25 and coordinate audits and investigations of actions

1 taken by the Secretary related to the liquidation of
2 any covered financial company under this title, in-
3 cluding collecting and summarizing—

4 (A) a description of actions taken by the
5 Secretary under this title;

6 (B) an analysis of the approval by the Sec-
7 retary of the policies and procedures of the Cor-
8 poration under section 203 and acceptance of
9 the orderly liquidation plan of the Corporation
10 under section 210; and

11 (C) an assessment of the terms and condi-
12 tions underlying the purchase by the Secretary
13 of obligations of the Corporation under section
14 210.

15 (2) FREQUENCY.—Not later than 6 months
16 after the date of appointment of the Corporation as
17 receiver under this title and every 6 months there-
18 after, the Inspector General of the Department of
19 the Treasury shall conduct the audit and investiga-
20 tion described in paragraph (1).

21 (3) REPORTS AND TESTIMONY.—The Inspector
22 General of the Department of the Treasury shall in-
23 clude in the semiannual reports required by section
24 5(a) of the Inspector General Act of 1978 (5 U.S.C.
25 App.), a summary of the findings and assessments

1 under paragraph (1), and shall appear before the
2 appropriate committees of Congress, if requested, to
3 present each such report.

4 (4) TERMINATION OF RESPONSIBILITIES.—The
5 duties and responsibilities of the Inspector General
6 of the Department of the Treasury under this sub-
7 section shall terminate 1 year after the date on
8 which the obligations purchased by the Secretary
9 from the Corporation under section 210 are fully re-
10 deemed.

11 (f) PRIMARY FINANCIAL REGULATORY AGENCY IN-
12 SPECTOR GENERAL REVIEWS.—

13 (1) SCOPE.—Upon the appointment of the Cor-
14 poration as receiver for a covered financial company
15 supervised by a Federal primary financial regulatory
16 agency or the Board of Governors under section
17 165, the Inspector General of the agency or the
18 Board of Governors shall make a written report re-
19 viewing the supervision by the agency or the Board
20 of Governors of the covered financial company,
21 which shall—

22 (A) evaluate the effectiveness of the agency
23 or the Board of Governors in carrying out its
24 supervisory responsibilities with respect to the
25 covered financial company;

1 (B) identify any acts or omissions on the
2 part of agency or Board of Governors officials
3 that contributed to the covered financial com-
4 pany being in default or in danger of default;

5 (C) identify any actions that could have
6 been taken by the agency or the Board of Gov-
7 ernors that would have prevented the company
8 from being in default or in danger of default;
9 and

10 (D) recommend appropriate administrative
11 or legislative action.

12 (2) REPORTS AND TESTIMONY.—Not later than
13 1 year after the date of appointment of the Corpora-
14 tion as receiver under this title, the Inspector Gen-
15 eral of the Federal primary financial regulatory
16 agency or the Board of Governors shall provide the
17 report required by paragraph (1) to such agency or
18 the Board of Governors, and along with such agency
19 or the Board of Governors, as applicable, shall ap-
20 pear before the appropriate committees of Congress,
21 if requested, to present the report required by para-
22 graph (1). Not later than 90 days after the date of
23 receipt of the report required by paragraph (1), such
24 agency or the Board of Governors, as applicable,
25 shall provide a written report to Congress describing

1 any actions taken in response to the recommenda-
2 tions in the report, and if no such actions were
3 taken, describing the reasons why no actions were
4 taken.

5 **SEC. 212. PROHIBITION OF CIRCUMVENTION AND PREVEN-**
6 **TION OF CONFLICTS OF INTEREST.**

7 (a) **NO OTHER FUNDING.**—Funds for the orderly liq-
8 uidation of any covered financial company under this title
9 shall only be provided as specified under this title.

10 (b) **LIMIT ON GOVERNMENTAL ACTIONS.**—No gov-
11 ernmental entity may take any action to circumvent the
12 purposes of this title.

13 (c) **CONFLICT OF INTEREST.**—In the event that the
14 Corporation is appointed receiver for more than 1 covered
15 financial company or is appointed receiver for a covered
16 financial company and receiver for any insured depository
17 institution that is an affiliate of such covered financial
18 company, the Corporation shall take appropriate action,
19 as necessary to avoid any conflicts of interest that may
20 arise in connection with multiple receiverships.

21 **SEC. 213. BAN ON CERTAIN ACTIVITIES BY SENIOR EXECU-**
22 **TIVES AND DIRECTORS.**

23 (a) **PROHIBITION AUTHORITY.**—The Board of Gov-
24 ernors or, if the covered financial company was not super-

1 vided by the Board of Governors, the Corporation, may
2 exercise the authority provided by this section.

3 (b) AUTHORITY TO ISSUE ORDER.—The appropriate
4 agency described in subsection (a) may take any action
5 authorized by subsection (c), if the agency determines
6 that—

7 (1) a senior executive or a director of the cov-
8 ered financial company, prior to the appointment of
9 the Corporation as receiver, has, directly or indi-
10 rectly—

11 (A) violated—

12 (i) any law or regulation;

13 (ii) any cease-and-desist order which
14 has become final;

15 (iii) any condition imposed in writing
16 by a Federal agency in connection with
17 any action on any application, notice, or
18 request by such company or senior execu-
19 tive; or

20 (iv) any written agreement between
21 such company and such agency;

22 (B) engaged or participated in any unsafe
23 or unsound practice in connection with any fi-
24 nancial company; or

1 (C) committed or engaged in any act,
2 omission, or practice which constitutes a breach
3 of the fiduciary duty of such senior executive or
4 director;

5 (2) by reason of the violation, practice, or
6 breach described in any subparagraph of paragraph
7 (1), such senior executive or director has received fi-
8 nancial gain or other benefit by reason of such viola-
9 tion, practice, or breach and such violation, practice,
10 or breach contributed to the failure of the company;
11 and

12 (3) such violation, practice, or breach—

13 (A) involves personal dishonesty on the
14 part of such senior executive or director; or

15 (B) demonstrates willful or continuing dis-
16 regard by such senior executive or director for
17 the safety or soundness of such company.

18 (c) AUTHORIZED ACTIONS.—

19 (1) IN GENERAL.—The appropriate agency for
20 a financial company, as described in subsection (a),
21 may serve upon a senior executive or director de-
22 scribed in subsection (b) a written notice of the in-
23 tention of the agency to prohibit any further partici-
24 pation by such person, in any manner, in the con-
25 duct of the affairs of any financial company for a

1 period of time determined by the appropriate agency
2 to be commensurate with such violation, practice, or
3 breach, provided such period shall be not less than
4 2 years.

5 (2) PROCEDURES.—The due process require-
6 ments and other procedures under section 8(e) of
7 the Federal Deposit Insurance Act (12 U.S.C.
8 1818(e)) shall apply to actions under this section as
9 if the covered financial company were an insured de-
10 pository institution and the senior executive or direc-
11 tor were an institution-affiliated party, as those
12 terms are defined in that Act.

13 (d) REGULATIONS.—The Corporation and the Board
14 of Governors, in consultation with the Council, shall joint-
15 ly prescribe rules or regulations to administer and carry
16 out this section, including rules, regulations, or guidelines
17 to further define the term senior executive for the pur-
18 poses of this section.

19 **SEC. 214. PROHIBITION ON TAXPAYER FUNDING.**

20 (a) LIQUIDATION REQUIRED.—All financial compa-
21 nies put into receivership under this title shall be liq-
22 uidated. No taxpayer funds shall be used to prevent the
23 liquidation of any financial company under this title.

24 (b) RECOVERY OF FUNDS.—All funds expended in
25 the liquidation of a financial company under this title shall

1 be recovered from the disposition of assets of such finan-
2 cial company, or shall be the responsibility of the financial
3 sector, through assessments.

4 (c) NO LOSSES TO TAXPAYERS.—Taxpayers shall
5 bear no losses from the exercise of any authority under
6 this title.

7 **SEC. 215. STUDY ON SECURED CREDITOR HAIRCUTS.**

8 (a) STUDY REQUIRED.—The Council shall conduct a
9 study evaluating the importance of maximizing United
10 States taxpayer protections and promoting market dis-
11 cipline with respect to the treatment of fully secured credi-
12 tors in the utilization of the orderly liquidation authority
13 authorized by this Act. In carrying out such study, the
14 Council shall—

15 (1) not be prejudicial to current or past laws or
16 regulations with respect to secured creditor treat-
17 ment in a resolution process;

18 (2) study the similarities and differences be-
19 tween the resolution mechanisms authorized by the
20 Bankruptcy Code, the Federal Deposit Insurance
21 Corporation Improvement Act of 1991, and the or-
22 derly liquidation authority authorized by this Act;

23 (3) determine how various secured creditors are
24 treated in such resolution mechanisms and examine
25 how a haircut (of various degrees) on secured credi-

1 tors could improve market discipline and protect tax-
2 payers;

3 (4) compare the benefits and dynamics of pru-
4 dent lending practices by depository institutions in
5 secured loans for consumers and small businesses to
6 the lending practices of secured creditors to large,
7 interconnected financial firms;

8 (5) consider whether credit differs according to
9 different types of collateral and different terms and
10 timing of the extension of credit; and

11 (6) include an examination of stakeholders who
12 were unsecured or under-collateralized and seek col-
13 lateral when a firm is failing, and the impact that
14 such behavior has on financial stability and an or-
15 derly resolution that protects taxpayers if the firm
16 fails.

17 (b) REPORT.—Not later than the end of the 1-year
18 period beginning on the date of enactment of this Act, the
19 Council shall issue a report to the Congress containing all
20 findings and conclusions made by the Council in carrying
21 out the study required under subsection (a).

22 **SEC. 216. STUDY ON BANKRUPTCY PROCESS FOR FINAN-**
23 **CIAL AND NONBANK FINANCIAL INSTITU-**
24 **TIONS.**

25 (a) STUDY.—

1 (1) IN GENERAL.—Upon enactment of this Act,
2 the Board of Governors, in consultation with the Ad-
3 ministrative Office of the United States Courts, shall
4 conduct a study regarding the resolution of financial
5 companies under the Bankruptcy Code, under chap-
6 ter 7 or 11 thereof .

7 (2) ISSUES TO BE STUDIED.—Issues to be stud-
8 ied under this section include—

9 (A) the effectiveness of chapter 7 and
10 chapter 11 of the Bankruptcy Code in facili-
11 tating the orderly resolution or reorganization
12 of systemic financial companies;

13 (B) whether a special financial resolution
14 court or panel of special masters or judges
15 should be established to oversee cases involving
16 financial companies to provide for the resolution
17 of such companies under the Bankruptcy Code,
18 in a manner that minimizes adverse impacts on
19 financial markets without creating moral haz-
20 ard;

21 (C) whether amendments to the Bank-
22 ruptcy Code should be adopted to enhance the
23 ability of the Code to resolve financial compa-
24 nies in a manner that minimizes adverse im-

1 pacts on financial markets without creating
2 moral hazard;

3 (D) whether amendments should be made
4 to the Bankruptcy Code, the Federal Deposit
5 Insurance Act, and other insolvency laws to ad-
6 dress the manner in which qualified financial
7 contracts of financial companies are treated;
8 and

9 (E) the implications, challenges, and bene-
10 fits to creating a new chapter or subchapter of
11 the Bankruptcy Code to deal with financial
12 companies.

13 (b) REPORTS TO CONGRESS.—Not later than 1 year
14 after the date of enactment of this Act, and in each succes-
15 sive year until the fifth year after the date of enactment
16 of this Act, the Administrative Office of the United States
17 courts shall submit to the Committees on Banking, Hous-
18 ing, and Urban Affairs and the Judiciary of the Senate
19 and the Committees on Financial Services and the Judici-
20 ary of the House of Representatives a report summarizing
21 the results of the study conducted under subsection (a).

22 **SEC. 217. STUDY ON INTERNATIONAL COORDINATION RE-**
23 **LATING TO BANKRUPTCY PROCESS FOR**
24 **NONBANK FINANCIAL INSTITUTIONS.**

25 (a) STUDY.—

1 (1) IN GENERAL.—The Board of Governors, in
2 consultation with the Administrative Office of the
3 United States Courts, shall conduct a study regard-
4 ing international coordination relating to the resolu-
5 tion of systemic financial companies under the
6 United States Bankruptcy Code and applicable for-
7 eign law.

8 (2) ISSUES TO BE STUDIED.—With respect to
9 the bankruptcy process for financial companies,
10 issues to be studied under this section include—

11 (A) the extent to which international co-
12 ordination currently exists;

13 (B) current mechanisms and structures for
14 facilitating international cooperation;

15 (C) barriers to effective international co-
16 ordination; and

17 (D) ways to increase and make more effec-
18 tive international coordination of the resolution
19 of financial companies, so as to minimize the
20 impact on the financial system without creating
21 moral hazard.

22 (b) REPORT TO CONGRESS.—Not later than 1 year
23 after the date of enactment of this Act, the Administrative
24 office of the United States Courts shall submit to the
25 Committees on Banking, Housing, and Urban Affairs and

1 the Judiciary of the Senate and the Committees on Finan-
2 cial Services and the Judiciary of the House of Represent-
3 atives a report summarizing the results of the study con-
4 ducted under subsection (a).

5 **TITLE III—TRANSFER OF POW-**
6 **ERS TO THE COMPTROLLER**
7 **OF THE CURRENCY, THE COR-**
8 **PORATION, AND THE BOARD**
9 **OF GOVERNORS**

10 **SEC. 300. SHORT TITLE.**

11 This title may be cited as the “Enhancing Financial
12 Institution Safety and Soundness Act of 2010”.

13 **SEC. 301. PURPOSES.**

14 The purposes of this title are—

15 (1) to provide for the safe and sound operation
16 of the banking system of the United States;

17 (2) to preserve and protect the dual system of
18 Federal and State-chartered depository institutions;

19 (3) to ensure the fair and appropriate super-
20 vision of each depository institution, regardless of
21 the size or type of charter of the depository institu-
22 tion; and

23 (4) to streamline and rationalize the supervision
24 of depository institutions and the holding companies
25 of depository institutions.

1 **SEC. 302. DEFINITION.**

2 In this title, the term “transferred employee” means,
3 as the context requires, an employee transferred to the
4 Office of the Comptroller of the Currency or the Corpora-
5 tion under section 322.

6 **Subtitle A—Transfer of Powers and**
7 **Duties**

8 **SEC. 311. TRANSFER DATE.**

9 (a) TRANSFER DATE.—Except as provided in sub-
10 section (b), the term “transfer date” means the date that
11 is 1 year after the date of enactment of this Act.

12 (b) EXTENSION PERMITTED.—

13 (1) NOTICE REQUIRED.—The Secretary, in con-
14 sultation with the Comptroller of the Currency, the
15 Director of the Office of Thrift Supervision, the
16 Chairman of the Board of Governors, and the Chair-
17 person of the Corporation, may extend the period
18 under subsection (a) and designate a transfer date
19 that is not later than 18 months after the date of
20 enactment of this Act, if the Secretary transmits to
21 the Committee on Banking, Housing, and Urban Af-
22 fairs of the Senate and the Committee on Financial
23 Services of the House of Representatives—

24 (A) a written determination that com-
25 mencement of the orderly process to implement

1 this title is not feasible by the date that is 1
2 year after the date of enactment of this Act;

3 (B) an explanation of why an extension is
4 necessary to commence the process of orderly
5 implementation of this title;

6 (C) the transfer date designated under this
7 subsection; and

8 (D) a description of the steps that will be
9 taken to initiate the process of an orderly and
10 timely implementation of this title within the
11 extended time period.

12 (2) PUBLICATION OF NOTICE.—Not later than
13 270 days after the date of enactment of this Act, the
14 Secretary shall publish in the Federal Register no-
15 tice of any transfer date designated under paragraph
16 (1).

17 **SEC. 312. POWERS AND DUTIES TRANSFERRED.**

18 (a) EFFECTIVE DATE.—This section, and the amend-
19 ments made by this section, shall take effect on the trans-
20 fer date.

21 (b) FUNCTIONS OF THE OFFICE OF THRIFT SUPER-
22 VISION.—

23 (1) SAVINGS AND LOAN HOLDING COMPANY
24 FUNCTIONS TRANSFERRED.—

1 (A) TRANSFER OF FUNCTIONS.—There are
2 transferred to the Board of Governors all func-
3 tions of the Office of Thrift Supervision and the
4 Director of the Office of Thrift Supervision (in-
5 cluding the authority to issue orders) relating
6 to—

7 (i) the supervision of—

8 (I) any savings and loan holding
9 company; and

10 (II) any subsidiary (other than a
11 depository institution) of a savings
12 and loan holding company; and

13 (ii) all rulemaking authority of the Of-
14 fice of Thrift Supervision and the Director
15 of the Office of Thrift Supervision relating
16 to savings and loan holding companies.

17 (B) POWERS, AUTHORITIES, RIGHTS, AND
18 DUTIES.—The Board of Governors shall suc-
19 ceed to all powers, authorities, rights, and du-
20 ties that were vested in the Office of Thrift Su-
21 pervision and the Director of the Office of
22 Thrift Supervision on the day before the trans-
23 fer date relating to the functions and authority
24 transferred under subparagraph (A).

25 (2) ALL OTHER FUNCTIONS TRANSFERRED.—

1 Supervision, respectively, relating to
2 savings associations; and

3 (ii) the Office of the Comptroller of
4 the Currency and the Comptroller of the
5 Currency shall succeed to all powers, au-
6 thorities, rights, and duties that were vest-
7 ed in the Office of Thrift Supervision and
8 the Director of the Office of Thrift Super-
9 vision, respectively, on the day before the
10 transfer date relating to the functions and
11 authority transferred under clause (i).

12 (C) CORPORATION.—Except as provided in
13 paragraph (1) and subparagraphs (A) and
14 (B)—

15 (i) all functions of the Office of Thrift
16 Supervision and the Director of the Office
17 of Thrift Supervision relating to State sav-
18 ings associations are transferred to the
19 Corporation; and

20 (ii) the Corporation shall succeed to
21 all powers, authorities, rights, and duties
22 that were vested in the Office of Thrift Su-
23 pervision and the Director of the Office of
24 Thrift Supervision on the day before the

1 transfer date relating to the functions
2 transferred under clause (i).

3 (c) CONFORMING AMENDMENTS.—Section 3 of the
4 Federal Deposit Insurance Act (12 U.S.C. 1813) is
5 amended—

6 (1) in subsection (q), by striking paragraphs
7 (1) through (4) and inserting the following:

8 “(1) the Office of the Comptroller of the Cur-
9 rency, in the case of—

10 “(A) any national banking association;

11 “(B) any Federal branch or agency of a
12 foreign bank; and

13 “(C) any Federal savings association;

14 “(2) the Federal Deposit Insurance Corpora-
15 tion, in the case of—

16 “(A) any State nonmember insured bank;

17 “(B) any foreign bank having an insured
18 branch; and

19 “(C) any State savings association;

20 “(3) the Board of Governors of the Federal Re-
21 serve System, in the case of—

22 “(A) any State member bank;

23 “(B) any branch or agency of a foreign
24 bank with respect to any provision of the Fed-

1 eral Reserve Act which is made applicable
2 under the International Banking Act of 1978;

3 “(C) any foreign bank which does not op-
4 erate an insured branch;

5 “(D) any agency or commercial lending
6 company other than a Federal agency;

7 “(E) supervisory or regulatory proceedings
8 arising from the authority given to the Board
9 of Governors under section 7(c)(1) of the Inter-
10 national Banking Act of 1978, including such
11 proceedings under the Financial Institutions
12 Supervisory Act of 1966;

13 “(F) any bank holding company and any
14 subsidiary (other than a depository institution)
15 of a bank holding company; and

16 “(G) any savings and loan holding com-
17 pany and any subsidiary (other than a deposi-
18 tory institution) of a savings and loan holding
19 company.”; and

20 (2) in paragraphs (1) and (3) of subsection (u),
21 by striking “(other than a bank holding company”
22 and inserting “(other than a bank holding company
23 or savings and loan holding company”.

1 (d) CONSUMER PROTECTION.—Nothing in this sec-
2 tion may be construed to limit or otherwise affect the
3 transfer of powers under title X.

4 **SEC. 313. ABOLISHMENT.**

5 Effective 90 days after the transfer date, the Office
6 of Thrift Supervision and the position of Director of the
7 Office of Thrift Supervision are abolished.

8 **SEC. 314. AMENDMENTS TO THE REVISED STATUTES.**

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

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

13 “(a) OFFICE OF THE COMPTROLLER OF THE CUR-
14 RENCY ESTABLISHED.—There is established in the De-
15 partment of the Treasury a bureau to be known as the
16 ‘Office of the Comptroller of the Currency’ which is
17 charged with assuring the safety and soundness of, and
18 compliance with laws and regulations, fair access to finan-
19 cial services, and fair treatment of customers by, the insti-
20 tutions and other persons subject to its jurisdiction.

21 “(b) COMPTROLLER OF THE CURRENCY.—

22 “(1) IN GENERAL.—The chief officer of the Of-
23 fice of the Comptroller of the Currency shall be
24 known as the Comptroller of the Currency. The
25 Comptroller of the Currency shall perform the duties

1 of the Comptroller of the Currency under the gen-
2 eral direction of the Secretary of the Treasury. The
3 Secretary of the Treasury may not delay or prevent
4 the issuance of any rule or the promulgation of any
5 regulation by the Comptroller of the Currency, and
6 may not intervene in any matter or proceeding be-
7 fore the Comptroller of the Currency (including
8 agency enforcement actions), unless otherwise spe-
9 cifically provided by law.

10 “(2) ADDITIONAL AUTHORITY.—The Comp-
11 troller of the Currency shall have the same authority
12 with respect to functions transferred to the Comp-
13 troller of the Currency under the Enhancing Finan-
14 cial Institution Safety and Soundness Act of 2010
15 as was vested in the Director of the Office of Thrift
16 Supervision on the transfer date, as defined in sec-
17 tion 311 of that Act.”.

18 (b) SUPERVISION OF FEDERAL SAVINGS ASSOCIA-
19 TIONS.—Chapter 9 of title VII of the Revised Statutes of
20 the United States (12 U.S.C. 1 et seq.) is amended by
21 inserting after section 327A (12 U.S.C. 4a) the following:

1 **“SEC. 327B. DEPUTY COMPTROLLER FOR THE SUPER-**
2 **VISION AND EXAMINATION OF FEDERAL SAV-**
3 **INGS ASSOCIATIONS.**

4 “The Comptroller of the Currency shall designate a
5 Deputy Comptroller, who shall be responsible for the su-
6 pervision and examination of Federal savings associa-
7 tions.”.

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

12 (d) EFFECTIVE DATE.—This section, and the amend-
13 ments made by this section, shall take effect on the trans-
14 fer date.

15 **SEC. 315. FEDERAL INFORMATION POLICY.**

16 Section 3502(5) of title 44, United States Code, is
17 amended by inserting “Office of the Comptroller of the
18 Currency,” after “the Securities and Exchange Commis-
19 sion,”.

20 **SEC. 316. SAVINGS PROVISIONS.**

21 (a) OFFICE OF THRIFT SUPERVISION.—

22 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
23 TIONS NOT AFFECTED.—Sections 312(b) and 313
24 shall not affect the validity of any right, duty, or ob-
25 ligation of the United States, the Director of the Of-
26 fice of Thrift Supervision, the Office of Thrift Su-

1 pervision, or any other person, that existed on the
2 day before the transfer date.

3 (2) CONTINUATION OF SUITS.—This title shall
4 not abate any action or proceeding commenced by or
5 against the Director of the Office of Thrift Super-
6 vision or the Office of Thrift Supervision before the
7 transfer date, except that—

8 (A) for any action or proceeding arising
9 out of a function of the Office of Thrift Super-
10 vision or the Director of the Office of Thrift
11 Supervision transferred to the Board of Gov-
12 ernors by this title, the Board of Governors
13 shall be substituted for the Office of Thrift Su-
14 pervision or the Director of the Office of Thrift
15 Supervision as a party to the action or pro-
16 ceeding on and after the transfer date;

17 (B) for any action or proceeding arising
18 out of a function of the Office of Thrift Super-
19 vision or the Director of the Office of Thrift
20 Supervision transferred to the Office of the
21 Comptroller of the Currency or the Comptroller
22 of the Currency by this title, the Office of the
23 Comptroller of the Currency or the Comptroller
24 of the Currency shall be substituted for the Of-
25 fice of Thrift Supervision or the Director of the

1 Office of Thrift Supervision, as the case may
2 be, as a party to the action or proceeding on
3 and after the transfer date; and

4 (C) for any action or proceeding arising
5 out of a function of the Office of Thrift Super-
6 vision or the Director of the Office of Thrift
7 Supervision transferred to the Corporation by
8 this title, the Corporation shall be substituted
9 for the Office of Thrift Supervision or the Di-
10 rector of the Office of Thrift Supervision as a
11 party to the action or proceeding on and after
12 the transfer date.

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

1 tive rules, other interpretations, guidelines, procedures,
2 and other advisory materials, and shall be enforceable by
3 or against—

4 (1) the Board of Governors, in the case of a
5 function of the Office of Thrift Supervision or the
6 Director of the Office of Thrift Supervision trans-
7 ferred to the Board of Governors, until modified,
8 terminated, set aside, or superseded in accordance
9 with applicable law by the Board of Governors, by
10 any court of competent jurisdiction, or by operation
11 of law;

12 (2) the Office of the Comptroller of the Cur-
13 rency or the Comptroller of the Currency, in the
14 case of a function of the Office of Thrift Supervision
15 or the Director of the Office of Thrift Supervision
16 transferred to the Office of the Comptroller of the
17 Currency or the Comptroller of the Currency, re-
18 spectively, until modified, terminated, set aside, or
19 superseded in accordance with applicable law by the
20 Office of the Comptroller of the Currency or the
21 Comptroller of the Currency, by any court of com-
22 petent jurisdiction, or by operation of law; and

23 (3) the Corporation, in the case of a function
24 of the Office of Thrift Supervision or the Director
25 of the Office of Thrift Supervision transferred to the

1 Corporation, until modified, terminated, set aside, or
2 superseded in accordance with applicable law by the
3 Corporation, by any court of competent jurisdiction,
4 or by operation of law.

5 (c) IDENTIFICATION OF REGULATIONS CONTIN-
6 UED.—

7 (1) BY THE BOARD OF GOVERNORS.—Not later
8 than the transfer date, the Board of Governors
9 shall—

10 (A) identify the regulations continued
11 under subsection (b) that will be enforced by
12 the Board of Governors; and

13 (B) publish a list of the regulations identi-
14 fied under subparagraph (A) in the Federal
15 Register.

16 (2) BY OFFICE OF THE COMPTROLLER OF THE
17 CURRENCY.—Not later than the transfer date, the
18 Office of the Comptroller of the Currency shall—

19 (A) after consultation with the Corpora-
20 tion, identify the regulations continued under
21 subsection (b) that will be enforced by the Of-
22 fice of the Comptroller of the Currency; and

23 (B) publish a list of the regulations identi-
24 fied under subparagraph (A) in the Federal
25 Register.

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

3 (A) after consultation with the Office of
4 the Comptroller of the Currency, identify the
5 regulations continued under subsection (b) that
6 will be enforced by the Corporation; and

7 (B) publish a list of the regulations identi-
8 fied under subparagraph (A) in the Federal
9 Register.

10 (d) STATUS OF REGULATIONS PROPOSED OR NOT
11 YET EFFECTIVE.—

12 (1) PROPOSED REGULATIONS.—Any proposed
13 regulation of the Office of Thrift Supervision, which
14 the Office of Thrift Supervision in performing func-
15 tions transferred by this title, has proposed before
16 the transfer date but has not published as a final
17 regulation before such date, shall be deemed to be
18 a proposed regulation of the Office of the Comp-
19 troller of the Currency or the Board of Governors,
20 as appropriate, according to the terms of the pro-
21 posed regulation.

22 (2) REGULATIONS NOT YET EFFECTIVE.—Any
23 interim or final regulation of the Office of Thrift Su-
24 pervision, which the Office of Thrift Supervision, in
25 performing functions transferred by this title, has

1 published before the transfer date but which has not
2 become effective before that date, shall become effective
3 as a regulation of the Office of the Comptroller
4 of the Currency or the Board of Governors, as appropriate,
5 according to the terms of the interim or
6 final regulation, unless modified, terminated, set
7 aside, or superseded in accordance with applicable
8 law by the Office of the Comptroller of the Currency
9 or the Board of Governors, as appropriate, by any
10 court of competent jurisdiction, or by operation of
11 law.

12 **SEC. 317. REFERENCES IN FEDERAL LAW TO FEDERAL**
13 **BANKING AGENCIES.**

14 On and after the transfer date, any reference in Federal
15 law to the Director of the Office of Thrift Supervision
16 or the Office of Thrift Supervision, in connection with any
17 function of the Director of the Office of Thrift Supervision
18 or the Office of Thrift Supervision transferred under section
19 312(b) or any other provision of this subtitle, shall
20 be deemed to be a reference to the Comptroller of the Currency,
21 the Office of the Comptroller of the Currency, the
22 Chairperson of the Corporation, the Corporation, the
23 Chairman of the Board of Governors, or the Board of Governors,
24 as appropriate and consistent with the amendments
25 made in subtitle E.

1 **SEC. 318. FUNDING.**

2 (a) COMPENSATION OF EXAMINERS.—Section 5240
3 of the Revised Statutes of the United States (12 U.S.C.
4 481 et seq.) is amended—

5 (1) in the second undesignated paragraph (12
6 U.S.C. 481), in the fourth sentence, by striking
7 “without regard to the provisions of other laws ap-
8 plicable to officers or employees of the United
9 States” and inserting the following: “set and ad-
10 justed subject to chapter 71 of title 5, United States
11 Code, and without regard to the provisions of other
12 laws applicable to officers or employees of the
13 United States”; and

14 (2) in the third undesignated paragraph (12
15 U.S.C. 482), in the first sentence, by striking “shall
16 fix” and inserting “shall, subject to chapter 71 of
17 title 5, United States Code, fix”.

18 (b) FUNDING OF OFFICE OF THE COMPTROLLER OF
19 THE CURRENCY.—Chapter 4 of title LXII of the Revised
20 Statutes is amended by inserting after section 5240 (12
21 U.S.C. 481, 482) the following:

22 “SEC. 5240A. The Comptroller of the Currency may
23 collect an assessment, fee, or other charge from any entity
24 described in section 3(q)(1) of the Federal Deposit Insur-
25 ance Act (12 U.S.C. 1813(q)(1)), as the Comptroller de-
26 termines is necessary or appropriate to carry out the re-

1 sponsibilities of the Office of the Comptroller of the Cur-
2 rency. In establishing the amount of an assessment, fee,
3 or charge collected from an entity under this section, the
4 Comptroller of the Currency may take into account the
5 nature and scope of the activities of the entity, the amount
6 and type of assets that the entity holds, the financial and
7 managerial condition of the entity, and any other factor,
8 as the Comptroller of the Currency determines is appro-
9 priate. Funds derived from any assessment, fee, or charge
10 collected or payment made pursuant to this section may
11 be deposited by the Comptroller of the Currency in accord-
12 ance with the provisions of section 5234. Such funds shall
13 not be construed to be Government funds or appropriated
14 monies, and shall not be subject to apportionment for pur-
15 poses of chapter 15 of title 31, United States Code, or
16 any other provision of law. The authority of the Comp-
17 troller of the Currency under this section shall be in addi-
18 tion to the authority under section 5240.

19 “The Comptroller of the Currency shall have sole au-
20 thority to determine the manner in which the obligations
21 of the Office of the Comptroller of the Currency shall be
22 incurred and its disbursements and expenses allowed and
23 paid, in accordance with this section, except as provided
24 in chapter 71 of title 5, United States Code (with respect
25 to compensation).”.

1 (c) FUNDING OF BOARD OF GOVERNORS.—Section
2 11 of the Federal Reserve Act (12 U.S.C. 248) is amended
3 by adding at the end the following:

4 “(s) ASSESSMENTS, FEES, AND OTHER CHARGES
5 FOR CERTAIN COMPANIES.—

6 “(1) IN GENERAL.—The Board shall collect a
7 total amount of assessments, fees, or other charges
8 from the companies described in paragraph (2) that
9 is equal to the total expenses the Board estimates
10 are necessary or appropriate to carry out the super-
11 visory and regulatory responsibilities of the Board
12 with respect to such companies.

13 “(2) COMPANIES.—The companies described in
14 this paragraph are—

15 “(A) all bank holding companies having
16 total consolidated assets of \$50,000,000,000 or
17 more;

18 “(B) all savings and loan holding compa-
19 nies having total consolidated assets of
20 \$50,000,000,000 or more; and

21 “(C) all nonbank financial companies su-
22 pervised by the Board under section 113 of the
23 Dodd-Frank Wall Street Reform and Consumer
24 Protection Act.”.

1 (d) CORPORATION EXAMINATION FEES.—Section
2 10(e) of the Federal Deposit Insurance Act (12 U.S.C.
3 1820(e)) is amended by striking paragraph (1) and insert-
4 ing the following:

5 “(1) REGULAR AND SPECIAL EXAMINATIONS OF
6 DEPOSITORY INSTITUTIONS.—The cost of conducting
7 any regular examination or special examination of
8 any depository institution under subsection (b)(2),
9 (b)(3), or (d) or of any entity described in section
10 3(q)(2) may be assessed by the Corporation against
11 the institution or entity to meet the expenses of the
12 Corporation in carrying out such examinations.”.

13 (e) EFFECTIVE DATE.—This section, and the amend-
14 ments made by this section, shall take effect on the trans-
15 fer date.

16 **SEC. 319. CONTRACTING AND LEASING AUTHORITY.**

17 Notwithstanding the Federal Property and Adminis-
18 trative Services Act of 1949 (41 U.S.C. 251 et seq.) or
19 any other provision of law (except the full and open com-
20 petition requirements of the Competition in Contracting
21 Act), the Office of the Comptroller of the Currency may—

22 (1) enter into and perform contracts, execute
23 instruments, and acquire real property (or property
24 interest) as the Comptroller deems necessary to

1 carry out the duties and responsibilities of the Office
2 of the Comptroller of the Currency; and

3 (2) hold, maintain, sell, lease, or otherwise dis-
4 pose of the property (or property interest) acquired
5 under paragraph (1).

6 **Subtitle B—Transitional Provisions**

7 **SEC. 321. INTERIM USE OF FUNDS, PERSONNEL, AND PROP-** 8 **ERTY OF THE OFFICE OF THRIFT SUPER-** 9 **VISION.**

10 (a) IN GENERAL.—Before the transfer date, the Of-
11 fice of the Comptroller of the Currency, the Corporation,
12 and the Board of Governors shall—

13 (1) consult and cooperate with the Office of
14 Thrift Supervision to facilitate the orderly transfer
15 of functions to the Office of the Comptroller of the
16 Currency, the Corporation, and the Board of Gov-
17 ernors in accordance with this title;

18 (2) determine jointly, from time to time—

19 (A) the amount of funds necessary to pay
20 any expenses associated with the transfer of
21 functions (including expenses for personnel,
22 property, and administrative services) during
23 the period beginning on the date of enactment
24 of this Act and ending on the transfer date;

1 (B) which personnel are appropriate to fa-
2 cilitate the orderly transfer of functions by this
3 title; and

4 (C) what property and administrative serv-
5 ices are necessary to support the Office of the
6 Comptroller of the Currency, the Corporation,
7 and the Board of Governors during the period
8 beginning on the date of enactment of this Act
9 and ending on the transfer date; and

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

12 (b) AGENCY CONSULTATION.—When requested joint-
13 ly by the Office of the Comptroller of the Currency, the
14 Corporation, and the Board of Governors to do so before
15 the transfer date, the Office of Thrift Supervision shall—

16 (1) pay to the Office of the Comptroller of the
17 Currency, the Corporation, or the Board of Gov-
18 ernors, as applicable, from funds obtained by the Of-
19 fice of Thrift Supervision through assessments, fees,
20 or other charges that the Office of Thrift Super-
21 vision is authorized by law to impose, such amounts
22 as the Office of the Comptroller of the Currency, the
23 Corporation, and the Board of Governors jointly de-
24 termine to be necessary under subsection (a);

1 (2) detail to the Office of the Comptroller of the
2 Currency, the Corporation, or the Board of Gov-
3 ernors, as applicable, such personnel as the Office of
4 the Comptroller of the Currency, the Corporation,
5 and the Board of Governors jointly determine to be
6 appropriate under subsection (a); and

7 (3) make available to the Office of the Comp-
8 troller of the Currency, the Corporation, or the
9 Board of Governors, as applicable, such property
10 and provide to the Office of the Comptroller of the
11 Currency, the Corporation, or the Board of Gov-
12 ernors, as applicable, such administrative services as
13 the Office of the Comptroller of the Currency, the
14 Corporation, and the Board of Governors jointly de-
15 termine to be necessary under subsection (a).

16 (c) NOTICE REQUIRED.—The Office of the Comp-
17 troller of the Currency, the Corporation, and the Board
18 of Governors shall jointly give the Office of Thrift Super-
19 vision reasonable prior notice of any request that the Of-
20 fice of the Comptroller of the Currency, the Corporation,
21 and the Board of Governors jointly intend to make under
22 subsection (b).

23 **SEC. 322. TRANSFER OF EMPLOYEES.**

24 (a) IN GENERAL.—

1 (1) OFFICE OF THRIFT SUPERVISION EMPLOY-
2 EES.—

3 (A) IN GENERAL.—Except as provided in
4 section 1064, all employees of the Office of
5 Thrift Supervision shall be transferred to the
6 Office of the Comptroller of the Currency or the
7 Corporation for employment in accordance with
8 this section.

9 (B) ALLOCATING EMPLOYEES FOR TRANS-
10 FER TO RECEIVING AGENCIES.—The Director of
11 the Office of Thrift Supervision, the Comp-
12 troller of the Currency, and the Chairperson of
13 the Corporation shall—

14 (i) jointly determine the number of
15 employees of the Office of Thrift Super-
16 vision necessary to perform or support the
17 functions that are transferred to the Office
18 of the Comptroller of the Currency or the
19 Corporation by this title; and

20 (ii) consistent with the determination
21 under clause (i), jointly identify employees
22 of the Office of Thrift Supervision for
23 transfer to the Office of the Comptroller of
24 the Currency or the Corporation.

1 (2) EMPLOYEES TRANSFERRED; SERVICE PERI-
2 ODS CREDITED.—For purposes of this section, peri-
3 ods of service with a Federal home loan bank, a
4 joint office of Federal home loan banks, or a Federal
5 reserve bank shall be credited as periods of service
6 with a Federal agency.

7 (3) APPOINTMENT AUTHORITY FOR EXCEPTED
8 SERVICE TRANSFERRED.—

9 (A) IN GENERAL.—Except as provided in
10 subparagraph (B), any appointment authority
11 of the Office of Thrift Supervision under Fed-
12 eral law that relates to the functions trans-
13 ferred under section 312, including the regula-
14 tions of the Office of Personnel Management,
15 for filling the positions of employees in the ex-
16 cepted service shall be transferred to the Comp-
17 troller of the Currency or the Chairperson of
18 the Corporation, as appropriate.

19 (B) DECLINING TRANSFERS ALLOWED.—
20 The Comptroller of the Currency or the Chair-
21 person of the Corporation may decline to accept
22 a transfer of authority under subparagraph (A)
23 (and the employees appointed under that au-
24 thority) to the extent that such authority re-
25 lates to positions excepted from the competitive

1 service because of their confidential, policy-mak-
2 ing, policy-determining, or policy-advocating
3 character.

4 (4) ADDITIONAL APPOINTMENT AUTHORITY.—
5 Notwithstanding any other provision of law, the Of-
6 fice of the Comptroller of the Currency and the Cor-
7 poration may appoint transferred employees to posi-
8 tions in the Office of the Comptroller of the Cur-
9 rency or the Corporation, respectively.

10 (b) TIMING OF TRANSFERS AND POSITION ASSIGN-
11 MENTS.—Each employee to be transferred under sub-
12 section (a)(1) shall—

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

15 (2) receive notice of the position assignment of
16 the employee not later than 120 days after the effec-
17 tive date of the transfer of the employee.

18 (c) TRANSFER OF FUNCTIONS.—

19 (1) IN GENERAL.—Notwithstanding any other
20 provision of law, the transfer of employees under
21 this subtitle shall be deemed a transfer of functions
22 for the purpose of section 3503 of title 5, United
23 States Code.

24 (2) PRIORITY.—If any provision of this subtitle
25 conflicts with any protection provided to a trans-

1 ferred employee under section 3503 of title 5,
2 United States Code, the provisions of this subtitle
3 shall control.

4 (d) EMPLOYEE STATUS AND ELIGIBILITY.—The
5 transfer of functions and employees under this subtitle,
6 and the abolishment of the Office of Thrift Supervision
7 under section 313, shall not affect the status of the trans-
8 ferred employees as employees of an agency of the United
9 States under any provision of law.

10 (e) EQUAL STATUS AND TENURE POSITIONS.—

11 (1) STATUS AND TENURE.—Each transferred
12 employee from the Office of Thrift Supervision shall
13 be placed in a position at the Office of the Comp-
14 troller of the Currency or the Corporation with the
15 same status and tenure as the transferred employee
16 held on the day before the date on which the em-
17 ployee was transferred.

18 (2) FUNCTIONS.—To the extent practicable,
19 each transferred employee shall be placed in a posi-
20 tion at the Office of the Comptroller of the Currency
21 or the Corporation, as applicable, responsible for the
22 same functions and duties as the transferred em-
23 ployee had on the day before the date on which the
24 employee was transferred, in accordance with the ex-
25 pertise and preferences of the transferred employee.

1 (f) NO ADDITIONAL CERTIFICATION REQUIRE-
2 MENTS.—An examiner who is a transferred employee shall
3 not be subject to any additional certification requirements
4 before being placed in a comparable position at the Office
5 of the Comptroller of the Currency or the Corporation,
6 if the examiner carries out examinations of the same type
7 of institutions as an employee of the Office of the Comp-
8 troller of the Currency or the Corporation as the employee
9 was responsible for carrying out before the date on which
10 the employee was transferred.

11 (g) PERSONNEL ACTIONS LIMITED.—

12 (1) PROTECTION.—

13 (A) IN GENERAL.—Except as provided in
14 paragraph (2), each affected employee shall not,
15 during the 30-month period beginning on the
16 transfer date, be involuntarily separated, or in-
17 voluntarily reassigned outside his or her locality
18 pay area.

19 (B) AFFECTED EMPLOYEES.—For pur-
20 poses of this paragraph, the term “affected em-
21 ployee” means—

22 (i) an employee transferred from the
23 Office of Thrift Supervision holding a per-
24 manent position on the day before the
25 transfer date; and

1 (ii) an employee of the Office of the
2 Comptroller of the Currency or the Cor-
3 poration holding a permanent position on
4 the day before the transfer date.

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

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

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

14 (C) reassign an employee outside such em-
15 ployee's locality pay area when the Office of the
16 Comptroller of the Currency or the Corporation
17 determines that the reassignment is necessary
18 for the efficient operation of the agency.

19 (h) PAY.—

20 (1) 30-MONTH PROTECTION.—Except as pro-
21 vided in paragraph (2), during the 30-month period
22 beginning on the date on which the employee was
23 transferred under this subtitle, a transferred em-
24 ployee shall be paid at a rate that is not less than
25 the basic rate of pay, including any geographic dif-

1 ferential, that the transferred employee received dur-
2 ing the pay period immediately preceding the date
3 on which the employee was transferred. Notwith-
4 standing the preceding sentence, if the employee was
5 receiving a higher rate of basic pay on a temporary
6 basis (because of a temporary assignment, tem-
7 porary promotion, or other temporary action) imme-
8 diately before the transfer, the Agency may reduce
9 the rate of basic pay on the date the rate would have
10 been reduced but for the transfer, and the protected
11 rate for the remainder of the 30-month period will
12 be the reduced rate that would have applied but for
13 the transfer.

14 (2) EXCEPTIONS.—The Comptroller of the Cur-
15 rency or the Corporation may reduce the rate of
16 basic pay of a transferred employee—

17 (A) for cause, including for unacceptable
18 performance; or

19 (B) with the consent of the transferred
20 employee.

21 (3) PROTECTION ONLY WHILE EMPLOYED.—

22 This subsection shall apply to a transferred em-
23 ployee only during the period that the transferred
24 employee remains employed by Office of the Comp-
25 troller of the Currency or the Corporation.

1 (4) PAY INCREASES PERMITTED.—Nothing in
2 this subsection shall limit the authority of the Comp-
3 troller of the Currency or the Chairperson of the
4 Corporation to increase the pay of a transferred em-
5 ployee.

6 (i) BENEFITS.—

7 (1) RETIREMENT BENEFITS FOR TRANSFERRED
8 EMPLOYEES.—

9 (A) IN GENERAL.—

10 (i) CONTINUATION OF EXISTING RE-
11 TIREMENT PLAN.—Each transferred em-
12 ployee shall remain enrolled in the retire-
13 ment plan of the transferred employee, for
14 as long as the transferred employee is em-
15 ployed by the Office of the Comptroller of
16 the Currency or the Corporation.

17 (ii) EMPLOYER'S CONTRIBUTION.—
18 The Comptroller of the Currency or the
19 Chairperson of the Corporation, as appro-
20 priate, shall pay any employer contribu-
21 tions to the existing retirement plan of
22 each transferred employee, as required
23 under each such existing retirement plan.

24 (B) DEFINITION.—In this paragraph, the
25 term “existing retirement plan” means, with re-

1 spect to a transferred employee, the retirement
2 plan (including the Financial Institutions Re-
3 tirement Fund), and any associated thrift sav-
4 ings plan, of the agency from which the em-
5 ployee was transferred in which the employee
6 was enrolled on the day before the date on
7 which the employee was transferred.

8 (2) BENEFITS OTHER THAN RETIREMENT BEN-
9 EFITS.—

10 (A) DURING FIRST YEAR.—

11 (i) EXISTING PLANS CONTINUE.—

12 During the 1-year period following the
13 transfer date, each transferred employee
14 may retain membership in any employee
15 benefit program (other than a retirement
16 benefit program) of the agency from which
17 the employee was transferred under this
18 title, including any dental, vision, long
19 term care, or life insurance program to
20 which the employee belonged on the day
21 before the transfer date.

22 (ii) EMPLOYER'S CONTRIBUTION.—

23 The Office of the Comptroller of the Cur-
24 rency or the Corporation, as appropriate,
25 shall pay any employer cost required to ex-

1 tend coverage in the benefit program to
2 the transferred employee as required under
3 that program or negotiated agreements.

4 (B) DENTAL, VISION, OR LIFE INSURANCE
5 AFTER FIRST YEAR.—If, after the 1-year period
6 beginning on the transfer date, the Office of the
7 Comptroller of the Currency or the Corporation
8 determines that the Office of the Comptroller of
9 the Currency or the Corporation, as the case
10 may be, will not continue to participate in any
11 dental, vision, or life insurance program of an
12 agency from which an employee was trans-
13 ferred, a transferred employee who is a member
14 of the program may, before the decision takes
15 effect and without regard to any regularly
16 scheduled open season, elect to enroll in—

17 (i) the enhanced dental benefits pro-
18 gram established under chapter 89A of
19 title 5, United States Code;

20 (ii) the enhanced vision benefits estab-
21 lished under chapter 89B of title 5, United
22 States Code; and

23 (iii) the Federal Employees' Group
24 Life Insurance Program established under
25 chapter 87 of title 5, United States Code,

1 without regard to any requirement of in-
2 surability.

3 (C) LONG TERM CARE INSURANCE AFTER
4 1ST YEAR.—If, after the 1-year period begin-
5 ning on the transfer date, the Office of the
6 Comptroller of the Currency or the Corporation
7 determines that the Office of the Comptroller of
8 the Currency or the Corporation, as appro-
9 priate, will not continue to participate in any
10 long term care insurance program of an agency
11 from which an employee transferred, a trans-
12 ferred employee who is a member of such a pro-
13 gram may, before the decision takes effect, elect
14 to apply for coverage under the Federal Long
15 Term Care Insurance Program established
16 under chapter 90 of title 5, United States Code,
17 under the underwriting requirements applicable
18 to a new active workforce member, as described
19 in part 875 of title 5, Code of Federal Regula-
20 tions (or any successor thereto).

21 (D) CONTRIBUTION OF TRANSFERRED EM-
22 PLOYEE.—

23 (i) IN GENERAL.—Subject to clause
24 (ii), a transferred employee who is enrolled
25 in a plan under the Federal Employees

1 Health Benefits Program shall pay any
2 employee contribution required under the
3 plan.

4 (ii) COST DIFFERENTIAL.—The Office
5 of the Comptroller of the Currency or the
6 Corporation, as applicable, shall pay any
7 difference in cost between the employee
8 contribution required under the plan pro-
9 vided to transferred employees by the
10 agency from which the employee trans-
11 ferred on the date of enactment of this Act
12 and the plan provided by the Office of the
13 Comptroller of the Currency or the Cor-
14 poration, as the case may be, under this
15 section.

16 (iii) FUNDS TRANSFER.—The Office
17 of the Comptroller of the Currency or the
18 Corporation, as the case may be, shall
19 transfer to the Employees Health Benefits
20 Fund established under section 8909 of
21 title 5, United States Code, an amount de-
22 termined by the Director of the Office of
23 Personnel Management, after consultation
24 with the Comptroller of the Currency or
25 the Chairperson of the Corporation, as the

1 case may be, and the Office of Manage-
2 ment and Budget, to be necessary to reim-
3 burse the Fund for the cost to the Fund
4 of providing any benefits under this sub-
5 paragraph that are not otherwise paid for
6 by a transferred employee under clause (i).

7 (E) SPECIAL PROVISIONS TO ENSURE CON-
8 TINUATION OF LIFE INSURANCE BENEFITS.—

9 (i) IN GENERAL.—An annuitant, as
10 defined in section 8901 of title 5, United
11 States Code, who is enrolled in a life insur-
12 ance plan administered by an agency from
13 which employees are transferred under this
14 title on the day before the transfer date
15 shall be eligible for coverage by a life in-
16 surance plan under sections 8706(b),
17 8714a, 8714b, or 8714c of title 5, United
18 States Code, or by a life insurance plan es-
19 tablished by the Office of the Comptroller
20 of the Currency or the Corporation, as ap-
21 plicable, without regard to any regularly
22 scheduled open season or any requirement
23 of insurability.

24 (ii) CONTRIBUTION OF TRANSFERRED
25 EMPLOYEE.—

1 (I) IN GENERAL.—Subject to
2 subclause (II), a transferred employee
3 enrolled in a life insurance plan under
4 this subparagraph shall pay any em-
5 ployee contribution required by the
6 plan.

7 (II) COST DIFFERENTIAL.—The
8 Office of the Comptroller of the Cur-
9 rency or the Corporation, as the case
10 may be, shall pay any difference in
11 cost between the benefits provided by
12 the agency from which the employee
13 transferred on the date of enactment
14 of this Act and the benefits provided
15 under this section.

16 (III) FUNDS TRANSFER.—The
17 Office of the Comptroller of the Cur-
18 rency or the Corporation, as the case
19 may be, shall transfer to the Federal
20 Employees' Group Life Insurance
21 Fund established under section 8714
22 of title 5, United States Code, an
23 amount determined by the Director of
24 the Office of Personnel Management,
25 after consultation with the Comp-

1 troller of the Currency or the Chair-
2 person of the Corporation, as the case
3 may be, and the Office of Manage-
4 ment and Budget, to be necessary to
5 reimburse the Federal Employees'
6 Group Life Insurance Fund for the
7 cost to the Federal Employees' Group
8 Life Insurance Fund of providing ben-
9 efits under this subparagraph not oth-
10 erwise paid for by a transferred em-
11 ployee under subclause (I).

12 (IV) CREDIT FOR TIME EN-
13 ROLLED IN OTHER PLANS.—For any
14 transferred employee, enrollment in a
15 life insurance plan administered by
16 the agency from which the employee
17 transferred, immediately before enroll-
18 ment in a life insurance plan under
19 chapter 87 of title 5, United States
20 Code, shall be considered as enroll-
21 ment in a life insurance plan under
22 that chapter for purposes of section
23 8706(b)(1)(A) of title 5, United
24 States Code.

1 (j) INCORPORATION INTO AGENCY PAY SYSTEM.—

2 Not later than 2 years after the transfer date, the Comp-
3 troller of the Currency and the Chairperson of the Cor-
4 poration shall place each transferred employee into the es-
5 tablished pay system and structure of the appropriate em-
6 ploying agency.

7 (k) EQUITABLE TREATMENT.—In administering the
8 provisions of this section, the Comptroller of the Currency
9 and the Chairperson of the Corporation—

10 (1) may not take any action that would unfairly
11 disadvantage a transferred employee relative to any
12 other employee of the Office of the Comptroller of
13 the Currency or the Corporation on the basis of
14 prior employment by the Office of Thrift Super-
15 vision;

16 (2) may take such action as is appropriate in
17 an individual case to ensure that a transferred em-
18 ployee receives equitable treatment, with respect to
19 the status, tenure, pay, benefits (other than benefits
20 under programs administered by the Office of Per-
21 sonnel Management), and accrued leave or vacation
22 time for prior periods of service with any Federal
23 agency of the transferred employee;

24 (3) shall, jointly with the Director of the Office
25 of Thrift Supervision, develop and adopt procedures

1 and safeguards designed to ensure that the require-
2 ments of this subsection are met; and

3 (4) shall conduct a study detailing the position
4 assignments of all employees transferred pursuant to
5 subsection (a), describing the procedures and safe-
6 guards adopted pursuant to paragraph (3), and
7 demonstrating that the requirements of this sub-
8 section have been met; and shall, not later than 365
9 days after the transfer date, submit a copy of such
10 study to Congress.

11 (l) REORGANIZATION.—

12 (1) IN GENERAL.—If the Comptroller of the
13 Currency or the Chairperson of the Corporation de-
14 termines, during the 2-year period beginning 1 year
15 after the transfer date, that a reorganization of the
16 staff of the Office of the Comptroller of the Cur-
17 rency or the Corporation, respectively, is required,
18 the reorganization shall be deemed a “major reorga-
19 nization” for purposes of affording affected employ-
20 ees retirement under section 8336(d)(2) or
21 8414(b)(1)(B) of title 5, United States Code.

22 (2) SERVICE CREDIT.—For purposes of this
23 subsection, periods of service with a Federal home
24 loan bank or a joint office of Federal home loan

1 banks shall be credited as periods of service with a
2 Federal agency.

3 **SEC. 323. PROPERTY TRANSFERRED.**

4 (a) PROPERTY DEFINED.—For purposes of this sec-
5 tion, the term “property” includes all real property (in-
6 cluding leaseholds) and all personal property, including
7 computers, furniture, fixtures, equipment, books, ac-
8 counts, records, reports, files, memoranda, paper, reports
9 of examination, work papers, and correspondence related
10 to such reports, and any other information or materials.

11 (b) PROPERTY OF THE OFFICE OF THRIFT SUPER-
12 VISION.—

13 (1) IN GENERAL.—No later than 90 days after
14 the transfer date, all property of the Office of Thrift
15 Supervision (other than property described under
16 paragraph (b)(2)) that the Comptroller of the Cur-
17 rency and the Chairperson of the Corporation jointly
18 determine is used, on the day before the transfer
19 date, to perform or support the functions of the Of-
20 fice of Thrift Supervision transferred to the Office
21 of the Comptroller of the Currency or the Corpora-
22 tion under this title, shall be transferred to the Of-
23 fice of the Comptroller of the Currency or the Cor-
24 poration in a manner consistent with the transfer of
25 employees under this subtitle.

1 (2) PERSONAL PROPERTY.—All books, ac-
2 counts, records, reports, files, memoranda, papers,
3 documents, reports of examination, work papers, and
4 correspondence of the Office of Thrift Supervision
5 that the Comptroller of the Currency, the Chair-
6 person of the Corporation, and the Chairman of the
7 Board of Governors jointly determine is used, on the
8 day before the transfer date, to perform or support
9 the functions of the Office of Thrift Supervision
10 transferred to the Board of Governors under this
11 title shall be transferred to the Board of Governors
12 in a manner consistent with the purposes of this
13 title.

14 (c) CONTRACTS RELATED TO PROPERTY TRANS-
15 FERRED.—Each contract, agreement, lease, license, per-
16 mit, and similar arrangement relating to property trans-
17 ferred to the Office of the Comptroller of the Currency
18 or the Corporation by this section shall be transferred to
19 the Office of the Comptroller of the Currency or the Cor-
20 poration, as appropriate, together with the property to
21 which it relates.

22 (d) PRESERVATION OF PROPERTY.—Property identi-
23 fied for transfer under this section shall not be altered,
24 destroyed, or deleted before transfer under this section.

1 **SEC. 324. FUNDS TRANSFERRED.**

2 The funds that, on the day before the transfer date,
3 the Director of the Office of Thrift Supervision (in con-
4 sultation with the Comptroller of the Currency, the Chair-
5 person of the Corporation, and the Chairman of the Board
6 of Governors) determines are not necessary to dispose of
7 the affairs of the Office of Thrift Supervision under sec-
8 tion 325 and are available to the Office of Thrift Super-
9 vision to pay the expenses of the Office of Thrift Super-
10 vision—

11 (1) relating to the functions of the Office of
12 Thrift Supervision transferred under section
13 312(b)(2)(B), shall be transferred to the Office of
14 the Comptroller of the Currency on the transfer
15 date;

16 (2) relating to the functions of the Office of
17 Thrift Supervision transferred under section
18 312(b)(2)(C), shall be transferred to the Corporation
19 on the transfer date; and

20 (3) relating to the functions of the Office of
21 Thrift Supervision transferred under section
22 312(b)(1)(A), shall be transferred to the Board of
23 Governors on the transfer date.

1 **SEC. 325. DISPOSITION OF AFFAIRS.**

2 (a) **AUTHORITY OF DIRECTOR.**—During the 90-day
3 period beginning on the transfer date, the Director of the
4 Office of Thrift Supervision—

5 (1) shall, solely for the purpose of winding up
6 the affairs of the Office of Thrift Supervision relat-
7 ing to any function transferred to the Office of the
8 Comptroller of the Currency, the Corporation, or the
9 Board of Governors under this title—

10 (A) manage the employees of the Office of
11 Thrift Supervision who have not yet been trans-
12 ferred and provide for the payment of the com-
13 pensation and benefits of the employees that ac-
14 crue before the date on which the employees are
15 transferred under this title; and

16 (B) manage any property of the Office of
17 Thrift Supervision, until the date on which the
18 property is transferred under section 323; and

19 (2) may take any other action necessary to
20 wind up the affairs of the Office of Thrift Super-
21 vision.

22 (b) **STATUS OF DIRECTOR.**—

23 (1) **IN GENERAL.**—Notwithstanding the trans-
24 fer of functions under this subtitle, during the 90-
25 day period beginning on the transfer date, the Direc-
26 tor of the Office of Thrift Supervision shall retain

1 and may exercise any authority vested in the Direc-
2 tor of the Office of Thrift Supervision on the day be-
3 fore the transfer date, only to the extent necessary—

4 (A) to wind up the Office of Thrift Super-
5 vision; and

6 (B) to carry out the transfer under this
7 subtitle during such 90-day period.

8 (2) OTHER PROVISIONS.—For purposes of
9 paragraph (1), the Director of the Office of Thrift
10 Supervision shall, during the 90-day period begin-
11 ning on the transfer date, continue to be—

12 (A) treated as an officer of the United
13 States; and

14 (B) entitled to receive compensation at the
15 same annual rate of basic pay that the Director
16 of the Office of Thrift Supervision received on
17 the day before the transfer date.

18 **SEC. 326. CONTINUATION OF SERVICES.**

19 Any agency, department, or other instrumentality of
20 the United States, and any successor to any such agency,
21 department, or instrumentality, that was, before the trans-
22 fer date, providing support services to the Office of Thrift
23 Supervision in connection with functions transferred to
24 the Office of the Comptroller of the Currency, the Cor-

1 poration or the Board of Governors under this title,
2 shall—

3 (1) continue to provide such services, subject to
4 reimbursement by the Office of the Comptroller of
5 the Currency, the Corporation, or the Board of Gov-
6 ernors, until the transfer of functions under this
7 title is complete; and

8 (2) consult with the Comptroller of the Cur-
9 rency, the Chairperson of the Corporation, or the
10 Chairman of the Board of Governors, as appro-
11 priate, to coordinate and facilitate a prompt and or-
12 derly transition.

13 **SEC. 327. IMPLEMENTATION PLAN AND REPORTS.**

14 (a) PLAN SUBMISSION.—Within 180 days of the en-
15 actment of the Dodd-Frank Wall Street Reform and Con-
16 sumer Protection Act, the Board of Governors, the Cor-
17 poration, the Office of the Comptroller of the Currency,
18 and the Office of Thrift Supervision, shall jointly submit
19 a plan to the Committee on Banking, Housing, and Urban
20 Affairs of the Senate, the Committee on Financial Services
21 of the House of Representatives, and the Inspectors Gen-
22 eral of the Department of the Treasury, the Corporation,
23 and the Board of Governors detailing the steps the Board
24 of Governors, the Corporation, the Office of the Comp-
25 troller of the Currency, and the Office of Thrift Super-

1 vision will take to implement the provisions of sections 301
2 through 326, and the provisions of the amendments made
3 by such sections.

4 (b) INSPECTORS GENERAL REVIEW OF THE PLAN.—
5 Within 60 days of receiving the plan required under sub-
6 section (a), the Inspectors General of the Department of
7 the Treasury, the Corporation, and the Board of Gov-
8 ernors shall jointly provide a written report to the Board
9 of Governors, the Corporation, the Office of the Comp-
10 troller of the Currency, and the Office of Thrift Super-
11 vision and shall submit a copy 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 detailing whether the plan conforms with the
15 provisions of sections 301 through 326, and the provisions
16 of the amendments made by such sections, including—

17 (1) whether the plan sufficiently takes into con-
18 sideration the orderly transfer of personnel;

19 (2) whether the plan describes procedures and
20 safeguards to ensure that the Office of Thrift Super-
21 vision employees are not unfairly disadvantaged rel-
22 ative to employees of the Office of the Comptroller
23 of the Currency and the Corporation;

1 (3) whether the plan sufficiently takes into con-
2 sideration the orderly transfer of authority and re-
3 sponsibilities;

4 (4) whether the plan sufficiently takes into con-
5 sideration the effective transfer of funds;

6 (5) whether the plan sufficiently takes in con-
7 sideration the orderly transfer of property; and

8 (6) any additional recommendations for an or-
9 derly and effective process.

10 (c) IMPLEMENTATION REPORTS.—Not later than 6
11 months after the date on which 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 receives the report required under subsection
15 (b), and every 6 months thereafter until all aspects of the
16 plan have been implemented, the Inspectors General of the
17 Department of the Treasury, the Corporation, and the
18 Board of Governors shall jointly provide a written report
19 on the status of the implementation of the plan to the
20 Board of Governors, the Corporation, the Office of the
21 Comptroller of the Currency, and the Office of Thrift Su-
22 pervision and shall submit a copy to the Committee on
23 Banking, Housing, and Urban Affairs of the Senate and
24 the Committee on Financial Services of the House of Rep-
25 resentatives.

1 **Subtitle C—Federal Deposit**
2 **Insurance Corporation**

3 **SEC. 331. DEPOSIT INSURANCE REFORMS.**

4 (a) **SIZE DISTINCTIONS.**—Section 7(b)(2) of the Fed-
5 eral Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is
6 amended—

7 (1) by striking subparagraph (D); and

8 (2) by redesignating subparagraph (C) as sub-
9 paragraph (D).

10 (b) **ASSESSMENT BASE.**—The Corporation shall
11 amend the regulations issued by the Corporation under
12 section 7(b)(2) of the Federal Deposit Insurance Act (12
13 U.S.C. 1817(b)(2)) to define the term “assessment base”
14 with respect to an insured depository institution for pur-
15 poses of that section 7(b)(2), as an amount equal to—

16 (1) the average consolidated total assets of the
17 insured depository institution during the assessment
18 period; minus

19 (2) the sum of—

20 (A) the average tangible equity of the in-
21 insured depository institution during the assess-
22 ment period; and

23 (B) in the case of an insured depository in-
24 stitution that is a custodial bank (as defined by
25 the Corporation, based on factors including the

1 percentage of total revenues generated by custo-
2 dial businesses and the level of assets under
3 custody) or a banker's bank (as that term is
4 used in section 5136 of the Revised Statutes
5 (12 U.S.C. 24)), an amount that the Corpora-
6 tion determines is necessary to establish assess-
7 ments consistent with the definition under sec-
8 tion 7(b)(1) of the Federal Deposit Insurance
9 Act (12 U.S.C. 1817(b)(1)) for a custodial
10 bank or a banker's bank.

11 **SEC. 332. 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. 333. 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 “agreement” and insert-
13 ing “consultation”.

14 (b) Section 7(b)(1)(E) of the Federal Deposit Insur-
15 ance Act is amended—

16 (1) in clause (i), by striking “such as” and in-
17 serting “including”; and

18 (2) in clause (iii), by striking “Corporation”
19 and inserting “Corporation, except as provided in
20 section 7(a)(2)(B)”.

21 **SEC. 334. TRANSITION RESERVE RATIO REQUIREMENTS TO**
22 **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 **SEC. 335. PERMANENT INCREASE IN DEPOSIT AND SHARE**
19 **INSURANCE.**

20 (a) PERMANENT INCREASE IN DEPOSIT INSUR-
21 ANCE.—Section 11(a)(1)(E) of the Federal Deposit Insur-
22 ance Act (12 U.S.C. 1821(a)(1)(E)) is amended—

23 (1) by striking “\$100,000” and inserting
24 “\$250,000”; and

1 (2) by adding at the end the following new sen-
2 tences: “Notwithstanding any other provision of law,
3 the increase in the standard maximum deposit insur-
4 ance amount to \$250,000 shall apply to depositors
5 in any institution for which the Corporation was ap-
6 pointed as receiver or conservator on or after Janu-
7 ary 1, 2008, and before October 3, 2008. The Cor-
8 poration shall take such actions as are necessary to
9 carry out the requirements of this section with re-
10 spect to such depositors, without regard to any time
11 limitations under this Act. In implementing this and
12 the preceding 2 sentences, any payment on a deposit
13 claim made by the Corporation as receiver or conser-
14 vator to a depositor above the standard maximum
15 deposit insurance amount in effect at the time of the
16 appointment of the Corporation as receiver or con-
17 servator shall be deemed to be part of the net
18 amount due to the depositor under subparagraph
19 (B).”

20 (b) PERMANENT INCREASE IN SHARE INSURANCE.—
21 Section 207(k)(5) of the Federal Credit Union Act (12
22 U.S.C. 1787(k)(5)) is amended by striking “\$100,000”
23 and inserting “\$250,000”.

1 **SEC. 336. MANAGEMENT OF THE FEDERAL DEPOSIT INSUR-**
2 **ANCE CORPORATION.**

3 (a) IN GENERAL.—Section 2 of the Federal Deposit
4 Insurance Act (12 U.S.C. 1812) is amended—

5 (1) in subsection (a)(1)(B), by striking “Direc-
6 tor of the Office of Thrift Supervision” and insert-
7 ing “Director of the Consumer Financial Protection
8 Bureau”;

9 (2) by amending subsection (d)(2) to read as
10 follows:

11 “(2) ACTING OFFICIALS MAY SERVE.—In the
12 event of a vacancy in the office of the Comptroller
13 of the Currency or the office of Director of the Con-
14 sumer Financial Protection Bureau and pending the
15 appointment of a successor, or during the absence or
16 disability of the Comptroller of the Currency or the
17 Director of the Consumer Financial Protection Bu-
18 reau, the acting Comptroller of the Currency or the
19 acting Director of the Consumer Financial Protec-
20 tion Bureau, as the case may be, shall be a member
21 of the Board of Directors in the place of the Comp-
22 troller or Director.”; and

23 (3) in subsection (f)(2), by striking “Office of
24 Thrift Supervision” and inserting “Consumer Finan-
25 cial Protection Bureau”.

1 (b) EFFECTIVE DATE.—This section, and the amend-
2 ments made by this section, shall take effect on the trans-
3 fer date.

4 **Subtitle D—Other Matters**

5 **SEC. 341. BRANCHING.**

6 Notwithstanding the Federal Deposit Insurance Act
7 (12 U.S.C. 1811 et seq.), the Bank Holding Company Act
8 of 1956 (12 U.S.C. 1841 et seq.), or any other provision
9 of Federal or State law, a savings association that be-
10 comes a bank may—

11 (1) continue to operate any branch or agency
12 that the savings association operated immediately
13 before the savings association became a bank; and

14 (2) establish, acquire, and operate additional
15 branches and agencies at any location within any
16 State in which the savings association operated a
17 branch immediately before the savings association
18 became a bank, if the law of the State in which the
19 branch is located, or is to be located, would permit
20 establishment of the branch if the bank were a State
21 bank chartered by such State.

22 **SEC. 342. OFFICE OF MINORITY AND WOMEN INCLUSION.**

23 (a) OFFICE OF MINORITY AND WOMEN INCLU-
24 SION.—

25 (1) ESTABLISHMENT.—

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), not later than 6 months
3 after the date of enactment of this Act, each
4 agency shall establish an Office of Minority and
5 Women Inclusion that shall be responsible for
6 all matters of the agency relating to diversity in
7 management, employment, and business activi-
8 ties.

9 (B) BUREAU.—The Bureau shall establish
10 an Office of Minority and Women Inclusion not
11 later than 6 months after the designated trans-
12 fer date established under section 1062.

13 (2) TRANSFER OF RESPONSIBILITIES.—Each
14 agency that, on the day before the date of enactment
15 of this Act, assigned the responsibilities described in
16 paragraph (1) (or comparable responsibilities) to an-
17 other office of the agency shall ensure that such re-
18 sponsibilities are transferred to the Office.

19 (3) DUTIES WITH RESPECT TO CIVIL RIGHTS
20 LAWS.—The responsibilities described in paragraph
21 (1) do not include enforcement of statutes, regula-
22 tions, or executive orders pertaining to civil rights,
23 except each Director shall coordinate with the agen-
24 cy administrator, or the designee of the agency ad-
25 ministrator, regarding the design and implementa-

1 tion of any remedies resulting from violations of
2 such statutes, regulations, or executive orders.

3 (b) DIRECTOR.—

4 (1) IN GENERAL.—The Director of each Office
5 shall be appointed by, and shall report to, the agen-
6 cy administrator. The position of Director shall be
7 a career reserved position in the Senior Executive
8 Service, as that position is defined in section 3132
9 of title 5, United States Code, or an equivalent des-
10 ignation.

11 (2) DUTIES.—Each Director shall develop
12 standards for—

13 (A) equal employment opportunity and the
14 racial, ethnic, and gender diversity of the work-
15 force and senior management of the agency;

16 (B) increased participation of minority-
17 owned and women-owned businesses in the pro-
18 grams and contracts of the agency, including
19 standards for coordinating technical assistance
20 to such businesses; and

21 (C) assessing the diversity policies and
22 practices of entities regulated by the agency.

23 (3) OTHER DUTIES.—Each Director shall ad-
24 vise the agency administrator on the impact of the

1 policies and regulations of the agency on minority-
2 owned and women-owned businesses.

3 (4) RULE OF CONSTRUCTION.—Nothing in
4 paragraph (2)(C) may be construed to mandate any
5 requirement on or otherwise affect the lending poli-
6 cies and practices of any regulated entity, or to re-
7 quire any specific action based on the findings of the
8 assessment.

9 (c) INCLUSION IN ALL LEVELS OF BUSINESS ACTIVI-
10 TIES.—

11 (1) IN GENERAL.—The Director of each Office
12 shall develop and implement standards and proce-
13 dures to ensure, to the maximum extent possible, the
14 fair inclusion and utilization of minorities, women,
15 and minority-owned and women-owned businesses in
16 all business and activities of the agency at all levels,
17 including in procurement, insurance, and all types of
18 contracts.

19 (2) CONTRACTS.—The procedures established
20 by each agency for review and evaluation of contract
21 proposals and for hiring service providers shall in-
22 clude, to the extent consistent with applicable law, a
23 component that gives consideration to the diversity
24 of the applicant. Such procedure shall include a
25 written statement, in a form and with such content

1 as the Director shall prescribe, that a contractor
2 shall ensure, to the maximum extent possible, the
3 fair inclusion of women and minorities in the work-
4 force of the contractor and, as applicable, sub-
5 contractors.

6 (3) TERMINATION.—

7 (A) DETERMINATION.—The standards and
8 procedures developed and implemented under
9 this subsection shall include a procedure for the
10 Director to make a determination whether an
11 agency contractor, and, as applicable, a subcon-
12 tractor has failed to make a good faith effort to
13 include minorities and women in their work-
14 force.

15 (B) EFFECT OF DETERMINATION.—

16 (i) RECOMMENDATION TO AGENCY AD-
17 MINISTRATOR.—Upon a determination de-
18 scribed in subparagraph (A), the Director
19 shall make a recommendation to the agen-
20 cy administrator that the contract be ter-
21 minated.

22 (ii) ACTION BY AGENCY ADMINIS-
23 TRATOR.—Upon receipt of a recommenda-
24 tion under clause (i), the agency adminis-
25 trator may—

- 1 (I) terminate the contract;
- 2 (II) make a referral to the Office
- 3 of Federal Contract Compliance Pro-
- 4 grams of the Department of Labor; or
- 5 (III) take other appropriate ac-
- 6 tion.

7 (d) APPLICABILITY.—This section shall apply to all

8 contracts of an agency for services of any kind, including

9 the services of financial institutions, investment banking

10 firms, mortgage banking firms, asset management firms,

11 brokers, dealers, financial services entities, underwriters,

12 accountants, investment consultants, and providers of

13 legal services. The contracts referred to in this subsection

14 include all contracts for all business and activities of an

15 agency, at all levels, including contracts for the issuance

16 or guarantee of any debt, equity, or security, the sale of

17 assets, the management of the assets of the agency, the

18 making of equity investments by the agency, and the im-

19 plementation by the agency of programs to address eco-

20 nomic recovery.

21 (e) REPORTS.—Each Office shall submit to Congress

22 an annual report regarding the actions taken by the agen-

23 cy and the Office pursuant to this section, which shall in-

24 clude—

1 (1) a statement of the total amounts paid by
2 the agency to contractors since the previous report;

3 (2) the percentage of the amounts described in
4 paragraph (1) that were paid to contractors de-
5 scribed 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) any other information, findings, conclusions,
14 and recommendations for legislative or agency ac-
15 tion, as the Director determines appropriate.

16 (f) DIVERSITY IN AGENCY WORKFORCE.—Each
17 agency shall take affirmative steps to seek diversity in the
18 workforce of the agency at all levels of the agency in a
19 manner consistent with applicable law. Such steps shall
20 include—

21 (1) recruiting at historically black colleges and
22 universities, Hispanic-serving institutions, women’s
23 colleges, and colleges that typically serve majority
24 minority populations;

1 (2) sponsoring and recruiting at job fairs in
2 urban communities;

3 (3) placing employment advertisements in news-
4 papers and magazines oriented toward minorities
5 and women;

6 (4) partnering with organizations that are fo-
7 cused on developing opportunities for minorities and
8 women to place talented young minorities and
9 women in industry internships, summer employment,
10 and full-time positions;

11 (5) where feasible, partnering with inner-city
12 high schools, girls' high schools, and high schools
13 with majority minority populations to establish or
14 enhance financial literacy programs and provide
15 mentoring; and

16 (6) any other mass media communications that
17 the Office determines necessary.

18 (g) DEFINITIONS.—For purposes of this section, the
19 following definitions shall apply:

20 (1) AGENCY.—The term “agency” means—

21 (A) the Departmental Offices of the De-
22 partment of the Treasury;

23 (B) the Corporation;

24 (C) the Federal Housing Finance Agency;

25 (D) each of the Federal reserve banks;

1 (E) the Board;

2 (F) the National Credit Union Administra-
3 tion;

4 (G) the Office of the Comptroller of the
5 Currency;

6 (H) the Commission; and

7 (I) the Bureau.

8 (2) AGENCY ADMINISTRATOR.—The term
9 “agency administrator” means the head of an agen-
10 cy.

11 (3) MINORITY.—The term “minority” has the
12 same meaning as in section 1204(c) of the Financial
13 Institutions Reform, Recovery, and Enforcement Act
14 of 1989 (12 U.S.C. 1811 note).

15 (4) MINORITY-OWNED BUSINESS.—The term
16 “minority-owned business” has the same meaning as
17 in section 21A(r)(4)(A) of the Federal Home Loan
18 Bank Act (12 U.S.C. 1441a(r)(4)(A)), as in effect
19 on the day before the transfer date.

20 (5) OFFICE.—The term “Office” means the Of-
21 fice of Minority and Women Inclusion established by
22 an agency under subsection (a).

23 (6) WOMEN-OWNED BUSINESS.—The term
24 “women-owned business” has the meaning given the
25 term “women’s business” in section 21A(r)(4)(B) of

1 the Federal Home Loan Bank Act (12 U.S.C.
2 1441a(r)(4)(B)), as in effect on the day before the
3 transfer date.

4 **SEC. 343. INSURANCE OF TRANSACTION ACCOUNTS.**

5 (a) BANKS AND SAVINGS ASSOCIATIONS.—

6 (1) AMENDMENTS.—Section 11(a)(1) of the
7 Federal Deposit Insurance Act (12 U.S.C.
8 1821(a)(1)) is amended—

9 (A) in subparagraph (B)—

10 (i) by striking “The net amount” and
11 inserting the following:

12 “(i) IN GENERAL.—Subject to clause
13 (ii), the net amount”; and

14 (ii) by adding at the end the following
15 new clauses:

16 “(ii) INSURANCE FOR NONINTEREST-
17 BEARING TRANSACTION ACCOUNTS.—Not-
18 withstanding clause (i), the Corporation
19 shall fully insure the net amount that any
20 depositor at an insured depository institu-
21 tion maintains in a noninterest-bearing
22 transaction account. Such amount shall
23 not be taken into account when computing
24 the net amount due to such depositor
25 under clause (i).

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1 “(iii) NONINTEREST-BEARING TRANS-
2 ACTION ACCOUNT DEFINED.—For purposes
3 of this subparagraph, the term ‘non-
4 interest-bearing transaction account’
5 means a deposit or account maintained at
6 an insured depository institution—

7 “(I) with respect to which inter-
8 est is neither accrued nor paid;

9 “(II) on which the depositor or
10 account holder is permitted to make
11 withdrawals by negotiable or transfer-
12 able instrument, payment orders of
13 withdrawal, telephone or other elec-
14 tronic media transfers, or other simi-
15 lar items for the purpose of making
16 payments or transfers to third parties
17 or others; and

18 “(III) on which the insured de-
19 pository institution does not reserve
20 the right to require advance notice of
21 an intended withdrawal.”; and

22 (B) in subparagraph (C), by striking “sub-
23 paragraph (B)” and inserting “subparagraph
24 (B)(i)”.

1 (2) EFFECTIVE DATE.—The amendments made
2 by paragraph (1) shall take effect on December 31,
3 2010.

4 (3) PROSPECTIVE REPEAL.—Effective January
5 1, 2013, section 11(a)(1) of the Federal Deposit In-
6 surance Act (12 U.S.C. 1821(a)(1)), as amended by
7 paragraph (1), is amended—

8 (A) in subparagraph (B)—

9 (i) by striking “DEPOSIT.—” and all
10 that follows through “clause (ii), the net
11 amount” and insert “DEPOSIT.—The net
12 amount”; and

13 (ii) by striking clauses (ii) and (iii);
14 and

15 (B) in subparagraph (C), by striking “sub-
16 paragraph (B)(i)” and inserting “subparagraph
17 (B)”.

18 (b) CREDIT UNIONS.—

19 (1) AMENDMENTS.—Section 207(k)(1) of the
20 Federal Credit Union Act (12 U.S.C. 1787(k)(1)) is
21 amended—

22 (A) in subparagraph (A)—

23 (i) by striking “Subject to the provi-
24 sions of paragraph (2), the net amount”
25 and inserting the following:

1 “(i) NET AMOUNT OF INSURANCE
2 PAYABLE.—Subject to clause (ii) and the
3 provisions of paragraph (2), the net
4 amount”; and

5 (ii) by adding at the end the following
6 new clauses: “(ii) .-- “(iii) .--”.

7 “(ii) INSURANCE FOR NONINTEREST-
8 BEARING TRANSACTION ACCOUNTS.—Not-
9 withstanding clause (i), the Board shall
10 fully insure the net amount that any mem-
11 ber or depositor at an insured credit union
12 maintains in a noninterest-bearing trans-
13 action account. Such amount shall not be
14 taken into account when computing the net
15 amount due to such member or depositor
16 under clause (i).

17 “(iii) NONINTEREST-BEARING TRANS-
18 ACTION ACCOUNT DEFINED.—For purposes
19 of this subparagraph, the term ‘non-
20 interest-bearing transaction account’
21 means an account or deposit maintained at
22 an insured credit union—

23 “(I) with respect to which inter-
24 est is neither accrued nor paid;

1 “(II) on which the account holder
2 or depositor is permitted to make
3 withdrawals by negotiable or transfer-
4 able instrument, payment orders of
5 withdrawal, telephone or other elec-
6 tronic media transfers, or other simi-
7 lar items for the purpose of making
8 payments or transfers to third parties
9 or others; and

10 “(III) on which the insured cred-
11 it union does not reserve the right to
12 require advance notice of an intended
13 withdrawal.”; and

14 (B) in subparagraph (B), by striking “sub-
15 paragraph (A)” and inserting “subparagraph
16 (A)(i)”.

17 (2) EFFECTIVE DATE.—The amendments made
18 by paragraph (1) shall take effect upon the date of
19 the enactment of this Act

20 (3) PROSPECTIVE REPEAL.—Effective January
21 1, 2013, section 207(k)(1) of the Federal Credit
22 Union Act (12 U.S.C. 1787(k)(1)), as amended by
23 paragraph (1), is amended—

24 (A) in subparagraph (A)—

1 (i) by striking “(i) NET AMOUNT OF
2 INSURANCE PAYABLE.—” and all that fol-
3 lows through “paragraph (2), the net
4 amount” and inserting “Subject to the
5 provisions of paragraph (2), the net
6 amount”; and

7 (ii) by striking clauses (ii) and (iii);
8 and

9 (B) in subparagraph (B), by striking “sub-
10 paragraph (A)(i)” and inserting “subparagraph
11 (A)”.

12 **Subtitle E—Technical and** 13 **Conforming Amendments**

14 **SEC. 351. EFFECTIVE DATE.**

15 Except as provided in section 364(a), the amend-
16 ments made by this subtitle shall take effect on the trans-
17 fer date.

18 **SEC. 352. BALANCED BUDGET AND EMERGENCY DEFICIT**

19 **CONTROL ACT OF 1985.**

20 Section 256(h) of the Balanced Budget and Emer-
21 gency Deficit Control Act of 1985 (2 U.S.C. 906(h)) is
22 amended—

23 (1) in paragraph (4), by striking subparagraphs
24 (C) and (G); and

1 (2) by redesignating subparagraphs (D), (E),
2 (F), and (H) as subparagraphs (C), (D), (E), and
3 (F), respectively.

4 **SEC. 353. BANK ENTERPRISE ACT OF 1991.**

5 Section 232(a) of the Bank Enterprise Act of 1991
6 (12 U.S.C. 1834(a)) is amended—

7 (1) in the subsection heading, by striking “BY
8 FEDERAL RESERVE BOARD”;

9 (2) in paragraph (1)—

10 (A) by striking “The Board of Governors
11 of the Federal Reserve System,” and inserting
12 “the Comptroller of the Currency”; and

13 (B) by striking “section 7(b)(2)(H)” and
14 inserting “section 7(b)(2)(E)”;

15 (3) in paragraph (2)(A), by striking “Board”
16 and inserting “Comptroller”; and

17 (4) in paragraph (3)—

18 (A) by redesignating subparagraphs (A)
19 through (C) as subparagraphs (B) through (D),
20 respectively; and

21 (B) by inserting before subparagraph (B)
22 the following:

23 “(A) COMPTROLLER.—The term ‘Comptroller’
24 means the Comptroller of the Cur-
25 rency.”.

1 **SEC. 354. BANK HOLDING COMPANY ACT OF 1956.**

2 The Bank Holding Company Act of 1956 (12 U.S.C.
3 1841 et seq.) is amended—

4 (1) in section 2(j)(3) (12 U.S.C. 1841(j)(3)),
5 strike “Director of the Office of Thrift Supervision”
6 and inserting “appropriate Federal banking agen-
7 cy”;

8 (2) in section 4 (12 U.S.C. 1843)—

9 (A) in subsection (i)—

10 (i) in paragraph (4)—

11 (I) in subparagraph (A)—

12 (aa) in the subparagraph
13 heading, by striking “TO DIREC-
14 TOR”; and

15 (bb) by striking “Board”
16 and all that follows through the
17 end of the subparagraph and in-
18 serting “Board shall solicit com-
19 ments and recommendations
20 from—

21 “(i) the Comptroller of the Currency,
22 with respect to the acquisition of a Federal
23 savings association; and

24 “(ii) the Federal Deposit Insurance
25 Corporation, with respect to the acquisition
26 of a State savings association.”.

1 (II) in subparagraph (B), by
2 striking “Director” each place that
3 term appears and inserting “Comp-
4 troller of the Currency or the Federal
5 Deposit Insurance Corporation, as ap-
6 plicable,”;

7 (ii) in paragraph (5)—

8 (I) in subparagraph (B), by
9 striking “Director with” and inserting
10 “Comptroller of the Currency or the
11 Federal Deposit Insurance Corpora-
12 tion, as applicable, with”; and

13 (II) by striking “Director” each
14 place that term appears and inserting
15 “Comptroller of the Currency or the
16 Federal Deposit Insurance Corpora-
17 tion”;

18 (iii) in paragraph (6), by striking “Di-
19 rector” and inserting “Comptroller of the
20 Currency or the Federal Deposit Insurance
21 Corporation, as applicable,”; and

22 (iv) by striking paragraph (7); and

23 (3) in section 5(f) (12 U.S.C. 1844(f))—

24 (A) by striking “subpena” each place that
25 term appears and inserting “subpoena”;

1 (B) by striking “subpenas” each place that
2 term appears and inserting “subpoenas”; and
3 (C) by striking “subpenaed” and inserting
4 “subpoenaed”.

5 **SEC. 355. BANK HOLDING COMPANY ACT AMENDMENTS OF**
6 **1970.**

7 Section 106(b)(1) of the Bank Holding Company Act
8 Amendments of 1970 (12 U.S.C. 1972(1)) is amended in
9 the undesignated matter following subparagraph (E) by
10 inserting “issue such regulations as are necessary to carry
11 out this section, and, in consultation with the Comptroller
12 of the Currency and the Federal Deposit Insurance Com-
13 pany, may” after “The Board may”.

14 **SEC. 356. BANK PROTECTION ACT OF 1968.**

15 The Bank Protection Act of 1968 (12 U.S.C. 1881
16 et seq.) is amended—

17 (1) in section 2 (12 U.S.C. 1881), by striking
18 “the term” and all that follows through the end of
19 the section and inserting “the term ‘Federal super-
20 visory agency’ means the appropriate Federal bank-
21 ing agency, as defined in section 3(q) of the Federal
22 Deposit Insurance Act (12 U.S.C. 1813(q)).”;

23 (2) in section 3 (12 U.S.C. 1882), by striking
24 “and loan” each place that term appears; and

1 (3) in section 5 (12 U.S.C. 1884), by striking
2 “and loan”.

3 **SEC. 357. BANK SERVICE COMPANY ACT.**

4 The Bank Service Company Act (12 U.S.C. 1861 et
5 seq.) is amended—

6 (1) in section 1(b)(4) (12 U.S.C. 1861(b)(4))—

7 (A) by inserting after “an insured bank,”
8 the following: “a savings association,”;

9 (B) by striking “Director of the Office of
10 Thrift Supervision” and inserting “appropriate
11 Federal banking agency”; and

12 (C) by striking “, the Federal Savings and
13 Loan Insurance Corporation,”;

14 (2) in section 1(b)(5), by striking “term ‘in-
15 sured depository institution’ has the same meaning
16 as in section 3(c)” and inserting “terms ‘depository
17 institution’ and ‘savings association’ have the same
18 meanings as in section 3”; and

19 (3) in section 7(c)(2) (12 U.S.C. 1867(c)(2)),
20 by inserting “each” after “notify”.

21 **SEC. 358. COMMUNITY REINVESTMENT ACT OF 1977.**

22 The Community Reinvestment Act of 1977 (12
23 U.S.C. 2901 et seq.) is amended—

24 (1) in section 803 (12 U.S.C. 2902)—

25 (A) in paragraph (1)—

1 (i) in subparagraph (A), by inserting
2 “and Federal savings associations (the de-
3 posits of which are insured by the Federal
4 Deposit Insurance Corporation)” after
5 “banks”;

6 (ii) in subparagraph (B), by striking
7 “and bank holding companies” and insert-
8 ing “, bank holding companies, and sav-
9 ings and loan holding companies”; and

10 (iii) in subparagraph (C), by striking
11 “; and” and inserting “, and State savings
12 associations (the deposits of which are in-
13 sured by the Federal Deposit Insurance
14 Corporation).”; and

15 (B) by striking paragraph (2) (relating to
16 the Office of Thrift Supervision), as added by
17 section 744(q) of the Financial Institutions Re-
18 form, Recovery, and Enforcement Act of 1989
19 (Public Law 101–73; 103 Stat. 440); and

20 (2) in section 806 (12 U.S.C. 2905), by insert-
21 ing “, except that the Comptroller of the Currency
22 shall prescribe regulations applicable to savings asso-
23 ciations and the Board of Governors shall prescribe
24 regulations applicable to insured State member

1 banks, bank holding companies and savings and loan
2 holding companies,” after “supervisory agency”.

3 **SEC. 359. CRIME CONTROL ACT OF 1990.**

4 The Crime Control Act of 1990 is amended—

5 (1) in section 2539(c)(2) (28 U.S.C. 509
6 note)—

7 (A) by striking subparagraphs (C) and
8 (D); and

9 (B) by redesignating subparagraphs (E)
10 through (H) as subparagraphs (C) through (G),
11 respectively; and

12 (2) in section 2554(b)(2) (Public Law 101–647;
13 104 Stat. 4890)—

14 (A) in subparagraph (A), by striking “, the
15 Director of the Office of Thrift Supervision,”
16 and inserting “the Comptroller of the Cur-
17 rency”; and

18 (B) in subparagraph (B), by striking “,
19 the Director” and all that follows through
20 “Trust Corporation” and inserting “or the Fed-
21 eral Deposit Insurance Corporation”.

22 **SEC. 360. DEPOSITORY INSTITUTION MANAGEMENT INTER-**
23 **LOCKS ACT.**

24 The Depository Institution Management Interlocks
25 Act (12 U.S.C. 3201 et seq.) is amended—

1 (1) in section 207 (12 U.S.C. 3206)—

2 (A) in paragraph (1), by inserting before
3 the comma at the end the following: “and Fed-
4 eral savings associations (the deposits of which
5 are insured by the Federal Deposit Insurance
6 Corporation)”;

7 (B) in paragraph (2), by striking “, and
8 bank holding companies” and inserting “, bank
9 holding companies, and savings and loan hold-
10 ing companies”;

11 (C) in paragraph (3), by striking “Cor-
12 poration,” and inserting “Corporation and
13 State savings associations (the deposits of
14 which are insured by the Federal Deposit In-
15 surance Corporation),”;

16 (D) by striking paragraph (4);

17 (E) by redesignating paragraphs (5) and
18 (6) as paragraphs (4) and (5), respectively; and

19 (F) in paragraph (5), as so redesignated,
20 by striking “through (5)” and inserting
21 “through (4)”;

22 (2) in section 209 (12 U.S.C. 3207)—

23 (A) in paragraph (1), by inserting before
24 the comma at the end the following: “and Fed-
25 eral savings associations (the deposits of which

1 are insured by the Federal Deposit Insurance
2 Corporation”;

3 (B) in paragraph (2), by striking “, and
4 bank holding companies” and inserting “, bank
5 holding companies, and savings and loan hold-
6 ing companies”;

7 (C) in paragraph (3), by striking “Cor-
8 poration,” and inserting “Corporation and
9 State savings associations (the deposits of
10 which are insured by the Federal Deposit In-
11 surance Corporation),”;

12 (D) by striking paragraph (4); and

13 (E) by redesignating paragraph (5) as
14 paragraph (4); and

15 (3) in section 210(a) (12 U.S.C. 3208(a))—

16 (A) by striking “his” and inserting “the”;

17 and

18 (B) by inserting “of the Attorney General”

19 after “enforcement functions”.

20 **SEC. 361. EMERGENCY HOMEOWNERS’ RELIEF ACT.**

21 Section 110 of the Emergency Homeowners’ Relief
22 Act (12 U.S.C. 2709) is amended in the second sentence,
23 by striking “Home Loan Bank Board, the Federal Savings
24 and Loan Insurance Corporation” and inserting “Housing
25 Finance Agency”.

1 **SEC. 362. FEDERAL CREDIT UNION ACT.**

2 The Federal Credit Union Act (12 U.S.C. 1751 et
3 seq.) is amended—

4 (1) in section 107(8) (12 U.S.C. 1757(8)), by
5 striking “or the Federal Savings and Loan Insur-
6 ance Corporation”;

7 (2) in section 205 (12 U.S.C. 1785)—

8 (A) in subsection (b)(2)(G)(i), by striking
9 “the Office of Thrift Supervision and”; and

10 (B) in subsection (i)(1), by striking “or the
11 Federal Savings and Loan Insurance Corpora-
12 tion”; and

13 (3) in section 206(g)(7) (12 U.S.C.
14 1786(g)(7))—

15 (A) in subparagraph (A)—

16 (i) in clause (ii), by striking “(b)(8)”
17 and inserting “(b)(9)”;

18 (ii) in clause (v)—

19 (I) by striking “depository” and
20 inserting “financial”; and

21 (II) by adding “and” at the end;

22 (iii) in clause (vi)—

23 (I) by striking “Board” and in-
24 serting “Agency”; and

25 (II) by striking “; and” and in-
26 serting a period; and

- 1 (iv) by striking clause (vii); and
2 (B) in subparagraph (D)—
3 (i) in clause (iii), by adding “and” at
4 the end;
5 (ii) in clause (iv)—
6 (I) by striking “Board” and in-
7 serting “Agency”; and
8 (II) by striking “and” at the end;
9 and
10 (iii) by striking clause (v).

11 **SEC. 363. FEDERAL DEPOSIT INSURANCE ACT.**

12 The Federal Deposit Insurance Act (12 U.S.C. 1811
13 et seq.) is amended—

- 14 (1) in section 3 (12 U.S.C. 1813)—
15 (A) in subsection (b)(1)(C), by striking
16 “Director of the Office of Thrift Supervision”
17 and inserting “Comptroller of the Currency”;
18 (B) in subsection (l)(5), in the matter pre-
19 ceding subparagraph (A), by striking “Director
20 of the Office of Thrift Supervision,”; and
21 (C) in subsection (z), by striking “the Di-
22 rector of the Office of Thrift Supervision,”;
23 (2) in section 7 (12 U.S.C. 1817)—
24 (A) in subsection (a)—
25 (i) in paragraph (2)—

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1 (I) in subparagraph (A)—

2 (aa) in the first sentence, by
3 striking “the Director of the Of-
4 fice of Thrift Supervision,”;

5 (bb) in the second sen-
6 tence—

7 (AA) by striking “the
8 Director of the Office of
9 Thrift Supervision,” and in-
10 sserting “to”; and

11 (BB) by inserting “to”
12 before “any Federal home”;
13 and

14 (cc) by striking “Finance
15 Board” each place that term ap-
16 pears and inserting “Finance
17 Agency”; and

18 (II) in subparagraph (B), by
19 striking “the Comptroller of the Cur-
20 rency, the Board of Governors of the
21 Federal Reserve System, and the Di-
22 rector of the Office of Thrift Super-
23 vision,” and inserting “the Comp-
24 troller of the Currency and the Board

1 of Governors of the Federal Reserve
2 System,”;

3 (ii) in paragraph (3), in the first sen-
4 tence, by striking “Comptroller of the Cur-
5 rency, the Chairman of the Board of Gov-
6 ernors of the Federal Reserve System, and
7 the Director of the Office of Thrift Super-
8 vision.” and inserting “Comptroller of the
9 Currency, and the Chairman of the Board
10 of Governors of the Federal Reserve Sys-
11 tem.”;

12 (iii) in paragraph (6), by striking
13 “section 232(a)(3)(C)” and inserting “sec-
14 tion 232(a)(3)(D)”;

15 (iv) in paragraph (7), by striking “,
16 the Director of the Office of Thrift Super-
17 vision,”; and

18 (B) in subsection (n)—

19 (i) in the heading, by striking “DI-
20 RECTOR OF THE OFFICE OF THRIFT SU-
21 PERVISION” and inserting “COMPTROLLER
22 OF THE CURRENCY”;

23 (ii) in the first sentence—

24 (I) by striking “the Director of
25 the Office of Thrift Supervision” and

1 inserting “the Comptroller of the Cur-
2 rency”; and

3 (II) by inserting “Federal” be-
4 fore “savings associations”;

5 (iii) in the third sentence, by striking
6 “, the Financing Corporation, and the Res-
7 olution Funding Corporation”; and

8 (iv) by striking “the Director” each
9 place that term appears and inserting “the
10 Comptroller”;

11 (3) in section 8 (12 U.S.C. 1818)—

12 (A) in subsection (a)(8)(B)(ii), in the last
13 sentence, by striking “Director of the Office of
14 Thrift Supervision” each place that term ap-
15 pears and inserting “Comptroller of the Cur-
16 rency”;

17 (B) in subsection (b)(3)—

18 (i) by inserting “any savings and loan
19 holding company and any subsidiary (other
20 than a depository institution) of a savings
21 and loan holding company (as such terms
22 are defined in section 10 of Home Owners’
23 Loan Act)), any noninsured State member
24 bank” after “Bank Holding Company Act
25 of 1956,”; and

1 (ii) by inserting “or against a savings
2 and loan holding company or any sub-
3 sidiary thereof (other than a depository in-
4 stitution or a subsidiary of such depository
5 institution)” before the period at the end;

6 (C) by striking paragraph (9) of subsection
7 (b) and inserting the following new paragraph:
8 “(9) [Repealed]”.

9 (D) in subsection (e)(7)—

10 (i) in subparagraph (A)—

11 (I) in clause (v), by inserting
12 “and” after the semicolon;

13 (II) in clause (vi)—

14 (aa) by striking “Board”
15 and inserting “Agency”; and

16 (bb) by striking “; and” and
17 inserting a period; and

18 (III) by striking clause (vii); and

19 (ii) in subparagraph (D)—

20 (I) in clause (iii), by inserting
21 “and” after the semicolon;

22 (II) in clause (iv)—

23 (aa) by striking “Board”
24 and inserting “Agency”; and

- 1 (bb) by striking “; and” and
2 inserting a period; and
- 3 (III) by striking clause (v);
- 4 (E) in subsection (j)—
- 5 (i) in paragraph (2), by striking “, or
6 as a savings association under subsection
7 (b)(9) of this section”;
- 8 (ii) in paragraph (3), by inserting
9 “or” after the semicolon;
- 10 (iii) in paragraph (4), by striking “;
11 or” and inserting a comma; and
- 12 (iv) by striking paragraph (5);
- 13 (F) in subsection (o), by striking “Director
14 of the Office of Thrift Supervision” and insert-
15 ing “Comptroller of the Currency”; and
- 16 (G) in subsection (w)(3)(A), by striking
17 “and the Office of Thrift Supervision”;
- 18 (4) in section 10 (12 U.S.C. 1820)—
- 19 (A) in subsection (d)(5), by striking “or
20 the Resolution Trust Corporation” each place
21 that term appears; and
- 22 (B) in subsection (k)(5)(B)—
- 23 (i) in clause (ii), by inserting “and”
24 after the semicolon;

1 (ii) in clause (iii), by striking “; and”

2 and inserting a period; and

3 (iii) by striking clause (iv);

4 (5) in section 11 (12 U.S.C. 1821)—

5 (A) in subsection (c)—

6 (i) in paragraph (2)(A)(ii), by striking

7 “(other than section 21A of the Federal

8 Home Loan Bank Act)”;

9 (ii) in paragraph (4), by striking “Ex-
10 cept as otherwise provided in section 21A

11 of the Federal Home Loan Bank Act and

12 notwithstanding” and inserting “Notwith-

13 standing”;

14 (iii) in paragraph (6)—

15 (I) in the heading, by striking

16 “DIRECTOR OF THE OFFICE OF

17 THRIFT SUPERVISION” and inserting

18 “COMPTROLLER OF THE CURRENCY”;

19 (II) in subparagraph (A)—

20 (aa) by striking “or the Res-

21 olution Trust Corporation”; and

22 (bb) by striking “Director of

23 the Office of Thrift Supervision”

24 and inserting “Comptroller of the

25 Currency”; and

1 (III) by amending subparagraph
2 (B) to read as follows:

3 “(B) RECEIVER.—The Corporation may,
4 at the discretion of the Comptroller of the Cur-
5 rency, be appointed receiver and the Corpora-
6 tion may accept any such appointment.”;

7 (iv) in paragraph (12)(A), by striking
8 “or the Resolution Trust Corporation”;
9 (B) in subsection (d)—

10 (i) in paragraph (17)(A), by striking
11 “or the Director of the Office of Thrift Su-
12 pervision”; and

13 (ii) in paragraph (18)(B), by striking
14 “or the Director of the Office of Thrift Su-
15 pervision”;

16 (C) in subsection (m)—

17 (i) in paragraph (9), by striking “or
18 the Director of the Office of Thrift Super-
19 vision, as appropriate”;

20 (ii) in paragraph (16), by striking “or
21 the Director of the Office of Thrift Super-
22 vision, as appropriate” each place that
23 term appears; and

24 (iii) in paragraph (18), by striking
25 “or the Director of the Office of Thrift Su-

1 pervision, as appropriate” each place that
2 term appears;

3 (D) in subsection (n)—

4 (i) in paragraph (1)(A)—

5 (I) by striking “, or the Director
6 of the Office of Thrift Supervision,
7 with respect to” and inserting “or”;
8 and

9 (II) by striking “applicable,,”
10 and inserting “applicable,”;

11 (ii) in paragraph (2)(A), by striking
12 “or the Director of the Office of Thrift Su-
13 pervision”;

14 (iii) in paragraph (4)(D), by striking
15 “and the Director of the Office of Thrift
16 Supervision, as appropriate,”;

17 (iv) in paragraph (4)(G), by striking
18 “and the Director of the Office of Thrift
19 Supervision, as appropriate,”; and

20 (v) in paragraph (12)(B)—

21 (I) by inserting “as” after “shall
22 appoint the Corporation”;

23 (II) by striking “or the Director
24 of the Office of Thrift Supervision, as

1 appropriate,” each place such term
2 appears;

3 (E) in subsection (p)—

4 (i) in paragraph (2)(B), by striking
5 “the Corporation, the FSLIC Resolution
6 Fund, or the Resolution Trust Corpora-
7 tion,” and inserting “or the Corporation,”;
8 and

9 (ii) in paragraph (3)(B), by striking
10 “, the FSLIC Resolution Fund, the Reso-
11 lution Trust Corporation,”; and

12 (F) in subsection (r), by striking “and the
13 Resolution Trust Corporation”;

14 (6) in section 13(k)(1)(A)(iv) (12 U.S.C.
15 1823(k)(1)(A)(iv)), by striking “Director of the Of-
16 fice of Thrift Supervision” and inserting “Comp-
17 troller of the Currency”;

18 (7) in section 18 (12 U.S.C. 1828)—

19 (A) in subsection (c)(2)—

20 (i) in subparagraph (A), by inserting
21 “or a Federal savings association” before
22 the semicolon;

23 (ii) in subparagraph (B), by adding
24 “and” at the end;

1 (iii) in subparagraph (C), by striking
2 “(except” and all that follows through “;
3 and” and inserting “or a State savings as-
4 sociation.”; and

5 (iv) by striking subparagraph (D);

6 (B) in subsection (g)(1), by striking “the
7 Director of the Office of Thrift Supervision” and
8 inserting “the Comptroller of the Currency”;

9 (C) in subsection (i)(2)(C), by striking
10 “Director of the Office of Thrift Supervision”
11 and inserting “Corporation”; and

12 (D) in subsection (m)—

13 (i) in paragraph (1)—

14 (I) in subparagraph (A), by strik-
15 ing “and the Director of the Office of
16 Thrift Supervision” and inserting “or
17 the Comptroller of the Currency, as
18 appropriate,”; and

19 (II) in subparagraph (B), by
20 striking “and orders of the Director
21 of the Office of Thrift Supervision”
22 and inserting “of the Comptroller of
23 the Currency and orders of the Cor-
24 poration and the Comptroller of the
25 Currency”;

1 (ii) in paragraph (2)—

2 (I) in subparagraph (A), by strik-
3 ing “Director of the Office of Thrift
4 Supervision” and inserting “Comp-
5 troller of the Currency, as appro-
6 priate,”; and

7 (II) in subparagraph (B)—

8 (aa) in the matter before
9 clause (i), by striking “Director
10 of the Office of Thrift Super-
11 vision” and inserting “Corpora-
12 tion or the Comptroller of the
13 Currency, as appropriate,”; and

14 (bb) in the matter following
15 clause (ii)—

16 (AA) in the first sen-
17 tence, by striking “Director
18 of the Office of Thrift Su-
19 pervision” and inserting
20 “Office of the Comptroller of
21 the Currency, as appro-
22 priate,”; and

23 (BB) by striking the
24 second sentence and insert-
25 ing the following: “The Cor-

1 poration or the Comptroller
2 of the Currency, as appro-
3 priate, may take any other
4 corrective measures with re-
5 spect to the subsidiary, in-
6 cluding the authority to re-
7 quire the subsidiary to ter-
8 minate the activities or oper-
9 ations posing such risks, as
10 the Corporation or the
11 Comptroller of the Currency,
12 respectively, may deem ap-
13 propriate.”; and

14 (iii) in paragraph (3)—

15 (I) in subparagraph (A), in the
16 second sentence—

17 (aa) by inserting “, in the
18 case of a Federal savings associa-
19 tion,” before “consult with”; and

20 (bb) by striking “Director of
21 the Office of Thrift Supervision”
22 and inserting “Comptroller of the
23 Currency”; and

24 (II) in subparagraph (B)—

1 (aa) in the subparagraph
2 heading, by striking “DIRECTOR”
3 and inserting “COMPTROLLER OF
4 THE CURRENCY”;

5 (bb) by striking “Office of
6 Thrift Supervision” and inserting
7 “Comptroller of the Currency”;

8 (cc) by inserting a comma
9 after “soundness”; and

10 (dd) by inserting “as to
11 Federal savings associations”
12 after “compliance”;

13 (8) in section 19(e) (12 U.S.C. 1829(e))—

14 (A) in paragraph (1), by striking “Director
15 of the Office of Thrift Supervision” and insert-
16 ing “Board of Governors of the Federal Reserve
17 System”; and

18 (B) in paragraph (2), by striking “Director
19 of the Office of Thrift Supervision” and insert-
20 ing “Board of Governors of the Federal Reserve
21 System”;

22 (9) in section 28 (12 U.S.C. 1831e)—

23 (A) in subsection (e)—

24 (i) in paragraph (2)—

1 (I) in subparagraph (A)(ii), by
2 striking “Director of the Office of
3 Thrift Supervision” and inserting
4 “Comptroller of the Currency or the
5 Corporation, as appropriate”;

6 (II) in subparagraph (C), by
7 striking “Director of the Office of
8 Thrift Supervision” and inserting
9 “Comptroller of the Currency or the
10 Corporation, as appropriate,”; and

11 (III) in subparagraph (F), by
12 striking “Director of the Office of
13 Thrift Supervision” and inserting
14 “Comptroller of the Currency or the
15 Corporation, as appropriate”; and

16 (ii) in paragraph (3)—

17 (I) in subparagraph (A), by strik-
18 ing “Director of the Office of Thrift
19 Supervision” and inserting “Comp-
20 troller of the Currency or the Cor-
21 poration, as appropriate”; and

22 (II) in subparagraph (B), by
23 striking “Director of the Office of
24 Thrift Supervision” and inserting

1 “Comptroller of the Currency or the
2 Corporation, as appropriate,”; and

3 (B) in subsection (h)(2), by striking “Di-
4 rector of the Office of Thrift Supervision” and
5 inserting “Comptroller of the Currency, of the
6 Corporation,”; and

7 (10) in section 33(e) (12 U.S.C. 1831j(e)), by
8 striking “Federal Housing Finance Board, the
9 Comptroller of the Currency, and the Director of the
10 Office of Thrift Supervision” and inserting “Federal
11 Housing Finance Agency and the Comptroller of the
12 Currency”.

13 **SEC. 364. FEDERAL HOME LOAN BANK ACT.**

14 (a) REPEAL OF SECTION 18(c).—Effective 90 days
15 after the transfer date, section 18(c) of the Federal Home
16 Loan Bank Act (12 U.S.C. 1438(c)) is repealed.

17 (b) REPEAL OF SECTION 21A.—Section 21A of the
18 Federal Home Loan Bank Act (12 U.S.C. 1441a) is re-
19 pealed.

20 **SEC. 365. FEDERAL HOUSING ENTERPRISES FINANCIAL**
21 **SAFETY AND SOUNDNESS ACT OF 1992.**

22 The Federal Housing Enterprises Financial Safety
23 and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is
24 amended—

1 (1) in section 1315(b) (12 U.S.C. 4515(b)), by
2 striking “the Federal Deposit Insurance Corpora-
3 tion, and the Office of Thrift Supervision.” and in-
4 serting “and the Federal Deposit Insurance Cor-
5 poration.”; and

6 (2) in section 1317(c) (12 U.S.C. 4517(c)), by
7 striking “the Federal Deposit Insurance Corpora-
8 tion, or the Director of the Office of Thrift Super-
9 vision” and inserting “or the Federal Deposit Insur-
10 ance Corporation”.

11 **SEC. 366. FEDERAL RESERVE ACT.**

12 The Federal Reserve Act (12 U.S.C. 221 et seq.) is
13 amended—

14 (1) in section 11(a)(2) (12 U.S.C. 248(a)(2))—

15 (A) by inserting “State savings associa-
16 tions that are insured depository institutions
17 (as defined in section 3 of the Federal Deposit
18 Insurance Act),” after “case of insured”;

19 (B) by striking “Director of the Office of
20 Thrift Supervision” and inserting “Comptroller
21 of the Currency”;

22 (C) by inserting “Federal” before “savings
23 association which”; and

24 (D) by striking “savings and loan associa-
25 tion” and inserting “savings association”; and

1 (2) in section 19(b) (12 U.S.C. 461(b))—

2 (A) in paragraph (1)(F), by striking “Di-
3 rector of the Office of Thrift Supervision” and
4 inserting “Comptroller of the Currency”; and

5 (B) in paragraph (4)(B), by striking “Di-
6 rector of the Office of Thrift Supervision” and
7 inserting “Comptroller of the Currency”.

8 **SEC. 367. FINANCIAL INSTITUTIONS REFORM, RECOVERY,**
9 **AND ENFORCEMENT ACT OF 1989.**

10 The Financial Institutions Reform, Recovery, and
11 Enforcement Act of 1989 is amended—

12 (1) in section 203 (12 U.S.C. 1812 note), by
13 striking subsection (b);

14 (2) in section 302(1) (12 U.S.C. 1467a note),
15 by striking “Director of the Office of Thrift Super-
16 vision” and inserting “Comptroller of the Currency”;

17 (3) in section 305(12 U.S.C. 1464 note), by
18 striking subsection (b);

19 (4) in section 308 (12 U.S.C. 1463 note)—

20 (A) in subsection (a), by striking “Director
21 of the Office of Thrift Supervision” and insert-
22 ing “Chairman of the Board of Governors of
23 the Federal Reserve System, the Comptroller of
24 the Currency, the Chairman of the National
25 Credit Union Administration,”; and

1 (B) by adding at the end the following new
2 subsection:

3 “(c) REPORTS.—The Secretary of the Treasury, the
4 Chairman of the Board of Governors of the Federal Re-
5 serve System, the Comptroller of the Currency, the Chair-
6 man of the National Credit Union Administration, and the
7 Chairperson of Board of Directors of the Federal Deposit
8 Insurance Corporation shall each submit an annual report
9 to the Congress containing a description of actions taken
10 to carry out this section.”;

11 (5) in section 402 (12 U.S.C. 1437 note)—

12 (A) in subsection (a), by striking “Director
13 of the Office of Thrift Supervision” and insert-
14 ing “Comptroller of the Currency”;

15 (B) by striking subsection (b);

16 (C) in subsection (e)—

17 (i) in paragraph (1), by striking “Of-
18 fice of Thrift Supervision” and inserting
19 “Comptroller of the Currency”; and

20 (ii) in each of paragraphs (2), (3),
21 and (4), by striking “Director of the Office
22 of Thrift Supervision” each place that
23 term appears and inserting “Comptroller
24 of the Currency”; and

- 1 (D) by striking “Federal Housing Finance
2 Board” each place that term appears and in-
3 serting “Federal Housing Finance Agency”;
- 4 (6) in section 1103(a) (12 U.S.C. 3332(a)), by
5 striking “and the Resolution Trust Corporation”;
- 6 (7) in section 1205(b) (12 U.S.C. 1818 note)—
- 7 (A) in paragraph (1)—
- 8 (i) by striking subparagraph (B); and
9 (ii) by redesignating subparagraphs
10 (C) through (F) as subparagraphs (B)
11 through (E), respectively; and
- 12 (B) in paragraph (2), by striking “para-
13 graph (1)(F)” and inserting “paragraph
14 (1)(E)”;
- 15 (8) in section 1206 (12 U.S.C. 1833b)—
- 16 (A) by striking “Board, the Oversight
17 Board of the Resolution Trust Corporation”
18 and inserting “Agency, and”; and
- 19 (B) by striking “, and the Office of Thrift
20 Supervision”;
- 21 (9) in section 1216 (12 U.S.C. 1833e)—
- 22 (A) in subsection (a)—
- 23 (i) in paragraph (3), by adding “and”
24 at the end;

1 (ii) in paragraph (4), by striking the
2 semicolon at the end and inserting a pe-
3 riod;

4 (iii) by striking paragraphs (2), (5),
5 and (6); and

6 (iv) by redesignating paragraphs (3)
7 and (4), as paragraphs (2) and (3), respec-
8 tively;

9 (B) in subsection (c)—

10 (i) by striking “the Director of the
11 Office of Thrift Supervision,” and insert-
12 ing “and”; and

13 (ii) by striking “the Thrift Depositor
14 Protection Oversight Board of the Resolu-
15 tion Trust Corporation, and the Resolution
16 Trust Corporation”; and

17 (C) in subsection (d)—

18 (i) by striking paragraphs (3), (5),
19 and (6); and

20 (ii) by redesignating paragraphs (4),
21 (7), and (8) as paragraphs (3), (4), and
22 (5), respectively.

1 **SEC. 368. FLOOD DISASTER PROTECTION ACT OF 1973.**

2 Section 3(a)(5) of the Flood Disaster Protection Act
3 of 1973 (42 U.S.C. 4003(a)(5)) is amended by striking
4 “, the Office of Thrift Supervision”.

5 **SEC. 369. HOME OWNERS’ LOAN ACT.**

6 The Home Owners’ Loan Act (12 U.S.C. 1461 et
7 seq.) is amended—

8 (1) in section 1 (12 U.S.C. 1461), by striking
9 the table of contents;

10 (2) in section 2 (12 U.S.C. 1462), as amended
11 by this Act—

12 (A) by striking paragraphs (1) and (3);

13 (B) by redesignating paragraph (2) as
14 paragraph (1);

15 (C) by redesignating paragraphs (4)
16 through (9) as paragraphs (2) through (7), re-
17 spectively; and

18 (D) by adding at the end the following:

19 “(8) BOARD.—The term ‘Board’, other than in
20 the context of the Board of Directors of the Cor-
21 poration, means the Board of Governors of the Fed-
22 eral Reserve System.

23 “(9) COMPTROLLER.—The term ‘Comptroller’
24 means the Comptroller of the Currency.”;

25 (3) in section 3 (12 U.S.C. 1462a)—

1 (A) by striking the section heading and in-
2 serting the following:

3 **“SEC. 3. ADMINISTRATIVE PROVISIONS.”;**

4 (B) by striking subsections (a), (b), (c),
5 (d), (g), (h), (i), and (j);

6 (C) by redesignating subsections (e) and
7 (f) as subsections (a) and (b), respectively;

8 (D) in subsection (a), as so redesignated—

9 (i) in the heading by striking “OF
10 THE DIRECTOR”; and

11 (ii) in the matter preceding paragraph
12 (1), by striking “The Director” and insert-
13 ing “In accordance with subtitle A of title
14 III of the Dodd-Frank Wall Street Reform
15 and Consumer Protection Act, the appro-
16 priate Federal banking agency”; and

17 (E) in subsection (b), as so redesignated,
18 by striking “Director” and inserting “appro-
19 priate Federal banking agency”;

20 (4) in section 4 (12 U.S.C. 1463)—

21 (A) in subsection (a)—

22 (i) in the subsection heading, by strik-
23 ing “FEDERAL”;

24 (ii) by striking paragraphs (1) and (2)
25 and inserting the following:

1 “(1) EXAMINATION AND SAFE AND SOUND OP-
2 ERATION.—

3 “(A) FEDERAL SAVINGS ASSOCIATIONS.—
4 The Comptroller shall provide for the examina-
5 tion and safe and sound operation of Federal
6 savings associations.

7 “(B) STATE SAVINGS ASSOCIATIONS.—The
8 Corporation shall provide for the examination
9 and safe and sound operation of State savings
10 associations.

11 “(2) REGULATIONS FOR SAVINGS ASSOCIA-
12 TIONS.—The Comptroller may prescribe regulations
13 with respect to savings associations, as the Comp-
14 troller determines to be appropriate to carry out the
15 purposes of this Act.”; and

16 (iii) in paragraph (3), by striking “Di-
17 rector” each place that term appears and
18 inserting “Comptroller and the Corpora-
19 tion”;

20 (B) in subsection (b)—

21 (i) in paragraph (2)—

22 (I) in subparagraph (A), by add-
23 ing “and” at the end;

1 (II) in subparagraph (B), by
2 striking “; and” and inserting a pe-
3 riod; and

4 (III) by striking subparagraph
5 (C); and

6 (ii) by striking “Director” each place
7 that term appears and inserting “Comp-
8 troller”;

9 (C) in subsection (c)—

10 (i) by striking “All regulations and
11 policies of the Director” and inserting
12 “The regulations of the Comptroller and
13 the policies of the Comptroller and the
14 Corporation”; and

15 (ii) by striking “of the Currency”;

16 (D) in subsection (e)(5), by striking “Di-
17 rector” and inserting “Comptroller”;

18 (E) in subsection (f), by striking “Direc-
19 tor” each place that term appears and inserting
20 “appropriate Federal banking agency”; and

21 (F) in subsection (h), by striking “Direc-
22 tor” each place that term appears and inserting
23 “appropriate Federal banking agency”;

24 (5) in section 5 (12 U.S.C. 1464)—

1 (A) in subsection (a), by striking “Direc-
2 tor”, each place such term appears and insert-
3 ing “Comptroller of the Currency”;

4 (B) in subsection (b), by striking “Direc-
5 tor”, each place such term appears and insert-
6 ing “Comptroller of the Currency”;

7 (C) in subsection (c)—

8 (i) in paragraph (5)—

9 (I) in subparagraph (A), by strik-
10 ing “Director” and inserting “appro-
11 priate Federal banking agency”; and

12 (II) in subparagraph (B)—

13 (aa) by striking “The Direc-
14 tor” and inserting “The appro-
15 priate Federal banking agency”;
16 and

17 (bb) by striking “the Direc-
18 tor” and inserting “the appro-
19 priate Federal banking agency”;

20 (D) in subsection (d)—

21 (i) in paragraph (1)—

22 (I) in subparagraph (A)—

23 (aa) in the first sentence, by
24 striking “Director” and inserting

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1 “appropriate Federal banking
2 agency”;

3 (bb) in the second sen-
4 tence—

5 (AA) by striking “Di-
6 rector’s own name and
7 through the Director’s own
8 attorneys” and inserting
9 “name of the appropriate
10 Federal banking agency and
11 through the attorneys of the
12 appropriate Federal banking
13 agency”; and

14 (BB) by striking “Di-
15 rector” each place that term
16 appears and inserting “ap-
17 propriate Federal banking
18 agency”; and

19 (cc) in the third sentence, by
20 striking “Director” each place
21 that term appears and inserting
22 “Comptroller”;

23 (II) in subparagraph (B)—

24 (aa) in clauses (i) through
25 (iv), by striking “Director” each

1 place that term appears and in-
2 serting “appropriate Federal
3 banking agency”;

4 (III) in clause (v)—

5 (aa) in the matter preceding
6 subclause (I), by striking “Direc-
7 tor” and inserting “appropriate
8 Federal banking agency”;

9 (bb) in subclause (II), by
10 striking “subpenas” and insert-
11 ing “subpoenas”; and

12 (cc) in the matter following
13 subclause (II), by striking “sub-
14 pena” and inserting “subpoena”;
15 (IV) in clause (vi)—

16 (aa) in the first sentence, by
17 striking “Director” and inserting
18 “appropriate Federal banking
19 agency”; and

20 (bb) in the second sentence,
21 by striking “Director” and in-
22 serting “Comptroller”;

23 (V) in clause (vii)—

1 (aa) in the first sentence, by
2 striking “subpena” and inserting
3 “subpoena”;

4 (bb) in the second sentence,
5 by striking “subpenaed” and in-
6 serting “subpoenaed”; and

7 (cc) in the third sentence, by
8 striking “Director” and inserting
9 “appropriate Federal banking
10 agency”;

11 (ii) in paragraph (2)—

12 (I) in subparagraph (A)—

13 (aa) by striking “Director of
14 the Office of Thrift Supervision”
15 and inserting “appropriate Fed-
16 eral banking agency”;

17 (bb) by striking “any in-
18 sured savings association” and
19 inserting “an insured savings as-
20 sociation”; and

21 (cc) by striking “Director
22 determines, in the Director’s dis-
23 cretion” and inserting “appro-
24 priate Federal banking agency
25 determines, in the discretion of

1 the appropriate Federal banking
2 agency”;

3 (II) in subparagraph (B), by
4 striking “Director” each place that
5 term appears and inserting “appro-
6 priate Federal banking agency”;

7 (III) in subparagraphs (C) and
8 (D), by striking “Director” and in-
9 serting “appropriate Federal banking
10 agency”;

11 (IV) in subparagraph (E)—

12 (aa) in clause (ii)—

13 (AA) in the clause
14 heading, by striking “OR
15 RTC”; and

16 (BB) by striking “or
17 the Resolution Trust Cor-
18 poration, as appropriate,”
19 each place that term ap-
20 pears; and

21 (bb) by striking “Director”
22 each place that term appears and
23 inserting “appropriate Federal
24 banking agency”; and

25 (iii) in paragraph (3)—

1 (I) in subparagraph (A), by strik-
2 ing “Director” each place that term
3 appears and inserting “Comptroller”;
4 and

5 (II) in subparagraph (B)—

6 (aa) in the subparagraph
7 heading, by striking “OR RTC”;

8 (bb) by striking “Corpora-
9 tion or the Resolution Trust”;
10 and

11 (cc) by striking “Director”
12 and inserting “Comptroller”;

13 (iv) in paragraph (4), by striking “Di-
14 rector” and inserting “appropriate Federal
15 banking agency”;

16 (v) in paragraph (6)—

17 (I) in subparagraph (A), by strik-
18 ing “Director” and inserting “Comp-
19 troller”; and

20 (II) in subparagraphs (B) and
21 (C), by striking “Director” each place
22 that term appears and inserting “ap-
23 propriate Federal banking agency”;

24 (vi) in paragraph (7)—

1 (I) in subparagraphs (A), (B),
2 and (D), by striking “Director” each
3 place that term appears and inserting
4 “appropriate Federal banking agen-
5 cy”;

6 (II) in subparagraph (C), by
7 striking “Director” and inserting
8 “Federal Deposit Insurance Corpora-
9 tion or the Comptroller, as appro-
10 priate,”; and

11 (III) by striking subparagraph
12 (E) and inserting the following:

13 “(E) ADMINISTRATION BY THE COMP-
14 TROLLER AND THE CORPORATION.—The Comp-
15 troller may issue such regulations, and the ap-
16 propriate Federal banking agency may issue
17 such orders, including those issued pursuant to
18 section 8 of the Federal Deposit Insurance Act,
19 as may be necessary to administer and carry
20 out this paragraph and to prevent evasion of
21 this paragraph.”;

22 (E) in subsection (e)(2), strike “Director”
23 and insert “Comptroller”;

24 (F) in subsection (i)—

1 (i) by striking “Director”, each place
2 such term appears, and inserting “Comp-
3 troller”;

4 (ii) in paragraph (2), in the heading,
5 by striking “DIRECTOR” and inserting
6 “COMPTROLLER”;

7 (iii) in paragraph (5)(A), by striking
8 “of the Currency”; and

9 (iv) except as provided in clauses (i)
10 through (iii), by striking “Director” each
11 place such term appears and inserting
12 “Comptroller”;

13 (G) in subsection (o)—

14 (i) in paragraph (1), by striking “Di-
15 rector” and inserting “Comptroller”; and

16 (ii) in paragraph (2)(B), by striking
17 “Director’s determination” and inserting
18 “determination of the Comptroller”;

19 (H) in subsections (m), (n), (o), and (p),
20 by striking “Director”, each place such term
21 appears, and inserting “Comptroller”;

22 (I) in subsection (q)—

23 (i) in paragraph (6), by striking “of
24 Governors of the Federal Reserve System”;

1 (ii) by striking “Director” each place
2 that term appears and inserting “Board”;
3 and

4 (iii) by inserting “in consultation with
5 the Comptroller and the Corporation,” be-
6 fore “considers”;

7 (J) in subsection (r)(3), by striking “Di-
8 rector” and inserting “Comptroller of the Cur-
9 rency”;

10 (K) in subsection (s)—

11 (i) in paragraph (1), strike “Director”
12 and insert “Comptroller of the Currency”;

13 (ii) in paragraph (2), strike “Direc-
14 tor” and insert “Comptroller of the Cur-
15 rency”;

16 (iii) in paragraph (3), by striking “Di-
17 rector’s discretion, the Director” and in-
18 serting “discretion of the appropriate Fed-
19 eral banking agency, the appropriate Fed-
20 eral banking agency,”;

21 (iv) in paragraph (4), by striking “Di-
22 rector” each place that term appears and
23 inserting “appropriate Federal banking
24 agency”; and

25 (v) in paragraph (5)—

1 (I) by striking “Director”, each
2 place such term appears, and insert-
3 ing “appropriate Federal banking
4 agency”; and

5 (II) by striking “Director’s ap-
6 proval” and inserting “approval of the
7 appropriate Federal banking agency”;

8 (L) in subsection (t)—

9 (i) in paragraph (1), by striking sub-
10 paragraph (D);

11 (ii) by striking paragraph (3) and in-
12 serting the following:

13 “(3) [Repealed].”;

14 (iii) in paragraph (5)—

15 (I) in subparagraph (B), by
16 striking “Corporation, in its sole dis-
17 cretion” and inserting “appropriate
18 Federal banking agency, in the sole
19 discretion of the appropriate Federal
20 banking agency”; and

21 (II) by striking subparagraph
22 (D);

23 (iv) in paragraph (6)—

24 (I) by striking subparagraph (A)
25 and inserting the following:

1 “(A) [Reserved].”;

2 (II) in subparagraph (B), by
3 striking “Director” each place that
4 term appears and inserting “appro-
5 priate Federal banking agency”;

6 (III) in subparagraph (C)—

7 (aa) in clause (i), by striking
8 “Director’s prior approval” and
9 inserting “prior approval of the
10 appropriate Federal banking
11 agency”;

12 (bb) in clause (ii), by strik-
13 ing “Director’s discretion” and
14 inserting “discretion of the ap-
15 propriate Federal banking agen-
16 cy”; and

17 (cc) by striking “Director”
18 each place that term appears and
19 inserting “appropriate Federal
20 banking agency”;

21 (IV) in subparagraph (E), by
22 striking “Director shall” and inserting
23 “appropriate Federal banking agency
24 may”; and

1 (V) in subparagraph (F), by
2 striking “Director” and all that fol-
3 lows through the end of the subpara-
4 graph and inserting “appropriate Fed-
5 eral banking agency under this Act or
6 any other provision of law.”;

7 (v) in paragraph (7), by striking “Di-
8 rector” each place that term appears and
9 inserting “appropriate Federal banking
10 agency”;

11 (vi) by striking paragraph (8) and in-
12 serting the following:

13 “(8) [Repealed].”;

14 (vii) in paragraph (9)—

15 (I) in subparagraph (A), by strik-
16 ing “Director” and inserting “Comp-
17 troller”;

18 (II) in subparagraph (C), by
19 striking “of the Currency”; and

20 (III) by striking subparagraph
21 (B) and redesignating subparagraphs
22 (C) and (D) as subparagraphs (B)
23 and (C), respectively; and

24 (viii) except as provided in clauses (i)
25 through (vii), by striking “Director” each

1 place that term appears and inserting “ap-
2 appropriate Federal banking agency”;

3 (M) in subsection (u), by striking “Direc-
4 tor” each place that term appears and inserting
5 “appropriate Federal banking agency”;

6 (N) in subsection (v)—

7 (i) in paragraph (2), by striking “Di-
8 rector’s determinations” and inserting “de-
9 terminations of the appropriate Federal
10 banking agency”; and

11 (ii) by striking “Director” each place
12 that term appears and inserting “appro-
13 priate Federal banking agency”;

14 (O) in subsection (w)(1)—

15 (i) in subparagraph (A)(II), by strik-
16 ing “Director’s intention” and inserting
17 “intention of the Comptroller”; and

18 (ii) in subparagraph (B), by striking
19 “Director’s intention” and inserting “in-
20 tention of the Comptroller”; and

21 (P) except as provided in subparagraphs
22 (A) through (J), by striking “Director” each
23 place that term appears and inserting “Comp-
24 troller”;

1 (6) in section 8 (12 U.S.C. 1466a), by striking
2 “Director” each place that term appears and insert-
3 ing “Comptroller”;

4 (7) in section 9 (12 U.S.C. 1467)—

5 (A) in subsection (a), by striking “assessed
6 by the Director” and all that follows through
7 the end of the subsection and inserting the fol-
8 lowing: “assessed by—

9 “(1) the Comptroller, against each such Federal
10 savings association, as the Comptroller deems nec-
11 essary or appropriate; and

12 “(2) the Corporation, against each such State
13 savings association, as the Corporation deems nec-
14 essary or appropriate.”;

15 (B) in subsection (b), by striking “Direc-
16 tor”, each place such term appears, and insert-
17 ing “Comptroller or Corporation, as appro-
18 priate”;

19 (C) in subsection (e)—

20 (i) by striking “Only the Director”
21 and inserting “The Comptroller”; and

22 (ii) by striking “Director’s designee”
23 and inserting “designee of the Comp-
24 troller”;

1 (D) by striking subsection (f) and inserting
2 the following:

3 “(f) [Reserved].”;

4 (E) in subsection (g)—

5 (i) in paragraph (1), by striking “Di-
6 rector” and inserting “appropriate Federal
7 banking agency”; and

8 (ii) in paragraph (2), by striking “Di-
9 rector, or the Corporation, as the case may
10 be,” and inserting “appropriate Federal
11 banking agency for the savings associa-
12 tion”;

13 (F) in subsection (i), by striking “Direc-
14 tor” each place that term appears and inserting
15 “appropriate Federal banking agency”;

16 (G) in subsection (j), by striking “Direc-
17 tor’s sole discretion” and inserting “sole discre-
18 tion of the appropriate Federal banking agen-
19 cy”;

20 (H) in subsection (k), by striking “Direc-
21 tor may assess against institutions for which
22 the Director is the appropriate Federal banking
23 agency, as defined in section 3 of the Federal
24 Deposit Insurance Act,” and inserting “appro-

1 appropriate Federal banking agency may assess
2 against an institution”; and

3 (I) except as provided in subparagraphs
4 (A) through (G), by striking “Director” each
5 place that term appears and inserting “appro-
6 priate Federal banking agency”;

7 (8) in section 10 (12 U.S.C. 1467a)—

8 (A) in subsection (a)(1), by striking “Di-
9 rector” each place that term appears and in-
10 serting “appropriate Federal banking agency”;

11 (B) in subsection (b)—

12 (i) in paragraph (2), by striking “and
13 the regional office of the Director of the
14 district in which its principal office is lo-
15 cated,”; and

16 (ii) in paragraph (6), by striking “Di-
17 rector’s own motion or application” and in-
18 serting “motion or application of the
19 Board”;

20 (C) in subsection (c)—

21 (i) in paragraph (2)(F), by striking
22 “of Governors of the Federal Reserve Sys-
23 tem”;

1 (ii) in paragraph (4)(B), in the sub-
2 paragraph heading, by striking “BY DIREC-
3 TOR”;

4 (iii) in paragraph (6)(D), in the sub-
5 paragraph heading, by striking “BY DIREC-
6 TOR”; and

7 (iv) in paragraph (9)(E), by inserting
8 “(in consultation with the appropriate Fed-
9 eral banking agency)” after “including a
10 determination”;

11 (D) in subsection (g)(5)(B), by striking
12 “the Director’s discretion” and inserting “the
13 discretion of the Board”;

14 (E) in subsection (l), by striking “Direc-
15 tor” each place that term appears and inserting
16 “appropriate Federal banking agency”;

17 (F) in subsection (m), by striking “Direc-
18 tor” and inserting “appropriate Federal bank-
19 ing agency”;

20 (G) in subsection (p)—

21 (i) in paragraph (1)—

22 (I) by striking “Director deter-
23 mines” the 1st place such term ap-
24 pears and inserting “Board or the ap-

1 appropriate Federal banking agency for
2 the savings association determines”;

3 (II) by striking “Director may”
4 and inserting “Board may”; and

5 (III) by striking “Director deter-
6 mines” the 2nd place such term ap-
7 pears and inserting “Board, in con-
8 sultation with the appropriate Federal
9 banking agency for the savings asso-
10 ciation determines”; and

11 (ii) in paragraph (2), by striking “Di-
12 rector”, each place such term appears, and
13 inserting “Board”;

14 (H) in subsection (q), by striking “Direc-
15 tor”, each place such term appears, and insert-
16 ing “Board”;

17 (I) in subsection (r), by striking “Direc-
18 tor”, each place such term appears, and insert-
19 ing “Board or appropriate Federal banking
20 agency”;

21 (J) in subsection (s)—

22 (i) in paragraph (2)—

23 (I) in subparagraph (B)(ii), by
24 striking “Director’s judgment” and
25 inserting “judgment of the appro-

1 priate Federal banking agency for the
2 savings association”; and

3 (II) by striking “Director” each
4 place that term appears and inserting
5 “appropriate Federal banking agency
6 for the savings association”; and

7 (ii) in paragraph (4), by striking “Di-
8 rector” and inserting “Comptroller”; and

9 (K) except as provided in subparagraphs
10 (A) through (J), by striking “Director” each
11 place that term appears and inserting “Board”;
12 (9) in section 11 (12 U.S.C. 1468), by striking
13 “Director” each place that term appears and insert-
14 ing “appropriate Federal banking agency”;

15 (10) in section 12 (12 U.S.C. 1468a), by strik-
16 ing “the Director” and inserting “a Federal banking
17 agency”; and

18 (11) in section 13 (12 U.S.C. 1468a) is amend-
19 ed by striking “Director” and inserting “a Federal
20 banking agency”.

21 **SEC. 370. HOUSING ACT OF 1948.**

22 Section 502(c) of the Housing Act of 1948 (12
23 U.S.C. 1701c(c)) is amended—

24 (1) in the matter preceding paragraph (1), by
25 striking “and the Director of the Office of Thrift

1 Supervision” and inserting “, the Comptroller of the
2 Currency, and the Federal Deposit Insurance Cor-
3 poration”; and

4 (2) in paragraph (3), by striking “Board” and
5 inserting “Agency”.

6 **SEC. 371. HOUSING AND COMMUNITY DEVELOPMENT ACT**
7 **OF 1992.**

8 Section 543 of the Housing and Community Develop-
9 ment Act of 1992 (Public Law 102–550; 106 Stat. 3798)
10 is amended—

11 (1) in subsection (c)(1)—

12 (A) by striking subparagraphs (D) through
13 (F); and

14 (B) by redesignating subparagraphs (G)
15 and (H) as subparagraphs (D) and (E), respec-
16 tively; and

17 (2) in subsection (f)—

18 (A) in paragraph (2), by striking “the Of-
19 fice of Thrift Supervision,” each place that
20 term appears; and

21 (B) in paragraph (3)—

22 (i) in the matter preceding subpara-
23 graph (A), by striking “the Office of Thrift
24 Supervision,”; and

1 (ii) in subparagraph (D), by striking
2 “Office of Thrift Supervision,”.

3 **SEC. 372. HOUSING AND URBAN-RURAL RECOVERY ACT OF**
4 **1983.**

5 Section 469 of the Housing and Urban-Rural Recov-
6 ery Act of 1983 (12 U.S.C. 1701p–1) is amended in the
7 first sentence, by striking “Federal Home Loan Bank
8 Board” and inserting “Federal Housing Finance Agency”.

9 **SEC. 373. NATIONAL HOUSING ACT.**

10 Section 202(f) of the National Housing Act (12
11 U.S.C. 1708(f)) is amended—

12 (1) by striking paragraph (5) and inserting the
13 following:

14 “(5) if the mortgagee is a national bank, a sub-
15 sidiary or affiliate of such bank, a Federal savings
16 association or a subsidiary or affiliate of a savings
17 association, the Comptroller of the Currency;”;

18 (2) in paragraph (6), by adding “and” at the
19 end;

20 (3) in paragraph (7)—

21 (A) by inserting “or State savings associa-
22 tion” after “State bank”; and

23 (B) by striking “; and” and inserting a pe-
24 riod; and

25 (4) by striking paragraph (8).

1 **SEC. 374. NEIGHBORHOOD REINVESTMENT CORPORATION**
2 **ACT.**

3 Section 606(c)(3) of the Neighborhood Reinvestment
4 Corporation Act (42 U.S.C. 8105(c)(3)) is amended by
5 striking “Federal Home Loan Bank Board” and inserting
6 “Federal Housing Finance Agency”.

7 **SEC. 375. PUBLIC LAW 93–100.**

8 Section 5(d) of Public Law 93–100 (12 U.S.C.
9 1470(a)) is amended—

10 (1) in paragraph (1), by striking “Federal Sav-
11 ings and Loan Insurance Corporation with respect
12 to insured institutions, the Board of Governors of
13 the Federal Reserve System with respect to State
14 member insured banks, and the Federal Deposit In-
15 surance Corporation with respect to State non-
16 member insured banks” and inserting “appropriate
17 Federal banking agency, with respect to the institu-
18 tions subject to the jurisdiction of each such agen-
19 cy,”; and

20 (2) in paragraph (2), by striking “supervisory”
21 and inserting “banking”.

22 **SEC. 376. SECURITIES EXCHANGE ACT OF 1934.**

23 The Securities Exchange Act of 1934 (15 U.S.C. 78a
24 et seq.) is amended—

25 (1) in section 3(a)(34) (15 U.S.C.
26 78c(a)(34))—

1 (A) in subparagraph (A)—

2 (i) in clause (i), by striking “or a sub-
3 subsidiary or a department or division of any
4 such bank” and inserting “a subsidiary or
5 a department or division of any such bank,
6 a Federal savings association (as defined
7 in section 3(b)(2) of the Federal Deposit
8 Insurance Act (12 U.S.C. 1813(b)(2))),
9 the deposits of which are insured by the
10 Federal Deposit Insurance Corporation, or
11 a subsidiary or department or division of
12 any such Federal savings association”;

13 (ii) in clause (ii), by striking “or a
14 subsidiary or a department or division of
15 such subsidiary” and inserting “a sub-
16 subsidiary or a department or division of such
17 subsidiary, or a savings and loan holding
18 company”;

19 (iii) in clause (iii), by striking “or a
20 subsidiary or department or division there-
21 of;” and inserting “a subsidiary or depart-
22 ment or division of any such bank, a State
23 savings association (as defined in section
24 3(b)(3) of the Federal Deposit Insurance
25 Act (12 U.S.C. 1813(b)(3))), the deposits

1 of which are insured by the Federal De-
2 posit Insurance Corporation, or a sub-
3 subsidiary or a department or division of any
4 such State savings association; and”;

5 (iv) by striking clause (iv); and

6 (v) by redesignating clause (v) as
7 clause (iv);

8 (B) in subparagraph (B)—

9 (i) in clause (i), by striking “or a sub-
10 subsidiary of any such bank” and inserting “a
11 subsidiary of any such bank, a Federal
12 savings association (as defined in section
13 3(b)(2) of the Federal Deposit Insurance
14 Act (12 U.S.C. 1813(b)(2))), the deposits
15 of which are insured by the Federal De-
16 posit Insurance Corporation, or a sub-
17 subsidiary of any such Federal savings asso-
18 ciation”;

19 (ii) in clause (ii), by striking “or a
20 subsidiary of a bank holding company
21 which is a bank other than a bank speci-
22 fied in clause (i), (iii), or (iv) of this sub-
23 paragraph” and inserting “a subsidiary of
24 a bank holding company that is a bank
25 other than a bank specified in clause (i) or

1 (iii) of this subparagraph, or a savings and
2 loan holding company”;

3 (iii) in clause (iii), by striking “or a
4 subsidiary thereof;” and inserting “a sub-
5 sidiary of any such bank, a State savings
6 association (as defined in section 3(b)(3) of
7 the Federal Deposit Insurance Act (12
8 U.S.C. 1813(b)(3))), the deposits of which
9 are insured by the Federal Deposit Insur-
10 ance Corporation, or a subsidiary of any
11 such State savings association; and”;

12 (iv) by striking clause (iv); and

13 (v) by redesignating clause (v) as
14 clause (iv);

15 (C) in subparagraph (C)—

16 (i) in clause (i), by striking “bank”
17 and inserting “bank or a Federal savings
18 association (as defined in section 3(b)(2) of
19 the Federal Deposit Insurance Act (12
20 U.S.C. 1813(b)(2))), the deposits of which
21 are insured by the Federal Deposit Insur-
22 ance Corporation”;

23 (ii) in clause (ii), by striking “or a
24 subsidiary of a bank holding company
25 which is a bank other than a bank speci-

1 fied in clause (i), (iii), or (iv) of this sub-
2 paragraph” and inserting “a subsidiary of
3 a bank holding company that is a bank
4 other than a bank specified in clause (i) or
5 (iii) of this subparagraph, or a savings and
6 loan holding company”;

7 (iii) in clause (iii), by striking “Sys-
8 tem)” and inserting, “System) or a State
9 savings association (as defined in section
10 3(b)(3) of the Federal Deposit Insurance
11 Act (12 U.S.C. 1813(b)(3))), the deposits
12 of which are insured by the Federal De-
13 posit Insurance Corporation; and”;

14 (iv) by striking clause (iv); and

15 (v) by redesignating clause (v) as
16 clause (iv);

17 (D) in subparagraph (D)—

18 (i) in clause (i), by inserting after
19 “bank” the following: “or a Federal sav-
20 ings association (as defined in section
21 3(b)(2) of the Federal Deposit Insurance
22 Act (12 U.S.C. 1813(b)(2))), the deposits
23 of which are insured by the Federal De-
24 posit Insurance Corporation”;

1 (ii) in clause (ii), by adding “and” at
2 the end;

3 (iii) by striking clause (iii);

4 (iv) by redesignating clause (iv) as
5 clause (iii); and

6 (v) in clause (iii), as so redesignated,
7 by inserting after “bank” the following:
8 “or a State savings association (as defined
9 in section 3(b)(3) of the Federal Deposit
10 Insurance Act (12 U.S.C. 1813(b)(3))),
11 the deposits of which are insured by the
12 Federal Deposit Insurance Corporation”;

13 (E) in subparagraph (F)—

14 (i) in clause (i), by inserting after
15 “bank” the following: “or a Federal sav-
16 ings association (as defined in section
17 3(b)(2) of the Federal Deposit Insurance
18 Act (12 U.S.C. 1813(b)(2))), the deposits
19 of which are insured by the Federal De-
20 posit Insurance Corporation”;

21 (ii) by striking clause (ii);

22 (iii) by redesignating clauses (iii), (iv),
23 and (v) as clauses (ii), (iii), and (iv), re-
24 spectively; and

1 (iv) in clause (iii), as so redesignated,
2 by inserting before the semicolon the fol-
3 lowing: “or a State savings association (as
4 defined in section 3(b)(3) of the Federal
5 Deposit Insurance Act (12 U.S.C.
6 1813(b)(3))), the deposits of which are in-
7 sured by the Federal Deposit Insurance
8 Corporation”;

9 (F) in subparagraph (G)—

10 (i) in clause (i), by inserting after
11 “national bank” the following: “, a Federal
12 savings association (as defined in section
13 3(b)(2) of the Federal Deposit Insurance
14 Act), the deposits of which are insured by
15 the Federal Deposit Insurance Corpora-
16 tion,”;

17 (ii) in clause (iii)—

18 (I) by inserting after “bank)” the
19 following: “, a State savings associa-
20 tion (as defined in section 3(b)(3) of
21 the Federal Deposit Insurance Act),
22 the deposits of which are insured by
23 the Federal Deposit Insurance Cor-
24 poration,”; and

25 (II) by adding “and” at the end;

1 (iii) by striking clause (iv); and

2 (iv) by redesignating clause (v) as
3 clause (iv); and

4 (G) in the undesignated matter following
5 subparagraph (H), by striking “, and the term
6 ‘District of Columbia savings and loan associa-
7 tion’ means any association subject to examina-
8 tion and supervision by the Office of Thrift Su-
9 pervision under section 8 of the Home Owners’
10 Loan Act of 1933”;

11 (2) in section 12(i) (15 U.S.C. 78l(i))—

12 (A) in paragraph (1), by inserting after
13 “national banks” the following: “and Federal
14 savings associations, the accounts of which are
15 insured by the Federal Deposit Insurance Cor-
16 poration”;

17 (B) by striking “(3)” and all that follows
18 through “vested in the Office of Thrift Super-
19 vision” and inserting “and (3) with respect to
20 all other insured banks and State savings asso-
21 ciations, the accounts of which are insured by
22 the Federal Deposit Insurance Corporation, are
23 vested in the Federal Deposit Insurance Cor-
24 poration”; and

1 (C) in the second sentence, by striking
2 “the Federal Deposit Insurance Corporation,
3 and the Office of Thrift Supervision” and in-
4 serting “and the Federal Deposit Insurance
5 Corporation”;

6 (3) in section 15C(g)(1) (15 U.S.C. 78o-
7 5(g)(1)), by striking “the Director of the Office of
8 Thrift Supervision, the Federal Savings and Loan
9 Insurance Corporation,”; and

10 (4) in section 23(b)(1) (15 U.S.C. 78w(b)(1)),
11 by striking “, other than the Office of Thrift Super-
12 vision,”.

13 **SEC. 377. TITLE 18, UNITED STATES CODE.**

14 Title 18, United States Code, is amended—

15 (1) in section 212(c)(2)—

16 (A) by striking subparagraph (C); and

17 (B) by redesignating subparagraphs (D)
18 through (H) as subparagraphs (C) through (G),
19 respectively;

20 (2) in section 657, by striking “Office of Thrift
21 Supervision, the Resolution Trust Corporation,”;

22 (3) in section 981(a)(1)(D)—

23 (A) by striking “Resolution Trust Corpora-
24 tion,”; and

1 (B) by striking “or the Office of Thrift Su-
2 pervision”;

3 (4) in section 982(a)(3)—

4 (A) by striking “Resolution Trust Corpora-
5 tion,”; and

6 (B) by striking “or the Office of Thrift Su-
7 pervision”;

8 (5) in section 1006—

9 (A) by striking “Office of Thrift Super-
10 vision,”; and

11 (B) by striking “the Resolution Trust Cor-
12 poration,”;

13 (6) in section 1014—

14 (A) by striking “the Office of Thrift Su-
15 pervision”; and

16 (B) by striking “the Resolution Trust Cor-
17 poration,”; and

18 (7) in section 1032(1)—

19 (A) by striking “the Resolution Trust Cor-
20 poration,”; and

21 (B) by striking “or the Director of the Of-
22 fice of Thrift Supervision”.

23 **SEC. 378. TITLE 31, UNITED STATES CODE.**

24 Title 31, United States Code, is amended—

25 (1) in section 321—

1 (A) in subsection (c)—
2 (i) in paragraph (1), by adding “and”
3 at the end;
4 (ii) in paragraph (2), by striking “;
5 and” and inserting a period; and
6 (iii) by striking paragraph (3); and
7 (B) by striking subsection (e); and
8 (2) in section 714(a), by striking “the Office of
9 the Comptroller of the Currency, and the Office of
10 Thrift Supervision.” and inserting “and the Office of
11 the Comptroller of the Currency.”.

12 **TITLE IV—REGULATION OF AD-**
13 **VISERS TO HEDGE FUNDS**
14 **AND OTHERS**

15 **SEC. 401. SHORT TITLE.**

16 This title may be cited as the “Private Fund Invest-
17 ment Advisers Registration Act of 2010”.

18 **SEC. 402. DEFINITIONS.**

19 (a) INVESTMENT ADVISERS ACT OF 1940 DEFINI-
20 TIONS.—Section 202(a) of the Investment Advisers Act of
21 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the
22 end the following:

1 “(29) The term ‘private fund’ means an issuer
2 that would be an investment company, as defined in
3 section 3 of the Investment Company Act of 1940
4 (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(e)(7)
5 of that Act.

6 “(30) The term ‘foreign private adviser’ means
7 any investment adviser who—

8 “(A) has no place of business in the
9 United States;

10 “(B) has, in total, fewer than 15 clients
11 and investors in the United States in private
12 funds advised by the investment adviser;

13 “(C) has aggregate assets under manage-
14 ment attributable to clients in the United
15 States and investors in the United States in
16 private funds advised by the investment adviser
17 of less than \$25,000,000, or such higher
18 amount as the Commission may, by rule, deem
19 appropriate in accordance with the purposes of
20 this title; and

21 “(D) neither—

22 “(i) holds itself out generally to the
23 public in the United States as an invest-
24 ment adviser; nor

25 “(ii) acts as—

1 “(I) an investment adviser to any
2 investment company registered under
3 the Investment Company Act of 1940;
4 or

5 “(II) a company that has elected
6 to be a business development company
7 pursuant to section 54 of the Invest-
8 ment Company Act of 1940 (15
9 U.S.C. 80a-53), and has not with-
10 drawn its election.”.

11 (b) OTHER DEFINITIONS.—As used in this title, the
12 terms “investment adviser” and “private fund” have the
13 same meanings as in section 202 of the Investment Advis-
14 ers Act of 1940, as amended by this title.

15 **SEC. 403. ELIMINATION OF PRIVATE ADVISER EXEMPTION;**
16 **LIMITED EXEMPTION FOR FOREIGN PRIVATE**
17 **ADVISERS; LIMITED INTRASTATE EXEMP-**
18 **TION.**

19 Section 203(b) of the Investment Advisers Act of
20 1940 (15 U.S.C. 80b-3(b)) is amended—

21 (1) in paragraph (1), by inserting “, other than
22 an investment adviser who acts as an investment ad-
23 viser to any private fund,” before “all of whose”;

24 (2) by striking paragraph (3) and inserting the
25 following:

1 “(3) any investment adviser that is a foreign
2 private adviser;” and

3 (3) in paragraph (5), by striking “or” at the
4 end;

5 (4) in paragraph (6)—

6 (A) by striking “any investment adviser”
7 and inserting “(A) any investment adviser”;

8 (B) by redesignating subparagraphs (A)
9 and (B) as clauses (i) and (ii), respectively; and

10 (C) in clause (ii) (as so redesignated), by
11 striking the period at the end and inserting “;
12 or”; and

13 (D) by adding at the end the following:

14 “(B) any investment adviser that is registered with
15 the Commodity Futures Trading Commission as a com-
16 modity trading advisor and advises a private fund, pro-
17 vided that, if after the date of enactment of the Investor
18 Protection and Securities Reform Act of 2010, the busi-
19 ness of the advisor should become predominately the provi-
20 sion of securities-related advice, then such adviser shall
21 register with the Commission.”.

22 (5) by adding at the end the following:

23 “(7) any investment adviser, other than any en-
24 tity that has elected to be regulated or is regulated
25 as a business development company pursuant to sec-

1 tion 54 of the Investment Company Act of 1940 (15
2 U.S.C. 80a–54), who solely advises—

3 “(A) small business investment companies
4 that are licensees under the Small Business In-
5 vestment Act of 1958;

6 “(B) entities that have received from the
7 Small Business Administration notice to pro-
8 ceed to qualify for a license as a small business
9 investment company under the Small Business
10 Investment Act of 1958, which notice or license
11 has not been revoked; or

12 “(C) applicants that are affiliated with 1
13 or more licensed small business investment
14 companies described in subparagraph (A) and
15 that have applied for another license under the
16 Small Business Investment Act of 1958, which
17 application remains pending.”.

18 **SEC. 404. COLLECTION OF SYSTEMIC RISK DATA; REPORTS;**

19 **EXAMINATIONS; DISCLOSURES.**

20 Section 204 of the Investment Advisers Act of 1940
21 (15 U.S.C. 80b–4) is amended—

22 (1) by redesignating subsections (b) and (c) as
23 subsection (c) and (d), respectively; and

24 (2) by inserting after subsection (a) the fol-
25 lowing:

1 “(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

2 “(1) IN GENERAL.—The Commission may re-
3 quire any investment adviser registered under this
4 title—

5 “(A) to maintain such records of, and file
6 with the Commission such reports regarding,
7 private funds advised by the investment adviser,
8 as necessary and appropriate in the public in-
9 terest and for the protection of investors, or for
10 the assessment of systemic risk by the Finan-
11 cial Stability Oversight Council (in this sub-
12 section referred to as the ‘Council’); and

13 “(B) to provide or make available to the
14 Council those reports or records or the informa-
15 tion contained therein.

16 “(2) TREATMENT OF RECORDS.—The records
17 and reports of any private fund to which an invest-
18 ment adviser registered under this title provides in-
19 vestment advice shall be deemed to be the records
20 and reports of the investment adviser.

21 “(3) REQUIRED INFORMATION.—The records
22 and reports required to be maintained by an invest-
23 ment adviser and subject to inspection by the Com-
24 mission under this subsection shall include, for each

1 private fund advised by the investment adviser, a de-
2 scription of—

3 “(A) the amount of assets under manage-
4 ment and use of leverage, including off-balance-
5 sheet leverage;

6 “(B) counterparty credit risk exposure;

7 “(C) trading and investment positions;

8 “(D) valuation policies and practices of the
9 fund;

10 “(E) types of assets held;

11 “(F) side arrangements or side letters,
12 whereby certain investors in a fund obtain more
13 favorable rights or entitlements than other in-
14 vestors;

15 “(G) trading practices; and

16 “(H) such other information as the Com-
17 mission, in consultation with the Council, deter-
18 mines is necessary and appropriate in the pub-
19 lic interest and for the protection of investors
20 or for the assessment of systemic risk, which
21 may include the establishment of different re-
22 porting requirements for different classes of
23 fund advisers, based on the type or size of pri-
24 vate fund being advised.

1 “(4) MAINTENANCE OF RECORDS.—An invest-
2 ment adviser registered under this title shall main-
3 tain such records of private funds advised by the in-
4 vestment adviser for such period or periods as the
5 Commission, by rule, may prescribe as necessary and
6 appropriate in the public interest and for the protec-
7 tion of investors, or for the assessment of systemic
8 risk.

9 “(5) FILING OF RECORDS.—The Commission
10 shall issue rules requiring each investment adviser to
11 a private fund to file reports containing such infor-
12 mation as the Commission deems necessary and ap-
13 propriate in the public interest and for the protec-
14 tion of investors or for the assessment of systemic
15 risk.

16 “(6) EXAMINATION OF RECORDS.—

17 “(A) PERIODIC AND SPECIAL EXAMINA-
18 TIONS.—The Commission—

19 “(i) shall conduct periodic inspections
20 of the records of private funds maintained
21 by an investment adviser registered under
22 this title in accordance with a schedule es-
23 tablished by the Commission; and

24 “(ii) may conduct at any time and
25 from time to time such additional, special,

1 and other examinations as the Commission
2 may prescribe as necessary and appro-
3 priate in the public interest and for the
4 protection of investors, or for the assess-
5 ment of systemic risk.

6 “(B) AVAILABILITY OF RECORDS.—An in-
7 vestment adviser registered under this title shall
8 make available to the Commission any copies or
9 extracts from such records as may be prepared
10 without undue effort, expense, or delay, as the
11 Commission or its representatives may reason-
12 ably request.

13 “(7) INFORMATION SHARING.—

14 “(A) IN GENERAL.—The Commission shall
15 make available to the Council copies of all re-
16 ports, documents, records, and information filed
17 with or provided to the Commission by an in-
18 vestment adviser under this subsection as the
19 Council may consider necessary for the purpose
20 of assessing the systemic risk posed by a pri-
21 vate fund.

22 “(B) CONFIDENTIALITY.—The Council
23 shall maintain the confidentiality of information
24 received under this paragraph in all such re-
25 ports, documents, records, and information, in

1 a manner consistent with the level of confiden-
2 tiality established for the Commission pursuant
3 to paragraph (8). The Council shall be exempt
4 from section 552 of title 5, United States Code,
5 with respect to any information in any report,
6 document, record, or information made avail-
7 able, to the Council under this subsection.”.

8 “(8) COMMISSION CONFIDENTIALITY OF RE-
9 PORTS.—Notwithstanding any other provision of
10 law, the Commission may not be compelled to dis-
11 close any report or information contained therein re-
12 quired to be filed with the Commission under this
13 subsection, except that nothing in this subsection
14 authorizes the Commission—

15 “(A) to withhold information from Con-
16 gress, upon an agreement of confidentiality; or

17 “(B) prevent the Commission from com-
18 plying with—

19 “(i) a request for information from
20 any other Federal department or agency or
21 any self-regulatory organization requesting
22 the report or information for purposes
23 within the scope of its jurisdiction; or

1 “(ii) an order of a court of the United
2 States in an action brought by the United
3 States or the Commission.

4 “(9) OTHER RECIPIENTS CONFIDENTIALITY.—
5 Any department, agency, or self-regulatory organiza-
6 tion that receives reports or information from the
7 Commission under this subsection shall maintain the
8 confidentiality of such reports, documents, records,
9 and information in a manner consistent with the
10 level of confidentiality established for the Commis-
11 sion under paragraph (8).

12 “(10) PUBLIC INFORMATION EXCEPTION.—
13 “(A) IN GENERAL.—The Commission, the
14 Council, and any other department, agency, or
15 self-regulatory organization that receives infor-
16 mation, reports, documents, records, or infor-
17 mation from the Commission under this sub-
18 section, shall be exempt from the provisions of
19 section 552 of title 5, United States Code, with
20 respect to any such report, document, record, or
21 information. Any proprietary information of an
22 investment adviser ascertained by the Commis-
23 sion from any report required to be filed with
24 the Commission pursuant to this subsection
25 shall be subject to the same limitations on pub-

1 lic disclosure as any facts ascertained during an
2 examination, as provided by section 210(b) of
3 this title.

4 “(B) PROPRIETARY INFORMATION.—For
5 purposes of this paragraph, proprietary infor-
6 mation includes sensitive, non-public informa-
7 tion regarding—

8 “(i) the investment or trading strate-
9 gies of the investment adviser;

10 “(ii) analytical or research methodolo-
11 gies;

12 “(iii) trading data;

13 “(iv) computer hardware or software
14 containing intellectual property; and

15 “(v) any additional information that
16 the Commission determines to be propri-
17 etary.

18 “(11) ANNUAL REPORT TO CONGRESS.—The
19 Commission shall report annually to Congress on
20 how the Commission has used the data collected
21 pursuant to this subsection to monitor the markets
22 for the protection of investors and the integrity of
23 the markets.”.

1 **SEC. 405. DISCLOSURE PROVISION AMENDMENT.**

2 Section 210(c) of the Investment Advisers Act of
3 1940 (15 U.S.C. 80b–10(c)) is amended by inserting be-
4 fore the period at the end the following: “or for purposes
5 of assessment of potential systemic risk”.

6 **SEC. 406. 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) in subsection (a), by inserting before the pe-
10 riod at the end of the first sentence the following:
11 “, including rules and regulations defining technical,
12 trade, and other terms used in this title, except that
13 the Commission may not define the term ‘client’ for
14 purposes of paragraphs (1) and (2) of section 206
15 to include an investor in a private fund managed by
16 an investment adviser, if such private fund has en-
17 tered into an advisory contract with such adviser”;
18 and

19 (2) by adding at the end the following:

20 “(e) DISCLOSURE RULES ON PRIVATE FUNDS.—The
21 Commission and the Commodity Futures Trading Com-
22 mission shall, after consultation with the Council but not
23 later than 12 months after the date of enactment of the
24 Private Fund Investment Advisers Registration Act of
25 2010, jointly promulgate rules to establish the form and
26 content of the reports required to be filed with the Com-

1 mission under subsection 204(b) and with the Commodity
2 Futures Trading Commission by investment advisers that
3 are registered both under this title and the Commodity
4 Exchange Act (7 U.S.C. 1a et seq.).”.

5 **SEC. 407. EXEMPTION OF AND REPORTING BY VENTURE**
6 **CAPITAL FUND ADVISERS.**

7 Section 203 of the Investment Advisers Act of 1940
8 (15 U.S.C. 80b–3) is amended by adding at the end the
9 following:

10 “(1) EXEMPTION OF VENTURE CAPITAL FUND AD-
11 VISERS.—No investment adviser that acts as an invest-
12 ment adviser solely to 1 or more venture capital funds
13 shall be subject to the registration requirements of this
14 title with respect to the provision of investment advice re-
15 lating to a venture capital fund. Not later than 1 year
16 after the date of enactment of this subsection, the Com-
17 mission shall issue final rules to define the term ‘venture
18 capital fund’ for purposes of this subsection. The Commis-
19 sion shall require such advisers to maintain such records
20 and provide to the Commission such annual or other re-
21 ports as the Commission determines necessary or appro-
22 priate in the public interest or for the protection of inves-
23 tors.”.

1 **SEC. 408. 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) is amended by adding at the end the
5 following:

6 “(m) EXEMPTION OF AND REPORTING BY CERTAIN
7 PRIVATE FUND ADVISERS.—

8 “(1) IN GENERAL.—The Commission shall pro-
9 vide an exemption from the registration require-
10 ments under this section to any investment adviser
11 of private funds, if each of such investment adviser
12 acts solely as an adviser to private funds and has as-
13 sets under management in the United States of less
14 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. 409. FAMILY OFFICES.**

7 (a) IN GENERAL.—Section 202(a)(11) of the Invest-
8 ment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is
9 amended by striking “or (G)” and inserting the following:
10 “; (G) any family office, as defined by rule, regulation,
11 or order of the Commission, in accordance with the pur-
12 poses of this title; or (H)”.

13 (b) RULEMAKING.—The rules, regulations, or orders
14 issued by the Commission pursuant to section
15 202(a)(11)(G) of the Investment Advisers Act of 1940, as
16 added by this section, regarding the definition of the term
17 “family office” shall provide for an exemption that—

18 (1) is consistent with the previous exemptive
19 policy of the Commission, as reflected in exemptive
20 orders for family offices in effect on the date of en-
21 actment of this Act, and the grandfathering provi-
22 sions in paragraph (3);

23 (2) recognizes the range of organizational, man-
24 agement, and employment structures and arrange-
25 ments employed by family offices; and

1 (3) does not exclude any person who was not
2 registered or required to be registered under the In-
3 vestment Advisers Act on January 1, 2010 from the
4 definition of the term “family office”, solely because
5 such person provides investment advice to, and was
6 engaged before January 1, 2010 in providing invest-
7 ment advice to—

8 (A) natural persons who, at the time of
9 their applicable investment, are officers, direc-
10 tors, or employees of the family office who—

11 (i) have invested with the family office
12 before January 1, 2010; and

13 (ii) are accredited investors, as de-
14 fined in Regulation D of the Commission
15 (or any successor thereto) under the Secu-
16 rities Act of 1933, or, as the Commission
17 may prescribe by rule, the successors-in-in-
18 terest thereto;

19 (B) any company owned exclusively and
20 controlled by members of the family of the fam-
21 ily office, or as the Commission may prescribe
22 by rule;

23 (C) any investment adviser registered
24 under the Investment Adviser Act of 1940 that
25 provides investment advice to the family office

1 and who identifies investment opportunities to
2 the family office, and invests in such trans-
3 actions on substantially the same terms as the
4 family office invests, but does not invest in
5 other funds advised by the family office, and
6 whose assets as to which the family office di-
7 rectly or indirectly provides investment advice
8 represent, in the aggregate, not more than 5
9 percent of the value of the total assets as to
10 which the family office provides investment ad-
11 vice.

12 (c) **ANTIFRAUD AUTHORITY.**—A family office that
13 would not be a family office, but for subsection (b)(3),
14 shall be deemed to be an investment adviser for the pur-
15 poses of paragraphs (1), (2) and (4) of section 206 of the
16 Investment Advisers Act of 1940.

17 **SEC. 410. STATE AND FEDERAL RESPONSIBILITIES; ASSET**
18 **THRESHOLD FOR FEDERAL REGISTRATION**
19 **OF INVESTMENT ADVISERS.**

20 Section 203A(a) of the of the Investment Advisers
21 Act of 1940 (15 U.S.C. 80b–3a(a)) is amended—

22 (1) by redesignating paragraph (2) as para-
23 graph (3); and

24 (2) by inserting after paragraph (1) the fol-
25 lowing:

1 “(2) TREATMENT OF MID-SIZED INVESTMENT
2 ADVISERS.—

3 “(A) IN GENERAL.—No investment adviser
4 described in subparagraph (B) shall register
5 under section 203, unless the investment ad-
6 viser is an adviser to an investment company
7 registered under the Investment Company Act
8 of 1940, or a company which has elected to be
9 a business development company pursuant to
10 section 54 of the Investment Company Act of
11 1940, and has not withdrawn the election, ex-
12 cept that, if by effect of this paragraph an in-
13 vestment adviser would be required to register
14 with 15 or more States, then the adviser may
15 register under section 203.

16 “(B) COVERED PERSONS.—An investment
17 adviser described in this subparagraph is an in-
18 vestment adviser that—

19 “(i) is required to be registered as an
20 investment adviser with the securities com-
21 missioner (or any agency or office per-
22 forming like functions) of the State in
23 which it maintains its principal office and
24 place of business and, if registered, would
25 be subject to examination as an investment

1 adviser by any such commissioner, agency,
2 or office; and

3 “(ii) has assets under management
4 between—

5 “(I) the amount specified under
6 subparagraph (A) of paragraph (1),
7 as such amount may have been ad-
8 justed by the Commission pursuant to
9 that subparagraph; and

10 “(II) \$100,000,000, or such
11 higher amount as the Commission
12 may, by rule, deem appropriate in ac-
13 cordance with the purposes of this
14 title.”.

15 **SEC. 411. CUSTODY OF CLIENT ASSETS.**

16 The Investment Advisers Act of 1940 (15 U.S.C.
17 80b–1 et seq.) is amended by adding at the end the fol-
18 lowing new section:

19 **“SEC. 223. CUSTODY OF CLIENT ACCOUNTS.**

20 “An investment adviser registered under this title
21 shall take such steps to safeguard client assets over which
22 such adviser has custody, including, without limitation,
23 verification of such assets by an independent public ac-
24 countant, as the Commission may, by rule, prescribe.”.

1 **SEC. 412. COMPTROLLER GENERAL STUDY ON CUSTODY**
2 **RULE COSTS.**

3 The Comptroller General of the United States shall—

4 (1) conduct a study of—

5 (A) the compliance costs associated with
6 the current Securities and Exchange Commis-
7 sion rules 204–2 (17 C.F.R. Parts 275.204–2)
8 and rule 206(4)–2 (17 C.F.R. 275.206(4)–2)
9 under the Investment Advisers Act of 1940 re-
10 garding custody of funds or securities of clients
11 by investment advisers; and

12 (B) the additional costs if subsection
13 (b)(6) of rule 206(4)–2 (17 C.F.R. 275.206(4)–
14 2(b)(6)) relating to operational independence
15 were eliminated; and

16 (2) submit a report to the Committee on Bank-
17 ing, Housing, and Urban Affairs of the Senate and
18 the Committee on Financial Services of the House of
19 Representatives on the results of such study, not
20 later than 3 years after the date of enactment of
21 this Act.

22 **SEC. 413. ADJUSTING THE ACCREDITED INVESTOR STAND-**
23 **ARD.**

24 (a) IN GENERAL.—The Commission shall adjust any
25 net worth standard for an accredited investor, as set forth
26 in the rules of the Commission under the Securities Act

1 of 1933, so that the individual net worth of any natural
2 person, or joint net worth with the spouse of that person,
3 at the time of purchase, is more than \$1,000,000 (as such
4 amount is adjusted periodically by rule of the Commis-
5 sion), excluding the value of the primary residence of such
6 natural person, except that during the 4-year period that
7 begins on the date of enactment of this Act, any net worth
8 standard shall be \$1,000,000, excluding the value of the
9 primary residence of such natural person.

10 (b) REVIEW AND ADJUSTMENT.—

11 (1) INITIAL REVIEW AND ADJUSTMENT.—

12 (A) INITIAL REVIEW.—The Commission
13 may undertake a review of the definition of the
14 term “accredited investor”, as such term ap-
15 plies to natural persons, to determine whether
16 the requirements of the definition, excluding the
17 requirement relating to the net worth standard
18 described in subsection (a), should be adjusted
19 or modified for the protection of investors, in
20 the public interest, and in light of the economy.

21 (B) ADJUSTMENT OR MODIFICATION.—

22 Upon completion of a review under subpara-
23 graph (A), the Commission may, by notice and
24 comment rulemaking, make such adjustments
25 to the definition of the term “accredited inves-

1 tor”, excluding adjusting or modifying the re-
2 quirement relating to the net worth standard
3 described in subsection (a), as such term ap-
4 plies to natural persons, as the Commission
5 may deem appropriate for the protection of in-
6 vestors, in the public interest, and in light of
7 the economy.

8 (2) SUBSEQUENT REVIEWS AND ADJUST-
9 MENT.—

10 (A) SUBSEQUENT REVIEWS.—Not earlier
11 than 4 years after the date of enactment of this
12 Act, and not less frequently than once every 4
13 years thereafter, the Commission shall under-
14 take a review of the definition, in its entirety,
15 of the term “accredited investor”, as defined in
16 section 230.215 of title 17, Code of Federal
17 Regulations, or any successor thereto, as such
18 term applies to natural persons, to determine
19 whether the requirements of the definition
20 should be adjusted or modified for the protec-
21 tion of investors, in the public interest, and in
22 light of the economy.

23 (B) ADJUSTMENT OR MODIFICATION.—
24 Upon completion of a review under subpara-
25 graph (A), the Commission may, by notice and

1 comment rulemaking, make such adjustments
2 to the definition of the term “accredited inves-
3 tor”, as defined in section 230.215 of title 17,
4 Code of Federal Regulations, or any successor
5 thereto, as such term applies to natural per-
6 sons, as the Commission may deem appropriate
7 for the protection of investors, in the public in-
8 terest, and in light of the economy.

9 **SEC. 414. RULE OF CONSTRUCTION RELATING TO THE**
10 **COMMODITIES EXCHANGE ACT.**

11 The Investment Advisers Act of 1940 (15 U.S.C.
12 80b–1 et seq.) is further amended by adding at the end
13 the following new section:

14 **“SEC. 224. RULE OF CONSTRUCTION RELATING TO THE**
15 **COMMODITIES EXCHANGE ACT.**

16 “Nothing in this title shall relieve any person of any
17 obligation or duty, or affect the availability of any right
18 or remedy available to the Commodity Futures Trading
19 Commission or any private party, arising under the Com-
20 modity Exchange Act (7 U.S.C. 1 et seq.) governing com-
21 modity pools, commodity pool operators, or commodity
22 trading advisors.”.

1 **SEC. 415. GAO STUDY AND REPORT ON ACCREDITED INVES-**
2 **TORS.**

3 The Comptroller General of the United States shall
4 conduct a study on the appropriate criteria for deter-
5 mining the financial thresholds or other criteria needed
6 to qualify for accredited investor status and eligibility to
7 invest in private funds, and shall submit a report to the
8 Committee on Banking, Housing, and Urban Affairs of
9 the Senate and the Committee on Financial Services of
10 the House of Representatives on the results of such study
11 not later than 3 years after the date of enactment of this
12 Act.

13 **SEC. 416. GAO STUDY ON SELF-REGULATORY ORGANIZA-**
14 **TION FOR PRIVATE FUNDS.**

15 The Comptroller General of the United States shall—

16 (1) conduct a study of the feasibility of forming
17 a self-regulatory organization to oversee private
18 funds; and

19 (2) submit a report to the Committee on Bank-
20 ing, Housing, and Urban Affairs of the Senate and
21 the Committee on Financial Services of the House of
22 Representatives on the results of such study, not
23 later than 1 year after the date of enactment of this
24 Act.

1 **SEC. 417. COMMISSION STUDY AND REPORT ON SHORT**
2 **SELLING.**

3 (a) STUDIES.—The Division of Risk, Strategy, and
4 Financial Innovation of the Commission shall conduct—

5 (1) a study, taking into account current schol-
6 arship, on the state of short selling on national secu-
7 rities exchanges and in the over-the-counter markets,
8 with particular attention to the impact of recent rule
9 changes and the incidence of—

10 (A) the failure to deliver shares sold short;

11 or

12 (B) delivery of shares on the fourth day
13 following the short sale transaction; and

14 (2) a study of—

15 (A) the feasibility, benefits, and costs of
16 requiring reporting publicly, in real time short
17 sale positions of publicly listed securities, or, in
18 the alternative, reporting such short positions
19 in real time only to the Commission and the Fi-
20 nancial Industry Regulatory Authority; and

21 (B) the feasibility, benefits, and costs of
22 conducting a voluntary pilot program in which
23 public companies will agree to have all trades of
24 their shares marked “short”, “market maker
25 short”, “buy”, “buy-to-cover”, or “long”, and

1 reported in real time through the Consolidated
2 Tape.

3 (b) REPORTS.—The Commission shall submit a re-
4 port to the Committee on Banking, Housing, and Urban
5 Affairs of the Senate and the Committee on Financial
6 Services of the House of Representatives—

7 (1) on the results of the study required under
8 subsection (a)(1), including recommendations for
9 market improvements, not later than 2 years after
10 the date of enactment of this Act; and

11 (2) on the results of the study required under
12 subsection (a)(2), not later than 1 year after the
13 date of enactment of this Act.

14 **SEC. 418. QUALIFIED CLIENT STANDARD.**

15 Section 205(e) of the Investment Advisers Act of
16 1940 (15 U.S.C. 80b–5(e)) is amended by adding at the
17 end the following: “With respect to any factor used in any
18 rule or regulation by the Commission in making a deter-
19 mination under this subsection, if the Commission uses
20 a dollar amount test in connection with such factor, such
21 as a net asset threshold, the Commission shall, by order,
22 not later than 1 year after the date of enactment of the
23 Private Fund Investment Advisers Registration Act of
24 2010, and every 5 years thereafter, adjust for the effects
25 of inflation on such test. Any such adjustment that is not

1 a multiple of \$100,000 shall be rounded to the nearest
2 multiple of \$100,000.”.

3 **SEC. 419. TRANSITION PERIOD.**

4 Except as otherwise provided in this title, this title
5 and the amendments made by this title shall become effec-
6 tive 1 year after the date of enactment of this Act, except
7 that any investment adviser may, at the discretion of the
8 investment adviser, register with the Commission under
9 the Investment Advisers Act of 1940 during that 1-year
10 period, subject to the rules of the Commission.

11 **TITLE V—INSURANCE**
12 **Subtitle A—Federal Insurance**
13 **Office**

14 **SEC. 501. SHORT TITLE.**

15 This subtitle may be cited as the “Federal Insurance
16 Office Act of 2010”.

17 **SEC. 502. FEDERAL INSURANCE OFFICE.**

18 (a) ESTABLISHMENT OF OFFICE.—Subchapter I of
19 chapter 3 of subtitle I of title 31, United States Code,
20 is amended—

21 (1) by redesignating section 312 as section 315;

22 (2) by redesignating section 313 as section 312;

23 and

24 (3) by inserting after section 312 (as so redес-
25 igned) the following new sections:

1 **“SEC. 313. FEDERAL INSURANCE OFFICE.**

2 “(a) ESTABLISHMENT.—There is established within
3 the Department of the Treasury the Federal Insurance
4 Office.

5 “(b) LEADERSHIP.—The Office shall be headed by a
6 Director, who shall be appointed by the Secretary of the
7 Treasury. The position of Director shall be a career re-
8 served position in the Senior Executive Service, as that
9 position is defined under section 3132 of title 5, United
10 States Code.

11 “(c) FUNCTIONS.—

12 “(1) AUTHORITY PURSUANT TO DIRECTION OF
13 SECRETARY.—The Office, pursuant to the direction
14 of the Secretary, shall have the authority—

15 “(A) to monitor all aspects of the insur-
16 ance industry, including identifying issues or
17 gaps in the regulation of insurers that could
18 contribute to a systemic crisis in the insurance
19 industry or the United States financial system;

20 “(B) to monitor the extent to which tradi-
21 tionally underserved communities and con-
22 sumers, minorities (as such term is defined in
23 section 1204(c) of the Financial Institutions
24 Reform, Recovery, and Enforcement Act of
25 1989 (12 U.S.C. 1811 note)), and low- and
26 moderate-income persons have access to afford-

1 able insurance products regarding all lines of
2 insurance, except health insurance;

3 “(C) to recommend to the Financial Sta-
4 bility Oversight Council that it designate an in-
5 surer, including the affiliates of such insurer, as
6 an entity subject to regulation as a nonbank fi-
7 nancial company supervised by the Board of
8 Governors pursuant to title I of the Restoring
9 American Financial Stability Act of 2010;

10 “(D) to assist the Secretary in admin-
11 istering the Terrorism Insurance Program es-
12 tablished in the Department of the Treasury
13 under the Terrorism Risk Insurance Act of
14 2002 (15 U.S.C. 6701 note);

15 “(E) to coordinate Federal efforts and de-
16 velop Federal policy on prudential aspects of
17 international insurance matters, including rep-
18 resenting the United States, as appropriate, in
19 the International Association of Insurance Su-
20 pervisors (or a successor entity) and assisting
21 the Secretary in negotiating covered agreements
22 (as such term is defined in subsection (r));

23 “(F) to determine, in accordance with sub-
24 section (f), whether State insurance measures
25 are preempted by covered agreements;

1 “(G) to consult with the States (including
2 State insurance regulators) regarding insurance
3 matters of national importance and prudential
4 insurance matters of international importance;
5 and

6 “(H) to perform such other related duties
7 and authorities as may be assigned to the Of-
8 fice by the Secretary.

9 “(2) ADVISORY FUNCTIONS.—The Office shall
10 advise the Secretary on major domestic and pruden-
11 tial international insurance policy issues.

12 “(3) ADVISORY CAPACITY ON COUNCIL.—The
13 Director shall serve in an advisory capacity on the
14 Financial Stability Oversight Council established
15 under the Financial Stability Act of 2010.

16 “(d) SCOPE.—The authority of the Office shall ex-
17 tend to all lines of insurance except—

18 “(1) health insurance, as determined by the
19 Secretary in coordination with the Secretary of
20 Health and Human Services based on section 2791
21 of the Public Health Service Act (42 U.S.C. 300gg–
22 91);

23 “(2) long-term care insurance, except long-term
24 care insurance that is included with life or annuity
25 insurance components, as determined by the Sec-

1 retary in coordination with the Secretary of Health
2 and Human Services, and in the case of long-term
3 care insurance that is included with such compo-
4 nents, the Secretary shall coordinate with the Sec-
5 retary of Health and Human Services in performing
6 the functions of the Office; and

7 “(3) crop insurance, as established by the Fed-
8 eral Crop Insurance Act (7 U.S.C. 1501 et seq.).

9 “(e) GATHERING OF INFORMATION.—

10 “(1) IN GENERAL.—In carrying out the func-
11 tions required under subsection (c), the Office
12 may—

13 “(A) receive and collect data and informa-
14 tion on and from the insurance industry and in-
15 surers;

16 “(B) enter into information-sharing agree-
17 ments;

18 “(C) analyze and disseminate data and in-
19 formation; and

20 “(D) issue reports regarding all lines of in-
21 surance except health insurance.

22 “(2) COLLECTION OF INFORMATION FROM IN-
23 SURERS AND AFFILIATES.—

24 “(A) IN GENERAL.—Except as provided in
25 paragraph (3), the Office may require an in-

1 surer, or any affiliate of an insurer, to submit
2 such data or information as the Office may rea-
3 sonably require in carrying out the functions
4 described under subsection (c).

5 “(B) RULE OF CONSTRUCTION.—Notwith-
6 standing any other provision of this section, for
7 purposes of subparagraph (A), the term ‘in-
8 surer’ means any entity that writes insurance
9 or reinsures risks and issues contracts or poli-
10 cies in 1 or more States.

11 “(3) EXCEPTION FOR SMALL INSURERS.—Para-
12 graph (2) shall not apply with respect to any insurer
13 or affiliate thereof that meets a minimum size
14 threshold that the Office may establish, whether by
15 order or rule.

16 “(4) ADVANCE COORDINATION.—Before col-
17 lecting any data or information under paragraph (2)
18 from an insurer, or affiliate of an insurer, the Office
19 shall coordinate with each relevant Federal agency
20 and State insurance regulator (or other relevant
21 Federal or State regulatory agency, if any, in the
22 case of an affiliate of an insurer) and any publicly
23 available sources to determine if the information to
24 be collected is available from, and may be obtained
25 in a timely manner by, such Federal agency or State

1 insurance regulator, individually or collectively, other
2 regulatory agency, or publicly available sources. If
3 the Director determines that such data or informa-
4 tion is available, and may be obtained in a timely
5 manner, from such an agency, regulator, regulatory
6 agency, or source, the Director shall obtain the data
7 or information from such agency, regulator, regu-
8 latory agency, or source. If the Director determines
9 that such data or information is not so available, the
10 Director may collect such data or information from
11 an insurer (or affiliate) only if the Director complies
12 with the requirements of subchapter I of chapter 35
13 of title 44, United States Code (relating to Federal
14 information policy; commonly known as the Paper-
15 work Reduction Act), in collecting such data or in-
16 formation. Notwithstanding any other provision of
17 law, each such relevant Federal agency and State in-
18 surance regulator or other Federal or State regu-
19 latory agency is authorized to provide to the Office
20 such data or information.

21 “(5) CONFIDENTIALITY.—

22 “(A) RETENTION OF PRIVILEGE.—The
23 submission of any nonpublicly available data
24 and information to the Office under this sub-
25 section shall not constitute a waiver of, or oth-

1 erwise affect, any privilege arising under Fed-
2 eral or State law (including the rules of any
3 Federal or State court) to which the data or in-
4 formation is otherwise subject.

5 “(B) CONTINUED APPLICATION OF PRIOR
6 CONFIDENTIALITY AGREEMENTS.—Any require-
7 ment under Federal or State law to the extent
8 otherwise applicable, or any requirement pursu-
9 ant to a written agreement in effect between
10 the original source of any nonpublicly available
11 data or information and the source of such data
12 or information to the Office, regarding the pri-
13 vacy or confidentiality of any data or informa-
14 tion in the possession of the source to the Of-
15 fice, shall continue to apply to such data or in-
16 formation after the data or information has
17 been provided pursuant to this subsection to the
18 Office.

19 “(C) INFORMATION-SHARING AGREE-
20 MENT.—Any data or information obtained by
21 the Office may be made available to State in-
22 surance regulators, individually or collectively,
23 through an information-sharing agreement
24 that—

1 “(i) shall comply with applicable Fed-
2 eral law; and

3 “(ii) shall not constitute a waiver of,
4 or otherwise affect, any privilege under
5 Federal or State law (including the rules
6 of any Federal or State court) to which the
7 data or information is otherwise subject.

8 “(D) AGENCY DISCLOSURE REQUIRE-
9 MENTS.—Section 552 of title 5, United States
10 Code, shall apply to any data or information
11 submitted to the Office by an insurer or an af-
12 filiate of an insurer.

13 “(6) SUBPOENAS AND ENFORCEMENT.—The
14 Director shall have the power to require by subpoena
15 the production of the data or information requested
16 under paragraph (2), but only upon a written find-
17 ing by the Director that such data or information is
18 required to carry out the functions described under
19 subsection (c) and that the Office has coordinated
20 with such regulator or agency as required under
21 paragraph (4). Subpoenas shall bear the signature of
22 the Director and shall be served by any person or
23 class of persons designated by the Director for that
24 purpose. In the case of contumacy or failure to obey
25 a subpoena, the subpoena shall be enforceable by

1 order of any appropriate district court of the United
2 States. Any failure to obey the order of the court
3 may be punished by the court as a contempt of
4 court.

5 “(f) PREEMPTION OF STATE INSURANCE MEAS-
6 URES.—

7 “(1) STANDARD.—A State insurance measure
8 shall be preempted pursuant to this section or sec-
9 tion 314 if, and only to the extent that the Director
10 determines, in accordance with this subsection, that
11 the measure—

12 “(A) results in less favorable treatment of
13 a non-United States insurer domiciled in a for-
14 eign jurisdiction that is subject to a covered
15 agreement than a United States insurer domi-
16 ciled, licensed, or otherwise admitted in that
17 State; and

18 “(B) is inconsistent with a covered agree-
19 ment.

20 “(2) DETERMINATION.—

21 “(A) NOTICE OF POTENTIAL INCONSIST-
22 ENCY.—Before making any determination
23 under paragraph (1), the Director shall—

1 “(i) notify and consult with the appro-
2 priate State regarding any potential incon-
3 sistency or preemption;

4 “(ii) notify and consult with the
5 United States Trade Representative re-
6 garding any potential inconsistency or pre-
7 emption;

8 “(iii) cause to be published in the
9 Federal Register notice of the issue re-
10 garding the potential inconsistency or pre-
11 emption, including a description of each
12 State insurance measure at issue and any
13 applicable covered agreement;

14 “(iv) provide interested parties a rea-
15 sonable opportunity to submit written com-
16 ments to the Office; and

17 “(v) consider any comments received.

18 “(B) SCOPE OF REVIEW.—For purposes of
19 this subsection, any determination of the Direc-
20 tor regarding State insurance measures, and
21 any preemption under paragraph (1) as a result
22 of such determination, shall be limited to the
23 subject matter contained within the covered
24 agreement involved and shall achieve a level of
25 protection for insurance or reinsurance con-

1 sumers that is substantially equivalent to the
2 level of protection achieved under State insur-
3 ance or reinsurance regulation.

4 “(C) NOTICE OF DETERMINATION OF IN-
5 CONSISTENCY.—Upon making any determina-
6 tion under paragraph (1), the Director shall—

7 “(i) notify the appropriate State of
8 the determination and the extent of the in-
9 consistency;

10 “(ii) establish a reasonable period of
11 time, which shall not be less than 30 days,
12 before the determination shall become ef-
13 fective; and

14 “(iii) notify the Committees on Finan-
15 cial Services and Ways and Means of the
16 House of Representatives and the Commit-
17 tees on Banking, Housing, and Urban Af-
18 fairs and Finance of the Senate.

19 “(3) NOTICE OF EFFECTIVENESS.—Upon the
20 conclusion of the period referred to in paragraph
21 (2)(C)(ii), if the basis for such determination still
22 exists, the determination shall become effective and
23 the Director shall—

1 “(A) cause to be published a notice in the
2 Federal Register that the preemption has be-
3 come effective, as well as the effective date; and

4 “(B) notify the appropriate State.

5 “(4) LIMITATION.—No State may enforce a
6 State insurance measure to the extent that such
7 measure has been preempted under this subsection.

8 “(g) APPLICABILITY OF ADMINISTRATIVE PROCE-
9 DURES ACT.—Determinations of inconsistency made pur-
10 suant to subsection (f)(2) shall be subject to the applicable
11 provisions of subchapter II of chapter 5 of title 5, United
12 States Code (relating to administrative procedure), and
13 chapter 7 of such title (relating to judicial review), except
14 that in any action for judicial review of a determination
15 of inconsistency, the court shall determine the matter de
16 novo.

17 “(h) REGULATIONS, POLICIES, AND PROCEDURES.—
18 The Secretary may issue orders, regulations, policies, and
19 procedures to implement this section.

20 “(i) CONSULTATION.—The Director shall consult
21 with State insurance regulators, individually or collec-
22 tively, to the extent the Director determines appropriate,
23 in carrying out the functions of the Office.

24 “(j) SAVINGS PROVISIONS.—Nothing in this section
25 shall—

1 “(1) preempt—

2 “(A) any State insurance measure that
3 governs any insurer’s rates, premiums, under-
4 writing, or sales practices;

5 “(B) any State coverage requirements for
6 insurance;

7 “(C) the application of the antitrust laws
8 of any State to the business of insurance; or

9 “(D) any State insurance measure gov-
10 erning the capital or solvency of an insurer, ex-
11 cept to the extent that such State insurance
12 measure results in less favorable treatment of a
13 non-United State insurer than a United States
14 insurer;

15 “(2) be construed to alter, amend, or limit any
16 provision of the Consumer Financial Protection
17 Agency Act of 2010; or

18 “(3) affect the preemption of any State insur-
19 ance measure otherwise inconsistent with and pre-
20 empted by Federal law.

21 “(k) RETENTION OF EXISTING STATE REGULATORY
22 AUTHORITY.—Nothing in this section or section 314 shall
23 be construed to establish or provide the Office or the De-
24 partment of the Treasury with general supervisory or reg-
25 ulatory authority over the business of insurance.

1 “(l) RETENTION OF AUTHORITY OF FEDERAL FI-
2 NANCIAL REGULATORY AGENCIES.—Nothing in this sec-
3 tion or section 314 shall be construed to limit the author-
4 ity of any Federal financial regulatory agency, including
5 the authority to develop and coordinate policy, negotiate,
6 and enter into agreements with foreign governments, au-
7 thorities, regulators, and multinational regulatory commit-
8 tees and to preempt State measures to affect uniformity
9 with international regulatory agreements.

10 “(m) RETENTION OF AUTHORITY OF UNITED
11 STATES TRADE REPRESENTATIVE.—Nothing in this sec-
12 tion or section 314 shall be construed to affect the author-
13 ity of the Office of the United States Trade Representative
14 pursuant to section 141 of the Trade Act of 1974 (19
15 U.S.C. 2171) or any other provision of law, including au-
16 thority over the development and coordination of United
17 States international trade policy and the administration
18 of the United States trade agreements program.

19 “(n) ANNUAL REPORTS TO CONGRESS.—

20 “(1) SECTION 313(f) REPORTS.—Beginning
21 September 30, 2011, the Director shall submit a re-
22 port on or before September 30 of each calendar
23 year to the President and to the Committees on Fi-
24 nancial Services and Ways and Means of the House
25 of Representatives and the Committees on Banking,

1 Housing, and Urban Affairs and Finance of the
2 Senate on any actions taken by the Office pursuant
3 to subsection (f) (regarding preemption of incon-
4 sistent State insurance measures).

5 “(2) INSURANCE INDUSTRY.—Beginning Sep-
6 tember 30, 2011, the Director shall submit a report
7 on or before September 30 of each calendar year to
8 the President and to the Committee on Financial
9 Services of the House of Representatives and the
10 Committee on Banking, Housing, and Urban Affairs
11 of the Senate on the insurance industry and any
12 other information as deemed relevant by the Direc-
13 tor or requested by such Committees.

14 “(o) REPORTS ON U.S. AND GLOBAL REINSURANCE
15 MARKET.—The Director shall submit to the Committee
16 on Financial Services of the House of Representatives and
17 the Committee on Banking, Housing, and Urban Affairs
18 of the Senate—

19 “(1) a report received not later than September
20 30, 2012, describing the breadth and scope of the
21 global reinsurance market and the critical role such
22 market plays in supporting insurance in the United
23 States; and

24 “(2) a report received not later than January 1,
25 2013, and updated not later than January 1, 2015,

1 describing the impact of part II of the Nonadmitted
2 and Reinsurance Reform Act of 2010 on the ability
3 of State regulators to access reinsurance information
4 for regulated companies in their jurisdictions.

5 “(p) STUDY AND REPORT ON REGULATION OF IN-
6 SURANCE.—

7 “(1) IN GENERAL.—Not later than 18 months
8 after the date of enactment of this section, the Di-
9 rector shall conduct a study and submit a report to
10 Congress on how to modernize and improve the sys-
11 tem of insurance regulation in the United States.

12 “(2) CONSIDERATIONS.—The study and report
13 required under paragraph (1) shall be based on and
14 guided by the following considerations:

15 “(A) Systemic risk regulation with respect
16 to insurance.

17 “(B) Capital standards and the relation-
18 ship between capital allocation and liabilities,
19 including standards relating to liquidity and du-
20 ration risk.

21 “(C) Consumer protection for insurance
22 products and practices, including gaps in State
23 regulation.

24 “(D) The degree of national uniformity of
25 State insurance regulation.

1 “(E) The regulation of insurance compa-
2 nies and affiliates on a consolidated basis.

3 “(F) International coordination of insur-
4 ance regulation.

5 “(3) ADDITIONAL FACTORS.—The study and
6 report required under paragraph (1) shall also exam-
7 ine the following factors:

8 “(A) The costs and benefits of potential
9 Federal regulation of insurance across various
10 lines of insurance (except health insurance).

11 “(B) The feasibility of regulating only cer-
12 tain lines of insurance at the Federal level,
13 while leaving other lines of insurance to be reg-
14 ulated at the State level.

15 “(C) The ability of any potential Federal
16 regulation or Federal regulators to eliminate or
17 minimize regulatory arbitrage.

18 “(D) The impact that developments in the
19 regulation of insurance in foreign jurisdictions
20 might have on the potential Federal regulation
21 of insurance.

22 “(E) The ability of any potential Federal
23 regulation or Federal regulator to provide ro-
24 bust consumer protection for policyholders.

1 “(F) The potential consequences of sub-
2 jecting insurance companies to a Federal reso-
3 lution authority, including the effects of any
4 Federal resolution authority—

5 “(i) on the operation of State insur-
6 ance guaranty fund systems, including the
7 loss of guaranty fund coverage if an insur-
8 ance company is subject to a Federal reso-
9 lution authority;

10 “(ii) on policyholder protection, in-
11 cluding the loss of the priority status of
12 policyholder claims over other unsecured
13 general creditor claims;

14 “(iii) in the case of life insurance
15 companies, on the loss of the special status
16 of separate account assets and separate ac-
17 count liabilities; and

18 “(iv) on the international competitive-
19 ness of insurance companies.

20 “(G) Such other factors as the Director
21 determines necessary or appropriate, consistent
22 with the principles set forth in paragraph (2).

23 “(4) REQUIRED RECOMMENDATIONS.—The
24 study and report required under paragraph (1) shall
25 also contain any legislative, administrative, or regu-

1 latory recommendations, as the Director determines
2 appropriate, to carry out or effectuate the findings
3 set forth in such report.

4 “(5) CONSULTATION.—With respect to the
5 study and report required under paragraph (1), the
6 Director shall consult with the State insurance regu-
7 lators, consumer organizations, representatives of
8 the insurance industry and policyholders, and other
9 organizations and experts, as appropriate.

10 “(q) USE OF EXISTING RESOURCES.—To carry out
11 this section, the Office may employ personnel, facilities,
12 and any other resource of the Department of the Treasury
13 available to the Secretary and the Secretary shall dedicate
14 specific personnel to the Office.

15 “(r) DEFINITIONS.—In this section and section 314,
16 the following definitions shall apply:

17 “(1) AFFILIATE.—The term ‘affiliate’ means,
18 with respect to an insurer, any person who controls,
19 is controlled by, or is under common control with the
20 insurer.

21 “(2) COVERED AGREEMENT.—The term ‘cov-
22 ered agreement’ means a written bilateral or multi-
23 lateral agreement regarding prudential measures
24 with respect to the business of insurance or reinsur-
25 ance that—

1 “(A) is entered into between the United
2 States and one or more foreign governments,
3 authorities, or regulatory entities; and

4 “(B) relates to the recognition of pruden-
5 tial measures with respect to the business of in-
6 surance or reinsurance that achieves a level of
7 protection for insurance or reinsurance con-
8 sumers that is substantially equivalent to the
9 level of protection achieved under State insur-
10 ance or reinsurance regulation.

11 “(3) INSURER.—The term ‘insurer’ means any
12 person engaged in the business of insurance, includ-
13 ing reinsurance.

14 “(4) FEDERAL FINANCIAL REGULATORY AGEN-
15 CY.—The term ‘Federal financial regulatory agency’
16 means the Department of the Treasury, the Board
17 of Governors of the Federal Reserve System, the Of-
18 fice of the Comptroller of the Currency, the Office
19 of Thrift Supervision, the Securities and Exchange
20 Commission, the Commodity Futures Trading Com-
21 mission, the Federal Deposit Insurance Corporation,
22 the Federal Housing Finance Agency, or the Na-
23 tional Credit Union Administration.

24 “(5) NON-UNITED STATES INSURER.—The term
25 ‘non-United States insurer’ means an insurer that is

1 organized under the laws of a jurisdiction other than
2 a State, but does not include any United States
3 branch of such an insurer.

4 “(6) OFFICE.—The term ‘Office’ means the
5 Federal Insurance Office established by this section.

6 “(7) STATE INSURANCE MEASURE.—The term
7 ‘State insurance measure’ means any State law, reg-
8 ulation, administrative ruling, bulletin, guideline, or
9 practice relating to or affecting prudential measures
10 applicable to insurance or reinsurance.

11 “(8) STATE INSURANCE REGULATOR.—The
12 term ‘State insurance regulator’ means any State
13 regulatory authority responsible for the supervision
14 of insurers.

15 “(9) SUBSTANTIALLY EQUIVALENT TO THE
16 LEVEL OF PROTECTION ACHIEVED.—The term ‘sub-
17 stantially equivalent to the level of protection
18 achieved’ means the prudential measures of a for-
19 eign government, authority, or regulatory entity
20 achieve a similar outcome in consumer protection as
21 the outcome achieved under State insurance or rein-
22 surance regulation.

23 “(10) UNITED STATES INSURER.—The term
24 ‘United States insurer’ means—

1 “(A) an insurer that is organized under
2 the laws of a State; or

3 “(B) a United States branch of a non-
4 United States insurer.

5 “(s) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated for the Office for each
7 fiscal year such sums as may be necessary.

8 **“SEC. 314. COVERED AGREEMENTS.**

9 “(a) AUTHORITY.—The Secretary and the United
10 States Trade Representative are authorized, jointly, to ne-
11 gotiate and enter into covered agreements on behalf of the
12 United States.

13 “(b) REQUIREMENTS FOR CONSULTATION WITH
14 CONGRESS.—

15 “(1) IN GENERAL.—Before initiating negotia-
16 tions to enter into a covered agreement under sub-
17 section (a), during such negotiations, and before en-
18 tering into any such agreement, the Secretary and
19 the United States Trade Representative shall jointly
20 consult with the Committee on Financial Services
21 and the Committee on Ways and Means of the
22 House of Representatives and the Committee on
23 Banking, Housing, and Urban Affairs and the Com-
24 mittee on Finance of the Senate.

1 “(2) SCOPE.—The consultation described in
2 paragraph (1) shall include consultation with respect
3 to—

4 “(A) the nature of the agreement;

5 “(B) how and to what extent the agree-
6 ment will achieve the applicable purposes, poli-
7 cies, priorities, and objectives of section 313
8 and this section; and

9 “(C) the implementation of the agreement,
10 including the general effect of the agreement on
11 existing State laws.

12 “(c) SUBMISSION AND LAYOVER PROVISIONS.—A
13 covered agreement under subsection (a) may enter into
14 force with respect to the United States only if—

15 “(1) the Secretary and the United States Trade
16 Representative jointly submit to the congressional
17 committees specified in subsection (b)(1), on a day
18 on which both Houses of Congress are in session, a
19 copy of the final legal text of the agreement; and

20 “(2) a period of 90 calendar days beginning on
21 the date on which the copy of the final legal text of
22 the agreement is submitted to the congressional
23 committees under paragraph (1) has expired.”.

24 (b) DUTIES OF SECRETARY.—Section 321(a) of title
25 31, United States Code, is amended—

1 (1) in paragraph (7), by striking “; and” and
2 inserting a semicolon;

3 (2) in paragraph (8)(C), by striking the period
4 at the end and inserting “; and”; and

5 (3) by adding at the end the following new
6 paragraph:

7 “(9) advise the President on major domestic
8 and international prudential policy issues in connec-
9 tion with all lines of insurance except health insur-
10 ance.”.

11 (c) CLERICAL AMENDMENT.—The table of sections
12 for subchapter I of chapter 3 of title 31, United States
13 Code, is amended by striking the item relating to section
14 312 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.”.

15 **Subtitle B—State-Based Insurance** 16 **Reform**

17 **SEC. 511. SHORT TITLE.**

18 This subtitle may be cited as the “Nonadmitted and
19 Reinsurance Reform Act of 2010”.

20 **SEC. 512. EFFECTIVE DATE.**

21 Except as otherwise specifically provided in this sub-
22 title, this subtitle shall take effect upon the expiration of

1 the 12-month period beginning on the date of the enact-
2 ment of this subtitle.

3 **PART I—NONADMITTED INSURANCE**

4 **SEC. 521. REPORTING, PAYMENT, AND ALLOCATION OF**
5 **PREMIUM TAXES.**

6 (a) HOME STATE'S EXCLUSIVE AUTHORITY.—No
7 State other than the home State of an insured may require
8 any premium tax payment for nonadmitted insurance.

9 (b) ALLOCATION OF NONADMITTED PREMIUM
10 TAXES.—

11 (1) IN GENERAL.—The States may enter into a
12 compact or otherwise establish procedures to allocate
13 among the States the premium taxes paid to an in-
14 sured's home State described in subsection (a).

15 (2) EFFECTIVE DATE.—Except as expressly
16 otherwise provided in such compact or other proce-
17 dures, any such compact or other procedures—

18 (A) if adopted on or before the expiration
19 of the 330-day period that begins on the date
20 of the enactment of this subtitle, shall apply to
21 any premium taxes that, on or after such date
22 of enactment, are required to be paid to any
23 State that is subject to such compact or proce-
24 dures; and

1 (B) if adopted after the expiration of such
2 330-day period, shall apply to any premium
3 taxes that, on or after January 1 of the first
4 calendar year that begins after the expiration of
5 such 330-day period, are required to be paid to
6 any State that is subject to such compact or
7 procedures.

8 (3) REPORT.—Upon the expiration of the 330-
9 day period referred to in paragraph (2), the NAIC
10 may submit a report to the Committee on Financial
11 Services and the Committee on the Judiciary of the
12 House of Representatives and the Committee on
13 Banking, Housing, and Urban Affairs of the Senate
14 identifying and describing any compact or other pro-
15 cedures for allocation among the States of premium
16 taxes that have been adopted during such period by
17 any States.

18 (4) NATIONWIDE SYSTEM.—The Congress in-
19 tends that each State adopt nationwide uniform re-
20 quirements, forms, and procedures, such as an inter-
21 state compact, that provide for the reporting, pay-
22 ment, collection, and allocation of premium taxes for
23 nonadmitted insurance consistent with this section.

24 (c) ALLOCATION BASED ON TAX ALLOCATION RE-
25 PORT.—To facilitate the payment of premium taxes

1 among the States, an insured's home State may require
2 surplus lines brokers and insureds who have independently
3 procured insurance to annually file tax allocation reports
4 with the insured's home State detailing the portion of the
5 nonadmitted insurance policy premium or premiums at-
6 tributable to properties, risks, or exposures located in each
7 State. The filing of a nonadmitted insurance tax allocation
8 report and the payment of tax may be made by a person
9 authorized by the insured to act as its agent.

10 **SEC. 522. REGULATION OF NONADMITTED INSURANCE BY**
11 **INSURED'S HOME STATE.**

12 (a) HOME STATE AUTHORITY.—Except as otherwise
13 provided in this section, the placement of nonadmitted in-
14 surance shall be subject to the statutory and regulatory
15 requirements solely of the insured's home State.

16 (b) BROKER LICENSING.—No State other than an in-
17 sured's home State may require a surplus lines broker to
18 be licensed in order to sell, solicit, or negotiate non-
19 admitted insurance with respect to such insured.

20 (c) ENFORCEMENT PROVISION.—With respect to sec-
21 tion 521 and subsections (a) and (b) of this section, any
22 law, regulation, provision, or action of any State that ap-
23 plies or purports to apply to nonadmitted insurance sold
24 to, solicited by, or negotiated with an insured whose home

1 State is another State shall be preempted with respect to
2 such application.

3 (d) WORKERS' COMPENSATION EXCEPTION.—This
4 section may not be construed to preempt any State law,
5 rule, or regulation that restricts the placement of workers'
6 compensation insurance or excess insurance for self-fund-
7 ed workers' compensation plans with a nonadmitted in-
8 surer.

9 **SEC. 523. PARTICIPATION IN NATIONAL PRODUCER DATA-**
10 **BASE.**

11 After the expiration of the 2-year period beginning
12 on the date of the enactment of this subtitle, a State may
13 not collect any fees relating to licensing of an individual
14 or entity as a surplus lines broker in the State unless the
15 State has in effect at such time laws or regulations that
16 provide for participation by the State in the national in-
17 surance producer database of the NAIC, or any other
18 equivalent uniform national database, for the licensure of
19 surplus lines brokers and the renewal of such licenses.

20 **SEC. 524. UNIFORM STANDARDS FOR SURPLUS LINES ELI-**
21 **GIBILITY.**

22 A State may not—

23 (1) impose eligibility requirements on, or other-
24 wise establish eligibility criteria for, nonadmitted in-
25 surers domiciled in a United States jurisdiction, ex-

1 cept in conformance with such requirements and cri-
2 teria in sections 5A(2) and 5C(2)(a) of the Non-Ad-
3 mitted Insurance Model Act, unless the State has
4 adopted nationwide uniform requirements, forms,
5 and procedures developed in accordance with section
6 521(b) of this subtitle that include alternative na-
7 tionwide uniform eligibility requirements; or

8 (2) prohibit a surplus lines broker from placing
9 nonadmitted insurance with, or procuring non-
10 admitted insurance from, a nonadmitted insurer
11 domiciled outside the United States that is listed on
12 the Quarterly Listing of Alien Insurers maintained
13 by the International Insurers Department of the
14 NAIC.

15 **SEC. 525. STREAMLINED APPLICATION FOR COMMERCIAL**
16 **PURCHASERS.**

17 A surplus lines broker seeking to procure or place
18 nonadmitted insurance in a State for an exempt commer-
19 cial purchaser shall not be required to satisfy any State
20 requirement to make a due diligence search to determine
21 whether the full amount or type of insurance sought by
22 such exempt commercial purchaser can be obtained from
23 admitted insurers if—

24 (1) the broker procuring or placing the surplus
25 lines insurance has disclosed to the exempt commer-

1 cial purchaser that such insurance may or may not
2 be available from the admitted market that may pro-
3 vide greater protection with more regulatory over-
4 sight; and

5 (2) the exempt commercial purchaser has sub-
6 sequently requested in writing the broker to procure
7 or place such insurance from a nonadmitted insurer.

8 **SEC. 526. GAO STUDY OF NONADMITTED INSURANCE MAR-**
9 **KET.**

10 (a) IN GENERAL.—The Comptroller General of the
11 United States shall conduct a study of the nonadmitted
12 insurance market to determine the effect of the enactment
13 of this part on the size and market share of the non-
14 admitted insurance market for providing coverage typi-
15 cally provided by the admitted insurance market.

16 (b) CONTENTS.—The study shall determine and ana-
17 lyze—

18 (1) the change in the size and market share of
19 the nonadmitted insurance market and in the num-
20 ber of insurance companies and insurance holding
21 companies providing such business in the 18-month
22 period that begins upon the effective date of this
23 subtitle;

1 (2) the extent to which insurance coverage typi-
2 cally provided by the admitted insurance market has
3 shifted to the nonadmitted insurance market;

4 (3) the consequences of any change in the size
5 and market share of the nonadmitted insurance
6 market, including differences in the price and avail-
7 ability of coverage available in both the admitted
8 and nonadmitted insurance markets;

9 (4) the extent to which insurance companies
10 and insurance holding companies that provide both
11 admitted and nonadmitted insurance have experi-
12 enced shifts in the volume of business between ad-
13 mitted and nonadmitted insurance; and

14 (5) the extent to which there has been a change
15 in the number of individuals who have nonadmitted
16 insurance policies, the type of coverage provided
17 under such policies, and whether such coverage is
18 available in the admitted insurance market.

19 (c) CONSULTATION WITH NAIC.—In conducting the
20 study under this section, the Comptroller General shall
21 consult with the NAIC.

22 (d) REPORT.—The Comptroller General shall com-
23 plete the study under this section and submit a report to
24 the Committee on Banking, Housing, and Urban Affairs
25 of the Senate and the Committee on Financial Services

1 of the House of Representatives regarding the findings of
2 the study not later than 30 months after the effective date
3 of this subtitle.

4 **SEC. 527. DEFINITIONS.**

5 For purposes of this part, the following definitions
6 shall apply:

7 (1) ADMITTED INSURER.—The term “admitted
8 insurer” means, with respect to a State, an insurer
9 licensed to engage in the business of insurance in
10 such State.

11 (2) AFFILIATE.—The term “affiliate” means,
12 with respect to an insured, any entity that controls,
13 is controlled by, or is under common control with the
14 insured.

15 (3) AFFILIATED GROUP.—The term “affiliated
16 group” means any group of entities that are all af-
17 filiated.

18 (4) CONTROL.—An entity has “control” over
19 another entity if—

20 (A) the entity directly or indirectly or act-
21 ing through 1 or more other persons owns, con-
22 trols, or has the power to vote 25 percent or
23 more of any class of voting securities of the
24 other entity; or

1 (B) the entity controls in any manner the
2 election of a majority of the directors or trust-
3 ees of the other entity.

4 (5) EXEMPT COMMERCIAL PURCHASER.—The
5 term “exempt commercial purchaser” means any
6 person purchasing commercial insurance that, at the
7 time of placement, meets the following requirements:

8 (A) The person employs or retains a quali-
9 fied risk manager to negotiate insurance cov-
10 erage.

11 (B) The person has paid aggregate nation-
12 wide commercial property and casualty insur-
13 ance premiums in excess of \$100,000 in the im-
14 mediately preceding 12 months.

15 (C)(i) The person meets at least 1 of the
16 following criteria:

17 (I) The person possesses a net worth
18 in excess of \$20,000,000, as such amount
19 is adjusted pursuant to clause (ii).

20 (II) The person generates annual rev-
21 enues in excess of \$50,000,000, as such
22 amount is adjusted pursuant to clause (ii).

23 (III) The person employs more than
24 500 full-time or full-time equivalent em-
25 ployees per individual insured or is a mem-

1 ber of an affiliated group employing more
2 than 1,000 employees in the aggregate.

3 (IV) The person is a not-for-profit or-
4 ganization or public entity generating an-
5 nual budgeted expenditures of at least
6 \$30,000,000, as such amount is adjusted
7 pursuant to clause (ii).

8 (V) The person is a municipality with
9 a population in excess of 50,000 persons.

10 (ii) Effective on the fifth January 1 occur-
11 ring after the date of the enactment of this sub-
12 title and each fifth January 1 occurring there-
13 after, the amounts in subclauses (I), (II), and
14 (IV) of clause (i) shall be adjusted to reflect the
15 percentage change for such 5-year period in the
16 Consumer Price Index for All Urban Con-
17 sumers published by the Bureau of Labor Sta-
18 tistics of the Department of Labor.

19 (6) HOME STATE.—

20 (A) IN GENERAL.—Except as provided in
21 subparagraph (B), the term “home State”
22 means, with respect to an insured—

23 (i) the State in which an insured
24 maintains its principal place of business or,

1 in the case of an individual, the individ-
2 ual's principal residence; or

3 (ii) if 100 percent of the insured risk
4 is located out of the State referred to in
5 clause (i), the State to which the greatest
6 percentage of the insured's taxable pre-
7 mium for that insurance contract is allo-
8 cated.

9 (B) AFFILIATED GROUPS.—If more than 1
10 insured from an affiliated group are named in-
11 sureds on a single nonadmitted insurance con-
12 tract, the term “home State” means the home
13 State, as determined pursuant to subparagraph
14 (A), of the member of the affiliated group that
15 has the largest percentage of premium attrib-
16 uted to it under such insurance contract.

17 (7) INDEPENDENTLY PROCURED INSURANCE.—
18 The term “independently procured insurance”
19 means insurance procured directly by an insured
20 from a nonadmitted insurer.

21 (8) NAIC.—The term “NAIC” means the Na-
22 tional Association of Insurance Commissioners or
23 any successor entity.

24 (9) NONADMITTED INSURANCE.—The term
25 “nonadmitted insurance” means any property and

1 casualty insurance permitted to be placed directly or
2 through a surplus lines broker with a nonadmitted
3 insurer eligible to accept such insurance.

4 (10) NON-ADMITTED INSURANCE MODEL
5 ACT.—The term “Non-Admitted Insurance Model
6 Act” means the provisions of the Non-Admitted In-
7 surance Model Act, as adopted by the NAIC on Au-
8 gust 3, 1994, and amended on September 30, 1996,
9 December 6, 1997, October 2, 1999, and June 8,
10 2002.

11 (11) NONADMITTED INSURER.—The term
12 “nonadmitted insurer”—

13 (A) means, with respect to a State, an in-
14 surer not licensed to engage in the business of
15 insurance in such State; but

16 (B) does not include a risk retention
17 group, as that term is defined in section 2(a)(4)
18 of the Liability Risk Retention Act of 1986 (15
19 U.S.C. 3901(a)(4)).

20 (12) PREMIUM TAX.—The term “premium tax”
21 means, with respect to surplus lines or independently
22 procured insurance coverage, any tax, fee, assess-
23 ment, or other charge imposed by a government en-
24 tity directly or indirectly based on any payment
25 made as consideration for an insurance contract for

1 such insurance, including premium deposits, assess-
2 ments, registration fees, and any other compensation
3 given in consideration for a contract of insurance.

4 (13) QUALIFIED RISK MANAGER.—The term
5 “qualified risk manager” means, with respect to a
6 policyholder of commercial insurance, a person who
7 meets all of the following requirements:

8 (A) The person is an employee of, or third-
9 party consultant retained by, the commercial
10 policyholder.

11 (B) The person provides skilled services in
12 loss prevention, loss reduction, or risk and in-
13 surance coverage analysis, and purchase of in-
14 surance.

15 (C) The person—

16 (i)(I) has a bachelor’s degree or high-
17 er from an accredited college or university
18 in risk management, business administra-
19 tion, finance, economics, or any other field
20 determined by a State insurance commis-
21 sioner or other State regulatory official or
22 entity to demonstrate minimum com-
23 petence in risk management; and

24 (II)(aa) has 3 years of experience in
25 risk financing, claims administration, loss

1 prevention, risk and insurance analysis, or
2 purchasing commercial lines of insurance;
3 or

4 (bb) has—

5 (AA) a designation as a Char-
6 tered Property and Casualty Under-
7 writer (in this subparagraph referred
8 to as “CPCU”) issued by the Amer-
9 ican Institute for CPCU/Insurance In-
10 stitute of America;

11 (BB) a designation as an Asso-
12 ciate in Risk Management (ARM)
13 issued by the American Institute for
14 CPCU/Insurance Institute of America;

15 (CC) a designation as Certified
16 Risk Manager (CRM) issued by the
17 National Alliance for Insurance Edu-
18 cation & Research;

19 (DD) a designation as a RIMS
20 Fellow (RF) issued by the Global Risk
21 Management Institute; or

22 (EE) any other designation, cer-
23 tification, or license determined by a
24 State insurance commissioner or other
25 State insurance regulatory official or

1 entity to demonstrate minimum com-
2 petency in risk management;

3 (ii)(I) has at least 7 years of experi-
4 ence in risk financing, claims administra-
5 tion, loss prevention, risk and insurance
6 coverage analysis, or purchasing commer-
7 cial lines of insurance; and

8 (II) has any 1 of the designations
9 specified in subitems (AA) through (EE)
10 of clause (i)(II)(bb);

11 (iii) has at least 10 years of experi-
12 ence in risk financing, claims administra-
13 tion, loss prevention, risk and insurance
14 coverage analysis, or purchasing commer-
15 cial lines of insurance; or

16 (iv) has a graduate degree from an
17 accredited college or university in risk
18 management, business administration, fi-
19 nance, economics, or any other field deter-
20 mined by a State insurance commissioner
21 or other State regulatory official or entity
22 to demonstrate minimum competence in
23 risk management.

1 (14) REINSURANCE.—The term “reinsurance”
2 means the assumption by an insurer of all or part
3 of a risk undertaken originally by another insurer.

4 (15) SURPLUS LINES BROKER.—The term “sur-
5 plus lines broker” means an individual, firm, or cor-
6 poration which is licensed in a State to sell, solicit,
7 or negotiate insurance on properties, risks, or expo-
8 sures located or to be performed in a State with
9 nonadmitted insurers.

10 (16) STATE.—The term “State” includes any
11 State of the United States, the District of Columbia,
12 the Commonwealth of Puerto Rico, Guam, the
13 Northern Mariana Islands, the Virgin Islands, and
14 American Samoa.

15 **PART II—REINSURANCE**

16 **SEC. 531. REGULATION OF CREDIT FOR REINSURANCE AND**
17 **REINSURANCE AGREEMENTS.**

18 (a) CREDIT FOR REINSURANCE.—If the State of
19 domicile of a ceding insurer is an NAIC-accredited State,
20 or has financial solvency requirements substantially simi-
21 lar to the requirements necessary for NAIC accreditation,
22 and recognizes credit for reinsurance for the insurer’s
23 ceded risk, then no other State may deny such credit for
24 reinsurance.

1 (b) ADDITIONAL PREEMPTION OF
2 EXTRATERRITORIAL APPLICATION OF STATE LAW.—In
3 addition to the application of subsection (a), all laws, regu-
4 lations, provisions, or other actions of a State that is not
5 the domiciliary State of the ceding insurer, except those
6 with respect to taxes and assessments on insurance com-
7 panies or insurance income, are preempted to the extent
8 that they—

9 (1) restrict or eliminate the rights of the ceding
10 insurer or the assuming insurer to resolve disputes
11 pursuant to contractual arbitration to the extent
12 such contractual provision is not inconsistent with
13 the provisions of title 9, United States Code;

14 (2) require that a certain State’s law shall gov-
15 ern the reinsurance contract, disputes arising from
16 the reinsurance contract, or requirements of the re-
17 insurance contract;

18 (3) attempt to enforce a reinsurance contract
19 on terms different than those set forth in the rein-
20 surance contract, to the extent that the terms are
21 not inconsistent with this part; or

22 (4) otherwise apply the laws of the State to re-
23 insurance agreements of ceding insurers not domi-
24 ciled in that State.

1 **SEC. 532. REGULATION OF REINSURER SOLVENCY.**

2 (a) DOMICILIARY STATE REGULATION.—If the State
3 of domicile of a reinsurer is an NAIC-accredited State or
4 has financial solvency requirements substantially similar
5 to the requirements necessary for NAIC accreditation,
6 such State shall be solely responsible for regulating the
7 financial solvency of the reinsurer.

8 (b) NONDOMICILIARY STATES.—

9 (1) LIMITATION ON FINANCIAL INFORMATION
10 REQUIREMENTS.—If the State of domicile of a rein-
11 surer is an NAIC-accredited State or has financial
12 solvency requirements substantially similar to the re-
13 quirements necessary for NAIC accreditation, no
14 other State may require the reinsurer to provide any
15 additional financial information other than the infor-
16 mation the reinsurer is required to file with its
17 domiciliary State.

18 (2) RECEIPT OF INFORMATION.—No provision
19 of this section shall be construed as preventing or
20 prohibiting a State that is not the State of domicile
21 of a reinsurer from receiving a copy of any financial
22 statement filed with its domiciliary State.

23 **SEC. 533. DEFINITIONS.**

24 For purposes of this part, the following definitions
25 shall apply:

1 (1) CEDING INSURER.—The term “ceding in-
2 surer” means an insurer that purchases reinsurance.

3 (2) DOMICILIARY STATE.—The terms “State of
4 domicile” and “domiciliary State” mean, with re-
5 spect to an insurer or reinsurer, the State in which
6 the insurer or reinsurer is incorporated or entered
7 through, and licensed.

8 (3) NAIC.—The term “NAIC” means the Na-
9 tional Association of Insurance Commissioners or
10 any successor entity.

11 (4) REINSURANCE.—The term “reinsurance”
12 means the assumption by an insurer of all or part
13 of a risk undertaken originally by another insurer.

14 (5) REINSURER.—

15 (A) IN GENERAL.—The term “reinsurer”
16 means an insurer to the extent that the in-
17 surer—

18 (i) is principally engaged in the busi-
19 ness of reinsurance;

20 (ii) does not conduct significant
21 amounts of direct insurance as a percent-
22 age of its net premiums; and

23 (iii) is not engaged in an ongoing
24 basis in the business of soliciting direct in-
25 surance.

1 (B) DETERMINATION.—A determination of
2 whether an insurer is a reinsurer shall be made
3 under the laws of the State of domicile in ac-
4 cordance with this paragraph.

5 (6) STATE.—The term “State” includes any
6 State of the United States, the District of Columbia,
7 the Commonwealth of Puerto Rico, Guam, the
8 Northern Mariana Islands, the Virgin Islands, and
9 American Samoa.

10 **PART III—RULE OF CONSTRUCTION**

11 **SEC. 541. RULE OF CONSTRUCTION.**

12 Nothing in this subtitle or the amendments made by
13 this subtitle shall be construed to modify, impair, or super-
14 sede the application of the antitrust laws. Any implied or
15 actual conflict between this subtitle and any amendments
16 to this subtitle and the antitrust laws shall be resolved
17 in favor of the operation of the antitrust laws.

18 **SEC. 542. SEVERABILITY.**

19 If any section or subsection of this subtitle, or any
20 application of such provision to any person or cir-
21 cumstance, is held to be unconstitutional, the remainder
22 of this subtitle, and the application of the provision to any
23 other person or circumstance, shall not be affected.

1 **TITLE VI—IMPROVEMENTS TO**
2 **REGULATION OF BANK AND**
3 **SAVINGS ASSOCIATION HOLD-**
4 **ING COMPANIES AND DEPOSI-**
5 **TORY INSTITUTIONS**

6 **SEC. 601. SHORT TITLE.**

7 This title may be cited as the “Bank and Savings
8 Association Holding Company and Depository Institution
9 Regulatory Improvements Act of 2010”.

10 **SEC. 602. DEFINITION.**

11 For purposes of this title, a company is a “commer-
12 cial firm” if the annual gross revenues derived by the com-
13 pany and all of its affiliates from activities that are finan-
14 cial in nature (as defined in section 4(k) of the Bank
15 Holding Company Act of 1956 (12 U.S.C. 1843(k))) and,
16 if applicable, from the ownership or control of one or more
17 insured depository institutions, represent less than 15 per-
18 cent of the consolidated annual gross revenues of the com-
19 pany.

20 **SEC. 603. MORATORIUM AND STUDY ON TREATMENT OF**
21 **CREDIT CARD BANKS, INDUSTRIAL LOAN**
22 **COMPANIES, AND CERTAIN OTHER COMPA-**
23 **NIES UNDER THE BANK HOLDING COMPANY**
24 **ACT OF 1956.**

25 (a) MORATORIUM.—

1 (1) DEFINITIONS.—In this subsection—

2 (A) the term “credit card bank” means an
3 institution described in section 2(c)(2)(F) of the
4 Bank Holding Company Act of 1956 (12
5 U.S.C. 1841(c)(2)(F));

6 (B) the term “industrial bank” means an
7 institution described in section 2(c)(2)(H) of
8 the Bank Holding Company Act of 1956 (12
9 U.S.C. 1841(c)(2)(H)); and

10 (C) the term “trust bank” means an insti-
11 tution described in section 2(c)(2)(D) of the
12 Bank Holding Company Act of 1956 (12
13 U.S.C. 1841(c)(2)(D)).

14 (2) MORATORIUM ON PROVISION OF DEPOSIT
15 INSURANCE.—The Corporation may not approve an
16 application for deposit insurance under section 5 of
17 the Federal Deposit Insurance Act (12 U.S.C. 1815)
18 that is received after November 23, 2009, for an in-
19 dustrial bank, a credit card bank, or a trust bank
20 that is directly or indirectly owned or controlled by
21 a commercial firm.

22 (3) CHANGE IN CONTROL.—

23 (A) IN GENERAL.—Except as provided in
24 subparagraph (B), the appropriate Federal
25 banking agency shall disapprove a change in

1 control, as provided in section 7(j) of the Fed-
2 eral Deposit Insurance Act (12 U.S.C. 1817(j)),
3 of an industrial bank, a credit card bank, or a
4 trust bank if the change in control would result
5 in direct or indirect control of the industrial
6 bank, credit card bank, or trust bank by a com-
7 mercial firm.

8 (B) EXCEPTIONS.—Subparagraph (A)
9 shall not apply to a change in control of an in-
10 dustrial bank, credit card bank, or trust bank—

11 (i) that—

12 (I) is in danger of default, as de-
13 termined by the appropriate Federal
14 banking agency;

15 (II) results from the merger or
16 whole acquisition of a commercial firm
17 that directly or indirectly controls the
18 industrial bank, credit card bank, or
19 trust bank in a bona fide merger with
20 or acquisition by another commercial
21 firm, as determined by the appro-
22 priate Federal banking agency; or

23 (III) results from an acquisition
24 of voting shares of a publicly traded
25 company that controls an industrial

1 bank, credit card bank, or trust bank,
2 if, after the acquisition, the acquiring
3 shareholder (or group of shareholders
4 acting in concert) holds less than 25
5 percent of any class of the voting
6 shares of the company; and

7 (ii) that has obtained all regulatory
8 approvals otherwise required for such
9 change of control under any applicable
10 Federal or State law, including section 7(j)
11 of the Federal Deposit Insurance Act (12
12 U.S.C. 1817(j)).

13 (4) SUNSET.—This subsection shall cease to
14 have effect 3 years after the date of enactment of
15 this Act.

16 (b) GOVERNMENT ACCOUNTABILITY OFFICE STUDY
17 OF EXCEPTIONS UNDER THE BANK HOLDING COMPANY
18 ACT OF 1956.—

19 (1) STUDY REQUIRED.—The Comptroller Gen-
20 eral of the United States shall carry out a study to
21 determine whether it is necessary, in order to
22 strengthen the safety and soundness of institutions
23 or the stability of the financial system, to eliminate
24 the exceptions under section 2 of the Bank Holding

1 Company Act of 1956 (12 U.S.C. 1841) for institu-
2 tions described in—

3 (A) section 2(a)(5)(E) of the Bank Hold-
4 ing Company Act of 1956 (12 U.S.C.
5 1841(a)(5)(E));

6 (B) section 2(a)(5)(F) of the Bank Hold-
7 ing Company Act of 1956 (12 U.S.C.
8 1841(a)(5)(F));

9 (C) section 2(c)(2)(D) of the Bank Hold-
10 ing Company Act of 1956 (12 U.S.C.
11 1841(c)(2)(D));

12 (D) section 2(c)(2)(F) of the Bank Hold-
13 ing Company Act of 1956 (12 U.S.C.
14 1841(c)(2)(F));

15 (E) section 2(c)(2)(H) of the Bank Hold-
16 ing Company Act of 1956 (12 U.S.C.
17 1841(c)(2)(H)); and

18 (F) section 2(c)(2)(B) of the Bank Hold-
19 ing Company Act of 1956 (12 U.S.C.
20 1841(c)(2)(B)).

21 (2) CONTENT OF STUDY.—

22 (A) IN GENERAL.—The study required
23 under paragraph (1), with respect to the insti-
24 tutions referenced in each of subparagraphs (A)
25 through (E) of paragraph (1), shall, to the ex-

1 cable to each category of institution de-
2 scribed in clause (i), including any restric-
3 tions (including limitations on affiliate
4 transactions or cross-marketing) that apply
5 to transactions between an institution, the
6 holding company of the institution, and
7 any other affiliate of the institution; and

8 (vii) evaluate the potential con-
9 sequences of subjecting the institutions de-
10 scribed in clause (i) to the requirements of
11 the Bank Holding Company Act of 1956,
12 including with respect to the availability
13 and allocation of credit, the stability of the
14 financial system and the economy, the safe
15 and sound operation of each category of
16 institution, and the impact on the types of
17 activities in which such institutions, and
18 the holding companies of such institutions,
19 may engage.

20 (B) SAVINGS ASSOCIATIONS.—With respect
21 to institutions described in paragraph (1)(F),
22 the study required under paragraph (1) shall—

23 (i) determine the adequacy of the
24 Federal bank regulatory framework appli-
25 cable to such institutions, including any re-

1 restrictions (including limitations on affiliate
2 transactions or cross-marketing) that apply
3 to transactions between an institution, the
4 holding company of the institution, and
5 any other affiliate of the institution; and

6 (ii) evaluate the potential con-
7 sequences of subjecting the institutions de-
8 scribed in paragraph (1)(F) to the require-
9 ments of the Bank Holding Company Act
10 of 1956, including with respect to the
11 availability and allocation of credit, the
12 stability of the financial system and the
13 economy, the safe and sound operation of
14 such institutions, and the impact on the
15 types of activities in which such institu-
16 tions, and the holding companies of such
17 institutions, may engage.

18 (3) REPORT.—Not later than 18 months after
19 the date of enactment of this Act, the Comptroller
20 General shall submit to the Committee on Banking,
21 Housing, and Urban Affairs of the Senate and the
22 Committee on Financial Services of the House of
23 Representatives a report on the study required
24 under paragraph (1).

1 **SEC. 604. REPORTS AND EXAMINATIONS OF HOLDING COM-**
2 **PANIES; REGULATION OF FUNCTIONALLY**
3 **REGULATED SUBSIDIARIES.**

4 (a) REPORTS BY BANK HOLDING COMPANIES.—Sec-
5 tions 5(c)(1) of the Bank Holding Company Act of 1956
6 (12 U.S.C. 1844(c)(1)) is amended—

7 (1) by striking subclause (A)(ii) and inserting
8 the following:

9 “(ii) compliance by the bank holding
10 company or subsidiary with—

11 “(I) this Act;

12 “(II) Federal laws that the
13 Board has specific jurisdiction to en-
14 force against the company or sub-
15 sidiary; and

16 “(III) other than in the case of
17 an insured depository institution or
18 functionally regulated subsidiary, any
19 other applicable provision of Federal
20 law.”;

21 (2) by striking subparagraph (B) and inserting
22 the following:

23 “(B) USE OF EXISTING REPORTS AND
24 OTHER SUPERVISORY INFORMATION.—The
25 Board shall, to the fullest extent possible, use—

1 “(i) reports and other supervisory in-
2 formation that the bank holding company
3 or any subsidiary thereof has been required
4 to provide to other Federal or State regu-
5 latory agencies;

6 “(ii) externally audited financial state-
7 ments of the bank holding company or
8 subsidiary;

9 “(iii) information otherwise available
10 from Federal or State regulatory agencies;
11 and

12 “(iv) information that is otherwise re-
13 quired to be reported publicly.”; and

14 (3) by adding at the end the following:

15 “(C) AVAILABILITY.—Upon the request of
16 the Board, the bank holding company or a sub-
17 sidiary of the bank holding company shall
18 promptly provide to the Board any information
19 described in clauses (i) through (iii) of subpara-
20 graph (B).”.

21 (b) EXAMINATIONS OF BANK HOLDING COMPA-
22 NIES.—Section 5(c)(2) of the Bank Holding Company Act
23 of 1956 (12 U.S.C. 1844(c)(2)) is amended to read as
24 follows:

25 “(2) EXAMINATIONS.—

1 “(A) IN GENERAL.—Subject to subtitle B
2 of the Consumer Financial Protection Act of
3 2010, the Board may make examinations of a
4 bank holding company and each subsidiary of a
5 bank holding company in order to—

6 “(i) inform the Board of—

7 “(I) the nature of the operations
8 and financial condition of the bank
9 holding company and the subsidiary;

10 “(II) the financial, operational,
11 and other risks within the bank hold-
12 ing company system that may pose a
13 threat to—

14 “(aa) the safety and sound-
15 ness of the bank holding com-
16 pany or of any depository institu-
17 tion subsidiary of the bank hold-
18 ing company; or

19 “(bb) the stability of the fi-
20 nancial system of the United
21 States; and

22 “(III) the systems of the bank
23 holding company for monitoring and
24 controlling the risks described in sub-
25 clause (II); and

1 “(ii) monitor the compliance of the
2 bank holding company and the subsidiary
3 with—

4 “(I) this Act;

5 “(II) Federal laws that the
6 Board has specific jurisdiction to en-
7 force against the company or sub-
8 sidiary; and

9 “(III) other than in the case of
10 an insured depository institution or
11 functionally regulated subsidiary, any
12 other applicable provisions of Federal
13 law.

14 “(B) USE OF REPORTS TO REDUCE EXAMI-
15 NATIONS.—For purposes of this paragraph, the
16 Board shall, to the fullest extent possible, rely
17 on—

18 “(i) examination reports made by
19 other Federal or State regulatory agencies
20 relating to a bank holding company and
21 any subsidiary of a bank holding company;
22 and

23 “(ii) the reports and other informa-
24 tion required under paragraph (1).

1 “(C) COORDINATION WITH OTHER REGU-
2 LATORS.—The Board shall—

3 “(i) provide reasonable notice to, and
4 consult with, the appropriate Federal
5 banking agency, the Securities and Ex-
6 change Commission, the Commodity Fu-
7 tures Trading Commission, or State regu-
8 latory agency, as appropriate, for a sub-
9 sidiary that is a depository institution or a
10 functionally regulated subsidiary of a bank
11 holding company before commencing an ex-
12 amination of the subsidiary under this sec-
13 tion; and

14 “(ii) to the fullest extent possible,
15 avoid duplication of examination activities,
16 reporting requirements, and requests for
17 information.”.

18 (c) AUTHORITY TO REGULATE FUNCTIONALLY REG-
19 ULATED SUBSIDIARIES OF BANK HOLDING COMPA-
20 NIES.—The Bank Holding Company Act of 1956 (12
21 U.S.C. 1841 et seq.) is amended—

22 (1) in section 5(c)(5)(B) (12 U.S.C.
23 1844(c)(5)(B)), by striking clause (v) and inserting
24 the following:

1 “(v) an entity that is subject to regu-
2 lation by, or registration with, the Com-
3 modity Futures Trading Commission, with
4 respect to activities conducted as a futures
5 commission merchant, commodity trading
6 adviser, commodity pool, commodity pool
7 operator, swap execution facility, swap
8 data repository, swap dealer, major swap
9 participant, and activities that are inci-
10 dental to such commodities and swaps ac-
11 tivities.”; and

12 (2) by striking section 10A (12 U.S.C. 1848a).

13 (d) ACQUISITIONS OF BANKS.—Section 3(c) of the
14 Bank Holding Company Act of 1956 (12 U.S.C. 1842(e))
15 is amended by adding at the end the following:

16 “(7) FINANCIAL STABILITY.—In every case, the
17 Board shall take into consideration the extent to
18 which a proposed acquisition, merger, or consolida-
19 tion would result in greater or more concentrated
20 risks to the stability of the United States banking or
21 financial system.”.

22 (e) ACQUISITIONS OF NONBANKS.—

23 (1) NOTICE PROCEDURES.—Section 4(j)(2)(A)
24 of the Bank Holding Company Act of 1956 (12
25 U.S.C. 1843(j)(2)(A)) is amended by striking “or

1 “(iii) HART-SCOTT-RODINO FILING
2 REQUIREMENT.—Solely for purposes of
3 section 7A(c)(8) of the Clayton Act (15
4 U.S.C. 18a(c)(8)), the transactions subject
5 to the requirements of this paragraph shall
6 be treated as if the approval of the Board
7 is not required.”.

8 (f) BANK MERGER ACT TRANSACTIONS.—Section
9 18(c)(5) of the Federal Deposit Insurance Act (12 U.S.C.
10 1828(c)(5)) is amended, in the matter immediately fol-
11 lowing subparagraph (B), by striking “and the conven-
12 ience and needs of the community to be served” and in-
13 serting “the convenience and needs of the community to
14 be served, and the risk to the stability of the United States
15 banking or financial system”.

16 (g) REPORTS BY SAVINGS AND LOAN HOLDING COM-
17 PANIES.—Section 10(b)(2) of the Home Owners’ Loan Act
18 (12 U.S.C. 1467a(b)(2) is amended—

19 (1) by striking “Each savings” and inserting
20 the following:

21 “(A) IN GENERAL.—Each savings”; and

22 (2) by adding at the end the following:

23 “(B) USE OF EXISTING REPORTS AND
24 OTHER SUPERVISORY INFORMATION.—The
25 Board shall, to the fullest extent possible, use—

1 “(i) reports and other supervisory in-
2 formation that the savings and loan hold-
3 ing company or any subsidiary thereof has
4 been required to provide to other Federal
5 or State regulatory agencies;

6 “(ii) externally audited financial state-
7 ments of the savings and loan holding com-
8 pany or subsidiary;

9 “(iii) information that is otherwise
10 available from Federal or State regulatory
11 agencies; and

12 “(iv) information that is otherwise re-
13 quired to be reported publicly.

14 “(C) AVAILABILITY.—Upon the request of
15 the Board, a savings and loan holding company
16 or a subsidiary of a savings and loan holding
17 company shall promptly provide to the Board
18 any information described in clauses (i) through
19 (iii) of subparagraph (B).”.

20 (h) EXAMINATION OF SAVINGS AND LOAN HOLDING
21 COMPANIES.—

22 (1) DEFINITIONS.—Section 2 of the Home
23 Owners’ Loan Act (12 U.S.C. 1462) is amended by
24 adding at the end the following:

1 “(10) APPROPRIATE FEDERAL BANKING AGEN-
2 CY.—The term ‘appropriate Federal banking agency’
3 has the same meaning as in section 3(q) of the Fed-
4 eral Deposit Insurance Act (12 U.S.C. 1813(q)).

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

10 (2) EXAMINATION.—Section 10(b) of the Home
11 Owners’ Loan Act (12 U.S.C. 1467a(b)) is amended
12 by striking paragraph (4) and inserting the fol-
13 lowing:

14 “(4) EXAMINATIONS.—

15 “(A) IN GENERAL.—Subject to subtitle B
16 of the Consumer Financial Protection Act of
17 2010, the Board may make examinations of a
18 savings and loan holding company and each
19 subsidiary of a savings and loan holding com-
20 pany system, in order to—

21 “(i) inform the Board of—

22 “(I) the nature of the operations
23 and financial condition of the savings
24 and loan holding company and the
25 subsidiary;

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1 “(II) the financial, operational,
2 and other risks within the savings and
3 loan holding company system that
4 may pose a threat to—

5 “(aa) the safety and sound-
6 ness of the savings and loan
7 holding company or of any depos-
8 itory institution subsidiary of the
9 savings and loan holding com-
10 pany; or

11 “(bb) the stability of the fi-
12 nancial system of the United
13 States; and

14 “(III) the systems of the savings
15 and loan holding company for moni-
16 toring and controlling the risks de-
17 scribed in subclause (II); and

18 “(ii) monitor the compliance of the
19 savings and loan holding company and the
20 subsidiary with—

21 “(I) this Act;

22 “(II) Federal laws that the
23 Board has specific jurisdiction to en-
24 force against the company or sub-
25 sidiary; and

1 “(III) other than in the case of
2 an insured depository institution or
3 functionally regulated subsidiary, any
4 other applicable provisions of Federal
5 law.

6 “(B) USE OF REPORTS TO REDUCE EXAMI-
7 NATIONS.—For purposes of this subsection, the
8 Board shall, to the fullest extent possible, rely
9 on—

10 “(i) the examination reports made by
11 other Federal or State regulatory agencies
12 relating to a savings and loan holding com-
13 pany and any subsidiary; and

14 “(ii) the reports and other informa-
15 tion required under paragraph (2).

16 “(C) COORDINATION WITH OTHER REGU-
17 LATORS.—The Board shall—

18 “(i) provide reasonable notice to, and
19 consult with, the appropriate Federal
20 banking agency, the Securities and Ex-
21 change Commission, the Commodity Fu-
22 tures Trading Commission, or State regu-
23 latory agency, as appropriate, for a sub-
24 sidiary that is a depository institution or a
25 functionally regulated subsidiary of a sav-

1 ings and loan holding company before com-
2 mencing an examination of the subsidiary
3 under this section; and

4 “(ii) to the fullest extent possible,
5 avoid duplication of examination activities,
6 reporting requirements, and requests for
7 information.”.

8 (i) DEFINITION OF THE TERM “SAVINGS AND LOAN
9 HOLDING COMPANY”.—Section 10(a)(1)(D)(ii) of the
10 Home Owners’ Loan Act (12 U.S.C. 1467a(a)(1)(D)(ii))
11 is amended to read as follows:

12 “(ii) EXCLUSION.—The term ‘savings
13 and loan holding company’ does not in-
14 clude—

15 “(I) a bank holding company
16 that is registered under, and subject
17 to, the Bank Holding Company Act of
18 1956 (12 U.S.C. 1841 et seq.), or to
19 any company directly or indirectly
20 controlled by such company (other
21 than a savings association);

22 “(II) a company that controls a
23 savings association that functions
24 solely in a trust or fiduciary capacity
25 as described in section 2(c)(2)(D) of

1 the Bank Holding Company Act of
2 1956 (12 U.S.C. 1841(c)(2)(D)); or

3 “(III) a company described in
4 subsection (c)(9)(C) solely by virtue of
5 such company’s control of an inter-
6 mediate holding company established
7 pursuant to section 10A.”.

8 (j) EFFECTIVE DATE.—The amendments made by
9 this section shall take effect on the transfer date.

10 **SEC. 605. ASSURING CONSISTENT OVERSIGHT OF PERMISSIBLE**
11 **ACTIVITIES OF DEPOSITORY INSTITU-**
12 **TION SUBSIDIARIES OF HOLDING COMPANIES.**
13 **NIES.**

14 (a) IN GENERAL.—The Federal Deposit Insurance
15 Act (12 U.S.C. 1811 et seq.) is amended by inserting after
16 section 25 the following new section:

17 **“SEC. 26. ASSURING CONSISTENT OVERSIGHT OF SUBSIDI-**
18 **ARIES OF HOLDING COMPANIES.**

19 “(a) DEFINITIONS.—For purposes of this section:

20 “(1) BOARD.—The term ‘Board’ means the
21 Board of Governors of the Federal Reserve System.

22 “(2) FUNCTIONALLY REGULATED SUB-
23 SIDIARY.—The term ‘functionally regulated sub-
24 sidiary’ has the same meaning as in section 5(c)(5)
25 of the Bank Holding Company Act.

1 “(3) LEAD INSURED DEPOSITORY INSTITU-
2 TION.—The term ‘lead insured depository institu-
3 tion’ has the same meaning as in section 2(o)(8) of
4 the Bank Holding Company Act.

5 “(b) EXAMINATION REQUIREMENTS.—Subject to
6 subtitle B of the Consumer Financial Protection Act of
7 2010, the Board shall examine the activities of a non-
8 depository institution subsidiary (other than a functionally
9 regulated subsidiary or a subsidiary of a depository insti-
10 tution) of a depository institution holding company that
11 are permissible for the insured depository institution sub-
12 sidiaries of the depository institution holding company in
13 the same manner, subject to the same standards, and with
14 the same frequency as would be required if such activities
15 were conducted in the lead insured depository institution
16 of the depository institution holding company.

17 “(c) STATE COORDINATION.—

18 “(1) CONSULTATION AND COORDINATION.—If a
19 nondepository institution subsidiary is supervised by
20 a State bank supervisor or other State regulatory
21 authority, the Board, in conducting the examinations
22 required in subsection (b), shall consult and coordi-
23 nate with such State regulator.

24 “(2) ALTERNATING EXAMINATIONS PER-
25 MITTED.—The examinations required under sub-

1 section (b) may be conducted in joint or alternating
2 manner with a State regulator, if the Board deter-
3 mines that an examination of a nondepository insti-
4 tution subsidiary conducted by the State carries out
5 the purposes of this section.

6 “(d) APPROPRIATE FEDERAL BANKING AGENCY
7 BACKUP EXAMINATION AUTHORITY.—

8 “(1) IN GENERAL.—In the event that the
9 Board does not conduct examinations required under
10 subsection (b) in the same manner, subject to the
11 same standards, and with the same frequency as
12 would be required if such activities were conducted
13 by the lead insured depository institution subsidiary
14 of the depository institution holding company, the
15 appropriate Federal banking agency for the lead in-
16 sured depository institution may recommend in writ-
17 ing (which shall include a written explanation of the
18 concerns giving rise to the recommendation) that the
19 Board perform the examination required under sub-
20 section (b).

21 “(2) EXAMINATION BY AN APPROPRIATE FED-
22 ERAL BANKING AGENCY.—If the Board does not, be-
23 fore the end of the 60-day period beginning on the
24 date on which the Board receives a recommendation
25 under paragraph (1), begin an examination as re-

1 required under subsection (b) or provide a written ex-
2 planation or plan to the appropriate Federal banking
3 agency making such recommendation responding to
4 the concerns raised by the appropriate Federal
5 banking agency for the lead insured depository insti-
6 tution, the appropriate Federal banking agency for
7 the lead insured depository institution may, subject
8 to the Consumer Financial Protection Act of 2010,
9 examine the activities that are permissible for a de-
10 pository institution subsidiary conducted by such
11 nondepository institution subsidiary (other than a
12 functionally regulated subsidiary or a subsidiary of
13 a depository institution) of the depository institution
14 holding company as if the nondepository institution
15 subsidiary were an insured depository institution for
16 which the appropriate Federal banking agency of the
17 lead insured depository institution was the appro-
18 priate Federal banking agency, to determine whether
19 the activities—

20 “(A) pose a material threat to the safety
21 and soundness of any insured depository insti-
22 tution subsidiary of the depository institution
23 holding company;

24 “(B) are conducted in accordance with ap-
25 plicable Federal law; and

1 “(C) are subject to appropriate systems for
2 monitoring and controlling the financial, oper-
3 ating, and other material risks of the activities
4 that may pose a material threat to the safety
5 and soundness of the insured depository institu-
6 tion subsidiaries of the holding company.

7 “(3) AGENCY COORDINATION WITH THE
8 BOARD.—An appropriate Federal banking agency
9 that conducts an examination pursuant to paragraph
10 (2) shall coordinate examination of the activities of
11 nondepository institution subsidiaries described in
12 subsection (b) with the Board in a manner that—

13 “(A) avoids duplication;

14 “(B) shares information relevant to the su-
15 pervision of the depository institution holding
16 company;

17 “(C) achieves the objectives of subsection
18 (b); and

19 “(D) ensures that the depository institu-
20 tion holding company and the subsidiaries of
21 the depository institution holding company are
22 not subject to conflicting supervisory demands
23 by such agency and the Board.

24 “(4) FEE PERMITTED FOR EXAMINATION
25 COSTS.—An appropriate Federal banking agency

1 that conducts an examination or enforcement action
2 pursuant to this section may collect an assessment,
3 fee, or such other charge from the subsidiary as the
4 appropriate Federal banking agency determines nec-
5 essary or appropriate to carry out the responsibil-
6 ities of the appropriate Federal banking agency in
7 connection with such examination.

8 “(e) REFERRALS FOR ENFORCEMENT BY APPRO-
9 PRIATE FEDERAL BANKING AGENCY.—

10 “(1) RECOMMENDATION OF ENFORCEMENT AC-
11 TION.—The appropriate Federal banking agency for
12 the lead insured depository institution, based upon
13 its examination of a nondepository institution sub-
14 sidiary conducted pursuant to subsection (d), or
15 other relevant information, may submit to the
16 Board, in writing, a recommendation that the Board
17 take enforcement action against such nondepository
18 institution subsidiary, together with an explanation
19 of the concerns giving rise to the recommendation,
20 if the appropriate Federal banking agency deter-
21 mines (by a vote of its members, if applicable) that
22 the activities of the nondepository institution sub-
23 sidiary pose a material threat to the safety and
24 soundness of any insured depository institution sub-

1 subsidiary of the depository institution holding com-
2 pany.

3 “(2) BACK-UP AUTHORITY OF THE APPRO-
4 PRIATE FEDERAL BANKING AGENCY.—If, within the
5 60-day period beginning on the date on which the
6 Board receives a recommendation under paragraph
7 (1), the Board does not take enforcement action
8 against the nondepository institution subsidiary or
9 provide a plan for supervisory or enforcement action
10 that is acceptable to the appropriate Federal bank-
11 ing agency that made the recommendation pursuant
12 to paragraph (1), such agency may take the rec-
13 ommended enforcement action against the non-
14 depository institution subsidiary, in the same man-
15 ner as if the nondepository institution subsidiary
16 were an insured depository institution for which the
17 agency was the appropriate Federal banking agency.

18 “(f) COORDINATION AMONG APPROPRIATE FEDERAL
19 BANKING AGENCIES.—Each Federal banking agency,
20 prior to or when exercising authority under subsection (d)
21 or (e) shall—

22 “(1) provide reasonable notice to, and consult
23 with, the appropriate Federal banking agency or
24 State bank supervisor (or other State regulatory
25 agency) of the nondepository institution subsidiary

1 of a depository institution holding company that is
2 described in subsection (d) before commencing any
3 examination of the subsidiary;

4 “(2) to the fullest extent possible—

5 “(A) rely on the examinations, inspections,
6 and reports of the appropriate Federal banking
7 agency or the State bank supervisor (or other
8 State regulatory agency) of the subsidiary;

9 “(B) avoid duplication of examination ac-
10 tivities, reporting requirements, and requests
11 for information; and

12 “(C) ensure that the depository institution
13 holding company and the subsidiaries of the de-
14 pository institution holding company are not
15 subject to conflicting supervisory demands by
16 the appropriate Federal banking agencies.

17 “(g) RULE OF CONSTRUCTION.—No provision of this
18 section shall be construed as limiting any authority of the
19 Board, the Corporation, or the Comptroller of the Cur-
20 rency under any other provision of law.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall take effect on the transfer date.

1 **SEC. 606. REQUIREMENTS FOR FINANCIAL HOLDING COM-**
2 **PANIES TO REMAIN WELL CAPITALIZED AND**
3 **WELL MANAGED.**

4 (a) AMENDMENT.—Section 4(l)(1) of the Bank Hold-
5 ing Company Act of 1956 (12 U.S.C. 1843(l)(1)) is
6 amended—

7 (1) in subparagraph (B), by striking “and” at
8 the end;

9 (2) by redesignating subparagraph (C) as sub-
10 paragraph (D);

11 (3) by inserting after subparagraph (B) the fol-
12 lowing:

13 “(C) the bank holding company is well
14 capitalized and well managed; and”;

15 (4) in subparagraph (D)(ii), as so redesignated,
16 by striking “subparagraphs (A) and (B)” and insert-
17 ing “subparagraphs (A), (B), and (C)”.

18 (b) HOME OWNERS’ LOAN ACT AMENDMENT.—Sec-
19 tion 10(c)(2) of the Home Owners’ Loan Act (12 U.S.C.
20 1467a(c)(2)) is amended by adding at the end the fol-
21 lowing new subparagraph:

22 “(H) Any activity that is permissible for a
23 financial holding company (as such term is de-
24 fined under section 2(p) of the Bank Holding
25 Company Act of 1956 (12 U.S.C. 1841(p)) to

1 conduct under section 4(k) of the Bank Holding
2 Company Act of 1956 if—

3 “(i) the savings and loan holding com-
4 pany meets all of the criteria to qualify as
5 a financial holding company, and complies
6 with all of the requirements applicable to a
7 financial holding company, under sections
8 4(l) and 4(m) of the Bank Holding Com-
9 pany Act and section 804(c) of the Com-
10 munity Reinvestment Act of 1977 (12
11 U.S.C. 2903(c)) as if the savings and loan
12 holding company was a bank holding com-
13 pany; and

14 “(ii) the savings and loan holding
15 company conducts the activity in accord-
16 ance with the same terms, conditions, and
17 requirements that apply to the conduct of
18 such activity by a bank holding company
19 under the Bank Holding Company Act of
20 1956 and the Board’s regulations and in-
21 terpretations under such Act.”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall take effect on the transfer date.

1 **SEC. 607. STANDARDS FOR INTERSTATE ACQUISITIONS.**

2 (a) ACQUISITION OF BANKS.—Section 3(d)(1)(A) of
3 the Bank Holding Company Act of 1956 (12 U.S.C.
4 1842(d)(1)(A)) is amended by striking “adequately cap-
5 italized and adequately managed” and inserting “well cap-
6 italized and well managed”.

7 (b) INTERSTATE BANK MERGERS.—Section
8 44(b)(4)(B) of the Federal Deposit Insurance Act (12
9 U.S.C. 1831u(b)(4)(B)) is amended by striking “will con-
10 tinue to be adequately capitalized and adequately man-
11 aged” and inserting “will be well capitalized and well man-
12 aged”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect on the transfer date.

15 **SEC. 608. ENHANCING EXISTING RESTRICTIONS ON BANK**
16 **TRANSACTIONS WITH AFFILIATES.**

17 (a) AFFILIATE TRANSACTIONS.—Section 23A of the
18 Federal Reserve Act (12 U.S.C. 371c) is amended—

19 (1) in subsection (b)—

20 (A) in paragraph (1), by striking subpara-
21 graph (D) and inserting the following:

22 “(D) any investment fund with respect to
23 which a member bank or affiliate thereof is an
24 investment adviser; and”;

25 (B) in paragraph (7)—

1 (i) in subparagraph (A), by inserting
2 before the semicolon at the end the fol-
3 lowing: “, including a purchase of assets
4 subject to an agreement to repurchase”;

5 (ii) in subparagraph (C), by striking
6 “, including assets subject to an agreement
7 to repurchase,”;

8 (iii) in subparagraph (D)—

9 (I) by inserting “or other debt
10 obligations” after “acceptance of secu-
11 rities”; and

12 (II) by striking “or” at the end;
13 and

14 (iv) by adding at the end the fol-
15 lowing:

16 “(F) a transaction with an affiliate that
17 involves the borrowing or lending of securities,
18 to the extent that the transaction causes a
19 member bank or a subsidiary to have credit ex-
20 posure to the affiliate; or

21 “(G) a derivative transaction, as defined in
22 paragraph (3) of section 5200(b) of the Revised
23 Statutes of the United States (12 U.S.C.
24 84(b)), with an affiliate, to the extent that the

1 transaction causes a member bank or a sub-
2 subsidiary to have credit exposure to the affiliate;”;

3 (2) in subsection (c)—

4 (A) in paragraph (1)—

5 (i) in the matter preceding subpara-
6 graph (A), by striking “subsidiary” and all
7 that follows through “time of the trans-
8 action” and inserting “subsidiary, and any
9 credit exposure of a member bank or a
10 subsidiary to an affiliate resulting from a
11 securities borrowing or lending transaction,
12 or a derivative transaction, shall be se-
13 cured at all times”; and

14 (ii) in each of subparagraphs (A)
15 through (D), by striking “or letter of cred-
16 it” and inserting “letter of credit, or credit
17 exposure”;

18 (B) by striking paragraph (2);

19 (C) by redesignating paragraphs (3)
20 through (5) as paragraphs (2) through (4), re-
21 spectively;

22 (D) in paragraph (2), as so redesignated,
23 by inserting before the period at the end “, or
24 credit exposure to an affiliate resulting from a

1 securities borrowing or lending transaction, or
2 derivative transaction”; and

3 (E) in paragraph (3), as so redesignated—

4 (i) by inserting “or other debt obliga-
5 tions” after “securities”; and

6 (ii) by striking “or guarantee” and all
7 that follows through “behalf of,” and in-
8 serting “guarantee, acceptance, or letter of
9 credit issued on behalf of, or credit expo-
10 sure from a securities borrowing or lending
11 transaction, or derivative transaction to,”;

12 (3) in subsection (d)(4), in the matter pre-
13 ceding subparagraph (A), by striking “or issuing”
14 and all that follows through “behalf of,” and insert-
15 ing “issuing a guarantee, acceptance, or letter of
16 credit on behalf of, or having credit exposure result-
17 ing from a securities borrowing or lending trans-
18 action, or derivative transaction to,”; and

19 (4) in subsection (f)—

20 (A) in paragraph (2)—

21 (i) by striking “or order”;

22 (ii) by striking “if it finds” and all
23 that follows through the end of the para-
24 graph and inserting the following: “if—

1 “(i) the Board finds the exemption to
2 be in the public interest and consistent
3 with the purposes of this section, and noti-
4 fies the Federal Deposit Insurance Cor-
5 poration of such finding; and

6 “(ii) before the end of the 60-day pe-
7 riod beginning on the date on which the
8 Federal Deposit Insurance Corporation re-
9 ceives notice of the finding under clause
10 (i), the Federal Deposit Insurance Cor-
11 poration does not object, in writing, to the
12 finding, based on a determination that the
13 exemption presents an unacceptable risk to
14 the Deposit Insurance Fund.”;

15 (iii) by striking the Board and insert-
16 ing the following:

17 “(A) IN GENERAL.—The Board”; and

18 (iv) by adding at the end the fol-
19 lowing:

20 “(B) ADDITIONAL EXEMPTIONS.—

21 “(i) NATIONAL BANKS.—The Comp-
22 troller of the Currency may, by order, ex-
23 empt a transaction of a national bank from
24 the requirements of this section if—

1 “(I) the Board and the Office of
2 the Comptroller of the Currency joint-
3 ly find the exemption to be in the
4 public interest and consistent with the
5 purposes of this section and notify the
6 Federal Deposit Insurance Corpora-
7 tion of such finding; and

8 “(II) before the end of the 60-
9 day period beginning on the date on
10 which the Federal Deposit Insurance
11 Corporation receives notice of the
12 finding under subclause (I), the Fed-
13 eral Deposit Insurance Corporation
14 does not object, in writing, to the
15 finding, based on a determination that
16 the exemption presents an unaccept-
17 able risk to the Deposit Insurance
18 Fund.

19 “(ii) STATE BANKS.—The Federal
20 Deposit Insurance Corporation may, by
21 order, exempt a transaction of a State non-
22 member bank, and the Board may, by
23 order, exempt a transaction of a State
24 member bank, from the requirements of
25 this section if—

1 “(I) the Board and the Federal
2 Deposit Insurance Corporation jointly
3 find that the exemption is in the pub-
4 lic interest and consistent with the
5 purposes of this section; and

6 “(II) the Federal Deposit Insur-
7 ance Corporation finds that the ex-
8 emption does not present an unaccept-
9 able risk to the Deposit Insurance
10 Fund.”; and

11 (B) by adding at the end the following:

12 “(4) AMOUNTS OF COVERED TRANSACTIONS.—
13 The Board may issue such regulations or interpreta-
14 tions as the Board determines are necessary or ap-
15 propriate with respect to the manner in which a net-
16 ting agreement may be taken into account in deter-
17 mining the amount of a covered transaction between
18 a member bank or a subsidiary and an affiliate, in-
19 cluding the extent to which netting agreements be-
20 tween a member bank or a subsidiary and an affil-
21 iate may be taken into account in determining
22 whether a covered transaction is fully secured for
23 purposes of subsection (d)(4). An interpretation
24 under this paragraph with respect to a specific mem-
25 ber bank, subsidiary, or affiliate shall be issued

1 jointly with the appropriate Federal banking agency
2 for such member bank, subsidiary, or affiliate.”.

3 (b) TRANSACTIONS WITH AFFILIATES.—Section
4 23B(e) of the Federal Reserve Act (12 U.S.C. 371e–1(e))
5 is amended—

6 (1) by striking the undesignated matter fol-
7 lowing subparagraph (B);

8 (2) by redesignating subparagraphs (A) and
9 (B) as clauses (i) and (ii), respectively, and adjust-
10 ing the clause margins accordingly;

11 (3) by redesignating paragraphs (1) and (2) as
12 subparagraphs (A) and (B), respectively, and adjust-
13 ing the subparagraph margins accordingly;

14 (4) by striking “The Board” and inserting the
15 following:

16 “(1) IN GENERAL.—The Board”;

17 (5) in paragraph (1)(B), as so redesignated—

18 (A) in the matter preceding clause (i), by
19 inserting before “regulations” the following:

20 “subject to paragraph (2), if the Board finds
21 that an exemption or exclusion is in the public
22 interest and is consistent with the purposes of
23 this section, and notifies the Federal Deposit
24 Insurance Corporation of such finding,”; and

1 (B) in clause (ii), by striking the comma at
2 the end and inserting a period; and

3 (6) by adding at the end the following:

4 “(2) EXCEPTION.—The Board may grant an
5 exemption or exclusion under this subsection only if,
6 during the 60-day period beginning on the date of
7 receipt of notice of the finding from the Board
8 under paragraph (1)(B), the Federal Deposit Insur-
9 ance Corporation does not object, in writing, to such
10 exemption or exclusion, based on a determination
11 that the exemption presents an unacceptable risk to
12 the Deposit Insurance Fund.”.

13 (c) HOME OWNERS’ LOAN ACT.—Section 11 of the
14 Home Owners’ Loan Act (12 U.S.C. 1468) is amended
15 by adding at the end the following:

16 “(d) EXEMPTIONS.—

17 “(1) FEDERAL SAVINGS ASSOCIATIONS.—The
18 Comptroller of the Currency may, by order, exempt
19 a transaction of a Federal savings association from
20 the requirements of this section if—

21 “(A) the Board and the Office of the
22 Comptroller of the Currency jointly find the ex-
23 emption to be in the public interest and con-
24 sistent with the purposes of this section and no-

1 tify the Federal Deposit Insurance Corporation
2 of such finding; and

3 “(B) before the end of the 60-day period
4 beginning on the date on which the Federal De-
5 posit Insurance Corporation receives notice of
6 the finding under subparagraph (A), the Fed-
7 eral Deposit Insurance Corporation does not ob-
8 ject, in writing, to the finding, based on a de-
9 termination that the exemption presents an un-
10 acceptable risk to the Deposit Insurance Fund.

11 “(2) STATE SAVINGS ASSOCIATION.—The Fed-
12 eral Deposit Insurance Corporation may, by order,
13 exempt a transaction of a State savings association
14 from the requirements of this section if the Board
15 and the Federal Deposit Insurance Corporation
16 jointly find that—

17 “(A) the exemption is in the public interest
18 and consistent with the purposes of this section;
19 and

20 “(B) the exemption does not present an
21 unacceptable risk to the Deposit Insurance
22 Fund.”.

23 (d) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect 1 year after the transfer date.

1 **SEC. 609. ELIMINATING EXCEPTIONS FOR TRANSACTIONS**
2 **WITH FINANCIAL SUBSIDIARIES.**

3 (a) AMENDMENT.—Section 23A(e) of the Federal Re-
4 serve Act (12 U.S.C. 371c(e)) is amended—

5 (1) by striking paragraph (3); and

6 (2) by redesignating paragraph (4) as para-
7 graph (3).

8 (b) PROSPECTIVE APPLICATION OF AMENDMENT.—

9 The amendments made by this section shall apply with
10 respect to any covered transaction between a bank and
11 a subsidiary of the bank, as those terms are defined in
12 section 23A of the Federal Reserve Act (12 U.S.C. 371c),
13 that is entered into on or after the date of enactment of
14 this Act.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect 1 year after the transfer date.

17 **SEC. 610. LENDING LIMITS APPLICABLE TO CREDIT EXPO-**
18 **SURE ON DERIVATIVE TRANSACTIONS, RE-**
19 **PURCHASE AGREEMENTS, REVERSE REPUR-**
20 **CHASE AGREEMENTS, AND SECURITIES**
21 **LENDING AND BORROWING TRANSACTIONS.**

22 (a) NATIONAL BANKS.—Section 5200(b) of the Re-
23 vised Statutes of the United States (12 U.S.C. 84(b)) is
24 amended—

25 (1) in paragraph (1), by striking “shall in-
26 clude” and all that follows through the end of the

1 paragraph and inserting the following: “shall in-
2 clude—

3 “(A) all direct or indirect advances of
4 funds to a person made on the basis of any ob-
5 ligation of that person to repay the funds or re-
6 payable from specific property pledged by or on
7 behalf of the person;

8 “(B) to the extent specified by the Comp-
9 troller of the Currency, any liability of a na-
10 tional banking association to advance funds to
11 or on behalf of a person pursuant to a contrac-
12 tual commitment; and

13 “(C) any credit exposure to a person aris-
14 ing from a derivative transaction, repurchase
15 agreement, reverse repurchase agreement, secu-
16 rities lending transaction, or securities bor-
17 rowing transaction between the national bank-
18 ing association and the person;”;

19 (2) in paragraph (2), by striking the period at
20 the end and inserting “; and”; and

21 (3) by adding at the end the following:

22 “(3) the term ‘derivative transaction’ includes
23 any transaction that is a contract, agreement, swap,
24 warrant, note, or option that is based, in whole or
25 in part, on the value of, any interest in, or any

1 quantitative measure or the occurrence of any event
2 relating to, one or more commodities, securities, cur-
3 rencies, interest or other rates, indices, or other as-
4 sets.”.

5 (b) SAVINGS ASSOCIATIONS.—Section 5(u)(3) of the
6 Home Owners’ Loan Act (12 U.S.C. 1464(u)(3)) is
7 amended by striking “Director” each place that term ap-
8 pears and inserting “Comptroller of the Currency”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall take effect 1 year after the transfer date.

11 **SEC. 611. CONSISTENT TREATMENT OF DERIVATIVE TRANS-**
12 **ACTIONS IN LENDING LIMITS.**

13 (a) AMENDMENT.—Section 18 of the Federal Deposit
14 Insurance Act (12 U.S.C. 1828) is amended by adding at
15 the end the following:

16 “(y) STATE LENDING LIMIT TREATMENT OF DE-
17 RIVATIVES TRANSACTIONS.—An insured State bank may
18 engage in a derivative transaction, as defined in section
19 5200(b)(3) of the Revised Statutes of the United States
20 (12 U.S.C. 84(b)(3)), only if the law with respect to lend-
21 ing limits of the State in which the insured State bank
22 is chartered takes into consideration credit exposure to de-
23 rivative transactions.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall take effect 18 months after the transfer
3 date.

4 **SEC. 612. RESTRICTION ON CONVERSIONS OF TROUBLED**
5 **BANKS.**

6 (a) CONVERSION OF A NATIONAL BANKING ASSOCIA-
7 TION.—The Act entitled “An Act to provide for the con-
8 version of national banking associations into and their
9 merger or consolidation with State banks, and for other
10 purposes.” (12 U.S.C. 214 et seq.) is amended by adding
11 at the end the following:

12 **“SEC. 10. PROHIBITION ON CONVERSION.**

13 “A national banking association may not convert to
14 a State bank or State savings association during any pe-
15 riod in which the national banking association is subject
16 to a cease and desist order (or other formal enforcement
17 order) issued by, or a memorandum of understanding en-
18 tered into with, the Comptroller of the Currency with re-
19 spect to a significant supervisory matter.”.

20 (b) CONVERSION OF A STATE BANK OR SAVINGS AS-
21 SOCIATION.—Section 5154 of the Revised Statutes of the
22 United States (12 U.S.C. 35) is amended by adding at
23 the end the following: “The Comptroller of the Currency
24 may not approve the conversion of a State bank or State
25 savings association to a national banking association or

1 Federal savings association during any period in which the
2 State bank or State savings association is subject to a
3 cease and desist order (or other formal enforcement order)
4 issued by, or a memorandum of understanding entered
5 into with, a State bank supervisor or the appropriate Fed-
6 eral banking agency with respect to a significant super-
7 visory matter or a final enforcement action by a State At-
8 torney General.”.

9 (c) CONVERSION OF A FEDERAL SAVINGS ASSOCIA-
10 TION.—Section 5(i) of the Home Owners’ Loan Act (12
11 U.S.C. 1464(i)) is amended by adding at the end the fol-
12 lowing:

13 “(6) LIMITATION ON CERTAIN CONVERSIONS BY
14 FEDERAL SAVINGS ASSOCIATIONS.—A Federal sav-
15 ings association may not convert to a State bank or
16 State savings association during any period in which
17 the Federal savings association is subject to a cease
18 and desist order (or other formal enforcement order)
19 issued by, or a memorandum of understanding en-
20 tered into with, the Office of Thrift Supervision or
21 the Comptroller of the Currency with respect to a
22 significant supervisory matter.”.

23 (d) EXCEPTION.—The prohibition on the approval of
24 conversions under the amendments made by subsections
25 (a), (b), and (c) shall not apply, if—

1 (1) the Federal banking agency that would be
2 the appropriate Federal banking agency after the
3 proposed conversion gives the appropriate Federal
4 banking agency or State bank supervisor that issued
5 the cease and desist order (or other formal enforce-
6 ment order) or memorandum of understanding, as
7 appropriate, written notice of the proposed conver-
8 sion including a plan to address the significant su-
9 pervisory matter in a manner that is consistent with
10 the safe and sound operation of the institution;

11 (2) within 30 days of receipt of the written no-
12 tice required under paragraph (1), the appropriate
13 Federal banking agency or State bank supervisor
14 that issued the cease and desist order (or other for-
15 mal enforcement order) or memorandum of under-
16 standing, as appropriate, does not object to the con-
17 version or the plan to address the significant super-
18 visory matter;

19 (3) after conversion of the insured depository
20 institution, the appropriate Federal banking agency
21 after the conversion implements such plan; and

22 (4) in the case of a final enforcement action by
23 a State Attorney General, approval of the conversion
24 is conditioned on compliance by the insured deposi-

1 tory institution with the terms of such final enforce-
2 ment action.

3 (e) NOTIFICATION OF PENDING ENFORCEMENT AC-
4 TIONS.—

5 (1) COPY OF CONVERSION APPLICATION.—At
6 the time an insured depository institution files a
7 conversion application, the insured depository insti-
8 tution shall transmit a copy of the conversion appli-
9 cation to—

10 (A) the appropriate Federal banking agen-
11 cy for the insured depository institution; and

12 (B) the Federal banking agency that would
13 be the appropriate Federal banking agency of
14 the insured depository institution after the pro-
15 posed conversion; and

16 (2) NOTIFICATION AND ACCESS TO INFORMA-
17 TION.—Upon receipt of a copy of the application de-
18 scribed in paragraph (1), the appropriate Federal
19 banking agency for the insured depository institution
20 proposing the conversion shall—

21 (A) notify the Federal banking agency that
22 would be the appropriate Federal banking agen-
23 cy for the institution after the proposed conver-
24 sion in writing of any ongoing supervisory or
25 investigative proceedings that the appropriate

1 Federal banking agency for the institution pro-
2 posing to convert believes is likely to result, in
3 the near term and absent the proposed conver-
4 sion, in a cease and desist order (or other for-
5 mal enforcement order) or memorandum of un-
6 derstanding with respect to a significant super-
7 visory matter; and

8 (B) provide the Federal banking agency
9 that would be the appropriate Federal banking
10 agency for the institution after the proposed
11 conversion access to all investigative and super-
12 visory information relating to the proceedings
13 described in subparagraph (A).

14 **SEC. 613. DE NOVO BRANCHING INTO STATES.**

15 (a) NATIONAL BANKS.—Section 5155(g)(1)(A) of the
16 Revised Statutes of the United States (12 U.S.C.
17 36(g)(1)(A)) is amended to read as follows:

18 “(A) the law of the State in which the
19 branch is located, or is to be located, would per-
20 mit establishment of the branch, if the national
21 bank were a State bank chartered by such
22 State; and”.

23 (b) STATE INSURED BANKS.—Section 18(d)(4)(A)(i)
24 of the Federal Deposit Insurance Act (12 U.S.C.
25 1828(d)(4)(A)(i)) is amended to read as follows:

1 transaction, or securities borrowing
2 transaction between the member bank
3 and the person.”.

4 (b) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect 1 year after the transfer date.

6 **SEC. 615. LIMITATIONS ON PURCHASES OF ASSETS FROM**
7 **INSIDERS.**

8 (a) AMENDMENT TO THE FEDERAL DEPOSIT INSUR-
9 ANCE ACT.—Section 18 of the Federal Deposit Insurance
10 Act (12 U.S.C. 1828) is amended by adding at the end
11 the following:

12 “(z) GENERAL PROHIBITION ON SALE OF ASSETS.—

13 “(1) IN GENERAL.—An insured depository in-
14 stitution may not purchase an asset from, or sell an
15 asset to, an executive officer, director, or principal
16 shareholder of the insured depository institution, or
17 any related interest of such person (as such terms
18 are defined in section 22(h) of Federal Reserve Act),
19 unless—

20 “(A) the transaction is on market terms;

21 and

22 “(B) if the transaction represents more
23 than 10 percent of the capital stock and surplus
24 of the insured depository institution, the trans-
25 action has been approved in advance by a ma-

1 jority of the members of the board of directors
2 of the insured depository institution who do not
3 have an interest in the transaction.

4 “(2) RULEMAKING.—The Board of Governors
5 of the Federal Reserve System may issue such rules
6 as may be necessary to define terms and to carry
7 out the purposes this subsection. Before proposing
8 or adopting a rule under this paragraph, the Board
9 of Governors of the Federal Reserve System shall
10 consult with the Comptroller of the Currency and
11 the Corporation as to the terms of the rule.”.

12 (b) AMENDMENTS TO THE FEDERAL RESERVE
13 ACT.—Section 22(d) of the Federal Reserve Act (12
14 U.S.C. 375) is amended to read as follows:

15 “(d) [Reserved]”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect on the transfer date.

18 **SEC. 616. REGULATIONS REGARDING CAPITAL LEVELS.**

19 (a) CAPITAL LEVELS OF BANK HOLDING COMPA-
20 NIES.—Section 5(b) of the Bank Holding Company Act
21 of 1956 (12 U.S.C. 1844(b)) is amended—

22 (1) by inserting after “orders” the following: “,
23 including regulations and orders relating to the cap-
24 ital requirements for bank holding companies,”; and

1 (2) by adding at the end the following: “In es-
2 tablishing capital regulations pursuant to this sub-
3 section, the Board shall seek to make such require-
4 ments countercyclical, so that the amount of capital
5 required to be maintained by a company increases in
6 times of economic expansion and decreases in times
7 of economic contraction, consistent with the safety
8 and soundness of the company.”.

9 (b) CAPITAL LEVELS OF SAVINGS AND LOAN HOLD-
10 ING COMPANIES.—Section 10(g)(1) of the Home Owners’
11 Loan Act (12 U.S.C. 1467a(g)(1)) is amended—

12 (1) by inserting after “orders” the following: “,
13 including regulations and orders relating to capital
14 requirements for savings and loan holding compa-
15 nies,”; and

16 (2) by inserting at the end the following: “In
17 establishing capital regulations pursuant to this sub-
18 section, the appropriate Federal banking agency
19 shall seek to make such requirements countercyclical
20 so that the amount of capital required to be main-
21 tained by a company increases in times of economic
22 expansion and decreases in times of economic con-
23 traction, consistent with the safety and soundness of
24 the company.”.

1 (c) CAPITAL LEVELS OF INSURED DEPOSITORY IN-
2 STITUTIONS.—Section 908(a)(1) of the International
3 Lending Supervision Act of 1983 (12 U.S.C. 3907(a)(1))
4 is amended by adding at the end the following: “Each ap-
5 propriate Federal banking agency shall seek to make the
6 capital standards required under this section or other pro-
7 visions of Federal law for insured depository institutions
8 countercyclical so that the amount of capital required to
9 be maintained by an insured depository institution in-
10 creases in times of economic expansion and decreases in
11 times of economic contraction, consistent with the safety
12 and soundness of the insured depository institution.”

13 (d) SOURCE OF STRENGTH.—The Federal Deposit
14 Insurance Act (12 U.S.C. 1811 et seq.) is amended by
15 inserting after section 38 (12 U.S.C. 1831o) the following:

16 **“SEC. 38A. SOURCE OF STRENGTH.**

17 “(a) HOLDING COMPANIES.—The appropriate Fed-
18 eral banking agency for a bank holding company or sav-
19 ings and loan holding company shall require the bank
20 holding company or savings and loan holding company to
21 serve as a source of financial strength for any subsidiary
22 of the bank holding company or savings and loan holding
23 company that is a depository institution.

24 “(b) OTHER COMPANIES.—If an insured depository
25 institution is not the subsidiary of a bank holding com-

1 pany or savings and loan holding company, the appro-
2 priate Federal banking agency for the insured depository
3 institution shall require any company that directly or indi-
4 rectly controls the insured depository institution to serve
5 as a source of financial strength for such institution.

6 “(c) REPORTS.—The appropriate Federal banking
7 agency for an insured depository institution described in
8 subsection (b) may, from time to time, require the com-
9 pany, or a company that directly or indirectly controls the
10 insured depository institution to submit a report, under
11 oath, for the purposes of—

12 “(1) assessing the ability of such company to
13 comply with the requirement under subsection (b);
14 and

15 “(2) enforcing the compliance of such company
16 with the requirement under subsection (b).

17 “(d) RULES.—Not later than 1 year after the trans-
18 fer date, as defined in section 311 of the Enhancing Fi-
19 nancial Institution Safety and Soundness Act of 2010, the
20 appropriate Federal banking agencies shall jointly issue
21 final rules to carry out this section.

22 “(e) DEFINITION.—In this section, the term ‘source
23 of financial strength’ means the ability of a company that
24 directly or indirectly owns or controls an insured deposi-
25 tory institution to provide financial assistance to such in-

1 insured depository institution in the event of the financial
2 distress of the insured depository institution.”.

3 (e) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect on the transfer date.

5 **SEC. 617. ELIMINATION OF ELECTIVE INVESTMENT BANK**
6 **HOLDING COMPANY FRAMEWORK.**

7 (a) AMENDMENT.—Section 17 of the Securities Ex-
8 change Act of 1934 (15 U.S.C. 78q) is amended—

9 (1) by striking subsection (i); and

10 (2) by redesignating subsections (j) and (k) as
11 subsections (i) and (j), respectively.

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect on the transfer date.

14 **SEC. 618. SECURITIES HOLDING COMPANIES.**

15 (a) DEFINITIONS.—In this section—

16 (1) the term “associated person of a securities
17 holding company” means a person directly or indi-
18 rectly controlling, controlled by, or under common
19 control with, a securities holding company;

20 (2) the term “foreign bank” has the same
21 meaning as in section 1(b)(7) of the International
22 Banking Act of 1978 (12 U.S.C. 3101(b)(7));

23 (3) the term “insured bank” has the same
24 meaning as in section 3 of the Federal Deposit In-
25 surance Act (12 U.S.C. 1813);

- 1 (4) the term “securities holding company”—
- 2 (A) means—
- 3 (i) a person (other than a natural per-
- 4 son) that owns or controls 1 or more bro-
- 5 kers or dealers registered with the Com-
- 6 mission; and
- 7 (ii) the associated persons of a person
- 8 described in clause (i); and
- 9 (B) does not include a person that is—
- 10 (i) a nonbank financial company su-
- 11 pervised by the Board under title I;
- 12 (ii) an insured bank (other than an
- 13 institution described in subparagraphs (D),
- 14 (F), or (H) of section 2(c)(2) of the Bank
- 15 Holding Company Act of 1956 (12 U.S.C.
- 16 1841(c)(2)) or a savings association;
- 17 (iii) an affiliate of an insured bank
- 18 (other than an institution described in sub-
- 19 paragraphs (D), (F), or (H) of section
- 20 2(c)(2) of the Bank Holding Company Act
- 21 of 1956 (12 U.S.C. 1841(c)(2)) or an affil-
- 22 iate of a savings association;
- 23 (iv) a foreign bank, foreign company,
- 24 or company that is described in section

1 8(a) of the International Banking Act of
2 1978 (12 U.S.C. 3106(a));

3 (v) a foreign bank that controls, di-
4 rectly or indirectly, a corporation chartered
5 under section 25A of the Federal Reserve
6 Act (12 U.S.C. 611 et seq.); or

7 (vi) subject to comprehensive consoli-
8 dated supervision by a foreign regulator;

9 (5) the term “supervised securities holding com-
10 pany” means a securities holding company that is
11 supervised by the Board of Governors under this
12 section; and

13 (6) the terms “affiliate”, “bank”, “bank hold-
14 ing company”, “company”, “control”, “savings asso-
15 ciation”, and “subsidiary” have the same meanings
16 as in section 2 of the Bank Holding Company Act
17 of 1956.

18 (b) SUPERVISION OF A SECURITIES HOLDING COM-
19 PANY NOT HAVING A BANK OR SAVINGS ASSOCIATION
20 AFFILIATE.—

21 (1) IN GENERAL.—A securities holding com-
22 pany that is required by a foreign regulator or provi-
23 sion of foreign law to be subject to comprehensive
24 consolidated supervision may register with the Board
25 of Governors under paragraph (2) to become a su-

1 supervised securities holding company. Any securities
2 holding company filing such a registration shall be
3 supervised in accordance with this section, and shall
4 comply with the rules and orders prescribed by the
5 Board of Governors applicable to supervised securi-
6 ties holding companies.

7 (2) REGISTRATION AS A SUPERVISED SECURI-
8 TIES HOLDING COMPANY.—

9 (A) REGISTRATION.—A securities holding
10 company that elects to be subject to comprehen-
11 sive consolidated supervision shall register by
12 filing with the Board of Governors such infor-
13 mation and documents as the Board of Gov-
14 ernors, by regulation, may prescribe as nec-
15 essary or appropriate in furtherance of the pur-
16 poses of this section.

17 (B) EFFECTIVE DATE.—A securities hold-
18 ing company that registers under subparagraph
19 (A) shall be deemed to be a supervised securi-
20 ties holding company, effective on the date that
21 is 45 days after the date of receipt of the reg-
22 istration information and documents under sub-
23 paragraph (A) by the Board of Governors, or
24 within such shorter period as the Board of Gov-
25 ernors, by rule or order, may determine.

1 (c) SUPERVISION OF SECURITIES HOLDING COMPA-
2 NIES.—

3 (1) RECORDKEEPING AND REPORTING.—

4 (A) RECORDKEEPING AND REPORTING RE-
5 QUIRED.—Each supervised securities holding
6 company and each affiliate of a supervised secu-
7 rities holding company shall make and keep for
8 periods determined by the Board of Governors
9 such records, furnish copies of such records,
10 and make such reports, as the Board of Gov-
11 ernors determines to be necessary or appro-
12 priate to carry out this section, to prevent eva-
13 sions thereof, and to monitor compliance by the
14 supervised securities holding company or affil-
15 iate with applicable provisions of law.

16 (B) FORM AND CONTENTS.—

17 (i) IN GENERAL.—Any record or re-
18 port required to be made, furnished, or
19 kept under this paragraph shall—

20 (I) be prepared in such form and
21 according to such specifications (in-
22 cluding certification by a registered
23 public accounting firm), as the Board
24 of Governors may require; and

1 (II) be provided promptly to the
2 Board of Governors at any time, upon
3 request by the Board of Governors.

4 (ii) CONTENTS.—Records and reports
5 required to be made, furnished, or kept
6 under this paragraph may include—

7 (I) a balance sheet or income
8 statement of the supervised securities
9 holding company or an affiliate of a
10 supervised securities holding company;

11 (II) an assessment of the consoli-
12 dated capital and liquidity of the su-
13 pervised securities holding company;

14 (III) a report by an independent
15 auditor attesting to the compliance of
16 the supervised securities holding com-
17 pany with the internal risk manage-
18 ment and internal control objectives of
19 the supervised securities holding com-
20 pany; and

21 (IV) a report concerning the ex-
22 tent to which the supervised securities
23 holding company or affiliate has com-
24 plied with the provisions of this sec-

1 tion and any regulations prescribed
2 and orders issued under this section.

3 (2) USE OF EXISTING REPORTS.—

4 (A) IN GENERAL.—The Board of Gov-
5 ernors shall, to the fullest extent possible, ac-
6 cept reports in fulfillment of the requirements
7 of this paragraph that a supervised securities
8 holding company or an affiliate of a supervised
9 securities holding company has been required to
10 provide to another regulatory agency or a self-
11 regulatory organization.

12 (B) AVAILABILITY.—A supervised securi-
13 ties holding company or an affiliate of a super-
14 vised securities holding company shall promptly
15 provide to the Board of Governors, at the re-
16 quest of the Board of Governors, any report de-
17 scribed in subparagraph (A), as permitted by
18 law.

19 (3) EXAMINATION AUTHORITY.—

20 (A) FOCUS OF EXAMINATION AUTHOR-
21 ITY.—The Board of Governors may make ex-
22 aminations of any supervised securities holding
23 company and any affiliate of a supervised secu-
24 rities holding company to carry out this sub-
25 section, to prevent evasions thereof, and to

1 monitor compliance by the supervised securities
2 holding company or affiliate with applicable
3 provisions of law.

4 (B) DEFERENCE TO OTHER EXAMINA-
5 TIONS.—For purposes of this subparagraph, the
6 Board of Governors shall, to the fullest extent
7 possible, use the reports of examination made
8 by other appropriate Federal or State regu-
9 latory authorities with respect to any function-
10 ally regulated subsidiary or any institution de-
11 scribed in subparagraph (D), (F), or (H) of
12 section 2(c)(2) of the Bank Holding Company
13 Act of 1956 (12 U.S.C. 1841(c)(2)).

14 (d) CAPITAL AND RISK MANAGEMENT.—

15 (1) IN GENERAL.—The Board of Governors
16 shall, by regulation or order, prescribe capital ade-
17 quacy and other risk management standards for su-
18 pervised securities holding companies that are ap-
19 propriate to protect the safety and soundness of the
20 supervised securities holding companies and address
21 the risks posed to financial stability by supervised
22 securities holding companies.

23 (2) DIFFERENTIATION.—In imposing standards
24 under this subsection, the Board of Governors may
25 differentiate among supervised securities holding

1 companies on an individual basis, or by category,
2 taking into consideration the requirements under
3 paragraph (3).

4 (3) CONTENT.—Any standards imposed on a
5 supervised securities holding company under this
6 subsection shall take into account—

7 (A) the differences among types of busi-
8 ness activities carried out by the supervised se-
9 curities holding company;

10 (B) the amount and nature of the financial
11 assets of the supervised securities holding com-
12 pany;

13 (C) the amount and nature of the liabilities
14 of the supervised securities holding company,
15 including the degree of reliance on short-term
16 funding;

17 (D) the extent and nature of the off-bal-
18 ance sheet exposures of the supervised securi-
19 ties holding company;

20 (E) the extent and nature of the trans-
21 actions and relationships of the supervised secu-
22 rities holding company with other financial
23 companies;

24 (F) the importance of the supervised secu-
25 rities holding company as a source of credit for

1 households, businesses, and State and local gov-
2 ernments, and as a source of liquidity for the
3 financial system; and

4 (G) the nature, scope, and mix of the ac-
5 tivities of the supervised securities holding com-
6 pany.

7 (4) NOTICE.—A capital requirement imposed
8 under this subsection may not take effect earlier
9 than 180 days after the date on which a supervised
10 securities holding company is provided notice of the
11 capital requirement.

12 (e) OTHER PROVISIONS OF LAW APPLICABLE TO SU-
13 PERVISED SECURITIES HOLDING COMPANIES.—

14 (1) FEDERAL DEPOSIT INSURANCE ACT.—Sub-
15 sections (b), (c) through (s), and (u) of section 8 of
16 the Federal Deposit Insurance Act (12 U.S.C. 1818)
17 shall apply to any supervised securities holding com-
18 pany, and to any subsidiary (other than a bank or
19 an institution described in subparagraph (D), (F),
20 or (H) of section 2(c)(2) of the Bank Holding Com-
21 pany Act of 1956 (12 U.S.C. 1841(c)(2))) of a su-
22 pervised securities holding company, in the same
23 manner as such subsections apply to a bank holding
24 company for which the Board of Governors is the
25 appropriate Federal banking agency. For purposes

1 of applying such subsections to a supervised securi-
2 ties holding company or a subsidiary (other than a
3 bank or an institution described in subparagraph
4 (D), (F), or (H) of section 2(c)(2) of the Bank
5 Holding Company Act of 1956 (12 U.S.C.
6 1841(c)(2))) of a supervised securities holding com-
7 pany, the Board of Governors shall be deemed the
8 appropriate Federal banking agency for the super-
9 vised securities holding company or subsidiary.

10 (2) BANK HOLDING COMPANY ACT OF 1956.—
11 Except as the Board of Governors may otherwise
12 provide by regulation or order, a supervised securi-
13 ties holding company shall be subject to the provi-
14 sions of the Bank Holding Company Act of 1956
15 (12 U.S.C. 1841 et seq.) in the same manner and
16 to the same extent a bank holding company is sub-
17 ject to such provisions, except that a supervised se-
18 curities holding company may not, by reason of this
19 paragraph, be deemed to be a bank holding company
20 for purposes of section 4 of the Bank Holding Com-
21 pany Act of 1956 (12 U.S.C. 1843).

1 **SEC. 619. PROHIBITIONS ON PROPRIETARY TRADING AND**
2 **CERTAIN RELATIONSHIPS WITH HEDGE**
3 **FUNDS AND PRIVATE EQUITY FUNDS.**

4 The Bank Holding Company Act of 1956 (12 U.S.C.
5 1841 et seq.) is amended by adding at the end the fol-
6 lowing:

7 **“SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND**
8 **CERTAIN RELATIONSHIPS WITH HEDGE**
9 **FUNDS AND PRIVATE EQUITY FUNDS.**

10 “(a) IN GENERAL.—

11 “(1) PROHIBITION.—Unless otherwise provided
12 in this section, a banking entity shall not—

13 “(A) engage in proprietary trading; or

14 “(B) acquire or retain any equity, partner-
15 ship, or other ownership interest in or sponsor
16 a hedge fund or a private equity fund.

17 “(2) NONBANK FINANCIAL COMPANIES SUPER-
18 VISED BY THE BOARD.—Any nonbank financial com-
19 pany supervised by the Board that engages in pro-
20 prietary trading or takes or retains any equity, part-
21 nership, or other ownership interest in or sponsors
22 a hedge fund or a private equity fund shall be sub-
23 ject, by rule, as provided in subsection (b)(2), to ad-
24 ditional capital requirements for and additional
25 quantitative limits with regards to such proprietary
26 trading and taking or retaining any equity, partner-

1 ship, or other ownership interest in or sponsorship
2 of a hedge fund or a private equity fund, except that
3 permitted activities as described in subsection (d)
4 shall not be subject to the additional capital and ad-
5 ditional quantitative limits except as provided in
6 subsection (d)(3), as if the nonbank financial com-
7 pany supervised by the Board were a banking entity.

8 “(b) STUDY AND RULEMAKING.—

9 “(1) STUDY.—Not later than 6 months after
10 the date of enactment of this section, the Financial
11 Stability Oversight Council shall study and make
12 recommendations on implementing the provisions of
13 this section so as to—

14 “(A) promote and enhance the safety and
15 soundness of banking entities;

16 “(B) protect taxpayers and consumers and
17 enhance financial stability by minimizing the
18 risk that insured depository institutions and the
19 affiliates of insured depository institutions will
20 engage in unsafe and unsound activities;

21 “(C) limit the inappropriate transfer of
22 Federal subsidies from institutions that benefit
23 from deposit insurance and liquidity facilities of
24 the Federal Government to unregulated entities;

1 “(D) reduce conflicts of interest between
2 the self-interest of banking entities and
3 nonbank financial companies supervised by the
4 Board, and the interests of the customers of
5 such entities and companies;

6 “(E) limit activities that have caused
7 undue risk or loss in banking entities and
8 nonbank financial companies supervised by the
9 Board, or that might reasonably be expected to
10 create undue risk or loss in such banking enti-
11 ties and nonbank financial companies super-
12 vised by the Board;

13 “(F) appropriately accommodate the busi-
14 ness of insurance within an insurance company,
15 subject to regulation in accordance with the rel-
16 evant insurance company investment laws, while
17 protecting the safety and soundness of any
18 banking entity with which such insurance com-
19 pany is affiliated and of the United States fi-
20 nancial system; and

21 “(G) appropriately time the divestiture of
22 illiquid assets that are affected by the imple-
23 mentation of the prohibitions under subsection
24 (a).

25 “(2) RULEMAKING.—

1 “(A) IN GENERAL.—Unless otherwise pro-
2 vided in this section, not later than 9 months
3 after the completion of the study under para-
4 graph (1), the appropriate Federal banking
5 agencies, the Securities and Exchange Commis-
6 sion, and the Commodity Futures Trading
7 Commission, shall consider the findings of the
8 study under paragraph (1) and adopt rules to
9 carry out this section, as provided in subpara-
10 graph (B).

11 “(B) COORDINATED RULEMAKING.—

12 “(i) REGULATORY AUTHORITY.—The
13 regulations issued under this paragraph
14 shall be issued by—

15 “(I) the appropriate Federal
16 banking agencies, jointly, with respect
17 to insured depository institutions;

18 “(II) the Board, with respect to
19 any company that controls an insured
20 depository institution, or that is treat-
21 ed as a bank holding company for
22 purposes of section 8 of the Inter-
23 national Banking Act, any nonbank fi-
24 nancial company supervised by the
25 Board, and any subsidiary of any of

1 the foregoing (other than a subsidiary
2 for which an agency described in sub-
3 clause (I), (III), or (IV) is the pri-
4 mary financial regulatory agency);

5 “(III) the Commodity Futures
6 Trading Commission, with respect to
7 any entity for which the Commodity
8 Futures Trading Commission is the
9 primary financial regulatory agency,
10 as defined in section 2 of the Dodd-
11 Frank Wall Street Reform and Con-
12 sumer Protection Act; and

13 “(IV) the Securities and Ex-
14 change Commission, with respect to
15 any entity for which the Securities
16 and Exchange Commission is the pri-
17 mary financial regulatory agency, as
18 defined in section 2 of the Dodd-
19 Frank Wall Street Reform and Con-
20 sumer Protection Act.

21 “(ii) COORDINATION, CONSISTENCY,
22 AND COMPARABILITY.—In developing and
23 issuing regulations pursuant to this sec-
24 tion, the appropriate Federal banking
25 agencies, the Securities and Exchange

1 Commission, and the Commodity Futures
2 Trading Commission shall consult and co-
3 ordinate with each other, as appropriate,
4 for the purposes of assuring, to the extent
5 possible, that such regulations are com-
6 parable and provide for consistent applica-
7 tion and implementation of the applicable
8 provisions of this section to avoid providing
9 advantages or imposing disadvantages to
10 the companies affected by this subsection
11 and to protect the safety and soundness of
12 banking entities and nonbank financial
13 companies supervised by the Board.

14 “(iii) COUNCIL ROLE.—The Chair-
15 person of the Financial Stability Oversight
16 Council shall be responsible for coordina-
17 tion of the regulations issued under this
18 section.

19 “(c) EFFECTIVE DATE.—

20 “(1) IN GENERAL.—Except as provided in para-
21 graphs (2) and (3), this section shall take effect on
22 the earlier of—

23 “(A) 12 months after the date of the
24 issuance of final rules under subsection (b); or

1 “(B) 2 years after the date of enactment
2 of this section.

3 “(2) CONFORMANCE PERIOD FOR DIVESTI-
4 TURE.—A banking entity or nonbank financial com-
5 pany supervised by the Board shall bring its activi-
6 ties and investments into compliance with the re-
7 quirements of this section not later than 2 years
8 after the date on which the requirements become ef-
9 fective pursuant to this section or 2 years after the
10 date on which the entity or company becomes a
11 nonbank financial company supervised by the Board.
12 The Board may, by rule or order, extend this two-
13 year period for not more than one year at a time,
14 if, in the judgment of the Board, such an extension
15 is consistent with the purposes of this section and
16 would not be detrimental to the public interest. The
17 extensions made by the Board under the preceding
18 sentence may not exceed an aggregate of 3 years.

19 “(3) EXTENDED TRANSITION FOR ILLIQUID
20 FUNDS.—

21 “(A) APPLICATION.—The Board may,
22 upon the application of a banking entity, extend
23 the period during which the banking entity, to
24 the extent necessary to fulfill a contractual obli-
25 gation that was in effect on May 1, 2010, may

1 take or retain its equity, partnership, or other
2 ownership interest in, or otherwise provide addi-
3 tional capital to, an illiquid fund.

4 “(B) TIME LIMIT ON APPROVAL.—The
5 Board may grant 1 extension under subpara-
6 graph (A), which may not exceed 5 years.

7 “(4) DIVESTITURE REQUIRED.—Except as oth-
8 erwise provided in subsection (d)(1)(G), a banking
9 entity may not engage in any activity prohibited
10 under subsection (a)(1)(B) after the earlier of—

11 “(A) the date on which the contractual ob-
12 ligation to invest in the illiquid fund terminates;
13 and

14 “(B) the date on which any extensions
15 granted by the Board under paragraph (3) ex-
16 pire.

17 “(5) ADDITIONAL CAPITAL DURING TRANSITION
18 PERIOD.—Notwithstanding paragraph (2), on the
19 date on which the Commission issues rules under
20 subsection (b)(2) the appropriate Federal banking
21 agencies, the Securities and Exchange Commission,
22 and the Commodity Futures Trading Commission
23 shall issue rules, as provided in subsection (b)(2), to
24 impose additional capital requirements, and any
25 other restrictions, as appropriate, on any equity,

1 partnership, or ownership interest in or sponsorship
2 of a hedge fund or private equity fund by a banking
3 entity.

4 “(6) SPECIAL RULEMAKING.—Not later than 6
5 months after the date of enactment of this section,
6 the Board shall issues rules to implement paragraph
7 (2) and (3).

8 “(d) PERMITTED ACTIVITIES.—

9 “(1) IN GENERAL.—Notwithstanding the re-
10 strictions under subsection (a), to the extent per-
11 mitted by any other provision of Federal or State
12 law, and subject to the limitations under paragraph
13 (2) and any restrictions or limitations that the ap-
14 propriate Federal banking agencies, the Securities
15 and Exchange Commission, and the Commodity Fu-
16 tures Trading Commission, may determine, the fol-
17 lowing activities (in this section referred to as ‘per-
18 mitted activities’) are permitted:

19 “(A) The purchase, sale, acquisition, or
20 disposition of obligations of the United States
21 or any agency thereof, obligations, participa-
22 tions, or other instruments of or issued by the
23 Government National Mortgage Association, the
24 Federal National Mortgage Association, the
25 Federal Home Loan Mortgage Corporation, a

1 Federal Home Loan Bank, the Federal Agricultural
2 tural Mortgage Corporation, or a Farm Credit
3 System institution chartered under and subject
4 to the provisions of the Farm Credit Act of
5 1971 (12 U.S.C. 2001 et seq.), and obligations
6 of any State or of any political subdivision
7 thereof.

8 “(B) The purchase, sale, acquisition, or
9 disposition of securities and other instruments
10 described in subsection (h)(4) in connection
11 with underwriting or market-making-related ac-
12 tivities, to the extent that any such activities
13 permitted by this subparagraph are designed
14 not to exceed the reasonably expected near term
15 demands of clients, customers, or counterpar-
16 ties.

17 “(C) Risk-mitigating hedging activities in
18 connection with and related to individual or ag-
19 gregated positions, contracts, or other holdings
20 of the banking entity that are designed to re-
21 duce the specific risks to a banking entity in
22 connection with and related to such positions,
23 contracts, or other holdings.

24 “(D) The purchase, sale, acquisition, or
25 disposition of securities and other instruments

1 described in subsection (h)(4) on behalf of cus-
2 tomers.

3 “(E) Investments in one or more small
4 business investment companies, as defined in
5 section 102 of the Small Business Investment
6 Act of 1958 (15 U.S.C. 662), investments de-
7 signed primarily to promote the public welfare,
8 of the type permitted under paragraph (11) of
9 section 5136 of the Revised Statutes of the
10 United States (12 U.S.C. 24), or investments
11 that are qualified rehabilitation expenditures
12 with respect to a qualified rehabilitated building
13 or certified historic structure, as such terms are
14 defined in section 47 of the Internal Revenue
15 Code of 1986 or a similar State historic tax
16 credit program.

17 “(F) The purchase, sale, acquisition, or
18 disposition of securities and other instruments
19 described in subsection (h)(4) by a regulated in-
20 surance company directly engaged in the busi-
21 ness of insurance for the general account of the
22 company and by any affiliate of such regulated
23 insurance company, provided that such activi-
24 ties by any affiliate are solely for the general

1 account of the regulated insurance company,
2 if—

3 “(i) the purchase, sale, acquisition, or
4 disposition is conducted in compliance
5 with, and subject to, the insurance com-
6 pany investment laws, regulations, and
7 written guidance of the State or jurisdic-
8 tion in which each such insurance company
9 is domiciled; and

10 “(ii) the appropriate Federal banking
11 agencies, after consultation with the Fi-
12 nancial Stability Oversight Council and the
13 relevant insurance commissioners of the
14 States and territories of the United States,
15 have not jointly determined, after notice
16 and comment, that a particular law, regu-
17 lation, or written guidance described in
18 clause (i) is insufficient to protect the safe-
19 ty and soundness of the banking entity, or
20 of the financial stability of the United
21 States.

22 “(G) Organizing and offering a private eq-
23 uity or hedge fund, including serving as a gen-
24 eral partner, managing member, or trustee of
25 the fund and in any manner selecting or con-

1 trolling (or having employees, officers, directors,
2 or agents who constitute) a majority of the di-
3 rectors, trustees, or management of the fund,
4 including any necessary expenses for the fore-
5 going, only if—

6 “(i) the banking entity provides bona
7 fide trust, fiduciary, or investment advisory
8 services;

9 “(ii) the fund is organized and offered
10 only in connection with the provision of
11 bona fide trust, fiduciary, or investment
12 advisory services and only to persons that
13 are customers of such services of the bank-
14 ing entity;

15 “(iii) the banking entity does not ac-
16 quire or retain an equity interest, partner-
17 ship interest, or other ownership interest
18 in the funds except for a de minimis in-
19 vestment subject to and in compliance with
20 paragraph (4);

21 “(iv) the banking entity complies with
22 the restrictions under paragraphs (1) and
23 (2) of subparagraph (f);

24 “(v) the banking entity does not, di-
25 rectly or indirectly, guarantee, assume, or

1 otherwise insure the obligations or per-
2 formance of the hedge fund or private eq-
3 uity fund or of any hedge fund or private
4 equity fund in which such hedge fund or
5 private equity fund invests;

6 “(vi) the banking entity does not
7 share with the hedge fund or private equity
8 fund, for corporate, marketing, pro-
9 motional, or other purposes, the same
10 name or a variation of the same name;

11 “(vii) no director or employee of the
12 banking entity takes or retains an equity
13 interest, partnership interest, or other
14 ownership interest in the hedge fund or
15 private equity fund, except for any director
16 or employee of the banking entity who is
17 directly engaged in providing investment
18 advisory or other services to the hedge
19 fund or private equity fund; and

20 “(viii) the banking entity discloses to
21 prospective and actual investors in the
22 fund, in writing, that any losses in such
23 hedge fund or private equity fund are
24 borne solely by investors in the fund and
25 not by the banking entity, and otherwise

1 complies with any additional rules of the
2 appropriate Federal banking agencies, the
3 Securities and Exchange Commission, or
4 the Commodity Futures Trading Commis-
5 sion, as provided in subsection (b)(2), de-
6 signed to ensure that losses in such hedge
7 fund or private equity fund are borne sole-
8 ly by investors in the fund and not by the
9 banking entity.

10 “(H) Proprietary trading conducted by a
11 banking entity pursuant to paragraph (9) or
12 (13) of section 4(c), provided that the trading
13 occurs solely outside of the United States and
14 that the banking entity is not directly or indi-
15 rectly controlled by a banking entity that is or-
16 ganized under the laws of the United States or
17 of one or more States.

18 “(I) The acquisition or retention of any eq-
19 uity, partnership, or other ownership interest
20 in, or the sponsorship of, a hedge fund or a pri-
21 vate equity fund by a banking entity pursuant
22 to paragraph (9) or (13) of section 4(c) solely
23 outside of the United States, provided that no
24 ownership interest in such hedge fund or pri-
25 vate equity fund is offered for sale or sold to a

1 resident of the United States and that the
2 banking entity is not directly or indirectly con-
3 trolled by a banking entity that is organized
4 under the laws of the United States or of one
5 or more States.

6 “(J) Such other activity as the appropriate
7 Federal banking agencies, the Securities and
8 Exchange Commission, and the Commodity Fu-
9 tures Trading Commission determine, by rule,
10 as provided in subsection (b)(2), would promote
11 and protect the safety and soundness of the
12 banking entity and the financial stability of the
13 United States.

14 “(2) LIMITATION ON PERMITTED ACTIVITIES.—

15 “(A) IN GENERAL.—No transaction, class
16 of transactions, or activity may be deemed a
17 permitted activity under paragraph (1) if the
18 transaction, class of transactions, or activity—

19 “(i) would involve or result in a mate-
20 rial conflict of interest (as such term shall
21 be defined by rule as provided in sub-
22 section (b)(2)) between the banking entity
23 and its clients, customers, or counterpar-
24 ties;

1 “(ii) would result, directly or indi-
2 rectly, in a material exposure by the bank-
3 ing entity to high-risk assets or high-risk
4 trading strategies (as such terms shall be
5 defined by rule as provided in subsection
6 (b)(2));

7 “(iii) would pose a threat to the safety
8 and soundness of such banking entity; or

9 “(iv) would pose a threat to the finan-
10 cial stability of the United States.

11 “(B) RULEMAKING.—The appropriate
12 Federal banking agencies, the Securities and
13 Exchange Commission, and the Commodity Fu-
14 tures Trading Commission shall issue regula-
15 tions to implement subparagraph (A), as part
16 of the regulations issued under subsection
17 (b)(2).

18 “(3) CAPITAL AND QUANTITATIVE LIMITA-
19 TIONS.—The appropriate Federal banking agencies,
20 the Securities and Exchange Commission, and the
21 Commodity Futures Trading Commission shall, as
22 provided in subsection (b)(2), adopt rules imposing
23 additional capital requirements and quantitative lim-
24 itations, including diversification requirements, re-
25 garding the activities permitted under this section if

1 the appropriate Federal banking agencies, the Secu-
2 rities and Exchange Commission, and the Com-
3 modity Futures Trading Commission determine that
4 additional capital and quantitative limitations are
5 appropriate to protect the safety and soundness of
6 banking entities engaged in such activities.

7 “(4) DE MINIMIS INVESTMENT.—

8 “(A) IN GENERAL.—A banking entity may
9 make and retain an investment in a hedge fund
10 or private equity fund that the banking entity
11 organizes and offers, subject to the limitations
12 and restrictions in subparagraph (B) for the
13 purposes of—

14 “(i) establishing the fund and pro-
15 viding the fund with sufficient initial eq-
16 uity for investment to permit the fund to
17 attract unaffiliated investors; or

18 “(ii) making a de minimis investment.

19 “(B) LIMITATIONS AND RESTRICTIONS ON
20 INVESTMENTS.—

21 “(i) REQUIREMENT TO SEEK OTHER
22 INVESTORS.—A banking entity shall ac-
23 tively seek unaffiliated investors to reduce
24 or dilute the investment of the banking en-

1 tity to the amount permitted under clause
2 (ii).

3 “(ii) LIMITATIONS ON SIZE OF IN-
4 VESTMENTS.—Notwithstanding any other
5 provision of law, investments by a banking
6 entity in a hedge fund or private equity
7 fund shall—

8 “(I) not later than 1 year after
9 the date of establishment of the fund,
10 be reduced through redemption, sale,
11 or dilution to an amount that is not
12 more than 3 percent of the total own-
13 ership interests of the fund;

14 “(II) be immaterial to the bank-
15 ing entity, as defined, by rule, pursu-
16 ant to subsection (b)(2), but in no
17 case may the aggregate of all of the
18 interests of the banking entity in all
19 such funds exceed 3 percent of the
20 Tier 1 capital of the banking entity.

21 “(iii) CAPITAL.—For purposes of de-
22 termining compliance with applicable cap-
23 ital standards under paragraph (3), the ag-
24 gregate amount of the outstanding invest-
25 ments by a banking entity under this para-

1 graph, including retained earnings, shall be
2 deducted from the assets and tangible eq-
3 uity of the banking entity, and the amount
4 of the deduction shall increase commensu-
5 rate with the leverage of the hedge fund or
6 private equity fund.

7 “(C) EXTENSION.—Upon an application by
8 a banking entity, the Board may extend the pe-
9 riod of time to meet the requirements under
10 subparagraph (B)(i)(I) for 2 additional years, if
11 the Board finds that an extension would be con-
12 sistent with safety and soundness and in the
13 public interest.

14 “(e) ANTI-EVASION.—

15 “(1) RULEMAKING.—The appropriate Federal
16 banking agencies, the Securities and Exchange Com-
17 mission, and the Commodity Futures Trading Com-
18 mission shall issue regulations, as part of the rule-
19 making provided for in subsection (b)(2), regarding
20 internal controls and recordkeeping, in order to in-
21 sure compliance with this section.

22 “(2) TERMINATION OF ACTIVITIES OR INVEST-
23 MENT.—Notwithstanding any other provision of law,
24 whenever an appropriate Federal banking agency,
25 the Securities and Exchange Commission, or the

1 Commodity Futures Trading Commission, as appro-
2 priate, has reasonable cause to believe that a bank-
3 ing entity or nonbank financial company supervised
4 by the Board under the respective agency's jurisdic-
5 tion has made an investment or engaged in an activ-
6 ity in a manner that functions as an evasion of the
7 requirements of this section (including through an
8 abuse of any permitted activity) or otherwise violates
9 the restrictions under this section, the appropriate
10 Federal banking agency, the Securities and Ex-
11 change Commission, or the Commodity Futures
12 Trading Commission, as appropriate, shall order,
13 after due notice and opportunity for hearing, the
14 banking entity or nonbank financial company super-
15 vised by the Board to terminate the activity and, as
16 relevant, dispose of the investment. Nothing in this
17 paragraph shall be construed to limit the inherent
18 authority of any Federal agency or State regulatory
19 authority to further restrict any investments or ac-
20 tivities under otherwise applicable provisions of law.

21 “(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE
22 FUNDS AND PRIVATE EQUITY FUNDS.—

23 “(1) IN GENERAL.—No banking entity that
24 serves, directly or indirectly, as the investment man-
25 ager, investment adviser, or sponsor to a hedge fund

1 or private equity fund, or that organizes and offers
2 a hedge fund or private equity fund pursuant to
3 paragraph (d)(1)(G), and no affiliate of such entity,
4 may enter into a transaction with the fund, or with
5 any other hedge fund or private equity fund that is
6 controlled by such fund, that would be a covered
7 transaction, as defined in section 23A of the Federal
8 Reserve Act (12 U.S.C. 371c), with the hedge fund
9 or private equity fund, as if such banking entity and
10 the affiliate thereof were a member bank and the
11 hedge fund or private equity fund were an affiliate
12 thereof.

13 “(2) TREATMENT AS MEMBER BANK.—A bank-
14 ing entity that serves, directly or indirectly, as the
15 investment manager or investment adviser to a
16 hedge fund or private equity fund, or that organizes
17 and offers a hedge fund or private equity fund pur-
18 suant to paragraph (d)(1)(G), shall be subject to
19 section 23B of the Federal Reserve Act (12 U.S.C.
20 371c–1), as if such banking entity were a member
21 bank and such hedge fund or private equity fund
22 were an affiliate thereof.

23 “(3) PERMITTED SERVICES.—

24 “(A) IN GENERAL.—Notwithstanding para-
25 graph (1), the Board may permit a banking en-

1 tity or nonbank financial company supervised
2 by the Board to enter into any prime brokerage
3 transaction with any hedge fund or private eq-
4 uity fund in which a hedge fund or private eq-
5 uity fund managed, sponsored, or advised by
6 such banking entity or nonbank financial com-
7 pany supervised by the Board has taken an eq-
8 uity, partnership, or other ownership interest,
9 if—

10 “(i) the banking entity or nonbank fi-
11 nancial company supervised by the Board
12 is in compliance with each of the limita-
13 tions set forth in subsection (d)(1)(G) with
14 regard to a hedge fund or private equity
15 fund organized and offered by such bank-
16 ing entity or nonbank financial company
17 supervised by the Board;

18 “(ii) the chief executive officer (or
19 equivalent officer) of the banking entity
20 certifies in writing annually (with a duty to
21 update the certification if the information
22 in the certification materially changes) that
23 the conditions specified in subsection
24 (d)(1)(g)(v) are satisfied;

1 “(iii) the Board has determined that
2 such transaction is consistent with the safe
3 and sound operation and condition of the
4 banking entity or nonbank financial com-
5 pany supervised by the Board.

6 “(B) TREATMENT OF PRIME BROKERAGE
7 TRANSACTIONS.—For purposes of subparagraph
8 (A), a prime brokerage transaction described in
9 subparagraph (A) shall be subject to section
10 23B of the Federal Reserve Act (12 U.S.C.
11 371c-1) as if the counterparty were an affiliate
12 of the banking entity.

13 “(4) APPLICATION TO NONBANK FINANCIAL
14 COMPANIES SUPERVISED BY THE BOARD.—The ap-
15 propriate Federal banking agencies, the Securities
16 and Exchange Commission, and the Commodity Fu-
17 tures Trading Commission shall adopt rules, as pro-
18 vided in subsection (b)(2), imposing additional cap-
19 ital charges or other restrictions for nonbank finan-
20 cial companies supervised by the Board to address
21 the risks to and conflicts of interest of banking enti-
22 ties described in paragraphs (1), (2), and (3) of this
23 subsection.

24 “(g) RULES OF CONSTRUCTION.—

1 “(1) LIMITATION ON CONTRARY AUTHORITY.—

2 Except as provided in this section, notwithstanding
3 any other provision of law, the prohibitions and re-
4 strictions under this section shall apply to activities
5 of a banking entity or nonbank financial company
6 supervised by the Board, even if such activities are
7 authorized for a banking entity or nonbank financial
8 company supervised by the Board.

9 “(2) SALE OR SECURITIZATION OF LOANS.—

10 Nothing in this section shall be construed to limit or
11 restrict the ability of a banking entity or nonbank fi-
12 nancial company supervised by the Board to sell or
13 securitize loans in a manner otherwise permitted by
14 law.

15 “(3) AUTHORITY OF FEDERAL AGENCIES AND
16 STATE REGULATORY AUTHORITIES.—Nothing in this
17 section shall be construed to limit the inherent au-
18 thority of any Federal agency or State regulatory
19 authority under otherwise applicable provisions of
20 law.

21 “(h) DEFINITIONS.—In this section, the following
22 definitions shall apply:

23 “(1) BANKING ENTITY.—The term ‘banking en-
24 tity’ means any insured depository institution (as de-
25 fined in section 3 of the Federal Deposit Insurance

1 Act (12 U.S.C. 1813)), any company that controls
2 an insured depository institution, or that is treated
3 as a bank holding company for purposes of section
4 8 of the International Banking Act of 1978, and any
5 affiliate or subsidiary of any such entity. For pur-
6 poses of this paragraph, the term ‘insured depository
7 institution’ does not include an institution that func-
8 tions solely in a trust or fiduciary capacity, if—

9 “(A) all or substantially all of the deposits
10 of such institution are in trust funds and are
11 received in a bona fide fiduciary capacity;

12 “(B) no deposits of such institution which
13 are insured by the Federal Deposit Insurance
14 Corporation are offered or marketed by or
15 through an affiliate of such institution;

16 “(C) such institution does not accept de-
17 mand deposits or deposits that the depositor
18 may withdraw by check or similar means for
19 payment to third parties or others or make
20 commercial loans; and

21 “(D) such institution does not—

22 “(i) obtain payment or payment re-
23 lated services from any Federal Reserve
24 bank, including any service referred to in

1 section 11(a) of the Federal Reserve Act
2 (12 U.S.C. 248a); or

3 “(ii) exercise discount or borrowing
4 privileges pursuant to section 19(b)(7) of
5 the Federal Reserve Act (12 U.S.C.
6 461(b)(7)).

7 “(2) HEDGE FUND; PRIVATE EQUITY FUND.—
8 The terms ‘hedge fund’ and ‘private equity fund’
9 mean an issuer that would be an investment com-
10 pany, as defined in the Investment Company Act of
11 1940 (15 U.S.C. 80a-1 et seq.), but for section
12 3(c)(1) or 3(c)(7) of that Act, or such similar funds
13 as the appropriate Federal banking agencies, the Se-
14 curities and Exchange Commission, and the Com-
15 modity Futures Trading Commission may, by rule,
16 as provided in subsection (b)(2), determine.

17 “(3) NONBANK FINANCIAL COMPANY SUPER-
18 VISED BY THE BOARD.—The term ‘nonbank finan-
19 cial company supervised by the Board’ means a
20 nonbank financial company supervised by the Board
21 of Governors, as defined in section 102 of the Fi-
22 nancial Stability Act of 2010.

23 “(4) PROPRIETARY TRADING.—The term ‘pro-
24 prietary trading’, when used with respect to a bank-
25 ing entity or nonbank financial company supervised

1 by the Board, means engaging as a principal for the
2 trading account of the banking entity or nonbank fi-
3 nancial company supervised by the Board in any
4 transaction to purchase or sell, or otherwise acquire
5 or dispose of, any security, any derivative, any con-
6 tract of sale of a commodity for future delivery, any
7 option on any such security, derivative, or contract,
8 or any other security or financial instrument that
9 the appropriate Federal banking agencies, the Secu-
10 rities and Exchange Commission, and the Com-
11 modity Futures Trading Commission may, by rule
12 as provided in subsection (b)(2), determine.

13 “(5) SPONSOR.—The term to ‘sponsor’ a fund
14 means—

15 “(A) to serve as a general partner, man-
16 aging member, or trustee of a fund;

17 “(B) in any manner to select or to control
18 (or to have employees, officers, or directors, or
19 agents who constitute) a majority of the direc-
20 tors, trustees, or management of a fund; or

21 “(C) to share with a fund, for corporate,
22 marketing, promotional, or other purposes, the
23 same name or a variation of the same name.

24 “(6) TRADING ACCOUNT.—The term ‘trading
25 account’ means any account used for acquiring or

1 taking positions in the securities and instruments
2 described in paragraph (4) principally for the pur-
3 pose of selling in the near term (or otherwise with
4 the intent to resell in order to profit from short-term
5 price movements), and any such other accounts as
6 the appropriate Federal banking agencies, the Secu-
7 rities and Exchange Commission, and the Com-
8 modity Futures Trading Commission may, by rule
9 as provided in subsection (b)(2), determine.

10 “(7) ILLIQUID FUND.—

11 “(A) IN GENERAL.—The term ‘illiquid
12 fund’ means a hedge fund or private equity
13 fund that—

14 “(i) as of May 1, 2010, was prin-
15 cipally invested in, or was invested and
16 contractually committed to principally in-
17 vest in, illiquid assets, such as portfolio
18 companies, real estate investments, and
19 venture capital investments; and

20 “(ii) makes all investments pursuant
21 to, and consistent with, an investment
22 strategy to principally invest in illiquid as-
23 sets. In issuing rules regarding this sub-
24 paragraph, the Board shall take into con-
25 sideration the terms of investment for the

1 hedge fund or private equity fund, includ-
2 ing contractual obligations, the ability of
3 the fund to divest of assets held by the
4 fund, and any other factors that the Board
5 determines are appropriate.

6 “(B) HEDGE FUND.—For the purposes of
7 this paragraph, the term ‘hedge fund’ means
8 any fund identified under subsection (h)(2), and
9 does not include a private equity fund, as such
10 term is used in section 203(m) of the Invest-
11 ment Advisers Act of 1940 (15 U.S.C. 80b-
12 3(m)).”.

13 **SEC. 620. STUDY OF BANK INVESTMENT ACTIVITIES.**

14 (a) STUDY.—

15 (1) IN GENERAL.—Not later than 18 months
16 after the date of enactment of this Act, the appro-
17 priate Federal banking agencies shall jointly review
18 and prepare a report on the activities that a banking
19 entity, as such term is defined in the Bank Holding
20 Company Act of 1956 (12 U.S.C. 1841 et. seq.),
21 may engage in under Federal and State law, includ-
22 ing activities authorized by statute and by order, in-
23 terpretation and guidance.

1 (2) CONTENT.—In carrying out the study
2 under paragraph (1), the appropriate Federal bank-
3 ing agencies shall review and consider—

4 (A) the type of activities or investments;

5 (B) any financial, operational, managerial,
6 or reputation risks associated with or presented
7 as a result of the banking entity engaged in the
8 activity or making the investment; and

9 (C) risk mitigation activities undertaken by
10 the banking entity with regard to the risks.

11 (b) REPORT AND RECOMMENDATIONS TO THE COUN-
12 CIL AND TO CONGRESS.—The appropriate Federal bank-
13 ing agencies shall submit to the Council, the Committee
14 on Financial Services of the House of Representatives,
15 and the Committee on Banking, Housing, and Urban Af-
16 fairs of the Senate the study conducted pursuant to sub-
17 section (a) no later than 2 months after its completion.
18 In addition to the information described in subsection (a),
19 the report shall include recommendations regarding—

20 (1) whether each activity or investment has or
21 could have a negative effect on the safety and sound-
22 ness of the banking entity or the United States fi-
23 nancial system;

1 (2) the appropriateness of the conduct of each
2 activity or type of investment by banking entities;
3 and

4 (3) additional restrictions as may be necessary
5 to address risks to safety and soundness arising
6 from the activities or types of investments described
7 in subsection (a).

8 **SEC. 621. CONFLICTS OF INTEREST.**

9 (a) IN GENERAL.—The Securities Act of 1933 (15
10 U.S.C. 77a et seq.) is amended by inserting after section
11 27A the following:

12 **“SEC. 27B. CONFLICTS OF INTEREST RELATING TO CER-**
13 **TAIN SECURITIZATIONS.**

14 “(a) IN GENERAL.—An underwriter, placement
15 agent, initial purchaser, or sponsor, or any affiliate or sub-
16 sidiary of any such entity, of an asset-backed security (as
17 such term is defined in section 3 of the Securities and
18 Exchange Act of 1934 (15 U.S.C. 78e), which for the pur-
19 poses of this section shall include a synthetic asset-backed
20 security), shall not, at any time for a period ending on
21 the date that is one year after the date of the first closing
22 of the sale of the asset-backed security, engage in any
23 transaction that would involve or result in any material
24 conflict of interest with respect to any investor in a trans-
25 action arising out of such activity.

1 “(b) RULEMAKING.—Not later than 270 days after
2 the date of enactment of this section, the Commission
3 shall issue rules for the purpose of implementing sub-
4 section (a).

5 “(c) EXCEPTION.—The prohibitions of subsection (a)
6 shall not apply to—

7 “(1) risk-mitigating hedging activities in con-
8 nection with positions or holdings arising out of the
9 underwriting, placement, initial purchase, or spon-
10 sorship of an asset-backed security, provided that
11 such activities are designed to reduce the specific
12 risks to the underwriter, placement agent, initial
13 purchaser, or sponsor associated with positions or
14 holdings arising out of such underwriting, place-
15 ment, initial purchase, or sponsorship; or

16 “(2) purchases or sales of asset-backed securi-
17 ties made pursuant to and consistent with—

18 “(A) commitments of the underwriter,
19 placement agent, initial purchaser, or sponsor,
20 or any affiliate or subsidiary of any such entity,
21 to provide liquidity for the asset-backed secu-
22 rity, or

23 “(B) bona fide market-making in the asset
24 backed security.

1 “(d) RULE OF CONSTRUCTION.—This subsection
2 shall not otherwise limit the application of section 15G
3 of the Securities Exchange Act of 1934.”.

4 (b) EFFECTIVE DATE.—Section 27B of the Securi-
5 ties Act of 1933, as added by this section, shall take effect
6 on the effective date of final rules issued by the Commis-
7 sion under subsection (b) of such section 27B, except that
8 subsections (b) and (d) of such section 27B shall take ef-
9 fect on the date of enactment of this Act.

10 **SEC. 622. CONCENTRATION LIMITS ON LARGE FINANCIAL**
11 **FIRMS.**

12 The Bank Holding Company Act of 1956 (12 U.S.C.
13 1841 et seq.) is amended by adding at the end the fol-
14 lowing:

15 **“SEC. 13. CONCENTRATION LIMITS ON LARGE FINANCIAL**
16 **FIRMS.**

17 “(a) DEFINITIONS.—In this section—

18 “(1) the term ‘Council’ means the Financial
19 Stability Oversight Council;

20 “(2) the term ‘financial company’ means—

21 “(A) an insured depository institution;

22 “(B) a bank holding company;

23 “(C) a savings and loan holding company;

24 “(D) a company that controls an insured
25 depository institution;

1 “(E) a nonbank financial company super-
2 vised by the Board under title I of the Dodd-
3 Frank Wall Street Reform and Consumer Pro-
4 tection Act; and

5 “(F) a foreign bank or company that is
6 treated as a bank holding company for purposes
7 of this Act; and

8 “(3) the term ‘liabilities’ means—

9 “(A) with respect to a United States finan-
10 cial company—

11 “(i) the total risk-weighted assets of
12 the financial company, as determined
13 under the risk-based capital rules applica-
14 ble to bank holding companies, as adjusted
15 to reflect exposures that are deducted from
16 regulatory capital; less

17 “(ii) the total regulatory capital of the
18 financial company under the risk-based
19 capital rules applicable to bank holding
20 companies;

21 “(B) with respect to a foreign-based finan-
22 cial company—

23 “(i) the total risk-weighted assets of
24 the United States operations of the finan-
25 cial company, as determined under the ap-

1 plicable risk-based capital rules, as ad-
2 justed to reflect exposures that are de-
3 ducted from regulatory capital; less

4 “(ii) the total regulatory capital of the
5 United States operations of the financial
6 company, as determined under the applica-
7 ble risk-based capital rules; and

8 “(C) with respect to an insurance company
9 or other nonbank financial company supervised
10 by the Board, such assets of the company as
11 the Board shall specify by rule, in order to pro-
12 vide for consistent and equitable treatment of
13 such companies.

14 “(b) CONCENTRATION LIMIT.—Subject to the rec-
15 ommendations by the Council under subsection (e), a fi-
16 nancial company may not merge or consolidate with, ac-
17 quire all or substantially all of the assets of, or otherwise
18 acquire control of, another company, if the total consoli-
19 dated liabilities of the acquiring financial company upon
20 consummation of the transaction would exceed 10 percent
21 of the aggregate consolidated liabilities of all financial
22 companies at the end of the calendar year preceding the
23 transaction.

24 “(c) EXCEPTION TO CONCENTRATION LIMIT.—With
25 the prior written consent of the Board, the concentration

1 limit under subsection (b) shall not apply to an acquisi-
2 tion—

3 “(1) of a bank in default or in danger of de-
4 fault;

5 “(2) with respect to which assistance is pro-
6 vided by the Federal Deposit Insurance Corporation
7 under section 13(c) of the Federal Deposit Insur-
8 ance Act (12 U.S.C. 1823(c)); or

9 “(3) that would result only in a de minimis in-
10 crease in the liabilities of the financial company.

11 “(d) RULEMAKING AND GUIDANCE.—The Board
12 shall issue regulations implementing this section in accord-
13 ance with the recommendations of the Council under sub-
14 section (e), including the definition of terms, as necessary.
15 The Board may issue interpretations or guidance regard-
16 ing the application of this section to an individual financial
17 company or to financial companies in general.

18 “(e) COUNCIL STUDY AND RULEMAKING.—

19 “(1) STUDY AND RECOMMENDATIONS.—Not
20 later than 6 months after the date of enactment of
21 this section, the Council shall—

22 “(A) complete a study of the extent to
23 which the concentration limit under this section
24 would affect financial stability, moral hazard in
25 the financial system, the efficiency and competi-

1 tiveness of United States financial firms and fi-
2 nancial markets, and the cost and availability of
3 credit and other financial services to households
4 and businesses in the United States; and

5 “(B) make recommendations regarding any
6 modifications to the concentration limit that the
7 Council determines would more effectively im-
8 plement this section.

9 “(2) RULEMAKING.—Not later than 9 months
10 after the date of completion of the study under para-
11 graph (1), and notwithstanding subsections (b) and
12 (d), the Board shall issue final regulations imple-
13 menting this section, which shall reflect any rec-
14 ommendations by the Council under paragraph
15 (1)(B).”.

16 **SEC. 623. INTERSTATE MERGER TRANSACTIONS.**

17 (a) INTERSTATE MERGER TRANSACTIONS.—Section
18 18(c) of the Federal Deposit Insurance Act (12 U.S.C.
19 1828(c)) is amended by adding at the end the following:

20 “(13)(A) Except as provided in subparagraph (B),
21 the responsible agency may not approve an application for
22 an interstate merger transaction if the resulting insured
23 depository institution (including all insured depository in-
24 stitutions which are affiliates of the resulting insured de-
25 pository institution), upon consummation of the trans-

1 action, would control more than 10 percent of the total
2 amount of deposits of insured depository institutions in
3 the United States.

4 “(B) Subparagraph (A) shall not apply to an inter-
5 state merger transaction that involves 1 or more insured
6 depository institutions in default or in danger of default,
7 or with respect to which the Corporation provides assist-
8 ance under section 13.

9 “(C) In this paragraph—

10 “(i) the term ‘interstate merger transaction’
11 means a merger transaction involving 2 or more in-
12 sured depository institutions that have different
13 home States and that are not affiliates; and

14 “(ii) the term ‘home State’ means—

15 “(I) with respect to a national bank, the
16 State in which the main office of the bank is lo-
17 cated;

18 “(II) with respect to a State bank or State
19 savings association, the State by which the
20 State bank or State savings association is char-
21 tered; and

22 “(III) with respect to a Federal savings as-
23 sociation, the State in which the home office (as
24 defined by the regulations of the Director of the
25 Office of Thrift Supervision, or, on and after

1 the transfer date, the Comptroller of the Cur-
2 rency) of the Federal savings association is lo-
3 cated.”.

4 (b) ACQUISITIONS BY BANK HOLDING COMPANIES.—

5 (1) IN GENERAL.—Section 4 of the Bank Hold-
6 ing Company Act of 1956 (12 U.S.C. 1843) is
7 amended—

8 (A) in subsection (i), by adding at the end
9 the following:

10 “(8) INTERSTATE ACQUISITIONS.—

11 “(A) IN GENERAL.—The Board may not
12 approve an application by a bank holding com-
13 pany to acquire an insured depository institu-
14 tion under subsection (c)(8) or any other provi-
15 sion of this Act if—

16 “(i) the home State of such insured
17 depository institution is a State other than
18 the home State of the bank holding com-
19 pany; and

20 “(ii) the applicant (including all in-
21 sured depository institutions which are af-
22 filiates of the applicant) controls, or upon
23 consummation of the transaction would
24 control, more than 10 percent of the total

1 amount of deposits of insured depository
2 institutions in the United States.

3 “(B) EXCEPTION.—Subparagraph (A)
4 shall not apply to an acquisition that involves
5 an insured depository institution in default or
6 in danger of default, or with respect to which
7 the Federal Deposit Insurance Corporation pro-
8 vides assistance under section 13 of the Federal
9 Deposit Insurance Act (12 U.S.C. 1823).”; and
10 (B) in subsection (k)(6)(B), by striking
11 “savings association” and inserting “insured
12 depository institution”.

13 (2) DEFINITIONS.—Section 2(o)(4) of the Bank
14 Holding Company Act of 1956 (12 U.S.C.
15 1841(o)(4)) is amended—

16 (A) in subparagraph (B), by striking
17 “and” at the end;

18 (B) in subparagraph (C)(ii), by striking
19 the period at the end and inserting a semicolon;
20 and

21 (C) by adding at the end the following:

22 “(D) with respect to a State savings asso-
23 ciation, the State by which the savings associa-
24 tion is chartered; and

1 “(E) with respect to a Federal savings as-
2 sociation, the State in which the home office (as
3 defined by the regulations of the Director of the
4 Office of Thrift Supervision, or, on and after
5 the transfer date, the Comptroller of the Cur-
6 rency) of the Federal savings association is lo-
7 cated.”.

8 (e) ACQUISITIONS BY SAVINGS AND LOAN HOLDING
9 COMPANIES.—Section 10(e)(2) of the Home Owners’
10 Loan Act (12 U.S.C. 1467a(e)(2)) is amended—

11 (1) in paragraph (2)—

12 (A) in subparagraph (C), by striking “or”
13 at the end;

14 (B) in subparagraph (D), by striking the
15 period at the end and inserting “, or”; and

16 (C) by adding at the end the following:

17 “(E) in the case of an application by a sav-
18 ings and loan holding company to acquire an
19 insured depository institution, if—

20 “(i) the home State of the insured de-
21 pository institution is a State other than
22 the home State of the savings and loan
23 holding company;

24 “(ii) the applicant (including all in-
25 sured depository institutions which are af-

1 filiates of the applicant) controls, or upon
2 consummation of the transaction would
3 control, more than 10 percent of the total
4 amount of deposits of insured depository
5 institutions in the United States; and

6 “(iii) the acquisition does not involve
7 an insured depository institution in default
8 or in danger of default, or with respect to
9 which the Federal Deposit Insurance Cor-
10 poration provides assistance under section
11 13 of the Federal Deposit Insurance Act
12 (12 U.S.C. 1823).”; and

13 (2) by adding at the end the following:

14 “(7) DEFINITIONS.—For purposes of paragraph
15 (2)(E)—

16 “(A) the terms ‘default’, ‘in danger of de-
17 fault’, and ‘insured depository institution’ have
18 the same meanings as in section 3 of the Fed-
19 eral Deposit Insurance Act (12 U.S.C. 1813);
20 and

21 “(B) the term ‘home State’ means—

22 “(i) with respect to a national bank,
23 the State in which the main office of the
24 bank is located;

1 “(ii) with respect to a State bank or
2 State savings association, the State by
3 which the savings association is chartered;

4 “(iii) with respect to a Federal sav-
5 ings association, the State in which the
6 home office (as defined by the regulations
7 of the Director of the Office of Thrift Su-
8 pervision, or, on and after the transfer
9 date, the Comptroller of the Currency) of
10 the Federal savings association is located;
11 and

12 “(iv) with respect to a savings and
13 loan holding company, the State in which
14 the amount of total deposits of all insured
15 depository institution subsidiaries of such
16 company was the greatest on the date on
17 which the company became a savings and
18 loan holding company.”.

19 **SEC. 624. QUALIFIED THRIFT LENDERS.**

20 Section 10(m)(3) of the Home Owners’ Loan Act (12
21 U.S.C. 1467a(m)(3)) is amended—

22 (1) by striking subparagraph (A) and inserting
23 the following:

24 “(A) IN GENERAL.—A savings association
25 that fails to become or remain a qualified thrift

1 lender shall immediately be subject to the re-
2 strictions under subparagraph (B).”; and

3 (2) in subparagraph (B)(i), by striking sub-
4 clause (III) and inserting the following:

5 “(III) DIVIDENDS.—The savings
6 association may not pay dividends, ex-
7 cept for dividends that—

8 “(aa) would be permissible
9 for a national bank;

10 “(bb) are necessary to meet
11 obligations of a company that
12 controls such savings association;
13 and

14 “(cc) are specifically ap-
15 proved by the Comptroller of the
16 Currency and the Board after a
17 written request submitted to the
18 Comptroller of the Currency and
19 the Board by the savings associa-
20 tion not later than 30 days be-
21 fore the date of the proposed
22 payment.

23 “(IV) REGULATORY AUTHOR-
24 ITY.—A savings association that fails
25 to become or remain a qualified thrift

1 lender shall be deemed to have vio-
2 lated section 5 of the Home Owners'
3 Loan Act (12 U.S.C. 1464) and sub-
4 ject to actions authorized by section
5 5(d) of the Home Owners' Loan Act
6 (12 U.S.C. 1464(d)).”.

7 **SEC. 625. TREATMENT OF DIVIDENDS BY CERTAIN MUTUAL**
8 **HOLDING COMPANIES.**

9 (a) IN GENERAL.—Section 10(o) of the Home Own-
10 ers' Loan Act (12 U.S.C. 1467a(o)) is amended by adding
11 at the end the following:

12 “(11) DIVIDENDS.—

13 “(A) DECLARATION OF DIVIDENDS.—

14 “(i) ADVANCE NOTICE REQUIRED.—

15 Each subsidiary of a mutual holding com-
16 pany that is a savings association shall
17 give the appropriate Federal banking agen-
18 cy and the Board notice not later than 30
19 days before the date of a proposed declara-
20 tion by the board of directors of the sav-
21 ings association of any dividend on the
22 guaranty, permanent, or other
23 nonwithdrawable stock of the savings asso-
24 ciation.

1 “(ii) INVALID DIVIDENDS.—Any divi-
2 dend described in clause (i) that is de-
3 clared without giving notice to the appro-
4 priate Federal banking agency and the
5 Board under clause (i), or that is declared
6 during the 30-day period preceding the
7 date of a proposed declaration for which
8 notice is given to the appropriate Federal
9 banking agency and the Board under
10 clause (i), shall be invalid and shall confer
11 no rights or benefits upon the holder of
12 any such stock.

13 “(B) WAIVER OF DIVIDENDS.—A mutual
14 holding company may waive the right to receive
15 any dividend declared by a subsidiary of the
16 mutual holding company, if—

17 “(i) no insider of the mutual holding
18 company, associate of an insider, or tax-
19 qualified or non-tax-qualified employee
20 stock benefit plan of the mutual holding
21 company holds any share of the stock in
22 the class of stock to which the waiver
23 would apply; or

24 “(ii) the mutual holding company
25 gives written notice to the Board of the in-

1 tent of the mutual holding company to
2 waive the right to receive dividends, not
3 later than 30 days before the date of the
4 proposed date of payment of the dividend,
5 and the Board does not object to the waiv-
6 er.

7 “(C) RESOLUTION INCLUDED IN WAIVER
8 NOTICE.—A notice of a waiver under subpara-
9 graph (B) shall include a copy of the resolution
10 of the board of directors of the mutual holding
11 company, in such form and substance as the
12 Board may determine, together with any sup-
13 porting materials relied upon by the board of
14 directors of the mutual holding company, con-
15 cluding that the proposed dividend waiver is
16 consistent with the fiduciary duties of the board
17 of directors to the mutual members of the mu-
18 tual holding company.

19 “(D) STANDARDS FOR WAIVER OF DIVI-
20 DEND.—The Board may not object to a waiver
21 of dividends under subparagraph (B) if—

22 “(i) the waiver would not be detri-
23 mental to the safe and sound operation of
24 the savings association;

1 “(ii) the board of directors of the mu-
2 tual holding company expressly determines
3 that a waiver of the dividend by the mu-
4 tual holding company is consistent with the
5 fiduciary duties of the board of directors to
6 the mutual members of the mutual holding
7 company; and

8 “(iii) the mutual holding company
9 has, prior to December 1, 2009—

10 “(I) reorganized into a mutual
11 holding company under subsection (o);

12 “(II) issued minority stock either
13 from its mid-tier stock holding com-
14 pany or its subsidiary stock savings
15 association; and

16 “(III) waived dividends it had a
17 right to receive from the subsidiary
18 stock savings association.

19 “(E) VALUATION.—

20 “(i) IN GENERAL.—The appropriate
21 Federal banking agency shall consider
22 waived dividends in determining an appro-
23 priate exchange ratio in the event of a full
24 conversion to stock form.

1 “(ii) EXCEPTION.—In the case of a
2 savings association that has reorganized
3 into a mutual holding company, has issued
4 minority stock from a mid-tier stock hold-
5 ing company or a subsidiary stock savings
6 association of the mutual holding company,
7 and has waived dividends it had a right to
8 receive from a subsidiary savings associa-
9 tion before December 1, 2009, the appro-
10 priate Federal banking agency shall not
11 consider waived dividends in determining
12 an appropriate exchange ratio in the event
13 of a full conversion to stock form.”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 subsection (a) shall take effect on the transfer date.

16 **SEC. 626. INTERMEDIATE HOLDING COMPANIES.**

17 The Home Owners’ Loan Act (12 U.S.C. 1461 et
18 seq.) is amended by inserting after section 10 (12 U.S.C.
19 1467a) the following new section:

20 **“SEC. 10A. INTERMEDIATE HOLDING COMPANIES.**

21 “(a) DEFINITION.—For purposes of this section:

22 “(1) FINANCIAL ACTIVITIES.—The term ‘finan-
23 cial activities’ means activities described in clauses
24 (i) and (ii) of section 10(c)(9)(A).

1 “(2) GRANDFATHERED UNITARY SAVINGS AND
2 LOAN HOLDING COMPANY.—The term ‘grand-
3 fathered unitary savings and loan holding company’
4 means a company described in section 10(c)(9)(C).

5 “(3) INTERNAL FINANCIAL ACTIVITIES.—The
6 term ‘internal financial activities’ includes—

7 “(A) internal financial activities conducted
8 by a grandfathered savings and loan holding
9 company or any affiliate; and

10 “(B) internal treasury, investment, and
11 employee benefit functions.

12 “(b) REQUIREMENT.—

13 “(1) IN GENERAL.—

14 “(A) ACTIVITIES OTHER THAN FINANCIAL
15 ACTIVITIES.—If a grandfathered unitary sav-
16 ings and loan holding company conducts activi-
17 ties other than financial activities, the Board
18 may require such company to establish and con-
19 duct all or a portion of such financial activities
20 in or through an intermediate holding company,
21 which shall be a savings and loan holding com-
22 pany, established pursuant to regulations of the
23 Board, not later than 90 days (or such longer
24 period as the Board may deem appropriate)
25 after the transfer date.

1 “(B) OTHER ACTIVITIES.—Notwith-
2 standing subparagraph (A), the Board shall re-
3 quire a grandfathered unitary savings and loan
4 holding company to establish an intermediate
5 holding company if the Board makes a deter-
6 mination that the establishment of such inter-
7 mediate holding company is necessary—

8 “(i) to appropriately supervise activi-
9 ties that are determined to be financial ac-
10 tivities; or

11 “(ii) to ensure that supervision by the
12 Board does not extend to the activities of
13 such company that are not financial activi-
14 ties.

15 “(2) INTERNAL FINANCIAL ACTIVITIES.—

16 “(A) TREATMENT OF INTERNAL FINAN-
17 CIAL ACTIVITIES.—For purposes of this sub-
18 section, the internal financial activities of a
19 grandfathered unitary savings and loan holding
20 company shall not be required to be placed in
21 an intermediate holding company.

22 “(B) GRANDFATHERED ACTIVITIES.—A
23 grandfathered unitary savings and loan holding
24 company may continue to engage in an internal
25 financial activity, subject to review by the

1 Board to determine whether engaging in such
2 activity presents undue risk to the grand-
3 fathered unitary savings and loan holding com-
4 pany or to the financial stability of the United
5 States, if—

6 “(i) the grandfathered unitary savings
7 and loan holding company engaged in the
8 activity during the year before the date of
9 enactment of this section; and

10 “(ii) at least $\frac{2}{3}$ of the assets or $\frac{2}{3}$ of
11 the revenues generated from the activity
12 are from or attributable to the grand-
13 fathered unitary savings and loan holding
14 company.

15 “(3) SOURCE OF STRENGTH.—A grandfathered
16 unitary savings and loan holding company that di-
17 rectly or indirectly controls an intermediate holding
18 company established under this section shall serve as
19 a source of strength to its subsidiary intermediate
20 holding company.

21 “(4) PARENT COMPANY REPORTS.—The Board,
22 may from time to time, examine and require reports
23 under oath from a grandfathered unitary savings
24 and loan holding company that controls an inter-
25 mediate holding company, and from the appropriate

1 officers or directors of such company, solely for pur-
2 poses of ensuring compliance with the provisions of
3 this section, including assessing the ability of the
4 company to serve as a source of strength to its sub-
5 sidiary intermediate holding company as required
6 under paragraph (3) and enforcing compliance with
7 such requirement.

8 “(5) LIMITED PARENT COMPANY ENFORCE-
9 MENT.—

10 “(A) IN GENERAL.—In addition to any
11 other authority of the Board, the Board may
12 enforce compliance with the provisions of this
13 subsection that are applicable to any company
14 described in paragraph (1)(A) that controls an
15 intermediate holding company under section 8
16 of the Federal Deposit Insurance Act, and a
17 company described in paragraph (1)(A) shall be
18 subject to such section (solely for purposes of
19 this subparagraph) in the same manner and to
20 the same extent as if the company described in
21 paragraph (1)(A) were a savings and loan hold-
22 ing company.

23 “(B) APPLICATION OF OTHER ACT.—Any
24 violation of this subsection by a grandfathered
25 unitary savings and loan holding company that

1 controls an intermediate holding company may
2 also be treated as a violation of the Federal De-
3 posit Insurance Act for purposes of subpara-
4 graph (A).

5 “(C) NO EFFECT ON OTHER AUTHOR-
6 ITY.—No provision of this paragraph shall be
7 construed as limiting any authority of the
8 Board or any other Federal agency under any
9 other provision of law.

10 “(c) REGULATIONS.—The Board—

11 “(1) shall promulgate regulations to establish
12 the criteria for determining whether to require a
13 grandfathered unitary savings and loan holding com-
14 pany to establish an intermediate holding company
15 under subsection (b); and

16 “(2) may promulgate regulations to establish
17 any restrictions or limitations on transactions be-
18 tween an intermediate holding company or a parent
19 of such company and its affiliates, as necessary to
20 prevent unsafe and unsound practices in connection
21 with transactions between the intermediate holding
22 company, or any subsidiary thereof, and its parent
23 company or affiliates that are not subsidiaries of the
24 intermediate holding company, except that such reg-
25 ulations shall not restrict or limit any transaction in

1 connection with the bona fide acquisition or lease by
2 an unaffiliated person of assets, goods, or services.

3 “(d) RULES OF CONSTRUCTION.—

4 “(1) ACTIVITIES.—Nothing in this section shall
5 be construed to require a grandfathered unitary sav-
6 ings and loan holding company to conform its activi-
7 ties to permissible activities.

8 “(2) PERMISSIBLE CORPORATE REORGANIZA-
9 TION.—The formation of an intermediate holding
10 company as required in subsection (b) shall be pre-
11 sumed to be a permissible corporate reorganization
12 as described in section 10(c)(9)(D).”.

13 **SEC. 627. INTEREST-BEARING TRANSACTION ACCOUNTS**
14 **AUTHORIZED.**

15 (a) REPEAL OF PROHIBITION ON PAYMENT OF IN-
16 TEREST ON DEMAND DEPOSITS.—

17 (1) FEDERAL RESERVE ACT.—Section 19(i) of
18 the Federal Reserve Act (12 U.S.C. 371a) is amend-
19 ed to read as follows:

20 “(i) [Repealed]”.

21 (2) HOME OWNERS’ LOAN ACT.—The first sen-
22 tence of section 5(b)(1)(B) of the Home Owners’
23 Loan Act (12 U.S.C. 1464(b)(1)(B)) is amended by
24 striking “savings association may not—” and all

1 that follows through “(ii) permit any” and inserting
2 “savings association may not permit any”.

3 (3) FEDERAL DEPOSIT INSURANCE ACT.—Sec-
4 tion 18(g) of the Federal Deposit Insurance Act (12
5 U.S.C. 1828(g)) is amended to read as follows:
6 “(g) [Repealed]”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 subsection (a) shall take effect 1 year after the date of
9 the enactment of this Act.

10 **SEC. 628. CREDIT CARD BANK SMALL BUSINESS LENDING.**

11 Section 2(c)(2)(F)(v) of the Bank Holding Company
12 Act of 1956 (12 U.S.C. 1841(c)(2)(F)(v)) is amended by
13 inserting before the period the following: “, other than
14 credit card loans that are made to businesses that meet
15 the criteria for a small business concern to be eligible for
16 business loans under regulations established by the Small
17 Business Administration under part 121 of title 13, Code
18 of Federal Regulations”.

19 **TITLE VII—WALL STREET**
20 **TRANSPARENCY AND AC-**
21 **COUNTABILITY**

22 **SEC. 701. SHORT TITLE.**

23 This title may be cited as the “Wall Street Trans-
24 parency and Accountability Act of 2010”.

1 **Subtitle A—Regulation of Over-the-**
2 **Counter Swaps Markets**

3 **PART I—REGULATORY AUTHORITY**

4 **SEC. 711. DEFINITIONS.**

5 In this subtitle, the terms “prudential regulator”,
6 “swap”, “swap dealer”, “major swap participant”, “swap
7 data repository”, “associated person of a swap dealer or
8 major swap participant”, “eligible contract participant”,
9 “swap execution facility”, “security-based swap”, “secu-
10 rity-based swap dealer”, “major security-based swap par-
11 ticipant”, and “associated person of a security-based swap
12 dealer or major security-based swap participant” have the
13 meanings given the terms in section 1a of the Commodity
14 Exchange Act (7 U.S.C. 1a), including any modification
15 of the meanings under section 721(b) of this Act.

16 **SEC. 712. REVIEW OF REGULATORY AUTHORITY.**

17 (a) CONSULTATION.—

18 (1) COMMODITY FUTURES TRADING COMMIS-
19 SION.—Before commencing any rulemaking or
20 issuing an order regarding swaps, swap dealers,
21 major swap participants, swap data repositories, de-
22 rivative clearing organizations with regard to swaps,
23 persons associated with a swap dealer or major swap
24 participant, eligible contract participants, or swap
25 execution facilities pursuant to this subtitle, the

1 Commodity Futures Trading Commission shall con-
2 sult and coordinate to the extent possible with the
3 Securities and Exchange Commission and the pru-
4 dential regulators for the purposes of assuring regu-
5 latory consistency and comparability, to the extent
6 possible.

7 (2) SECURITIES AND EXCHANGE COMMIS-
8 SION.—Before commencing any rulemaking or
9 issuing an order regarding security-based swaps, se-
10 curity-based swap dealers, major security-based
11 swap participants, security-based swap data reposi-
12 tories, clearing agencies with regard to security-
13 based swaps, persons associated with a security-
14 based swap dealer or major security-based swap par-
15 ticipant, eligible contract participants with regard to
16 security-based swaps, or security-based swap execu-
17 tion facilities pursuant to subtitle B, the Securities
18 and Exchange Commission shall consult and coordi-
19 nate to the extent possible with the Commodity Fu-
20 tures Trading Commission and the prudential regu-
21 lators for the purposes of assuring regulatory con-
22 sistency and comparability, to the extent possible.

23 (3) PROCEDURES AND DEADLINE.—Such regu-
24 lations shall be prescribed in accordance with appli-
25 cable requirements of title 5, United States Code,

1 and shall be issued in final form not later than 360
2 days after the date of enactment of this Act.

3 (4) APPLICABILITY.—The requirements of
4 paragraphs (1) and (2) shall not apply to an order
5 issued—

6 (A) in connection with or arising from a
7 violation or potential violation of any provision
8 of the Commodity Exchange Act (7 U.S.C. 1 et
9 seq.);

10 (B) in connection with or arising from a
11 violation or potential violation of any provision
12 of the securities laws; or

13 (C) in any proceeding that is conducted on
14 the record in accordance with sections 556 and
15 557 of title 5, United States Code.

16 (5) EFFECT.—Nothing in this subsection au-
17 thorizes any consultation or procedure for consulta-
18 tion that is not consistent with the requirements of
19 subchapter II of chapter 5, and chapter 7, of title
20 5, United States Code (commonly known as the
21 “Administrative Procedure Act”).

22 (6) RULES; ORDERS.—In developing and pro-
23 mulgating rules or orders pursuant to this sub-
24 section, each Commission shall consider the views of
25 the prudential regulators.

1 (7) TREATMENT OF SIMILAR PRODUCTS AND
2 ENTITIES.—

3 (A) IN GENERAL.—In adopting rules and
4 orders under this subsection, the Commodity
5 Futures Trading Commission and the Securities
6 and Exchange Commission shall treat function-
7 ally or economically similar products or entities
8 described in paragraphs (1) and (2) in a similar
9 manner.

10 (B) EFFECT.—Nothing in this subtitle re-
11 quires the Commodity Futures Trading Com-
12 mission or the Securities and Exchange Com-
13 mission to adopt joint rules or orders that treat
14 functionally or economically similar products or
15 entities described in paragraphs (1) and (2) in
16 an identical manner.

17 (8) MIXED SWAPS.—The Commodity Futures
18 Trading Commission and the Securities and Ex-
19 change Commission, after consultation with the
20 Board of Governors, shall jointly prescribe such reg-
21 ulations regarding mixed swaps, as described in sec-
22 tion 1a(47)(D) of the Commodity Exchange Act (7
23 U.S.C. 1a(47)(D)) and in section 3(a)(68)(D) of the
24 Securities Exchange Act of 1934 (15 U.S.C.

1 78c(a)(68)(D)), as may be necessary to carry out
2 the purposes of this title.

3 (b) LIMITATION.—

4 (1) COMMODITY FUTURES TRADING COMMIS-
5 SION.—Nothing in this title, unless specifically pro-
6 vided, confers jurisdiction on the Commodity Fu-
7 tures Trading Commission to issue a rule, regula-
8 tion, or order providing for oversight or regulation
9 of—

10 (A) security-based swaps; or

11 (B) with regard to its activities or func-
12 tions concerning security-based swaps—

13 (i) security-based swap dealers;

14 (ii) major security-based swap partici-
15 pants;

16 (iii) security-based swap data reposi-
17 tories;

18 (iv) associated persons of a security-
19 based swap dealer or major security-based
20 swap participant;

21 (v) eligible contract participants with
22 respect to security-based swaps; or

23 (vi) swap execution facilities with re-
24 spect to security-based swaps.

1 (2) SECURITIES AND EXCHANGE COMMIS-
2 SION.—Nothing in this title, unless specifically pro-
3 vided, confers jurisdiction on the Securities and Ex-
4 change Commission or State securities regulators to
5 issue a rule, regulation, or order providing for over-
6 sight or regulation of—

7 (A) swaps; or

8 (B) with regard to its activities or func-
9 tions concerning swaps—

10 (i) swap dealers;

11 (ii) major swap participants;

12 (iii) swap data repositories;

13 (iv) persons associated with a swap
14 dealer or major swap participant;

15 (v) eligible contract participants with
16 respect to swaps; or

17 (vi) swap execution facilities with re-
18 spect to swaps.

19 (3) PROHIBITION ON CERTAIN FUTURES ASSO-
20 CIATIONS AND NATIONAL SECURITIES ASSOCIA-
21 TIONS.—

22 (A) FUTURES ASSOCIATIONS.—Notwith-
23 standing any other provision of law (including
24 regulations), unless otherwise authorized by this
25 title, no futures association registered under

1 section 17 of the Commodity Exchange Act (7
2 U.S.C. 21) may issue a rule, regulation, or
3 order for the oversight or regulation of, or oth-
4 erwise assert jurisdiction over, for any purpose,
5 any security-based swap, except that this sub-
6 paragraph shall not limit the authority of a reg-
7 istered futures association to examine for com-
8 pliance with, and enforce, its rules on capital
9 adequacy.

10 (B) NATIONAL SECURITIES ASSOCIA-
11 TIONS.—Notwithstanding any other provision of
12 law (including regulations), unless otherwise au-
13 thorized by this title, no national securities as-
14 sociation registered under section 15A of the
15 Securities Exchange Act of 1934 (15 U.S.C.
16 78o–3) may issue a rule, regulation, or order
17 for the oversight or regulation of, or otherwise
18 assert jurisdiction over, for any purpose, any
19 swap, except that this subparagraph shall not
20 limit the authority of a national securities asso-
21 ciation to examine for compliance with, and en-
22 force, its rules on capital adequacy.

23 (c) OBJECTION TO COMMISSION REGULATION.—

24 (1) FILING OF PETITION FOR REVIEW.—

1 (A) IN GENERAL.—If either Commission
2 referred to in this section determines that a
3 final rule, regulation, or order of the other
4 Commission conflicts with subsection (a)(7) or
5 (b), then the complaining Commission may ob-
6 tain review of the final rule, regulation, or order
7 in the United States Court of Appeals for the
8 District of Columbia Circuit by filing in the
9 court, not later than 60 days after the date of
10 publication of the final rule, regulation, or
11 order, a written petition requesting that the
12 rule, regulation, or order be set aside.

13 (B) EXPEDITED PROCEEDING.—A pro-
14 ceeding described in subparagraph (A) shall be
15 expedited by the United States Court of Ap-
16 peals for the District of Columbia Circuit.

17 (2) TRANSMITTAL OF PETITION AND
18 RECORD.—

19 (A) IN GENERAL.—A copy of a petition de-
20 scribed in paragraph (1) shall be transmitted
21 not later than 1 business day after the date of
22 filing by the complaining Commission to the
23 Secretary of the responding Commission.

24 (B) DUTY OF RESPONDING COMMISSION.—
25 On receipt of the copy of a petition described

1 in paragraph (1), the responding Commission
2 shall file with the United States Court of Ap-
3 peals for the District of Columbia Circuit—

4 (i) a copy of the rule, regulation, or
5 order under review (including any docu-
6 ments referred to therein); and

7 (ii) any other materials prescribed by
8 the United States Court of Appeals for the
9 District of Columbia Circuit.

10 (3) STANDARD OF REVIEW.—The United States
11 Court of Appeals for the District of Columbia Cir-
12 cuit shall—

13 (A) give deference to the views of neither
14 Commission; and

15 (B) determine to affirm or set aside a rule,
16 regulation, or order of the responding Commis-
17 sion under this subsection, based on the deter-
18 mination of the court as to whether the rule,
19 regulation, or order is in conflict with sub-
20 section (a)(7) or (b), as applicable.

21 (4) JUDICIAL STAY.—The filing of a petition by
22 the complaining Commission pursuant to paragraph
23 (1) shall operate as a stay of the rule, regulation, or
24 order until the date on which the determination of
25 the United States Court of Appeals for the District

1 of Columbia Circuit is final (including any appeal of
2 the determination).

3 (d) JOINT RULEMAKING.—

4 (1) IN GENERAL.—Notwithstanding any other
5 provision of this title and subsections (b) and (c),
6 the Commodity Futures Trading Commission and
7 the Securities and Exchange Commission, in con-
8 sultation with the Board of Governors, shall further
9 define the terms “swap”, “security-based swap”,
10 “swap dealer”, “security-based swap dealer”, “major
11 swap participant”, “major security-based swap par-
12 ticipant”, “eligible contract participant”, and “secu-
13 rity-based swap agreement” in section 1a(47)(A)(v)
14 of the Commodity Exchange Act (7 U.S.C.
15 1a(47)(A)(v)) and section 3(a)(78) of the Securities
16 Exchange Act of 1934 (15 U.S.C. 78c(a)(78)).

17 (2) AUTHORITY OF THE COMMISSIONS.—

18 (A) IN GENERAL.—Notwithstanding any
19 other provision of this title, the Commodity Fu-
20 tures Trading Commission and the Securities
21 and Exchange Commission, in consultation with
22 the Board of Governors, shall jointly adopt such
23 other rules regarding such definitions as the
24 Commodity Futures Trading Commission and
25 the Securities and Exchange Commission deter-

1 mine are necessary and appropriate, in the pub-
2 lic interest, and for the protection of investors.

3 (B) TRADE REPOSITORY RECORD-
4 KEEPING.—Notwithstanding any other provi-
5 sion of this title, the Commodity Futures Trad-
6 ing Commission and the Securities and Ex-
7 change Commission, in consultation with the
8 Board of Governors, shall engage in joint rule-
9 making to jointly adopt a rule or rules gov-
10 erning the books and records that are required
11 to be kept and maintained regarding security-
12 based swap agreements by persons that are reg-
13 istered as swap data repositories under the
14 Commodity Exchange Act, including uniform
15 rules that specify the data elements that shall
16 be collected and maintained by each repository.

17 (C) BOOKS AND RECORDS.—Notwith-
18 standing any other provision of this title, the
19 Commodity Futures Trading Commission and
20 the Securities and Exchange Commission, in
21 consultation with the Board of Governors, shall
22 engage in joint rulemaking to jointly adopt a
23 rule or rules governing books and records re-
24 garding security-based swap agreements, in-
25 cluding daily trading records, for swap dealers,

1 major swap participants, security-based swap
2 dealers, and security-based swap participants.

3 (D) COMPARABLE RULES.—Rules and reg-
4 ulations prescribed jointly under this title by
5 the Commodity Futures Trading Commission
6 and the Securities and Exchange Commission
7 shall be comparable to the maximum extent
8 possible, taking into consideration differences in
9 instruments and in the applicable statutory re-
10 quirements.

11 (E) TRACKING UNCLEARED TRANS-
12 ACTIONS.—Any rules prescribed under subpara-
13 graph (A) shall require the maintenance of
14 records of all activities relating to security-
15 based swap agreement transactions defined
16 under subparagraph (A) that are not cleared.

17 (F) SHARING OF INFORMATION.—The
18 Commodity Futures Trading Commission shall
19 make available to the Securities and Exchange
20 Commission information relating to security-
21 based swap agreement transactions defined in
22 subparagraph (A) that are not cleared.

23 (3) FINANCIAL STABILITY OVERSIGHT COUN-
24 CIL.—In the event that the Commodity Futures
25 Trading Commission and the Securities and Ex-

1 change Commission fail to jointly prescribe rules
2 pursuant to paragraph (1) or (2) in a timely man-
3 ner, at the request of either Commission, the Finan-
4 cial Stability Oversight Council shall resolve the dis-
5 pute—

6 (A) within a reasonable time after receiv-
7 ing the request;

8 (B) after consideration of relevant infor-
9 mation provided by each Commission; and

10 (C) by agreeing with 1 of the Commissions
11 regarding the entirety of the matter or by de-
12 termining a compromise position.

13 (4) JOINT INTERPRETATION.—Any interpreta-
14 tion of, or guidance by either Commission regarding,
15 a provision of this title, shall be effective only if
16 issued jointly by the Commodity Futures Trading
17 Commission and the Securities and Exchange Com-
18 mission, after consultation with the Board of Gov-
19 ernors, if this title requires the Commodity Futures
20 Trading Commission and the Securities and Ex-
21 change Commission to issue joint regulations to im-
22 plement the provision.

23 (e) GLOBAL RULEMAKING TIMEFRAME.—Unless oth-
24 erwise provided in this title, or an amendment made by
25 this title, the Commodity Futures Trading Commission or

1 the Securities and Exchange Commission, or both, shall
2 individually, and not jointly, promulgate rules and regula-
3 tions required of each Commission under this title or an
4 amendment made by this title not later than 360 days
5 after the date of enactment of this Act.

6 (f) RULES AND REGISTRATION BEFORE FINAL EF-
7 FECTIVE DATES.—Beginning on the date of enactment of
8 this Act and notwithstanding the effective date of any pro-
9 vision of this Act, the Commodity Futures Trading Com-
10 mission and the Securities and Exchange Commission
11 may, in order to prepare for the effective dates of the pro-
12 visions of this Act—

13 (1) promulgate rules, regulations, or orders per-
14 mitted or required by this Act;

15 (2) conduct studies and prepare reports and
16 recommendations required by this Act;

17 (3) register persons under the provisions of this
18 Act; and

19 (4) exempt persons, agreements, contracts, or
20 transactions from provisions of this Act, under the
21 terms contained in this Act,

22 provided, however, that no action by the Commodity Fu-
23 tures Trading Commission or the Securities and Exchange
24 Commission described in paragraphs (1) through (4) shall

1 become effective prior to the effective date applicable to
2 such action under the provisions of this Act.

3 **SEC. 713. PORTFOLIO MARGINING CONFORMING CHANGES.**

4 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
5 15(c)(3) of the Securities Exchange Act of 1934 (15
6 U.S.C. 78o(c)(3)) is amended by adding at the end the
7 following:

8 “(C) Notwithstanding any provision of sec-
9 tions 2(a)(1)(C)(i) or 4d(a)(2) of the Com-
10 modity Exchange Act and the rules and regula-
11 tions thereunder, and pursuant to an exemption
12 granted by the Commission under section 36 of
13 this title or pursuant to a rule or regulation,
14 cash and securities may be held by a broker or
15 dealer registered pursuant to subsection (b)(1)
16 and also registered as a futures commission
17 merchant pursuant to section 4f(a)(1) of the
18 Commodity Exchange Act, in a portfolio mar-
19 gining account carried as a futures account
20 subject to section 4d of the Commodity Ex-
21 change Act and the rules and regulations there-
22 under, pursuant to a portfolio margining pro-
23 gram approved by the Commodity Futures
24 Trading Commission, and subject to subchapter
25 IV of chapter 7 of title 11 of the United States

1 Code and the rules and regulations thereunder.
2 The Commission shall consult with the Com-
3 modity Futures Trading Commission to adopt
4 rules to ensure that such transactions and ac-
5 counts are subject to comparable requirements
6 to the extent practicable for similar products.”.

7 (b) COMMODITY EXCHANGE ACT.—Section 4d of the
8 Commodity Exchange Act (7 U.S.C. 6d) is amended by
9 adding at the end the following:

10 “(h) Notwithstanding subsection (a)(2) or the rules
11 and regulations thereunder, and pursuant to an exemption
12 granted by the Commission under section 4(c) of this Act
13 or pursuant to a rule or regulation, a futures commission
14 merchant that is registered pursuant to section 4f(a)(1)
15 of this Act and also registered as a broker or dealer pursu-
16 ant to section 15(b)(1) of the Securities Exchange Act of
17 1934 may, pursuant to a portfolio margining program ap-
18 proved by the Securities and Exchange Commission pursu-
19 ant to section 19(b) of the Securities Exchange Act of
20 1934, hold in a portfolio margining account carried as a
21 securities account subject to section 15(c)(3) of the Secu-
22 rities Exchange Act of 1934 and the rules and regulations
23 thereunder, a contract for the purchase or sale of a com-
24 modity for future delivery or an option on such a contract,
25 and any money, securities or other property received from

1 a customer to margin, guarantee or secure such a con-
2 tract, or accruing to a customer as the result of such a
3 contract. The Commission shall consult with the Securities
4 and Exchange Commission to adopt rules to ensure that
5 such transactions and accounts are subject to comparable
6 requirements to the extent practical for similar products.”.

7 (c) DUTY OF COMMODITY FUTURES TRADING COM-
8 MISSION.—Section 20 of the Commodity Exchange Act (7
9 U.S.C. 24) is amended by adding at the end the following:

10 “(c) The Commission shall exercise its authority to
11 ensure that securities held in a portfolio margining ac-
12 count carried as a futures account are customer property
13 and the owners of those accounts are customers for the
14 purposes of subchapter IV of chapter 7 of title 11 of the
15 United States Code.”.

16 **SEC. 714. ABUSIVE SWAPS.**

17 The Commodity Futures Trading Commission or the
18 Securities and Exchange Commission, or both, individually
19 may, by rule or order—

20 (1) collect information as may be necessary con-
21 cerning the markets for any types of—

22 (A) swap (as defined in section 1a of the
23 Commodity Exchange Act (7 U.S.C. 1a)); or

1 (B) security-based swap (as defined in sec-
2 tion 1a of the Commodity Exchange Act (7
3 U.S.C. 1a)); and

4 (2) issue a report with respect to any types of
5 swaps or security-based swaps that the Commodity
6 Futures Trading Commission or the Securities and
7 Exchange Commission determines to be detrimental
8 to—

9 (A) the stability of a financial market; or

10 (B) participants in a financial market.

11 **SEC. 715. AUTHORITY TO PROHIBIT PARTICIPATION IN**
12 **SWAP ACTIVITIES.**

13 Except as provided in section 4 of the Commodity Ex-
14 change Act (7 U.S.C. 6), if the Commodity Futures Trad-
15 ing Commission or the Securities and Exchange Commis-
16 sion determines that the regulation of swaps or security-
17 based swaps markets in a foreign country undermines the
18 stability of the United States financial system, either
19 Commission, in consultation with the Secretary of the
20 Treasury, may prohibit an entity domiciled in the foreign
21 country from participating in the United States in any
22 swap or security-based swap activities.

1 **SEC. 716. PROHIBITION AGAINST FEDERAL GOVERNMENT**
2 **BAILOUTS OF SWAPS ENTITIES.**

3 (a) PROHIBITION ON FEDERAL ASSISTANCE.—Not-
4 withstanding any other provision of law (including regula-
5 tions), no Federal assistance may be provided to any
6 swaps entity with respect to any swap, security-based
7 swap, or other activity of the swaps entity.

8 (b) DEFINITIONS.—In this section:

9 (1) FEDERAL ASSISTANCE.—The term “Federal
10 assistance” means the use of any advances from any
11 Federal Reserve credit facility or discount window
12 that is not part of a program or facility with broad-
13 based eligibility under section 13(3)(A) of the Fed-
14 eral Reserve Act, Federal Deposit Insurance Cor-
15 poration insurance or guarantees for the purpose
16 of—

17 (A) making any loan to, or purchasing any
18 stock, equity interest, or debt obligation of, any
19 swaps entity;

20 (B) purchasing the assets of any swaps en-
21 tity;

22 (C) guaranteeing any loan or debt issuance
23 of any swaps entity; or

24 (D) entering into any assistance arrange-
25 ment (including tax breaks), loss sharing, or
26 profit sharing with any swaps entity.

1 (2) SWAPS ENTITY.—

2 (A) IN GENERAL.—The term “swaps enti-
3 ty” means any swap dealer, security-based swap
4 dealer, major swap participant, major security-
5 based swap participant, that is registered
6 under—

7 (i) the Commodity Exchange Act (7
8 U.S.C. 1 et seq.); or

9 (ii) the Securities Exchange Act of
10 1934 (15 U.S.C. 78a et seq.).

11 (B) EXCLUSION.—The term “swaps enti-
12 ty” does not include any major swap partici-
13 pant or major security-based swap participant
14 that is an insured depository institution.

15 (c) AFFILIATES OF INSURED DEPOSITORY INSTITU-
16 TIONS.—The prohibition on Federal assistance contained
17 in subsection (a) does not apply to and shall not prevent
18 an insured depository institution from having or estab-
19 lishing an affiliate which is a swaps entity, as long as such
20 insured depository institution is part of a bank holding
21 company, or savings and loan holding company, that is
22 supervised by the Federal Reserve and such swaps entity
23 affiliate complies with sections 23A and 23B of the Fed-
24 eral Reserve Act and such other requirements as the Com-
25 modity Futures Trading Commission or the Securities Ex-

1 change Commission, as appropriate, and the Board of
2 Governors of the Federal Reserve System, may determine
3 to be necessary and appropriate.

4 (d) ONLY BONA FIDE HEDGING AND TRADITIONAL
5 BANK ACTIVITIES PERMITTED.—The prohibition in sub-
6 section (a) shall apply to any insured depository institu-
7 tion unless the insured depository institution limits its
8 swap or security-based swap activities to:

9 (1) Hedging and other similar risk mitigating
10 activities directly related to the insured depository
11 institution’s activities.

12 (2) Acting as a swaps entity for swaps or secu-
13 rity-based swaps involving rates or reference assets
14 that are permissible for investment by a national
15 bank under the paragraph designated as “Seventh.”
16 of section 5136 of the Revised Statutes of the
17 United States (12 U.S.C. 24), other than as de-
18 scribed in paragraph (3).

19 (3) LIMITATION ON CREDIT DEFAULT SWAPS.—
20 Acting as a swaps entity for credit default swaps, in-
21 cluding swaps or security-based swaps referencing
22 the credit risk of asset-backed securities as defined
23 in section 3(a)(77) of the Securities Exchange Act
24 of 1934 (15 U.S.C. 78c(a)(77)) (as amended by this
25 Act) shall not be considered a bank permissible ac-

1 tivity for purposes of subsection (d)(2) unless such
2 swaps or security-based swaps are cleared by a de-
3 rivatives clearing organization (as such term is de-
4 fined in section 1a of the Commodity Exchange Act
5 (7 U.S.C. 1a)) or a clearing agency (as such term is
6 defined in section 3 of the Securities Exchange Act
7 (15 U.S.C. 78c)) that is registered, or exempt from
8 registration, as a derivatives clearing organization
9 under the Commodity Exchange Act or as a clearing
10 agency under the Securities Exchange Act, respec-
11 tively.

12 (e) EXISTING SWAPS AND SECURITY-BASED
13 SWAPS.—The prohibition in subsection (a) shall only
14 apply to swaps or security-based swaps entered into by
15 an insured depository institution after the end of the tran-
16 sition period described in subsection (f).

17 (f) TRANSITION PERIOD.—To the extent an insured
18 depository institution qualifies as a “swaps entity” and
19 would be subject to the Federal assistance prohibition in
20 subsection (a), the appropriate Federal banking agency,
21 after consulting with and considering the views of the
22 Commodity Futures Trading Commission or the Securities
23 Exchange Commission, as appropriate, shall permit the in-
24 sured depository institution up to 24 months to divest the
25 swaps entity or cease the activities that require registra-

1 tion as a swaps entity. In establishing the appropriate
2 transition period to effect such divestiture or cessation of
3 activities, which may include making the swaps entity an
4 affiliate of the insured depository institution, the appro-
5 priate Federal banking agency shall take into account and
6 make written findings regarding the potential impact of
7 such divestiture or cessation of activities on the insured
8 depository institution's (1) mortgage lending, (2) small
9 business lending, (3) job creation, and (4) capital forma-
10 tion versus the potential negative impact on insured de-
11 positors and the Deposit Insurance Fund of the Federal
12 Deposit Insurance Corporation. The appropriate Federal
13 banking agency may consider such other factors as may
14 be appropriate. The appropriate Federal banking agency
15 may place such conditions on the insured depository insti-
16 tution's divestiture or ceasing of activities of the swaps
17 entity as it deems necessary and appropriate. The transi-
18 tion period under this subsection may be extended by the
19 appropriate Federal banking agency, after consultation
20 with the Commodity Futures Trading Commission and the
21 Securities and Exchange Commission, for a period of up
22 to 1 additional year.

23 (g) EXCLUDED ENTITIES.—For purposes of this sec-
24 tion, the term “swaps entity” shall not include any insured
25 depository institution under the Federal Deposit Insur-

1 ance Act or a covered financial company under title II
2 which is in a conservatorship, receivership, or a bridge
3 bank operated by the Federal Deposit Insurance Corpora-
4 tion.

5 (h) EFFECTIVE DATE.—The prohibition in sub-
6 section (a) shall be effective 2 years following the date on
7 which this Act is effective.

8 (i) LIQUIDATION REQUIRED.—

9 (1) IN GENERAL.—

10 (A) FDIC INSURED INSTITUTIONS.—All
11 swaps entities that are FDIC insured institu-
12 tions that are put into receivership or declared
13 insolvent as a result of swap or security-based
14 swap activity of the swaps entities shall be sub-
15 ject to the termination or transfer of that swap
16 or security-based swap activity in accordance
17 with applicable law prescribing the treatment of
18 those contracts. No taxpayer funds shall be
19 used to prevent the receivership of any swap en-
20 tity resulting from swap or security-based swap
21 activity of the swaps entity.

22 (B) INSTITUTIONS THAT POSE A SYSTEMIC
23 RISK AND ARE SUBJECT TO HEIGHTENED PRU-
24 DENTIAL SUPERVISION AS REGULATED UNDER
25 SECTION 113.—All swaps entities that are insti-

1 tutions that pose a systemic risk and are sub-
2 ject to heightened prudential supervision as reg-
3 ulated under section 113, that are put into re-
4 ceivership or declared insolvent as a result of
5 swap or security-based swap activity of the
6 swaps entities shall be subject to the termi-
7 nation or transfer of that swap or security-
8 based swap activity in accordance with applica-
9 ble law prescribing the treatment of those con-
10 tracts. No taxpayer funds shall be used to pre-
11 vent the receivership of any swap entity result-
12 ing from swap or security-based swap activity
13 of the swaps entity.

14 (C) NON-FDIC INSURED, NON-SYSTEM-
15 ICALLY SIGNIFICANT INSTITUTIONS NOT SUB-
16 JECT TO HEIGHTENED PRUDENTIAL SUPER-
17 VISION AS REGULATED UNDER SECTION 113.—
18 No taxpayer resources shall be used for the or-
19 derly liquidation of any swaps entities that are
20 non-FDIC insured, non-systemically significant
21 institutions not subject to heightened prudential
22 supervision as regulated under section 113.

23 (2) RECOVERY OF FUNDS.—All funds expended
24 on the termination or transfer of the swap or secu-
25 rity-based swap activity of the swaps entity shall be

1 recovered in accordance with applicable law from the
2 disposition of assets of such swap entity or through
3 assessments, including on the financial sector as
4 provided under applicable law.

5 (3) NO LOSSES TO TAXPAYERS.—Taxpayers
6 shall bear no losses from the exercise of any author-
7 ity under this title.

8 (j) PROHIBITION ON UNREGULATED COMBINATION
9 OF SWAPS ENTITIES AND BANKING.—At no time fol-
10 lowing adoption of the rules in subsection (k) may a bank
11 or bank holding company be permitted to be or become
12 a swap entity unless it conducts its swap or security-based
13 swap activity in compliance with such minimum standards
14 set by its prudential regulator as are reasonably calculated
15 to permit the swaps entity to conduct its swap or security-
16 based swap activities in a safe and sound manner and
17 mitigate systemic risk.

18 (k) RULES.—In prescribing rules, the prudential reg-
19 ulator for a swaps entity shall consider the following fac-
20 tors:

21 (1) The expertise and managerial strength of
22 the swaps entity, including systems for effective
23 oversight.

24 (2) The financial strength of the swaps entity.

1 (3) Systems for identifying, measuring and con-
2 trolling risks arising from the swaps entity's oper-
3 ations.

4 (4) Systems for identifying, measuring and con-
5 trolling the swaps entity's participation in existing
6 markets.

7 (5) Systems for controlling the swaps entity's
8 participation or entry into in new markets and prod-
9 ucts.

10 (1) AUTHORITY OF THE FINANCIAL STABILITY OVER-
11 SIGHT COUNCIL.—The Financial Stability Oversight
12 Council may determine that, when other provisions estab-
13 lished by this Act are insufficient to effectively mitigate
14 systemic risk and protect taxpayers, that swaps entities
15 may no longer access Federal assistance with respect to
16 any swap, security-based swap, or other activity of the
17 swaps entity. Any such determination by the Financial
18 Stability Oversight Council of a prohibition of federal as-
19 sistance shall be made on an institution-by-institution
20 basis, and shall require the vote of not fewer than two-
21 thirds of the members of the Financial Stability Oversight
22 Council, which must include the vote by the Chairman of
23 the Council, the Chairman of the Board of Governors of
24 the Federal Reserve System, and the Chairperson of the
25 Federal Deposit Insurance Corporation. Notice and hear-

1 ing requirements for such determinations shall be con-
2 sistent with the standards provided in title I.

3 (m) BAN ON PROPRIETARY TRADING IN DERIVA-
4 TIVES.—An insured depository institution shall comply
5 with the prohibition on proprietary trading in derivatives
6 as required by section 619 of the Dodd-Frank Wall Street
7 Reform and Consumer Protection Act.

8 **SEC. 717. NEW PRODUCT APPROVAL CFTC—SEC PROCESS.**

9 (a) AMENDMENTS TO THE COMMODITY EXCHANGE
10 ACT.—Section 2(a)(1)(C) of the Commodity Exchange
11 Act (7 U.S.C. 2(a)(1)(C)) is amended—

12 (1) in clause (i) by striking “This” and insert-
13 ing “(I) Except as provided in subclause (II), this”;
14 and

15 (2) by adding at the end of clause (i) the fol-
16 lowing:

17 “(II) This Act shall apply to and
18 the Commission shall have jurisdiction
19 with respect to accounts, agreements,
20 and transactions involving, and may
21 permit the listing for trading pursu-
22 ant to section 5c(c) of, a put, call, or
23 other option on 1 or more securities
24 (as defined in section 2(a)(1) of the
25 Securities Act of 1933 or section

1 3(a)(10) of the Securities Exchange
2 Act of 1934 on the date of enactment
3 of the Futures Trading Act of 1982),
4 including any group or index of such
5 securities, or any interest therein or
6 based on the value thereof, that is ex-
7 empted by the Securities and Ex-
8 change Commission pursuant to sec-
9 tion 36(a)(1) of the Securities Ex-
10 change Act of 1934 with the condition
11 that the Commission exercise concu-
12 rent jurisdiction over such put, call, or
13 other option; provided, however, that
14 nothing in this paragraph shall be
15 construed to affect the jurisdiction
16 and authority of the Securities and
17 Exchange Commission over such put,
18 call, or other option.”.

19 (b) AMENDMENTS TO THE SECURITIES EXCHANGE
20 ACT OF 1934.—The Securities Exchange Act of 1934 is
21 amended by adding the following section after section 3A
22 (15 U.S.C. 78c–1):

23 **“SEC. 3B. SECURITIES-RELATED DERIVATIVES.**

24 “(a) Any agreement, contract, or transaction (or
25 class thereof) that is exempted by the Commodity Futures

1 Trading Commission pursuant to section 4(c)(1) of the
2 Commodity Exchange Act (7 U.S.C. 6(c)(1)) with the con-
3 dition that the Commission exercise concurrent jurisdic-
4 tion over such agreement, contract, or transaction (or
5 class thereof) shall be deemed a security for purposes of
6 the securities laws.

7 “(b) With respect to any agreement, contract, or
8 transaction (or class thereof) that is exempted by the
9 Commodity Futures Trading Commission pursuant to sec-
10 tion 4(c)(1) of the Commodity Exchange Act (7 U.S.C.
11 6(c)(1)) with the condition that the Commission exercise
12 concurrent jurisdiction over such agreement, contract, or
13 transaction (or class thereof), references in the securities
14 laws to the ‘purchase’ or ‘sale’ of a security shall be
15 deemed to include the execution, termination (prior to its
16 scheduled maturity date), assignment, exchange, or simi-
17 lar transfer or conveyance of, or extinguishing of rights
18 or obligations under such agreement, contract, or trans-
19 action, as the context may require.”.

20 (c) AMENDMENT TO SECURITIES EXCHANGE ACT OF
21 1934.—Section 19(b) of the Securities Exchange Act of
22 1934 (15 U.S.C. 78s(b)) is amended by adding at the end
23 the following:

24 “(10) Notwithstanding paragraph (2), the time
25 period within which the Commission is required by

1 order to approve a proposed rule change or institute
2 proceedings to determine whether the proposed rule
3 change should be disapproved is stayed pending a
4 determination by the Commission upon the request
5 of the Commodity Futures Trading Commission or
6 its Chairman that the Commission issue a deter-
7 mination as to whether a product that is the subject
8 of such proposed rule change is a security pursuant
9 to section 718 of the Wall Street Transparency and
10 Accountability Act of 2010.”.

11 (d) AMENDMENT TO COMMODITY EXCHANGE ACT.—
12 Section 5c(e)(1) of the Commodity Exchange Act (7
13 U.S.C. 7a-2(c)(1)) is amended—

14 (1) by striking “Subject to paragraph (2)” and
15 inserting the following:

16 “(A) ELECTION.—Subject to paragraph
17 (2)”;

18 (2) by adding at the end the following:

19 “(B) CERTIFICATION.—The certification of
20 a product pursuant to this paragraph shall be
21 stayed pending a determination by the Commis-
22 sion upon the request of the Securities and Ex-
23 change Commission or its Chairman that the
24 Commission issue a determination as to wheth-
25 er the product that is the subject of such cer-

1 tification is a contract of sale of a commodity
2 for future delivery, an option on such a con-
3 tract, or an option on a commodity pursuant to
4 section 718 of the Wall Street Transparency
5 and Accountability Act of 2010.”.

6 **SEC. 718. DETERMINING STATUS OF NOVEL DERIVATIVE**
7 **PRODUCTS.**

8 (a) PROCESS FOR DETERMINING THE STATUS OF A
9 NOVEL DERIVATIVE PRODUCT.—

10 (1) NOTICE.—

11 (A) IN GENERAL.—Any person filing a
12 proposal to list or trade a novel derivative prod-
13 uct that may have elements of both securities
14 and contracts of sale of a commodity for future
15 delivery (or options on such contracts or options
16 on commodities) may concurrently provide no-
17 tice and furnish a copy of such filing with the
18 Securities and Exchange Commission and the
19 Commodity Futures Trading Commission. Any
20 such notice shall state that notice has been
21 made with both Commissions.

22 (B) NOTIFICATION.—If no concurrent no-
23 tice is made pursuant to subparagraph (A),
24 within 5 business days after determining that a
25 proposal that seeks to list or trade a novel de-

1 rivative product may have elements of both se-
2 curities and contracts of sale of a commodity
3 for future delivery (or options on such contracts
4 or options on commodities), the Securities and
5 Exchange Commission or the Commodity Fu-
6 tures Trading Commission, as applicable, shall
7 notify the other Commission and provide a copy
8 of such filing to the other Commission.

9 (2) REQUEST FOR DETERMINATION.—

10 (A) IN GENERAL.—No later than 21 days
11 after receipt of a notice under paragraph (1), or
12 upon its own initiative if no such notice is re-
13 ceived, the Commodity Futures Trading Com-
14 mission may request that the Securities and
15 Exchange Commission issue a determination as
16 to whether a product is a security, as defined
17 in section 3(a)(10) of the Securities Exchange
18 Act of 1934 (15 U.S.C. 78c(a)(10)).

19 (B) REQUEST.—No later than 21 days
20 after receipt of a notice under paragraph (1), or
21 upon its own initiative if no such notice is re-
22 ceived, the Securities and Exchange Commis-
23 sion may request that the Commodity Futures
24 Trading Commission issue a determination as
25 to whether a product is a contract of sale of a

1 commodity for future delivery, an option on
2 such a contract, or an option on a commodity
3 subject to the Commodity Futures Trading
4 Commission's exclusive jurisdiction under sec-
5 tion 2(a)(1)(A) of the Commodity Exchange
6 Act (7 U.S.C. 2(a)(1)(A)).

7 (C) REQUIREMENT RELATING TO RE-
8 QUEST.—A request under subparagraph (A) or
9 (B) shall be made by submitting such request,
10 in writing, to the Securities and Exchange
11 Commission or the Commodity Futures Trading
12 Commission, as applicable.

13 (D) EFFECT.—Nothing in this paragraph
14 shall be construed to prevent—

15 (i) the Commodity Futures Trading
16 Commission from requesting that the Se-
17 curities and Exchange Commission grant
18 an exemption pursuant to section 36(a)(1)
19 of the Securities Exchange Act of 1934
20 (15 U.S.C. 78mm(a)(1)) with respect to a
21 product that is the subject of a filing
22 under paragraph (1); or

23 (ii) the Securities and Exchange Com-
24 mission from requesting that the Com-
25modity Futures Trading Commission grant

1 an exemption pursuant to section 4(e)(1)
2 of the Commodity Exchange Act (7 U.S.C.
3 6(c)(1)) with respect to a product that is
4 the subject of a filing under paragraph (1),
5 *Provided*, however, that nothing in this sub-
6 paragraph shall be construed to require the
7 Commodity Futures Trading Commission or the
8 Securities and Exchange Commission to issue
9 an exemption requested pursuant to this sub-
10 paragraph; *provided further*, That an order
11 granting or denying an exemption described in
12 this subparagraph and issued under paragraph
13 (3)(B) shall not be subject to judicial review
14 pursuant to subsection (b).

15 (E) WITHDRAWAL OF REQUEST.—A re-
16 quest under subparagraph (A) or (B) may be
17 withdrawn by the Commission making the re-
18 quest at any time prior to a determination
19 being made pursuant to paragraph (3) for any
20 reason by providing written notice to the head
21 of the other Commission.

22 (3) DETERMINATION.—Notwithstanding any
23 other provision of law, no later than 120 days after
24 the date of receipt of a request—

1 (A) under subparagraph (A) or (B) of
2 paragraph (2), unless such request has been
3 withdrawn pursuant to paragraph (2)(E), the
4 Securities and Exchange Commission or the
5 Commodity Futures Trading Commission, as
6 applicable, shall, by order, issue the determina-
7 tion requested in subparagraph (A) or (B) of
8 paragraph (2), as applicable, and the reasons
9 therefor; or

10 (B) under paragraph (2)(D), unless such
11 request has been withdrawn, the Securities and
12 Exchange Commission or the Commodity Fu-
13 tures Trading Commission, as applicable, shall
14 grant an exemption or provide reasons for not
15 granting such exemption, provided that any de-
16 cision by the Securities and Exchange Commis-
17 sion not to grant such exemption shall not be
18 reviewable under section 25 of the Securities
19 Exchange Act of 1934 (15 U.S.C. 78y).

20 (b) JUDICIAL RESOLUTION.—

21 (1) IN GENERAL.—The Commodity Futures
22 Trading Commission or the Securities and Exchange
23 Commission may petition the United States Court of
24 Appeals for the District of Columbia Circuit for re-
25 view of a final order of the other Commission issued

1 pursuant to subsection (a)(3)(A), with respect to a
2 novel derivative product that may have elements of
3 both securities and contracts of sale of a commodity
4 for future delivery (or options on such contracts or
5 options on commodities) that it believes affects its
6 statutory jurisdiction within 60 days after the date
7 of entry of such order, a written petition requesting
8 a review of the order. Any such proceeding shall be
9 expedited by the Court of Appeals.

10 (2) TRANSMITTAL OF PETITION AND
11 RECORD.—A copy of a petition described in para-
12 graph (1) shall be transmitted not later than 1 busi-
13 ness day after filing by the complaining Commission
14 to the responding Commission. On receipt of the pe-
15 tition, the responding Commission shall file with the
16 court a copy of the order under review and any doc-
17 uments referred to therein, and any other materials
18 prescribed by the court.

19 (3) STANDARD OF REVIEW.—The court, in con-
20 sidering a petition filed pursuant to paragraph (1),
21 shall give no deference to, or presumption in favor
22 of, the views of either Commission.

23 (4) JUDICIAL STAY.—The filing of a petition by
24 the complaining Commission pursuant to paragraph
25 (1) shall operate as a stay of the order, until the

1 date on which the determination of the court is final
2 (including any appeal of the determination).

3 **SEC. 719. STUDIES.**

4 (a) STUDY ON EFFECTS OF POSITION LIMITS ON
5 TRADING ON EXCHANGES IN THE UNITED STATES.—

6 (1) STUDY.—The Commodity Futures Trading
7 Commission, in consultation with each entity that is
8 a designated contract market under the Commodity
9 Exchange Act, shall conduct a study of the effects
10 (if any) of the position limits imposed pursuant to
11 the other provisions of this title on excessive specula-
12 tion and on the movement of transactions from ex-
13 changes in the United States to trading venues out-
14 side the United States.

15 (2) REPORT TO THE CONGRESS.—Within 12
16 months after the imposition of position limits pursu-
17 ant to the other provisions of this title, the Com-
18modity Futures Trading Commission, in consultation
19 with each entity that is a designated contract mar-
20 ket under the Commodity Exchange Act, shall sub-
21 mit to the Congress a report on the matters de-
22 scribed in paragraph (1).

23 (3) REQUIRED HEARING.—Within 30 legislative
24 days after the submission to the Congress of the re-
25 port described in paragraph (2), the Committee on

1 Agriculture of the House of Representatives shall
2 hold a hearing examining the findings of the report.

3 (4) BIENNIAL REPORTING.—In addition to the
4 study required in paragraph (1), the Chairman of
5 the Commodity Futures Trading Commission shall
6 prepare and submit to the Congress biennial reports
7 on the growth or decline of the derivatives markets
8 in the United States and abroad, which shall include
9 assessments of the causes of any such growth or de-
10 cline, the effectiveness of regulatory regimes in man-
11 aging systemic risk, a comparison of the costs of
12 compliance at the time of the report for market par-
13 ticipants subject to regulation by the United States
14 with the costs of compliance in December 2008 for
15 the market participants, and the quality of the avail-
16 able data. In preparing the report, the Chairman
17 shall solicit the views of, consult with, and address
18 the concerns raised by, market participants, regu-
19 lators, legislators, and other interested parties.

20 (b) STUDY ON FEASIBILITY OF REQUIRING USE OF
21 STANDARDIZED ALGORITHMIC DESCRIPTIONS FOR FI-
22 NANCIAL DERIVATIVES.—

23 (1) IN GENERAL.—The Securities and Ex-
24 change Commission and the Commodity Futures
25 Trading Commission shall conduct a joint study of

1 the feasibility of requiring the derivatives industry to
2 adopt standardized computer-readable algorithmic
3 descriptions which may be used to describe complex
4 and standardized financial derivatives.

5 (2) GOALS.—The algorithmic descriptions de-
6 fined in the study shall be designed to facilitate com-
7 puterized analysis of individual derivative contracts
8 and to calculate net exposures to complex deriva-
9 tives. The algorithmic descriptions shall be optimized
10 for simultaneous use by—

11 (A) commercial users and traders of de-
12 rivatives;

13 (B) derivative clearing houses, exchanges
14 and electronic trading platforms;

15 (C) trade repositories and regulator inves-
16 tigations of market activities; and

17 (D) systemic risk regulators.

18 The study will also examine the extent to which the
19 algorithmic description, together with standardized
20 and extensible legal definitions, may serve as the
21 binding legal definition of derivative contracts. The
22 study will examine the logistics of possible imple-
23 mentations of standardized algorithmic descriptions
24 for derivatives contracts. The study shall be limited
25 to electronic formats for exchange of derivative con-

1 tract descriptions and will not contemplate disclo-
2 sure of proprietary valuation models.

3 (3) INTERNATIONAL COORDINATION.—In con-
4 ducting the study, the Securities and Exchange
5 Commission and the Commodity Futures Trading
6 Commission shall coordinate the study with inter-
7 national financial institutions and regulators as ap-
8 propriate and practical.

9 (4) REPORT.—Within 8 months after the date
10 of the enactment of this Act, the Securities and Ex-
11 change Commission and the Commodity Futures
12 Trading Commission shall jointly submit to the
13 Committees on Agriculture and on Financial Serv-
14 ices of the House of Representatives and the Com-
15 mittees on Agriculture, Nutrition, and Forestry and
16 on Banking, Housing, and Urban Affairs of the Sen-
17 ate a written report which contains the results of the
18 study required by paragraphs (1) through (3).

19 (c) INTERNATIONAL SWAP REGULATION.—

20 (1) IN GENERAL.—The Commodity Futures
21 Trading Commission and the Securities and Ex-
22 change Commission shall jointly conduct a study—

23 (A) relating to—

24 (i) swap regulation in the United
25 States, Asia, and Europe; and

1 (ii) clearing house and clearing agency
2 regulation in the United States, Asia, and
3 Europe; and

4 (B) that identifies areas of regulation that
5 are similar in the United States, Asia and Eu-
6 rope and other areas of regulation that could be
7 harmonized

8 (2) REPORT.—Not later than 18 months after
9 the date of enactment of this Act, the Commodity
10 Futures Trading Commission and the Securities and
11 Exchange Commission shall submit to the Com-
12 mittee on Agriculture, Nutrition, and Forestry and
13 the Committee on Banking, Housing, and Urban Af-
14 fairs of the Senate and the Committee on Agri-
15 culture and the Committee on Financial Services of
16 the House of Representatives a report that includes
17 a description of the results of the study under sub-
18 section (a), including—

19 (A) identification of the major exchanges
20 and their regulator in each geographic area for
21 the trading of swaps and security-based swaps
22 including a listing of the major contracts and
23 their trading volumes and notional values as
24 well as identification of the major swap dealers
25 participating in such markets;

1 (B) identification of the major clearing
2 houses and clearing agencies and their regu-
3 lator in each geographic area for the clearing of
4 swaps and security-based swaps, including a
5 listing of the major contracts and the clearing
6 volumes and notional values as well as identi-
7 fication of the major clearing members of such
8 clearing houses and clearing agencies in such
9 markets;

10 (C) a description of the comparative meth-
11 ods of clearing swaps in the United States,
12 Asia, and Europe; and

13 (D) a description of the various systems
14 used for establishing margin on individual
15 swaps, security-based swaps, and swap port-
16 folios.

17 (d) STABLE VALUE CONTRACTS.—

18 (1) DETERMINATION.—

19 (A) STATUS.—Not later than 15 months
20 after the date of the enactment of this Act, the
21 Securities and Exchange Commission and the
22 Commodity Futures Trading Commission shall,
23 jointly, conduct a study to determine whether
24 stable value contracts fall within the definition
25 of a swap. In making the determination re-

1 required under this subparagraph, the Commis-
2 sions jointly shall consult with the Department
3 of Labor, the Department of the Treasury, and
4 the State entities that regulate the issuers of
5 stable value contracts.

6 (B) REGULATIONS.—If the Commissions
7 determine that stable value contracts fall within
8 the definition of a swap, the Commissions joint-
9 ly shall determine if an exemption for stable
10 value contracts from the definition of swap is
11 appropriate and in the public interest. The
12 Commissions shall issue regulations imple-
13 menting the determinations required under this
14 paragraph. Until the effective date of such reg-
15 ulations, and notwithstanding any other provi-
16 sion of this title, the requirements of this title
17 shall not apply to stable value contracts.

18 (C) LEGAL CERTAINTY.—Stable value con-
19 tracts in effect prior to the effective date of the
20 regulations described in subparagraph (B) shall
21 not be considered swaps.

22 (2) DEFINITION.—For purposes of this sub-
23 section, the term “stable value contract” means any
24 contract, agreement, or transaction that provides a
25 crediting interest rate and guaranty or financial as-

1 surance of liquidity at contract or book value prior
2 to maturity offered by a bank, insurance company,
3 or other State or federally regulated financial insti-
4 tution for the benefit of any individual or commin-
5 gled fund available as an investment in an employee
6 benefit plan (as defined in section 3(3) of the Em-
7 ployee Retirement Income Security Act of 1974, in-
8 cluding plans described in section 3(32) of such Act)
9 subject to participant direction, an eligible deferred
10 compensation plan (as defined in section 457(b) of
11 the Internal Revenue Code of 1986) that is main-
12 tained by an eligible employer described in section
13 457(e)(1)(A) of such Code, an arrangement de-
14 scribed in section 403(b) of such Code, or a qualified
15 tuition program (as defined in section 529 of such
16 Code).

17 **SEC. 720. MEMORANDUM.**

18 (a)(1) The Commodity Futures Trading Commission
19 and the Federal Energy Regulatory Commission shall, not
20 later than 180 days after the date of the enactment of
21 this Act, negotiate a memorandum of understanding to es-
22 tablish procedures for—

23 (A) applying their respective authorities in a
24 manner so as to ensure effective and efficient regula-
25 tion in the public interest;

1 (B) resolving conflicts concerning overlapping
2 jurisdiction between the 2 agencies; and

3 (C) avoiding, to the extent possible, conflicting
4 or duplicative regulation.

5 (2) Such memorandum and any subsequent amend-
6 ments to the memorandum shall be promptly submitted
7 to the appropriate committees of Congress.

8 (b) The Commodity Futures Trading Commission
9 and the Federal Energy Regulatory Commission shall, not
10 later than 180 days after the date of the enactment of
11 this section, negotiate a memorandum of understanding
12 to share information that may be requested where either
13 Commission is conducting an investigation into potential
14 manipulation, fraud, or market power abuse in markets
15 subject to such Commission's regulation or oversight.
16 Shared information shall remain subject to the same re-
17 strictions on disclosure applicable to the Commission ini-
18 tially holding the information.

19 **PART II—REGULATION OF SWAP MARKETS**

20 **SEC. 721. DEFINITIONS.**

21 (a) IN GENERAL.—Section 1a of the Commodity Ex-
22 change Act (7 U.S.C. 1a) is amended—

23 (1) by redesignating paragraphs (2), (3) and
24 (4), (5) through (17), (18) through (23), (24)
25 through (28), (29), (30), (31) through (33), and

1 (34) as paragraphs (6), (8) and (9), (11) through
2 (23), (26) through (31), (34) through (38), (40),
3 (41), (44) through (46), and (51), respectively;

4 (2) by inserting after paragraph (1) the fol-
5 lowing:

6 “(2) APPROPRIATE FEDERAL BANKING AGEN-
7 CY.—The term ‘appropriate Federal banking agen-
8 cy’—

9 “(A) has the meaning given the term in
10 section 3 of the Federal Deposit Insurance Act
11 (12 U.S.C. 1813);

12 “(B) means the Board in the case of a
13 noninsured State bank; and

14 “(C) is the Farm Credit Administration
15 for farm credit system institutions.

16 “(3) ASSOCIATED PERSON OF A SECURITY-
17 BASED SWAP DEALER OR MAJOR SECURITY-BASED
18 SWAP PARTICIPANT.—The term ‘associated person of
19 a security-based swap dealer or major security-based
20 swap participant’ has the meaning given the term in
21 section 3(a) of the Securities Exchange Act of 1934
22 (15 U.S.C. 78c(a)).

23 “(4) ASSOCIATED PERSON OF A SWAP DEALER
24 OR MAJOR SWAP PARTICIPANT.—

1 “(A) IN GENERAL.—The term ‘associated
2 person of a swap dealer or major swap partici-
3 pant’ means a person who is associated with a
4 swap dealer or major swap participant as a
5 partner, officer, employee or agent (or any per-
6 son occupying a similar status or performing
7 similar functions), in any capacity that in-
8 volves—

9 “(i) the solicitation or acceptance of
10 swaps; or

11 “(ii) the supervision of any person or
12 persons so engaged.

13 “(B) EXCLUSION.—Other than for pur-
14 poses of section 4s(b)(6), the term ‘associated
15 person of a swap dealer or major swap partici-
16 pant’ does not include any person associated
17 with a swap dealer or major swap participant
18 the functions of which are solely clerical or min-
19 isterial.

20 “(5) BOARD.—The term ‘Board’ means the
21 Board of Governors of the Federal Reserve Sys-
22 tem.”;

23 (3) by inserting after paragraph (6) (as redesign-
24 nated by paragraph (1)) the following:

1 “(7) CLEARED SWAP.—The term ‘cleared swap’
2 means any swap that is, directly or indirectly, sub-
3 mitted to and cleared by a derivatives clearing orga-
4 nization registered with the Commission.”;

5 (4) in paragraph (9) (as redesignated by para-
6 graph (1)), by striking “except onions” and all that
7 follows through the period at the end and inserting
8 the following: “except onions (as provided by the
9 first section of Public Law 85–839 (7 U.S.C. 13–1))
10 and motion picture box office receipts (or any index,
11 measure, value, or data related to such receipts),
12 and all services, rights, and interests (except motion
13 picture box office receipts, or any index, measure,
14 value or data related to such receipts) in which con-
15 tracts for future delivery are presently or in the fu-
16 ture dealt in.”;

17 (5) by inserting after paragraph (9) (as redesign-
18 ated by paragraph (1)) the following:

19 “(10) COMMODITY POOL.—

20 “(A) IN GENERAL.—The term ‘commodity
21 pool’ means any investment trust, syndicate, or
22 similar form of enterprise operated for the pur-
23 pose of trading in commodity interests, includ-
24 ing any—

1 “(i) commodity for future delivery, se-
2 curity futures product, or swap;

3 “(ii) agreement, contract, or trans-
4 action described in section 2(c)(2)(C)(i) or
5 section 2(e)(2)(D)(i);

6 “(iii) commodity option authorized
7 under section 4c; or

8 “(iv) leverage transaction authorized
9 under section 19.

10 “(B) FURTHER DEFINITION.—The Com-
11 mission, by rule or regulation, may include
12 within, or exclude from, the term ‘commodity
13 pool’ any investment trust, syndicate, or similar
14 form of enterprise if the Commission deter-
15 mines that the rule or regulation will effectuate
16 the purposes of this Act.”;

17 (6) by striking paragraph (11) (as redesignated
18 by paragraph (1)) and inserting the following:

19 “(11) COMMODITY POOL OPERATOR.—

20 “(A) IN GENERAL.—The term ‘commodity
21 pool operator’ means any person—

22 “(i) engaged in a business that is of
23 the nature of a commodity pool, invest-
24 ment trust, syndicate, or similar form of
25 enterprise, and who, in connection there-

1 with, solicits, accepts, or receives from oth-
2 ers, funds, securities, or property, either
3 directly or through capital contributions,
4 the sale of stock or other forms of securi-
5 ties, or otherwise, for the purpose of trad-
6 ing in commodity interests, including
7 any—

8 “(I) commodity for future deliv-
9 ery, security futures product, or swap;

10 “(II) agreement, contract, or
11 transaction described in section
12 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

13 “(III) commodity option author-
14 ized under section 4c; or

15 “(IV) leverage transaction au-
16 thorized under section 19; or

17 “(ii) who is registered with the Com-
18 mission as a commodity pool operator.

19 “(B) FURTHER DEFINITION.—The Com-
20 mission, by rule or regulation, may include
21 within, or exclude from, the term ‘commodity
22 pool operator’ any person engaged in a business
23 that is of the nature of a commodity pool, in-
24 vestment trust, syndicate, or similar form of en-
25 terprise if the Commission determines that the

1 rule or regulation will effectuate the purposes of
2 this Act.”;

3 (7) in paragraph (12) (as redesignated by para-
4 graph (1)), in subparagraph (A)—

5 (A) in clause (i)—

6 (i) in subclause (I), by striking “made
7 or to be made on or subject to the rules of
8 a contract market or derivatives trans-
9 action execution facility” and inserting “,
10 security futures product, or swap”;

11 (ii) by redesignating subclauses (II)
12 and (III) as subclauses (III) and (IV);

13 (iii) by inserting after subclause (I)
14 the following:

15 “(II) any agreement, contract, or
16 transaction described in section
17 2(c)(2)(C)(i) or section 2(c)(2)(D)(i)”;

18 and

19 (iv) in subclause (IV) (as so redesign-
20 ated), by striking “or”;

21 (B) in clause (ii), by striking the period at
22 the end and inserting a semicolon; and

23 (C) by adding at the end the following:

24 “(iii) is registered with the Commis-
25 sion as a commodity trading advisor; or

1 “(iv) the Commission, by rule or regu-
2 lation, may include if the Commission de-
3 termines that the rule or regulation will ef-
4 fectuate the purposes of this Act.”;

5 (8) in paragraph (17) (as redesignated by para-
6 graph (1)), in subparagraph (A), in the matter pre-
7 ceding clause (i), by striking “paragraph (12)(A)”
8 and inserting “paragraph (18)(A)”;

9 (9) in paragraph (18) (as redesignated by para-
10 graph (1))—

11 (A) in subparagraph (A)—

12 (i) in the matter following clause
13 (vii)(III)—

14 (I) by striking “section 1a
15 (11)(A)” and inserting “paragraph
16 (17)(A)”;

17 (II) by striking “\$25,000,000”
18 and inserting “\$50,000,000”;

19 (ii) in clause (xi), in the matter pre-
20 ceding subclause (I), by striking “total as-
21 sets in an amount” and inserting
22 “amounts invested on a discretionary
23 basis, the aggregate of which is”;

24 (10) by striking paragraph (22) (as redesi-
25 gnated by paragraph (1)) and inserting the following:

1 “(22) FLOOR BROKER.—

2 “(A) IN GENERAL.—The term ‘floor
3 broker’ means any person—

4 “(i) who, in or surrounding any pit,
5 ring, post, or other place provided by a
6 contract market for the meeting of persons
7 similarly engaged, shall purchase or sell for
8 any other person—

9 “(I) any commodity for future
10 delivery, security futures product, or
11 swap; or

12 “(II) any commodity option au-
13 thorized under section 4c; or

14 “(ii) who is registered with the Com-
15 mission as a floor broker.

16 “(B) FURTHER DEFINITION.—The Com-
17 mission, by rule or regulation, may include
18 within, or exclude from, the term ‘floor broker’
19 any person in or surrounding any pit, ring,
20 post, or other place provided by a contract mar-
21 ket for the meeting of persons similarly engaged
22 who trades for any other person if the Commis-
23 sion determines that the rule or regulation will
24 effectuate the purposes of this Act.”;

1 (11) by striking paragraph (23) (as redesignated by paragraph (1)) and inserting the following:

2 “(23) FLOOR TRADER.—

3 “(A) IN GENERAL.—The term ‘floor trader’ means any person—

4 “(i) who, in or surrounding any pit,
5 ring, post, or other place provided by a
6 contract market for the meeting of persons
7 similarly engaged, purchases, or sells solely
8 for such person’s own account—

9 “(I) any commodity for future
10 delivery, security futures product, or
11 swap; or

12 “(II) any commodity option authorized under section 4c; or

13 “(ii) who is registered with the Commission as a floor trader.

14 “(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include
15 within, or exclude from, the term ‘floor trader’
16 any person in or surrounding any pit, ring,
17 post, or other place provided by a contract market for the meeting of persons similarly engaged
18 who trades solely for such person’s own account
19 if the Commission determines that the rule or
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1 regulation will effectuate the purposes of this
2 Act.”;

3 (12) by inserting after paragraph (23) (as re-
4 designated by paragraph (1)) the following:

5 “(24) FOREIGN EXCHANGE FORWARD.—The
6 term ‘foreign exchange forward’ means a transaction
7 that solely involves the exchange of 2 different cur-
8 rencies on a specific future date at a fixed rate
9 agreed upon on the inception of the contract cov-
10 ering the exchange.

11 “(25) FOREIGN EXCHANGE SWAP.—The term
12 ‘foreign exchange swap’ means a transaction that
13 solely involves—

14 “(A) an exchange of 2 different currencies
15 on a specific date at a fixed rate that is agreed
16 upon on the inception of the contract covering
17 the exchange; and

18 “(B) a reverse exchange of the 2 cur-
19 rencies described in subparagraph (A) at a later
20 date and at a fixed rate that is agreed upon on
21 the inception of the contract covering the ex-
22 change.”;

23 (13) by striking paragraph (28) (as redesign-
24 nated by paragraph (1)) and inserting the following:

25 “(28) FUTURES COMMISSION MERCHANT.—

1 “(A) IN GENERAL.—The term ‘futures
2 commission merchant’ means an individual, as-
3 sociation, partnership, corporation, or trust—

4 “(i) that—

5 “(I) is engaged in soliciting or in
6 accepting orders for—

7 “(aa) the purchase or sale of
8 a commodity for future delivery;

9 “(bb) a security futures
10 product;

11 “(cc) a swap;

12 “(dd) any agreement, con-
13 tract, or transaction described in
14 section 2(c)(2)(C)(i) or section
15 2(c)(2)(D)(i);

16 “(ee) any commodity option
17 authorized under section 4e; or

18 “(ff) any leverage trans-
19 action authorized under section
20 19; or

21 “(II) is acting as a counterparty
22 in any agreement, contract, or trans-
23 action described in section
24 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);
25 and

1 “(III) in or in connection with
2 the activities described in subclause
3 (I) or (II), accepts any money, securi-
4 ties, or property (or extends credit in
5 lieu thereof) to margin, guarantee, or
6 secure any trades or contracts that re-
7 sult or may result therefrom; or

8 “(ii) that is registered with the Com-
9 mission as a futures commission merchant.

10 “(B) FURTHER DEFINITION.—The Com-
11 mission, by rule or regulation, may include
12 within, or exclude from, the term ‘futures com-
13 mission merchant’ any person who engages in
14 soliciting or accepting orders for, or acting as
15 a counterparty in, any agreement, contract, or
16 transaction subject to this Act, and who accepts
17 any money, securities, or property (or extends
18 credit in lieu thereof) to margin, guarantee, or
19 secure any trades or contracts that result or
20 may result therefrom, if the Commission deter-
21 mines that the rule or regulation will effectuate
22 the purposes of this Act.”;

23 (14) in paragraph (30) (as redesignated by
24 paragraph (1)), in subparagraph (B), by striking
25 “state” and inserting “State”;

1 (15) by striking paragraph (31) (as redesignated by paragraph (1)) and inserting the following:

2 “(31) INTRODUCING BROKER.—

3 “(A) IN GENERAL.—The term ‘introducing broker’ means any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant)—

4 “(i) who—

5 “(I) is engaged in soliciting or in accepting orders for—

6 “(aa) the purchase or sale of any commodity for future delivery, security futures product, or swap;

7 “(bb) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

8 “(cc) any commodity option authorized under section 4c; or

9 “(dd) any leverage transaction authorized under section 19; and

1 “(II) does not accept any money,
2 securities, or property (or extend cred-
3 it in lieu thereof) to margin, guar-
4 antee, or secure any trades or con-
5 tracts that result or may result there-
6 from; or

7 “(ii) who is registered with the Com-
8 mission as an introducing broker.

9 “(B) FURTHER DEFINITION.—The Com-
10 mission, by rule or regulation, may include
11 within, or exclude from, the term ‘introducing
12 broker’ any person who engages in soliciting or
13 accepting orders for any agreement, contract,
14 or transaction subject to this Act, and who does
15 not accept any money, securities, or property
16 (or extend credit in lieu thereof) to margin,
17 guarantee, or secure any trades or contracts
18 that result or may result therefrom, if the Com-
19 mission determines that the rule or regulation
20 will effectuate the purposes of this Act.”;

21 (16) by inserting after paragraph (31) (as re-
22 designated by paragraph (1)) the following:

23 “(32) MAJOR SECURITY-BASED SWAP PARTICI-
24 PANT.—The term ‘major security-based swap partici-
25 ipant’ has the meaning given the term in section

1 3(a) of the Securities Exchange Act of 1934 (15
2 U.S.C. 78c(a)).

3 “(33) MAJOR SWAP PARTICIPANT.—

4 “(A) IN GENERAL.—The term ‘major swap
5 participant’ means any person who is not a
6 swap dealer, and—

7 “(i) maintains a substantial position
8 in swaps for any of the major swap cat-
9 egories as determined by the Commission,
10 excluding—

11 “(I) positions held for hedging or
12 mitigating commercial risk; and

13 “(II) positions maintained by any
14 employee benefit plan (or any contract
15 held by such a plan) as defined in
16 paragraphs (3) and (32) of section 3
17 of the Employee Retirement Income
18 Security Act of 1974 (29 U.S.C.
19 1002) for the primary purpose of
20 hedging or mitigating any risk directly
21 associated with the operation of the
22 plan;

23 “(ii) whose outstanding swaps create
24 substantial counterparty exposure that
25 could have serious adverse effects on the

1 financial stability of the United States
2 banking system or financial markets; or

3 “(iii)(I) is a financial entity that is
4 highly leveraged relative to the amount of
5 capital it holds and that is not subject to
6 capital requirements established by an ap-
7 propriate Federal banking agency; and

8 “(II) maintains a substantial position
9 in outstanding swaps in any major swap
10 category as determined by the Commission.

11 “(B) DEFINITION OF SUBSTANTIAL POSI-
12 TION.—For purposes of subparagraph (A), the
13 Commission shall define by rule or regulation
14 the term ‘substantial position’ at the threshold
15 that the Commission determines to be prudent
16 for the effective monitoring, management, and
17 oversight of entities that are systemically im-
18 portant or can significantly impact the financial
19 system of the United States. In setting the defi-
20 nition under this subparagraph, the Commis-
21 sion shall consider the person’s relative position
22 in uncleared as opposed to cleared swaps and
23 may take into consideration the value and qual-
24 ity of collateral held against counterparty expo-
25 sures.

1 “(C) SCOPE OF DESIGNATION.—For pur-
2 poses of subparagraph (A), a person may be
3 designated as a major swap participant for 1 or
4 more categories of swaps without being classi-
5 fied as a major swap participant for all classes
6 of swaps.

7 “(D) EXCLUSIONS.—The definition under
8 this paragraph shall not include an entity whose
9 primary business is providing financing, and
10 uses derivatives for the purpose of hedging un-
11 derlying commercial risks related to interest
12 rate and foreign currency exposures, 90 percent
13 or more of which arise from financing that fa-
14 cilitates the purchase or lease of products, 90
15 percent or more of which are manufactured by
16 the parent company or another subsidiary of
17 the parent company.”;

18 (17) by inserting after paragraph (38) (as re-
19 designated by paragraph (1)) the following:

20 “(39) PRUDENTIAL REGULATOR.—The term
21 ‘prudential regulator’ means—

22 “(A) the Board in the case of a swap deal-
23 er, major swap participant, security-based swap
24 dealer, or major security-based swap participant
25 that is—

1 “(i) a State-chartered bank that is a
2 member of the Federal Reserve System;

3 “(ii) a State-chartered branch or
4 agency of a foreign bank;

5 “(iii) any foreign bank which does not
6 operate an insured branch;

7 “(iv) any organization operating
8 under section 25A of the Federal Reserve
9 Act or having an agreement with the
10 Board under section 225 of the Federal
11 Reserve Act;

12 “(v) any bank holding company (as
13 defined in section 2 of the Bank Holding
14 Company Act of 1965 (12 U.S.C. 1841)),
15 any foreign bank (as defined in section
16 1(b)(7) of the International Banking Act
17 of 1978 (12 U.S.C. 3101(b)(7)) that is
18 treated as a bank holding company under
19 section 8(a) of the International Banking
20 Act of 1978 (12 U.S.C. 3106(a)), and any
21 subsidiary of such a company or foreign
22 bank (other than a subsidiary that is de-
23 scribed in subparagraph (A) or (B) or that
24 is required to be registered with the Com-
25 mission as a swap dealer or major swap

1 participant under this Act or with the Se-
2 curities and Exchange Commission as a se-
3 curity-based swap dealer or major security-
4 based swap participant);

5 “(vi) after the transfer date (as de-
6 fined in section 311 of the Dodd-Frank
7 Wall Street Reform and Consumer Protec-
8 tion Act of 2010), any savings and loan
9 holding company (as defined in section 10
10 of the Home Owners’ Loan Act (12 U.S.C.
11 1467a)) and any subsidiary of such com-
12 pany (other than a subsidiary that is de-
13 scribed in subparagraph (A) or (B) or that
14 is required to be registered as a swap deal-
15 er or major swap participant with the
16 Commission under this Act or with the Se-
17 curities and Exchange Commission as a se-
18 curity-based swap dealer or major security-
19 based swap participant); or

20 “(vii) any organization operating
21 under section 25A of the Federal Reserve
22 Act (12U.S.C. 611 et seq.) or having an
23 agreement with the Board under section
24 25 of the Federal Reserve Act (12 U.S.C.
25 601 et seq.); and

1 “(B) the Office of the Comptroller of the
2 Currency in the case of a swap dealer, major
3 swap participant, security-based swap dealer, or
4 major security-based swap participant that is—

5 “(i) a national bank;

6 “(ii) a federally chartered branch or
7 agency of a foreign bank; or

8 “(iii) any Federal savings association;

9 “(C) the Federal Deposit Insurance Cor-
10 poration in the case of a swap dealer, major
11 swap participant, security-based swap dealer, or
12 major security-based swap participant that is—

13 “(i) a State-chartered bank that is not
14 a member of the Federal Reserve System;

15 or

16 “(ii) any State savings association;

17 “(D) the Farm Credit Administration, in
18 the case of a swap dealer, major swap partici-
19 pant, security-based swap dealer, or major secu-
20 rity-based swap participant that is an institu-
21 tion chartered under the Farm Credit Act of
22 1971 (12 U.S.C. 2001 et seq.); and

23 “(E) the Federal Housing Finance Agency
24 in the case of a swap dealer, major swap partici-
25 pant, security-based swap dealer, or major se-

1 security-based swap participant that is a regu-
2 lated entity (as such term is defined in section
3 1303 of the Federal Housing Enterprises Fi-
4 nancial Safety and Soundness Act of 1992).”;
5 (18) in paragraph (40) (as redesignated by
6 paragraph (1))—

7 (A) by striking subparagraph (B);

8 (B) by redesignating subparagraphs (C),
9 (D), and (E) as subparagraphs (B), (C), and
10 (F), respectively;

11 (C) in subparagraph (C) (as so redesi-
12 gnated), by striking “and”;

13 (D) by inserting after subparagraph (C)
14 (as so redesignated) the following:

15 “(D) a swap execution facility registered
16 under section 5h;

17 “(E) a swap data repository registered
18 under section 21; and”;

19 (19) by inserting after paragraph (41) (as re-
20 designated by paragraph (1)) the following:

21 “(42) SECURITY-BASED SWAP.—The term ‘se-
22 curity-based swap’ has the meaning given the term
23 in section 3(a) of the Securities Exchange Act of
24 1934 (15 U.S.C. 78c(a)).

1 “(43) SECURITY-BASED SWAP DEALER.—The
2 term ‘security-based swap dealer’ has the meaning
3 given the term in section 3(a) of the Securities Ex-
4 change Act of 1934 (15 U.S.C. 78c(a)).”;

5 (20) in paragraph (46) (as redesignated by
6 paragraph (1)), by striking “subject to section
7 2(h)(7)” and inserting “subject to section 2(h)(5)”;

8 (21) by inserting after paragraph (46) (as re-
9 designated by paragraph (1)) the following:

10 “(47) SWAP.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), the term ‘swap’ means any
13 agreement, contract, or transaction—

14 “(i) that is a put, call, cap, floor, col-
15 lar, or similar option of any kind that is
16 for the purchase or sale, or based on the
17 value, of 1 or more interest or other rates,
18 currencies, commodities, securities, instru-
19 ments of indebtedness, indices, quantitative
20 measures, or other financial or economic
21 interests or property of any kind;

22 “(ii) that provides for any purchase,
23 sale, payment, or delivery (other than a
24 dividend on an equity security) that is de-
25 pendent on the occurrence, nonoccurrence,

1 or the extent of the occurrence of an event
2 or contingency associated with a potential
3 financial, economic, or commercial con-
4 sequence;

5 “(iii) that provides on an executory
6 basis for the exchange, on a fixed or con-
7 tingent basis, of 1 or more payments based
8 on the value or level of 1 or more interest
9 or other rates, currencies, commodities, se-
10 curities, instruments of indebtedness, indi-
11 ces, quantitative measures, or other finan-
12 cial or economic interests or property of
13 any kind, or any interest therein or based
14 on the value thereof, and that transfers, as
15 between the parties to the transaction, in
16 whole or in part, the financial risk associ-
17 ated with a future change in any such
18 value or level without also conveying a cur-
19 rent or future direct or indirect ownership
20 interest in an asset (including any enter-
21 prise or investment pool) or liability that
22 incorporates the financial risk so trans-
23 ferred, including any agreement, contract,
24 or transaction commonly known as—

25 “(I) an interest rate swap;

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- 1 “(II) a rate floor;
- 2 “(III) a rate cap;
- 3 “(IV) a rate collar;
- 4 “(V) a cross-currency rate swap;
- 5 “(VI) a basis swap;
- 6 “(VII) a currency swap;
- 7 “(VIII) a foreign exchange swap;
- 8 “(IX) a total return swap;
- 9 “(X) an equity index swap;
- 10 “(XI) an equity swap;
- 11 “(XII) a debt index swap;
- 12 “(XIII) a debt swap;
- 13 “(XIV) a credit spread;
- 14 “(XV) a credit default swap;
- 15 “(XVI) a credit swap;
- 16 “(XVII) a weather swap;
- 17 “(XVIII) an energy swap;
- 18 “(XIX) a metal swap;
- 19 “(XX) an agricultural swap;
- 20 “(XXI) an emissions swap; and
- 21 “(XXII) a commodity swap;
- 22 “(iv) that is an agreement, contract,
- 23 or transaction that is, or in the future be-
- 24 comes commonly known to the trade as a
- 25 swap;

1 “(v) including any security-based
2 swap agreement which meets the definition
3 of ‘swap agreement’ as defined in section
4 206A of the Gramm-Leach-Bliley Act (15
5 U.S.C. 78c note) of which a material term
6 is based on the price, yield, value, or vola-
7 tility of any security or any group or index
8 of securities, or any interest therein; or

9 “(vi) that is any combination or per-
10 mutation of, or option on, any agreement,
11 contract, or transaction described in any of
12 clauses (i) through (v).

13 “(B) EXCLUSIONS.—The term ‘swap’ does
14 not include—

15 “(i) any contract of sale of a com-
16 modity for future delivery (or option on
17 such a contract), leverage contract author-
18 ized under section 19, security futures
19 product, or agreement, contract, or trans-
20 action described in section 2(c)(2)(C)(i) or
21 section 2(c)(2)(D)(i);

22 “(ii) any sale of a nonfinancial com-
23 modity or security for deferred shipment or
24 delivery, so long as the transaction is in-
25 tended to be physically settled;

1 “(iii) any put, call, straddle, option, or
2 privilege on any security, certificate of de-
3 posit, or group or index of securities, in-
4 cluding any interest therein or based on
5 the value thereof, that is subject to—

6 “(I) the Securities Act of 1933
7 (15 U.S.C. 77a et seq.); and

8 “(II) the Securities Exchange
9 Act of 1934 (15 U.S.C. 78a et seq.);

10 “(iv) any put, call, straddle, option, or
11 privilege relating to a foreign currency en-
12 tered into on a national securities exchange
13 registered pursuant to section 6(a) of the
14 Securities Exchange Act of 1934 (15
15 U.S.C. 78f(a));

16 “(v) any agreement, contract, or
17 transaction providing for the purchase or
18 sale of 1 or more securities on a fixed basis
19 that is subject to—

20 “(I) the Securities Act of 1933
21 (15 U.S.C. 77a et seq.); and

22 “(II) the Securities Exchange
23 Act of 1934 (15 U.S.C. 78a et seq.);

24 “(vi) any agreement, contract, or
25 transaction providing for the purchase or

1 sale of 1 or more securities on a contingent
2 basis that is subject to the Securities Act
3 of 1933 (15 U.S.C. 77a et seq.) and the
4 Securities Exchange Act of 1934 (15
5 U.S.C. 78a et seq.), unless the agreement,
6 contract, or transaction predicates the pur-
7 chase or sale on the occurrence of a bona
8 fide contingency that might reasonably be
9 expected to affect or be affected by the
10 creditworthiness of a party other than a
11 party to the agreement, contract, or trans-
12 action;

13 “(vii) any note, bond, or evidence of
14 indebtedness that is a security, as defined
15 in section 2(a)(1) of the Securities Act of
16 1933 (15 U.S.C. 77b(a)(1));

17 “(viii) any agreement, contract, or
18 transaction that is—

19 “(I) based on a security; and

20 “(II) entered into directly or
21 through an underwriter (as defined in
22 section 2(a)(11) of the Securities Act
23 of 1933 (15 U.S.C. 77b(a)(11)) by
24 the issuer of such security for the
25 purposes of raising capital, unless the

1 agreement, contract, or transaction is
2 entered into to manage a risk associ-
3 ated with capital raising;

4 “(ix) any agreement, contract, or
5 transaction a counterparty of which is a
6 Federal Reserve bank, the Federal Govern-
7 ment, or a Federal agency that is expressly
8 backed by the full faith and credit of the
9 United States; and

10 “(x) any security-based swap, other
11 than a security-based swap as described in
12 subparagraph (D).

13 “(C) RULE OF CONSTRUCTION REGARDING
14 MASTER AGREEMENTS.—

15 “(i) IN GENERAL.—Except as pro-
16 vided in clause (ii), the term ‘swap’ in-
17 cludes a master agreement that provides
18 for an agreement, contract, or transaction
19 that is a swap under subparagraph (A), to-
20 gether with each supplement to any master
21 agreement, without regard to whether the
22 master agreement contains an agreement,
23 contract, or transaction that is not a swap
24 pursuant to subparagraph (A).

1 “(ii) EXCEPTION.—For purposes of
2 clause (i), the master agreement shall be
3 considered to be a swap only with respect
4 to each agreement, contract, or transaction
5 covered by the master agreement that is a
6 swap pursuant to subparagraph (A).

7 “(D) MIXED SWAP.—The term ‘security-
8 based swap’ includes any agreement, contract,
9 or transaction that is as described in section
10 3(a)(68)(A) of the Securities Exchange Act of
11 1934 (15 U.S.C. 78c(a)(68)(A)) and also is
12 based on the value of 1 or more interest or
13 other rates, currencies, commodities, instru-
14 ments of indebtedness, indices, quantitative
15 measures, other financial or economic interest
16 or property of any kind (other than a single se-
17 curity or a narrow-based security index), or the
18 occurrence, non-occurrence, or the extent of the
19 occurrence of an event or contingency associ-
20 ated with a potential financial, economic, or
21 commercial consequence (other than an event
22 described in subparagraph (A)(iii)).

23 “(E) TREATMENT OF FOREIGN EXCHANGE
24 SWAPS AND FORWARDS.—

1 “(i) IN GENERAL.—Foreign exchange
2 swaps and foreign exchange forwards shall
3 be considered swaps under this paragraph
4 unless the Secretary makes a written de-
5 termination under section 1b that either
6 foreign exchange swaps or foreign ex-
7 change forwards or both—

8 “(I) should be not be regulated
9 as swaps under this Act; and

10 “(II) are not structured to evade
11 the Dodd-Frank Wall Street Reform
12 and Consumer Protection Act in viola-
13 tion of any rule promulgated by the
14 Commission pursuant to section
15 721(c) of that Act.

16 “(ii) CONGRESSIONAL NOTICE; EFFEC-
17 TIVENESS.—The Secretary shall submit
18 any written determination under clause (i)
19 to the appropriate committees of Congress,
20 including the Committee on Agriculture,
21 Nutrition, and Forestry of the Senate and
22 the Committee on Agriculture of the House
23 of Representatives. Any such written deter-
24 mination by the Secretary shall not be ef-

1 fective until it is submitted to the appro-
2 priate committees of Congress.

3 “(iii) REPORTING.—Notwithstanding
4 a written determination by the Secretary
5 under clause (i), all foreign exchange
6 swaps and foreign exchange forwards shall
7 be reported to either a swap data reposi-
8 tory, or, if there is no swap data repository
9 that would accept such swaps or forwards,
10 to the Commission pursuant to section 4r
11 within such time period as the Commission
12 may by rule or regulation prescribe.

13 “(iv) BUSINESS STANDARDS.—Not-
14 withstanding a written determination by
15 the Secretary pursuant to clause (i), any
16 party to a foreign exchange swap or for-
17 ward that is a swap dealer or major swap
18 participant shall conform to the business
19 conduct standards contained in section
20 4s(h).

21 “(v) SECRETARY.—For purposes of
22 this subparagraph, the term ‘Secretary’
23 means the Secretary of the Treasury.

24 “(F) EXCEPTION FOR CERTAIN FOREIGN
25 EXCHANGE SWAPS AND FORWARDS.—

1 “(i) REGISTERED ENTITIES.—Any
2 foreign exchange swap and any foreign ex-
3 change forward that is listed and traded on
4 or subject to the rules of a designated con-
5 tract market or a swap execution facility,
6 or that is cleared by a derivatives clearing
7 organization shall not be exempt from any
8 provision of this Act or amendments made
9 by the Wall Street Transparency and Ac-
10 countability Act of 2010 prohibiting fraud
11 or manipulation.

12 “(ii) RETAIL TRANSACTIONS.—Noth-
13 ing in subparagraph (E) shall affect, or be
14 construed to affect, the applicability of this
15 Act or the jurisdiction of the Commission
16 with respect to agreements, contracts, or
17 transactions in foreign currency pursuant
18 to section 2(c)(2).

19 “(48) SWAP DATA REPOSITORY.—The term
20 ‘swap data repository’ means any person that col-
21 lects and maintains information or records with re-
22 spect to transactions or positions in, or the terms
23 and conditions of, swaps entered into by third par-
24 ties for the purpose of providing a centralized rec-
25 ordkeeping facility for swaps.

1 “(49) SWAP DEALER.—

2 “(A) IN GENERAL.—The term ‘swap deal-
3 er’ means any person who—

4 “(i) holds itself out as a dealer in
5 swaps;

6 “(ii) makes a market in swaps;

7 “(iii) regularly enters into swaps with
8 counterparties as an ordinary course of
9 business for its own account; or

10 “(iv) engages in any activity causing
11 the person to be commonly known in the
12 trade as a dealer or market maker in
13 swaps,

14 provided however, in no event shall an insured
15 depository institution be considered to be a
16 swap dealer to the extent it offers to enter into
17 a swap with a customer in connection with orig-
18 inating a loan with that customer.

19 “(B) INCLUSION.—A person may be des-
20 ignated as a swap dealer for a single type or
21 single class or category of swap or activities and
22 considered not to be a swap dealer for other
23 types, classes, or categories of swaps or activi-
24 ties.

1 “(C) EXCEPTION.—The term ‘swap dealer’
2 does not include a person that enters into
3 swaps for such person’s own account, either in-
4 dividually or in a fiduciary capacity, but not as
5 a part of a regular business.

6 “(D) DE MINIMIS EXCEPTION.—The Com-
7 mission shall exempt from designation as a
8 swap dealer an entity that engages in a de
9 minimis quantity of swap dealing in connection
10 with transactions with or on behalf of its cus-
11 tomers. The Commission shall promulgate regu-
12 lations to establish factors with respect to the
13 making of this determination to exempt.

14 “(50) SWAP EXECUTION FACILITY.—The term
15 ‘swap execution facility’ means a facility trading sys-
16 tem or platform in which multiple participants have
17 the ability to execute or trade swaps by accepting
18 bids and offers made by other participants that are
19 open to multiple participants in the facility or sys-
20 tem, through any means of interstate commerce, in-
21 cluding any trading facility, that—

22 “(A) facilitates the execution of security-
23 based swaps between persons; and

24 “(B) is not a designated contract mar-
25 ket.”.

1 (22) in paragraph (51) (as redesignated by
2 paragraph (1)), in subparagraph (A)(i), by striking
3 “partipants” and inserting “participants”.

4 (b) **AUTHORITY TO DEFINE TERMS.**—The Com-
5 modity Futures Trading Commission may adopt a rule to
6 define—

7 (1) the term “commercial risk”; and

8 (2) any other term included in an amendment
9 to the Commodity Exchange Act (7 U.S.C. 1 et seq.)
10 made by this subtitle.

11 (c) **MODIFICATION OF DEFINITIONS.**—To include
12 transactions and entities that have been structured to
13 evade this subtitle (or an amendment made by this sub-
14 title), the Commodity Futures Trading Commission shall
15 adopt a rule to further define the terms “swap”, “swap
16 dealer”, “major swap participant”, and “eligible contract
17 participant”.

18 (d) **EXEMPTIONS.**—Section 4(c)(1) of the Commodity
19 Exchange Act (7 U.S.C. 6(c)(1)) is amended by striking
20 “except that” and all that follows through the period at
21 the end and inserting the following: “except that—

22 “(A) unless the Commission is expressly author-
23 ized by any provision described in this subparagraph
24 to grant exemptions, with respect to amendments

1 made by subtitle A of the Wall Street Transparency
2 and Accountability Act of 2010—

3 “(i) with respect to—

4 “(I) paragraphs (2), (3), (4), (5), and
5 (7), paragraph (18)(A)(vii)(III), para-
6 graphs (23), (24), (31), (32), (38), (39),
7 (41), (42), (46), (47), (48), and (49) of
8 section 1a, and sections 2(a)(13),
9 2(c)(1)(D), 4a(a), 4a(b), 4d(c), 4d(d), 4r,
10 4s, 5b(a), 5b(b), 5(d), 5(g), 5(h), 5b(c),
11 5b(i), 8e, and 21; and

12 “(II) section 206(e) of the Gramm-
13 Leach-Bliley Act (Public Law 106–102; 15
14 U.S.C. 78c note); and

15 “(ii) in sections 721(c) and 742 of the
16 Dodd-Frank Wall Street Reform and Consumer
17 Protection Act; and

18 “(B) the Commission and the Securities and
19 Exchange Commission may by rule, regulation, or
20 order jointly exclude any agreement, contract, or
21 transaction from section 2(a)(1)(D)) if the Commis-
22 sions determine that the exemption would be con-
23 sistent with the public interest.”.

24 (e) CONFORMING AMENDMENTS.—

1 (1) Section 2(c)(2)(B)(i)(II) of the Commodity
2 Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amend-
3 ed—

4 (A) in item (cc)—

5 (i) in subitem (AA), by striking “sec-
6 tion 1a(20)” and inserting “section 1a”;
7 and

8 (ii) in subitem (BB), by striking “sec-
9 tion 1a(20)” and inserting “section 1a”;
10 and

11 (B) in item (dd), by striking “section
12 1a(12)(A)(ii)” and inserting “section
13 1a(18)(A)(ii)”.

14 (2) Section 4m(3) of the Commodity Exchange
15 Act (7 U.S.C. 6m(3)) is amended by striking “sec-
16 tion 1a(6)” and inserting “section 1a”.

17 (3) Section 4q(a)(1) of the Commodity Ex-
18 change Act (7 U.S.C. 6o-1(a)(1)) is amended by
19 striking “section 1a(4)” and inserting “section
20 1a(9)”.

21 (4) Section 5(e)(1) of the Commodity Exchange
22 Act (7 U.S.C. 7(e)(1)) is amended by striking “sec-
23 tion 1a(4)” and inserting “section 1a(9)”.

24 (5) Section 5a(b)(2)(F) of the Commodity Ex-
25 change Act (7 U.S.C. 7a(b)(2)(F)) is amended by

1 striking “section 1a(4)” and inserting “section
2 1a(9)”.

3 (6) Section 5b(a) of the Commodity Exchange
4 Act (7 U.S.C. 7a–1(a)) is amended, in the matter
5 preceding paragraph (1), by striking “section 1a(9)”
6 and inserting “section 1a”.

7 (7) Section 5c(e)(2)(B) of the Commodity Ex-
8 change Act (7 U.S.C. 7a–2(e)(2)(B)) is amended by
9 striking “section 1a(4)” and inserting “section
10 1a(9)”.

11 (8) Section 6(g)(5)(B)(i) of the Securities Ex-
12 change Act of 1934 (15 U.S.C. 78f(g)(5)(B)(i)) is
13 amended—

14 (A) in subclause (I), by striking “section
15 1a(12)(B)(ii)” and inserting “section
16 1a(18)(B)(ii)”; and

17 (B) in subclause (II), by striking “section
18 1a(12)” and inserting “section 1a(18)”.

19 (9) Section 402 of the Legal Certainty for
20 Bank Products Act of 2000 (7 U.S.C. 27 et seq.) is
21 amended—

22 (A) in subsection (a)(7), by striking “sec-
23 tion 1a(20)” and inserting “section 1a”;

24 (B) in subsection (b)(2), by striking “sec-
25 tion 1a(12)” and inserting “section 1a”; and

1 (C) in subsection (c), by striking “section
2 1a(4)” and inserting “section 1a”.

3 (10) The first section of Public Law 85–839 (7
4 U.S.C. 13–1) is amended in subsection (a), in the
5 first sentence, by inserting “motion picture box of-
6 fice receipts (or any index, measure, value, or data
7 related to such receipts) or” after “sale of”.

8 (f) EFFECTIVE DATE.—Notwithstanding any other
9 provision of this Act, the amendments made by subsection
10 (a)(4) shall take effect on June 1, 2010.

11 **SEC. 722. JURISDICTION.**

12 (a) EXCLUSIVE JURISDICTION.—Section 2(a)(1) of
13 the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is
14 amended—

15 (1) in subparagraph (A), in the first sentence—

16 (A) by inserting “the Wall Street Trans-
17 parency and Accountability Act of 2010 (includ-
18 ing an amendment made by that Act) and”
19 after “otherwise provided in”;

20 (B) by striking “(C) and (D)” and insert-
21 ing “(C), (D), and (I)”;

22 (C) by striking “(e) through (i) of this sec-
23 tion” and inserting “(e) and (f)”;

24 (D) by striking “contracts of sale” and in-
25 serting “swaps or contracts of sale”; and

1 (E) by striking “or derivatives transaction
2 execution facility registered pursuant to section
3 5 or 5a” and inserting “pursuant to section 5
4 or a swap execution facility pursuant to section
5 5h”; and

6 (2) by adding at the end the following:

7 “(G)(i) Nothing in this paragraph shall
8 limit the jurisdiction conferred on the Securities
9 and Exchange Commission by the Wall Street
10 Transparency and Accountability Act of 2010
11 with regard to security-based swap agreements
12 as defined pursuant to section 3(a)(78) of the
13 Securities Exchange Act of 1934, and security-
14 based swaps.

15 “(ii) In addition to the authority of the Se-
16 curities and Exchange Commission described in
17 clause (i), nothing in this subparagraph shall
18 limit or affect any statutory authority of the
19 Commission with respect to an agreement, con-
20 tract, or transaction described in clause (i).

21 “(H) Notwithstanding any other provision
22 of law, the Wall Street Transparency and Ac-
23 countability Act of 2010 shall not apply to, and
24 the Commodity Futures Trading Commission
25 shall have no jurisdiction under such Act (or

1 any amendments to the Commodity Exchange
2 Act made by such Act) with respect to, any se-
3 curity other than a security-based swap.”.

4 (b) REGULATION OF SWAPS UNDER FEDERAL AND
5 STATE LAW.—Section 12 of the Commodity Exchange Act
6 (7 U.S.C. 16) is amended by adding at the end the fol-
7 lowing:

8 “(h) REGULATION OF SWAPS AS INSURANCE UNDER
9 STATE LAW.—A swap—

10 “(1) shall not be considered to be insurance;
11 and

12 “(2) may not be regulated as an insurance con-
13 tract under the law of any State.”.

14 (c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS
15 TRADED ON AN ORGANIZED EXCHANGE.—Section
16 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C.
17 2(c)(2)(A)) is amended—

18 (1) in clause (i), by striking “or” at the end;

19 (2) by redesignating clause (ii) as clause (iii);

20 and

21 (3) by inserting after clause (i) the following:

22 “(ii) a swap; or”.

23 (d) APPLICABILITY.—Section 2 of the Commodity
24 Exchange Act (7 U.S.C. 2) (as amended by section
25 723(a)(3)) is amended by adding at the end the following:

1 “(i) APPLICABILITY.—The provisions of this Act re-
2 lating to swaps that were enacted by the Wall Street
3 Transparency and Accountability Act of 2010 (including
4 any rule prescribed or regulation promulgated under that
5 Act), shall not apply to activities outside the United States
6 unless those activities—

7 “(1) have a direct and significant connection
8 with activities in, or effect on, commerce of the
9 United States; or

10 “(2) contravene such rules or regulations as the
11 Commission may prescribe or promulgate as are nec-
12 essary or appropriate to prevent the evasion of any
13 provision of this Act that was enacted by the Wall
14 Street Transparency and Accountability Act of
15 2010.”.

16 (e) FEDERAL ENERGY REGULATORY COMMISSION.—
17 Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C.
18 2(a)(1)) is amended by adding at the end the following:

19 “(I)(i) Nothing in this Act shall limit or
20 affect any statutory authority of the Federal
21 Energy Regulatory Commission or a State reg-
22 ulatory authority (as defined in section 3(21) of
23 the Federal Power Act (16 U.S.C. 796(21))
24 with respect to an agreement, contract, or
25 transaction that is entered into pursuant to a

1 tariff or rate schedule approved by the Federal
2 Energy Regulatory Commission or a State reg-
3 ulatory authority and is—

4 “(I) not executed, traded, or cleared
5 on a registered entity or trading facility; or

6 “(II) executed, traded, or cleared on a
7 registered entity or trading facility owned
8 or operated by a regional transmission or-
9 ganization or independent system operator.

10 “(ii) In addition to the authority of the
11 Federal Energy Regulatory Commission or a
12 State regulatory authority described in clause
13 (i), nothing in this subparagraph shall limit or
14 affect—

15 “(I) any statutory authority of the
16 Commission with respect to an agreement,
17 contract, or transaction described in clause
18 (i); or

19 “(II) the jurisdiction of the Commis-
20 sion under subparagraph (A) with respect
21 to an agreement, contract, or transaction
22 that is executed, traded, or cleared on a
23 registered entity or trading facility that is
24 not owned or operated by a regional trans-
25 mission organization or independent sys-

1 tem operator (as defined by sections 3(27)
2 and (28) of the Federal Power Act (16
3 U.S.C. 796(27), 796(28)).”.

4 (f) PUBLIC INTEREST WAIVER.—Section 4(c) of the
5 Commodity Exchange Act (7 U.S.C. 6(c)) (as amended
6 by section 721(d)) is amended by adding at the end the
7 following:

8 “(6) If the Commission determines that the ex-
9 emption would be consistent with the public interest
10 and the purposes of this Act, the Commission shall,
11 in accordance with paragraphs (1) and (2), exempt
12 from the requirements of this Act an agreement,
13 contract, or transaction that is entered into—

14 “(A) pursuant to a tariff or rate schedule
15 approved or permitted to take effect by the
16 Federal Energy Regulatory Commission;

17 “(B) pursuant to a tariff or rate schedule
18 establishing rates or charges for, or protocols
19 governing, the sale of electric energy approved
20 or permitted to take effect by the regulatory au-
21 thority of the State or municipality having ju-
22 risdiction to regulate rates and charges for the
23 sale of electric energy within the State or mu-
24 nicipality; or

1 “(C) between entities described in section
2 201(f) of the Federal Power Act (16 U.S.C.
3 824(f)).”.

4 (g) **AUTHORITY OF FERC.**—Nothing in the Wall
5 Street Transparency and Accountability Act of 2010 or
6 the amendments to the Commodity Exchange Act made
7 by such Act shall limit or affect any statutory enforcement
8 authority of the Federal Energy Regulatory Commission
9 pursuant to section 222 of the Federal Power Act and sec-
10 tion 4A of the Natural Gas Act that existed prior to the
11 date of enactment of the Wall Street Transparency and
12 Accountability Act of 2010.

13 (h) **DETERMINATION.**—The Commodity Exchange
14 Act is amended by inserting after section 1a (7 U.S.C.
15 1a) the following:

16 **“SEC. 1b. REQUIREMENTS OF SECRETARY OF THE TREAS-**
17 **URY REGARDING EXEMPTION OF FOREIGN**
18 **EXCHANGE SWAPS AND FOREIGN EXCHANGE**
19 **FORWARDS FROM DEFINITION OF THE TERM**
20 **‘SWAP’.**

21 “(a) **REQUIRED CONSIDERATIONS.**—In determining
22 whether to exempt foreign exchange swaps and foreign ex-
23 change forwards from the definition of the term ‘swap’,
24 the Secretary of the Treasury (referred to in this section
25 as the ‘Secretary’) shall consider—

1 “(1) whether the required trading and clearing
2 of foreign exchange swaps and foreign exchange for-
3 wards would create systemic risk, lower trans-
4 parency, or threaten the financial stability of the
5 United States;

6 “(2) whether foreign exchange swaps and for-
7 eign exchange forwards are already subject to a reg-
8 ulatory scheme that is materially comparable to that
9 established by this Act for other classes of swaps;

10 “(3) the extent to which bank regulators of par-
11 ticipants in the foreign exchange market provide
12 adequate supervision, including capital and margin
13 requirements;

14 “(4) the extent of adequate payment and settle-
15 ment systems; and

16 “(5) the use of a potential exemption of foreign
17 exchange swaps and foreign exchange forwards to
18 evade otherwise applicable regulatory requirements.

19 “(b) DETERMINATION.—If the Secretary makes a de-
20 termination to exempt foreign exchange swaps and foreign
21 exchange forwards from the definition of the term ‘swap’,
22 the Secretary shall submit to the appropriate committees
23 of Congress a determination that contains—

24 “(1) an explanation regarding why foreign ex-
25 change swaps and foreign exchange forwards are

1 qualitatively different from other classes of swaps in
2 a way that would make the foreign exchange swaps
3 and foreign exchange forwards ill-suited for regula-
4 tion as swaps; and

5 “(2) an identification of the objective dif-
6 ferences of foreign exchange swaps and foreign ex-
7 change forwards with respect to standard swaps that
8 warrant an exempted status.

9 “(c) EFFECT OF DETERMINATION.—A determination
10 by the Secretary under subsection (b) shall not exempt
11 any foreign exchange swaps and foreign exchange for-
12 wards traded on a designated contract market or swap
13 execution facility from any applicable antifraud and
14 antimanipulation provision under this title.”.

15 **SEC. 723. CLEARING.**

16 (a) CLEARING REQUIREMENT.—

17 (1) IN GENERAL.—Section 2 of the Commodity
18 Exchange Act (7 U.S.C. 2) is amended—

19 (A) by striking subsections (d), (e), (g),
20 and (h); and

21 (B) by redesignating subsection (i) as sub-
22 section (g).

23 (2) SWAPS; LIMITATION ON PARTICIPATION.—
24 Section 2 of the Commodity Exchange Act (7 U.S.C.

1 2) (as amended by paragraph (1)) is amended by in-
2 serting after subsection (c) the following:

3 “(d) SWAPS.—Nothing in this Act (other than sub-
4 paragraphs (A), (B), (C), (D), (G), and (H) of subsection
5 (a)(1), subsections (f) and (g), sections 1a, 2(a)(13),
6 2(c)(2)(A)(ii), 2(e), 2(h), 4(c), 4a, 4b, and 4b–1, sub-
7 sections (a), (b), and (g) of section 4c, sections 4d, 4e,
8 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 4p, 4r, 4s, 4t, 5,
9 5b, 5c, 5e, and 5h, subsections (c) and (d) of section 6,
10 sections 6c, 6d, 8, 8a, and 9, subsections (e)(2), (f), and
11 (h) of section 12, subsections (a) and (b) of section 13,
12 sections 17, 20, 21, and 22(a)(4), and any other provision
13 of this Act that is applicable to registered entities or Com-
14 mission registrants) governs or applies to a swap.

15 “(e) LIMITATION ON PARTICIPATION.—It shall be
16 unlawful for any person, other than an eligible contract
17 participant, to enter into a swap unless the swap is en-
18 tered into on, or subject to the rules of, a board of trade
19 designated as a contract market under section 5.”.

20 (3) MANDATORY CLEARING OF SWAPS.—Section
21 2 of the Commodity Exchange Act (7 U.S.C. 2) is
22 amended by inserting after subsection (g) (as reded-
23 signated by paragraph (1)(B)) the following:

24 “(h) CLEARING REQUIREMENT.—

25 “(1) IN GENERAL.—

1 “(A) STANDARD FOR CLEARING.—It shall
2 be unlawful for any person to engage in a swap
3 unless that person submits such swap for clear-
4 ing to a derivatives clearing organization that is
5 registered under this Act or a derivatives clear-
6 ing organization that is exempt from registra-
7 tion under this Act if the swap is required to
8 be cleared.

9 “(B) OPEN ACCESS.—The rules of a de-
10 rivatives clearing organization described in sub-
11 paragraph (A) shall—

12 “(i) prescribe that all swaps (but not
13 contracts of sale of a commodity for future
14 delivery or options on such contracts) sub-
15 mitted to the derivatives clearing organiza-
16 tion with the same terms and conditions
17 are economically equivalent within the de-
18 rivatives clearing organization and may be
19 offset with each other within the deriva-
20 tives clearing organization; and

21 “(ii) provide for non-discriminatory
22 clearing of a swap (but not a contract of
23 sale of a commodity for future delivery or
24 option on such contract) executed bilat-
25 erally or on or through the rules of an un-

1 affiliated designated contract market or
2 swap execution facility.

3 “(2) COMMISSION REVIEW.—

4 “(A) COMMISSION-INITIATED REVIEW.—

5 “(i) The Commission on an ongoing
6 basis shall review each swap, or any group,
7 category, type, or class of swaps to make
8 a determination as to whether the swap or
9 group, category, type, or class of swaps
10 should be required to be cleared.

11 “(ii) The Commission shall provide at
12 least a 30-day public comment period re-
13 garding any determination made under
14 clause (i).

15 “(B) SWAP SUBMISSIONS.—

16 “(i) A derivatives clearing organiza-
17 tion shall submit to the Commission each
18 swap, or any group, category, type, or class
19 of swaps that it plans to accept for clear-
20 ing, and provide notice to its members (in
21 a manner to be determined by the Com-
22 mission) of the submission.

23 “(ii) Any swap or group, category,
24 type, or class of swaps listed for clearing
25 by a derivative clearing organization as of

1 the date of enactment of this subsection
2 shall be considered submitted to the Com-
3 mission.

4 “(iii) The Commission shall—

5 “(I) make available to the public
6 submissions received under clauses (i)
7 and (ii);

8 “(II) review each submission
9 made under clauses (i) and (ii), and
10 determine whether the swap, or group,
11 category, type, or class of swaps de-
12 scribed in the submission is required
13 to be cleared; and

14 “(III) provide at least a 30-day
15 public comment period regarding its
16 determination as to whether the clear-
17 ing requirement under paragraph
18 (1)(A) shall apply to the submission.

19 “(C) DEADLINE.—The Commission shall
20 make its determination under subparagraph
21 (B)(iii) not later than 90 days after receiving a
22 submission made under subparagraphs (B)(i)
23 and (B)(ii), unless the submitting derivatives
24 clearing organization agrees to an extension for

1 the time limitation established under this sub-
2 paragraph.

3 “(D) DETERMINATION.—

4 “(i) In reviewing a submission made
5 under subparagraph (B), the Commission
6 shall review whether the submission is con-
7 sistent with section 5b(c)(2).

8 “(ii) In reviewing a swap, group of
9 swaps, or class of swaps pursuant to sub-
10 paragraph (A) or a submission made under
11 subparagraph (B), the Commission shall
12 take into account the following factors:

13 “(I) The existence of significant
14 outstanding notional exposures, trad-
15 ing liquidity and adequate pricing
16 data.

17 “(II) The availability of rule
18 framework, capacity, operational ex-
19 pertise and resources, and credit sup-
20 port infrastructure to clear the con-
21 tract on terms that are consistent
22 with the material terms and trading
23 conventions on which the contract is
24 then traded.

1 “(III) The effect on the mitiga-
2 tion of systemic risk, taking into ac-
3 count the size of the market for such
4 contract and the resources of the de-
5 rivatives clearing organization avail-
6 able to clear the contract.

7 “(IV) The effect on competition,
8 including appropriate fees and charges
9 applied to clearing.

10 “(V) The existence of reasonable
11 legal certainty in the event of the in-
12 solvency of the relevant derivatives
13 clearing organization or 1 or more of
14 its clearing members with regard to
15 the treatment of customer and swap
16 counterparty positions, funds, and
17 property.

18 “(iii) In making a determination
19 under subparagraph (A) or (B)(iii) that
20 the clearing requirement shall apply, the
21 Commission may require such terms and
22 conditions to the requirement as the Com-
23 mission determines to be appropriate.

24 “(E) RULES.—Not later than 1 year after
25 the date of the enactment of the this sub-

1 section, the Commission shall adopt rules for a
2 derivatives clearing organization's submission
3 for review, pursuant to this paragraph, of a
4 swap, or a group, category, type, or class of
5 swaps, that it seeks to accept for clearing.
6 Nothing in this subparagraph limits the Com-
7 mission from making a determination under
8 subparagraph (B)(iii) for swaps described in
9 subparagraph (B)(ii).

10 “(3) STAY OF CLEARING REQUIREMENT.—

11 “(A) IN GENERAL.—After making a deter-
12 mination pursuant to paragraph (2)(B), the
13 Commission, on application of a counterparty to
14 a swap or on its own initiative, may stay the
15 clearing requirement of paragraph (1) until the
16 Commission completes a review of the terms of
17 the swap (or the group, category, type, or class
18 of swaps) and the clearing arrangement.

19 “(B) DEADLINE.—The Commission shall
20 complete a review undertaken pursuant to sub-
21 paragraph (A) not later than 90 days after
22 issuance of the stay, unless the derivatives
23 clearing organization that clears the swap, or
24 group, category, type, or class of swaps, agrees

1 to an extension of the time limitation estab-
2 lished 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 swap, or group, category, type, or
10 class of swaps, must be cleared pursuant
11 to this subsection if it finds that such
12 clearing is consistent with paragraph
13 (2)(D); or

14 “(ii) determine that the clearing re-
15 quirement of paragraph (1) shall not apply
16 to the swap, or group, category, type, or
17 class of swaps.

18 “(D) RULES.—Not later than 1 year after
19 the date of the enactment of the Wall Street
20 Transparency and Accountability Act of 2010,
21 the Commission shall adopt rules for reviewing,
22 pursuant to this paragraph, a derivatives clear-
23 ing organization’s clearing of a swap, or a
24 group, category, type, or class of swaps, that it
25 has accepted for clearing.

1 “(4) PREVENTION OF EVASION.—

2 “(A) IN GENERAL.—The Commission shall
3 prescribe rules under this subsection (and issue
4 interpretations of rules prescribed under this
5 subsection) as determined by the Commission to
6 be necessary to prevent evasions of the manda-
7 tory clearing requirements under this Act.

8 “(B) DUTY OF COMMISSION TO INVES-
9 TIGATE AND TAKE CERTAIN ACTIONS.—To the
10 extent the Commission finds that a particular
11 swap, group, category, type, or class of swaps
12 would otherwise be subject to mandatory clear-
13 ing but no derivatives clearing organization has
14 listed the swap, group, category, type, or class
15 of swaps for clearing, the Commission shall—

16 “(i) investigate the relevant facts and
17 circumstances;

18 “(ii) within 30 days issue a public re-
19 port containing the results of the investiga-
20 tion; and

21 “(iii) take such actions as the Com-
22 mission determines to be necessary and in
23 the public interest, which may include re-
24 quiring the retaining of adequate margin

1 or capital by parties to the swap, group,
2 category, type, or class of swaps.

3 “(C) EFFECT ON AUTHORITY.—Nothing in
4 this paragraph shall—

5 “(i) authorize the Commission to
6 adopt rules requiring a derivatives clearing
7 organization to list for clearing a swap,
8 group, category, type, or class of swaps if
9 the clearing of the swap, group, category,
10 type, or class of swaps would threaten the
11 financial integrity of the derivatives clear-
12 ing organization; and

13 “(ii) affect the authority of the Com-
14 mission to enforce the open access provi-
15 sions of paragraph (1)(B) with respect to
16 a swap, group, category, type, or class of
17 swaps that is listed for clearing by a de-
18 rivatives clearing organization.

19 “(5) REPORTING TRANSITION RULES.—Rules
20 adopted by the Commission under this section shall
21 provide for the reporting of data, as follows:

22 “(A) Swaps entered into before the date of
23 the enactment of this subsection shall be re-
24 ported to a registered swap data repository or

1 the Commission no later than 180 days after
2 the effective date of this subsection.

3 “(B) Swaps entered into on or after such
4 date of enactment shall be reported to a reg-
5 istered swap data repository or the Commission
6 no later than the later of—

7 “(i) 90 days after such effective date;

8 or

9 “(ii) such other time after entering
10 into the swap as the Commission may pre-
11 scribe by rule or regulation.

12 “(6) CLEARING TRANSITION RULES.—

13 “(A) Swaps entered into before the date of
14 the enactment of this subsection are exempt
15 from the clearing requirements of this sub-
16 section if reported pursuant to paragraph
17 (5)(A).

18 “(B) Swaps entered into before application
19 of the clearing requirement pursuant to this
20 subsection are exempt from the clearing re-
21 quirements of this subsection if reported pursu-
22 ant to paragraph (5)(B).

23 “(7) EXCEPTIONS.—

1 “(A) IN GENERAL.—The requirements of
2 paragraph (1)(A) shall not apply to a swap if
3 1 of the counterparties to the swap—

4 “(i) is not a financial entity;

5 “(ii) is using swaps to hedge or miti-
6 gate commercial risk; and

7 “(iii) notifies the Commission, in a
8 manner set forth by the Commission, how
9 it generally meets its financial obligations
10 associated with entering into non-cleared
11 swaps.

12 “(B) OPTION TO CLEAR.—The application
13 of the clearing exception in subparagraph (A) is
14 solely at the discretion of the counterparty to
15 the swap that meets the conditions of clauses
16 (i) through (iii) of subparagraph (A).

17 “(C) FINANCIAL ENTITY DEFINITION.—

18 “(i) IN GENERAL.—For the purposes
19 of this paragraph, the term ‘financial enti-
20 ty’ means—

21 “(I) a swap dealer;

22 “(II) a security-based swap deal-
23 er;

24 “(III) a major swap participant;

822

1 “(IV) a major security-based
2 swap participant;

3 “(V) a commodity pool;

4 “(VI) a private fund as defined
5 in section 202(a) of the Investment
6 Advisers Act of 1940 (15 U.S.C. 80-
7 b-2(a));

8 “(VII) an employee benefit plan
9 as defined in paragraphs (3) and (32)
10 of section 3 of the Employee Retirement
11 Income Security Act of 1974
12 (29 U.S.C. 1002);

13 “(VIII) a person predominantly
14 engaged in activities that are in the
15 business of banking, or in activities
16 that are financial in nature, as de-
17 fined in section 4(k) of the Bank
18 Holding Company Act of 1956.

19 “(ii) EXCLUSION.—The Commission
20 shall consider whether to exempt small
21 banks, savings associations, farm credit
22 system institutions, and credit unions, in-
23 cluding—

1 “(I) depository institutions with
2 total assets of \$10,000,000,000 or
3 less;

4 “(II) farm credit system institu-
5 tions with total assets of
6 \$10,000,000,000 or less; or

7 “(III) credit unions with total as-
8 sets of \$10,000,000,000 or less.

9 “(iii) LIMITATION.—Such definition
10 shall not include an entity whose primary
11 business is providing financing, and uses
12 derivatives for the purpose of hedging un-
13 derlying commercial risks related to inter-
14 est rate and foreign currency exposures, 90
15 percent or more of which arise from fi-
16 nancing that facilitates the purchase or
17 lease of products, 90 percent or more of
18 which are manufactured by the parent
19 company or another subsidiary of the par-
20 ent company.

21 “(D) TREATMENT OF AFFILIATES.—

22 “(i) IN GENERAL.—An affiliate of a
23 person that qualifies for an exception
24 under subparagraph (A) (including affiliate
25 entities predominantly engaged in pro-

1 viding financing for the purchase of the
2 merchandise or manufactured goods of the
3 person) may qualify for the exception only
4 if the affiliate, acting on behalf of the per-
5 son and as an agent, uses the swap to
6 hedge or mitigate the commercial risk of
7 the person or other affiliate of the person
8 that is not a financial entity.

9 “(ii) PROHIBITION RELATING TO CER-
10 TAIN AFFILIATES.—The exception in
11 clause (i) shall not apply if the affiliate
12 is—

13 “(I) a swap dealer;

14 “(II) a security-based swap deal-
15 er;

16 “(III) a major swap participant;

17 “(IV) a major security-based
18 swap participant;

19 “(V) an issuer that would be an
20 investment company, as defined in
21 section 3 of the Investment Company
22 Act of 1940 (15 U.S.C. 80a-3), but
23 for paragraph (1) or (7) of subsection
24 (c) of that Act (15 U.S.C. 80a-3(c));

25 “(VI) a commodity pool; or

1 “(VII) a bank holding company
2 with over \$50,000,000,000 in consoli-
3 dated assets.

4 “(iii) TRANSITION RULE FOR AFFILI-
5 ATES.—An affiliate, subsidiary, or a wholly
6 owned entity of a person that qualifies for
7 an exception under subparagraph (A) and
8 is predominantly engaged in providing fi-
9 nancing for the purchase or lease of mer-
10 chandise or manufactured goods of the
11 person shall be exempt from the margin re-
12 quirement described in section 4s(e) and
13 the clearing requirement described in para-
14 graph (1) with regard to swaps entered
15 into to mitigate the risk of the financing
16 activities for not less than a 2-year period
17 beginning on the date of enactment of this
18 clause.

19 “(E) ELECTION OF COUNTERPARTY.—

20 “(i) SWAPS REQUIRED TO BE
21 CLEARED.—With respect to any swap that
22 is subject to the mandatory clearing re-
23 quirement under this subsection and en-
24 tered into by a swap dealer or a major
25 swap participant with a counterparty that

1 is not a swap dealer, major swap partici-
2 pant, security-based swap dealer, or major
3 security-based swap participant, the
4 counterparty shall have the sole right to
5 select the derivatives clearing organization
6 at which the swap will be cleared.

7 “(ii) SWAPS NOT REQUIRED TO BE
8 CLEARED.—With respect to any swap that
9 is not subject to the mandatory clearing
10 requirement under this subsection and en-
11 tered into by a swap dealer or a major
12 swap participant with a counterparty that
13 is not a swap dealer, major swap partici-
14 pant, security-based swap dealer, or major
15 security-based swap participant, the
16 counterparty—

17 “(I) may elect to require clearing
18 of the swap; and

19 “(II) shall have the sole right to
20 select the derivatives clearing organi-
21 zation at which the swap will be
22 cleared.

23 “(F) ABUSE OF EXCEPTION.—The Com-
24 mission may prescribe such rules or issue inter-
25 pretations of the rules as the Commission deter-

1 mines to be necessary to prevent abuse of the
2 exceptions described in this paragraph. The
3 Commission may also request information from
4 those persons claiming the clearing exception as
5 necessary to prevent abuse of the exceptions de-
6 scribed in this paragraph.

7 “(8) TRADE EXECUTION.—

8 “(A) IN GENERAL.—With respect to trans-
9 actions involving swaps subject to the clearing
10 requirement of paragraph (1), counterparties
11 shall—

12 “(i) execute the transaction on a
13 board of trade designated as a contract
14 market under section 5; or

15 “(ii) execute the transaction on a
16 swap execution facility registered under 5h
17 or a swap execution facility that is exempt
18 from registration under section 5h(f) of
19 this Act.

20 “(B) EXCEPTION.—The requirements of
21 clauses (i) and (ii) of subparagraph (A) shall
22 not apply if no board of trade or swap execution
23 facility makes the swap available to trade or for
24 swap transactions subject to the clearing excep-
25 tion under paragraph (7).”.

1 (b) COMMODITY EXCHANGE ACT.—Section 2 of the
2 Commodity Exchange Act (7 U.S.C. 2) is amended by
3 adding at the end the following:

4 “(j) COMMITTEE APPROVAL BY BOARD.—Exemp-
5 tions from the requirements of subsection (h)(1) to clear
6 a swap and subsection (h)(8) to execute a swap through
7 a board of trade or swap execution facility shall be avail-
8 able to a counterparty that is an issuer of securities that
9 are registered under section 12 of the Securities Exchange
10 Act of 1934 (15 U.S.C. 78l) or that is required to file
11 reports pursuant to section 15(d) of the Securities Ex-
12 change Act of 1934 (15 U.S.C. 78o) only if an appropriate
13 committee of the issuer’s board or governing body has re-
14 viewed and approved its decision to enter into swaps that
15 are subject to such exemptions.”.

16 (c) GRANDFATHER PROVISIONS.—

17 (1) LEGAL CERTAINTY FOR CERTAIN TRANS-
18 ACTIONS IN EXEMPT COMMODITIES.—Not later than
19 60 days after the date of enactment of this Act, a
20 person may submit to the Commodity Futures Trad-
21 ing Commission a petition to remain subject to sec-
22 tion 2(h) of the Commodity Exchange Act (7 U.S.C.
23 2(h)) (as in effect on the day before the date of en-
24 actment of this Act).

1 (2) CONSIDERATION; AUTHORITY OF COM-
2 MODITY FUTURES TRADING COMMISSION.—The
3 Commodity Futures Trading Commission—

4 (A) shall consider any petition submitted
5 under subparagraph (A) in a prompt manner;
6 and

7 (B) may allow a person to continue oper-
8 ating subject to section 2(h) of the Commodity
9 Exchange Act (7 U.S.C. 2(h)) (as in effect on
10 the day before the date of enactment of this
11 Act) for not longer than a 1-year period.

12 (3) AGRICULTURAL SWAPS.—

13 (A) IN GENERAL.—Except as provided in
14 subparagraph (B), no person shall offer to
15 enter into, enter into, or confirm the execution
16 of, any swap in an agricultural commodity (as
17 defined by the Commodity Futures Trading
18 Commission).

19 (B) EXCEPTION.—Notwithstanding sub-
20 paragraph (A), a person may offer to enter
21 into, enter into, or confirm the execution of,
22 any swap in an agricultural commodity pursu-
23 ant to section 4(c) of the Commodity Exchange
24 Act (7 U.S.C. 6(c)) or any rule, regulation, or
25 order issued thereunder (including any rule,

1 regulation, or order in effect as of the date of
2 enactment of this Act) by the Commodity Fu-
3 tures Trading Commission to allow swaps under
4 such terms and conditions as the Commission
5 shall prescribe.

6 (4) **REQUIRED REPORTING.**—If the exception
7 described in section 2(h)(8)(B) of the Commodity
8 Exchange Act applies, the counterparties shall com-
9 ply with any recordkeeping and transaction report-
10 ing requirements that may be prescribed by the
11 Commission with respect to swaps subject to section
12 2(h)(8)(B) of the Commodity Exchange Act.

13 **SEC. 724. SWAPS; SEGREGATION AND BANKRUPTCY TREAT-**
14 **MENT.**

15 (a) **SEGREGATION REQUIREMENTS FOR CLEARED**
16 **SWAPS.**—Section 4d of the Commodity Exchange Act (7
17 U.S.C. 6d) (as amended by section 732) is amended by
18 adding at the end the following:

19 “(f) **SWAPS.**—

20 “(1) **REGISTRATION REQUIREMENT.**—It shall
21 be unlawful for any person to accept any money, se-
22 curities, or property (or to extend any credit in lieu
23 of money, securities, or property) from, for, or on
24 behalf of a swaps customer to margin, guarantee, or
25 secure a swap cleared by or through a derivatives

1 clearing organization (including money, securities, or
2 property accruing to the customer as the result of
3 such a swap), unless the person shall have registered
4 under this Act with the Commission as a futures
5 commission merchant, and the registration shall not
6 have expired nor been suspended nor revoked.

7 “(2) CLEARED SWAPS.—

8 “(A) SEGREGATION REQUIRED.—A futures
9 commission merchant shall treat and deal with
10 all money, securities, and property of any swaps
11 customer received to margin, guarantee, or se-
12 cure a swap cleared by or through a derivatives
13 clearing organization (including money, securi-
14 ties, or property accruing to the swaps cus-
15 tomer as the result of such a swap) as belong-
16 ing to the swaps customer.

17 “(B) COMMINGLING PROHIBITED.—Money,
18 securities, and property of a swaps customer
19 described in subparagraph (A) shall be sepa-
20 rately accounted for and shall not be commin-
21 gled with the funds of the futures commission
22 merchant or be used to margin, secure, or guar-
23 antee any trades or contracts of any swaps cus-
24 tomer or person other than the person for
25 whom the same are held.

1 “(3) EXCEPTIONS.—

2 “(A) USE OF FUNDS.—

3 “(i) IN GENERAL.—Notwithstanding
4 paragraph (2), money, securities, and
5 property of swap customers of a futures
6 commission merchant described in para-
7 graph (2) may, for convenience, be com-
8 mingled and deposited in the same account
9 or accounts with any bank or trust com-
10 pany or with a derivatives clearing organi-
11 zation.

12 “(ii) WITHDRAWAL.—Notwithstanding
13 paragraph (2), such share of the money,
14 securities, and property described in clause
15 (i) as in the normal course of business
16 shall be necessary to margin, guarantee,
17 secure, transfer, adjust, or settle a cleared
18 swap with a derivatives clearing organiza-
19 tion, or with any member of the derivatives
20 clearing organization, may be withdrawn
21 and applied to such purposes, including the
22 payment of commissions, brokerage, inter-
23 est, taxes, storage, and other charges, law-
24 fully accruing in connection with the
25 cleared swap.

1 “(B) COMMISSION ACTION.—Notwith-
2 standing paragraph (2), in accordance with
3 such terms and conditions as the Commission
4 may prescribe by rule, regulation, or order, any
5 money, securities, or property of the swaps cus-
6 tomers of a futures commission merchant de-
7 scribed in paragraph (2) may be commingled
8 and deposited in customer accounts with any
9 other money, securities, or property received by
10 the futures commission merchant and required
11 by the Commission to be separately accounted
12 for and treated and dealt with as belonging to
13 the swaps customer of the futures commission
14 merchant.

15 “(4) PERMITTED INVESTMENTS.—Money de-
16 scribed in paragraph (2) may be invested in obliga-
17 tions of the United States, in general obligations of
18 any State or of any political subdivision of a State,
19 and in obligations fully guaranteed as to principal
20 and interest by the United States, or in any other
21 investment that the Commission may by rule or reg-
22 ulation prescribe, and such investments shall be
23 made in accordance with such rules and regulations
24 and subject to such conditions as the Commission
25 may prescribe.

1 “(5) COMMODITY CONTRACT.—A swap cleared
2 by or through a derivatives clearing organization
3 shall be considered to be a commodity contract as
4 such term is defined in section 761 of title 11,
5 United States Code, with regard to all money, secu-
6 rities, and property of any swaps customer received
7 by a futures commission merchant or a derivatives
8 clearing organization to margin, guarantee, or se-
9 cure the swap (including money, securities, or prop-
10 erty accruing to the customer as the result of the
11 swap).

12 “(6) PROHIBITION.—It shall be unlawful for
13 any person, including any derivatives clearing orga-
14 nization and any depository institution, that has re-
15 ceived any money, securities, or property for deposit
16 in a separate account or accounts as provided in
17 paragraph (2) to hold, dispose of, or use any such
18 money, securities, or property as belonging to the
19 depositing futures commission merchant or any per-
20 son other than the swaps customer of the futures
21 commission merchant.”.

22 (b) BANKRUPTCY TREATMENT OF CLEARED
23 SWAPS.—Section 761 of title 11, United States Code, is
24 amended—

1 (1) in paragraph (4), by striking subparagraph
2 (F) and inserting the following:

3 “(F)(i) any other contract, option, agree-
4 ment, or transaction that is similar to a con-
5 tract, option, agreement, or transaction referred
6 to in this paragraph; and

7 “(ii) with respect to a futures commission
8 merchant or a clearing organization, any other
9 contract, option, agreement, or transaction, in
10 each case, that is cleared by a clearing organi-
11 zation;”; and

12 (2) in paragraph (9)(A)(i), by striking “the
13 commodity futures account” and inserting “a com-
14modity contract account”.

15 (c) SEGREGATION REQUIREMENTS FOR UNCLEARED
16 SWAPS.—Section 4s of the Commodity Exchange Act (as
17 added by section 731) is amended by adding at the end
18 the following:

19 “(1) SEGREGATION REQUIREMENTS.—

20 “(1) SEGREGATION OF ASSETS HELD AS COL-
21 LATERAL IN UNCLEARED SWAP TRANSACTIONS.—

22 “(A) NOTIFICATION.—A swap dealer or
23 major swap participant shall be required to no-
24 tify the counterparty of the swap dealer or
25 major swap participant at the beginning of a

1 swap transaction that the counterparty has the
2 right to require segregation of the funds or
3 other property supplied to margin, guarantee,
4 or secure the obligations of the counterparty.

5 “(B) SEGREGATION AND MAINTENANCE OF
6 FUNDS.—At the request of a counterparty to a
7 swap that provides funds or other property to
8 a swap dealer or major swap participant to
9 margin, guarantee, or secure the obligations of
10 the counterparty, the swap dealer or major
11 swap participant shall—

12 “(i) segregate the funds or other
13 property for the benefit of the
14 counterparty; and

15 “(ii) in accordance with such rules
16 and regulations as the Commission may
17 promulgate, maintain the funds or other
18 property in a segregated account separate
19 from the assets and other interests of the
20 swap dealer or major swap participant.

21 “(2) APPLICABILITY.—The requirements de-
22 scribed in paragraph (1) shall—

23 “(A) apply only to a swap between a
24 counterparty and a swap dealer or major swap

1 participant that is not submitted for clearing to
2 a derivatives clearing organization; and

3 “(B)(i) not apply to variation margin pay-
4 ments; or

5 “(ii) not preclude any commercial arrange-
6 ment regarding—

7 “(I) the investment of segregated
8 funds or other property that may only be
9 invested in such investments as the Com-
10 mission may permit by rule or regulation;
11 and

12 “(II) the related allocation of gains
13 and losses resulting from any investment
14 of the segregated funds or other property.

15 “(3) USE OF INDEPENDENT THIRD-PARTY
16 CUSTODIANS.—The segregated account described in
17 paragraph (1) shall be—

18 “(A) carried by an independent third-party
19 custodian; and

20 “(B) designated as a segregated account
21 for and on behalf of the counterparty.

22 “(4) REPORTING REQUIREMENT.—If the
23 counterparty does not choose to require segregation
24 of the funds or other property supplied to margin,
25 guarantee, or secure the obligations of the

1 counterparty, the swap dealer or major swap partici-
2 pant shall report to the counterparty of the swap
3 dealer or major swap participant on a quarterly
4 basis that the back office procedures of the swap
5 dealer or major swap participant relating to margin
6 and collateral requirements are in compliance with
7 the agreement of the counterparties.”.

8 **SEC. 725. DERIVATIVES CLEARING ORGANIZATIONS.**

9 (a) REGISTRATION REQUIREMENT.—Section 5b of
10 the Commodity Exchange Act (7 U.S.C. 7a–1) is amended
11 by striking subsections (a) and (b) and inserting the fol-
12 lowing:

13 “(a) REGISTRATION REQUIREMENT.—

14 “(1) IN GENERAL.—Except as provided in para-
15 graph (2), it shall be unlawful for a derivatives
16 clearing organization, directly or indirectly, to make
17 use of the mails or any means or instrumentality of
18 interstate commerce to perform the functions of a
19 derivatives clearing organization with respect to—

20 “(A) a contract of sale of a commodity for
21 future delivery (or an option on the contract of
22 sale) or option on a commodity, in each case,
23 unless the contract or option is—

1 “(i) excluded from this Act by sub-
2 section (a)(1)(C)(i), (c), or (f) of section 2;

3 or

4 “(ii) a security futures product
5 cleared by a clearing agency registered
6 with the Securities and Exchange Commis-
7 sion under the Securities Exchange Act of
8 1934 (15 U.S.C. 78a et seq.); or

9 “(B) a swap.

10 “(2) EXCEPTION.—Paragraph (1) shall not
11 apply to a derivatives clearing organization that is
12 registered with the Commission.

13 “(b) VOLUNTARY REGISTRATION.—A person that
14 clears 1 or more agreements, contracts, or transactions
15 that are not required to be cleared under this Act may
16 register with the Commission as a derivatives clearing or-
17 ganization.”.

18 (b) REGISTRATION FOR DEPOSITORY INSTITUTIONS
19 AND CLEARING AGENCIES; EXEMPTIONS; COMPLIANCE
20 OFFICER; ANNUAL REPORTS.—Section 5b of the Com-
21modity Exchange Act (7 U.S.C. 7a–1) is amended by add-
22 ing at the end the following:

23 “(g) EXISTING DEPOSITORY INSTITUTIONS AND
24 CLEARING AGENCIES.—

1 “(1) IN GENERAL.—A depository institution or
2 clearing agency registered with the Securities and
3 Exchange Commission under the Securities Ex-
4 change Act of 1934 (15 U.S.C. 78a et seq.) that is
5 required to be registered as a derivatives clearing or-
6 ganization under this section is deemed to be reg-
7 istered under this section to the extent that, before
8 the date of enactment of this subsection—

9 “(A) the depository institution cleared
10 swaps as a multilateral clearing organization; or

11 “(B) the clearing agency cleared swaps.

12 “(2) CONVERSION OF DEPOSITORY INSTITU-
13 TIONS.—A depository institution to which this sub-
14 section applies may, by the vote of the shareholders
15 owning not less than 51 percent of the voting inter-
16 ests of the depository institution, be converted into
17 a State corporation, partnership, limited liability
18 company, or similar legal form pursuant to a plan
19 of conversion, if the conversion is not in contraven-
20 tion of applicable State law.

21 “(3) SHARING OF INFORMATION.—The Securi-
22 ties and Exchange Commission shall make available
23 to the Commission, upon request, all information de-
24 termined to be relevant by the Securities and Ex-
25 change Commission regarding a clearing agency

1 deemed to be registered with the Commission under
2 paragraph (1).

3 “(h) EXEMPTIONS.—The Commission may exempt,
4 conditionally or unconditionally, a derivatives clearing or-
5 ganization from registration under this section for the
6 clearing of swaps if the Commission determines that the
7 derivatives clearing organization is subject to comparable,
8 comprehensive supervision and regulation by the Securi-
9 ties and Exchange Commission or the appropriate govern-
10 ment authorities in the home country of the organization.
11 Such conditions may include, but are not limited to, re-
12 quiring that the derivatives clearing organization be avail-
13 able for inspection by the Commission and make available
14 all information requested by the Commission.

15 “(i) DESIGNATION OF CHIEF COMPLIANCE OFFI-
16 CER.—

17 “(1) IN GENERAL.—Each derivatives clearing
18 organization shall designate an individual to serve as
19 a chief compliance officer.

20 “(2) DUTIES.—The chief compliance officer
21 shall—

22 “(A) report directly to the board or to the
23 senior officer of the derivatives clearing organi-
24 zation;

1 “(B) review the compliance of the deriva-
2 tives clearing organization with respect to the
3 core principles described in subsection (c)(2);

4 “(C) in consultation with the board of the
5 derivatives clearing organization, a body per-
6 forming a function similar to the board of the
7 derivatives clearing organization, or the senior
8 officer of the derivatives clearing organization,
9 resolve any conflicts of interest that may arise;

10 “(D) be responsible for administering each
11 policy and procedure that is required to be es-
12 tablished pursuant to this section;

13 “(E) ensure compliance with this Act (in-
14 cluding regulations) relating to agreements,
15 contracts, or transactions, including each rule
16 prescribed by the Commission under this sec-
17 tion;

18 “(F) establish procedures for the remedi-
19 ation of noncompliance issues identified by the
20 compliance officer through any—

21 “(i) compliance office review;

22 “(ii) look-back;

23 “(iii) internal or external audit find-
24 ing;

25 “(iv) self-reported error; or

1 “(v) validated complaint; and

2 “(G) establish and follow appropriate pro-
3 cedures for the handling, management response,
4 remediation, retesting, and closing of non-
5 compliance issues.

6 “(3) ANNUAL REPORTS.—

7 “(A) IN GENERAL.—In accordance with
8 rules prescribed by the Commission, the chief
9 compliance officer shall annually prepare and
10 sign a report that contains a description of—

11 “(i) the compliance of the derivatives
12 clearing organization of the compliance of-
13 ficer with respect to this Act (including
14 regulations); and

15 “(ii) each policy and procedure of the
16 derivatives clearing organization of the
17 compliance officer (including the code of
18 ethics and conflict of interest policies of
19 the derivatives clearing organization).

20 “(B) REQUIREMENTS.—A compliance re-
21 port under subparagraph (A) shall—

22 “(i) accompany each appropriate fi-
23 nancial report of the derivatives clearing
24 organization that is required to be fur-

1 nished to the Commission pursuant to this
2 section; and

3 “(ii) include a certification that, under
4 penalty of law, the compliance report is ac-
5 curate and complete.”.

6 (c) CORE PRINCIPLES FOR DERIVATIVES CLEARING
7 ORGANIZATIONS.—Section 5b(c) of the Commodity Ex-
8 change Act (7 U.S.C. 7a–1(c)) is amended by striking
9 paragraph (2) and inserting the following:

10 “(2) CORE PRINCIPLES FOR DERIVATIVES
11 CLEARING ORGANIZATIONS.—

12 “(A) COMPLIANCE.—

13 “(i) IN GENERAL.—To be registered
14 and to maintain registration as a deriva-
15 tives clearing organization, a derivatives
16 clearing organization shall comply with
17 each core principle described in this para-
18 graph and any requirement that the Com-
19 mission may impose by rule or regulation
20 pursuant to section 8a(5).

21 “(ii) DISCRETION OF DERIVATIVES
22 CLEARING ORGANIZATION.—Subject to any
23 rule or regulation prescribed by the Com-
24 mission, a derivatives clearing organization
25 shall have reasonable discretion in estab-

1 lishing the manner by which the derivatives
2 clearing organization complies with each
3 core principle described in this paragraph.

4 “(B) FINANCIAL RESOURCES.—

5 “(i) IN GENERAL.—Each derivatives
6 clearing organization shall have adequate
7 financial, operational, and managerial re-
8 sources, as determined by the Commission,
9 to discharge each responsibility of the de-
10 rivatives clearing organization.

11 “(ii) MINIMUM AMOUNT OF FINAN-
12 CIAL RESOURCES.—Each derivatives clear-
13 ing organization shall possess financial re-
14 sources that, at a minimum, exceed the
15 total amount that would—

16 “(I) enable the organization to
17 meet its financial obligations to its
18 members and participants notwith-
19 standing a default by the member or
20 participant creating the largest finan-
21 cial exposure for that organization in
22 extreme but plausible market condi-
23 tions; and

24 “(II) enable the derivatives clear-
25 ing organization to cover the oper-

1 ating costs of the derivatives clearing
2 organization for a period of 1 year (as
3 calculated on a rolling basis).

4 “(C) PARTICIPANT AND PRODUCT ELIGI-
5 BILITY.—

6 “(i) IN GENERAL.—Each derivatives
7 clearing organization shall establish—

8 “(I) appropriate admission and
9 continuing eligibility standards (in-
10 cluding sufficient financial resources
11 and operational capacity to meet obli-
12 gations arising from participation in
13 the derivatives clearing organization)
14 for members of, and participants in,
15 the derivatives clearing organization;
16 and

17 “(II) appropriate standards for
18 determining the eligibility of agree-
19 ments, contracts, or transactions sub-
20 mitted to the derivatives clearing or-
21 ganization for clearing.

22 “(ii) REQUIRED PROCEDURES.—Each
23 derivatives clearing organization shall es-
24 tablish and implement procedures to verify,
25 on an ongoing basis, the compliance of

1 each participation and membership re-
2 quirement of the derivatives clearing orga-
3 nization.

4 “(iii) REQUIREMENTS.—The partici-
5 pation and membership requirements of
6 each derivatives clearing organization
7 shall—

8 “(I) be objective;

9 “(II) be publicly disclosed; and

10 “(III) permit fair and open ac-
11 cess.

12 “(D) RISK MANAGEMENT.—

13 “(i) IN GENERAL.—Each derivatives
14 clearing organization shall ensure that the
15 derivatives clearing organization possesses
16 the ability to manage the risks associated
17 with discharging the responsibilities of the
18 derivatives clearing organization through
19 the use of appropriate tools and proce-
20 dures.

21 “(ii) MEASUREMENT OF CREDIT EX-
22 POSURE.—Each derivatives clearing orga-
23 nization shall—

24 “(I) not less than once during
25 each business day of the derivatives

1 clearing organization, measure the
2 credit exposures of the derivatives
3 clearing organization to each member
4 and participant of the derivatives
5 clearing organization; and

6 “(II) monitor each exposure de-
7 scribed in subclause (I) periodically
8 during the business day of the deriva-
9 tives clearing organization.

10 “(iii) LIMITATION OF EXPOSURE TO
11 POTENTIAL LOSSES FROM DEFAULTS.—
12 Each derivatives clearing organization,
13 through margin requirements and other
14 risk control mechanisms, shall limit the ex-
15 posure of the derivatives clearing organiza-
16 tion to potential losses from defaults by
17 members and participants of the deriva-
18 tives clearing organization to ensure that—

19 “(I) the operations of the deriva-
20 tives clearing organization would not
21 be disrupted; and

22 “(II) nondefaulting members or
23 participants would not be exposed to
24 losses that nondefaulting members or

1 participants cannot anticipate or con-
2 trol.

3 “(iv) MARGIN REQUIREMENTS.—The
4 margin required from each member and
5 participant of a derivatives clearing organi-
6 zation shall be sufficient to cover potential
7 exposures in normal market conditions.

8 “(v) REQUIREMENTS REGARDING
9 MODELS AND PARAMETERS.—Each model
10 and parameter used in setting margin re-
11 quirements under clause (iv) shall be—

12 “(I) risk-based; and

13 “(II) reviewed on a regular basis.

14 “(E) SETTLEMENT PROCEDURES.—Each
15 derivatives clearing organization shall—

16 “(i) complete money settlements on a
17 timely basis (but not less frequently than
18 once each business day);

19 “(ii) employ money settlement ar-
20 rangements to eliminate or strictly limit
21 the exposure of the derivatives clearing or-
22 ganization to settlement bank risks (in-
23 cluding credit and liquidity risks from the
24 use of banks to effect money settlements);

1 “(iii) ensure that money settlements
2 are final when effected;

3 “(iv) maintain an accurate record of
4 the flow of funds associated with each
5 money settlement;

6 “(v) possess the ability to comply with
7 each term and condition of any permitted
8 netting or offset arrangement with any
9 other clearing organization;

10 “(vi) regarding physical settlements,
11 establish rules that clearly state each obli-
12 gation of the derivatives clearing organiza-
13 tion with respect to physical deliveries; and

14 “(vii) ensure that each risk arising
15 from an obligation described in clause (vi)
16 is identified and managed.

17 “(F) TREATMENT OF FUNDS.—

18 “(i) REQUIRED STANDARDS AND PRO-
19 CEDURES.—Each derivatives clearing orga-
20 nization shall establish standards and pro-
21 cedures that are designed to protect and
22 ensure the safety of member and partici-
23 pant funds and assets.

24 “(ii) HOLDING OF FUNDS AND AS-
25 SETS.—Each derivatives clearing organiza-

1 “(I) clearly state the default pro-
2 cedures of the derivatives clearing or-
3 ganization;

4 “(II) make publicly available the
5 default rules of the derivatives clear-
6 ing organization; and

7 “(III) ensure that the derivatives
8 clearing organization may take timely
9 action—

10 “(aa) to contain losses and
11 liquidity pressures; and

12 “(bb) to continue meeting
13 each obligation of the derivatives
14 clearing organization.

15 “(H) RULE ENFORCEMENT.—Each deriva-
16 tives clearing organization shall—

17 “(i) maintain adequate arrangements
18 and resources for—

19 “(I) the effective monitoring and
20 enforcement of compliance with the
21 rules of the derivatives clearing orga-
22 nization; and

23 “(II) the resolution of disputes;

24 “(ii) have the authority and ability to
25 discipline, limit, suspend, or terminate the

1 activities of a member or participant due
2 to a violation by the member or participant
3 of any rule of the derivatives clearing orga-
4 nization; and

5 “(iii) report to the Commission re-
6 garding rule enforcement activities and
7 sanctions imposed against members and
8 participants as provided in clause (ii).

9 “(I) SYSTEM SAFEGUARDS.—Each deriva-
10 tives clearing organization shall—

11 “(i) establish and maintain a program
12 of risk analysis and oversight to identify
13 and minimize sources of operational risk
14 through the development of appropriate
15 controls and procedures, and automated
16 systems, that are reliable, secure, and have
17 adequate scalable capacity;

18 “(ii) establish and maintain emer-
19 gency procedures, backup facilities, and a
20 plan for disaster recovery that allows for—

21 “(I) the timely recovery and re-
22 sumption of operations of the deriva-
23 tives clearing organization; and

1 “(II) the fulfillment of each obli-
2 gation and responsibility of the de-
3 rivatives clearing organization; and

4 “(iii) periodically conduct tests to
5 verify that the backup resources of the de-
6 rivatives clearing organization are suffi-
7 cient to ensure daily processing, clearing,
8 and settlement.

9 “(J) REPORTING.—Each derivatives clear-
10 ing organization shall provide to the Commis-
11 sion all information that the Commission deter-
12 mines to be necessary to conduct oversight of
13 the derivatives clearing organization.

14 “(K) RECORDKEEPING.—Each derivatives
15 clearing organization shall maintain records of
16 all activities related to the business of the de-
17 rivatives clearing organization as a derivatives
18 clearing organization—

19 “(i) in a form and manner that is ac-
20 ceptable to the Commission; and

21 “(ii) for a period of not less than 5
22 years.

23 “(L) PUBLIC INFORMATION.—

24 “(i) IN GENERAL.—Each derivatives
25 clearing organization shall provide to mar-

1 ket participants sufficient information to
2 enable the market participants to identify
3 and evaluate accurately the risks and costs
4 associated with using the services of the
5 derivatives clearing organization.

6 “(ii) AVAILABILITY OF INFORMA-
7 TION.—Each derivatives clearing organiza-
8 tion shall make information concerning the
9 rules and operating and default procedures
10 governing the clearing and settlement sys-
11 tems of the derivatives clearing organiza-
12 tion available to market participants.

13 “(iii) PUBLIC DISCLOSURE.—Each de-
14 rivatives clearing organization shall dis-
15 close publicly and to the Commission infor-
16 mation concerning—

17 “(I) the terms and conditions of
18 each contract, agreement, and trans-
19 action cleared and settled by the de-
20 rivatives clearing organization;

21 “(II) each clearing and other fee
22 that the derivatives clearing organiza-
23 tion charges the members and partici-
24 pants of the derivatives clearing orga-
25 nization;

1 “(III) the margin-setting method-
2 ology, and the size and composition,
3 of the financial resource package of
4 the derivatives clearing organization;

5 “(IV) daily settlement prices, vol-
6 ume, and open interest for each con-
7 tract settled or cleared by the deriva-
8 tives clearing organization; and

9 “(V) any other matter relevant to
10 participation in the settlement and
11 clearing activities of the derivatives
12 clearing organization.

13 “(M) INFORMATION-SHARING.—Each de-
14 rivatives clearing organization shall—

15 “(i) enter into, and abide by the terms
16 of, each appropriate and applicable domes-
17 tic and international information-sharing
18 agreement; and

19 “(ii) use relevant information obtained
20 from each agreement described in clause
21 (i) in carrying out the risk management
22 program of the derivatives clearing organi-
23 zation.

24 “(N) ANTITRUST CONSIDERATIONS.—Un-
25 less necessary or appropriate to achieve the

1 purposes of this Act, a derivatives clearing or-
2 ganization shall not—

3 “(i) adopt any rule or take any action
4 that results in any unreasonable restraint
5 of trade; or

6 “(ii) impose any material anticompeti-
7 tive burden.

8 “(O) GOVERNANCE FITNESS STAND-
9 ARDS.—

10 “(i) GOVERNANCE ARRANGEMENTS.—
11 Each derivatives clearing organization shall
12 establish governance arrangements that
13 are transparent—

14 “(I) to fulfill public interest re-
15 quirements; and

16 “(II) to permit the consideration
17 of the views of owners and partici-
18 pants.

19 “(ii) FITNESS STANDARDS.—Each de-
20 rivatives clearing organization shall estab-
21 lish and enforce appropriate fitness stand-
22 ards for—

23 “(I) directors;

24 “(II) members of any disciplinary
25 committee;

1 “(III) members of the derivatives
2 clearing organization;

3 “(IV) any other individual or en-
4 tity with direct access to the settle-
5 ment or clearing activities of the de-
6 rivatives clearing organization; and

7 “(V) any party affiliated with
8 any individual or entity described in
9 this clause.

10 “(P) CONFLICTS OF INTEREST.—Each de-
11 rivatives clearing organization shall—

12 “(i) establish and enforce rules to
13 minimize conflicts of interest in the deci-
14 sion-making process of the derivatives
15 clearing organization; and

16 “(ii) establish a process for resolving
17 conflicts of interest described in clause (i).

18 “(Q) COMPOSITION OF GOVERNING
19 BOARDS.—Each derivatives clearing organiza-
20 tion shall ensure that the composition of the
21 governing board or committee of the derivatives
22 clearing organization includes market partici-
23 pants.

24 “(R) LEGAL RISK.—Each derivatives clear-
25 ing organization shall have a well-founded,

1 transparent, and enforceable legal framework
2 for each aspect of the activities of the deriva-
3 tives clearing organization.”.

4 (d) CONFLICTS OF INTEREST.—The Commodity Fu-
5 tures Trading Commission shall adopt rules mitigating
6 conflicts of interest in connection with the conduct of busi-
7 ness by a swap dealer or a major swap participant with
8 a derivatives clearing organization, board of trade, or a
9 swap execution facility that clears or trades swaps in
10 which the swap dealer or major swap participant has a
11 material debt or material equity investment.

12 (e) REPORTING REQUIREMENTS.—Section 5b of the
13 Commodity Exchange Act (7 U.S.C. 7a–1) (as amended
14 by subsection (b)) is amended by adding at the end the
15 following:

16 “(k) REPORTING REQUIREMENTS.—

17 “(1) DUTY OF DERIVATIVES CLEARING ORGANI-
18 ZATIONS.—Each derivatives clearing organization
19 that clears swaps shall provide to the Commission all
20 information that is determined by the Commission to
21 be necessary to perform each responsibility of the
22 Commission under this Act.

23 “(2) DATA COLLECTION AND MAINTENANCE
24 REQUIREMENTS.—The Commission shall adopt data
25 collection and maintenance requirements for swaps

1 cleared by derivatives clearing organizations that are
2 comparable to the corresponding requirements for—

3 “(A) swaps data reported to swap data re-
4 positories; and

5 “(B) swaps traded on swap execution fa-
6 cilities.

7 “(3) REPORTS ON SECURITY-BASED SWAP
8 AGREEMENTS TO BE SHARED WITH THE SECURITIES
9 AND EXCHANGE COMMISSION.—

10 “(A) IN GENERAL.—A derivatives clearing
11 organization that clears security-based swap
12 agreements (as defined in section 1a(47)(A)(v))
13 shall, upon request, open to inspection and ex-
14 amination to the Securities and Exchange Com-
15 mission all books and records relating to such
16 security-based swap agreements, consistent with
17 the confidentiality and disclosure requirements
18 of section 8.

19 “(B) JURISDICTION.—Nothing in this
20 paragraph shall affect the exclusive jurisdiction
21 of the Commission to prescribe recordkeeping
22 and reporting requirements for a derivatives
23 clearing organization that is registered with the
24 Commission.

1 “(4) INFORMATION SHARING.—Subject to sec-
2 tion 8, and upon request, the Commission shall
3 share information collected under paragraph (2)
4 with—

5 “(A) the Board;

6 “(B) the Securities and Exchange Commis-
7 sion;

8 “(C) each appropriate prudential regulator;

9 “(D) the Financial Stability Oversight
10 Council;

11 “(E) the Department of Justice; and

12 “(F) any other person that the Commis-
13 sion determines to be appropriate, including—

14 “(i) foreign financial supervisors (in-
15 cluding foreign futures authorities);

16 “(ii) foreign central banks; and

17 “(iii) foreign ministries.

18 “(5) CONFIDENTIALITY AND INDEMNIFICATION
19 AGREEMENT.—Before the Commission may share in-
20 formation with any entity described in paragraph
21 (4)—

22 “(A) the Commission shall receive a writ-
23 ten agreement from each entity stating that the
24 entity shall abide by the confidentiality require-
25 ments described in section 8 relating to the in-

1 formation on swap transactions that is pro-
2 vided; and

3 “(B) each entity shall agree to indemnify
4 the Commission for any expenses arising from
5 litigation relating to the information provided
6 under section 8.

7 “(6) PUBLIC INFORMATION.—Each derivatives
8 clearing organization that clears swaps shall provide
9 to the Commission (including any designee of the
10 Commission) information under paragraph (2) in
11 such form and at such frequency as is required by
12 the Commission to comply with the public reporting
13 requirements contained in section 2(a)(13).”.

14 (f) PUBLIC DISCLOSURE.—Section 8(e) of the Com-
15 modity Exchange Act (7 U.S.C. 12(e)) is amended in the
16 last sentence—

17 (1) by inserting “, central bank and min-
18 istries,” after “department” each place it appears;
19 and

20 (2) by striking “. is a party.” and inserting “,
21 is a party.”.

22 (g) LEGAL CERTAINTY FOR IDENTIFIED BANKING
23 PRODUCTS.—

1 (1) REPEALS.—The Legal Certainty for Bank
2 Products Act of 2000 (7 U.S.C. 27 et seq.) is
3 amended—

4 (A) by striking sections 404 and 407 (7
5 U.S.C. 27b, 27e);

6 (B) in section 402 (7 U.S.C. 27), by strik-
7 ing subsection (d); and

8 (C) in section 408 (7 U.S.C. 27f)—

9 (i) in subsection (c)—

10 (I) by striking “in the case” and
11 all that follows through “a hybrid”
12 and inserting “in the case of a hy-
13 brid”;

14 (II) by striking “; or” and insert-
15 ing a period; and

16 (III) by striking paragraph (2);

17 (ii) by striking subsection (b); and

18 (iii) by redesignating subsection (c) as
19 subsection (b).

20 (2) LEGAL CERTAINTY FOR BANK PRODUCTS
21 ACT OF 2000.—Section 403 of the Legal Certainty
22 for Bank Products Act of 2000 (7 U.S.C. 27a) is
23 amended to read as follows:

1 **“SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.**

2 “(a) EXCLUSION.—Except as provided in subsection
3 (b) or (c)—

4 “(1) the Commodity Exchange Act (7 U.S.C. 1
5 et seq.) shall not apply to, and the Commodity Fu-
6 tures Trading Commission shall not exercise regu-
7 latory authority under the Commodity Exchange Act
8 (7 U.S.C. 1 et seq.) with respect to, an identified
9 banking product; and

10 “(2) the definitions of ‘security-based swap’ in
11 section 3(a)(68) of the Securities Exchange Act of
12 1934 and ‘security-based swap agreement’ in section
13 1a(47)(A)(v) of the Commodity Exchange Act and
14 section 3(a)(78) of the Securities Exchange Act of
15 1934 do not include any identified bank product.

16 “(b) EXCEPTION.—An appropriate Federal banking
17 agency may except an identified banking product of a
18 bank under its regulatory jurisdiction from the exclusion
19 in subsection (a) if the agency determines, in consultation
20 with the Commodity Futures Trading Commission and the
21 Securities and Exchange Commission, that the product—

22 “(1) would meet the definition of a ‘swap’
23 under section 1a(47) of the Commodity Exchange
24 Act (7 U.S.C. 1a) or a ‘security-based swap’ under
25 that section 3(a)(68) of the Securities Exchange Act
26 of 1934; and

1 “(2) has become known to the trade as a swap
2 or security-based swap, or otherwise has been struc-
3 tured as an identified banking product for the pur-
4 pose of evading the provisions of the Commodity Ex-
5 change Act (7 U.S.C. 1 et seq.), the Securities Act
6 of 1933 (15 U.S.C. 77a et seq.), or the Securities
7 Exchange Act of 1934 (15 U.S.C. 78a et seq.).

8 “(c) EXCEPTION.—The exclusions in subsection (a)
9 shall not apply to an identified bank product that—

10 “(1) is a product of a bank that is not under
11 the regulatory jurisdiction of an appropriate Federal
12 banking agency;

13 “(2) meets the definition of swap in section
14 1a(47) of the Commodity Exchange Act or security-
15 based swap in section 3(a)(68) of the Securities Ex-
16 change Act of 1934; and

17 “(3) has become known to the trade as a swap
18 or security-based swap, or otherwise has been struc-
19 tured as an identified banking product for the pur-
20 pose of evading the provisions of the Commodity Ex-
21 change Act (7 U.S.C. 1 et seq.), the Securities Act
22 of 1933 (15 U.S.C. 77a et seq.), or the Securities
23 Exchange Act of 1934 (15 U.S.C. 78a et seq.).”.

24 (h) REDUCING CLEARING SYSTEMIC RISK.—Section
25 5b(f)(1) of the Commodity Exchange Act (7 U.S.C. 7a-

1 1(F)(i)) is amended by adding at the end the following:
2 “In order to minimize systemic risk, under no cir-
3 cumstances shall a derivatives clearing organization be
4 compelled to accept the counterparty credit risk of another
5 clearing organization.”.

6 **SEC. 726. RULEMAKING ON CONFLICT OF INTEREST.**

7 (a) IN GENERAL.—In order to mitigate conflicts of
8 interest, not later than 180 days after the date of enact-
9 ment of the Wall Street Transparency and Accountability
10 Act of 2010, the Commodity Futures Trading Commission
11 shall adopt rules which may include numerical limits on
12 the control of, or the voting rights with respect to, any
13 derivatives clearing organization that clears swaps, or
14 swap execution facility or board of trade designated as a
15 contract market that posts swaps or makes swaps avail-
16 able for trading, by a bank holding company (as defined
17 in section 2 of the Bank Holding Company Act of 1956
18 (12 U.S.C. 1841)) with total consolidated assets of
19 \$50,000,000,000 or more, a nonbank financial company
20 (as defined in section 102) supervised by the Board, an
21 affiliate of such a bank holding company or nonbank fi-
22 nancial company, a swap dealer, major swap participant,
23 or associated person of a swap dealer or major swap par-
24 ticipant.

1 (b) PURPOSES.—The Commission shall adopt rules if
2 it determines, after the review described in subsection (a),
3 that such rules are necessary or appropriate to improve
4 the governance of, or to mitigate systemic risk, promote
5 competition, or mitigate conflicts of interest in connection
6 with a swap dealer or major swap participant’s conduct
7 of business with, a derivatives clearing organization, con-
8 tract market, or swap execution facility that clears or
9 posts swaps or makes swaps available for trading and in
10 which such swap dealer or major swap participant has a
11 material debt or equity investment.

12 (c) CONSIDERATIONS.—In adopting rules pursuant to
13 this section, the Commodity Futures Trading Commission
14 shall consider any conflicts of interest arising from the
15 amount of equity owned by a single investor, the ability
16 to vote, cause the vote of, or withhold votes entitled to
17 be cast on any matters by the holders of the ownership
18 interest, and the governance arrangements of any deriva-
19 tives clearing organization that clears swaps, or swap exe-
20 cution facility or board of trade designated as a contract
21 market that posts swaps or makes swaps available for
22 trading.

1 **SEC. 727. PUBLIC REPORTING OF SWAP TRANSACTION**
2 **DATA.**

3 Section 2(a) of the Commodity Exchange Act (7
4 U.S.C. 2(a)) is amended by adding at the end the fol-
5 lowing:

6 “(13) PUBLIC AVAILABILITY OF SWAP TRANS-
7 ACTION DATA.—

8 “(A) DEFINITION OF REAL-TIME PUBLIC
9 REPORTING.—In this paragraph, the term ‘real-
10 time public reporting’ means to report data re-
11 lating to a swap transaction, including price
12 and volume, as soon as technologically prac-
13 ticable after the time at which the swap trans-
14 action has been executed.

15 “(B) PURPOSE.—The purpose of this sec-
16 tion is to authorize the Commission to make
17 swap transaction and pricing data available to
18 the public in such form and at such times as
19 the Commission determines appropriate to en-
20 hance price discovery.

21 “(C) GENERAL RULE.—The Commission is
22 authorized and required to provide by rule for
23 the public availability of swap transaction and
24 pricing data as follows:

25 “(i) With respect to those swaps that
26 are subject to the mandatory clearing re-

1 requirement described in subsection (h)(1)
2 (including those swaps that are excepted
3 from the requirement pursuant to sub-
4 section (h)(7)), the Commission shall re-
5 quire real-time public reporting for such
6 transactions.

7 “(ii) With respect to those swaps that
8 are not subject to the mandatory clearing
9 requirement described in subsection (h)(1),
10 but are cleared at a registered derivatives
11 clearing organization, the Commission
12 shall require real-time public reporting for
13 such transactions.

14 “(iii) With respect to swaps that are
15 not cleared at a registered derivatives
16 clearing organization and which are re-
17 ported to a swap data repository or the
18 Commission under subsection (h)(6), the
19 Commission shall require real-time public
20 reporting for such transactions, in a man-
21 ner that does not disclose the business
22 transactions and market positions of any
23 person.

24 “(iv) With respect to swaps that are
25 determined to be required to be cleared

1 under subsection (h)(2) but are not
2 cleared, the Commission shall require real-
3 time public reporting for such transactions.

4 “(D) REGISTERED ENTITIES AND PUBLIC
5 REPORTING.—The Commission may require
6 registered entities to publicly disseminate the
7 swap transaction and pricing data required to
8 be reported under this paragraph.

9 “(E) RULEMAKING REQUIRED.—With re-
10 spect to the rule providing for the public avail-
11 ability of transaction and pricing data for
12 swaps described in clauses (i) and (ii) of sub-
13 paragraph (C), the rule promulgated by the
14 Commission shall contain provisions—

15 “(i) to ensure such information does
16 not identify the participants;

17 “(ii) to specify the criteria for deter-
18 mining what constitutes a large notional
19 swap transaction (block trade) for par-
20 ticular markets and contracts;

21 “(iii) to specify the appropriate time
22 delay for reporting large notional swap
23 transactions (block trades) to the public;
24 and

1 “(iv) that take into account whether
2 the public disclosure will materially reduce
3 market liquidity.

4 “(F) TIMELINESS OF REPORTING.—Par-
5 ties to a swap (including agents of the parties
6 to a swap) shall be responsible for reporting
7 swap transaction information to the appropriate
8 registered entity in a timely manner as may be
9 prescribed by the Commission.

10 “(G) REPORTING OF SWAPS TO REG-
11 ISTERED SWAP DATA REPOSITORIES.—Each
12 swap (whether cleared or uncleared) shall be re-
13 ported to a registered swap data repository.

14 “(14) SEMIANNUAL AND ANNUAL PUBLIC RE-
15 PORTING OF AGGREGATE SWAP DATA.—

16 “(A) IN GENERAL.—In accordance with
17 subparagraph (B), the Commission shall issue a
18 written report on a semiannual and annual
19 basis to make available to the public informa-
20 tion relating to—

21 “(i) the trading and clearing in the
22 major swap categories; and

23 “(ii) the market participants and de-
24 velopments in new products.

1 “(B) USE; CONSULTATION.—In preparing
2 a report under subparagraph (A), the Commis-
3 sion shall—

4 “(i) use information from swap data
5 repositories and derivatives clearing orga-
6 nizations; and

7 “(ii) consult with the Office of the
8 Comptroller of the Currency, the Bank for
9 International Settlements, and such other
10 regulatory bodies as may be necessary.

11 “(C) AUTHORITY OF THE COMMISSION.—
12 The Commission may, by rule, regulation, or
13 order, delegate the public reporting responsibil-
14 ities of the Commission under this paragraph in
15 accordance with such terms and conditions as
16 the Commission determines to be appropriate
17 and in the public interest.”.

18 **SEC. 728. SWAP DATA REPOSITORIES.**

19 The Commodity Exchange Act is amended by insert-
20 ing after section 20 (7 U.S.C. 24) the following:

21 **“SEC. 21. SWAP DATA REPOSITORIES.**

22 “(a) REGISTRATION REQUIREMENT.—

23 “(1) REQUIREMENT; AUTHORITY OF DERIVA-
24 TIVES CLEARING ORGANIZATION.—

1 “(A) IN GENERAL.—It shall be unlawful
2 for any person, unless registered with the Com-
3 mission, directly or indirectly to make use of
4 the mails or any means or instrumentality of
5 interstate commerce to perform the functions of
6 a swap data repository.

7 “(B) REGISTRATION OF DERIVATIVES
8 CLEARING ORGANIZATIONS.—A derivatives
9 clearing organization may register as a swap
10 data repository.

11 “(2) INSPECTION AND EXAMINATION.—Each
12 registered swap data repository shall be subject to
13 inspection and examination by any representative of
14 the Commission.

15 “(3) COMPLIANCE WITH CORE PRINCIPLES.—

16 “(A) IN GENERAL.—To be registered, and
17 maintain registration, as a swap data reposi-
18 tory, the swap data repository shall comply
19 with—

20 “(i) the requirements and core prin-
21 ciples described in this section; and

22 “(ii) any requirement that the Com-
23 mission may impose by rule or regulation
24 pursuant to section 8a(5).

1 “(B) REASONABLE DISCRETION OF SWAP
2 DATA REPOSITORY.—Unless otherwise deter-
3 mined by the Commission by rule or regulation,
4 a swap data repository described in subpara-
5 graph (A) shall have reasonable discretion in
6 establishing the manner in which the swap data
7 repository complies with the core principles de-
8 scribed in this section.

9 “(b) STANDARD SETTING.—

10 “(1) DATA IDENTIFICATION.—

11 “(A) IN GENERAL.—In accordance with
12 subparagraph (B), the Commission shall pre-
13 scribe standards that specify the data elements
14 for each swap that shall be collected and main-
15 tained by each registered swap data repository.

16 “(B) REQUIREMENT.—In carrying out
17 subparagraph (A), the Commission shall pre-
18 scribe consistent data element standards appli-
19 cable to registered entities and reporting
20 counterparties.

21 “(2) DATA COLLECTION AND MAINTENANCE.—

22 The Commission shall prescribe data collection and
23 data maintenance standards for swap data reposi-
24 tories.

1 “(3) COMPARABILITY.—The standards pre-
2 scribed by the Commission under this subsection
3 shall be comparable to the data standards imposed
4 by the Commission on derivatives clearing organiza-
5 tions in connection with their clearing of swaps.

6 “(c) DUTIES.—A swap data repository shall—

7 “(1) accept data prescribed by the Commission
8 for each swap under subsection (b);

9 “(2) confirm with both counterparties to the
10 swap the accuracy of the data that was submitted;

11 “(3) maintain the data described in paragraph
12 (1) in such form, in such manner, and for such pe-
13 riod as may be required by the Commission;

14 “(4)(A) provide direct electronic access to the
15 Commission (or any designee of the Commission, in-
16 cluding another registered entity); and

17 “(B) provide the information described in para-
18 graph (1) in such form and at such frequency as the
19 Commission may require to comply with the public
20 reporting requirements contained in section
21 2(a)(13);

22 “(5) at the direction of the Commission, estab-
23 lish automated systems for monitoring, screening,
24 and analyzing swap data, including compliance and

1 frequency of end user clearing exemption claims by
2 individual and affiliated entities;

3 “(6) maintain the privacy of any and all swap
4 transaction information that the swap data reposi-
5 tory receives from a swap dealer, counterparty, or
6 any other registered entity; and

7 “(7) on a confidential basis pursuant to section
8 8, upon request, and after notifying the Commission
9 of the request, make available all data obtained by
10 the swap data repository, including individual
11 counterparty trade and position data, to—

12 “(A) each appropriate prudential regulator;

13 “(B) the Financial Stability Oversight
14 Council;

15 “(C) the Securities and Exchange Commis-
16 sion;

17 “(D) the Department of Justice; and

18 “(E) any other person that the Commis-
19 sion determines to be appropriate, including—

20 “(i) foreign financial supervisors (in-
21 cluding foreign futures authorities);

22 “(ii) foreign central banks;

23 “(iii) foreign ministries; and

24 “(8) establish and maintain emergency proce-
25 dures, backup facilities, and a plan for disaster re-

1 covery that allows for the timely recovery and re-
2 sumption of operations and the fulfillment of the re-
3 sponsibilities and obligations of the organization.

4 “(d) CONFIDENTIALITY AND INDEMNIFICATION
5 AGREEMENT.—Before the swap data repository may share
6 information with any entity described in subsection
7 (c)(7)—

8 “(1) the swap data repository shall receive a
9 written agreement from each entity stating that the
10 entity shall abide by the confidentiality requirements
11 described in section 8 relating to the information on
12 swap transactions that is provided; and

13 “(2) each entity shall agree to indemnify the
14 swap data repository and the Commission for any
15 expenses arising from litigation relating to the infor-
16 mation provided under section 8.

17 “(e) DESIGNATION OF CHIEF COMPLIANCE OFFI-
18 CER.—

19 “(1) IN GENERAL.—Each swap data repository
20 shall designate an individual to serve as a chief com-
21 pliance officer.

22 “(2) DUTIES.—The chief compliance officer
23 shall—

24 “(A) report directly to the board or to the
25 senior officer of the swap data repository;

1 “(B) review the compliance of the swap
2 data repository with respect to the requirements
3 and core principles described in this section;

4 “(C) in consultation with the board of the
5 swap data repository, a body performing a func-
6 tion similar to the board of the swap data re-
7 pository, or the senior officer of the swap data
8 repository, resolve any conflicts of interest that
9 may arise;

10 “(D) be responsible for administering each
11 policy and procedure that is required to be es-
12 tablished pursuant to this section;

13 “(E) ensure compliance with this Act (in-
14 cluding regulations) relating to agreements,
15 contracts, or transactions, including each rule
16 prescribed by the Commission under this sec-
17 tion;

18 “(F) establish procedures for the remedi-
19 ation of noncompliance issues identified by the
20 chief compliance officer through any—

21 “(i) compliance office review;

22 “(ii) look-back;

23 “(iii) internal or external audit find-
24 ing;

25 “(iv) self-reported error; or

1 “(v) validated complaint; and

2 “(G) establish and follow appropriate pro-
3 cedures for the handling, management response,
4 remediation, retesting, and closing of non-
5 compliance issues.

6 “(3) ANNUAL REPORTS.—

7 “(A) IN GENERAL.—In accordance with
8 rules prescribed by the Commission, the chief
9 compliance officer shall annually prepare and
10 sign a report that contains a description of—

11 “(i) the compliance of the swap data
12 repository of the chief compliance officer
13 with respect to this Act (including regula-
14 tions); and

15 “(ii) each policy and procedure of the
16 swap data repository of the chief compli-
17 ance officer (including the code of ethics
18 and conflict of interest policies of the swap
19 data repository).

20 “(B) REQUIREMENTS.—A compliance re-
21 port under subparagraph (A) shall—

22 “(i) accompany each appropriate fi-
23 nancial report of the swap data repository
24 that is required to be furnished to the
25 Commission pursuant to this section; and

1 “(ii) include a certification that, under
2 penalty of law, the compliance report is ac-
3 curate and complete.

4 “(f) CORE PRINCIPLES APPLICABLE TO SWAP DATA
5 REPOSITORIES.—

6 “(1) ANTITRUST CONSIDERATIONS.—Unless
7 necessary or appropriate to achieve the purposes of
8 this Act, a swap data repository shall not—

9 “(A) adopt any rule or take any action
10 that results in any unreasonable restraint of
11 trade; or

12 “(B) impose any material anticompetitive
13 burden on the trading, clearing, or reporting of
14 transactions.

15 “(2) GOVERNANCE ARRANGEMENTS.—Each
16 swap data repository shall establish governance ar-
17 rangements that are transparent—

18 “(A) to fulfill public interest requirements;
19 and

20 “(B) to support the objectives of the Fed-
21 eral Government, owners, and participants.

22 “(3) CONFLICTS OF INTEREST.—Each swap
23 data repository shall—

1 “(A) establish and enforce rules to mini-
2 mize conflicts of interest in the decision-making
3 process of the swap data repository; and

4 “(B) establish a process for resolving con-
5 flicts of interest described in subparagraph (A).

6 “(4) ADDITIONAL DUTIES DEVELOPED BY COM-
7 MISSION.—

8 “(A) IN GENERAL.—The Commission may
9 develop 1 or more additional duties applicable
10 to swap data repositories.

11 “(B) CONSIDERATION OF EVOLVING
12 STANDARDS.—In developing additional duties
13 under subparagraph (A), the Commission may
14 take into consideration any evolving standard of
15 the United States or the international commu-
16 nity.

17 “(C) ADDITIONAL DUTIES FOR COMMIS-
18 SION DESIGNEES.—The Commission shall es-
19 tablish additional duties for any registrant de-
20 scribed in section 1a(48) in order to minimize
21 conflicts of interest, protect data, ensure com-
22 pliance, and guarantee the safety and security
23 of the swap data repository.

24 “(g) REQUIRED REGISTRATION FOR SWAP DATA RE-
25 POSITORIES.—Any person that is required to be registered

1 as a swap data repository under this section shall register
2 with the Commission regardless of whether that person is
3 also licensed as a bank or registered with the Securities
4 and Exchange Commission as a swap data repository.

5 “(h) RULES.—The Commission shall adopt rules gov-
6 erning persons that are registered under this section.”.

7 **SEC. 729. REPORTING AND RECORDKEEPING.**

8 The Commodity Exchange Act is amended by insert-
9 ing after section 4q (7 U.S.C. 6o–1) the following:

10 **“SEC. 4r. REPORTING AND RECORDKEEPING FOR**
11 **UNCLEARED SWAPS.**

12 “(a) REQUIRED REPORTING OF SWAPS NOT ACCEPT-
13 ED BY ANY DERIVATIVES CLEARING ORGANIZATION.—

14 “(1) IN GENERAL.—Each swap that is not ac-
15 cepted for clearing by any derivatives clearing orga-
16 nization shall be reported to—

17 “(A) a swap data repository described in
18 section 21; or

19 “(B) in the case in which there is no swap
20 data repository that would accept the swap, to
21 the Commission pursuant to this section within
22 such time period as the Commission may by
23 rule or regulation prescribe.

24 “(2) TRANSITION RULE FOR PREENACTMENT
25 SWAPS.—

1 “(A) SWAPS ENTERED INTO BEFORE THE
2 DATE OF ENACTMENT OF THE WALL STREET
3 TRANSPARENCY AND ACCOUNTABILITY ACT OF
4 2010.—Each swap entered into before the date
5 of enactment of the Wall Street Transparency
6 and Accountability Act of 2010, the terms of
7 which have not expired as of the date of enact-
8 ment of that Act, shall be reported to a reg-
9 istered swap data repository or the Commission
10 by a date that is not later than—

11 “(i) 30 days after issuance of the in-
12 terim final rule; or

13 “(ii) such other period as the Com-
14 mission determines to be appropriate.

15 “(B) COMMISSION RULEMAKING.—The
16 Commission shall promulgate an interim final
17 rule within 90 days of the date of enactment of
18 this section providing for the reporting of each
19 swap entered into before the date of enactment
20 as referenced in subparagraph (A).

21 “(C) EFFECTIVE DATE.—The reporting
22 provisions described in this section shall be ef-
23 fective upon the enactment of this section.

24 “(3) REPORTING OBLIGATIONS.—

1 “(A) SWAPS IN WHICH ONLY 1
2 COUNTERPARTY IS A SWAP DEALER OR MAJOR
3 SWAP PARTICIPANT.—With respect to a swap in
4 which only 1 counterparty is a swap dealer or
5 major swap participant, the swap dealer or
6 major swap participant shall report the swap as
7 required under paragraphs (1) and (2).

8 “(B) SWAPS IN WHICH 1 COUNTERPARTY
9 IS A SWAP DEALER AND THE OTHER A MAJOR
10 SWAP PARTICIPANT.—With respect to a swap in
11 which 1 counterparty is a swap dealer and the
12 other a major swap participant, the swap dealer
13 shall report the swap as required under para-
14 graphs (1) and (2).

15 “(C) OTHER SWAPS.—With respect to any
16 other swap not described in subparagraph (A)
17 or (B), the counterparties to the swap shall se-
18 lect a counterparty to report the swap as re-
19 quired under paragraphs (1) and (2).

20 “(b) DUTIES OF CERTAIN INDIVIDUALS.—Any indi-
21 vidual or entity that enters into a swap shall meet each
22 requirement described in subsection (c) if the individual
23 or entity did not—

24 “(1) clear the swap in accordance with section
25 2(h)(1); or

1 “(2) have the data regarding the swap accepted
2 by a swap data repository in accordance with rules
3 (including timeframes) adopted by the Commission
4 under section 21.

5 “(c) REQUIREMENTS.—An individual or entity de-
6 scribed in subsection (b) shall—

7 “(1) upon written request from the Commis-
8 sion, provide reports regarding the swaps held by the
9 individual or entity to the Commission in such form
10 and in such manner as the Commission may request;
11 and

12 “(2) maintain books and records pertaining to
13 the swaps held by the individual or entity in such
14 form, in such manner, and for such period as the
15 Commission may require, which shall be open to in-
16 spection by—

17 “(A) any representative of the Commis-
18 sion;

19 “(B) an appropriate prudential regulator;

20 “(C) the Securities and Exchange Commis-
21 sion;

22 “(D) the Financial Stability Oversight
23 Council; and

24 “(E) the Department of Justice.

1 “(d) IDENTICAL DATA.—In prescribing rules under
2 this section, the Commission shall require individuals and
3 entities described in subsection (b) to submit to the Com-
4 mission a report that contains data that is not less com-
5 prehensive than the data required to be collected by swap
6 data repositories under section 21.”.

7 **SEC. 730. LARGE SWAP TRADER REPORTING.**

8 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
9 is amended by adding after section 4s (as added by section
10 731) the following:

11 **“SEC. 4t. LARGE SWAP TRADER REPORTING.**

12 “(a) PROHIBITION.—

13 “(1) IN GENERAL.—Except as provided in para-
14 graph (2), it shall be unlawful for any person to
15 enter into any swap that the Commission determines
16 to perform a significant price discovery function with
17 respect to registered entities if—

18 “(A) the person directly or indirectly en-
19 ters into the swap during any 1 day in an
20 amount equal to or in excess of such amount as
21 shall be established periodically by the Commis-
22 sion; and

23 “(B) the person directly or indirectly has
24 or obtains a position in the swap equal to or in

1 excess of such amount as shall be established
2 periodically by the Commission.

3 “(2) EXCEPTION.—Paragraph (1) shall not
4 apply if—

5 “(A) the person files or causes to be filed
6 with the properly designated officer of the Com-
7 mission such reports regarding any transactions
8 or positions described in subparagraphs (A) and
9 (B) of paragraph (1) as the Commission may
10 require by rule or regulation; and

11 “(B) in accordance with the rules and reg-
12 ulations of the Commission, the person keeps
13 books and records of all such swaps and any
14 transactions and positions in any related com-
15 modity traded on or subject to the rules of any
16 designated contract market or swap execution
17 facility, and of cash or spot transactions in, in-
18 ventories of, and purchase and sale commit-
19 ments of, such a commodity.

20 “(b) REQUIREMENTS.—

21 “(1) IN GENERAL.—Books and records de-
22 scribed in subsection (a)(2)(B) shall—

23 “(A) show such complete details con-
24 cerning all transactions and positions as the

1 Commission may prescribe by rule or regula-
2 tion;

3 “(B) be open at all times to inspection and
4 examination by any representative of the Com-
5 mission; and

6 “(C) be open at all times to inspection and
7 examination by the Securities and Exchange
8 Commission, to the extent such books and
9 records relate to transactions in swaps (as that
10 term is defined in section 1a(47)(A)(v)), and
11 consistent with the confidentiality and disclo-
12 sure requirements of section 8.

13 “(2) JURISDICTION.—Nothing in paragraph (1)
14 shall affect the exclusive jurisdiction of the Commis-
15 sion to prescribe recordkeeping and reporting re-
16 quirements for large swap traders under this section.

17 “(c) APPLICABILITY.—For purposes of this section,
18 the swaps, futures, and cash or spot transactions and posi-
19 tions of any person shall include the swaps, futures, and
20 cash or spot transactions and positions of any persons di-
21 rectly or indirectly controlled by the person.

22 “(d) SIGNIFICANT PRICE DISCOVERY FUNCTION.—
23 In making a determination as to whether a swap performs
24 or affects a significant price discovery function with re-

1 spect to registered entities, the Commission shall consider
2 the factors described in section 4a(a)(3).”.

3 **SEC. 731. REGISTRATION AND REGULATION OF SWAP DEAL-**
4 **ERS AND MAJOR SWAP PARTICIPANTS.**

5 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
6 is amended by inserting after section 4r (as added by sec-
7 tion 729) the following:

8 **“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEAL-**
9 **ERS AND MAJOR SWAP PARTICIPANTS.**

10 “(a) REGISTRATION.—

11 “(1) SWAP DEALERS.—It shall be unlawful for
12 any person to act as a swap dealer unless the person
13 is registered as a swap dealer with the Commission.

14 “(2) MAJOR SWAP PARTICIPANTS.—It shall be
15 unlawful for any person to act as a major swap par-
16 ticipant unless the person is registered as a major
17 swap participant with the Commission.

18 “(b) REQUIREMENTS.—

19 “(1) IN GENERAL.—A person shall register as
20 a swap dealer or major swap participant by filing a
21 registration application with the Commission.

22 “(2) CONTENTS.—

23 “(A) IN GENERAL.—The application shall
24 be made in such form and manner as prescribed
25 by the Commission, and shall contain such in-

1 formation, as the Commission considers nec-
2 essary concerning the business in which the ap-
3 plicant is or will be engaged.

4 “(B) CONTINUAL REPORTING.—A person
5 that is registered as a swap dealer or major
6 swap participant shall continue to submit to the
7 Commission reports that contain such informa-
8 tion pertaining to the business of the person as
9 the Commission may require.

10 “(3) EXPIRATION.—Each registration under
11 this section shall expire at such time as the Commis-
12 sion may prescribe by rule or regulation.

13 “(4) RULES.—Except as provided in sub-
14 sections (d) and (e), the Commission may prescribe
15 rules applicable to swap dealers and major swap par-
16 ticipants, including rules that limit the activities of
17 swap dealers and major swap participants.

18 “(5) TRANSITION.—Rules under this section
19 shall provide for the registration of swap dealers and
20 major swap participants not later than 1 year after
21 the date of enactment of the Wall Street Trans-
22 parency and Accountability Act of 2010.

23 “(6) STATUTORY DISQUALIFICATION.—Except
24 to the extent otherwise specifically provided by rule,
25 regulation, or order, it shall be unlawful for a swap

1 dealer or a major swap participant to permit any
2 person associated with a swap dealer or a major
3 swap participant who is subject to a statutory dis-
4 qualification to effect or be involved in effecting
5 swaps on behalf of the swap dealer or major swap
6 participant, if the swap dealer or major swap partici-
7 pant knew, or in the exercise of reasonable care
8 should have known, of the statutory disqualification.

9 “(c) DUAL REGISTRATION.—

10 “(1) SWAP DEALER.—Any person that is re-
11 quired to be registered as a swap dealer under this
12 section shall register with the Commission regardless
13 of whether the person also is a depository institution
14 or is registered with the Securities and Exchange
15 Commission as a security-based swap dealer.

16 “(2) MAJOR SWAP PARTICIPANT.—Any person
17 that is required to be registered as a major swap
18 participant under this section shall register with the
19 Commission regardless of whether the person also is
20 a depository institution or is registered with the Se-
21 curities and Exchange Commission as a major secu-
22 rity-based swap participant.

23 “(d) RULEMAKINGS.—

24 “(1) IN GENERAL.—The Commission shall
25 adopt rules for persons that are registered as swap

1 dealers or major swap participants under this sec-
2 tion.

3 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
4 MENTS.—

5 “(A) IN GENERAL.—The Commission may
6 not prescribe rules imposing prudential require-
7 ments on swap dealers or major swap partici-
8 pants for which there is a prudential regulator.

9 “(B) APPLICABILITY.—Subparagraph (A)
10 does not limit the authority of the Commission
11 to prescribe rules as directed under this section.

12 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

13 “(1) IN GENERAL.—

14 “(A) SWAP DEALERS AND MAJOR SWAP
15 PARTICIPANTS THAT ARE BANKS.—Each reg-
16 istered swap dealer and major swap participant
17 for which there is a prudential regulator shall
18 meet such minimum capital requirements and
19 minimum initial and variation margin require-
20 ments as the prudential regulator shall by rule
21 or regulation prescribe under paragraph (2)(A).

22 “(B) SWAP DEALERS AND MAJOR SWAP
23 PARTICIPANTS THAT ARE NOT BANKS.—Each
24 registered swap dealer and major swap partici-
25 pant for which there is not a prudential regu-

1 lator shall meet such minimum capital require-
2 ments and minimum initial and variation mar-
3 gin requirements as the Commission shall by
4 rule or regulation prescribe under paragraph
5 (2)(B).

6 “(2) RULES.—

7 “(A) SWAP DEALERS AND MAJOR SWAP
8 PARTICIPANTS THAT ARE BANKS.—The pruden-
9 tial regulators, in consultation with the Com-
10 mission and the Securities and Exchange Com-
11 mission, shall jointly adopt rules for swap deal-
12 ers and major swap participants, with respect
13 to their activities as a swap dealer or major
14 swap participant, for which there is a pruden-
15 tial regulator imposing—

16 “(i) capital requirements; and

17 “(ii) both initial and variation margin
18 requirements on all swaps that are not
19 cleared by a registered derivatives clearing
20 organization.

21 “(B) SWAP DEALERS AND MAJOR SWAP
22 PARTICIPANTS THAT ARE NOT BANKS.—The
23 Commission shall adopt rules for swap dealers
24 and major swap participants, with respect to
25 their activities as a swap dealer or major swap

1 participant, for which there is not a prudential
2 regulator imposing—

3 “(i) capital requirements; and

4 “(ii) both initial and variation margin
5 requirements on all swaps that are not
6 cleared by a registered derivatives clearing
7 organization.

8 “(C) CAPITAL.—In setting capital require-
9 ments for a person that is designated as a swap
10 dealer or a major swap participant for a single
11 type or single class or category of swap or ac-
12 tivities, the prudential regulator and the Com-
13 mission shall take into account the risks associ-
14 ated with other types of swaps or classes of
15 swaps or categories of swaps engaged in and
16 the other activities conducted by that person
17 that are not otherwise subject to regulation ap-
18 plicable to that person by virtue of the status
19 of the person as a swap dealer or a major swap
20 participant.

21 “(3) STANDARDS FOR CAPITAL AND MARGIN.—

22 “(A) IN GENERAL.—To offset the greater
23 risk to the swap dealer or major swap partici-
24 pant and the financial system arising from the

1 use of swaps that are not cleared, the require-
2 ments imposed under paragraph (2) shall—

3 “(i) help ensure the safety and sound-
4 ness of the swap dealer or major swap par-
5 ticipant; and

6 “(ii) be appropriate for the risk asso-
7 ciated with the non-cleared swaps held as
8 a swap dealer or major swap participant.

9 “(B) RULE OF CONSTRUCTION.—

10 “(i) IN GENERAL.—Nothing in this
11 section shall limit, or be construed to limit,
12 the authority—

13 “(I) of the Commission to set fi-
14 nancial responsibility rules for a fu-
15 tures commission merchant or intro-
16 ducing broker registered pursuant to
17 section 4f(a) (except for section
18 4f(a)(3)) in accordance with section
19 4f(b); or

20 “(II) of the Securities and Ex-
21 change Commission to set financial
22 responsibility rules for a broker or
23 dealer registered pursuant to section
24 15(b) of the Securities Exchange Act
25 of 1934 (15 U.S.C. 78o(b)) (except

1 for section 15(b)(11) of that Act (15
2 U.S.C. 78o(b)(11)) in accordance with
3 section 15(c)(3) of the Securities Ex-
4 change Act of 1934 (15 U.S.C.
5 78o(c)(3)).

6 “(ii) FUTURES COMMISSION MER-
7 CHANTS AND OTHER DEALERS.—A futures
8 commission merchant, introducing broker,
9 broker, or dealer shall maintain sufficient
10 capital to comply with the stricter of any
11 applicable capital requirements to which
12 such futures commission merchant, intro-
13 ducing broker, broker, or dealer is subject
14 to under this Act or the Securities Ex-
15 change Act of 1934 (15 U.S.C. 78a et
16 seq.).

17 “(C) MARGIN REQUIREMENTS.—In pre-
18 scribing margin requirements under this sub-
19 section, the prudential regulator with respect to
20 swap dealers and major swap participants for
21 which it is the prudential regulator and the
22 Commission with respect to swap dealers and
23 major swap participants for which there is no
24 prudential regulator shall permit the use of

1 noncash collateral, as the regulator or the Com-
2 mission determines to be consistent with—

3 “(i) preserving the financial integrity
4 of markets trading swaps; and

5 “(ii) preserving the stability of the
6 United States financial system.

7 “(D) COMPARABILITY OF CAPITAL AND
8 MARGIN REQUIREMENTS.—

9 “(i) IN GENERAL.—The prudential
10 regulators, the Commission, and the Secu-
11 rities and Exchange Commission shall peri-
12 odically (but not less frequently than annu-
13 ally) consult on minimum capital require-
14 ments and minimum initial and variation
15 margin requirements.

16 “(ii) COMPARABILITY.—The entities
17 described in clause (i) shall, to the max-
18 imum extent practicable, establish and
19 maintain comparable minimum capital re-
20 quirements and minimum initial and vari-
21 ation margin requirements, including the
22 use of non cash collateral, for—

23 “(I) swap dealers; and

24 “(II) major swap participants.

25 “(f) REPORTING AND RECORDKEEPING.—

1 “(1) IN GENERAL.—Each registered swap deal-
2 er and major swap participant—

3 “(A) shall make such reports as are re-
4 quired by the Commission by rule or regulation
5 regarding the transactions and positions and fi-
6 nancial condition of the registered swap dealer
7 or major swap participant;

8 “(B)(i) for which there is a prudential reg-
9 ulator, shall keep books and records of all ac-
10 tivities related to the business as a swap dealer
11 or major swap participant in such form and
12 manner and for such period as may be pre-
13 scribed by the Commission by rule or regula-
14 tion; and

15 “(ii) for which there is no prudential regu-
16 lator, shall keep books and records in such form
17 and manner and for such period as may be pre-
18 scribed by the Commission by rule or regula-
19 tion;

20 “(C) shall keep books and records de-
21 scribed in subparagraph (B) open to inspection
22 and examination by any representative of the
23 Commission; and

24 “(D) shall keep any such books and
25 records relating to swaps defined in section

1 1a(47)(A)(v) open to inspection and examina-
2 tion by the Securities and Exchange Commis-
3 sion.

4 “(2) RULES.—The Commission shall adopt
5 rules governing reporting and recordkeeping for
6 swap dealers and major swap participants.

7 “(g) DAILY TRADING RECORDS.—

8 “(1) IN GENERAL.—Each registered swap deal-
9 er and major swap participant shall maintain daily
10 trading records of the swaps of the registered swap
11 dealer and major swap participant and all related
12 records (including related cash or forward trans-
13 actions) and recorded communications, including
14 electronic mail, instant messages, and recordings of
15 telephone calls, for such period as may be required
16 by the Commission by rule or regulation.

17 “(2) INFORMATION REQUIREMENTS.—The daily
18 trading records shall include such information as the
19 Commission shall require by rule or regulation.

20 “(3) COUNTERPARTY RECORDS.—Each reg-
21 istered swap dealer and major swap participant shall
22 maintain daily trading records for each counterparty
23 in a manner and form that is identifiable with each
24 swap transaction.

1 “(4) AUDIT TRAIL.—Each registered swap deal-
2 er and major swap participant shall maintain a com-
3 plete audit trail for conducting comprehensive and
4 accurate trade reconstructions.

5 “(5) RULES.—The Commission shall adopt
6 rules governing daily trading records for swap deal-
7 ers and major swap participants.

8 “(h) BUSINESS CONDUCT STANDARDS.—

9 “(1) IN GENERAL.—Each registered swap deal-
10 er and major swap participant shall conform with
11 such business conduct standards as prescribed in
12 paragraph (3) and as may be prescribed by the
13 Commission by rule or regulation that relate to—

14 “(A) fraud, manipulation, and other abu-
15 sive practices involving swaps (including swaps
16 that are offered but not entered into);

17 “(B) diligent supervision of the business of
18 the registered swap dealer and major swap par-
19 ticipant;

20 “(C) adherence to all applicable position
21 limits; and

22 “(D) such other matters as the Commis-
23 sion determines to be appropriate.

24 “(2) RESPONSIBILITIES WITH RESPECT TO SPE-
25 CIAL ENTITIES.—

1 “(A) ADVISING SPECIAL ENTITIES.—A
2 swap dealer or major swap participant that acts
3 as an advisor to a special entity regarding a
4 swap shall comply with the requirements of sub-
5 paragraph (4) with respect to such Special En-
6 tity.

7 “(B) ENTERING OF SWAPS WITH RESPECT
8 TO SPECIAL ENTITIES.—A swap dealer that en-
9 ters into or offers to enter into swap with a
10 Special Entity shall comply with the require-
11 ments of subparagraph (5) with respect to such
12 Special Entity.

13 “(C) SPECIAL ENTITY DEFINED.—For
14 purposes of this subsection, the term ‘special
15 entity’ means—

16 “(i) a Federal agency;

17 “(ii) a State, State agency, city, coun-
18 ty, municipality, or other political subdivi-
19 sion of a State;

20 “(iii) any employee benefit plan, as
21 defined in section 3 of the Employee Re-
22 tirement Income Security Act of 1974 (29
23 U.S.C. 1002);

24 “(iv) any governmental plan, as de-
25 fined in section 3 of the Employee Retire-

1 ment Income Security Act of 1974 (29
2 U.S.C. 1002); or

3 “(v) any endowment, including an en-
4 dowment that is an organization described
5 in section 501(c)(3) of the Internal Rev-
6 enue Code of 1986.

7 “(3) BUSINESS CONDUCT REQUIREMENTS.—
8 Business conduct requirements adopted by the Com-
9 mission shall—

10 “(A) establish a duty for a swap dealer or
11 major swap participant to verify that any
12 counterparty meets the eligibility standards for
13 an eligible contract participant;

14 “(B) require disclosure by the swap dealer
15 or major swap participant to any counterparty
16 to the transaction (other than a swap dealer,
17 major swap participant, security-based swap
18 dealer, or major security-based swap partici-
19 pant) of—

20 “(i) information about the material
21 risks and characteristics of the swap;

22 “(ii) any material incentives or con-
23 flicts of interest that the swap dealer or
24 major swap participant may have in con-
25 nection with the swap; and

1 “(iii)(I) for cleared swaps, upon the
2 request of the counterparty, receipt of the
3 daily mark of the transaction from the ap-
4 propriate derivatives clearing organization;
5 and

6 “(II) for uncleared swaps, receipt of
7 the daily mark of the transaction from the
8 swap dealer or the major swap participant;

9 “(C) establish a duty for a swap dealer or
10 major swap participant to communicate in a
11 fair and balanced manner based on principles of
12 fair dealing and good faith; and

13 “(D) establish such other standards and
14 requirements as the Commission may determine
15 are appropriate in the public interest, for the
16 protection of investors, or otherwise in further-
17 ance of the purposes of this Act.

18 “(4) SPECIAL REQUIREMENTS FOR SWAP DEAL-
19 ERS ACTING AS ADVISORS.—

20 “(A) IN GENERAL.—It shall be unlawful
21 for a swap dealer or major swap participant—

22 “(i) to employ any device, scheme, or
23 artifice to defraud any Special Entity or
24 prospective customer who is a Special En-
25 tity;

1 “(ii) to engage in any transaction,
2 practice, or course of business that oper-
3 ates as a fraud or deceit on any Special
4 Entity or prospective customer who is a
5 Special Entity; or

6 “(iii) to engage in any act, practice,
7 or course of business that is fraudulent,
8 deceptive or manipulative.

9 “(B) DUTY.—Any swap dealer that acts as
10 an advisor to a Special Entity shall have a duty
11 to act in the best interests of the Special Enti-
12 ty.

13 “(C) REASONABLE EFFORTS.—Any swap
14 dealer that acts as an advisor to a Special Enti-
15 ty shall make reasonable efforts to obtain such
16 information as is necessary to make a reason-
17 able determination that any swap recommended
18 by the swap dealer is in the best interests of the
19 Special Entity, including information relating
20 to—

21 “(i) the financial status of the Special
22 Entity;

23 “(ii) the tax status of the Special En-
24 tity;

1 “(iii) the investment or financing ob-
2 jectives of the Special Entity; and

3 “(iv) any other information that the
4 Commission may prescribe by rule or regu-
5 lation.

6 “(5) SPECIAL REQUIREMENTS FOR SWAP DEAL-
7 ERS AS COUNTERPARTIES TO SPECIAL ENTITIES.—

8 “(A) Any swap dealer or major swap par-
9 ticipant that offers to enter or enters into a
10 swap with a Special Entity shall—

11 “(i) comply with any duty established
12 by the Commission for a swap dealer or
13 major swap participant, with respect to a
14 counterparty that is an eligible contract
15 participant within the meaning of sub-
16 clause (I) or (II) of clause (vii) of section
17 1a(18) of this Act, that requires the swap
18 dealer or major swap participant to have a
19 reasonable basis to believe that the
20 counterparty that is a Special Entity has
21 an independent representative that—

22 “(I) has sufficient knowledge to
23 evaluate the transaction and risks;

24 “(II) is not subject to a statutory
25 disqualification;

1 “(III) is independent of the swap
2 dealer or major swap participant;

3 “(IV) undertakes a duty to act in
4 the best interests of the counterparty
5 it represents;

6 “(V) makes appropriate dislo-
7 sures;

8 “(VI) will provide written rep-
9 resentations to the Special Entity re-
10 garding fair pricing and the appro-
11 priateness of the transaction; and

12 “(VII) in the case of employee
13 benefit plans subject to the Employee
14 Retirement Income Security act of
15 1974, is a fiduciary as defined in sec-
16 tion 3 of that Act (29 U.S.C. 1002);
17 and

18 “(ii) before the initiation of the trans-
19 action, disclose to the Special Entity in
20 writing the capacity in which the swap
21 dealer is acting; and

22 “(B) the Commission may establish such
23 other standards and requirements as the Com-
24 mission may determine are appropriate in the
25 public interest, for the protection of investors,

1 or otherwise in furtherance of the purposes of
2 this Act.

3 “(6) RULES.—The Commission shall prescribe
4 rules under this subsection governing business con-
5 duct standards for swap dealers and major swap
6 participants.

7 “(7) APPLICABILITY.—This section shall not
8 apply with respect to a transaction that is—

9 “(A) initiated by a Special Entity on an
10 exchange or swap execution facility; and

11 “(B) one in which the swap dealer or
12 major swap participant does not know the iden-
13 tity of the counterparty to the transaction.

14 “(i) DOCUMENTATION STANDARDS.—

15 “(1) IN GENERAL.—Each registered swap deal-
16 er and major swap participant shall conform with
17 such standards as may be prescribed by the Com-
18 mission by rule or regulation that relate to timely
19 and accurate confirmation, processing, netting, docu-
20 mentation, and valuation of all swaps.

21 “(2) RULES.—The Commission shall adopt
22 rules governing documentation standards for swap
23 dealers and major swap participants.

1 “(j) DUTIES.—Each registered swap dealer and
2 major swap participant at all times shall comply with the
3 following requirements:

4 “(1) MONITORING OF TRADING.—The swap
5 dealer or major swap participant shall monitor its
6 trading in swaps to prevent violations of applicable
7 position limits.

8 “(2) RISK MANAGEMENT PROCEDURES.—The
9 swap dealer or major swap participant shall estab-
10 lish robust and professional risk management sys-
11 tems adequate for managing the day-to-day business
12 of the swap dealer or major swap participant.

13 “(3) DISCLOSURE OF GENERAL INFORMA-
14 TION.—The swap dealer or major swap participant
15 shall disclose to the Commission and to the pruden-
16 tial regulator for the swap dealer or major swap par-
17 ticipant, as applicable, information concerning—

18 “(A) terms and conditions of its swaps;

19 “(B) swap trading operations, mechanisms,
20 and practices;

21 “(C) financial integrity protections relating
22 to swaps; and

23 “(D) other information relevant to its trad-
24 ing in swaps.

1 “(4) ABILITY TO OBTAIN INFORMATION.—The
2 swap dealer or major swap participant shall—

3 “(A) establish and enforce internal systems
4 and procedures to obtain any necessary infor-
5 mation to perform any of the functions de-
6 scribed in this section; and

7 “(B) provide the information to the Com-
8 mission and to the prudential regulator for the
9 swap dealer or major swap participant, as ap-
10 plicable, on request.

11 “(5) CONFLICTS OF INTEREST.—The swap
12 dealer and major swap participant shall implement
13 conflict-of-interest systems and procedures that—

14 “(A) establish structural and institutional
15 safeguards to ensure that the activities of any
16 person within the firm relating to research or
17 analysis of the price or market for any com-
18 modity or swap or acting in a role of providing
19 clearing activities or making determinations as
20 to accepting clearing customers are separated
21 by appropriate informational partitions within
22 the firm from the review, pressure, or oversight
23 of persons whose involvement in pricing, trad-
24 ing, or clearing activities might potentially bias
25 their judgment or supervision and contravene

1 the core principles of open access and the busi-
2 ness conduct standards described in this Act;
3 and

4 “(B) address such other issues as the
5 Commission determines to be appropriate.

6 “(6) ANTITRUST CONSIDERATIONS.—Unless
7 necessary or appropriate to achieve the purposes of
8 this Act, a swap dealer or major swap participant
9 shall not—

10 “(A) adopt any process or take any action
11 that results in any unreasonable restraint of
12 trade; or

13 “(B) impose any material anticompetitive
14 burden on trading or clearing.

15 “(7) RULES.—The Commission shall prescribe
16 rules under this subsection governing duties of swap
17 dealers and major swap participants.

18 “(k) DESIGNATION OF CHIEF COMPLIANCE OFFI-
19 CER.—

20 “(1) IN GENERAL.—Each swap dealer and
21 major swap participant shall designate an individual
22 to serve as a chief compliance officer.

23 “(2) DUTIES.—The chief compliance officer
24 shall—

1 “(A) report directly to the board or to the
2 senior officer of the swap dealer or major swap
3 participant;

4 “(B) review the compliance of the swap
5 dealer or major swap participant with respect to
6 the swap dealer and major swap participant re-
7 quirements described in this section;

8 “(C) in consultation with the board of di-
9 rectors, a body performing a function similar to
10 the board, or the senior officer of the organiza-
11 tion, resolve any conflicts of interest that may
12 arise;

13 “(D) be responsible for administering each
14 policy and procedure that is required to be es-
15 tablished pursuant to this section;

16 “(E) ensure compliance with this Act (in-
17 cluding regulations) relating to swaps, including
18 each rule prescribed by the Commission under
19 this section;

20 “(F) establish procedures for the remedi-
21 ation of noncompliance issues identified by the
22 chief compliance officer through any—

23 “(i) compliance office review;

24 “(ii) look-back;

1 “(iii) internal or external audit find-
2 ing;

3 “(iv) self-reported error; or

4 “(v) validated complaint; and

5 “(G) establish and follow appropriate pro-
6 cedures for the handling, management response,
7 remediation, retesting, and closing of non-
8 compliance issues.

9 “(3) ANNUAL REPORTS.—

10 “(A) IN GENERAL.—In accordance with
11 rules prescribed by the Commission, the chief
12 compliance officer shall annually prepare and
13 sign a report that contains a description of—

14 “(i) the compliance of the swap dealer
15 or major swap participant with respect to
16 this Act (including regulations); and

17 “(ii) each policy and procedure of the
18 swap dealer or major swap participant of
19 the chief compliance officer (including the
20 code of ethics and conflict of interest poli-
21 cies).

22 “(B) REQUIREMENTS.—A compliance re-
23 port under subparagraph (A) shall—

24 “(i) accompany each appropriate fi-
25 nancial report of the swap dealer or major

1 swap participant that is required to be fur-
2 nished to the Commission pursuant to this
3 section; and

4 “(ii) include a certification that, under
5 penalty of law, the compliance report is ac-
6 curate and complete.”.

7 **SEC. 732. CONFLICTS OF INTEREST.**

8 Section 4d of the Commodity Exchange Act (7 U.S.C.
9 6d) is amended—

10 (1) by redesignating subsection (c) as sub-
11 section (e); and

12 (2) by inserting after subsection (b) the fol-
13 lowing:

14 “(c) CONFLICTS OF INTEREST.—The Commission
15 shall require that futures commission merchants and in-
16 troducing brokers implement conflict-of-interest systems
17 and procedures that—

18 “(1) establish structural and institutional safe-
19 guards to ensure that the activities of any person
20 within the firm relating to research or analysis of
21 the price or market for any commodity are separated
22 by appropriate informational partitions within the
23 firm from the review, pressure, or oversight of per-
24 sons whose involvement in trading or clearing activi-

1 ties might potentially bias the judgment or super-
2 vision of the persons; and

3 “(2) address such other issues as the Commis-
4 sion determines to be appropriate.

5 “(d) DESIGNATION OF CHIEF COMPLIANCE OFFI-
6 CER.—Each futures commission merchant shall designate
7 an individual to serve as its Chief Compliance Officer and
8 perform such duties and responsibilities as shall be set
9 forth in regulations to be adopted by the Commission or
10 rules to be adopted by a futures association registered
11 under section 17.”.

12 **SEC. 733. SWAP EXECUTION FACILITIES.**

13 The Commodity Exchange Act is amended by insert-
14 ing after section 5g (7 U.S.C. 7b–2) the following:

15 **“SEC. 5h. SWAP EXECUTION FACILITIES.**

16 “(a) REGISTRATION.—

17 “(1) IN GENERAL.—No person may operate a
18 facility for the trading or processing of swaps unless
19 the facility is registered as a swap execution facility
20 or as a designated contract market under this sec-
21 tion.

22 “(2) DUAL REGISTRATION.—Any person that is
23 registered as a swap execution facility under this
24 section shall register with the Commission regardless
25 of whether the person also is registered with the Se-

1 securities and Exchange Commission as a swap execu-
2 tion facility.

3 “(b) TRADING AND TRADE PROCESSING.—

4 “(1) IN GENERAL.—Except as specified in
5 paragraph (2), a swap execution facility that is reg-
6 istered under subsection (a) may—

7 “(A) make available for trading any swap;

8 and

9 “(B) facilitate trade processing of any
10 swap.

11 “(2) AGRICULTURAL SWAPS.—A swap execution
12 facility may not list for trading or confirm the exe-
13 cution of any swap in an agricultural commodity (as
14 defined by the Commission) except pursuant to a
15 rule or regulation of the Commission allowing the
16 swap under such terms and conditions as the Com-
17 mission shall prescribe.

18 “(c) IDENTIFICATION OF FACILITY USED TO TRADE
19 SWAPS BY CONTRACT MARKETS.—A board of trade that
20 operates a contract market shall, to the extent that the
21 board of trade also operates a swap execution facility and
22 uses the same electronic trade execution system for listing
23 and executing trades of swaps on or through the contract
24 market and the swap execution facility, identify whether
25 the electronic trading of such swaps is taking place on or

1 through the contract market or the swap execution facil-
2 ity.

3 “(d) RULE-WRITING.—

4 “(1) The Securities and Exchange Commission
5 and Commodity Futures Trading Commission may
6 promulgate rules defining the universe of swaps that
7 can be executed on a swap execution facility. These
8 rules shall take into account the price and nonprice
9 requirements of the counterparties to a swap and
10 the goal of this section as set forth in subsection (e).

11 “(2) For all swaps that are not required to be
12 executed through a swap execution facility as de-
13 fined in paragraph (1), such trades may be executed
14 through any other available means of interstate com-
15 merce.

16 “(3) The Securities and Exchange Commission
17 and Commodity Futures Trading Commission shall
18 update these rules as necessary to account for tech-
19 nological and other innovation.

20 “(e) RULE OF CONSTRUCTION.—The goal of this sec-
21 tion is to promote the trading of swaps on swap execution
22 facilities and to promote pre-trade price transparency in
23 the swaps market.

24 “(f) CORE PRINCIPLES FOR SWAP EXECUTION FA-
25 CILITIES.—

1 “(1) COMPLIANCE WITH CORE PRINCIPLES.—

2 “(A) IN GENERAL.—To be registered, and
3 maintain registration, as a swap execution facil-
4 ity, the swap execution facility shall comply
5 with—

6 “(i) the core principles described in
7 this subsection; and

8 “(ii) any requirement that the Com-
9 mission may impose by rule or regulation
10 pursuant to section 8a(5).

11 “(B) REASONABLE DISCRETION OF SWAP
12 EXECUTION FACILITY.—Unless otherwise deter-
13 mined by the Commission by rule or regulation,
14 a swap execution facility described in subpara-
15 graph (A) shall have reasonable discretion in
16 establishing the manner in which the swap exe-
17 cution facility complies with the core principles
18 described in this subsection.

19 “(2) COMPLIANCE WITH RULES.—A swap exe-
20 cution facility shall—

21 “(A) establish and enforce compliance with
22 any rule of the swap execution facility, includ-
23 ing—

1 “(i) the terms and conditions of the
2 swaps traded or processed on or through
3 the swap execution facility; and

4 “(ii) any limitation on access to the
5 swap execution facility;

6 “(B) establish and enforce trading, trade
7 processing, and participation rules that will
8 deter abuses and have the capacity to detect,
9 investigate, and enforce those rules, including
10 means—

11 “(i) to provide market participants
12 with impartial access to the market; and

13 “(ii) to capture information that may
14 be used in establishing whether rule viola-
15 tions have occurred;

16 “(C) establish rules governing the oper-
17 ation of the facility, including rules specifying
18 trading procedures to be used in entering and
19 executing orders traded or posted on the facil-
20 ity, including block trades; and

21 “(D) provide by its rules that when a swap
22 dealer or major swap participant enters into or
23 facilitates a swap that is subject to the manda-
24 tory clearing requirement of section 2(h), the
25 swap dealer or major swap participant shall be

1 responsible for compliance with the mandatory
2 trading requirement under section 2(h)(8).

3 “(3) SWAPS NOT READILY SUSCEPTIBLE TO MA-
4 NIPULATION.—The swap execution facility shall per-
5 mit trading only in swaps that are not readily sus-
6 ceptible to manipulation.

7 “(4) MONITORING OF TRADING AND TRADE
8 PROCESSING.—The swap execution facility shall—

9 “(A) establish and enforce rules or terms
10 and conditions defining, or specifications detail-
11 ing—

12 “(i) trading procedures to be used in
13 entering and executing orders traded on or
14 through the facilities of the swap execution
15 facility; and

16 “(ii) procedures for trade processing
17 of swaps on or through the facilities of the
18 swap execution facility; and

19 “(B) monitor trading in swaps to prevent
20 manipulation, price distortion, and disruptions
21 of the delivery or cash settlement process
22 through surveillance, compliance, and discipli-
23 nary practices and procedures, including meth-
24 ods for conducting real-time monitoring of trad-

1 ing and comprehensive and accurate trade re-
2 constructions.

3 “(5) ABILITY TO OBTAIN INFORMATION.—The
4 swap execution facility shall—

5 “(A) establish and enforce rules that will
6 allow the facility to obtain any necessary infor-
7 mation to perform any of the functions de-
8 scribed in this section;

9 “(B) provide the information to the Com-
10 mission on request; and

11 “(C) have the capacity to carry out such
12 international information-sharing agreements as
13 the Commission may require.

14 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

15 “(A) IN GENERAL.—To reduce the poten-
16 tial threat of market manipulation or conges-
17 tion, especially during trading in the delivery
18 month, a swap execution facility that is a trad-
19 ing facility shall adopt for each of the contracts
20 of the facility, as is necessary and appropriate,
21 position limitations or position accountability
22 for speculators.

23 “(B) POSITION LIMITS.—For any contract
24 that is subject to a position limitation estab-

1 lished by the Commission pursuant to section
2 4a(a), the swap execution facility shall—

3 “(i) set its position limitation at a
4 level no higher than the Commission limi-
5 tation; and

6 “(ii) monitor positions established on
7 or through the swap execution facility for
8 compliance with the limit set by the Com-
9 mission and the limit, if any, set by the
10 swap execution facility.

11 “(7) FINANCIAL INTEGRITY OF TRANS-
12 ACTIONS.—The swap execution facility shall estab-
13 lish and enforce rules and procedures for ensuring
14 the financial integrity of swaps entered on or
15 through the facilities of the swap execution facility,
16 including the clearance and settlement of the swaps
17 pursuant to section 2(h)(1).

18 “(8) EMERGENCY AUTHORITY.—The swap exe-
19 cution facility shall adopt rules to provide for the ex-
20 ercise of emergency authority, in consultation or co-
21 operation with the Commission, as is necessary and
22 appropriate, including the authority to liquidate or
23 transfer open positions in any swap or to suspend or
24 curtail trading in a swap.

1 “(9) TIMELY PUBLICATION OF TRADING INFOR-
2 MATION.—

3 “(A) IN GENERAL.—The swap execution
4 facility shall make public timely information on
5 price, trading volume, and other trading data
6 on swaps to the extent prescribed by the Com-
7 mission.

8 “(B) CAPACITY OF SWAP EXECUTION FA-
9 CILITY.—The swap execution facility shall be
10 required to have the capacity to electronically
11 capture and transmit trade information with re-
12 spect to transactions executed on the facility.

13 “(10) RECORDKEEPING AND REPORTING.—

14 “(A) IN GENERAL.—A swap execution fa-
15 cility shall—

16 “(i) maintain records of all activities
17 relating to the business of the facility, in-
18 cluding a complete audit trail, in a form
19 and manner acceptable to the Commission
20 for a period of 5 years;

21 “(ii) report to the Commission, in a
22 form and manner acceptable to the Com-
23 mission, such information as the Commis-
24 sion determines to be necessary or appro-
25 priate for the Commission to perform the

1 duties of the Commission under this Act;
2 and

3 “(iii) shall keep any such records re-
4 lating to swaps defined in section
5 1a(47)(A)(v) open to inspection and exam-
6 ination by the Securities and Exchange
7 Commission.”

8 “(B) REQUIREMENTS.—The Commission
9 shall adopt data collection and reporting re-
10 quirements for swap execution facilities that are
11 comparable to corresponding requirements for
12 derivatives clearing organizations and swap
13 data repositories.

14 “(11) ANTITRUST CONSIDERATIONS.—Unless
15 necessary or appropriate to achieve the purposes of
16 this Act, the swap execution facility shall not—

17 “(A) adopt any rules or taking any actions
18 that result in any unreasonable restraint of
19 trade; or

20 “(B) impose any material anticompetitive
21 burden on trading or clearing.

22 “(12) CONFLICTS OF INTEREST.—The swap
23 execution facility shall—

1 “(A) establish and enforce rules to mini-
2 mize conflicts of interest in its decision-making
3 process; and

4 “(B) establish a process for resolving the
5 conflicts of interest.

6 “(13) FINANCIAL RESOURCES.—

7 “(A) IN GENERAL.—The swap execution
8 facility shall have adequate financial, oper-
9 ational, and managerial resources to discharge
10 each responsibility of the swap execution facil-
11 ity.

12 “(B) DETERMINATION OF RESOURCE ADE-
13 QUACY.—The financial resources of a swap exe-
14 cution facility shall be considered to be ade-
15 quate if the value of the financial resources ex-
16 ceeds the total amount that would enable the
17 swap execution facility to cover the operating
18 costs of the swap execution facility for a 1-year
19 period, as calculated on a rolling basis.

20 “(14) SYSTEM SAFEGUARDS.—The swap execu-
21 tion facility shall—

22 “(A) establish and maintain a program of
23 risk analysis and oversight to identify and mini-
24 mize sources of operational risk, through the

1 development of appropriate controls and proce-
2 dures, and automated systems, that—

3 “(i) are reliable and secure; and

4 “(ii) have adequate scalable capacity;

5 “(B) establish and maintain emergency
6 procedures, backup facilities, and a plan for dis-
7 aster recovery that allow for—

8 “(i) the timely recovery and resump-
9 tion of operations; and

10 “(ii) the fulfillment of the responsibil-
11 ities and obligations of the swap execution
12 facility; and

13 “(C) periodically conduct tests to verify
14 that the backup resources of the swap execution
15 facility are sufficient to ensure continued—

16 “(i) order processing and trade
17 matching;

18 “(ii) price reporting;

19 “(iii) market surveillance and

20 “(iv) maintenance of a comprehensive
21 and accurate audit trail.

22 “(15) DESIGNATION OF CHIEF COMPLIANCE
23 OFFICER.—

1 “(A) IN GENERAL.—Each swap execution
2 facility shall designate an individual to serve as
3 a chief compliance officer.

4 “(B) DUTIES.—The chief compliance offi-
5 cer shall—

6 “(i) report directly to the board or to
7 the senior officer of the facility;

8 “(ii) review compliance with the core
9 principles in this subsection;

10 “(iii) in consultation with the board of
11 the facility, a body performing a function
12 similar to that of a board, or the senior of-
13 ficer of the facility, resolve any conflicts of
14 interest that may arise;

15 “(iv) be responsible for establishing
16 and administering the policies and proce-
17 dures required to be established pursuant
18 to this section;

19 “(v) ensure compliance with this Act
20 and the rules and regulations issued under
21 this Act, including rules prescribed by the
22 Commission pursuant to this section; and

23 “(vi) establish procedures for the re-
24 mediation of noncompliance issues found
25 during compliance office reviews, look

1 nancial report of the swap execution
2 facility that is required to be sub-
3 mitted to the Commission pursuant to
4 this section; and

5 “**(II)** include in the report a cer-
6 tification that, under penalty of law,
7 the report is accurate and complete.

8 “(g) **EXEMPTIONS.**—The Commission may exempt,
9 conditionally or unconditionally, a swap execution facility
10 from registration under this section if the Commission
11 finds that the facility is subject to comparable, comprehen-
12 sive supervision and regulation on a consolidated basis by
13 the Securities and Exchange Commission, a prudential
14 regulator, or the appropriate governmental authorities in
15 the home country of the facility.

16 “(h) **RULES.**—The Commission shall prescribe rules
17 governing the regulation of alternative swap execution fa-
18 cilities under this section.”.

19 **SEC. 734. DERIVATIVES TRANSACTION EXECUTION FACILI-**
20 **TIES AND EXEMPT BOARDS OF TRADE.**

21 (a) **IN GENERAL.**—Sections 5a and 5d of the Com-
22 modity Exchange Act (7 U.S.C. 7a, 7a–3) are repealed.

23 (b) **CONFORMING AMENDMENTS.**—

24 (1) Section 2 of the Commodity Exchange Act
25 (7 U.S.C. 2) is amended—

1 (A) in subsection (a)(1)(A), in the first
2 sentence, by striking “or 5a”; and

3 (B) in paragraph (2) of subsection (g) (as
4 redesignated by section 723(a)(1)(B)), by strik-
5 ing “section 5a of this Act” and all that follows
6 through “5d of this Act” and inserting “section
7 5b of this Act”.

8 (2) Section 6(g)(1)(A) of the Securities Ex-
9 change Act of 1934 (15 U.S.C. 78f(g)(1)(A)) is
10 amended—

11 (A) by striking “that—” and all that fol-
12 lows through “(i) has been designated” and in-
13 serting “that has been designated”;

14 (B) by striking “; or” and inserting “;
15 and” and

16 (C) by striking clause (ii).

17 (c) ABILITY TO PETITION COMMISSION.—

18 (1) IN GENERAL.—Prior to the final effective
19 dates in this title, a person may petition the Com-
20 modity Futures Trading Commission to remain sub-
21 ject to the provisions of section 5d of the Commodity
22 Exchange Act, as such provisions existed prior to
23 the effective date of this subtitle.

24 (2) CONSIDERATION OF PETITION.—The Com-
25 modity Futures Trading Commission shall consider

1 any petition submitted under paragraph (1) in a
2 prompt manner and may allow a person to continue
3 operating subject to the provisions of section 5d of
4 the Commodity Exchange Act for up to 1 year after
5 the effective date of this subtitle.

6 **SEC. 735. DESIGNATED CONTRACT MARKETS.**

7 (a) CRITERIA FOR DESIGNATION.—Section 5 of the
8 Commodity Exchange Act (7 U.S.C. 7) is amended by
9 striking subsection (b).

10 (b) CORE PRINCIPLES FOR CONTRACT MARKETS.—
11 Section 5 of the Commodity Exchange Act (7 U.S.C. 7)
12 is amended by striking subsection (d) and inserting the
13 following:

14 “(d) CORE PRINCIPLES FOR CONTRACT MARKETS.—

15 “(1) DESIGNATION AS CONTRACT MARKET.—

16 “(A) IN GENERAL.—To be designated, and
17 maintain a designation, as a contract market, a
18 board of trade shall comply with—

19 “(i) any core principle described in
20 this subsection; and

21 “(ii) any requirement that the Com-
22 mission may impose by rule or regulation
23 pursuant to section 8a(5).

24 “(B) REASONABLE DISCRETION OF CON-
25 TRACT MARKET.—Unless otherwise determined

1 by the Commission by rule or regulation, a
2 board of trade described in subparagraph (A)
3 shall have reasonable discretion in establishing
4 the manner in which the board of trade com-
5 plies with the core principles described in this
6 subsection.

7 “(2) COMPLIANCE WITH RULES.—

8 “(A) IN GENERAL.—The board of trade
9 shall establish, monitor, and enforce compliance
10 with the rules of the contract market, includ-
11 ing—

12 “(i) access requirements;

13 “(ii) the terms and conditions of any
14 contracts to be traded on the contract mar-
15 ket; and

16 “(iii) rules prohibiting abusive trade
17 practices on the contract market.

18 “(B) CAPACITY OF CONTRACT MARKET.—

19 The board of trade shall have the capacity to
20 detect, investigate, and apply appropriate sanc-
21 tions to any person that violates any rule of the
22 contract market.

23 “(C) REQUIREMENT OF RULES.—The rules
24 of the contract market shall provide the board
25 of trade with the ability and authority to obtain

1 any necessary information to perform any func-
2 tion described in this subsection, including the
3 capacity to carry out such international infor-
4 mation-sharing agreements as the Commission
5 may require.

6 “(3) CONTRACTS NOT READILY SUBJECT TO
7 MANIPULATION.—The board of trade shall list on
8 the contract market only contracts that are not
9 readily susceptible to manipulation.

10 “(4) PREVENTION OF MARKET DISRUPTION.—
11 The board of trade shall have the capacity and re-
12 sponsibility to prevent manipulation, price distortion,
13 and disruptions of the delivery or cash-settlement
14 process through market surveillance, compliance,
15 and enforcement practices and procedures, includ-
16 ing—

17 “(A) methods for conducting real-time
18 monitoring of trading; and

19 “(B) comprehensive and accurate trade re-
20 constructions.

21 “(5) POSITION LIMITATIONS OR ACCOUNT-
22 ABILITY.—

23 “(A) IN GENERAL.—To reduce the poten-
24 tial threat of market manipulation or conges-
25 tion (especially during trading in the delivery

1 month), the board of trade shall adopt for each
2 contract of the board of trade, as is necessary
3 and appropriate, position limitations or position
4 accountability for speculators.

5 “(B) MAXIMUM ALLOWABLE POSITION
6 LIMITATION.—For any contract that is subject
7 to a position limitation established by the Com-
8 mission pursuant to section 4a(a), the board of
9 trade shall set the position limitation of the
10 board of trade at a level not higher than the po-
11 sition limitation established by the Commission.

12 “(6) EMERGENCY AUTHORITY.—The board of
13 trade, in consultation or cooperation with the Com-
14 mission, shall adopt rules to provide for the exercise
15 of emergency authority, as is necessary and appro-
16 priate, including the authority—

17 “(A) to liquidate or transfer open positions
18 in any contract;

19 “(B) to suspend or curtail trading in any
20 contract; and

21 “(C) to require market participants in any
22 contract to meet special margin requirements.

23 “(7) AVAILABILITY OF GENERAL INFORMA-
24 TION.—The board of trade shall make available to

1 market authorities, market participants, and the
2 public accurate information concerning—

3 “(A) the terms and conditions of the con-
4 tracts of the contract market; and

5 “(B)(i) the rules, regulations, and mecha-
6 nisms for executing transactions on or through
7 the facilities of the contract market; and

8 “(ii) the rules and specifications describing
9 the operation of the contract market’s—

10 “(I) electronic matching platform; or

11 “(II) trade execution facility.

12 “(8) DAILY PUBLICATION OF TRADING INFOR-
13 MATION.—The board of trade shall make public
14 daily information on settlement prices, volume, open
15 interest, and opening and closing ranges for actively
16 traded contracts on the contract market.

17 “(9) EXECUTION OF TRANSACTIONS.—

18 “(A) IN GENERAL.—The board of trade
19 shall provide a competitive, open, and efficient
20 market and mechanism for executing trans-
21 actions that protects the price discovery process
22 of trading in the centralized market of the
23 board of trade.

1 “(B) RULES.—The rules of the board of
2 trade may authorize, for bona fide business
3 purposes—

4 “(i) transfer trades or office trades;

5 “(ii) an exchange of—

6 “(I) futures in connection with a
7 cash commodity transaction;

8 “(II) futures for cash commod-
9 ities; or

10 “(III) futures for swaps; or

11 “(iii) a futures commission merchant,
12 acting as principal or agent, to enter into
13 or confirm the execution of a contract for
14 the purchase or sale of a commodity for fu-
15 ture delivery if the contract is reported, re-
16 corded, or cleared in accordance with the
17 rules of the contract market or a deriva-
18 tives clearing organization.

19 “(10) TRADE INFORMATION.—The board of
20 trade shall maintain rules and procedures to provide
21 for the recording and safe storage of all identifying
22 trade information in a manner that enables the con-
23 tract market to use the information—

24 “(A) to assist in the prevention of cus-
25 tomer and market abuses; and

1 “(B) to provide evidence of any violations
2 of the rules of the contract market.

3 “(11) FINANCIAL INTEGRITY OF TRANS-
4 ACTIONS.—The board of trade shall establish and
5 enforce—

6 “(A) rules and procedures for ensuring the
7 financial integrity of transactions entered into
8 on or through the facilities of the contract mar-
9 ket (including the clearance and settlement of
10 the transactions with a derivatives clearing or-
11 ganization); and

12 “(B) rules to ensure—

13 “(i) the financial integrity of any—

14 “(I) futures commission mer-
15 chant; and

16 “(II) introducing broker; and

17 “(ii) the protection of customer funds.

18 “(12) PROTECTION OF MARKETS AND MARKET
19 PARTICIPANTS.—The board of trade shall establish
20 and enforce rules—

21 “(A) to protect markets and market par-
22 ticipants from abusive practices committed by
23 any party, including abusive practices com-
24 mitted by a party acting as an agent for a par-
25 ticipant; and

1 “(A) to minimize conflicts of interest in
2 the decision-making process of the contract
3 market; and

4 “(B) to establish a process for resolving
5 conflicts of interest described in subparagraph
6 (A).

7 “(17) COMPOSITION OF GOVERNING BOARDS OF
8 CONTRACT MARKETS.—The governance arrange-
9 ments of the board of trade shall be designed to per-
10 mit consideration of the views of market partici-
11 pants.

12 “(18) RECORDKEEPING.—The board of trade
13 shall maintain records of all activities relating to the
14 business of the contract market—

15 “(A) in a form and manner that is accept-
16 able to the Commission; and

17 “(B) for a period of at least 5 years.

18 “(19) ANTITRUST CONSIDERATIONS.—Unless
19 necessary or appropriate to achieve the purposes of
20 this Act, the board of trade shall not—

21 “(A) adopt any rule or taking any action
22 that results in any unreasonable restraint of
23 trade; or

24 “(B) impose any material anticompetitive
25 burden on trading on the contract market.

1 “(20) SYSTEM SAFEGUARDS.—The board of
2 trade shall—

3 “(A) establish and maintain a program of
4 risk analysis and oversight to identify and mini-
5 mize sources of operational risk, through the
6 development of appropriate controls and proce-
7 dures, and the development of automated sys-
8 tems, that are reliable, secure, and have ade-
9 quate scalable capacity;

10 “(B) establish and maintain emergency
11 procedures, backup facilities, and a plan for dis-
12 aster recovery that allow for the timely recovery
13 and resumption of operations and the fulfill-
14 ment of the responsibilities and obligations of
15 the board of trade; and

16 “(C) periodically conduct tests to verify
17 that backup resources are sufficient to ensure
18 continued order processing and trade matching,
19 price reporting, market surveillance, and main-
20 tenance of a comprehensive and accurate audit
21 trail.

22 “(21) FINANCIAL RESOURCES.—

23 “(A) IN GENERAL.—The board of trade
24 shall have adequate financial, operational, and

1 managerial resources to discharge each respon-
2 sibility of the board of trade.

3 “(B) DETERMINATION OF ADEQUACY.—

4 The financial resources of the board of trade
5 shall be considered to be adequate if the value
6 of the financial resources exceeds the total
7 amount that would enable the contract market
8 to cover the operating costs of the contract
9 market for a 1-year period, as calculated on a
10 rolling basis.

11 “(22) DIVERSITY OF BOARD OF DIRECTORS.—

12 The board of trade, if a publicly traded company,
13 shall endeavor to recruit individuals to serve on the
14 board of directors and the other decision-making
15 bodies (as determined by the Commission) of the
16 board of trade from among, and to have the com-
17 position of the bodies reflect, a broad and culturally
18 diverse pool of qualified candidates.

19 “(23) SEC.—The board of trade shall keep any
20 such records relating to swaps defined in section
21 1a(47)(A)(v) open to inspection and examination by
22 the Securities and Exchange Commission.”.

23 **SEC. 736. MARGIN.**

24 Section 8a(7) of the Commodity Exchange Act (7
25 U.S.C. 12a(7)) is amended—

1 (1) in subparagraph (C), by striking “, except-
2 ing the setting of levels of margin”;

3 (2) by redesignating subparagraphs (D)
4 through (F) as subparagraphs (E) through (G), re-
5 spectively; and

6 (3) by inserting after subparagraph (C) the fol-
7 lowing:

8 “(D) margin requirements, provided that
9 the rules, regulations, or orders shall—

10 “(i) be limited to protecting the finan-
11 cial integrity of the derivatives clearing or-
12 ganization;

13 “(ii) be designed for risk management
14 purposes to protect the financial integrity
15 of transactions; and

16 “(iii) not set specific margin
17 amounts;”.

18 **SEC. 737. POSITION LIMITS.**

19 (a) **AGGREGATE POSITION LIMITS.**—Section 4a(a) of
20 the Commodity Exchange Act (7 U.S.C. 6a(a)) is amend-
21 ed—

22 (1) by inserting after “(a)” the following:

23 “(1) **IN GENERAL.**—”;

24 (2) in the first sentence, by striking “on elec-
25 tronic trading facilities with respect to a significant

1 price discovery contract” and inserting “swaps that
2 perform or affect a significant price discovery func-
3 tion with respect to registered entities”;

4 (3) in the second sentence—

5 (A) by inserting “, including any group or
6 class of traders,” after “held by any person”;
7 and

8 (B) by striking “on an electronic trading
9 facility with respect to a significant price dis-
10 covery contract,” and inserting “swaps traded
11 on or subject to the rules of a designated con-
12 tract market or a swap execution facility, or
13 swaps not traded on or subject to the rules of
14 a designated contract market or a swap execu-
15 tion facility that performs a significant price
16 discovery function with respect to a registered
17 entity,”; and

18 (4) by adding at the end the following:

19 “(2) ESTABLISHMENT OF LIMITATIONS.—

20 “(A) IN GENERAL.—In accordance with
21 the standards set forth in paragraph (1) of this
22 subsection and consistent with the good faith
23 exception cited in subsection (b)(2), with re-
24 spect to physical commodities other than ex-
25 cluded commodities as defined by the Commis-

1 sion, the Commission shall by rule, regulation,
2 or order establish limits on the amount of posi-
3 tions, as appropriate, other than bona fide
4 hedge positions, that may be held by any person
5 with respect to contracts of sale for future de-
6 livery or with respect to options on the con-
7 tracts or commodities traded on or subject to
8 the rules of a designated contract market.

9 “(B) TIMING.—

10 “(i) EXEMPT COMMODITIES.—For ex-
11 empt commodities, the limits required
12 under subparagraph (A) shall be estab-
13 lished within 180 days after the date of the
14 enactment of this paragraph.

15 “(ii) AGRICULTURAL COMMODITIES.—

16 For agricultural commodities, the limits re-
17 quired under subparagraph (A) shall be es-
18 tablished within 270 days after the date of
19 the enactment of this paragraph.

20 “(C) GOAL.—In establishing the limits re-
21 quired under subparagraph (A), the Commis-
22 sion shall strive to ensure that trading on for-
23 eign boards of trade in the same commodity will
24 be subject to comparable limits and that any
25 limits to be imposed by the Commission will not

1 cause price discovery in the commodity to shift
2 to trading on the foreign boards of trade.

3 “(3) SPECIFIC LIMITATIONS.—In establishing
4 the limits required in paragraph (2), the Commis-
5 sion, as appropriate, shall set limits—

6 “(A) on the number of positions that may
7 be held by any person for the spot month, each
8 other month, and the aggregate number of posi-
9 tions that may be held by any person for all
10 months; and

11 “(B) to the maximum extent practicable,
12 in its discretion—

13 “(i) to diminish, eliminate, or prevent
14 excessive speculation as described under
15 this section;

16 “(ii) to deter and prevent market ma-
17 nipulation, squeezes, and corners;

18 “(iii) to ensure sufficient market li-
19 quidity for bona fide hedgers; and

20 “(iv) to ensure that the price dis-
21 covery function of the underlying market is
22 not disrupted.

23 “(4) SIGNIFICANT PRICE DISCOVERY FUNC-
24 TION.—In making a determination whether a swap
25 performs or affects a significant price discovery

1 function with respect to regulated markets, the Com-
2 mission shall consider, as appropriate:

3 “(A) PRICE LINKAGE.—The extent to
4 which the swap uses or otherwise relies on a
5 daily or final settlement price, or other major
6 price parameter, of another contract traded on
7 a regulated market based upon the same under-
8 lying commodity, to value a position, transfer or
9 convert a position, financially settle a position,
10 or close out a position.

11 “(B) ARBITRAGE.—The extent to which
12 the price for the swap is sufficiently related to
13 the price of another contract traded on a regu-
14 lated market based upon the same underlying
15 commodity so as to permit market participants
16 to effectively arbitrage between the markets by
17 simultaneously maintaining positions or exe-
18 cuting trades in the swaps on a frequent and
19 recurring basis.

20 “(C) MATERIAL PRICE REFERENCE.—The
21 extent to which, on a frequent and recurring
22 basis, bids, offers, or transactions in a contract
23 traded on a regulated market are directly based
24 on, or are determined by referencing, the price
25 generated by the swap.

1 “(D) MATERIAL LIQUIDITY.—The extent
2 to which the volume of swaps being traded in
3 the commodity is sufficient to have a material
4 effect on another contract traded on a regulated
5 market.

6 “(E) OTHER MATERIAL FACTORS.—Such
7 other material factors as the Commission speci-
8 fies by rule or regulation as relevant to deter-
9 mine whether a swap serves a significant price
10 discovery function with respect to a regulated
11 market.

12 “(5) ECONOMICALLY EQUIVALENT CON-
13 TRACTS.—

14 “(A) Notwithstanding any other provision
15 of this section, the Commission shall establish
16 limits on the amount of positions, including ag-
17 gregate position limits, as appropriate, other
18 than bona fide hedge positions, that may be
19 held by any person with respect to swaps that
20 are economically equivalent to contracts of sale
21 for future delivery or to options on the con-
22 tracts or commodities traded on or subject to
23 the rules of a designated contract market sub-
24 ject to paragraph (2).

1 “(B) In establishing limits pursuant to
2 subparagraph (A), the Commission shall—

3 “(i) develop the limits concurrently
4 with limits established under paragraph
5 (2), and the limits shall have similar re-
6 quirements as under paragraph (3)(B);
7 and

8 “(ii) establish the limits simulta-
9 neously with limits established under para-
10 graph (2).

11 “(6) AGGREGATE POSITION LIMITS.—The Com-
12 mission shall, by rule or regulation, establish limits
13 (including related hedge exemption provisions) on
14 the aggregate number or amount of positions in con-
15 tracts based upon the same underlying commodity
16 (as defined by the Commission) that may be held by
17 any person, including any group or class of traders,
18 for each month across—

19 “(A) contracts listed by designated con-
20 tract markets;

21 “(B) with respect to an agreement con-
22 tract, or transaction that settles against any
23 price (including the daily or final settlement
24 price) of 1 or more contracts listed for trading
25 on a registered entity, contracts traded on a

1 foreign board of trade that provides members or
2 other participants located in the United States
3 with direct access to its electronic trading and
4 order matching system; and

5 “(C) swap contracts that perform or affect
6 a significant price discovery function with re-
7 spect to regulated entities.

8 “(7) EXEMPTIONS.—The Commission, by rule,
9 regulation, or order, may exempt, conditionally or
10 unconditionally, any person or class of persons, any
11 swap or class of swaps, any contract of sale of a
12 commodity for future delivery or class of such con-
13 tracts, any option or class of options, or any trans-
14 action or class of transactions from any requirement
15 it may establish under this section with respect to
16 position limits.”.

17 (b) CONFORMING AMENDMENTS.—Section 4a(b) of
18 the Commodity Exchange Act (7 U.S.C. 6a(b)) is amend-
19 ed—

20 (1) in paragraph (1), by striking “or derivatives
21 transaction execution facility or facilities or elec-
22 tronic trading facility” and inserting “or swap exe-
23 cution facility or facilities”; and

24 (2) in paragraph (2), by striking “or derivatives
25 transaction execution facility or facilities or elec-

1 tronic trading facility” and inserting “or swap exe-
2 cution facility”.

3 (c) BONA FIDE HEDGING TRANSACTION.—Section
4 4a(c) of the Commodity Exchange Act is amended—

5 (1) by inserting “(1)” after “(c)”; and

6 (2) by adding at the end the following:

7 “(2) For the purposes of implementation of
8 subsection (a)(2) for contracts of sale for future de-
9 livery or options on the contracts or commodities,
10 the Commission shall define what constitutes a bona
11 fide hedging transaction or position as a transaction
12 or position that—

13 “(A)(i) represents a substitute for trans-
14 actions made or to be made or positions taken
15 or to be taken at a later time in a physical mar-
16 keting channel;

17 “(ii) is economically appropriate to the re-
18 duction of risks in the conduct and manage-
19 ment of a commercial enterprise; and

20 “(iii) arises from the potential change in
21 the value of—

22 “(I) assets that a person owns, pro-
23 duces, manufactures, processes, or mer-
24 chandises or anticipates owning, producing,

1 manufacturing, processing, or merchan-
2 dising;

3 “(II) liabilities that a person owns or
4 anticipates incurring; or

5 “(III) services that a person provides,
6 purchases, or anticipates providing or pur-
7 chasing; or

8 “(B) reduces risks attendant to a position
9 resulting from a swap that—

10 “(i) was executed opposite a
11 counterparty for which the transaction
12 would qualify as a bona fide hedging trans-
13 action pursuant to subparagraph (A); or

14 “(ii) meets the requirements of sub-
15 paragraph (A).”.

16 (d) EFFECTIVE DATE.—This section and the amend-
17 ments made by this section shall become effective on the
18 date of the enactment of this section.

19 **SEC. 738. FOREIGN BOARDS OF TRADE.**

20 (a) IN GENERAL.—Section 4(b) of the Commodity
21 Exchange Act (7 U.S.C. 6(b)) is amended—

22 (1) in the first sentence, by striking “The Com-
23 mission” and inserting the following:

24 “(2) PERSONS LOCATED IN THE UNITED
25 STATES.—

1 “(A) IN GENERAL.—The Commission”;

2 (2) in the second sentence, by striking “Such
3 rules and regulations” and inserting the following:

4 “(B) DIFFERENT REQUIREMENTS.—Rules
5 and regulations described in subparagraph
6 (A)”;

7 (3) in the third sentence—

8 (A) by striking “No rule or regulation”
9 and inserting the following:

10 “(C) PROHIBITION.—Except as provided in
11 paragraphs (1) and (2), no rule or regulation”;

12 (B) by striking “that (1) requires” and in-
13 serting the following: “that—

14 “(i) requires”; and

15 (C) by striking “market, or (2) governs”
16 and inserting the following: “market; or

17 “(ii) governs”; and

18 (4) by inserting before paragraph (2) (as des-
19 ignated by paragraph (1)) the following:

20 “(1) FOREIGN BOARDS OF TRADE.—

21 “(A) REGISTRATION.—The Commission
22 may adopt rules and regulations requiring reg-
23 istration with the Commission for a foreign
24 board of trade that provides the members of the
25 foreign board of trade or other participants lo-

1 cated in the United States with direct access to
2 the electronic trading and order matching sys-
3 tem of the foreign board of trade, including
4 rules and regulations prescribing procedures
5 and requirements applicable to the registration
6 of such foreign boards of trade. For purposes of
7 this paragraph, ‘direct access’ refers to an ex-
8 plicit grant of authority by a foreign board of
9 trade to an identified member or other partici-
10 pant located in the United States to enter
11 trades directly into the trade matching system
12 of the foreign board of trade. In adopting such
13 rules and regulations, the commission shall con-
14 sider—

15 “(i) whether any such foreign board
16 of trade is subject to comparable, com-
17 prehensive supervision and regulation by
18 the appropriate governmental authorities
19 in the foreign board of trade’s home coun-
20 try; and

21 “(ii) any previous commission findings
22 that the foreign board of trade is subject
23 to comparable comprehensive supervision
24 and regulation by the appropriate govern-

1 ment authorities in the foreign board of
2 trade's home country.

3 “(B) LINKED CONTRACTS.—The Commis-
4 sion may not permit a foreign board of trade to
5 provide to the members of the foreign board of
6 trade or other participants located in the
7 United States direct access to the electronic
8 trading and order-matching system of the for-
9 eign board of trade with respect to an agree-
10 ment, contract, or transaction that settles
11 against any price (including the daily or final
12 settlement price) of 1 or more contracts listed
13 for trading on a registered entity, unless the
14 Commission determines that—

15 “(i) the foreign board of trade makes
16 public daily trading information regarding
17 the agreement, contract, or transaction
18 that is comparable to the daily trading in-
19 formation published by the registered enti-
20 ty for the 1 or more contracts against
21 which the agreement, contract, or trans-
22 action traded on the foreign board of trade
23 settles; and

1 “(ii) the foreign board of trade (or the
2 foreign futures authority that oversees the
3 foreign board of trade)—

4 “(I) adopts position limits (in-
5 cluding related hedge exemption provi-
6 sions) for the agreement, contract, or
7 transaction that are comparable to the
8 position limits (including related
9 hedge exemption provisions) adopted
10 by the registered entity for the 1 or
11 more contracts against which the
12 agreement, contract, or transaction
13 traded on the foreign board of trade
14 settles;

15 “(II) has the authority to require
16 or direct market participants to limit,
17 reduce, or liquidate any position the
18 foreign board of trade (or the foreign
19 futures authority that oversees the
20 foreign board of trade) determines to
21 be necessary to prevent or reduce the
22 threat of price manipulation, excessive
23 speculation as described in section 4a,
24 price distortion, or disruption of deliv-
25 ery or the cash settlement process;

1 “(III) agrees to promptly notify
2 the Commission, with regard to the
3 agreement, contract, or transaction
4 that settles against any price (includ-
5 ing the daily or final settlement price)
6 of 1 or more contracts listed for trad-
7 ing on a registered entity, of any
8 change regarding—

9 “(aa) the information that
10 the foreign board of trade will
11 make publicly available;

12 “(bb) the position limits
13 that the foreign board of trade or
14 foreign futures authority will
15 adopt and enforce;

16 “(cc) the position reductions
17 required to prevent manipulation,
18 excessive speculation as described
19 in section 4a, price distortion, or
20 disruption of delivery or the cash
21 settlement process; and

22 “(dd) any other area of in-
23 terest expressed by the Commis-
24 sion to the foreign board of trade
25 or foreign futures authority;

1 “(IV) provides information to the
2 Commission regarding large trader
3 positions in the agreement, contract,
4 or transaction that is comparable to
5 the large trader position information
6 collected by the Commission for the 1
7 or more contracts against which the
8 agreement, contract, or transaction
9 traded on the foreign board of trade
10 settles; and

11 “(V) provides the Commission
12 such information as is necessary to
13 publish reports on aggregate trader
14 positions for the agreement, contract,
15 or transaction traded on the foreign
16 board of trade that are comparable to
17 such reports on aggregate trader posi-
18 tions for the 1 or more contracts
19 against which the agreement, con-
20 tract, or transaction traded on the
21 foreign board of trade settles.

22 “(C) EXISTING FOREIGN BOARDS OF
23 TRADE.—Subparagraphs (A) and (B) shall not
24 be effective with respect to any foreign board of
25 trade to which, prior to the date of enactment

1 of this paragraph, the Commission granted di-
2 rect access permission until the date that is 180
3 days after that date of enactment.”.

4 (b) LIABILITY OF REGISTERED PERSONS TRADING
5 ON A FOREIGN BOARD OF TRADE.—Section 4 of the Com-
6 modity Exchange Act (7 U.S.C. 6) is amended—

7 (1) in subsection (a), in the matter preceding
8 paragraph (1), by inserting “or by subsection (e)”
9 after “Unless exempted by the Commission pursuant
10 to subsection (c)”;

11 (2) by adding at the end the following:

12 “(e) LIABILITY OF REGISTERED PERSONS TRADING
13 ON A FOREIGN BOARD OF TRADE.—

14 “(1) IN GENERAL.—A person registered with
15 the Commission, or exempt from registration by the
16 Commission, under this Act may not be found to
17 have violated subsection (a) with respect to a trans-
18 action in, or in connection with, a contract of sale
19 of a commodity for future delivery if the person—

20 “(A) has reason to believe that the trans-
21 action and the contract is made on or subject
22 to the rules of a foreign board of trade that
23 is—

24 “(i) legally organized under the laws
25 of a foreign country;

1 “(ii) authorized to act as a board of
2 trade by a foreign futures authority; and

3 “(iii) subject to regulation by the for-
4 eign futures authority; and

5 “(B) has not been determined by the Com-
6 mission to be operating in violation of sub-
7 section (a)

8 “(2) RULE OF CONSTRUCTION.—Nothing in
9 this subsection shall be construed as implying or cre-
10 ating any presumption that a board of trade, ex-
11 change, or market is located outside the United
12 States, or its territories or possessions, for purposes
13 of subsection (a).”.

14 (c) CONTRACT ENFORCEMENT FOR FOREIGN FU-
15 TURES CONTRACTS.—Section 22(a) of the Commodity Ex-
16 change Act (7 U.S.C. 25(a)) (as amended by section 739)
17 is amended by adding at the end the following:

18 “(6) CONTRACT ENFORCEMENT FOR FOREIGN FU-
19 TURES CONTRACTS.—A contract of sale of a commodity
20 for future delivery traded or executed on or through the
21 facilities of a board of trade, exchange, or market located
22 outside the United States for purposes of section 4(a)
23 shall not be void, voidable, or unenforceable, and a party
24 to such a contract shall not be entitled to rescind or re-
25 cover any payment made with respect to the contract,

1 based on the failure of the foreign board of trade to com-
2 ply with any provision of this Act.”.

3 **SEC. 739. LEGAL CERTAINTY FOR SWAPS.**

4 Section 22(a) of the Commodity Exchange Act (7
5 U.S.C. 25(a)) is amended by striking paragraph (4) and
6 inserting the following:

7 “(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE
8 COUNTERPARTIES.—

9 “(A) IN GENERAL.—No hybrid instrument sold
10 to any investor shall be void, voidable, or unenforce-
11 able, and no party to a hybrid instrument shall be
12 entitled to rescind, or recover any payment made
13 with respect to, the hybrid instrument under this
14 section or any other provision of Federal or State
15 law, based solely on the failure of the hybrid instru-
16 ment to comply with the terms or conditions of sec-
17 tion 2(f) or regulations of the Commission.

18 “(B) SWAPS.—No agreement, contract, or
19 transaction between eligible contract participants or
20 persons reasonably believed to be eligible contract
21 participants shall be void, voidable, or unenforceable,
22 and no party to such agreement, contract, or trans-
23 action shall be entitled to rescind, or recover any
24 payment made with respect to, the agreement, con-
25 tract, or transaction under this section or any other

1 provision of Federal or State law, based solely on
2 the failure of the agreement, contract, or trans-
3 action—

4 “(i) to meet the definition of a swap under
5 section 1a; or

6 “(ii) to be cleared in accordance with sec-
7 tion 2(h)(1).

8 “(5) LEGAL CERTAINTY FOR LONG-TERM SWAPS
9 ENTERED INTO BEFORE THE DATE OF ENACTMENT OF
10 THE WALL STREET TRANSPARENCY AND ACCOUNT-
11 ABILITY ACT OF 2010.—

12 “(A) EFFECT ON SWAPS.—Unless specifically
13 reserved in the applicable swap, neither the enact-
14 ment of the Wall Street Transparency and Account-
15 ability Act of 2010, nor any requirement under that
16 Act or an amendment made by that Act, shall con-
17 stitute a termination event, force majeure, illegality,
18 increased costs, regulatory change, or similar event
19 under a swap (including any related credit support
20 arrangement) that would permit a party to termi-
21 nate, renegotiate, modify, amend, or supplement 1
22 or more transactions under the swap.

23 “(B) POSITION LIMITS.—Any position limit es-
24 tablished under the Wall Street Transparency and
25 Accountability Act of 2010 shall not apply to a posi-

1 tion acquired in good faith prior to the effective date
2 of any rule, regulation, or order under the Act that
3 establishes the position limit; provided, however, that
4 such positions shall be attributed to the trader if the
5 trader's position is increased after the effective date
6 of such position limit rule, regulation, or order.”.

7 **SEC. 740. MULTILATERAL CLEARING ORGANIZATIONS.**

8 Sections 408 and 409 of the Federal Deposit Insur-
9 ance Corporation Improvement Act of 1991 (12 U.S.C.
10 4421, 4422) are repealed.

11 **SEC. 741. ENFORCEMENT.**

12 (a) **ENFORCEMENT AUTHORITY.**—The Commodity
13 Exchange Act is amended by inserting after section 4b (7
14 U.S.C. 6b) the following:

15 **“SEC. 4b-1. ENFORCEMENT AUTHORITY.**

16 “(a) **CFTC.**—Except as provided in subsections (b),
17 (c), and (d), the Commission shall have exclusive authority
18 to enforce the provisions of subtitle A of the Wall Street
19 Transparency and Accountability Act of 2010 with respect
20 to any person.

21 “(b) **PRUDENTIAL REGULATORS.**—The prudential
22 regulators shall have exclusive authority to enforce the
23 provisions of section 4s(e) with respect to swap dealers
24 or major swap participants for which they are the pruden-
25 tial regulator.

1 “(c) REFERRALS.—

2 “(1) PRUDENTIAL REGULATORS.—If the pru-
3 dential regulator for a swap dealer or major swap
4 participant has cause to believe that the swap dealer
5 or major swap participant, or any affiliate or divi-
6 sion of the swap dealer or major swap participant,
7 may have engaged in conduct that constitutes a vio-
8 lation of the nonprudential requirements of this Act
9 (including section 4s or rules adopted by the Com-
10 mission under that section), the prudential regulator
11 may promptly notify the Commission in a written re-
12 port that includes—

13 “(A) a request that the Commission ini-
14 tiate an enforcement proceeding under this Act;
15 and

16 “(B) an explanation of the facts and cir-
17 cumstances that led to the preparation of the
18 written report.

19 “(2) COMMISSION.—If the Commission has
20 cause to believe that a swap dealer or major swap
21 participant that has a prudential regulator may have
22 engaged in conduct that constitutes a violation of
23 any prudential requirement of section 4s or rules
24 adopted by the Commission under that section, the

1 Commission may notify the prudential regulator of
2 the conduct in a written report that includes—

3 “(A) a request that the prudential regu-
4 lator initiate an enforcement proceeding under
5 this Act or any other Federal law (including
6 regulations); and

7 “(B) an explanation of the concerns of the
8 Commission, and a description of the facts and
9 circumstances, that led to the preparation of
10 the written report.

11 “(d) BACKSTOP ENFORCEMENT AUTHORITY.—

12 “(1) INITIATION OF ENFORCEMENT PRO-
13 CEEDING BY PRUDENTIAL REGULATOR.—If the
14 Commission does not initiate an enforcement pro-
15 ceeding before the end of the 90-day period begin-
16 ning on the date on which the Commission receives
17 a written report under subsection (c)(1), the pruden-
18 tial regulator may initiate an enforcement pro-
19 ceeding.

20 “(2) INITIATION OF ENFORCEMENT PRO-
21 CEEDING BY COMMISSION.—If the prudential regu-
22 lator does not initiate an enforcement proceeding be-
23 fore the end of the 90-day period beginning on the
24 date on which the prudential regulator receives a

1 written report under subsection (c)(2), the Commis-
2 sion may initiate an enforcement proceeding.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 4b of the Commodity Exchange Act
5 (7 U.S.C. 6b) is amended—

6 (A) in subsection (a)(2), by striking “or
7 other agreement, contract, or transaction sub-
8 ject to paragraphs (1) and (2) of section
9 5a(g),” and inserting “or swap,”;

10 (B) in subsection (b), by striking “or other
11 agreement, contract or transaction subject to
12 paragraphs (1) and (2) of section 5a(g),” and
13 inserting “or swap,”; and

14 (C) by adding at the end the following:

15 “(e) It shall be unlawful for any person, directly or
16 indirectly, by the use of any means or instrumentality of
17 interstate commerce, or of the mails, or of any facility of
18 any registered entity, in or in connection with any order
19 to make, or the making of, any contract of sale of any
20 commodity for future delivery (or option on such a con-
21 tract), or any swap, on a group or index of securities (or
22 any interest therein or based on the value thereof)—

23 “(1) to employ any device, scheme, or artifice to
24 defraud;

1 “(2) to make any untrue statement of a mate-
2 rial fact or to omit to state a material fact necessary
3 in order to make the statements made, in the light
4 of the circumstances under which they were made,
5 not misleading; or

6 “(3) to engage in any act, practice, or course of
7 business which operates or would operate as a fraud
8 or deceit upon any person.”.

9 (2) Section 4c(a)(1) of the Commodity Ex-
10 change Act (7 U.S.C. 6c(a)(1)) is amended by in-
11 serting “or swap” before “if the transaction is used
12 or may be used”.

13 (3) Section 6(c) of the Commodity Exchange
14 Act (7 U.S.C. 9) is amended in the first sentence by
15 inserting “or of any swap,” before “or has willfully
16 made”.

17 (4) Section 6(d) of the Commodity Exchange
18 Act (7 U.S.C. 13b) is amended in the first sentence,
19 in the matter preceding the proviso, by inserting “or
20 of any swap,” before “or otherwise is violating”.

21 (5) Section 6c(a) of the Commodity Exchange
22 Act (7 U.S.C. 13a-1(a)) is amended in the matter
23 preceding the proviso by inserting “or any swap”
24 after “commodity for future delivery”.

1 (6) Section 9 of the Commodity Exchange Act
2 (7 U.S.C. 13) is amended—

3 (A) in subsection (a)—

4 (i) in paragraph (2), by inserting “or
5 of any swap,” before “or to corner”; and

6 (ii) in paragraph (4), by inserting
7 “swap data repository,” before “or futures
8 association” and

9 (B) in subsection (e)(1)—

10 (i) by inserting “swap data reposi-
11 tory,” before “or registered futures asso-
12 ciation”; and

13 (ii) by inserting “, or swaps,” before
14 “on the basis”.

15 (7) Section 9(a) of the Commodity Exchange
16 Act (7 U.S.C. 13(a)) is amended by adding at the
17 end the following:

18 “(6) Any person to abuse the end user clearing
19 exemption under section 2(h)(4), as determined by
20 the Commission.”.

21 (8) Section 2(c)(2)(B) of the Commodity Ex-
22 change Act (7 U.S.C. 2(c)(2)(B)) is amended—

23 (A) by striking “(dd),” each place it ap-
24 pears;

1 (B) in clause (iii), by inserting “, and ac-
2 counts or pooled investment vehicles described
3 in clause (vi),” before “shall be subject to”; and

4 (C) by adding at the end the following:

5 “(vi) This Act applies to, and the
6 Commission shall have jurisdiction over, an
7 account or pooled investment vehicle that
8 is offered for the purpose of trading, or
9 that trades, any agreement, contract, or
10 transaction in foreign currency described
11 in clause (i).”.

12 (9) Section 2(c)(2)(C) of the Commodity Ex-
13 change Act (7 U.S.C. 2(c)(2)(C)) is amended—

14 (A) by striking “(dd),” each place it ap-
15 pears;

16 (B) in clause (ii)(I), by inserting “, and ac-
17 counts or pooled investment vehicles described
18 in clause (vii),” before “shall be subject to”;
19 and

20 (C) by adding at the end the following:

21 “(vii) This Act applies to, and the
22 Commission shall have jurisdiction over, an
23 account or pooled investment vehicle that
24 is offered for the purpose of trading, or
25 that trades, any agreement, contract, or

1 transaction in foreign currency described
2 in clause (i).”.

3 (10) Section 1a(19)(A)(iv)(II) of the Com-
4modity Exchange Act (7 U.S.C. 1a(19)(A)(iv)(II))
5 (as redesignated by section 721(a)(1)) is amended
6 by inserting before the semicolon at the end the fol-
7 lowing: “provided, however, that for purposes of sec-
8 tion 2(c)(2)(B)(vi) and section 2(c)(2)(C)(vii), the
9 term ‘eligible contract participant’ shall not include
10 a commodity pool in which any participant is not
11 otherwise an eligible contract participant”.

12 (11) Section 6(e) of the Commodity Exchange
13 Act (7 U.S.C. 9a) is amended by adding at the end
14 the following:

15 “(4) Any designated clearing organization that
16 knowingly or recklessly evades or participates in or
17 facilitates an evasion of the requirements of section
18 2(h) shall be liable for a civil money penalty in twice
19 the amount otherwise available for a violation of sec-
20 tion 2(h).

21 “(5) Any swap dealer or major swap participant
22 that knowingly or recklessly evades or participates in
23 or facilitates an evasion of the requirements of sec-
24 tion 2(h) shall be liable for a civil money penalty in

1 twice the amount otherwise available for a violation
2 of section 2(h).”.

3 (c) SAVINGS CLAUSE.—Notwithstanding any other
4 provision of this title, nothing in this subtitle shall be con-
5 strued as divesting any appropriate Federal banking agen-
6 cy of any authority it may have to establish or enforce,
7 with respect to a person for which such agency is the ap-
8 propriate Federal banking agency, prudential or other
9 standards pursuant to authority granted by Federal law
10 other than this title.

11 **SEC. 742. RETAIL COMMODITY TRANSACTIONS.**

12 (a) IN GENERAL.—Section 2(c) of the Commodity
13 Exchange Act (7 U.S.C. 2(c)) is amended—

14 (1) in paragraph (1), by striking “5a (to the ex-
15 tent provided in section 5a(g)), 5b, 5d, or
16 12(e)(2)(B))” and inserting “, 5b, or 12(e)(2)(B))”;
17 and

18 (2) in paragraph (2), by adding at the end the
19 following:

20 “(D) RETAIL COMMODITY TRANS-
21 ACTIONS.—

22 “(i) APPLICABILITY.—Except as pro-
23 vided in clause (ii), this subparagraph shall
24 apply to any agreement, contract, or trans-
25 action in any commodity that is—

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1 “(I) entered into with, or offered
2 to (even if not entered into with), a
3 person that is not an eligible contract
4 participant or eligible commercial en-
5 tity; and

6 “(II) entered into, or offered
7 (even if not entered into), on a lever-
8 aged or margined basis, or financed
9 by the offeror, the counterparty, or a
10 person acting in concert with the of-
11 feror or counterparty on a similar
12 basis.

13 “(ii) EXCEPTIONS.—This subpara-
14 graph shall not apply to—

15 “(I) an agreement, contract, or
16 transaction described in paragraph (1)
17 or subparagraphs (A), (B), or (C), in-
18 cluding any agreement, contract, or
19 transaction specifically excluded from
20 subparagraph (A), (B), or (C);

21 “(II) any security;

22 “(III) a contract of sale that—

23 “(aa) results in actual deliv-
24 ery within 28 days or such other
25 longer period as the Commission

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1 may determine by rule or regula-
2 tion based upon the typical com-
3 mercial practice in cash or spot
4 markets for the commodity in-
5 volved; or

6 “(bb) creates an enforceable
7 obligation to deliver between a
8 seller and a buyer that have the
9 ability to deliver and accept deliv-
10 ery, respectively, in connection
11 with the line of business of the
12 seller and buyer; or

13 “(IV) an agreement, contract, or
14 transaction that is listed on a national
15 securities exchange registered under
16 section 6(a) of the Securities Ex-
17 change Act of 1934 (15 U.S.C.
18 78f(a)); or

19 “(V) an identified banking prod-
20 uct, as defined in section 402(b) of
21 the Legal Certainty for Bank Prod-
22 ucts Act of 2000 (7 U.S.C.27(b)).

23 “(iii) ENFORCEMENT.—Sections 4(a),
24 4(b), and 4b apply to any agreement, con-
25 tract, or transaction described in clause (i),

1 as if the agreement, contract, or trans-
2 action was a contract of sale of a com-
3 modity for future delivery.

4 “(iv) ELIGIBLE COMMERCIAL ENTI-
5 TY.—For purposes of this subparagraph,
6 an agricultural producer, packer, or han-
7 dler shall be considered to be an eligible
8 commercial entity for any agreement, con-
9 tract, or transaction for a commodity in
10 connection with the line of business of the
11 agricultural producer, packer, or handler.”.

12 (b) GRAMM-LEACH-BLILEY ACT.—Section 206(a) of
13 the Gramm-Leach-Bliley Act (Public Law 106–102; 15
14 U.S.C. 78c note) is amended, in the matter preceding
15 paragraph (1), by striking “For purposes of” and insert-
16 ing “Except as provided in subsection (e), for purposes
17 of”.

18 (c) CONFORMING AMENDMENTS RELATING TO RE-
19 TAIL FOREIGN EXCHANGE TRANSACTIONS.—

20 (1) Section 2(c)(2)(B)(i)(II) of the Commodity
21 Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amend-
22 ed—

23 (A) in item (aa), by inserting “United
24 States” before “financial institution”;

25 (B) by striking items (dd) and (ff);

1 (C) by redesignating items (ee) and (gg) as
2 items (dd) and (ff), respectively; and

3 (D) in item (dd) (as so redesignated), by
4 striking the semicolon and inserting “; or”.

5 (2) Section 2(c)(2) of the Commodity Exchange
6 Act (7 U.S.C. 2(c)(2)) (as amended by subsection
7 (a)(2)) is amended by adding at the end the fol-
8 lowing:

9 “(E) PROHIBITION.—

10 “(i) DEFINITION OF FEDERAL REGU-
11 LATORY AGENCY.—In this subparagraph,
12 the term ‘Federal regulatory agency’
13 means—

14 “(I) the Commission;

15 “(II) the Securities and Ex-
16 change Commission;

17 “(III) an appropriate Federal
18 banking agency;

19 “(IV) the National Credit Union
20 Association; and

21 “(V) the Farm Credit Adminis-
22 tration.

23 “(ii) PROHIBITION.—

24 “(I) IN GENERAL.—Except as
25 provided in subclause (II), a person

1 described in subparagraph (B)(i)(II)
2 for which there is a Federal regu-
3 latory agency shall not offer to, or
4 enter into with, a person that is not
5 an eligible contract participant, any
6 agreement, contract, or transaction in
7 foreign currency described in subpara-
8 graph (B)(i)(I) except pursuant to a
9 rule or regulation of a Federal regu-
10 latory agency allowing the agreement,
11 contract, or transaction under such
12 terms and conditions as the Federal
13 regulatory agency shall prescribe.

14 “(II) EFFECTIVE DATE.—With
15 regard to persons described in sub-
16 paragraph (B)(i)(II) for which a Fed-
17 eral regulatory agency has issued a
18 proposed rule concerning agreements,
19 contracts, or transactions in foreign
20 currency described in subparagraph
21 (B)(i)(I) prior to the date of enact-
22 ment of this subclause, subclause (I)
23 shall take effect 90 days after the
24 date of enactment of this subclause.

1 “(iii) REQUIREMENTS OF RULES AND
2 REGULATIONS.—

3 “(I) IN GENERAL.—The rules
4 and regulations described in clause
5 (ii) shall prescribe appropriate re-
6 quirements with respect to—

7 “(aa) disclosure;

8 “(bb) recordkeeping;

9 “(cc) capital and margin;

10 “(dd) reporting;

11 “(ee) business conduct;

12 “(ff) documentation; and

13 “(gg) such other standards
14 or requirements as the Federal
15 regulatory agency shall determine
16 to be necessary.

17 “(II) TREATMENT.—The rules or
18 regulations described in clause (ii)
19 shall treat all agreements, contracts,
20 and transactions in foreign currency
21 described in subparagraph (B)(i)(I),
22 and all agreements, contracts, and
23 transactions in foreign currency that
24 are functionally or economically simi-
25 lar to agreements, contracts, or trans-

1 actions described in subparagraph
2 (B)(i)(I), similarly.”.

3 **SEC. 743. OTHER AUTHORITY.**

4 Unless otherwise provided by the amendments made
5 by this subtitle, the amendments made by this subtitle do
6 not divest any appropriate Federal banking agency, the
7 Commodity Futures Trading Commission, the Securities
8 and Exchange Commission, or other Federal or State
9 agency of any authority derived from any other applicable
10 law.

11 **SEC. 744. RESTITUTION REMEDIES.**

12 Section 6c(d) of the Commodity Exchange Act (7
13 U.S.C. 13a–1(d)) is amended by adding at the end the
14 following:

15 “(3) **EQUITABLE REMEDIES.**—In any action
16 brought under this section, the Commission may
17 seek, and the court may impose, on a proper show-
18 ing, on any person found in the action to have com-
19 mitted any violation, equitable remedies including—

20 “(A) restitution to persons who have sus-
21 tained losses proximately caused by such viola-
22 tion (in the amount of such losses); and

23 “(B) disgorgement of gains received in
24 connection with such violation.”.

1 **SEC. 745. ENHANCED COMPLIANCE BY REGISTERED ENTI-**
2 **TIES.**

3 (a) EFFECT OF INTERPRETATION.—Section 5c(a) of
4 the Commodity Exchange Act (7 U.S.C. 7a–2(a)) is
5 amended by striking paragraph (2) and inserting the fol-
6 lowing:

7 “(2) EFFECT OF INTERPRETATION.—An inter-
8 pretation issued under paragraph (1) may provide
9 the exclusive means for complying with each section
10 described in paragraph (1).”.

11 (b) NEW CONTRACTS, NEW RULES, AND RULE
12 AMENDMENTS.—Section 5c of the Commodity Exchange
13 Act (7 U.S.C. 7a–2) is amended by striking subsection (c)
14 and inserting the following:

15 “(c) NEW CONTRACTS, NEW RULES, AND RULE
16 AMENDMENTS.—

17 “(1) IN GENERAL.—A registered entity may
18 elect to list for trading or accept for clearing any
19 new contract, or other instrument, or may elect to
20 approve and implement any new rule or rule amend-
21 ment, by providing to the Commission (and the Sec-
22 retary of the Treasury, in the case of a contract of
23 sale of a government security for future delivery (or
24 option on such a contract) or a rule or rule amend-
25 ment specifically related to such a contract) a writ-
26 ten certification that the new contract or instrument

1 or clearing of the new contract or instrument, new
2 rule, or rule amendment complies with this Act (in-
3 cluding regulations under this Act).

4 “(2) RULE REVIEW.—The new rule or rule
5 amendment described in paragraph (1) shall become
6 effective, pursuant to the certification of the reg-
7 istered entity and notice of such certification to its
8 members (in a manner to be determined by the
9 Commission), on the date that is 10 business days
10 after the date on which the Commission receives the
11 certification (or such shorter period as determined
12 by the Commission by rule or regulation) unless the
13 Commission notifies the registered entity within such
14 time that it is staying the certification because there
15 exist novel or complex issues that require additional
16 time to analyze, an inadequate explanation by the
17 submitting registered entity, or a potential inconsis-
18 tency with this Act (including regulations under this
19 Act).

20 “(3) STAY OF CERTIFICATION FOR RULES.—

21 “(A) A notification by the Commission
22 pursuant to paragraph (2) shall stay the certifi-
23 cation of the new rule or rule amendment for
24 up to an additional 90 days from the date of
25 the notification.

1 “(B) A rule or rule amendment subject to
2 a stay pursuant to subparagraph (A) shall be-
3 come effective, pursuant to the certification of
4 the registered entity, at the expiration of the
5 period described in subparagraph (A) unless the
6 Commission—

7 “(i) withdraws the stay prior to that
8 time; or

9 “(ii) notifies the registered entity dur-
10 ing such period that it objects to the pro-
11 posed certification on the grounds that it is
12 inconsistent with this Act (including regu-
13 lations under this Act).

14 “(C) The Commission shall provide a not
15 less than 30-day public comment period, within
16 the 90-day period in which the stay is in effect
17 as described in subparagraph (A), whenever the
18 Commission reviews a rule or rule amendment
19 pursuant to a notification by the Commission
20 under this paragraph.

21 “(4) PRIOR APPROVAL.—

22 “(A) IN GENERAL.—A registered entity
23 may request that the Commission grant prior
24 approval to any new contract or other instru-
25 ment, new rule, or rule amendment.

1 “(B) PRIOR APPROVAL REQUIRED.—Not-
2 withstanding any other provision of this section,
3 a designated contract market shall submit to
4 the Commission for prior approval each rule
5 amendment that materially changes the terms
6 and conditions, as determined by the Commis-
7 sion, in any contract of sale for future delivery
8 of a commodity specifically enumerated in sec-
9 tion 1a(10) (or any option thereon) traded
10 through its facilities if the rule amendment ap-
11 plies to contracts and delivery months which
12 have already been listed for trading and have
13 open interest.

14 “(C) DEADLINE.—If prior approval is re-
15 quested under subparagraph (A), the Commis-
16 sion shall take final action on the request not
17 later than 90 days after submission of the re-
18 quest, unless the person submitting the request
19 agrees to an extension of the time limitation es-
20 tablished under this subparagraph.

21 “(5) APPROVAL.—

22 “(A) RULES.—The Commission shall ap-
23 prove a new rule, or rule amendment, of a reg-
24 istered entity unless the Commission finds that

1 the new rule, or rule amendment, is incon-
2 sistent with this subtitle (including regulations).

3 “(B) CONTRACTS AND INSTRUMENTS.—

4 The Commission shall approve a new contract
5 or other instrument unless the Commission
6 finds that the new contract or other instrument
7 would violate this Act (including regulations).

8 “(C) SPECIAL RULE FOR REVIEW AND AP-

9 PROVAL OF EVENT CONTRACTS AND SWAPS
10 CONTRACTS.—

11 “(i) EVENT CONTRACTS.—In connec-
12 tion with the listing of agreements, con-
13 tracts, transactions, or swaps in excluded
14 commodities that are based upon the oc-
15 currence, extent of an occurrence, or con-
16 tingency (other than a change in the price,
17 rate, value, or levels of a commodity de-
18 scribed in section 1a(2)(i)), by a des-
19 ignated contract market or swap execution
20 facility, the Commission may determine
21 that such agreements, contracts, or trans-
22 actions are contrary to the public interest
23 if the agreements, contracts, or trans-
24 actions involve—

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1 “(I) activity that is unlawful
2 under any Federal or State law;

3 “(II) terrorism;

4 “(III) assassination;

5 “(IV) war;

6 “(V) gaming; or

7 “(VI) other similar activity deter-
8 mined by the Commission, by rule or
9 regulation, to be contrary to the pub-
10 lic interest.

11 “(ii) PROHIBITION.—No agreement,
12 contract, or transaction determined by the
13 Commission to be contrary to the public
14 interest under clause (i) may be listed or
15 made available for clearing or trading on
16 or through a registered entity.

17 “(iii) SWAPS CONTRACTS.—

18 “(I) IN GENERAL.—In connection
19 with the listing of a swap for clearing
20 by a derivatives clearing organization,
21 the Commission shall determine, upon
22 request or on its own motion, the ini-
23 tial eligibility, or the continuing quali-
24 fication, of a derivatives clearing orga-
25 nization to clear such a swap under

1 those criteria, conditions, or rules that
2 the Commission, in its discretion, de-
3 termines.

4 “(II) REQUIREMENTS.—Any
5 such criteria, conditions, or rules shall
6 consider—

7 “(aa) the financial integrity
8 of the derivatives clearing organi-
9 zation; and

10 “(bb) any other factors
11 which the Commission deter-
12 mines may be appropriate.

13 “(iv) DEADLINE.—The Commission
14 shall take final action under clauses (i)
15 and (ii) in not later than 90 days from the
16 commencement of its review unless the
17 party seeking to offer the contract or swap
18 agrees to an extension of this time limita-
19 tion.”.

20 (c) VIOLATION OF CORE PRINCIPLES.—Section 5c of
21 the Commodity Exchange Act (7 U.S.C. 7a-2) is amended
22 by striking subsection (d).

1 **SEC. 746. INSIDER TRADING.**

2 Section 4c(a) of the Commodity Exchange Act (7
3 U.S.C. 6c(a)) is amended by adding at the end the fol-
4 lowing:

5 “(3) CONTRACT OF SALE.—It shall be unlawful
6 for any employee or agent of any department or
7 agency of the Federal Government who, by virtue of
8 the employment or position of the employee or
9 agent, acquires information that may affect or tend
10 to affect the price of any commodity in interstate
11 commerce, or for future delivery, or any swap, and
12 which information has not been disseminated by the
13 department or agency of the Federal Government
14 holding or creating the information in a manner
15 which makes it generally available to the trading
16 public, or disclosed in a criminal, civil, or adminis-
17 trative hearing, or in a congressional, administrative,
18 or Government Accountability Office report, hearing,
19 audit, or investigation, to use the information in his
20 personal capacity and for personal gain to enter
21 into, or offer to enter into—

22 “(A) a contract of sale of a commodity for
23 future delivery (or option on such a contract);

24 “(B) an option (other than an option exe-
25 cuted or traded on a national securities ex-
26 change registered pursuant to section 6(a) of

1 the Securities Exchange Act of 1934 (15
2 U.S.C. 78f(a)); or

3 “(C) a swap.

4 “(4) NONPUBLIC INFORMATION.—

5 “(A) IMPARTING OF NONPUBLIC INFORMA-
6 TION.—It shall be unlawful for any employee or
7 agent of any department or agency of the Fed-
8 eral Government who, by virtue of the employ-
9 ment or position of the employee or agent, ac-
10 quires information that may affect or tend to
11 affect the price of any commodity in interstate
12 commerce, or for future delivery, or any swap,
13 and which information has not been dissemi-
14 nated by the department or agency of the Fed-
15 eral Government holding or creating the infor-
16 mation in a manner which makes it generally
17 available to the trading public, or disclosed in
18 a criminal, civil, or administrative hearing, or in
19 a congressional, administrative, or Government
20 Accountability Office report, hearing, audit, or
21 investigation, to impart the information in his
22 personal capacity and for personal gain with in-
23 tent to assist another person, directly or indi-
24 rectly, to use the information to enter into, or
25 offer to enter into—

1 “(i) a contract of sale of a commodity
2 for future delivery (or option on such a
3 contract);

4 “(ii) an option (other than an option
5 executed or traded on a national securities
6 exchange registered pursuant to section
7 6(a) of the Securities Exchange Act of
8 1934 (15 U.S.C. 78f(a)); or

9 “(iii) a swap.

10 “(B) KNOWING USE.—It shall be unlawful
11 for any person who receives information im-
12 parted by any employee or agent of any depart-
13 ment or agency of the Federal Government as
14 described in subparagraph (A) to knowingly use
15 such information to enter into, or offer to enter
16 into—

17 “(i) a contract of sale of a commodity
18 for future delivery (or option on such a
19 contract);

20 “(ii) an option (other than an option
21 executed or traded on a national securities
22 exchange registered pursuant to section
23 6(a) of the Securities Exchange Act of
24 1934 (15 U.S.C. 78f(a)); or

25 “(iii) a swap.

1 “(C) THEFT OF NONPUBLIC INFORMA-
2 TION.—It shall be unlawful for any person to
3 steal, convert, or misappropriate, by any means
4 whatsoever, information held or created by any
5 department or agency of the Federal Govern-
6 ment that may affect or tend to affect the price
7 of any commodity in interstate commerce, or
8 for future delivery, or any swap, where such
9 person knows, or acts in reckless disregard of
10 the fact, that such information has not been
11 disseminated by the department or agency of
12 the Federal Government holding or creating the
13 information in a manner which makes it gen-
14 erally available to the trading public, or dis-
15 closed in a criminal, civil, or administrative
16 hearing, or in a congressional, administrative,
17 or Government Accountability Office report,
18 hearing, audit, or investigation, and to use such
19 information, or to impart such information with
20 the intent to assist another person, directly or
21 indirectly, to use such information to enter into,
22 or offer to enter into—

23 “(i) a contract of sale of a commodity
24 for future delivery (or option on such a
25 contract);

1 “(ii) an option (other than an option
2 executed or traded on a national securities
3 exchange registered pursuant to section
4 6(a) of the Securities Exchange Act of
5 1934 (15 U.S.C. 78f(a)); or

6 “(iii) a swap, provided, however, that
7 nothing in this subparagraph shall pre-
8 clude a person that has provided informa-
9 tion concerning, or generated by, the per-
10 son, its operations or activities, to any em-
11 ployee or agent of any department or agen-
12 cy of the Federal Government, voluntarily
13 or as required by law, from using such in-
14 formation to enter into, or offer to enter
15 into, a contract of sale, option, or swap de-
16 scribed in clauses (i), (ii), or (iii).”.

17 **SEC. 747. ANTIDISRUPTIVE PRACTICES AUTHORITY.**

18 Section 4c(a) of the Commodity Exchange Act (7
19 U.S.C. 6c(a)) (as amended by section 746) is amended
20 by adding at the end the following:

21 “(5) DISRUPTIVE PRACTICES.—It shall be un-
22 lawful for any person to engage in any trading, prac-
23 tice, or conduct on or subject to the rules of a reg-
24 istered entity that—

25 “(A) violates bids or offers;

1 “(B) demonstrates intentional or reckless
2 disregard for the orderly execution of trans-
3 actions during the closing period; or

4 “(C) is, is of the character of, or is com-
5 monly known to the trade as, ‘spoofing’ (bid-
6 ding or offering with the intent to cancel the
7 bid or offer before execution).

8 “(6) RULEMAKING AUTHORITY.—The Commis-
9 sion may make and promulgate such rules and regu-
10 lations as, in the judgment of the Commission, are
11 reasonably necessary to prohibit the trading prac-
12 tices described in paragraph (5) and any other trad-
13 ing practice that is disruptive of fair and equitable
14 trading.

15 “(7) USE OF SWAPS TO DEFRAUD.—It shall be
16 unlawful for any person to enter into a swap know-
17 ing, or acting in reckless disregard of the fact, that
18 its counterparty will use the swap as part of a de-
19 vice, scheme, or artifice to defraud any third
20 party.”.

21 **SEC. 748. COMMODITY WHISTLEBLOWER INCENTIVES AND**
22 **PROTECTION.**

23 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
24 is amended by adding at the end the following:

1 **“SEC. 23. COMMODITY WHISTLEBLOWER INCENTIVES AND**
2 **PROTECTION.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) COVERED JUDICIAL OR ADMINISTRATIVE
5 ACTION.—The term ‘covered judicial or administra-
6 tive action’ means any judicial or administrative ac-
7 tion brought by the Commission under this Act that
8 results in monetary sanctions exceeding \$1,000,000.

9 “(2) FUND.—The term ‘Fund’ means the Com-
10 modity Futures Trading Commission Customer Pro-
11 tection Fund established under subsection (g).

12 “(3) MONETARY SANCTIONS.—The term ‘mone-
13 tary sanctions’, when used with respect to any judi-
14 cial or administrative action means—

15 “(A) any monies, including penalties,
16 disgorgement, restitution, and interest ordered
17 to be paid; and

18 “(B) any monies deposited into a
19 disgorgement fund or other fund pursuant to
20 section 308(b) of the Sarbanes-Oxley Act of
21 2002 (15 U.S.C. 7246(b)), as a result of such
22 action or any settlement of such action.

23 “(4) ORIGINAL INFORMATION.—The term
24 ‘original information’ means information that—

25 “(A) is derived from the independent
26 knowledge or analysis of a whistleblower;

1 “(B) is not known to the Commission from
2 any other source, unless the whistleblower is the
3 original source of the information; and

4 “(C) is not exclusively derived from an al-
5 legation made in a judicial or administrative
6 hearing, in a governmental report, hearing,
7 audit, or investigation, or from the news media,
8 unless the whistleblower is a source of the infor-
9 mation.

10 “(5) RELATED ACTION.—The term ‘related ac-
11 tion’, when used with respect to any judicial or ad-
12 ministrative action brought by the Commission
13 under this Act, means any judicial or administrative
14 action brought by an entity described in subclauses
15 (I) through (VI) of subsection (h)(2)(C) that is
16 based upon the original information provided by a
17 whistleblower pursuant to subsection (a) that led to
18 the successful enforcement of the Commission ac-
19 tion.

20 “(6) SUCCESSFUL RESOLUTION.—The term
21 ‘successful resolution’, when used with respect to
22 any judicial or administrative action brought by the
23 Commission under this Act, includes any settlement
24 of such action.

1 “(7) WHISTLEBLOWER.—The term ‘whistle-
2 blower’ means any individual, or 2 or more individ-
3 uals acting jointly, who provides information relating
4 to a violation of this Act to the Commission, in a
5 manner established by rule or regulation by the
6 Commission.

7 “(b) AWARDS.—

8 “(1) IN GENERAL.—In any covered judicial or
9 administrative action, or related action, the Commis-
10 sion, under regulations prescribed by the Commis-
11 sion and subject to subsection (c), shall pay an
12 award or awards to 1 or more whistleblowers who
13 voluntarily provided original information to the
14 Commission that led to the successful enforcement
15 of the covered judicial or administrative action, or
16 related action, in an aggregate amount equal to—

17 “(A) not less than 10 percent, in total, of
18 what has been collected of the monetary sanc-
19 tions imposed in the action or related actions;
20 and

21 “(B) not more than 30 percent, in total, of
22 what has been collected of the monetary sanc-
23 tions imposed in the action or related actions.

24 “(2) PAYMENT OF AWARDS.—Any amount paid
25 under paragraph (1) shall be paid from the Fund.

1 “(c) DETERMINATION OF AMOUNT OF AWARD; DE-
2 NIAL OF AWARD.—

3 “(1) DETERMINATION OF AMOUNT OF
4 AWARD.—

5 “(A) DISCRETION.—The determination of
6 the amount of an award made under subsection
7 (b) shall be in the discretion of the Commission.

8 “(B) CRITERIA.—In determining the
9 amount of an award made under subsection (b),
10 the Commission—

11 “(i) shall take into consideration—

12 “(I) the significance of the infor-
13 mation provided by the whistleblower
14 to the success of the covered judicial
15 or administrative action;

16 “(II) the degree of assistance
17 provided by the whistleblower and any
18 legal representative of the whistle-
19 blower in a covered judicial or admin-
20 istrative action;

21 “(III) the programmatic interest
22 of the Commission in deterring viola-
23 tions of the Act (including regulations
24 under the Act) by making awards to
25 whistleblowers who provide informa-

1 tion that leads to the successful en-
2 forcement of such laws; and

3 “(IV) such additional relevant
4 factors as the Commission may estab-
5 lish by rule or regulation; and

6 “(ii) shall not take into consideration
7 the balance of the Fund.

8 “(2) DENIAL OF AWARD.—No award under
9 subsection (b) shall be made—

10 “(A) to any whistleblower who is, or was at
11 the time the whistleblower acquired the original
12 information submitted to the Commission, a
13 member, officer, or employee of—

14 “(i) a appropriate regulatory agency;

15 “(ii) the Department of Justice;

16 “(iii) a registered entity;

17 “(iv) a registered futures association;

18 “(v) a self-regulatory organization as
19 defined in section 3(a) of the Securities
20 Exchange Act of 1934 (15 U.S.C. 78c(a));

21 or

22 “(vi) a law enforcement organization;

23 “(B) to any whistleblower who is convicted
24 of a criminal violation related to the judicial or
25 administrative action for which the whistle-

1 blower otherwise could receive an award under
2 this section;

3 “(C) to any whistleblower who submits in-
4 formation to the Commission that is based on
5 the facts underlying the covered action sub-
6 mitted previously by another whistleblower;

7 “(D) to any whistleblower who fails to sub-
8 mit information to the Commission in such
9 form as the Commission may, by rule or regula-
10 tion, require.

11 “(d) REPRESENTATION.—

12 “(1) PERMITTED REPRESENTATION.—Any
13 whistleblower who makes a claim for an award under
14 subsection (b) may be represented by counsel.

15 “(2) REQUIRED REPRESENTATION.—

16 “(A) IN GENERAL.—Any whistleblower
17 who anonymously makes a claim for an award
18 under subsection (b) shall be represented by
19 counsel if the whistleblower submits the infor-
20 mation upon which the claim is based.

21 “(B) DISCLOSURE OF IDENTITY.—Prior to
22 the payment of an award, a whistleblower shall
23 disclose the identity of the whistleblower and
24 provide such other information as the Commis-

1 sion may require, directly or through counsel
2 for the whistleblower.

3 “(e) NO CONTRACT NECESSARY.—No contract with
4 the Commission is necessary for any whistleblower to re-
5 ceive an award under subsection (b), unless otherwise re-
6 quired by the Commission, by rule or regulation.

7 “(f) APPEALS.—

8 “(1) IN GENERAL.—Any determination made
9 under this section, including whether, to whom, or in
10 what amount to make awards, shall be in the discre-
11 tion of the Commission.

12 “(2) APPEALS.—Any determination described
13 in paragraph (1) may be appealed to the appropriate
14 court of appeals of the United States not more than
15 30 days after the determination is issued by the
16 Commission.

17 “(3) REVIEW.—The court shall review the de-
18 termination made by the Commission in accordance
19 with section 7064 of title 5, United States Code.

20 “(g) COMMODITY FUTURES TRADING COMMISSION
21 CUSTOMER PROTECTION FUND.—

22 “(1) ESTABLISHMENT.—There is established in
23 the Treasury of the United States a revolving fund
24 to be known as the ‘Commodity Futures Trading
25 Commission Customer Protection Fund’.

1 “(2) USE OF FUND.—The Fund shall be avail-
2 able to the Commission, without further appropria-
3 tion or fiscal year limitation, for—

4 “(A) the payment of awards to whistle-
5 blowers as provided in subsection (a); and

6 “(B) the funding of customer education
7 initiatives designed to help customers protect
8 themselves against fraud or other violations of
9 this Act, or the rules and regulations there-
10 under.

11 “(3) DEPOSITS AND CREDITS.—There shall be
12 deposited into or credited to the Fund:

13 “(A) MONETARY SANCTIONS.—Any mone-
14 etary sanctions collected by the Commission in
15 any covered judicial or administrative action
16 that is not otherwise distributed to victims of a
17 violation of this Act or the rules and regulations
18 thereunder underlying such action, unless the
19 balance of the Fund at the time the monetary
20 judgment is collected exceeds \$100,000,000.

21 “(B) ADDITIONAL AMOUNTS.—If the
22 amounts deposited into or credited to the Fund
23 under subparagraph (A) are not sufficient to
24 satisfy an award made under subsection (b),
25 there shall be deposited into or credited to the

1 Fund an amount equal to the unsatisfied por-
2 tion of the award from any monetary sanction
3 collected by the Commission in any judicial or
4 administrative action brought by the Commis-
5 sion under this Act that is based on information
6 provided by a whistleblower.

7 “(C) INVESTMENT INCOME.—All income
8 from investments made 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 Agriculture, Nutri-
6 tion, and Forestry of the Senate, and the Committee
7 on Agriculture of the House of Representatives a re-
8 port on—

9 “(A) the Commission’s whistleblower
10 award program under this section, including a
11 description of the number of awards granted
12 and the types of cases in which awards were
13 granted during the preceding fiscal year;

14 “(B) customer 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;

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1 “(F) the amount paid from the Fund dur-
2 ing the preceding fiscal year to whistleblowers
3 pursuant to subsection (b);

4 “(G) the amount paid from the Fund dur-
5 ing the preceding fiscal year for customer edu-
6 cation initiatives described in paragraph (2)(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 “(h) PROTECTION OF WHISTLEBLOWERS.—

13 “(1) PROHIBITION AGAINST RETALIATION.—

14 “(A) IN GENERAL.—No employer may dis-
15 charge, demote, suspend, threaten, harass, di-
16 rectly or indirectly, or in any other manner dis-
17 criminate against, a whistleblower in the terms
18 and conditions of employment because of any
19 lawful act done by the whistleblower—

20 “(i) in providing information to the
21 Commission in accordance with subsection
22 (b); or

23 “(ii) in assisting in any investigation
24 or judicial or administrative action of the

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1 Commission based upon or related to such
2 information.

3 “(B) ENFORCEMENT.—

4 “(i) CAUSE OF ACTION.—An indi-
5 vidual who alleges discharge or other dis-
6 crimination in violation of subparagraph
7 (A) may bring an action under this sub-
8 section in the appropriate district court of
9 the United States for the relief provided in
10 subparagraph (C), unless the individual
11 who is alleging discharge or other discrimi-
12 nation in violation of subparagraph (A) is
13 an employee of the Federal Government, in
14 which case the individual shall only bring
15 an action under section 1221 of title 5,
16 United States Code.

17 “(ii) SUBPOENAS.—A subpoena re-
18 quiring the attendance of a witness at a
19 trial or hearing conducted under this sub-
20 section may be served at any place in the
21 United States.

22 “(iii) STATUTE OF LIMITATIONS.—An
23 action under this subsection may not be
24 brought more than 2 years after the date

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1 on which the violation reported in subpara-
2 graph (A) is committed.

3 “(C) RELIEF.—Relief for an individual
4 prevailing in an action brought under subpara-
5 graph (B) shall include—

6 “(i) reinstatement with the same se-
7 niority status that the individual would
8 have had, but for the discrimination;

9 “(ii) the amount of back pay other-
10 wise owed to the individual, with interest;
11 and

12 “(iii) compensation for any special
13 damages sustained as a result of the dis-
14 charge or discrimination, including litiga-
15 tion costs, expert witness fees, and reason-
16 able attorney’s fees.

17 “(2) CONFIDENTIALITY.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraphs (B) and (C), the Commission,
20 and any officer or employee of the Commission,
21 shall not disclose any information, including in-
22 formation provided by a whistleblower to the
23 Commission, which could reasonably be ex-
24 pected to reveal the identity of a whistleblower,
25 except in accordance with the provisions of sec-

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1 tion 552a of title 5, United States Code, unless
2 and until required to be disclosed to a defend-
3 ant or respondent in connection with a public
4 proceeding instituted by the Commission or any
5 entity described in subparagraph (C). For pur-
6 poses of section 552 of title 5, United States
7 Code, this paragraph shall be considered a stat-
8 ute described in subsection (b)(3)(B) of such
9 section 552.

10 “(B) EFFECT.—Nothing in this paragraph
11 is intended to limit the ability of the Attorney
12 General to present such evidence to a grand
13 jury or to share such evidence with potential
14 witnesses or defendants in the course of an on-
15 going criminal investigation.

16 “(C) AVAILABILITY TO GOVERNMENT
17 AGENCIES.—

18 “(i) IN GENERAL.—Without the loss
19 of its status as confidential in the hands of
20 the Commission, all information referred to
21 in subparagraph (A) may, in the discretion
22 of the Commission, when determined by
23 the Commission to be necessary or appro-
24 priate to accomplish the purposes of this
25 Act and protect customers and in accord-

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1 “(iii) STUDY ON IMPACT OF FOIA EX-
2 EMPTION ON CFTC.—

3 “(I) STUDY.—The Inspector
4 General of the Commission shall con-
5 duct a study—

6 “(aa) on whether the exemp-
7 tion under section 552(b)(3) of
8 title 5, United States Code
9 (known as the Freedom of Infor-
10 mation Act) established in para-
11 graph (2)(A) aids whistleblowers
12 in disclosing information to the
13 Commission;

14 “(bb) on what impact the
15 exemption has had on the
16 public’s ability to access informa-
17 tion about the Commission’s reg-
18 ulation of commodity futures and
19 option markets; and

20 “(cc) to make any rec-
21 ommendations on whether the
22 Commission should continue to
23 use the exemption.

24 “(II) REPORT.—Not later than
25 30 months after the date of enact-

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1 ment of this clause, the Inspector
2 General shall—

3 “(aa) submit a report on the
4 findings of the study required
5 under this clause to the Com-
6 mittee on Banking, Housing, and
7 Urban Affairs of the Senate and
8 the Committee on Financial
9 Services of the House of Rep-
10 representatives; and

11 “(bb) make the report avail-
12 able to the public through publi-
13 cation of a report on the website
14 of the Commission.

15 “(3) RIGHTS RETAINED.—Nothing in this sec-
16 tion shall be deemed to diminish the rights, privi-
17 leges, or remedies of any whistleblower under any
18 Federal or State law, or under any collective bar-
19 gaining agreement.

20 “(i) RULEMAKING AUTHORITY.—The Commission
21 shall have the authority to issue such rules and regulations
22 as may be necessary or appropriate to implement the pro-
23 visions of this section consistent with the purposes of this
24 section.

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1 “(j) IMPLEMENTING RULES.—The Commission shall
2 issue final rules or regulations implementing the provi-
3 sions of this section not later than 270 days after the date
4 of enactment of the Wall Street Transparency and Ac-
5 countability Act of 2010.

6 “(k) ORIGINAL INFORMATION.—Information sub-
7 mitted to the Commission by a whistleblower in accord-
8 ance with rules or regulations implementing this section
9 shall not lose its status as original information solely be-
10 cause the whistleblower submitted such information prior
11 to the effective date of such rules or regulations, provided
12 such information was submitted after the date of enact-
13 ment of the Wall Street Transparency and Accountability
14 Act of 2010.

15 “(l) AWARDS.—A whistleblower may receive an award
16 pursuant to this section regardless of whether any viola-
17 tion of a provision of this Act, or a rule or regulation
18 thereunder, underlying the judicial or administrative ac-
19 tion upon which the award is based occurred prior to the
20 date of enactment of the Wall Street Transparency and
21 Accountability Act of 2010.

22 “(m) PROVISION OF FALSE INFORMATION.—A whis-
23 tleblower who knowingly and willfully makes any false, fie-
24 titious, or fraudulent statement or representation, or who
25 makes or uses any false writing or document knowing the

1 same to contain any false, fictitious, or fraudulent state-
2 ment or entry, shall not be entitled to an award under
3 this section and shall be subject to prosecution under sec-
4 tion 1001 of title 18, United States Code.

5 “(n) NONENFORCEABILITY OF CERTAIN PROVISIONS
6 WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBI-
7 TRATION OF DISPUTES.—

8 “(1) WAIVER OF RIGHTS AND REMEDIES.—The
9 rights and remedies provided for in this section may
10 not be waived by any agreement, policy form, or con-
11 dition of employment including by a predispute arbi-
12 tration agreement.

13 “(2) PREDISPUTE ARBITRATION AGREE-
14 MENTS.—No predispute arbitration agreement shall
15 be valid or enforceable, if the agreement requires ar-
16 bitration of a dispute arising under this section.”.

17 **SEC. 749. CONFORMING AMENDMENTS.**

18 (a) Section 4d of the Commodity Exchange Act (7
19 U.S.C. 6d) (as amended by section 724) is amended—

20 (1) in subsection (a)—

21 (A) in the matter preceding paragraph

22 (1)—

23 (i) by striking “engage as” and insert-
24 ing “be a”; and

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1 (ii) by striking “or introducing
2 broker” and all that follows through “or
3 derivatives transaction execution facility”;

4 (B) in paragraph (1), by striking “or in-
5 troducing broker”; and

6 (C) in paragraph (2), by striking “if a fu-
7 tures commission merchant,”; and

8 (2) by adding at the end the following:

9 “(g) It shall be unlawful for any person to be an in-
10 troducing broker unless such person shall have registered
11 under this Act with the Commission as an introducing
12 broker and such registration shall not have expired nor
13 been suspended nor revoked.”.

14 (b) Section 4m(3) of the Commodity Exchange Act
15 (7 U.S.C. 6m(3)) is amended—

16 (1) by striking “(3) Subsection (1) of this sec-
17 tion” and inserting the following:

18 “(3) EXCEPTION.—

19 “(A) IN GENERAL.—Paragraph (1)”;

20 (2) by striking “to any investment trust” and
21 all that follows through the period at the end and
22 inserting the following: “to any commodity pool that
23 is engaged primarily in trading commodity interests.

24 “(B) ENGAGED PRIMARILY.—For purposes of
25 subparagraph (A), a commodity trading advisor or a

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1 commodity pool shall be considered to be ‘engaged
2 primarily’ in the business of being a commodity
3 trading advisor or commodity pool if it is or holds
4 itself out to the public as being engaged primarily,
5 or proposes to engage primarily, in the business of
6 advising on commodity interests or investing, rein-
7 vesting, owning, holding, or trading in commodity
8 interests, respectively.

9 “(C) COMMODITY INTERESTS.—For purposes of
10 this paragraph, commodity interests shall include
11 contracts of sale of a commodity for future delivery,
12 options on such contracts, security futures, swaps,
13 leverage contracts, foreign exchange, spot and for-
14 ward contracts on physical commodities, and any
15 monies held in an account used for trading com-
16modity interests.”.

17 (c) Section 5c of the Commodity Exchange Act (7
18 U.S.C. 7a–2) is amended—

19 (1) in subsection (a)(1)—

20 (A) by striking “, 5a(d),”; and

21 (B) by striking “and section (2)(h)(7) with
22 respect to significant price discovery con-
23 tracts,”; and

24 (2) in subsection (f)(1), by striking “section
25 4d(c) of this Act” and inserting “section 4d(e)”.

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1 (d) Section 5e of the Commodity Exchange Act (7
2 U.S.C. 7b) is amended by striking “or revocation of the
3 right of an electronic trading facility to rely on the exemp-
4 tion set forth in section 2(h)(3) with respect to a signifi-
5 cant price discovery contract,”.

6 (e) Section 6(b) of the Commodity Exchange Act (7
7 U.S.C. 8(b)) is amended in the first sentence by striking
8 “, or to revoke the right of an electronic trading facility
9 to rely on the exemption set forth in section 2(h)(3) with
10 respect to a significant price discovery contract,”.

11 (f) Section 12(e)(2)(B) of the Commodity Exchange
12 Act (7 U.S.C. 16(e)(2)(B)) is amended—

13 (1) by striking “section 2(c), 2(d), 2(f), or 2(g)
14 of this Act” and inserting “section 2(e) or 2(f) of
15 this Act”; and

16 (2) by striking “2(h) or”.

17 (g) Section 17(r)(1) of the Commodity Exchange Act
18 (7 U.S.C. 21(r)(1)) is amended by striking “section 4d(c)
19 of this Act” and inserting “section 4d(e)”.

20 (h) Section 22 of the Commodity Exchange Act is
21 amended—

22 (1) in subsection (a)(1)(B), by—

23 (A) inserting “or any swap” after “com-
24 modity”; and

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1 (B) inserting “or any swap” after “such
2 contract”;

3 (2) in subsection (a)(1)(C), by adding at the
4 end the following:

5 “(iv) a swap; or”; and

6 (3) in subsection (b)(1)(A), by striking “section
7 2(h)(7) or sections 5 through 5c” and inserting
8 “section 5, 5b, 5c, 5h, or 21”.

9 (i) Section 408(2)(C) of the Federal Deposit Insur-
10 ance Corporation Improvement Act of 1991 (12 U.S.C.
11 4421(2)(C)) is amended—

12 (1) by striking “section 2(c), 2(d), 2(f), or
13 (2)(g) of such Act” and inserting “section 2(c), 2(f),
14 or 2(i) of that Act”; and

15 (2) by striking “2(h) or”.

16 **SEC. 750. STUDY ON OVERSIGHT OF CARBON MARKETS.**

17 (a) INTERAGENCY WORKING GROUP.—There is es-
18 tablished to carry out this section an interagency working
19 group (referred to in this section as the “interagency
20 group”) composed of the following members or designees:

21 (1) The Chairman of the Commodity Futures
22 Trading Commission (referred to in this section as
23 the “Commission”), who shall serve as Chairman of
24 the interagency group.

25 (2) The Secretary of Agriculture.

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1 (3) The Secretary of the Treasury.

2 (4) The Chairman of the Securities and Ex-
3 change Commission.

4 (5) The Administrator of the Environmental
5 Protection Agency.

6 (6) The Chairman of the Federal Energy Regu-
7 latory Commission.

8 (7) The Commissioner of the Federal Trade
9 Commission.

10 (8) The Administrator of the Energy Informa-
11 tion Administration.

12 (b) ADMINISTRATIVE SUPPORT.—The Commission
13 shall provide the interagency group such administrative
14 support services as are necessary to enable the interagency
15 group to carry out the functions of the interagency group
16 under this section.

17 (c) CONSULTATION.—In carrying out this section, the
18 interagency group shall consult with representatives of ex-
19 changes, clearinghouses, self-regulatory bodies, major car-
20 bon market participants, consumers, and the general pub-
21 lic, as the interagency group determines to be appropriate.

22 (d) STUDY.—The interagency group shall conduct a
23 study on the oversight of existing and prospective carbon
24 markets to ensure an efficient, secure, and transparent

1 carbon market, including oversight of spot markets and
2 derivative markets.

3 (e) REPORT.—Not later than 180 days after the date
4 of enactment of this Act, the interagency group shall sub-
5 mit to Congress a report on the results of the study con-
6 ducted under subsection (b), including recommendations
7 for the oversight of existing and prospective carbon mar-
8 kets to ensure an efficient, secure, and transparent carbon
9 market, including oversight of spot markets and derivative
10 markets.

11 **SEC. 751. ENERGY AND ENVIRONMENTAL MARKETS ADVI-**
12 **SORY COMMITTEE.**

13 Section 2(a) of the Commodity Exchange Act (7
14 U.S.C. 2(a)) (as amended by section 727) is amended by
15 adding at the end the following:

16 “(15) ENERGY AND ENVIRONMENTAL MARKETS
17 ADVISORY COMMITTEE.—

18 “(A) ESTABLISHMENT.—

19 “(i) IN GENERAL.—An Energy and
20 Environmental Markets Advisory Com-
21 mittee is hereby established.

22 “(ii) MEMBERSHIP.—The Committee
23 shall have 9 members.

24 “(iii) ACTIVITIES.—The Committee’s
25 objectives and scope of activities shall be—

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1 “(I) to conduct public meetings;

2 “(II) to submit reports and rec-
3 ommendations to the Commission (in-
4 cluding dissenting or minority views,
5 if any); and

6 “(III) otherwise to serve as a ve-
7 hicle for discussion and communica-
8 tion on matters of concern to ex-
9 changes, firms, end users, and regu-
10 lators regarding energy and environ-
11 mental markets and their regulation
12 by the Commission.

13 “(B) REQUIREMENTS.—

14 “(i) IN GENERAL.—The Committee
15 shall hold public meetings at such intervals
16 as are necessary to carry out the functions
17 of the Committee, but not less frequently
18 than 2 times per year.

19 “(ii) MEMBERS.—Members shall be
20 appointed to 3-year terms, but may be re-
21 moved for cause by vote of the Commis-
22 sion.

23 “(C) APPOINTMENT.—The Commission
24 shall appoint members with a wide diversity of

1 opinion and who represent a broad spectrum of
2 interests, including hedgers and consumers.

3 “(D) REIMBURSEMENT.—Members shall
4 be entitled to per diem and travel expense reim-
5 bursement by the Commission.

6 “(E) FACA.—The Committee shall not be
7 subject to the Federal Advisory Committee Act
8 (5 U.S.C. App.).”

9 **SEC. 752. INTERNATIONAL HARMONIZATION.**

10 (a) In order to promote effective and consistent global
11 regulation of swaps and security-based swaps, the Com-
12 modity Futures Trading Commission, the Securities and
13 Exchange Commission, and the prudential regulators (as
14 that term is defined in section 1a(39) of the Commodity
15 Exchange Act), as appropriate, shall consult and coordi-
16 nate with foreign regulatory authorities on the establish-
17 ment of consistent international standards with respect to
18 the regulation (including fees) of swaps, security-based
19 swaps, swap entities, and security-based swap entities and
20 may agree to such information-sharing arrangements as
21 may be deemed to be necessary or appropriate in the pub-
22 lic interest or for the protection of investors, swap counter-
23 parties, and security-based swap counterparties.

24 (b) In order to promote effective and consistent global
25 regulation of contracts of sale of a commodity for future

1 delivery and options on such contracts, the Commodity
2 Futures Trading Commission shall consult and coordinate
3 with foreign regulatory authorities on the establishment
4 of consistent international standards with respect to the
5 regulation of contracts of sale of a commodity for future
6 delivery and options on such contracts, and may agree to
7 such information-sharing arrangements as may be deemed
8 necessary or appropriate in the public interest for the pro-
9 tection of users of contracts of sale of a commodity for
10 future delivery.

11 **SEC. 753. ANTI-MANIPULATION AUTHORITY.**

12 (a) PROHIBITION REGARDING MANIPULATION AND
13 FALSE INFORMATION.—Subsection (c) of section 6 of the
14 Commodity Exchange Act (7 U.S.C. 9, 15) is amended
15 to read as follows:

16 “(c) PROHIBITION REGARDING MANIPULATION AND
17 FALSE INFORMATION.—

18 “(1) PROHIBITION AGAINST MANIPULATION.—

19 It shall be unlawful for any person, directly or indi-
20 rectly, to use or employ, or attempt to use or em-
21 ploy, in connection with any swap, or a contract of
22 sale of any commodity in interstate commerce, or for
23 future delivery on or subject to the rules of any reg-
24 istered entity, any manipulative or deceptive device
25 or contrivance, in contravention of such rules and

1 regulations as the Commission shall promulgate by
2 not later than 1 year after the date of enactment of
3 the Dodd-Frank Wall Street Reform and Consumer
4 Protection Act, provided no rule or regulation pro-
5 mulgated by the Commission shall require any per-
6 son to disclose to another person nonpublic informa-
7 tion that may be material to the market price, rate,
8 or level of the commodity transaction, except as nec-
9 essary to make any statement made to the other
10 person in or in connection with the transaction not
11 misleading in any material respect.

12 “(A) SPECIAL PROVISION FOR MANIPULA-
13 TION BY FALSE REPORTING.—Unlawful manip-
14 ulation for purposes of this paragraph shall in-
15 clude, but not be limited to, delivering, or caus-
16 ing to be delivered for transmission through the
17 mails or interstate commerce, by any means of
18 communication whatsoever, a false or mis-
19 leading or inaccurate report concerning crop or
20 market information or conditions that affect or
21 tend to affect the price of any commodity in
22 interstate commerce, knowing, or acting in
23 reckless disregard of the fact that such report
24 is false, misleading or inaccurate.

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1 “(B) EFFECT ON OTHER LAW.—Nothing
2 in this paragraph shall affect, or be construed
3 to affect, the applicability of section 9(a)(2).

4 “(C) GOOD FAITH MISTAKES.—Mistakenly
5 transmitting, in good faith, false or misleading
6 or inaccurate information to a price reporting
7 service would not be sufficient to violate sub-
8 section (c)(1)(A).

9 “(2) PROHIBITION REGARDING FALSE INFOR-
10 MATION.—It shall be unlawful for any person to
11 make any false or misleading statement of a mate-
12 rial fact to the Commission, including in any reg-
13 istration application or any report filed with the
14 Commission under this Act, or any other informa-
15 tion relating to a swap, or a contract of sale of a
16 commodity, in interstate commerce, or for future de-
17 livery on or subject to the rules of any registered en-
18 tity, or to omit to state in any such statement any
19 material fact that is necessary to make any state-
20 ment of a material fact made not misleading in any
21 material respect, if the person knew, or reasonably
22 should have known, the statement to be false or mis-
23 leading.

24 “(3) OTHER MANIPULATION.—In addition to
25 the prohibition in paragraph (1), it shall be unlawful

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1 for any person, directly or indirectly, to manipulate
2 or attempt to manipulate the price of any swap, or
3 of any commodity in interstate commerce, or for fu-
4 ture delivery on or subject to the rules of any reg-
5 istered entity.

6 “(4) ENFORCEMENT.—

7 “(A) AUTHORITY OF COMMISSION.—If the
8 Commission has reason to believe that any per-
9 son (other than a registered entity) is violating
10 or has violated this subsection, or any other
11 provision of this Act (including any rule, regula-
12 tion, or order of the Commission promulgated
13 in accordance with this subsection or any other
14 provision of this Act), the Commission may
15 serve upon the person a complaint.

16 “(B) CONTENTS OF COMPLAINT.—A com-
17 plaint under subparagraph (A) shall—

18 “(i) contain a description of the
19 charges against the person that is the sub-
20 ject of the complaint; and

21 “(ii) have attached or contain a notice
22 of hearing that specifies the date and loca-
23 tion of the hearing regarding the com-
24 plaint.

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1 “(C) HEARING.—A hearing described in
2 subparagraph (B)(ii)—

3 “(i) shall be held not later than 3
4 days after service of the complaint de-
5 scribed in subparagraph (A);

6 “(ii) shall require the person to show
7 cause regarding why—

8 “(I) an order should not be
9 made—

10 “(aa) to prohibit the person
11 from trading on, or subject to the
12 rules of, any registered entity;
13 and

14 “(bb) to direct all registered
15 entities to refuse all privileges to
16 the person until further notice of
17 the Commission; and

18 “(II) the registration of the per-
19 son, if registered with the Commission
20 in any capacity, should not be sus-
21 pended or revoked; and

22 “(iii) may be held before—

23 “(I) the Commission; or

24 “(II) an administrative law judge
25 designated by the Commission, under

1 which the administrative law judge
2 shall ensure that all evidence is re-
3 corded in written form and submitted
4 to the Commission.

5 “(5) SUBPOENA.—For the purpose of securing
6 effective enforcement of the provisions of this Act,
7 for the purpose of any investigation or proceeding
8 under this Act, and for the purpose of any action
9 taken under section 12(f), any member of the Com-
10 mission or any Administrative Law Judge or other
11 officer designated by the Commission (except as pro-
12 vided in paragraph (7)) may administer oaths and
13 affirmations, subpoena witnesses, compel their at-
14 tendance, take evidence, and require the production
15 of any books, papers, correspondence, memoranda,
16 or other records that the Commission deems relevant
17 or material to the inquiry.

18 “(6) WITNESSES.—The attendance of witnesses
19 and the production of any such records may be re-
20 quired from any place in the United States, any
21 State, or any foreign country or jurisdiction at any
22 designated place of hearing.

23 “(7) SERVICE.—A subpoena issued under this
24 section may be served upon any person who is not
25 to be found within the territorial jurisdiction of any

1 court of the United States in such manner as the
2 Federal Rules of Civil Procedure prescribe for serv-
3 ice of process in a foreign country, except that a
4 subpoena to be served on a person who is not to be
5 found within the territorial jurisdiction of any court
6 of the United States may be issued only on the prior
7 approval of the Commission.

8 “(8) REFUSAL TO OBEY.—In case of contumacy
9 by, or refusal to obey a subpoena issued to, any per-
10 son, the Commission may invoke the aid of any
11 court of the United States within the jurisdiction in
12 which the investigation or proceeding is conducted,
13 or where such person resides or transacts business,
14 in requiring the attendance and testimony of wit-
15 nesses and the production of books, papers, cor-
16 respondence, memoranda, and other records. Such
17 court may issue an order requiring such person to
18 appear before the Commission or member or Admin-
19 istrative Law Judge or other officer designated by
20 the Commission, there to produce records, if so or-
21 dered, or to give testimony touching the matter
22 under investigation or in question.

23 “(9) FAILURE TO OBEY.—Any failure to obey
24 such order of the court may be punished by the
25 court as a contempt thereof. All process in any such

1 case may be served in the judicial district wherein
2 such person is an inhabitant or transacts business or
3 wherever such person may be found.

4 “(10) EVIDENCE.—On the receipt of evidence
5 under paragraph (4)(C)(iii), the Commission may—

6 “(A) prohibit the person that is the subject
7 of the hearing from trading on, or subject to
8 the rules of, any registered entity and require
9 all registered entities to refuse the person all
10 privileges on the registered entities for such pe-
11 riod as the Commission may require in the
12 order;

13 “(B) if the person is registered with the
14 Commission in any capacity, suspend, for a pe-
15 riod not to exceed 180 days, or revoke, the reg-
16 istration of the person;

17 “(C) assess such person—

18 “(i) a civil penalty of not more than
19 an amount equal to the greater of—

20 “(I) \$140,000; or

21 “(II) triple the monetary gain to
22 such person for each such violation; or

23 “(ii) in any case of manipulation or
24 attempted manipulation in violation of this
25 subsection or section 9(a)(2), a civil pen-

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1 alty of not more than an amount equal to
2 the greater of—

3 “(I) \$1,000,000; or

4 “(II) triple the monetary gain to
5 the person for each such violation;
6 and

7 “(D) require restitution to customers of
8 damages proximately caused by violations of the
9 person.

10 “(11) ORDERS.—

11 “(A) NOTICE.—The Commission shall pro-
12 vide to a person described in paragraph (10)
13 and the appropriate governing board of the reg-
14 istered entity notice of the order described in
15 paragraph (10) by—

16 “(i) registered mail;

17 “(ii) certified mail; or

18 “(iii) personal delivery.

19 “(B) REVIEW.—

20 “(i) IN GENERAL.—A person de-
21 scribed in paragraph (10) may obtain a re-
22 view of the order or such other equitable
23 relief as determined to be appropriate by a
24 court described in clause (ii).

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1 “(ii) PETITION.—To obtain a review
2 or other relief under clause (i), a person
3 may, not later than 15 days after notice is
4 given to the person under clause (i), file a
5 written petition to set aside the order with
6 the United States Court of Appeals—

7 “(I) for the circuit in which the
8 petitioner carries out the business of
9 the petitioner; or

10 “(II) in the case of an order de-
11 nying registration, the circuit in which
12 the principal place of business of the
13 petitioner is located, as listed on the
14 application for registration of the peti-
15 tioner.

16 “(C) PROCEDURE.—

17 “(i) DUTY OF CLERK OF APPRO-
18 PRIATE COURT.—The clerk of the appro-
19 priate court under subparagraph (B)(ii)
20 shall transmit to the Commission a copy of
21 a petition filed under subparagraph (B)(ii).

22 “(ii) DUTY OF COMMISSION.—In ac-
23 cordance with section 2112 of title 28,
24 United States Code, the Commission shall
25 file in the appropriate court described in

1 subparagraph (B)(ii) the record theretofore
2 made.

3 “(iii) JURISDICTION OF APPROPRIATE
4 COURT.—Upon the filing of a petition
5 under subparagraph (B)(ii), the appro-
6 priate court described in subparagraph
7 (B)(ii) may affirm, set aside, or modify the
8 order of the Commission.”.

9 (b) CEASE AND DESIST ORDERS, FINES.—Section
10 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is
11 amended to read as follows:

12 “(d) If any person (other than a registered entity),
13 is violating or has violated subsection (c) or any other pro-
14 visions of this Act or of the rules, regulations, or orders
15 of the Commission thereunder, the Commission may, upon
16 notice and hearing, and subject to appeal as in other cases
17 provided for in subsection (c), make and enter an order
18 directing that such person shall cease and desist therefrom
19 and, if such person thereafter and after the lapse of the
20 period allowed for appeal of such order or after the affirm-
21 ance of such order, shall knowingly fail or refuse to obey
22 or comply with such order, such person, upon conviction
23 thereof, shall be fined not more than the higher of
24 \$140,000 or triple the monetary gain to such person, or
25 imprisoned for not more than 1 year, or both, except that

1 if such knowing failure or refusal to obey or comply with
2 such order involves any offense within subsection (a) or
3 (b) of section 9, such person, upon conviction thereof, shall
4 be subject to the penalties of said subsection (a) or (b):
5 Provided, That any such cease and desist order under this
6 subsection against any respondent in any case of manipu-
7 lation shall be issued only in conjunction with an order
8 issued against such respondent under subsection (c).”.

9 (c) MANIPULATIONS; PRIVATE RIGHTS OF ACTION.—
10 Section 22(a)(1) of the Commodity Exchange Act (7
11 U.S.C. 25(a)(1)) is amended by striking subparagraph
12 (D) and inserting the following:

13 “(D) who purchased or sold a contract referred
14 to in subparagraph (B) hereof or swap if the viola-
15 tion constitutes—

16 “(i) the use or employment of, or an at-
17 tempt to use or employ, in connection with a
18 swap, or a contract of sale of a commodity, in
19 interstate commerce, or for future delivery on
20 or subject to the rules of any registered entity,
21 any manipulative device or contrivance in con-
22 travention of such rules and regulations as the
23 Commission shall promulgate by not later than
24 1 year after the date of enactment of the Dodd-

1 Frank Wall Street Reform and Consumer Pro-
2 tection Act of 2010; or

3 “(ii) a manipulation of the price of any
4 such contract or swap or the price of the com-
5 modity underlying such contract or swap.”.

6 (d) EFFECTIVE DATE.—

7 (1) The amendments made by this section shall
8 take effect on the date on which the final rule pro-
9 mulgated by the Commodity Futures Trading Com-
10 mission pursuant to this Act takes effect.

11 (2) Paragraph (1) shall not preclude the Com-
12 mission from undertaking prior to the effective date
13 any rulemaking necessary to implement the amend-
14 ments contained in this section.

15 **SEC. 754. EFFECTIVE DATE.**

16 Unless otherwise provided in this title, the provisions
17 of this subtitle shall take effect on the later of 360 days
18 after the date of the enactment of this subtitle or, to the
19 extent a provision of this subtitle requires a rulemaking,
20 not less than 60 days after publication of the final rule
21 or regulation implementing such provision of this subtitle.

1 **Subtitle B—Regulation of Security-**
2 **Based Swap Markets**

3 **SEC. 761. DEFINITIONS UNDER THE SECURITIES EX-**
4 **CHANGE ACT OF 1934.**

5 (a) DEFINITIONS.—Section 3(a) of the Securities Ex-
6 change Act of 1934 (15 U.S.C. 78c(a)) is amended—

7 (1) in subparagraphs (A) and (B) of paragraph
8 (5), by inserting “(not including security-based
9 swaps, other than security-based swaps with or for
10 persons that are not eligible contract participants)”
11 after “securities” each place that term appears;

12 (2) in paragraph (10), by inserting “security-
13 based swap,” after “security future,”;

14 (3) in paragraph (13), by adding at the end the
15 following: “For security-based swaps, such terms in-
16 clude the execution, termination (prior to its sched-
17 uled maturity date), assignment, exchange, or simi-
18 lar transfer or conveyance of, or extinguishing of
19 rights or obligations under, a security-based swap,
20 as the context may require.”;

21 (4) in paragraph (14), by adding at the end the
22 following: “For security-based swaps, such terms in-
23 clude the execution, termination (prior to its sched-
24 uled maturity date), assignment, exchange, or simi-
25 lar transfer or conveyance of, or extinguishing of

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1 rights or obligations under, a security-based swap,
2 as the context may require.”;

3 (5) in paragraph (39)—

4 (A) in subparagraph (B)(i)—

5 (i) in subclause (I), by striking “or
6 government securities dealer” and insert-
7 ing “government securities dealer, security-
8 based swap dealer, or major security-based
9 swap participant”; and

10 (ii) in subclause (II), by inserting “se-
11 curity-based swap dealer, major security-
12 based swap participant,” after “govern-
13 ment securities dealer,”;

14 (B) in subparagraph (C), by striking “or
15 government securities dealer” and inserting
16 “government securities dealer, security-based
17 swap dealer, or major security-based swap par-
18 ticipant”; and

19 (C) in subparagraph (D), by inserting “se-
20 curity-based swap dealer, major security-based
21 swap participant,” after “government securities
22 dealer,”; and

23 (6) by adding at the end the following:

24 “(65) ELIGIBLE CONTRACT PARTICIPANT.—The
25 term ‘eligible contract participant’ has the same

1 meaning as in section 1a of the Commodity Ex-
2 change Act (7 U.S.C. 1a).

3 “(66) MAJOR SWAP PARTICIPANT.—The term
4 ‘major swap participant’ has the same meaning as in
5 section 1a of the Commodity Exchange Act (7
6 U.S.C. 1a).

7 “(67) MAJOR SECURITY-BASED SWAP PARTICI-
8 PANT.—

9 “(A) IN GENERAL.—The term ‘major secu-
10 rity-based swap participant’ means any per-
11 son—

12 “(i) who is not a security-based swap
13 dealer; and

14 “(ii)(I) who maintains a substantial
15 position in security-based swaps for any of
16 the major security-based swap categories,
17 as such categories are determined by the
18 Commission, excluding positions held for
19 hedging or mitigating commercial risk;

20 “(II) whose outstanding security-
21 based swaps create substantial
22 counterparty exposure that could have seri-
23 ous adverse effects on the financial sta-
24 bility of the United States banking system
25 or financial markets; or

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1 “(III) that is a financial entity that—

2 “(aa) is highly leveraged relative
3 to the amount of capital such entity
4 holds and that is not subject to cap-
5 ital requirements established by an
6 appropriate Federal banking regu-
7 lator; and

8 “(bb) maintains a substantial po-
9 sition in outstanding security-based
10 swaps in any major security-based
11 swap category, as such categories are
12 determined by the Commission.

13 “(B) DEFINITION OF SUBSTANTIAL POSI-
14 TION.—For purposes of subparagraph (A), the
15 Commission shall define, by rule or regulation,
16 the term ‘substantial position’ at the threshold
17 that the Commission determines to be prudent
18 for the effective monitoring, management, and
19 oversight of entities that are systemically im-
20 portant or can significantly impact the financial
21 system of the United States. In setting such
22 definitions, the Commission shall consider the
23 person’s relative position in uncleared as op-
24 posed to cleared security-based swaps and may

1 take into consideration the value and quality of
2 collateral held against counterparty exposures.

3 “(C) SCOPE OF DESIGNATION.—For pur-
4 poses of subparagraph (A), a person may be
5 designated as a major security-based swap par-
6 ticipant for 1 or more categories of security-
7 based swaps without being classified as a major
8 security-based swap participant for all classes
9 of security-based swaps.

10 “(68) SECURITY-BASED SWAP.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), the term ‘security-based
13 swap’ means any agreement, contract, or trans-
14 action that—

15 “(i) is a swap, as that term is defined
16 under section 1a of the Commodity Ex-
17 change Act (without regard to paragraph
18 (47)(B)(x) of such section); and

19 “(ii) is based on—

20 “(I) an index that is a narrow-
21 based security index, including any in-
22 terest therein or on the value thereof;

23 “(II) a single security or loan, in-
24 cluding any interest therein or on the
25 value thereof; or

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1 “(III) the occurrence, nonoccur-
2 rence, or extent of the occurrence of
3 an event relating to a single issuer of
4 a security or the issuers of securities
5 in a narrow-based security index, pro-
6 vided that such event directly affects
7 the financial statements, financial
8 condition, or financial obligations of
9 the issuer.

10 “(B) RULE OF CONSTRUCTION REGARDING
11 MASTER AGREEMENTS.—The term ‘security-
12 based swap’ shall be construed to include a
13 master agreement that provides for an agree-
14 ment, contract, or transaction that is a secu-
15 rity-based swap pursuant to subparagraph (A),
16 together with all supplements to any such mas-
17 ter agreement, without regard to whether the
18 master agreement contains an agreement, con-
19 tract, or transaction that is not a security-based
20 swap pursuant to subparagraph (A), except
21 that the master agreement shall be considered
22 to be a security-based swap only with respect to
23 each agreement, contract, or transaction under
24 the master agreement that is a security-based
25 swap pursuant to subparagraph (A).

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1 “(C) EXCLUSIONS.—The term ‘security-
2 based swap’ does not include any agreement,
3 contract, or transaction that meets the defini-
4 tion of a security-based swap only because such
5 agreement, contract, or transaction references,
6 is based upon, or settles through the transfer,
7 delivery, or receipt of an exempted security
8 under paragraph (12), as in effect on the date
9 of enactment of the Futures Trading Act of
10 1982 (other than any municipal security as de-
11 fined in paragraph (29) as in effect on the date
12 of enactment of the Futures Trading Act of
13 1982), unless such agreement, contract, or
14 transaction is of the character of, or is com-
15 monly known in the trade as, a put, call, or
16 other option.

17 “(D) MIXED SWAP.—The term ‘security-
18 based swap’ includes any agreement, contract,
19 or transaction that is as described in subpara-
20 graph (A) and also is based on the value of 1
21 or more interest or other rates, currencies, com-
22 modities, instruments of indebtedness, indices,
23 quantitative measures, other financial or eco-
24 nomic interest or property of any kind (other
25 than a single security or a narrow-based secu-

1 participant (or any person occupying a
2 similar status or performing similar func-
3 tions);

4 “(ii) any person directly or indirectly
5 controlling, controlled by, or under com-
6 mon control with such security-based swap
7 dealer or major security-based swap partic-
8 ipant; or

9 “(iii) any employee of such security-
10 based swap dealer or major security-based
11 swap participant.

12 “(B) EXCLUSION.—Other than for pur-
13 poses of section 15F(l)(2), the term ‘person as-
14 sociated with a security-based swap dealer or
15 major security-based swap participant’ or ‘asso-
16 ciated person of a security-based swap dealer or
17 major security-based swap participant’ does not
18 include any person associated with a security-
19 based swap dealer or major security-based swap
20 participant whose functions are solely clerical or
21 ministerial.

22 “(71) SECURITY-BASED SWAP DEALER.—

23 “(A) IN GENERAL.—The term ‘security-
24 based swap dealer’ means any person who—

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1 “(i) holds themselves out as a dealer in
2 security-based swaps;

3 “(ii) makes a market in security-based
4 swaps;

5 “(iii) regularly enters into security-
6 based swaps with counterparties as an or-
7 dinary course of business for its own ac-
8 count; or

9 “(iv) engages in any activity causing
10 it to be commonly known in the trade as
11 a dealer or market maker in security-based
12 swaps.

13 “(B) DESIGNATION BY TYPE OR CLASS.—
14 A person may be designated as a security-based
15 swap dealer for a single type or single class or
16 category of security-based swap or activities
17 and considered not to be a security-based swap
18 dealer for other types, classes, or categories of
19 security-based swaps or activities.

20 “(C) EXCEPTION.—The term ‘security-
21 based swap dealer’ does not include a person
22 that enters into security-based swaps for such
23 person’s own account, either individually or in
24 a fiduciary capacity, but not as a part of reg-
25 ular business.

1 “(D) DE MINIMIS EXCEPTION.—The Com-
2 mission shall exempt from designation as a se-
3 curity-based swap dealer an entity that engages
4 in a de minimis quantity of security-based swap
5 dealing in connection with transactions with or
6 on behalf of its customers. The Commission
7 shall promulgate regulations to establish factors
8 with respect to the making of any determina-
9 tion to exempt.

10 “(72) APPROPRIATE FEDERAL BANKING AGEN-
11 CY.—The term ‘appropriate Federal banking agency’
12 has the same meaning as in section 3(q) of the Fed-
13 eral Deposit Insurance Act (12 U.S.C. 1813(q)).

14 “(73) BOARD.—The term ‘Board’ means the
15 Board of Governors of the Federal Reserve System.

16 “(74) PRUDENTIAL REGULATOR.—The term
17 ‘prudential regulator’ has the same meaning as in
18 section 1a of the Commodity Exchange Act (7
19 U.S.C. 1a).

20 “(75) SECURITY-BASED SWAP DATA REPOSI-
21 TORY.—The term ‘security-based swap data reposi-
22 tory’ means any person that collects and maintains
23 information or records with respect to transactions
24 or positions in, or the terms and conditions of, secu-
25 rity-based swaps entered into by third parties for the

1 purpose of providing a centralized recordkeeping fa-
2 cility for security-based swaps.

3 “(76) SWAP DEALER.—The term ‘swap dealer’
4 has the same meaning as in section 1a of the Com-
5 modity Exchange Act (7 U.S.C. 1a).

6 “(77) SECURITY-BASED SWAP EXECUTION FA-
7 CILITY.—The term ‘security-based swap execution
8 facility’ means a trading system or platform in
9 which multiple participants have the ability to exe-
10 cute or trade security-based swaps by accepting bids
11 and offers made by multiple participants in the facil-
12 ity or system, through any means of interstate com-
13 merce, including any trading facility, that—

14 “(A) facilitates the execution of security-
15 based swaps between persons; and

16 “(B) is not a national securities exchange.

17 “(78) SECURITY-BASED SWAP AGREEMENT.—

18 “(A) IN GENERAL.—For purposes of sec-
19 tions 9, 10, 16, 20, and 21A of this Act, and
20 section 17 of the Securities Act of 1933 (15
21 U.S.C. 77q), the term ‘security-based swap
22 agreement’ means a swap agreement as defined
23 in section 206A of the Gramm-Leach-Bliley Act
24 (15 U.S.C. 78c note) of which a material term
25 is based on the price, yield, value, or volatility

1 of any security or any group or index of securi-
2 ties, or any interest therein.

3 “(B) EXCLUSIONS.—The term ‘security-
4 based swap agreement’ does not include any se-
5 curity-based swap.”.

6 (b) AUTHORITY TO FURTHER DEFINE TERMS.—The
7 Securities and Exchange Commission may, by rule, fur-
8 ther define—

9 (1) the term “commercial risk”;

10 (2) any other term included in an amendment
11 to the Securities Exchange Act of 1934 (15 U.S.C.
12 78c(a)) made by this subtitle; and

13 (3) the terms “security-based swap”, “security-
14 based swap dealer”, “major security-based swap par-
15 ticipant”, and “eligible contract participant”, with
16 regard to security-based swaps (as such terms are
17 defined in the amendments made by subsection (a))
18 for the purpose of including transactions and enti-
19 ties that have been structured to evade this subtitle
20 or the amendments made by this subtitle.

21 **SEC. 762. REPEAL OF PROHIBITION ON REGULATION OF SE-**
22 **CURITY-BASED SWAP AGREEMENTS.**

23 (a) REPEAL.—Sections 206B and 206C of the
24 Gramm-Leach-Bliley Act (Public Law 106–102; 15 U.S.C.
25 78c note) are repealed.

1 (b) CONFORMING AMENDMENTS TO GRAMM-LEACH-
2 BLILEY.—Section 206A(a) of the Gramm-Leach-Bliley
3 Act (15 U.S.C. 78c note) is amended in the material pre-
4 ceding paragraph (1), by striking “Except as” and all that
5 follows through “that—” and inserting the following: “Ex-
6 cept as provided in subsection (b), as used in this section,
7 the term ‘swap agreement’ means any agreement, con-
8 tract, or transaction that—”.

9 (c) CONFORMING AMENDMENTS TO THE SECURITIES
10 ACT OF 1933.—

11 (1) Section 2A of the Securities Act of 1933
12 (15 U.S.C. 77b–1) is amended—

13 (A) by striking subsection (a) and reserv-
14 ing that subsection; and

15 (B) by striking “(as defined in section
16 206B of the Gramm-Leach-Bliley Act)” each
17 place that such term appears and inserting “(as
18 defined in section 3(a)(78) of the Securities Ex-
19 change Act of 1934)”.

20 (2) Section 17 of the Securities Act of 1933 (15
21 U.S.C. 77q) is amended—

22 (A) in subsection (a)—

23 (i) by inserting “(including security-
24 based swaps)” after “securities”; and

1 (ii) by striking “(as defined in section
2 206B of the Gramm-Leach-Bliley Act)”
3 and inserting “(as defined in section
4 3(a)(78) of the Securities Exchange Act)”;
5 and

6 (B) in subsection (d), by striking “206B of
7 the Gramm-Leach-Bliley Act” and inserting
8 “3(a)(78) of the Securities Exchange Act of
9 1934”.

10 (d) CONFORMING AMENDMENTS TO THE SECURITIES
11 EXCHANGE ACT OF 1934.—The Securities Exchange Act
12 of 1934 (15 U.S.C. 78a et seq.) is amended—

13 (1) in section 3A (15 U.S.C. 78c–1)—

14 (A) by striking subsection (a) and reserv-
15 ing that subsection; and

16 (B) by striking “(as defined in section
17 206B of the Gramm-Leach-Bliley Act)” each
18 place that the term appears;

19 (2) in section 9 (15 U.S.C. 78i)—

20 (A) in subsection (a), by striking para-
21 graphs (2) through (5) and inserting the fol-
22 lowing:

23 “(2) To effect, alone or with 1 or more other persons,
24 a series of transactions in any security registered on a na-
25 tional securities exchange, any security not so registered,

1 or in connection with any security-based swap or security-
2 based swap agreement with respect to such security cre-
3 ating actual or apparent active trading in such security,
4 or raising or depressing the price of such security, for the
5 purpose of inducing the purchase or sale of such security
6 by others.

7 “(3) If a dealer, broker, security-based swap dealer,
8 major security-based swap participant, or other person
9 selling or offering for sale or purchasing or offering to
10 purchase the security, a security-based swap, or a secu-
11 rity-based swap agreement with respect to such security,
12 to induce the purchase or sale of any security registered
13 on a national securities exchange, any security not so reg-
14 istered, any security-based swap, or any security-based
15 swap agreement with respect to such security by the cir-
16 culation or dissemination in the ordinary course of busi-
17 ness of information to the effect that the price of any such
18 security will or is likely to rise or fall because of market
19 operations of any 1 or more persons conducted for the
20 purpose of raising or depressing the price of such security.

21 “(4) If a dealer, broker, security-based swap dealer,
22 major security-based swap participant, or other person
23 selling or offering for sale or purchasing or offering to
24 purchase the security, a security-based swap, or security-
25 based swap agreement with respect to such security, to

1 make, regarding any security registered on a national se-
2 curities exchange, any security not so registered, any secu-
3 rity-based swap, or any security-based swap agreement
4 with respect to such security, for the purpose of inducing
5 the purchase or sale of such security, such security-based
6 swap, or such security-based swap agreement any state-
7 ment which was at the time and in the light of the cir-
8 cumstances under which it was made, false or misleading
9 with respect to any material fact, and which that person
10 knew or had reasonable ground to believe was so false or
11 misleading.

12 “(5) For a consideration, received directly or indi-
13 rectly from a broker, dealer, security-based swap dealer,
14 major security-based swap participant, or other person
15 selling or offering for sale or purchasing or offering to
16 purchase the security, a security-based swap, or security-
17 based swap agreement with respect to such security, to
18 induce the purchase of any security registered on a na-
19 tional securities exchange, any security not so registered,
20 any security-based swap, or any security-based swap
21 agreement with respect to such security by the circulation
22 or dissemination of information to the effect that the price
23 of any such security will or is likely to rise or fall because
24 of the market operations of any 1 or more persons con-

1 ducted for the purpose of raising or depressing the price
2 of such security.”; and

3 (B) in subsection (i), by striking “(as de-
4 fined in section 206B of the Gramm-Leach-Bliley
5 Act)”;

6 (3) in section 10 (15 U.S.C. 78j)—

7 (A) in subsection (b), by striking “(as de-
8 fined in section 206B of the Gramm-Leach-Bliley
9 Act),” each place that term appears; and

10 (B) in the matter following subsection (b),
11 by striking “(as defined in section 206B of the
12 Gramm-Leach-Bliley Act), in each place that
13 such terms appear”;

14 (4) in section 15 (15 U.S.C. 78o)—

15 (A) in subsection (c)(1)(A), by striking
16 “(as defined in section 206B of the Gramm-
17 Leach-Bliley Act),”;

18 (B) in subparagraphs (B) and (C) of sub-
19 section (c)(1), by striking “(as defined in sec-
20 tion 206B of the Gramm-Leach-Bliley Act)”
21 each place that term appears;

22 (C) by redesignating subsection (i), as
23 added by section 303(f) of the Commodity Fu-
24 tures Modernization Act of 2000 (Public Law

1 106–554; 114 Stat. 2763A–455)), as subsection
2 (j); and

3 (D) in subsection (j), as redesignated by
4 subparagraph (C), by striking “(as defined in
5 section 206B of the Gramm-Leach-Bliley Act)”;
6 (5) in section 16 (15 U.S.C. 78p)—

7 (A) in subsection (a)(2)(C), by striking
8 “(as defined in section 206(b) of the Gramm-
9 Leach-Bliley Act (15 U.S.C. 78c note))”;

10 (B) in subsection (a)(3)(B), by inserting
11 “or security-based swaps” after “security-based
12 swap agreement”;

13 (C) in the first sentence of subsection (b),
14 by striking “(as defined in section 206B of the
15 Gramm-Leach-Bliley Act)”;

16 (D) in the third sentence of subsection (b),
17 by striking “(as defined in section 206B of the
18 Gramm-Leach Bliley Act)” and inserting “or a
19 security-based swap”; and

20 (E) in subsection (g), by striking “(as de-
21 fined in section 206B of the Gramm-Leach-Bli-
22 ley Act)”;

23 (6) in section 20 (15 U.S.C. 78t),

1 (A) in subsection (d), by striking “(as de-
2 fined in section 206B of the Gramm-Leach-Bli-
3 ley Act)”; and

4 (B) in subsection (f), by striking “(as de-
5 fined in section 206B of the Gramm-Leach-Bli-
6 ley Act)”;

7 (7) in section 21A (15 U.S.C. 78u-1)—

8 (A) in subsection (a)(1), by striking “(as
9 defined in section 206B of the Gramm-Leach-
10 Bliley Act)”; and

11 (B) in subsection (g), by striking “(as de-
12 fined in section 206B of the Gramm-Leach-Bli-
13 ley Act)”.

14 **SEC. 763. AMENDMENTS TO THE SECURITIES EXCHANGE**

15 **ACT OF 1934.**

16 (a) **CLEARING FOR SECURITY-BASED SWAPS.**—The
17 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
18 is amended by inserting after section 3B (as added by sec-
19 tion 717 of this Act):

20 **“SEC. 3C. CLEARING FOR SECURITY-BASED SWAPS.**

21 **“(a) IN GENERAL.—**

22 **“(1) STANDARD FOR CLEARING.—**It shall be
23 unlawful for any person to engage in a security-
24 based swap unless that person submits such secu-
25 rity-based swap for clearing to a clearing agency

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1 that is registered under this Act or a clearing agency
2 that is exempt from registration under this Act if
3 the security-based swap is required to be cleared.

4 “(2) OPEN ACCESS.—The rules of a clearing
5 agency described in paragraph (1) shall—

6 “(A) prescribe that all security-based
7 swaps submitted to the clearing agency with the
8 same terms and conditions are economically
9 equivalent within the clearing agency and may
10 be offset with each other within the clearing
11 agency; and

12 “(B) provide for non-discriminatory clear-
13 ing of a security-based swap executed bilaterally
14 or on or through the rules of an unaffiliated na-
15 tional securities exchange or security-based
16 swap execution facility.

17 “(b) COMMISSION REVIEW.—

18 “(1) COMMISSION-INITIATED REVIEW.—

19 “(A) The Commission on an ongoing basis
20 shall review each security-based swap, or any
21 group, category, type, or class of security-based
22 swaps to make a determination that such secu-
23 rity-based swap, or group, category, type, or
24 class of security-based swaps should be required
25 to be cleared.

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1 “(B) The Commission shall provide at
2 least a 30-day public comment period regarding
3 any determination under subparagraph (A).

4 “(2) SWAP SUBMISSIONS.—

5 “(A) A clearing agency shall submit to the
6 Commission each security-based swap, or any
7 group, category, type, or class of security-based
8 swaps that it plans to accept for clearing and
9 provide notice to its members (in a manner to
10 be determined by the Commission) of such sub-
11 mission.

12 “(B) Any security-based swap or group,
13 category, type, or class of security-based swaps
14 listed for clearing by a clearing agency as of the
15 date of enactment of this subsection shall be
16 considered submitted to the Commission.

17 “(C) The Commission shall—

18 “(i) make available to the public any
19 submission received under subparagraphs
20 (A) and (B);

21 “(ii) review each submission made
22 under subparagraphs (A) and (B), and de-
23 termine whether the security-based swap,
24 or group, category, type, or class of secu-

1 rity-based swaps, described in the submis-
2 sion is required to be cleared; and

3 “(iii) provide at least a 30-day public
4 comment period regarding its determina-
5 tion whether the clearing requirement
6 under subsection (a)(1) shall apply to the
7 submission.

8 “(3) DEADLINE.—The Commission shall make
9 its determination under paragraph (2)(C) not later
10 than 90 days after receiving a submission made
11 under paragraphs (2)(A) and (2)(B), unless the sub-
12 mitting clearing agency agrees to an extension for
13 the time limitation established under this paragraph.

14 “(4) DETERMINATION.—

15 “(A) In reviewing a submission made
16 under paragraph (2), the Commission shall re-
17 view whether the submission is consistent with
18 section 17A.

19 “(B) In reviewing a security-based swap,
20 group of security-based swaps or class of secu-
21 rity-based swaps pursuant to paragraph (1) or
22 a submission made under paragraph (2), the
23 Commission shall take into account the fol-
24 lowing factors:

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1 “(i) The existence of significant out-
2 standing notional exposures, trading liquid-
3 ity and adequate pricing data.

4 “(ii) The availability of rule frame-
5 work, capacity, operational expertise and
6 resources, and credit support infrastruc-
7 ture to clear the contract on terms that are
8 consistent with the material terms and
9 trading conventions on which the contract
10 is then traded.

11 “(iii) The effect on the mitigation of
12 systemic risk, taking into account the size
13 of the market for such contract and the re-
14 sources of the clearing agency available to
15 clear the contract.

16 “(iv) The effect on competition, in-
17 cluding appropriate fees and charges ap-
18 plied to clearing.

19 “(v) The existence of reasonable legal
20 certainty in the event of the insolvency of
21 the relevant clearing agency or 1 or more
22 of its clearing members with regard to the
23 treatment of customer and security-based
24 swap counterparty positions, funds, and
25 property.

1 “(C) In making a determination under
2 subsection (b)(1) or paragraph (2)(C) that the
3 clearing requirement shall apply, the Commis-
4 sion may require such terms and conditions to
5 the requirement as the Commission determines
6 to be appropriate.

7 “(5) RULES.—Not later than 1 year after the
8 date of the enactment of this section, the Commis-
9 sion shall adopt rules for a clearing agency’s submis-
10 sion for review, pursuant to this subsection, of a se-
11 curity-based swap, or a group, category, type or
12 class of security-based swaps, that it seeks to accept
13 for clearing. Nothing in this paragraph limits the
14 Commission from making a determination under
15 paragraph (2)(C) for security-based swaps described
16 in paragraph (2)(B).

17 “(c) STAY OF CLEARING REQUIREMENT.—

18 “(1) IN GENERAL.—After making a determina-
19 tion pursuant to subsection (b)(2), the Commission,
20 on application of a counterparty to a security-based
21 swap or on its own initiative, may stay the clearing
22 requirement of subsection (a)(1) until the Commis-
23 sion completes a review of the terms of the security-
24 based swap (or the group, category, type, or class of
25 security-based swaps) and the clearing arrangement.

1 “(2) DEADLINE.—The Commission shall com-
2 plete a review undertaken pursuant to paragraph (1)
3 not later than 90 days after issuance of the stay, un-
4 less the clearing agency that clears the security-
5 based swap, or group, category, type, or class of se-
6 curity-based swaps, agrees to an extension of the
7 time limitation established under this paragraph.

8 “(3) DETERMINATION.—Upon completion of
9 the review undertaken pursuant to paragraph (1),
10 the Commission may—

11 “(A) determine, unconditionally or subject
12 to such terms and conditions as the Commis-
13 sion determines to be appropriate, that the se-
14 curity-based swap, or group, category, type, or
15 class of security-based swaps, must be cleared
16 pursuant to this subsection if it finds that such
17 clearing is consistent with subsection (b)(4); or

18 “(B) determine that the clearing require-
19 ment of subsection (a)(1) shall not apply to the
20 security-based swap, or group, category, type,
21 or class of security-based swaps.

22 “(4) RULES.—Not later than 1 year after the
23 date of the enactment of this section, the Commis-
24 sion shall adopt rules for reviewing, pursuant to this
25 subsection, a clearing agency’s clearing of a security-

1 based swap, or a group, category, type or class of se-
2 curity-based swaps, that it has accepted for clearing.

3 “(d) PREVENTION OF EVASION.—

4 “(1) IN GENERAL.—The Commission shall pre-
5 scribe rules under this section (and issue interpreta-
6 tions of rules prescribed under this section), as de-
7 termined by the Commission to be necessary to pre-
8 vent evasions of the mandatory clearing require-
9 ments under this Act.

10 “(2) DUTY OF COMMISSION TO INVESTIGATE
11 AND TAKE CERTAIN ACTIONS.—To the extent the
12 Commission finds that a particular security-based
13 swap or any group, category, type, or class of secu-
14 rity-based swaps that would otherwise be subject to
15 mandatory clearing but no clearing agency has listed
16 the security-based swap or the group, category, type,
17 or class of security-based swaps for clearing, the
18 Commission shall—

19 “(A) investigate the relevant facts and cir-
20 cumstances;

21 “(B) within 30 days issue a public report
22 containing the results of the investigation; and

23 “(C) take such actions as the Commission
24 determines to be necessary and in the public in-
25 terest, which may include requiring the retain-

1 ing of adequate margin or capital by parties to
2 the security-based swap or the group, category,
3 type, or class of security-based swaps.

4 “(3) EFFECT ON AUTHORITY.—Nothing in this
5 subsection—

6 “(A) authorize the Commission to adopt
7 rules requiring a clearing agency to list for
8 clearing a security-based swap or any group,
9 category, type, or class of security-based swaps
10 if the clearing of the security-based swap or the
11 group, category, type, or class of security-based
12 swaps would threaten the financial integrity of
13 the clearing agency; and

14 “(B) affect the authority of the Commis-
15 sion to enforce the open access provisions of
16 subsection (a)(2) with respect to a security-
17 based swap or the group, category, type, or
18 class of security-based swaps that is listed for
19 clearing by a clearing agency.

20 “(e) REPORTING TRANSITION RULES.—Rules adopt-
21 ed by the Commission under this section shall provide for
22 the reporting of data, as follows:

23 “(1) Security-based swaps entered into before
24 the date of the enactment of this section shall be re-
25 ported to a registered security-based swap data re-

1 pository or the Commission no later than 180 days
2 after the effective date of this section.

3 “(2) Security-based swaps entered into on or
4 after such date of enactment shall be reported to a
5 registered security-based swap data repository or the
6 Commission no later than the later of—

7 “(A) 90 days after such effective date; or

8 “(B) such other time after entering into
9 the security-based swap as the Commission may
10 prescribe by rule or regulation.

11 “(f) CLEARING TRANSITION RULES.—

12 “(1) Security-based swaps entered into before
13 the date of the enactment of this section are exempt
14 from the clearing requirements of this subsection if
15 reported pursuant to subsection (e)(1).

16 “(2) Security-based swaps entered into before
17 application of the clearing requirement pursuant to
18 this section are exempt from the clearing require-
19 ments of this section if reported pursuant to sub-
20 section (e)(2).

21 “(g) EXCEPTIONS.—

22 “(1) IN GENERAL.—The requirements of sub-
23 section (a)(1) shall not apply to a security-based
24 swap if 1 of the counterparties to the security-based
25 swap—

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1 “(A) is not a financial entity;

2 “(B) is using security-based swaps to
3 hedge or mitigate commercial risk; and

4 “(C) notifies the Commission, in a manner
5 set forth by the Commission, how it generally
6 meets its financial obligations associated with
7 entering into non-cleared security-based swaps.

8 “(2) OPTION TO CLEAR.—The application of
9 the clearing exception in paragraph (1) is solely at
10 the discretion the counterparty to the security-based
11 swap that meets the conditions of subparagraphs (A)
12 through (C) of paragraph (1).

13 “(3) FINANCIAL ENTITY DEFINITION.—

14 “(A) IN GENERAL.—For the purposes of
15 this subsection, the term ‘financial entity’
16 means—

17 “(i) a swap dealer;

18 “(ii) a security-based swap dealer;

19 “(iii) a major swap participant;

20 “(iv) a major security-based swap par-
21 ticipant;

22 “(v) a commodity pool as defined in
23 section 1a(10) of the Commodity Exchange
24 Act;

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1 “(vi) a private fund as defined in sec-
2 tion 202(a) of the Investment Advisers Act
3 of 1940 (15 U.S.C. 80–b–2(a));

4 “(vii) an employee benefit plan as de-
5 fined in paragraphs (3) and (32) of section
6 3 of the Employee Retirement Income Se-
7 curity Act of 1974 (29 U.S.C. 1002);

8 “(viii) a person predominantly en-
9 gaged in activities that are in the business
10 of banking or financial in nature, as de-
11 fined in section 4(k) of the Bank Holding
12 Company Act of 1956.

13 “(B) EXCLUSION.—The Commission shall
14 consider whether to exempt small banks, sav-
15 ings associations, farm credit system institu-
16 tions, and credit unions, including—

17 “(i) depository institutions with total
18 assets of \$10,000,000,000 or less;

19 “(ii) farm credit system institutions
20 with total assets of \$10,000,000,000 or
21 less; or

22 “(iii) credit unions with total assets of
23 \$10,000,000,000 or less.

24 “(4) TREATMENT OF AFFILIATES.—

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1 “(A) IN GENERAL.—An affiliate of a per-
2 son that qualifies for an exception under this
3 subsection (including affiliate entities predomi-
4 nantly engaged in providing financing for the
5 purchase of the merchandise or manufactured
6 goods of the person) may qualify for the excep-
7 tion only if the affiliate, acting on behalf of the
8 person and as an agent, uses the security-based
9 swap to hedge or mitigate the commercial risk
10 of the person or other affiliate of the person
11 that is not a financial entity.

12 “(B) PROHIBITION RELATING TO CERTAIN
13 AFFILIATES.—The exception in subparagraph
14 (A) shall not apply if the affiliate is—

15 “(i) a swap dealer;

16 “(ii) a security-based swap dealer;

17 “(iii) a major swap participant;

18 “(iv) a major security-based swap par-
19 ticipant;

20 “(v) an issuer that would be an in-
21 vestment company, as defined in section 3
22 of the Investment Company Act of 1940
23 (15 U.S.C. 80a–3), but for paragraph (1)
24 or (7) of subsection (c) of that Act (15
25 U.S.C. 80a–3(c));

1 “(vi) a commodity pool; or

2 “(vii) a bank holding company with
3 over \$50,000,000,000 in consolidated as-
4 sets.

5 “(C) TRANSITION RULE FOR AFFILI-
6 ATES.—An affiliate, subsidiary, or a wholly
7 owned entity of a person that qualifies for an
8 exception under subparagraph (A) and is pre-
9 dominantly engaged in providing financing for
10 the purchase or lease of merchandise or manu-
11 factured goods of the person shall be exempt
12 from the margin requirement described in sec-
13 tion 15F(e) and the clearing requirement de-
14 scribed in subsection (a) with regard to secu-
15 rity-based swaps entered into to mitigate the
16 risk of the financing activities for not less than
17 a 2-year period beginning on the date of enact-
18 ment of this clause.

19 “(5) ELECTION OF COUNTERPARTY.—

20 “(A) SECURITY-BASED SWAPS REQUIRED
21 TO BE CLEARED.—With respect to any security-
22 based swap that is subject to the mandatory
23 clearing requirement under subsection (a) and
24 entered into by a security-based swap dealer or
25 a major security-based swap participant with a

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1 counterparty that is not a swap dealer, major
2 swap participant, security-based swap dealer, or
3 major security-based swap participant, the
4 counterparty shall have the sole right to select
5 the clearing agency at which the security-based
6 swap will be cleared.

7 “(B) SECURITY-BASED SWAPS NOT RE-
8 QUIRED TO BE CLEARED.—With respect to any
9 security-based swap that is not subject to the
10 mandatory clearing requirement under sub-
11 section (a) and entered into by a security-based
12 swap dealer or a major security-based swap
13 participant with a counterparty that is not a
14 swap dealer, major swap participant, security-
15 based swap dealer, or major security-based
16 swap participant, the counterparty—

17 “(i) may elect to require clearing of
18 the security-based swap; and

19 “(ii) shall have the sole right to select
20 the clearing agency at which the security-
21 based swap will be cleared.

22 “(6) ABUSE OF EXCEPTION.—The Commission
23 may prescribe such rules or issue interpretations of
24 the rules as the Commission determines to be nec-
25 essary to prevent abuse of the exceptions described

1 in this subsection. The Commission may also request
2 information from those persons claiming the clearing
3 exception as necessary to prevent abuse of the excep-
4 tions described in this subsection.

5 “(h) TRADE EXECUTION.—

6 “(1) IN GENERAL.—With respect to trans-
7 actions involving security-based swaps subject to the
8 clearing requirement of subsection (a)(1), counter-
9 parties shall—

10 “(A) execute the transaction on an ex-
11 change; or

12 “(B) execute the transaction on a security-
13 based swap execution facility registered under
14 section 3D or a security-based swap execution
15 facility that is exempt from registration under
16 section 3D(e) of this Act.

17 “(2) EXCEPTION.—The requirements of sub-
18 paragraphs (A) and (B) of paragraph (1) shall not
19 apply if no exchange or security-based swap execu-
20 tion facility makes the security-based swap available
21 to trade or for security-based swap transactions sub-
22 ject to the clearing exception under subsection (g).

23 “(i) BOARD APPROVAL.—Exemptions from the re-
24 quirements of this section to clear a security-based swap
25 or execute a security-based swap through a national secu-

1 rities exchange or security-based swap execution facility
2 shall be available to a counterparty that is an issuer of
3 securities that are registered under section 12 or that is
4 required to file reports pursuant to section 15(d), only if
5 an appropriate committee of the issuer's board or gov-
6 erning body has reviewed and approved the issuer's deci-
7 sion to enter into security-based swaps that are subject
8 to such exemptions.

9 “(j) DESIGNATION OF CHIEF COMPLIANCE OFFI-
10 CER.—

11 “(1) IN GENERAL.—Each registered clearing
12 agency shall designate an individual to serve as a
13 chief compliance officer.

14 “(2) DUTIES.—The chief compliance officer
15 shall—

16 “(A) report directly to the board or to the
17 senior officer of the clearing agency;

18 “(B) in consultation with its board, a body
19 performing a function similar thereto, or the
20 senior officer of the registered clearing agency,
21 resolve any conflicts of interest that may arise;

22 “(C) be responsible for administering each
23 policy and procedure that is required to be es-
24 tablished pursuant to this section;

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1 “(D) ensure compliance with this title (in-
2 cluding regulations issued under this title) re-
3 lating to agreements, contracts, or transactions,
4 including each rule prescribed by the Commis-
5 sion under this section;

6 “(E) establish procedures for the remedi-
7 ation of noncompliance issues identified by the
8 compliance officer through any—

9 “(i) compliance office review;

10 “(ii) look-back;

11 “(iii) internal or external audit find-
12 ing;

13 “(iv) self-reported error; or

14 “(v) validated complaint; and

15 “(F) establish and follow appropriate pro-
16 cedures for the handling, management response,
17 remediation, retesting, and closing of non-
18 compliance issues.

19 “(3) ANNUAL REPORTS.—

20 “(A) IN GENERAL.—In accordance with
21 rules prescribed by the Commission, the chief
22 compliance officer shall annually prepare and
23 sign a report that contains a description of—

24 “(i) the compliance of the registered
25 clearing agency or security-based swap exe-

1 cution facility of the compliance officer
2 with respect to this title (including regula-
3 tions under this title); and

4 “(ii) each policy and procedure of the
5 registered clearing agency of the compli-
6 ance officer (including the code of ethics
7 and conflict of interest policies of the reg-
8 istered clearing agency).

9 “(B) REQUIREMENTS.—A compliance re-
10 port under subparagraph (A) shall—

11 “(i) accompany each appropriate fi-
12 nancial report of the registered clearing
13 agency that is required to be furnished to
14 the Commission pursuant to this section;
15 and

16 “(ii) include a certification that, under
17 penalty of law, the compliance report is ac-
18 curate and complete.”.

19 (b) CLEARING AGENCY REQUIREMENTS.—Section
20 17A of the Securities Exchange Act of 1934 (15 U.S.C.
21 78q-1) is amended by adding at the end the following:

22 “(g) REGISTRATION REQUIREMENT.—It shall be un-
23 lawful for a clearing agency, unless registered with the
24 Commission, directly or indirectly to make use of the mails
25 or any means or instrumentality of interstate commerce

1 to perform the functions of a clearing agency with respect
2 to a security-based swap.

3 “(h) VOLUNTARY REGISTRATION.—A person that
4 clears agreements, contracts, or transactions that are not
5 required to be cleared under this title may register with
6 the Commission as a clearing agency.

7 “(i) STANDARDS FOR CLEARING AGENCIES CLEAR-
8 ING SECURITY-BASED SWAP TRANSACTIONS.—To be reg-
9 istered and to maintain registration as a clearing agency
10 that clears security-based swap transactions, a clearing
11 agency shall comply with such standards as the Commis-
12 sion may establish by rule. In establishing any such stand-
13 ards, and in the exercise of its oversight of such a clearing
14 agency pursuant to this title, the Commission may con-
15 form such standards or oversight to reflect evolving
16 United States and international standards. Except where
17 the Commission determines otherwise by rule or regula-
18 tion, a clearing agency shall have reasonable discretion in
19 establishing the manner in which it complies with any such
20 standards.

21 “(j) RULES.—The Commission shall adopt rules gov-
22 erning persons that are registered as clearing agencies for
23 security-based swaps under this title.

24 “(k) EXEMPTIONS.—The Commission may exempt,
25 conditionally or unconditionally, a clearing agency from

1 registration under this section for the clearing of security-
2 based swaps if the Commission determines that the clear-
3 ing agency is subject to comparable, comprehensive super-
4 vision and regulation by the Commodity Futures Trading
5 Commission or the appropriate government authorities in
6 the home country of the agency. Such conditions may in-
7 clude, but are not limited to, requiring that the clearing
8 agency be available for inspection by the Commission and
9 make available all information requested by the Commis-
10 sion.

11 “(1) EXISTING DEPOSITORY INSTITUTIONS AND DE-
12 RIVATIVE CLEARING ORGANIZATIONS.—

13 “(1) IN GENERAL.—A depository institution or
14 derivative clearing organization registered with the
15 Commodity Futures Trading Commission under the
16 Commodity Exchange Act that is required to be reg-
17 istered as a clearing agency under this section is
18 deemed to be registered under this section solely for
19 the purpose of clearing security-based swaps to the
20 extent that, before the date of enactment of this
21 subsection—

22 “(A) the depository institution cleared
23 swaps as a multilateral clearing organization; or

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1 “(B) the derivative clearing organization
2 cleared swaps pursuant to an exemption from
3 registration as a clearing agency.

4 “(2) CONVERSION OF DEPOSITORY INSTITU-
5 TIONS.—A depository institution to which this sub-
6 section applies may, by the vote of the shareholders
7 owning not less than 51 percent of the voting inter-
8 ests of the depository institution, be converted into
9 a State corporation, partnership, limited liability
10 company, or similar legal form pursuant to a plan
11 of conversion, if the conversion is not in contraven-
12 tion of applicable State law.

13 “(3) SHARING OF INFORMATION.—The Com-
14 modity Futures Trading Commission shall make
15 available to the Commission, upon request, all infor-
16 mation determined to be relevant by the Commodity
17 Futures Trading Commission regarding a derivatives
18 clearing organization deemed to be registered with
19 the Commission under paragraph (1).

20 “(m) MODIFICATION OF CORE PRINCIPLES.—The
21 Commission may conform the core principles established
22 in this section to reflect evolving United States and inter-
23 national standards.”.

24 (c) SECURITY-BASED SWAP EXECUTION FACILI-
25 TIES.—The Securities Exchange Act of 1934 (15 U.S.C.

1 78a et seq.) is amended by inserting after section 3C (as
2 added by subsection (a) of this section) the following:

3 **“SEC. 3D. SECURITY-BASED SWAP EXECUTION FACILITIES.**

4 “(a) REGISTRATION.—

5 “(1) IN GENERAL.—No person may operate a
6 facility for the trading or processing of security-
7 based swaps, unless the facility is registered as a se-
8 curity-based swap execution facility or as a national
9 securities exchange under this section.

10 “(2) DUAL REGISTRATION.—Any person that is
11 registered as a security-based swap execution facility
12 under this section shall register with the Commis-
13 sion regardless of whether the person also is reg-
14 istered with the Commodity Futures Trading Com-
15 mission as a swap execution facility.

16 “(b) TRADING AND TRADE PROCESSING.—A secu-
17 rity-based swap execution facility that is registered under
18 subsection (a) may—

19 “(1) make available for trading any security-
20 based swap; and

21 “(2) facilitate trade processing of any security-
22 based swap.

23 “(c) IDENTIFICATION OF FACILITY USED TO TRADE
24 SECURITY-BASED SWAPS BY NATIONAL SECURITIES EX-
25 CHANGES.—A national securities exchange shall, to the ex-

1 tent that the exchange also operates a security-based swap
2 execution facility and uses the same electronic trade execu-
3 tion system for listing and executing trades of security-
4 based swaps on or through the exchange and the facility,
5 identify whether electronic trading of such security-based
6 swaps is taking place on or through the national securities
7 exchange or the security-based swap execution facility.

8 “(d) CORE PRINCIPLES FOR SECURITY-BASED SWAP
9 EXECUTION FACILITIES.—

10 “(1) COMPLIANCE WITH CORE PRINCIPLES.—

11 “(A) IN GENERAL.—To be registered, and
12 maintain registration, as a security-based swap
13 execution facility, the security-based swap exe-
14 cution facility shall comply with—

15 “(i) the core principles described in
16 this subsection; and

17 “(ii) any requirement that the Com-
18 mission may impose by rule or regulation.

19 “(B) REASONABLE DISCRETION OF SECUR-
20 RITY-BASED SWAP EXECUTION FACILITY.—Un-
21 less otherwise determined by the Commission,
22 by rule or regulation, a security-based swap
23 execution facility described in subparagraph (A)
24 shall have reasonable discretion in establishing

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1 the manner in which it complies with the core
2 principles described in this subsection.

3 “(2) COMPLIANCE WITH RULES.—A security-
4 based swap execution facility shall—

5 “(A) establish and enforce compliance with
6 any rule established by such security-based
7 swap execution facility, including—

8 “(i) the terms and conditions of the
9 security-based swaps traded or processed
10 on or through the facility; and

11 “(ii) any limitation on access to the
12 facility;

13 “(B) establish and enforce trading, trade
14 processing, and participation rules that will
15 deter abuses and have the capacity to detect,
16 investigate, and enforce those rules, including
17 means—

18 “(i) to provide market participants
19 with impartial access to the market; and

20 “(ii) to capture information that may
21 be used in establishing whether rule viola-
22 tions have occurred; and

23 “(C) establish rules governing the oper-
24 ation of the facility, including rules specifying
25 trading procedures to be used in entering and

1 executing orders traded or posted on the facil-
2 ity, including block trades.

3 “(3) SECURITY-BASED SWAPS NOT READILY
4 SUSCEPTIBLE TO MANIPULATION.—The security-
5 based swap execution facility shall permit trading
6 only in security-based swaps that are not readily
7 susceptible to manipulation.

8 “(4) MONITORING OF TRADING AND TRADE
9 PROCESSING.—The security-based swap execution
10 facility shall—

11 “(A) establish and enforce rules or terms
12 and conditions defining, or specifications detail-
13 ing—

14 “(i) trading procedures to be used in
15 entering and executing orders traded on or
16 through the facilities of the security-based
17 swap execution facility; and

18 “(ii) procedures for trade processing
19 of security-based swaps on or through the
20 facilities of the security-based swap execu-
21 tion facility; and

22 “(B) monitor trading in security-based
23 swaps to prevent manipulation, price distortion,
24 and disruptions of the delivery or cash settle-
25 ment process through surveillance, compliance,

1 and disciplinary practices and procedures, in-
2 cluding methods for conducting real-time moni-
3 toring of trading and comprehensive and accu-
4 rate trade reconstructions.

5 “(5) ABILITY TO OBTAIN INFORMATION.—The
6 security-based swap execution facility shall—

7 “(A) establish and enforce rules that will
8 allow the facility to obtain any necessary infor-
9 mation to perform any of the functions de-
10 scribed in this subsection;

11 “(B) provide the information to the Com-
12 mission on request; and

13 “(C) have the capacity to carry out such
14 international information-sharing agreements as
15 the Commission may require.

16 “(6) FINANCIAL INTEGRITY OF TRANS-
17 ACTIONS.—The security-based swap execution facil-
18 ity shall establish and enforce rules and procedures
19 for ensuring the financial integrity of security-based
20 swaps entered on or through the facilities of the se-
21 curity-based swap execution facility, including the
22 clearance and settlement of security-based swaps
23 pursuant to section 3C(a)(1).

24 “(7) EMERGENCY AUTHORITY.—The security-
25 based swap execution facility shall adopt rules to

1 provide for the exercise of emergency authority, in
2 consultation or cooperation with the Commission, as
3 is necessary and appropriate, including the authority
4 to liquidate or transfer open positions in any secu-
5 rity-based swap or to suspend or curtail trading in
6 a security-based swap.

7 “(8) TIMELY PUBLICATION OF TRADING INFOR-
8 MATION.—

9 “(A) IN GENERAL.—The security-based
10 swap execution facility shall make public timely
11 information on price, trading volume, and other
12 trading data on security-based swaps to the ex-
13 tent prescribed by the Commission.

14 “(B) CAPACITY OF SECURITY-BASED SWAP
15 EXECUTION FACILITY.—The security-based
16 swap execution facility shall be required to have
17 the capacity to electronically capture and trans-
18 mit and disseminate trade information with re-
19 spect to transactions executed on or through
20 the facility.

21 “(9) RECORDKEEPING AND REPORTING.—

22 “(A) IN GENERAL.—A security-based swap
23 execution facility shall—

24 “(i) maintain records of all activities
25 relating to the business of the facility, in-

1 cluding a complete audit trail, in a form
2 and manner acceptable to the Commission
3 for a period of 5 years; and

4 “(ii) report to the Commission, in a
5 form and manner acceptable to the Com-
6 mission, such information as the Commis-
7 sion determines to be necessary or appro-
8 priate for the Commission to perform the
9 duties of the Commission under this title.

10 “(B) REQUIREMENTS.—The Commission
11 shall adopt data collection and reporting re-
12 quirements for security-based swap execution
13 facilities that are comparable to corresponding
14 requirements for clearing agencies and security-
15 based swap data repositories.

16 “(10) ANTITRUST CONSIDERATIONS.—Unless
17 necessary or appropriate to achieve the purposes of
18 this title, the security-based swap execution facility
19 shall not—

20 “(A) adopt any rules or taking any actions
21 that result in any unreasonable restraint of
22 trade; or

23 “(B) impose any material anticompetitive
24 burden on trading or clearing.

1 “(11) CONFLICTS OF INTEREST.—The security-
2 based swap execution facility shall—

3 “(A) establish and enforce rules to mini-
4 mize conflicts of interest in its decision-making
5 process; and

6 “(B) establish a process for resolving the
7 conflicts of interest.

8 “(12) FINANCIAL RESOURCES.—

9 “(A) IN GENERAL.—The security-based
10 swap execution facility shall have adequate fi-
11 nancial, operational, and managerial resources
12 to discharge each responsibility of the security-
13 based swap execution facility, as determined by
14 the Commission.

15 “(B) DETERMINATION OF RESOURCE ADE-
16 QUACY.—The financial resources of a security-
17 based swap execution facility shall be consid-
18 ered to be adequate if the value of the financial
19 resources—

20 “(i) enables the organization to meet
21 its financial obligations to its members and
22 participants notwithstanding a default by
23 the member or participant creating the
24 largest financial exposure for that organi-

1 zation in extreme but plausible market
2 conditions; and

3 “(ii) exceeds the total amount that
4 would enable the security-based swap exe-
5 cution facility to cover the operating costs
6 of the security-based swap execution facil-
7 ity for a 1-year period, as calculated on a
8 rolling basis.

9 “(13) SYSTEM SAFEGUARDS.—The security-
10 based swap execution facility shall—

11 “(A) establish and maintain a program of
12 risk analysis and oversight to identify and mini-
13 mize sources of operational risk, through the
14 development of appropriate controls and proce-
15 dures, and automated systems, that—

16 “(i) are reliable and secure; and

17 “(ii) have adequate scalable capacity;

18 “(B) establish and maintain emergency
19 procedures, backup facilities, and a plan for dis-
20 aster recovery that allow for—

21 “(i) the timely recovery and resump-
22 tion of operations; and

23 “(ii) the fulfillment of the responsibil-
24 ities and obligations of the security-based
25 swap execution facility; and

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1 “(C) periodically conduct tests to verify
2 that the backup resources of the security-based
3 swap execution facility are sufficient to ensure
4 continued—

5 “(i) order processing and trade
6 matching;

7 “(ii) price reporting;

8 “(iii) market surveillance; and

9 “(iv) maintenance of a comprehensive
10 and accurate audit trail.

11 “(14) DESIGNATION OF CHIEF COMPLIANCE
12 OFFICER.—

13 “(A) IN GENERAL.—Each security-based
14 swap execution facility shall designate an indi-
15 vidual to serve as a chief compliance officer.

16 “(B) DUTIES.—The chief compliance offi-
17 cer shall—

18 “(i) report directly to the board or to
19 the senior officer of the facility;

20 “(ii) review compliance with the core
21 principles in this subsection;

22 “(iii) in consultation with the board of
23 the facility, a body performing a function
24 similar to that of a board, or the senior of-

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1 ficer of the facility, resolve any conflicts of
2 interest that may arise;

3 “(iv) be responsible for establishing
4 and administering the policies and proce-
5 dures required to be established pursuant
6 to this section;

7 “(v) ensure compliance with this title
8 and the rules and regulations issued under
9 this title, including rules prescribed by the
10 Commission pursuant to this section;

11 “(vi) establish procedures for the re-
12 mediation of noncompliance issues found
13 during—

14 “(I) compliance office reviews;

15 “(II) look backs;

16 “(III) internal or external audit
17 findings;

18 “(IV) self-reported errors; or

19 “(V) through validated com-
20 plaints; and

21 “(vii) establish and follow appropriate
22 procedures for the handling, management
23 response, remediation, retesting, and clos-
24 ing of noncompliance issues.

25 “(C) ANNUAL REPORTS.—

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1 “(i) IN GENERAL.—In accordance
2 with rules prescribed by the Commission,
3 the chief compliance officer shall annually
4 prepare and sign a report that contains a
5 description of—

6 “(I) the compliance of the secu-
7 rity-based swap execution facility with
8 this title; and

9 “(II) the policies and procedures,
10 including the code of ethics and con-
11 flict of interest policies, of the secu-
12 rity-based security-based swap execu-
13 tion facility.

14 “(ii) REQUIREMENTS.—The chief
15 compliance officer shall—

16 “(I) submit each report described
17 in clause (i) with the appropriate fi-
18 nancial report of the security-based
19 swap execution facility that is re-
20 quired to be submitted to the Com-
21 mission pursuant to this section; and

22 “(II) include in the report a cer-
23 tification that, under penalty of law,
24 the report is accurate and complete.

1 “(e) EXEMPTIONS.—The Commission may exempt,
2 conditionally or unconditionally, a security-based swap
3 execution facility from registration under this section if
4 the Commission finds that the facility is subject to com-
5 parable, comprehensive supervision and regulation on a
6 consolidated basis by the Commodity Futures Trading
7 Commission.

8 “(f) RULES.—The Commission shall prescribe rules
9 governing the regulation of security-based swap execution
10 facilities under this section.”.

11 (d) SEGREGATION OF ASSETS HELD AS COLLATERAL
12 IN SECURITY-BASED SWAP TRANSACTIONS.—The Securi-
13 ties Exchange Act of 1934 (15 U.S.C. 78a et seq.) is
14 amended by inserting after section 3D (as added by sub-
15 section (b)) the following:

16 **“SEC. 3E. SEGREGATION OF ASSETS HELD AS COLLATERAL**
17 **IN SECURITY-BASED SWAP TRANSACTIONS.**

18 “(a) REGISTRATION REQUIREMENT.—It shall be un-
19 lawful for any person to accept any money, securities, or
20 property (or to extend any credit in lieu of money, securi-
21 ties, or property) from, for, or on behalf of a security-
22 based swaps customer to margin, guarantee, or secure a
23 security-based swap cleared by or through a clearing agen-
24 cy (including money, securities, or property accruing to
25 the customer as the result of such a security-based swap),

1 unless the person shall have registered under this title
2 with the Commission as a broker, dealer, or security-based
3 swap dealer, and the registration shall not have expired
4 nor been suspended nor revoked.

5 “(b) CLEARED SECURITY-BASED SWAPS.—

6 “(1) SEGREGATION REQUIRED.—A broker,
7 dealer, or security-based swap dealer shall treat and
8 deal with all money, securities, and property of any
9 security-based swaps customer received to margin,
10 guarantee, or secure a security-based swap cleared
11 by or through a clearing agency (including money, se-
12 curities, or property accruing to the security-based
13 swaps customer as the result of such a security-
14 based swap) as belonging to the security-based
15 swaps customer.

16 “(2) COMMINGLING PROHIBITED.—Money, se-
17 curities, and property of a security-based swaps cus-
18 tomer described in paragraph (1) shall be separately
19 accounted for and shall not be commingled with the
20 funds of the broker, dealer, or security-based swap
21 dealer or be used to margin, secure, or guarantee
22 any trades or contracts of any security-based swaps
23 customer or person other than the person for whom
24 the same are held.

25 “(c) EXCEPTIONS.—

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1 “(1) USE OF FUNDS.—

2 “(A) IN GENERAL.—Notwithstanding sub-
3 section (b), money, securities, and property of a
4 security-based swaps customer of a broker,
5 dealer, or security-based swap dealer described
6 in subsection (b) may, for convenience, be com-
7 mingled and deposited in the same 1 or more
8 accounts with any bank or trust company or
9 with a clearing agency.

10 “(B) WITHDRAWAL.—Notwithstanding
11 subsection (b), such share of the money, securi-
12 ties, and property described in subparagraph
13 (A) as in the normal course of business shall be
14 necessary to margin, guarantee, secure, trans-
15 fer, adjust, or settle a cleared security-based
16 swap with a clearing agency, or with any mem-
17 ber of the clearing agency, may be withdrawn
18 and applied to such purposes, including the
19 payment of commissions, brokerage, interest,
20 taxes, storage, and other charges, lawfully ac-
21 cruing in connection with the cleared security-
22 based swap.

23 “(2) COMMISSION ACTION.—Notwithstanding
24 subsection (b), in accordance with such terms and
25 conditions as the Commission may prescribe by rule,

1 regulation, or order, any money, securities, or prop-
2 erty of the security-based swaps customer of a
3 broker, dealer, or security-based swap dealer de-
4 scribed in subsection (b) may be commingled and de-
5 posited as provided in this section with any other
6 money, securities, or property received by the
7 broker, dealer, or security-based swap dealer and re-
8 quired by the Commission to be separately ac-
9 counted for and treated and dealt with as belonging
10 to the security-based swaps customer of the broker,
11 dealer, or security-based swap dealer.

12 “(d) PERMITTED INVESTMENTS.—Money described
13 in subsection (b) may be invested in obligations of the
14 United States, in general obligations of any State or of
15 any political subdivision of a State, and in obligations fully
16 guaranteed as to principal and interest by the United
17 States, or in any other investment that the Commission
18 may by rule or regulation prescribe, and such investments
19 shall be made in accordance with such rules and regula-
20 tions and subject to such conditions as the Commission
21 may prescribe.

22 “(e) PROHIBITION.—It shall be unlawful for any per-
23 son, including any clearing agency and any depository in-
24 stitution, that has received any money, securities, or prop-
25 erty for deposit in a separate account or accounts as pro-

1 vided in subsection (b) to hold, dispose of, or use any such
2 money, securities, or property as belonging to the depos-
3 iting broker, dealer, or security-based swap dealer or any
4 person other than the swaps customer of the broker, deal-
5 er, or security-based swap dealer.

6 “(f) SEGREGATION REQUIREMENTS FOR UNCLEARED
7 SECURITY-BASED SWAPS.—

8 “(1) SEGREGATION OF ASSETS HELD AS COL-
9 LATERAL IN UNCLEARED SECURITY-BASED SWAP
10 TRANSACTIONS.—

11 “(A) NOTIFICATION.—A security-based
12 swap dealer or major security-based swap par-
13 ticipant shall be required to notify the
14 counterparty of the security-based swap dealer
15 or major security-based swap participant at the
16 beginning of a security-based swap transaction
17 that the counterparty has the right to require
18 segregation of the funds of other property sup-
19 plied to margin, guarantee, or secure the obliga-
20 tions of the counterparty.

21 “(B) SEGREGATION AND MAINTENANCE OF
22 FUNDS.—At the request of a counterparty to a
23 security-based swap that provides funds or
24 other property to a security-based swap dealer
25 or major security-based swap participant to

1 margin, guarantee, or secure the obligations of
2 the counterparty, the security-based swap deal-
3 er or major security-based swap participant
4 shall—

5 “(i) segregate the funds or other
6 property for the benefit of the
7 counterparty; and

8 “(ii) in accordance with such rules
9 and regulations as the Commission may
10 promulgate, maintain the funds or other
11 property in a segregated account separate
12 from the assets and other interests of the
13 security-based swap dealer or major secu-
14 rity-based swap participant.

15 “(2) APPLICABILITY.—The requirements de-
16 scribed in paragraph (1) shall—

17 “(A) apply only to a security-based swap
18 between a counterparty and a security-based
19 swap dealer or major security-based swap par-
20 ticipant that is not submitted for clearing to a
21 clearing agency;

22 “(B)(i) not apply to variation margin pay-
23 ments; or

24 “(ii) not preclude any commercial arrange-
25 ment regarding—

1 “(I) the investment of segregated
2 funds or other property that may only be
3 invested in such investments as the Com-
4 mission may permit by rule or regulation;
5 and

6 “(II) the related allocation of gains
7 and losses resulting from any investment
8 of the segregated funds or other property.

9 “(3) USE OF INDEPENDENT THIRD-PARTY
10 CUSTODIANS.—The segregated account described in
11 paragraph (1) shall be—

12 “(A) carried by an independent third-party
13 custodian; and

14 “(B) designated as a segregated account
15 for and on behalf of the counterparty.

16 “(4) REPORTING REQUIREMENT.—If the
17 counterparty does not choose to require segregation
18 of the funds or other property supplied to margin,
19 guarantee, or secure the obligations of the
20 counterparty, the security-based swap dealer or
21 major security-based swap participant shall report to
22 the counterparty of the security-based swap dealer
23 or major security-based swap participant on a quar-
24 terly basis that the back office procedures of the se-
25 curity-based swap dealer or major security-based

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1 swap participant relating to margin and collateral
2 requirements are in compliance with the agreement
3 of the counterparties.

4 “(g) BANKRUPTCY.—A security-based swap, as de-
5 fined in section 3(a)(68) shall be considered to be a secu-
6 rity as such term is used in section 101(53A)(B) and sub-
7 chapter III of title 11, United States Code. An account
8 that holds a security-based swap, other than a portfolio
9 margining account referred to in section 15(c)(3)(C) shall
10 be considered to be a securities account, as that term is
11 defined in section 741 of title 11, United States Code. The
12 definitions of the terms ‘purchase’ and ‘sale’ in section
13 3(a)(13) and (14) shall be applied to the terms ‘purchase’
14 and ‘sale’, as used in section 741 of title 11, United States
15 Code. The term ‘customer’, as defined in section 741 of
16 title 11, United States Code, excludes any person, to the
17 extent that such person has a claim based on any open
18 repurchase agreement, open reverse repurchase agree-
19 ment, stock borrowed agreement, non-cleared option, or
20 non-cleared security-based swap except to the extent of
21 any margin delivered to or by the customer with respect
22 to which there is a customer protection requirement under
23 section 15(c)(3) or a segregation requirement.”.

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1 (e) TRADING IN SECURITY-BASED SWAPS.—Section
2 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)
3 is amended by adding at the end the following:

4 “(l) SECURITY-BASED SWAPS.—It shall be unlawful
5 for any person to effect a transaction in a security-based
6 swap with or for a person that is not an eligible contract
7 participant, unless such transaction is effected on a na-
8 tional securities exchange registered pursuant to sub-
9 section (b).”.

10 (f) ADDITIONS OF SECURITY-BASED SWAPS TO CER-
11 TAIN ENFORCEMENT PROVISIONS.—Section 9(b) of the
12 Securities Exchange Act of 1934 (15 U.S.C. 78i(b)) is
13 amended by striking paragraphs (1) through (3) and in-
14 serting the following:

15 “(1) any transaction in connection with any se-
16 curity whereby any party to such transaction ac-
17 quires—

18 “(A) any put, call, straddle, or other op-
19 tion or privilege of buying the security from or
20 selling the security to another without being
21 bound to do so;

22 “(B) any security futures product on the
23 security; or

24 “(C) any security-based swap involving the
25 security or the issuer of the security;

1 “(2) any transaction in connection with any se-
2 curity with relation to which such person has, di-
3 rectly or indirectly, any interest in any—

4 “(A) such put, call, straddle, option, or
5 privilege;

6 “(B) such security futures product; or

7 “(C) such security-based swap; or

8 “(3) any transaction in any security for the ac-
9 count of any person who such person has reason to
10 believe has, and who actually has, directly or indi-
11 rectly, any interest in any—

12 “(A) such put, call, straddle, option, or
13 privilege;

14 “(B) such security futures product with re-
15 lation to such security; or

16 “(C) any security-based swap involving
17 such security or the issuer of such security.”.

18 (g) RULEMAKING AUTHORITY TO PREVENT FRAUD,
19 MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-
20 BASED SWAPS.—Section 9 of the Securities Exchange Act
21 of 1934 (15 U.S.C. 78i) is amended by adding at the end
22 the following:

23 “(j) It shall be unlawful for any person, directly or
24 indirectly, by the use of any means or instrumentality of
25 interstate commerce or of the mails, or of any facility of

1 any national securities exchange, to effect any transaction
2 in, or to induce or attempt to induce the purchase or sale
3 of, any security-based swap, in connection with which such
4 person engages in any fraudulent, deceptive, or manipula-
5 tive act or practice, makes any fictitious quotation, or en-
6 gages in any transaction, practice, or course of business
7 which operates as a fraud or deceit upon any person. The
8 Commission shall, for the purposes of this subsection, by
9 rules and regulations define, and prescribe means reason-
10 ably designed to prevent, such transactions, acts, prac-
11 tices, and courses of business as are fraudulent, deceptive,
12 or manipulative, and such quotations as are fictitious.”.

13 (h) POSITION LIMITS AND POSITION ACCOUNT-
14 ABILITY FOR SECURITY-BASED SWAPS.—The Securities
15 Exchange Act of 1934 is amended by inserting after sec-
16 tion 10A (15 U.S.C. 78j–1) the following:

17 **“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNT-**
18 **ABILITY FOR SECURITY-BASED SWAPS AND**
19 **LARGE TRADER REPORTING.**

20 “(a) POSITION LIMITS.—As a means reasonably de-
21 signed to prevent fraud and manipulation, the Commission
22 shall, by rule or regulation, as necessary or appropriate
23 in the public interest or for the protection of investors,
24 establish limits (including related hedge exemption provi-
25 sions) on the size of positions in any security-based swap

1 that may be held by any person. In establishing such lim-
2 its, the Commission may require any person to aggregate
3 positions in—

4 “(1) any security-based swap and any security
5 or loan or group of securities or loans on which such
6 security-based swap is based, which such security-
7 based swap references, or to which such security-
8 based swap is related as described in paragraph (68)
9 of section 3(a), and any other instrument relating to
10 such security or loan or group or index of securities
11 or loans; or

12 “(2) any security-based swap and—

13 “(A) 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 paragraph (68) of section
18 3(a); and

19 “(B) any other instrument relating to the
20 same security or group or index of securities de-
21 scribed under subparagraph (A).

22 “(b) EXEMPTIONS.—The Commission, by rule, regu-
23 lation, or order, may conditionally or unconditionally ex-
24 empt any person or class of persons, any security-based
25 swap or class of security-based swaps, or any transaction

1 or class of transactions from any requirement the Com-
2 mission may establish under this section with respect to
3 position limits.

4 “(c) SRO RULES.—

5 “(1) IN GENERAL.—As a means reasonably de-
6 signed to prevent fraud or manipulation, the Com-
7 mission, by rule, regulation, or order, as necessary
8 or appropriate in the public interest, for the protec-
9 tion of investors, or otherwise in furtherance of the
10 purposes of this title, may direct a self-regulatory
11 organization—

12 “(A) to adopt rules regarding the size of
13 positions in any security-based swap that may
14 be held by—

15 “(i) any member of such self-regu-
16 latory organization; or

17 “(ii) any person for whom a member
18 of such self-regulatory organization effects
19 transactions in such security-based swap;
20 and

21 “(B) to adopt rules reasonably designed to
22 ensure compliance with requirements prescribed
23 by the Commission under this subsection.

24 “(2) REQUIREMENT TO AGGREGATE POSI-
25 TIONS.—In establishing the limits under paragraph

1 (1), the self-regulatory organization may require
2 such member or person to aggregate positions in—

3 “(A) any security-based swap and any se-
4 curity or loan or group or narrow-based secu-
5 rity narrow-based security index of securities or
6 loans on which such security-based swap is
7 based, which such security-based swap ref-
8 erences, or to which such security-based swap is
9 related as described in section 3(a)(68), and
10 any other instrument relating to such security
11 or loan or group or narrow-based security index
12 of securities or loans; or

13 “(B)(i) any security-based swap; and

14 “(ii) any security-based swap and any
15 other instrument relating to the same security
16 or group or narrow-based security index of se-
17 curities.

18 “(d) LARGE TRADER REPORTING.—The Commis-
19 sion, by rule or regulation, may require any person that
20 effects transactions for such person’s own account or the
21 account of others in any securities-based swap or
22 uncleared security-based swap and any security or loan or
23 group or narrow-based security index of securities or loans
24 as set forth in paragraphs (1) and (2) of subsection (a)
25 under this section to report such information as the Com-

1 mission may prescribe regarding any position or positions
2 in any security-based swap or uncleared security-based
3 swap and any security or loan or group or narrow-based
4 security index of securities or loans and any other instru-
5 ment relating to such security or loan or group or narrow-
6 based security index of securities or loans as set forth in
7 paragraphs (1) and (2) of subsection (a) under this sec-
8 tion.”.

9 (i) PUBLIC REPORTING AND REPOSITORIES FOR SE-
10 CURITY-BASED SWAPS.—Section 13 of the Securities Ex-
11 change Act of 1934 (15 U.S.C. 78m) is amended by add-
12 ing at the end the following:

13 “(m) PUBLIC AVAILABILITY OF SECURITY-BASED
14 SWAP TRANSACTION DATA.—

15 “(1) IN GENERAL.—

16 “(A) DEFINITION OF REAL-TIME PUBLIC
17 REPORTING.—In this paragraph, the term ‘real-
18 time public reporting’ means to report data re-
19 lating to a security-based swap transaction, in-
20 cluding price and volume, as soon as techno-
21 logically practicable after the time at which the
22 security-based swap transaction has been exe-
23 cuted.

24 “(B) PURPOSE.—The purpose of this sec-
25 tion is to authorize the Commission to make se-

1 security-based swap transaction and pricing data
2 available to the public in such form and at such
3 times as the Commission determines appro-
4 priate to enhance price discovery.

5 “(C) GENERAL RULE.—The Commission is
6 authorized to provide by rule for the public
7 availability of security-based swap transaction,
8 volume, and pricing data as follows:

9 “(i) With respect to those security-
10 based swaps that are subject to the man-
11 datory clearing requirement described in
12 section 3C(a)(1) (including those security-
13 based swaps that are excepted from the re-
14 quirement pursuant to section 3C(g)), the
15 Commission shall require real-time public
16 reporting for such transactions.

17 “(ii) With respect to those security-
18 based swaps that are not subject to the
19 mandatory clearing requirement described
20 in section 3C(a)(1), but are cleared at a
21 registered clearing agency, the Commission
22 shall require real-time public reporting for
23 such transactions.

24 “(iii) With respect to security-based
25 swaps that are not cleared at a registered

1 clearing agency and which are reported to
2 a security-based swap data repository or
3 the Commission under section 3C(a)(6),
4 the Commission shall require real-time
5 public reporting for such transactions, in a
6 manner that does not disclose the business
7 transactions and market positions of any
8 person.

9 “(iv) With respect to security-based
10 swaps that are determined to be required
11 to be cleared under section 3C(b) but are
12 not cleared, the Commission shall require
13 real-time public reporting for such trans-
14 actions.

15 “(D) REGISTERED ENTITIES AND PUBLIC
16 REPORTING.—The Commission may require
17 registered entities to publicly disseminate the
18 security-based swap transaction and pricing
19 data required to be reported under this para-
20 graph.

21 “(E) RULEMAKING REQUIRED.—With re-
22 spect to the rule providing for the public avail-
23 ability of transaction and pricing data for secu-
24 rity-based swaps described in clauses (i) and (ii)

1 of subparagraph (C), the rule promulgated by
2 the Commission shall contain provisions—

3 “(i) to ensure such information does
4 not identify the participants;

5 “(ii) to specify the criteria for deter-
6 mining what constitutes a large notional
7 security-based swap transaction (block
8 trade) for particular markets and con-
9 tracts;

10 “(iii) to specify the appropriate time
11 delay for reporting large notional security-
12 based swap transactions (block trades) to
13 the public; and

14 “(iv) that take into account whether
15 the public disclosure will materially reduce
16 market liquidity.

17 “(F) TIMELINESS OF REPORTING.—Par-
18 ties to a security-based swap (including agents
19 of the parties to a security-based swap) shall be
20 responsible for reporting security-based swap
21 transaction information to the appropriate reg-
22 istered entity in a timely manner as may be
23 prescribed by the Commission.

24 “(G) REPORTING OF SWAPS TO REG-
25 ISTERED SECURITY-BASED SWAP DATA REPOSI-

1 TORIES.—Each security-based swap (whether
2 cleared or uncleared) shall be reported to a reg-
3 istered security-based swap data repository.

4 “(H) REGISTRATION OF CLEARING AGEN-
5 CIES.—A clearing agency may register as a se-
6 curity-based swap data repository.

7 “(2) SEMIANNUAL AND ANNUAL PUBLIC RE-
8 PORTING OF AGGREGATE SECURITY-BASED SWAP
9 DATA.—

10 “(A) IN GENERAL.—In accordance with
11 subparagraph (B), the Commission shall issue a
12 written report on a semiannual and annual
13 basis to make available to the public informa-
14 tion relating to—

15 “(i) the trading and clearing in the
16 major security-based swap categories; and

17 “(ii) the market participants and de-
18 velopments in new products.

19 “(B) USE; CONSULTATION.—In preparing
20 a report under subparagraph (A), the Commis-
21 sion shall—

22 “(i) use information from security-
23 based swap data repositories and clearing
24 agencies; and

1 “(ii) consult with the Office of the
2 Comptroller of the Currency, the Bank for
3 International Settlements, and such other
4 regulatory bodies as may be necessary.

5 “(C) AUTHORITY OF COMMISSION.—The
6 Commission may, by rule, regulation, or order,
7 delegate the public reporting responsibilities of
8 the Commission under this paragraph in ac-
9 cordance with such terms and conditions as the
10 Commission determines to be appropriate and
11 in the public interest.

12 “(n) SECURITY-BASED SWAP DATA REPOSITORIES.—

13 “(1) REGISTRATION REQUIREMENT.—It shall
14 be unlawful for any person, unless registered with
15 the Commission, directly or indirectly, to make use
16 of the mails or any means or instrumentality of
17 interstate commerce to perform the functions of a
18 security-based swap data repository.

19 “(2) INSPECTION AND EXAMINATION.—Each
20 registered security-based swap data repository shall
21 be subject to inspection and examination by any rep-
22 resentative of the Commission.

23 “(3) COMPLIANCE WITH CORE PRINCIPLES.—

24 “(A) IN GENERAL.—To be registered, and
25 maintain registration, as a security-based swap

1 data repository, the security-based swap data
2 repository shall comply with—

3 “(i) the requirements and core prin-
4 ciples described in this subsection; and

5 “(ii) any requirement that the Com-
6 mission may impose by rule or regulation.

7 “(B) REASONABLE DISCRETION OF SECUR-
8 RITY-BASED SWAP DATA REPOSITORY.—Unless
9 otherwise determined by the Commission, by
10 rule or regulation, a security-based swap data
11 repository described in subparagraph (A) shall
12 have reasonable discretion in establishing the
13 manner in which the security-based swap data
14 repository complies with the core principles de-
15 scribed in this subsection.

16 “(4) STANDARD SETTING.—

17 “(A) DATA IDENTIFICATION.—

18 “(i) IN GENERAL.—In accordance
19 with clause (ii), the Commission shall pre-
20 scribe standards that specify the data ele-
21 ments for each security-based swap that
22 shall be collected and maintained by each
23 registered security-based swap data reposi-
24 tory.

1 “(ii) REQUIREMENT.—In carrying out
2 clause (i), the Commission shall prescribe
3 consistent data element standards applica-
4 ble to registered entities and reporting
5 counterparties.

6 “(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data
7 collection and data maintenance standards for
8 security-based swap data 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 in connection with their clearing of se-
14 curity-based swaps.

15 “(5) DUTIES.—A security-based swap data re-
16 pository shall—

17 “(A) accept data prescribed by the Com-
18 mission for each security-based swap under sub-
19 section (b);

20 “(B) confirm with both counterparties to
21 the security-based swap the accuracy of the
22 data that was submitted;

23 “(C) maintain the data described in sub-
24 paragraph (A) in such form, in such manner,
25

1 and for such period as may be required by the
2 Commission;

3 “(D)(i) provide direct electronic access to
4 the Commission (or any designee of the Com-
5 mission, including another registered entity);
6 and

7 “(ii) provide the information described in
8 subparagraph (A) in such form and at such fre-
9 quency as the Commission may require to com-
10 ply with the public reporting requirements set
11 forth in subsection (m);

12 “(E) at the direction of the Commission,
13 establish automated systems for monitoring,
14 screening, and analyzing security-based swap
15 data;

16 “(F) maintain the privacy of any and all
17 security-based swap transaction information
18 that the security-based swap data repository re-
19 ceives from a security-based swap dealer,
20 counterparty, or any other registered entity;
21 and

22 “(G) on a confidential basis pursuant to
23 section 24, upon request, and after notifying
24 the Commission of the request, make available
25 all data obtained by the security-based swap

1 data repository, including individual
2 counterparty trade and position data, to—

3 “(i) each appropriate prudential regu-
4 lator;

5 “(ii) the Financial Stability Oversight
6 Council;

7 “(iii) the Commodity Futures Trading
8 Commission;

9 “(iv) the Department of Justice; and

10 “(v) any other person that the Com-
11 mission determines to be appropriate, in-
12 cluding—

13 “(I) foreign financial supervisors
14 (including foreign futures authorities);

15 “(II) foreign central banks; and

16 “(III) foreign ministries.

17 “(H) CONFIDENTIALITY AND INDEM-
18 NIFICATION AGREEMENT.—Before the security-
19 based swap data repository may share informa-
20 tion with any entity described in subparagraph
21 (G)—

22 “(i) the security-based swap data re-
23 pository shall receive a written agreement
24 from each entity stating that the entity
25 shall abide by the confidentiality require-

1 ments described in section 24 relating to
2 the information on security-based swap
3 transactions that is provided; and

4 “(ii) each entity shall agree to indem-
5 nify the security-based swap data reposi-
6 tory and the Commission for any expenses
7 arising from litigation relating to the infor-
8 mation provided under section 24.

9 “(6) DESIGNATION OF CHIEF COMPLIANCE OF-
10 FICER.—

11 “(A) IN GENERAL.—Each security-based
12 swap data repository shall designate an indi-
13 vidual to serve as a chief compliance officer.

14 “(B) DUTIES.—The chief compliance offi-
15 cer shall—

16 “(i) report directly to the board or to
17 the senior officer of the security-based
18 swap data repository;

19 “(ii) review the compliance of the se-
20 curity-based swap data repository with re-
21 spect to the requirements and core prin-
22 ciples described in this subsection;

23 “(iii) in consultation with the board of
24 the security-based swap data repository, a
25 body performing a function similar to the

1 board of the security-based swap data re-
2 pository, or the senior officer of the secu-
3 rity-based swap data repository, resolve
4 any conflicts of interest that may arise;

5 “(iv) be responsible for administering
6 each policy and procedure that is required
7 to be established pursuant to this section;

8 “(v) ensure compliance with this title
9 (including regulations) relating to agree-
10 ments, contracts, or transactions, including
11 each rule prescribed by the Commission
12 under this section;

13 “(vi) establish procedures for the re-
14 mediation of noncompliance issues identi-
15 fied by the chief compliance officer through
16 any—

17 “(I) compliance office review;

18 “(II) look-back;

19 “(III) internal or external audit
20 finding;

21 “(IV) self-reported error; or

22 “(V) validated complaint; and

23 “(vii) establish and follow appropriate
24 procedures for the handling, management

1 response, remediation, retesting, and clos-
2 ing of noncompliance issues.

3 “(C) ANNUAL REPORTS.—

4 “(i) IN GENERAL.—In accordance
5 with rules prescribed by the Commission,
6 the chief compliance officer shall annually
7 prepare and sign a report that contains a
8 description of—

9 “(I) the compliance of the secu-
10 rity-based swap data repository of the
11 chief compliance officer with respect
12 to this title (including regulations);
13 and

14 “(II) each policy and procedure
15 of the security-based swap data repos-
16 itory of the chief compliance officer
17 (including the code of ethics and con-
18 flict of interest policies of the secu-
19 rity-based swap data repository).

20 “(ii) REQUIREMENTS.—A compliance
21 report under clause (i) shall—

22 “(I) accompany each appropriate
23 financial report of the security-based
24 swap data repository that is required

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1 to be furnished to the Commission
2 pursuant to this section; and

3 “(II) include a certification that,
4 under penalty of law, the compliance
5 report is accurate and complete.

6 “(7) CORE PRINCIPLES APPLICABLE TO SECUR-
7 RITY-BASED SWAP DATA REPOSITORIES.—

8 “(A) ANTITRUST CONSIDERATIONS.—Un-
9 less necessary or appropriate to achieve the
10 purposes of this title, the swap data repository
11 shall not—

12 “(i) adopt any rule or take any action
13 that results in any unreasonable restraint
14 of trade; or

15 “(ii) impose any material anticompeti-
16 tive burden on the trading, clearing, or re-
17 porting of transactions.

18 “(B) GOVERNANCE ARRANGEMENTS.—
19 Each security-based swap data repository shall
20 establish governance arrangements that are
21 transparent—

22 “(i) to fulfill public interest require-
23 ments; and

1111

1 “(ii) to support the objectives of the
2 Federal Government, owners, and partici-
3 pants.

4 “(C) CONFLICTS OF INTEREST.—Each se-
5 curity-based swap data repository shall—

6 “(i) establish and enforce rules to
7 minimize conflicts of interest in the deci-
8 sion-making process of the security-based
9 swap data repository; and

10 “(ii) establish a process for resolving
11 any conflicts of interest described in clause
12 (i).

13 “(D) ADDITIONAL DUTIES DEVELOPED BY
14 COMMISSION.—

15 “(i) IN GENERAL.—The Commission
16 may develop 1 or more additional duties
17 applicable to security-based swap data re-
18 positories.

19 “(ii) CONSIDERATION OF EVOLVING
20 STANDARDS.—In developing additional du-
21 ties under subparagraph (A), the Commis-
22 sion may take into consideration any evolv-
23 ing standard of the United States or the
24 international community.

1 “(iii) ADDITIONAL DUTIES FOR COM-
2 MISSION DESIGNEES.—The Commission
3 shall establish additional duties for any
4 registrant described in section 13(m)(2)(C)
5 in order to minimize conflicts of interest,
6 protect data, ensure compliance, and guar-
7 antee the safety and security of the secu-
8 rity-based swap data repository.

9 “(8) REQUIRED REGISTRATION FOR SECURITY-
10 BASED SWAP DATA REPOSITORIES.—Any person that
11 is required to be registered as a security-based swap
12 data repository under this subsection shall register
13 with the Commission, regardless of whether that
14 person is also licensed under the Commodity Ex-
15 change Act as a swap data repository.

16 “(9) RULES.—The Commission shall adopt
17 rules governing persons that are registered under
18 this subsection.”.

19 **SEC. 764. REGISTRATION AND REGULATION OF SECURITY-**
20 **BASED SWAP DEALERS AND MAJOR SECU-**
21 **RITY-BASED SWAP PARTICIPANTS.**

22 (a) IN GENERAL.—The Securities Exchange Act of
23 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
24 section 15E (15 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) SECURITY-BASED SWAP DEALERS.—It
6 shall be unlawful for any person to act as a security-
7 based swap dealer unless the person is registered as
8 a security-based swap dealer with the Commission.

9 “(2) MAJOR SECURITY-BASED SWAP PARTICI-
10 PANTS.—It shall be unlawful for any person to act
11 as a major security-based swap participant unless
12 the person is registered as a major security-based
13 swap participant with the Commission.

14 “(b) REQUIREMENTS.—

15 “(1) IN GENERAL.—A person shall register as
16 a security-based swap dealer or major security-based
17 swap participant by filing a registration application
18 with the Commission.

19 “(2) CONTENTS.—

20 “(A) IN GENERAL.—The application shall
21 be made in such form and manner as prescribed
22 by the Commission, and shall contain such in-
23 formation, as the Commission considers nec-
24 essary concerning the business in which the ap-
25 plicant is or will be engaged.

1 “(B) CONTINUAL REPORTING.—A person
2 that is registered as a security-based swap deal-
3 er or major security-based swap participant
4 shall continue to submit to the Commission re-
5 ports that contain such information pertaining
6 to the business of the person as the Commission
7 may require.

8 “(3) EXPIRATION.—Each registration under
9 this section shall expire at such time as the Commis-
10 sion may prescribe by rule or regulation.

11 “(4) RULES.—Except as provided in sub-
12 sections (d) and (e), the Commission may prescribe
13 rules applicable to security-based swap dealers and
14 major security-based swap participants, including
15 rules that limit the activities of non-bank security-
16 based swap dealers and major security-based swap
17 participants.

18 “(5) TRANSITION.—Not later than 1 year after
19 the date of enactment of the Wall Street Trans-
20 parency and Accountability Act of 2010, the Com-
21 mission shall issue rules under this section to pro-
22 vide for the registration of security-based swap deal-
23 ers and major security-based swap participants.

24 “(6) STATUTORY DISQUALIFICATION.—Except
25 to the extent otherwise specifically provided by rule,

1 regulation, or order of the Commission, it shall be
2 unlawful for a security-based swap dealer or a major
3 security-based swap participant to permit any person
4 associated with a security-based swap dealer or a
5 major security-based swap participant who is subject
6 to a statutory disqualification to effect or be involved
7 in effecting security-based swaps on behalf of the se-
8 curity-based swap dealer or major security-based
9 swap participant, if the security-based swap dealer
10 or major security-based swap participant knew, or in
11 the exercise of reasonable care should have known,
12 of the statutory disqualification.

13 “(c) DUAL REGISTRATION.—

14 “(1) SECURITY-BASED SWAP DEALER.—Any
15 person that is required to be registered as a secu-
16 rity-based swap dealer under this section shall reg-
17 ister with the Commission, regardless of whether the
18 person also is registered with the Commodity Fu-
19 tures Trading Commission as a swap dealer.

20 “(2) MAJOR SECURITY-BASED SWAP PARTICI-
21 PANT.—Any person that is required to be registered
22 as a major security-based swap participant under
23 this section shall register with the Commission, re-
24 gardless of whether the person also is registered

1 with the Commodity Futures Trading Commission
2 as a major swap participant.

3 “(d) RULEMAKING.—

4 “(1) IN GENERAL.—The Commission shall
5 adopt rules for persons that are registered as secu-
6 rity-based swap dealers or major security-based swap
7 participants under this section.

8 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
9 MENTS.—

10 “(A) IN GENERAL.—The Commission may
11 not prescribe rules imposing prudential require-
12 ments on security-based swap dealers or major
13 security-based swap participants for which there
14 is a prudential regulator.

15 “(B) APPLICABILITY.—Subparagraph (A)
16 does not limit the authority of the Commission
17 to prescribe rules as directed under this section.

18 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

19 “(1) IN GENERAL.—

20 “(A) SECURITY-BASED SWAP DEALERS
21 AND MAJOR SECURITY-BASED SWAP PARTICI-
22 PANTS THAT ARE BANKS.—Each registered se-
23 curity-based swap dealer and major security-
24 based swap participant for which there is not a
25 prudential regulator shall meet such minimum

1 capital requirements and minimum initial and
2 variation margin requirements as the prudential
3 regulator shall by rule or regulation prescribe
4 under paragraph (2)(A).

5 “(B) SECURITY-BASED SWAP DEALERS
6 AND MAJOR SECURITY-BASED SWAP PARTICI-
7 PANTS THAT ARE NOT BANKS.—Each registered
8 security-based swap dealer and major security-
9 based swap participant for which there is not a
10 prudential regulator shall meet such minimum
11 capital requirements and minimum initial and
12 variation margin requirements as the Commis-
13 sion shall by rule or regulation prescribe under
14 paragraph (2)(B).

15 “(2) RULES.—

16 “(A) SECURITY-BASED SWAP DEALERS
17 AND MAJOR SECURITY-BASED SWAP PARTICI-
18 PANTS THAT ARE BANKS.—The prudential reg-
19 ulators, in consultation with the Commission
20 and the Commodity Futures Trading Commis-
21 sion, shall adopt rules for security-based swap
22 dealers and major security-based swap partici-
23 pants, with respect to their activities as a swap
24 dealer or major swap participant, for which
25 there is a prudential regulator imposing—

1 “(i) capital requirements; and

2 “(ii) both initial and variation margin
3 requirements on all security-based swaps
4 that are not cleared by a registered clear-
5 ing agency.

6 “(B) SECURITY-BASED SWAP DEALERS
7 AND MAJOR SECURITY-BASED SWAP PARTICI-
8 PANTS THAT ARE NOT BANKS.—The Commis-
9 sion shall adopt rules for security-based swap
10 dealers and major security-based swap partici-
11 pants, with respect to their activities as a swap
12 dealer or major swap participant, for which
13 there is not a prudential regulator imposing—

14 “(i) capital requirements; and

15 “(ii) both initial and variation margin
16 requirements on all swaps that are not
17 cleared by a registered clearing agency.

18 “(3) STANDARDS FOR CAPITAL AND MARGIN.—

19 “(A) IN GENERAL.—To offset the greater
20 risk to the security-based swap dealer or major
21 security-based swap participant and the finan-
22 cial system arising from the use of security-
23 based swaps that are not cleared, the require-
24 ments imposed under paragraph (2) shall —

1 “(i) help ensure the safety and sound-
2 ness of the security-based swap dealer or
3 major security-based swap participant; and

4 “(ii) be appropriate for the risk asso-
5 ciated with the non-cleared security-based
6 swaps held as a security-based swap dealer
7 or major security-based swap participant.

8 “(B) RULE OF CONSTRUCTION.—

9 “(i) IN GENERAL.—Nothing in this
10 section shall limit, or be construed to limit,
11 the authority—

12 “(I) of the Commission to set fi-
13 nancial responsibility rules for a
14 broker or dealer registered pursuant
15 to section 15(b) (except for section
16 15(b)(11) thereof) in accordance with
17 section 15(c)(3); or

18 “(II) of the Commodity Futures
19 Trading Commission to set financial
20 responsibility rules for a futures com-
21 mission merchant or introducing
22 broker registered pursuant to section
23 4f(a) of the Commodity Exchange Act
24 (except for section 4f(a)(3) thereof) in

1 accordance with section 4f(b) of the
2 Commodity Exchange Act.

3 “(ii) FUTURES COMMISSION MER-
4 CHANTS AND OTHER DEALERS.—A futures
5 commission merchant, introducing broker,
6 broker, or dealer shall maintain sufficient
7 capital to comply with the stricter of any
8 applicable capital requirements to which
9 such futures commission merchant, intro-
10 ducing broker, broker, or dealer is subject
11 to under this title or the Commodity Ex-
12 change Act.

13 “(C) MARGIN REQUIREMENTS.—In pre-
14 scribing margin requirements under this sub-
15 section, the prudential regulator with respect to
16 security-based swap dealers and major security-
17 based swap participants that are depository in-
18 stitutions, and the Commission with respect to
19 security-based swap dealers and major security-
20 based swap participants that are not depository
21 institutions shall permit the use of noncash col-
22 lateral, as the regulator or the Commission de-
23 termines to be consistent with—

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1 “(i) preserving the financial integrity
2 of markets trading security-based swaps;
3 and

4 “(ii) preserving the stability of the
5 United States financial system.

6 “(D) COMPARABILITY OF CAPITAL AND
7 MARGIN REQUIREMENTS.—

8 “(i) IN GENERAL.—The prudential
9 regulators, the Commission, and the Secu-
10 rities and Exchange Commission shall peri-
11 odically (but not less frequently than annu-
12 ally) consult on minimum capital require-
13 ments and minimum initial and variation
14 margin requirements.

15 “(ii) COMPARABILITY.—The entities
16 described in clause (i) shall, to the max-
17 imum extent practicable, establish and
18 maintain comparable minimum capital re-
19 quirements and minimum initial and vari-
20 ation margin requirements, including the
21 use of noncash collateral, for—

22 “(I) security-based swap dealers;
23 and

24 “(II) major security-based swap
25 participants.

1 “(f) REPORTING AND RECORDKEEPING.—

2 “(1) IN GENERAL.—Each registered security-
3 based swap dealer and major security-based swap
4 participant—

5 “(A) shall make such reports as are re-
6 quired by the Commission, by rule or regula-
7 tion, regarding the transactions and positions
8 and financial condition of the registered secu-
9 rity-based swap dealer or major security-based
10 swap participant;

11 “(B)(i) for which there is a prudential regu-
12 lator, shall keep books and records of all ac-
13 tivities related to the business as a security-
14 based swap dealer or major security-based swap
15 participant in such form and manner and for
16 such period as may be prescribed by the Com-
17 mission by rule or regulation; and

18 “(ii) for which there is no prudential regu-
19 lator, shall keep books and records in such form
20 and manner and for such period as may be pre-
21 scribed by the Commission by rule or regula-
22 tion; and

23 “(C) shall keep books and records de-
24 scribed in subparagraph (B) open to inspection

1 and examination by any representative of the
2 Commission.

3 “(2) RULES.—The Commission shall adopt
4 rules governing reporting and recordkeeping for se-
5 curity-based swap dealers and major security-based
6 swap participants.

7 “(g) DAILY TRADING RECORDS.—

8 “(1) IN GENERAL.—Each registered security-
9 based swap dealer and major security-based swap
10 participant shall maintain daily trading records of
11 the security-based swaps of the registered security-
12 based swap dealer and major security-based swap
13 participant and all related records (including related
14 cash or forward transactions) and recorded commu-
15 nications, including electronic mail, instant mes-
16 sages, and recordings of telephone calls, for such pe-
17 riod as may be required by the Commission by rule
18 or regulation.

19 “(2) INFORMATION REQUIREMENTS.—The daily
20 trading records shall include such information as the
21 Commission shall require by rule or regulation.

22 “(3) COUNTERPARTY RECORDS.—Each reg-
23 istered security-based swap dealer and major secu-
24 rity-based swap participant shall maintain daily
25 trading records for each counterparty in a manner

1 and form that is identifiable with each security-
2 based swap transaction.

3 “(4) AUDIT TRAIL.—Each registered security-
4 based swap dealer and major security-based swap
5 participant shall maintain a complete audit trail for
6 conducting comprehensive and accurate trade recon-
7 structions.

8 “(5) RULES.—The Commission shall adopt
9 rules governing daily trading records for security-
10 based swap dealers and major security-based swap
11 participants.

12 “(h) BUSINESS CONDUCT STANDARDS.—

13 “(1) IN GENERAL.—Each registered security-
14 based swap dealer and major security-based swap
15 participant shall conform with such business conduct
16 standards as prescribed in paragraph (3) and as
17 may be prescribed by the Commission by rule or reg-
18 ulation that relate to—

19 “(A) fraud, manipulation, and other abu-
20 sive practices involving security-based swaps
21 (including security-based swaps that are offered
22 but not entered into);

23 “(B) diligent supervision of the business of
24 the registered security-based swap dealer and
25 major security-based swap participant;

1 “(C) adherence to all applicable position
2 limits; and

3 “(D) such other matters as the Commis-
4 sion determines to be appropriate.

5 “(2) RESPONSIBILITIES WITH RESPECT TO SPE-
6 CIAL ENTITIES.—

7 “(A) ADVISING SPECIAL ENTITIES.—A se-
8 curity-based swap dealer or major security-
9 based swap participant that acts as an advisor
10 to special entity regarding a security-based
11 swap shall comply with the requirements of
12 paragraph (4) with respect to such special enti-
13 ty.

14 “(B) ENTERING OF SWAPS WITH RESPECT
15 TO SPECIAL ENTITIES.—A security-based swap
16 dealer that enters into or offers to enter into se-
17 curity-based swap with a special entity shall
18 comply with the requirements of paragraph (5)
19 with respect to such special entity.

20 “(C) SPECIAL ENTITY DEFINED.—For
21 purposes of this subsection, the term ‘special
22 entity’ means—

23 “(i) a Federal agency;

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1 “(ii) a State, State agency, city, coun-
2 ty, municipality, or other political subdivi-
3 sion of a State or;

4 “(iii) any employee benefit plan, as
5 defined in section 3 of the Employee Re-
6 tirement Income Security Act of 1974 (29
7 U.S.C. 1002);

8 “(iv) any governmental plan, as de-
9 fined in section 3 of the Employee Retire-
10 ment Income Security Act of 1974 (29
11 U.S.C. 1002); or

12 “(v) any endowment, including an en-
13 dowment that is an organization described
14 in section 501(c)(3) of the Internal Rev-
15 enue Code of 1986.

16 “(3) BUSINESS CONDUCT REQUIREMENTS.—
17 Business conduct requirements adopted by the Com-
18 mission shall—

19 “(A) establish a duty for a security-based
20 swap dealer or major security-based swap par-
21 ticipant to verify that any counterparty meets
22 the eligibility standards for an eligible contract
23 participant;

24 “(B) require disclosure by the security-
25 based swap dealer or major security-based swap

1 participant to any counterparty to the trans-
2 action (other than a security-based swap dealer,
3 major security-based swap participant, security-
4 based swap dealer, or major security-based
5 swap participant) of—

6 “(i) information about the material
7 risks and characteristics of the security-
8 based swap;

9 “(ii) any material incentives or con-
10 flicts of interest that the security-based
11 swap dealer or major security-based swap
12 participant may have in connection with
13 the security-based swap; and

14 “(iii)(I) for cleared security-based
15 swaps, upon the request of the
16 counterparty, receipt of the daily mark of
17 the transaction from the appropriate de-
18 rivatives clearing organization; and

19 “(II) for uncleared security-based
20 swaps, receipt of the daily mark of the
21 transaction from the security-based swap
22 dealer or the major security-based swap
23 participant;

24 “(C) establish a duty for a security-based
25 swap dealer or major security-based swap par-

1 participant to communicate in a fair and balanced
2 manner based on principles of fair dealing and
3 good faith; and

4 “(D) establish such other standards and
5 requirements as the Commission may determine
6 are appropriate in the public interest, for the
7 protection of investors, or otherwise in further-
8 ance of the purposes of this Act.

9 “(4) SPECIAL REQUIREMENTS FOR SECURITY-
10 BASED SWAP DEALERS ACTING AS ADVISORS.—

11 “(A) IN GENERAL.—It shall be unlawful
12 for a security-based swap dealer or major secu-
13 rity-based swap participant—

14 “(i) to employ any device, scheme, or
15 artifice to defraud any special entity or
16 prospective customer who is a special enti-
17 ty;

18 “(ii) to engage in any transaction,
19 practice, or course of business that oper-
20 ates as a fraud or deceit on any special en-
21 tity or prospective customer who is a spe-
22 cial entity; or

23 “(iii) to engage in any act, practice,
24 or course of business that is fraudulent,
25 deceptive, or manipulative.

1 “(B) DUTY.—Any security-based swap
2 dealer that acts as an advisor to a special entity
3 shall have a duty to act in the best interests of
4 the special entity.

5 “(C) REASONABLE EFFORTS.—Any secu-
6 rity-based swap dealer that acts as an advisor
7 to a special entity shall make reasonable efforts
8 to obtain such information as is necessary to
9 make a reasonable determination that any secu-
10 rity-based swap recommended by the security-
11 based swap dealer is in the best interests of the
12 special entity, including information relating
13 to—

14 “(i) the financial status of the special
15 entity;

16 “(ii) the tax status of the special enti-
17 ty;

18 “(iii) the investment or financing ob-
19 jectives of the special entity; and

20 “(iv) any other information that the
21 Commission may prescribe by rule or regu-
22 lation.

23 “(5) SPECIAL REQUIREMENTS FOR SECURITY-
24 BASED SWAP DEALERS AS COUNTERPARTIES TO SPE-
25 CIAL ENTITIES.—

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1 “(A) IN GENERAL.—Any security-based
2 swap dealer or major security-based swap par-
3 ticipant that offers to or enters into a security-
4 based swap with a special entity shall—

5 “(i) comply with any duty established
6 by the Commission for a security-based
7 swap dealer or major security-based swap
8 participant, with respect to a counterparty
9 that is an eligible contract participant
10 within the meaning of subclause (I) or (II)
11 of clause (vii) of section 1a(18) of the
12 Commodity Exchange Act, that requires
13 the security-based swap dealer or major se-
14 curity-based swap participant to have a
15 reasonable basis to believe that the
16 counterparty that is a special entity has an
17 independent representative that—

18 “(I) has sufficient knowledge to
19 evaluate the transaction and risks;

20 “(II) is not subject to a statutory
21 disqualification;

22 “(III) is independent of the secu-
23 rity-based swap dealer or major secu-
24 rity-based swap participant;

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1 “(IV) undertakes a duty to act in
2 the best interests of the counterparty
3 it represents;

4 “(V) makes appropriate disclo-
5 sures;

6 “(VI) will provide written rep-
7 resentations to the special entity re-
8 garding fair pricing and the appro-
9 priateness of the transaction; and

10 “(VII) in the case of employee
11 benefit plans subject to the Employee
12 Retirement Income Security act of
13 1974, is a fiduciary as defined in sec-
14 tion 3 of that Act (29 U.S.C. 1002);
15 and

16 “(ii) before the initiation of the trans-
17 action, disclose to the special entity in
18 writing the capacity in which the security-
19 based swap dealer is acting.

20 “(B) COMMISSION AUTHORITY.—The Com-
21 mission may establish such other standards and
22 requirements under this paragraph as the Com-
23 mission may determine are appropriate in the
24 public interest, for the protection of investors,

1 or otherwise in furtherance of the purposes of
2 this Act.

3 “(6) RULES.—The Commission shall prescribe
4 rules under this subsection governing business con-
5 duct standards for security-based swap dealers and
6 major security-based swap participants.

7 “(7) APPLICABILITY.—This subsection shall not
8 apply with respect to a transaction that is—

9 “(A) initiated by a special entity on an ex-
10 change or security-based swaps execution facil-
11 ity; and

12 “(B) the security-based swap dealer or
13 major security-based swap participant does not
14 know the identity of the counterparty to the
15 transaction.”

16 “(i) DOCUMENTATION STANDARDS.—

17 “(1) IN GENERAL.—Each registered security-
18 based swap dealer and major security-based swap
19 participant shall conform with such standards as
20 may be prescribed by the Commission, by rule or
21 regulation, that relate to timely and accurate con-
22 firmation, processing, netting, documentation, and
23 valuation of all security-based swaps.

24 “(2) RULES.—The Commission shall adopt
25 rules governing documentation standards for secu-

1 rity-based swap dealers and major security-based
2 swap participants.

3 “(j) DUTIES.—Each registered security-based swap
4 dealer and major security-based swap participant shall, at
5 all times, comply with the following requirements:

6 “(1) MONITORING OF TRADING.—The security-
7 based swap dealer or major security-based swap par-
8 ticipant shall monitor its trading in security-based
9 swaps to prevent violations of applicable position
10 limits.

11 “(2) RISK MANAGEMENT PROCEDURES.—The
12 security-based swap dealer or major security-based
13 swap participant shall establish robust and profes-
14 sional risk management systems adequate for man-
15 aging the day-to-day business of the security-based
16 swap dealer or major security-based swap partici-
17 pant.

18 “(3) DISCLOSURE OF GENERAL INFORMA-
19 TION.—The security-based swap dealer or major se-
20 curity-based swap participant shall disclose to the
21 Commission and to the prudential regulator for the
22 security-based swap dealer or major security-based
23 swap participant, as applicable, information con-
24 cerning—

1 “(A) terms and conditions of its security-
2 based swaps;

3 “(B) security-based swap trading oper-
4 ations, mechanisms, and practices;

5 “(C) financial integrity protections relating
6 to security-based swaps; and

7 “(D) other information relevant to its trad-
8 ing in security-based swaps.

9 “(4) ABILITY TO OBTAIN INFORMATION.—The
10 security-based swap dealer or major security-based
11 swap participant shall—

12 “(A) establish and enforce internal systems
13 and procedures to obtain any necessary infor-
14 mation to perform any of the functions de-
15 scribed in this section; and

16 “(B) provide the information to the Com-
17 mission and to the prudential regulator for the
18 security-based swap dealer or major security-
19 based swap participant, as applicable, on re-
20 quest.

21 “(5) CONFLICTS OF INTEREST.—The security-
22 based swap dealer and major security-based swap
23 participant shall implement conflict-of-interest sys-
24 tems and procedures that—

1 “(A) establish structural and institutional
2 safeguards to ensure that the activities of any
3 person within the firm relating to research or
4 analysis of the price or market for any security-
5 based swap or acting in a role of providing
6 clearing activities or making determinations as
7 to accepting clearing customers are separated
8 by appropriate informational partitions within
9 the firm from the review, pressure, or oversight
10 of persons whose involvement in pricing, trad-
11 ing, or clearing activities might potentially bias
12 their judgment or supervision and contravene
13 the core principles of open access and the busi-
14 ness conduct standards described in this title;
15 and

16 “(B) address such other issues as the
17 Commission determines to be appropriate.

18 “(6) ANTITRUST CONSIDERATIONS.—Unless
19 necessary or appropriate to achieve the purposes of
20 this title, the security-based swap dealer or major se-
21 curity-based swap participant shall not—

22 “(A) adopt any process or take any action
23 that results in any unreasonable restraint of
24 trade; or

1 “(B) impose any material anticompetitive
2 burden on trading or clearing.

3 “(7) RULES.—The Commission shall prescribe
4 rules under this subsection governing duties of secu-
5 rity-based swap dealers and major security-based
6 swap participants.

7 “(k) DESIGNATION OF CHIEF COMPLIANCE OFFI-
8 CER.—

9 “(1) IN GENERAL.—Each security-based swap
10 dealer and major security-based swap participant
11 shall designate an individual to serve as a chief com-
12 pliance officer.

13 “(2) DUTIES.—The chief compliance officer
14 shall—

15 “(A) report directly to the board or to the
16 senior officer of the security-based swap dealer
17 or major security-based swap participant;

18 “(B) review the compliance of the security-
19 based swap dealer or major security-based swap
20 participant with respect to the security-based
21 swap dealer and major security-based swap par-
22 ticipant requirements described in this section;

23 “(C) in consultation with the board of di-
24 rectors, a body performing a function similar to
25 the board, or the senior officer of the organiza-

1 tion, resolve any conflicts of interest that may
2 arise;

3 “(D) be responsible for administering each
4 policy and procedure that is required to be es-
5 tablished pursuant to this section;

6 “(E) ensure compliance with this title (in-
7 cluding regulations) relating to security-based
8 swaps, including each rule prescribed by the
9 Commission under this section;

10 “(F) establish procedures for the remedi-
11 ation of noncompliance issues identified by the
12 chief compliance officer through any—

13 “(i) compliance office review;

14 “(ii) look-back;

15 “(iii) internal or external audit find-
16 ing;

17 “(iv) self-reported error; or

18 “(v) validated complaint; and

19 “(G) establish and follow appropriate pro-
20 cedures for the handling, management response,
21 remediation, retesting, and closing of non-
22 compliance issues.

23 “(3) ANNUAL REPORTS.—

24 “(A) IN GENERAL.—In accordance with
25 rules prescribed by the Commission, the chief

1 compliance officer shall annually prepare and
2 sign a report that contains a description of—

3 “(i) the compliance of the security-
4 based swap dealer or major swap partici-
5 pant with respect to this title (including
6 regulations); and

7 “(ii) each policy and procedure of the
8 security-based swap dealer or major secu-
9 rity-based swap participant of the chief
10 compliance officer (including the code of
11 ethics and conflict of interest policies).

12 “(B) REQUIREMENTS.—A compliance re-
13 port under subparagraph (A) shall—

14 “(i) accompany each appropriate fi-
15 nancial report of the security-based swap
16 dealer or major security-based swap partici-
17 pant that is required to be furnished to
18 the Commission pursuant to this section;
19 and

20 “(ii) include a certification that, under
21 penalty of law, the compliance report is ac-
22 curate and complete.

23 “(1) ENFORCEMENT AND ADMINISTRATIVE PRO-
24 CEEDING AUTHORITY.—

25 “(1) PRIMARY ENFORCEMENT AUTHORITY.—

1 “(A) SECURITIES AND EXCHANGE COMMIS-
2 SION.—Except as provided in subparagraph
3 (B), the Commission shall have primary author-
4 ity to enforce subtitle B, and the amendments
5 made by subtitle B of the Wall Street Trans-
6 parency and Accountability Act of 2010, with
7 respect to any person.

8 “(B) PRUDENTIAL REGULATORS.—The
9 prudential regulators shall have exclusive au-
10 thority to enforce the provisions of subsection
11 (e) and other prudential requirements of this
12 title (including risk management standards),
13 with respect to security-based swap dealers or
14 major security-based swap participants for
15 which they are the prudential regulator.

16 “(C) REFERRAL.—

17 “(i) VIOLATIONS OF NONPRUDENTIAL
18 REQUIREMENTS.—If the appropriate Fed-
19 eral banking agency for security-based
20 swap dealers or major security-based swap
21 participants that are depository institu-
22 tions has cause to believe that such secu-
23 rity-based swap dealer or major security-
24 based swap participant may have engaged
25 in conduct that constitutes a violation of

1 the nonprudential requirements of this sec-
2 tion or rules adopted by the Commission
3 thereunder, the agency may recommend in
4 writing to the Commission that the Com-
5 mission initiate an enforcement proceeding
6 as authorized under this title. The rec-
7 ommendation shall be accompanied by a
8 written explanation of the concerns giving
9 rise to the recommendation.

10 “(ii) VIOLATIONS OF PRUDENTIAL RE-
11 QUIREMENTS.—If the Commission has
12 cause to believe that a securities-based
13 swap dealer or major securities-based swap
14 participant that has a prudential regulator
15 may have engaged in conduct that con-
16 stitute a violation of the prudential re-
17 quirements of subsection (e) or rules
18 adopted thereunder, the Commission may
19 recommend in writing to the prudential
20 regulator that the prudential regulator ini-
21 tiate an enforcement proceeding as author-
22 ized under this title. The recommendation
23 shall be accompanied by a written expla-
24 nation of the concerns giving rise to the
25 recommendation.

1 “(2) CENSURE, DENIAL, SUSPENSION; NOTICE
2 AND HEARING.—The Commission, by order, shall
3 censure, place limitations on the activities, functions,
4 or operations of, or revoke the registration of any se-
5 curity-based swap dealer or major security-based
6 swap participant that has registered with the Com-
7 mission pursuant to subsection (b) if the Commis-
8 sion finds, on the record after notice and oppor-
9 tunity for hearing, that such censure, placing of lim-
10 itations, or revocation is in the public interest and
11 that such security-based swap dealer or major secu-
12 rity-based swap participant, or any person associated
13 with such security-based swap dealer or major secu-
14 rity-based swap participant effecting or involved in
15 effecting transactions in security-based swaps on be-
16 half of such security-based swap dealer or major se-
17 curity-based swap participant, whether prior or sub-
18 sequent to becoming so associated—

19 “(A) has committed or omitted any act, or
20 is subject to an order or finding, enumerated in
21 subparagraph (A), (D), or (E) of paragraph (4)
22 of section 15(b);

23 “(B) has been convicted of any offense
24 specified in subparagraph (B) of such para-

1 graph (4) within 10 years of the commencement
2 of the proceedings under this subsection;

3 “(C) is enjoined from any action, conduct,
4 or practice specified in subparagraph (C) of
5 such paragraph (4);

6 “(D) is subject to an order or a final order
7 specified in subparagraph (F) or (H), respec-
8 tively, of such paragraph (4); or

9 “(E) has been found by a foreign financial
10 regulatory authority to have committed or omit-
11 ted any act, or violated any foreign statute or
12 regulation, enumerated in subparagraph (G) of
13 such paragraph (4).

14 “(3) ASSOCIATED PERSONS.—With respect to
15 any person who is associated, who is seeking to be-
16 come associated, or, at the time of the alleged mis-
17 conduct, who was associated or was seeking to be-
18 come associated with a security-based swap dealer or
19 major security-based swap participant for the pur-
20 pose of effecting or being involved in effecting secu-
21 rity-based swaps on behalf of such security-based
22 swap dealer or major security-based swap partici-
23 pant, the Commission, by order, shall censure, place
24 limitations on the activities or functions of such per-
25 son, or suspend for a period not exceeding 12

1 months, or bar such person from being associated
2 with a security-based swap dealer or major security-
3 based swap participant, if the Commission finds, on
4 the record after notice and opportunity for a hear-
5 ing, that such censure, placing of limitations, sus-
6 pension, or bar is in the public interest and that
7 such person—

8 “(A) has committed or omitted any act, or
9 is subject to an order or finding, enumerated in
10 subparagraph (A), (D), or (E) of paragraph (4)
11 of section 15(b);

12 “(B) has been convicted of any offense
13 specified in subparagraph (B) of such para-
14 graph (4) within 10 years of the commencement
15 of the proceedings under this subsection;

16 “(C) is enjoined from any action, conduct,
17 or practice specified in subparagraph (C) of
18 such paragraph (4);

19 “(D) is subject to an order or a final order
20 specified in subparagraph (F) or (H), respec-
21 tively, of such paragraph (4); or

22 “(E) has been found by a foreign financial
23 regulatory authority to have committed or omit-
24 ted any act, or violated any foreign statute or

1 regulation, enumerated in subparagraph (G) of
2 such paragraph (4).

3 “(4) UNLAWFUL CONDUCT.—It shall be unlaw-
4 ful—

5 “(A) for any person as to whom an order
6 under paragraph (3) is in effect, without the
7 consent of the Commission, willfully to become,
8 or to be, associated with a security-based swap
9 dealer or major security-based swap participant
10 in contravention of such order; or

11 “(B) for any security-based swap dealer or
12 major security-based swap participant to permit
13 such a person, without the consent of the Com-
14 mission, to become or remain a person associ-
15 ated with the security-based swap dealer or
16 major security-based swap participant in con-
17 travention of such order, if such security-based
18 swap dealer or major security-based swap par-
19 ticipant knew, or in the exercise of reasonable
20 care should have known, of such order.”.

21 (b) SAVINGS CLAUSE.—Notwithstanding any other
22 provision of this title, nothing in this subtitle shall be con-
23 strued as divesting any appropriate Federal banking agen-
24 cy of any authority it may have to establish or enforce,
25 with respect to a person for which such agency is the ap-

1 appropriate Federal banking agency, prudential or other
2 standards pursuant to authority by Federal law other than
3 this title.

4 **SEC. 765. RULEMAKING ON CONFLICT OF INTEREST.**

5 (a) IN GENERAL.—In order to mitigate conflicts of
6 interest, not later than 180 days after the date of enact-
7 ment of the Wall Street Transparency and Accountability
8 Act of 2010, the Securities and Exchange Commission
9 shall adopt rules which may include numerical limits on
10 the control of, or the voting rights with respect to, any
11 clearing agency that clears security-based swaps, or on the
12 control of any security-based swap execution facility or na-
13 tional securities exchange that posts or makes available
14 for trading security-based swaps, by a bank holding com-
15 pany (as defined in section 2 of the Bank Holding Com-
16 pany Act of 1956 (12 U.S.C. 1841)) with total consoli-
17 dated assets of \$50,000,000,000 or more, a nonbank fi-
18 nancial company (as defined in section 102) supervised by
19 the Board of Governors of the Federal Reserve System,
20 affiliate of such a bank holding company or nonbank fi-
21 nancial company, a security-based swap dealer, major se-
22 curity-based swap participant, or person associated with
23 a security-based swap dealer or major security-based swap
24 participant.

1 (b) PURPOSES.—The Commission shall adopt rules if
2 the Commission determines, after the review described in
3 subsection (a), that such rules are necessary or appro-
4 priate to improve the governance of, or to mitigate sys-
5 temic risk, promote competition, or mitigate conflicts of
6 interest in connection with a security-based swap dealer
7 or major security-based swap participant’s conduct of
8 business with, a clearing agency, national securities ex-
9 change, or security-based swap execution facility that
10 clears, posts, or makes available for trading security-based
11 swaps and in which such security-based swap dealer or
12 major security-based swap participant has a material debt
13 or equity investment.

14 (c) CONSIDERATIONS.—In adopting rules pursuant to
15 this section, the Securities and Exchange Commission
16 shall consider any conflicts of interest arising from the
17 amount of equity owned by a single investor, the ability
18 to vote, cause the vote of, or withhold votes entitled to
19 be cast on any matters by the holders of the ownership
20 interest, and the governance arrangements of any deriva-
21 tives clearing organization that clears swaps, or swap exe-
22 cution facility or board of trade designated as a contract
23 market that posts swaps or makes swaps available for
24 trading.

1 **SEC. 766. REPORTING AND RECORDKEEPING.**

2 (a) IN GENERAL.—The Securities Exchange Act of
3 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
4 section 13 the following:

5 **“SEC. 13A. REPORTING AND RECORDKEEPING FOR CER-**
6 **TAIN SECURITY-BASED SWAPS.**

7 “(a) REQUIRED REPORTING OF SECURITY-BASED
8 SWAPS NOT ACCEPTED BY ANY CLEARING AGENCY OR
9 DERIVATIVES CLEARING ORGANIZATION.—

10 “(1) IN GENERAL.—Each security-based swap
11 that is not accepted for clearing by any clearing
12 agency or derivatives clearing organization shall be
13 reported to—

14 “(A) a security-based swap data repository
15 described in section 13(n); or

16 “(B) in the case in which there is no secu-
17 rity-based swap data repository that would ac-
18 cept the security-based swap, to the Commis-
19 sion pursuant to this section within such time
20 period as the Commission may by rule or regu-
21 lation prescribe.

22 “(2) TRANSITION RULE FOR PREENACTMENT
23 SECURITY-BASED SWAPS.—

24 “(A) SECURITY-BASED SWAPS ENTERED
25 INTO BEFORE THE DATE OF ENACTMENT OF
26 THE WALL STREET TRANSPARENCY AND AC-

1 COURTABILITY ACT OF 2010.—Each security-
2 based swap entered into before the date of en-
3 actment of the Wall Street Transparency and
4 Accountability Act of 2010, the terms of which
5 have not expired as of the date of enactment of
6 that Act, shall be reported to a registered secu-
7 rity-based swap data repository or the Commis-
8 sion by a date that is not later than—

9 “(i) 30 days after issuance of the in-
10 terim final rule; or

11 “(ii) such other period as the Com-
12 mission determines to be appropriate.

13 “(B) COMMISSION RULEMAKING.—The
14 Commission shall promulgate an interim final
15 rule within 90 days of the date of enactment of
16 this section providing for the reporting of each
17 security-based swap entered into before the date
18 of enactment as referenced in subparagraph
19 (A).

20 “(C) EFFECTIVE DATE.—The reporting
21 provisions described in this section shall be ef-
22 fective upon the date of the enactment of this
23 section.

24 “(3) REPORTING OBLIGATIONS.—

1 “(A) SECURITY-BASED SWAPS IN WHICH
2 ONLY 1 COUNTERPARTY IS A SECURITY-BASED
3 SWAP DEALER OR MAJOR SECURITY-BASED
4 SWAP PARTICIPANT.—With respect to a secu-
5 rity-based swap in which only 1 counterparty is
6 a security-based swap dealer or major security-
7 based swap participant, the security-based swap
8 dealer or major security-based swap participant
9 shall report the security-based swap as required
10 under paragraphs (1) and (2).

11 “(B) SECURITY-BASED SWAPS IN WHICH 1
12 COUNTERPARTY IS A SECURITY-BASED SWAP
13 DEALER AND THE OTHER A MAJOR SECURITY-
14 BASED SWAP PARTICIPANT.—With respect to a
15 security-based swap in which 1 counterparty is
16 a security-based swap dealer and the other a
17 major security-based swap participant, the secu-
18 rity-based swap dealer shall report the security-
19 based swap as required under paragraphs (1)
20 and (2).

21 “(C) OTHER SECURITY-BASED SWAPS.—
22 With respect to any other security-based swap
23 not described in subparagraph (A) or (B), the
24 counterparties to the security-based swap shall
25 select a counterparty to report the security-

1 based swap as required under paragraphs (1)
2 and (2).

3 “(b) DUTIES OF CERTAIN INDIVIDUALS.—Any indi-
4 vidual or entity that enters into a security-based swap
5 shall meet each requirement described in subsection (c)
6 if the individual or entity did not—

7 “(1) clear the security-based swap in accord-
8 ance with section 3C(a)(1); or

9 “(2) have the data regarding the security-based
10 swap accepted by a security-based swap data reposi-
11 tory in accordance with rules (including timeframes)
12 adopted by the Commission under this title.

13 “(c) REQUIREMENTS.—An individual or entity de-
14 scribed in subsection (b) shall—

15 “(1) upon written request from the Commis-
16 sion, provide reports regarding the security-based
17 swaps held by the individual or entity to the Com-
18 mission in such form and in such manner as the
19 Commission may request; and

20 “(2) maintain books and records pertaining to
21 the security-based swaps held by the individual or
22 entity in such form, in such manner, and for such
23 period as the Commission may require, which shall
24 be open to inspection by—

1 “(A) any representative of the Commis-
2 sion;

3 “(B) an appropriate prudential regulator;

4 “(C) the Commodity Futures Trading
5 Commission;

6 “(D) the Financial Stability Oversight
7 Council; and

8 “(E) the Department of Justice.

9 “(d) IDENTICAL DATA.—In prescribing rules under
10 this section, the Commission shall require individuals and
11 entities described in subsection (b) to submit to the Com-
12 mission a report that contains data that is not less com-
13 prehensive than the data required to be collected by secu-
14 rity-based swap data repositories under this title.”.

15 (b) BENEFICIAL OWNERSHIP REPORTING.—Section
16 13 of the Securities Exchange Act of 1934 (15 U.S.C.
17 78m) is amended—

18 (1) in subsection (d)(1), by inserting “or other-
19 wise becomes or is deemed to become a beneficial
20 owner of any of the foregoing upon the purchase or
21 sale of a security-based swap that the Commission
22 may define by rule, and” after “Alaska Native
23 Claims Settlement Act,”; and

24 (2) in subsection (g)(1), by inserting “or other-
25 wise becomes or is deemed to become a beneficial

1 owner of any security of a class described in sub-
2 section (d)(1) upon the purchase or sale of a secu-
3 rity-based swap that the Commission may define by
4 rule” after “subsection (d)(1) of this section”.

5 (c) REPORTS BY INSTITUTIONAL INVESTMENT MAN-
6 AGERS.—Section 13(f)(1) of the Securities Exchange Act
7 of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting
8 “or otherwise becomes or is deemed to become a beneficial
9 owner of any security of a class described in subsection
10 (d)(1) upon the purchase or sale of a security-based swap
11 that the Commission may define by rule,” after “sub-
12 section (d)(1) of this section”.

13 (d) ADMINISTRATIVE PROCEEDING AUTHORITY.—
14 Section 15(b)(4) of the Securities Exchange Act of 1934
15 (15 U.S.C. 78o(b)(4)) is amended—

16 (1) in subparagraph (C), by inserting “security-
17 based swap dealer, major security-based swap partic-
18 ipant,” after “government securities dealer,”; and

19 (2) in subparagraph (F), by striking “broker or
20 dealer” and inserting “broker, dealer, security-based
21 swap dealer, or a major security-based swap partici-
22 pant”.

23 (e) SECURITY-BASED SWAP BENEFICIAL OWNER-
24 SHIP.—Section 13 of the Securities Exchange Act of 1934

1 (15 U.S.C. 78m) is amended by adding at the end the
2 following:

3 “(o) **BENEFICIAL OWNERSHIP.**—For purposes of this
4 section and section 16, a person shall be deemed to acquire
5 beneficial ownership of an equity security based on the
6 purchase or sale of a security-based swap, only to the ex-
7 tent that the Commission, by rule, determines after con-
8 sultation with the prudential regulators and the Secretary
9 of the Treasury, that the purchase or sale of the security-
10 based swap, or class of security-based swap, provides inci-
11 dents of ownership comparable to direct ownership of the
12 equity security, and that it is necessary to achieve the pur-
13 poses of this section that the purchase or sale of the secu-
14 rity-based swaps, or class of security-based swap, be
15 deemed the acquisition of beneficial ownership of the eq-
16 uity security.”.

17 **SEC. 767. STATE GAMING AND BUCKET SHOP LAWS.**

18 Section 28(a) of the Securities Exchange Act of 1934
19 (15 U.S.C. 78bb(a)) is amended to read as follows:

20 “(a) **LIMITATION ON JUDGMENTS.**—

21 “(1) **IN GENERAL.**—No person permitted to
22 maintain a suit for damages under the provisions of
23 this title shall recover, through satisfaction of judg-
24 ment in 1 or more actions, a total amount in excess
25 of the actual damages to that person on account of

1 the act complained of. Except as otherwise specifi-
2 cally provided in this title, nothing in this title shall
3 affect the jurisdiction of the securities commission
4 (or any agency or officer performing like functions)
5 of any State over any security or any person insofar
6 as it does not conflict with the provisions of this title
7 or the rules and regulations under this title.

8 “(2) RULE OF CONSTRUCTION.—Except as pro-
9 vided in subsection (f), the rights and remedies pro-
10 vided by this title shall be in addition to any and all
11 other rights and remedies that may exist at law or
12 in equity.

13 “(3) STATE BUCKET SHOP LAWS.—No State
14 law which prohibits or regulates the making or pro-
15 moting of wagering or gaming contracts, or the op-
16 eration of ‘bucket shops’ or other similar or related
17 activities, shall invalidate—

18 “(A) any put, call, straddle, option, privi-
19 lege, or other security subject to this title (ex-
20 cept any security that has a pari-mutuel payout
21 or otherwise is determined by the Commission,
22 acting by rule, regulation, or order, to be appro-
23 priately subject to such laws), or apply to any
24 activity which is incidental or related to the

1 offer, purchase, sale, exercise, settlement, or
2 closeout of any such security;

3 “(B) any security-based swap between eli-
4 gible contract participants; or

5 “(C) any security-based swap effected on a
6 national securities exchange registered pursuant
7 to section 6(b).

8 “(4) OTHER STATE PROVISIONS.—No provision
9 of State law regarding the offer, sale, or distribution
10 of securities shall apply to any transaction in a secu-
11 rity-based swap or a security futures product, except
12 that this paragraph may not be construed as lim-
13 iting any State antifraud law of general applica-
14 bility. A security-based swap may not be regulated
15 as an insurance contract under any provision of
16 State law.”.

17 **SEC. 768. AMENDMENTS TO THE SECURITIES ACT OF 1933;**
18 **TREATMENT OF SECURITY-BASED SWAPS.**

19 (a) DEFINITIONS.—Section 2(a) of the Securities Act
20 of 1933 (15 U.S.C. 77b(a)) is amended—

21 (1) in paragraph (1), by inserting “security-
22 based swap,” after “security future,”;

23 (2) in paragraph (3), by adding at the end the
24 following: “Any offer or sale of a security-based
25 swap by or on behalf of the issuer of the securities

1 upon which such security-based swap is based or is
2 referenced, an affiliate of the issuer, or an under-
3 writer, shall constitute a contract for sale of, sale of,
4 offer for sale, or offer to sell such securities.”; and

5 (3) by adding at the end the following:

6 “(17) The terms ‘swap’ and ‘security-based
7 swap’ have the same meanings as in section 1a of
8 the Commodity Exchange Act (7 U.S.C. 1a).

9 “(18) The terms ‘purchase’ or ‘sale’ of a secu-
10 rity-based swap shall be deemed to mean the execu-
11 tion, termination (prior to its scheduled maturity
12 date), assignment, exchange, or similar transfer or
13 conveyance of, or extinguishing of rights or obliga-
14 tions under, a security-based swap, as the context
15 may require.”.

16 (b) REGISTRATION OF SECURITY-BASED SWAPS.—
17 Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)
18 is amended by adding at the end the following:

19 “(d) Notwithstanding the provisions of section 3 or
20 4, unless a registration statement meeting the require-
21 ments of section 10(a) is in effect as to a security-based
22 swap, it shall be unlawful for any person, directly or indi-
23 rectly, to make use of any means or instruments of trans-
24 portation or communication in interstate commerce or of
25 the mails to offer to sell, offer to buy or purchase or sell

1 a security-based swap to any person who is not an eligible
2 contract participant as defined in section 1a(18) of the
3 Commodity Exchange Act (7 U.S.C. 1a(18)).”.

4 **SEC. 769. DEFINITIONS UNDER THE INVESTMENT COMPANY**
5 **ACT OF 1940.**

6 Section 2(a) of the Investment Company Act of 1940
7 (15 U.S.C. 80a–2) is amended by adding at the end the
8 following:

9 “(54) The terms ‘commodity pool’, ‘commodity
10 pool operator’, ‘commodity trading advisor’, ‘major
11 swap participant’, ‘swap’, ‘swap dealer’, and ‘swap
12 execution facility’ have the same meanings as in sec-
13 tion 1a of the Commodity Exchange Act (7 U.S.C.
14 1a).”.

15 **SEC. 770. DEFINITIONS UNDER THE INVESTMENT ADVISERS**
16 **ACT OF 1940.**

17 Section 202(a) of the Investment Advisers Act of
18 1940 (15 U.S.C. 80b–2) is amended by adding at the end
19 the following:

20 “(29) The terms ‘commodity pool’, ‘commodity
21 pool operator’, ‘commodity trading advisor’, ‘major
22 swap participant’, ‘swap’, ‘swap dealer’, and ‘swap
23 execution facility’ have the same meanings as in sec-
24 tion 1a of the Commodity Exchange Act (7 U.S.C.
25 1a).”.

1 **SEC. 771. OTHER AUTHORITY.**

2 Unless otherwise provided by its terms, this subtitle
3 does not divest any appropriate Federal banking agency,
4 the Securities and Exchange Commission, the Commodity
5 Futures Trading Commission, or any other Federal or
6 State agency, of any authority derived from any other pro-
7 vision of applicable law.

8 **SEC. 772. JURISDICTION.**

9 (a) IN GENERAL.—Section 36 of the Securities Ex-
10 change Act of 1934 (15 U.S.C. 78mm) is amended by add-
11 ing at the end the following:

12 “(c) DERIVATIVES.—Unless the Commission is ex-
13 pressly authorized by any provision described in this sub-
14 section to grant exemptions, the Commission shall not
15 grant exemptions, with respect to amendments made by
16 subtitle B of the Wall Street Transparency and Account-
17 ability Act of 2010, with respect to paragraphs (65), (66),
18 (68), (69), (70), (71), (72), (73), (74), (75), (76), and
19 (79) of section 3(a), and sections 10B(a), 10B(b), 10B(c),
20 13A, 15F, 17A(g), 17A(h), 17A(i), 17A(j), 17A(k), and
21 17A(l); provided that the Commission shall have exemp-
22 tive authority under this title with respect to security-
23 based swaps as to the same matters that the Commodity
24 Futures Trading Commission has under the Wall Street
25 Transparency and Accountability Act of 2010 with respect

1 to swaps, including under section 4(c) of the Commodity
2 Exchange Act.”.

3 (b) RULE OF CONSTRUCTION.—Section 30 of the Se-
4 curities Exchange Act of 1934 (15 U.S.C. 78dd) is amend-
5 ed by adding at the end the following:

6 “(c) RULE OF CONSTRUCTION.—No provision of this
7 title that was added by the Wall Street Transparency and
8 Accountability Act of 2010, or any rule or regulation
9 thereunder, shall apply to any person insofar as such per-
10 son transacts a business in security-based swaps without
11 the jurisdiction of the United States, unless such person
12 transacts such business in contravention of such rules and
13 regulations as the Commission may prescribe as necessary
14 or appropriate to prevent the evasion of any provision of
15 this title that was added by the Wall Street Transparency
16 and Accountability Act of 2010. This subsection shall not
17 be construed to limit the jurisdiction of the Commission
18 under any provision of this title, as in effect prior to the
19 date of enactment of the Wall Street Transparency and
20 Accountability Act of 2010.”.

21 **SEC. 773. CIVIL PENALTIES.**

22 Section 21B of the Securities Exchange Act of 1934
23 (15 U.S.C. 78p-2) is amended by adding at the end the
24 following:

25 “(f) SECURITY-BASED SWAPS.—

1 “(1) CLEARING AGENCY.—Any clearing agency
2 that knowingly or recklessly evades or participates in
3 or facilitates an evasion of the requirements of sec-
4 tion 3C shall be liable for a civil money penalty in
5 twice the amount otherwise available for a violation
6 of section 3C.

7 “(2) SECURITY-BASED SWAP DEALER OR MAJOR
8 SECURITY-BASED SWAP PARTICIPANT.—Any secu-
9 rity-based swap dealer or major security-based swap
10 participant that knowingly or recklessly evades or
11 participates in or facilitates an evasion of the re-
12 quirements of section 3C shall be liable for a civil
13 money penalty in twice the amount otherwise avail-
14 able for a violation of section 3C.”.

15 **SEC. 774. EFFECTIVE DATE.**

16 Unless otherwise provided, the provisions of this sub-
17 title shall take effect on the later of 360 days after the
18 date of the enactment of this subtitle or, to the extent
19 a provision of this subtitle requires a rulemaking, not less
20 than 60 days after publication of the final rule or regula-
21 tion implementing such provision of this subtitle.

1 **TITLE VIII—PAYMENT, CLEAR-**
2 **ING, AND SETTLEMENT SU-**
3 **PERVISION**

4 **SEC. 801. SHORT TITLE.**

5 This title may be cited as the “Payment, Clearing,
6 and Settlement Supervision Act of 2010”.

7 **SEC. 802. FINDINGS AND PURPOSES.**

8 (a) FINDINGS.—Congress finds the following:

9 (1) The proper functioning of the financial mar-
10 kets is dependent upon safe and efficient arrange-
11 ments for the clearing and settlement of payment,
12 securities, and other financial transactions.

13 (2) Financial market utilities that conduct or
14 support multilateral payment, clearing, or settlement
15 activities may reduce risks for their participants and
16 the broader financial system, but such utilities may
17 also concentrate and create new risks and thus must
18 be well designed and operated in a safe and sound
19 manner.

20 (3) Payment, clearing, and settlement activities
21 conducted by financial institutions also present im-
22 portant risks to the participating financial institu-
23 tions and to the financial system.

24 (4) Enhancements to the regulation and super-
25 vision of systemically important financial market

1 utilities and the conduct of systemically important
2 payment, clearing, and settlement activities by finan-
3 cial institutions are necessary—

4 (A) to provide consistency;

5 (B) to promote robust risk management
6 and safety and soundness;

7 (C) to reduce systemic risks; and

8 (D) to support the stability of the broader
9 financial system.

10 (b) PURPOSE.—The purpose of this title is to miti-
11 gate systemic risk in the financial system and promote fi-
12 nancial stability by—

13 (1) authorizing the Board of Governors to pro-
14 mote uniform standards for the—

15 (A) management of risks by systemically
16 important financial market utilities; and

17 (B) conduct of systemically important pay-
18 ment, clearing, and settlement activities by fi-
19 nancial institutions;

20 (2) providing the Board of Governors an en-
21 hanced role in the supervision of risk management
22 standards for systemically important financial mar-
23 ket utilities;

24 (3) strengthening the liquidity of systemically
25 important financial market utilities; and

1 (4) providing the Board of Governors an en-
2 hanced role in the supervision of risk management
3 standards for systemically important payment, clear-
4 ing, and settlement activities by financial institu-
5 tions.

6 **SEC. 803. DEFINITIONS.**

7 In this title, the following definitions shall apply:

8 (1) **APPROPRIATE FINANCIAL REGULATOR.**—

9 The term “appropriate financial regulator” means—

10 (A) the primary financial regulatory agen-
11 cy, as defined in section 2 of this Act;

12 (B) the National Credit Union Administra-
13 tion, with respect to any insured credit union
14 under the Federal Credit Union Act (12 U.S.C.
15 1751 et seq.); and

16 (C) the Board of Governors, with respect
17 to organizations operating under section 25A of
18 the Federal Reserve Act (12 U.S.C. 611), and
19 any other financial institution engaged in a des-
20 ignated activity.

21 (2) **DESIGNATED ACTIVITY.**—The term “des-
22 ignated activity” means a payment, clearing, or set-
23 tlement activity that the Council has designated as
24 systemically important under section 804.

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1 Act (12 U.S.C. 601–604a and 611 through
2 631);

3 (iv) a credit union, as defined in sec-
4 tion 101 of the Federal Credit Union Act
5 (12 U.S.C. 1752);

6 (v) a broker or dealer, as defined in
7 section 3 of the Securities Exchange Act of
8 1934 (15 U.S.C. 78c);

9 (vi) an investment company, as de-
10 fined in section 3 of the Investment Com-
11 pany Act of 1940 (15 U.S.C. 80a–3);

12 (vii) an insurance company, as defined
13 in section 2 of the Investment Company
14 Act of 1940 (15 U.S.C. 80a–2);

15 (viii) an investment adviser, as de-
16 fined in section 202 of the Investment Ad-
17 visers Act of 1940 (15 U.S.C. 80b–2);

18 (ix) a futures commission merchant,
19 commodity trading advisor, or commodity
20 pool operator, as defined in section 1a of
21 the Commodity Exchange Act (7 U.S.C.
22 1a); and

23 (x) any company engaged in activities
24 that are financial in nature or incidental to
25 a financial activity, as described in section

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1 4 of the Bank Holding Company Act of
2 1956 (12 U.S.C. 1843(k)).

3 (B) EXCLUSIONS.—The term “financial in-
4 stitution” does not include designated contract
5 markets, registered futures associations, swap
6 data repositories, and swap execution facilities
7 registered under the Commodity Exchange Act
8 (7 U.S.C. 1 et seq.), or national securities ex-
9 changes, national securities associations, alter-
10 native trading systems, securities information
11 processors solely with respect to the activities of
12 the entity as a securities information processor,
13 security-based swap data repositories, and swap
14 execution facilities registered under the Securi-
15 ties Exchange Act of 1934 (15 U.S.C. 78a et
16 seq.), or designated clearing entities, provided
17 that the exclusions in this subparagraph apply
18 only with respect to the activities that require
19 the entity to be so registered.

20 (6) FINANCIAL MARKET UTILITY.—

21 (A) INCLUSION.—The term “financial
22 market utility” means any person that manages
23 or operates a multilateral system for the pur-
24 pose of transferring, clearing, or settling pay-
25 ments, securities, or other financial transactions

1 among financial institutions or between finan-
2 cial institutions and the person.

3 (B) EXCLUSIONS.—The term “financial
4 market utility” does not include—

5 (i) designated contract markets, reg-
6 istered futures associations, swap data re-
7 positories, and swap execution facilities
8 registered under the Commodity Exchange
9 Act (7 U.S.C. 1 et seq.), or national secu-
10 rities exchanges, national securities asso-
11 ciations, alternative trading systems, secu-
12 rity-based swap data repositories, and
13 swap execution facilities registered under
14 the Securities Exchange Act of 1934 (15
15 U.S.C. 78a et seq.), solely by reason of
16 their providing facilities for comparison of
17 data respecting the terms of settlement of
18 securities or futures transactions effected
19 on such exchange or by means of any elec-
20 tronic system operated or controlled by
21 such entities, provided that the exclusions
22 in this clause apply only with respect to
23 the activities that require the entity to be
24 so registered; and

1 (ii) any broker, dealer, transfer agent,
2 or investment company, or any futures
3 commission merchant, introducing broker,
4 commodity trading advisor, or commodity
5 pool operator, solely by reason of functions
6 performed by such institution as part of
7 brokerage, dealing, transfer agency, or in-
8 vestment company activities, or solely by
9 reason of acting on behalf of a financial
10 market utility or a participant therein in
11 connection with the furnishing by the fi-
12 nancial market utility of services to its
13 participants or the use of services of the fi-
14 nancial market utility by its participants,
15 provided that services performed by such
16 institution do not constitute critical risk
17 management or processing functions of the
18 financial market utility.

19 (7) PAYMENT, CLEARING, OR SETTLEMENT AC-
20 TIVITY.—

21 (A) IN GENERAL.—The term “payment,
22 clearing, or settlement activity” means an activ-
23 ity carried out by 1 or more financial institu-
24 tions to facilitate the completion of financial
25 transactions, but shall not include any offer or

1 sale of a security under the Securities Act of
2 1933 (15 U.S.C. 77a et seq.), or any quotation,
3 order entry, negotiation, or other pre-trade ac-
4 tivity or execution activity.

5 (B) FINANCIAL TRANSACTION.—For the
6 purposes of subparagraph (A), the term “finan-
7 cial transaction” includes—

8 (i) funds transfers;

9 (ii) securities contracts;

10 (iii) contracts of sale of a commodity
11 for future delivery;

12 (iv) forward contracts;

13 (v) repurchase agreements;

14 (vi) swaps;

15 (vii) security-based swaps;

16 (viii) swap agreements;

17 (ix) security-based swap agreements;

18 (x) foreign exchange contracts;

19 (xi) financial derivatives contracts;

20 and

21 (xii) any similar transaction that the
22 Council determines to be a financial trans-
23 action for purposes of this title.

24 (C) INCLUDED ACTIVITIES.—When con-
25 ducted with respect to a financial transaction,

1 payment, clearing, and settlement activities may
2 include—

3 (i) the calculation and communication
4 of unsettled financial transactions between
5 counterparties;

6 (ii) the netting of transactions;

7 (iii) provision and maintenance of
8 trade, contract, or instrument information;

9 (iv) the management of risks and ac-
10 tivities associated with continuing financial
11 transactions;

12 (v) transmittal and storage of pay-
13 ment instructions;

14 (vi) the movement of funds;

15 (vii) the final settlement of financial
16 transactions; and

17 (viii) other similar functions that the
18 Council may determine.

19 (D) EXCLUSION.—Payment, clearing, and
20 settlement activities shall not include public re-
21 porting of swap transaction data under section
22 727 or 763(i) of the Wall Street Transparency
23 and Accountability Act of 2010.

24 (8) SUPERVISORY AGENCY.—

1 (A) IN GENERAL.—The term “Supervisory
2 Agency” means the Federal agency that has
3 primary jurisdiction over a designated financial
4 market utility under Federal banking, securi-
5 ties, or commodity futures laws, as follows:

6 (i) The Securities and Exchange Com-
7 mission, with respect to a designated fi-
8 nancial market utility that is a clearing
9 agency registered with the Securities and
10 Exchange Commission.

11 (ii) The Commodity Futures Trading
12 Commission, with respect to a designated
13 financial market utility that is a deriva-
14 tives clearing organization registered with
15 the Commodity Futures Trading Commis-
16 sion.

17 (iii) The appropriate Federal banking
18 agency, with respect to a designated finan-
19 cial market utility that is an institution de-
20 scribed in section 3(q) of the Federal De-
21 posit Insurance Act.

22 (iv) The Board of Governors, with re-
23 spect to a designated financial market util-
24 ity that is otherwise not subject to the ju-

1 jurisdiction of any agency listed in clauses
2 (i), (ii), and (iii).

3 (B) MULTIPLE AGENCY JURISDICTION.—If
4 a designated financial market utility is subject
5 to the jurisdictional supervision of more than 1
6 agency listed in subparagraph (A), then such
7 agencies should agree on 1 agency to act as the
8 Supervisory Agency, and if such agencies can-
9 not agree on which agency has primary jurisdic-
10 tion, the Council shall decide which agency is
11 the Supervisory Agency for purposes of this
12 title.

13 (9) SYSTEMICALLY IMPORTANT AND SYSTEMIC
14 IMPORTANCE.—The terms “systemically important”
15 and “systemic importance” mean a situation where
16 the failure of or a disruption to the functioning of
17 a financial market utility or the conduct of a pay-
18 ment, clearing, or settlement activity could create, or
19 increase, the risk of significant liquidity or credit
20 problems spreading among financial institutions or
21 markets and thereby threaten the stability of the fi-
22 nancial system of the United States.

23 **SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.**

24 (a) DESIGNATION.—

1 (1) FINANCIAL STABILITY OVERSIGHT COUN-
2 CIL.—The Council, on a nondelegable basis and by
3 a vote of not fewer than $\frac{2}{3}$ of members then serving,
4 including an affirmative vote by the Chairperson of
5 the Council, shall designate those financial market
6 utilities or payment, clearing, or settlement activities
7 that the Council determines are, or are likely to be-
8 come, systemically important.

9 (2) CONSIDERATIONS.—In determining whether
10 a financial market utility or payment, clearing, or
11 settlement activity is, or is likely to become, system-
12 ically important, the Council shall take into consid-
13 eration the following:

14 (A) The aggregate monetary value of
15 transactions processed by the financial market
16 utility or carried out through the payment,
17 clearing, or settlement activity.

18 (B) The aggregate exposure of the finan-
19 cial market utility or a financial institution en-
20 gaged in payment, clearing, or settlement activi-
21 ties to its counterparties.

22 (C) The relationship, interdependencies, or
23 other interactions of the financial market utility
24 or payment, clearing, or settlement activity with

1 other financial market utilities or payment,
2 clearing, or settlement activities.

3 (D) The effect that the failure of or a dis-
4 ruption to the financial market utility or pay-
5 ment, clearing, or settlement activity would
6 have on critical markets, financial institutions,
7 or the broader financial system.

8 (E) Any other factors that the Council
9 deems appropriate.

10 (b) RESCISSION OF DESIGNATION.—

11 (1) IN GENERAL.—The Council, on a nondele-
12 gable basis and by a vote of not fewer than $\frac{2}{3}$ of
13 members then serving, including an affirmative vote
14 by the Chairperson of the Council, shall rescind a
15 designation of systemic importance for a designated
16 financial market utility or designated activity if the
17 Council determines that the utility or activity no
18 longer meets the standards for systemic importance.

19 (2) EFFECT OF RESCISSION.—Upon rescission,
20 the financial market utility or financial institutions
21 conducting the activity will no longer be subject to
22 the provisions of this title or any rules or orders pre-
23 scribed by the Council under this title.

24 (c) CONSULTATION AND NOTICE AND OPPORTUNITY
25 FOR HEARING.—

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1 (1) CONSULTATION.—Before making any deter-
2 mination under subsection (a) or (b), the Council
3 shall consult with the relevant Supervisory Agency
4 and the Board of Governors.

5 (2) ADVANCE NOTICE AND OPPORTUNITY FOR
6 HEARING.—

7 (A) IN GENERAL.—Before making any de-
8 termination under subsection (a) or (b), the
9 Council shall provide the financial market util-
10 ity or, in the case of a payment, clearing, or
11 settlement activity, financial institutions with
12 advance notice of the proposed determination of
13 the Council.

14 (B) NOTICE IN FEDERAL REGISTER.—The
15 Council shall provide such advance notice to fi-
16 nancial institutions by publishing a notice in
17 the Federal Register.

18 (C) REQUESTS FOR HEARING.—Within 30
19 days from the date of any notice of the pro-
20 posed determination of the Council, the finan-
21 cial market utility or, in the case of a payment,
22 clearing, or settlement activity, a financial insti-
23 tution engaged in the designated activity may
24 request, in writing, an opportunity for a written
25 or oral hearing before the Council to dem-

1 onstrate that the proposed designation or re-
2 scission of designation is not supported by sub-
3 stantial evidence.

4 (D) WRITTEN SUBMISSIONS.—Upon re-
5 ceipt of a timely request, the Council shall fix
6 a time, not more than 30 days after receipt of
7 the request, unless extended at the request of
8 the financial market utility or financial institu-
9 tion, and place at which the financial market
10 utility or financial institution may appear, per-
11 sonally or through counsel, to submit written
12 materials, or, at the sole discretion of the Coun-
13 cil, oral testimony or oral argument.

14 (3) EMERGENCY EXCEPTION.—

15 (A) WAIVER OR MODIFICATION BY VOTE
16 OF THE COUNCIL.—The Council may waive or
17 modify the requirements of paragraph (2) if the
18 Council determines, by an affirmative vote of
19 not less than $\frac{2}{3}$ of all members then serving,
20 including an affirmative vote by the Chair-
21 person of the Council, that the waiver or modi-
22 fication is necessary to prevent or mitigate an
23 immediate threat to the financial system posed
24 by the financial market utility or the payment,
25 clearing, or settlement activity.

1 (B) NOTICE OF WAIVER OR MODIFICA-
2 TION.—The Council shall provide notice of the
3 waiver or modification to the financial market
4 utility concerned or, in the case of a payment,
5 clearing, or settlement activity, to financial in-
6 stitutions, as soon as practicable, which shall be
7 no later than 24 hours after the waiver or
8 modification in the case of a financial market
9 utility and 3 business days in the case of finan-
10 cial institutions. The Council shall provide the
11 notice to financial institutions by posting a no-
12 tice on the website of the Council and by pub-
13 lishing a notice in the Federal Register.

14 (d) NOTIFICATION OF FINAL DETERMINATION.—

15 (1) AFTER HEARING.—Within 60 days of any
16 hearing under subsection (c)(2), the Council shall
17 notify the financial market utility or financial insti-
18 tutions of the final determination of the Council in
19 writing, which shall include findings of fact upon
20 which the determination of the Council is based.

21 (2) WHEN NO HEARING REQUESTED.—If the
22 Council does not receive a timely request for a hear-
23 ing under subsection (c)(2), the Council shall notify
24 the financial market utility or financial institutions
25 of the final determination of the Council in writing

1 not later than 30 days after the expiration of the
2 date by which a financial market utility or a finan-
3 cial institution could have requested a hearing. All
4 notices to financial institutions under this subsection
5 shall be published in the Federal Register.

6 (e) **EXTENSION OF TIME PERIODS.**—The Council
7 may extend the time periods established in subsections (c)
8 and (d) as the Council determines to be necessary or ap-
9 propriate.

10 **SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FI-**
11 **NANCIAL MARKET UTILITIES AND PAYMENT,**
12 **CLEARING, OR SETTLEMENT ACTIVITIES.**

13 (a) **AUTHORITY TO PRESCRIBE STANDARDS.**—

14 (1) **BOARD OF GOVERNORS.**—Except as pro-
15 vided in paragraph (2), the Board of Governors, by
16 rule or order, and in consultation with the Council
17 and the Supervisory Agencies, shall prescribe risk
18 management standards, taking into consideration
19 relevant international standards and existing pru-
20 dential requirements, governing—

21 (A) the operations related to the payment,
22 clearing, and settlement activities of designated
23 financial market utilities; and

24 (B) the conduct of designated activities by
25 financial institutions.

1 (2) SPECIAL PROCEDURES FOR DESIGNATED
2 CLEARING ENTITIES AND DESIGNATED ACTIVITIES
3 OF CERTAIN FINANCIAL INSTITUTIONS.—

4 (A) CFTC AND COMMISSION.—The Com-
5 modity Futures Trading Commission and the
6 Commission may each prescribe regulations, in
7 consultation with the Council and the Board of
8 Governors, containing risk management stand-
9 ards, taking into consideration relevant inter-
10 national standards and existing prudential re-
11 quirements, for those designated clearing enti-
12 ties and financial institutions engaged in des-
13 ignated activities for which each is the Super-
14 visory Agency or the appropriate financial regu-
15 lator, governing—

16 (i) the operations related to payment,
17 clearing, and settlement activities of such
18 designated clearing entities; and

19 (ii) the conduct of designated activi-
20 ties by such financial institutions.

21 (B) REVIEW AND DETERMINATION.—The
22 Board of Governors may determine that exist-
23 ing prudential requirements of the Commodity
24 Futures Trading Commission, the Commission,
25 or both (including requirements prescribed pur-

1 suant to subparagraph (A)) with respect to des-
2 ignated clearing entities and financial institu-
3 tions engaged in designated activities for which
4 the Commission or the Commodity Futures
5 Trading Commission is the Supervisory Agency
6 or the appropriate financial regulator are insuf-
7 ficient to prevent or mitigate significant liquid-
8 ity, credit, operational, or other risks to the fi-
9 nancial markets or to the financial stability of
10 the United States.

11 (C) WRITTEN DETERMINATION.—Any de-
12 termination by the Board of Governors under
13 subparagraph (B) shall be provided in writing
14 to the Commodity Futures Trading Commission
15 or the Commission, as applicable, and the
16 Council, and shall explain why existing pruden-
17 tial requirements, considered as a whole, are in-
18 sufficient to ensure that the operations and ac-
19 tivities of the designated clearing entities or the
20 activities of financial institutions described in
21 subparagraph (B) will not pose significant li-
22 quidity, credit, operational, or other risks to the
23 financial markets or to the financial stability of
24 the United States. The Board of Governors' de-
25 termination shall contain a detailed analysis

1 supporting its findings and identify the specific
2 prudential requirements that are insufficient.

3 (D) CFTC AND COMMISSION RESPONSE.—

4 The Commodity Futures Trading Commission
5 or the Commission, as applicable, shall within
6 60 days either object to the Board of Gov-
7 ernor's determination with a detailed analysis
8 as to why existing prudential requirements are
9 sufficient, or submit an explanation to the
10 Council and the Board of Governors describing
11 the actions to be taken in response to the
12 Board of Governor's determination.

13 (E) AUTHORIZATION.—Upon an affirma-
14 tive vote by not fewer than 2/3 of members then
15 serving on the Council, the Council shall either
16 find that the response submitted under sub-
17 paragraph (D) is sufficient, or require the Com-
18 modity Futures Trading Commission, or the
19 Commission, as applicable, to prescribe such
20 risk management standards as the Council de-
21 termines is necessary to address the specific
22 prudential requirements that are determined to
23 be insufficient.”

1 (b) OBJECTIVES AND PRINCIPLES.—The objectives
2 and principles for the risk management standards pre-
3 scribed under subsection (a) shall be to—

- 4 (1) promote robust risk management;
- 5 (2) promote safety and soundness;
- 6 (3) reduce systemic risks; and
- 7 (4) support the stability of the broader financial
8 system.

9 (c) SCOPE.—The standards prescribed under sub-
10 section (a) may address areas such as—

- 11 (1) risk management policies and procedures;
- 12 (2) margin and collateral requirements;
- 13 (3) participant or counterparty default policies
14 and procedures;
- 15 (4) the ability to complete timely clearing and
16 settlement of financial transactions;
- 17 (5) capital and financial resource requirements
18 for designated financial market utilities; and
- 19 (6) other areas that are necessary to achieve
20 the objectives and principles in subsection (b).

21 (d) LIMITATION ON SCOPE.—Except as provided in
22 subsections (e) and (f) of section 807, nothing in this title
23 shall be construed to permit the Council or the Board of
24 Governors to take any action or exercise any authority
25 granted to the Commodity Futures Trading Commission

1 under section 2(h) of the Commodity Exchange Act or the
2 Securities and Exchange Commission under section 3C(a)
3 of the Securities Exchange Act of 1934, including—

4 (1) the approval of, disapproval of, or stay of
5 the clearing requirement for any group, category,
6 type, or class of swaps that a designated clearing en-
7 tity may accept for clearing;

8 (2) the determination that any group, category,
9 type, or class of swaps shall be subject to the man-
10 datory clearing requirement of section 2(h)(1) of the
11 Commodity Exchange Act or section 3C(a)(1) of the
12 Securities Exchange Act of 1934;

13 (3) the determination that any person is exempt
14 from the mandatory clearing requirement of section
15 2(h)(1) of the Commodity Exchange Act or section
16 3C(a)(1) of the Securities Exchange Act of 1934; or

17 (4) any authority granted to the Commodity
18 Futures Trading Commission or the Securities and
19 Exchange Commission with respect to transaction
20 reporting or trade execution.

21 (e) THRESHOLD LEVEL.—The standards prescribed
22 under subsection (a) governing the conduct of designated
23 activities by financial institutions shall, where appropriate,
24 establish a threshold as to the level or significance of en-
25 gagement in the activity at which a financial institution

1 will become subject to the standards with respect to that
2 activity.

3 (f) COMPLIANCE REQUIRED.—Designated financial
4 market utilities and financial institutions subject to the
5 standards prescribed under subsection (a) for a designated
6 activity shall conduct their operations in compliance with
7 the applicable risk management standards.

8 **SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MAR-**
9 **KET UTILITIES.**

10 (a) FEDERAL RESERVE ACCOUNT AND SERVICES.—
11 The Board of Governors may authorize a Federal Reserve
12 Bank to establish and maintain an account for a des-
13 ignated financial market utility and provide the services
14 listed in section 11A(b) of the Federal Reserve Act (12
15 U.S.C. 248a(b)) and deposit accounts under the first un-
16 designated paragraph of section 13 of the Federal Reserve
17 Act (12 U.S.C. 342) to the designated financial market
18 utility that the Federal Reserve Bank is authorized under
19 the Federal Reserve Act to provide to a depository institu-
20 tion, subject to any applicable rules, orders, standards, or
21 guidelines prescribed by the Board of Governors.

22 (b) ADVANCES.—The Board of Governors may au-
23 thorize a Federal Reserve bank under section 10B of the
24 Federal Reserve Act (12 U.S.C. 347b) to provide to a des-
25 ignated financial market utility discount and borrowing

1 privileges only in unusual or exigent circumstances, upon
2 the affirmative vote of a majority of the Board of Gov-
3 ernors then serving (or such other number in accordance
4 with the provisions of section 11(r)(2) of the Federal Re-
5 serve Act (12 U.S.C. 248(r)(2)) after consultation with
6 the Secretary, and upon a showing by the designated fi-
7 nancial market utility that it is unable to secure adequate
8 credit accommodations from other banking institutions.
9 All such discounts and borrowing privileges shall be sub-
10 ject to such other limitations, restrictions, and regulations
11 as the Board of Governors may prescribe. Access to dis-
12 count and borrowing privileges under section 10B of the
13 Federal Reserve Act as authorized in this section does not
14 require a designated financial market utility to be or be-
15 come a bank or bank holding company.

16 (c) EARNINGS ON FEDERAL RESERVE BALANCES.—
17 A Federal Reserve Bank may pay earnings on balances
18 maintained by or on behalf of a designated financial mar-
19 ket utility in the same manner and to the same extent
20 as the Federal Reserve Bank may pay earnings to a depos-
21 itory institution under the Federal Reserve Act, subject
22 to any applicable rules, orders, standards, or guidelines
23 prescribed by the Board of Governors.

24 (d) RESERVE REQUIREMENTS.—The Board of Gov-
25 ernors may exempt a designated financial market utility

1 from, or modify any, reserve requirements under section
2 19 of the Federal Reserve Act (12 U.S.C. 461) applicable
3 to a designated financial market utility.

4 (e) CHANGES TO RULES, PROCEDURES, OR OPER-
5 ATIONS.—

6 (1) ADVANCE NOTICE.—

7 (A) ADVANCE NOTICE OF PROPOSED
8 CHANGES REQUIRED.—A designated financial
9 market utility shall provide notice 60 days in
10 advance notice to its Supervisory Agency of any
11 proposed change to its rules, procedures, or op-
12 erations that could, as defined in rules of each
13 Supervisory Agency, materially affect, the na-
14 ture or level of risks presented by the des-
15 ignated financial market utility.

16 (B) TERMS AND STANDARDS PRESCRIBED
17 BY THE SUPERVISORY AGENCIES.—Each Super-
18 visory Agency, in consultation with the Board
19 of Governors, shall prescribe regulations that
20 define and describe the standards for deter-
21 mining when notice is required to be provided
22 under subparagraph (A).

23 (C) CONTENTS OF NOTICE.—The notice of
24 a proposed change shall describe—

1 (i) the nature of the change and ex-
2 pected effects on risks to the designated fi-
3 nancial market utility, its participants, or
4 the market; and

5 (ii) how the designated financial mar-
6 ket utility plans to manage any identified
7 risks.

8 (D) ADDITIONAL INFORMATION.—The Su-
9 pervisory Agency may require a designated fi-
10 nancial market utility to provide any informa-
11 tion necessary to assess the effect the proposed
12 change would have on the nature or level of
13 risks associated with the designated financial
14 market utility’s payment, clearing, or settle-
15 ment activities and the sufficiency of any pro-
16 posed risk management techniques.

17 (E) NOTICE OF OBJECTION.—The Super-
18 visory Agency shall notify the designated finan-
19 cial market utility of any objection regarding
20 the proposed change within 60 days from the
21 later of—

22 (i) the date that the notice of the pro-
23 posed change is received; or

1 (ii) the date any further information
2 requested for consideration of the notice is
3 received.

4 (F) CHANGE NOT ALLOWED IF OBJEC-
5 TION.—A designated financial market utility
6 shall not implement a change to which the Su-
7 pervisory Agency has an objection.

8 (G) CHANGE ALLOWED IF NO OBJECTION
9 WITHIN 60 DAYS.—A designated financial mar-
10 ket utility may implement a change if it has not
11 received an objection to the proposed change
12 within 60 days of the later of—

13 (i) the date that the Supervisory
14 Agency receives the notice of proposed
15 change; or

16 (ii) the date the Supervisory Agency
17 receives any further information it requests
18 for consideration of the notice.

19 (H) REVIEW EXTENSION FOR NOVEL OR
20 COMPLEX ISSUES.—The Supervisory Agency
21 may, during the 60-day review period, extend
22 the review period for an additional 60 days for
23 proposed changes that raise novel or complex
24 issues, subject to the Supervisory Agency or the
25 Board of Governors providing the designated fi-

1 nancial market utility with prompt written no-
2 tice of the extension. Any extension under this
3 subparagraph will extend the time periods
4 under subparagraphs (E) and (G).

5 (I) CHANGE ALLOWED EARLIER IF NOTI-
6 FIED OF NO OBJECTION.—A designated finan-
7 cial market utility may implement a change in
8 less than 60 days from the date of receipt of
9 the notice of proposed change by the Super-
10 visory Agency, or the date the Supervisory
11 Agency receives any further information it re-
12 quested, if the Supervisory Agency notifies the
13 designated financial market utility in writing
14 that it does not object to the proposed change
15 and authorizes the designated financial market
16 utility to implement the change on an earlier
17 date, subject to any conditions imposed by the
18 Supervisory Agency.

19 (2) EMERGENCY CHANGES.—

20 (A) IN GENERAL.—A designated financial
21 market utility may implement a change that
22 would otherwise require advance notice under
23 this subsection if it determines that—

24 (i) an emergency exists; and

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1 (ii) immediate implementation of the
2 change is necessary for the designated fi-
3 nancial market utility to continue to pro-
4 vide its services in a safe and sound man-
5 ner.

6 (B) NOTICE REQUIRED WITHIN 24
7 HOURS.—The designated financial market util-
8 ity shall provide notice of any such emergency
9 change to its Supervisory Agency, as soon as
10 practicable, which shall be no later than 24
11 hours after implementation of the change.

12 (C) CONTENTS OF EMERGENCY NOTICE.—
13 In addition to the information required for
14 changes requiring advance notice, the notice of
15 an emergency change shall describe—

16 (i) the nature of the emergency; and
17 (ii) the reason the change was nec-
18 essary for the designated financial market
19 utility to continue to provide its services in
20 a safe and sound manner.

21 (D) MODIFICATION OR RESCISSION OF
22 CHANGE MAY BE REQUIRED.—The Supervisory
23 Agency may require modification or rescission
24 of the change if it finds that the change is not
25 consistent with the purposes of this Act or any

1 applicable rules, orders, or standards prescribed
2 under section 805(a).

3 (3) COPYING THE BOARD OF GOVERNORS.—The
4 Supervisory Agency shall provide the Board of Gov-
5 ernors concurrently with a complete copy of any no-
6 tice, request, or other information it issues, submits,
7 or receives under this subsection.

8 (4) CONSULTATION WITH BOARD OF GOV-
9 ERNORS.—Before taking any action on, or com-
10 pleting its review of, a change proposed by a des-
11 ignated financial market utility, the Supervisory
12 Agency shall consult with the Board of Governors.

13 **SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS**
14 **AGAINST DESIGNATED FINANCIAL MARKET**
15 **UTILITIES.**

16 (a) EXAMINATION.—Notwithstanding any other pro-
17 vision of law and subject to subsection (d), the Supervisory
18 Agency shall conduct examinations of a designated finan-
19 cial market utility at least once annually in order to deter-
20 mine the following:

21 (1) The nature of the operations of, and the
22 risks borne by, the designated financial market util-
23 ity.

24 (2) The financial and operational risks pre-
25 sented by the designated financial market utility to

1 financial institutions, critical markets, or the broad-
2 er financial system.

3 (3) The resources and capabilities of the des-
4 igned financial market utility to monitor and con-
5 trol such risks.

6 (4) The safety and soundness of the designated
7 financial market utility.

8 (5) The designated financial market utility's
9 compliance with—

10 (A) this title; and

11 (B) the rules and orders prescribed under
12 this title.

13 (b) SERVICE PROVIDERS.—Whenever a service inte-
14 gral to the operation of a designated financial market util-
15 ity is performed for the designated financial market utility
16 by another entity, whether an affiliate or non-affiliate and
17 whether on or off the premises of the designated financial
18 market utility, the Supervisory Agency may examine
19 whether the provision of that service is in compliance with
20 applicable law, rules, orders, and standards to the same
21 extent as if the designated financial market utility were
22 performing the service on its own premises.

23 (c) ENFORCEMENT.—For purposes of enforcing the
24 provisions of this section, a designated financial market
25 utility shall be subject to, and the appropriate Supervisory

1 Agency shall have authority under the provisions of sub-
2 sections (b) through (n) of section 8 of the Federal De-
3 posit Insurance Act (12 U.S.C. 1818) in the same manner
4 and to the same extent as if the designated financial mar-
5 ket utility was an insured depository institution and the
6 Supervisory Agency was the appropriate Federal banking
7 agency for such insured depository institution.

8 (d) BOARD OF GOVERNORS INVOLVEMENT IN EXAMI-
9 NATIONS.—

10 (1) BOARD OF GOVERNORS CONSULTATION ON
11 EXAMINATION PLANNING.—The Supervisory Agency
12 shall consult annually with the Board of Governors
13 regarding the scope and methodology of any exam-
14 ination conducted under subsections (a) and (b).
15 The Supervisory Agency shall lead all examinations
16 conducted under subsections (a) and (b)

17 (2) BOARD OF GOVERNORS PARTICIPATION IN
18 EXAMINATION.—The Board of Governors may, in its
19 discretion, participate in any examination led by a
20 Supervisory Agency and conducted under sub-
21 sections (a) and (b).

22 (e) BOARD OF GOVERNORS ENFORCEMENT REC-
23 OMMENDATIONS.—

24 (1) RECOMMENDATION.—The Board of Gov-
25 ernors may, after consulting with the Council and

1 the Supervisory Agency, at any time recommend to
2 the Supervisory Agency that such agency take en-
3 forcement action against a designated financial mar-
4 ket utility in order to prevent or mitigate significant
5 liquidity, credit, operational, or other risks to the fi-
6 nancial markets or to the financial stability of the
7 United States. Any such recommendation for en-
8 forcement action shall provide a detailed analysis
9 supporting the recommendation of the Board of
10 Governors.

11 (2) CONSIDERATION.—The Supervisory Agency
12 shall consider the recommendation of the Board of
13 Governors and submit a response to the Board of
14 Governors within 60 days.

15 (3) BINDING ARBITRATION.—If the Supervisory
16 Agency rejects, in whole or in part, the recommenda-
17 tion of the Board of Governors, the Board of Gov-
18 ernors may refer the recommendation to the Council
19 for a binding decision on whether an enforcement
20 action is warranted.

21 (4) ENFORCEMENT ACTION.—Upon an affirma-
22 tive vote by a majority of the Council in favor of the
23 Board of Governors' recommendation under para-
24 graph (3), the Council may require the Supervisory
25 Agency to—

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1 (A) exercise the enforcement authority ref-
2 erenced in subsection (c); and

3 (B) take enforcement action against the
4 designated financial market utility.

5 (f) EMERGENCY ENFORCEMENT ACTIONS BY THE
6 BOARD OF GOVERNORS.—

7 (1) IMMINENT RISK OF SUBSTANTIAL HARM.—

8 The Board of Governors may, after consulting with
9 the Supervisory Agency and upon an affirmative
10 vote by a majority the Council, take enforcement ac-
11 tion against a designated financial market utility if
12 the Board of Governors has reasonable cause to con-
13 clude that—

14 (A) either—

15 (i) an action engaged in, or con-
16 templated by, a designated financial mar-
17 ket utility (including any change proposed
18 by the designated financial market utility
19 to its rules, procedures, or operations that
20 would otherwise be subject to section
21 806(e)) poses an imminent risk of substan-
22 tial harm to financial institutions, critical
23 markets, or the broader financial system of
24 the United States; or

1 (ii) the condition of a designated fi-
2 nancial market utility poses an imminent
3 risk of substantial harm to financial insti-
4 tutions, critical markets, or the broader fi-
5 nancial system; and

6 (B) the imminent risk of substantial harm
7 precludes the Board of Governors' use of the
8 procedures in subsection (e).

9 (2) ENFORCEMENT AUTHORITY.—For purposes
10 of taking enforcement action under paragraph (1), a
11 designated financial market utility shall be subject
12 to, and the Board of Governors shall have authority
13 under the provisions of subsections (b) through (n)
14 of section 8 of the Federal Deposit Insurance Act
15 (12 U.S.C. 1818) in the same manner and to the
16 same extent as if the designated financial market
17 utility was an insured depository institution and the
18 Board of Governors was the appropriate Federal
19 banking agency for such insured depository institu-
20 tion.

1 **SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS**
2 **AGAINST FINANCIAL INSTITUTIONS SUBJECT**
3 **TO STANDARDS FOR DESIGNATED ACTIVI-**
4 **TIES.**

5 (a) EXAMINATION.—The appropriate financial regu-
6 lator is authorized to examine a financial institution sub-
7 ject to the standards prescribed under section 805(a) for
8 a designated activity in order to determine the following:

9 (1) The nature and scope of the designated ac-
10 tivities engaged in by the financial institution.

11 (2) The financial and operational risks the des-
12 igned activities engaged in by the financial institu-
13 tion may pose to the safety and soundness of the fi-
14 nancial institution.

15 (3) The financial and operational risks the des-
16 igned activities engaged in by the financial institu-
17 tion may pose to other financial institutions, critical
18 markets, or the broader financial system.

19 (4) The resources available to and the capabili-
20 ties of the financial institution to monitor and con-
21 trol the risks described in paragraphs (2) and (3).

22 (5) The financial institution's compliance with
23 this title and the rules and orders prescribed under
24 section 805(a).

25 (b) ENFORCEMENT.—For purposes of enforcing the
26 provisions of this section, and the rules and orders pre-

1 scribed by the Board of Governors under this section, a
2 financial institution subject to the standards prescribed
3 under section 805(a) for a designated activity shall be sub-
4 ject to, and the appropriate financial regulator shall have
5 authority under the provisions of subsections (b) through
6 (n) of section 8 of the Federal Deposit Insurance Act (12
7 U.S.C. 1818) in the same manner and to the same extent
8 as if the financial institution was an insured depository
9 institution and the appropriate financial regulator was the
10 appropriate Federal banking agency for such insured de-
11 pository institution.

12 (c) TECHNICAL ASSISTANCE.—The Board of Gov-
13 ernors shall consult with and provide such technical assist-
14 ance as may be required by the appropriate financial regu-
15 lators to ensure that the rules and orders prescribed by
16 the Board of Governors under this title are interpreted
17 and applied in as consistent and uniform a manner as
18 practicable.

19 (d) DELEGATION.—

20 (1) EXAMINATION.—

21 (A) REQUEST TO BOARD OF GOV-
22 ERNORS.—The appropriate financial regulator
23 may request the Board of Governors to conduct
24 or participate in an examination of a financial
25 institution subject to the standards prescribed

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1 under section 805(a) for a designated activity
2 in order to assess the compliance of such finan-
3 cial institution with—

4 (i) this title; or

5 (ii) the rules or orders prescribed
6 under this title.

7 (B) EXAMINATION BY BOARD OF GOV-
8 ERNORS.—Upon receipt of an appropriate writ-
9 ten request, the Board of Governors will con-
10 duct the examination under such terms and
11 conditions to which the Board of Governors and
12 the appropriate financial regulator mutually
13 agree.

14 (2) ENFORCEMENT.—

15 (A) REQUEST TO BOARD OF GOV-
16 ERNORS.—The appropriate financial regulator
17 may request the Board of Governors to enforce
18 this title or the rules or orders prescribed under
19 this title against a financial institution that is
20 subject to the standards prescribed under sec-
21 tion 805(a) for a designated activity.

22 (B) ENFORCEMENT BY BOARD OF GOV-
23 ERNORS.—Upon receipt of an appropriate writ-
24 ten request, the Board of Governors shall deter-
25 mine whether an enforcement action is war-

1 ranted, and, if so, it shall enforce compliance
2 with this title or the rules or orders prescribed
3 under this title and, if so, the financial institu-
4 tion shall be subject to, and the Board of Gov-
5 ernors shall have authority under the provisions
6 of subsections (b) through (n) of section 8 of
7 the Federal Deposit Insurance Act (12 U.S.C.
8 1818) in the same manner and to the same ex-
9 tent as if the financial institution was an in-
10 sured depository institution and the Board of
11 Governors was the appropriate Federal banking
12 agency for such insured depository institution.

13 (e) BACK-UP AUTHORITY OF THE BOARD OF GOV-
14 ERNORS.—

15 (1) EXAMINATION AND ENFORCEMENT.—Not-
16 withstanding any other provision of law, the Board
17 of Governors may—

18 (A) conduct an examination of the type de-
19 scribed in subsection (a) of any financial insti-
20 tution that is subject to the standards pre-
21 scribed under section 805(a) for a designated
22 activity; and

23 (B) enforce the provisions of this title or
24 any rules or orders prescribed under this title
25 against any financial institution that is subject

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1 to the standards prescribed under section
2 805(a) for a designated activity.

3 (2) LIMITATIONS.—

4 (A) EXAMINATION.—The Board of Gov-
5 ernors may exercise the authority described in
6 paragraph (1)(A) only if the Board of Gov-
7 ernors has—

8 (i) reasonable cause to believe that a
9 financial institution is not in compliance
10 with this title or the rules or orders pre-
11 scribed by the Board of Governors under
12 this title with respect to a designated activ-
13 ity;

14 (ii) notified, in writing, the appro-
15 priate financial regulator and the Council
16 of its belief under clause (i) with sup-
17 porting documentation included;

18 (iii) requested the appropriate finan-
19 cial regulator to conduct a prompt exam-
20 ination of the financial institution;

21 (iv) either—

22 (I) not been afforded a reason-
23 able opportunity to participate in an
24 examination of the financial institu-
25 tion by the appropriate financial regu-

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1 lator within 30 days after the date of
2 the Board's notification under clause
3 (ii); or

4 (II) reasonable cause to believe
5 that the financial institution's non-
6 compliance with this title or the rules
7 or orders prescribed by the Board of
8 Governors under this title poses a
9 substantial risk to other financial in-
10 stitutions, critical markets, or the
11 broader financial system, subject to
12 the Board of Governors affording the
13 appropriate financial regulator a rea-
14 sonable opportunity to participate in
15 the examination; and

16 (v) obtained the approval of the Coun-
17 cil upon an affirmative vote by a majority
18 of the Council.

19 (B) ENFORCEMENT.—The Board of Gov-
20 ernors may exercise the authority described in
21 paragraph (1)(B) only if the Board of Gov-
22 ernors has—

23 (i) reasonable cause to believe that a
24 financial institution is not in compliance
25 with this title or the rules or orders pre-

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1 scribed under this title with respect to a
2 designated activity;

3 (ii) notified, in writing, the appro-
4 priate financial regulator and the Council
5 of its belief under clause (i) with sup-
6 porting documentation included and with a
7 recommendation that the appropriate fi-
8 nancial regulator take 1 or more specific
9 enforcement actions against the financial
10 institution;

11 (iii) either—

12 (I) not been notified, in writing,
13 by the appropriate financial regulator
14 of the commencement of an enforce-
15 ment action recommended by the
16 Board of Governors against the finan-
17 cial institution within 60 days from
18 the date of the notification under
19 clause (ii); or

20 (II) reasonable cause to believe
21 that the financial institution's non-
22 compliance with this title or the rules
23 or orders prescribed under this title
24 poses significant liquidity, credit,
25 operational, or other risks to the fi-

1 nancial markets or to the financial
2 stability of the United States, subject
3 to the Board of Governors notifying
4 the appropriate financial regulator of
5 the Board's enforcement action; and

6 (iv) obtained the approval of the
7 Council upon an affirmative vote by a ma-
8 jority of the Council.

9 (3) ENFORCEMENT PROVISIONS.—For purposes
10 of taking enforcement action under paragraph (1),
11 the financial institution shall be subject to, and the
12 Board of Governors shall have authority under the
13 provisions of subsections (b) through (n) of section
14 8 of the Federal Deposit Insurance Act (12 U.S.C.
15 1818) in the same manner and to the same extent
16 as if the financial institution was an insured deposi-
17 tory institution and the Board of Governors was the
18 appropriate Federal banking agency for such insured
19 depository institution.

20 **SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR**
21 **RECORDS.**

22 (a) INFORMATION TO ASSESS SYSTEMIC IMPOR-
23 TANCE.—

24 (1) FINANCIAL MARKET UTILITIES.—The Coun-
25 cil is authorized to require any financial market util-

1 ity to submit such information as the Council may
2 require for the sole purpose of assessing whether
3 that financial market utility is systemically impor-
4 tant, but only if the Council has reasonable cause to
5 believe that the financial market utility meets the
6 standards for systemic importance set forth in sec-
7 tion 804.

8 (2) FINANCIAL INSTITUTIONS ENGAGED IN PAY-
9 MENT, CLEARING, OR SETTLEMENT ACTIVITIES.—

10 The Council is authorized to require any financial
11 institution to submit such information as the Coun-
12 cil may require for the sole purpose of assessing
13 whether any payment, clearing, or settlement activ-
14 ity engaged in or supported by a financial institution
15 is systemically important, but only if the Council has
16 reasonable cause to believe that the activity meets
17 the standards for systemic importance set forth in
18 section 804.

19 (b) REPORTING AFTER DESIGNATION.—

20 (1) DESIGNATED FINANCIAL MARKET UTILI-
21 TIES.—The Board of Governors and the Council
22 may each require a designated financial market util-
23 ity to submit reports or data to the Board of Gov-
24 ernors and the Council in such frequency and form
25 as deemed necessary by the Board of Governors or

1 the Council in order to assess the safety and sound-
2 ness of the utility and the systemic risk that the
3 utility's operations pose to the financial system.

4 (2) FINANCIAL INSTITUTIONS SUBJECT TO
5 STANDARDS FOR DESIGNATED ACTIVITIES.—The
6 Board of Governors and the Council may each re-
7 quire 1 or more financial institutions subject to the
8 standards prescribed under section 805(a) for a des-
9 ignated activity to submit, in such frequency and
10 form as deemed necessary by the Board of Gov-
11 ernors or the Council, reports and data to the Board
12 of Governors and the Council solely with respect to
13 the conduct of the designated activity and solely to
14 assess whether—

15 (A) the rules, orders, or standards pre-
16 scribed under section 805(a) with respect to the
17 designated activity appropriately address the
18 risks to the financial system presented by such
19 activity; and

20 (B) the financial institutions are in compli-
21 ance with this title and the rules and orders
22 prescribed under section 805(a) with respect to
23 the designated activity.

24 (3) LIMITATION.—The Board of Governors
25 may, upon an affirmative vote by a majority of the

1 Council, prescribe regulations under this section that
2 impose a recordkeeping or reporting requirement on
3 designated clearing entities or financial institutions
4 engaged in designated activities that are subject to
5 standards that have been prescribed under section
6 805(a)(2).

7 (c) COORDINATION WITH APPROPRIATE FEDERAL
8 SUPERVISORY AGENCY.—

9 (1) ADVANCE COORDINATION.—Before request-
10 ing any material information from, or imposing re-
11 porting or recordkeeping requirements on, any finan-
12 cial market utility or any financial institution en-
13 gaged in a payment, clearing, or settlement activity,
14 the Board of Governors or the Council shall coordi-
15 nate with the Supervisory Agency for a financial
16 market utility or the appropriate financial regulator
17 for a financial institution to determine if the infor-
18 mation is available from or may be obtained by the
19 agency in the form, format, or detail required by the
20 Board of Governors or the Council.

21 (2) SUPERVISORY REPORTS.—Notwithstanding
22 any other provision of law, the Supervisory Agency,
23 the appropriate financial regulator, and the Board of
24 Governors are authorized to disclose to each other
25 and the Council copies of its examination reports or

1 similar reports regarding any financial market utility
2 or any financial institution engaged in payment,
3 clearing, or settlement activities.

4 (d) TIMING OF RESPONSE FROM APPROPRIATE FED-
5 ERAL SUPERVISORY AGENCY.—If the information, report,
6 records, or data requested by the Board of Governors or
7 the Council under subsection (c)(1) are not provided in
8 full by the Supervisory Agency or the appropriate financial
9 regulator in less than 15 days after the date on which
10 the material is requested, the Board of Governors or the
11 Council may request the information or impose record-
12 keeping or reporting requirements directly on such per-
13 sons as provided in subsections (a) and (b) with notice
14 to the agency.

15 (e) SHARING OF INFORMATION.—

16 (1) MATERIAL CONCERNS.—Notwithstanding
17 any other provision of law, the Board of Governors,
18 the Council, the appropriate financial regulator, and
19 any Supervisory Agency are authorized to—

20 (A) promptly notify each other of material
21 concerns about a designated financial market
22 utility or any financial institution engaged in
23 designated activities; and

24 (B) share appropriate reports, information,
25 or data relating to such concerns.

1 (2) OTHER INFORMATION.—Notwithstanding
2 any other provision of law, the Board of Governors,
3 the Council, the appropriate financial regulator, or
4 any Supervisory Agency may, under such terms and
5 conditions as it deems appropriate, provide confiden-
6 tial supervisory information and other information
7 obtained under this title to each other, and to the
8 Secretary, Federal Reserve Banks, State financial
9 institution supervisory agencies, foreign financial su-
10 pervisors, foreign central banks, and foreign finance
11 ministries, subject to reasonable assurances of con-
12 fidentiality, provided, however, that no person or en-
13 tity receiving information pursuant to this section
14 may disseminate such information to entities or per-
15 sons other than those listed in this paragraph with-
16 out complying with applicable law, including section
17 8 of the Commodity Exchange Act (7 U.S.C. 12).

18 (f) PRIVILEGE MAINTAINED.—The Board of Gov-
19 ernors, the Council, the appropriate financial regulator,
20 and any Supervisory Agency providing reports or data
21 under this section shall not be deemed to have waived any
22 privilege applicable to those reports or data, or any portion
23 thereof, by providing the reports or data to the other party
24 or by permitting the reports or data, or any copies thereof,
25 to be used by the other party.

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1 (g) DISCLOSURE EXEMPTION.—Information obtained
2 by the Board of Governors, the Supervisory Agencies, or
3 the Council under this section and any materials prepared
4 by the Board of Governors, the Supervisory Agencies, or
5 the Council regarding their assessment of the systemic im-
6 portance of financial market utilities or any payment,
7 clearing, or settlement activities engaged in by financial
8 institutions, and in connection with their supervision of
9 designated financial market utilities and designated activi-
10 ties, shall be confidential supervisory information exempt
11 from disclosure under section 552 of title 5, United States
12 Code. For purposes of such section 552, this subsection
13 shall be considered a statute described in subsection (b)(3)
14 of such section 552.

15 **SEC. 810. RULEMAKING.**

16 The Board of Governors, the Supervisory Agencies,
17 and the Council are authorized to prescribe such rules and
18 issue such orders as may be necessary to administer and
19 carry out their respective authorities and duties granted
20 under this title and prevent evasions thereof.

21 **SEC. 811. OTHER AUTHORITY.**

22 Unless otherwise provided by its terms, this title does
23 not divest any appropriate financial regulator, any Super-
24 visory Agency, or any other Federal or State agency, of
25 any authority derived from any other applicable law, ex-

1 cept that any standards prescribed by the Board of Gov-
2 ernors under section 805 shall supersede any less strin-
3 gent requirements established under other authority to the
4 extent of any conflict.

5 **SEC. 812. CONSULTATION.**

6 (a) CFTC.—The Commodity Futures Trading Com-
7 mission shall consult with the Board of Governors—

8 (1) prior to exercising its authorities under sec-
9 tions 2(h)(2)(C), 2(h)(3)(A), 2(h)(3)(C), 2(h)(4)(A),
10 and 2(h)(4)(B) of the Commodity Exchange Act, as
11 amended by the Wall Street Transparency and Ac-
12 countability Act of 2010;

13 (2) with respect to any rule or rule amendment
14 of a derivatives clearing organization for which a
15 stay of certification has been issued under section
16 745(b)(3) of the Wall Street Transparency and Ac-
17 countability Act of 2010; and

18 (3) prior to exercising its rulemaking authori-
19 ties under section 728 of the Wall Street Trans-
20 parency and Accountability Act of 2010.

21 (b) SEC.—The Commission shall consult with the
22 Board of Governors—

23 (1) prior to exercising its authorities under sec-
24 tions 3C(a)(2)(C), 3C(a)(3)(A), 3C(a)(3)(C),
25 3C(a)(4)(A), and 3C(a)(4)(B) of the Securities Ex-

1 change Act of 1934, as amended by the Wall Street
2 Transparency and Accountability Act of 2010;

3 (2) with respect to any proposed rule change of
4 a clearing agency for which an extension of the time
5 for review has been designated under section
6 19(b)(2) of the Securities Exchange Act of 1934;
7 and

8 (3) prior to exercising its rulemaking authori-
9 ties under section 13(n) of the Securities Exchange
10 Act of 1934, as added by section 763(i) of the Wall
11 Street Transparency and Accountability Act of
12 2010.

13 **SEC. 813. COMMON FRAMEWORK FOR DESIGNATED CLEAR-**
14 **ING ENTITY RISK MANAGEMENT.**

15 The Commodity Futures Trading Commission and
16 the Commission shall coordinate with the Board of Gov-
17 ernors to jointly develop risk management supervision pro-
18 grams for designated clearing entities. Not later than 1
19 year after the date of enactment of this Act, the Com-
20 modity Futures Trading Commission, the Commission,
21 and the Board of Governors shall submit a joint report
22 to the Committee on Banking, Housing, and Urban Af-
23 fairs and the Committee on Agriculture, Nutrition, and
24 Forestry of the Senate, and the Committee on Financial

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1 Services and the Committee on Agriculture of the House
2 of Representatives recommendations for—

3 (1) improving consistency in the designated
4 clearing entity oversight programs of the Commis-
5 sion and the Commodity Futures Trading Commis-
6 sion;

7 (2) promoting robust risk management by des-
8 ignated clearing entities;

9 (3) promoting robust risk management over-
10 sight by regulators of designated clearing entities;
11 and

12 (4) improving regulators' ability to monitor the
13 potential effects of designated clearing entity risk
14 management on the stability of the financial system
15 of the United States.

16 **SEC. 814. EFFECTIVE DATE.**

17 This title is effective as of the date of enactment of
18 this Act.

1 **TITLE IX—INVESTOR PROTEC-**
2 **TIONS AND IMPROVEMENTS**
3 **TO THE REGULATION OF SE-**
4 **CURITIES**

5 **SEC. 901. SHORT TITLE.**

6 This title may be cited as the “Investor Protection
7 and Securities Reform Act of 2010”.

8 **Subtitle A—Increasing Investor**
9 **Protection**

10 **SEC. 911. INVESTOR ADVISORY COMMITTEE ESTABLISHED.**

11 Title I of the Securities Exchange Act of 1934 (15
12 U.S.C. 78a et seq.) is amended by adding at the end the
13 following:

14 **“SEC. 39. INVESTOR ADVISORY COMMITTEE.**

15 “(a) ESTABLISHMENT AND PURPOSE.—

16 “(1) ESTABLISHMENT.—There is established
17 within the Commission the Investor Advisory Com-
18 mittee (referred to in this section as the ‘Com-
19 mittee’).

20 “(2) PURPOSE.—The Committee shall—

21 “(A) advise and consult with the Commis-
22 sion on—

23 “(i) regulatory priorities of the Com-
24 mission;

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1 “(ii) issues relating to the regulation
2 of securities products, trading strategies,
3 and fee structures, and the effectiveness of
4 disclosure;

5 “(iii) initiatives to protect investor in-
6 terest; and

7 “(iv) initiatives to promote investor
8 confidence and the integrity of the securi-
9 ties marketplace; and

10 “(B) submit to the Commission such find-
11 ings and recommendations as the Committee
12 determines are appropriate, including rec-
13 ommendations for proposed legislative changes.

14 “(b) MEMBERSHIP.—

15 “(1) IN GENERAL.—The members of the Com-
16 mittee shall be—

17 “(A) the Investor Advocate;

18 “(B) a representative of State securities
19 commissions;

20 “(C) a representative of the interests of
21 senior citizens; and

22 “(D) not fewer than 10, and not more
23 than 20, members appointed by the Commis-
24 sion, from among individuals who—

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1 “(i) represent the interests of indi-
2 vidual equity and debt investors, including
3 investors in mutual funds;

4 “(ii) represent the interests of institu-
5 tional investors, including the interests of
6 pension funds and registered investment
7 companies;

8 “(iii) are knowledgeable about invest-
9 ment issues and decisions; and

10 “(iv) have reputations of integrity.

11 “(2) TERM.—Each member of the Committee
12 appointed under paragraph (1)(B) shall serve for a
13 term of 4 years.

14 “(3) MEMBERS NOT COMMISSION EMPLOY-
15 EES.—Members appointed under paragraph (1)(B)
16 shall not be deemed to be employees or agents of the
17 Commission solely because of membership on the
18 Committee.

19 “(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; AS-
20 SISTANT SECRETARY.—

21 “(1) IN GENERAL.—The members of the Com-
22 mittee shall elect, from among the members of the
23 Committee—

24 “(A) a chairman, who may not be em-
25 ployed by an issuer;

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1 “(B) a vice chairman, who may not be em-
2 ployed by an issuer;

3 “(C) a secretary; and

4 “(D) an assistant secretary.

5 “(2) TERM.—Each member elected under para-
6 graph (1) shall serve for a term of 3 years in the
7 capacity for which the member was elected under
8 paragraph (1).

9 “(d) MEETINGS.—

10 “(1) FREQUENCY OF MEETINGS.—The Com-
11 mittee shall meet—

12 “(A) not less frequently than twice annu-
13 ally, at the call of the chairman of the Com-
14 mittee; and

15 “(B) from time to time, at the call of the
16 Commission.

17 “(2) NOTICE.—The chairman of the Committee
18 shall give the members of the Committee written no-
19 tice of each meeting, not later than 2 weeks before
20 the date of the meeting.

21 “(e) COMPENSATION AND TRAVEL EXPENSES.—

22 Each member of the Committee who is not a full-time em-
23 ployee of the United States shall—

24 “(1) be entitled to receive compensation at a
25 rate not to exceed the daily equivalent of the annual

1 rate of basic pay in effect for a position at level V
2 of the Executive Schedule under section 5316 of title
3 5, United States Code, for each day during which
4 the member is engaged in the actual performance of
5 the duties of the Committee; and

6 “(2) while away from the home or regular place
7 of business of the member in the performance of
8 services for the Committee, be allowed travel ex-
9 penses, including per diem in lieu of subsistence, in
10 the same manner as persons employed intermittently
11 in the Government service are allowed expenses
12 under section 5703(b) of title 5, United States Code.

13 “(f) STAFF.—The Commission shall make available
14 to the Committee such staff as the chairman of the Com-
15 mittee determines are necessary to carry out this section.

16 “(g) REVIEW BY COMMISSION.—The Commission
17 shall—

18 “(1) review the findings and recommendations
19 of the Committee; and

20 “(2) each time the Committee submits a finding
21 or recommendation to the Commission, promptly
22 issue a public statement—

23 “(A) assessing the finding or recommenda-
24 tion of the Committee; and

1 “(B) disclosing the action, if any, the Com-
2 mission intends to take with respect to the find-
3 ing or recommendation.

4 “(h) COMMITTEE FINDINGS.—Nothing in this section
5 shall require the Commission to agree to or act upon any
6 finding or recommendation of the Committee.

7 “(i) FEDERAL ADVISORY COMMITTEE ACT.—The
8 Federal Advisory Committee Act (5 U.S.C. App.) shall not
9 apply with respect to the Committee and its activities.

10 “(j) AUTHORIZATION OF APPROPRIATIONS.—There
11 is authorized to be appropriated to the Commission such
12 sums as are necessary to carry out this section.”.

13 **SEC. 912. CLARIFICATION OF AUTHORITY OF THE COMMIS-**
14 **SION TO ENGAGE IN INVESTOR TESTING.**

15 Section 19 of the Securities Act of 1933 (15 U.S.C.
16 77s) is amended by adding at the end the following:

17 “(e) EVALUATION OF RULES OR PROGRAMS.—For
18 the purpose of evaluating any rule or program of the Com-
19 mission issued or carried out under any provision of the
20 securities laws, as defined in section 3 of the Securities
21 Exchange Act of 1934 (15 U.S.C. 78c), and the purposes
22 of considering, proposing, adopting, or engaging in any
23 such rule or program or developing new rules or programs,
24 the Commission may—

1 “(1) gather information from and communicate
2 with investors or other members of the public;

3 “(2) engage in such temporary investor testing
4 programs as the Commission determines are in the
5 public interest or would protect investors; and

6 “(3) consult with academics and consultants, as
7 necessary to carry out this subsection.

8 “(f) **RULE OF CONSTRUCTION.**—For purposes of the
9 Paperwork Reduction Act (44 U.S.C. 3501 et seq.), any
10 action taken under subsection (e) shall not be construed
11 to be a collection of information.”.

12 **SEC. 913. STUDY AND RULEMAKING REGARDING OBLIGA-**
13 **TIONS OF BROKERS, DEALERS, AND INVEST-**
14 **MENT ADVISERS.**

15 (a) **DEFINITION.**—For purposes of this section, the
16 term “retail customer” means a natural person, or the
17 legal representative of such natural person, who—

18 (1) receives personalized investment advice
19 about securities from a broker or dealer or invest-
20 ment adviser; and

21 (2) uses such advice primarily for personal,
22 family, or household purposes.

23 (b) **STUDY.**—The Commission shall conduct a study
24 to evaluate—

1 (1) the effectiveness of existing legal or regu-
2 latory standards of care for brokers, dealers, invest-
3 ment advisers, persons associated with brokers or
4 dealers, and persons associated with investment ad-
5 visers for providing personalized investment advice
6 and recommendations about securities to retail cus-
7 tomers imposed by the Commission and a national
8 securities association, and other Federal and State
9 legal or regulatory standards; and

10 (2) whether there are legal or regulatory gaps,
11 shortcomings, or overlaps in legal or regulatory
12 standards in the protection of retail customers relat-
13 ing to the standards of care for brokers, dealers, in-
14 vestment advisers, persons associated with brokers
15 or dealers, and persons associated with investment
16 advisers for providing personalized investment advice
17 about securities to retail customers that should be
18 addressed by rule or statute.

19 (c) CONSIDERATIONS.—In conducting the study re-
20 quired under subsection (b), the Commission shall con-
21 sider—

22 (1) the effectiveness of existing legal or regu-
23 latory standards of care for brokers, dealers, invest-
24 ment advisers, persons associated with brokers or
25 dealers, and persons associated with investment ad-

1 visers for providing personalized investment advice
2 and recommendations about securities to retail cus-
3 tomers imposed by the Commission and a national
4 securities association, and other Federal and State
5 legal or regulatory standards;

6 (2) whether there are legal or regulatory gaps,
7 shortcomings, or overlaps in legal or regulatory
8 standards in the protection of retail customers relat-
9 ing to the standards of care for brokers, dealers, in-
10 vestment advisers, persons associated with brokers
11 or dealers, and persons associated with investment
12 advisers for providing personalized investment advice
13 about securities to retail customers that should be
14 addressed by rule or statute;

15 (3) whether retail customers understand that
16 there are different standards of care applicable to
17 brokers, dealers, investment advisers, persons associ-
18 ated with brokers or dealers, and persons associated
19 with investment advisers in the provision of person-
20 alized investment advice about securities to retail
21 customers;

22 (4) whether the existence of different standards
23 of care applicable to brokers, dealers, investment ad-
24 visers, persons associated with brokers or dealers,
25 and persons associated with investment advisers is a

1 source of confusion for retail customers regarding
2 the quality of personalized investment advice that re-
3 tail customers receive;

4 (5) the regulatory, examination, and enforce-
5 ment resources devoted to, and activities of, the
6 Commission, the States, and a national securities as-
7 sociation to enforce the standards of care for bro-
8 kers, dealers, investment advisers, persons associated
9 with brokers or dealers, and persons associated with
10 investment advisers when providing personalized in-
11 vestment advice and recommendations about securi-
12 ties to retail customers, including—

13 (A) the effectiveness of the examinations of
14 brokers, dealers, and investment advisers in de-
15 termining compliance with regulations;

16 (B) the frequency of the examinations; and

17 (C) the length of time of the examinations;

18 (6) the substantive differences in the regulation
19 of brokers, dealers, and investment advisers, when
20 providing personalized investment advice and rec-
21 ommendations about securities to retail customers;

22 (7) the specific instances related to the provi-
23 sion of personalized investment advice about securi-
24 ties in which—

1 (A) the regulation and oversight of invest-
2 ment advisers provide greater protection to re-
3 tail customers than the regulation and oversight
4 of brokers and dealers; and

5 (B) the regulation and oversight of brokers
6 and dealers provide greater protection to retail
7 customers than the regulation and oversight of
8 investment advisers;

9 (8) the existing legal or regulatory standards of
10 State securities regulators and other regulators in-
11 tended to protect retail customers;

12 (9) the potential impact on retail customers, in-
13 cluding the potential impact on access of retail cus-
14 tomers to the range of products and services offered
15 by brokers and dealers, of imposing upon brokers,
16 dealers, and persons associated with brokers or deal-
17 ers—

18 (A) the standard of care applied under the
19 Investment Advisers Act of 1940 (15 U.S.C.
20 80b–1 et seq.) for providing personalized invest-
21 ment advice about securities to retail customers
22 of investment advisers, as interpreted by the
23 Commission and the courts; and

1 (B) other requirements of the Investment
2 Advisers Act of 1940 (15 U.S.C. 80b–1 et
3 seq.);

4 (10) the potential impact of eliminating the
5 broker and dealer exclusion from the definition of
6 “investment adviser” under section 202(a)(11)(C) of
7 the Investment Advisers Act of 1940 (15 U.S.C.
8 80b–2(a)(11)(C)), in terms of—

9 (A) the impact and potential benefits and
10 harm to retail customers that could result from
11 such a change, including any potential impact
12 on access to personalized investment advice and
13 recommendations about securities to retail cus-
14 tomers or the availability of such advice and
15 recommendations;

16 (B) the number of additional entities and
17 individuals that would be required to register
18 under, or become subject to, the Investment
19 Advisers Act of 1940 (15 U.S.C. 80b–1 et
20 seq.), and the additional requirements to which
21 brokers, dealers, and persons associated with
22 brokers and dealers would become subject, in-
23 cluding—

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1 (i) any potential additional associated
2 person licensing, registration, and exam-
3 ination requirements; and

4 (ii) the additional costs, if any, to the
5 additional entities and individuals; and

6 (C) the impact on Commission and State
7 resources to—

8 (i) conduct examinations of registered
9 investment advisers and the representatives
10 of registered investment advisers, including
11 the impact on the examination cycle; and

12 (ii) enforce the standard of care and
13 other applicable requirements imposed
14 under the Investment Advisers Act of 1940
15 (15 U.S.C. 80b–1 et seq.);

16 (11) the varying level of services provided by
17 brokers, dealers, investment advisers, persons associ-
18 ated with brokers or dealers, and persons associated
19 with investment advisers to retail customers and the
20 varying scope and terms of retail customer relation-
21 ships of brokers, dealers, investment advisers, per-
22 sons associated with brokers or dealers, and persons
23 associated with investment advisers with such retail
24 customers;

1 (12) the potential impact upon retail customers
2 that could result from potential changes in the regu-
3 latory requirements or legal standards of care affect-
4 ing brokers, dealers, investment advisers, persons as-
5 sociated with brokers or dealers, and persons associ-
6 ated with investment advisers relating to their obli-
7 gations to retail customers regarding the provision
8 of investment advice, including any potential impact
9 on—

10 (A) protection from fraud;

11 (B) access to personalized investment ad-
12 vice, and recommendations about securities to
13 retail customers; or

14 (C) the availability of such advice and rec-
15 ommendations;

16 (13) the potential additional costs and expenses
17 to—

18 (A) retail customers regarding and the po-
19 tential impact on the profitability of their in-
20 vestment decisions; and

21 (B) brokers, dealers, and investment advis-
22 ers resulting from potential changes in the regu-
23 latory requirements or legal standards affect-
24 ing brokers, dealers, investment advisers, per-
25 sons associated with brokers or dealers, and

1 persons associated with investment advisers re-
2 lating to their obligations, including duty of
3 care, to retail customers; and

4 (14) any other consideration that the Commis-
5 sion considers necessary and appropriate in deter-
6 mining whether to conduct a rulemaking under sub-
7 section (f).

8 (d) REPORT.—

9 (1) IN GENERAL.—Not later than 6 months
10 after the date of enactment of this Act, the Commis-
11 sion shall submit a report on the study required
12 under subsection (b) to—

13 (A) the Committee on Banking, Housing,
14 and Urban Affairs of the Senate; and

15 (B) the Committee on Financial Services
16 of the House of Representatives.

17 (2) CONTENT REQUIREMENTS.—The report re-
18 quired under paragraph (1) shall describe the find-
19 ings, conclusions, and recommendations of the Com-
20 mission from the study required under subsection
21 (b), including—

22 (A) a description of the considerations,
23 analysis, and public and industry input that the
24 Commission considered, as required under sub-

1 section (d), to make such findings, conclusions,
2 and policy recommendations; and

3 (B) an analysis of whether any identified
4 legal or regulatory gaps, shortcomings, or over-
5 lap in legal or regulatory standards in the pro-
6 tection of retail customers relating to the stand-
7 ards of care for brokers, dealers, investment ad-
8 visers, persons associated with brokers or deal-
9 ers, and persons associated with investment ad-
10 visers for providing personalized investment ad-
11 vice about securities to retail customers.

12 (e) PUBLIC COMMENT.—The Commission shall seek
13 and consider public input, comments, and data in order
14 to prepare the report required under subsection (d).

15 (f) RULEMAKING.—The Commission may commence
16 a rulemaking, as necessary or appropriate in the public
17 interest and for the protection of retail customers (and
18 such other customers as the Commission may by rule pro-
19 vide), to address the legal or regulatory standards of care
20 for brokers, dealers, investment advisers, persons associ-
21 ated with brokers or dealers, and persons associated with
22 investment advisers for providing personalized investment
23 advice about securities to such retail customers. The Com-
24 mission shall consider the findings conclusions, and rec-
25 ommendations of the study required under subsection (b).

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1 (g) AUTHORITY TO ESTABLISH A FIDUCIARY DUTY
2 FOR BROKERS AND DEALERS.—

3 (1) SECURITIES EXCHANGE ACT OF 1934.—Sec-
4 tion 15 of the Securities Exchange Act of 1934 (15
5 U.S.C. 78o) is amended by adding at the end the
6 following:

7 “(k) STANDARD OF CONDUCT.—

8 “(1) IN GENERAL.—Notwithstanding any other
9 provision of this Act or the Investment Advisers Act
10 of 1940, the Commission may promulgate rules to
11 provide that, with respect to a broker or dealer,
12 when providing personalized investment advice about
13 securities to a retail customer (and such other cus-
14 tomers as the Commission may by rule provide), the
15 standard of conduct for such broker or dealer with
16 respect to such customer shall be the same as the
17 standard of conduct applicable to an investment ad-
18 viser under section 211 of the Investment Advisers
19 Act of 1940. The receipt of compensation based on
20 commission or other standard compensation for the
21 sale of securities shall not, in and of itself, be con-
22 sidered a violation of such standard applied to a
23 broker or dealer. Nothing in this section shall re-
24 quire a broker or dealer or registered representative
25 to have a continuing duty of care or loyalty to the

1 customer after providing personalized investment ad-
2 vice about securities.

3 “(2) DISCLOSURE OF RANGE OF PRODUCTS OF-
4 FERED.—Where a broker or dealer sells only propri-
5 etary or other limited range of products, as deter-
6 mined by the Commission, the Commission may by
7 rule require that such broker or dealer provide no-
8 tice to each retail customer and obtain the consent
9 or acknowledgment of the customer. The sale of only
10 proprietary or other limited range of products by a
11 broker or dealer shall not, in and of itself, be consid-
12 ered a violation of the standard set forth in para-
13 graph (1).

14 “(1) 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 (2) INVESTMENT ADVISERS ACT OF 1940.—Sec-
2 tion 211 of the Investment Advisers Act of 1940, is
3 further amended by adding at the end the following
4 new subsections:

5 “(g) STANDARD OF CONDUCT.—

6 “(1) IN GENERAL.—The Commission may 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 (h) 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 (f)(1), is further amended by
7 adding at the end the following new subsection:

8 “(m) 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 adviser 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 (f)(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 adviser 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. 914. STUDY ON ENHANCING INVESTMENT ADVISER EX-**
5 **AMINATIONS.**

6 (a) STUDY REQUIRED.—

7 (1) IN GENERAL.—The Commission shall review
8 and analyze the need for enhanced examination and
9 enforcement resources for investment advisers.

10 (2) AREAS OF CONSIDERATION.—The study re-
11 quired by this subsection shall examine—

12 (A) the number and frequency of examina-
13 tions of investment advisers by the Commission
14 over the 5 years preceding the date of the en-
15 actment of this subtitle;

16 (B) the extent to which having Congress
17 authorize the Commission to designate one or
18 more self-regulatory organizations to augment
19 the Commission’s efforts in overseeing invest-
20 ment advisers would improve the frequency of
21 examinations of investment advisers; and

22 (C) current and potential approaches to ex-
23 amining the investment advisory activities of
24 dually registered broker-dealers and investment

1 advisers or affiliated broker-dealers and invest-
2 ment advisers.

3 (b) **REPORT REQUIRED.**—The Commission shall re-
4 port its findings to the Committee on Financial Services
5 of the House of Representatives and the Committee on
6 Banking, Housing, and Urban Affairs of the Senate, not
7 later than 180 days after the date of enactment of this
8 subtitle, and shall use such findings to revise its rules and
9 regulations, as necessary. The report shall include a dis-
10 cussion of regulatory or legislative steps that are rec-
11 ommended or that may be necessary to address concerns
12 identified in the study.

13 **SEC. 915. OFFICE OF THE INVESTOR ADVOCATE.**

14 Section 4 of the Securities Exchange Act of 1934 (15
15 U.S.C. 78d) is amended by adding at the end the fol-
16 lowing:

17 “(g) **OFFICE OF THE INVESTOR ADVOCATE.**—

18 “(1) **OFFICE ESTABLISHED.**—There is estab-
19 lished within the Commission the Office of the In-
20 vestor Advocate (in this subsection referred to as the
21 ‘Office’).

22 “(2) **INVESTOR ADVOCATE.**—

23 “(A) **IN GENERAL.**—The head of the Of-
24 fice shall be the Investor Advocate, who shall—

1 “(i) report directly to the Chairman;
2 and

3 “(ii) be appointed by the Chairman, in
4 consultation with the Commission, from
5 among individuals having experience in ad-
6 vocating for the interests of investors in se-
7 curities and investor protection issues,
8 from the perspective of investors.

9 “(B) COMPENSATION.—The annual rate of
10 pay for the Investor Advocate shall be equal to
11 the highest rate of annual pay for other senior
12 executives who report to the Chairman of the
13 Commission.

14 “(C) LIMITATION ON SERVICE.—An indi-
15 vidual who serves as the Investor Advocate may
16 not be employed by the Commission—

17 “(i) during the 2-year period ending
18 on the date of appointment as Investor Ad-
19 vocate; or

20 “(ii) during the 5-year period begin-
21 ning on the date on which the person
22 ceases to serve as the Investor Advocate.

23 “(3) STAFF OF OFFICE.—The Investor Advo-
24 cate, after consultation with the Chairman of the
25 Commission, may retain or employ independent

1 counsel, research staff, and service staff, as the In-
2 vestor Advocate deems necessary to carry out the
3 functions, powers, and duties of the Office.

4 “(4) FUNCTIONS OF THE INVESTOR ADVOCATE.—The Investor Advocate shall—

6 “(A) assist retail investors in resolving sig-
7 nificant problems such investors may have with
8 the Commission or with self-regulatory organi-
9 zations;

10 “(B) identify areas in which investors
11 would benefit from changes in the regulations
12 of the Commission or the rules of self-regu-
13 latory organizations;

14 “(C) identify problems that investors have
15 with financial service providers and investment
16 products;

17 “(D) analyze the potential impact on inves-
18 tors of—

19 “(i) proposed regulations of the Com-
20 mission; and

21 “(ii) proposed rules of self-regulatory
22 organizations registered under this title;
23 and

24 “(E) to the extent practicable, propose to
25 the Commission changes in the regulations or

1 orders of the Commission and to Congress any
2 legislative, administrative, or personnel changes
3 that may be appropriate to mitigate problems
4 identified under this paragraph and to promote
5 the interests of investors.

6 “(5) ACCESS TO DOCUMENTS.—The Commis-
7 sion shall ensure that the Investor Advocate has full
8 access to the documents of the Commission and any
9 self-regulatory organization, as necessary to carry
10 out the functions of the Office.

11 “(6) ANNUAL REPORTS.—

12 “(A) REPORT ON OBJECTIVES.—

13 “(i) IN GENERAL.—Not later than
14 June 30 of each year after 2010, the In-
15 vestor Advocate shall submit to the Com-
16 mittee on Banking, Housing, and Urban
17 Affairs of the Senate and the Committee
18 on Financial Services of the House of Rep-
19 resentatives a report on the objectives of
20 the Investor Advocate for the following fis-
21 cal year.

22 “(ii) CONTENTS.—Each report re-
23 quired under clause (i) shall contain full
24 and substantive analysis and explanation.

25 “(B) REPORT ON ACTIVITIES.—

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1 “(i) IN GENERAL.—Not later than
2 December 31 of each year after 2010, the
3 Investor Advocate shall submit to the Com-
4 mittee on Banking, Housing, and Urban
5 Affairs of the Senate and the Committee
6 on Financial Services of the House of Rep-
7 resentatives a report on the activities of
8 the Investor Advocate during the imme-
9 diately preceding fiscal year.

10 “(ii) CONTENTS.—Each report re-
11 quired under clause (i) shall include—

12 “(I) appropriate statistical infor-
13 mation and full and substantive anal-
14 ysis;

15 “(II) information on steps that
16 the Investor Advocate has taken dur-
17 ing the reporting period to improve in-
18 vestor services and the responsiveness
19 of the Commission and self-regulatory
20 organizations to investor concerns;

21 “(III) a summary of the most se-
22 rious problems encountered by inves-
23 tors during the reporting period;

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1 “(IV) an inventory of the items
2 described in subclause (III) that in-
3 cludes—

4 “(aa) identification of any
5 action taken by the Commission
6 or the self-regulatory organiza-
7 tion and the result of such ac-
8 tion;

9 “(bb) the length of time that
10 each item has remained on such
11 inventory; and

12 “(cc) for items on which no
13 action has been taken, the rea-
14 sons for inaction, and an identi-
15 fication of any official who is re-
16 sponsible for such action;

17 “(V) recommendations for such
18 administrative and legislative actions
19 as may be appropriate to resolve prob-
20 lems encountered by investors; and

21 “(VI) any other information, as
22 determined appropriate by the Inves-
23 tor Advocate.

24 “(iii) INDEPENDENCE.—Each report
25 required under this paragraph shall be pro-

1 vided directly to the Committees listed in
2 clause (i) without any prior review or com-
3 ment from the Commission, any commis-
4 sioner, any other officer or employee of the
5 Commission, or the Office of Management
6 and Budget.

7 “(iv) CONFIDENTIALITY.—No report
8 required under clause (i) may contain con-
9 fidential information.

10 “(7) REGULATIONS.—The Commission shall, by
11 regulation, establish procedures requiring a formal
12 response to all recommendations submitted to the
13 Commission by the Investor Advocate, not later than
14 3 months after the date of such submission.”.

15 **SEC. 916. STREAMLINING OF FILING PROCEDURES FOR**
16 **SELF-REGULATORY ORGANIZATIONS.**

17 (a) FILING PROCEDURES.—Section 19(b) of the Se-
18 curities Exchange Act of 1934 (15 U.S.C. 78s(b)) is
19 amended by striking paragraph (2) (including the undesig-
20 nated matter immediately following subparagraph (B))
21 and inserting the following:

22 “(2) APPROVAL PROCESS.—

23 “(A) APPROVAL PROCESS ESTABLISHED.—

24 “(i) IN GENERAL.—Except as pro-
25 vided in clause (ii), not later than 45 days

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1 after the date of publication of a proposed
2 rule change under paragraph (1), the Com-
3 mission shall—

4 “(I) by order, approve or dis-
5 approve the proposed rule change; or

6 “(II) institute proceedings under
7 subparagraph (B) to determine wheth-
8 er the proposed rule change should be
9 disapproved.

10 “(ii) EXTENSION OF TIME PERIOD.—
11 The Commission may extend the period es-
12 tablished under clause (i) by not more than
13 an additional 45 days, if—

14 “(I) the Commission determines
15 that a longer period is appropriate
16 and publishes the reasons for such de-
17 termination; or

18 “(II) the self-regulatory organiza-
19 tion that filed the proposed rule
20 change consents to the longer period.

21 “(B) PROCEEDINGS.—

22 “(i) NOTICE AND HEARING.—If the
23 Commission does not approve or dis-
24 approve a proposed rule change under sub-
25 paragraph (A), the Commission shall pro-

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1 appropriate and publishes the rea-
2 sons for such determination; or

3 “(bb) the self-regulatory or-
4 ganization that filed the proposed
5 rule change consents to the
6 longer period.

7 “(C) STANDARDS FOR APPROVAL AND DIS-
8 APPROVAL.—

9 “(i) APPROVAL.—The Commission
10 shall approve a proposed rule change of a
11 self-regulatory organization if it finds that
12 such proposed rule change is consistent
13 with the requirements of this title and the
14 rules and regulations issued under this
15 title that are applicable to such organiza-
16 tion.

17 “(ii) DISAPPROVAL.—The Commission
18 shall disapprove a proposed rule change of
19 a self-regulatory organization if it does not
20 make a finding described in clause (i).

21 “(iii) TIME FOR APPROVAL.—The
22 Commission may not approve a proposed
23 rule change earlier than 30 days after the
24 date of publication under paragraph (1),
25 unless the Commission finds good cause

1 for so doing and publishes the reason for
2 the finding.

3 “(D) RESULT OF FAILURE TO INSTITUTE
4 OR CONCLUDE PROCEEDINGS.—A proposed rule
5 change shall be deemed to have been approved
6 by the Commission, if—

7 “(i) the Commission does not approve
8 the proposed rule change or begin pro-
9 ceedings under subparagraph (B) within
10 the period described in subparagraph (A);
11 or

12 “(ii) the Commission does not issue
13 an order approving or disapproving the
14 proposed rule change under subparagraph
15 (B) within the period described in subpara-
16 graph (B)(ii).

17 “(E) PUBLICATION DATE BASED ON FED-
18 ERAL REGISTER PUBLISHING.—For purposes of
19 this paragraph, if, after filing a proposed rule
20 change with the Commission pursuant to para-
21 graph (1), a self-regulatory organization pub-
22 lishes a notice of the filing of such proposed
23 rule change, together with the substantive
24 terms of such proposed rule change, on a pub-
25 licly accessible website, the Commission shall

1 thereafter send the notice to the Federal Reg-
2 ister for publication thereof under paragraph
3 (1) within 15 days of the date on which such
4 website publication is made. If the Commission
5 fails to send the notice for publication thereof
6 within such 15 day period, then the date of
7 publication shall be deemed to be the date on
8 which such website publication was made.

9 “(F) RULEMAKING.—

10 “(i) IN GENERAL.—Not later than
11 180 days after the date of enactment of
12 the Investor Protection and Securities Re-
13 form Act of 2010, after consultation with
14 other regulatory agencies, the Commission
15 shall promulgate rules setting forth the
16 procedural requirements of the proceedings
17 required under this paragraph.

18 “(ii) NOTICE AND COMMENT NOT RE-
19 QUIRED.—The rules promulgated by the
20 Commission under clause (i) are not re-
21 quired to include republication of proposed
22 rule changes or solicitation of public com-
23 ment.”.

24 (b) CLARIFICATION OF FILING DATE.—

1 (1) RULE OF CONSTRUCTION.—Section 19(b) of
2 the Securities Exchange Act of 1934 (15 U.S.C.
3 78s(b)) is amended by adding at the end the fol-
4 lowing:

5 “(10) RULE OF CONSTRUCTION RELATING TO
6 FILING DATE OF PROPOSED RULE CHANGES.—

7 “(A) IN GENERAL.—For purposes of this
8 subsection, the date of filing of a proposed rule
9 change shall be deemed to be the date on which
10 the Commission receives the proposed rule
11 change.

12 “(B) EXCEPTION.—A proposed rule
13 change has not been received by the Commis-
14 sion for purposes of subparagraph (A) if, not
15 later than 7 business days after the date of re-
16 ceipt by the Commission, the Commission noti-
17 fies the self-regulatory organization that such
18 proposed rule change does not comply with the
19 rules of the Commission relating to the required
20 form of a proposed rule change, except that if
21 the Commission determines that the proposed
22 rule change is unusually lengthy and is complex
23 or raises novel regulatory issues, the Commis-
24 sion shall inform the self-regulatory organiza-
25 tion of such determination not later than 7

1 business days after the date of receipt by the
2 Commission and, for the purposes of subpara-
3 graph (A), a proposed rule change has not been
4 received by the Commission, if, not later than
5 21 days after the date of receipt by the Com-
6 mission, the Commission notifies the self-regu-
7 latory organization that such proposed rule
8 change does not comply with the rules of the
9 Commission relating to the required form of a
10 proposed rule change.”.

11 (2) PUBLICATION.—Section 19(b)(1) of the Se-
12 curities Exchange Act of 1934 (15 U.S.C. 78s(b)(1))
13 is amended by striking “upon” and inserting “as
14 soon as practicable after the date of”.

15 (c) EFFECTIVE DATE OF PROPOSED RULES.—Sec-
16 tion 19(b)(3) of the Securities Exchange Act of 1934 (15
17 U.S.C. 78s(b)(3)) is amended—

18 (1) in subparagraph (A)—

19 (A) by striking “may take effect” and in-
20 serting “shall take effect”; and

21 (B) by inserting “on any person, whether
22 or not the person is a member of the self-regu-
23 latory organization” after “charge imposed by
24 the self-regulatory organization”; and

25 (2) in subparagraph (C)—

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1 (A) by amending the second sentence to
2 read as follows: “At any time within the 60-day
3 period beginning on the date of filing of such
4 a proposed rule change in accordance with the
5 provisions of paragraph (1), the Commission
6 summarily may temporarily suspend the change
7 in the rules of the self-regulatory organization
8 made thereby, if it appears to the Commission
9 that such action is necessary or appropriate in
10 the public interest, for the protection of inves-
11 tors, or otherwise in furtherance of the pur-
12 poses of this title.”;

13 (B) by inserting after the second sentence
14 the following: “If the Commission takes such
15 action, the Commission shall institute pro-
16 ceedings under paragraph (2)(B) to determine
17 whether the proposed rule should be approved
18 or disapproved.”; and

19 (C) in the third sentence, by striking “the
20 preceding sentence” and inserting “this sub-
21 paragraph”.

22 (d) CONFORMING CHANGE.—Section 19(b)(4)(D) of
23 the Securities Exchange Act of 1934 (15 U.S.C.
24 78s(b)(4)(D)) is amended to read as follows:

1 “(D)(i) The Commission shall order the
2 temporary suspension of any change in the
3 rules of a clearing agency made by a proposed
4 rule change that has taken effect under para-
5 graph (3), if the appropriate regulatory agency
6 for the clearing agency notifies the Commission
7 not later than 30 days after the date on which
8 the proposed rule change was filed of—

9 “(I) the determination by the appro-
10 priate regulatory agency that the rules of
11 such clearing agency, as so changed, may
12 be inconsistent with the safeguarding of
13 securities or funds in the custody or con-
14 trol of such clearing agency or for which it
15 is responsible; and

16 “(II) the reasons for the determina-
17 tion described in subclause (I).

18 “(ii) If the Commission takes action under
19 clause (i), the Commission shall institute pro-
20 ceedings under paragraph (2)(B) to determine
21 if the proposed rule change should be approved
22 or disapproved.”.

1 **SEC. 917. STUDY REGARDING FINANCIAL LITERACY AMONG**
2 **INVESTORS.**

3 (a) IN GENERAL.—The Commission shall conduct a
4 study to identify—

5 (1) the existing level of financial literacy among
6 retail investors, including subgroups of investors
7 identified by the Commission;

8 (2) methods to improve the timing, content, and
9 format of disclosures to investors with respect to fi-
10 nancial intermediaries, investment products, and in-
11 vestment services;

12 (3) the most useful and understandable relevant
13 information that retail investors need to make in-
14 formed financial decisions before engaging a finan-
15 cial intermediary or purchasing an investment prod-
16 uct or service that is typically sold to retail inves-
17 tors, including shares of open-end companies, as
18 that term is defined in section 5 of the Investment
19 Company Act of 1940 (15 U.S.C. 80a–5) that are
20 registered under section 8 of that Act;

21 (4) methods to increase the transparency of ex-
22 penses and conflicts of interests in transactions in-
23 volving investment services and products, including
24 shares of open-end companies described in para-
25 graph (3);

1 (5) the most effective existing private and pub-
2 lic efforts to educate investors; and

3 (6) in consultation with the Financial Literacy
4 and Education Commission, a strategy (including, to
5 the extent practicable, measurable goals and objec-
6 tives) to increase the financial literacy of investors
7 in order to bring about a positive change in investor
8 behavior.

9 (b) REPORT.—Not later than 2 years after the date
10 of enactment of this Act, the Commission shall submit a
11 report on the study required under subsection (a) to—

12 (1) the Committee on Banking, Housing, and
13 Urban Affairs of the Senate; and

14 (2) the Committee on Financial Services of the
15 House of Representatives.

16 **SEC. 918. STUDY REGARDING MUTUAL FUND ADVERTISING.**

17 (a) IN GENERAL.—The Comptroller General of the
18 United States shall conduct a study on mutual fund adver-
19 tising to identify—

20 (1) existing and proposed regulatory require-
21 ments for open-end investment company advertise-
22 ments;

23 (2) current marketing practices for the sale of
24 open-end investment company shares, including the

1 use of past performance data, funds that have
2 merged, and incubator funds;

3 (3) the impact of such advertising on con-
4 sumers; and

5 (4) recommendations to improve investor pro-
6 tections in mutual fund advertising and additional
7 information necessary to ensure that investors can
8 make informed financial decisions when purchasing
9 shares.

10 (b) REPORT.—Not later than 18 months after the
11 date of enactment of this Act, the Comptroller General
12 of the United States shall submit a report on the results
13 of the study conducted under subsection (a) to—

14 (1) the Committee on Banking, Housing, and
15 Urban Affairs of the United States Senate; and

16 (2) the Committee on Financial Services of the
17 House of Representatives.

18 **SEC. 919. CLARIFICATION OF COMMISSION AUTHORITY TO**
19 **REQUIRE INVESTOR DISCLOSURES BEFORE**
20 **PURCHASE OF INVESTMENT PRODUCTS AND**
21 **SERVICES.**

22 Section 15 of the Securities Exchange Act of 1934
23 (15 U.S.C. 78o) is amended by adding at the end the fol-
24 lowing:

25 “(n) DISCLOSURES TO RETAIL INVESTORS.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of the securities laws, the Commission may
3 issue rules designating documents or information
4 that shall be provided by a broker or dealer to a re-
5 tail investor before the purchase of an investment
6 product or service by the retail investor.

7 “(2) CONSIDERATIONS.—In developing any
8 rules under paragraph (1), the Commission shall
9 consider whether the rules will promote investor pro-
10 tection, efficiency, competition, and capital forma-
11 tion.

12 “(3) FORM AND CONTENTS OF DOCUMENTS
13 AND INFORMATION.—Any documents or information
14 designated under a rule promulgated under para-
15 graph (1) shall—

16 “(A) be in a summary format; and

17 “(B) contain clear and concise information
18 about—

19 “(i) investment objectives, strategies,
20 costs, and risks; and

21 “(ii) any compensation or other finan-
22 cial incentive received by a broker, dealer,
23 or other intermediary in connection with
24 the purchase of retail investment prod-
25 ucts.”.

1 **SEC. 919A. STUDY ON CONFLICTS OF INTEREST.**

2 (a) IN GENERAL.—The Comptroller General of the
3 United States shall conduct a study—

4 (1) to identify and examine potential conflicts
5 of interest that exist between the staffs of the invest-
6 ment banking and equity and fixed income securities
7 analyst functions within the same firm; and

8 (2) to make recommendations to Congress de-
9 signed to protect investors in light of such conflicts.

10 (b) CONSIDERATIONS.—In conducting the study
11 under subsection (a), the Comptroller General shall—

12 (1) consider—

13 (A) the potential for investor harm result-
14 ing from conflicts, including consideration of
15 the forms of misconduct engaged in by the sev-
16 eral securities firms and individuals that en-
17 tered into the Global Analyst Research Settle-
18 ments in 2003 (also known as the “Global Set-
19 tlement”);

20 (B) the nature and benefits of the under-
21 takings to which those firms agreed in enforce-
22 ment proceedings, including firewalls between
23 research and investment banking, separate re-
24 porting lines, dedicated legal and compliance
25 staffs, allocation of budget, physical separation,
26 compensation, employee performance evalua-

1 tions, coverage decisions, limitations on solie-
2 iting investment banking business, disclosures,
3 transparency, and other measures;

4 (C) whether any such undertakings should
5 be codified and applied permanently to securi-
6 ties firms, or whether the Commission should
7 adopt rules applying any such undertakings to
8 securities firms; and

9 (D) whether to recommend regulatory or
10 legislative measures designed to mitigate pos-
11 sible adverse consequences to investors arising
12 from the conflicts of interest or to enhance in-
13 vestor protection or confidence in the integrity
14 of the securities markets; and

15 (2) consult with State attorneys general, State
16 securities officials, the Commission, the Financial
17 Industry Regulatory Authority (“FINRA”), NYSE
18 Regulation, investor advocates, brokers, dealers, re-
19 tail investors, institutional investors, and academics.

20 (c) REPORT.—The Comptroller General shall submit
21 a report on the results of the study required by this section
22 to the Committee on Banking, Housing, and Urban Af-
23 fairs of the Senate and the Committee on Financial Serv-
24 ices of the House of Representatives, not later than 18
25 months after the date of enactment of this Act.

1 **SEC. 919B. STUDY ON IMPROVED INVESTOR ACCESS TO IN-**
2 **FORMATION ON INVESTMENT ADVISERS AND**
3 **BROKER-DEALERS.**

4 (a) STUDY.—

5 (1) IN GENERAL.—Not later than 6 months
6 after the date of enactment of this Act, the Commis-
7 sion shall complete a study, including recommenda-
8 tions, of ways to improve the access of investors to
9 registration information (including disciplinary ac-
10 tions, regulatory, judicial, and arbitration pro-
11 ceedings, and other information) about registered
12 and previously registered investment advisers, asso-
13 ciated persons of investment advisers, brokers and
14 dealers and their associated persons on the existing
15 Central Registration Depository and Investment Ad-
16 viser Registration Depository systems, as well as
17 identify additional information that should be made
18 publicly available.

19 (2) CONTENTS.—The study required by sub-
20 section (a) shall include an analysis of the advan-
21 tages and disadvantages of further centralizing ac-
22 cess to the information contained in the 2 systems,
23 including—

24 (A) identification of those data pertinent
25 to investors; and

1 (B) the identification of the method and
2 format for displaying and publishing such data
3 to enhance accessibility by and utility to inves-
4 tors.

5 (b) IMPLEMENTATION.—Not later than 18 months
6 after the date of completion of the study required by sub-
7 section (a), the Commission shall implement any rec-
8 ommendations of the study.

9 **SEC. 919C. STUDY ON FINANCIAL PLANNERS AND THE USE**
10 **OF FINANCIAL DESIGNATIONS.**

11 (a) IN GENERAL.—The Comptroller General of the
12 United States shall conduct a study to evaluate—

13 (1) the effectiveness of State and Federal regu-
14 lations to protect investors and other consumers
15 from individuals who hold themselves out as finan-
16 cial planners through the use of misleading titles,
17 designations, or marketing materials;

18 (2) current State and Federal oversight struc-
19 ture and regulations for financial planners; and

20 (3) legal or regulatory gaps in the regulation of
21 financial planners and other individuals who provide
22 or offer to provide financial planning services to con-
23 sumers.

1 (b) CONSIDERATIONS.—In conducting the study re-
2 quired under subsection (a), the Comptroller General shall
3 consider—

4 (1) the role of financial planners in providing
5 advice regarding the management of financial re-
6 sources, including investment planning, income tax
7 planning, education planning, retirement planning,
8 estate planning, and risk management;

9 (2) whether current regulations at the State
10 and Federal level provide adequate ethical and pro-
11 fessional standards for financial planners;

12 (3) the possible risk posed to investors and
13 other consumers by individuals who hold themselves
14 out as financial planners or as otherwise providing
15 financial planning services in connection with the
16 sale of financial products, including insurance and
17 securities;

18 (4) the possible risk posed to investors and
19 other consumers by individuals who otherwise use ti-
20 tles, designations, or marketing materials in a mis-
21 leading way in connection with the delivery of finan-
22 cial advice;

23 (6) the ability of investors and other consumers
24 to understand licensing requirements and standards
25 of care that apply to individuals who hold themselves

1 out as financial planners or as otherwise providing
2 financial planning services;

3 (7) the possible benefits to investors and other
4 consumers of regulation and professional oversight
5 of financial planners; and

6 (8) any other consideration that the Comp-
7 troller General deems necessary or appropriate to ef-
8 fectively execute the study required under subsection
9 (a).

10 (c) RECOMMENDATIONS.—In providing recommenda-
11 tions for the appropriate regulation of financial planners
12 and other individuals who provide or offer to provide fi-
13 nancial planning services, in order to protect investors and
14 other consumers of financial planning services, the Comp-
15 troller General shall consider—

16 (1) the appropriate structure for regulation of
17 financial planners and individuals providing financial
18 planning services; and

19 (2) the appropriate scope of the regulations
20 needed to protect investors and other consumers, in-
21 cluding but not limited to the need to establish com-
22 petency standards, practice standards, ethical guide-
23 lines, disciplinary authority, and transparency to in-
24 vestors and other consumers.

25 (d) REPORT.—

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1 (1) IN GENERAL.—Not later than 180 days
2 after the date of enactment of this Act, the Comp-
3 troller General shall submit a report on the study re-
4 quired under subsection (a) to—

5 (A) the Committee on Banking, Housing,
6 and Urban Affairs of the Senate;

7 (B) the Special Committee on Aging of the
8 Senate; and

9 (C) the Committee on Financial Services of
10 the House of Representatives.

11 (2) CONTENT REQUIREMENTS.—The report re-
12 quired under paragraph (1) shall describe the find-
13 ings and determinations made by the Comptroller
14 General in carrying out the study required under
15 subsection (a), including a description of the consid-
16 erations, analysis, and government, public, industry,
17 nonprofit and consumer input that the Comptroller
18 General considered to make such findings, conclu-
19 sions, and legislative, regulatory, or other rec-
20 ommendations.

21 **SEC. 919D. OMBUDSMAN.**

22 Section 4(g) of the Securities Exchange Act of 1934,
23 as added by section 914, is amended by adding at the end
24 the following:

25 “(8) OMBUDSMAN.—

1 “(A) APPOINTMENT.—Not later than 180
2 days after the date on which the first Investor
3 Advocate is appointed under paragraph
4 (2)(A)(i), the Investor Advocate shall appoint
5 an Ombudsman, who shall report directly to the
6 Investor Advocate.

7 “(B) DUTIES.—The Ombudsman ap-
8 pointed under subparagraph (A) shall—

9 “(i) act as a liaison between the Com-
10 mission and any retail investor in resolving
11 problems that retail investors may have
12 with the Commission or with self-regu-
13 latory organizations;

14 “(ii) review and make recommenda-
15 tions regarding policies and procedures to
16 encourage persons to present questions to
17 the Investor Advocate regarding compli-
18 ance with the securities laws; and

19 “(iii) establish safeguards to maintain
20 the confidentiality of communications be-
21 tween the persons described in clause (ii)
22 and the Ombudsman.

23 “(C) LIMITATION.—In carrying out the
24 duties of the Ombudsman under subparagraph
25 (B), the Ombudsman shall utilize personnel of

1 the Commission to the extent practicable. Noth-
2 ing in this paragraph shall be construed as re-
3 placing, altering, or diminishing the activities of
4 any ombudsman or similar office of any other
5 agency.

6 “(D) REPORT.—The Ombudsman shall
7 submit a semiannual report to the Investor Ad-
8 vocate that describes the activities and evalu-
9 ates the effectiveness of the Ombudsman during
10 the preceding year. The Investor Advocate shall
11 include the reports required under this section
12 in the reports required to be submitted by the
13 Inspector Advocate under paragraph (6).”.

14 **Subtitle B—Increasing Regulatory** 15 **Enforcement and Remedies**

16 **SEC. 921. AUTHORITY TO RESTRICT MANDATORY PRE-DIS-** 17 **PUTE ARBITRATION.**

18 (a) AMENDMENT TO SECURITIES EXCHANGE ACT OF
19 1934.—Section 15 of the Securities Exchange Act of 1934
20 (15 U.S.C. 78o), as amended by this title, is further
21 amended by adding at the end the following new sub-
22 section:

23 “(o) AUTHORITY TO RESTRICT MANDATORY PRE-
24 DISPUTE ARBITRATION.—The Commission, by rule, may
25 prohibit, or impose conditions or limitations on the use

1 of, agreements that require customers or clients of any
2 broker, dealer, or municipal securities dealer to arbitrate
3 any future dispute between them arising under the Fed-
4 eral securities laws, the rules and regulations thereunder,
5 or the rules of a self-regulatory organization if it finds
6 that such prohibition, imposition of conditions, or limita-
7 tions are in the public interest and for the protection of
8 investors.”.

9 (b) AMENDMENT TO INVESTMENT ADVISERS ACT OF
10 1940.—Section 205 of the Investment Advisers Act of
11 1940 (15 U.S.C. 80b–5) is amended by adding at the end
12 the following new subsection:

13 “(f) AUTHORITY TO RESTRICT MANDATORY PRE-
14 DISPUTE ARBITRATION.—The Commission, by rule, may
15 prohibit, or impose conditions or limitations on the use
16 of, agreements that require customers or clients of any
17 investment adviser to arbitrate any future dispute between
18 them arising under the Federal securities laws, the rules
19 and regulations thereunder, or the rules of a self-regu-
20 latory organization if it finds that such prohibition, im-
21 position of conditions, or limitations are in the public inter-
22 est and for the protection of investors.”.

1 **SEC. 922. WHISTLEBLOWER PROTECTION.**

2 (a) IN GENERAL.—The Securities Exchange Act of
3 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
4 section 21E the following:

5 **“SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND**
6 **PROTECTION.**

7 “(a) DEFINITIONS.—In this section the following
8 definitions shall apply:

9 “(1) COVERED JUDICIAL OR ADMINISTRATIVE
10 ACTION.—The term ‘covered judicial or administra-
11 tive action’ means any judicial or administrative ac-
12 tion brought by the Commission under the securities
13 laws that results in monetary sanctions exceeding
14 \$1,000,000.

15 “(2) FUND.—The term ‘Fund’ means the Secu-
16 rities and Exchange Commission Investor Protection
17 Fund.

18 “(3) ORIGINAL INFORMATION.—The term
19 ‘original information’ means information that—

20 “(A) is derived from the independent
21 knowledge or analysis of a whistleblower;

22 “(B) is not known to the Commission from
23 any other source, unless the whistleblower is the
24 original source of the information; and

25 “(C) is not exclusively derived from an al-
26 legation made in a judicial or administrative

1 hearing, in a governmental report, hearing,
2 audit, or investigation, or from the news media,
3 unless the whistleblower is a source of the infor-
4 mation.

5 “(4) MONETARY SANCTIONS.—The term ‘mone-
6 tary sanctions’, when used with respect to any judi-
7 cial or administrative action, means—

8 “(A) any monies, including penalties,
9 disgorgement, and interest, ordered to be paid;
10 and

11 “(B) any monies deposited into a
12 disgorgement fund or other fund pursuant to
13 section 308(b) of the Sarbanes-Oxley Act of
14 2002 (15 U.S.C. 7246(b)), as a result of such
15 action or any settlement of such action.

16 “(5) RELATED ACTION.—The term ‘related ac-
17 tion’, when used with respect to any judicial or ad-
18 ministrative action brought by the Commission
19 under the securities laws, means any judicial or ad-
20 ministrative action brought by an entity described in
21 subclauses (I) through (IV) of subsection
22 (h)(2)(D)(i) that is based upon the original informa-
23 tion provided by a whistleblower pursuant to sub-
24 section (a) that led to the successful enforcement of
25 the Commission action.

1 “(6) WHISTLEBLOWER.—The term ‘whistle-
2 blower’ means any individual who provides, or 2 or
3 more individuals acting jointly who provide, informa-
4 tion relating to a violation of the securities laws to
5 the Commission, in a manner established, by rule or
6 regulation, by the Commission.

7 “(b) AWARDS.—

8 “(1) IN GENERAL.—In any covered judicial or
9 administrative action, or related action, the Commis-
10 sion, under regulations prescribed by the Commis-
11 sion and subject to subsection (c), shall pay an
12 award or awards to 1 or more whistleblowers who
13 voluntarily provided original information to the
14 Commission that led to the successful enforcement
15 of the covered judicial or administrative action, or
16 related action, in an aggregate amount equal to—

17 “(A) not less than 10 percent, in total, of
18 what has been collected of the monetary sanc-
19 tions imposed in the action or related actions;
20 and

21 “(B) not more than 30 percent, in total, of
22 what has been collected of the monetary sanc-
23 tions imposed in the action or related actions.

24 “(2) PAYMENT OF AWARDS.—Any amount paid
25 under paragraph (1) shall be paid from the Fund.

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1 “(c) DETERMINATION OF AMOUNT OF AWARD; DE-
2 NIAL OF AWARD.—

3 “(1) DETERMINATION OF AMOUNT OF
4 AWARD.—

5 “(A) DISCRETION.—The determination of
6 the amount of an award made under subsection
7 (b) shall be in the discretion of the Commission.

8 “(B) CRITERIA.—In determining the
9 amount of an award made under subsection (b),
10 the Commission—

11 “(i) shall take into consideration—

12 “(I) the significance of the infor-
13 mation provided by the whistleblower
14 to the success of the covered judicial
15 or administrative action;

16 “(II) the degree of assistance
17 provided by the whistleblower and any
18 legal representative of the whistle-
19 blower in a covered judicial or admin-
20 istrative action;

21 “(III) the programmatic interest
22 of the Commission in deterring viola-
23 tions of the securities laws by making
24 awards to whistleblowers who provide

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1 information that lead to the successful
2 enforcement of such laws; and

3 “(IV) such additional relevant
4 factors as the Commission may estab-
5 lish by rule or regulation; and

6 “(ii) shall not take into consideration
7 the balance of the Fund.

8 “(2) DENIAL OF AWARD.—No award under
9 subsection (b) shall be made—

10 “(A) to any whistleblower who is, or was at
11 the time the whistleblower acquired the original
12 information submitted to the Commission, a
13 member, officer, or employee of—

14 “(i) an appropriate regulatory agency;

15 “(ii) the Department of Justice;

16 “(iii) a self-regulatory organization;

17 “(iv) the Public Company Accounting
18 Oversight Board; or

19 “(v) a law enforcement organization;

20 “(B) to any whistleblower who is convicted
21 of a criminal violation related to the judicial or
22 administrative action for which the whistle-
23 blower otherwise could receive an award under
24 this section;

1 “(C) to any whistleblower who gains the
2 information through the performance of an
3 audit of financial statements required under the
4 securities laws and for whom such submission
5 would be contrary to the requirements of sec-
6 tion 10A of the Securities Exchange Act of
7 1934 (15 U.S.C. 78j-1); or

8 “(D) to any whistleblower who fails to sub-
9 mit information to the Commission in such
10 form as the Commission may, by rule, require.

11 “(d) REPRESENTATION.—

12 “(1) PERMITTED REPRESENTATION.—Any
13 whistleblower who makes a claim for an award under
14 subsection (b) may be represented by counsel.

15 “(2) REQUIRED REPRESENTATION.—

16 “(A) IN GENERAL.—Any whistleblower
17 who anonymously makes a claim for an award
18 under subsection (b) shall be represented by
19 counsel if the whistleblower anonymously sub-
20 mits the information upon which the claim is
21 based.

22 “(B) DISCLOSURE OF IDENTITY.—Prior to
23 the payment of an award, a whistleblower shall
24 disclose the identity of the whistleblower and
25 provide such other information as the Commis-

1 sion may require, directly or through counsel
2 for the whistleblower.

3 “(e) NO CONTRACT NECESSARY.—No contract with
4 the Commission is necessary for any whistleblower to re-
5 ceive an award under subsection (b), unless otherwise re-
6 quired by the Commission by rule or regulation.

7 “(f) APPEALS.—Any determination made under this
8 section, including whether, to whom, or in what amount
9 to make awards, shall be in the discretion of the Commis-
10 sion. Any such determination, except the determination of
11 the amount of an award if the award was made in accord-
12 ance with subsection (b), may be appealed to the appro-
13 priate court of appeals of the United States not more than
14 30 days after the determination is issued by the Commis-
15 sion. The court shall review the determination made by
16 the Commission in accordance with section 706 of title 5,
17 United States Code.

18 “(g) 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’.

23 “(2) USE OF FUND.—The Fund shall be avail-
24 able to the Commission, without further appropria-
25 tion or fiscal year limitation, for—

1 “(A) paying awards to whistleblowers as
2 provided in subsection (b); and

3 “(B) funding the activities of the Inspector
4 General of the Commission under section 4(i).

5 “(3) DEPOSITS AND CREDITS.—

6 “(A) IN GENERAL.—There shall be depos-
7 ited into or credited to the Fund an amount
8 equal to—

9 “(i) any monetary sanction collected
10 by the Commission in any judicial or ad-
11 ministrative action brought by the Com-
12 mission under the securities laws that is
13 not added to a disgorgement fund or other
14 fund under section 308 of the Sarbanes-
15 Oxley Act of 2002 (15 U.S.C. 7246) or
16 otherwise distributed to victims of a viola-
17 tion of the securities laws, or the rules and
18 regulations thereunder, underlying such ac-
19 tion, unless the balance of the Fund at the
20 time the monetary sanction is collected ex-
21 ceeds \$300,000,000;

22 “(ii) any monetary sanction added to
23 a disgorgement fund or other fund under
24 section 308 of the Sarbanes-Oxley Act of
25 2002 (15 U.S.C. 7246) that is not distrib-

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1 uted to the victims for whom the Fund was
2 established, unless the balance of the
3 disgorgement fund at the time the deter-
4 mination is made not to distribute the
5 monetary sanction to such victims exceeds
6 \$200,000,000; and

7 “(iii) all income from investments
8 made under paragraph (4).

9 “(B) ADDITIONAL AMOUNTS.—If the
10 amounts deposited into or credited to the Fund
11 under subparagraph (A) are not sufficient to
12 satisfy an award made under subsection (b),
13 there shall be deposited into or credited to the
14 Fund an amount equal to the unsatisfied por-
15 tion of the award from any monetary sanction
16 collected by the Commission in the covered judi-
17 cial or administrative action on which the
18 award is based.

19 “(4) INVESTMENTS.—

20 “(A) AMOUNTS IN FUND MAY BE IN-
21 VESTED.—The Commission may request the
22 Secretary of the Treasury to invest the portion
23 of the Fund that is not, in the discretion of the
24 Commission, required to meet the current needs
25 of the Fund.

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1 “(B) ELIGIBLE INVESTMENTS.—Invest-
2 ments shall be made by the Secretary of the
3 Treasury in obligations of the United States or
4 obligations that are guaranteed as to principal
5 and interest by the United States, with matu-
6 rities suitable to the needs of the Fund as de-
7 termined by the Commission on the record.

8 “(C) INTEREST AND PROCEEDS CRED-
9 ITED.—The interest on, and the proceeds from
10 the sale or redemption of, any obligations held
11 in the Fund shall be credited to the Fund.

12 “(5) REPORTS TO CONGRESS.—Not later than
13 October 30 of each fiscal year beginning after the
14 date of enactment of this subsection, the Commis-
15 sion shall submit to the Committee on Banking,
16 Housing, and Urban Affairs of the Senate, and the
17 Committee on Financial Services of the House of
18 Representatives a report on—

19 “(A) the whistleblower award program, es-
20 tablished under this section, including—

21 “(i) a description of the number of
22 awards granted; and

23 “(ii) the types of cases in which
24 awards were granted during the preceding
25 fiscal year;

1 “(B) the balance of the Fund at the begin-
2 ning of the preceding fiscal year;

3 “(C) the amounts deposited into or cred-
4 ited to the Fund during the preceding fiscal
5 year;

6 “(D) the amount of earnings on invest-
7 ments made under paragraph (4) during the
8 preceding fiscal year;

9 “(E) the amount paid from the Fund dur-
10 ing the preceding fiscal year to whistleblowers
11 pursuant to subsection (b);

12 “(F) the balance of the Fund at the end
13 of the preceding fiscal year; and

14 “(G) a complete set of audited financial
15 statements, including—

16 “(i) a balance sheet;

17 “(ii) income statement; and

18 “(iii) cash flow analysis.

19 “(h) PROTECTION OF WHISTLEBLOWERS.—

20 “(1) PROHIBITION AGAINST RETALIATION.—

21 “(A) IN GENERAL.—No employer may dis-
22 charge, demote, suspend, threaten, harass, di-
23 rectly or indirectly, or in any other manner dis-
24 criminate against, a whistleblower in the terms

1 and conditions of employment because of any
2 lawful act done by the whistleblower—

3 “(i) in providing information to the
4 Commission in accordance with this sec-
5 tion;

6 “(ii) in initiating, testifying in, or as-
7 sisting in any investigation or judicial or
8 administrative action of the Commission
9 based upon or related to such information;
10 or

11 “(iii) in making disclosures that are
12 required or protected under the Sarbanes-
13 Oxley Act of 2002 (15 U.S.C. 7201 et
14 seq.), the Securities Exchange Act of 1934
15 (15 U.S.C. 78a et seq.), including section
16 10A(m) of such Act (15 U.S.C. 78f(m)),
17 section 1513(e) of title 18, United States
18 Code, and any other law, rule, or regula-
19 tion subject to the jurisdiction of the Com-
20 mission.

21 “(B) ENFORCEMENT.—

22 “(i) CAUSE OF ACTION.—An indi-
23 vidual who alleges discharge or other dis-
24 crimination in violation of subparagraph
25 (A) may bring an action under this sub-

1 section in the appropriate district court of
2 the United States for the relief provided in
3 subparagraph (C).

4 “(ii) SUBPOENAS.—A subpoena re-
5 quiring the attendance of a witness at a
6 trial or hearing conducted under this sec-
7 tion may be served at any place in the
8 United States.

9 “(iii) STATUTE OF LIMITATIONS.—

10 “(I) IN GENERAL.—An action
11 under this subsection may not be
12 brought—

13 “(aa) more than 6 years
14 after the date on which the viola-
15 tion of subparagraph (A) oc-
16 curred; or

17 “(bb) more than 3 years
18 after the date when facts mate-
19 rial to the right of action are
20 known or reasonably should have
21 been known by the employee al-
22 leging a violation of subpara-
23 graph (A).

24 “(II) REQUIRED ACTION WITHIN
25 10 YEARS.—Notwithstanding sub-

1 clause (I), an action under this sub-
2 section may not in any circumstance
3 be brought more than 10 years after
4 the date on which the violation occurs.

5 “(C) RELIEF.—Relief for an individual
6 prevailing in an action brought under subpara-
7 graph (B) shall include—

8 “(i) reinstatement with the same se-
9 niority status that the individual would
10 have had, but for the discrimination;

11 “(ii) 2 times the amount of back pay
12 otherwise owed to the individual, with in-
13 terest; and

14 “(iii) compensation for litigation
15 costs, expert witness fees, and reasonable
16 attorneys’ fees.

17 “(2) CONFIDENTIALITY.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraphs (B) and (C), the Commission
20 and any officer or employee of the Commission
21 shall not disclose any information, including in-
22 formation provided by a whistleblower to the
23 Commission, which could reasonably be ex-
24 pected to reveal the identity of a whistleblower,
25 except in accordance with the provisions of sec-

1 tion 552a of title 5, United States Code, unless
2 and until required to be disclosed to a defend-
3 ant or respondent in connection with a public
4 proceeding instituted by the Commission or any
5 entity described in subparagraph (C). For pur-
6 poses of section 552 of title 5, United States
7 Code, this paragraph shall be considered a stat-
8 ute described in subsection (b)(3)(B) of such
9 section.

10 “(B) EXEMPTED STATUTE.—For purposes
11 of section 552 of title 5, United States Code,
12 this paragraph shall be considered a statute de-
13 scribed in subsection (b)(3)(B) of such section
14 552.

15 “(C) RULE OF CONSTRUCTION.—Nothing
16 in this section is intended to limit, or shall be
17 construed to limit, the ability of the Attorney
18 General to present such evidence to a grand
19 jury or to share such evidence with potential
20 witnesses or defendants in the course of an on-
21 going criminal investigation.

22 “(D) AVAILABILITY TO GOVERNMENT
23 AGENCIES.—

24 “(i) IN GENERAL.—Without the loss
25 of its status as confidential in the hands of

1 the Commission, all information referred to
2 in subparagraph (A) may, in the discretion
3 of the Commission, when determined by
4 the Commission to be necessary to accom-
5 plish the purposes of this Act and to pro-
6 tect investors, be made available to—

7 “(I) the Attorney General of the
8 United States;

9 “(II) an appropriate regulatory
10 authority;

11 “(III) a self-regulatory organiza-
12 tion;

13 “(IV) a State attorney general in
14 connection with any criminal inves-
15 tigation;

16 “(V) any appropriate State regu-
17 latory authority;

18 “(VI) the Public Company Ac-
19 counting Oversight Board;

20 “(VII) a foreign securities au-
21 thority; and

22 “(VIII) a foreign law enforce-
23 ment authority.

24 “(ii) CONFIDENTIALITY.—

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1 “(I) IN GENERAL.—Each of the
2 entities described in subclauses (I)
3 through (VI) of clause (i) shall main-
4 tain such information as confidential
5 in accordance with the requirements
6 established under subparagraph (A).

7 “(II) FOREIGN AUTHORITIES.—
8 Each of the entities described in sub-
9 clauses (VII) and (VIII) of clause (i)
10 shall maintain such information in ac-
11 cordance with such assurances of con-
12 fidentiality as the Commission deter-
13 mines appropriate.

14 “(3) RIGHTS RETAINED.—Nothing in this sec-
15 tion shall be deemed to diminish the rights, privi-
16 leges, or remedies of any whistleblower under any
17 Federal or State law, or under any collective bar-
18 gaining agreement.

19 “(i) PROVISION OF FALSE INFORMATION.—A whis-
20 tler shall not be entitled to an award under this sec-
21 tion if the whistleblower—

22 “(1) knowingly and willfully makes any false,
23 fictitious, or fraudulent statement or representation;
24 or

1 “(2) uses any false writing or document know-
2 ing the writing or document contains any false, ficti-
3 tious, or fraudulent statement or entry.

4 “(j) RULEMAKING AUTHORITY.—The Commission
5 shall have the authority to issue such rules and regulations
6 as may be necessary or appropriate to implement the pro-
7 visions of this section consistent with the purposes of this
8 section.”.

9 (b) PROTECTION FOR EMPLOYEES OF NATIONALLY
10 RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—
11 Section 1514A(a) of title 18, United States Code, is
12 amended—

13 (1) by inserting “or nationally recognized sta-
14 tistical rating organization (as defined in section
15 3(a) of the Securities Exchange Act of 1934 (15
16 U.S.C. 78c),” after “78o(d),”; and

17 (2) by inserting “or nationally recognized sta-
18 tistical rating organization” after “such company”.

19 (c) SECTION 1514A OF TITLE 18, UNITED STATES
20 CODE.—

21 (1) STATUTE OF LIMITATIONS; JURY TRIAL.—
22 Section 1514A(b)(2) of title 18, United States Code,
23 is amended—

24 (A) in subparagraph (D)—

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1 (i) by striking “90” and inserting
2 “180”; and

3 (ii) by striking the period at the end
4 and inserting “, or after the date on which
5 the employee became aware of the viola-
6 tion.”; and

7 (B) by adding at the end the following:

8 “(E) JURY TRIAL.—A party to an action
9 brought under paragraph (1)(B) shall be enti-
10 tled to trial by jury.”.

11 (2) PRIVATE SECURITIES LITIGATION WIT-
12 NESSES; NONENFORCEABILITY; INFORMATION.—Sec-
13 tion 1514A of title 18, United States Code, is
14 amended by adding at the end the following:

15 “(e) NONENFORCEABILITY OF CERTAIN PROVISIONS
16 WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBI-
17 TRATION OF DISPUTES.—

18 “(1) WAIVER OF RIGHTS AND REMEDIES.—The
19 rights and remedies provided for in this section may
20 not be waived by any agreement, policy form, or con-
21 dition of employment, including by a predispute ar-
22 bitration agreement.

23 “(2) PREDISPUTE ARBITRATION AGREE-
24 MENTS.—No predispute arbitration agreement shall

1 be valid or enforceable, if the agreement requires ar-
2 bitration of a dispute arising under this section.”.

3 (d) STUDY OF WHISTLEBLOWER PROTECTION PRO-
4 GRAM.—

5 (1) STUDY.—The Inspector General of the
6 Commission shall conduct a study of the whistle-
7 blower protections established under the amend-
8 ments made by this section, including—

9 (A) whether the final rules and regulation
10 issued under the amendments made by this sec-
11 tion have made the whistleblower protection
12 program (referred to in this subsection as the
13 “program”) clearly defined and user-friendly;

14 (B) whether the program is promoted on
15 the website of the Commission and has been
16 widely publicized;

17 (C) whether the Commission is prompt
18 in—

19 (i) responding to—

20 (I) information provided by whis-
21 tleblowers; and

22 (II) applications for awards filed
23 by whistleblowers;

24 (ii) updating whistleblowers about the
25 status of their applications; and

1 (iii) otherwise communicating with the
2 interested parties;

3 (D) whether the minimum and maximum
4 reward levels are adequate to entice whistle-
5 blowers to come forward with information and
6 whether the reward levels are so high as to en-
7 courage illegitimate whistleblower claims;

8 (E) whether the appeals process has been
9 unduly burdensome for the Commission;

10 (F) whether the funding mechanism for
11 the Investor Protection Fund is adequate;

12 (G) whether, in the interest of protecting
13 investors and identifying and preventing fraud,
14 it would be useful for Congress to consider em-
15 powering whistleblowers or other individuals,
16 who have already attempted to pursue the case
17 through the Commission, to have a private right
18 of action to bring suit based on the facts of the
19 same case, on behalf of the Government and
20 themselves, against persons who have com-
21 mittee securities fraud;

22 (H)(i) whether the exemption under sec-
23 tion 552(b)(3) of title 5 (known as the Freedom
24 of Information Act) established in section
25 21F(h)(2)(A) of the Securities Exchange Act of

1 1934, as added by this Act, aids whistleblowers
2 in disclosing information to the Commission;

3 (ii) what impact the exemption described
4 in clause (i) has had on the ability of the public
5 to access information about the regulation and
6 enforcement by the Commission of securities;
7 and

8 (iii) any recommendations on whether the
9 exemption described in clause (i) should remain
10 in effect; and

11 (I) such other matters as the Inspector
12 General deems appropriate.

13 (2) REPORT.—Not later than 30 months after
14 the date of enactment of this Act, the Inspector
15 General shall—

16 (A) submit a report on the findings of the
17 study required under paragraph (1) to the
18 Committee on Banking, Housing, and Urban
19 Affairs of the Senate and the Committee on Fi-
20 nancial Services of the House; and

21 (B) make the report described in subpara-
22 graph (A) available to the public through publi-
23 cation of the report on the website of the Com-
24 mission.

1 **SEC. 923. CONFORMING AMENDMENTS FOR WHISTLE-**
2 **BLOWER PROTECTION.**

3 (a) IN GENERAL.—

4 (1) SECURITIES ACT OF 1933.—Section
5 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C.
6 77t(d)(3)(A)) is amended by inserting “and section
7 21F of the Securities Exchange Act of 1934” after
8 “the Sarbanes-Oxley Act of 2002”.

9 (2) INVESTMENT COMPANY ACT OF 1940.—Sec-
10 tion 42(e)(3)(A) of the Investment Company Act of
11 1940 (15 U.S.C. 80a–41(e)(3)(A)) is amended by
12 inserting “and section 21F of the Securities Ex-
13 change Act of 1934” after “the Sarbanes-Oxley Act
14 of 2002”.

15 (3) INVESTMENT ADVISERS ACT OF 1940.—Sec-
16 tion 209(e)(3)(A) of the Investment Advisers Act of
17 1940 (15 U.S.C. 80b–9(e)(3)(A)) is amended by in-
18 sserting “and section 21F of the Securities Exchange
19 Act of 1934” after “the Sarbanes-Oxley Act of
20 2002”.

21 (b) SECURITIES EXCHANGE ACT.—

22 (1) SECTION 21.—Section 21(d)(3)(C)(i) of the
23 Securities Exchange Act of 1934 (15 U.S.C.
24 78u(d)(3)(C)(i)) is amended by inserting “and sec-
25 tion 21F of this title” after “the Sarbanes-Oxley Act
26 of 2002”.

1 (2) SECTION 21A.—Section 21A of the Securi-
2 ties Exchange Act of 1934 (15 U.S.C. 78u–1) is
3 amended—

4 (A) in subsection (d)(1) by—

5 (i) striking “(subject to subsection
6 (e))”; and

7 (ii) inserting “and section 21F of this
8 title” after “the Sarbanes-Oxley Act of
9 2002”;

10 (B) by striking subsection (e); and

11 (C) by redesignating subsections (f) and
12 (g) as subsections (e) and (f), respectively.

13 **SEC. 924. IMPLEMENTATION AND TRANSITION PROVISIONS**
14 **FOR WHISTLEBLOWER PROTECTION.**

15 (a) IMPLEMENTING RULES.—The Commission shall
16 issue final regulations implementing the provisions of sec-
17 tion 21F of the Securities Exchange Act of 1934, as added
18 by this subtitle, not later than 270 days after the date
19 of enactment of this Act.

20 (b) ORIGINAL INFORMATION.—Information provided
21 to the Commission in writing by a whistleblower shall not
22 lose the status of original information (as defined in sec-
23 tion 21F(a)(3) of the Securities Exchange Act of 1934,
24 as added by this subtitle) solely because the whistleblower
25 provided the information prior to the effective date of the

1 regulations, if the information is provided by the whistle-
2 blower after the date of enactment of this subtitle.

3 (c) AWARDS.—A whistleblower may receive an award
4 pursuant to section 21F of the Securities Exchange Act
5 of 1934, as added by this subtitle, regardless of whether
6 any violation of a provision of the securities laws, or a
7 rule or regulation thereunder, underlying the judicial or
8 administrative action upon which the award is based, oc-
9 curred prior to the date of enactment of this subtitle.

10 (d) ADMINISTRATION AND ENFORCEMENT.—The Se-
11 curities and Exchange Commission shall establish a sepa-
12 rate office within the Commission to administer and en-
13 force the provisions of section 21F of the Securities Ex-
14 change Act of 1934 (as add by section 922(a)). Such office
15 shall report annually to the Committee on Banking, Hous-
16 ing, and Urban Affairs of the Senate and the Committee
17 on Financial Services of the House of Representatives on
18 its activities, whistleblower complaints, and the response
19 of the Commission to such complaints.

20 **SEC. 925. COLLATERAL BARS.**

21 (a) SECURITIES EXCHANGE ACT OF 1934.—

22 (1) SECTION 15.—Section 15(b)(6)(A) of the
23 Securities Exchange Act of 1934 (15 U.S.C.
24 78o(b)(6)(A)) is amended by striking “12 months,
25 or bar such person from being associated with a

1 broker or dealer,” and inserting “12 months, or bar
2 any such person from being associated with a
3 broker, dealer, investment adviser, municipal securi-
4 ties dealer, municipal advisor, transfer agent, or na-
5 tionally recognized statistical rating organization,”.

6 (2) SECTION 15B.—Section 15B(c)(4) of the Se-
7 curities Exchange Act of 1934 (15 U.S.C. 78o-
8 4(c)(4)) is amended by striking “twelve months or
9 bar any such person from being associated with a
10 municipal securities dealer,” and inserting “12
11 months or bar any such person from being associ-
12 ated with a broker, dealer, investment adviser, mu-
13 nicipal securities dealer, municipal advisor, transfer
14 agent, or nationally recognized statistical rating or-
15 ganization,”.

16 (3) SECTION 17A.—Section 17A(c)(4)(C) of the
17 Securities Exchange Act of 1934 (15 U.S.C. 78q-
18 1(c)(4)(C)) is amended by striking “twelve months
19 or bar any such person from being associated with
20 the transfer agent,” and inserting “12 months or
21 bar any such person from being associated with any
22 transfer agent, broker, dealer, investment adviser,
23 municipal securities dealer, municipal advisor, or na-
24 tionally recognized statistical rating organization,”.

1 (b) INVESTMENT ADVISERS ACT OF 1940.—Section
2 203(f) of the Investment Advisers Act of 1940 (15 U.S.C.
3 80b–3(f)) is amended by striking “twelve months or bar
4 any such person from being associated with an investment
5 adviser,” and inserting “12 months or bar any such per-
6 son from being associated with an investment adviser,
7 broker, dealer, municipal securities dealer, municipal advi-
8 sor, transfer agent, or nationally recognized statistical rat-
9 ing organization,”.

10 **SEC. 926. DISQUALIFYING FELONS AND OTHER “BAD AC-**
11 **TORS” FROM REGULATION D OFFERINGS.**

12 Not later than 1 year after the date of enactment
13 of this Act, the Commission shall issue rules for the dis-
14 qualification of offerings and sales of securities made
15 under section 230.506 of title 17, Code of Federal Regula-
16 tions, that—

17 (1) are substantially similar to the provisions of
18 section 230.262 of title 17, Code of Federal Regula-
19 tions, or any successor thereto; and

20 (2) disqualify any offering or sale of securities
21 by a person that—

22 (A) is subject to a final order of a State
23 securities commission (or an agency or officer
24 of a State performing like functions), a State
25 authority that supervises or examines banks,

1 savings associations, or credit unions, a State
2 insurance commission (or an agency or officer
3 of a State performing like functions), an appro-
4 priate Federal banking agency, or the National
5 Credit Union Administration, that—

6 (i) bars the person from—

7 (I) association with an entity reg-
8 ulated by such commission, authority,
9 agency, or officer;

10 (II) engaging in the business of
11 securities, insurance, or banking; or

12 (III) engaging in savings associa-
13 tion or credit union activities; or

14 (ii) constitutes a final order based on
15 a violation of any law or regulation that
16 prohibits fraudulent, manipulative, or de-
17 ceptive conduct within the 10-year period
18 ending on the date of the filing of the offer
19 or sale; or

20 (B) has been convicted of any felony or
21 misdemeanor in connection with the purchase
22 or sale of any security or involving the making
23 of any false filing with the Commission.

1 **SEC. 927. EQUAL TREATMENT OF SELF-REGULATORY ORGA-**
2 **NIZATION 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. 928. 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, in the matter pre-
12 ceding paragraph (1)—

13 (1) by striking “, unless exempt from registra-
14 tion pursuant to section 203(b),” and inserting
15 “registered or required to be registered with the
16 Commission”;

17 (2) by striking “make use of the mails or any
18 means or instrumentality of interstate commerce, di-
19 rectly or indirectly, to”; and

20 (3) by striking “to” after “in any way”.

21 **SEC. 929. UNLAWFUL MARGIN LENDING.**

22 Section 7(c)(1)(A) of the Securities Exchange Act of
23 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking “;
24 and” and inserting “; or”.

1 **SEC. 929A. PROTECTION FOR EMPLOYEES OF SUBSIDI-**
2 **ARIES AND AFFILIATES OF PUBLICLY TRAD-**
3 **ED COMPANIES.**

4 Section 1514A of title 18, United States Code, is
5 amended by inserting “including any subsidiary or affil-
6 iate whose financial information is included in the consoli-
7 dated financial statements of such company” after “the
8 Securities Exchange Act of 1934 (15 U.S.C. 78o(d))”.

9 **SEC. 929B. FAIR FUND AMENDMENTS.**

10 Section 308 of the Sarbanes-Oxley Act of 2002 (15
11 U.S.C. 7246(a)) is amended—

12 (1) by striking subsection (a) and inserting the
13 following:

14 “(a) CIVIL PENALTIES TO BE USED FOR THE RE-
15 LIEF OF VICTIMS.—If, in any judicial or administrative
16 action brought by the Commission under the securities
17 laws, the Commission obtains a civil penalty against any
18 person for a violation of such laws, or such person agrees,
19 in settlement of any such action, to such civil penalty, the
20 amount of such civil penalty shall, on the motion or at
21 the direction of the Commission, be added to and become
22 part of a disgorgement fund or other fund established for
23 the benefit of the victims of such violation.”;

24 (2) in subsection (b)—

25 (A) by striking “for a disgorgement fund
26 described in subsection (a)” and inserting “for

1 a disgorgement fund or other fund described in
2 subsection (a)”; and

3 (B) by striking “in the disgorgement fund”
4 and inserting “in such fund”; and

5 (3) by striking subsection (e).

6 **SEC. 929C. INCREASING THE BORROWING LIMIT ON TREAS-**
7 **URY LOANS.**

8 Section 4(h) of the Securities Investor Protection Act
9 of 1970 (15 U.S.C. 78ddd(h)) is amended in the first sen-
10 tence, by striking “\$1,000,000,000” and inserting
11 “\$2,500,000,000”.

12 **SEC. 929D. LOST AND STOLEN SECURITIES.**

13 Section 17(f)(1) of the Securities Exchange Act of
14 1934 (15 U.S.C. 78q(f)(1)) is amended—

15 (1) in subparagraph (A), by striking “missing,
16 lost, counterfeit, or stolen securities” and inserting
17 “securities that are missing, lost, counterfeit, stolen,
18 or cancelled”; and

19 (2) in subparagraph (B), by striking “or sto-
20 len” and inserting “stolen, cancelled, or reported in
21 such other manner as the Commission, by rule, may
22 prescribe”.

23 **SEC. 929E. NATIONWIDE SERVICE OF SUBPOENAS.**

24 (a) SECURITIES ACT OF 1933.—Section 22(a) of the
25 Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by

1 inserting after the second sentence the following: “In any
2 action or proceeding instituted by the Commission under
3 this title in a United States district court for any judicial
4 district, a subpoena issued to compel the attendance of
5 a witness or the production of documents or tangible
6 things (or both) at a hearing or trial may be served at
7 any place within the United States. Rule 45(c)(3)(A)(ii)
8 of the Federal Rules of Civil Procedure shall not apply
9 to a subpoena issued under the preceding sentence.”.

10 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
11 27 of the Securities Exchange Act of 1934 (15 U.S.C.
12 78aa) is amended by inserting after the third sentence the
13 following: “In any action or proceeding instituted by the
14 Commission under this title in a United States district
15 court for any judicial district, a subpoena issued to compel
16 the attendance of a witness 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. Rule
19 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure
20 shall not apply to a subpoena issued under the preceding
21 sentence.”.

22 (c) INVESTMENT COMPANY ACT OF 1940.—Section
23 44 of the Investment Company Act of 1940 (15 U.S.C.
24 80a–43) is amended by inserting after the fourth sentence
25 the following: “In any action or proceeding instituted by

1 the Commission under this title in a United States district
2 court for any judicial district, a subpoena issued to compel
3 the attendance of a witness or the production of docu-
4 ments or tangible things (or both) at a hearing or trial
5 may be served at any place within the United States. Rule
6 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure
7 shall not apply to a subpoena issued under the preceding
8 sentence.”.

9 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
10 214 of the Investment Advisers Act of 1940 (15 U.S.C.
11 80b–14) is amended by inserting after the third sentence
12 the following: “In any action or proceeding instituted by
13 the Commission under this title in a United States district
14 court for any judicial district, a subpoena issued to compel
15 the attendance of a witness or the production of docu-
16 ments or tangible things (or both) at a hearing or trial
17 may be served at any place within the United States. Rule
18 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure
19 shall not apply to a subpoena issued under the preceding
20 sentence.”.

21 **SEC. 929F. FORMERLY ASSOCIATED PERSONS.**

22 (a) MEMBER OR EMPLOYEE OF THE MUNICIPAL SE-
23 CURITIES RULEMAKING BOARD.—Section 15B(c)(8) of
24 the Securities Exchange Act of 1934 (15 U.S.C. 78o–
25 4(c)(8)) is amended by striking “any member or em-

1 ployee” and inserting “any person who is, or at the time
2 of the alleged violation or abuse was, a member or em-
3 ployee”.

4 (b) PERSON ASSOCIATED WITH A GOVERNMENT SE-
5 CURITIES BROKER OR DEALER.—Section 15C(c) of the
6 Securities Exchange Act of 1934 (15 U.S.C. 78o–5(c)) is
7 amended—

8 (1) in paragraph (1)(C), by striking “any per-
9 son associated, or seeking to become associated,”
10 and inserting “any person who is, or at the time of
11 the alleged misconduct was, associated or seeking to
12 become associated”; and

13 (2) in paragraph (2)—

14 (A) in subparagraph (A), by inserting “,
15 seeking to become associated, or, at the time of
16 the alleged misconduct, associated or seeking to
17 become associated” after “any person associ-
18 ated”; and

19 (B) in subparagraph (B), by inserting “,
20 seeking to become associated, or, at the time of
21 the alleged misconduct, associated or seeking to
22 become associated” after “any person associ-
23 ated”.

24 (c) PERSON ASSOCIATED WITH A MEMBER OF A NA-
25 TIONAL SECURITIES EXCHANGE OR REGISTERED SECURI-

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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 in the first sentence, by inserting “, or, as to any act or
4 practice, or omission to act, while associated with a mem-
5 ber, formerly associated” after “member or a person asso-
6 ciated”.

7 (d) PARTICIPANT OF A REGISTERED CLEARING
8 AGENCY.—Section 21(a)(1) of the Securities Exchange
9 Act of 1934 (15 U.S.C. 78u(a)(1)) is amended, in the first
10 sentence, by inserting “or, as to any act or practice, or
11 omission to act, while a participant, was a participant,”
12 after “in which such person is a participant,”.

13 (e) OFFICER OR DIRECTOR OF A SELF-REGULATORY
14 ORGANIZATION.—Section 19(h)(4) of the Securities Ex-
15 change Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

16 (1) by striking “any officer or director” and in-
17 serting “any person who is, or at the time of the al-
18 leged misconduct was, an officer or director”; and

19 (2) by striking “such officer or director” and
20 inserting “such person”.

21 (f) OFFICER OR DIRECTOR OF AN INVESTMENT COM-
22 PANY.—Section 36(a) of the Investment Company Act of
23 1940 (15 U.S.C. 80a–35(a)) is amended—

1 (1) by striking “a person serving or acting” and
2 inserting “a person who is, or at the time of the al-
3 leged misconduct was, serving or acting”; and

4 (2) by striking “such person so serves or acts”
5 and inserting “such person so serves or acts, or at
6 the time of the alleged misconduct, so served or
7 acted”.

8 (g) PERSON ASSOCIATED WITH A PUBLIC ACCOUNT-
9 ING FIRM.—

10 (1) SARBANES-OXLEY ACT OF 2002 AMEND-
11 MENT.—Section 2(a)(9) of the Sarbanes-Oxley Act
12 of 2002 (15 U.S.C. 7201(9)) is amended by adding
13 at the end the following:

14 “(C) INVESTIGATIVE AND ENFORCEMENT
15 AUTHORITY.—For purposes of sections 3(e),
16 101(c), 105, and 107(c) and the rules of the
17 Board and Commission issued thereunder, ex-
18 cept to the extent specifically excepted by such
19 rules, the terms defined in subparagraph (A)
20 shall include any person associated, seeking to
21 become associated, or formerly associated with
22 a public accounting firm, except that—

23 “(i) the authority to conduct an inves-
24 tigation of such person under section
25 105(b) shall apply only with respect to any

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1 act or practice, or omission to act, by the
2 person while such person was associated or
3 seeking to become associated with a reg-
4 istered public accounting firm; and

5 “(ii) the authority to commence a dis-
6 ciplinary proceeding under section
7 105(c)(1), or impose sanctions under sec-
8 tion 105(c)(4), against such person shall
9 apply only with respect to—

10 “(I) conduct occurring while such
11 person was associated or seeking to
12 become associated with a registered
13 public accounting firm; or

14 “(II) non-cooperation, as de-
15 scribed in section 105(b)(3), with re-
16 spect to a demand in a Board inves-
17 tigation for testimony, documents, or
18 other information relating to a period
19 when such person was associated or
20 seeking to become associated with a
21 registered public accounting firm.”.

22 (2) SECURITIES EXCHANGE ACT OF 1934
23 AMENDMENT.—Section 21(a)(1) of the Securities
24 Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is
25 amended by striking “or a person associated with

1 such a firm” and inserting “, a person associated
2 with such a firm, or, as to any act, practice, or omis-
3 sion to act, while associated with such firm, a person
4 formerly associated with such a firm”.

5 (h) SUPERVISORY PERSONNEL OF AN AUDIT
6 FIRM.—Section 105(c)(6) of the Sarbanes-Oxley Act of
7 2002 (15 U.S.C. 7215(c)(6)) is amended—

8 (1) in subparagraph (A), by striking “the su-
9 pervisory personnel” and inserting “any person who
10 is, or at the time of the alleged failure reasonably to
11 supervise was, a supervisory person”; and

12 (2) in subparagraph (B)—

13 (A) by striking “No associated person”
14 and inserting “No current or former super-
15 visory person”; and

16 (B) by striking “any other person” and in-
17 serting “any associated person”.

18 (i) MEMBER OF THE PUBLIC COMPANY ACCOUNTING
19 OVERSIGHT BOARD.—Section 107(d)(3) of the Sarbanes-
20 Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by
21 striking “any member” and inserting “any person who is,
22 or at the time of the alleged misconduct was, a member”.

1 **SEC. 929G. STREAMLINED HIRING AUTHORITY FOR MAR-**
2 **KET SPECIALISTS.**

3 (a) APPOINTMENT AUTHORITY.—Section 3114 of
4 title 5, United States Code, is amended by striking the
5 section heading and all that follows through the end of
6 subsection (a) and inserting the following:

7 **“§ 3114. Appointment of candidates to certain posi-**
8 **tions in the competitive service by the**
9 **Securities and Exchange Commission**

10 “(a) APPLICABILITY.—This section applies with re-
11 spect to any position of accountant, economist, and securi-
12 ties compliance examiner at the Commission that is in the
13 competitive service, and any position at the Commission
14 in the competitive service that requires specialized knowl-
15 edge of financial and capital market formation or regula-
16 tion, financial market structures or surveillance, or infor-
17 mation technology.”.

18 (b) CLERICAL AMENDMENT.—The table of sections
19 for chapter 31 of title 5, United States Code, is amended
20 by striking the item relating to section 3114 and inserting
21 the following:

“3114. Appointment of candidates to positions in the competitive service by the
Securities and Exchange Commission.”.

22 (c) PAY AUTHORITY.—The Commission may set the
23 rate of pay for experts and consultants appointed under
24 the authority of section 3109 of title 5, United States

1 Code, in the same manner in which it sets the rate of pay
2 for employees of the Commission.

3 **SEC. 929H. SIPC REFORMS.**

4 (a) INCREASING THE CASH LIMIT OF PROTEC-
5 TION.—Section 9 of the Securities Investor Protection Act
6 of 1970 (15 U.S.C. 78fff-3) is amended—

7 (1) in subsection (a)(1), by striking “\$100,000
8 for each such customer” and inserting “the standard
9 maximum cash advance amount for each such cus-
10 tomer, as determined in accordance with subsection
11 (d)”; and

12 (2) by adding the following new subsections:

13 “(d) STANDARD MAXIMUM CASH ADVANCE AMOUNT
14 DEFINED.—For purposes of this section, the term ‘stand-
15 ard maximum cash advance amount’ means \$250,000, as
16 such amount may be adjusted after December 31, 2010,
17 as provided under subsection (e).

18 “(e) INFLATION ADJUSTMENT.—

19 “(1) IN GENERAL.—Not later than January 1,
20 2011, and every 5 years thereafter, and subject to
21 the approval of the Commission as provided under
22 section 3(e)(2), the Board of Directors of SIPC shall
23 determine whether an inflation adjustment to the
24 standard maximum cash advance amount is appro-
25 priate. If the Board of Directors of SIPC determines

1 such an adjustment is appropriate, then the stand-
2 ard maximum cash advance amount shall be an
3 amount equal to—

4 “(A) \$250,000 multiplied by—

5 “(B) the ratio of the annual value of the
6 Personal Consumption Expenditures Chain-
7 Type Price Index (or any successor index there-
8 to), published by the Department of Commerce,
9 for the calendar year preceding the year in
10 which such determination is made, to the pub-
11 lished annual value of such index for the cal-
12 endar year preceding the year in which this
13 subsection was enacted.

14 The index values used in calculations under this
15 paragraph shall be, as of the date of the calculation,
16 the values most recently published by the Depart-
17 ment of Commerce.

18 “(2) ROUNDING.—If the standard maximum
19 cash advance amount determined under paragraph
20 (1) for any period is not a multiple of \$10,000, the
21 amount so determined shall be rounded down to the
22 nearest \$10,000.

23 “(3) PUBLICATION AND REPORT TO THE CON-
24 GRESS.—Not later than April 5 of any calendar year

1 in which a determination is required to be made
2 under paragraph (1)—

3 “(A) the Commission shall publish in the
4 Federal Register the standard maximum cash
5 advance amount; and

6 “(B) the Board of Directors of SIPC shall
7 submit a report to the Congress stating the
8 standard maximum cash advance amount.

9 “(4) IMPLEMENTATION PERIOD.—Any adjust-
10 ment to the standard maximum cash advance
11 amount shall take effect on January 1 of the year
12 immediately succeeding the calendar year in which
13 such adjustment is made.

14 “(5) INFLATION ADJUSTMENT CONSIDER-
15 ATIONS.—In making any determination under para-
16 graph (1) to increase the standard maximum cash
17 advance amount, the Board of Directors of SIPC
18 shall consider—

19 “(A) the overall state of the fund and the
20 economic conditions affecting members of
21 SIPC;

22 “(B) the potential problems affecting mem-
23 bers of SIPC; and

1 “(C) such other factors as the Board of
2 Directors of SIPC may determine appro-
3 priate.”.

4 (b) LIQUIDATION OF A CARRYING BROKER-DEAL-
5 ER.—Section 5(a)(3) of the Securities Investor Protection
6 Act of 1970 (15 U.S.C. 78eee(a)(3)) is amended—

7 (1) by striking the undesignated matter imme-
8 diately following subparagraph (B);

9 (2) in subparagraph (A), by striking “any mem-
10 ber of SIPC” and inserting “the member”;

11 (3) in subparagraph (B), by striking the comma
12 at the end and inserting a period;

13 (4) by striking “If SIPC” and inserting the fol-
14 lowing:

15 “(A) IN GENERAL.—SIPC may, upon no-
16 tice to a member of SIPC, file an application
17 for a protective decree with any court of com-
18 petent jurisdiction specified in section 21(e) or
19 27 of the Securities Exchange Act of 1934, ex-
20 cept that no such application shall be filed with
21 respect to a member, the only customers of
22 which are persons whose claims could not be
23 satisfied by SIPC advances pursuant to section
24 9, if SIPC”; and

25 (5) by adding at the end the following:

1 “(B) CONSENT REQUIRED.—No member of
2 SIPC that has a customer may enter into an in-
3 solvency, receivership, or bankruptcy pro-
4 ceeding, under Federal or State law, without
5 the specific consent of SIPC, except as provided
6 in title II of the Investor Protection and Securi-
7 ties Reform Act of 2010.”.

8 **SEC. 929I. PROTECTING CONFIDENTIALITY OF MATERIALS**
9 **SUBMITTED TO THE COMMISSION.**

10 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
11 24 of the Securities Exchange Act of 1934 (15 U.S.C.
12 78x) is amended—

13 (1) in subsection (d), by striking “subsection
14 (e)” and inserting “subsection (f)”;

15 (2) by redesignating subsection (e) as sub-
16 section (f); and

17 (3) by inserting after subsection (d) the fol-
18 lowing:

19 “(e) RECORDS OBTAINED FROM REGISTERED PER-
20 SONS.—

21 “(1) IN GENERAL.—Except as provided in sub-
22 section (f), the Commission shall not be compelled to
23 disclose records or information obtained pursuant to
24 section 17(b), or records or information based upon
25 or derived from such records or information, if such

1 records or information have been obtained by the
2 Commission for use in furtherance of the purposes
3 of this title, including surveillance, risk assessments,
4 or other regulatory and oversight activities.

5 “(2) TREATMENT OF INFORMATION.—For pur-
6 poses of section 552 of title 5, United States Code,
7 this subsection shall be considered a statute de-
8 scribed in subsection (b)(3)(B) of such section 552.
9 Collection of information pursuant to section 17
10 shall be an administrative action involving an agency
11 against specific individuals or agencies pursuant to
12 section 3518(c)(1) of title 44, United States Code.”.

13 (b) INVESTMENT COMPANY ACT OF 1940.—Section
14 31 of the Investment Company Act of 1940 (15 U.S.C.
15 80a-30) is amended—

16 (1) by striking subsection (c) and inserting the
17 following:

18 “(c) LIMITATIONS ON DISCLOSURE BY COMMIS-
19 SION.—Notwithstanding any other provision of law, the
20 Commission shall not be compelled to disclose any records
21 or information provided to the Commission under this sec-
22 tion, or records or information based upon or derived from
23 such records or information, if such records or information
24 have been obtained by the Commission for use in further-
25 ance of the purposes of this title, including surveillance,

1 risk assessments, or other regulatory and oversight activi-
2 ties. Nothing in this subsection authorizes the Commission
3 to withhold information from the Congress or prevent the
4 Commission from complying with a request for informa-
5 tion from any other Federal department or agency re-
6 questing the information for purposes within the scope of
7 jurisdiction of that department or agency, or complying
8 with an order of a court of the United States in an action
9 brought by the United States or the Commission. For pur-
10 poses of section 552 of title 5, United States Code, this
11 section shall be considered a statute described in sub-
12 section (b)(3)(B) of such section 552. Collection of infor-
13 mation pursuant to section 31 shall be an administrative
14 action involving an agency against specific individuals or
15 agencies pursuant to section 3518(c)(1) of title 44, United
16 States Code.”;

17 (2) by striking subsection (d); and

18 (3) by redesignating subsections (e) and (f) as
19 subsections (d) and (e), respectively.

20 (c) INVESTMENT ADVISERS ACT OF 1940.—Section
21 210 of the Investment Advisers Act of 1940 (15 U.S.C.
22 80b-10) is amended by adding at the end the following:

23 “(d) LIMITATIONS ON DISCLOSURE BY THE COMMIS-
24 SION.—Notwithstanding any other provision of law, the
25 Commission shall not be compelled to disclose any records

1 or information provided to the Commission under section
2 204, or records or information based upon or derived from
3 such records or information, if such records or information
4 have been obtained by the Commission for use in further-
5 ance of the purposes of this title, including surveillance,
6 risk assessments, or other regulatory and oversight activi-
7 ties. Nothing in this subsection authorizes the Commission
8 to withhold information from the Congress or prevent the
9 Commission from complying with a request for informa-
10 tion from any other Federal department or agency re-
11 questing the information for purposes within the scope of
12 jurisdiction of that department or agency, or complying
13 with an order of a court of the United States in an action
14 brought by the United States or the Commission. For pur-
15 poses of section 552 of title 5, United States Code, this
16 subsection shall be considered a statute described in sub-
17 section (b)(3)(B) of such section 552. Collection of infor-
18 mation pursuant to section 204 shall be an administrative
19 action involving an agency against specific individuals or
20 agencies pursuant to section 3518(e)(1) of title 44, United
21 States Code.”.

22 **SEC. 929J. EXPANSION OF AUDIT INFORMATION TO BE PRO-**
23 **DUCED AND EXCHANGED.**

24 Section 106 of the Sarbanes-Oxley Act of 2002 (15
25 U.S.C. 7216) is amended—

1 (1) by striking subsection (b) and inserting the
2 following:

3 “(b) PRODUCTION OF DOCUMENTS.—

4 “(1) PRODUCTION BY FOREIGN FIRMS.—If a
5 foreign public accounting firm performs material
6 services upon which a registered public accounting
7 firm relies in the conduct of an audit or interim re-
8 view, issues an audit report, performs audit work, or
9 conducts interim reviews, the foreign public account-
10 ing firm shall—

11 “(A) produce the audit work papers of the
12 foreign public accounting firm and all other
13 documents of the firm related to any such audit
14 work or interim review to the Commission or
15 the Board, upon request of the Commission or
16 the Board; and

17 “(B) be subject to the jurisdiction of the
18 courts of the United States for purposes of en-
19 forcement of any request for such documents.

20 “(2) OTHER PRODUCTION.—Any registered
21 public accounting firm that relies, in whole or in
22 part, on the work of a foreign public accounting firm
23 in issuing an audit report, performing audit work, or
24 conducting an interim review, shall—

1 “(A) produce the audit work papers of the
2 foreign public accounting firm and all other
3 documents related to any such work in response
4 to a request for production by the Commission
5 or the Board; and

6 “(B) secure the agreement of any foreign
7 public accounting firm to such production, as a
8 condition of the reliance by the registered public
9 accounting firm on the work of that foreign
10 public accounting firm.”;

11 (2) by redesignating subsection (d) as sub-
12 section (g); and

13 (3) by inserting after subsection (c) the fol-
14 lowing:

15 “(d) SERVICE OF REQUESTS OR PROCESS.—

16 “(1) IN GENERAL.—Any foreign public account-
17 ing firm that performs work for a domestic reg-
18 istered public accounting firm shall furnish to the
19 domestic registered public accounting firm a written
20 irrevocable consent and power of attorney that des-
21 ignates the domestic registered public accounting
22 firm as an agent upon whom may be served any re-
23 quest by the Commission or the Board under this
24 section or upon whom may be served any process,

1 pleadings, or other papers in any action brought to
2 enforce this section.

3 “(2) SPECIFIC AUDIT WORK.—Any foreign pub-
4 lic accounting firm that performs material services
5 upon which a registered public accounting firm relies
6 in the conduct of an audit or interim review, issues
7 an audit report, performs audit work, or, performs
8 interim reviews, shall designate to the Commission
9 or the Board an agent in the United States upon
10 whom may be served any request by the Commission
11 or the Board under this section or upon whom may
12 be served any process, pleading, or other papers in
13 any action brought to enforce this section.

14 “(e) SANCTIONS.—A willful refusal to comply, in
15 whole in or in part, with any request by the Commission
16 or the Board under this section, shall be deemed a viola-
17 tion of this Act.

18 “(f) OTHER MEANS OF SATISFYING PRODUCTION
19 OBLIGATIONS.—Notwithstanding any other provisions of
20 this section, the staff of the Commission or the Board may
21 allow a foreign public accounting firm that is subject to
22 this section to meet production obligations under this sec-
23 tion through alternate means, such as through foreign
24 counterparts of the Commission or the Board.”.

1 **SEC. 929K. SHARING PRIVILEGED INFORMATION WITH**
2 **OTHER AUTHORITIES.**

3 Section 24 of the Securities Exchange Act of 1934
4 (15 U.S.C. 78x) is amended—

5 (1) in subsection (d), as amended by subsection
6 (d)(1)(A), by striking “subsection (f)” and inserting
7 “subsection (g)”;

8 (2) in subsection (e), as added by subsection
9 (d)(1)(C), by striking “subsection (f)” and inserting
10 “subsection (g)”;

11 (3) by redesignating subsection (f) as sub-
12 section (g); and

13 (4) by inserting after subsection (e) the fol-
14 lowing:

15 “(f) SHARING PRIVILEGED INFORMATION WITH
16 OTHER AUTHORITIES.—

17 “(1) PRIVILEGED INFORMATION PROVIDED BY
18 THE COMMISSION.—The Commission shall not be
19 deemed to have waived any privilege applicable to
20 any information by transferring that information to
21 or permitting that information to be used by—

22 “(A) any agency (as defined in section 6 of
23 title 18, United States Code);

24 “(B) the Public Company Accounting
25 Oversight Board;

26 “(C) any self-regulatory organization;

1 “(D) any foreign securities authority;

2 “(E) any foreign law enforcement author-
3 ity; or

4 “(F) any State securities or law enforce-
5 ment authority.

6 “(2) NONDISCLOSURE OF PRIVILEGED INFOR-
7 MATION PROVIDED TO THE COMMISSION.—The Com-
8 mission shall not be compelled to disclose privileged
9 information obtained from any foreign securities au-
10 thority, or foreign law enforcement authority, if the
11 authority has in good faith determined and rep-
12 resented to the Commission that the information is
13 privileged.

14 “(3) NONWAIVER OF PRIVILEGED INFORMATION
15 PROVIDED TO THE COMMISSION.—

16 “(A) IN GENERAL.—Federal agencies,
17 State securities and law enforcement authori-
18 ties, self-regulatory organizations, and the Pub-
19 lic Company Accounting Oversight Board shall
20 not be deemed to have waived any privilege ap-
21 plicable to any information by transferring that
22 information to or permitting that information
23 to be used by the Commission.

24 “(B) EXCEPTION.—The provisions of sub-
25 paragraph (A) shall not apply to a self-regu-

1 latory organization or the Public Company Ac-
2 counting Oversight Board with respect to infor-
3 mation used by the Commission in an action
4 against such organization.

5 “(4) DEFINITIONS.—For purposes of this sub-
6 section—

7 “(A) the term ‘privilege’ includes any
8 work-product privilege, attorney-client privilege,
9 governmental privilege, or other privilege recog-
10 nized under Federal, State, or foreign law;

11 “(B) the term ‘foreign law enforcement au-
12 thority’ means any foreign authority that is em-
13 powered under foreign law to detect, investigate
14 or prosecute potential violations of law; and

15 “(C) the term ‘State securities or law en-
16 forcement authority’ means the authority of any
17 State or territory that is empowered under
18 State or territory law to detect, investigate, or
19 prosecute potential violations of law.”.

20 **SEC. 929L. ENHANCED APPLICATION OF ANTIFRAUD PRO-**
21 **VISIONS.**

22 The Securities Exchange Act of 1934 (15 U.S.C. 78a
23 et seq.) is amended—

24 (1) in section 9—

1 (A) by striking “registered on a national
2 securities exchange” each place that term ap-
3 pears and inserting “other than a government
4 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. 929M. 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 (b) 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. 929N. 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 subsection:

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 **SEC. 929O. AIDING AND ABETTING STANDARD OF KNOWL-**
16 **EDGE SATISFIED BY RECKLESSNESS.**

17 Section 20(e) of the Securities Exchange Act of 1934
18 (15 U.S.C. 78t(e)) is amended by inserting “or recklessly”
19 after “knowingly”.

20 **SEC. 929P. STRENGTHENING ENFORCEMENT BY THE COM-**
21 **MISSION.**

22 (a) AUTHORITY TO IMPOSE CIVIL PENALTIES IN
23 CEASE AND DESIST PROCEEDINGS.—

24 (1) UNDER THE SECURITIES ACT OF 1933.—
25 Section 8A of the Securities Act of 1933 (15 U.S.C.

1 77h–1) is amended by adding at the end the fol-
2 lowing new subsection:

3 “(g) **AUTHORITY TO IMPOSE MONEY PENALTIES.**—

4 “(1) **GROUND.**—In any cease-and-desist pro-
5 ceeding under subsection (a), the Commission may
6 impose a civil penalty on a person if the Commission
7 finds, on the record, after notice and opportunity for
8 hearing, that—

9 “(A) such person—

10 “(i) is violating or has violated any
11 provision of this title, or any rule or regu-
12 lation issued under this title; or

13 “(ii) is or was a cause of the violation
14 of any provision of this title, or any rule or
15 regulation thereunder; and

16 “(B) such penalty is in the public interest.

17 “(2) **MAXIMUM AMOUNT OF PENALTY.**—

18 “(A) **FIRST TIER.**—The maximum amount
19 of a penalty for each act or omission described
20 in paragraph (1) shall be \$7,500 for a natural
21 person or \$75,000 for any other person.

22 “(B) **SECOND TIER.**—Notwithstanding
23 subparagraph (A), the maximum amount of
24 penalty for each such act or omission shall be
25 \$75,000 for a natural person or \$375,000 for

1 any other person, if the act or omission de-
2 scribed in paragraph (1) involved fraud, deceit,
3 manipulation, or deliberate or reckless dis-
4 regard of a regulatory requirement.

5 “(C) THIRD TIER.—Notwithstanding sub-
6 paragraphs (A) and (B), the maximum amount
7 of penalty for each such act or omission shall
8 be \$150,000 for a natural person or \$725,000
9 for any other person, if—

10 “(i) the act or omission described in
11 paragraph (1) involved fraud, deceit, ma-
12 nipulation, or deliberate or reckless dis-
13 regard of a regulatory requirement; and

14 “(ii) such act or omission directly or
15 indirectly resulted in—

16 “(I) substantial losses or created
17 a significant risk of substantial losses
18 to other persons; or

19 “(II) substantial pecuniary gain
20 to the person who committed the act
21 or omission.

22 “(3) EVIDENCE CONCERNING ABILITY TO
23 PAY.—In any proceeding in which the Commission
24 may impose a penalty under this section, a respond-
25 ent may present evidence of the ability of the re-

1 spondent to pay such penalty. The Commission may,
2 in its discretion, consider such evidence in deter-
3 mining whether such penalty is in the public inter-
4 est. Such evidence may relate to the extent of the
5 ability of the respondent to continue in business and
6 the collectability of a penalty, taking into account
7 any other claims of the United States or third par-
8 ties upon the assets of the respondent and the
9 amount of the assets of the respondent.”.

10 (2) UNDER THE SECURITIES EXCHANGE ACT
11 OF 1934.—Section 21B(a) of the Securities Ex-
12 change Act of 1934 (15 U.S.C. 78u-2(a)) is amend-
13 ed—

14 (A) by striking the matter following para-
15 graph (4);

16 (B) in the matter preceding paragraph (1),
17 by inserting after “opportunity for hearing,”
18 the following: “that such penalty is in the pub-
19 lic interest and”;

20 (C) by redesignating paragraphs (1)
21 through (4) as subparagraphs (A) through (D),
22 respectively, and adjusting the margins accord-
23 ingly;

24 (D) by striking “In any proceeding” and
25 inserting the following:

1 “(1) IN GENERAL.—In any proceeding”; and

2 (E) by adding at the end the following:

3 “(2) CEASE-AND-DESIST PROCEEDINGS.—In
4 any proceeding instituted under section 21C against
5 any person, the Commission may impose a civil pen-
6 alty, if the Commission finds, on the record after no-
7 tice and opportunity for hearing, that such person—

8 “(A) is violating or has violated any provi-
9 sion of this title, or any rule or regulation
10 issued under this title; or

11 “(B) is or was a cause of the violation of
12 any provision of this title, or any rule or regula-
13 tion issued under this title.”.

14 (3) UNDER THE INVESTMENT COMPANY ACT OF
15 1940.—Section 9(d)(1) of the Investment Company
16 Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

17 (A) by striking the matter following sub-
18 paragraph (C);

19 (B) in the matter preceding subparagraph
20 (A), by inserting after “opportunity for hear-
21 ing,” the following: “that such penalty is in the
22 public interest, and”;

23 (C) by redesignating subparagraphs (A)
24 through (C) as clauses (i) through (iii), respec-
25 tively, and adjusting the margins accordingly;

1 (D) by striking “In any proceeding” and
2 inserting the following:

3 “(A) IN GENERAL.—In any proceeding”;
4 and

5 (E) by adding at the end the following:

6 “(B) CEASE-AND-DESIST PROCEEDINGS.—
7 In any proceeding instituted pursuant to sub-
8 section (f) against any person, the Commission
9 may impose a civil penalty if the Commission
10 finds, on the record, after notice and oppor-
11 tunity for hearing, that such person—

12 “(i) is violating or has violated any
13 provision of this title, or any rule or regu-
14 lation issued under this title; or

15 “(ii) is or was a cause of the violation
16 of any provision of this title, or any rule or
17 regulation issued under this title.”.

18 (4) UNDER THE INVESTMENT ADVISERS ACT OF
19 1940.—Section 203(i)(1) of the Investment Advisers
20 Act of 1940 (15 U.S.C. 80b-3(i)(1)) is amended—

21 (A) by striking the matter following sub-
22 paragraph (D);

23 (B) in the matter preceding subparagraph
24 (A), by inserting after “opportunity for hear-

1 ing,” the following: “that such penalty is in the
2 public interest and”;

3 (C) by redesignating subparagraphs (A)
4 through (D) as clauses (i) through (iv), respec-
5 tively, and adjusting the margins accordingly;

6 (D) by striking “In any proceeding” and
7 inserting the following:

8 “(A) IN GENERAL.—In any proceeding”;
9 and

10 (E) by adding at the end the following new
11 subparagraph:

12 “(B) CEASE-AND-DESIST PROCEEDINGS.—
13 In any proceeding instituted pursuant to sub-
14 section (k) against any person, the Commission
15 may impose a civil penalty if the Commission
16 finds, on the record, after notice and oppor-
17 tunity for hearing, that such person—

18 “(i) is violating or has violated any
19 provision of this title, or any rule or regu-
20 lation issued under this title; or

21 “(ii) is or was a cause of the violation
22 of any provision of this title, or any rule or
23 regulation issued under this title.”.

1 (b) EXTRATERRITORIAL JURISDICTION OF THE
2 ANTIFRAUD PROVISIONS OF THE FEDERAL SECURITIES
3 LAWS.—

4 (1) UNDER THE SECURITIES ACT OF 1933.—
5 Section 22 of the Securities Act of 1933 (15 U.S.C.
6 77v(a)) is amended by adding at the end the fol-
7 lowing new subsection:

8 “(c) EXTRATERRITORIAL JURISDICTION.—The dis-
9 trict courts of the United States and the United States
10 courts of any Territory shall have jurisdiction of an action
11 or proceeding brought or instituted by the Commission or
12 the United States alleging a violation of section 17(a) 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 (2) UNDER THE SECURITIES EXCHANGE ACT
23 OF 1934.—Section 27 of the Securities Exchange Act
24 of 1934 (15 U.S.C. 78aa) is amended—

1 (A) by striking “The district” and insert-
2 ing the following:

3 “(a) IN GENERAL.—The district”; and

4 (B) by adding at the end the following new
5 subsection:

6 “(b) EXTRATERRITORIAL JURISDICTION.—The dis-
7 trict courts of the United States and the United States
8 courts of any Territory shall have jurisdiction of an action
9 or proceeding brought or instituted by the Commission or
10 the United States alleging a violation of the antifraud pro-
11 visions of this title involving—

12 “(1) conduct within the United States that con-
13 stitutes significant steps in furtherance of the viola-
14 tion, even if the securities transaction occurs outside
15 the United States and involves only foreign inves-
16 tors; or

17 “(2) conduct occurring outside the United
18 States that has a foreseeable substantial effect with-
19 in the United States.”.

20 (3) UNDER THE INVESTMENT ADVISERS ACT OF
21 1940.—Section 214 of the Investment Advisers Act
22 of 1940 (15 U.S.C. 80b–14) is amended—

23 (A) by striking “The district” and insert-
24 ing the following:

25 “(a) IN GENERAL.—The district”; and

1 (B) by adding at the end the following new
2 subsection:

3 “(b) **EXTRATERRITORIAL JURISDICTION.**—The dis-
4 trict courts of the United States and the United States
5 courts of any Territory shall have jurisdiction of an action
6 or proceeding brought or instituted by the Commission or
7 the United States alleging a violation of section 206 in-
8 volving—

9 “(1) conduct within the United States that con-
10 stitutes significant steps in furtherance of the viola-
11 tion, even if the violation is committed by a foreign
12 adviser and involves only foreign investors; or

13 “(2) conduct occurring outside the United
14 States that has a foreseeable substantial effect with-
15 in the United States.”.

16 (c) **CONTROL PERSON LIABILITY UNDER THE SECUR-**
17 **ITIES EXCHANGE ACT OF 1934.**—Section 20(a) of the
18 Securities Exchange Act of 1934 (15 U.S.C. 78t(a)) is
19 amended by inserting after “controlled person is liable”
20 the following: “(including to the Commission in any action
21 brought under paragraph (1) or (3) of section 21(d))”.

22 **SEC. 929Q. REVISION TO RECORDKEEPING RULE.**

23 (a) **INVESTMENT COMPANY ACT OF 1940 AMEND-**
24 **MENTS.**—Section 31 of the Investment Company Act of
25 1940 (15 U.S.C. 80a–30) is amended—

1 (1) in subsection (a)(1), by adding at the end
2 the following: “Each person having custody or use of
3 the securities, deposits, or credits of a registered in-
4 vestment company shall maintain and preserve all
5 records that relate to the custody or use by such
6 person of the securities, deposits, or credits of the
7 registered investment company for such period or
8 periods as the Commission, by rule or regulation,
9 may prescribe, as necessary or appropriate in the
10 public interest or for the protection of investors.”;
11 and

12 (2) in subsection (b), by adding at the end the
13 following:

14 “(4) RECORDS OF PERSONS WITH CUSTODY OR
15 USE.—

16 “(A) IN GENERAL.—Records of persons
17 having custody or use of the securities, depos-
18 its, or credits of a registered investment com-
19 pany that relate to such custody or use, are
20 subject at any time, or from time to time, to
21 such reasonable periodic, special, or other ex-
22 aminations and other information and docu-
23 ment requests by representatives of the Com-
24 mission, as the Commission deems necessary or

1 appropriate in the public interest or for the pro-
2 tection of investors.

3 “(B) CERTAIN PERSONS SUBJECT TO
4 OTHER REGULATION.—Any person that is sub-
5 ject to regulation and examination by a Federal
6 financial institution regulatory agency (as such
7 term is defined under section 212(c)(2) of title
8 18, United States Code) may satisfy any exam-
9 ination request, information request, or docu-
10 ment request described under subparagraph
11 (A), by providing to the Commission a detailed
12 listing, in writing, of the securities, deposits, or
13 credits of the registered investment company
14 within the custody or use of such person.”.

15 (b) INVESTMENT ADVISERS ACT OF 1940 AMEND-
16 MENT.—Section 204 of the Investment Advisers Act of
17 1940 (15 U.S.C. 80b–4) is amended by adding at the end
18 the following new subsection:

19 “(d) RECORDS OF PERSONS WITH CUSTODY OR
20 USE.—

21 “(1) IN GENERAL.—Records of persons having
22 custody or use of the securities, deposits, or credits
23 of a client, that relate to such custody or use, are
24 subject at any time, or from time to time, to such
25 reasonable periodic, special, or other examinations

1 and other information and document requests by
2 representatives of the Commission, as the Commis-
3 sion deems necessary or appropriate in the public in-
4 terest or for the protection of investors.

5 “(2) CERTAIN PERSONS SUBJECT TO OTHER
6 REGULATION.—Any person that is subject to regula-
7 tion and examination by a Federal financial institu-
8 tion regulatory agency (as such term is defined
9 under section 212(c)(2) of title 18, United States
10 Code) may satisfy any examination request, informa-
11 tion request, or document request described under
12 paragraph (1), by providing the Commission with a
13 detailed listing, in writing, of the securities, deposits,
14 or credits of the client within the custody or use of
15 such person.”.

16 **SEC. 929R. BENEFICIAL OWNERSHIP AND SHORT-SWING**
17 **PROFIT REPORTING.**

18 (a) BENEFICIAL OWNERSHIP REPORTING.—Section
19 13 of the Securities Exchange Act of 1934 (15 U.S.C.
20 78m) is amended—

21 (1) in subsection (d)(1)—

22 (A) by inserting after “within ten days
23 after such acquisition” the following: “or within
24 such shorter time as the Commission may es-
25 tablish by rule”; and

1 (B) by striking “send to the issuer of the
2 security at its principal executive office, by reg-
3 istered or certified mail, send to each exchange
4 where the security is traded, and”;

5 (2) in subsection (d)(2)—

6 (A) by striking “in the statements to the
7 issuer and the exchange, and”; and

8 (B) by striking “shall be transmitted to
9 the issuer and the exchange and”;

10 (3) in subsection (g)(1), by striking “shall send
11 to the issuer of the security and”; and

12 (4) in subsection (g)(2)—

13 (A) by striking “sent to the issuer and”;
14 and

15 (B) by striking “shall be transmitted to
16 the issuer and”.

17 (b) SHORT-SWING PROFIT REPORTING.—Section
18 16(a) of the Securities Exchange Act of 1934 (15 U.S.C.
19 78p(a)) is amended—

20 (1) in paragraph (1), by striking “(and, if such
21 security is registered on a national securities ex-
22 change, also with the exchange)”; and

23 (2) in paragraph (2)(B), by inserting after “of-
24 ficer” the following: “, or within such shorter time
25 as the Commission may establish by rule”.

1 **SEC. 929S. FINGERPRINTING.**

2 Section 17(f)(2) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78q(f)(2)) is amended—

4 (1) in the first sentence, by striking “and reg-
5 istered clearing agency,” and inserting “registered
6 clearing agency, registered securities information
7 processor, national securities exchange, and national
8 securities association”; and

9 (2) in the second sentence, by striking “or
10 clearing agency,” and inserting “clearing agency, se-
11 curities information processor, national securities ex-
12 change, or national securities association,”.

13 **SEC. 929T. EQUAL TREATMENT OF SELF-REGULATORY OR-**
14 **GANIZATION RULES.**

15 Section 29(a) of the Securities Exchange Act of 1934
16 (15 U.S.C. 78cc(a)) is amended by striking “an exchange
17 required thereby” and inserting “a self-regulatory organi-
18 zation,”.

19 **SEC. 929U. DEADLINE FOR COMPLETING EXAMINATIONS,**
20 **INSPECTIONS AND ENFORCEMENT ACTIONS.**

21 The Securities Exchange Act of 1934 (15 U.S.C. 78a
22 et seq.) is amended by inserting after section 4D the fol-
23 lowing new section:

1 **“SEC. 4E. DEADLINE FOR COMPLETING ENFORCEMENT IN-**
2 **VESTIGATIONS AND COMPLIANCE EXAMINA-**
3 **TIONS AND INSPECTIONS.**

4 “(a) ENFORCEMENT INVESTIGATIONS.—

5 “(1) IN GENERAL.—Not later than 180 days
6 after the date on which Commission staff provide a
7 written Wells notification to any person, the Com-
8 mission staff shall either file an action against such
9 person or provide notice to the Director of the Divi-
10 sion of Enforcement of its intent to not file an ac-
11 tion.

12 “(2) EXCEPTIONS FOR CERTAIN COMPLEX AC-
13 TIONS.—Notwithstanding paragraph (1), if the Di-
14 rector of the Division of Enforcement of the Com-
15 mission or the Director’s designee determines that a
16 particular enforcement investigation is sufficiently
17 complex such that a determination regarding the fil-
18 ing of an action against a person cannot be com-
19 pleted within the deadline specified in paragraph (1),
20 the Director of the Division of Enforcement of the
21 Commission or the Director’s designee may, after
22 providing notice to the Chairman of the Commission,
23 extend such deadline as needed for one additional
24 180-day period. If after the additional 180-day pe-
25 riod the Director of the Division of Enforcement of
26 the Commission or the Director’s designee deter-

1 mines that a particular enforcement investigation is
2 sufficiently complex such that a determination re-
3 garding the filing of an action against a person can-
4 not be completed within the additional 180-day pe-
5 riod, the Director of the Division of Enforcement of
6 the Commission or the Director's designee may,
7 after providing notice to and receiving approval of
8 the Commission, extend such deadline as needed for
9 one or more additional successive 180-day periods.

10 “(b) COMPLIANCE EXAMINATIONS AND INSPEC-
11 TIONS.—

12 “(1) IN GENERAL.—Not later than 180 days
13 after the date on which Commission staff completes
14 the on-site portion of its compliance examination or
15 inspection or receives all records requested from the
16 entity being examined or inspected, whichever is
17 later, Commission staff shall provide the entity being
18 examined or inspected with written notification indi-
19 cating either that the examination or inspection has
20 concluded, has concluded without findings, or that
21 the staff requests the entity undertake corrective ac-
22 tion.

23 “(2) EXCEPTION FOR CERTAIN COMPLEX AC-
24 TIONS.—Notwithstanding paragraph (1), if the head
25 of any division or office within the Commission re-

1 sponsible for compliance examinations and inspec-
2 tions or his designee determines that a particular
3 compliance examination or inspection is sufficiently
4 complex such that a determination regarding con-
5 cluding the examination or inspection, or regarding
6 the staff requests the entity undertake corrective ac-
7 tion, cannot be completed within the deadline speci-
8 fied in paragraph (1), the head of any division or of-
9 fice within the Commission responsible for compli-
10 ance examinations and inspections or his designee
11 may, after providing notice to the Chairman of the
12 Commission, extend such deadline as needed for one
13 additional 180-day period.”.

14 **SEC. 929V. SECURITY INVESTOR PROTECTION ACT AMEND-**
15 **MENTS.**

16 (a) INCREASING THE MINIMUM ASSESSMENT PAID
17 BY SIPC MEMBERS.—Section 4(d)(1)(C) of the Securities
18 Investor Protection Act of 1970 (15 U.S.C.
19 78ddd(d)(1)(C)) is amended by striking “\$150 per
20 annum” and inserting the following: “0.02 percent of the
21 gross revenues from the securities business of such mem-
22 ber of SIPC”.

23 (b) INCREASING THE FINE FOR PROHIBITED ACTS
24 UNDER SIPA.—Section 14(c) of the Securities Investor
25 Protection Act of 1970 (15 U.S.C. 78jjj(c)) is amended—

1 (1) in paragraph (1), by striking “\$50,000”
2 and inserting “\$250,000”; and

3 (2) in paragraph (2), by striking “\$50,000”
4 and inserting “\$250,000”.

5 (c) PENALTY FOR MISREPRESENTATION OF SIPC
6 MEMBERSHIP OR PROTECTION.—Section 14 of the Securi-
7 ties Investor Protection Act of 1970 (15 U.S.C. 78jjj) is
8 amended by adding at the end the following new sub-
9 section:

10 “(d) MISREPRESENTATION OF SIPC MEMBERSHIP
11 OR PROTECTION.—

12 “(1) IN GENERAL.—Any person who falsely
13 represents by any means (including, without limita-
14 tion, through the Internet or any other medium of
15 mass communication), with actual knowledge of the
16 falsity of the representation and with an intent to
17 deceive or cause injury to another, that such person,
18 or another person, is a member of SIPC or that any
19 person or account is protected or is eligible for pro-
20 tection under this Act or by SIPC, shall be liable for
21 any damages caused thereby and shall be fined not
22 more than \$250,000 or imprisoned for not more
23 than 5 years.

24 “(2) INJUNCTIONS.—Any court having jurisdic-
25 tion of a civil action arising under this Act may

1 grant temporary injunctions and final injunctions on
2 such terms as the court deems reasonable to prevent
3 or restrain any violation of paragraph (1). Any such
4 injunction may be served anywhere in the United
5 States on the person enjoined, shall be operative
6 throughout the United States, and shall be enforce-
7 able, by proceedings in contempt or otherwise, by
8 any United States court having jurisdiction over that
9 person. The clerk of the court granting the injunc-
10 tion shall, when requested by any other court in
11 which enforcement of the injunction is sought, trans-
12 mit promptly to the other court a certified copy of
13 all papers in the case on file in such clerk's office.”.

14 **SEC. 929W. NOTICE TO MISSING SECURITY HOLDERS.**

15 Section 17A of the Securities Exchange Act of 1934
16 (15 U.S.C. 78q-1) is amended by adding at the end the
17 following new subsection:

18 “(g) DUE DILIGENCE FOR THE DELIVERY OF DIVI-
19 DENDS, INTEREST, AND OTHER VALUABLE PROPERTY
20 RIGHTS.—

21 “(1) REVISION OF RULES REQUIRED.—The
22 Commission shall revise its regulations in section
23 240.17Ad-17 of title 17, Code of Federal Regula-
24 tions, as in effect on December 8, 1997, to extend

1 the application of such section to brokers and deal-
2 ers and to provide for the following:

3 “(A) A requirement that the paying agent
4 provide a single written notification to each
5 missing security holder that the missing secu-
6 rity holder has been sent a check that has not
7 yet been negotiated. The written notification
8 may be sent along with a check or other mailing
9 subsequently sent to the missing security holder
10 but must be provided no later than 7 months
11 after the sending of the not yet negotiated
12 check.

13 “(B) An exclusion for paying agents from
14 the notification requirements when the value of
15 the not yet negotiated check is less than \$25.

16 “(C) A provision clarifying that the re-
17 quirements described in subparagraph (A) shall
18 have no effect on State escheatment laws.

19 “(D) For purposes of such revised regula-
20 tions—

21 “(i) a security holder shall be consid-
22 ered a ‘missing security holder’ if a check
23 is sent to the security holder and the check
24 is not negotiated before the earlier of the
25 paying agent sending the next regularly

1 scheduled check or the elapsing of 6
2 months after the sending of the not yet ne-
3 gotiated check; and

4 “(ii) the term ‘paying agent’ includes
5 any issuer, transfer agent, broker, dealer,
6 investment adviser, indenture trustee, cus-
7 todian, or any other person that accepts
8 payments from the issuer of a security and
9 distributes the payments to the holders of
10 the security.

11 “(2) RULEMAKING.—The Commission shall
12 adopt such rules, regulations, and orders necessary
13 to implement this subsection no later than 1 year
14 after the date of enactment of this subsection. In
15 proposing such rules, the Commission shall seek to
16 minimize disruptions to current systems used by or
17 on behalf of paying agents to process payment to ac-
18 count holders and avoid requiring multiple paying
19 agents to send written notification to a missing secu-
20 rity holder regarding the same not yet negotiated
21 check.”.

22 **SEC. 929X. SHORT SALE REFORMS.**

23 (a) SHORT SALE DISCLOSURE.—Section 13(f) of the
24 Securities Exchange Act of 1934 (15 U.S.C. 78m(f)) is
25 amended by redesignating paragraphs (2), (3), (4), and

1 (5) as paragraphs (3), (4), (5), and (6), respectively, and
2 inserting after paragraph (1) the following:

3 “(2) The Commission shall prescribe rules pro-
4 viding for the public disclosure of the name of the
5 issuer and the title, class, CUSIP number, aggregate
6 amount of the number of short sales of each secu-
7 rity, and any additional information determined by
8 the Commission following the end of the reporting
9 period. At a minimum, such public disclosure shall
10 occur every month.”.

11 (b) **SHORT SELLING ENFORCEMENT.**—Section 9 of
12 the Securities Exchange Act of 1934 (15 U.S.C. 78i) is
13 amended—

14 (1) by redesignating subsections (d), (e), (f),
15 (g), (h), and (i) as subsections (e), (f), (g), (h), (i),
16 and (j), respectively; and

17 (2) inserting after subsection (c), the following
18 new subsection:

19 “(d) **TRANSACTIONS RELATING TO SHORT SALES OF**
20 **SECURITIES.**—It shall be unlawful for any person, directly
21 or indirectly, by the use of the mails or any means or in-
22 strumentality of interstate commerce, or of any facility of
23 any national securities exchange, or for any member of
24 a national securities exchange to effect, alone or with one
25 or more other persons, a manipulative short sale of any

1 security. The Commission shall issue such other rules as
2 are necessary or appropriate to ensure that the appro-
3 priate enforcement options and remedies are available for
4 violations of this subsection in the public interest or for
5 the protection of investors.”.

6 (c) INVESTOR NOTIFICATION.—Section 15 of the Se-
7 curities Exchange Act of 1934 (15 U.S.C. 78o) is amend-
8 ed—

9 (1) by redesignating subsections (e), (f), (g),
10 (h), and (i) as subsections (f), (g), (h), (i), and (j),
11 respectively; and

12 (2) inserting after subsection (d) the following
13 new subsection:

14 “(e) NOTICES TO CUSTOMERS REGARDING SECURI-
15 TIES LENDING.—Every registered broker or dealer shall
16 provide notice to its customers that they may elect not
17 to allow their fully paid securities to be used in connection
18 with short sales. If a broker or dealer uses a customer’s
19 securities in connection with short sales, the broker or
20 dealer shall provide notice to its customer that the broker
21 or dealer may receive compensation in connection with
22 lending the customer’s securities. The Commission, by
23 rule, as it deems necessary or appropriate in the public
24 interest and for the protection of investors, may prescribe

1 the form, content, time, and manner of delivery of any
2 notice required under this paragraph.”.

3 **SEC. 929Y. STUDY ON EXTRATERRITORIAL PRIVATE**
4 **RIGHTS OF ACTION.**

5 (a) IN GENERAL.—The Securities and Exchange
6 Commission of the United States shall solicit public com-
7 ment and thereafter conduct a study to determine the ex-
8 tent to which private rights of action under the antifraud
9 provisions of the Securities and Exchange Act of 1934 (15
10 U.S.C. 78u-4) should be extended to cover—

11 (1) conduct within the United States that con-
12 stitutes a significant step in the furtherance of the
13 violation, even if the securities transaction occurs
14 outside the United States and involves only foreign
15 investors; and

16 (2) conduct occurring outside the United States
17 that has a foreseeable substantial effect within the
18 United States.

19 (b) CONTENTS.—The study shall consider and ana-
20 lyze, among other things—

21 (1) the scope of such a private right of action,
22 including whether it should extend to all private ac-
23 tors or whether it should be more limited to extend
24 just to institutional investors or otherwise;

1 (2) what implications such a private right of ac-
2 tion would have on international comity;

3 (3) the economic costs and benefits of extending
4 a private right of action for transnational securities
5 frauds; and

6 (4) whether a narrower extraterritorial stand-
7 ard should be adopted.

8 (c) REPORT.—A report of the study shall be sub-
9 mitted and recommendations made to the Committee on
10 Banking, Housing, and Urban Affairs of the Senate and
11 the Committee on Financial Services of the House not
12 later than 18 months after the date of enactment of this
13 Act.

14 **SEC. 929Z. GAO STUDY ON SECURITIES LITIGATION.**

15 (a) STUDY.—The Comptroller General of the United
16 States shall conduct a study on the impact of authorizing
17 a private right of action against any person who aids or
18 abets another person in violation of the securities laws.
19 To the extent feasible, this study shall include—

20 (1) a review of the role of secondary actors in
21 companies issuance of securities;

22 (2) the courts interpretation of the scope of li-
23 ability for secondary actors under Federal securities
24 laws after January 14, 2008; and

1 (3) the types of lawsuits decided under the Pri-
2 vate Securities Litigation Act of 1995.

3 (b) REPORT.—Not later than 1 year after the date
4 of enactment of this Act, the Comptroller General shall
5 submit a report to Congress on the findings of the study
6 required under subsection (a).

7 **Subtitle C—Improvements to the**
8 **Regulation of Credit Rating**
9 **Agencies**

10 **SEC. 931. FINDINGS.**

11 Congress finds the following:

12 (1) Because of the systemic importance of cred-
13 it ratings and the reliance placed on credit ratings
14 by individual and institutional investors and finan-
15 cial regulators, the activities and performances of
16 credit rating agencies, including nationally recog-
17 nized statistical rating organizations, are matters of
18 national public interest, as credit rating agencies are
19 central to capital formation, investor confidence, and
20 the efficient performance of the United States econ-
21 omy.

22 (2) Credit rating agencies, including nationally
23 recognized statistical rating organizations, play a
24 critical “gatekeeper” role in the debt market that is
25 functionally similar to that of securities analysts,

1 who evaluate the quality of securities in the equity
2 market, and auditors, who review the financial state-
3 ments of firms. Such role justifies a similar level of
4 public oversight and accountability.

5 (3) Because credit rating agencies perform eval-
6 uative and analytical services on behalf of clients,
7 much as other financial “gatekeepers” do, the activi-
8 ties of credit rating agencies are fundamentally com-
9 mercial in character and should be subject to the
10 same standards of liability and oversight as apply to
11 auditors, securities analysts, and investment bank-
12 ers.

13 (4) In certain activities, particularly in advising
14 arrangers of structured financial products on poten-
15 tial ratings of such products, credit rating agencies
16 face conflicts of interest that need to be carefully
17 monitored and that therefore should be addressed
18 explicitly in legislation in order to give clearer au-
19 thority to the Securities and Exchange Commission.

20 (5) In the recent financial crisis, the ratings on
21 structured financial products have proven to be inac-
22 curate. This inaccuracy contributed significantly to
23 the mismanagement of risks by financial institutions
24 and investors, which in turn adversely impacted the
25 health of the economy in the United States and

1 paragraph may be construed to afford a
2 defense against any action or proceeding
3 brought by the Commission to enforce the
4 antifraud provisions of the securities
5 laws.”; and

6 (B) by adding at the end the following:

7 “(3) INTERNAL CONTROLS OVER PROCESSES
8 FOR DETERMINING CREDIT RATINGS.—

9 “(A) IN GENERAL.—Each nationally recog-
10 nized statistical rating organization shall estab-
11 lish, maintain, enforce, and document an effec-
12 tive internal control structure governing the im-
13 plementation of and adherence to policies, pro-
14 cedures, and methodologies for determining
15 credit ratings, taking into consideration such
16 factors as the Commission may prescribe, by
17 rule.

18 “(B) ATTESTATION REQUIREMENT.—The
19 Commission shall prescribe rules requiring each
20 nationally recognized statistical rating organiza-
21 tion to submit to the Commission an annual in-
22 ternal controls report, which shall contain—

23 “(i) a description of the responsibility
24 of the management of the nationally recog-
25 nized statistical rating organization in es-

1 tablishing and maintaining an effective in-
2 ternal control structure under subpara-
3 graph (A);

4 “‘(ii) an assessment of the effective-
5 ness of the internal control structure of the
6 nationally recognized statistical rating or-
7 ganization; and

8 “‘(iii) the attestation of the chief exec-
9 utive officer, or equivalent individual, of
10 the nationally recognized statistical rating
11 organization.’”;

12 (3) in subsection (d)—

13 (A) by inserting after “or revoke the reg-
14 istration of any nationally recognized statistical
15 rating organization” the following: “, or with
16 respect to any person who is associated with,
17 who is seeking to become associated with, or, at
18 the time of the alleged misconduct, who was as-
19 sociated or was seeking to become associated
20 with a nationally recognized statistical rating
21 organization, the Commission, by order, shall
22 censure, place limitations on the activities or
23 functions of such person, suspend for a period
24 not exceeding 1 year, or bar such person from

1 being associated with a nationally recognized
2 statistical rating organization,”;

3 (B) by inserting “bar” after “placing of
4 limitations, suspension,”;

5 (C) in paragraph (2), by striking “fur-
6 nished to” and inserting “filed with”;

7 (D) in paragraph (2), by redesignating
8 subparagraphs (A) and (B) as clauses (i) and
9 (ii), respectively, and adjusting the clause mar-
10 gins accordingly;

11 (E) by redesignating paragraphs (1)
12 through (5) as subparagraphs (A) through (E),
13 respectively, and adjusting the subparagraph
14 margins accordingly;

15 (F) in the matter preceding subparagraph
16 (A), as so redesignated, by striking “The Com-
17 mission” and inserting the following:

18 “(1) IN GENERAL.—The Commission”;

19 (G) in subparagraph (D), as so redesi-
20 gnated—

21 (i) by striking “furnish” and inserting
22 “file”; and

23 (ii) by striking “or” at the end.

1 (H) in subparagraph (E), as so redesign-
2 nated, by striking the period at the end and in-
3 serting a semicolon; and

4 (I) by adding at the end the following:

5 “(F) has failed reasonably to supervise,
6 with a view to preventing a violation of the se-
7 curities laws, an individual who commits such a
8 violation, if the individual is subject to the su-
9 pervision of that person.

10 “(2) SUSPENSION OR REVOCATION FOR PAR-
11 TICULAR CLASS OF SECURITIES.—

12 “(A) IN GENERAL.—The Commission may
13 temporarily suspend or permanently revoke the
14 registration of a nationally recognized statistical
15 rating organization with respect to a particular
16 class or subclass of securities, if the Commis-
17 sion finds, on the record after notice and oppor-
18 tunity for hearing, that the nationally recog-
19 nized statistical rating organization does not
20 have adequate financial and managerial re-
21 sources to consistently produce credit ratings
22 with integrity.

23 “(B) CONSIDERATIONS.—In making any
24 determination under subparagraph (A), the
25 Commission shall consider—

1 “(i) whether the nationally recognized
2 statistical rating organization has failed
3 over a sustained period of time, as deter-
4 mined by the Commission, to produce rat-
5 ings that are accurate for that class or
6 subclass of securities; and

7 “(ii) such other factors as the Com-
8 mission may determine.”;

9 (4) in subsection (h), by adding at the end the
10 following:

11 “(3) SEPARATION OF RATINGS FROM SALES
12 AND MARKETING.—

13 “(A) RULES REQUIRED.—The Commission
14 shall issue rules to prevent the sales and mar-
15 keting considerations of a nationally recognized
16 statistical rating organization from influencing
17 the production of ratings by the nationally rec-
18 ognized statistical rating organization.

19 “(B) CONTENTS OF RULES.—The rules
20 issued under subparagraph (A) shall provide
21 for—

22 “(i) exceptions for small nationally
23 recognized statistical rating organizations
24 with respect to which the Commission de-
25 termines that the separation of the produc-

1 tion of ratings and sales and marketing ac-
2 tivities is not appropriate; and

3 “(ii) suspension or revocation of the
4 registration of a nationally recognized sta-
5 tistical rating organization, if the Commis-
6 sion finds, on the record, after notice and
7 opportunity for a hearing, that—

8 “(I) the nationally recognized
9 statistical rating organization has
10 committed a violation of a rule issued
11 under this subsection; and

12 “(II) the violation of a rule
13 issued under this subsection affected a
14 rating.

15 “(4) LOOK-BACK REQUIREMENT.—

16 “(A) REVIEW BY THE NATIONALLY RECOG-
17 NIZED STATISTICAL RATING ORGANIZATION.—

18 Each nationally recognized statistical rating or-
19 ganization shall establish, maintain, and enforce
20 policies and procedures reasonably designed to
21 ensure that, in any case in which an employee
22 of a person subject to a credit rating of the na-
23 tionally recognized statistical rating organiza-
24 tion or the issuer, underwriter, or sponsor of a
25 security or money market instrument subject to

1 a credit rating of the nationally recognized sta-
2 tistical rating organization was employed by the
3 nationally recognized statistical rating organiza-
4 tion and participated in any capacity in deter-
5 mining credit ratings for the person or the se-
6 curities or money market instruments during
7 the 1-year period preceding the date an action
8 was taken with respect to the credit rating, the
9 nationally recognized statistical rating organiza-
10 tion shall—

11 “(i) conduct a review to determine
12 whether any conflicts of interest of the em-
13 ployee influenced the credit rating; and

14 “(ii) take action to revise the rating if
15 appropriate, in accordance with such rules
16 as the Commission shall prescribe.

17 “(B) REVIEW BY COMMISSION.—

18 “(i) IN GENERAL.—The Commission
19 shall conduct periodic reviews of the poli-
20 cies described in subparagraph (A) and the
21 implementation of the policies at each na-
22 tionally recognized statistical rating orga-
23 nization to ensure they are reasonably de-
24 signed and implemented to most effectively
25 eliminate conflicts of interest.

1 “(ii) TIMING OF REVIEWS.—The Com-
2 mission shall review the code of ethics and
3 conflict of interest policy of each nationally
4 recognized statistical rating organization—

5 “(I) not less frequently than an-
6 nually; and

7 “(II) whenever such policies are
8 materially modified or amended.

9 “(5) REPORT TO COMMISSION ON CERTAIN EM-
10 PLOYMENT TRANSITIONS.—

11 “(A) REPORT REQUIRED.—Each nationally
12 recognized statistical rating organization shall
13 report to the Commission any case such organi-
14 zation knows or can reasonably be expected to
15 know where a person associated with such orga-
16 nization within the previous 5 years obtains em-
17 ployment with any obligor, issuer, underwriter,
18 or sponsor of a security or money market in-
19 strument for which the organization issued a
20 credit rating during the 12-month period prior
21 to such employment, if such employee—

22 “(i) was a senior officer of such orga-
23 nization;

1 “(ii) participated in any capacity in
2 determining credit ratings for such obligor,
3 issuer, underwriter, or sponsor; or

4 “(iii) supervised an employee de-
5 scribed in clause (ii).

6 “(B) PUBLIC DISCLOSURE.—Upon receiv-
7 ing such a report, the Commission shall make
8 such information publicly available.”;

9 (5) in subsection (j)—

10 (A) by striking “Each” and inserting the
11 following:

12 “(1) IN GENERAL.—Each”; and

13 (B) by adding at the end the following:

14 “(2) LIMITATIONS.—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraph (B), an individual designated
17 under paragraph (1) may not, while serving in
18 the designated capacity—

19 “(i) perform credit ratings;

20 “(ii) participate in the development of
21 ratings methodologies or models;

22 “(iii) perform marketing or sales
23 functions; or

1 “(iv) participate in establishing com-
2 pensation levels, other than for employees
3 working for that individual.

4 “(B) EXCEPTION.—The Commission may
5 exempt a small nationally recognized statistical
6 rating organization from the limitations under
7 this paragraph, if the Commission finds that
8 compliance with such limitations would impose
9 an unreasonable burden on the nationally recog-
10 nized statistical rating organization.

11 “(3) OTHER DUTIES.—Each individual des-
12 ignated under paragraph (1) shall establish proce-
13 dures for the receipt, retention, and treatment of—

14 “(A) complaints regarding credit ratings,
15 models, methodologies, and compliance with the
16 securities laws and the policies and procedures
17 developed under this section; and

18 “(B) confidential, anonymous complaints
19 by employees or users of credit ratings.

20 “(4) COMPENSATION.—The compensation of
21 each compliance officer appointed under paragraph
22 (1) shall not be linked to the financial performance
23 of the nationally recognized statistical rating organi-
24 zation and shall be arranged so as to ensure the
25 independence of the officer’s judgment.

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1 “(5) ANNUAL REPORTS REQUIRED.—

2 “(A) ANNUAL REPORTS REQUIRED.—Each
3 individual designated under paragraph (1) shall
4 submit to the nationally recognized statistical
5 rating organization an annual report on the
6 compliance of the nationally recognized statis-
7 tical rating organization with the securities laws
8 and the policies and procedures of the nation-
9 ally recognized statistical rating organization
10 that includes—

11 “(i) a description of any material
12 changes to the code of ethics and conflict
13 of interest policies of the nationally recog-
14 nized statistical rating organization; and

15 “(ii) a certification that the report is
16 accurate and complete.

17 “(B) SUBMISSION OF REPORTS TO THE
18 COMMISSION.—Each nationally recognized sta-
19 tistical rating organization shall file the reports
20 required under subparagraph (A) together with
21 the financial report that is required to be sub-
22 mitted to the Commission under this section.”;
23 (6) in subsection (k), by striking “furnish to”
24 and inserting “file with”;

1 (7) in subsection (l)(2)(A)(i), by striking “fur-
2 nished” and inserting “filed”; and

3 (8) by striking subsection (p) and inserting the
4 following:

5 “(p) REGULATION OF NATIONALLY RECOGNIZED
6 STATISTICAL RATING ORGANIZATIONS.—

7 “(1) ESTABLISHMENT OF OFFICE OF CREDIT
8 RATINGS.—

9 “(A) OFFICE ESTABLISHED.—The Com-
10 mission shall establish within the Commission
11 an Office of Credit Ratings (referred to in this
12 subsection as the ‘Office’) to administer the
13 rules of the Commission—

14 “(i) with respect to the practices of
15 nationally recognized statistical rating or-
16 ganizations in determining ratings, for the
17 protection of users of credit ratings and in
18 the public interest;

19 “(ii) to promote accuracy in credit
20 ratings issued by nationally recognized sta-
21 tistical rating organizations; and

22 “(iii) to ensure that such ratings are
23 not unduly influenced by conflicts of inter-
24 est.

1 “(B) DIRECTOR OF THE OFFICE.—The
2 head of the Office shall be the Director, who
3 shall report to the Chairman.

4 “(2) STAFFING.—The Office established under
5 this subsection shall be staffed sufficiently to carry
6 out fully the requirements of this section. The staff
7 shall include persons with knowledge of and exper-
8 tise in corporate, municipal, and structured debt fi-
9 nance.

10 “(3) COMMISSION EXAMINATIONS.—

11 “(A) ANNUAL EXAMINATIONS RE-
12 QUIRED.—The Office shall conduct an examina-
13 tion of each nationally recognized statistical
14 rating organization at least annually.

15 “(B) CONDUCT OF EXAMINATIONS.—Each
16 examination under subparagraph (A) shall in-
17 clude a review of—

18 “(i) whether the nationally recognized
19 statistical rating organization conducts
20 business in accordance with the policies,
21 procedures, and rating methodologies of
22 the nationally recognized statistical rating
23 organization;

1 “(ii) the management of conflicts of
2 interest by the nationally recognized statis-
3 tical rating organization;

4 “(iii) implementation of ethics policies
5 by the nationally recognized statistical rat-
6 ing organization;

7 “(iv) the internal supervisory controls
8 of the nationally recognized statistical rat-
9 ing organization;

10 “(v) the governance of the nationally
11 recognized statistical rating organization;

12 “(vi) the activities of the individual
13 designated by the nationally recognized
14 statistical rating organization under sub-
15 section (j)(1);

16 “(vii) the processing of complaints by
17 the nationally recognized statistical rating
18 organization; and

19 “(viii) the policies of the nationally
20 recognized statistical rating organization
21 governing the post-employment activities of
22 former staff of the nationally recognized
23 statistical rating organization.

24 “(C) INSPECTION REPORTS.—The Com-
25 mission shall make available to the public, in an

1 easily understandable format, an annual report
2 summarizing—

3 “(i) the essential findings of all ex-
4 aminations conducted under subparagraph
5 (A), as deemed appropriate by the Com-
6 mission;

7 “(ii) the responses by the nationally
8 recognized statistical rating organizations
9 to any material regulatory deficiencies
10 identified by the Commission under clause
11 (i); and

12 “(iii) whether the nationally recog-
13 nized statistical rating organizations have
14 appropriately addressed the recommenda-
15 tions of the Commission contained in pre-
16 vious reports under this subparagraph.

17 “(4) RULEMAKING AUTHORITY.—The Commis-
18 sion shall—

19 “(A) establish, by rule, fines, and other
20 penalties applicable to any nationally recognized
21 statistical rating organization that violates the
22 requirements of this section and the rules there-
23 under; and

24 “(B) issue such rules as may be necessary
25 to carry out this section.

1 “(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

2 “(1) RULEMAKING REQUIRED.—The Commis-
3 sion shall, by rule, require that each nationally rec-
4 ognized statistical rating organization publicly dis-
5 close information on the initial credit ratings deter-
6 mined by the nationally recognized statistical rating
7 organization for each type of obligor, security, and
8 money market instrument, and any subsequent
9 changes to such credit ratings, for the purpose of al-
10 lowing users of credit ratings to evaluate the accu-
11 racy of ratings and compare the performance of rat-
12 ings by different nationally recognized statistical rat-
13 ing organizations.

14 “(2) CONTENT.—The rules of the Commission
15 under this subsection shall require, at a minimum,
16 disclosures that—

17 “(A) are comparable among nationally rec-
18 ognized statistical rating organizations, to allow
19 users of credit ratings to compare the perform-
20 ance of credit ratings across nationally recog-
21 nized statistical rating organizations;

22 “(B) are clear and informative for inves-
23 tors having a wide range of sophistication who
24 use or might use credit ratings;

1 “(C) include performance information over
2 a range of years and for a variety of types of
3 credit ratings, including for credit ratings with-
4 drawn by the nationally recognized statistical
5 rating organization;

6 “(D) are published and made freely avail-
7 able by the nationally recognized statistical rat-
8 ing organization, on an easily accessible portion
9 of its website, and in writing, when requested;

10 “(E) are appropriate to the business model
11 of a nationally recognized statistical rating or-
12 ganization; and

13 “(F) each nationally recognized statistical
14 rating organization include an attestation with
15 any credit rating it issues affirming that no
16 part of the rating was influenced by any other
17 business activities, that the rating was based
18 solely on the merits of the instruments being
19 rated, and that such rating was an independent
20 evaluation of the risks and merits of the instru-
21 ment.

22 “(r) CREDIT RATINGS METHODOLOGIES.—The Com-
23 mission shall prescribe rules, for the protection of inves-
24 tors and in the public interest, with respect to the proce-
25 dures and methodologies, including qualitative and quan-

1 titative data and models, used by nationally recognized
2 statistical rating organizations that require each nation-
3 ally recognized statistical rating organization—

4 “(1) to ensure that credit ratings are deter-
5 mined using procedures and methodologies, includ-
6 ing qualitative and quantitative data and models,
7 that are—

8 “(A) approved by the board of the nation-
9 ally recognized statistical rating organization, a
10 body performing a function similar to that of a
11 board; and

12 “(B) in accordance with the policies and
13 procedures of the nationally recognized statis-
14 tical rating organization for the development
15 and modification of credit rating procedures
16 and methodologies;

17 “(2) to ensure that when material changes to
18 credit rating procedures and methodologies (includ-
19 ing changes to qualitative and quantitative data and
20 models) are made, that—

21 “(A) the changes are applied consistently
22 to all credit ratings to which the changed proce-
23 dures and methodologies apply;

24 “(B) to the extent that changes are made
25 to credit rating surveillance procedures and

1 methodologies, the changes are applied to then-
2 current credit ratings by the nationally recog-
3 nized statistical rating organization within a
4 reasonable time period determined by the Com-
5 mission, by rule; and

6 “(C) the nationally recognized statistical
7 rating organization publicly discloses the reason
8 for the change; and

9 “(3) to notify users of credit ratings—

10 “(A) of the version of a procedure or meth-
11 odology, including the qualitative methodology
12 or quantitative inputs, used with respect to a
13 particular credit rating;

14 “(B) when a material change is made to a
15 procedure or methodology, including to a quali-
16 tative model or quantitative inputs;

17 “(C) when a significant error is identified
18 in a procedure or methodology, including a
19 qualitative or quantitative model, that may re-
20 sult in credit rating actions; and

21 “(D) of the likelihood of a material change
22 described in subparagraph (B) resulting in a
23 change in current credit ratings.

24 “(s) TRANSPARENCY OF CREDIT RATING METH-
25 ODOLOGIES AND INFORMATION REVIEWED.—

1 “(1) FORM FOR DISCLOSURES.—The Commis-
2 sion shall require, by rule, each nationally recognized
3 statistical rating organization to prescribe a form to
4 accompany the publication of each credit rating that
5 discloses—

6 “(A) information relating to—

7 “(i) the assumptions underlying the
8 credit rating procedures and methodolo-
9 gies;

10 “(ii) the data that was relied on to de-
11 termine the credit rating; and

12 “(iii) if applicable, how the nationally
13 recognized statistical rating organization
14 used servicer or remittance reports, and
15 with what frequency, to conduct surveil-
16 lance of the credit rating; and

17 “(B) information that can be used by in-
18 vestors and other users of credit ratings to bet-
19 ter understand credit ratings in each class of
20 credit rating issued by the nationally recognized
21 statistical rating organization.

22 “(2) FORMAT.—The form developed under
23 paragraph (1) shall—

1 “(A) be easy to use and helpful for users
2 of credit ratings to understand the information
3 contained in the report;

4 “(B) require the nationally recognized sta-
5 tistical rating organization to provide the con-
6 tent described in paragraph (3)(B) in a manner
7 that is directly comparable across types of secu-
8 rities; and

9 “(C) be made readily available to users of
10 credit ratings, in electronic or paper form, as
11 the Commission may, by rule, determine.

12 “(3) CONTENT OF FORM.—

13 “(A) QUALITATIVE CONTENT.—Each na-
14 tionally recognized statistical rating organiza-
15 tion shall disclose on the form developed under
16 paragraph (1)—

17 “(i) the credit ratings produced by the
18 nationally recognized statistical rating or-
19 ganization;

20 “(ii) the main assumptions and prin-
21 ciples used in constructing procedures and
22 methodologies, including qualitative meth-
23 odologies and quantitative inputs and as-
24 sumptions about the correlation of defaults

1 across underlying assets used in rating
2 structured products;

3 “(iii) the potential limitations of the
4 credit ratings, and the types of risks ex-
5 cluded from the credit ratings that the na-
6 tionally recognized statistical rating orga-
7 nization does not comment on, including li-
8 quidity, market, and other risks;

9 “(iv) information on the uncertainty
10 of the credit rating, including—

11 “(I) information on the reli-
12 ability, accuracy, and quality of the
13 data relied on in determining the
14 credit rating; and

15 “(II) a statement relating to the
16 extent to which data essential to the
17 determination of the credit rating
18 were reliable or limited, including—

19 “(aa) any limits on the
20 scope of historical data; and

21 “(bb) any limits in accessi-
22 bility to certain documents or
23 other types of information that
24 would have better informed the
25 credit rating;

1 “(v) whether and to what extent third
2 party due diligence services have been used
3 by the nationally recognized statistical rat-
4 ing organization, a description of the infor-
5 mation that such third party reviewed in
6 conducting due diligence services, and a
7 description of the findings or conclusions
8 of such third party;

9 “(vi) a description of the data about
10 any obligor, issuer, security, or money
11 market instrument that were relied upon
12 for the purpose of determining the credit
13 rating;

14 “(vii) a statement containing an over-
15 all assessment of the quality of information
16 available and considered in producing a
17 rating for an obligor, security, or money
18 market instrument, in relation to the qual-
19 ity of information available to the nation-
20 ally recognized statistical rating organiza-
21 tion in rating similar issuances;

22 “(viii) information relating to conflicts
23 of interest of the nationally recognized sta-
24 tistical rating organization; and

1 “(ix) such additional information as
2 the Commission may require.

3 “(B) QUANTITATIVE CONTENT.—Each na-
4 tionally recognized statistical rating organiza-
5 tion shall disclose on the form developed under
6 this subsection—

7 “(i) an explanation or measure of the
8 potential volatility of the credit rating, in-
9 cluding—

10 “(I) any factors that might lead
11 to a change in the credit ratings; and

12 “(II) the magnitude of the
13 change that a user can expect under
14 different market conditions;

15 “(ii) information on the content of the
16 rating, including—

17 “(I) the historical performance of
18 the rating; and

19 “(II) the expected probability of
20 default and the expected loss in the
21 event of default;

22 “(iii) information on the sensitivity of
23 the rating to assumptions made by the na-
24 tionally recognized statistical rating orga-
25 nization, including—

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1 “(I) 5 assumptions made in the
2 ratings process that, without account-
3 ing for any other factor, would have
4 the greatest impact on a rating if the
5 assumptions were proven false or in-
6 accurate; and

7 “(II) an analysis, using specific
8 examples, of how each of the 5 as-
9 sumptions identified under subclause
10 (I) impacts a rating;

11 “(iv) such additional information as
12 may be required by the Commission.

13 “(4) DUE DILIGENCE SERVICES FOR ASSET-
14 BACKED SECURITIES.—

15 “(A) FINDINGS.—The issuer or under-
16 writer of any asset-backed security shall make
17 publicly available the findings and conclusions
18 of any third-party due diligence report obtained
19 by the issuer or underwriter.

20 “(B) CERTIFICATION REQUIRED.—In any
21 case in which third-party due diligence services
22 are employed by a nationally recognized statis-
23 tical rating organization, an issuer, or an un-
24 derwriter, the person providing the due dili-
25 gence services shall provide to any nationally

1 recognized statistical rating organization that
2 produces a rating to which such services relate,
3 written certification, as provided in subpara-
4 graph (C).

5 “(C) FORMAT AND CONTENT.—The Com-
6 mission shall establish the appropriate format
7 and content for the written certifications re-
8 quired under subparagraph (B), to ensure that
9 providers of due diligence services have con-
10 ducted a thorough review of data, documenta-
11 tion, and other relevant information necessary
12 for a nationally recognized statistical rating or-
13 ganization to provide an accurate rating.

14 “(D) DISCLOSURE OF CERTIFICATION.—
15 The Commission shall adopt rules requiring a
16 nationally recognized statistical rating organiza-
17 tion, at the time at which the nationally recog-
18 nized statistical rating organization produces a
19 rating, to disclose the certification described in
20 subparagraph (B) to the public in a manner
21 that allows the public to determine the ade-
22 quacy and level of due diligence services pro-
23 vided by a third party.

24 “(t) CORPORATE GOVERNANCE, ORGANIZATION, AND
25 MANAGEMENT OF CONFLICTS OF INTEREST.—

1 “(1) BOARD OF DIRECTORS.—Each nationally
2 recognized statistical rating organization shall have
3 a board of directors.

4 “(2) INDEPENDENT DIRECTORS.—

5 “(A) IN GENERAL.—At least $\frac{1}{2}$ of the
6 board of directors, but not fewer than 2 of the
7 members thereof, shall be independent of the
8 nationally recognized statistical rating agency.
9 A portion of the independent directors shall in-
10 clude users of ratings from a nationally recog-
11 nized statistical rating organization.

12 “(B) INDEPENDENCE DETERMINATION.—
13 In order to be considered independent for pur-
14 poses of this subsection, a member of the board
15 of directors of a nationally recognized statistical
16 rating organization—

17 “(i) may not, other than in his or her
18 capacity as a member of the board of di-
19 rectors or any committee thereof—

20 “(I) accept any consulting, advi-
21 sory, or other compensatory fee from
22 the nationally recognized statistical
23 rating organization; or

24 “(II) be a person associated with
25 the nationally recognized statistical

1 rating organization or with any affli-
2 ated company thereof; and

3 “(ii) shall be disqualified from any de-
4 liberation involving a specific rating in
5 which the independent board member has
6 a financial interest in the outcome of the
7 rating.

8 “(C) COMPENSATION AND TERM.—The
9 compensation of the independent members of
10 the board of directors of a nationally recognized
11 statistical rating organization shall not be
12 linked to the business performance of the na-
13 tionally recognized statistical rating organiza-
14 tion, and shall be arranged so as to ensure the
15 independence of their judgment. The term of
16 office of the independent directors shall be for
17 a pre-agreed fixed period, not to exceed 5 years,
18 and shall not be renewable.

19 “(3) DUTIES OF BOARD OF DIRECTORS.—In
20 addition to the overall responsibilities of the board of
21 directors, the board shall oversee—

22 “(A) the establishment, maintenance, and
23 enforcement of policies and procedures for de-
24 termining credit ratings;

1 “(B) the establishment, maintenance, and
2 enforcement of policies and procedures to ad-
3 dress, manage, and disclose any conflicts of in-
4 terest;

5 “(C) the effectiveness of the internal con-
6 trol system with respect to policies and proce-
7 dures for determining credit ratings; and

8 “(D) the compensation and promotion poli-
9 cies and practices of the nationally recognized
10 statistical rating organization.

11 “(4) TREATMENT OF NRSRO SUBSIDIARIES.—If
12 a nationally recognized statistical rating organiza-
13 tion is a subsidiary of a parent entity, the board of
14 the directors of the parent entity may satisfy the re-
15 quirements of this subsection by assigning to a com-
16 mittee of such board of directors the duties under
17 paragraph (3), if—

18 “(A) at least $\frac{1}{2}$ of the members of the
19 committee (including the chairperson of the
20 committee) are independent, as defined in this
21 section; and

22 “(B) at least 1 member of the committee
23 is a user of ratings from a nationally recognized
24 statistical rating organization.

1 “(5) EXCEPTION AUTHORITY.—If the Commis-
2 sion finds that compliance with the provisions of this
3 subsection present an unreasonable burden on a
4 small nationally recognized statistical rating organi-
5 zation, the Commission may permit the nationally
6 recognized statistical rating organization to delegate
7 such responsibilities to a committee that includes at
8 least one individual who is a user of ratings of a na-
9 tionally recognized statistical rating organization.”.

10 (b) CONFORMING AMENDMENT.—Section 3(a)(62) of
11 the Securities Exchange Act of 1934 (15 U.S.C.
12 78c(a)(62)) is amended by striking subparagraph (A) and
13 redesignating subparagraphs (B) and (C) as subpara-
14 graphs (A) and (B), respectively.

15 **SEC. 933. STATE OF MIND IN PRIVATE ACTIONS.**

16 (a) ACCOUNTABILITY.—Section 15E(m) of the Secu-
17 rities Exchange Act of 1934 (15 U.S.C. 78o–7(m)) is
18 amended to read as follows:

19 “(m) ACCOUNTABILITY.—

20 “(1) IN GENERAL.—The enforcement and pen-
21 alty provisions of this title shall apply to statements
22 made by a credit rating agency in the same manner
23 and to the same extent as such provisions apply to
24 statements made by a registered public accounting
25 firm or a securities analyst under the securities laws,

1 and such statements shall not be deemed forward-
2 looking statements for the purposes of section 21E.

3 “(2) RULEMAKING.—The Commission shall
4 issue such rules as may be necessary to carry out
5 this subsection.”.

6 (b) STATE OF MIND.—Section 21D(b)(2) of the Se-
7 curities Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2))
8 is amended—

9 (1) by striking “In any” and inserting the fol-
10 lowing:

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), in any”; and

13 (2) by adding at the end the following:

14 “(B) EXCEPTION.—In the case of an ac-
15 tion for money damages brought against a cred-
16 it rating agency or a controlling person under
17 this title, it shall be sufficient, for purposes of
18 pleading any required state of mind in relation
19 to such action, that the complaint state with
20 particularity facts giving rise to a strong infer-
21 ence that the credit rating agency knowingly or
22 recklessly failed—

23 “(i) to conduct a reasonable investiga-
24 tion of the rated security with respect to

1 the factual elements relied upon by its own
2 methodology for evaluating credit risk; or
3 “(ii) to obtain reasonable verification
4 of such factual elements (which verification
5 may be based on a sampling technique that
6 does not amount to an audit) from other
7 sources that the credit rating agency con-
8 sidered to be competent and that were
9 independent of the issuer and under-
10 writer.”.

11 **SEC. 934. REFERRING TIPS TO LAW ENFORCEMENT OR**
12 **REGULATORY AUTHORITIES.**

13 Section 15E of the Securities Exchange Act of 1934
14 (15 U.S.C. 78o-7), as amended by this subtitle, is amend-
15 ed by adding at the end the following:

16 “(u) DUTY TO REPORT TIPS ALLEGING MATERIAL
17 VIOLATIONS OF LAW.—

18 “(1) DUTY TO REPORT.—Each nationally rec-
19 ognized statistical rating organization shall refer to
20 the appropriate law enforcement or regulatory au-
21 thorities any information that the nationally recog-
22 nized statistical rating organization receives from a
23 third party and finds credible that alleges that an
24 issuer of securities rated by the nationally recog-
25 nized statistical rating organization has committed

1 or is committing a material violation of law that has
2 not been adjudicated by a Federal or State court.

3 “(2) RULE OF CONSTRUCTION.—Nothing in
4 paragraph (1) may be construed to require a nation-
5 ally recognized statistical rating organization to
6 verify the accuracy of the information described in
7 paragraph (1).”.

8 **SEC. 935. CONSIDERATION OF INFORMATION FROM**
9 **SOURCES OTHER THAN THE ISSUER IN RAT-**
10 **ING DECISIONS.**

11 Section 15E of the Securities Exchange Act of 1934
12 (15 U.S.C. 78o–7), as amended by this subtitle, is amend-
13 ed by adding at the end the following:

14 “(v) INFORMATION FROM SOURCES OTHER THAN
15 THE ISSUER.—In producing a credit rating, a nationally
16 recognized statistical rating organization shall consider in-
17 formation about an issuer that the nationally recognized
18 statistical rating organization has, or receives from a
19 source other than the issuer or underwriter, that the na-
20 tionally recognized statistical rating organization finds
21 credible and potentially significant to a rating decision.”.

22 **SEC. 936. QUALIFICATION STANDARDS FOR CREDIT RAT-**
23 **ING ANALYSTS.**

24 Not later than 1 year after the date of enactment
25 of this Act, the Commission shall issue rules that are rea-

1 sonably designed to ensure that any person employed by
2 a nationally recognized statistical rating organization to
3 perform credit ratings—

4 (1) meets standards of training, experience, and
5 competence necessary to produce accurate ratings
6 for the categories of issuers whose securities the per-
7 son rates; and

8 (2) is tested for knowledge of the credit rating
9 process.

10 **SEC. 937. TIMING OF REGULATIONS.**

11 Unless otherwise specifically provided in this subtitle,
12 the Commission shall issue final regulations, as required
13 by this subtitle and the amendments made by this subtitle,
14 not later than 1 year after the date of enactment of this
15 Act.

16 **SEC. 938. UNIVERSAL RATINGS SYMBOLS.**

17 (a) RULEMAKING.—The Commission shall require, by
18 rule, each nationally recognized statistical rating organiza-
19 tion to establish, maintain, and enforce written policies
20 and procedures that—

21 (1) assess the probability that an issuer of a se-
22 curity or money market instrument will default, fail
23 to make timely payments, or otherwise not make
24 payments to investors in accordance with the terms
25 of the security or money market instrument;

1 (2) clearly define and disclose the meaning of
2 any symbol used by the nationally recognized statis-
3 tical rating organization to denote a credit rating;
4 and

5 (3) apply any symbol described in paragraph
6 (2) in a manner that is consistent for all types of
7 securities and money market instruments for which
8 the symbol is used.

9 (b) RULE OF CONSTRUCTION.—Nothing in this sec-
10 tion shall prohibit a nationally recognized statistical rating
11 organization from using distinct sets of symbols to denote
12 credit ratings for different types of securities or money
13 market instruments.

14 **SEC. 939. REMOVAL OF STATUTORY REFERENCES TO CRED-**
15 **IT RATINGS.**

16 (a) FEDERAL DEPOSIT INSURANCE ACT.—The Fed-
17 eral Deposit Insurance Act (12 U.S.C. 1811 et seq.) is
18 amended—

19 (1) in section 7(b)(1)(E)(i), by striking “credit
20 rating entities, and other private economic” and in-
21 sert “private economic, credit,”;

22 (2) in section 28(d)—

23 (A) in the subsection heading, by striking
24 “NOT OF INVESTMENT GRADE”;

1 (B) in paragraph (1), by striking “not of
2 investment grade” and inserting “that does not
3 meet standards of credit-worthiness as estab-
4 lished by the Corporation”;

5 (C) in paragraph (2), by striking “not of
6 investment grade”;

7 (D) by striking paragraph (3);

8 (E) by redesignating paragraph (4) as
9 paragraph (3); and

10 (F) in paragraph (3), as so redesignated—

11 (i) by striking subparagraph (A);

12 (ii) by redesignating subparagraphs
13 (B) and (C) as subparagraphs (A) and
14 (B), respectively; and

15 (iii) in subparagraph (B), as so redesi-
16 gnated, by striking “not of investment
17 grade” and inserting “that does not meet
18 standards of credit-worthiness as estab-
19 lished by the Corporation”; and

20 (3) in section 28(e)—

21 (A) in the subsection heading, by striking
22 “NOT OF INVESTMENT GRADE”;

23 (B) in paragraph (1), by striking “not of
24 investment grade” and inserting “that does not

1 meet standards of credit-worthiness as estab-
2 lished by the Corporation”; and

3 (C) in paragraphs (2) and (3), by striking
4 “not of investment grade” each place that it ap-
5 pears and inserting “that does not meet stand-
6 ards of credit-worthiness established by the
7 Corporation”.

8 (b) FEDERAL HOUSING ENTERPRISES FINANCIAL
9 SAFETY AND SOUNDNESS ACT OF 1992.—Section 1319
10 of the Federal Housing Enterprises Financial Safety and
11 Soundness Act of 1992 (12 U.S.C. 4519) is amended by
12 striking “that is a nationally recognized statistical rating
13 organization, as such term is defined in section 3(a) of
14 the Securities Exchange Act of 1934,”.

15 (c) INVESTMENT COMPANY ACT OF 1940.—Section
16 6(a)(5)(A)(iv)(I) Investment Company Act of 1940 (15
17 U.S.C. 80a–6(a)(5)(A)(iv)(I)) is amended by striking “is
18 rated investment grade by not less than 1 nationally recog-
19 nized statistical rating organization” and inserting “meets
20 such standards of credit-worthiness as the Commission
21 shall adopt”.

22 (d) REVISED STATUTES.—Section 5136A of title
23 LXII of the Revised Statutes of the United States (12
24 U.S.C. 24a) is amended—

1 (1) in subsection (a)(2)(E), by striking “any
2 applicable rating” and inserting “standards of cred-
3 it-worthiness established by the Comptroller of the
4 Currency”;

5 (2) in the heading for subsection (a)(3) by
6 striking “RATING OR COMPARABLE REQUIREMENT”
7 and inserting “REQUIREMENT”;

8 (3) subsection (a)(3), by amending subpara-
9 graph (A) to read as follows:

10 “(A) IN GENERAL.—A national bank meets
11 the requirements of this paragraph if the bank
12 is one of the 100 largest insured banks and has
13 not fewer than 1 issue of outstanding debt that
14 meets standards of credit-worthiness or other
15 criteria as the Secretary of the Treasury and
16 the Board of Governors of the Federal Reserve
17 System may jointly establish.”.

18 (4) in the heading for subsection (f), by striking
19 “MAINTAIN PUBLIC RATING OR” and inserting
20 “MEET STANDARDS OF CREDIT-WORTHINESS”; and

21 (5) in subsection (f)(1), by striking “any appli-
22 cable rating” and inserting “standards of credit-wor-
23 thiness established by the Comptroller of the Cur-
24 rency”.

1 (e) SECURITIES EXCHANGE ACT OF 1934.—Section
2 3(a) Securities Exchange Act of 1934 (15 U.S.C.
3 78a(3)(a)) is amended—

4 (1) in paragraph (41), by striking “is rated in
5 one of the two highest rating categories by at least
6 one nationally recognized statistical rating organiza-
7 tion” and inserting “meets standards of credit-wor-
8 thiness as established by the Commission”; and

9 (2) in paragraph (53)(A), by striking “is rated
10 in 1 of the 4 highest rating categories by at least 1
11 nationally recognized statistical rating organization”
12 and inserting “meets standards of credit-worthiness
13 as established by the Commission”.

14 (f) WORLD BANK DISCUSSIONS.—Section 3(a)(6) of
15 the amendment in the nature of a substitute to the text
16 of H.R. 4645, as ordered reported from the Committee
17 on Banking, Finance and Urban Affairs on September 22,
18 1988, as enacted into law by section 555 of Public Law
19 100–461, (22 U.S.C. 286hh(a)(6)), is amended by striking
20 “credit rating” and inserting “credit-worthiness”.

21 (g) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect 2 years after the date of en-
23 actment of this Act.

24 (h) STUDY AND REPORT.—

1 (1) IN GENERAL.—Commission shall undertake
2 a study on the feasibility and desirability of—

3 (A) standardizing credit ratings termi-
4 nology, so that all credit rating agencies issue
5 credit ratings using identical terms;

6 (B) standardizing the market stress condi-
7 tions under which ratings are evaluated;

8 (C) requiring a quantitative correspond-
9 ence between credit ratings and a range of de-
10 fault probabilities and loss expectations under
11 standardized conditions of economic stress; and

12 (D) standardizing credit rating termi-
13 nology across asset classes, so that named rat-
14 ings correspond to a standard range of default
15 probabilities and expected losses independent of
16 asset class and issuing entity.

17 (2) REPORT.—Not later than 1 year after the
18 date of enactment of this Act, the Commission shall
19 submit to Congress a report containing the findings
20 of the study under paragraph (1) and the rec-
21 ommendations, if any, of the Commission with re-
22 spect to the study.

1 **SEC. 939A. REVIEW OF RELIANCE ON RATINGS.**

2 (a) AGENCY REVIEW.—Not later than 1 year after
3 the date of the enactment of this subtitle, each Federal
4 agency shall, to the extent applicable, review—

5 (1) any regulation issued by such agency that
6 requires the use of an assessment of the credit-wor-
7 thiness of a security or money market instrument;
8 and

9 (2) any references to or requirements in such
10 regulations regarding credit ratings.

11 (b) MODIFICATIONS REQUIRED.—Each such agency
12 shall modify any such regulations identified by the review
13 conducted under subsection (a) to remove any reference
14 to or requirement of reliance on credit ratings and to sub-
15 stitute in such regulations such standard of credit-worthi-
16 ness as each respective agency shall determine as appro-
17 priate for such regulations. In making such determination,
18 such agencies shall seek to establish, to the extent feasible,
19 uniform standards of credit-worthiness for use by each
20 such agency, taking into account the entities regulated by
21 each such agency and the purposes for which such entities
22 would rely on such standards of credit-worthiness.

23 (c) REPORT.—Upon conclusion of the review required
24 under subsection (a), each Federal agency shall transmit
25 a report to Congress containing a description of any modi-

1 fication of any regulation such agency made pursuant to
2 subsection (b).

3 **SEC. 939B. ELIMINATION OF EXEMPTION FROM FAIR DIS-**
4 **CLOSURE RULE.**

5 Not later than 90 days after the date of enactment
6 of this subtitle, the Securities Exchange Commission shall
7 revise Regulation FD (17 C.F.R. 243.100) to remove from
8 such regulation the exemption for entities whose primary
9 business is the issuance of credit ratings (17 C.F.R.
10 243.100(b)(2)(iii)).

11 **SEC. 939C. SECURITIES AND EXCHANGE COMMISSION**
12 **STUDY ON STRENGTHENING CREDIT RATING**
13 **AGENCY INDEPENDENCE.**

14 (a) STUDY.—The Commission shall conduct a study
15 of—

16 (1) the independence of nationally recognized
17 statistical rating organizations; and

18 (2) how the independence of nationally recog-
19 nized statistical rating organizations affects the rat-
20 ings issued by the nationally recognized statistical
21 rating organizations.

22 (b) SUBJECTS FOR EVALUATION.—In conducting the
23 study under subsection (a), the Commission shall evalu-
24 ate—

1 (1) the management of conflicts of interest
2 raised by a nationally recognized statistical rating
3 organization providing other services, including risk
4 management advisory services, ancillary assistance,
5 or consulting services;

6 (2) the potential impact of rules prohibiting a
7 nationally recognized statistical rating organization
8 that provides a rating to an issuer from providing
9 other services to the issuer; and

10 (3) any other issue relating to nationally recog-
11 nized statistical rating organizations, as the Chair-
12 man of the Commission determines is appropriate.

13 (c) REPORT.—Not later than 3 years after the date
14 of enactment of this Act, the Chairman of the Commission
15 shall submit to the Committee on Banking, Housing, and
16 Urban Affairs of the Senate and the Committee on Finan-
17 cial Services of the House of Representatives a report on
18 the results of the study conducted under subsection (a),
19 including recommendations, if any, for improving the in-
20 tegrity of ratings issued by nationally recognized statis-
21 tical rating organizations.

22 **SEC. 939D. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
23 **ON ALTERNATIVE BUSINESS MODELS.**

24 (a) STUDY.—The Comptroller General of the United
25 States shall conduct a study on alternative means for com-

1 pensating nationally recognized statistical rating organiza-
2 tions in order to create incentives for nationally recognized
3 statistical rating organizations to provide more accurate
4 credit ratings, including any statutory changes that would
5 be required to facilitate the use of an alternative means
6 of compensation.

7 (b) REPORT.—Not later than 18 months after the
8 date of enactment of this Act, the Comptroller General
9 shall submit to the Committee on Banking, Housing, and
10 Urban Affairs of the Senate and the Committee on Finan-
11 cial Services of the House of Representatives a report on
12 the results of the study conducted under subsection (a),
13 including recommendations, if any, for providing incen-
14 tives to credit rating agencies to improve the credit rating
15 process.

16 **SEC. 939E. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
17 **ON THE CREATION OF AN INDEPENDENT**
18 **PROFESSIONAL ANALYST ORGANIZATION.**

19 (a) STUDY.—The Comptroller General of the United
20 States shall conduct a study on the feasibility and merits
21 of creating an independent professional organization for
22 rating analysts employed by nationally recognized statis-
23 tical rating organizations that would be responsible for—

24 (1) establishing independent standards for gov-
25 erning the profession of rating analysts;

1 (2) establishing a code of ethical conduct; and

2 (3) overseeing the profession of rating analysts.

3 (b) REPORT.—Not later than 1 year after the date
4 of publication of the rules issued by the Commission pur-
5 suant to section 936, the Comptroller General shall submit
6 to the Committee on Banking, Housing, and Urban Af-
7 fairs of the Senate and the Committee on Financial Serv-
8 ices of the House of Representatives a report on the re-
9 sults of the study conducted under subsection (a).

10 **SEC. 939F. STUDY AND RULEMAKING ON ASSIGNED CREDIT**
11 **RATINGS.**

12 (a) DEFINITION.—In this section, the term “struc-
13 tured finance product” means an asset-backed security, as
14 defined in section 3(a)(77) of the Securities Exchange Act
15 of 1934, as added by section 941, and any structured
16 product based on an asset-backed security, as determined
17 by the Commission, by rule.

18 (b) STUDY.—The Commission shall carry out a study
19 of—

20 (1) the credit rating process for structured fi-
21 nance products and the conflicts of interest associ-
22 ated with the issuer-pay and the subscriber-pay
23 models;

24 (2) the feasibility of establishing a system in
25 which a public or private utility or a self-regulatory

1 organization assigns nationally recognized statistical
2 rating organizations to determine the credit ratings
3 of structured finance products, including—

4 (A) an assessment of potential mechanisms
5 for determining fees for the nationally recog-
6 nized statistical rating organizations;

7 (B) appropriate methods for paying fees to
8 the nationally recognized statistical rating orga-
9 nizations;

10 (C) the extent to which the creation of
11 such a system would be viewed as the creation
12 of moral hazard by the Federal Government;
13 and

14 (D) any constitutional or other issues con-
15 cerning the establishment of such a system;

16 (3) the range of metrics that could be used to
17 determine the accuracy of credit ratings; and

18 (4) alternative means for compensating nation-
19 ally recognized statistical rating organizations that
20 would create incentives for accurate credit ratings.

21 (c) REPORT AND RECOMMENDATION.—Not later
22 than 24 months after the date of enactment of this Act,
23 the Commission shall submit to the Committee on Bank-
24 ing, Housing, and Urban Affairs of the Senate and the

1 Committee on Financial Services of the House of Rep-
2 resentatives a report that contains—

3 (1) the findings of the study required under
4 subsection (b); and

5 (2) any recommendations for regulatory or stat-
6 utory changes that the Commission determines
7 should be made to implement the findings of the
8 study required under subsection (b).

9 (d) RULEMAKING.—

10 (1) RULEMAKING.—After submission of the re-
11 port under subsection (c), the Commission shall, by
12 rule, as the Commission determines is necessary or
13 appropriate in the public interest or for the protec-
14 tion of investors, establish a system for the assign-
15 ment of nationally recognized statistical rating orga-
16 nizations to determine the initial credit ratings of
17 structured finance products, in a manner that pre-
18 vents the issuer, sponsor, or underwriter of the
19 structured finance product from selecting the nation-
20 ally recognized statistical rating organization that
21 will determine the initial credit ratings and monitor
22 such credit ratings. In issuing any rule under this
23 paragraph, the Commission shall give thorough con-
24 sideration to the provisions of section 15E(w) of the
25 Securities Exchange Act of 1934, as that provision

1 would have been added by section 939D of H.R.
2 4173 (111th Congress), as passed by the Senate on
3 May 20, 2010, and shall implement the system de-
4 scribed in such section 939D unless the Commission
5 determines that an alternative system would better
6 serve the public interest and the protection of inves-
7 tors.

8 (2) **RULE OF CONSTRUCTION.**—Nothing in this
9 subsection may be construed to limit or suspend any
10 other rulemaking authority of the Commission.

11 **SEC. 939G. EFFECT OF RULE 436(G).**

12 Rule 436(g), promulgated by the Securities and Ex-
13 change Commission under the Securities Act of 1933,
14 shall have no force or effect.

15 **SEC. 939H. SENSE OF CONGRESS.**

16 It is the sense of Congress that the Securities and
17 Exchange Commission should exercise the rulemaking au-
18 thority of the Commission under section 15E(h)(2)(B) of
19 the Securities Exchange Act of 1934 (15 U.S.C. 78o-
20 7(h)(2)(B)) to prevent improper conflicts of interest aris-
21 ing from employees of nationally recognized statistical rat-
22 ing organizations providing services to issuers of securities
23 that are unrelated to the issuance of credit ratings, includ-
24 ing consulting, advisory, and other services.

1 **Subtitle D—Improvements to the**
2 **Asset-Backed Securitization**
3 **Process**

4 **SEC. 941. REGULATION OF CREDIT RISK RETENTION.**

5 (a) DEFINITION OF ASSET-BACKED SECURITY.—Sec-
6 tion 3(a) of the Securities Exchange Act of 1934 (15
7 U.S.C. 78c(a)) is amended by adding at the end the fol-
8 lowing:

9 “(77) ASSET-BACKED SECURITY.—The term
10 ‘asset-backed security’—

11 “(A) means a fixed-income or other secu-
12 rity collateralized by any type of self-liquidating
13 financial asset (including a loan, a lease, a
14 mortgage, or a secured or unsecured receivable)
15 that allows the holder of the security to receive
16 payments that depend primarily on cash flow
17 from the asset, including—

18 “(i) a collateralized mortgage obliga-
19 tion;

20 “(ii) a collateralized debt obligation;

21 “(iii) a collateralized bond obligation;

22 “(iv) a collateralized debt obligation of
23 asset-backed securities;

24 “(v) a collateralized debt obligation of
25 collateralized debt obligations; and

1 “(vi) a security that the Commission,
2 by rule, determines to be an asset-backed
3 security for purposes of this section; and

4 “(B) does not include a security issued by
5 a finance subsidiary held by the parent com-
6 pany or a company controlled by the parent
7 company, if none of the securities issued by the
8 finance subsidiary are held by an entity that is
9 not controlled by the parent company.”.

10 (b) CREDIT RISK RETENTION.—The Securities Ex-
11 change Act of 1934 (15 U.S.C. 78a et seq.) is amended
12 by inserting after section 15F, as added by this Act, the
13 following:

14 **“SEC. 15G. CREDIT RISK RETENTION.**

15 “(a) DEFINITIONS.—In this section—

16 “(1) the term ‘Federal banking agencies’ means
17 the Office of the Comptroller of the Currency, the
18 Board of Governors of the Federal Reserve System,
19 and the Federal Deposit Insurance Corporation;

20 “(2) the term ‘insured depository institution’
21 has the same meaning as in section 3(c) of the Fed-
22 eral Deposit Insurance Act (12 U.S.C. 1813(c));

23 “(3) the term ‘securitizer’ means—

24 “(A) an issuer of an asset-backed security;

25 or

1 “(B) a person who organizes and initiates
2 an asset-backed securities transaction by selling
3 or transferring assets, either directly or indi-
4 rectly, including through an affiliate, to the
5 issuer; and

6 “(4) the term ‘originator’ means a person
7 who—

8 “(A) through the extension of credit or
9 otherwise, creates a financial asset that
10 collateralizes an asset-backed security; and

11 “(B) sells an asset directly or indirectly to
12 a securitizer.

13 “(b) REGULATIONS REQUIRED.—

14 “(1) IN GENERAL.—Not later than 270 days
15 after the date of enactment of this section, the Fed-
16 eral banking agencies and the Commission shall
17 jointly prescribe regulations to require any
18 securitizer to retain an economic interest in a por-
19 tion of the credit risk for any asset that the
20 securitizer, through the issuance of an asset-backed
21 security, transfers, sells, or conveys to a third party.

22 “(2) RESIDENTIAL MORTGAGES.—Not later
23 than 270 days after the date of the enactment of
24 this section, the Federal banking agencies, the Com-
25 mission, the Secretary of Housing and Urban Devel-

1 an asset-backed security by the
2 securitizer, if 1 or more of the assets
3 that collateralize the asset-backed se-
4 curity are not qualified residential
5 mortgages; or

6 “(ii) less than 5 percent of the credit
7 risk for an asset that is not a qualified res-
8 idential mortgage that is transferred, sold,
9 or conveyed through the issuance of an
10 asset-backed security by the securitizer, if
11 the originator of the asset meets the un-
12 derwriting standards prescribed under
13 paragraph (2)(B);

14 “(C) specify—

15 “(i) the permissible forms of risk re-
16 tention for purposes of this section;

17 “(ii) the minimum duration of the
18 risk retention required under this section;

19 and

20 “(iii) that a securitizer is not required
21 to retain any part of the credit risk for an
22 asset that is transferred, sold or conveyed
23 through the issuance of an asset-backed se-
24 curity by the securitizer, if all of the assets

1 that collateralize the asset-backed security
2 are qualified residential mortgages;

3 “(D) apply, regardless of whether the
4 securitizer is an insured depository institution;

5 “(E) with respect to a commercial mort-
6 gage, specify the permissible types, forms, and
7 amounts of risk retention that would meet the
8 requirements of subparagraph (B), which in the
9 determination of the Federal banking agencies
10 and the Commission may include—

11 “(i) retention of a specified amount or
12 percentage of the total credit risk of the
13 asset;

14 “(ii) retention of the first-loss position
15 by a third-party purchaser that specifically
16 negotiates for the purchase of such first
17 loss position, holds adequate financial re-
18 sources to back losses, provides due dili-
19 gence on all individual assets in the pool
20 before the issuance of the asset-backed se-
21 curities, and meets the same standards for
22 risk retention as the Federal banking
23 agencies and the Commission require of
24 the securitizer;

1 “(iii) a determination by the Federal
2 banking agencies and the Commission that
3 the underwriting standards and controls
4 for the asset are adequate; and

5 “(iv) provision of adequate representa-
6 tions and warranties and related enforce-
7 ment mechanisms; and

8 “(F) establish appropriate standards for
9 retention of an economic interest with respect
10 to collateralized debt obligations, securities
11 collateralized by collateralized debt obligations,
12 and similar instruments collateralized by other
13 asset-backed securities; and

14 “(G) provide for—

15 “(i) a total or partial exemption of
16 any securitization, as may be appropriate
17 in the public interest and for the protec-
18 tion of investors;

19 “(ii) a total or partial exemption for
20 the securitization of an asset issued or
21 guaranteed by the United States, or an
22 agency of the United States, as the Fed-
23 eral banking agencies and the Commission
24 jointly determine appropriate in the public
25 interest and for the protection of investors,

1 except that, for purposes of this clause, the
2 Federal National Mortgage Association
3 and the Federal Home Loan Mortgage
4 Corporation are not agencies of the United
5 States;

6 “(iii) a total or partial exemption for
7 any asset-backed security that is a security
8 issued or guaranteed by any State of the
9 United States, or by any political subdivi-
10 sion of a State or territory, or by any pub-
11 lic instrumentality of a State or territory
12 that is exempt from the registration re-
13 quirements of the Securities Act of 1933
14 by reason of section 3(a)(2) of that Act
15 (15 U.S.C. 77c(a)(2)), or a security de-
16 fined as a qualified scholarship funding
17 bond in section 150(d)(2) of the Internal
18 Revenue Code of 1986, as may be appro-
19 priate in the public interest and for the
20 protection of investors; and

21 “(iv) the allocation of risk retention
22 obligations between a securitizer and an
23 originator in the case of a securitizer that
24 purchases assets from an originator, as the

1 Federal banking agencies and the Commis-
2 sion jointly determine appropriate.

3 “(2) ASSET CLASSES.—

4 “(A) ASSET CLASSES.—The regulations
5 prescribed under subsection (b) shall establish
6 asset classes with separate rules for securitizers
7 of different classes of assets, including residen-
8 tial mortgages, commercial mortgages, commer-
9 cial loans, auto loans, and any other class of as-
10 sets that the Federal banking agencies and the
11 Commission deem appropriate.

12 “(B) CONTENTS.—For each asset class es-
13 tablished under subparagraph (A), the regula-
14 tions prescribed under subsection (b) shall in-
15 clude underwriting standards established by the
16 Federal banking agencies that specify the
17 terms, conditions, and characteristics of a loan
18 within the asset class that indicate a low credit
19 risk with respect to the loan.

20 “(d) ORIGINATORS.—In determining how to allocate
21 risk retention obligations between a securitizer and an
22 originator under subsection (c)(1)(E)(iv), the Federal
23 banking agencies and the Commission shall—

24 “(1) reduce the percentage of risk retention ob-
25 ligations required of the securitizer by the percent-

1 age of risk retention obligations required of the
2 originator; and

3 “(2) consider—

4 “(A) whether the assets sold to the
5 securitizer have terms, conditions, and charac-
6 teristics that reflect low credit risk;

7 “(B) whether the form or volume of trans-
8 actions in securitization markets creates incen-
9 tives for imprudent origination of the type of
10 loan or asset to be sold to the securitizer; and

11 “(C) the potential impact of the risk reten-
12 tion obligations on the access of consumers and
13 businesses to credit on reasonable terms, which
14 may not include the transfer of credit risk to a
15 third party.

16 “(e) EXEMPTIONS, EXCEPTIONS, AND ADJUST-
17 MENTS.—

18 “(1) IN GENERAL.—The Federal banking agen-
19 cies and the Commission may jointly adopt or issue
20 exemptions, exceptions, or adjustments to the rules
21 issued under this section, including exemptions, ex-
22 ceptions, or adjustments for classes of institutions or
23 assets relating to the risk retention requirement and
24 the prohibition on hedging under subsection (c)(1).

1 “(2) APPLICABLE STANDARDS.—Any exemp-
2 tion, exception, or adjustment adopted or issued by
3 the Federal banking agencies and the Commission
4 under this paragraph shall—

5 “(A) help ensure high quality underwriting
6 standards for the securitizers and originators of
7 assets that are securitized or available for
8 securitization; and

9 “(B) encourage appropriate risk manage-
10 ment practices by the securitizers and origina-
11 tors of assets, improve the access of consumers
12 and businesses to credit on reasonable terms, or
13 otherwise be in the public interest and for the
14 protection of investors.

15 “(3) CERTAIN INSTITUTIONS AND PROGRAMS
16 EXEMPT.—

17 “(A) FARM CREDIT SYSTEM INSTITU-
18 TIONS.—Notwithstanding any other provision of
19 this section, the requirements of this section
20 shall not apply to any loan or other financial
21 asset made, insured, guaranteed, or purchased
22 by any institution that is subject to the super-
23 vision of the Farm Credit Administration, in-
24 cluding the Federal Agricultural Mortgage Cor-
25 poration.

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1 “(B) OTHER FEDERAL PROGRAMS.—This
2 section shall not apply to any residential, multi-
3 family, or health care facility mortgage loan
4 asset, or securitization based directly or indi-
5 rectly on such an asset, which is insured or
6 guaranteed by the United States or an agency
7 of the United States. For purposes of this sub-
8 section, the Federal National Mortgage Associa-
9 tion, the Federal Home Loan Mortgage Cor-
10 poration, and the Federal home loan banks
11 shall not be considered an agency of the United
12 States.

13 “(4) EXEMPTION FOR QUALIFIED RESIDENTIAL
14 MORTGAGES.—

15 “(A) IN GENERAL.—The Federal banking
16 agencies, the Commission, the Secretary of
17 Housing and Urban Development, and the Di-
18 rector of the Federal Housing Finance Agency
19 shall jointly issue regulations to exempt quali-
20 fied residential mortgages from the risk reten-
21 tion requirements of this subsection.

22 “(B) QUALIFIED RESIDENTIAL MORT-
23 GAGE.—The Federal banking agencies, the
24 Commission, the Secretary of Housing and
25 Urban Development, and the Director of the

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1 Federal Housing Finance Agency shall jointly
2 define the term ‘qualified residential mortgage’
3 for purposes of this subsection, taking into con-
4 sideration underwriting and product features
5 that historical loan performance data indicate
6 result in a lower risk of default, such as—

7 “(i) documentation and verification of
8 the financial resources relied upon to qual-
9 ify the mortgagor;

10 “(ii) standards with respect to—

11 “(I) the residual income of the
12 mortgagor after all monthly obliga-
13 tions;

14 “(II) the ratio of the housing
15 payments of the mortgagor to the
16 monthly income of the mortgagor;

17 “(III) the ratio of total monthly
18 installment payments of the mort-
19 gagor to the income of the mortgagor;

20 “(iii) mitigating the potential for pay-
21 ment shock on adjustable rate mortgages
22 through product features and underwriting
23 standards;

24 “(iv) mortgage guarantee insurance or
25 other types of insurance or credit enhance-

1 ment obtained at the time of origination, to
2 the extent such insurance or credit en-
3 hancement reduces the risk of default; and

4 “(v) prohibiting or restricting the use
5 of balloon payments, negative amortization,
6 prepayment penalties, interest-only pay-
7 ments, and other features that have been
8 demonstrated to exhibit a higher risk of
9 borrower default.

10 “(C) LIMITATION ON DEFINITION.—The
11 Federal banking agencies, the Commission, the
12 Secretary of Housing and Urban Development,
13 and the Director of the Federal Housing Fi-
14 nance Agency in defining the term ‘qualified
15 residential mortgage’, as required by subpara-
16 graph (B), shall define that term to be no
17 broader than the definition ‘qualified mortgage’
18 as the term is defined under section 129C(c)(2)
19 of the Truth in Lending Act, as amended by
20 the Consumer Financial Protection Act of
21 2010, and regulations adopted thereunder.

22 “(5) CONDITION FOR QUALIFIED RESIDENTIAL
23 MORTGAGE EXEMPTION.—The regulations issued
24 under paragraph (4) shall provide that an asset-
25 backed security that is collateralized by tranches of

1 other asset-backed securities shall not be exempt
2 from the risk retention requirements of this sub-
3 section.

4 “(6) CERTIFICATION.—The Commission shall
5 require an issuer to certify, for each issuance of an
6 asset-backed security collateralized exclusively by
7 qualified residential mortgages, that the issuer has
8 evaluated the effectiveness of the internal super-
9 visory controls of the issuer with respect to the proc-
10 ess for ensuring that all assets that collateralize the
11 asset-backed security are qualified residential mort-
12 gages.

13 “(f) ENFORCEMENT.—The regulations issued under
14 this section shall be enforced by—

15 “(1) the appropriate Federal banking agency,
16 with respect to any securitizer that is an insured de-
17 pository institution; and

18 “(2) the Commission, with respect to any
19 securitizer that is not an insured depository institu-
20 tion.

21 “(g) AUTHORITY OF COMMISSION.—The authority of
22 the Commission under this section shall be in addition to
23 the authority of the Commission to otherwise enforce the
24 securities laws.

1 “(h) AUTHORITY TO COORDINATE ON RULE-
2 MAKING.—The Chairperson of the Financial Stability
3 Oversight Council shall coordinate all joint rulemaking re-
4 quired under this section.

5 “(i) EFFECTIVE DATE OF REGULATIONS.—The regu-
6 lations issued under this section shall become effective—

7 “(1) with respect to securitizers and originators
8 of asset-backed securities backed by residential
9 mortgages, 1 year after the date on which final rules
10 under this section are published in the Federal Reg-
11 ister; and

12 “(2) with respect to securitizers and originators
13 of all other classes of asset-backed securities, 2 years
14 after the date on which final rules under this section
15 are published in the Federal Register.”.

16 (c) STUDY ON RISK RETENTION.—

17 (1) STUDY.—The Board of Governors of the
18 Federal Reserve System, in coordination and con-
19 sultation with the Comptroller of the Currency, the
20 Director of the Office of Thrift Supervision, the
21 Chairperson of the Federal Deposit Insurance Cor-
22 poration, and the Securities and Exchange Commis-
23 sion shall conduct a study of the combined impact
24 on each individual class of asset-backed security es-
25 tablished under section 15G(c)(2) of the Securities

1 Exchange Act of 1934, as added by subsection (b),
2 of—

3 (A) the new credit risk retention require-
4 ments contained in the amendment made by
5 subsection (b); and

6 (B) the Financial Accounting Statements
7 166 and 167 issued by the Financial Account-
8 ing Standards Board.

9 (2) REPORT.—Not later than 90 days after the
10 date of enactment of this Act, the Board of Gov-
11 ernors of the Federal Reserve System shall submit
12 to Congress a report on the study conducted under
13 paragraph (1). Such report shall include statutory
14 and regulatory recommendations for eliminating any
15 negative impacts on the continued viability of the
16 asset-backed securitization markets and on the avail-
17 ability of credit for new lending identified by the
18 study conducted under paragraph (1).

19 **SEC. 942. DISCLOSURES AND REPORTING FOR ASSET-**
20 **BACKED SECURITIES.**

21 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
22 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.
23 78o(d)) is amended—

24 (1) by striking “(d) Each” and inserting the
25 following:

1 “(d) SUPPLEMENTARY AND PERIODIC INFORMA-
2 TION.—

3 “(1) IN GENERAL.—Each”;

4 (2) in the third sentence, by inserting after “se-
5 curities of each class” the following: “, other than
6 any class of asset-backed securities,”; and

7 (3) by adding at the end the following:

8 “(2) ASSET-BACKED SECURITIES.—

9 “(A) SUSPENSION OF DUTY TO FILE.—The
10 Commission may, by rule or regulation, provide
11 for the suspension or termination of the duty to
12 file under this subsection for any class of asset-
13 backed security, on such terms and conditions
14 and for such period or periods as the Commis-
15 sion deems necessary or appropriate in the pub-
16 lic interest or for the protection of investors.

17 “(B) CLASSIFICATION OF ISSUERS.—The
18 Commission may, for purposes of this sub-
19 section, classify issuers and prescribe require-
20 ments appropriate for each class of issuers of
21 asset-backed securities.”.

22 (b) SECURITIES ACT OF 1933.—Section 7 of the Se-
23 curities Act of 1933 (15 U.S.C. 77g) is amended by add-
24 ing at the end the following:

25 “(c) DISCLOSURE REQUIREMENTS.—

1 “(iii) the amount of risk retention by
2 the originator and the securitizer of such
3 assets.”.

4 **SEC. 943. REPRESENTATIONS AND WARRANTIES IN ASSET-**
5 **BACKED OFFERINGS.**

6 Not later than 180 days after the date of enactment
7 of this Act, the Securities and Exchange Commission shall
8 prescribe regulations on the use of representations and
9 warranties in the market for asset-backed securities (as
10 that term is defined in section 3(a)(77) of the Securities
11 Exchange Act of 1934, as added by this subtitle) that—

12 (1) require each national recognized statistical
13 rating organization to include in any report accom-
14 panying a credit rating a description of—

15 (A) the representations, warranties, and
16 enforcement mechanisms available to investors;
17 and

18 (B) how they differ from the representa-
19 tions, warranties, and enforcement mechanisms
20 in issuances of similar securities; and

21 (2) require any securitizer (as that term is de-
22 fined in section 15G(a) of the Securities Exchange
23 Act of 1934, as added by this subtitle) to disclose
24 fulfilled and unfulfilled repurchase requests across
25 all trusts aggregated by the securitizer, so that in-

1 vestors may identify asset originators with clear un-
2 derwriting deficiencies.

3 **SEC. 944. EXEMPTED TRANSACTIONS UNDER THE SECURI-**
4 **TIES ACT OF 1933.**

5 (a) EXEMPTION ELIMINATED.—Section 4 of the Se-
6 curities Act of 1933 (15 U.S.C. 77d) is amended—

7 (1) by striking paragraph (5); and

8 (2) by striking “(6) transactions” and inserting
9 the following:

10 “(5) transactions”.

11 (b) CONFORMING AMENDMENT.—Section
12 3(a)(4)(B)(vii)(I) of the Securities Exchange Act of 1934
13 (15 U.S.C. 78c(a)(4)(B)(vii)(I)) is amended by striking
14 “4(6)” and inserting “4(5)”.

15 **SEC. 945. DUE DILIGENCE ANALYSIS AND DISCLOSURE IN**
16 **ASSET-BACKED SECURITIES ISSUES.**

17 Section 7 of the Securities Act of 1933 (15 U.S.C.
18 77g), as amended by this subtitle, is amended by adding
19 at the end the following:

20 “(d) REGISTRATION STATEMENT FOR ASSET-
21 BACKED SECURITIES.—Not later than 180 days after the
22 date of enactment of this subsection, the Commission shall
23 issue rules relating to the registration statement required
24 to be filed by any issuer of an asset-backed security (as
25 that term is defined in section 3(a)(77) of the Securities

1 Exchange Act of 1934) that require any issuer of an asset-
2 backed security—

3 “(1) to perform a review of the assets under-
4 lying the asset-backed security; and

5 “(2) to disclose the nature of the review under
6 paragraph (1).”.

7 **SEC. 946. STUDY ON THE MACROECONOMIC EFFECTS OF**
8 **RISK RETENTION REQUIREMENTS.**

9 (a) **STUDY REQUIRED.**—The Chairman of the Finan-
10 cial Services Oversight Council shall carry out a study on
11 the macroeconomic effects of the risk retention require-
12 ments under this subtitle, and the amendments made by
13 this subtitle, with emphasis placed on potential beneficial
14 effects with respect to stabilizing the real estate market.
15 Such study shall include—

16 (1) an analysis of the effects of risk retention
17 on real estate asset price bubbles, including a retro-
18 spective estimate of what fraction of real estate
19 losses may have been averted had such requirements
20 been in force in recent years;

21 (2) an analysis of the feasibility of minimizing
22 real estate price bubbles by proactively adjusting the
23 percentage of risk retention that must be borne by
24 creditors and securitizers of real estate debt, as a
25 function of regional or national market conditions;

1 (3) a comparable analysis for proactively ad-
2 justing mortgage origination requirements;

3 (4) an assessment of whether such proactive ad-
4 justments should be made by an independent regu-
5 lator, or in a formulaic and transparent manner;

6 (5) an assessment of whether such adjustments
7 should take place independently or in concert with
8 monetary policy; and

9 (6) recommendations for implementation and
10 enabling legislation.

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 of the Financial Services Oversight Council
14 shall issue a report to the Congress containing any find-
15 ings and determinations made in carrying out the study
16 required under subsection (a).

17 **Subtitle E—Accountability and**
18 **Executive Compensation**

19 **SEC. 951. SHAREHOLDER VOTE ON EXECUTIVE COMPENSA-**
20 **TION DISCLOSURES.**

21 The Securities Exchange Act of 1934 (15 U.S.C. 78a
22 et seq.) is amended by inserting after section 14 (15
23 U.S.C. 78n) the following:

1 **“SEC. 14A. SHAREHOLDER APPROVAL OF EXECUTIVE COM-**
2 **PENSATION.**

3 “(a) SEPARATE RESOLUTION REQUIRED.—

4 “(1) IN GENERAL.—Not less frequently than
5 once every 3 years, a proxy or consent or authoriza-
6 tion for an annual or other meeting of the share-
7 holders for which the proxy solicitation rules of the
8 Commission require compensation disclosure shall
9 include a separate resolution subject to shareholder
10 vote to approve the compensation of executives, as
11 disclosed pursuant to section 229.402 of title 17,
12 Code of Federal Regulations, or any successor there-
13 to.

14 “(2) FREQUENCY OF VOTE.—Not less fre-
15 quently than once every 6 years, a proxy or consent
16 or authorization for an annual or other meeting of
17 the shareholders for which the proxy solicitation
18 rules of the Commission require compensation dis-
19 closure shall include a separate resolution subject to
20 shareholder vote to determine whether votes on the
21 resolutions required under paragraph (1) will occur
22 every 1, 2, or 3 years.

23 “(3) EFFECTIVE DATE.—The proxy or consent
24 or authorization for the first annual or other meet-
25 ing of the shareholders occurring after the end of

1 the 6-month period beginning on the date of enact-
2 ment of this section shall include—

3 “(A) the resolution described in paragraph
4 (1); and

5 “(B) a separate resolution subject to
6 shareholder vote to determine whether votes on
7 the resolutions required under paragraph (1)
8 will occur every 1, 2, or 3 years.

9 “(b) SHAREHOLDER APPROVAL OF GOLDEN PARA-
10 CHUTE COMPENSATION.—

11 “(1) DISCLOSURE.—In any proxy or consent
12 solicitation material (the solicitation of which is sub-
13 ject to the rules of the Commission pursuant to sub-
14 section (a)) for a meeting of the shareholders occur-
15 ring after the end of the 6-month period beginning
16 on the date of enactment of this section, at which
17 shareholders are asked to approve an acquisition,
18 merger, consolidation, or proposed sale or other dis-
19 position of all or substantially all the assets of an
20 issuer, the person making such solicitation shall dis-
21 close in the proxy or consent solicitation material, in
22 a clear and simple form in accordance with regula-
23 tions to be promulgated by the Commission, any
24 agreements or understandings that such person has
25 with any named executive officers of such issuer (or

1 of the acquiring issuer, if such issuer is not the ac-
2 quiring issuer) concerning any type of compensation
3 (whether present, deferred, or contingent) that is
4 based on or otherwise relates to the acquisition,
5 merger, consolidation, sale, or other disposition of all
6 or substantially all of the assets of the issuer and
7 the aggregate total of all such compensation that
8 may (and the conditions upon which it may) be paid
9 or become payable to or on behalf of such executive
10 officer.

11 “(2) SHAREHOLDER APPROVAL.—Any proxy or
12 consent or authorization relating to the proxy or
13 consent solicitation material containing the disclo-
14 sure required by paragraph (1) shall include a sepa-
15 rate resolution subject to shareholder vote to ap-
16 prove such agreements or understandings and com-
17 pensation as disclosed, unless such agreements or
18 understandings have been subject to a shareholder
19 vote under subsection (a).

20 “(c) RULE OF CONSTRUCTION.—The shareholder
21 vote referred to in subsections (a) and (b) shall not be
22 binding on the issuer or the board of directors of an issuer,
23 and may not be construed—

24 “(1) as overruling a decision by such issuer or
25 board of directors;

1 “(2) to create or imply any change to the fidu-
2 ciary duties of such issuer or board of directors;

3 “(3) to create or imply any additional fiduciary
4 duties for such issuer or board of directors; or

5 “(4) to restrict or limit the ability of share-
6 holders to make proposals for inclusion in proxy ma-
7 terials related to executive compensation.

8 “(d) DISCLOSURE OF VOTES.—Every institutional in-
9 vestment manager subject to section 13(f) shall report at
10 least annually how it voted on any shareholder vote pursu-
11 ant to subsections (a) and (b), unless such vote is other-
12 wise required to be reported publicly by rule or regulation
13 of the Commission.

14 “(e) EXEMPTION.—The Commission may, by rule or
15 order, exempt an issuer or class of issuers from the re-
16 quirement under subsection (a) or (b). In determining
17 whether to make an exemption under this subsection, the
18 Commission shall take into account, among other consid-
19 erations, whether the requirements under subsections (a)
20 and (b) disproportionately burdens small issuers.”.

21 **SEC. 952. COMPENSATION COMMITTEE INDEPENDENCE.**

22 (a) IN GENERAL.—The Securities Exchange Act of
23 1934 (15 U.S.C. 78 et seq.) is amended by inserting after
24 section 10B, as added by section 753, the following:

1 **“SEC. 10C. COMPENSATION COMMITTEES.**

2 “(a) INDEPENDENCE OF COMPENSATION COMMIT-
3 TEES.—

4 “(1) LISTING STANDARDS.—The Commission
5 shall, by rule, direct the national securities ex-
6 changes and national securities associations to pro-
7 hibit the listing of any equity security of an issuer,
8 other than an issuer that is a controlled company,
9 limited partnership, company in bankruptcy pro-
10 ceedings, open-ended management investment com-
11 pany that is registered under the Investment Com-
12 pany Act of 1940, or a foreign private issuer that
13 provides annual disclosures to shareholders of the
14 reasons that the foreign private issuer does not have
15 an independent compensation committee, that does
16 not comply with the requirements of this subsection.

17 “(2) INDEPENDENCE OF COMPENSATION COM-
18 MITTEES.—The rules of the Commission under para-
19 graph (1) shall require that each member of the
20 compensation committee of the board of directors of
21 an issuer be—

22 “(A) a member of the board of directors of
23 the issuer; and

24 “(B) independent.

25 “(3) INDEPENDENCE.—The rules of the Com-
26 mission under paragraph (1) shall require that, in

1 determining the definition of the term ‘independ-
2 ence’ for purposes of paragraph (2), the national se-
3 curities exchanges and the national securities asso-
4 ciations shall consider relevant factors, including—

5 “(A) the source of compensation of a mem-
6 ber of the board of directors of an issuer, in-
7 cluding any consulting, advisory, or other com-
8 pensatory fee paid by the issuer to such mem-
9 ber of the board of directors; and

10 “(B) whether a member of the board of di-
11 rectors of an issuer is affiliated with the issuer,
12 a subsidiary of the issuer, or an affiliate of a
13 subsidiary of the issuer.

14 “(4) EXEMPTION AUTHORITY.—The rules of
15 the Commission under paragraph (1) shall permit a
16 national securities exchange or a national securities
17 association to exempt a particular relationship from
18 the requirements of paragraph (2), with respect to
19 the members of a compensation committee, as the
20 national securities exchange or national securities
21 association determines is appropriate, taking into
22 consideration the size of an issuer and any other rel-
23 evant factors.

1 “(b) INDEPENDENCE OF COMPENSATION CONSULT-
2 ANTS AND OTHER COMPENSATION COMMITTEE ADVIS-
3 ERS.—

4 “(1) IN GENERAL.—The compensation com-
5 mittee of an issuer may only select a compensation
6 consultant, legal counsel, or other adviser to the
7 compensation committee after taking into consider-
8 ation the factors identified by the Commission under
9 paragraph (2).

10 “(2) RULES.—The Commission shall identify
11 factors that affect the independence of a compensa-
12 tion consultant, legal counsel, or other adviser to a
13 compensation committee of an issuer. Such factors
14 shall be competitively neutral among categories of
15 consultants, legal counsel, or other advisers and pre-
16 serve the ability of compensation committees to re-
17 tain the services of members of any such category,
18 and shall include—

19 “(A) the provision of other services to the
20 issuer by the person that employs the com-
21 pensation consultant, legal counsel, or other ad-
22 viser;

23 “(B) the amount of fees received from the
24 issuer by the person that employs the com-
25 pensation consultant, legal counsel, or other ad-

1 viser, as a percentage of the total revenue of
2 the person that employs the compensation con-
3 sultant, legal counsel, or other adviser;

4 “(C) the policies and procedures of the
5 person that employs the compensation consult-
6 ant, legal counsel, or other adviser that are de-
7 signed to prevent conflicts of interest;

8 “(D) any business or personal relationship
9 of the compensation consultant, legal counsel,
10 or other adviser with a member of the com-
11 pensation committee; and

12 “(E) any stock of the issuer owned by the
13 compensation consultant, legal counsel, or other
14 adviser.

15 “(c) COMPENSATION COMMITTEE AUTHORITY RE-
16 LATING TO COMPENSATION CONSULTANTS.—

17 “(1) AUTHORITY TO RETAIN COMPENSATION
18 CONSULTANT.—

19 “(A) IN GENERAL.—The compensation
20 committee of an issuer, in its capacity as a
21 committee of the board of directors, may, in its
22 sole discretion, retain or obtain the advice of a
23 compensation consultant.

24 “(B) DIRECT RESPONSIBILITY OF COM-
25 PENSATION COMMITTEE.—The compensation

1 committee of an issuer shall be directly respon-
2 sible for the appointment, compensation, and
3 oversight of the work of a compensation con-
4 sultant.

5 “(C) RULE OF CONSTRUCTION.—This
6 paragraph may not be construed—

7 “(i) to require the compensation com-
8 mittee to implement or act consistently
9 with the advice or recommendations of the
10 compensation consultant; or

11 “(ii) to affect the ability or obligation
12 of a compensation committee to exercise its
13 own judgment in fulfillment of the duties
14 of the compensation committee.

15 “(2) DISCLOSURE.—In any proxy or consent
16 solicitation material for an annual meeting of the
17 shareholders (or a special meeting in lieu of the an-
18 nual meeting) occurring on or after the date that is
19 1 year after the date of enactment of this section,
20 each issuer shall disclose in the proxy or consent
21 material, in accordance with regulations of the Com-
22 mission, whether—

23 “(A) the compensation committee of the
24 issuer retained or obtained the advice of a com-
25 pensation consultant; and

1 “(B) the work of the compensation con-
2 sultant has raised any conflict of interest and,
3 if so, the nature of the conflict and how the
4 conflict is being addressed.

5 “(d) AUTHORITY TO ENGAGE INDEPENDENT LEGAL
6 COUNSEL AND OTHER ADVISERS.—

7 “(1) IN GENERAL.—The compensation com-
8 mittee of an issuer, in its capacity as a committee
9 of the board of directors, may, in its sole discretion,
10 retain and obtain the advice of independent legal
11 counsel and other advisers.

12 “(2) DIRECT RESPONSIBILITY OF COMPENSA-
13 TION COMMITTEE.—The compensation committee of
14 an issuer shall be directly responsible for the ap-
15 pointment, compensation, and oversight of the work
16 of independent legal counsel and other advisers.

17 “(3) RULE OF CONSTRUCTION.—This sub-
18 section may not be construed—

19 “(A) to require a compensation committee
20 to implement or act consistently with the advice
21 or recommendations of independent legal coun-
22 sel or other advisers under this subsection; or

23 “(B) to affect the ability or obligation of a
24 compensation committee to exercise its own

1 judgment in fulfillment of the duties of the
2 compensation committee.

3 “(e) COMPENSATION OF COMPENSATION CONSULT-
4 ANTS, INDEPENDENT LEGAL COUNSEL, AND OTHER AD-
5 VISERS.—Each issuer shall provide for appropriate fund-
6 ing, as determined by the compensation committee in its
7 capacity as a committee of the board of directors, for pay-
8 ment of reasonable compensation—

9 “(1) to a compensation consultant; and

10 “(2) to independent legal counsel or any other
11 adviser to the compensation committee.

12 “(f) COMMISSION RULES.—

13 “(1) IN GENERAL.—Not later than 360 days
14 after the date of enactment of this section, the Com-
15 mission shall, by rule, direct the national securities
16 exchanges and national securities associations to
17 prohibit the listing of any security of an issuer that
18 is not in compliance with the requirements of this
19 section.

20 “(2) OPPORTUNITY TO CURE DEFECTS.—The
21 rules of the Commission under paragraph (1) shall
22 provide for appropriate procedures for an issuer to
23 have a reasonable opportunity to cure any defects
24 that would be the basis for the prohibition under

1 paragraph (1), before the imposition of such prohibi-
2 tion.

3 “(3) EXEMPTION AUTHORITY.—

4 “(A) IN GENERAL.—The rules of the Com-
5 mission under paragraph (1) shall permit a na-
6 tional securities exchange or a national securi-
7 ties association to exempt a category of issuers
8 from the requirements under this section, as
9 the national securities exchange or the national
10 securities association determines is appropriate.

11 “(B) CONSIDERATIONS.—In determining
12 appropriate exemptions under subparagraph
13 (A), the national securities exchange or the na-
14 tional securities association shall take into ac-
15 count the potential impact of the requirements
16 of this section on smaller reporting issuers.

17 “(g) CONTROLLED COMPANY EXEMPTION.—

18 “(1) IN GENERAL.—This section shall not apply
19 to any controlled company.

20 “(2) DEFINITION.—For purposes of this sec-
21 tion, the term ‘controlled company’ means an
22 issuer—

23 “(A) that is listed on a national securities
24 exchange or by a national securities association;
25 and

1 “(B) that holds an election for the board
2 of directors of the issuer in which more than 50
3 percent of the voting power is held by an indi-
4 vidual, a group, or another issuer.”.

5 (b) STUDY AND REPORT.—

6 (1) STUDY.—The Securities and Exchange
7 Commission shall conduct a study and review of the
8 use of compensation consultants and the effects of
9 such use.

10 (2) REPORT.—Not later than 2 years after the
11 date of the enactment of this Act, the Commission
12 shall submit a report to Congress on the results of
13 the study and review required by this subsection.

14 **SEC. 953. EXECUTIVE COMPENSATION DISCLOSURES.**

15 (a) DISCLOSURE OF PAY VERSUS PERFORMANCE.—
16 Section 14 of the Securities Exchange Act of 1934 (15
17 U.S.C. 78n), as amended by this title, is amended by add-
18 ing at the end the following:

19 “(i) DISCLOSURE OF PAY VERSUS PERFORMANCE.—
20 The Commission shall, by rule, require each issuer to dis-
21 close in any proxy or consent solicitation material for an
22 annual meeting of the shareholders of the issuer a clear
23 description of any compensation required to be disclosed
24 by the issuer under section 229.402 of title 17, Code of
25 Federal Regulations (or any successor thereto), including

1 information that shows the relationship between executive
2 compensation actually paid and the financial performance
3 of the issuer, taking into account any change in the value
4 of the shares of stock and dividends of the issuer and any
5 distributions. The disclosure under this subsection may in-
6 clude a graphic representation of the information required
7 to be disclosed.”.

8 (b) ADDITIONAL DISCLOSURE REQUIREMENTS.—

9 (1) IN GENERAL.—The Commission shall
10 amend section 229.402 of title 17, Code of Federal
11 Regulations, to require each issuer to disclose in any
12 filing of the issuer described in section 229.10(a) of
13 title 17, Code of Federal Regulations (or any suc-
14 cessor thereto)—

15 (A) the median of the annual total com-
16 pensation of all employees of the issuer, except
17 the chief executive officer (or any equivalent po-
18 sition) of the issuer;

19 (B) the annual total compensation of the
20 chief executive officer (or any equivalent posi-
21 tion) of the issuer; and

22 (C) the ratio of the amount described in
23 subparagraph (A) to the amount described in
24 subparagraph (B).

1 (2) **TOTAL COMPENSATION.**—For purposes of
2 this subsection, the total compensation of an em-
3 ployee of an issuer shall be determined in accordance
4 with section 229.402(c)(2)(x) of title 17, Code of
5 Federal Regulations, as in effect on the day before
6 the date of enactment of this Act.

7 **SEC. 954. RECOVERY OF ERRONEOUSLY AWARDED COM-**
8 **PENSATION.**

9 The Securities Exchange Act of 1934 is amended by
10 inserting after section 10C, as added by section 952, the
11 following:

12 **“SEC. 10D. RECOVERY OF ERRONEOUSLY AWARDED COM-**
13 **PENSATION POLICY.**

14 “(a) **LISTING STANDARDS.**—The Commission shall,
15 by rule, direct the national securities exchanges and na-
16 tional securities associations to prohibit the listing of any
17 security of an issuer that does not comply with the re-
18 quirements of this section.

19 “(b) **RECOVERY OF FUNDS.**—The rules of the Com-
20 mission under subsection (a) shall require each issuer to
21 develop and implement a policy providing—

22 “(1) for disclosure of the policy of the issuer on
23 incentive-based compensation that is based on finan-
24 cial information required to be reported under the
25 securities laws; and

1 “(2) that, in the event that the issuer is re-
2 quired to prepare an accounting restatement due to
3 the material noncompliance of the issuer with any fi-
4 nancial reporting requirement under the securities
5 laws, the issuer will recover from any current or
6 former executive officer of the issuer who received
7 incentive-based compensation (including stock op-
8 tions awarded as compensation) during the 3-year
9 period preceding the date on which the issuer is re-
10 quired to prepare an accounting restatement, based
11 on the erroneous data, in excess of what would have
12 been paid to the executive officer under the account-
13 ing restatement.”.

14 **SEC. 955. DISCLOSURE REGARDING EMPLOYEE AND DIREC-**
15 **TOR HEDGING.**

16 Section 14 of the Securities Exchange Act of 1934
17 (15 U.S.C. 78n), as amended by this title, is amended by
18 adding at the end the following:

19 “(j) DISCLOSURE OF HEDGING BY EMPLOYEES AND
20 DIRECTORS.—The Commission shall, by rule, require each
21 issuer to disclose in any proxy or consent solicitation mate-
22 rial for an annual meeting of the shareholders of the issuer
23 whether any employee or member of the board of directors
24 of the issuer, or any designee of such employee or member,
25 is permitted to purchase financial instruments (including

1 prepaid variable forward contracts, equity swaps, collars,
2 and exchange funds) that are designed to hedge or offset
3 any decrease in the market value of equity securities—

4 “(1) granted to the employee or member of the
5 board of directors by the issuer as part of the com-
6 pensation of the employee or member of the board
7 of directors; or

8 “(2) held, directly or indirectly, by the employee
9 or member of the board of directors.”.

10 **SEC. 956. ENHANCED COMPENSATION STRUCTURE RE-**
11 **PORTING.**

12 (a) ENHANCED DISCLOSURE AND REPORTING OF
13 COMPENSATION ARRANGEMENTS.—

14 (1) IN GENERAL.—Not later than 9 months
15 after the date of enactment of this title, the appro-
16 priate Federal regulators jointly shall prescribe regu-
17 lations or guidelines to require each covered finan-
18 cial institution to disclose to the appropriate Federal
19 regulator the structures of all incentive-based com-
20 pensation arrangements offered by such covered fi-
21 nancial institutions sufficient to determine whether
22 the compensation structure—

23 (A) provides an executive officer, employee,
24 director, or principal shareholder of the covered

1 financial institution with excessive compensa-
2 tion, fees, or benefits; or

3 (B) could lead to material financial loss to
4 the covered financial institution.

5 (2) RULES OF CONSTRUCTION.—Nothing in
6 this section shall be construed as requiring the re-
7 porting of the actual compensation of particular in-
8 dividuals. Nothing in this section shall be construed
9 to require a covered financial institution that does
10 not have an incentive-based payment arrangement to
11 make the disclosures required under this subsection.

12 (b) PROHIBITION ON CERTAIN COMPENSATION AR-
13 RANGEMENTS.—Not later than 9 months after the date
14 of enactment of this title, the appropriate Federal regu-
15 lators shall jointly prescribe regulations or guidelines that
16 prohibit any types of incentive-based payment arrange-
17 ment, or any feature of any such arrangement, that the
18 regulators determine encourages inappropriate risks by
19 covered financial institutions—

20 (1) by providing an executive officer, employee,
21 director, or principal shareholder of the covered fi-
22 nancial institution with excessive compensation, fees,
23 or benefits; or

24 (2) that could lead to material financial loss to
25 the covered financial institution.

1 (c) STANDARDS.—The appropriate Federal regu-
2 lators shall—

3 (1) ensure that any standards for compensation
4 established under subsections (a) or (b) are com-
5 parable to the standards established under section of
6 the Federal Deposit Insurance Act (12 U.S.C. 2
7 1831p–1) for insured depository institutions; and

8 (2) in establishing such standards under such
9 subsections, take into consideration the compensa-
10 tion standards described in section 39(c) of the Fed-
11 eral Deposit Insurance Act (12 U.S.C. 1831p– 9
12 1(c)).

13 (d) ENFORCEMENT.—The provisions of this section
14 and the regulations issued under this section shall be en-
15 forced under section 505 of the Gramm-Leach-Bliley Act
16 and, for purposes of such section, a violation of this sec-
17 tion or such regulations shall be treated as a violation of
18 subtitle A of title V of such Act.

19 (e) DEFINITIONS.—As used in this section—

20 (1) the term “appropriate Federal regulator”
21 means the Board of Governors of the Federal Re-
22 serve System, the Office of the Comptroller of the
23 Currency, the Board of Directors of the Federal De-
24 posit Insurance Corporation, the Director of the Of-
25 fice of Thrift Supervision, the National Credit Union

1 Administration Board, the Securities and Exchange
2 Commission, the Federal Housing Finance Agency;
3 and

4 (2) the term “covered financial institution”
5 means—

6 (A) a depository institution or depository
7 institution holding company, as such terms are
8 defined in section 3 of the Federal Deposit In-
9 surance Act (12 U.S.C. 1813);

10 (B) a broker-dealer registered under sec-
11 tion 15 of the Securities Exchange Act of 1934
12 (15 U.S.C. 78o);

13 (C) a credit union, as described in section
14 19(b)(1)(A)(iv) of the Federal Reserve Act;

15 (D) an investment advisor, as such term is
16 defined in section 202(a)(11) of the Investment
17 Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11));

18 (E) the Federal National Mortgage Asso-
19 ciation;

20 (F) the Federal Home Loan Mortgage
21 Corporation; and

22 (G) any other financial institution that the
23 appropriate Federal regulators, jointly, by rule,
24 determine should be treated as a covered finan-
25 cial institution for purposes of this section.

1 (f) EXEMPTION FOR CERTAIN FINANCIAL INSTITU-
2 TIONS.—The requirements of this section shall not apply
3 to covered financial institutions with assets of less than
4 \$1,000,000,000.

5 **SEC. 957. VOTING BY BROKERS.**

6 Section 6(b) of the Securities Exchange Act of 1934
7 (15 U.S.C. 78f(b)) is amended—

8 (1) in paragraph (9)—

9 (A) in subparagraph (A), by redesignating
10 clauses (i) through (v) as subclauses (I)
11 through (V), respectively, and adjusting the
12 margins accordingly;

13 (B) by redesignating subparagraphs (A)
14 through (D) as clauses (i) through (iv), respec-
15 tively, and adjusting the margins accordingly;

16 (C) by inserting “(A)” after “(9)”; and

17 (D) in the matter immediately following
18 clause (iv), as so redesignated, by striking “As
19 used” and inserting the following:

20 “(B) As used”.

21 (2) by adding at the end the following:

22 “(10)(A) The rules of the exchange prohibit
23 any member that is not the beneficial owner of a se-
24 curity registered under section 12 from granting a
25 proxy to vote the security in connection with a

1 shareholder vote described in subparagraph (B), un-
2 less the beneficial owner of the security has in-
3 structed the member to vote the proxy in accordance
4 with the voting instructions of the beneficial owner.

5 “(B) A shareholder vote described in this sub-
6 paragraph is a shareholder vote with respect to the
7 election of a member of the board of directors of an
8 issuer, executive compensation, or any other signifi-
9 cant matter, as determined by the Commission, by
10 rule, and does not include a vote with respect to the
11 uncontested election of a member of the board of di-
12 rectors of any investment company registered under
13 the Investment Company Act of 1940 (15 U.S.C.
14 80b–1 et seq.).

15 “(C) Nothing in this paragraph shall be con-
16 strued to prohibit a national securities exchange
17 from prohibiting a member that is not the beneficial
18 owner of a security registered under section 12 from
19 granting a proxy to vote the security in connection
20 with a shareholder vote not described in subpara-
21 graph (A).”.

1 **Subtitle F—Improvements to the**
2 **Management of the Securities**
3 **and Exchange Commission**

4 **SEC. 961. REPORT AND CERTIFICATION OF INTERNAL SU-**
5 **PERVISORY CONTROLS.**

6 (a) ANNUAL REPORTS AND CERTIFICATION.—Not
7 later than 90 days after the end of each fiscal year, the
8 Commission shall submit a report to the Committee on
9 Banking, Housing, and Urban Affairs of the Senate and
10 the Committee on Financial Services of the House of Rep-
11 resentatives on the conduct by the Commission of exami-
12 nations of registered entities, enforcement investigations,
13 and review of corporate financial securities filings.

14 (b) CONTENTS OF REPORTS.—Each report under
15 subsection (a) shall contain—

16 (1) an assessment, as of the end of the most re-
17 cent fiscal year, of the effectiveness of—

18 (A) the internal supervisory controls of the
19 Commission; and

20 (B) the procedures of the Commission ap-
21 plicable to the staff of the Commission who per-
22 form examinations of registered entities, en-
23 forcement investigations, and reviews of cor-
24 porate financial securities filings;

1 (2) a certification that the Commission has ade-
2 quate internal supervisory controls to carry out the
3 duties of the Commission described in paragraph
4 (1)(B); and

5 (3) a summary by the Comptroller General of
6 the United States of the review carried out under
7 subsection (d).

8 (c) CERTIFICATION.—

9 (1) SIGNATURE.—The certification under sub-
10 section (b)(2) shall be signed by the Director of the
11 Division of Enforcement, the Director of the Divi-
12 sion of Corporation Finance, and the Director of the
13 Office of Compliance Inspections and Examinations
14 (or the head of any successor division or office).

15 (2) CONTENT OF CERTIFICATION.—Each indi-
16 vidual described in paragraph (1) shall certify that
17 the individual—

18 (A) is directly responsible for establishing
19 and maintaining the internal supervisory con-
20 trols of the Division or Office of which the indi-
21 vidual is the head;

22 (B) is knowledgeable about the internal su-
23 pervisory controls of the Division or Office of
24 which the individual is the head;

1 (C) has evaluated the effectiveness of the
2 internal supervisory controls during the 90-day
3 period ending on the final day of the fiscal year
4 to which the report relates; and

5 (D) has disclosed to the Commission any
6 significant deficiencies in the design or oper-
7 ation of internal supervisory controls that could
8 adversely affect the ability of the Division or
9 Office to consistently conduct inspections, or in-
10 vestigations, or reviews of filings with profes-
11 sional competence and integrity.

12 (d) NEW DIRECTOR OR ACTING DIRECTOR.—Not-
13 withstanding subsection (a), if the Director of the Division
14 of Enforcement, the Director of the Division of Corporate
15 Finance, or the Director of the Office of Compliance In-
16 spections and Examinations has served as Director of the
17 Division or Office for less than 90 days on the date on
18 which a report is required to be submitted under sub-
19 section (a), the Commission may submit the report on the
20 date on which the Director has served as Director for 90
21 days. If there is no Director of the Division of Enforce-
22 ment, the Division of Corporate Finance, or the Office of
23 Compliance Inspections and Examinations, on the date on
24 which a report is required to be submitted under sub-

1 section (a), the Acting Director of the Division or Office
2 may make the certification required under subsection (c).

3 (e) REVIEW BY THE COMPTROLLER GENERAL.—

4 (1) REPORT.—The Comptroller General of the
5 United States shall submit to the Committee on
6 Banking, Housing, and Urban Affairs of the Senate
7 and the Committee on Financial Services of the
8 House of Representatives a report that contains a
9 review of the adequacy and effectiveness of the inter-
10 nal supervisory control structure and procedures de-
11 scribed in subsection (b)(1), not less frequently than
12 once every 3 years, at a time to coincide with the
13 publication of the reports of the Commission under
14 this section.

15 (2) AUTHORITY TO HIRE EXPERTS.—The
16 Comptroller General of the United States may hire
17 independent consultants with specialized expertise in
18 any area relevant to the duties of the Comptroller
19 General described in this section, in order to assist
20 the Comptroller General in carrying out such duties.

21 **SEC. 962. TRIENNIAL REPORT ON PERSONNEL MANAGE-**
22 **MENT.**

23 (a) TRIENNIAL REPORT REQUIRED.—Once every 3
24 years, the Comptroller General of the United States shall
25 submit a report to the Committee on Banking, Housing,

1 and Urban Affairs of the Senate and the Committee on
2 Financial Services of the House of Representatives on the
3 quality of personnel management by the Commission.

4 (b) CONTENTS OF REPORT.—Each report under sub-
5 section (a) shall include—

6 (1) an evaluation of—

7 (A) the effectiveness of supervisors in
8 using the skills, talents, and motivation of the
9 employees of the Commission to achieve the
10 goals of the Commission;

11 (B) the criteria for promoting employees of
12 the Commission to supervisory positions;

13 (C) the fairness of the application of the
14 promotion criteria to the decisions of the Com-
15 mission;

16 (D) the competence of the professional
17 staff of the Commission;

18 (E) the efficiency of communication be-
19 tween the units of the Commission regarding
20 the work of the Commission (including commu-
21 nication between divisions and between subunits
22 of a division) and the efforts by the Commission
23 to promote such communication;

24 (F) the turnover within subunits of the
25 Commission, including the consideration of su-

1 pervisors whose subordinates have an unusually
2 high rate of turnover;

3 (G) whether there are excessive numbers of
4 low-level, mid-level, or senior-level managers;

5 (H) any initiatives of the Commission that
6 increase the competence of the staff of the
7 Commission;

8 (I) the actions taken by the Commission
9 regarding employees of the Commission who
10 have failed to perform their duties and cir-
11 cumstances under which the Commission has
12 issued to employees a notice of termination; and

13 (J) such other factors relating to the man-
14 agement of the Commission as the Comptroller
15 General determines are appropriate;

16 (2) an evaluation of any improvements made
17 with respect to the areas described in paragraph (1)
18 since the date of submission of the previous report;
19 and

20 (3) recommendations for how the Commission
21 can use the human resources of the Commission
22 more effectively and efficiently to carry out the mis-
23 sion of the Commission.

24 (c) CONSULTATION.—In preparing the report under
25 subsection (a), the Comptroller General shall consult with

1 current employees of the Commission, retired employees
2 and other former employees of the Commission, the In-
3 spector General of the Commission, persons that have
4 business before the Commission, any union representing
5 the employees of the Commission, private management
6 consultants, academics, and any other source that the
7 Comptroller General deems appropriate.

8 (d) REPORT BY COMMISSION.—Not later than 90
9 days after the date on which the Comptroller General sub-
10 mits each report under subsection (a), the Commission
11 shall submit to the Committee on Banking, Housing, and
12 Urban Affairs of the Senate and the Committee on Finan-
13 cial Services of the House of Representatives a report de-
14 scribing the actions taken by the Commission in response
15 to the recommendations contained in the report under
16 subsection (a).

17 (e) REIMBURSEMENTS FOR COST OF REPORTS.—

18 (1) REIMBURSEMENTS REQUIRED.—The Com-
19 mission shall reimburse the Government Account-
20 ability Office for the full cost of making the reports
21 under this section, as billed therefor by the Comp-
22 troller General.

23 (2) CREDITING AND USE OF REIMBURSE-
24 MENTS.—Such reimbursements shall—

1 (A) be credited to the appropriation ac-
2 count “Salaries and Expenses, Government Ac-
3 countability Office” current when the payment
4 is received; and

5 (B) remain available until expended.

6 (f) **AUTHORITY TO HIRE EXPERTS.**—The Comp-
7 troller General of the United States may hire independent
8 consultants with specialized expertise in any area relevant
9 to the duties of the Comptroller General described in this
10 section, in order to assist the Comptroller General in car-
11 rying out such duties.

12 **SEC. 963. ANNUAL FINANCIAL CONTROLS AUDIT.**

13 (a) **REPORTS OF COMMISSION.**—

14 (1) **ANNUAL REPORTS REQUIRED.**—Not later
15 than 6 months after the end of each fiscal year, the
16 Commission shall publish and submit to Congress a
17 report that—

18 (A) describes the responsibility of the man-
19 agement of the Commission for establishing and
20 maintaining an adequate internal control struc-
21 ture and procedures for financial reporting; and

22 (B) contains an assessment of the effec-
23 tiveness of the internal control structure and
24 procedures for financial reporting of the Com-
25 mission during that fiscal year.

1 (2) ATTESTATION.—The reports required under
2 paragraph (1) shall be attested to by the Chairman
3 and chief financial officer of the Commission.

4 (b) REPORT BY COMPTROLLER GENERAL.—

5 (1) REPORT REQUIRED.—Not later than 6
6 months after the end of the first fiscal year after the
7 date of enactment of this Act, the Comptroller Gen-
8 eral of the United States shall submit a report to
9 Congress that assesses—

10 (A) the effectiveness of the internal control
11 structure and procedures of the Commission for
12 financial reporting; and

13 (B) the assessment of the Commission
14 under subsection (a)(1)(B).

15 (2) ATTESTATION.—The Comptroller General
16 shall attest to, and report on, the assessment made
17 by the Commission under subsection (a).

18 (c) REIMBURSEMENTS FOR COST OF REPORTS.—

19 (1) REIMBURSEMENTS REQUIRED.—The Com-
20 mission shall reimburse the Government Account-
21 ability Office for the full cost of making the reports
22 under subsection (b), as billed therefor by the Comp-
23 troller General.

24 (2) CREDITING AND USE OF REIMBURSE-
25 MENTS.—Such reimbursements shall—

1 (A) be credited to the appropriation ac-
2 count “Salaries and Expenses, Government Ac-
3 countability Office” current when the payment
4 is received; and

5 (B) remain available until expended.

6 **SEC. 964. REPORT ON OVERSIGHT OF NATIONAL SECURI-**
7 **TIES ASSOCIATIONS.**

8 (a) REPORT REQUIRED.—Not later than 2 years
9 after the date of enactment of this Act, and every 3 years
10 thereafter, the Comptroller General of the United States
11 shall submit to the Committee on Banking, Housing, and
12 Urban Affairs of the Senate and the Committee on Finan-
13 cial Services of the House of Representatives a report that
14 includes an evaluation of the oversight by the Commission
15 of national securities associations registered under section
16 15A of the Securities Exchange Act of 1934 (15 U.S.C.
17 78o–3) with respect to—

18 (1) the governance of such national securities
19 associations, including the identification and man-
20 agement of conflicts of interest by such national se-
21 curities associations, together with an analysis of the
22 impact of any conflicts of interest on the regulatory
23 enforcement or rulemaking by such national securi-
24 ties associations;

1 (2) the examinations carried out by the national
2 securities associations, including the expertise of the
3 examiners;

4 (3) the executive compensation practices of such
5 national securities associations;

6 (4) the arbitration services provided by the na-
7 tional securities associations;

8 (5) the review performed by national securities
9 associations of advertising by the members of the
10 national securities associations;

11 (6) the cooperation with and assistance to State
12 securities administrators by the national securities
13 associations to promote investor protection;

14 (7) how the funding of national securities asso-
15 ciations is used to support the mission of the na-
16 tional securities associations, including—

17 (A) the methods of funding;

18 (B) the sufficiency of funds;

19 (C) how funds are invested by the national
20 securities association pending use; and

21 (D) the impact of the methods, sufficiency,
22 and investment of funds on regulatory enforce-
23 ment by the national securities associations;

1 (8) the policies regarding the employment of
2 former employees of national securities associations
3 by regulated entities;

4 (9) the ongoing effectiveness of the rules of the
5 national securities associations in achieving the goals
6 of the rules;

7 (10) the transparency of governance and activi-
8 ties of the national securities associations; and

9 (11) any other issue that has an impact, as de-
10 termined by the Comptroller General, on the effec-
11 tiveness of such national securities associations in
12 performing their mission and in dealing fairly with
13 investors and members;

14 (b) REIMBURSEMENTS FOR COST OF REPORTS.—

15 (1) REIMBURSEMENTS REQUIRED.—The Com-
16 mission shall reimburse the Government Account-
17 ability Office for the full cost of making the reports
18 under subsection (a), as billed therefor by the Comp-
19 troller General.

20 (2) CREDITING AND USE OF REIMBURSE-
21 MENTS.—Such reimbursements shall—

22 (A) be credited to the appropriation ac-
23 count “Salaries and Expenses, Government Ac-
24 countability Office” current when the payment
25 is received; and

1 (B) remain available until expended.

2 **SEC. 965. COMPLIANCE EXAMINERS.**

3 Section 4 of the Securities Exchange Act of 1934 (15
4 U.S.C. 78d) is amended by adding at the end the fol-
5 lowing:

6 “(h) EXAMINERS.—

7 “(1) DIVISION OF TRADING AND MARKETS.—

8 The Division of Trading and Markets of the Com-
9 mission, or any successor organizational unit, shall
10 have a staff of examiners who shall—

11 “(A) perform compliance inspections and
12 examinations of entities under the jurisdiction
13 of that Division; and

14 “(B) report to the Director of that Divi-
15 sion.

16 “(2) DIVISION OF INVESTMENT MANAGE-
17 MENT.—The Division of Investment Management of
18 the Commission, or any successor organizational
19 unit, shall have a staff of examiners who shall—

20 “(A) perform compliance inspections and
21 examinations of entities under the jurisdiction
22 of that Division; and

23 “(B) report to the Director of that Divi-
24 sion.”.

1 **SEC. 966. SUGGESTION PROGRAM FOR EMPLOYEES OF THE**
2 **COMMISSION.**

3 The Securities Exchange Act of 1934 (15 U.S.C. 78a
4 et seq.) is amended by inserting after section 4C (15
5 U.S.C. 78d-3) the following:

6 **“SEC. 4D. ADDITIONAL DUTIES OF INSPECTOR GENERAL.**

7 “(a) SUGGESTION SUBMISSIONS BY COMMISSION EM-
8 PLOYEES.—

9 “(1) HOTLINE ESTABLISHED.—The Inspector
10 General of the Commission shall establish and main-
11 tain a telephone hotline or other electronic means for
12 the receipt of—

13 “(A) suggestions by employees of the Com-
14 mission for improvements in the work effi-
15 ciency, effectiveness, and productivity, and the
16 use of the resources, of the Commission; and

17 “(B) allegations by employees of the Com-
18 mission of waste, abuse, misconduct, or mis-
19 management within the Commission.

20 “(2) CONFIDENTIALITY.—The Inspector Gen-
21 eral shall maintain as confidential—

22 “(A) the identity of any individual who
23 provides information by the means established
24 under paragraph (1), unless the individual re-
25 quests otherwise, in writing; and

1 “(B) at the request of any such individual,
2 any specific information provided by the indi-
3 vidual.

4 “(b) CONSIDERATION OF REPORTS.—The Inspector
5 General shall consider any suggestions or allegations re-
6 ceived by the means established under subsection (a)(1),
7 and shall recommend appropriate action in relation to
8 such suggestions or allegations.

9 “(c) RECOGNITION.—The Inspector General may rec-
10 ognize any employee who makes a suggestion under sub-
11 section (a)(1) (or by other means) that would or does—

12 “(1) increase the work efficiency, effectiveness,
13 or productivity of the Commission; or

14 “(2) reduce waste, abuse, misconduct, or mis-
15 management within the Commission.

16 “(d) REPORT.—The Inspector General of the Com-
17 mission shall submit to Congress an annual report con-
18 taining a description of—

19 “(1) the nature, number, and potential benefits
20 of any suggestions received under subsection (a);

21 “(2) the nature, number, and seriousness of
22 any allegations received under subsection (a);

23 “(3) any recommendations made or actions
24 taken by the Inspector General in response to sub-

1 stantiated allegations received under subsection (a);
2 and

3 “(4) any action the Commission has taken in
4 response to suggestions or allegations received under
5 subsection (a).

6 “(e) FUNDING.—The activities of the Inspector Gen-
7 eral under this subsection shall be funded by the Securities
8 and Exchange Commission Investor Protection Fund es-
9 tablished under section 21F.”.

10 **SEC. 967. COMMISSION ORGANIZATIONAL STUDY AND RE-**
11 **FORM.**

12 (a) STUDY REQUIRED.—

13 (1) IN GENERAL.—Not later than the end of
14 the 90-day period beginning on the date of the en-
15 actment of this subtitle, the Securities and Ex-
16 change Commission (hereinafter in this section re-
17 ferred to as the “SEC”) shall hire an independent
18 consultant of high caliber and with expertise in orga-
19 nizational restructuring and the operations of capital
20 markets to examine the internal operations, struc-
21 ture, funding, and the need for comprehensive re-
22 form of the SEC, as well as the SEC’s relationship
23 with and the reliance on self-regulatory organiza-
24 tions and other entities relevant to the regulation of

1 securities and the protection of securities investors
2 that are under the SEC's oversight.

3 (2) SPECIFIC AREAS FOR STUDY.—The study
4 required under paragraph (1) shall, at a minimum,
5 include the study of—

6 (A) the possible elimination of unnecessary
7 or redundant units at the SEC;

8 (B) improving communications between
9 SEC offices and divisions;

10 (C) the need to put in place a clear chain-
11 of-command structure, particularly for enforce-
12 ment examinations and compliance inspections;

13 (D) the effect of high-frequency trading
14 and other technological advances on the market
15 and what the SEC requires to monitor the ef-
16 fect of such trading and advances on the mar-
17 ket;

18 (E) the SEC's hiring authorities, work-
19 place policies, and personal practices, includ-
20 ing—

21 (i) whether there is a need to further
22 streamline hiring authorities for those who
23 are not lawyers, accountants, compliance
24 examiners, or economists;

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1 (ii) whether there is a need for further
2 pay reforms;

3 (iii) the diversity of skill sets of SEC
4 employees and whether the present skill set
5 diversity efficiently and effectively fosters
6 the SEC's mission of investor protection;
7 and

8 (iv) the application of civil service
9 laws by the SEC;

10 (F) whether the SEC's oversight and reli-
11 ance on self-regulatory organizations promotes
12 efficient and effective governance for the securi-
13 ties markets; and

14 (G) whether adjusting the SEC's reliance
15 on self-regulatory organizations is necessary to
16 promote more efficient and effective governance
17 for the securities markets.

18 (b) CONSULTANT REPORT.—Not later than the end
19 of the 150-day period after being retained, the inde-
20 pendent consultant hired pursuant to subsection (a)(1)
21 shall issue a report to the SEC and the Congress con-
22 taining—

23 (1) a detailed description of any findings and
24 conclusions made while carrying out the study re-
25 quired under subsection (a)(1); and

1 (2) recommendations for legislative, regulatory,
2 or administrative action that the consultant deter-
3 mines appropriate to enable the SEC and other enti-
4 ties on which the consultant reports to perform their
5 statutorily or otherwise mandated missions.

6 (c) SEC REPORT.—Not later than the end of the 6-
7 month period beginning on the date the consultant issues
8 the report under subsection (b), and every 6-months there-
9 after during the 2-year period following the date on which
10 the consultant issues such report, the SEC shall issue a
11 report to the Committee on Financial Services of the
12 House of Representatives and the Committee on Banking,
13 Housing, and Urban Affairs of the Senate describing the
14 SEC's implementation of the regulatory and administra-
15 tive recommendations contained in the consultant's report.

16 **SEC. 968. STUDY ON SEC REVOLVING DOOR.**

17 (a) GOVERNMENT ACCOUNTABILITY OFFICE
18 STUDY.—The Comptroller General of the United States
19 shall conduct a study that will—

20 (1) review the number of employees who leave
21 the Securities and Exchange Commission to work
22 for financial institutions regulated by such Commis-
23 sion;

24 (2) determine how many employees who leave
25 the Securities and Exchange Commission worked on

1 cases that involved financial institutions regulated by
2 such Commission;

3 (3) review the length of time employees work
4 for the Securities and Exchange Commission before
5 leaving to be employed by financial institutions regu-
6 lated by such Commission;

7 (4) review existing internal controls and make
8 recommendations on strengthening such controls to
9 ensure that employees of the Securities and Ex-
10 change Commission who are later employed by fi-
11 nancial institutions did not assist such institutions
12 in violating any rules or regulations of the Commis-
13 sion during the course of their employment with
14 such Commission;

15 (5) determine if greater post-employment re-
16 strictions are necessary to prevent employees of the
17 Securities and Exchange Commission from being
18 employed by financial institutions after employment
19 with such Commission;

20 (6) determine if the volume of employees of the
21 Securities and Exchange Commission who are later
22 employed by financial institutions has led to ineffi-
23 ciencies in enforcement;

24 (7) determine if employees of the Securities and
25 Exchange Commission who are later employed by fi-

1 financial institutions assisted such institutions in cir-
2 cumventing Federal rules and regulations while em-
3 ployed by such Commission;

4 (8) review any information that may address
5 the volume of employees of the Securities and Ex-
6 change Commission who are later employed by fi-
7 nancial institutions, and make recommendations to
8 Congress; and

9 (9) review other additional issues as may be
10 raised during the course of the study conducted
11 under this subsection.

12 (b) REPORT.—Not later than 1 year after the date
13 of the enactment of this subtitle, the Comptroller General
14 of the United States shall submit to the Committee on
15 Financial Services of the House of Representatives and
16 the Committee on Banking, Housing, and Urban Affairs
17 of the Senate a report on the results of the study required
18 by subsection (a).

19 **Subtitle G—Strengthening** 20 **Corporate Governance**

21 **SEC. 971. PROXY ACCESS.**

22 (a) PROXY ACCESS.—Section 14(a) of the Securities
23 Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

24 (1) by inserting “(1)” after “(a)”; and

25 (2) by adding at the end the following:

1 “(2) The rules and regulations prescribed by the
2 Commission under paragraph (1) may include—

3 “(A) a requirement that a solicitation of proxy,
4 consent, or authorization by (or on behalf of) an
5 issuer include a nominee submitted by a shareholder
6 to serve on the board of directors of the issuer; and

7 “(B) a requirement that an issuer follow a cer-
8 tain procedure in relation to a solicitation described
9 in subparagraph (A).”.

10 (b) REGULATIONS.—The Commission may issue rules
11 permitting the use by a shareholder of proxy solicitation
12 materials supplied by an issuer of securities for the pur-
13 pose of nominating individuals to membership on the
14 board of directors of the issuer, under such terms and con-
15 ditions as the Commission determines are in the interests
16 of shareholders and for the protection of investors.

17 (c) EXEMPTIONS.—The Commission may, by rule or
18 order, exempt an issuer or class of issuers from the re-
19 quirement made by this section or an amendment made
20 by this section. In determining whether to make an exemp-
21 tion under this subsection, the Commission shall take into
22 account, among other considerations, whether the require-
23 ment in the amendment made by subsection (a) dispropor-
24 tionately burdens small issuers.

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1 **SEC. 972. DISCLOSURES REGARDING CHAIRMAN AND CEO**
2 **STRUCTURES.**

3 The Securities Exchange Act of 1934 (15 U.S. C. 78a
4 et seq.) is amended by inserting after section 14A, as
5 added by this title, the following:

6 **“SEC. 14B. CORPORATE GOVERNANCE.**

7 “Not later than 180 days after the date of enactment
8 of this subsection, the Commission shall issue rules that
9 require an issuer to disclose in the annual proxy sent to
10 investors the reasons why the issuer has chosen—

11 “(1) the same person to serve as chairman of
12 the board of directors and chief executive officer (or
13 in equivalent positions); or

14 “(2) different individuals to serve as chairman
15 of the board of directors and chief executive officer
16 (or in equivalent positions of the issuer).”.

17 **Subtitle H—Municipal Securities**

18 **SEC. 975. REGULATION OF MUNICIPAL SECURITIES AND**
19 **CHANGES TO THE BOARD OF THE MSRB.**

20 (a) REGISTRATION OF MUNICIPAL SECURITIES
21 DEALERS AND MUNICIPAL ADVISORS.—Section 15B(a) of
22 the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(a))
23 is amended—

24 (1) in paragraph (1)—

25 (A) by inserting “(A)” after “(1)”; and

26 (B) by adding at the end the following:

1 “(B) It shall be unlawful for a municipal
2 advisor to provide advice to or on behalf of a
3 municipal entity or obligated person with re-
4 spect to municipal financial products or the
5 issuance of municipal securities, or to under-
6 take a solicitation of a municipal entity or obli-
7 gated person, unless the municipal advisor is
8 registered in accordance with this subsection.”;

9 (2) in paragraph (2), by inserting “or municipal
10 advisor” after “municipal securities dealer” each
11 place that term appears;

12 (3) in paragraph (3), by inserting “or municipal
13 advisor” after “municipal securities dealer” each
14 place that term appears;

15 (4) in paragraph (4), by striking “dealer, or
16 municipal securities dealer or class of brokers, deal-
17 ers, or municipal securities dealers” and inserting
18 “dealer, municipal securities dealer, or municipal ad-
19 visor, or class of brokers, dealers, municipal securi-
20 ties dealers, or municipal advisors”; and

21 (5) by adding at the end the following:

22 “(5) No municipal advisor shall make use of the
23 mails or any means or instrumentality of interstate
24 commerce to provide advice to or on behalf of a mu-
25 nicipal entity or obligated person with respect to mu-

1 municipal financial products, the issuance of municipal
2 securities, or to undertake a solicitation of a munic-
3 ipal entity or obligated person, in connection with
4 which such municipal advisor engages in any fraudu-
5 lent, deceptive, or manipulative act or practice.”.

6 (b) MUNICIPAL SECURITIES RULEMAKING BOARD.—
7 Section 15B(b) of the Securities Exchange Act of 1934
8 (15 U.S.C. 78o–4(b)) is amended—

9 (1) in paragraph (1)—

10 (A) in the first sentence, by striking “Not
11 later than” and all that follows through “ap-
12 pointed by the Commission” and inserting “The
13 Municipal Securities Rulemaking Board shall be
14 composed of 15 members, or such other number
15 of members as specified by rules of the Board
16 pursuant to paragraph (2)(B),”;

17 (B) by striking the second sentence and in-
18 serting the following: “The members of the
19 Board shall serve as members for a term of 3
20 years or for such other terms as specified by
21 rules of the Board pursuant to paragraph
22 (2)(B), and shall consist of (A) 8 individuals
23 who are independent of any municipal securities
24 broker, municipal securities dealer, or municipal
25 advisor, at least 1 of whom shall be representa-

1 tive of institutional or retail investors in munic-
2 ipal securities, at least 1 of whom shall be rep-
3 resentative of municipal entities, and at least 1
4 of whom shall be a member of the public with
5 knowledge of or experience in the municipal in-
6 dustry (which members are hereinafter referred
7 to as ‘public representatives’); and (B) 7 indi-
8 viduals who are associated with a broker, deal-
9 er, municipal securities dealer, or municipal ad-
10 visor, including at least 1 individual who is as-
11 sociated with and representative of brokers,
12 dealers, or municipal securities dealers that are
13 not banks or subsidiaries or departments or di-
14 visions of banks (which members are herein-
15 after referred to as ‘broker-dealer representa-
16 tives’), at least 1 individual who is associated
17 with and representative of municipal securities
18 dealers which are banks or subsidiaries or de-
19 partments or divisions of banks (which mem-
20 bers are hereinafter referred to as ‘bank rep-
21 resentatives’), and at least 1 individual who is
22 associated with a municipal advisor (which
23 members are hereinafter referred to as ‘advisor
24 representatives’ and, together with the broker-
25 dealer representatives and the bank representa-

1 tives, are referred to as ‘regulated representa-
2 tives’). Each member of the board shall be
3 knowledgeable of matters related to the munic-
4 ipal securities markets.’; and

5 (C) in the third sentence, by striking “ini-
6 tial”;

7 (2) in paragraph (2)—

8 (A) in the matter preceding subparagraph
9 (A)—

10 (i) by inserting before the period at
11 the end of the first sentence the following:
12 “and advice provided to or on behalf of
13 municipal entities or obligated persons by
14 brokers, dealers, municipal securities deal-
15 ers, and municipal advisors with respect to
16 municipal financial products, the issuance
17 of municipal securities, and solicitations of
18 municipal entities or obligated persons un-
19 dertaken by brokers, dealers, municipal se-
20 curities dealers, and municipal advisors”;
21 and

22 (ii) by striking the second sentence;

23 (B) in subparagraph (A)—

24 (i) in the matter preceding clause

25 (i)—

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1 (I) by inserting “, and no broker,
2 dealer, municipal securities dealer, or
3 municipal advisor shall provide advice
4 to or on behalf of a municipal entity
5 or obligated person with respect to
6 municipal financial products or the
7 issuance of municipal securities,”
8 after “sale of, any municipal secu-
9 rity”; and

10 (II) by inserting “and municipal
11 entities or obligated persons” after
12 “protection of investors”;

13 (ii) in clause (i), by striking “municipal
14 securities brokers and municipal secu-
15 rities dealers” each place that term ap-
16 pears and inserting “municipal securities
17 brokers, municipal securities dealers, and
18 municipal advisors”;

19 (iii) in clause (ii), by adding “and” at
20 the end;

21 (iv) in clause (iii), by striking “; and”
22 and inserting a period; and

23 (v) by striking clause (iv);

24 (C) by amending subparagraph (B) to read
25 as follows:

1 “(B) establish fair procedures for the nomina-
2 tion and election of members of the Board and as-
3 sure fair representation in such nominations and
4 elections of public representatives, broker dealer rep-
5 representatives, bank representatives, and advisor rep-
6 representatives. Such rules—

7 “(i) shall provide that the number of public
8 representatives of the Board shall at all times
9 exceed the total number of regulated represent-
10 atives and that the membership shall at all
11 times be as evenly divided in number as possible
12 between public representatives and regulated
13 representatives;

14 “(ii) shall specify the length or lengths of
15 terms members shall serve;

16 “(iii) may increase the number of members
17 which shall constitute the whole Board, pro-
18 vided that such number is an odd number; and

19 “(iv) shall establish requirements regard-
20 ing the independence of public representa-
21 tives.”.

22 (D) in subparagraph (C)—

23 (i) by inserting “and municipal finan-
24 cial products” after “municipal securities”
25 the first two times that term appears;

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1 (ii) by inserting “, municipal entities,
2 obligated persons,” before “and the public
3 interest”;

4 (iii) by striking “between” and insert-
5 ing “among”;

6 (iv) by striking “issuers, municipal se-
7 curities brokers, or municipal securities
8 dealers, to fix” and inserting “municipal
9 entities, obligated persons, municipal secu-
10 rities brokers, municipal securities dealers,
11 or municipal advisors, to fix”; and

12 (v) by striking “brokers or municipal
13 securities dealers, to regulate” and insert-
14 ing “brokers, municipal securities dealers,
15 or municipal advisors, to regulate”;

16 (E) in subparagraph (D)—

17 (i) by inserting “and advice con-
18 cerning municipal financial products” after
19 “transactions in municipal securities”;

20 (ii) by striking “That no” and insert-
21 ing “that no”;

22 (iii) by inserting “municipal advisor,”
23 before “or person associated”; and

24 (iv) by striking “a municipal securi-
25 ties broker or municipal securities dealer

1 may be compelled” and inserting “a mu-
2 nicipal securities broker, municipal securi-
3 ties dealer, or municipal advisor may be
4 compelled”;

5 (F) in subparagraph (E)—

6 (i) by striking “municipal securities
7 brokers and municipal securities dealers”
8 and inserting “municipal securities bro-
9 kers, municipal securities dealers, and mu-
10 nicipal advisors”; and

11 (ii) by striking “municipal securities
12 broker or municipal securities dealer” and
13 inserting “municipal securities broker, mu-
14 nicipal securities dealer, or municipal advi-
15 sor”;

16 (G) in subparagraph (G), by striking “mu-
17 nicipal securities brokers and municipal securi-
18 ties dealers” and inserting “municipal securities
19 brokers, municipal securities dealers, and mu-
20 nicipal advisors”;

21 (H) in subparagraph (J)—

22 (i) by striking “municipal securities
23 broker and each municipal securities deal-
24 er” and inserting “municipal securities

1 broker, municipal securities dealer, and
2 municipal advisor”; and

3 (ii) by striking the period at the end
4 of the second sentence and inserting “,
5 which may include charges for failure to
6 submit to the Board, or to any information
7 system operated by the Board, within the
8 prescribed timeframes, any items of infor-
9 mation or documents required to be sub-
10 mitted under any rule issued by the
11 Board.”;

12 (I) in subparagraph (K)—

13 (i) by inserting “broker, dealer, or”
14 before “municipal securities dealer” each
15 place that term appears; and

16 (ii) by striking “municipal securities
17 investment portfolio” and inserting “re-
18 lated account of a broker, dealer, or mu-
19 nicipal securities dealer”; and

20 (J) by adding at the end the following:

21 “(L) with respect to municipal advisors—

22 “(i) prescribe means reasonably de-
23 signed to prevent acts, practices, and
24 courses of business as are not consistent

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1 with a municipal advisor's fiduciary duty
2 to its clients;

3 “(ii) provide continuing education re-
4 quirements for municipal advisors;

5 “(iii) provide professional standards;
6 and

7 “(iv) not impose a regulatory burden
8 on small municipal advisors that is not
9 necessary or appropriate in the public in-
10 terest and for the protection of investors,
11 municipal entities, and obligated persons,
12 provided that there is robust protection of
13 investors against fraud.”;

14 (3) by redesignating paragraph (3) as para-
15 graph (7); and

16 (4) by inserting after paragraph (2) the fol-
17 lowing:

18 “(3) The Board, in conjunction with or on be-
19 half of any Federal financial regulator or self-regu-
20 latory organization, may—

21 “(A) establish information systems; and

22 “(B) assess such reasonable fees and
23 charges for the submission of information to, or
24 the receipt of information from, such systems
25 from any persons which systems may be devel-

1 oped for the purposes of serving as a repository
2 of information from municipal market partici-
3 pants or otherwise in furtherance of the pur-
4 poses of the Board, a Federal financial regu-
5 lator, or a self-regulatory organization, except
6 that the Board—

7 “(i) may not charge a fee to municipal
8 entities or obligated persons to submit doc-
9 uments or other information to the Board
10 or charge a fee to any person to obtain, di-
11 rectly from the Internet site of the Board,
12 documents or information submitted by
13 municipal entities, obligated persons, bro-
14 kers, dealers, municipal securities dealers,
15 or municipal advisors, including documents
16 submitted under the rules of the Board or
17 the Commission; and

18 “(ii) shall not be prohibited from
19 charging commercially reasonable fees for
20 automated subscription-based feeds or
21 similar services, or for charging for other
22 data or document-based services cus-
23 tomized upon request of any person, made
24 available to commercial enterprises, munic-
25 ipal securities market professionals, or the

1 “(ii) examination and enforcement of
2 compliance with Board rules.”.

3 (c) DISCIPLINE OF BROKERS, DEALERS, MUNICIPAL
4 SECURITIES DEALERS AND MUNICIPAL ADVISORS; FIDU-
5 CIARY DUTY OF MUNICIPAL ADVISORS.—Section 15B(c)
6 of the Securities Exchange Act of 1934 (15 U.S.C. 78o-
7 4(c)) is amended—

8 (1) in paragraph (1), by inserting “, and no
9 broker, dealer, municipal securities dealer, or munic-
10 ipal advisor shall make use of the mails or any
11 means or instrumentality of interstate commerce to
12 provide advice to or on behalf of a municipal entity
13 or obligated person with respect to municipal finan-
14 cial products, the issuance of municipal securities, or
15 to undertake a solicitation of a municipal entity or
16 obligated person,” after “any municipal security”;

17 (2) by adding at the end of paragraph (1) the
18 following: “A municipal advisor and any person as-
19 sociated with such municipal advisor shall be deemed
20 to have a fiduciary duty to any municipal entity for
21 whom such municipal advisor acts as a municipal
22 advisor, and no municipal advisor may engage in
23 any act, practice, or course of business which is not
24 consistent with a municipal advisor’s fiduciary duty

1 or that is in contravention of any rule of the
2 Board.”.

3 (3) in paragraph (2), by inserting “or municipal
4 advisor” after “municipal securities dealer” each
5 place that term appears;

6 (4) in paragraph (3)—

7 (A) by inserting “or municipal entities or
8 obligated person” after “protection of inves-
9 tors” each place that term appears; and

10 (B) by inserting “or municipal advisor”
11 after “municipal securities dealer” each place
12 that term appears;

13 (5) in paragraph (4), by inserting “or municipal
14 advisor” after “municipal securities dealer or obli-
15 gated person” each place that term appears;

16 (6) in paragraph (6)(B), by inserting “or mu-
17 nicipal entities or obligated person” after “protec-
18 tion of investors”;

19 (7) in paragraph (7)—

20 (A) in subparagraph (A)—

21 (i) in clause (i), by striking “; and”
22 and inserting a semicolon;

23 (ii) in clause (ii), by striking the pe-
24 riod and inserting “; and”; and

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1 (iii) by adding at the end the fol-
2 lowing:

3 “(iii) the Commission, or its designee,
4 in the case of municipal advisors.”.

5 (B) in subparagraph (B), by inserting “or
6 municipal entities or obligated person” after
7 “protection of investors”; and

8 (8) by adding at the end the following:

9 “(9)(A) Fines collected by the Commission for
10 violations of the rules of the Board shall be equally
11 divided between the Commission and the Board.

12 “(B) Fines collected by a registered securities
13 association under section 15A(7) with respect to vio-
14 lations of the rules of the Board shall be accounted
15 for by such registered securities association sepa-
16 rately from other fines collected under section
17 15A(7) and shall be allocated between such reg-
18 istered securities association and the Board, and
19 such allocation shall require the registered securities
20 association to pay to the Board $\frac{1}{3}$ of all fines col-
21 lected by the registered securities association reason-
22 ably allocable to violations of the rules of the Board,
23 or such other portion of such fines as may be di-
24 rected by the Commission upon agreement between
25 the registered securities association and the Board.”.

1 (d) ISSUANCE OF MUNICIPAL SECURITIES.—Section
2 15B(d)(2) of the Securities Exchange Act of 1934 (15
3 U.S.C. 78o–4(d)) is amended—

4 (1) by striking “through a municipal securities
5 broker or municipal securities dealer or otherwise”
6 and inserting “through a municipal securities
7 broker, municipal securities dealer, municipal advi-
8 sor, or otherwise”; and

9 (2) by inserting “or municipal advisors” before
10 “to furnish”.

11 (e) DEFINITIONS.—Section 15B of the Securities Ex-
12 change Act of 1934 (15 U.S.C. 78o–4) is amended by add-
13 ing at the end the following:

14 “(e) DEFINITIONS.—For purposes of this section—

15 “(1) the term ‘Board’ means the Municipal Se-
16 curities Rulemaking Board established under sub-
17 section (b)(1);

18 “(2) the term ‘guaranteed investment contract’
19 includes any investment that has specified with-
20 drawal or reinvestment provisions and a specifically
21 negotiated or bid interest rate, and also includes any
22 agreement to supply investments on 2 or more fu-
23 ture dates, such as a forward supply contract;

24 “(3) the term ‘investment strategies’ includes
25 plans or programs for the investment of the proceeds

1 of municipal securities that are not municipal de-
2 rivatives, guaranteed investment contracts, and the
3 recommendation of and brokerage of municipal es-
4 crow investments;

5 “(4) the term ‘municipal advisor’—

6 “(A) means a person (who is not a munic-
7 ipal entity or an employee of a municipal enti-
8 ty) that—

9 “(i) provides advice to or on behalf of
10 a municipal entity or obligated person with
11 respect to municipal financial products or
12 the issuance of municipal securities, in-
13 cluding advice with respect to the struc-
14 ture, timing, terms, and other similar mat-
15 ters concerning such financial products or
16 issues; or

17 “(ii) undertakes a solicitation of a
18 municipal entity;

19 “(B) includes financial advisors, guaran-
20 teed investment contract brokers, third-party
21 marketers, placement agents, solicitors, finders,
22 and swap advisors, if such persons are de-
23 scribed in any of clauses (i) through (iii) of sub-
24 paragraph (A); and

1 “(C) does not include a broker, dealer, or
2 municipal securities dealer serving as an under-
3 writer (as defined in section 2(a)(11) of the Se-
4 curities Act of 1933) (15 U.S.C. 77b(a)(11)),
5 any investment adviser registered under the In-
6 vestment Advisers Act of 1940, or persons asso-
7 ciated with such investment advisers who are
8 providing investment advice, any commodity
9 trading advisor registered under the Commodity
10 Exchange Act or persons associated with a com-
11 modity trading advisor who are providing advice
12 related to swaps, attorneys offering legal advice
13 or providing services that are of a traditional
14 legal nature, or engineers providing engineering
15 advice;

16 “(5) the term ‘municipal financial product’
17 means municipal derivatives, guaranteed investment
18 contracts, and investment strategies;

19 “(6) the term ‘rules of the Board’ means the
20 rules proposed and adopted by the Board under sub-
21 section (b)(2);

22 “(7) the term ‘person associated with a munic-
23 ipal advisor’ or ‘associated person of an advisor’
24 means—

1 “(A) any partner, officer, director, or
2 branch manager of such municipal advisor (or
3 any person occupying a similar status or per-
4 forming similar functions);

5 “(B) any other employee of such municipal
6 advisor who is engaged in the management, di-
7 rection, supervision, or performance of any ac-
8 tivities relating to the provision of advice to or
9 on behalf of a municipal entity or obligated per-
10 son with respect to municipal financial products
11 or the issuance of municipal securities; and

12 “(C) any person directly or indirectly con-
13 trolling, controlled by, or under common control
14 with such municipal advisor;

15 “(8) the term ‘municipal entity’ means any
16 State, political subdivision of a State, or municipal
17 corporate instrumentality of a State, including—

18 “(A) any agency, authority, or instrumen-
19 tality of the State, political subdivision, or mu-
20 nicipal corporate instrumentality;

21 “(B) any plan, program, or pool of assets
22 sponsored or established by the State, political
23 subdivision, or municipal corporate instrumen-
24 tality or any agency, authority, or instrumen-
25 tality thereof; and

1 “(C) any other issuer of municipal securi-
2 ties;

3 “(9) the term ‘solicitation of a municipal entity
4 or obligated person’ means a direct or indirect com-
5 munication with a municipal entity or obligated per-
6 son made by a person, for direct or indirect com-
7 pensation, on behalf of a broker, dealer, municipal
8 securities dealer, municipal advisor, or investment
9 adviser (as defined in section 202 of the Investment
10 Advisers Act of 1940) that does not control, is not
11 controlled by, or is not under common control with
12 the person undertaking such solicitation for the pur-
13 pose of obtaining or retaining an engagement by a
14 municipal entity or obligated person of a broker,
15 dealer, municipal securities dealer, or municipal ad-
16 visor for or in connection with municipal financial
17 products, the issuance of municipal securities, or of
18 an investment adviser to provide investment advisory
19 services to or on behalf of a municipal entity; and

20 “(10) the term ‘obligated person’ means any
21 person, including an issuer of municipal securities,
22 who is either generally or through an enterprise,
23 fund, or account of such person, committed by con-
24 tract or other arrangement to support the payment
25 of all or part of the obligations on the municipal se-

1 securities to be sold in an offering of municipal securi-
2 ties.”.

3 (f) REGISTERED SECURITIES ASSOCIATION.—Section
4 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C.
5 78o–3(b)) is amended by adding at the end the following:

6 “(15) The rules of the association provide that
7 the association shall—

8 “(A) request guidance from the Municipal
9 Securities Rulemaking Board in interpretation
10 of the rules of the Municipal Securities Rule-
11 making Board; and

12 “(B) provide information to the Municipal
13 Securities Rulemaking Board about the enforce-
14 ment actions and examinations of the associa-
15 tion under section 15B(b)(2)(E), so that the
16 Municipal Securities Rulemaking Board may—

17 “(i) assist in such enforcement actions
18 and examinations; and

19 “(ii) evaluate the ongoing effective-
20 ness of the rules of the Board.”.

21 (g) REGISTRATION AND REGULATION OF BROKERS
22 AND DEALERS.—Section 15 of the Securities Exchange
23 Act of 1934 is amended—

1 (1) in subsection (b)(4), by inserting “municipal advisor,” after “municipal securities dealer”
2 each place that term appears; and
3

4 (2) in subsection (c), by inserting “broker, dealer, or” before “municipal securities dealer” each
5 place that term appears.
6

7 (h) ACCOUNTS AND RECORDS, REPORTS, EXAMINATIONS OF EXCHANGES, MEMBERS, AND OTHERS.—Section
8 17(a)(1) of the Securities Exchange Act of 1934 is
9 amended by inserting “municipal advisor,” after “municipal securities dealer”.
10
11

12 (i) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on October
13 1, 2010.
14

15 **SEC. 976. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
16 **OF INCREASED DISCLOSURE TO INVESTORS.**

17 (a) STUDY.—The Comptroller General of the United States shall conduct a study and review of the disclosure
18 required to be made by issuers of municipal securities.
19

20 (b) SUBJECTS FOR EVALUATION.—In conducting the
21 study under subsection (a), the Comptroller General of the
22 United States shall—

23 (1) broadly describe—

24 (A) the size of the municipal securities
25 markets and the issuers and investors; and

1 (B) the disclosures provided by issuers to
2 investors;

3 (2) compare the amount, frequency, and quality
4 of disclosures that issuers of municipal securities are
5 required by law to provide for the benefit of munic-
6 ipal securities holders, including the amount of and
7 frequency of disclosures actually provided by issuers
8 of municipal securities, with the amount of and fre-
9 quency of disclosures that issuers of corporate secu-
10 rities provide for the benefit of corporate securities
11 holders, taking into account the differences between
12 issuers of municipal securities and issuers of cor-
13 porate securities;

14 (3) evaluate the costs and benefits to various
15 types of issuers of municipal securities of requiring
16 issuers of municipal bonds to provide additional fi-
17 nancial disclosures for the benefit of investors;

18 (4) evaluate the potential benefit to investors
19 from additional financial disclosures by issuers of
20 municipal bonds; and

21 (5) make recommendations relating to disclo-
22 sure requirements for municipal issuers, including
23 the advisability of the repeal or retention of section
24 15B(d) of the Securities Exchange Act of 1934 (15

1 U.S.C. 78o-4(d)) (commonly known as the “Tower
2 Amendment”).

3 (c) REPORT.—Not later than 24 months after the
4 date of enactment of this Act, the Comptroller General
5 of the United States shall submit a report to Congress
6 on the results of the study conducted under subsection (a),
7 including recommendations for how to improve disclosure
8 by issuers of municipal securities.

9 **SEC. 977. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
10 **ON THE MUNICIPAL SECURITIES MARKETS.**

11 (a) STUDY.—The Comptroller General of the United
12 States shall conduct a study of the municipal securities
13 markets.

14 (b) REPORT.—Not later than 18 months after the
15 date of enactment of this Act, the Comptroller General
16 of the United States shall submit a report to the Com-
17 mittee on Banking, Housing, and Urban Affairs of the
18 Senate, and the Committee on Financial Services of the
19 House of Representatives, with copies to the Special Com-
20 mittee on Aging of the Senate and the Commission, on
21 the results of the study conducted under subsection (a),
22 including—

23 (1) an analysis of the mechanisms for trading,
24 quality of trade executions, market transparency,

1 trade reporting, price discovery, settlement clearing,
2 and credit enhancements;

3 (2) the needs of the markets and investors and
4 the impact of recent innovations;

5 (3) recommendations for how to improve the
6 transparency, efficiency, fairness, and liquidity of
7 trading in the municipal securities markets, includ-
8 ing with reference to items listed in paragraph (1);
9 and

10 (4) potential uses of derivatives in the munic-
11 ipal securities markets.

12 (c) RESPONSES.—Not later than 180 days after re-
13 ceipt of the report required under subsection (b), the Com-
14 mission shall submit a response to the Committee on
15 Banking, Housing, and Urban Affairs of the Senate, and
16 the Committee on Financial Services of the House of Rep-
17 resentatives, with a copy to the Special Committee on
18 Aging of the Senate, stating the actions the Commission
19 has taken in response to the recommendations contained
20 in such report.

21 **SEC. 978. FUNDING FOR GOVERNMENTAL ACCOUNTING**

22 **STANDARDS BOARD.**

23 (a) AMENDMENT TO THE SECURITIES ACT OF
24 1933.—Section 19 of the Securities Act of 1933 (15

1 U.S.C. 77s), as amended by section 912, is further amend-
2 ed by adding at the end the following:

3 “(g) FUNDING FOR THE GASB.—

4 “(1) IN GENERAL.—The Commission may, sub-
5 ject to the limitations imposed by section 15B of the
6 Securities Exchange Act of 1934 (15 U.S.C. 78o–4),
7 require a national securities association registered
8 under the Securities Exchange Act of 1934 to estab-
9 lish—

10 “(A) a reasonable annual accounting sup-
11 port fee to adequately fund the annual budget
12 of the Governmental Accounting Standards
13 Board (referred to in this subsection as the
14 ‘GASB’); and

15 “(B) rules and procedures, in consultation
16 with the principal organizations representing
17 State governors, legislators, local elected offi-
18 cials, and State and local finance officers, to
19 provide for the equitable allocation, assessment,
20 and collection of the accounting support fee es-
21 tablished under subparagraph (A) from the
22 members of the association, and the remittance
23 of all such accounting support fees to the Fi-
24 nancial Accounting Foundation.

1 “(2) ANNUAL BUDGET.—For purposes of this
2 subsection, the annual budget of the GASB is the
3 annual budget reviewed and approved according to
4 the internal procedures of the Financial Accounting
5 Foundation.

6 “(3) USE OF FUNDS.—Any fees or funds col-
7 lected under this subsection shall be used to support
8 the efforts of the GASB to establish standards of fi-
9 nancial accounting and reporting recognized as gen-
10 erally accepted accounting principles applicable to
11 State and local governments of the United States.

12 “(4) LIMITATION ON FEE.—The annual ac-
13 counting support fees collected under this subsection
14 for a fiscal year shall not exceed the recoverable an-
15 nual budgeted expenses of the GASB (which may in-
16 clude operating expenses, capital, and accrued
17 items).

18 “(5) RULES OF CONSTRUCTION.—

19 “(A) FEES NOT PUBLIC MONIES.—Ac-
20 counting support fees collected under this sub-
21 section and other receipts of the GASB shall
22 not be considered public monies of the United
23 States.

1 “(B) LIMITATION ON AUTHORITY OF THE
2 COMMISSION.—Nothing in this subsection shall
3 be construed to—

4 “(i) provide the Commission or any
5 national securities association direct or in-
6 direct oversight of the budget or technical
7 agenda of the GASB; or

8 “(ii) affect the setting of generally ac-
9 cepted accounting principles by the GASB.

10 “(C) NONINTERFERENCE WITH STATES.—
11 Nothing in this subsection shall be construed to
12 impair or limit the authority of a State or local
13 government to establish accounting and finan-
14 cial reporting standards.”.

15 (b) STUDY OF FUNDING FOR GOVERNMENTAL AC-
16 COUNTING STANDARDS BOARD.—

17 (1) STUDY.—The Comptroller General of the
18 United States shall conduct a study that evaluates—

19 (A) the role and importance of the Govern-
20 mental Accounting Standards Board in the mu-
21 nicipal securities markets; and

22 (B) the manner and the level at which the
23 Governmental Accounting Standards Board has
24 been funded.

1 (2) CONSULTATION.—In conducting the study
2 required under paragraph (1), the Comptroller Gen-
3 eral shall consult with the principal organizations
4 representing State governors, legislators, local elect-
5 ed officials, and State and local finance officers.

6 (3) REPORT.—Not later than 180 days after
7 the date of enactment of this Act, the Comptroller
8 General shall submit to the Committee on Banking,
9 Housing, and Urban Affairs of the Senate and the
10 Committee on Financial Services of the House of
11 Representatives a report on the study required
12 under paragraph (1).

13 **SEC. 979. COMMISSION OFFICE OF MUNICIPAL SECURITIES.**

14 (a) IN GENERAL.—There shall be in the Commission
15 an Office of Municipal Securities, which shall—

16 (1) administer the rules of the Commission with
17 respect to the practices of municipal securities bro-
18 kers and dealers, municipal securities advisors, mu-
19 nicipal securities investors, and municipal securities
20 issuers; and

21 (2) coordinate with the Municipal Securities
22 Rulemaking Board for rulemaking and enforcement
23 actions as required by law.

1 (b) DIRECTOR OF THE OFFICE.—The head of the Of-
2 fice of Municipal Securities shall be the Director, who
3 shall report to the Chairman.

4 (c) STAFFING.—

5 (1) IN GENERAL.—The Office of Municipal Se-
6 curities shall be staffed sufficiently to carry out the
7 requirements of this section.

8 (2) REQUIREMENT.—The staff of the Office of
9 Municipal Securities shall include individuals with
10 knowledge of and expertise in municipal finance.

11 **Subtitle I—Public Company Ac-**
12 **counting Oversight Board, Port-**
13 **folio Margining, and Other Mat-**
14 **ters**

15 **SEC. 981. AUTHORITY TO SHARE CERTAIN INFORMATION**
16 **WITH FOREIGN AUTHORITIES.**

17 (a) DEFINITION.—Section 2(a) of the Sarbanes-
18 Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended by
19 adding at the end the following:

20 “(17) FOREIGN AUDITOR OVERSIGHT AUTHOR-
21 ITY.—The term ‘foreign auditor oversight authority’
22 means any governmental body or other entity em-
23 powered by a foreign government to conduct inspec-
24 tions of public accounting firms or otherwise to ad-

1 minister or enforce laws related to the regulation of
2 public accounting firms.”.

3 (b) AVAILABILITY TO SHARE INFORMATION.—Sec-
4 tion 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15
5 U.S.C. 7215(b)(5)) is amended by adding at the end the
6 following:

7 “(C) AVAILABILITY TO FOREIGN OVER-
8 SIGHT AUTHORITIES.—Without the loss of its
9 status as confidential and privileged in the
10 hands of the Board, all information referred to
11 in subparagraph (A) that relates to a public ac-
12 counting firm that a foreign government has
13 empowered a foreign auditor oversight authority
14 to inspect or otherwise enforce laws with re-
15 spect to, may, at the discretion of the Board, be
16 made available to the foreign auditor oversight
17 authority, if—

18 “(i) the Board finds that it is nec-
19 essary to accomplish the purposes of this
20 Act or to protect investors;

21 “(ii) the foreign auditor oversight au-
22 thority provides—

23 “(I) such assurances of confiden-
24 tiality as the Board may request;

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1 “(II) a description of the applica-
2 ble information systems and controls
3 of the foreign auditor oversight au-
4 thority; and

5 “(III) a description of the laws
6 and regulations of the foreign govern-
7 ment of the foreign auditor oversight
8 authority that are relevant to informa-
9 tion access; and

10 “(iii) the Board determines that it is
11 appropriate to share such information.”.

12 (c) CONFORMING AMENDMENT.—Section
13 105(b)(5)(A) of the Sarbanes-Oxley Act of 2002 (15
14 U.S.C. 7215(b)(5)(A)) is amended by striking “subpara-
15 graph (B)” and inserting “subparagraphs (B) and (C)”.

16 **SEC. 982. OVERSIGHT OF BROKERS AND DEALERS.**

17 (a) DEFINITIONS.—

18 (1) DEFINITIONS AMENDED.—Title I of the
19 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et
20 seq.) is amended by adding at the end the following
21 new section:

22 **“SEC. 110. DEFINITIONS.**

23 “For the purposes of this title, the following defini-
24 tions shall apply:

1 “(1) AUDIT.—The term ‘audit’ means an exam-
2 ination of the financial statements, reports, docu-
3 ments, procedures, controls, or notices of any issuer,
4 broker, or dealer by an independent public account-
5 ing firm in accordance with the rules of the Board
6 or the Commission, for the purpose of expressing an
7 opinion on the financial statements or providing an
8 audit report.

9 “(2) AUDIT REPORT.—The term ‘audit report’
10 means a document, report, notice, or other record—

11 “(A) prepared following an audit per-
12 formed for purposes of compliance by an issuer,
13 broker, or dealer with the requirements of the
14 securities laws; and

15 “(B) in which a public accounting firm ei-
16 ther—

17 “(i) sets forth the opinion of that firm
18 regarding a financial statement, report, no-
19 tice, or other document, procedures, or
20 controls; or

21 “(ii) asserts that no such opinion can
22 be expressed.

23 “(3) BROKER.—The term ‘broker’ means a
24 broker (as such term is defined in section 3(a)(4) of
25 the Securities Exchange Act of 1934 (15 U.S.C.

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1 78c(a)(4))) that is required to file a balance sheet,
2 income statement, or other financial statement
3 under section 17(e)(1)(A) of such Act (15 U.S.C.
4 78q(e)(1)(A)), where such balance sheet, income
5 statement, or financial statement is required to be
6 certified by a registered public accounting firm.

7 “(4) DEALER.—The term ‘dealer’ means a
8 dealer (as such term is defined in section 3(a)(5) of
9 the Securities Exchange Act of 1934 (15 U.S.C.
10 78c(a)(5))) that is required to file a balance sheet,
11 income statement, or other financial statement
12 under section 17(e)(1)(A) of such Act (15 U.S.C.
13 78q(e)(1)(A)), where such balance sheet, income
14 statement, or financial statement is required to be
15 certified by a registered public accounting firm.

16 “(5) PROFESSIONAL STANDARDS.—The term
17 ‘professional standards’ means—

18 “(A) accounting principles that are—
19 “(i) established by the standard set-
20 ting body described in section 19(b) of the
21 Securities Act of 1933, as amended by this
22 Act, or prescribed by the Commission
23 under section 19(a) of that Act (15 U.S.C.
24 17a(s)) or section 13(b) of the Securities

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1 Exchange Act of 1934 (15 U.S.C. 78a(m));

2 and

3 “(ii) relevant to audit reports for par-

4 ticular issuers, brokers, or dealers, or dealt

5 with in the quality control system of a par-

6 ticular registered public accounting firm;

7 and

8 “(B) auditing standards, standards for at-

9 testation engagements, quality control policies

10 and procedures, ethical and competency stand-

11 ards, and independence standards (including

12 rules implementing title II) that the Board or

13 the Commission determines—

14 “(i) relate to the preparation or

15 issuance of audit reports for issuers, bro-

16 kers, or dealers; and

17 “(ii) are established or adopted by the

18 Board under section 103(a), or are pro-

19 mulgated as rules of the Commission.

20 “(6) SELF-REGULATORY ORGANIZATION.—The

21 term ‘self-regulatory organization’ has the same

22 meaning as in section 3(a) of the Securities Ex-

23 change Act of 1934 (15 U.S.C. 78c(a)).”.

24 (2) CONFORMING AMENDMENT.—Section 2(a)

25 of the Sarbanes-Oxley Act of 2002 (15 U.S.C.

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1 7201(a)) is amended in the matter preceding para-
2 graph (1), by striking “In this” and inserting “Ex-
3 cept as otherwise specifically provided in this Act, in
4 this”.

5 (b) ESTABLISHMENT AND ADMINISTRATION OF THE
6 PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—
7 Section 101 of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
8 7211) is amended—

9 (1) by striking “issuers” each place that term
10 appears and inserting “issuers, brokers, and deal-
11 ers”; and

12 (2) in subsection (a)—

13 (A) by striking “public companies” and in-
14 serting “companies”; and

15 (B) by striking “for companies the securi-
16 ties of which are sold to, and held by and for,
17 public investors”.

18 (c) REGISTRATION WITH THE BOARD.—Section 102
19 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212) is
20 amended—

21 (1) in subsection (a)—

22 (A) by striking “Beginning 180” and all
23 that follows through “101(d), it” and inserting
24 “it”; and

1 (B) by striking “issuer” and inserting
2 “issuer, broker, or dealer”;

3 (2) in subsection (b)—

4 (A) in paragraph (2)(A), by striking
5 “issuers” and inserting “issuers, brokers, and
6 dealers”; and

7 (B) by striking “issuer” each place that
8 term appears and inserting “issuer, broker, or
9 dealer”.

10 (d) AUDITING AND INDEPENDENCE.—Section 103(a)
11 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7213(a))
12 is amended—

13 (1) in paragraph (1), by striking “and such eth-
14 ics standards” and inserting “such ethics standards,
15 and such independence standards”;

16 (2) in paragraph (2)(A)(iii), by striking “de-
17 scribe in each audit report” and inserting “in each
18 audit report for an issuer, describe”; and

19 (3) in paragraph (2)(B)(i), by striking
20 “issuers” and inserting “issuers, brokers, and deal-
21 ers”.

22 (e) INSPECTIONS OF REGISTERED PUBLIC ACCOUNT-
23 ING FIRMS.—

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1 (1) AMENDMENTS.—Section 104(a) of the Sar-
2 banes-Oxley Act of 2002 (15 U.S.C. 7214(a)) is
3 amended—

4 (A) by striking “The Board shall” and in-
5 serting the following:

6 “(1) INSPECTIONS GENERALLY.—The Board
7 shall”; and

8 (B) by adding at the end the following:

9 “(2) INSPECTIONS OF AUDIT REPORTS FOR
10 BROKERS AND DEALERS.—

11 “(A) The Board may, by rule, conduct and
12 require a program of inspection in accordance
13 with paragraph (1), on a basis to be determined
14 by the Board, of registered public accounting
15 firms that provide one or more audit reports for
16 a broker or dealer. The Board, in establishing
17 such a program, may allow for differentiation
18 among classes of brokers and dealers, as appro-
19 priate.

20 “(B) If the Board determines to establish
21 a program of inspection pursuant to subpara-
22 graph (A), the Board shall consider in estab-
23 lishing any inspection schedules whether dif-
24 fering schedules would be appropriate with re-
25 spect to registered public accounting firms that

1 issue audit reports only for one or more brokers
2 or dealers that do not receive, handle, or hold
3 customer securities or cash or are not a mem-
4 ber of the Securities Investor Protection Cor-
5 poration.

6 “(C) Any rules of the Board pursuant to
7 this paragraph shall be subject to prior ap-
8 proval by the Commission pursuant to section
9 107(b) before the rules become effective, includ-
10 ing an opportunity for public notice and com-
11 ment.

12 “(D) Notwithstanding anything to the con-
13 trary in section 102 of this Act, a public ac-
14 counting firm shall not be required to register
15 with the Board if the public accounting firm is
16 exempt from the inspection program which may
17 be established by the Board under subpara-
18 graph (A).”.

19 (2) CONFORMING AMENDMENT.—Section
20 17(e)(1)(A) of the Securities Exchange Act of 1934
21 (15 U.S.C. 78q(e)(1)(A)) is amended by striking
22 “registered public accounting firm” and inserting
23 “independent public accounting firm, or by a reg-
24 istered public accounting firm if the firm is required

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1 to be registered under the Sarbanes-Oxley Act of
2 2002.”.

3 (f) INVESTIGATIONS AND DISCIPLINARY PRO-
4 CEEDINGS.—Section 105(c)(7)(B) of the Sarbanes-Oxley
5 Act of 2002 (15 U.S.C. 7215(c)(7)(B)) is amended—

6 (1) in the subparagraph heading, by inserting
7 “, BROKER, OR DEALER” after “ISSUER”;

8 (2) by striking “any issuer” each place that
9 term appears and inserting “any issuer, broker, or
10 dealer”; and

11 (3) by striking “an issuer under this sub-
12 section” and inserting “a registered public account-
13 ing firm under this subsection”.

14 (g) FOREIGN PUBLIC ACCOUNTING FIRMS.—Section
15 106(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
16 7216(a)) is amended—

17 (1) in paragraph (1), by striking “issuer” and
18 inserting “issuer, broker, or dealer”; and

19 (2) in paragraph (2), by striking “issuers” and
20 inserting “issuers, brokers, or dealers”.

21 (h) FUNDING.—Section 109 of the Sarbanes-Oxley
22 Act of 2002 (15 U.S.C. 7219) is amended—

23 (1) in subsection (c)(2), by striking “subsection
24 (i)” and inserting “subsection (j)”;

25 (2) in subsection (d)—

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1 (A) in paragraph (2), by striking “allowing
2 for differentiation among classes of issuers, as
3 appropriate” and inserting “and among brokers
4 and dealers, in accordance with subsection (h),
5 and allowing for differentiation among classes
6 of issuers, brokers and dealers, as appropriate”;
7 and

8 (B) by adding at the end the following:

9 “(3) **BROKERS AND DEALERS.**—The Board
10 shall begin the allocation, assessment, and collection
11 of fees under paragraph (2) with respect to brokers
12 and dealers with the payment of support fees to
13 fund the first full fiscal year beginning after the
14 date of enactment of the Investor Protection and Se-
15 curities Reform Act of 2010.”;

16 (3) by redesignating subsections (h), (i), and (j)
17 as subsections (i), (j), and (k), respectively; and

18 (4) by inserting after subsection (g) the fol-
19 lowing:

20 “(h) **ALLOCATION OF ACCOUNTING SUPPORT FEES**
21 **AMONG BROKERS AND DEALERS.**—

22 “(1) **OBLIGATION TO PAY.**—Each broker or
23 dealer shall pay to the Board the annual accounting
24 support fee allocated to such broker or dealer under
25 this section.

1 “(2) ALLOCATION.—Any amount due from a
2 broker or dealer (or from a particular class of bro-
3 kers and dealers) under this section shall be allo-
4 cated among brokers and dealers and payable by the
5 broker or dealer (or the brokers and dealers in the
6 particular class, as applicable).

7 “(3) PROPORTIONALITY.—The amount due
8 from a broker or dealer shall be in proportion to the
9 net capital of the broker or dealer (before or after
10 any adjustments), compared to the total net capital
11 of all brokers and dealers (before or after any ad-
12 justments), in accordance with rules issued by the
13 Board.”.

14 (i) REFERRAL OF INVESTIGATIONS TO A SELF-REGU-
15 LATORY ORGANIZATION.—Section 105(b)(4)(B) of the
16 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(4)(B))
17 is amended—

18 (1) by redesignating clauses (ii) and (iii) as
19 clauses (iii) and (iv), respectively; and

20 (2) by inserting after clause (i) the following:

21 “(ii) to a self-regulatory organization,
22 in the case of an investigation that con-
23 cerns an audit report for a broker or deal-
24 er that is under the jurisdiction of such
25 self-regulatory organization;”.

1 (j) USE OF DOCUMENTS RELATED TO AN INSPEC-
2 TION OR INVESTIGATION.—Section 105(b)(5)(B)(ii) of the
3 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(B)(ii))
4 is amended—

5 (1) in subclause (III), by striking “and” at the
6 end;

7 (2) in subclause (IV), by striking the comma
8 and inserting “; and”; and

9 (3) by inserting after subclause (IV) the fol-
10 lowing:

11 “(V) a self-regulatory organiza-
12 tion, with respect to an audit report
13 for a broker or dealer that is under
14 the jurisdiction of such self-regulatory
15 organization,”.

16 **SEC. 983. PORTFOLIO MARGINING.**

17 (a) ADVANCES.—Section 9(a)(1) of the Securities In-
18 vestor Protection Act of 1970 (15 U.S.C. 78fff3(a)(1)) is
19 amended by inserting “or options on commodity futures
20 contracts” after “claim for securities”.

21 (b) DEFINITIONS.—Section 16 of the Securities In-
22 vestor Protection Act of 1970 (15 U.S.C. 78lll) is amend-
23 ed—

24 (1) by striking paragraph (2) and inserting the
25 following:

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1 “(2) CUSTOMER.—

2 “(A) IN GENERAL.—The term ‘customer’
3 of a debtor means any person (including any
4 person with whom the debtor deals as principal
5 or agent) who has a claim on account of securi-
6 ties received, acquired, or held by the debtor in
7 the ordinary course of its business as a broker
8 or dealer from or for the securities accounts of
9 such person for safekeeping, with a view to sale,
10 to cover consummated sales, pursuant to pur-
11 chases, as collateral, security, or for purposes of
12 effecting transfer.

13 “(B) INCLUDED PERSONS.—The term
14 ‘customer’ includes—

15 “(i) any person who has deposited
16 cash with the debtor for the purpose of
17 purchasing securities;

18 “(ii) any person who has a claim
19 against the debtor for cash, securities, fu-
20 tures contracts, or options on futures con-
21 tracts received, acquired, or held in a port-
22 folio margining account carried as a secu-
23 rities account pursuant to a portfolio mar-
24 gining program approved by the Commis-
25 sion; and

1 “(iii) any person who has a claim
2 against the debtor arising out of sales or
3 conversions of such securities.

4 “(C) EXCLUDED PERSONS.—The term
5 ‘customer’ does not include any person, to the
6 extent that—

7 “(i) the claim of such person arises
8 out of transactions with a foreign sub-
9 sidiary of a member of SIPC; or

10 “(ii) such person has a claim for cash
11 or securities which by contract, agreement,
12 or understanding, or by operation of law,
13 is part of the capital of the debtor, or is
14 subordinated to the claims of any or all
15 creditors of the debtor, notwithstanding
16 that some ground exists for declaring such
17 contract, agreement, or understanding void
18 or voidable in a suit between the claimant
19 and the debtor.”;

20 (2) in paragraph (4)—

21 (A) in subparagraph (C), by striking
22 “and” at the end;

23 (B) by redesignating subparagraph (D) as
24 subparagraph (E); and

1 (C) by inserting after subparagraph (C)
2 the following:

3 “(D) in the case of a portfolio margining
4 account of a customer that is carried as a secu-
5 rities account pursuant to a portfolio margining
6 program approved by the Commission, a futures
7 contract or an option on a futures contract re-
8 ceived, acquired, or held by or for the account
9 of a debtor from or for such portfolio margining
10 account, and the proceeds thereof; and”;

11 (3) in paragraph (9), in the matter following
12 subparagraph (L), by inserting after “Such term”
13 the following: “includes revenues earned by a broker
14 or dealer in connection with a transaction in the
15 portfolio margining account of a customer carried as
16 securities accounts pursuant to a portfolio margining
17 program approved by the Commission. Such term”;
18 and

19 (4) in paragraph (11)—

20 (A) in subparagraph (A)—

21 (i) by striking “filing date, all” and
22 all that follows through the end of the sub-
23 paragraph and inserting the following: “fil-
24 ing date—

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1 “(i) all securities positions of such
2 customer (other than customer name secu-
3 rities reclaimed by such customer); and

4 “(ii) all positions in futures contracts
5 and options on futures contracts held in a
6 portfolio margining account carried as a
7 securities account pursuant to a portfolio
8 margining program approved by the Com-
9 mission, including all property
10 collateralizing such positions, to the extent
11 that such property is not otherwise in-
12 cluded herein; minus”; and

13 (B) in the matter following subparagraph
14 (C), by striking “In determining” and inserting
15 the following: “A claim for a commodity futures
16 contract received, acquired, or held in a port-
17 folio margining account pursuant to a portfolio
18 margining program approved by the Commis-
19 sion or a claim for a security futures contract,
20 shall be deemed to be a claim with respect to
21 such contract as of the filing date, and such
22 claim shall be treated as a claim for cash. In
23 determining”.

1 **SEC. 984. LOAN OR BORROWING OF SECURITIES.**

2 (a) RULEMAKING AUTHORITY.—Section 10 of the Se-
3 curities Exchange Act of 1934 (15 U.S.C. 78j) is amended
4 by adding at the end the following:

5 “(c)(1) To effect, accept, or facilitate a trans-
6 action involving the loan or borrowing of securities
7 in contravention of such rules and regulations as the
8 Commission may prescribe as necessary or appro-
9 priate in the public interest or for the protection of
10 investors.

11 “(2) Nothing in paragraph (1) may be con-
12 strued to limit the authority of the appropriate Fed-
13 eral banking agency (as defined in section 3(q) of
14 the Federal Deposit Insurance Act (12 U.S.C.
15 1813(q))), the National Credit Union Administra-
16 tion, or any other Federal department or agency
17 having a responsibility under Federal law to pre-
18 scribe rules or regulations restricting transactions
19 involving the loan or borrowing of securities in order
20 to protect the safety and soundness of a financial in-
21 stitution or to protect the financial system from sys-
22 temic risk.”.

23 (b) RULEMAKING REQUIRED.—Not later than 2
24 years after the date of enactment of this Act, the Commis-
25 sion shall promulgate rules that are designed to increase
26 the transparency of information available to brokers, deal-

1 ers, and investors, with respect to the loan or borrowing
2 of securities.

3 **SEC. 985. TECHNICAL CORRECTIONS TO FEDERAL SECURI-**
4 **TIES LAWS.**

5 (a) SECURITIES ACT OF 1933.—The Securities Act
6 of 1933 (15 U.S.C. 77a et seq.) is amended—

7 (1) in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by
8 striking “individual;” and inserting “individual;”;

9 (2) in section 18 (15 U.S.C. 77r)—

10 (A) in subsection (b)(1)(C), by striking “is
11 a security” and inserting “a security”; and

12 (B) in subsection (c)(2)(B)(i), by striking
13 “State, or” and inserting “State or”;

14 (3) in section 19(d)(6)(A) (15 U.S.C.
15 77s(d)(6)(A)), by striking “in paragraph (1) of (3)”
16 and inserting “in paragraph (1) or (3)”; and

17 (4) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z–
18 2(c)(1)(B)(ii)), by striking “business entity;” and in-
19 serting “business entity.”

20 (b) SECURITIES EXCHANGE ACT OF 1934.—The Se-
21 curities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
22 is amended—

23 (1) in section 2 (15 U.S.C. 78b), by striking
24 “affected” and inserting “effected”;

25 (2) in section 3 (15 U.S.C. 78c)—

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1 (A) in subsection (a)(55)(A), by striking
2 “section 3(a)(12) of the Securities Exchange
3 Act of 1934” and inserting “section 3(a)(12) of
4 this title”; and

5 (B) in subsection (g), by striking “com-
6 pany, account person, or entity” and inserting
7 “company, account, person, or entity”;

8 (3) in section 10A(i)(1)(B) (15 U.S.C. 78j-
9 1(i)(1)(B))—

10 (A) in the subparagraph heading, by strik-
11 ing “MINIMUS” and inserting “MINIMIS”; and

12 (B) in clause (i), by striking “nonaudit”
13 and inserting “non-audit”;

14 (4) in section 13(b)(1) (15 U.S.C. 78m(b)(1)),
15 by striking “earning statement” and inserting
16 “earnings statement”;

17 (5) in section 15 (15 U.S.C. 78o)—

18 (A) in subsection (b)(1)—

19 (i) in subparagraph (B), by striking
20 “The order granting” and all that follows
21 through “from such membership.”; and

22 (ii) in the undesignated matter imme-
23 diately following subparagraph (B), by in-
24 serting after the first sentence the fol-
25 lowing: “The order granting registration

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1 shall not be effective until such broker or
2 dealer has become a member of a reg-
3 istered securities association, or until such
4 broker or dealer has become a member of
5 a national securities exchange, if such
6 broker or dealer effects transactions solely
7 on that exchange, unless the Commission
8 has exempted such broker or dealer, by
9 rule or order, from such membership.”;

10 (6) in section 15C(a)(2) (15 U.S.C. 78o-
11 5(a)(2))—

12 (A) by redesignating clauses (i) and (ii) as
13 subparagraphs (A) and (B), respectively, and
14 adjusting the subparagraph margins accord-
15 ingly;

16 (B) in subparagraph (B), as so redesi-
17 gnated, by striking “The order granting” and all
18 that follows through “from such membership.”;
19 and

20 (C) in the matter following subparagraph
21 (B), as so redesignated, by inserting after the
22 first sentence the following: “The order grant-
23 ing registration shall not be effective until such
24 government securities broker or government se-
25 curities dealer has become a member of a na-

1 tional securities exchange registered under sec-
2 tion 6 of this title, or a securities association
3 registered under section 15A of this title, unless
4 the Commission has exempted such government
5 securities broker or government securities deal-
6 er, by rule or order, from such membership.”;

7 (7) in section 17(b)(1)(B) (15 U.S.C.
8 78q(b)(1)(B)), by striking “15A(k) gives” and in-
9 serting “15A(k), give”; and

10 (8) in section 21C(c)(2) (15 U.S.C. 78u-
11 3(c)(2)), by striking “paragraph (1) subsection” and
12 inserting “Paragraph (1)”.

13 (c) TRUST INDENTURE ACT OF 1939.—The Trust
14 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is
15 amended—

16 (1) in section 304(b) (15 U.S.C. 77ddd(b)), by
17 striking “section 2 of such Act” and inserting “sec-
18 tion 2(a) of such Act”; and

19 (2) in section 317(a)(1) (15 U.S.C.
20 77qqq(a)(1)), by striking “, in the” and inserting
21 “in the”.

22 (d) INVESTMENT COMPANY ACT OF 1940.—The In-
23 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
24 is amended—

1519

1 (1) in section 2(a)(19) (15 U.S.C. 80a–
2 2(a)(19)), in the matter following subparagraph
3 (B)(vii)—

4 (A) by striking “clause (vi)” each place
5 that term appears and inserting “clause (vii)”;
6 and

7 (B) in each of subparagraphs (A)(vi) and
8 (B)(vi), by adding “and” at the end of sub-
9 clause (III);

10 (2) in section 9(b)(4)(B) (15 U.S.C. 80a–
11 9(b)(4)(B)), by adding “or” after the semicolon at
12 the end;

13 (3) in section 12(d)(1)(J) (15 U.S.C. 80a–
14 12(d)(1)(J)), by striking “any provision of this sub-
15 section” and inserting “any provision of this para-
16 graph”;

17 (4) in section 17(f) (15 U.S.C. 80a–17(f))—

18 (A) in paragraph (4), by striking “No such
19 member” and inserting “No member of a na-
20 tional securities exchange”; and

21 (B) in paragraph (6), by striking “com-
22 pany may serve” and inserting “company, may
23 serve”; and

24 (5) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a–
25 60(a)(3)(B)(iii))—

1520

1 (A) by striking “paragraph (1) of section
2 205” and inserting “section 205(a)(1)”; and

3 (B) by striking “clause (A) or (B) of that
4 section” and inserting “paragraph (1) or (2) of
5 section 205(b)”.

6 (e) INVESTMENT ADVISERS ACT OF 1940.—The In-
7 vestment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.)
8 is amended—

9 (1) in section 203 (15 U.S.C. 80b–3)—

10 (A) in subsection (c)(1)(A), by striking
11 “principal business office and” and inserting
12 “principal office, principal place of business,
13 and”; and

14 (B) in subsection (k)(4)(B), in the matter
15 following clause (ii), by striking “principal place
16 of business” and inserting “principal office or
17 place of business”;

18 (2) in section 206(3) (15 U.S.C. 80b–6(3)), by
19 adding “or” after the semicolon at the end;

20 (3) in section 213(a) (15 U.S.C. 80b–13(a)), by
21 striking “principal place of business” and inserting
22 “principal office or place of business”; and

23 (4) in section 222 (15 U.S.C. 80b–18a), by
24 striking “principal place of business” each place that

1 term appears and inserting “principal office and
2 place of business”.

3 **SEC. 986. CONFORMING AMENDMENTS RELATING TO RE-**
4 **PEAL OF THE PUBLIC UTILITY HOLDING**
5 **COMPANY ACT OF 1935.**

6 (a) SECURITIES EXCHANGE ACT OF 1934.—The Se-
7 curities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is
8 amended—

9 (1) in section 3(a)(47) (15 U.S.C. 78c(a)(47)),
10 by striking “the Public Utility Holding Company
11 Act of 1935 (15 U.S.C. 79a et seq.)”;

12 (2) in section 12(k) (15 U.S.C. 78l(k)), by
13 amending paragraph (7) to read as follows:

14 “(7) DEFINITION.—For purposes of this sub-
15 section, the term ‘emergency’ means—

16 “(A) a major market disturbance charac-
17 terized by or constituting—

18 “(i) sudden and excessive fluctuations
19 of securities prices generally, or a substan-
20 tial threat thereof, that threaten fair and
21 orderly markets; or

22 “(ii) a substantial disruption of the
23 safe or efficient operation of the national
24 system for clearance and settlement of

1 transactions in securities, or a substantial
2 threat thereof; or

3 “(B) a major disturbance that substan-
4 tially disrupts, or threatens to substantially dis-
5 rupt—

6 “(i) the functioning of securities mar-
7 kets, investment companies, or any other
8 significant portion or segment of the secu-
9 rities markets; or

10 “(ii) the transmission or processing of
11 securities transactions.”; and

12 (3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)),
13 by striking “section 18(c) of the Public Utility Hold-
14 ing Company Act of 1935,”.

15 (b) TRUST INDENTURE ACT OF 1939.—The Trust
16 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is
17 amended—

18 (1) in section 303 (15 U.S.C. 77ccc), by strik-
19 ing paragraph (17) and inserting the following:

20 “(17) The terms ‘Securities Act of 1933’ and
21 ‘Securities Exchange Act of 1934’ shall be deemed
22 to refer, respectively, to such Acts, as amended,
23 whether amended prior to or after the enactment of
24 this title.”;

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1 (2) in section 308 (15 U.S.C. 77hhh), by strik-
2 ing “Securities Act of 1933, the Securities Exchange
3 Act of 1934, or the Public Utility Holding Company
4 Act of 1935” each place that term appears and in-
5 serting “Securities Act of 1933 or the Securities Ex-
6 change Act of 1934”;

7 (3) in section 310 (15 U.S.C. 77jjj), by striking
8 subsection (c);

9 (4) in section 311 (15 U.S.C. 77kkk), by strik-
10 ing subsection (c);

11 (5) in section 323(b) (15 U.S.C. 77www(b)), by
12 striking “Securities Act of 1933, or the Securities
13 Exchange Act of 1934, or the Public Utility Holding
14 Company Act of 1935” and inserting “Securities Act
15 of 1933 or the Securities Exchange Act of 1934”;
16 and

17 (6) in section 326 (15 U.S.C. 77zzz), by strik-
18 ing “Securities Act of 1933, or the Securities Ex-
19 change Act of 1934, or the Public Utility Holding
20 Company Act of 1935,” and inserting “Securities
21 Act of 1933 or the Securities Exchange Act of
22 1934”.

23 (c) INVESTMENT COMPANY ACT OF 1940.—The In-
24 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
25 is amended—

1 (1) in section 2(a)(44) (15 U.S.C. 80a–
2 2(a)(44)), by striking “‘Public Utility Holding Com-
3 pany Act of 1935’,”;

4 (2) in section 3(c) (15 U.S.C. 80a–3(c)), by
5 striking paragraph (8) and inserting the following:

6 “(8) [Repealed]”;

7 (3) in section 38(b) (15 U.S.C. 80a–37(b)), by
8 striking “the Public Utility Holding Company Act of
9 1935,”; and

10 (4) in section 50 (15 U.S.C. 80a–49), by strik-
11 ing “the Public Utility Holding Company Act of
12 1935,”.

13 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
14 202(a)(21) of the Investment Advisers Act of 1940 (15
15 U.S.C. 80b–2(a)(21)) is amended by striking “‘Public
16 Utility Holding Company Act of 1935’,”.

17 **SEC. 987. AMENDMENT TO DEFINITION OF MATERIAL LOSS**
18 **AND NONMATERIAL LOSSES TO THE DEPOSIT**
19 **INSURANCE FUND FOR PURPOSES OF IN-**
20 **SPECTOR GENERAL REVIEWS.**

21 (a) IN GENERAL.—Section 38(k) of the Federal De-
22 posit Insurance Act (U.S.C. 1831o(k)) is amended—

23 (1) in paragraph (2), by striking subparagraph
24 (B) and inserting the following:

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1 “(B) MATERIAL LOSS DEFINED.—The
2 term ‘material loss’ means any estimated loss in
3 excess of—

4 “(i) \$200,000,000, if the loss occurs
5 during the period beginning on January 1,
6 2010, and ending on December 31, 2011;

7 “(ii) \$150,000,000, if the loss occurs
8 during the period beginning on January 1,
9 2012, and ending on December 31, 2013;
10 and

11 “(iii) \$50,000,000, if the loss occurs
12 on or after January 1, 2014, provided that
13 if the inspector general of a Federal bank-
14 ing agency certifies to the Committee on
15 Banking, Housing, and Urban Affairs of
16 the Senate and the Committee on Finan-
17 cial Services of the House of Representa-
18 tives that the number of projected failures
19 of depository institutions that would re-
20 quire material loss reviews for the fol-
21 lowing 12 months will be greater than 30
22 and would hinder the effectiveness of its
23 oversight functions, then the definition of
24 ‘material loss’ shall be \$75,000,000 for a

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1 duration of 1 year from the date of the
2 certification.”;

3 (2) in paragraph (4)(A) by striking “the re-
4 port” and inserting “any report on losses required
5 under this subsection,”;

6 (3) by striking paragraph (6);

7 (4) by redesignating paragraph (5) as para-
8 graph (6); and

9 (5) by inserting after paragraph (4) the fol-
10 lowing:

11 “(5) LOSSES THAT ARE NOT MATERIAL.—

12 “(A) SEMIANNUAL REPORT.—For the 6-
13 month period ending on March 31, 2010, and
14 each 6-month period thereafter, the Inspector
15 General of each Federal banking agency shall—

16 “(i) identify losses that the Inspector
17 General estimates have been incurred by
18 the Deposit Insurance Fund during that 6-
19 month period, with respect to the insured
20 depository institutions supervised by the
21 Federal banking agency;

22 “(ii) for each loss incurred by the De-
23 posit Insurance Fund that is not a mate-
24 rial loss, determine—

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1 “(I) the grounds identified by the
2 Federal banking agency or State bank
3 supervisor for appointing the Corpora-
4 tion as receiver under section
5 11(c)(5); and

6 “(II) whether any unusual cir-
7 cumstances exist that might warrant
8 an in-depth review of the loss; and

9 “(iii) prepare and submit a written re-
10 port to the appropriate Federal banking
11 agency and to Congress on the results of
12 any determination by the Inspector Gen-
13 eral, including—

14 “(I) an identification of any loss
15 that warrants an in-depth review, to-
16 gether with the reasons why such re-
17 view is warranted, or, if the Inspector
18 General determines that no review is
19 warranted, an explanation of such de-
20 termination; and

21 “(II) for each loss identified
22 under subclause (I) that warrants an
23 in-depth review, the date by which
24 such review, and a report on such re-
25 view prepared in a manner consistent

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1 with reports under paragraph (1)(A),
2 will be completed and submitted to
3 the Federal banking agency and Con-
4 gress.

5 “(B) DEADLINE FOR SEMIANNUAL RE-
6 PORT.—The Inspector General of each Federal
7 banking agency shall—

8 “(i) submit each report required
9 under paragraph (A) expeditiously, and not
10 later than 90 days after the end of the 6-
11 month period covered by the report; and

12 “(ii) provide a copy of the report re-
13 quired under paragraph (A) to any Mem-
14 ber of Congress, upon request.”.

15 (b) TECHNICAL AND CONFORMING AMENDMENT.—
16 The heading for subsection (k) of section 38 of the Fed-
17 eral Deposit Insurance Act (U.S.C. 1831o(k)) is amended
18 to read as follows:

19 “(k) REVIEWS REQUIRED WHEN DEPOSIT INSUR-
20 ANCE FUND INCURS LOSSES.—”.

1 **SEC. 988. AMENDMENT TO DEFINITION OF MATERIAL LOSS**
2 **AND NONMATERIAL LOSSES TO THE NA-**
3 **TIONAL CREDIT UNION SHARE INSURANCE**
4 **FUND FOR PURPOSES OF INSPECTOR GEN-**
5 **ERAL REVIEWS.**

6 (a) IN GENERAL.—Section 216(j) of the Federal
7 Credit Union Act (12 U.S.C. 1790d(j)) is amended to read
8 as follows:

9 “(j) REVIEWS REQUIRED WHEN SHARE INSURANCE
10 FUND EXPERIENCES LOSSES.—

11 “(1) IN GENERAL.—If the Fund incurs a mate-
12 rial loss with respect to an insured credit union, the
13 Inspector General of the Board shall—

14 “(A) submit to the Board a written report
15 reviewing the supervision of the credit union by
16 the Administration (including the implementa-
17 tion of this section by the Administration),
18 which shall include—

19 “(i) a description of the reasons why
20 the problems of the credit union resulted
21 in a material loss to the Fund; and

22 “(ii) recommendations for preventing
23 any such loss in the future; and

24 “(B) submit a copy of the report under
25 subparagraph (A) to—

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1 “(i) the Comptroller General of the
2 United States;

3 “(ii) the Corporation;

4 “(iii) in the case of a report relating
5 to a State credit union, the appropriate
6 State supervisor; and

7 “(iv) to any Member of Congress,
8 upon request.

9 “(2) MATERIAL LOSS DEFINED.—For purposes
10 of determining whether the Fund has incurred a ma-
11 terial loss with respect to an insured credit union, a
12 loss is material if it exceeds the sum of—

13 “(A) \$25,000,000; and

14 “(B) an amount equal to 10 percent of the
15 total assets of the credit union on the date on
16 which the Board initiated assistance under sec-
17 tion 208 or was appointed liquidating agent.

18 “(3) PUBLIC DISCLOSURE REQUIRED.—

19 “(A) IN GENERAL.—The Board shall dis-
20 close a report under this subsection, upon re-
21 quest under section 552 of title 5, United
22 States Code, without excising—

23 “(i) any portion under section
24 552(b)(5) of title 5, United States Code; or

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1 “(ii) any information about the in-
2 sured credit union (other than trade se-
3 crets) under section 552(b)(8) of title 5,
4 United States Code.

5 “(B) RULE OF CONSTRUCTION.—Subpara-
6 graph (A) may not be construed as requiring
7 the agency to disclose the name of any cus-
8 tomer of the insured credit union (other than
9 an institution-affiliated party), or information
10 from which the identity of such customer could
11 reasonably be ascertained.

12 “(4) LOSSES THAT ARE NOT MATERIAL.—

13 “(A) SEMIANNUAL REPORT.—For the 6-
14 month period ending on March 31, 2010, and
15 each 6-month period thereafter, the Inspector
16 General of the Board shall—

17 “(i) identify any losses that the In-
18 spector General estimates were incurred by
19 the Fund during such 6-month period,
20 with respect to insured credit unions;

21 “(ii) for each loss to the Fund that is
22 not a material loss, determine—

23 “(I) the grounds identified by the
24 Board or the State official having ju-
25 risdiction over a State credit union for

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1 appointing the Board as the liqui-
2 dating agent for any Federal or State
3 credit union; and

4 “(II) whether any unusual cir-
5 cumstances exist that might warrant
6 an in-depth review of the loss; and

7 “(iii) prepare and submit a written re-
8 port to the Board and to Congress on the
9 results of the determinations of the Inspec-
10 tor General that includes—

11 “(I) an identification of any loss
12 that warrants an in-depth review, and
13 the reasons such review is warranted,
14 or if the Inspector General determines
15 that no review is warranted, an expla-
16 nation of such determination; and

17 “(II) for each loss identified in
18 subclause (I) that warrants an in-
19 depth review, the date by which such
20 review, and a report on the review
21 prepared in a manner consistent with
22 reports under paragraph (1)(A), will
23 be completed.

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1 “(B) DEADLINE FOR SEMIANNUAL RE-
2 PORT.—The Inspector General of the Board
3 shall—

4 “(i) submit each report required
5 under subparagraph (A) expeditiously, and
6 not later than 90 days after the end of the
7 6-month period covered by the report; and

8 “(ii) provide a copy of the report re-
9 quired under subparagraph (A) to any
10 Member of Congress, upon request.

11 “(5) GAO REVIEW.—The Comptroller General
12 of the United States shall, under such conditions as
13 the Comptroller General determines to be appro-
14 priate—

15 “(A) review each report made under para-
16 graph (1), including the extent to which the In-
17 specter General of the Board complied with the
18 requirements under section 8L of the Inspector
19 General Act of 1978 (5 U.S.C. App.) with re-
20 spect to each such report; and

21 “(B) recommend improvements to the su-
22 pervision of insured credit unions (including im-
23 provements relating to the implementation of
24 this section).”.

1 **SEC. 989. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
2 **ON PROPRIETARY TRADING.**

3 (a) DEFINITIONS.—In this section—

4 (1) the term “covered entity” means—

5 (A) an insured depository institution, an
6 affiliate of an insured depository institution, a
7 bank holding company, a financial holding com-
8 pany, or a subsidiary of a bank holding com-
9 pany or a financial holding company, as those
10 terms are defined in the Bank Holding Com-
11 pany Act of 1956 (12 U.S.C. 1841 et seq.); and

12 (B) any other entity, as the Comptroller
13 General of the United States may determine;
14 and

15 (2) the term “proprietary trading” means the
16 act of a covered entity investing as a principal in se-
17 curities, commodities, derivatives, hedge funds, pri-
18 vate equity firms, or such other financial products or
19 entities as the Comptroller General may determine.

20 (b) STUDY.—

21 (1) IN GENERAL.—The Comptroller General of
22 the United States shall conduct a study regarding
23 the risks and conflicts associated with proprietary
24 trading by and within covered entities, including an
25 evaluation of—

1 (A) whether proprietary trading presents a
2 material systemic risk to the stability of the
3 United States financial system, and if so, the
4 costs and benefits of options for mitigating such
5 systemic risk;

6 (B) whether proprietary trading presents
7 material risks to the safety and soundness of
8 the covered entities that engage in such activi-
9 ties, and if so, the costs and benefits of options
10 for mitigating such risks;

11 (C) whether proprietary trading presents
12 material conflicts of interest between covered
13 entities that engage in proprietary trading and
14 the clients of the institutions who use the firm
15 to execute trades or who rely on the firm to
16 manage assets, and if so, the costs and benefits
17 of options for mitigating such conflicts of inter-
18 est;

19 (D) whether adequate disclosure regarding
20 the risks and conflicts of proprietary trading is
21 provided to the depositors, trading and asset
22 management clients, and investors of covered
23 entities that engage in proprietary trading, and
24 if not, the costs and benefits of options for the
25 improvement of such disclosure; and

1 (E) whether the banking, securities, and
2 commodities regulators of institutions that en-
3 gage in proprietary trading have in place ade-
4 quate systems and controls to monitor and con-
5 tain any risks and conflicts of interest related
6 to proprietary trading, and if not, the costs and
7 benefits of options for the improvement of such
8 systems and controls.

9 (2) CONSIDERATIONS.—In carrying out the
10 study required under paragraph (1), the Comptroller
11 General shall consider—

12 (A) current practice relating to proprietary
13 trading;

14 (B) the advisability of a complete ban on
15 proprietary trading;

16 (C) limitations on the scope of activities
17 that covered entities may engage in with respect
18 to proprietary trading;

19 (D) the advisability of additional capital
20 requirements for covered entities that engage in
21 proprietary trading;

22 (E) enhanced restrictions on transactions
23 between affiliates related to proprietary trading;

24 (F) enhanced accounting disclosures relat-
25 ing to proprietary trading;

1 (G) enhanced public disclosure relating to
2 proprietary trading; and

3 (H) any other options the Comptroller
4 General deems appropriate.

5 (c) REPORT TO CONGRESS.—Not later than 15
6 months after the date of enactment of this Act, the Comp-
7 troller General shall submit a report to Congress on the
8 results of the study conducted under subsection (b).

9 (d) ACCESS BY COMPTROLLER GENERAL.—For pur-
10 poses of conducting the study required under subsection
11 (b), the Comptroller General shall have access, upon re-
12 quest, to any information, data, schedules, books, ac-
13 counts, financial records, reports, files, electronic commu-
14 nications, or other papers, things, or property belonging
15 to or in use by a covered entity that engages in proprietary
16 trading, and to the officers, directors, employees, inde-
17 pendent public accountants, financial advisors, staff, and
18 agents and representatives of a covered entity (as related
19 to the activities of the agent or representative on behalf
20 of the covered entity), at such reasonable times as the
21 Comptroller General may request. The Comptroller Gen-
22 eral may make and retain copies of books, records, ac-
23 counts, and other records, as the Comptroller General
24 deems appropriate.

25 (e) CONFIDENTIALITY OF REPORTS.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the Comptroller General may not disclose
3 information regarding—

4 (A) any proprietary trading activity of a
5 covered entity, unless such information is dis-
6 closed at a level of generality that does not re-
7 veal the investment or trading position or strat-
8 egy of the covered entity for any specific secu-
9 rity, commodity, derivative, or other investment
10 or financial product; or

11 (B) any individual interviewed by the
12 Comptroller General for purposes of the study
13 under subsection (b), unless such information is
14 disclosed at a level of generality that does not
15 reveal—

16 (i) the name of or identifying details
17 relating to such individual; or

18 (ii) in the case of an individual who is
19 an employee of a third party that provides
20 professional services to a covered entity be-
21 lieved to be engaged in proprietary trading,
22 the name of or any identifying details re-
23 lating to such third party.

1 (2) EXCEPTIONS.—The Comptroller General
2 may disclose the information described in paragraph
3 (1)—

4 (A) to a department, agency, or official of
5 the Federal Government, for official use, upon
6 request;

7 (B) to a committee of Congress, upon re-
8 quest; and

9 (C) to a court, upon an order of such
10 court.

11 **SEC. 989A. SENIOR INVESTOR PROTECTIONS.**

12 (a) DEFINITIONS.—As used in this section—

13 (1) the term “eligible entity” means—

14 (A) a securities commission (or any agency
15 or office performing like functions) of a State
16 that the Office determines has adopted rules on
17 the appropriate use of designations in the offer
18 or sale of securities or the provision of invest-
19 ment advice that meet or exceed the minimum
20 requirements of the NASAA Model Rule on the
21 Use of Senior-Specific Certifications and Pro-
22 fessional Designations (or any successor there-
23 to);

1 (B) the insurance commission (or any
2 agency or office performing like functions) of
3 any State that the Office determines has—

4 (i) adopted rules on the appropriate
5 use of designations in the sale of insurance
6 products that, to the extent practicable,
7 conform to the minimum requirements of
8 the National Association of Insurance
9 Commissioners Model Regulation on the
10 Use of Senior-Specific Certifications and
11 Professional Designations in the Sale of
12 Life Insurance and Annuities (or any suc-
13 cessor thereto); and

14 (ii) adopted rules with respect to fidu-
15 ciary or suitability requirements in the sale
16 of annuities that meet or exceed the min-
17 imum requirements established by the
18 Suitability in Annuity Transactions Model
19 Regulation of the National Association of
20 Insurance Commissioners (or any successor
21 thereto); or

22 (C) a consumer protection agency of any
23 State, if—

24 (i) the securities commission (or any
25 agency or office performing like functions)

1 of the State is eligible under subparagraph
2 (A); or

3 (ii) the insurance commission (or any
4 agency or office performing like functions)
5 of the State is eligible under subparagraph
6 (B);

7 (2) the term “financial product” means a secu-
8 rity, an insurance product (including an insurance
9 product that pays a return, whether fixed or vari-
10 able), a bank product, and a loan product;

11 (3) the term “misleading designation”—

12 (A) means a certification, professional des-
13 igation, or other purported credential that in-
14 dicates or implies that a salesperson or adviser
15 has special certification or training in advising
16 or servicing seniors; and

17 (B) does not include a certification, profes-
18 sional designation, license, or other credential
19 that—

20 (i) was issued by or obtained from an
21 academic institution having regional ac-
22 creditation;

23 (ii) meets the standards for certifi-
24 cations and professional designations out-
25 lined by the NASAA Model Rule on the

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1 Use of Senior-Specific Certifications and
2 Professional Designations (or any suc-
3 cessor thereto) or by the Model Regula-
4 tions on the Use of Senior-Specific Certifi-
5 cations and Professional Designations in
6 the Sale of Life Insurance and Annuities,
7 adopted by the National Association of In-
8 surance Commissioners (or any successor
9 thereto); or

10 (iii) was issued by or obtained from a
11 State;

12 (4) the term “misleading or fraudulent mar-
13 keting” means the use of a misleading designation
14 by a person that sells to or advises a senior in con-
15 nection with the sale of a financial product;

16 (5) the term “NASAA” means the North Amer-
17 ican Securities Administrators Association;

18 (6) the term “Office” means the Office of Fi-
19 nancial Literacy of the Bureau;

20 (7) the term “senior” means any individual who
21 has attained the age of 62 years or older; and

22 (8) the term “State” has the same meaning as
23 in section 3 of the Securities Exchange Act of 1934
24 (15 U.S.C. 78c(a)).

1 (b) GRANTS TO STATES FOR ENHANCED PROTEC-
2 TION OF SENIORS FROM BEING MISLED BY FALSE DES-
3 IGNATIONS.—The Office shall establish a program under
4 which the Office may make grants to States or eligible
5 entities—

6 (1) to hire staff to identify, investigate, and
7 prosecute (through civil, administrative, or criminal
8 enforcement actions) cases involving misleading or
9 fraudulent marketing;

10 (2) to fund technology, equipment, and training
11 for regulators, prosecutors, and law enforcement of-
12 ficers, in order to identify salespersons and advisers
13 who target seniors through the use of misleading
14 designations;

15 (3) to fund technology, equipment, and training
16 for prosecutors to increase the successful prosecution
17 of salespersons and advisers who target seniors with
18 the use of misleading designations;

19 (4) to provide educational materials and train-
20 ing to regulators on the appropriateness of the use
21 of designations by salespersons and advisers in con-
22 nection with the sale and marketing of financial
23 products;

1 (5) to provide educational materials and train-
2 ing to seniors to increase awareness and under-
3 standing of misleading or fraudulent marketing;

4 (6) to develop comprehensive plans to combat
5 misleading or fraudulent marketing of financial
6 products to seniors; and

7 (7) to enhance provisions of State law to pro-
8 vide protection for seniors against misleading or
9 fraudulent marketing.

10 (c) APPLICATIONS.—A State or eligible entity desir-
11 ing a grant under this section shall submit an application
12 to the Office, in such form and in such a manner as the
13 Office may determine, that includes—

14 (1) a proposal for activities to protect seniors
15 from misleading or fraudulent marketing that are
16 proposed to be funded using a grant under this sec-
17 tion, including—

18 (A) an identification of the scope of the
19 problem of misleading or fraudulent marketing
20 in the State;

21 (B) a description of how the proposed ac-
22 tivities would—

23 (i) protect seniors from misleading or
24 fraudulent marketing in the sale of finan-
25 cial products, including by proactively iden-

1 tifying victims of misleading and fraudu-
2 lent marketing who are seniors;

3 (ii) assist in the investigation and
4 prosecution of those using misleading or
5 fraudulent marketing; and

6 (iii) discourage and reduce cases of
7 misleading or fraudulent marketing; and

8 (C) a description of how the proposed ac-
9 tivities would be coordinated with other State
10 efforts; and

11 (2) any other information, as the Office deter-
12 mines is appropriate.

13 (d) PERFORMANCE OBJECTIVES AND REPORTING
14 REQUIREMENTS.—The Office may establish such perform-
15 ance objectives and reporting requirements for States and
16 eligible entities receiving a grant under this section as the
17 Office determines are necessary to carry out and assess
18 the effectiveness of the program under this section.

19 (e) MAXIMUM AMOUNT.—The amount of a grant
20 under this section may not exceed—

21 (1) \$500,000 for each of 3 consecutive fiscal
22 years, if the recipient is a State, or an eligible entity
23 of a State, that has adopted rules—

24 (A) on the appropriate use of designations
25 in the offer or sale of securities or investment

1 advice that meet or exceed the minimum re-
2 quirements of the NASAA Model Rule on the
3 Use of Senior-Specific Certifications and Pro-
4 fessional Designations (or any successor there-
5 to);

6 (B) on the appropriate use of designations
7 in the sale of insurance products that, to the
8 extent practicable, conform to the minimum re-
9 quirements of the National Association of In-
10 surance Commissioners Model Regulation on
11 the Use of Senior-Specific Certifications and
12 Professional Designations in the Sale of Life
13 Insurance and Annuities (or any successor
14 thereto); and

15 (C) with respect to fiduciary or suitability
16 requirements in the sale of annuities that meet
17 or exceed the minimum requirements estab-
18 lished by the Suitability in Annuity Trans-
19 actions Model Regulation of the National Asso-
20 ciation of Insurance Commissioners (or any
21 successor thereto); and

22 (2) \$100,000 for each of 3 consecutive fiscal
23 years, if the recipient is a State, or an eligible entity
24 of a State, that has adopted—

1 (A) rules on the appropriate use of des-
2 ignations in the offer or sale of securities or in-
3 vestment advice that meet or exceed the min-
4 imum requirements of the NASAA Model Rule
5 on the Use of Senior-Specific Certifications and
6 Professional Designations (or any successor
7 thereto); or

8 (B) rules—

9 (i) on the appropriate use of designa-
10 tions in the sale of insurance products
11 that, to the extent practicable, conform to
12 the minimum requirements of the National
13 Association of Insurance Commissioners
14 Model Regulation on the Use of Senior-
15 Specific Certifications and Professional
16 Designations in the Sale of Life Insurance
17 and Annuities (or any successor thereto);
18 and

19 (ii) with respect to fiduciary or suit-
20 ability requirements in the sale of annu-
21 ities that meet or exceed the minimum re-
22 quirements established by the Suitability in
23 Annuity Transactions Model Regulation of
24 the National Association of Insurance
25 Commissioners (or any successor thereto).

1 (f) SUBGRANTS.—A State or eligible entity that re-
2 ceives a grant under this section may make a subgrant,
3 as the State or eligible entity determines is necessary to
4 carry out the activities funded using a grant under this
5 section.

6 (g) REAPPLICATION.—A State or eligible entity that
7 receives a grant under this section may reapply for a grant
8 under this section, notwithstanding the limitations on
9 grant amounts under subsection (e).

10 (h) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated to carry out this section,
12 \$8,000,000 for each of fiscal years 2011 through 2015.

13 **SEC. 989B. DESIGNATED FEDERAL ENTITY INSPECTORS**
14 **GENERAL INDEPENDENCE.**

15 Section 8G of the Inspector General Act of 1978 (5
16 U.S.C. App.) is amended—

17 (1) in subsection (a)(4)—

18 (A) in the matter preceding subparagraph
19 (A), by inserting “the board or commission of
20 the designated Federal entity, or in the event
21 the designated Federal entity does not have a
22 board or commission,” after “means”;

23 (B) in subparagraph (A), by striking
24 “and” after the semicolon; and

1 (C) by adding after subparagraph (B) the
2 following:

3 “(C) with respect to the Federal Labor Re-
4 lations Authority, such term means the mem-
5 bers of the Authority (described under section
6 7104 of title 5, United States Code);

7 “(D) with respect to the National Archives
8 and Records Administration, such term means
9 the Archivist of the United States;

10 “(E) with respect to the National Credit
11 Union Administration, such term means the
12 National Credit Union Administration Board
13 (described under section 102 of the Federal
14 Credit Union Act (12 U.S.C. 1752a);

15 “(F) with respect to the National Endow-
16 ment of the Arts, such term means the Na-
17 tional Council on the Arts;

18 “(G) with respect to the National Endow-
19 ment for the Humanities, such term means the
20 National Council on the Humanities; and

21 “(H) with respect to the Peace Corps, such
22 term means the Director of the Peace Corps;”;
23 and

1 (2) in subsection (h), by inserting “if the des-
2 ignated Federal entity is not a board or commission,
3 include” after “designated Federal entities and”.

4 **SEC. 989C. STRENGTHENING INSPECTOR GENERAL AC-**
5 **COUNTABILITY.**

6 Section 5(a) of the Inspector General Act of 1978
7 (5 U.S.C. App.) is amended—

8 (1) in paragraph (12), by striking “and” after
9 the semicolon;

10 (2) in paragraph (13), by striking the period
11 and inserting a semicolon; and

12 (3) by adding at the end the following:

13 “(14)(A) an appendix containing the results of
14 any peer review conducted by another Office of In-
15 spector General during the reporting period; or

16 “(B) if no peer review was conducted within
17 that reporting period, a statement identifying the
18 date of the last peer review conducted by another
19 Office of Inspector General;

20 “(15) a list of any outstanding recommenda-
21 tions from any peer review conducted by another Of-
22 fice of Inspector General that have not been fully
23 implemented, including a statement describing the
24 status of the implementation and why implementa-
25 tion is not complete; and

1 “(16) a list of any peer reviews conducted by
2 the Inspector General of another Office of the In-
3 spector General during the reporting period, includ-
4 ing a list of any outstanding recommendations made
5 from any previous peer review (including any peer
6 review conducted before the reporting period) that
7 remain outstanding or have not been fully imple-
8 mented.”.

9 **SEC. 989D. REMOVAL OF INSPECTORS GENERAL OF DES-**
10 **IGNATED FEDERAL ENTITIES.**

11 Section 8G(e) of the Inspector General Act of 1978
12 (5 U.S.C. App.) is amended—

13 (1) by redesignating the sentences following
14 “(e)” as paragraph (2); and

15 (2) by striking “(e)” and inserting the fol-
16 lowing:

17 “(e)(1) In the case of a designated Federal entity for
18 which a board or commission is the head of the designated
19 Federal entity, a removal under this subsection may only
20 be made upon the written concurrence of a $\frac{2}{3}$ majority
21 of the board or commission.”.

22 **SEC. 989E. ADDITIONAL OVERSIGHT OF FINANCIAL REGU-**
23 **LATORY SYSTEM.**

24 (a) COUNCIL OF INSPECTORS GENERAL ON FINAN-
25 CIAL OVERSIGHT.—

1 (1) ESTABLISHMENT AND MEMBERSHIP.—

2 There is established a Council of Inspectors General
3 on Financial Oversight (in this section referred to as
4 the “Council of Inspectors General”) chaired by the
5 Inspector General of the Department of the Treas-
6 ury and composed of the inspectors general of the
7 following:

8 (A) The Board of Governors of the Federal
9 Reserve System.

10 (B) The Commodity Futures Trading
11 Commission.

12 (C) The Department of Housing and
13 Urban Development.

14 (D) The Department of the Treasury.

15 (E) The Federal Deposit Insurance Cor-
16 poration.

17 (F) The Federal Housing Finance Agency.

18 (G) The National Credit Union Adminis-
19 tration.

20 (H) The Securities and Exchange Commis-
21 sion.

22 (I) The Troubled Asset Relief Program
23 (until the termination of the authority of the
24 Special Inspector General for such program
25 under section 121(k) of the Emergency Eco-

1 nomic Stabilization Act of 2008 (12 U.S.C.
2 5231(k)).

3 (2) DUTIES.—

4 (A) MEETINGS.—The Council of Inspec-
5 tors General shall meet not less than once each
6 quarter, or more frequently if the chair con-
7 siders it appropriate, to facilitate the sharing of
8 information among inspectors general and to
9 discuss the ongoing work of each inspector gen-
10 eral who is a member of the Council of Inspec-
11 tors General, with a focus on concerns that may
12 apply to the broader financial sector and ways
13 to improve financial oversight.

14 (B) ANNUAL REPORT.—Each year the
15 Council of Inspectors General shall submit to
16 the Council and to Congress a report includ-
17 ing—

18 (i) for each inspector general who is a
19 member of the Council of Inspectors Gen-
20 eral, a section within the exclusive editorial
21 control of such inspector general that high-
22 lights the concerns and recommendations
23 of such inspector general in such inspector
24 general's ongoing and completed work,

1 with a focus on issues that may apply to
2 the broader financial sector; and

3 (ii) a summary of the general observa-
4 tions of the Council of Inspectors General
5 based on the views expressed by each in-
6 spector general as required by clause (i),
7 with a focus on measures that should be
8 taken to improve financial oversight.

9 (3) WORKING GROUPS TO EVALUATE COUN-
10 CIL.—

11 (A) CONVENING A WORKING GROUP.—The
12 Council of Inspectors General may, by majority
13 vote, convene a Council of Inspectors General
14 Working Group to evaluate the effectiveness
15 and internal operations of the Council.

16 (B) PERSONNEL AND RESOURCES.—The
17 inspectors general who are members of the
18 Council of Inspectors General may detail staff
19 and resources to a Council of Inspectors Gen-
20 eral Working Group established under this
21 paragraph to enable it to carry out its duties.

22 (C) REPORTS.—A Council of Inspectors
23 General Working Group established under this
24 paragraph shall submit regular reports to the

1 Council and to Congress on its evaluations pur-
2 suant to this paragraph.

3 (b) RESPONSE TO REPORT BY COUNCIL.—The Coun-
4 cil shall respond to the concerns raised in the report of
5 the Council of Inspectors General under subsection
6 (a)(2)(B) for such year.

7 **SEC. 989F. GAO STUDY OF PERSON TO PERSON LENDING.**

8 (a) STUDY.—

9 (1) IN GENERAL.—The Comptroller General of
10 the United States shall conduct a study of person to
11 person lending to determine the optimal Federal reg-
12 ulatory structure.

13 (2) CONSULTATION.—In conducting the study
14 required under paragraph (1), the Comptroller Gen-
15 eral shall consult with Federal banking agencies, the
16 Commission, consumer groups, outside experts, and
17 the person to person lending industry.

18 (3) CONTENT OF STUDY.—The study required
19 under paragraph (1) shall include an examination
20 of—

21 (A) the regulatory structure as it exists on
22 the date of enactment of this Act, as deter-
23 mined by the Commission, with particular at-
24 tention to—

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1 (i) the application of the Securities
2 Act of 1933 to person to person lending
3 platforms;

4 (ii) the posting of consumer loan in-
5 formation on the EDGAR database of the
6 Commission; and

7 (iii) the treatment of privately held
8 person to person lending platforms as pub-
9 lic companies;

10 (B) the State and other Federal regulators
11 responsible for the oversight and regulation of
12 person to person lending markets;

13 (C) any Federal, State, or local govern-
14 ment or private studies of person to person
15 lending completed or in progress on the date of
16 enactment of this Act;

17 (D) consumer privacy and data protec-
18 tions, minimum credit standards, anti-money
19 laundering and risk management in the regu-
20 latory structure as it exists on the date of en-
21 actment of this Act, and whether additional or
22 alternative safeguards are needed; and

23 (E) the uses of person to person lending.

24 (b) REPORT.—

1 (1) IN GENERAL.—Not later than 1 year after
2 the date of enactment of this Act, the Comptroller
3 General shall submit a report on the study required
4 under subsection (a) to the Committee on Banking,
5 Housing, and Urban Affairs of the Senate and the
6 Committee on Financial Services of the House of
7 Representatives.

8 (2) CONTENT OF REPORT.—The report re-
9 quired under paragraph (1) shall include alternative
10 regulatory options, including—

11 (A) the involvement of other Federal agen-
12 cies; and

13 (B) alternative approaches by the Commis-
14 sion and recommendations on whether the alter-
15 native approaches are effective.

16 **SEC. 989G. EXEMPTION FOR NONACCELERATED FILERS.**

17 (a) EXEMPTION.—Section 404 of the Sarbanes-Oxley
18 Act of 2002 is amended by adding at the end the fol-
19 lowing:

20 “(c) EXEMPTION FOR SMALLER ISSUERS.—Sub-
21 section (b) shall not apply with respect to any audit report
22 prepared for an issuer that is neither a ‘large accelerated
23 filer’ nor an ‘accelerated filer’ as those terms are defined
24 in Rule 12b–2 of the Commission (17 C.F.R. 240.12b–
25 2).”.

1 (b) STUDY.—The Securities and Exchange Commis-
2 sion shall conduct a study to determine how the Commis-
3 sion could reduce the burden of complying with section
4 404(b) of the Sarbanes-Oxley Act of 2002 for companies
5 whose market capitalization is between \$75,000,000 and
6 \$250,000,000 for the relevant reporting period while
7 maintaining investor protections for such companies. The
8 study shall also consider whether any such methods of re-
9 ducing the compliance burden or a complete exemption for
10 such companies from compliance with such section would
11 encourage companies to list on exchanges in the United
12 States in their initial public offerings. Not later than 9
13 months after the date of the enactment of this subtitle,
14 the Commission shall transmit a report of such study to
15 Congress.

16 **SEC. 989H. CORRECTIVE RESPONSES BY HEADS OF CER-**
17 **TAIN ESTABLISHMENTS TO DEFICIENCIES**
18 **IDENTIFIED BY INSPECTORS GENERAL.**

19 The Chairman of the Board of Governors of the Fed-
20 eral Reserve System, the Chairman of the Commodity Fu-
21 tures Trading Commission, the Chairman of the National
22 Credit Union Administration, the Director of the Pension
23 Benefit Guaranty Corporation, and the Chairman of the
24 Securities and Exchange Commission shall each—

1 (1) take action to address deficiencies identified
2 by a report or investigation of the Inspector General
3 of the establishment concerned; or

4 (2) certify to both Houses of Congress that no
5 action is necessary or appropriate in connection with
6 a deficiency described in paragraph (1).

7 **SEC. 989I. GAO STUDY REGARDING EXEMPTION FOR**
8 **SMALLER ISSUERS.**

9 (a) STUDY REGARDING EXEMPTION FOR SMALLER
10 ISSUERS.—The Comptroller General of the United States
11 shall carry out a study on the impact of the amendments
12 made by this Act to section 404(b) of the Sarbanes-Oxley
13 Act of 2002 (15 U.S.C. 7262(b)), which shall include an
14 analysis of—

15 (1) whether issuers that are exempt from such
16 section 404(b) have fewer or more restatements of
17 published accounting statements than issuers that
18 are required to comply with such section 404(b);

19 (2) the cost of capital for issuers that are ex-
20 empt from such section 404(b) compared to the cost
21 of capital for issuers that are required to comply
22 with such section 404(b);

23 (3) whether there is any difference in the con-
24 fidence of investors in the integrity of financial
25 statements of issuers that comply with such section

1 404(b) and issuers that are exempt from compliance
2 with such section 404(b);

3 (4) whether issuers that do not receive the at-
4 testation for internal controls required under such
5 section 404(b) should be required to disclose the
6 lack of such attestation to investors; and

7 (5) the costs and benefits to issuers that are ex-
8 empt from such section 404(b) that voluntarily have
9 obtained the attestation of an independent auditor.

10 (b) REPORT.—Not later than 3 years after the date
11 of enactment of this Act, the Comptroller General shall
12 submit to the Committee on Banking, Housing, and
13 Urban Affairs of the Senate and the Committee on Finan-
14 cial Services of the House of Representatives a report on
15 the results of the study required under subsection (a).

16 **SEC. 989J. FURTHER PROMOTING THE ADOPTION OF THE**
17 **NAIC MODEL REGULATIONS THAT ENHANCE**
18 **PROTECTION OF SENIORS AND OTHER CON-**
19 **SUMERS.**

20 (a) IN GENERAL.—The Commission shall treat as ex-
21 empt securities described under section 3(a)(8) of the Se-
22 curities Act of 1933 (15 U.S.C. 77c(a)(8)) any insurance
23 or endowment policy or annuity contract or optional annu-
24 ity contract—

1 (1) the value of which does not vary according
2 to the performance of a separate account;

3 (2) that—

4 (A) satisfies standard nonforfeiture laws or
5 similar requirements of the applicable State at
6 the time of issue; or

7 (B) in the absence of applicable standard
8 nonforfeiture laws or requirements, satisfies the
9 Model Standard Nonforfeiture Law for Life In-
10 surance or Model Standard Nonforfeiture Law
11 for Individual Deferred Annuities, or any suc-
12 cessor model law, as published by the National
13 Association of Insurance Commissioners; and

14 (3) that is issued—

15 (A) on and after June 16, 2013, in a
16 State, or issued by an insurance company that
17 is domiciled in a State, that—

18 (i) adopts rules that govern suitability
19 requirements in the sale of an insurance or
20 endowment policy or annuity contract or
21 optional annuity contract, which shall sub-
22 stantially meet or exceed the minimum re-
23 quirements established by the Suitability in
24 Annuity Transactions Model Regulation
25 adopted by the National Association of In-

1 insurance Commissioners in March 2010;
2 and

3 (ii) adopts rules that substantially
4 meet or exceed the minimum requirements
5 of any successor modifications to the model
6 regulations described in subparagraph (A)
7 within 5 years of the adoption by the Asso-
8 ciation of any further successors thereto;
9 or

10 (B) by an insurance company that adopts
11 and implements practices on a nationwide basis
12 for the sale of any insurance or endowment pol-
13 icy or annuity contract or optional annuity con-
14 tract that meet or exceed the minimum require-
15 ments established by the National Association
16 of Insurance Commissioners Suitability in An-
17 nuity Transactions Model Regulation (Model
18 275), and any successor thereto, and is there-
19 fore subject to examination by the State of
20 domicile of the insurance company, or by any
21 other State where the insurance company con-
22 ducts sales of such products, for the purpose of
23 monitoring compliance under this section.

24 (b) RULE OF CONSTRUCTION.—Nothing in this sec-
25 tion shall be construed to affect whether any insurance

1 or endowment policy or annuity contract or optional annu-
2 ity contract that is not described in this section is or is
3 not an exempt security under section 3(a)(8) of the Secu-
4 rities Act of 1933 (15 U.S.C. 77c(a)(8)).

5 **Subtitle J—Securities and Ex-**
6 **change Commission Match**
7 **Funding**

8 **SEC. 991. SECURITIES AND EXCHANGE COMMISSION**
9 **MATCH FUNDING.**

10 (a) MATCH FUNDING AUTHORITY.—

11 (1) AMENDMENTS.—Section 31 of the Securi-
12 ties Exchange Act of 1934 (15 U.S.C. 78ee) is
13 amended—

14 (A) by striking subsection (a) and insert-
15 ing the following:

16 “(a) RECOVERY OF COSTS OF ANNUAL APPROPRIA-
17 TION.—The Commission shall, in accordance with this sec-
18 tion, collect transaction fees and assessments that are de-
19 signed to recover the costs to the Government of the an-
20 nual appropriation to the Commission by Congress.”;

21 (B) in subsection (e)(2), by striking “Sep-
22 tember 30” and inserting “September 25”;

23 (C) in subsection (g), by striking “April 30
24 of the fiscal year preceding the fiscal year to
25 which such rate applies” and inserting “30 days

1 after the date on which an Act making a reg-
2 ular appropriation to the Commission for such
3 fiscal year is enacted”;

4 (D) by striking subsection (j) and inserting
5 the following:

6 “(j) ADJUSTMENTS TO FEE RATES.—

7 “(1) ANNUAL ADJUSTMENT.—Subject to sub-
8 sections (i)(1)(B) and (k), for each fiscal year, the
9 Commission shall by order adjust each of the rates
10 applicable under subsections (b) and (c) for such fis-
11 cal year to a uniform adjusted rate that, when ap-
12 plied to the baseline estimate of the aggregate dollar
13 amount of sales for such fiscal year, is reasonably
14 likely to produce aggregate fee collections under this
15 section (including assessments collected under sub-
16 section (d) of this section) that are equal to the reg-
17 ular appropriation to the Commission by Congress
18 for such fiscal year.

19 “(2) MID-YEAR ADJUSTMENT.—Subject to sub-
20 sections (i)(1)(B) and (k), for each fiscal year, the
21 Commission shall determine, by March 1 of such fis-
22 cal year, whether, based on the actual aggregate dol-
23 lar volume of sales during the first 5 months of such
24 fiscal year, the baseline estimate of the aggregate
25 dollar volume of sales used under paragraph (1) for

1 such fiscal year is reasonably likely to be 10 percent
2 (or more) greater or less than the actual aggregate
3 dollar volume of sales for such fiscal year. If the
4 Commission so determines, the Commission shall by
5 order, no later than March 1, adjust each of the
6 rates applicable under subsections (b) and (c) for
7 such fiscal year to a uniform adjusted rate that,
8 when applied to the revised estimate of the aggre-
9 gate dollar amount of sales for the remainder of
10 such fiscal year, is reasonably likely to produce ag-
11 gregate fee collections under this section (including
12 fees collected during such five-month period and as-
13 sessments collected under subsection (d) of this sec-
14 tion) that are equal to the regular appropriation to
15 the Commission by Congress for such fiscal year. In
16 making such revised estimate, the Commission shall,
17 after consultation with the Congressional Budget Of-
18 fice and the Office of Management and Budget, use
19 the same methodology required by subsection (1).

20 “(3) REVIEW.—In exercising its authority
21 under this subsection, the Commission shall not be
22 required to comply with the provisions of section 553
23 of title 5, United States Code. An adjusted rate pre-
24 scribed under paragraph (1) or (2) and published

1 under subsection (g) shall not be subject to judicial
2 review.

3 “(4) EFFECTIVE DATE.—

4 “(A) ANNUAL ADJUSTMENT.—Subject to
5 subsections (i)(1)(B) and (k), an adjusted rate
6 prescribed under paragraph (1) shall take effect
7 on the later of—

8 “(i) the first day of the fiscal year to
9 which such rate applies; or

10 “(ii) 60 days after the date on which
11 an Act making a regular appropriation to
12 the Commission for such fiscal year is en-
13 acted.

14 “(B) MID-YEAR ADJUSTMENT.—An ad-
15 justed rate prescribed under paragraph (2)
16 shall take effect on April 1 of the fiscal year to
17 which such rate applies.”;

18 (E) in subsection (k), by striking “30
19 days” and inserting “60 days”; and

20 (F) in subsection (l), by striking “DEFINI-
21 TIONS.—” and all that follows through
22 “SALES.—The baseline” and inserting “BASE-
23 LINE ESTIMATE OF THE AGGREGATE DOLLAR
24 AMOUNT OF SALES.—The baseline”.

1 (2) EFFECTIVE DATE.—The amendments made
2 by this subsection shall take effect on the later of—

3 (A) October 1, 2011; or

4 (B) the date of enactment of an Act mak-
5 ing a regular appropriation to the Commission
6 for fiscal year 2012.

7 (b) AMENDMENTS TO REGISTRATION FEE PROVI-
8 SIONS.—

9 (1) SECTION 6(b) OF THE SECURITIES ACT OF
10 1933.—Section 6(b) of the Securities Act of 1933
11 (15 U.S.C. 77f(b)) is amended—

12 (A) by striking “offsetting” each place that
13 term appears and inserting “fee”;

14 (B) by striking paragraphs (1), (3), (4),
15 (6), (8), and (9);

16 (C) by redesignating paragraph (2) as
17 paragraph (1);

18 (D) by redesignating paragraph (5) as
19 paragraph (2);

20 (E) by redesignating paragraph (7) as
21 paragraph (3);

22 (F) by redesignating paragraph (10) as
23 paragraph (5);

24 (G) by redesignating paragraph (11) as
25 paragraph (6);

1 (H) in paragraph (1), as so redesignated,
2 by striking “paragraph (5) or (6).” and insert-
3 ing “paragraph (2).”;

4 (I) in paragraph (2), as so redesignated—
5 (i) by striking “of the fiscal years
6 2003 through 2011” and inserting “fiscal
7 year”; and

8 (ii) by striking “paragraph (2)” and
9 inserting “paragraph (1)”;

10 (J) by inserting after paragraph (3), as so
11 redesignated, the following:

12 “(4) REVIEW AND EFFECTIVE DATE.—In exer-
13 cising its authority under this subsection, the Com-
14 mission shall not be required to comply with the pro-
15 visions of section 553 of title 5, United States Code.
16 An adjusted rate prescribed under paragraph (2)
17 and published under paragraph (5) shall not be sub-
18 ject to judicial review. An adjusted rate prescribed
19 under paragraph (2) shall take effect on the first
20 day of the fiscal year to which such rate applies.”;

21 (K) in paragraph (5), as redesignated, by
22 striking “April 30” and inserting “August 31”;

23 (L) in paragraph (6), as so redesignated—

1 (i) by striking “of the fiscal years
 2 2002 through 2011” and inserting “fiscal
 3 year”; and

4 (ii) by inserting at the end of the
 5 table in subparagraph (A) the following:

| | |
|--------------------------------------|---|
| “2012 | \$425,000,000..... |
| 2013 | \$455,000,000..... |
| 2014 | \$485,000,000..... |
| 2015 | \$515,000,000..... |
| 2016 | \$550,000,000..... |
| 2017 | \$585,000,000..... |
| 2018 | \$620,000,000..... |
| 2019 | \$660,000,000..... |
| 2020 | \$705,000,000..... |
| 2021 and each fiscal year thereafter | .An amount that is equal to the target fee collection amount for the prior fiscal year, adjusted by the rate of inflation.”. |

6 (2) SECTION 13(e) OF THE SECURITIES EX-
 7 CHANGE ACT OF 1934.—Section 13(e) of the Securi-
 8 ties Exchange Act of 1934 (15 U.S.C. 78m(e)) is
 9 amended—

10 (A) in paragraph (3), by striking “para-
 11 graphs (5) and (6)” and inserting “paragraph
 12 (4)”;

13 (B) by striking paragraphs (4), (5), and
 14 (6);

15 (C) by inserting after paragraph (3) the
 16 following:

17 “(4) ANNUAL ADJUSTMENT.—For each fiscal
 18 year, the Commission shall by order adjust the rate
 19 required by paragraph (3) for such fiscal year to a

1 rate that is equal to the rate (expressed in dollars
2 per million) that is applicable under section 6(b) of
3 the Securities Act of 1933 for such fiscal year.

4 “(5) FEE COLLECTIONS.—Fees collected pursu-
5 ant to this subsection for fiscal year 2012 and each
6 fiscal year thereafter shall be deposited and credited
7 as general revenue of the Treasury and shall not be
8 available for obligation.

9 “(6) EFFECTIVE DATE; PUBLICATION.—In ex-
10 ercising its authority under this subsection, the
11 Commission shall not be required to comply with the
12 provisions of section 553 of title 5, United States
13 Code. An adjusted rate prescribed under paragraph
14 (4) shall be published and take effect in accordance
15 with section 6(b) of the Securities Act of 1933 (15
16 U.S.C. 77f(b)).”; and

17 (D) by striking paragraphs (8), (9), and
18 (10).

19 (3) SECTION 14(g) OF THE SECURITIES EX-
20 CHANGE ACT OF 1934.—Section 14(g) of the Securi-
21 ties Exchange Act of 1934 (15 U.S.C. 78n(g)) is
22 amended—

23 (A) in paragraph (1), by striking “para-
24 graphs (5) and (6)” each time that term ap-
25 pears and inserting “paragraph (4)”;

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1 (B) in paragraph (3), by striking “para-
2 graphs (5) and (6)” and inserting “paragraph
3 (4)”;

4 (C) by striking paragraphs (4), (5), and
5 (6);

6 (D) by inserting after paragraph (3) the
7 following:

8 “(4) ANNUAL ADJUSTMENT.—For each fiscal
9 year, the Commission shall by order adjust the rate
10 required by paragraphs (1) and (3) for such fiscal
11 year to a rate that is equal to the rate (expressed
12 in dollars per million) that is applicable under sec-
13 tion 6(b) of the Securities Act of 1933 (15 U.S.C.
14 77f(b)) for such fiscal year.

15 “(5) FEE COLLECTION.—Fees collected pursu-
16 ant to this subsection for fiscal year 2012 and each
17 fiscal year thereafter shall be deposited and credited
18 as general revenue of the Treasury and shall not be
19 available for obligation.

20 “(6) REVIEW; EFFECTIVE DATE; PUBLICA-
21 TION.—In exercising its authority under this sub-
22 section, the Commission shall not be required to
23 comply with the provisions of section 553 of title 5,
24 United States Code. An adjusted rate prescribed
25 under paragraph (4) shall be published and take ef-

1 fect in accordance with section 6(b) of the Securities
2 Act of 1933 (15 U.S.C. 77f(b)).”;

3 (E) by striking paragraphs (8), (9), and
4 (10); and

5 (F) by redesignating paragraph (11) as
6 paragraph (8).

7 (4) **EFFECTIVE DATE.**—The amendments made
8 by this subsection shall take effect on October 1,
9 2011, except that for fiscal year 2012, the Commis-
10 sion shall publish the rate established under section
11 6(b) of the Securities Act of 1933 (15 U.S.C.
12 77f(b)), as amended by this Act, on August 31,
13 2011.

14 (c) **AUTHORIZATION OF APPROPRIATIONS.**—Section
15 35 of the Securities Exchange Act of 1934 (15 U.S.C.
16 78kk) is amended to read as follows:

17 **“SEC. 35. AUTHORIZATION OF APPROPRIATIONS.**

18 “In addition to any other funds authorized to be ap-
19 propriated to the Commission, there are authorized to be
20 appropriated to carry out the functions, powers, and du-
21 ties of the Commission—

22 “(1) for fiscal year 2011, \$1,300,000,000;

23 “(2) for fiscal year 2012, \$1,500,000,000;

24 “(3) for fiscal year 2013, \$1,750,000,000;

25 “(4) for fiscal year 2014, \$2,000,000,000; and

1 “(5) for fiscal year 2015, \$2,250,000,000.”.

2 (d) TRANSMITTAL OF BUDGET REQUESTS.—

3 (1) AMENDMENT.—Section 31 of the Securities
4 Exchange Act of 1934 (15 U.S.C. 78ee) is amended
5 by adding at the end the following:

6 “(m) TRANSMITTAL OF COMMISSION BUDGET RE-
7 QUESTS.—

8 “(1) BUDGET REQUIRED.—For fiscal year
9 2012, and each fiscal year thereafter, the Commis-
10 sion shall prepare and submit a budget to the Presi-
11 dent. Whenever the Commission submits a budget
12 estimate or request to the President or the Office of
13 Management and Budget, the Commission shall con-
14 currently transmit copies of the estimate or request
15 to the Committee on Appropriations of the Senate,
16 the Committee on Appropriations of the House of
17 Representatives, the Committee on Banking, Hous-
18 ing, and Urban Affairs of the Senate, and the Com-
19 mittee on Financial Services of the House of Rep-
20 resentatives.

21 “(2) SUBMISSION TO CONGRESS.—The Presi-
22 dent shall submit each budget submitted under para-
23 graph (1) to Congress, in unaltered form, together
24 with the annual budget for the Administration sub-
25 mitted by the President.

1 “(3) CONTENTS.—The Commission shall in-
2 clude in each budget submitted under paragraph
3 (1)—

4 “(A) an itemization of the amount of funds
5 necessary to carry out the functions of the
6 Commission.

7 “(B) an amount to be designated as con-
8 tingency funding to be used by the Commission
9 to address unanticipated needs; and

10 “(C) a designation of any activities of the
11 Commission for which multi-year budget au-
12 thority would be suitable.”.

13 (2) BUDGET OF THE PRESIDENT.—For fiscal
14 year 2012, and each fiscal year thereafter, the an-
15 nual budget for the Administration submitted by the
16 President to Congress shall reflect the amendments
17 made by this section.

18 (e) SECURITIES AND EXCHANGE COMMISSION RE-
19 SERVE FUND.—

20 (1) AMENDMENT.—Section 4 of the Securities
21 Exchange Act of 1934 (15 U.S.C. 78d), as amended
22 by this Act, is amended by adding at the end the fol-
23 lowing:

24 “(i) SECURITIES AND EXCHANGE COMMISSION RE-
25 SERVE FUND.—

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1 “(1) RESERVE FUND ESTABLISHED.—There is
2 established in the Treasury of the United States a
3 separate fund, to be known as the ‘Securities and
4 Exchange Commission Reserve Fund’ (referred to in
5 this subsection as the ‘Reserve Fund’).

6 “(2) RESERVE FUND AMOUNTS.—

7 “(A) IN GENERAL.—Except as provided in
8 subparagraph (B), any registration fees col-
9 lected by the Commission under section 6(b) of
10 the Securities Act of 1933 (15 U.S.C. 77f(b))
11 or section 24(f) of the Investment Company Act
12 of 1940 (15 U.S.C. 80a-24(f)) shall be depos-
13 ited into the Reserve Fund.

14 “(B) LIMITATIONS.—For any 1 fiscal
15 year—

16 “(i) the amount deposited in the Fund
17 may not exceed \$50,000,000; and

18 “(ii) the balance in the Fund may not
19 exceed \$100,000,000.

20 “(C) EXCESS FEES.—Any amounts in ex-
21 cess of the limitations described in subpara-
22 graph (B) that the Commission collects from
23 registration fees under section 6(b) of the Secu-
24 rities Act of 1933 (15 U.S.C. 77f(b)) or section
25 24(f) of the Investment Company Act of 1940

1 (15 U.S.C. 80a-24(f)) shall be deposited in the
2 General Fund of the Treasury of the United
3 States and shall not be available for obligation
4 by the Commission.

5 “(3) USE OF AMOUNTS IN RESERVE FUND.—
6 The Commission may obligate amounts in the Re-
7 serve Fund, not to exceed a total of \$100,000,000
8 in any 1 fiscal year, as the Commission determines
9 is necessary to carry out the functions of the Com-
10 mission. Any amounts in the reserve fund shall re-
11 main available until expended. Not later than 10
12 days after the date on which the Commission obli-
13 gates amounts under this paragraph, the Commis-
14 sion shall notify Congress of the date, amount, and
15 purpose of the obligation.

16 “(4) RULE OF CONSTRUCTION.—Amounts col-
17 lected and deposited in the Reserve Fund shall not
18 be construed to be Government funds or appro-
19 priated monies and shall not be subject to apportion-
20 ment for the purpose of chapter 15 of title 31,
21 United States Code, or under any other authority.”.

22 “(2) EFFECTIVE DATE.—The amendment made
23 by this subsection shall take effect on October 1,
24 2011.

1 **TITLE X—BUREAU OF CON-**
2 **SUMER FINANCIAL PROTEC-**
3 **TION**

4 **SEC. 1001. SHORT TITLE.**

5 This title may be cited as the “Consumer Financial
6 Protection Act of 2010”.

7 **SEC. 1002. DEFINITIONS.**

8 Except as otherwise provided in this title, for pur-
9 poses of this title, the following definitions shall apply:

10 (1) **AFFILIATE.**—The term “affiliate” means
11 any person that controls, is controlled by, or is
12 under common control with another person.

13 (2) **BUREAU.**—The term “Bureau” means the
14 Bureau of Consumer Financial Protection.

15 (3) **BUSINESS OF INSURANCE.**—The term
16 “business of insurance” means the writing of insur-
17 ance or the reinsuring of risks by an insurer, includ-
18 ing all acts necessary to such writing or reinsuring
19 and the activities relating to the writing of insurance
20 or the reinsuring of risks conducted by persons who
21 act as, or are, officers, directors, agents, or employ-
22 ees of insurers or who are other persons authorized
23 to act on behalf of such persons.

1 (4) CONSUMER.—The term “consumer” means
2 an individual or an agent, trustee, or representative
3 acting on behalf of an individual.

4 (5) CONSUMER FINANCIAL PRODUCT OR SERV-
5 ICE.—The term “consumer financial product or
6 service” means any financial product or service that
7 is described in one or more categories under—

8 (A) paragraph (15) and is offered or pro-
9 vided for use by consumers primarily for per-
10 sonal, family, or household purposes; or

11 (B) clause (i), (iii), (ix), or (x) of para-
12 graph (15)(A), and is delivered, offered, or pro-
13 vided in connection with a consumer financial
14 product or service referred to in subparagraph
15 (A).

16 (6) COVERED PERSON.—The term “covered
17 person” means—

18 (A) any person that engages in offering or
19 providing a consumer financial product or serv-
20 ice; and

21 (B) any affiliate of a person described in
22 subparagraph (A) if such affiliate acts as a
23 service provider to such person.

24 (7) CREDIT.—The term “credit” means the
25 right granted by a person to a consumer to defer

1 payment of a debt, incur debt and defer its payment,
2 or purchase property or services and defer payment
3 for such purchase.

4 (8) DEPOSIT-TAKING ACTIVITY.—The term “de-
5 posit-taking activity” means—

6 (A) the acceptance of deposits, mainte-
7 nance of deposit accounts, or the provision of
8 services related to the acceptance of deposits or
9 the maintenance of deposit accounts;

10 (B) the acceptance of funds, the provision
11 of other services related to the acceptance of
12 funds, or the maintenance of member share ac-
13 counts by a credit union; or

14 (C) the receipt of funds or the equivalent
15 thereof, as the Bureau may determine by rule
16 or order, received or held by a covered person
17 (or an agent for a covered person) for the pur-
18 pose of facilitating a payment or transferring
19 funds or value of funds between a consumer
20 and a third party.

21 (9) DESIGNATED TRANSFER DATE.—The term
22 “designated transfer date” means the date estab-
23 lished under section 1062.

24 (10) DIRECTOR.—The term “Director” means
25 the Director of the Bureau.

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1 (11) ELECTRONIC CONDUIT SERVICES.—The
2 term “electronic conduit services”—

3 (A) means the provision, by a person, of
4 electronic data transmission, routing, inter-
5 mediate or transient storage, or connections to
6 a telecommunications system or network; and

7 (B) does not include a person that provides
8 electronic conduit services if, when providing
9 such services, the person—

10 (i) selects or modifies the content of
11 the electronic data;

12 (ii) transmits, routes, stores, or pro-
13 vides connections for electronic data, in-
14 cluding financial data, in a manner that
15 such financial data is differentiated from
16 other types of data of the same form that
17 such person transmits, routes, or stores, or
18 with respect to which, provides connec-
19 tions; or

20 (iii) is a payee, payor, correspondent,
21 or similar party to a payment transaction
22 with a consumer.

23 (12) ENUMERATED CONSUMER LAWS.—The
24 term “enumerated consumer laws” means—

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1 (A) the Alternative Mortgage Transaction
2 Parity Act of 1982 (12 U.S.C. 3801 et seq.);

3 (B) the Consumer Leasing Act of 1976
4 (15 U.S.C. 1667 et seq.);

5 (C) the Electronic Fund Transfer Act (15
6 U.S.C. 1693 et seq.);

7 (D) the Equal Credit Opportunity Act (15
8 U.S.C. 1691 et seq.);

9 (E) the Fair Credit Billing Act (15 U.S.C.
10 1666 et seq.);

11 (F) the Fair Credit Reporting Act (15
12 U.S.C. 1681 et seq.), except with respect to sec-
13 tions 615(e) and 628 of that Act (15 U.S.C.
14 1681m(e), 1681w);

15 (G) the Home Owners Protection Act of
16 1998 (12 U.S.C. 4901 et seq.);

17 (H) the Fair Debt Collection Practices Act
18 (15 U.S.C. 1692 et seq.);

19 (I) subsections (b) through (f) of section
20 43 of the Federal Deposit Insurance Act (12
21 U.S.C. 1831t(c)–(f));

22 (J) sections 502 through 509 of the
23 Gramm-Leach-Bliley Act (15 U.S.C. 6802–
24 6809) except for section 505 as it applies to
25 section 501(b);

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1 (K) the Home Mortgage Disclosure Act of
2 1975 (12 U.S.C. 2801 et seq.);

3 (L) the Home Ownership and Equity Pro-
4 tection Act of 1994 (15 U.S.C. 1601 note);

5 (M) the Real Estate Settlement Procedures
6 Act of 1974 (12 U.S.C. 2601 et seq.);

7 (N) the S.A.F.E. Mortgage Licensing Act
8 of 2008 (12 U.S.C. 5101 et seq.);

9 (O) the Truth in Lending Act (15 U.S.C.
10 1601 et seq.);

11 (P) the Truth in Savings Act (12 U.S.C.
12 4301 et seq.);

13 (Q) section 626 of the Omnibus Appropria-
14 tions Act, 2009 (Public Law 111–8); and

15 (R) the Interstate Land Sales Full Dislo-
16 sure Act (15 U.S.C. 1701).

17 (13) FAIR LENDING.—The term “fair lending”
18 means fair, equitable, and nondiscriminatory access
19 to credit for consumers.

20 (14) FEDERAL CONSUMER FINANCIAL LAW.—
21 The term “Federal consumer financial law” means
22 the provisions of this title, the enumerated consumer
23 laws, the laws for which authorities are transferred
24 under subtitles F and H, and any rule or order pre-
25 scribed by the Bureau under this title, an enumer-

1 ated consumer law, or pursuant to the authorities
2 transferred under subtitles F and H. The term does
3 not include the Federal Trade Commission Act.

4 (15) FINANCIAL PRODUCT OR SERVICE.—

5 (A) IN GENERAL.—The term “financial
6 product or service” means—

7 (i) extending credit and servicing
8 loans, including acquiring, purchasing, sell-
9 ing, brokering, or other extensions of credit
10 (other than solely extending commercial
11 credit to a person who originates consumer
12 credit transactions);

13 (ii) extending or brokering leases of
14 personal or real property that are the func-
15 tional equivalent of purchase finance ar-
16 rangements, if—

17 (I) the lease is on a non-oper-
18 ating basis;

19 (II) the initial term of the lease
20 is at least 90 days; and

21 (III) in the case of a lease involv-
22 ing real property, at the inception of
23 the initial lease, the transaction is in-
24 tended to result in ownership of the
25 leased property to be transferred to

1 the lessee, subject to standards pre-
2 scribed by the Bureau;

3 (iii) providing real estate settlement
4 services, except such services excluded
5 under subparagraph (C), or performing ap-
6 praisals of real estate or personal property;

7 (iv) engaging in deposit-taking activi-
8 ties, transmitting or exchanging funds, or
9 otherwise acting as a custodian of funds or
10 any financial instrument for use by or on
11 behalf of a consumer;

12 (v) selling, providing, or issuing stored
13 value or payment instruments, except that,
14 in the case of a sale of, or transaction to
15 reload, stored value, only if the seller exer-
16 cises substantial control over the terms or
17 conditions of the stored value provided to
18 the consumer where, for purposes of this
19 clause—

20 (I) a seller shall not be found to
21 exercise substantial control over the
22 terms or conditions of the stored value
23 if the seller is not a party to the con-
24 tract with the consumer for the stored
25 value product, and another person is

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1 principally responsible for establishing
2 the terms or conditions of the stored
3 value; and

4 (II) advertising the nonfinancial
5 goods or services of the seller on the
6 stored value card or device is not in
7 itself an exercise of substantial control
8 over the terms or conditions;

9 (vi) providing check cashing, check
10 collection, or check guaranty services;

11 (vii) providing payments or other fi-
12 nancial data processing products or serv-
13 ices to a consumer by any technological
14 means, including processing or storing fi-
15 nancial or banking data for any payment
16 instrument, or through any payments sys-
17 tems or network used for processing pay-
18 ments data, including payments made
19 through an online banking system or mo-
20 bile telecommunications network, except
21 that a person shall not be deemed to be a
22 covered person with respect to financial
23 data processing solely because the per-
24 son—

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1 (I) is a merchant, retailer, or
2 seller of any nonfinancial good or
3 service who engages in financial data
4 processing by transmitting or storing
5 payments data about a consumer ex-
6 clusively for purpose of initiating pay-
7 ments instructions by the consumer to
8 pay such person for the purchase of,
9 or to complete a commercial trans-
10 action for, such nonfinancial good or
11 service sold directly by such person to
12 the consumer; or

13 (II) provides access to a host
14 server to a person for purposes of en-
15 abling that person to establish and
16 maintain a website;

17 (viii) providing financial advisory serv-
18 ices (other than services relating to securi-
19 ties provided by a person regulated by the
20 Commission or a person regulated by a
21 State securities Commission, but only to
22 the extent that such person acts in a regu-
23 lated capacity) to consumers on individual
24 financial matters or relating to proprietary
25 financial products or services (other than

1 by publishing any bona fide newspaper,
2 news magazine, or business or financial
3 publication of general and regular circula-
4 tion, including publishing market data,
5 news, or data analytics or investment in-
6 formation or recommendations that are not
7 tailored to the individual needs of a par-
8 ticular consumer), including—

9 (I) providing credit counseling to
10 any consumer; and

11 (II) providing services to assist a
12 consumer with debt management or
13 debt settlement, modifying the terms
14 of any extension of credit, or avoiding
15 foreclosure;

16 (ix) collecting, analyzing, maintaining,
17 or providing consumer report information
18 or other account information, including in-
19 formation relating to the credit history of
20 consumers, used or expected to be used in
21 connection with any decision regarding the
22 offering or provision of a consumer finan-
23 cial product or service, except to the extent
24 that—

25 (I) a person—

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1 (aa) collects, analyzes, or
2 maintains information that re-
3 lates solely to the transactions
4 between a consumer and such
5 person;

6 (bb) provides the informa-
7 tion described in item (aa) to an
8 affiliate of such person; or

9 (cc) provides information
10 that is used or expected to be
11 used solely in any decision re-
12 garding the offering or provision
13 of a product or service that is not
14 a consumer financial product or
15 service, including a decision for
16 employment, government licens-
17 ing, or a residential lease or ten-
18 ancy involving a consumer; and

19 (II) the information described in
20 subclause (I)(aa) is not used by such
21 person or affiliate in connection with
22 any decision regarding the offering or
23 provision of a consumer financial
24 product or service to the consumer,

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1 other than credit described in section
2 1027(a)(2)(A);

3 (x) collecting debt related to any con-
4 sumer financial product or service; and

5 (xi) such other financial product or
6 service as may be defined by the Bureau,
7 by regulation, for purposes of this title, if
8 the Bureau finds that such financial prod-
9 uct or service is—

10 (I) entered into or conducted as
11 a subterfuge or with a purpose to
12 evade any Federal consumer financial
13 law; or

14 (II) permissible for a bank or for
15 a financial holding company to offer
16 or to provide under any provision of a
17 Federal law or regulation applicable
18 to a bank or a financial holding com-
19 pany, and has, or likely will have, a
20 material impact on consumers.

21 (B) RULE OF CONSTRUCTION.—

22 (i) IN GENERAL.—For purposes of
23 subparagraph (A)(xi)(II), and subject to
24 clause (ii) of this subparagraph, the fol-
25 lowing activities provided to a covered per-

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1 son shall not, for purposes of this title, be
2 considered incidental or complementary to
3 a financial activity permissible for a finan-
4 cial holding company to engage in under
5 any provision of a Federal law or regula-
6 tion applicable to a financial holding com-
7 pany:

8 (I) Providing information prod-
9 ucts or services to a covered person
10 for identity authentication.

11 (II) Providing information prod-
12 ucts or services for fraud or identify
13 theft detection, prevention, or inves-
14 tigation.

15 (III) Providing document re-
16 trieval or delivery services.

17 (IV) Providing public records in-
18 formation retrieval.

19 (V) Providing information prod-
20 ucts or services for anti-money laun-
21 dering activities.

22 (ii) LIMITATION.—Nothing in clause
23 (i) may be construed as modifying or lim-
24 iting the authority of the Bureau to exer-
25 cise any—

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1 (I) examination or enforcement
2 powers authority under this title with
3 respect to a covered person or service
4 provider engaging in an activity de-
5 scribed in subparagraph (A)(ix); or

6 (II) powers authorized by this
7 title to prescribe rules, issue orders,
8 or take other actions under any enu-
9 merated consumer law or law for
10 which the authorities are transferred
11 under subtitle F or H.

12 (C) EXCLUSIONS.—The term “financial
13 product or service” does not include—

14 (i) the business of insurance; or

15 (ii) electronic conduit services.

16 (16) 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 (17) INSURED CREDIT UNION.—The term “in-
21 sured credit union” has the same meaning as in sec-
22 tion 101 of the Federal Credit Union Act (12 U.S.C.
23 1752).

24 (18) 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 funds, or monetary
3 value (other than currency).

4 (19) 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 (20) PERSON REGULATED BY THE COMMODITY
9 FUTURES TRADING COMMISSION.—The term “person
10 regulated by the Commodity Futures Trading Com-
11 mission” means any person that is registered, or re-
12 quired by statute or regulation to be registered, with
13 the Commodity Futures Trading Commission, but
14 only to the extent that the activities of such person
15 are subject to the jurisdiction of the Commodity Fu-
16 tures Trading Commission under the Commodity
17 Exchange Act.

18 (21) PERSON REGULATED BY THE COMMIS-
19 SION.—The term “person regulated by the Commis-
20 sion” means a person who is—

21 (A) a broker or dealer that is required to
22 be registered under the Securities Exchange Act
23 of 1934;

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1 (B) an investment adviser that is reg-
2 istered under the Investment Advisers Act of
3 1940;

4 (C) an investment company that is re-
5 quired to be registered under the Investment
6 Company Act of 1940, and any company that
7 has elected to be regulated as a business devel-
8 opment company under that Act;

9 (D) a national securities exchange that is
10 required to be registered under the Securities
11 Exchange Act of 1934;

12 (E) a transfer agent that is required to be
13 registered under the Securities Exchange Act of
14 1934;

15 (F) a clearing corporation that is required
16 to be registered under the Securities Exchange
17 Act of 1934;

18 (G) any self-regulatory organization that is
19 required to be registered with the Commission;

20 (H) any nationally recognized statistical
21 rating organization that is required to be reg-
22 istered with the Commission;

23 (I) any securities information processor
24 that is required to be registered with the Com-
25 mission;

1 (J) any municipal securities dealer that is
2 required to be registered with the Commission;

3 (K) any other person that is required to be
4 registered with the Commission under the Secu-
5 rities Exchange Act of 1934; and

6 (L) any employee, agent, or contractor act-
7 ing on behalf of, registered with, or providing
8 services to, any person described in any of sub-
9 paragraphs (A) through (K), but only to the ex-
10 tent that any person described in any of sub-
11 paragraphs (A) through (K), or the employee,
12 agent, or contractor of such person, acts in a
13 regulated capacity.

14 (22) PERSON REGULATED BY A STATE INSUR-
15 ANCE REGULATOR.—The term “person regulated by
16 a State insurance regulator” means any person that
17 is engaged in the business of insurance and subject
18 to regulation by any State insurance regulator, but
19 only to the extent that such person acts in such ca-
20 pacity.

21 (23) PERSON THAT PERFORMS INCOME TAX
22 PREPARATION ACTIVITIES FOR CONSUMERS.—The
23 term “person that performs income tax preparation
24 activities for consumers” means—

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1 (A) any tax return preparer (as defined in
2 section 7701(a)(36) of the Internal Revenue
3 Code of 1986), regardless of whether com-
4 pensated, but only to the extent that the person
5 acts in such capacity;

6 (B) any person regulated by the Secretary
7 under section 330 of title 31, United States
8 Code, but only to the extent that the person
9 acts in such capacity; and

10 (C) any authorized IRS e-file Providers (as
11 defined for purposes of section 7216 of the In-
12 ternal Revenue Code of 1986), but only to the
13 extent that the person acts in such capacity.

14 (24) PRUDENTIAL REGULATOR.—The term
15 “prudential regulator” means—

16 (A) in the case of an insured depository in-
17 stitution or depository institution holding com-
18 pany (as defined in section 3 of the Federal De-
19 posit Insurance Act), or subsidiary of such in-
20 stitution or company, the appropriate Federal
21 banking agency, as that term is defined in sec-
22 tion 3 of the Federal Deposit Insurance Act;
23 and

24 (B) in the case of an insured credit union,
25 the National Credit Union Administration.

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1 (25) RELATED PERSON.—The term “related
2 person”—

3 (A) shall apply only with respect to a cov-
4 ered person that is not a bank holding company
5 (as that term is defined in section 2 of the
6 Bank Holding Company Act of 1956), credit
7 union, or depository institution;

8 (B) shall be deemed to mean a covered
9 person for all purposes of any provision of Fed-
10 eral consumer financial law; and

11 (C) means—

12 (i) any director, officer, or employee
13 charged with managerial responsibility for,
14 or controlling shareholder of, or agent for,
15 such covered person;

16 (ii) any shareholder, consultant, joint
17 venture partner, or other person, as deter-
18 mined by the Bureau (by rule or on a case-
19 by-case basis) who materially participates
20 in the conduct of the affairs of such cov-
21 ered person; and

22 (iii) any independent contractor (in-
23 cluding any attorney, appraiser, or ac-
24 countant) who knowingly or recklessly par-
25 ticipates in any—

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1 (I) violation of any provision of
2 law or regulation; or

3 (II) breach of a fiduciary duty.

4 (26) SERVICE PROVIDER.—

5 (A) IN GENERAL.—The term “service pro-
6 vider” means any person that provides a mate-
7 rial service to a covered person in connection
8 with the offering or provision by such covered
9 person of a consumer financial product or serv-
10 ice, including a person that—

11 (i) participates in designing, oper-
12 ating, or maintaining the consumer finan-
13 cial product or service; or

14 (ii) processes transactions relating to
15 the consumer financial product or service
16 (other than unknowingly or incidentally
17 transmitting or processing financial data in
18 a manner that such data is undifferen-
19 tiated from other types of data of the same
20 form as the person transmits or processes).

21 (B) EXCEPTIONS.—The term “service pro-
22 vider” does not include a person solely by virtue
23 of such person offering or providing 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; or

4 (ii) time or space for an advertisement
5 for a consumer financial product or service
6 through print, newspaper, or electronic
7 media.

8 (C) RULE OF CONSTRUCTION.—A person
9 that is a service provider shall be deemed to be
10 a covered person to the extent that such person
11 engages in the offering or provision of its own
12 consumer financial product or service.

13 (27) STATE.—The term “State” means any
14 State, territory, or possession of the United States,
15 the District of Columbia, the Commonwealth of
16 Puerto Rico, the Commonwealth of the Northern
17 Mariana Islands, Guam, American Samoa, or the
18 United States Virgin Islands or any federally recog-
19 nized Indian tribe, as defined by the Secretary of the
20 Interior under section 104(a) of the Federally Rec-
21 ognized Indian Tribe List Act of 1994 (25 U.S.C.
22 479a–1(a)).

23 (28) STORED VALUE.—

24 (A) IN GENERAL.—The term “stored
25 value” means funds or monetary value rep-

1 resented in any electronic format, whether or
2 not specially encrypted, and stored or capable
3 of storage on electronic media in such a way as
4 to be retrievable and transferred electronically,
5 and includes a prepaid debit card or product, or
6 any other similar product, regardless of whether
7 the amount of the funds or monetary value may
8 be increased or reloaded.

9 (B) EXCLUSION.—Notwithstanding sub-
10 paragraph (A), the term “stored value” does
11 not include a special purpose card or certificate,
12 which shall be defined for purposes of this para-
13 graph as funds or monetary value represented
14 in any electronic format, whether or not spe-
15 cially encrypted, that is—

16 (i) issued by a merchant, retailer, or
17 other seller of nonfinancial goods or serv-
18 ices;

19 (ii) redeemable only for transactions
20 with the merchant, retailer, or seller of
21 nonfinancial goods or services or with an
22 affiliate of such person, which affiliate
23 itself is a merchant, retailer, or seller of
24 nonfinancial goods or services;

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1 (iii) issued in a specified amount that,
2 except in the case of a card or product
3 used solely for telephone services, may not
4 be increased or reloaded;

5 (iv) purchased on a prepaid basis in
6 exchange for payment; and

7 (v) honored upon presentation to such
8 merchant, retailer, or seller of nonfinancial
9 goods or services or an affiliate of such
10 person, which affiliate itself is a merchant,
11 retailer, or seller of nonfinancial goods or
12 services, only for any nonfinancial goods or
13 services.

14 (29) TRANSMITTING OR EXCHANGING FUNDS.—

15 The term “transmitting or exchanging funds” means
16 receiving currency, monetary value, or payment in-
17 struments from a consumer for the purpose of ex-
18 changing or transmitting the same by any means,
19 including transmission by wire, facsimile, electronic
20 transfer, courier, the Internet, or through bill pay-
21 ment services or through other businesses that facili-
22 tate third-party transfers within the United States
23 or to or from the United States.

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1 **Subtitle A—Bureau of Consumer**
2 **Financial Protection**

3 **SEC. 1011. ESTABLISHMENT OF THE BUREAU OF CON-**
4 **SUMER FINANCIAL PROTECTION.**

5 (a) BUREAU ESTABLISHED.—There is established in
6 the Federal Reserve System, an independent bureau to be
7 known as the “Bureau of Consumer Financial Protec-
8 tion”, which shall regulate the offering and provision of
9 consumer financial products or services under the Federal
10 consumer financial laws. The Bureau shall be considered
11 an Executive agency, as defined in section 105 of title 5,
12 United States Code. Except as otherwise provided ex-
13 pressly by law, all Federal laws dealing with public or Fed-
14 eral contracts, property, works, officers, employees, budg-
15 ets, or funds, including the provisions of chapters 5 and
16 7 of title 5, shall apply to the exercise of the powers of
17 the Bureau.

18 (b) DIRECTOR AND DEPUTY DIRECTOR.—

19 (1) IN GENERAL.—There is established the po-
20 sition of the Director, who shall serve as the head
21 of the Bureau.

22 (2) APPOINTMENT.—Subject to paragraph (3),
23 the Director shall be appointed by the President, by
24 and with the advice and consent of the Senate.

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1 (3) QUALIFICATION.—The President shall
2 nominate the Director from among individuals who
3 are citizens of the United States.

4 (4) COMPENSATION.—The Director shall be
5 compensated at the rate prescribed for level II of the
6 Executive Schedule under section 5313 of title 5,
7 United States Code.

8 (5) DEPUTY DIRECTOR.—There is established
9 the position of Deputy Director, who shall—

10 (A) be appointed by the Director; and

11 (B) serve as acting Director in the absence
12 or unavailability of the Director.

13 (c) TERM.—

14 (1) IN GENERAL.—The Director shall serve for
15 a term of 5 years.

16 (2) EXPIRATION OF TERM.—An individual may
17 serve as Director after the expiration of the term for
18 which appointed, until a successor has been ap-
19 pointed and qualified.

20 (3) REMOVAL FOR CAUSE.—The President may
21 remove the Director for inefficiency, neglect of duty,
22 or malfeasance in office.

23 (d) SERVICE RESTRICTION.—No Director or Deputy
24 Director may hold any office, position, or employment in
25 any Federal reserve bank, Federal home loan bank, cov-

1 ered person, or service provider during the period of serv-
2 ice of such person as Director or Deputy Director.

3 (e) OFFICES.—The principal office of the Bureau
4 shall be in the District of Columbia. The Director may
5 establish regional offices of the Bureau, including in cities
6 in which the Federal reserve banks, or branches of such
7 banks, are located, in order to carry out the responsibil-
8 ities assigned to the Bureau under the Federal consumer
9 financial laws.

10 **SEC. 1012. EXECUTIVE AND ADMINISTRATIVE POWERS.**

11 (a) POWERS OF THE BUREAU.—The Bureau is au-
12 thorized to establish the general policies of the Bureau
13 with respect to all executive and administrative functions,
14 including—

15 (1) the establishment of rules for conducting
16 the general business of the Bureau, in a manner not
17 inconsistent with this title;

18 (2) to bind the Bureau and enter into con-
19 tracts;

20 (3) directing the establishment and mainte-
21 nance of divisions or other offices within the Bureau,
22 in order to carry out the responsibilities under the
23 Federal consumer financial laws, and to satisfy the
24 requirements of other applicable law;

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1 (4) to coordinate and oversee the operation of
2 all administrative, enforcement, and research activi-
3 ties of the Bureau;

4 (5) to adopt and use a seal;

5 (6) to determine the character of and the neces-
6 sity for the obligations and expenditures of the Bu-
7 reau;

8 (7) the appointment and supervision of per-
9 sonnel employed by the Bureau;

10 (8) the distribution of business among per-
11 sonnel appointed and supervised by the Director and
12 among administrative units of the Bureau;

13 (9) the use and expenditure of funds;

14 (10) implementing the Federal consumer finan-
15 cial laws through rules, orders, guidance, interpreta-
16 tions, statements of policy, examinations, and en-
17 forcement actions; and

18 (11) performing such other functions as may be
19 authorized or required by law.

20 (b) DELEGATION OF AUTHORITY.—The Director of
21 the Bureau may delegate to any duly authorized employee,
22 representative, or agent any power vested in the Bureau
23 by law.

24 (c) AUTONOMY OF THE BUREAU.—

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1 (1) COORDINATION WITH THE BOARD OF GOV-
2 ERNORS.—Notwithstanding any other provision of
3 law applicable to the supervision or examination of
4 persons with respect to Federal consumer financial
5 laws, the Board of Governors may delegate to the
6 Bureau the authorities to examine persons subject to
7 the jurisdiction of the Board of Governors for com-
8 pliance with the Federal consumer financial laws.

9 (2) AUTONOMY.—Notwithstanding the authori-
10 ties granted to the Board of Governors under the
11 Federal Reserve Act, the Board of Governors may
12 not—

13 (A) intervene in any matter or proceeding
14 before the Director, including examinations or
15 enforcement actions, unless otherwise specifi-
16 cally provided by law;

17 (B) appoint, direct, or remove any officer
18 or employee of the Bureau; or

19 (C) merge or consolidate the Bureau, or
20 any of the functions or responsibilities of the
21 Bureau, with any division or office of the Board
22 of Governors or the Federal reserve banks.

23 (3) RULES AND ORDERS.—No rule or order of
24 the Bureau shall be subject to approval or review by
25 the Board of Governors. The Board of Governors

1 may not delay or prevent the issuance of any rule
2 or order of the Bureau.

3 (4) RECOMMENDATIONS AND TESTIMONY.—No
4 officer or agency of the United States shall have any
5 authority to require the Director or any other officer
6 of the Bureau to submit legislative recommenda-
7 tions, or testimony or comments on legislation, to
8 any officer or agency of the United States for ap-
9 proval, comments, or review prior to the submission
10 of such recommendations, testimony, or comments to
11 the Congress, if such recommendations, testimony,
12 or comments to the Congress include a statement in-
13 dicating that the views expressed therein are those
14 of the Director or such officer, and do not nec-
15 essarily reflect the views of the Board of Governors
16 or the President.

17 (5) CLARIFICATION OF AUTONOMY OF THE BU-
18 REAU IN LEGAL PROCEEDINGS.—The Bureau shall
19 not be liable under any provision of law for any ac-
20 tion or inaction of the Board of Governors, and the
21 Board of Governors shall not be liable under any
22 provision of law for any action or inaction of the Bu-
23 reau.

24 **SEC. 1013. ADMINISTRATION.**

25 (a) PERSONNEL.—

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1 (1) APPOINTMENT.—

2 (A) IN GENERAL.—The Director may fix
3 the number of, and appoint and direct, all em-
4 ployees of the Bureau, in accordance with the
5 applicable provisions of title 5, United States
6 Code.

7 (B) EMPLOYEES OF THE BUREAU.—The
8 Director is authorized to employ attorneys,
9 compliance examiners, compliance supervision
10 analysts, economists, statisticians, and other
11 employees as may be deemed necessary to con-
12 duct the business of the Bureau. Unless other-
13 wise provided expressly by law, any individual
14 appointed under this section shall be an em-
15 ployee as defined in section 2105 of title 5,
16 United States Code, and subject to the provi-
17 sions of such title and other laws generally ap-
18 plicable to the employees of an Executive agen-
19 cy.

20 (C) WAIVER AUTHORITY.—

21 (i) IN GENERAL.—In making any ap-
22 pointment under subparagraph (A), the
23 Director may waive the requirements of
24 chapter 33 of title 5, United States Code,
25 and the regulations implementing such

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1 chapter, to the extent necessary to appoint
2 employees on terms and conditions that
3 are consistent with those set forth in sec-
4 tion 11(1) of the Federal Reserve Act (12
5 U.S.C. 248(1)), while providing for—

6 (I) fair, credible, and transparent
7 methods of establishing qualification
8 requirements for, recruitment for, and
9 appointments to positions;

10 (II) fair and open competition
11 and equitable treatment in the consid-
12 eration and selection of individuals to
13 positions;

14 (III) fair, credible, and trans-
15 parent methods of assigning, reas-
16 signing, detailing, transferring, or
17 promoting employees.

18 (ii) VETERANS PREFERENCES.—In
19 implementing this subparagraph, the Di-
20 rector shall comply with the provisions of
21 section 2302(b)(11), regarding veterans'
22 preference requirements, in a manner con-
23 sistent with that in which such provisions
24 are applied under chapter 33 of title 5,
25 United States Code. The authority under

1 this subparagraph to waive the require-
2 ments of that chapter 33 shall expire 5
3 years after the date of enactment of this
4 Act.

5 (2) COMPENSATION.—Notwithstanding any oth-
6 erwise applicable provision of title 5, United States
7 Code, concerning compensation, including the provi-
8 sions of chapter 51 and chapter 53, the following
9 provisions shall apply with respect to employees of
10 the Bureau:

11 (A) The rates of basic pay for all employ-
12 ees of the Bureau may be set and adjusted by
13 the Director.

14 (B) The Director shall at all times provide
15 compensation (including benefits) to each class
16 of employees that, at a minimum, are com-
17 parable to the compensation and benefits then
18 being provided by the Board of Governors for
19 the corresponding class of employees.

20 (C) All such employees shall be com-
21 pensated (including benefits) on terms and con-
22 ditions that are consistent with the terms and
23 conditions set forth in section 11(l) of the Fed-
24 eral Reserve Act (12 U.S.C. 248(l)).

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1 (3) LABOR-MANAGEMENT RELATIONS.—Chap-
2 ter 71 of title 5, United States Code, shall apply to
3 the Bureau and the employees of the Bureau.

4 (4) AGENCY OMBUDSMAN.—

5 (A) ESTABLISHMENT REQUIRED.—Not
6 later than 180 days after the designated trans-
7 fer date, the Bureau shall appoint an ombuds-
8 man.

9 (B) DUTIES OF OMBUDSMAN.—The om-
10 budsman appointed in accordance with subpara-
11 graph (A) shall—

12 (i) act as a liaison between the Bu-
13 reau and any affected person with respect
14 to any problem that such party may have
15 in dealing with the Bureau, resulting from
16 the regulatory activities of the Bureau; and

17 (ii) assure that safeguards exist to en-
18 courage complainants to come forward and
19 preserve confidentiality.

20 (b) SPECIFIC FUNCTIONAL UNITS.—

21 (1) RESEARCH.—The Director shall establish a
22 unit whose functions shall include researching, ana-
23 lyzing, and reporting on—

24 (A) developments in markets for consumer
25 financial products or services, including market

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1 areas of alternative consumer financial products
2 or services with high growth rates and areas of
3 risk to consumers;

4 (B) access to fair and affordable credit for
5 traditionally underserved communities;

6 (C) consumer awareness, understanding,
7 and use of disclosures and communications re-
8 garding consumer financial products or services;

9 (D) consumer awareness and under-
10 standing of costs, risks, and benefits of con-
11 sumer financial products or services;

12 (E) consumer behavior with respect to con-
13 sumer financial products or services, including
14 performance on mortgage loans; and

15 (F) experiences of traditionally under-
16 served consumers, including un-banked and
17 under-banked consumers.

18 (2) COMMUNITY AFFAIRS.—The Director shall
19 establish a unit whose functions shall include pro-
20 viding information, guidance, and technical assist-
21 ance regarding the offering and provision of con-
22 sumer financial products or services to traditionally
23 underserved consumers and communities.

24 (3) COLLECTING AND TRACKING COM-
25 PLAINTS.—

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1 (A) IN GENERAL.—The Director shall es-
2 tablish a unit whose functions shall include es-
3 tablishing a single, toll-free telephone number, a
4 website, and a database or utilizing an existing
5 database to facilitate the centralized collection
6 of, monitoring of, and response to consumer
7 complaints regarding consumer financial prod-
8 ucts or services. The Director shall coordinate
9 with the Federal Trade Commission or other
10 Federal agencies to route complaints to such
11 agencies, where appropriate.

12 (B) ROUTING CALLS TO STATES.—To the
13 extent practicable, State agencies may receive
14 appropriate complaints from the systems estab-
15 lished under subparagraph (A), if—

16 (i) the State agency system has the
17 functional capacity to receive calls or elec-
18 tronic reports routed by the Bureau sys-
19 tems;

20 (ii) the State agency has satisfied any
21 conditions of participation in the system
22 that the Bureau may establish, including
23 treatment of personally identifiable infor-
24 mation and sharing of information on com-

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1 plaint resolution or related compliance pro-
2 cedures and resources; and

3 (iii) participation by the State agency
4 includes measures necessary to provide for
5 protection of personally identifiable infor-
6 mation that conform to the standards for
7 protection of the confidentiality of person-
8 ally identifiable information and for data
9 integrity and security that apply to the
10 Federal agencies described in subpara-
11 graph (D).

12 (C) REPORTS TO THE CONGRESS.—The
13 Director shall present an annual report to Con-
14 gress not later than March 31 of each year on
15 the complaints received by the Bureau in the
16 prior year regarding consumer financial prod-
17 ucts and services. Such report shall include in-
18 formation and analysis about complaint num-
19 bers, complaint types, and, where applicable, in-
20 formation about resolution of complaints.

21 (D) DATA SHARING REQUIRED.—To facili-
22 tate preparation of the reports required under
23 subparagraph (C), supervision and enforcement
24 activities, and monitoring of the market for
25 consumer financial products and services, the

1 Bureau shall share consumer complaint infor-
2 mation with prudential regulators, the Federal
3 Trade Commission, other Federal agencies, and
4 State agencies, subject to the standards appli-
5 cable to Federal agencies for protection of the
6 confidentiality of personally identifiable infor-
7 mation and for data security and integrity. The
8 prudential regulators, the Federal Trade Com-
9 mission, and other Federal agencies shall share
10 data relating to consumer complaints regarding
11 consumer financial products and services with
12 the Bureau, subject to the standards applicable
13 to Federal agencies for protection of confiden-
14 tiality of personally identifiable information and
15 for data security and integrity.

16 (c) OFFICE OF FAIR LENDING AND EQUAL OPPOR-
17 TUNITY.—

18 (1) ESTABLISHMENT.—The Director shall es-
19 tablish within the Bureau the Office of Fair Lending
20 and Equal Opportunity.

21 (2) FUNCTIONS.—The Office of Fair Lending
22 and Equal Opportunity shall have such powers and
23 duties as the Director may delegate to the Office, in-
24 cluding—

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1 (A) providing oversight and enforcement of
2 Federal laws intended to ensure the fair, equi-
3 table, and nondiscriminatory access to credit for
4 both individuals and communities that are en-
5 forced by the Bureau, including the Equal
6 Credit Opportunity Act and the Home Mort-
7 gage Disclosure Act;

8 (B) coordinating fair lending efforts of the
9 Bureau with other Federal agencies and State
10 regulators, as appropriate, to promote con-
11 sistent, efficient, and effective enforcement of
12 Federal fair lending laws;

13 (C) working with private industry, fair
14 lending, civil rights, consumer and community
15 advocates on the promotion of fair lending com-
16 pliance and education; and

17 (D) providing annual reports to Congress
18 on the efforts of the Bureau to fulfill its fair
19 lending mandate.

20 (3) ADMINISTRATION OF OFFICE.—There is es-
21 tablished the position of Assistant Director of the
22 Bureau for Fair Lending and Equal Opportunity,
23 who—

24 (A) shall be appointed by the Director; and

1 (B) shall carry out such duties as the Di-
2 rector may delegate to such Assistant Director.

3 (d) OFFICE OF FINANCIAL EDUCATION.—

4 (1) ESTABLISHMENT.—The Director shall es-
5 tablish an Office of Financial Education, which shall
6 be responsible for developing and implementing ini-
7 tiatives intended to educate and empower consumers
8 to make better informed financial decisions.

9 (2) OTHER DUTIES.—The Office of Financial
10 Education shall develop and implement a strategy to
11 improve the financial literacy of consumers that in-
12 cludes measurable goals and objectives, in consulta-
13 tion with the Financial Literacy and Education
14 Commission, consistent with the National Strategy
15 for Financial Education, through activities including
16 providing opportunities for consumers to access—

17 (A) financial counseling, including commu-
18 nity-based financial counseling, where prac-
19 ticable;

20 (B) information to assist with the evalua-
21 tion of credit products and the understanding
22 of credit histories and scores;

23 (C) savings, borrowing, and other services
24 found at mainstream financial institutions;

25 (D) activities intended to—

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1 (i) prepare the consumer for edu-
2 cational expenses and the submission of fi-
3 nancial aid applications, and other major
4 purchases;

5 (ii) reduce debt; and

6 (iii) improve the financial situation of
7 the consumer;

8 (E) assistance in developing long-term sav-
9 ings strategies; and

10 (F) wealth building and financial services
11 during the preparation process to claim earned
12 income tax credits and Federal benefits.

13 (3) COORDINATION.—The Office of Financial
14 Education shall coordinate with other units within
15 the Bureau in carrying out its functions, including—

16 (A) working with the Community Affairs
17 Office to implement the strategy to improve fi-
18 nancial literacy of consumers; and

19 (B) working with the research unit estab-
20 lished by the Director to conduct research re-
21 lated to consumer financial education and coun-
22 seling.

23 (4) REPORT.—Not later than 24 months after
24 the designated transfer date, and annually there-
25 after, the Director shall submit a report on its finan-

1 cial literacy activities and strategy to improve finan-
2 cial literacy of consumers to—

3 (A) the Committee on Banking, Housing,
4 and Urban Affairs of the Senate; and

5 (B) the Committee on Financial Services
6 of the House of Representatives.

7 (5) MEMBERSHIP IN FINANCIAL LITERACY AND
8 EDUCATION COMMISSION.—Section 513(c)(1) of the
9 Financial Literacy and Education Improvement Act
10 (20 U.S.C. 9702(c)(1)) is amended—

11 (A) in subparagraph (B), by striking
12 “and” at the end;

13 (B) by redesignating subparagraph (C) as
14 subparagraph (D); and

15 (C) by inserting after subparagraph (B)
16 the following new subparagraph:

17 “(C) the Director of the Bureau of Con-
18 sumer Financial Protection; and”.

19 (6) CONFORMING AMENDMENT.—Section
20 513(d) of the Financial Literacy and Education Im-
21 provement Act (20 U.S.C. 9702(d)) is amended by
22 adding at the end the following: “The Director of
23 the Bureau of Consumer Financial Protection shall
24 serve as the Vice Chairman.”.

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1 power consumers about personal finance
2 management; and

3 (iv) recommendations intended to en-
4 courage the development of programs that
5 effectively improve financial education out-
6 comes and empower consumers to make
7 better informed financial decisions based
8 on findings.

9 (B) REPORT.—Not later than 1 year after
10 the date of enactment of this Act, the Comp-
11 troller General of the United States shall sub-
12 mit a report on the results of the study con-
13 ducted under this paragraph to the Committee
14 on Banking, Housing, and Urban Affairs of the
15 Senate and the Committee on Financial Serv-
16 ices of the House of Representatives.

17 (e) OFFICE OF SERVICE MEMBER AFFAIRS.—

18 (1) IN GENERAL.—The Director shall establish
19 an Office of Service Member Affairs, which shall be
20 responsible for developing and implementing initia-
21 tives for service members and their families intended
22 to—

23 (A) educate and empower service members
24 and their families to make better informed deci-

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1 sions regarding consumer financial products
2 and services;

3 (B) coordinate with the unit of the Bureau
4 established under subsection (b)(3), in order to
5 monitor complaints by service members and
6 their families and responses to those complaints
7 by the Bureau or other appropriate Federal or
8 State agency; and

9 (C) coordinate efforts among Federal and
10 State agencies, as appropriate, regarding con-
11 sumer protection measures relating to consumer
12 financial products and services offered to, or
13 used by, service members and their families.

14 (2) COORDINATION.—

15 (A) REGIONAL SERVICES.—The Director is
16 authorized to assign employees of the Bureau
17 as may be deemed necessary to conduct the
18 business of the Office of Service Member Af-
19 fairs, including by establishing and maintaining
20 the functions of the Office in regional offices of
21 the Bureau located near military bases, military
22 treatment facilities, or other similar military fa-
23 cilities.

24 (B) AGREEMENTS.—The Director is au-
25 thorized to enter into memoranda of under-

1 standing and similar agreements with the De-
2 partment of Defense, including any branch or
3 agency as authorized by the department, in
4 order to carry out the business of the Office of
5 Service Member Affairs.

6 (3) DEFINITION.—As used in this subsection,
7 the term “service member” means any member of
8 the United States Armed Forces and any member of
9 the National Guard or Reserves.

10 (f) TIMING.—The Office of Fair Lending and Equal
11 Opportunity, the Office of Financial Education, and the
12 Office of Service Member Affairs shall each be established
13 not later than 1 year after the designated transfer date.

14 (g) OFFICE OF FINANCIAL PROTECTION FOR OLDER
15 AMERICANS.—

16 (1) ESTABLISHMENT.—Before the end of the
17 180-day period beginning on the designated transfer
18 date, the Director shall establish the Office of Fi-
19 nancial Protection for Older Americans, the func-
20 tions of which shall include activities designed to fa-
21 cilitate the financial literacy of individuals who have
22 attained the age of 62 years or more (in this sub-
23 section, referred to as “seniors”) on protection from
24 unfair, deceptive, and abusive practices and on cur-
25 rent and future financial choices, including through

1 the dissemination of materials to seniors on such
2 topics.

3 (2) DIRECTOR.—The Office of Financial Pro-
4 tection for Older Americans (in this subsection re-
5 ferred to as the “Office”) shall be headed by an as-
6 sistant director.

7 (3) DUTIES.—The Office shall—

8 (A) develop goals for programs that pro-
9 vide seniors financial literacy and counseling,
10 including programs that—

11 (i) help seniors recognize warning
12 signs of unfair, deceptive, or abusive prac-
13 tices, protect themselves from such prac-
14 tices;

15 (ii) provide one-on-one financial coun-
16 seling on issues including long-term sav-
17 ings and later-life economic security; and

18 (iii) provide personal consumer credit
19 advocacy to respond to consumer problems
20 caused by unfair, deceptive, or abusive
21 practices;

22 (B) monitor certifications or designations
23 of financial advisors who advise seniors and
24 alert the Commission and State regulators of

1 certifications or designations that are identified
2 as unfair, deceptive, or abusive;

3 (C) not later than 18 months after the
4 date of the establishment of the Office, submit
5 to Congress and the Commission recommenda-
6 tions on the best practices for any legislative
7 and regulatory—

8 (i) disseminating information regard-
9 ing the legitimacy of certifications of finan-
10 cial advisers who advise seniors;

11 (ii) methods in which a senior can
12 identify the financial advisor most appro-
13 priate for the senior's needs; and

14 (iii) methods in which a senior can
15 verify a financial advisor's credentials;

16 (D) conduct research to identify best prac-
17 tices and effective methods, tools, technology
18 and strategies to educate and counsel seniors
19 about personal finance management with a
20 focus on—

21 (i) protecting themselves from unfair,
22 deceptive, and abusive practices;

23 (ii) long-term savings; and

24 (iii) planning for retirement and long-
25 term care;

1 (E) coordinate consumer protection efforts
2 of seniors with other Federal agencies and
3 State regulators, as appropriate, to promote
4 consistent, effective, and efficient enforcement;
5 and

6 (F) work with community organizations,
7 non-profit organizations, and other entities that
8 are involved with educating or assisting seniors
9 (including the National Education and Re-
10 source Center on Women and Retirement Plan-
11 ning).

12 **SEC. 1014. CONSUMER ADVISORY BOARD.**

13 (a) ESTABLISHMENT REQUIRED.—The Director shall
14 establish a Consumer Advisory Board to advise and con-
15 sult with the Bureau in the exercise of its functions under
16 the Federal consumer financial laws, and to provide infor-
17 mation on emerging practices in the consumer financial
18 products or services industry, including regional trends,
19 concerns, and other relevant information.

20 (b) MEMBERSHIP.—In appointing the members of
21 the Consumer Advisory Board, the Director shall seek to
22 assemble experts in consumer protection, financial serv-
23 ices, community development, fair lending and civil rights,
24 and consumer financial products or services and represent-
25 atives of depository institutions that primarily serve un-

1 derserved communities, and representatives of commu-
2 nities that have been significantly impacted by higher-
3 priced mortgage loans, and seek representation of the in-
4 terests of covered persons and consumers, without regard
5 to party affiliation. Not fewer than 6 members shall be
6 appointed upon the recommendation of the regional Fed-
7 eral Reserve Bank Presidents, on a rotating basis.

8 (c) MEETINGS.—The Consumer Advisory Board shall
9 meet from time to time at the call of the Director, but,
10 at a minimum, shall meet at least twice in each year.

11 (d) COMPENSATION AND TRAVEL EXPENSES.—Mem-
12 bers of the Consumer Advisory Board who are not full-
13 time employees of the United States shall—

14 (1) be entitled to receive compensation at a rate
15 fixed by the Director while attending meetings of the
16 Consumer Advisory Board, including travel time;
17 and

18 (2) be allowed travel expenses, including trans-
19 portation and subsistence, while away from their
20 homes or regular places of business.

21 **SEC. 1015. COORDINATION.**

22 The Bureau shall coordinate with the Commission,
23 the Commodity Futures Trading Commission, the Federal
24 Trade Commission, and other Federal agencies and State
25 regulators, as appropriate, to promote consistent regu-

1 latory treatment of consumer financial and investment
2 products and services.

3 **SEC. 1016. APPEARANCES BEFORE AND REPORTS TO CON-**
4 **GRESS.**

5 (a) APPEARANCES BEFORE CONGRESS.—The Direc-
6 tor of the Bureau shall appear before the Committee on
7 Banking, Housing, and Urban Affairs of the Senate and
8 the Committee on Financial Services and the Committee
9 on Energy and Commerce of the House of Representatives
10 at semi-annual hearings regarding the reports required
11 under subsection (b).

12 (b) REPORTS REQUIRED.—The Bureau shall, concur-
13 rent with each semi-annual hearing referred to in sub-
14 section (a), prepare and submit to the President and to
15 the Committee on Banking, Housing, and Urban Affairs
16 of the Senate and the Committee on Financial Services
17 and the Committee on Energy and Commerce of the
18 House of Representatives, a report, beginning with the
19 session following the designated transfer date. The Bureau
20 may also submit such report to the Committee on Com-
21 merce, Science, and Transportation of the Senate.

22 (c) CONTENTS.—The reports required by subsection
23 (b) shall include—

1 (1) a discussion of the significant problems
2 faced by consumers in shopping for or obtaining
3 consumer financial products or services;

4 (2) a justification of the budget request of the
5 previous year;

6 (3) a list of the significant rules and orders
7 adopted by the Bureau, as well as other significant
8 initiatives conducted by the Bureau, during the pre-
9 ceding year and the plan of the Bureau for rules, or-
10 ders, or other initiatives to be undertaken during the
11 upcoming period;

12 (4) an analysis of complaints about consumer
13 financial products or services that the Bureau has
14 received and collected in its central database on
15 complaints during the preceding year;

16 (5) a list, with a brief statement of the issues,
17 of the public supervisory and enforcement actions to
18 which the Bureau was a party during the preceding
19 year;

20 (6) the actions taken regarding rules, orders,
21 and supervisory actions with respect to covered per-
22 sons which are not credit unions or depository insti-
23 tutions;

1 (7) an assessment of significant actions by
2 State attorneys general or State regulators relating
3 to Federal consumer financial law;

4 (8) an analysis of the efforts of the Bureau to
5 fulfill the fair lending mission of the Bureau; and

6 (9) an analysis of the efforts of the Bureau to
7 increase workforce and contracting diversity con-
8 sistent with the procedures established by the Office
9 of Minority and Women Inclusion.

10 **SEC. 1017. FUNDING; PENALTIES AND FINES.**

11 (a) TRANSFER OF FUNDS FROM BOARD OF GOV-
12 ERNORS.—

13 (1) IN GENERAL.—Each year (or quarter of
14 such year), beginning on the designated transfer
15 date, and each quarter thereafter, the Board of Gov-
16 ernors shall transfer to the Bureau from the com-
17 bined earnings of the Federal Reserve System, the
18 amount determined by the Director to be reasonably
19 necessary to carry out the authorities of the Bureau
20 under Federal consumer financial law, taking into
21 account such other sums made available to the Bu-
22 reau from the preceding year (or quarter of such
23 year).

24 (2) FUNDING CAP.—

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1 (A) IN GENERAL.—Notwithstanding para-
2 graph (1), and in accordance with this para-
3 graph, the amount that shall be transferred to
4 the Bureau in each fiscal year shall not exceed
5 a fixed percentage of the total operating ex-
6 penses of the Federal Reserve System, as re-
7 ported in the Annual Report, 2009, of the
8 Board of Governors, equal to—

9 (i) 10 percent of such expenses in fis-
10 cal year 2011;

11 (ii) 11 percent of such expenses in fis-
12 cal year 2012; and

13 (iii) 12 percent of such expenses in
14 fiscal year 2013, and in each year there-
15 after.

16 (B) ADJUSTMENT OF AMOUNT.—The dol-
17 lar amount referred to in subparagraph (A)(iii)
18 shall be adjusted annually, using the percent in-
19 crease, if any, in the employment cost index for
20 total compensation for State and local govern-
21 ment workers published by the Federal Govern-
22 ment, or the successor index thereto, for the
23 12-month period ending on September 30 of the
24 year preceding the transfer.

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1 (C) REVIEWABILITY.—Notwithstanding
2 any other provision in this title, the funds de-
3 rived from the Federal System pursuant to this
4 subsection shall not be subject to review by the
5 Committees on Appropriations of the House of
6 Representatives and the Senate.

7 (3) TRANSITION PERIOD.—Beginning on the
8 date of enactment of this Act and until the des-
9 ignated transfer date, the Board of Governors shall
10 transfer to the Bureau the amount estimated by the
11 Secretary needed to carry out the authorities grant-
12 ed to the Bureau under Federal consumer financial
13 law, from the date of enactment of this Act until the
14 designated transfer date.

15 (4) BUDGET AND FINANCIAL MANAGEMENT.—

16 (A) FINANCIAL OPERATING PLANS AND
17 FORECASTS.—The Director shall provide to the
18 Director of the Office of Management and
19 Budget copies of the financial operating plans
20 and forecasts of the Director, as prepared by
21 the Director in the ordinary course of the oper-
22 ations of the Bureau, and copies of the quar-
23 terly reports of the financial condition and re-
24 sults of operations of the Bureau, as prepared

1 by the Director in the ordinary course of the
2 operations of the Bureau.

3 (B) FINANCIAL STATEMENTS.—The Bu-
4 reau shall prepare annually a statement of—

5 (i) assets and liabilities and surplus or
6 deficit;

7 (ii) income and expenses; and

8 (iii) sources and application of funds.

9 (C) FINANCIAL MANAGEMENT SYSTEMS.—
10 The Bureau shall implement and maintain fi-
11 nancial management systems that comply sub-
12 stantially with Federal financial management
13 systems requirements and applicable Federal
14 accounting standards.

15 (D) ASSERTION OF INTERNAL CON-
16 TROLS.—The Director shall provide to the
17 Comptroller General of the United States an as-
18 sertion as to the effectiveness of the internal
19 controls that apply to financial reporting by the
20 Bureau, using the standards established in sec-
21 tion 3512(e) of title 31, United States Code.

22 (E) RULE OF CONSTRUCTION.—This sub-
23 section may not be construed as implying any
24 obligation on the part of the Director to consult
25 with or obtain the consent or approval of the

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1 Director of the Office of Management and
2 Budget with respect to any report, plan, fore-
3 cast, or other information referred to in sub-
4 paragraph (A) or any jurisdiction or oversight
5 over the affairs or operations of the Bureau.

6 (F) FINANCIAL STATEMENTS.—The finan-
7 cial statements of the Bureau shall not be con-
8 solidated with the financial statements of either
9 the Board of Governors or the Federal Reserve
10 System.

11 (5) AUDIT OF THE BUREAU.—

12 (A) IN GENERAL.—The Comptroller Gen-
13 eral shall annually audit the financial trans-
14 actions of the Bureau in accordance with the
15 United States generally accepted government
16 auditing standards, as may be prescribed by the
17 Comptroller General of the United States. The
18 audit shall be conducted at the place or places
19 where accounts of the Bureau are normally
20 kept. The representatives of the Government
21 Accountability Office shall have access to the
22 personnel and to all books, accounts, docu-
23 ments, papers, records (including electronic
24 records), reports, files, and all other papers,
25 automated data, things, or property belonging

1 to or under the control of or used or employed
2 by the Bureau pertaining to its financial trans-
3 actions and necessary to facilitate the audit,
4 and such representatives shall be afforded full
5 facilities for verifying transactions with the bal-
6 ances or securities held by depositories, fiscal
7 agents, and custodians. All such books, ac-
8 counts, documents, records, reports, files, pa-
9 pers, and property of the Bureau shall remain
10 in possession and custody of the Bureau. The
11 Comptroller General may obtain and duplicate
12 any such books, accounts, documents, records,
13 working papers, automated data and files, or
14 other information relevant to such audit with-
15 out cost to the Comptroller General, and the
16 right of access of the Comptroller General to
17 such information shall be enforceable pursuant
18 to section 716(c) of title 31, United States
19 Code.

20 (B) REPORT.—The Comptroller General
21 shall submit to the Congress a report of each
22 annual audit conducted under this subsection.
23 The report to the Congress shall set forth the
24 scope of the audit and shall include the state-
25 ment of assets and liabilities and surplus or

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1 deficit, the statement of income and expenses,
2 the statement of sources and application of
3 funds, and such comments and information as
4 may be deemed necessary to inform Congress of
5 the financial operations and condition of the
6 Bureau, together with such recommendations
7 with respect thereto as the Comptroller General
8 may deem advisable. A copy of each report shall
9 be furnished to the President and to the Bu-
10 reau at the time submitted to the Congress.

11 (C) ASSISTANCE AND COSTS.—For the
12 purpose of conducting an audit under this sub-
13 section, the Comptroller General may, in the
14 discretion of the Comptroller General, employ
15 by contract, without regard to section 3709 of
16 the Revised Statutes of the United States (41
17 U.S.C. 5), professional services of firms and or-
18 ganizations of certified public accountants for
19 temporary periods or for special purposes. Upon
20 the request of the Comptroller General, the Di-
21 rector of the Bureau shall transfer to the Gov-
22 ernment Accountability Office from funds avail-
23 able, the amount requested by the Comptroller
24 General to cover the full costs of any audit and
25 report conducted by the Comptroller General.

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1 The Comptroller General shall credit funds
2 transferred to the account established for sala-
3 ries and expenses of the Government Account-
4 ability Office, and such amount shall be avail-
5 able upon receipt and without fiscal year limita-
6 tion to cover the full costs of the audit and re-
7 port.

8 (b) CONSUMER FINANCIAL PROTECTION FUND.—

9 (1) SEPARATE FUND IN FEDERAL RESERVE ES-
10 TABLISHED.—There is established in the Federal
11 Reserve a separate fund, to be known as the “Bu-
12 reau of Consumer Financial Protection Fund” (re-
13 ferred to in this section as the “Bureau Fund”).
14 The Bureau Fund shall be maintained and estab-
15 lished at a Federal reserve bank, in accordance with
16 such requirements as the Board of Governors may
17 impose.

18 (2) FUND RECEIPTS.—All amounts transferred
19 to the Bureau under subsection (a) shall be depos-
20 ited into the Bureau Fund.

21 (3) INVESTMENT AUTHORITY.—

22 (A) AMOUNTS IN BUREAU FUND MAY BE
23 INVESTED.—The Bureau may request the
24 Board of Governors to direct the investment of
25 the portion of the Bureau Fund that is not, in

1 the judgment of the Bureau, required to meet
2 the current needs of the Bureau.

3 (B) ELIGIBLE INVESTMENTS.—Invest-
4 ments authorized by this paragraph shall be
5 made in obligations of the United States or ob-
6 ligations that are guaranteed as to principal
7 and interest by the United States, with matu-
8 rities suitable to the needs of the Bureau Fund,
9 as determined by the Bureau.

10 (C) INTEREST AND PROCEEDS CRED-
11 ITED.—The interest on, and the proceeds from
12 the sale or redemption of, any obligations held
13 in the Bureau Fund shall be credited to the
14 Bureau Fund.

15 (c) USE OF FUNDS.—

16 (1) IN GENERAL.—Funds obtained by, trans-
17 ferred to, or credited to the Bureau Fund shall be
18 immediately available to the Bureau and under the
19 control of the Director, and shall remain available
20 until expended, to pay the expenses of the Bureau
21 in carrying out its duties and responsibilities. The
22 compensation of the Director and other employees of
23 the Bureau and all other expenses thereof may be
24 paid from, obtained by, transferred to, or credited to
25 the Bureau Fund under this section.

1 (2) FUNDS THAT ARE NOT GOVERNMENT
2 FUNDS.—Funds obtained by or transferred to the
3 Bureau Fund shall not be construed to be Govern-
4 ment funds or appropriated monies.

5 (3) AMOUNTS NOT SUBJECT TO APPORTION-
6 MENT.—Notwithstanding any other provision of law,
7 amounts in the Bureau Fund and in the Civil Pen-
8 alty Fund established under subsection (d) shall not
9 be subject to apportionment for purposes of chapter
10 15 of title 31, United States Code, or under any
11 other authority.

12 (d) PENALTIES AND FINES.—

13 (1) ESTABLISHMENT OF VICTIMS RELIEF
14 FUND.—There is established in the Federal Reserve
15 a separate fund, to be known as the “Consumer Fi-
16 nancial Civil Penalty Fund” (referred to in this sec-
17 tion as the “Civil Penalty Fund”). The Civil Penalty
18 Fund shall be maintained and established at a Fed-
19 eral reserve bank, in accordance with such require-
20 ments as the Board of Governors may impose. If the
21 Bureau obtains a civil penalty against any person in
22 any judicial or administrative action under Federal
23 consumer financial laws, the Bureau shall deposit
24 into the Civil Penalty Fund, the amount of the pen-
25 alty collected.

1 (2) PAYMENT TO VICTIMS.—Amounts in the
2 Civil Penalty Fund shall be available to the Bureau,
3 without fiscal year limitation, for payments to the
4 victims of activities for which civil penalties have
5 been imposed under the Federal consumer financial
6 laws. To the extent that such victims cannot be lo-
7 cated or such payments are otherwise not prac-
8 ticable, the Bureau may use such funds for the pur-
9 pose of consumer education and financial literacy
10 programs.

11 (e) AUTHORIZATION OF APPROPRIATIONS; ANNUAL
12 REPORT.—

13 (1) DETERMINATION REGARDING NEED FOR
14 APPROPRIATED FUNDS.—

15 (A) IN GENERAL.—The Director is author-
16 ized to determine that sums available to the
17 Bureau under this section will not be sufficient
18 to carry out the authorities of the Bureau
19 under Federal consumer financial law for the
20 upcoming year.

21 (B) REPORT REQUIRED.—When making a
22 determination under subparagraph (A), the Di-
23 rector shall prepare a report regarding the
24 funding of the Bureau, including the assets and
25 liabilities of the Bureau, and the extent to

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1 which the funding needs of the Bureau are an-
2 ticipated to exceed the level of the amount set
3 forth in subsection (a)(2). The Director shall
4 submit the report to the President and to the
5 Committee on Appropriations of the Senate and
6 the Committee on Appropriations of the House
7 of Representatives.

8 (2) AUTHORIZATION OF APPROPRIATIONS.—If
9 the Director makes the determination and submits
10 the report pursuant to paragraph (1), there are
11 hereby authorized to be appropriated to the Bureau,
12 for the purposes of carrying out the authorities
13 granted in Federal consumer financial law,
14 \$200,000,000 for each of fiscal years 2010, 2011,
15 2012, 2013, and 2014.

16 (3) APPORTIONMENT.—Notwithstanding any
17 other provision of law, the amounts in paragraph (2)
18 shall be subject to apportionment under section
19 1517 of title 31, United States Code, and restric-
20 tions that generally apply to the use of appropriated
21 funds in title 31, United States Code, and other
22 laws.

23 (4) ANNUAL REPORT.—The Director shall pre-
24 pare and submit a report, on an annual basis, to the
25 Committee on Appropriations of the Senate and the

1 Committee on Appropriations of the House of Rep-
2 resentatives regarding the financial operating plans
3 and forecasts of the Director, the financial condition
4 and results of operations of the Bureau, and the
5 sources and application of funds of the Bureau, in-
6 cluding any funds appropriated in accordance with
7 this subsection.

8 **SEC. 1018. EFFECTIVE DATE.**

9 This subtitle shall become effective on the date of en-
10 actment of this Act.

11 **Subtitle B—General Powers of the**
12 **Bureau**

13 **SEC. 1021. PURPOSE, OBJECTIVES, AND FUNCTIONS.**

14 (a) **PURPOSE.**—The Bureau shall seek to implement
15 and, where applicable, enforce Federal consumer financial
16 law consistently for the purpose of ensuring that all con-
17 sumers have access to markets for consumer financial
18 products and services and that markets for consumer fi-
19 nancial products and services are fair, transparent, and
20 competitive.

21 (b) **OBJECTIVES.**—The Bureau is authorized to exer-
22 cise its authorities under Federal consumer financial law
23 for the purposes of ensuring that, with respect to con-
24 sumer financial products and services—

1 (1) consumers are provided with timely and un-
2 derstandable information to make responsible deci-
3 sions about financial transactions;

4 (2) consumers are protected from unfair, decep-
5 tive, or abusive acts and practices and from dis-
6 crimination;

7 (3) outdated, unnecessary, or unduly burden-
8 some regulations are regularly identified and ad-
9 dressed in order to reduce unwarranted regulatory
10 burdens;

11 (4) Federal consumer financial law is enforced
12 consistently, without regard to the status of a person
13 as a depository institution, in order to promote fair
14 competition; and

15 (5) markets for consumer financial products
16 and services operate transparently and efficiently to
17 facilitate access and innovation.

18 (c) FUNCTIONS.—The primary functions of the Bu-
19 reau are—

20 (1) conducting financial education programs;

21 (2) collecting, investigating, and responding to
22 consumer complaints;

23 (3) collecting, researching, monitoring, and
24 publishing information relevant to the functioning of
25 markets for consumer financial products and serv-

1 ices to identify risks to consumers and the proper
2 functioning of such markets;

3 (4) subject to sections 1024 through 1026, su-
4 pervising covered persons for compliance with Fed-
5 eral consumer financial law, and taking appropriate
6 enforcement action to address violations of Federal
7 consumer financial law;

8 (5) issuing rules, orders, and guidance imple-
9 menting Federal consumer financial law; and

10 (6) performing such support activities as may
11 be necessary or useful to facilitate the other func-
12 tions of the Bureau.

13 **SEC. 1022. RULEMAKING AUTHORITY.**

14 (a) **IN GENERAL.**—The Bureau is authorized to exer-
15 cise its authorities under Federal consumer financial law
16 to administer, enforce, and otherwise implement the provi-
17 sions of Federal consumer financial law.

18 (b) **RULEMAKING, ORDERS, AND GUIDANCE.**—

19 (1) **GENERAL AUTHORITY.**—The Director may
20 prescribe rules and issue orders and guidance, as
21 may be necessary or appropriate to enable the Bu-
22 reau to administer and carry out the purposes and
23 objectives of the Federal consumer financial laws,
24 and to prevent evasions thereof.

1 (2) STANDARDS FOR RULEMAKING.—In pre-
2 scribing a rule under the Federal consumer financial
3 laws—

4 (A) the Bureau shall consider—

5 (i) the potential benefits and costs to
6 consumers and covered persons, including
7 the potential reduction of access by con-
8 sumers to consumer financial products or
9 services resulting from such rule; and

10 (ii) the impact of proposed rules on
11 covered persons, as described in section
12 1026, and the impact on consumers in
13 rural areas;

14 (B) the Bureau shall consult with the ap-
15 propriate prudential regulators or other Federal
16 agencies prior to proposing a rule and during
17 the comment process regarding consistency with
18 prudential, market, or systemic objectives ad-
19 ministered by such agencies; and

20 (C) if, during the consultation process de-
21 scribed in subparagraph (B), a prudential regu-
22 lator provides the Bureau with a written objec-
23 tion to the proposed rule of the Bureau or a
24 portion thereof, the Bureau shall include in the
25 adopting release a description of the objection

1 and the basis for the Bureau decision, if any,
2 regarding such objection, except that nothing in
3 this clause shall be construed as altering or lim-
4 iting the procedures under section 1023 that
5 may apply to any rule prescribed by the Bu-
6 reau.

7 (3) EXEMPTIONS.—

8 (A) IN GENERAL.—The Bureau, by rule,
9 may conditionally or unconditionally exempt
10 any class of covered persons, service providers,
11 or consumer financial products or services, from
12 any provision of this title, or from any rule
13 issued under this title, as the Bureau deter-
14 mines necessary or appropriate to carry out the
15 purposes and objectives of this title, taking into
16 consideration the factors in subparagraph (B).

17 (B) FACTORS.—In issuing an exemption,
18 as permitted under subparagraph (A), the Bu-
19 reau shall, as appropriate, take into consider-
20 ation—

21 (i) the total assets of the class of cov-
22 ered persons;

23 (ii) the volume of transactions involv-
24 ing consumer financial products or services

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1 in which the class of covered persons en-
2 gages; and

3 (iii) existing provisions of law which
4 are applicable to the consumer financial
5 product or service and the extent to which
6 such provisions provide consumers with
7 adequate protections.

8 (4) EXCLUSIVE RULEMAKING AUTHORITY.—

9 (A) IN GENERAL.—Notwithstanding any
10 other provisions of Federal law and except as
11 provided in section 1061(b)(5), to the extent
12 that a provision of Federal consumer financial
13 law authorizes the Bureau and another Federal
14 agency to issue regulations under that provision
15 of law for purposes of assuring compliance with
16 Federal consumer financial law and any regula-
17 tions thereunder, the Bureau shall have the ex-
18 clusive authority to prescribe rules subject to
19 those provisions of law.

20 (B) DEFERENCE.—Notwithstanding any
21 power granted to any Federal agency or to the
22 Council under this title, and subject to section
23 1061(b)(5)(E), the deference that a court af-
24 fords to the Bureau with respect to a deter-
25 mination by the Bureau regarding the meaning

1 or interpretation of any provision of a Federal
2 consumer financial law shall be applied as if the
3 Bureau were the only agency authorized to
4 apply, enforce, interpret, or administer the pro-
5 visions of such Federal consumer financial law.

6 (c) MONITORING.—

7 (1) IN GENERAL.—In order to support its rule-
8 making and other functions, the Bureau shall mon-
9 itor for risks to consumers in the offering or provi-
10 sion of consumer financial products or services, in-
11 cluding developments in markets for such products
12 or services.

13 (2) CONSIDERATIONS.—In allocating its re-
14 sources to perform the monitoring required by this
15 section, the Bureau may consider, among other fac-
16 tors—

17 (A) likely risks and costs to consumers as-
18 sociated with buying or using a type of con-
19 sumer financial product or service;

20 (B) understanding by consumers of the
21 risks of a type of consumer financial product or
22 service;

23 (C) the legal protections applicable to the
24 offering or provision of a consumer financial
25 product or service, including the extent to which

1 the law is likely to adequately protect con-
2 sumers;

3 (D) rates of growth in the offering or pro-
4 vision of a consumer financial product or serv-
5 ice;

6 (E) the extent, if any, to which the risks
7 of a consumer financial product or service may
8 disproportionately affect traditionally under-
9 served consumers; or

10 (F) the types, number, and other pertinent
11 characteristics of covered persons that offer or
12 provide the consumer financial product or serv-
13 ice.

14 (3) SIGNIFICANT FINDINGS.—

15 (A) IN GENERAL.—The Bureau shall pub-
16 lish not fewer than 1 report of significant find-
17 ings of its monitoring required by this sub-
18 section in each calendar year, beginning with
19 the first calendar year that begins at least 1
20 year after the designated transfer date.

21 (B) CONFIDENTIAL INFORMATION.—The
22 Bureau may make public such information ob-
23 tained by the Bureau under this section as is
24 in the public interest, through aggregated re-
25 ports or other appropriate formats designed to

1 protect confidential information in accordance
2 with paragraphs (4), (6), (8), and (9).

3 (4) COLLECTION OF INFORMATION.—

4 (A) IN GENERAL.—In conducting any
5 monitoring or assessment required by this sec-
6 tion, the Bureau shall have the authority to
7 gather information from time to time regarding
8 the organization, business conduct, markets,
9 and activities of covered persons and service
10 providers.

11 (B) METHODOLOGY.—In order to gather
12 information described in subparagraph (A), the
13 Bureau may—

14 (i) gather and compile information
15 from a variety of sources, including exam-
16 ination reports concerning covered persons
17 or service providers, consumer complaints,
18 voluntary surveys and voluntary interviews
19 of consumers, surveys and interviews with
20 covered persons and service providers, and
21 review of available databases; and

22 (ii) require covered persons and serv-
23 ice providers participating in consumer fi-
24 nancial services markets to file with the
25 Bureau, under oath or otherwise, in such

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1 form and within such reasonable period of
2 time as the Bureau may prescribe by rule
3 or order, annual or special reports, or an-
4 swers in writing to specific questions, fur-
5 nishing information described in paragraph
6 (4), as necessary for the Bureau to fulfill
7 the monitoring, assessment, and reporting
8 responsibilities imposed by Congress.

9 (C) LIMITATION.—The Bureau may not
10 use its authorities under this paragraph to ob-
11 tain records from covered persons and service
12 providers participating in consumer financial
13 services markets for purposes of gathering or
14 analyzing the personally identifiable financial
15 information of consumers.

16 (5) LIMITED INFORMATION GATHERING.—In
17 order to assess whether a nondepository is a covered
18 person, as defined in section 1002, the Bureau may
19 require such nondepository to file with the Bureau,
20 under oath or otherwise, in such form and within
21 such reasonable period of time as the Bureau may
22 prescribe by rule or order, annual or special reports,
23 or answers in writing to specific questions.

24 (6) CONFIDENTIALITY RULES.—

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1 (A) RULEMAKING.—The Bureau shall pre-
2 scribe rules regarding the confidential treat-
3 ment of information obtained from persons in
4 connection with the exercise of its authorities
5 under Federal consumer financial law.

6 (B) ACCESS BY THE BUREAU TO REPORTS
7 OF OTHER REGULATORS.—

8 (i) EXAMINATION AND FINANCIAL
9 CONDITION REPORTS.—Upon providing
10 reasonable assurances of confidentiality,
11 the Bureau shall have access to any report
12 of examination or financial condition made
13 by a prudential regulator or other Federal
14 agency having jurisdiction over a covered
15 person or service provider, and to all revi-
16 sions made to any such report.

17 (ii) PROVISION OF OTHER REPORTS
18 TO THE BUREAU.—In addition to the re-
19 ports described in clause (i), a prudential
20 regulator or other Federal agency having
21 jurisdiction over a covered person or serv-
22 ice provider may, in its discretion, furnish
23 to the Bureau any other report or other
24 confidential supervisory information con-
25 cerning any insured depository institution,

1 credit union, or other entity examined by
2 such agency under authority of any provi-
3 sion of Federal law.

4 (C) ACCESS BY OTHER REGULATORS TO
5 REPORTS OF THE BUREAU.—

6 (i) EXAMINATION REPORTS.—Upon
7 providing reasonable assurances of con-
8 fidentiality, a prudential regulator, a State
9 regulator, or any other Federal agency
10 having jurisdiction over a covered person
11 or service provider shall have access to any
12 report of examination made by the Bureau
13 with respect to such person, and to all re-
14 visions made to any such report.

15 (ii) PROVISION OF OTHER REPORTS
16 TO OTHER REGULATORS.—In addition to
17 the reports described in clause (i), the Bu-
18 reau may, in its discretion, furnish to a
19 prudential regulator or other agency hav-
20 ing jurisdiction over a covered person or
21 service provider any other report or other
22 confidential supervisory information con-
23 cerning such person examined by the Bu-
24 reau under the authority of any other pro-
25 vision of Federal law.

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1 (7) REGISTRATION.—

2 (A) IN GENERAL.—The Bureau may pre-
3 scribe rules regarding registration requirements
4 applicable to a covered person, other than an
5 insured depository institution, insured credit
6 union, or related person.

7 (B) REGISTRATION INFORMATION.—Sub-
8 ject to rules prescribed by the Bureau, the Bu-
9 reau may publicly disclose registration informa-
10 tion to facilitate the ability of consumers to
11 identify covered persons that are registered with
12 the Bureau.

13 (C) CONSULTATION WITH STATE AGEN-
14 CIES.—In developing and implementing reg-
15 istration requirements under this paragraph,
16 the Bureau shall consult with State agencies re-
17 garding requirements or systems (including co-
18 ordinated or combined systems for registration),
19 where appropriate.

20 (8) PRIVACY CONSIDERATIONS.—In collecting
21 information from any person, publicly releasing in-
22 formation held by the Bureau, or requiring covered
23 persons to publicly report information, the Bureau
24 shall take steps to ensure that proprietary, personal,
25 or confidential consumer information that is pro-

1 tected from public disclosure under section 552(b) or
2 552a of title 5, United States Code, or any other
3 provision of law, is not made public under this title.

4 (9) CONSUMER PRIVACY.—

5 (A) IN GENERAL.—The Bureau may not
6 obtain from a covered person or service provider
7 any personally identifiable financial information
8 about a consumer from the financial records of
9 the covered person or service provider, except—

10 (i) if the financial records are reason-
11 ably described in a request by the Bureau
12 and the consumer provides written permis-
13 sion for the disclosure of such information
14 by the covered person or service provider
15 to the Bureau; or

16 (ii) as may be specifically permitted or
17 required under other applicable provisions
18 of law and in accordance with the Right to
19 Financial Privacy Act of 1978 (12 U.S.C.
20 3401 et seq.).

21 (B) TREATMENT OF COVERED PERSON OR
22 SERVICE PROVIDER.—With respect to the appli-
23 cation of any provision of the Right to Finan-
24 cial Privacy Act of 1978, to a disclosure by a
25 covered person or service provider subject to

1 this subsection, the covered person or service
2 provider shall be treated as if it were a “finan-
3 cial institution”, as defined in section 1101 of
4 that Act (12 U.S.C. 3401).

5 (d) ASSESSMENT OF SIGNIFICANT RULES.—

6 (1) IN GENERAL.—The Bureau shall conduct
7 an assessment of each significant rule or order
8 adopted by the Bureau under Federal consumer fi-
9 nancial law. The assessment shall address, among
10 other relevant factors, the effectiveness of the rule or
11 order in meeting the purposes and objectives of this
12 title and the specific goals stated by the Bureau.
13 The assessment shall reflect available evidence and
14 any data that the Bureau reasonably may collect.

15 (2) REPORTS.—The Bureau shall publish a re-
16 port of its assessment under this subsection not
17 later than 5 years after the effective date of the sub-
18 ject rule or order.

19 (3) PUBLIC COMMENT REQUIRED.—Before pub-
20 lishing a report of its assessment, the Bureau shall
21 invite public comment on recommendations for modi-
22 fying, expanding, or eliminating the newly adopted
23 significant rule or order.

1 **SEC. 1023. REVIEW OF BUREAU REGULATIONS.**

2 (a) REVIEW OF BUREAU REGULATIONS.—On the pe-
3 tition of a member agency of the Council, the Council may
4 set aside a final regulation prescribed by the Bureau, or
5 any provision thereof, if the Council decides, in accordance
6 with subsection (c), that the regulation or provision would
7 put the safety and soundness of the United States banking
8 system or the stability of the financial system of the
9 United States at risk.

10 (b) PETITION.—

11 (1) PROCEDURE.—An agency represented by a
12 member of the Council may petition the Council, in
13 writing, and in accordance with rules prescribed pur-
14 suant to subsection (f), to stay the effectiveness of,
15 or set aside, a regulation if the member agency filing
16 the petition—

17 (A) has in good faith attempted to work
18 with the Bureau to resolve concerns regarding
19 the effect of the rule on the safety and sound-
20 ness of the United States banking system or
21 the stability of the financial system of the
22 United States; and

23 (B) files the petition with the Council not
24 later than 10 days after the date on which the
25 regulation has been published in the Federal
26 Register.

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1 (2) PUBLICATION.—Any petition filed with the
2 Council under this section shall be published in the
3 Federal Register and transmitted contemporaneously
4 with filing to the Committee on Banking, Housing,
5 and Urban Affairs of the Senate and the Committee
6 on Financial Services of the House of Representa-
7 tives.

8 (c) STAYS AND SET ASIDES.—

9 (1) STAY.—

10 (A) IN GENERAL.—Upon the request of
11 any member agency, the Chairperson of the
12 Council may stay the effectiveness of a regula-
13 tion for the purpose of allowing appropriate
14 consideration of the petition by the Council.

15 (B) EXPIRATION.—A stay issued under
16 this paragraph shall expire on the earlier of—

17 (i) 90 days after the date of filing of
18 the petition under subsection (b); or

19 (ii) the date on which the Council
20 makes a decision under paragraph (3).

21 (2) NO ADVERSE INFERENCE.—After the expi-
22 ration of any stay imposed under this section, no in-
23 ference shall be drawn regarding the validity or en-
24 forceability of a regulation which was the subject of
25 the petition.

1 (3) VOTE.—

2 (A) IN GENERAL.—The decision to issue a
3 stay of, or set aside, any regulation under this
4 section shall be made only with the affirmative
5 vote in accordance with subparagraph (B) of $\frac{2}{3}$
6 of the members of the Council then serving.

7 (B) AUTHORIZATION TO VOTE.—A member
8 of the Council may vote to stay the effectiveness
9 of, or set aside, a final regulation prescribed by
10 the Bureau only if the agency or department
11 represented by that member has—

12 (i) considered any relevant informa-
13 tion provided by the agency submitting the
14 petition and by the Bureau; and

15 (ii) made an official determination, at
16 a public meeting where applicable, that the
17 regulation which is the subject of the peti-
18 tion would put the safety and soundness of
19 the United States banking system or the
20 stability of the financial system of the
21 United States at risk.

22 (4) DECISIONS TO SET ASIDE.—

23 (A) EFFECT OF DECISION.—A decision by
24 the Council to set aside a regulation prescribed
25 by the Bureau, or provision thereof, shall

1 render such regulation, or provision thereof, un-
2 enforceable.

3 (B) **TIMELY ACTION REQUIRED.**—The
4 Council may not issue a decision to set aside a
5 regulation, or provision thereof, which is the
6 subject of a petition under this section after the
7 expiration of the later of—

8 (i) 45 days following the date of filing
9 of the petition, unless a stay is issued
10 under paragraph (1); or

11 (ii) the expiration of a stay issued by
12 the Council under this section.

13 (C) **SEPARATE AUTHORITY.**—The issuance
14 of a stay under this section does not affect the
15 authority of the Council to set aside a regula-
16 tion.

17 (5) **DISMISSAL DUE TO INACTION.**—A petition
18 under this section shall be deemed dismissed if the
19 Council has not issued a decision to set aside a regu-
20 lation, or provision thereof, within the period for
21 timely action under paragraph (4)(B).

22 (6) **PUBLICATION OF DECISION.**—Any decision
23 under this subsection to issue a stay of, or set aside,
24 a regulation or provision thereof shall be published
25 by the Council in the Federal Register as soon as

1 practicable after the decision is made, with an expla-
2 nation of the reasons for the decision.

3 (7) RULEMAKING PROCEDURES INAPPLI-
4 CABLE.—The notice and comment procedures under
5 section 553 of title 5, United States Code, shall not
6 apply to any decision under this section of the Coun-
7 cil to issue a stay of, or set aside, a regulation.

8 (8) JUDICIAL REVIEW OF DECISIONS BY THE
9 COUNCIL.—A decision by the Council to set aside a
10 regulation prescribed by the Bureau, or provision
11 thereof, shall be subject to review under chapter 7
12 of title 5, United States Code.

13 (d) APPLICATION OF OTHER LAW.—Nothing in this
14 section shall be construed as altering, limiting, or restrict-
15 ing the application of any other provision of law, except
16 as otherwise specifically provided in this section, including
17 chapter 5 and chapter 7 of title 5, United States Code,
18 to a regulation which is the subject of a petition filed
19 under this section.

20 (e) SAVINGS CLAUSE.—Nothing in this section shall
21 be construed as limiting or restricting the Bureau from
22 engaging in a rulemaking in accordance with applicable
23 law.

24 (f) IMPLEMENTING RULES.—The Council shall pre-
25 scribe procedural rules to implement this section.

1 **SEC. 1024. SUPERVISION OF NONDEPOSITORY COVERED**
2 **PERSONS.**

3 (a) SCOPE OF COVERAGE.—

4 (1) APPLICABILITY.—Notwithstanding any
5 other provision of this title, and except as provided
6 in paragraph (3), this section shall apply to any cov-
7 ered person who—

8 (A) offers or provides origination, broker-
9 age, or servicing of loans secured by real estate
10 for use by consumers primarily for personal,
11 family, or household purposes, or loan modifica-
12 tion or foreclosure relief services in connection
13 with such loans;

14 (B) is a larger participant of a market for
15 other consumer financial products or services,
16 as defined by rule in accordance with paragraph
17 (2);

18 (C) the Bureau has reasonable cause to de-
19 termine, by order, after notice to the covered
20 person and a reasonable opportunity for such
21 covered person to respond, based on complaints
22 collected through the system under section
23 1013(b)(3) or information from other sources,
24 that such covered person is engaging, or has en-
25 gaged, in conduct that poses risks to consumers

1 with regard to the offering or provision of con-
2 sumer financial products or services;

3 (D) offers or provides to a consumer any
4 private education loan, as defined in section
5 140 of the Truth in Lending Act (15 U.S.C.
6 1650), notwithstanding section 1027(a)(2)(A)
7 and subject to section 1027(a)(2)(C); or

8 (E) offers or provides to a consumer a pay-
9 day loan.

10 (2) RULEMAKING TO DEFINE COVERED PER-
11 SONS SUBJECT TO THIS SECTION.—The Bureau
12 shall consult with the Federal Trade Commission
13 prior to issuing a rule, in accordance with paragraph
14 (1)(B), to define covered persons subject to this sec-
15 tion. The Bureau shall issue its initial rule not later
16 than 1 year after the designated transfer date.

17 (3) RULES OF CONSTRUCTION.—

18 (A) CERTAIN PERSONS EXCLUDED.—This
19 section shall not apply to persons described in
20 section 1025(a) or 1026(a).

21 (B) ACTIVITY LEVELS.—For purposes of
22 computing activity levels under paragraph (1)
23 or rules issued thereunder, activities of affili-
24 ated companies (other than insured depository

1 institutions or insured credit unions) shall be
2 aggregated.

3 (b) SUPERVISION.—

4 (1) IN GENERAL.—The Bureau shall require re-
5 ports and conduct examinations on a periodic basis
6 of persons described in subsection (a)(1) for pur-
7 poses of—

8 (A) assessing compliance with the require-
9 ments of Federal consumer financial law;

10 (B) obtaining information about the activi-
11 ties and compliance systems or procedures of
12 such person; and

13 (C) detecting and assessing risks to con-
14 sumers and to markets for consumer financial
15 products and services.

16 (2) RISK-BASED SUPERVISION PROGRAM.—The
17 Bureau shall exercise its authority under paragraph
18 (1) in a manner designed to ensure that such exer-
19 cise, with respect to persons described in subsection
20 (a)(1), is based on the assessment by the Bureau of
21 the risks posed to consumers in the relevant product
22 markets and geographic markets, and taking into
23 consideration, as applicable—

24 (A) the asset size of the covered person;

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1 (B) the volume of transactions involving
2 consumer financial products or services in
3 which the covered person engages;

4 (C) the risks to consumers created by the
5 provision of such consumer financial products
6 or services;

7 (D) the extent to which such institutions
8 are subject to oversight by State authorities for
9 consumer protection; and

10 (E) any other factors that the Bureau de-
11 termines to be relevant to a class of covered
12 persons.

13 (3) COORDINATION.—To minimize regulatory
14 burden, the Bureau shall coordinate its supervisory
15 activities with the supervisory activities conducted by
16 prudential regulators and the State bank regulatory
17 authorities, including establishing their respective
18 schedules for examining persons described in sub-
19 section (a)(1) and requirements regarding reports to
20 be submitted by such persons.

21 (4) USE OF EXISTING REPORTS.—The Bureau
22 shall, to the fullest extent possible, use—

23 (A) reports pertaining to persons described
24 in subsection (a)(1) that have been provided or

1 required to have been provided to a Federal or
2 State agency; and

3 (B) information that has been reported
4 publicly.

5 (5) PRESERVATION OF AUTHORITY.—Nothing
6 in this title may be construed as limiting the author-
7 ity of the Director to require reports from persons
8 described in subsection (a)(1), as permitted under
9 paragraph (1), regarding information owned or
10 under the control of such person, regardless of
11 whether such information is maintained, stored, or
12 processed by another person.

13 (6) REPORTS OF TAX LAW NONCOMPLIANCE.—
14 The Bureau shall provide the Commissioner of In-
15 ternal Revenue with any report of examination or re-
16 lated information identifying possible tax law non-
17 compliance.

18 (7) REGISTRATION, RECORDKEEPING AND
19 OTHER REQUIREMENTS FOR CERTAIN PERSONS.—

20 (A) IN GENERAL.—The Bureau shall pre-
21 scribe rules to facilitate supervision of persons
22 described in subsection (a)(1) and assessment
23 and detection of risks to consumers.

24 (B) RECORDKEEPING.—The Bureau may
25 require a person described in subsection (a)(1),

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1 to generate, provide, or retain records for the
2 purposes of facilitating supervision of such per-
3 sons and assessing and detecting risks to con-
4 sumers.

5 (C) REQUIREMENTS CONCERNING OBLIGA-
6 TIONS.—The Bureau may prescribe rules re-
7 garding a person described in subsection (a)(1),
8 to ensure that such persons are legitimate enti-
9 ties and are able to perform their obligations to
10 consumers. Such requirements may include
11 background checks for principals, officers, di-
12 rectors, or key personnel and bonding or other
13 appropriate financial requirements.

14 (D) CONSULTATION WITH STATE AGEN-
15 CIES.—In developing and implementing require-
16 ments under this paragraph, the Bureau shall
17 consult with State agencies regarding require-
18 ments or systems (including coordinated or
19 combined systems for registration), where ap-
20 propriate.

21 (e) ENFORCEMENT AUTHORITY.—

22 (1) THE BUREAU TO HAVE ENFORCEMENT AU-
23 THORITY.—Except as provided in paragraph (3) and
24 section 1061, with respect to any person described
25 in subsection (a)(1), to the extent that Federal law

1 authorizes the Bureau and another Federal agency
2 to enforce Federal consumer financial law, the Bu-
3 reau shall have exclusive authority to enforce that
4 Federal consumer financial law.

5 (2) REFERRAL.—Any Federal agency author-
6 ized to enforce a Federal consumer financial law de-
7 scribed in paragraph (1) may recommend in writing
8 to the Bureau that the Bureau initiate an enforce-
9 ment proceeding, as the Bureau is authorized by
10 that Federal law or by this title.

11 (3) COORDINATION WITH THE FEDERAL TRADE
12 COMMISSION.—

13 (A) IN GENERAL.—The Bureau and the
14 Federal Trade Commission shall negotiate an
15 agreement for coordinating with respect to en-
16 forcement actions by each agency regarding the
17 offering or provision of consumer financial
18 products or services by any covered person that
19 is described in subsection (a)(1), or service pro-
20 viders thereto. The agreement shall include pro-
21 cedures for notice to the other agency, where
22 feasible, prior to initiating a civil action to en-
23 force any Federal law regarding the offering or
24 provision of consumer financial products or
25 services.

1 (B) CIVIL ACTIONS.—Whenever a civil ac-
2 tion has been filed by, or on behalf of, the Bu-
3 reau or the Federal Trade Commission for any
4 violation of any provision of Federal law de-
5 scribed in subparagraph (A), or any regulation
6 prescribed under such provision of law—

7 (i) the other agency may not, during
8 the pendency of that action, institute a
9 civil action under such provision of law
10 against any defendant named in the com-
11 plaint in such pending action for any viola-
12 tion alleged in the complaint; and

13 (ii) the Bureau or the Federal Trade
14 Commission may intervene as a party in
15 any such action brought by the other agen-
16 cy, and, upon intervening—

17 (I) be heard on all matters aris-
18 ing in such enforcement action; and

19 (II) file petitions for appeal in
20 such actions.

21 (C) AGREEMENT TERMS.—The terms of
22 any agreement negotiated under subparagraph
23 (A) may modify or supersede the provisions of
24 subparagraph (B).

1 (D) DEADLINE.—The agencies shall reach
2 the agreement required under subparagraph (A)
3 not later than 6 months after the designated
4 transfer date.

5 (d) EXCLUSIVE RULEMAKING AND EXAMINATION
6 AUTHORITY.—Notwithstanding any other provision of
7 Federal law and except as provided in section 1061, to
8 the extent that Federal law authorizes the Bureau and an-
9 other Federal agency to issue regulations or guidance,
10 conduct examinations, or require reports from a person
11 described in subsection (a)(1) under such law for purposes
12 of assuring compliance with Federal consumer financial
13 law and any regulations thereunder, the Bureau shall have
14 the exclusive authority to prescribe rules, issue guidance,
15 conduct examinations, require reports, or issue exemptions
16 with regard to a person described in subsection (a)(1),
17 subject to those provisions of law.

18 (e) SERVICE PROVIDERS.—A service provider to a
19 person described in subsection (a)(1) shall be subject to
20 the authority of the Bureau under this section, to the
21 same extent as if such service provider were engaged in
22 a service relationship with a bank, and the Bureau were
23 an appropriate Federal banking agency under section 7(c)
24 of the Bank Service Company Act (12 U.S.C. 1867(c)).
25 In conducting any examination or requiring any report

1 from a service provider subject to this subsection, the Bu-
2 reau shall coordinate with the appropriate prudential reg-
3 ulator, as applicable.

4 (f) PRESERVATION OF FARM CREDIT ADMINISTRA-
5 TION AUTHORITY.—No provision of this title may be con-
6 strued as modifying, limiting, or otherwise affecting the
7 authority of the Farm Credit Administration.

8 **SEC. 1025. SUPERVISION OF VERY LARGE BANKS, SAVINGS**
9 **ASSOCIATIONS, AND CREDIT UNIONS.**

10 (a) SCOPE OF COVERAGE.—This section shall apply
11 to any covered person that is—

12 (1) an insured depository institution with total
13 assets of more than \$10,000,000,000 and any affil-
14 iate thereof; or

15 (2) an insured credit union with total assets of
16 more than \$10,000,000,000 and any affiliate there-
17 of.

18 (b) SUPERVISION.—

19 (1) IN GENERAL.—The Bureau shall have ex-
20 clusive authority to require reports and conduct ex-
21 aminations on a periodic basis of persons described
22 in subsection (a) for purposes of—

23 (A) assessing compliance with the require-
24 ments of Federal consumer financial laws;

1 (B) obtaining information about the activi-
2 ties subject to such laws and the associated
3 compliance systems or procedures of such per-
4 sons; and

5 (C) detecting and assessing associated
6 risks to consumers and to markets for con-
7 sumer financial products and services.

8 (2) COORDINATION.—To minimize regulatory
9 burden, the Bureau shall coordinate its supervisory
10 activities with the supervisory activities conducted by
11 prudential regulators and the State bank regulatory
12 authorities, including consultation regarding their
13 respective schedules for examining such persons de-
14 scribed in subsection (a) and requirements regarding
15 reports to be submitted by such persons.

16 (3) USE OF EXISTING REPORTS.—The Bureau
17 shall, to the fullest extent possible, use—

18 (A) reports pertaining to a person de-
19 scribed in subsection (a) that have been pro-
20 vided or required to have been provided to a
21 Federal or State agency; and

22 (B) information that has been reported
23 publicly.

24 (4) PRESERVATION OF AUTHORITY.—Nothing
25 in this title may be construed as limiting the author-

1 ity of the Director to require reports from a person
2 described in subsection (a), as permitted under para-
3 graph (1), regarding information owned or under the
4 control of such person, regardless of whether such
5 information is maintained, stored, or processed by
6 another person.

7 (5) REPORTS OF TAX LAW NONCOMPLIANCE.—
8 The Bureau shall provide the Commissioner of In-
9 ternal Revenue with any report of examination or re-
10 lated information identifying possible tax law non-
11 compliance.

12 (c) PRIMARY ENFORCEMENT AUTHORITY.—

13 (1) THE BUREAU TO HAVE PRIMARY ENFORCE-
14 MENT AUTHORITY.—To the extent that the Bureau
15 and another Federal agency are authorized to en-
16 force a Federal consumer financial law, the Bureau
17 shall have primary authority to enforce that Federal
18 consumer financial law with respect to any person
19 described in subsection (a).

20 (2) REFERRAL.—Any Federal agency, other
21 than the Federal Trade Commission, that is author-
22 ized to enforce a Federal consumer financial law
23 may recommend, in writing, to the Bureau that the
24 Bureau initiate an enforcement proceeding with re-
25 spect to a person described in subsection (a), as the

1 Bureau is authorized to do by that Federal con-
2 sumer financial law.

3 (3) BACKUP ENFORCEMENT AUTHORITY OF
4 OTHER FEDERAL AGENCY.—If the Bureau does not,
5 before the end of the 120-day period beginning on
6 the date on which the Bureau receives a rec-
7 ommendation under paragraph (2), initiate an en-
8 forcement proceeding, the other agency referred to
9 in paragraph (2) may initiate an enforcement pro-
10 ceeding, including performing follow up supervisory
11 and support functions incidental thereto, to assure
12 compliance with such proceeding.

13 (d) SERVICE PROVIDERS.—A service provider to a
14 person described in subsection (a) shall be subject to the
15 authority of the Bureau under this section, to the same
16 extent as if the Bureau were an appropriate Federal bank-
17 ing agency under section 7(c) of the Bank Service Com-
18 pany Act 12 U.S.C. 1867(c). In conducting any examina-
19 tion or requiring any report from a service provider sub-
20 ject to this subsection, the Bureau shall coordinate with
21 the appropriate prudential regulator.

22 (e) SIMULTANEOUS AND COORDINATED SUPER-
23 VISORY ACTION.—

24 (1) EXAMINATIONS.—A prudential regulator
25 and the Bureau shall, with respect to each insured

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1 depository institution, insured credit union, or other
2 covered person described in subsection (a) that is su-
3 pervised by the prudential regulator and the Bureau,
4 respectively—

5 (A) coordinate the scheduling of examina-
6 tions of the insured depository institution, in-
7 sured credit union, or other covered person de-
8 scribed in subsection (a);

9 (B) conduct simultaneous examinations of
10 each insured depository institution or insured
11 credit union, unless such institution requests
12 examinations to be conducted separately;

13 (C) share each draft report of examination
14 with the other agency and permit the receiving
15 agency a reasonable opportunity (which shall
16 not be less than a period of 30 days after the
17 date of receipt) to comment on the draft report
18 before such report is made final; and

19 (D) prior to issuing a final report of exam-
20 ination or taking supervisory action, take into
21 consideration concerns, if any, raised in the
22 comments made by the other agency.

23 (2) COORDINATION WITH STATE BANK SUPER-
24 VISORS.—The Bureau shall pursue arrangements
25 and agreements with State bank supervisors to co-

1 ordinate examinations, consistent with paragraph
2 (1).

3 (3) AVOIDANCE OF CONFLICT IN SUPER-
4 VISION.—

5 (A) REQUEST.—If the proposed super-
6 visory determinations of the Bureau and a pru-
7 dential regulator (in this section referred to col-
8 lectively as the “agencies”) are conflicting, an
9 insured depository institution, insured credit
10 union, or other covered person described in sub-
11 section (a) may request the agencies to coordi-
12 nate and present a joint statement of coordi-
13 nated supervisory action.

14 (B) JOINT STATEMENT.—The agencies
15 shall provide a joint statement under subpara-
16 graph (A), not later than 30 days after the date
17 of receipt of the request of the insured deposi-
18 tory institution, credit union, or covered person
19 described in subsection (a).

20 (4) APPEALS TO GOVERNING PANEL.—

21 (A) IN GENERAL.—If the agencies do not
22 resolve the conflict or issue a joint statement
23 required by subparagraph (B), or if either of
24 the agencies takes or attempts to take any su-
25 pervisory action relating to the request for the

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1 joint statement without the consent of the other
2 agency, an insured depository institution, in-
3 sured credit union, or other covered person de-
4 scribed in subsection (a) may institute an ap-
5 peal to a governing panel, as provided in this
6 subsection, not later than 30 days after the ex-
7 piration of the period during which a joint
8 statement is required to be filed under para-
9 graph (3)(B).

10 (B) COMPOSITION OF GOVERNING
11 PANEL.—The governing panel for an appeal
12 under this paragraph shall be composed of—

13 (i) a representative from the Bureau
14 and a representative of the prudential reg-
15 ulator, both of whom—

16 (I) have not participated in the
17 material supervisory determinations
18 under appeal; and

19 (II) do not directly or indirectly
20 report to the person who participated
21 materially in the supervisory deter-
22 minations under appeal; and

23 (ii) one individual representative, to
24 be determined on a rotating basis, from
25 among the Board of Governors, the Cor-

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1 poration, the National Credit Union Ad-
2 ministration, and the Office of the Comp-
3 troller of the Currency, other than any
4 agency involved in the subject dispute.

5 (C) CONDUCT OF APPEAL.—In an appeal
6 under this paragraph—

7 (i) the insured depository institution,
8 insured credit union, or other covered per-
9 son described in subsection (a)—

10 (I) shall include in its appeal all
11 the facts and legal arguments per-
12 taining to the matter; and

13 (II) may, through counsel, em-
14 ployees, or representatives, appear be-
15 fore the governing panel in person or
16 by telephone; and

17 (ii) the governing panel—

18 (I) may request the insured de-
19 pository institution, insured credit
20 union, or other covered person de-
21 scribed in subsection (a), the Bureau,
22 or the prudential regulator to produce
23 additional information relevant to the
24 appeal; and

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1 (II) by a majority vote of its
2 members, shall provide a final deter-
3 mination, in writing, not later than 30
4 days after the date of filing of an
5 informationally complete appeal, or
6 such longer period as the panel and
7 the insured depository institution, in-
8 sured credit union, or other covered
9 person described in subsection (a)
10 may jointly agree.

11 (D) PUBLIC AVAILABILITY OF DETERMINA-
12 TIONS.—A governing panel shall publish all in-
13 formation contained in a determination by the
14 governing panel, with appropriate redactions of
15 information that would be subject to an exemp-
16 tion from disclosure under section 552 of title
17 5, United States Code.

18 (E) PROHIBITION AGAINST RETALIA-
19 TION.—The Bureau and the prudential regu-
20 lators shall prescribe rules to provide safe-
21 guards from retaliation against the insured de-
22 pository institution, insured credit union, or
23 other covered person described in subsection (a)
24 instituting an appeal under this paragraph, as
25 well as their officers and employees.

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1 (F) LIMITATION.—The process provided in
2 this paragraph shall not apply to a determina-
3 tion by a prudential regulator to appoint a con-
4 servator or receiver for an insured depository
5 institution or a liquidating agent for an insured
6 credit union, as the case may be, or a decision
7 to take action pursuant to section 38 of the
8 Federal Deposit Insurance Act (12 U.S.C.
9 1831o) or section 212 of the Federal Credit
10 Union Act (112 U.S.C. 1790a), as applicable.

11 (G) EFFECT ON OTHER AUTHORITY.—
12 Nothing in this section shall modify or limit the
13 authority of the Bureau to interpret, or take
14 enforcement action under, any Federal con-
15 sumer financial law, or the authority of a pru-
16 dential regulator to interpret or take enforce-
17 ment action under any other provision of Fed-
18 eral law for safety and soundness purposes.

19 **SEC. 1026. OTHER BANKS, SAVINGS ASSOCIATIONS, AND**
20 **CREDIT UNIONS.**

21 (a) SCOPE OF COVERAGE.—This section shall apply
22 to any covered person that is—

23 (1) an insured depository institution with total
24 assets of \$10,000,000,000 or less; or

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1 (2) an insured credit union with total assets of
2 \$10,000,000,000 or less.

3 (b) REPORTS.—The Director may require reports
4 from a person described in subsection (a), as necessary
5 to support the role of the Bureau in implementing Federal
6 consumer financial law, to support its examination activi-
7 ties under subsection (c), and to assess and detect risks
8 to consumers and consumer financial markets.

9 (1) USE OF EXISTING REPORTS.—The Bureau
10 shall, to the fullest extent possible, use—

11 (A) reports pertaining to a person de-
12 scribed in subsection (a) that have been pro-
13 vided or required to have been provided to a
14 Federal or State agency; and

15 (B) information that has been reported
16 publicly.

17 (2) PRESERVATION OF AUTHORITY.—Nothing
18 in this subsection may be construed as limiting the
19 authority of the Director from requiring from a per-
20 son described in subsection (a), as permitted under
21 paragraph (1), information owned or under the con-
22 trol of such person, regardless of whether such infor-
23 mation is maintained, stored, or processed by an-
24 other person.

1 (3) REPORTS OF TAX LAW NONCOMPLIANCE.—

2 The Bureau shall provide the Commissioner of In-
3 ternal Revenue with any report of examination or re-
4 lated information identifying possible tax law non-
5 compliance.

6 (c) EXAMINATIONS.—

7 (1) IN GENERAL.—The Bureau may, at its dis-
8 cretion, include examiners on a sampling basis of the
9 examinations performed by the prudential regulator
10 to assess compliance with the requirements of Fed-
11 eral consumer financial law of persons described in
12 subsection (a).

13 (2) AGENCY COORDINATION.—The prudential
14 regulator shall—

15 (A) provide all reports, records, and docu-
16 mentation related to the examination process
17 for any institution included in the sample re-
18 ferred to in paragraph (1) to the Bureau on a
19 timely and continual basis;

20 (B) involve such Bureau examiner in the
21 entire examination process for such person; and

22 (C) consider input of the Bureau con-
23 cerning the scope of an examination, conduct of
24 the examination, the contents of the examina-

1 tion report, the designation of matters requiring
2 attention, and examination ratings.

3 (d) ENFORCEMENT.—

4 (1) IN GENERAL.—Except for requiring reports
5 under subsection (b), the prudential regulator is au-
6 thorized to enforce the requirements of Federal con-
7 sumer financial laws and, with respect to a covered
8 person described in subsection (a), shall have exclu-
9 sive authority (relative to the Bureau) to enforce
10 such laws .

11 (2) COORDINATION WITH PRUDENTIAL REGU-
12 LATOR.—

13 (A) REFERRAL.—When the Bureau has
14 reason to believe that a person described in sub-
15 section (a) has engaged in a material violation
16 of a Federal consumer financial law, the Bu-
17 reau shall notify the prudential regulator in
18 writing and recommend appropriate action to
19 respond.

20 (B) RESPONSE.—Upon receiving a rec-
21 ommendation under subparagraph (A), the pru-
22 dential regulator shall provide a written re-
23 sponse to the Bureau not later than 60 days
24 thereafter.

1 (e) SERVICE PROVIDERS.—A service provider to a
2 substantial number of persons described in subsection (a)
3 shall be subject to the authority of the Bureau under sec-
4 tion 1025 to the same extent as if the Bureau were an
5 appropriate Federal bank agency under section 7(c) of the
6 Bank Service Company Act (12 U.S.C. 1867(c)). When
7 conducting any examination or requiring any report from
8 a service provider subject to this subsection, the Bureau
9 shall coordinate with the appropriate prudential regulator.

10 **SEC. 1027. LIMITATIONS ON AUTHORITIES OF THE BUREAU;**

11 **PRESERVATION OF AUTHORITIES.**

12 (a) EXCLUSION FOR MERCHANTS, RETAILERS, AND
13 OTHER SELLERS OF NONFINANCIAL GOODS OR SERV-
14 ICES.—

15 (1) SALE OR BROKERAGE OF NONFINANCIAL
16 GOOD OR SERVICE.—The Bureau may not exercise
17 any rulemaking, supervisory, enforcement or other
18 authority under this title with respect to a person
19 who is a merchant, retailer, or seller of any non-
20 financial good or service and is engaged in the sale
21 or brokerage of such nonfinancial good or service,
22 except to the extent that such person is engaged in
23 offering or providing any consumer financial product
24 or service, or is otherwise subject to any enumerated

1 consumer law or any law for which authorities are
2 transferred under subtitle F or H.

3 (2) OFFERING OR PROVISION OF CERTAIN CON-
4 SUMER FINANCIAL PRODUCTS OR SERVICES IN CON-
5 NECTION WITH THE SALE OR BROKERAGE OF NON-
6 FINANCIAL GOOD OR SERVICE.—

7 (A) IN GENERAL.—Except as provided in
8 subparagraph (B), and subject to subparagraph
9 (C), the Bureau may not exercise any rule-
10 making, supervisory, enforcement, or other au-
11 thority under this title with respect to a mer-
12 chant, retailer, or seller of nonfinancial goods or
13 services, but only to the extent that such per-
14 son—

15 (i) extends credit directly to a con-
16 sumer, in a case in which the good or serv-
17 ice being provided is not itself a consumer
18 financial product or service (other than
19 credit described in this subparagraph), ex-
20 clusively for the purpose of enabling that
21 consumer to purchase such nonfinancial
22 good or service directly from the merchant,
23 retailer, or seller;

24 (ii) directly, or through an agreement
25 with another person, collects debt arising

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1 from credit extended as described in clause
2 (i); or

3 (iii) sells or conveys debt described in
4 clause (i) that is delinquent or otherwise in
5 default.

6 (B) APPLICABILITY.—Subparagraph (A)
7 does not apply to any credit transaction or col-
8 lection of debt, other than as described in sub-
9 paragraph (C)(i), arising from a transaction de-
10 scribed in subparagraph (A)—

11 (i) in which the merchant, retailer, or
12 seller of nonfinancial goods or services as-
13 signs, sells or otherwise conveys to another
14 person such debt owed by the consumer
15 (except for a sale of debt that is delinquent
16 or otherwise in default, as described in
17 subparagraph (A)(iii));

18 (ii) in which the credit extended sig-
19 nificantly exceeds the market value of the
20 nonfinancial good or service provided, or
21 the Bureau otherwise finds that the sale of
22 the nonfinancial good or service is done as
23 a subterfuge, so as to evade or circumvent
24 the provisions of this title; or

1 (iii) in which the merchant, retailer,
2 or seller of nonfinancial goods or services
3 regularly extends credit and the credit is
4 subject to a finance charge.

5 (C) LIMITATIONS.—

6 (i) IN GENERAL.—Notwithstanding
7 subparagraph (B), subparagraph (A) shall
8 apply with respect to a merchant, retailer,
9 or seller of nonfinancial goods or services
10 that is not engaged significantly in offering
11 or providing consumer financial products
12 or services.

13 (ii) EXCEPTION.—Subparagraph (A)
14 and clause (i) of this subparagraph do not
15 apply to any merchant, retailer, or seller of
16 nonfinancial goods or services—

17 (I) if such merchant, retailer, or
18 seller of nonfinancial goods or services
19 is engaged in a transaction described
20 in subparagraph (B)(i) or (B)(ii); or

21 (II) to the extent that such mer-
22 chant, retailer, or seller is subject to
23 any enumerated consumer law or any
24 law for which authorities are trans-
25 ferred under subtitle F or H, but the

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1 Bureau may exercise such authority
2 only with respect to that law.

3 (D) RULES.—

4 (i) AUTHORITY OF OTHER AGEN-
5 CIES.—No provision of this title shall be
6 construed as modifying, limiting, or super-
7 seding the supervisory or enforcement au-
8 thority of the Federal Trade Commission
9 or any other agency (other than the Bu-
10 reau) with respect to credit extended, or
11 the collection of debt arising from such ex-
12 tension, directly by a merchant or retailer
13 to a consumer exclusively for the purpose
14 of enabling that consumer to purchase
15 nonfinancial goods or services directly from
16 the merchant or retailer.

17 (ii) SMALL BUSINESSES.—A mer-
18 chant, retailer, or seller of nonfinancial
19 goods or services that would otherwise be
20 subject to the authority of the Bureau sole-
21 ly by virtue of the application of subpara-
22 graph (B)(iii) shall be deemed not to be
23 engaged significantly in offering or pro-
24 viding consumer financial products or serv-

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1 ices under subparagraph (C)(i), if such
2 person—

3 (I) only extends credit for the
4 sale of nonfinancial goods or services,
5 as described in subparagraph (A)(i);

6 (II) retains such credit on its
7 own accounts (except to sell or convey
8 such debt that is delinquent or other-
9 wise in default); and

10 (III) meets the relevant industry
11 size threshold to be a small business
12 concern, based on annual receipts,
13 pursuant to section 3 of the Small
14 Business Act (15 U.S.C. 632) and the
15 implementing rules thereunder.

16 (iii) INITIAL YEAR.—A merchant, re-
17 tailer, or seller of nonfinancial goods or
18 services shall be deemed to meet the rel-
19 evant industry size threshold described in
20 clause (ii)(III) during the first year of op-
21 erations of that business concern if, during
22 that year, the receipts of that business
23 concern reasonably are expected to meet
24 that size threshold.

1 (iv) OTHER STANDARDS FOR SMALL
2 BUSINESS.—With respect to a merchant,
3 retailer, or seller of nonfinancial goods or
4 services that is a classified on a basis other
5 than annual receipts for the purposes of
6 section 3 of the Small Business Act (15
7 U.S.C. 632) and the implementing rules
8 thereunder, such merchant, retailer, or
9 seller shall be deemed to meet the relevant
10 industry size threshold described in clause
11 (ii)(III) if such merchant, retailer, or seller
12 meets the relevant industry size threshold
13 to be a small business concern based on
14 the number of employees, or other such ap-
15 plicable measure, established under that
16 Act.

17 (E) EXCEPTION FROM STATE ENFORCE-
18 MENT.—To the extent that the Bureau may not
19 exercise authority under this subsection with re-
20 spect to a merchant, retailer, or seller of non-
21 financial goods or services, no action by a State
22 attorney general or State regulator with respect
23 to a claim made under this title may be brought
24 under subsection 1042(a), with respect to an
25 activity described in any of clauses (i) through

1 (iii) of subparagraph (A) by such merchant, re-
2 tailer, or seller of nonfinancial goods or serv-
3 ices.

4 (b) EXCLUSION FOR REAL ESTATE BROKERAGE AC-
5 TIVITIES.—

6 (1) REAL ESTATE BROKERAGE ACTIVITIES EX-
7 CLUDED.—Without limiting subsection (a), and ex-
8 cept as permitted in paragraph (2), the Bureau may
9 not exercise any rulemaking, supervisory, enforce-
10 ment, or other authority under this title with respect
11 to a person that is licensed or registered as a real
12 estate broker or real estate agent, in accordance
13 with State law, to the extent that such person—

14 (A) acts as a real estate agent or broker
15 for a buyer, seller, lessor, or lessee of real prop-
16 erty;

17 (B) brings together parties interested in
18 the sale, purchase, lease, rental, or exchange of
19 real property;

20 (C) negotiates, on behalf of any party, any
21 portion of a contract relating to the sale, pur-
22 chase, lease, rental, or exchange of real prop-
23 erty (other than in connection with the provi-
24 sion of financing with respect to any such
25 transaction); or

1 (D) offers to engage in any activity, or act
2 in any capacity, described in subparagraph (A),
3 (B), or (C).

4 (2) DESCRIPTION OF ACTIVITIES.—The Bureau
5 may exercise rulemaking, supervisory, enforcement,
6 or other authority under this title with respect to a
7 person described in paragraph (1) when such person
8 is—

9 (A) engaged in an activity of offering or
10 providing any consumer financial product or
11 service, except that the Bureau may exercise
12 such authority only with respect to that activ-
13 ity; or

14 (B) otherwise subject to any enumerated
15 consumer law or any law for which authorities
16 are transferred under subtitle F or H, but the
17 Bureau may exercise such authority only with
18 respect to that law.

19 (c) EXCLUSION FOR MANUFACTURED HOME RETAIL-
20 ERS AND MODULAR HOME RETAILERS.—

21 (1) IN GENERAL.—The Director may not exer-
22 cise any rulemaking, supervisory, enforcement, or
23 other authority over a person to the extent that—

24 (A) such person is not described in para-
25 graph (2); and

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1 (B) such person—

2 (i) acts as an agent or broker for a
3 buyer or seller of a manufactured home or
4 a modular home;

5 (ii) facilitates the purchase by a con-
6 sumer of a manufactured home or modular
7 home, by negotiating the purchase price or
8 terms of the sales contract (other than
9 providing financing with respect to such
10 transaction); or

11 (iii) offers to engage in any activity
12 described in clause (i) or (ii).

13 (2) DESCRIPTION OF ACTIVITIES.—A person is
14 described in this paragraph to the extent that such
15 person is engaged in the offering or provision of any
16 consumer financial product or service or is otherwise
17 subject to any enumerated consumer law or any law
18 for which authorities are transferred under subtitle
19 F or H.

20 (3) DEFINITIONS.—For purposes of this sub-
21 section, the following definitions shall apply:

22 (A) MANUFACTURED HOME.—The term
23 “manufactured home” has the same meaning as
24 in section 603 of the National Manufactured

1 Housing Construction and Safety Standards
2 Act of 1974 (42 U.S.C. 5402).

3 (B) MODULAR HOME.—The term “mod-
4 ular home” means a house built in a factory in
5 2 or more modules that meet the State or local
6 building codes where the house will be located,
7 and where such modules are transported to the
8 building site, installed on foundations, and com-
9 pleted.

10 (d) EXCLUSION FOR ACCOUNTANTS AND TAX PRE-
11 PARERS.—

12 (1) IN GENERAL.—Except as permitted in para-
13 graph (2), the Bureau may not exercise any rule-
14 making, supervisory, enforcement, or other authority
15 over—

16 (A) any person that is a certified public ac-
17 countant, permitted to practice as a certified
18 public accounting firm, or certified or licensed
19 for such purpose by a State, or any individual
20 who is employed by or holds an ownership inter-
21 est with respect to a person described in this
22 subparagraph, when such person is performing
23 or offering to perform—

24 (i) customary and usual accounting
25 activities, including the provision of ac-

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1 counting, tax, advisory, or other services
2 that are subject to the regulatory authority
3 of a State board of accountancy or a Fed-
4 eral authority; or

5 (ii) other services that are incidental
6 to such customary and usual accounting
7 activities, to the extent that such incidental
8 services are not offered or provided—

9 (I) by the person separate and
10 apart from such customary and usual
11 accounting activities; or

12 (II) to consumers who are not re-
13 ceiving such customary and usual ac-
14 counting activities; or

15 (B) any person, other than a person de-
16 scribed in subparagraph (A) that performs in-
17 come tax preparation activities for consumers.

18 (2) DESCRIPTION OF ACTIVITIES.—

19 (A) IN GENERAL.—Paragraph (1) shall not
20 apply to any person described in paragraph
21 (1)(A) or (1)(B) to the extent that such person
22 is engaged in any activity which is not a cus-
23 tomary and usual accounting activity described
24 in paragraph (1)(A) or incidental thereto but
25 which is the offering or provision of any con-

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1 sumer financial product or service, except to the
2 extent that a person described in paragraph
3 (1)(A) is engaged in an activity which is a cus-
4 tomary and usual accounting activity described
5 in paragraph (1)(A), or incidental thereto.

6 (B) NOT A CUSTOMARY AND USUAL AC-
7 COUNTING ACTIVITY.—For purposes of this
8 subsection, extending or brokering credit is not
9 a customary and usual accounting activity, or
10 incidental thereto.

11 (C) RULE OF CONSTRUCTION.—For pur-
12 poses of subparagraphs (A) and (B), a person
13 described in paragraph (1)(A) shall not be
14 deemed to be extending credit, if such person is
15 only extending credit directly to a consumer, ex-
16 clusively for the purpose of enabling such con-
17 sumer to purchase services described in clause
18 (i) or (ii) of paragraph (1)(A) directly from
19 such person, and such credit is—

20 (i) not subject to a finance charge;

21 and

22 (ii) not payable by written agreement
23 in more than 4 installments.

24 (D) OTHER LIMITATIONS.—Paragraph (1)
25 does not apply to any person described in para-

1 graph (1)(A) or (1)(B) that is otherwise subject
2 to any enumerated consumer law or any law for
3 which authorities are transferred under subtitle
4 F or H.

5 (e) EXCLUSION FOR PRACTICE OF LAW.—

6 (1) IN GENERAL.—Except as provided under
7 paragraph (2), the Bureau may not exercise any su-
8 pervisory or enforcement authority with respect to
9 an activity engaged in by an attorney as part of the
10 practice of law under the laws of a State in which
11 the attorney is licensed to practice law.

12 (2) RULE OF CONSTRUCTION.—

13 (A) IN GENERAL.—Paragraph (1) shall not
14 be construed so as to limit the exercise by the
15 Bureau of any supervisory, enforcement, or
16 other authority regarding the offering or provi-
17 sion of a consumer financial product or service
18 described in any subparagraph of section
19 1002(5)—

20 (i) that is not offered or provided
21 as—

22 (I) part of, or incidental to, the
23 practice of law, occurring exclusively
24 within the scope of the attorney-client
25 relationship; or

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1 (II) that is otherwise offered or
2 provided by the attorney in question
3 with respect to any consumer who is
4 not receiving legal advice or services
5 from the attorney in connection with
6 such financial product or service.

7 (B) EXISTING AUTHORITY.—Paragraph
8 (1) shall not be construed so as to limit the au-
9 thority of the Bureau with respect to any attor-
10 ney, to the extent that such attorney is other-
11 wise subject to any of the enumerated consumer
12 laws or the authorities transferred under sub-
13 title F or H.

14 (f) EXCLUSION FOR PERSONS REGULATED BY A
15 STATE INSURANCE REGULATOR.—

16 (1) IN GENERAL.—No provision of this title
17 shall be construed as altering, amending, or affect-
18 ing the authority of any State insurance regulator to
19 adopt rules, initiate enforcement proceedings, or
20 take any other action with respect to a person regu-
21 lated by a State insurance regulator. Except as pro-
22 vided in paragraph (2), the Bureau shall have no au-
23 thority to exercise any power to enforce this title
24 with respect to a person regulated by a State insur-
25 ance regulator.

1 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
2 (1) does not apply to any person described in such
3 paragraph to the extent that such person is engaged
4 in the offering or provision of any consumer finan-
5 cial product or service or is otherwise subject to any
6 enumerated consumer law or any law for which au-
7 thorities are transferred under subtitle F or H.

8 (3) STATE INSURANCE AUTHORITY UNDER
9 GRAMM-LEACH-BLILEY.—Notwithstanding para-
10 graph (2), the Bureau shall not exercise any authori-
11 ties that are granted a State insurance authority
12 under section 505(a)(6) of the Gramm-Leach-Bliley
13 Act with respect to a person regulated by a State in-
14 surance authority.

15 (g) EXCLUSION FOR EMPLOYEE BENEFIT AND COM-
16 PENSATION PLANS AND CERTAIN OTHER ARRANGEMENTS
17 UNDER THE INTERNAL REVENUE CODE OF 1986.—

18 (1) PRESERVATION OF AUTHORITY OF OTHER
19 AGENCIES.—No provision of this title shall be con-
20 strued as altering, amending, or affecting the au-
21 thority of the Secretary of the Treasury, the Sec-
22 retary of Labor, or the Commissioner of Internal
23 Revenue to adopt regulations, initiate enforcement
24 proceedings, or take any actions with respect to any
25 specified plan or arrangement.

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1 (2) ACTIVITIES NOT CONSTITUTING THE OF-
2 FERING OR PROVISION OF ANY CONSUMER FINAN-
3 CIAL PRODUCT OR SERVICE.—For purposes of this
4 title, a person shall not be treated as having engaged
5 in the offering or provision of any consumer finan-
6 cial product or service solely because such person
7 is—

8 (A) a specified plan or arrangement;

9 (B) engaged in the activity of establishing
10 or maintaining, for the benefit of employees of
11 such person (or for members of an employee or-
12 ganization), any specified plan or arrangement;
13 or

14 (C) engaged in the activity of establishing
15 or maintaining a qualified tuition program
16 under section 529(b)(1) of the Internal Revenue
17 Code of 1986 offered by a State or other pre-
18 paid tuition program offered by a State.

19 (3) LIMITATION ON BUREAU AUTHORITY.—

20 (A) IN GENERAL.—Except as provided
21 under subparagraphs (B) and (C), the Bureau
22 may not exercise any rulemaking or enforce-
23 ment authority with respect to products or serv-
24 ices that relate to any specified plan or arrange-
25 ment.

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1 (B) BUREAU ACTION PURSUANT TO AGEN-
2 CY REQUEST.—

3 (i) AGENCY REQUEST.—The Secretary
4 and the Secretary of Labor may jointly
5 issue a written request to the Bureau re-
6 garding implementation of appropriate
7 consumer protection standards under this
8 title with respect to the provision of serv-
9 ices relating to any specified plan or ar-
10 rangement.

11 (ii) AGENCY RESPONSE.—In response
12 to a request by the Bureau, the Secretary
13 and the Secretary of Labor shall jointly
14 issue a written response, not later than 90
15 days after receipt of such request, to grant
16 or deny the request of the Bureau regard-
17 ing implementation of appropriate con-
18 sumer protection standards under this title
19 with respect to the provision of services re-
20 lating to any specified plan or arrange-
21 ment.

22 (iii) SCOPE OF BUREAU ACTION.—
23 Subject to a request or response pursuant
24 to clause (ii) by the agencies made under
25 this subparagraph, the Bureau may exer-

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1 cise rulemaking authority, and may act to
2 enforce a rule prescribed pursuant to such
3 request or response, in accordance with the
4 provisions of this title. A request or re-
5 sponse made by the Secretary and the Sec-
6 retary of Labor under this subparagraph
7 shall describe the basis for, and scope of,
8 appropriate consumer protection standards
9 to be implemented under this title with re-
10 spect to the provision of services relating
11 to any specified plan or arrangement.

12 (C) DESCRIPTION OF PRODUCTS OR SERV-
13 ICES.—To the extent that a person engaged in
14 providing products or services relating to any
15 specified plan or arrangement is subject to any
16 enumerated consumer law or any law for which
17 authorities are transferred under subtitle F or
18 H, subparagraph (A) shall not apply with re-
19 spect to that law.

20 (4) SPECIFIED PLAN OR ARRANGEMENT.—For
21 purposes of this subsection, the term “specified plan
22 or arrangement” means any plan, account, or ar-
23 rangement described in section 220, 223, 401(a),
24 403(a), 403(b), 408, 408A, 529, or 530 of the Inter-
25 nal Revenue Code of 1986, or any employee benefit

1 or compensation plan or arrangement, including a
2 plan that is subject to title I of the Employee Retirement
3 Income Security Act of 1974, or any prepaid
4 tuition program offered by a State.

5 (h) PERSONS REGULATED BY A STATE SECURITIES
6 COMMISSION.—

7 (1) IN GENERAL.—No provision of this title
8 shall be construed as altering, amending, or affect-
9 ing the authority of any securities commission (or
10 any agency or office performing like functions) of
11 any State to adopt rules, initiate enforcement pro-
12 ceedings, or take any other action with respect to a
13 person regulated by any securities commission (or
14 any agency or office performing like functions) of
15 any State. Except as permitted in paragraph (2) and
16 subsection (f), the Bureau shall have no authority to
17 exercise any power to enforce this title with respect
18 to a person regulated by any securities commission
19 (or any agency or office performing like functions)
20 of any State, but only to the extent that the person
21 acts in such regulated capacity.

22 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
23 (1) shall not apply to any person to the extent such
24 person is engaged in the offering or provision of any
25 consumer financial product or service, or is other-

1 wise subject to any enumerated consumer law or any
2 law for which authorities are transferred under sub-
3 title F or H.

4 (i) EXCLUSION FOR PERSONS REGULATED BY THE
5 COMMISSION.—

6 (1) IN GENERAL.—No provision of this title
7 may be construed as altering, amending, or affecting
8 the authority of the Commission to adopt rules, ini-
9 tiate enforcement proceedings, or take any other ac-
10 tion with respect to a person regulated by the Com-
11 mission. The Bureau shall have no authority to exer-
12 cise any power to enforce this title with respect to
13 a person regulated by the Commission.

14 (2) CONSULTATION AND COORDINATION.—Not-
15 withstanding paragraph (1), the Commission shall
16 consult and coordinate, where feasible, with the Bu-
17 reau with respect to any rule (including any advance
18 notice of proposed rulemaking) regarding an invest-
19 ment product or service that is the same type of
20 product as, or that competes directly with, a con-
21 sumer financial product or service that is subject to
22 the jurisdiction of the Bureau under this title or
23 under any other law. In carrying out this paragraph,
24 the agencies shall negotiate an agreement to estab-
25 lish procedures for such coordination, including pro-

1 cedures for providing advance notice to the Bureau
2 when the Commission is initiating a rulemaking.

3 (j) 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 Bureau shall have no authority to
12 exercise any power to enforce this title with respect
13 to a person regulated by the Commodity Futures
14 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 Bureau 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 Bureau under this title or
24 under any other law.

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1 (k) EXCLUSION FOR PERSONS REGULATED BY THE
2 FARM CREDIT ADMINISTRATION.—

3 (1) IN GENERAL.—No provision of this title
4 shall be construed as altering, amending, or affect-
5 ing the authority of the Farm Credit Administration
6 to adopt rules, initiate enforcement proceedings, or
7 take any other action with respect to a person regu-
8 lated by the Farm Credit Administration. The Bu-
9 reau shall have no authority to exercise any power
10 to enforce this title with respect to a person regu-
11 lated by the Farm Credit Administration.

12 (2) DEFINITION.—For purposes of this sub-
13 section, the term “person regulated by the Farm
14 Credit Administration” means any Farm Credit Sys-
15 tem institution that is chartered and subject to the
16 provisions of the Farm Credit Act of 1971 (12
17 U.S.C. 2001 et seq.).

18 (l) EXCLUSION FOR ACTIVITIES RELATING TO CHAR-
19 ITABLE CONTRIBUTIONS.—

20 (1) IN GENERAL.—The Director and the Bu-
21 reau may not exercise any rulemaking, supervisory,
22 enforcement, or other authority, including authority
23 to order penalties, over any activities related to the
24 solicitation or making of voluntary contributions to
25 a tax-exempt organization as recognized by the In-

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1 ternal Revenue Service, by any agent, volunteer, or
2 representative of such organizations to the extent
3 the organization, agent, volunteer, or representative
4 thereof is soliciting or providing advice, information,
5 education, or instruction to any donor or potential
6 donor relating to a contribution to the organization.

7 (2) LIMITATION.—The exclusion in paragraph
8 (1) does not apply to other activities not described
9 in paragraph (1) that are the offering or provision
10 of any consumer financial product or service, or are
11 otherwise subject to any enumerated consumer law
12 or any law for which authorities are transferred
13 under subtitle F or H.

14 (m) INSURANCE.—The Bureau may not define as a
15 financial product or service, by regulation or otherwise,
16 engaging in the business of insurance.

17 (n) LIMITED AUTHORITY OF THE BUREAU.—Not-
18 withstanding subsections (a) through (h) and (l), a person
19 subject to or described in one or more of such provisions—

20 (1) may be a service provider; and

21 (2) may be subject to requests from, or require-
22 ments imposed by, the Bureau regarding informa-
23 tion in order to carry out the responsibilities and
24 functions of the Bureau and in accordance with sec-
25 tion 1022, 1052, or 1053.

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1 (o) NO AUTHORITY TO IMPOSE USURY LIMIT.—No
2 provision of this title shall be construed as conferring au-
3 thority on the Bureau to establish a usury limit applicable
4 to an extension of credit offered or made by a covered per-
5 son to a consumer, unless explicitly authorized by law.

6 (p) ATTORNEY GENERAL.—No provision of this title,
7 including section 1024(c)(1), shall affect the authorities
8 of the Attorney General under otherwise applicable provi-
9 sions of law.

10 (q) SECRETARY OF THE TREASURY.—No provision of
11 this title shall affect the authorities of the Secretary, in-
12 cluding with respect to prescribing rules, initiating en-
13 forcement proceedings, or taking other actions with re-
14 spect to a person that performs income tax preparation
15 activities for consumers.

16 (r) DEPOSIT INSURANCE AND SHARE INSURANCE.—
17 Nothing in this title shall affect the authority of the Cor-
18 poration under the Federal Deposit Insurance Act or the
19 National Credit Union Administration Board under the
20 Federal Credit Union Act as to matters related to deposit
21 insurance and share insurance, respectively.

22 (s) FAIR HOUSING ACT.—No provision of this title
23 shall be construed as affecting any authority arising under
24 the Fair Housing Act.

1 **SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DIS-**
2 **PUTE ARBITRATION.**

3 (a) **STUDY AND REPORT.**—The Bureau shall conduct
4 a study of, and shall provide a report to Congress con-
5 cerning, the use of agreements providing for arbitration
6 of any future dispute between covered persons and con-
7 sumers in connection with the offering or providing of con-
8 sumer financial products or services.

9 (b) **FURTHER AUTHORITY.**—The Bureau, by regula-
10 tion, may prohibit or impose conditions or limitations on
11 the use of an agreement between a covered person and
12 a consumer for a consumer financial product or service
13 providing for arbitration of any future dispute between the
14 parties, if the Bureau finds that such a prohibition or im-
15 position of conditions or limitations is in the public inter-
16 est and for the protection of consumers. The findings in
17 such rule shall be consistent with the study conducted
18 under subsection (a).

19 (c) **LIMITATION.**—The authority described in sub-
20 section (b) may not be construed to prohibit or restrict
21 a consumer from entering into a voluntary arbitration
22 agreement with a covered person after a dispute has aris-
23 en.

24 (d) **EFFECTIVE DATE.**—Notwithstanding any other
25 provision of law, any regulation prescribed by the Bureau
26 under subsection (b) shall apply, consistent with the terms

1 of the regulation, to any agreement between a consumer
2 and a covered person entered into after the end of the
3 180-day period beginning on the effective date of the regu-
4 lation, as established by the Bureau.

5 **SEC. 1029. EXCLUSION FOR AUTO DEALERS.**

6 (a) SALE, SERVICING, AND LEASING OF MOTOR VE-
7 HICLES EXCLUDED.—Except as permitted in subsection
8 (b), the Bureau may not exercise any rulemaking, super-
9 visory, enforcement or any other authority, including any
10 authority to order assessments, over a motor vehicle dealer
11 that is predominantly engaged in the sale and servicing
12 of motor vehicles, the leasing and servicing of motor vehi-
13 cles, or both.

14 (b) CERTAIN FUNCTIONS EXCEPTED.—Subsection
15 (a) shall not apply to any person, to the extent that such
16 person—

17 (1) provides consumers with any services re-
18 lated to residential or commercial mortgages or self-
19 financing transactions involving real property;

20 (2) operates a line of business—

21 (A) that involves the extension of retail
22 credit or retail leases involving motor vehicles;
23 and

24 (B) in which—

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1 (i) the extension of retail credit or re-
2 tail leases are provided directly to con-
3 sumers; and

4 (ii) the contract governing such exten-
5 sion of retail credit or retail leases is not
6 routinely assigned to an unaffiliated third
7 party finance or leasing source; or

8 (3) offers or provides a consumer financial
9 product or service not involving or related to the
10 sale, financing, leasing, rental, repair, refurbish-
11 ment, maintenance, or other servicing of motor vehi-
12 cles, motor vehicle parts, or any related or ancillary
13 product or service.

14 (c) PRESERVATION OF AUTHORITIES OF OTHER
15 AGENCIES.—Except as provided in subsections (b) and
16 (d), nothing in this title, including subtitle F, shall be con-
17 strued as modifying, limiting, or superseding the operation
18 of any provision of Federal law, or otherwise affecting the
19 authority of the Board of Governors, the Federal Trade
20 Commission, or any other Federal agency, with respect to
21 a person described in subsection (a).

22 (d) FEDERAL TRADE COMMISSION AUTHORITY.—
23 Notwithstanding section 18 of the Federal Trade Commis-
24 sion Act, the Federal Trade Commission is authorized to
25 prescribe rules under sections 5 and 18(a)(1)(B) of the

1 Federal Trade Commission Act. in accordance with section
2 553 of title 5, United States Code, with respect to a per-
3 son described in subsection (a).

4 (e) COORDINATION WITH OFFICE OF SERVICE MEM-
5 BER AFFAIRS.—The Board of Governors and the Federal
6 Trade Commission shall coordinate with the Office of
7 Service Member Affairs, to ensure that—

8 (1) service members and their families are edu-
9 cated and empowered to make better informed deci-
10 sions regarding consumer financial products and
11 services offered by motor vehicle dealers, with a
12 focus on motor vehicle dealers in the proximity of
13 military installations; and

14 (2) complaints by service members and their
15 families concerning such motor vehicle dealers are
16 effectively monitored and responded to, and where
17 appropriate, enforcement action is pursued by the
18 authorized agencies.

19 (f) DEFINITIONS.—For purposes of this section, the
20 following definitions shall apply:

21 (1) MOTOR VEHICLE.—The term “motor vehi-
22 cle” means—

23 (A) any self-propelled vehicle designed for
24 transporting persons or property on a street,
25 highway, or other road;

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1 (B) recreational boats and marine equip-
2 ment;

3 (C) motoreycles;

4 (D) motor homes, recreational vehicle trail-
5 ers, and slide-in campers, as those terms are
6 defined in sections 571.3 and 575.103 (d) of
7 title 49, Code of Federal Regulations, or any
8 successor thereto; and

9 (E) other vehicles that are titled and sold
10 through dealers.

11 (2) MOTOR VEHICLE DEALER.—The term
12 “motor vehicle dealer” means any person or resident
13 in the United States, or any territory of the United
14 States, who—

15 (A) is licensed by a State, a territory of
16 the United States, or the District of Columbia
17 to engage in the sale of motor vehicles; and

18 (B) takes title to, holds an ownership in,
19 or takes physical custody of motor vehicles.

20 **SEC. 1029A. EFFECTIVE DATE.**

21 This subtitle shall become effective on the designated
22 transfer date, except that sections 1022, 1024, and
23 1025(e) shall become effective on the date of enactment
24 of this Act.

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1 **Subtitle C—Specific Bureau**
2 **Authorities**

3 **SEC. 1031. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE**
4 **ACTS OR PRACTICES.**

5 (a) **IN GENERAL.**—The Bureau may take any action
6 authorized under subtitle E to prevent a covered person
7 or service provider from committing or engaging in an un-
8 fair, deceptive, or abusive act or practice under Federal
9 law in connection with any transaction with a consumer
10 for a consumer financial product or service, or the offering
11 of a consumer financial product or service.

12 (b) **RULEMAKING.**—The Bureau may prescribe rules
13 applicable to a covered person or service provider identi-
14 fying as unlawful unfair, deceptive, or abusive acts or
15 practices in connection with any transaction with a con-
16 sumer for a consumer financial product or service, or the
17 offering of a consumer financial product or service. Rules
18 under this section may include requirements for the pur-
19 pose of preventing such acts or practices.

20 (c) **UNFAIRNESS.**—

21 (1) **IN GENERAL.**—The Bureau shall have no
22 authority under this section to declare an act or
23 practice in connection with a transaction with a con-
24 sumer for a consumer financial product or service,
25 or the offering of a consumer financial product or

1 service, to be unlawful on the grounds that such act
2 or practice is unfair, unless the Bureau has a rea-
3 sonable basis to conclude that—

4 (A) the act or practice causes or is likely
5 to cause substantial injury to consumers which
6 is not reasonably avoidable by consumers; and

7 (B) such substantial injury is not out-
8 weighed by countervailing benefits to consumers
9 or to competition.

10 (2) CONSIDERATION OF PUBLIC POLICIES.—In
11 determining whether an act or practice is unfair, the
12 Bureau may consider established public policies as
13 evidence to be considered with all other evidence.
14 Such public policy considerations may not serve as
15 a primary basis for such determination.

16 (d) ABUSIVE.—The Bureau shall have no authority
17 under this section to declare an act or practice abusive
18 in connection with the provision of a consumer financial
19 product or service, unless the act or practice—

20 (1) materially interferes with the ability of a
21 consumer to understand a term or condition of a
22 consumer financial product or service; or

23 (2) takes unreasonable advantage of—

1 (A) a lack of understanding on the part of
2 the consumer of the material risks, costs, or
3 conditions of the product or service;

4 (B) the inability of the consumer to protect
5 the interests of the consumer in selecting or
6 using a consumer financial product or service;
7 or

8 (C) the reasonable reliance by the con-
9 sumer on a covered person to act in the inter-
10 ests of the consumer.

11 (e) CONSULTATION.—In prescribing rules under this
12 section, the Bureau shall consult with the Federal banking
13 agencies, or other Federal agencies, as appropriate, con-
14 cerning the consistency of the proposed rule with pruden-
15 tial, market, or systemic objectives administered by such
16 agencies.

17 (f) CONSIDERATION OF SEASONAL INCOME.—The
18 rules of the Bureau under this section shall provide, with
19 respect to an extension of credit secured by residential real
20 estate or a dwelling, if documented income of the bor-
21 rower, including income from a small business, is a repay-
22 ment source for an extension of credit secured by residen-
23 tial real estate or a dwelling, the creditor may consider
24 the seasonality and irregularity of such income in the un-
25 derwriting of and scheduling of payments for such credit.

1 **SEC. 1032. DISCLOSURES.**

2 (a) IN GENERAL.—The Bureau may prescribe rules
3 to ensure that the features of any consumer financial
4 product or service, both initially and over the term of the
5 product or service, are fully, accurately, and effectively
6 disclosed to consumers in a manner that permits con-
7 sumers to understand the costs, benefits, and risks associ-
8 ated with the product or service, in light of the facts and
9 circumstances.

10 (b) MODEL DISCLOSURES.—

11 (1) IN GENERAL.—Any final rule prescribed by
12 the Bureau under this section requiring disclosures
13 may include a model form that may be used at the
14 option of the covered person for provision of the re-
15 quired disclosures.

16 (2) FORMAT.—A model form issued pursuant to
17 paragraph (1) shall contain a clear and conspicuous
18 disclosure that, at a minimum—

19 (A) uses plain language comprehensible to
20 consumers;

21 (B) contains a clear format and design,
22 such as an easily readable type font; and

23 (C) succinctly explains the information
24 that must be communicated to the consumer.

1 (3) CONSUMER TESTING.—Any model form
2 issued pursuant to this subsection shall be validated
3 through consumer testing.

4 (c) BASIS FOR RULEMAKING.—In prescribing rules
5 under this section, the Bureau shall consider available evi-
6 dence about consumer awareness, understanding of, and
7 responses to disclosures or communications about the
8 risks, costs, and benefits of consumer financial products
9 or services.

10 (d) SAFE HARBOR.—Any covered person that uses a
11 model form included with a rule issued under this section
12 shall be deemed to be in compliance with the disclosure
13 requirements of this section with respect to such model
14 form.

15 (e) TRIAL DISCLOSURE PROGRAMS.—

16 (1) IN GENERAL.—The Bureau may permit a
17 covered person to conduct a trial program that is
18 limited in time and scope, subject to specified stand-
19 ards and procedures, for the purpose of providing
20 trial disclosures to consumers that are designed to
21 improve upon any model form issued pursuant to
22 subsection (b)(1), or any other model form issued to
23 implement an enumerated statute, as applicable.

24 (2) SAFE HARBOR.—The standards and proce-
25 dures issued by the Bureau shall be designed to en-

1 courage covered persons to conduct trial disclosure
2 programs. For the purposes of administering this
3 subsection, the Bureau may establish a limited pe-
4 riod during which a covered person conducting a
5 trial disclosure program shall be deemed to be in
6 compliance with, or may be exempted from, a re-
7 quirement of a rule or an enumerated consumer law.

8 (3) PUBLIC DISCLOSURE.—The rules of the Bu-
9 reau shall provide for public disclosure of trial dis-
10 closure programs, which public disclosure may be
11 limited, to the extent necessary to encourage covered
12 persons to conduct effective trials.

13 (f) COMBINED MORTGAGE LOAN DISCLOSURE.—Not
14 later than 1 year after the designated transfer date, the
15 Bureau shall propose for public comment rules and model
16 disclosures that combine the disclosures required under
17 the Truth in Lending Act and sections 4 and 5 of the
18 Real Estate Settlement Procedures Act of 1974, into a
19 single, integrated disclosure for mortgage loan trans-
20 actions covered by those laws, unless the Bureau deter-
21 mines that any proposal issued by the Board of Governors
22 and the Secretary of Housing and Urban Development
23 carries out the same purpose.

1 **SEC. 1033. CONSUMER RIGHTS TO ACCESS INFORMATION.**

2 (a) IN GENERAL.—Subject to rules prescribed by the
3 Bureau, a covered person shall make available to a con-
4 sumer, upon request, information in the control or posses-
5 sion of the covered person concerning the consumer finan-
6 cial product or service that the consumer obtained from
7 such covered person, including information relating to any
8 transaction, series of transactions, or to the account in-
9 cluding costs, charges and usage data. The information
10 shall be made available in an electronic form usable by
11 consumers.

12 (b) EXCEPTIONS.—A covered person may not be re-
13 quired by this section to make available to the consumer—

14 (1) any confidential commercial information, in-
15 cluding an algorithm used to derive credit scores or
16 other risk scores or predictors;

17 (2) any information collected by the covered
18 person for the purpose of preventing fraud or money
19 laundering, or detecting, or making any report re-
20 garding other unlawful or potentially unlawful con-
21 duct;

22 (3) any information required to be kept con-
23 fidential by any other provision of law; 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.—Nothing in
2 this section shall be construed to impose any duty on a
3 covered person to maintain or keep any information about
4 a consumer.

5 (d) STANDARDIZED FORMATS FOR DATA.—The Bu-
6 reau, by rule, shall prescribe standards applicable to cov-
7 ered persons to promote the development and use of stand-
8 ardized formats for information, including through the use
9 of machine readable files, to be made available to con-
10 sumers under this section.

11 (e) CONSULTATION.—The Bureau shall, when pre-
12 scribing any rule under this section, consult with the Fed-
13 eral banking agencies and the Federal Trade Commission
14 to ensure, to the extent appropriate, that the rules—

15 (1) impose substantively similar requirements
16 on covered persons;

17 (2) take into account conditions under which
18 covered persons do business both in the United
19 States and in other countries; and

20 (3) do not require or promote the use of any
21 particular technology in order to develop systems for
22 compliance.

1 **SEC. 1034. RESPONSE TO CONSUMER COMPLAINTS AND IN-**
2 **QUIRIES.**

3 (a) **TIMELY REGULATOR RESPONSE TO CON-**
4 **SUMERS.**—The Bureau shall establish, in consultation
5 with the appropriate Federal regulatory agencies, reason-
6 able procedures to provide a timely response to consumers,
7 in writing where appropriate, to complaints against, or in-
8 quires concerning, a covered person, including—

9 (1) steps that have been taken by the regulator
10 in response to the complaint or inquiry of the con-
11 sumer;

12 (2) any responses received by the regulator
13 from the covered person; and

14 (3) any follow-up actions or planned follow-up
15 actions by the regulator in response to the complaint
16 or inquiry of the consumer.

17 (b) **TIMELY RESPONSE TO REGULATOR BY COVERED**
18 **PERSON.**—A covered person subject to supervision and
19 primary enforcement by the Bureau pursuant to section
20 1025 shall provide a timely response, in writing where ap-
21 propriate, to the Bureau, the prudential regulators, and
22 any other agency having jurisdiction over such covered
23 person concerning a consumer complaint or inquiry, in-
24 cluding—

1 (1) steps that have been taken by the covered
2 person to respond to the complaint or inquiry of the
3 consumer;

4 (2) responses received by the covered person
5 from the consumer; and

6 (3) follow-up actions or planned follow-up ac-
7 tions by the covered person to respond to the com-
8 plaint or inquiry of the consumer.

9 (c) PROVISION OF INFORMATION TO CONSUMERS.—

10 (1) IN GENERAL.—A covered person subject to
11 supervision and primary enforcement by the Bureau
12 pursuant to section 1025 shall, in a timely manner,
13 comply with a consumer request for information in
14 the control or possession of such covered person con-
15 cerning the consumer financial product or service
16 that the consumer obtained from such covered per-
17 son, including supporting written documentation,
18 concerning the account of the consumer.

19 (2) EXCEPTIONS.—A covered person subject to
20 supervision and primary enforcement by the Bureau
21 pursuant to section 1025, a prudential regulator,
22 and any other agency having jurisdiction over a cov-
23 ered person subject to supervision and primary en-
24 forcement by the Bureau pursuant to section 1025

1 may not be required by this section to make avail-
2 able to the consumer—

3 (A) any confidential commercial informa-
4 tion, including an algorithm used to derive cred-
5 it scores or other risk scores or predictors;

6 (B) any information collected by the cov-
7 ered person for the purpose of preventing fraud
8 or money laundering, or detecting or making
9 any report regarding other unlawful or poten-
10 tially unlawful conduct;

11 (C) any information required to be kept
12 confidential by any other provision of law; or

13 (D) any nonpublic or confidential informa-
14 tion, including confidential supervisory informa-
15 tion.

16 (d) AGREEMENTS WITH OTHER AGENCIES.—The
17 Bureau shall enter into a memorandum of understanding
18 with any affected Federal regulatory agency regarding
19 procedures by which any covered person, and the pruden-
20 tial regulators, and any other agency having jurisdiction
21 over a covered person, including the Secretary of the De-
22 partment of Housing and Urban Development and the
23 Secretary of Education, shall comply with this section.

1 **SEC. 1035. PRIVATE EDUCATION LOAN OMBUDSMAN.**

2 (a) ESTABLISHMENT.—The Secretary, in consulta-
3 tion with the Director, shall designate a Private Education
4 Loan Ombudsman (in this section referred to as the “Om-
5 budsman”) within the Bureau, to provide timely assist-
6 ance to borrowers of private education loans.

7 (b) PUBLIC INFORMATION.—The Secretary and the
8 Director shall disseminate information about the avail-
9 ability and functions of the Ombudsman to borrowers and
10 potential borrowers, as well as institutions of higher edu-
11 cation, lenders, guaranty agencies, loan servicers, and
12 other participants in private education student loan pro-
13 grams.

14 (c) FUNCTIONS OF OMBUDSMAN.—The Ombudsman
15 designated under this subsection shall—

16 (1) in accordance with regulations of the Direc-
17 tor, receive, review, and attempt to resolve infor-
18 mally complaints from borrowers of loans described
19 in subsection (a), including, as appropriate, attempts
20 to resolve such complaints in collaboration with the
21 Department of Education and with institutions of
22 higher education, lenders, guaranty agencies, loan
23 servicers, and other participants in private education
24 loan programs;

25 (2) not later than 90 days after the designated
26 transfer date, establish a memorandum of under-

1 standing with the student loan ombudsman estab-
2 lished under section 141(f) of the Higher Education
3 Act of 1965 (20 U.S.C. 1018(f)), to ensure coordi-
4 nation in providing assistance to and serving bor-
5 rowers seeking to resolve complaints related to their
6 private education or Federal student loans;

7 (3) compile and analyze data on borrower com-
8 plaints regarding private education loans; and

9 (4) make appropriate recommendations to the
10 Director, the Secretary, the Secretary of Education,
11 the Committee on Banking, Housing, and Urban Af-
12 fairs and the Committee on Health, Education,
13 Labor, and Pensions of the Senate and the Com-
14 mittee on Financial Services and the Committee on
15 Education and Labor of the House of Representa-
16 tives.

17 (d) ANNUAL REPORTS.—

18 (1) IN GENERAL.—The Ombudsman shall pre-
19 pare an annual report that describes the activities,
20 and evaluates the effectiveness of the Ombudsman
21 during the preceding year.

22 (2) SUBMISSION.—The report required by para-
23 graph (1) shall be submitted on the same date annu-
24 ally to the Secretary, the Secretary of Education,
25 the Committee on Banking, Housing, and Urban Af-

1 fairs and the Committee on Health, Education,
2 Labor, and Pensions of the Senate and the Com-
3 mittee on Financial Services and the Committee on
4 Education and Labor of the House of Representa-
5 tives.

6 (e) DEFINITIONS.—For purposes of this section, the
7 terms “private education loan” and “institution of higher
8 education” have the same meanings as in section 140 of
9 the Truth in Lending Act (15 U.S.C. 1650).

10 **SEC. 1036. PROHIBITED ACTS.**

11 (a) IN GENERAL.—It shall be unlawful for—

12 (1) any covered person or service provider—

13 (A) to offer or provide to a consumer any
14 financial product or service not in conformity
15 with Federal consumer financial law, or other-
16 wise commit any act or omission in violation of
17 a Federal consumer financial law; or

18 (B) to engage in any unfair, deceptive, or
19 abusive act or practice;

20 (2) any covered person or service provider to
21 fail or refuse, as required by Federal consumer fi-
22 nancial law, or any rule or order issued by the Bu-
23 reau thereunder—

24 (A) to permit access to or copying of
25 records;

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1 (B) to establish or maintain records; or

2 (C) to make reports or provide information
3 to the Bureau; or

4 (3) any person to knowingly or recklessly pro-
5 vide substantial assistance to a covered person or
6 service provider in violation of the provisions of sec-
7 tion 1031, or any rule or order issued thereunder,
8 and notwithstanding any provision of this title, the
9 provider of such substantial assistance shall be
10 deemed to be in violation of that section to the same
11 extent as the person to whom such assistance is pro-
12 vided.

13 (b) EXCEPTION.—No person shall be held to have
14 violated subsection (a)(1) solely by virtue of providing or
15 selling time or space to a covered person or service pro-
16 vider placing an advertisement.

17 **SEC. 1037. EFFECTIVE DATE.**

18 This subtitle shall take effect on the designated
19 transfer date.

20 **Subtitle D—Preservation of State**
21 **Law**

22 **SEC. 1041. RELATION TO STATE LAW.**

23 (a) IN GENERAL.—

24 (1) RULE OF CONSTRUCTION.—This title, other
25 than sections 1044 through 1048, may not be con-

1 strued as annulling, altering, or affecting, or ex-
2 empting any person subject to the provisions of this
3 title from complying with, the statutes, regulations,
4 orders, or interpretations in effect in any State, ex-
5 cept to the extent that any such provision of law is
6 inconsistent with the provisions of this title, and
7 then only to the extent of the inconsistency.

8 (2) GREATER PROTECTION UNDER STATE
9 LAW.—For purposes of this subsection, a statute,
10 regulation, order, or interpretation in effect in any
11 State is not inconsistent with the provisions of this
12 title if the protection that such statute, regulation,
13 order, or interpretation affords to consumers is
14 greater than the protection provided under this title.
15 A determination regarding whether a statute, regu-
16 lation, order, or interpretation in effect in any State
17 is inconsistent with the provisions of this title may
18 be made by the Bureau on its own motion or in re-
19 sponse to a nonfrivolous petition initiated by any in-
20 terested person.

21 (b) RELATION TO OTHER PROVISIONS OF ENUMER-
22 ATED CONSUMER LAWS THAT RELATE TO STATE LAW.—
23 No provision of this title, except as provided in section
24 1083, shall be construed as modifying, limiting, or super-
25 seding the operation of any provision of an enumerated

1 consumer law that relates to the application of a law in
2 effect in any State with respect to such Federal law.

3 (c) ADDITIONAL CONSUMER PROTECTION REGULA-
4 TIONS IN RESPONSE TO STATE ACTION.—

5 (1) NOTICE OF PROPOSED RULE REQUIRED.—

6 The Bureau shall issue a notice of proposed rule-
7 making whenever a majority of the States has en-
8 acted a resolution in support of the establishment or
9 modification of a consumer protection regulation by
10 the Bureau.

11 (2) BUREAU CONSIDERATIONS REQUIRED FOR
12 ISSUANCE OF FINAL REGULATION.—Before pre-
13 scribing a final regulation based upon a notice
14 issued pursuant to paragraph (1), the Bureau shall
15 take into account whether—

16 (A) the proposed regulation would afford
17 greater protection to consumers than any exist-
18 ing regulation;

19 (B) the intended benefits of the proposed
20 regulation for consumers would outweigh any
21 increased costs or inconveniences for con-
22 sumers, and would not discriminate unfairly
23 against any category or class of consumers; and

24 (C) a Federal banking agency has advised
25 that the proposed regulation is likely to present

1 an unacceptable safety and soundness risk to
2 insured depository institutions.

3 (3) EXPLANATION OF CONSIDERATIONS.—The
4 Bureau—

5 (A) shall include a discussion of the con-
6 siderations required in paragraph (2) in the
7 Federal Register notice of a final regulation
8 prescribed pursuant to this subsection; and

9 (B) whenever the Bureau determines not
10 to prescribe a final regulation, shall publish an
11 explanation of such determination in the Fed-
12 eral Register, and provide a copy of such expla-
13 nation to each State that enacted a resolution
14 in support of the proposed regulation, the Com-
15 mittee on Banking, Housing, and Urban Affairs
16 of the Senate, and the Committee on Financial
17 Services of the House of Representatives.

18 (4) RESERVATION OF AUTHORITY.—No provi-
19 sion of this subsection shall be construed as limiting
20 or restricting the authority of the Bureau to enhance
21 consumer protection standards established pursuant
22 to this title in response to its own motion or in re-
23 sponse to a request by any other interested person.

24 (5) RULE OF CONSTRUCTION.—No provision of
25 this subsection shall be construed as exempting the

1 Bureau from complying with subchapter II of chap-
2 ter 5 of title 5, United States Code.

3 (6) DEFINITION.—For purposes of this sub-
4 section, the term “consumer protection regulation”
5 means a regulation that the Bureau is authorized to
6 prescribe under the Federal consumer financial laws.

7 **SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF**
8 **STATES.**

9 (a) IN GENERAL.—

10 (1) ACTION BY STATE.—Except as provided in
11 paragraph (2), the attorney general (or the equiva-
12 lent thereof) of any State may bring a civil action
13 in the name of such State in any district court of
14 the United States in that State or in State court
15 that is located in that State and that has jurisdic-
16 tion over the defendant, to enforce provisions of this
17 title or regulations issued under this title, and to se-
18 cure remedies under provisions of this title or rem-
19 edies otherwise provided under other law. A State
20 regulator may bring a civil action or other appro-
21 priate proceeding to enforce the provisions of this
22 title or regulations issued under this title with re-
23 spect to any entity that is State-chartered, incor-
24 porated, licensed, or otherwise authorized to do busi-
25 ness under State law (except as provided in para-

1 graph (2)), and to secure remedies under provisions
2 of this title or remedies otherwise provided under
3 other provisions of law with respect to such an enti-
4 ty.

5 (2) ACTION BY STATE AGAINST NATIONAL
6 BANK OR FEDERAL SAVINGS ASSOCIATION TO EN-
7 FORCE RULES.—

8 (A) IN GENERAL.—Except as permitted
9 under subparagraph (B), the attorney general
10 (or equivalent thereof) of any State may not
11 bring a civil action in the name of such State
12 against a national bank or Federal savings as-
13 sociation to enforce a provision of this title.

14 (B) ENFORCEMENT OF RULES PER-
15 MITTED.—The attorney general (or the equiva-
16 lent thereof) of any State may bring a civil ac-
17 tion in the name of such State against a na-
18 tional bank or Federal savings association in
19 any district court of the United States in the
20 State or in State court that is located in that
21 State and that has jurisdiction over the defend-
22 ant to enforce a regulation prescribed by the
23 Bureau under a provision of this title and to se-
24 cure remedies under provisions of this title or
25 remedies otherwise provided under other law.

1 (3) RULE OF CONSTRUCTION.—No provision of
2 this title shall be construed as modifying, limiting,
3 or superseding the operation of any provision of an
4 enumerated consumer law that relates to the author-
5 ity of a State attorney general or State regulator to
6 enforce such Federal law.

7 (b) CONSULTATION REQUIRED.—

8 (1) NOTICE.—

9 (A) IN GENERAL.—Before initiating any
10 action in a court or other administrative or reg-
11 ulatory proceeding against any covered person
12 as authorized by subsection (a) to enforce any
13 provision of this title, including any regulation
14 prescribed by the Bureau under this title, a
15 State attorney general or State regulator shall
16 timely provide a copy of the complete complaint
17 to be filed and written notice describing such
18 action or proceeding to the Bureau and the pru-
19 dential regulator, if any, or the designee there-
20 of.

21 (B) EMERGENCY ACTION.—If prior notice
22 is not practicable, the State attorney general or
23 State regulator shall provide a copy of the com-
24 plete complaint and the notice to the Bureau
25 and the prudential regulator, if any, imme-

1 diately upon instituting the action or pro-
2 ceeding.

3 (C) CONTENTS OF NOTICE.—The notifica-
4 tion required under this paragraph shall, at a
5 minimum, describe—

6 (i) the identity of the parties;

7 (ii) the alleged facts underlying the
8 proceeding; and

9 (iii) whether there may be a need to
10 coordinate the prosecution of the pro-
11 ceeding so as not to interfere with any ac-
12 tion, including any rulemaking, undertaken
13 by the Bureau, a prudential regulator, or
14 another Federal agency.

15 (2) BUREAU RESPONSE.—In any action de-
16 scribed in paragraph (1), the Bureau may—

17 (A) intervene in the action as a party;

18 (B) upon intervening—

19 (i) remove the action to the appro-
20 priate United States district court, if the
21 action was not originally brought there;
22 and

23 (ii) be heard on all matters arising in
24 the action; and

1 (C) appeal any order or judgment, to the
2 same extent as any other party in the pro-
3 ceeding may.

4 (c) REGULATIONS.—The Bureau shall prescribe reg-
5 ulations to implement the requirements of this section
6 and, from time to time, provide guidance in order to fur-
7 ther coordinate actions with the State attorneys general
8 and other regulators.

9 (d) PRESERVATION OF STATE AUTHORITY.—

10 (1) STATE CLAIMS.—No provision of this sec-
11 tion shall be construed as altering, limiting, or af-
12 fecting the authority of a State attorney general or
13 any other regulatory or enforcement agency or au-
14 thority to bring an action or other regulatory pro-
15 ceeding arising solely under the law in effect in that
16 State.

17 (2) STATE SECURITIES REGULATORS.—No pro-
18 vision of this title shall be construed as altering, lim-
19 iting, or affecting the authority of a State securities
20 commission (or any agency or office performing like
21 functions) under State law to adopt rules, initiate
22 enforcement proceedings, or take any other action
23 with respect to a person regulated by such commis-
24 sion or authority.

1 (3) STATE INSURANCE REGULATORS.—No pro-
2 vision of this title shall be construed as altering, lim-
3 iting, or affecting the authority of a State insurance
4 commission or State insurance regulator under State
5 law to adopt rules, initiate enforcement proceedings,
6 or take any other action with respect to a person
7 regulated by such commission or regulator.

8 **SEC. 1043. PRESERVATION OF EXISTING CONTRACTS.**

9 This title, and regulations, orders, guidance, and in-
10 terpretations prescribed, issued, or established by the Bu-
11 reau, shall not be construed to alter or affect the applica-
12 bility of any regulation, order, guidance, or interpretation
13 prescribed, issued, and established by the Comptroller of
14 the Currency or the Director of the Office of Thrift Super-
15 vision regarding the applicability of State law under Fed-
16 eral banking law to any contract entered into on or before
17 the date of enactment of this Act, by national banks, Fed-
18 eral savings associations, or subsidiaries thereof that are
19 regulated and supervised by the Comptroller of the Cur-
20 rency or the Director of the Office of Thrift Supervision,
21 respectively.

1 **SEC. 1044. STATE LAW PREEMPTION STANDARDS FOR NA-**
2 **TIONAL BANKS AND SUBSIDIARIES CLARI-**
3 **FIED.**

4 (a) IN GENERAL.—Chapter one of title LXII of the
5 Revised Statutes of the United States (12 U.S.C. 21 et
6 seq.) is amended by inserting after section 5136B the fol-
7 lowing new section:

8 **“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NA-**
9 **TIONAL BANKS AND SUBSIDIARIES CLARI-**
10 **FIED.**

11 “(a) DEFINITIONS.—For purposes of this section, the
12 following definitions shall apply:

13 “(1) NATIONAL BANK.—The term ‘national
14 bank’ includes—

15 “(A) any bank organized under the laws of
16 the United States; and

17 “(B) any Federal branch established in ac-
18 cordance with the International Banking Act of
19 1978.

20 “(2) STATE CONSUMER FINANCIAL LAWS.—The
21 term ‘State consumer financial law’ means a State
22 law that does not directly or indirectly discriminate
23 against national banks and that directly and specifi-
24 cally regulates the manner, content, or terms and
25 conditions of any financial transaction (as may be

1 authorized for national banks to engage in), or any
2 account related thereto, with respect to a consumer.

3 “(3) OTHER DEFINITIONS.—The terms ‘affil-
4 iate’, ‘subsidiary’, ‘includes’, and ‘including’ have the
5 same meanings as in section 3 of the Federal De-
6 posit Insurance Act.

7 “(b) PREEMPTION STANDARD.—

8 “(1) IN GENERAL.—State consumer financial
9 laws are preempted, only if—

10 “(A) application of a State consumer fi-
11 nancial law would have a discriminatory effect
12 on national banks, in comparison with the effect
13 of the law on a bank chartered by that State;

14 “(B) in accordance with the legal standard
15 for preemption in the decision of the Supreme
16 Court of the United States in *Barnett Bank of
17 Marion County, N. A. v. Nelson, Florida Insur-
18 ance Commissioner, et al.*, 517 U.S. 25 (1996),
19 the State consumer financial law prevents or
20 significantly interferes with the exercise by the
21 national bank of its powers; and any preemp-
22 tion determination under this subparagraph
23 may be made by a court, or by regulation or
24 order of the Comptroller of the Currency on a

1 case-by-case basis, in accordance with applica-
2 ble law; or

3 “(C) the State consumer financial law is
4 preempted by a provision of Federal law other
5 than this title.

6 “(2) SAVINGS CLAUSE.—This title and section
7 24 of the Federal Reserve Act (12 U.S.C. 371) do
8 not preempt, annul, or affect the applicability of any
9 State law to any subsidiary or affiliate of a national
10 bank (other than a subsidiary or affiliate that is
11 chartered as a national bank).

12 “(3) CASE-BY-CASE BASIS.—

13 “(A) DEFINITION.—As used in this section
14 the term ‘case-by-case basis’ refers to a deter-
15 mination pursuant to this section made by the
16 Comptroller concerning the impact of a par-
17 ticular State consumer financial law on any na-
18 tional bank that is subject to that law, or the
19 law of any other State with substantively equiv-
20 alent terms.

21 “(B) CONSULTATION.—When making a
22 determination on a case-by-case basis that a
23 State consumer financial law of another State
24 has substantively equivalent terms as one that
25 the Comptroller is preempting, the Comptroller

1 shall first consult with the Bureau of Consumer
2 Financial Protection and shall take the views of
3 the Bureau into account when making the de-
4 termination.

5 “(4) RULE OF CONSTRUCTION.—This title does
6 not occupy the field in any area of State law.

7 “(5) STANDARDS OF REVIEW.—

8 “(A) PREEMPTION.—A court reviewing
9 any determinations made by the Comptroller re-
10 garding preemption of a State law by this title
11 or section 24 of the Federal Reserve Act (12
12 U.S.C. 371) shall assess the validity of such de-
13 terminations, depending upon the thoroughness
14 evident in the consideration of the agency, the
15 validity of the reasoning of the agency, the con-
16 sistency with other valid determinations made
17 by the agency, and other factors which the
18 court finds persuasive and relevant to its deci-
19 sion.

20 “(B) SAVINGS CLAUSE.—Except as pro-
21 vided in subparagraph (A), nothing in this sec-
22 tion shall affect the deference that a court may
23 afford to the Comptroller in making determina-
24 tions regarding the meaning or interpretation of

1 title LXII of the Revised Statutes of the United
2 States or other Federal laws.

3 “(6) COMPTROLLER DETERMINATION NOT DEL-
4 EGABLE.—Any regulation, order, or determination
5 made by the Comptroller of the Currency under
6 paragraph (1)(B) shall be made by the Comptroller,
7 and shall not be delegable to another officer or em-
8 ployee of the Comptroller of the Currency.

9 “(c) SUBSTANTIAL EVIDENCE.—No regulation or
10 order of the Comptroller of the Currency prescribed under
11 subsection (b)(1)(B), shall be interpreted or applied so as
12 to invalidate, or otherwise declare inapplicable to a na-
13 tional bank, the provision of the State consumer financial
14 law, unless substantial evidence, made on the record of
15 the proceeding, supports the specific finding regarding the
16 preemption of such provision in accordance with the legal
17 standard of the decision of the Supreme Court of the
18 United States in Barnett Bank of Marion County, N.A.
19 v. Nelson, Florida Insurance Commissioner, et al., 517
20 U.S. 25 (1996).

21 “(d) PERIODIC REVIEW OF PREEMPTION DETER-
22 MINATIONS.—

23 “(1) IN GENERAL.—The Comptroller of the
24 Currency shall periodically conduct a review,
25 through notice and public comment, of each deter-

1 mination that a provision of Federal law preempts a
2 State consumer financial law. The agency shall con-
3 duct such review within the 5-year period after pre-
4 scribing or otherwise issuing such determination,
5 and at least once during each 5-year period there-
6 after. After conducting the review of, and inspecting
7 the comments made on, the determination, the agen-
8 cy shall publish a notice in the Federal Register an-
9 nouncing the decision to continue or rescind the de-
10 termination or a proposal to amend the determina-
11 tion. Any such notice of a proposal to amend a de-
12 termination and the subsequent resolution of such
13 proposal shall comply with the procedures set forth
14 in subsections (a) and (b) of section 5244 of the Re-
15 vised Statutes of the United States (12 U.S.C. 43
16 (a), (b)).

17 “(2) REPORTS TO CONGRESS.—At the time of
18 issuing a review conducted under paragraph (1), the
19 Comptroller of the Currency shall submit a report
20 regarding such review to the Committee on Finan-
21 cial Services of the House of Representatives and
22 the Committee on Banking, Housing, and Urban Af-
23 fairs of the Senate. The report submitted to the re-
24 spective committees shall address whether the agen-
25 cy intends to continue, rescind, or propose to amend

1 any determination that a provision of Federal law
2 preempts a State consumer financial law, and the
3 reasons therefor.

4 “(e) APPLICATION OF STATE CONSUMER FINANCIAL
5 LAW TO SUBSIDIARIES AND AFFILIATES.—Notwith-
6 standing any provision of this title or section 24 of Federal
7 Reserve Act (12 U.S.C. 371), a State consumer financial
8 law shall apply to a subsidiary or affiliate of a national
9 bank (other than a subsidiary or affiliate that is chartered
10 as a national bank) to the same extent that the State con-
11 sumer financial law applies to any person, corporation, or
12 other entity subject to such State law.

13 “(f) PRESERVATION OF POWERS RELATED TO
14 CHARGING INTEREST.—No provision of this title shall be
15 construed as altering or otherwise affecting the authority
16 conferred by section 5197 of the Revised Statutes of the
17 United States (12 U.S.C. 85) for the charging of interest
18 by a national bank at the rate allowed by the laws of the
19 State, territory, or district where the bank is located, in-
20 cluding with respect to the meaning of ‘interest’ under
21 such provision.

22 “(g) TRANSPARENCY OF OCC PREEMPTION DETER-
23 MINATIONS.—The Comptroller of the Currency shall pub-
24 lish and update no less frequently than quarterly, a list
25 of preemption determinations by the Comptroller of the

1 Currency then in effect that identifies the activities and
2 practices covered by each determination and the require-
3 ments and constraints determined to be preempted.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 for chapter one of title LXII of the Revised Statutes of
6 the United States is amended by inserting after the item
7 relating to section 5136B the following new item:

“Sec. 5136C. State law preemption standards for national banks and subsidi-
aries clarified.”.

8 **SEC. 1045. CLARIFICATION OF LAW APPLICABLE TO NON-**
9 **DEPOSITORY INSTITUTION SUBSIDIARIES.**

10 Section 5136C of the Revised Statutes of the United
11 States (as added by this subtitle) is amended by adding
12 at the end the following:

13 “(h) CLARIFICATION OF LAW APPLICABLE TO NON-
14 DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILI-
15 ATES OF NATIONAL BANKS.—

16 “(1) DEFINITIONS.—For purposes of this sub-
17 section, the terms ‘depository institution’, ‘sub-
18 sidiary’, and ‘affiliate’ have the same meanings as in
19 section 3 of the Federal Deposit Insurance Act.

20 “(2) RULE OF CONSTRUCTION.—No provision
21 of this title or section 24 of the Federal Reserve Act
22 (12 U.S.C. 371) shall be construed as preempting,
23 annulling, or affecting the applicability of State law
24 to any subsidiary, affiliate, or agent of a national

1 bank (other than a subsidiary, affiliate, or agent
2 that is chartered as a national bank).”.

3 **SEC. 1046. STATE LAW PREEMPTION STANDARDS FOR FED-**
4 **ERAL SAVINGS ASSOCIATIONS AND SUBSIDI-**
5 **ARIES CLARIFIED.**

6 (a) IN GENERAL.—The Home Owners’ Loan Act (12
7 U.S.C. 1461 et seq.) is amended by inserting after section
8 5 the following new section:

9 **“SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FED-**
10 **ERAL SAVINGS ASSOCIATIONS CLARIFIED.**

11 “(a) IN GENERAL.—Any determination by a court or
12 by the Director or any successor officer or agency regard-
13 ing the relation of State law to a provision of this Act
14 or any regulation or order prescribed under this Act shall
15 be made in accordance with the laws and legal standards
16 applicable to national banks regarding the preemption of
17 State law.

18 “(b) PRINCIPLES OF CONFLICT PREEMPTION APPLI-
19 CABLE.—Notwithstanding the authorities granted under
20 sections 4 and 5, this Act does not occupy the field in
21 any area of State law.”.

22 (b) CLERICAL AMENDMENT.—The table of sections
23 for the Home Owners’ Loan Act (12 U.S.C. 1461 et seq.)
24 is amended by striking the item relating to section 6 and
25 inserting the following new item:

“Sec. 6. State law preemption standards for Federal savings associations and subsidiaries clarified.”.

1 **SEC. 1047. VISITORIAL STANDARDS FOR NATIONAL BANKS**
2 **AND SAVINGS ASSOCIATIONS.**

3 (a) NATIONAL BANKS.—Section 5136C of the Re-
4 vised Statutes of the United States (as added by this sub-
5 title) is amended by adding at the end the following:

6 “(i) VISITORIAL POWERS.—

7 “(1) IN GENERAL.—In accordance with the de-
8 cision of the Supreme Court of the United States in
9 Cuomo v. Clearing House Assn., L. L. C. (129 S.
10 Ct. 2710 (2009)), no provision of this title which re-
11 lates to visitorial powers or otherwise limits or re-
12 stricts the visitorial authority to which any national
13 bank is subject shall be construed as limiting or re-
14 stricting the authority of any attorney general (or
15 other chief law enforcement officer) of any State to
16 bring an action against a national bank in a court
17 of appropriate jurisdiction to enforce an applicable
18 law and to seek relief as authorized by such law.

19 “(j) ENFORCEMENT ACTIONS.—The ability of the
20 Comptroller of the Currency to bring an enforcement ac-
21 tion under this title or section 5 of the Federal Trade
22 Commission Act does not preclude any private party from
23 enforcing rights granted under Federal or State law in the
24 courts.”.

1 (b) SAVINGS ASSOCIATIONS.—Section 6 of the Home
2 Owners’ Loan Act (as added by this title) is amended by
3 adding at the end the following:

4 “(c) VISITORIAL POWERS.—The provisions of sec-
5 tions 5136C(i) of the Revised Statutes of the United
6 States shall apply to Federal savings associations, and any
7 subsidiary thereof, to the same extent and in the same
8 manner as if such savings associations, or subsidiaries
9 thereof, were national banks or subsidiaries of national
10 banks, respectively.”

11 “(d) ENFORCEMENT ACTIONS.—The ability of the
12 Comptroller of the Currency to bring an enforcement ac-
13 tion under this Act or section 5 of the Federal Trade Com-
14 mission Act does not preclude any private party from en-
15 forcing rights granted under Federal or State law in the
16 courts.”.

17 **SEC. 1048. EFFECTIVE DATE.**

18 This subtitle shall become effective on the designated
19 transfer date.

20 **Subtitle E—Enforcement Powers**

21 **SEC. 1051. DEFINITIONS.**

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

24 (1) BUREAU INVESTIGATION.—The term “Bu-
25 reau investigation” means any inquiry conducted by

1 a Bureau investigator for the purpose of
2 ascertaining whether any person is or has been en-
3 gaged in any conduct that is a violation, as defined
4 in this section.

5 (2) BUREAU INVESTIGATOR.—The term “Bu-
6 reau investigator” means any attorney or investi-
7 gator employed by the Bureau who is charged with
8 the duty of enforcing or carrying into effect any
9 Federal consumer financial law.

10 (3) CUSTODIAN.—The term “custodian” means
11 the custodian or any deputy custodian designated by
12 the Bureau.

13 (4) DOCUMENTARY MATERIAL.—The term
14 “documentary material” includes the original or any
15 copy of any book, document, record, report, memo-
16 randum, paper, communication, tabulation, chart,
17 logs, electronic files, or other data or data compila-
18 tions stored in any medium.

19 (5) VIOLATION.—The term “violation” means
20 any act or omission that, if proved, would constitute
21 a violation of any provision of Federal consumer fi-
22 nancial law.

23 **SEC. 1052. INVESTIGATIONS AND ADMINISTRATIVE DIS-**
24 **COVERY.**

25 (a) JOINT INVESTIGATIONS.—

1 (1) IN GENERAL.—The Bureau or, where ap-
2 propriate, a Bureau investigator, may engage in
3 joint investigations and requests for information, as
4 authorized under this title.

5 (2) FAIR LENDING.—The authority under para-
6 graph (1) includes matters relating to fair lending,
7 and where appropriate, joint investigations with, and
8 requests for information from, the Secretary of
9 Housing and Urban Development, the Attorney Gen-
10 eral of the United States, or both.

11 (b) SUBPOENAS.—

12 (1) IN GENERAL.—The Bureau or a Bureau in-
13 vestigator may issue subpoenas for the attendance
14 and testimony of witnesses and the production of
15 relevant papers, books, documents, or other material
16 in connection with hearings under this title.

17 (2) FAILURE TO OBEY.—In the case of contu-
18 macy or refusal to obey a subpoena issued pursuant
19 to this paragraph and served upon any person, the
20 district court of the United States for any district in
21 which such person is found, resides, or transacts
22 business, upon application by the Bureau or a Bu-
23 reau investigator and after notice to such person,
24 may issue an order requiring such person to appear

1 and give testimony or to appear and produce docu-
2 ments or other material.

3 (3) CONTEMPT.—Any failure to obey an order
4 of the court under this subsection may be punished
5 by the court as a contempt thereof.

6 (c) DEMANDS.—

7 (1) IN GENERAL.—Whenever the Bureau has
8 reason to believe that any person may be in posses-
9 sion, custody, or control of any documentary mate-
10 rial or tangible things, or may have any information,
11 relevant to a violation, the Bureau may, before the
12 institution of any proceedings under the Federal
13 consumer financial law, issue in writing, and cause
14 to be served upon such person, a civil investigative
15 demand requiring such person to—

16 (A) produce such documentary material for
17 inspection and copying or reproduction in the
18 form or medium requested by the Bureau;

19 (B) submit such tangible things;

20 (C) file written reports or answers to ques-
21 tions;

22 (D) give oral testimony concerning docu-
23 mentary material, tangible things, or other in-
24 formation; or

1 (E) furnish any combination of such mate-
2 rial, answers, or testimony.

3 (2) REQUIREMENTS.—Each civil investigative
4 demand shall state the nature of the conduct consti-
5 tuting the alleged violation which is under investiga-
6 tion and the provision of law applicable to such vio-
7 lation.

8 (3) PRODUCTION OF DOCUMENTS.—Each civil
9 investigative demand for the production of documen-
10 tary material shall—

11 (A) describe each class of documentary
12 material to be produced under the demand with
13 such definiteness and certainty as to permit
14 such material to be fairly identified;

15 (B) prescribe a return date or dates which
16 will provide a reasonable period of time within
17 which the material so demanded may be assem-
18 bled and made available for inspection and
19 copying or reproduction; and

20 (C) identify the custodian to whom such
21 material shall be made available.

22 (4) PRODUCTION OF THINGS.—Each civil inves-
23 tigative demand for the submission of tangible
24 things shall—

1 (A) describe each class of tangible things
2 to be submitted under the demand with such
3 definiteness and certainty as to permit such
4 things to be fairly identified;

5 (B) prescribe a return date or dates which
6 will provide a reasonable period of time within
7 which the things so demanded may be assem-
8 bled and submitted; and

9 (C) identify the custodian to whom such
10 things shall be submitted.

11 (5) DEMAND FOR WRITTEN REPORTS OR AN-
12 SWERS.—Each civil investigative demand for written
13 reports or answers to questions shall—

14 (A) propound with definiteness and cer-
15 tainty the reports to be produced or the ques-
16 tions to be answered;

17 (B) prescribe a date or dates at which time
18 written reports or answers to questions shall be
19 submitted; and

20 (C) identify the custodian to whom such
21 reports or answers shall be submitted.

22 (6) ORAL TESTIMONY.—Each civil investigative
23 demand for the giving of oral testimony shall—

24 (A) prescribe a date, time, and place at
25 which oral testimony shall be commenced; and

1 (B) identify a Bureau investigator who
2 shall conduct the investigation and the custo-
3 dian to whom the transcript of such investiga-
4 tion shall be submitted.

5 (7) SERVICE.—Any civil investigative demand
6 issued, and any enforcement petition filed, under
7 this section may be served—

8 (A) by any Bureau investigator at any
9 place within the territorial jurisdiction of any
10 court of the United States; and

11 (B) upon any person who is not found
12 within the territorial jurisdiction of any court of
13 the United States—

14 (i) in such manner as the Federal
15 Rules of Civil Procedure prescribe for serv-
16 ice in a foreign nation; and

17 (ii) to the extent that the courts of
18 the United States have authority to assert
19 jurisdiction over such person, consistent
20 with due process, the United States Dis-
21 trict Court for the District of Columbia
22 shall have the same jurisdiction to take
23 any action respecting compliance with this
24 section by such person that such district
25 court would have if such person were per-

1 sonally within the jurisdiction of such dis-
2 trict court.

3 (8) METHOD OF SERVICE.—Service of any civil
4 investigative demand or any enforcement petition
5 filed under this section may be made upon a person,
6 including any legal entity, by—

7 (A) delivering a duly executed copy of such
8 demand or petition to the individual or to any
9 partner, executive officer, managing agent, or
10 general agent of such person, or to any agent
11 of such person authorized by appointment or by
12 law to receive service of process on behalf of
13 such person;

14 (B) delivering a duly executed copy of such
15 demand or petition to the principal office or
16 place of business of the person to be served; or

17 (C) depositing a duly executed copy in the
18 United States mails, by registered or certified
19 mail, return receipt requested, duly addressed
20 to such person at the principal office or place
21 of business of such person.

22 (9) PROOF OF SERVICE.—

23 (A) IN GENERAL.—A verified return by the
24 individual serving any civil investigative demand
25 or any enforcement petition filed under this sec-

1 tion setting forth the manner of such service
2 shall be proof of such service.

3 (B) RETURN RECEIPTS.—In the case of
4 service by registered or certified mail, such re-
5 turn shall be accompanied by the return post
6 office receipt of delivery of such demand or en-
7 forcement petition.

8 (10) PRODUCTION OF DOCUMENTARY MATE-
9 RIAL.—The production of documentary material in
10 response to a civil investigative demand shall be
11 made under a sworn certificate, in such form as the
12 demand designates, by the person, if a natural per-
13 son, to whom the demand is directed or, if not a
14 natural person, by any person having knowledge of
15 the facts and circumstances relating to such produc-
16 tion, to the effect that all of the documentary mate-
17 rial required by the demand and in the possession,
18 custody, or control of the person to whom the de-
19 mand is directed has been produced and made avail-
20 able to the custodian.

21 (11) SUBMISSION OF TANGIBLE THINGS.—The
22 submission of tangible things in response to a civil
23 investigative demand shall be made under a sworn
24 certificate, in such form as the demand designates,
25 by the person to whom the demand is directed or,

1 if not a natural person, by any person having knowl-
2 edge of the facts and circumstances relating to such
3 production, to the effect that all of the tangible
4 things required by the demand and in the posses-
5 sion, custody, or control of the person to whom the
6 demand is directed have been submitted to the cus-
7 todian.

8 (12) SEPARATE ANSWERS.—Each reporting re-
9 quirement or question in a civil investigative demand
10 shall be answered separately and fully in writing
11 under oath, unless it is objected to, in which event
12 the reasons for the objection shall be stated in lieu
13 of an answer, and it shall be submitted under a
14 sworn certificate, in such form as the demand des-
15 ignates, by the person, if a natural person, to whom
16 the demand is directed or, if not a natural person,
17 by any person responsible for answering each report-
18 ing requirement or question, to the effect that all in-
19 formation required by the demand and in the posses-
20 sion, custody, control, or knowledge of the person to
21 whom the demand is directed has been submitted.

22 (13) TESTIMONY.—

23 (A) IN GENERAL.—

24 (i) OATH AND RECORDATION.—The
25 examination of any person pursuant to a

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1 demand for oral testimony served under
2 this subsection shall be taken before an of-
3 ficer authorized to administer oaths and
4 affirmations by the laws of the United
5 States or of the place at which the exam-
6 ination is held. The officer before whom
7 oral testimony is to be taken shall put the
8 witness on oath or affirmation and shall
9 personally, or by any individual acting
10 under the direction of and in the presence
11 of the officer, record the testimony of the
12 witness.

13 (ii) TRANSCRIPTION.—The testimony
14 shall be taken stenographically and tran-
15 scribed.

16 (iii) TRANSMISSION TO CUSTODIAN.—
17 After the testimony is fully transcribed,
18 the officer investigator before whom the
19 testimony is taken shall promptly transmit
20 a copy of the transcript of the testimony to
21 the custodian.

22 (B) PARTIES PRESENT.—Any Bureau in-
23 vestigator before whom oral testimony is to be
24 taken shall exclude from the place where the
25 testimony is to be taken all other persons, ex-

1 cept the person giving the testimony, the attor-
2 ney for that person, the officer before whom the
3 testimony is to be taken, an investigator or rep-
4 resentative of an agency with which the Bureau
5 is engaged in a joint investigation, and any ste-
6 nographer taking such testimony.

7 (C) LOCATION.—The oral testimony of any
8 person taken pursuant to a civil investigative
9 demand shall be taken in the judicial district of
10 the United States in which such person resides,
11 is found, or transacts business, or in such other
12 place as may be agreed upon by the Bureau in-
13 vestigator before whom the oral testimony of
14 such person is to be taken and such person.

15 (D) ATTORNEY REPRESENTATION.—

16 (i) IN GENERAL.—Any person com-
17 pelled to appear under a civil investigative
18 demand for oral testimony pursuant to this
19 section may be accompanied, represented,
20 and advised by an attorney.

21 (ii) AUTHORITY.—The attorney may
22 advise a person described in clause (i), in
23 confidence, either upon the request of such
24 person or upon the initiative of the attor-

1 ney, with respect to any question asked of
2 such person.

3 (iii) OBJECTIONS.—A person de-
4 scribed in clause (i), or the attorney for
5 that person, may object on the record to
6 any question, in whole or in part, and such
7 person shall briefly state for the record the
8 reason for the objection. An objection may
9 properly be made, received, and entered
10 upon the record when it is claimed that
11 such person is entitled to refuse to answer
12 the question on grounds of any constitu-
13 tional or other legal right or privilege, in-
14 cluding the privilege against self-incrimina-
15 tion, but such person shall not otherwise
16 object to or refuse to answer any question,
17 and such person or attorney shall not oth-
18 erwise interrupt the oral examination.

19 (iv) REFUSAL TO ANSWER.—If a per-
20 son described in clause (i) refuses to an-
21 swer any question—

22 (I) the Bureau may petition the
23 district court of the United States
24 pursuant to this section for an order

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1 compelling such person to answer
2 such question; and

3 (II) if the refusal is on grounds
4 of the privilege against self-incrimina-
5 tion, the testimony of such person
6 may be compelled in accordance with
7 the provisions of section 6004 of title
8 18, United States Code.

9 (E) TRANSCRIPTS.—For purposes of this
10 subsection—

11 (i) after the testimony of any witness
12 is fully transcribed, the Bureau investi-
13 gator shall afford the witness (who may be
14 accompanied by an attorney) a reasonable
15 opportunity to examine the transcript;

16 (ii) the transcript shall be read to or
17 by the witness, unless such examination
18 and reading are waived by the witness;

19 (iii) any changes in form or substance
20 which the witness desires to make shall be
21 entered and identified upon the transcript
22 by the Bureau investigator, with a state-
23 ment of the reasons given by the witness
24 for making such changes;

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1 (iv) the transcript shall be signed by
2 the witness, unless the witness in writing
3 waives the signing, is ill, cannot be found,
4 or refuses to sign; and

5 (v) if the transcript is not signed by
6 the witness during the 30-day period fol-
7 lowing the date on which the witness is
8 first afforded a reasonable opportunity to
9 examine the transcript, the Bureau investi-
10 gator shall sign the transcript and state on
11 the record the fact of the waiver, illness,
12 absence of the witness, or the refusal to
13 sign, together with any reasons given for
14 the failure to sign.

15 (F) CERTIFICATION BY INVESTIGATOR.—

16 The Bureau investigator shall certify on the
17 transcript that the witness was duly sworn by
18 him or her and that the transcript is a true
19 record of the testimony given by the witness,
20 and the Bureau investigator shall promptly de-
21 liver the transcript or send it by registered or
22 certified mail to the custodian.

23 (G) COPY OF TRANSCRIPT.—The Bureau
24 investigator shall furnish a copy of the tran-
25 script (upon payment of reasonable charges for

1 the transcript) to the witness only, except that
2 the Bureau may for good cause limit such wit-
3 ness to inspection of the official transcript of
4 his testimony.

5 (H) WITNESS FEES.—Any witness appear-
6 ing for the taking of oral testimony pursuant to
7 a civil investigative demand shall be entitled to
8 the same fees and mileage which are paid to
9 witnesses in the district courts of the United
10 States.

11 (d) CONFIDENTIAL TREATMENT OF DEMAND MATE-
12 RIAL.—

13 (1) IN GENERAL.—Documentary materials and
14 tangible things received as a result of a civil inves-
15 tigative demand shall be subject to requirements and
16 procedures regarding confidentiality, in accordance
17 with rules established by the Bureau.

18 (2) DISCLOSURE TO CONGRESS.—No rule es-
19 tablished by the Bureau regarding the confidentiality
20 of materials submitted to, or otherwise obtained by,
21 the Bureau shall be intended to prevent disclosure to
22 either House of Congress or to an appropriate com-
23 mittee of the Congress, except that the Bureau is
24 permitted to adopt rules allowing prior notice to any
25 party that owns or otherwise provided the material

1 to the Bureau and had designated such material as
2 confidential.

3 (e) PETITION FOR ENFORCEMENT.—

4 (1) IN GENERAL.—Whenever any person fails
5 to comply with any civil investigative demand duly
6 served upon him under this section, or whenever sat-
7 isfactory copying or reproduction of material re-
8 quested pursuant to the demand cannot be accom-
9 plished and such person refuses to surrender such
10 material, the Bureau, through such officers or attor-
11 neys as it may designate, may file, in the district
12 court of the United States for any judicial district
13 in which such person resides, is found, or transacts
14 business, and serve upon such person, a petition for
15 an order of such court for the enforcement of this
16 section.

17 (2) SERVICE OF PROCESS.—All process of any
18 court to which application may be made as provided
19 in this subsection may be served in any judicial dis-
20 trict.

21 (f) PETITION FOR ORDER MODIFYING OR SETTING
22 ASIDE DEMAND.—

23 (1) IN GENERAL.—Not later than 20 days after
24 the service of any civil investigative demand upon
25 any person under subsection (b), or at any time be-

1 fore the return date specified in the demand, which-
2 ever period is shorter, or within such period exceed-
3 ing 20 days after service or in excess of such return
4 date as may be prescribed in writing, subsequent to
5 service, by any Bureau investigator named in the de-
6 mand, such person may file with the Bureau a peti-
7 tion for an order by the Bureau modifying or setting
8 aside the demand.

9 (2) COMPLIANCE DURING PENDENCY.—The
10 time permitted for compliance with the demand in
11 whole or in part, as determined proper and ordered
12 by the Bureau, shall not run during the pendency of
13 a petition under paragraph (1) at the Bureau, ex-
14 cept that such person shall comply with any portions
15 of the demand not sought to be modified or set
16 aside.

17 (3) SPECIFIC GROUNDS.—A petition under
18 paragraph (1) shall specify each ground upon which
19 the petitioner relies in seeking relief, and may be
20 based upon any failure of the demand to comply
21 with the provisions of this section, or upon any con-
22 stitutional or other legal right or privilege of such
23 person.

24 (g) CUSTODIAL CONTROL.—At any time during
25 which any custodian is in custody or control of any docu-

1 mentary material, tangible things, reports, answers to
2 questions, or transcripts of oral testimony given by any
3 person in compliance with any civil investigative demand,
4 such person may file, in the district court of the United
5 States for the judicial district within which the office of
6 such custodian is situated, and serve upon such custodian,
7 a petition for an order of such court requiring the per-
8 formance by such custodian of any duty imposed upon him
9 by this section or rule promulgated by the Bureau.

10 (h) JURISDICTION OF COURT.—

11 (1) IN GENERAL.—Whenever any petition is
12 filed in any district court of the United States under
13 this section, such court shall have jurisdiction to
14 hear and determine the matter so presented, and to
15 enter such order or orders as may be required to
16 carry out the provisions of this section.

17 (2) APPEAL.—Any final order entered as de-
18 scribed in paragraph (1) shall be subject to appeal
19 pursuant to section 1291 of title 28, United States
20 Code.

21 **SEC. 1053. HEARINGS AND ADJUDICATION PROCEEDINGS.**

22 (a) IN GENERAL.—The Bureau is authorized to con-
23 duct hearings and adjudication proceedings with respect
24 to any person in the manner prescribed by chapter 5 of

1 title 5, United States Code in order to ensure or enforce
2 compliance with—

3 (1) the provisions of this title, including any
4 rules prescribed by the Bureau under this title; and

5 (2) any other Federal law that the Bureau is
6 authorized to enforce, including an enumerated con-
7 sumer law, and any regulations or order prescribed
8 thereunder, unless such Federal law specifically lim-
9 its the Bureau from conducting a hearing or adju-
10 dication proceeding and only to the extent of such
11 limitation.

12 (b) SPECIAL RULES FOR CEASE-AND-DESIST PRO-
13 CEEDINGS.—

14 (1) ORDERS AUTHORIZED.—

15 (A) IN GENERAL.—If, in the opinion of the
16 Bureau, any covered person or service provider
17 is engaging or has engaged in an activity that
18 violates a law, rule, or any condition imposed in
19 writing on the person by the Bureau, the Bu-
20 reau may, subject to sections 1024, 1025, and
21 1026, issue and serve upon the covered person
22 or service provider a notice of charges in re-
23 spect thereof.

24 (B) CONTENT OF NOTICE.—The notice
25 under subparagraph (A) shall contain a state-

1 ment of the facts constituting the alleged viola-
2 tion or violations, and shall fix a time and place
3 at which a hearing will be held to determine
4 whether an order to cease and desist should
5 issue against the covered person or service pro-
6 vider, such hearing to be held not earlier than
7 30 days nor later than 60 days after the date
8 of service of such notice, unless an earlier or a
9 later date is set by the Bureau, at the request
10 of any party so served.

11 (C) CONSENT.—Unless the party or par-
12 ties served under subparagraph (B) appear at
13 the hearing personally or by a duly authorized
14 representative, such person shall be deemed to
15 have consented to the issuance of the cease-and-
16 desist order.

17 (D) PROCEDURE.—In the event of consent
18 under subparagraph (C), or if, upon the record,
19 made at any such hearing, the Bureau finds
20 that any violation specified in the notice of
21 charges has been established, the Bureau may
22 issue and serve upon the covered person or
23 service provider an order to cease and desist
24 from the violation or practice. Such order may,
25 by provisions which may be mandatory or other-

1 wise, require the covered person or service pro-
2 vider to cease and desist from the subject activ-
3 ity, and to take affirmative action to correct the
4 conditions resulting from any such violation.

5 (2) EFFECTIVENESS OF ORDER.—A cease-and-
6 desist order shall become effective at the expiration
7 of 30 days after the date of service of an order
8 under paragraph (1) upon the covered person or
9 service provider concerned (except in the case of a
10 cease-and-desist order issued upon consent, which
11 shall become effective at the time specified therein),
12 and shall remain effective and enforceable as pro-
13 vided therein, except to such extent as the order is
14 stayed, modified, terminated, or set aside by action
15 of the Bureau or a reviewing court.

16 (3) DECISION AND APPEAL.—Any hearing pro-
17 vided for in this subsection shall be held in the Fed-
18 eral judicial district or in the territory in which the
19 residence or principal office or place of business of
20 the person is located unless the person consents to
21 another place, and shall be conducted in accordance
22 with the provisions of chapter 5 of title 5 of the
23 United States Code. After such hearing, and within
24 90 days after the Bureau has notified the parties
25 that the case has been submitted to the Bureau for

1 final decision, the Bureau shall render its decision
2 (which shall include findings of fact upon which its
3 decision is predicated) and shall issue and serve
4 upon each party to the proceeding an order or or-
5 ders consistent with the provisions of this section.
6 Judicial review of any such order shall be exclusively
7 as provided in this subsection. Unless a petition for
8 review is timely filed in a court of appeals of the
9 United States, as provided in paragraph (4), and
10 thereafter until the record in the proceeding has
11 been filed as provided in paragraph (4), the Bureau
12 may at any time, upon such notice and in such man-
13 ner as the Bureau shall determine proper, modify,
14 terminate, or set aside any such order. Upon filing
15 of the record as provided, the Bureau may modify,
16 terminate, or set aside any such order with permis-
17 sion of the court.

18 (4) APPEAL TO COURT OF APPEALS.—Any
19 party to any proceeding under this subsection may
20 obtain a review of any order served pursuant to this
21 subsection (other than an order issued with the con-
22 sent of the person concerned) by the filing in the
23 court of appeals of the United States for the circuit
24 in which the principal office of the covered person is
25 located, or in the United States Court of Appeals for

1 the District of Columbia Circuit, within 30 days
2 after the date of service of such order, a written pe-
3 tition praying that the order of the Bureau be modi-
4 fied, terminated, or set aside. A copy of such peti-
5 tion shall be forthwith transmitted by the clerk of
6 the court to the Bureau, and thereupon the Bureau
7 shall file in the court the record in the proceeding,
8 as provided in section 2112 of title 28 of the United
9 States Code. Upon the filing of such petition, such
10 court shall have jurisdiction, which upon the filing of
11 the record shall except as provided in the last sen-
12 tence of paragraph (3) be exclusive, to affirm, mod-
13 ify, terminate, or set aside, in whole or in part, the
14 order of the Bureau. Review of such proceedings
15 shall be had as provided in chapter 7 of title 5 of
16 the United States Code. The judgment and decree of
17 the court shall be final, except that the same shall
18 be subject to review by the Supreme Court of the
19 United States, upon certiorari, as provided in section
20 1254 of title 28 of the United States Code.

21 (5) NO STAY.—The commencement of pro-
22 ceedings for judicial review under paragraph (4)
23 shall not, unless specifically ordered by the court,
24 operate as a stay of any order issued by the Bureau.

1 (c) SPECIAL RULES FOR TEMPORARY CEASE-AND-
2 DESIST PROCEEDINGS.—

3 (1) IN GENERAL.—Whenever the Bureau deter-
4 mines that the violation specified in the notice of
5 charges served upon a person, including a service
6 provider, pursuant to subsection (b), or the continu-
7 ation thereof, is likely to cause the person to be in-
8 solvent or otherwise prejudice the interests of con-
9 sumers before the completion of the proceedings con-
10 ducted pursuant to subsection (b), the Bureau may
11 issue a temporary order requiring the person to
12 cease and desist from any such violation or practice
13 and to take affirmative action to prevent or remedy
14 such insolvency or other condition pending comple-
15 tion of such proceedings. Such order may include
16 any requirement authorized under this subtitle. Such
17 order shall become effective upon service upon the
18 person and, unless set aside, limited, or suspended
19 by a court in proceedings authorized by paragraph
20 (2), shall remain effective and enforceable pending
21 the completion of the administrative proceedings
22 pursuant to such notice and until such time as the
23 Bureau shall dismiss the charges specified in such
24 notice, or if a cease-and-desist order is issued

1 against the person, until the effective date of such
2 order.

3 (2) APPEAL.—Not later than 10 days after the
4 covered person or service provider concerned has
5 been served with a temporary cease-and-desist order,
6 the person may apply to the United States district
7 court for the judicial district in which the residence
8 or principal office or place of business of the person
9 is located, or the United States District Court for
10 the District of Columbia, for an injunction setting
11 aside, limiting, or suspending the enforcement, oper-
12 ation, or effectiveness of such order pending the
13 completion of the administrative proceedings pursu-
14 ant to the notice of charges served upon the person
15 under subsection (b), and such court shall have ju-
16 risdiction to issue such injunction.

17 (3) INCOMPLETE OR INACCURATE RECORDS.—

18 (A) TEMPORARY ORDER.—If a notice of
19 charges served under subsection (b) specifies,
20 on the basis of particular facts and cir-
21 cumstances, that the books and records of a
22 covered person or service provider are so incom-
23 plete or inaccurate that the Bureau is unable to
24 determine the financial condition of that person
25 or the details or purpose of any transaction or

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1 transactions that may have a material effect on
2 the financial condition of that person, the Bu-
3 reau may issue a temporary order requiring—

4 (i) the cessation of any activity or
5 practice which gave rise, whether in whole
6 or in part, to the incomplete or inaccurate
7 state of the books or records; or

8 (ii) affirmative action to restore such
9 books or records to a complete and accu-
10 rate state, until the completion of the pro-
11 ceedings under subsection (b)(1).

12 (B) EFFECTIVE PERIOD.—Any temporary
13 order issued under subparagraph (A)—

14 (i) shall become effective upon service;
15 and

16 (ii) unless set aside, limited, or sus-
17 pended by a court in proceedings under
18 paragraph (2), shall remain in effect and
19 enforceable until the earlier of—

20 (I) the completion of the pro-
21 ceeding initiated under subsection (b)
22 in connection with the notice of
23 charges; or

24 (II) the date the Bureau deter-
25 mines, by examination or otherwise,

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1 that the books and records of the cov-
2 ered person or service provider are ac-
3 curate and reflect the financial condi-
4 tion thereof.

5 (d) SPECIAL RULES FOR ENFORCEMENT OF OR-
6 DERS.—

7 (1) IN GENERAL.—The Bureau may in its dis-
8 cretion apply to the United States district court
9 within the jurisdiction of which the principal office
10 or place of business of the person is located, for the
11 enforcement of any effective and outstanding notice
12 or order issued under this section, and such court
13 shall have jurisdiction and power to order and re-
14 quire compliance herewith.

15 (2) EXCEPTION.—Except as otherwise provided
16 in this subsection, no court shall have jurisdiction to
17 affect by injunction or otherwise the issuance or en-
18 forcement of any notice or order or to review, mod-
19 ify, suspend, terminate, or set aside any such notice
20 or order.

21 (e) RULES.—The Bureau shall prescribe rules estab-
22 lishing such procedures as may be necessary to carry out
23 this section.

1 **SEC. 1054. LITIGATION AUTHORITY.**

2 (a) IN GENERAL.—If any person violates a Federal
3 consumer financial law, the Bureau may, subject to sec-
4 tions 1024, 1025, and 1026, commence a civil action
5 against such person to impose a civil penalty or to seek
6 all appropriate legal and equitable relief including a per-
7 manent or temporary injunction as permitted by law.

8 (b) REPRESENTATION.—The Bureau may act in its
9 own name and through its own attorneys in enforcing any
10 provision of this title, rules thereunder, or any other law
11 or regulation, or in any action, suit, or proceeding to which
12 the Bureau is a party.

13 (c) COMPROMISE OF ACTIONS.—The Bureau may
14 compromise or settle any action if such compromise is ap-
15 proved by the court.

16 (d) NOTICE TO THE ATTORNEY GENERAL.—

17 (1) IN GENERAL.—When commencing a civil
18 action under Federal consumer financial law, or any
19 rule thereunder, the Bureau shall notify the Attor-
20 ney General and, with respect to a civil action
21 against an insured depository institution or insured
22 credit union, the appropriate prudential regulator.

23 (2) NOTICE AND COORDINATION.—

24 (A) NOTICE OF OTHER ACTIONS.—In addi-
25 tion to any notice required under paragraph
26 (1), the Bureau shall notify the Attorney Gen-

1 eral concerning any action, suit, or proceeding
2 to which the Bureau is a party, except an ac-
3 tion, suit, or proceeding that involves the offer-
4 ing or provision of consumer financial products
5 or services.

6 (B) COORDINATION.—In order to avoid
7 conflicts and promote consistency regarding liti-
8 gation of matters under Federal law, the Attor-
9 ney General and the Bureau shall consult re-
10 garding the coordination of investigations and
11 proceedings, including by negotiating an agree-
12 ment for coordination by not later than 180
13 days after the designated transfer date. The
14 agreement under this subparagraph shall in-
15 clude provisions to ensure that parallel inves-
16 tigations and proceedings involving the Federal
17 consumer financial laws are conducted in a
18 manner that avoids conflicts and does not im-
19 pede the ability of the Attorney General to
20 prosecute violations of Federal criminal laws.

21 (C) RULE OF CONSTRUCTION.—Nothing in
22 this paragraph shall be construed to limit the
23 authority of the Bureau under this title, includ-
24 ing the authority to interpret Federal consumer
25 financial law.

1 (e) APPEARANCE BEFORE THE SUPREME COURT.—

2 The Bureau may represent itself in its own name before
3 the Supreme Court of the United States, provided that
4 the Bureau makes a written request to the Attorney Gen-
5 eral within the 10-day period which begins on the date
6 of entry of the judgment which would permit any party
7 to file a petition for writ of certiorari, and the Attorney
8 General concurs with such request or fails to take action
9 within 60 days of the request of the Bureau.

10 (f) FORUM.—Any civil action brought under this title
11 may be brought in a United States district court or in
12 any court of competent jurisdiction of a state in a district
13 in which the defendant is located or resides or is doing
14 business, and such court shall have jurisdiction to enjoin
15 such person and to require compliance with any Federal
16 consumer financial law.

17 (g) TIME FOR BRINGING ACTION.—

18 (1) IN GENERAL.—Except as otherwise per-
19 mitted by law or equity, no action may be brought
20 under this title more than 3 years after the date of
21 discovery of the violation to which an action relates.

22 (2) LIMITATIONS UNDER OTHER FEDERAL
23 LAWS.—

24 (A) IN GENERAL.—For purposes of this
25 subsection, an action arising under this title

1 does not include claims arising solely under
2 enumerated consumer laws.

3 (B) BUREAU AUTHORITY.—In any action
4 arising solely under an enumerated consumer
5 law, the Bureau may commence, defend, or in-
6 tervene in the action in accordance with the re-
7 quirements of that provision of law, as applica-
8 ble.

9 (C) TRANSFERRED AUTHORITY.—In any
10 action arising solely under laws for which au-
11 thorities were transferred under subtitles F and
12 H, the Bureau may commence, defend, or inter-
13 vene in the action in accordance with the re-
14 quirements of that provision of law, as applica-
15 ble.

16 **SEC. 1055. RELIEF AVAILABLE.**

17 (a) ADMINISTRATIVE PROCEEDINGS OR COURT AC-
18 TIONS.—

19 (1) JURISDICTION.—The court (or the Bureau,
20 as the case may be) in an action or adjudication pro-
21 ceeding brought under Federal consumer financial
22 law, shall have jurisdiction to grant any appropriate
23 legal or equitable relief with respect to a violation of
24 Federal consumer financial law, including a violation

1 of a rule or order prescribed under a Federal con-
2 sumer financial law.

3 (2) RELIEF.—Relief under this section may in-
4 clude, without limitation—

5 (A) rescission or reformation of contracts;

6 (B) refund of moneys or return of real
7 property;

8 (C) restitution;

9 (D) disgorgement or compensation for un-
10 just enrichment;

11 (E) payment of damages or other mone-
12 tary relief;

13 (F) public notification regarding the viola-
14 tion, including the costs of notification;

15 (G) limits on the activities or functions of
16 the person; and

17 (H) civil money penalties, as set forth
18 more fully in subsection (c).

19 (3) NO EXEMPLARY OR PUNITIVE DAMAGES.—
20 Nothing in this subsection shall be construed as au-
21 thorizing the imposition of exemplary or punitive
22 damages.

23 (b) RECOVERY OF COSTS.—In any action brought by
24 the Bureau, a State attorney general, or any State regu-
25 lator to enforce any Federal consumer financial law, the

1 Bureau, the State attorney general, or the State regulator
2 may recover its costs in connection with prosecuting such
3 action if the Bureau, the State attorney general, or the
4 State regulator is the prevailing party in the action.

5 (c) CIVIL MONEY PENALTY IN COURT AND ADMINIS-
6 TRATIVE ACTIONS.—

7 (1) IN GENERAL.—Any person that violates,
8 through any act or omission, any provision of Fed-
9 eral consumer financial law shall forfeit and pay a
10 civil penalty pursuant to this subsection.

11 (2) PENALTY AMOUNTS.—

12 (A) FIRST TIER.—For any violation of a
13 law, rule, or final order or condition imposed in
14 writing by the Bureau, a civil penalty may not
15 exceed \$5,000 for each day during which such
16 violation or failure to pay continues.

17 (B) SECOND TIER.—Notwithstanding
18 paragraph (A), for any person that recklessly
19 engages in a violation of a Federal consumer fi-
20 nancial law, a civil penalty may not exceed
21 \$25,000 for each day during which such viola-
22 tion continues.

23 (C) THIRD TIER.—Notwithstanding sub-
24 paragraphs (A) and (B), for any person that
25 knowingly violates a Federal consumer financial

1 law, a civil penalty may not exceed \$1,000,000
2 for each day during which such violation con-
3 tinues.

4 (3) MITIGATING FACTORS.—In determining the
5 amount of any penalty assessed under paragraph
6 (2), the Bureau or the court shall take into account
7 the appropriateness of the penalty with respect to—

8 (A) the size of financial resources and good
9 faith of the person charged;

10 (B) the gravity of the violation or failure
11 to pay;

12 (C) the severity of the risks to or losses of
13 the consumer, which may take into account the
14 number of products or services sold or provided;

15 (D) the history of previous violations; and

16 (E) such other matters as justice may re-
17 quire.

18 (4) AUTHORITY TO MODIFY OR REMIT PEN-
19 ALTY.—The Bureau may compromise, modify, or
20 remit any penalty which may be assessed or had al-
21 ready been assessed under paragraph (2). The
22 amount of such penalty, when finally determined,
23 shall be exclusive of any sums owed by the person
24 to the United States in connection with the costs of

1 the proceeding, and may be deducted from any sums
2 owing by the United States to the person charged.

3 (5) NOTICE AND HEARING.—No civil penalty
4 may be assessed under this subsection with respect
5 to a violation of any Federal consumer financial law,
6 unless—

7 (A) the Bureau gives notice and an oppor-
8 tunity for a hearing to the person accused of
9 the violation; or

10 (B) the appropriate court has ordered such
11 assessment and entered judgment in favor of
12 the Bureau.

13 **SEC. 1056. REFERRALS FOR CRIMINAL PROCEEDINGS.**

14 If the Bureau obtains evidence that any person, do-
15 mestic or foreign, has engaged in conduct that may con-
16 stitute a violation of Federal criminal law, the Bureau
17 shall transmit such evidence to the Attorney General of
18 the United States, who may institute criminal proceedings
19 under appropriate law. Nothing in this section affects any
20 other authority of the Bureau to disclose information.

21 **SEC. 1057. EMPLOYEE PROTECTION.**

22 (a) IN GENERAL.—No covered person or service pro-
23 vider shall terminate or in any other way discriminate
24 against, or cause to be terminated or discriminated
25 against, any covered employee or any authorized rep-

1 representative of covered employees by reason of the fact that
2 such employee or representative, whether at the initiative
3 of the employee or in the ordinary course of the duties
4 of the employee (or any person acting pursuant to a re-
5 quest of the employee), has—

6 (1) provided, caused to be provided, or is about
7 to provide or cause to be provided, information to
8 the employer, the Bureau, or any other State, local,
9 or Federal, government authority or law enforce-
10 ment agency relating to any violation of, or any act
11 or omission that the employee reasonably believes to
12 be a violation of, any provision of this title or any
13 other provision of law that is subject to the jurisdic-
14 tion of the Bureau, or any rule, order, standard, or
15 prohibition prescribed by the Bureau;

16 (2) testified or will testify in any proceeding re-
17 sulting from the administration or enforcement of
18 any provision of this title or any other provision of
19 law that is subject to the jurisdiction of the Bureau,
20 or any rule, order, standard, or prohibition pre-
21 scribed by the Bureau;

22 (3) filed, instituted, or caused to be filed or in-
23 stituted any proceeding under any Federal consumer
24 financial law; or

1 (4) objected to, or refused to participate in, any
2 activity, policy, practice, or assigned task that the
3 employee (or other such person) reasonably believed
4 to be in violation of any law, rule, order, standard,
5 or prohibition, subject to the jurisdiction of, or en-
6 forceable by, the Bureau.

7 (b) DEFINITION OF COVERED EMPLOYEE.—For the
8 purposes of this section, the term “covered employee”
9 means any individual performing tasks related to the of-
10 fering or provision of a consumer financial product or
11 service.

12 (c) PROCEDURES AND TIMETABLES.—

13 (1) COMPLAINT.—

14 (A) IN GENERAL.—A person who believes
15 that he or she has been discharged or otherwise
16 discriminated against by any person in violation
17 of subsection (a) may, not later than 180 days
18 after the date on which such alleged violation
19 occurs, file (or have any person file on his or
20 her behalf) a complaint with the Secretary of
21 Labor alleging such discharge or discrimination
22 and identifying the person responsible for such
23 act.

24 (B) ACTIONS OF SECRETARY OF LABOR.—

25 Upon receipt of such a complaint, the Secretary

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1 of Labor shall notify, in writing, the person
2 named in the complaint who is alleged to have
3 committed the violation, of—

4 (i) the filing of the complaint;

5 (ii) the allegations contained in the
6 complaint;

7 (iii) the substance of evidence sup-
8 porting the complaint; and

9 (iv) opportunities that will be afforded
10 to such person under paragraph (2).

11 (2) INVESTIGATION BY SECRETARY OF
12 LABOR.—

13 (A) IN GENERAL.—Not later than 60 days
14 after the date of receipt of a complaint filed
15 under paragraph (1), and after affording the
16 complainant and the person named in the com-
17 plaint who is alleged to have committed the vio-
18 lation that is the basis for the complaint an op-
19 portunity to submit to the Secretary of Labor
20 a written response to the complaint and an op-
21 portunity to meet with a representative of the
22 Secretary of Labor to present statements from
23 witnesses, the Secretary of Labor shall—

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1 (i) initiate an investigation and deter-
2 mine whether there is reasonable cause to
3 believe that the complaint has merit; and

4 (ii) notify the complainant and the
5 person alleged to have committed the viola-
6 tion of subsection (a), in writing, of such
7 determination.

8 (B) NOTICE OF RELIEF AVAILABLE.—If
9 the Secretary of Labor concludes that there is
10 reasonable cause to believe that a violation of
11 subsection (a) has occurred, the Secretary of
12 Labor shall, together with the notice under sub-
13 paragraph (A)(ii), issue a preliminary order
14 providing the relief prescribed by paragraph
15 (4)(B).

16 (C) REQUEST FOR HEARING.—Not later
17 than 30 days after the date of receipt of notifi-
18 cation of a determination of the Secretary of
19 Labor under this paragraph, either the person
20 alleged to have committed the violation or the
21 complainant may file objections to the findings
22 or preliminary order, or both, and request a
23 hearing on the record. The filing of such objec-
24 tions shall not operate to stay any reinstatement
25 remedy contained in the preliminary

1 order. Any such hearing shall be conducted ex-
2 peditiously, and if a hearing is not requested in
3 such 30-day period, the preliminary order shall
4 be deemed a final order that is not subject to
5 judicial review.

6 (3) GROUNDS FOR DETERMINATION OF COM-
7 PLAINTS.—

8 (A) IN GENERAL.—The Secretary of Labor
9 shall dismiss a complaint filed under this sub-
10 section, and shall not conduct an investigation
11 otherwise required under paragraph (2), unless
12 the complainant makes a prima facie showing
13 that any behavior described in paragraphs (1)
14 through (4) of subsection (a) was a contrib-
15 uting factor in the unfavorable personnel action
16 alleged in the complaint.

17 (B) REBUTTAL EVIDENCE.—Notwith-
18 standing a finding by the Secretary of Labor
19 that the complainant has made the showing re-
20 quired under subparagraph (A), no investiga-
21 tion otherwise required under paragraph (2)
22 shall be conducted, if the employer dem-
23 onstrates, by clear and convincing evidence,
24 that the employer would have taken the same

1 unfavorable personnel action in the absence of
2 that behavior.

3 (C) EVIDENTIARY STANDARDS.—The Sec-
4 retary of Labor may determine that a violation
5 of subsection (a) has occurred only if the com-
6 plainant demonstrates that any behavior de-
7 scribed in paragraphs (1) through (4) of sub-
8 section (a) was a contributing factor in the un-
9 favorable personnel action alleged in the com-
10 plaint. Relief may not be ordered under sub-
11 paragraph (A) if the employer demonstrates by
12 clear and convincing evidence that the employer
13 would have taken the same unfavorable per-
14 sonnel action in the absence of that behavior.

15 (4) ISSUANCE OF FINAL ORDERS; REVIEW PRO-
16 CEDURES.—

17 (A) TIMING.—Not later than 120 days
18 after the date of conclusion of any hearing
19 under paragraph (2), the Secretary of Labor
20 shall issue a final order providing the relief pre-
21 scribed by this paragraph or denying the com-
22 plaint. At any time before issuance of a final
23 order, a proceeding under this subsection may
24 be terminated on the basis of a settlement
25 agreement entered into by the Secretary of

1 Labor, the complainant, and the person alleged
2 to have committed the violation.

3 (B) PENALTIES.—

4 (i) ORDER OF SECRETARY OF
5 LABOR.—If, in response to a complaint
6 filed under paragraph (1), the Secretary of
7 Labor determines that a violation of sub-
8 section (a) has occurred, the Secretary of
9 Labor shall order the person who com-
10 mitted such violation—

11 (I) to take affirmative action to
12 abate the violation;

13 (II) to reinstate the complainant
14 to his or her former position, together
15 with compensation (including back
16 pay) and restore the terms, condi-
17 tions, and privileges associated with
18 his or her employment; and

19 (III) to provide compensatory
20 damages to the complainant.

21 (ii) PENALTY.—If an order is issued
22 under clause (i), the Secretary of Labor, at
23 the request of the complainant, shall assess
24 against the person against whom the order
25 is issued, a sum equal to the aggregate

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1 amount of all costs and expenses (includ-
2 ing attorney fees and expert witness fees)
3 reasonably incurred, as determined by the
4 Secretary of Labor, by the complainant
5 for, or in connection with, the bringing of
6 the complaint upon which the order was
7 issued.

8 (C) PENALTY FOR FRIVOLOUS CLAIMS.—If
9 the Secretary of Labor finds that a complaint
10 under paragraph (1) is frivolous or has been
11 brought in bad faith, the Secretary of Labor
12 may award to the prevailing employer a reason-
13 able attorney fee, not exceeding \$1,000, to be
14 paid by the complainant.

15 (D) DE NOVO REVIEW.—

16 (i) FAILURE OF THE SECRETARY TO
17 ACT.—If the Secretary of Labor has not
18 issued a final order within 210 days after
19 the date of filing of a complaint under this
20 subsection, or within 90 days after the
21 date of receipt of a written determination,
22 the complainant may bring an action at
23 law or equity for de novo review in the ap-
24 propriate district court of the United
25 States having jurisdiction, which shall have

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1 jurisdiction over such an action without re-
2 gard to the amount in controversy, and
3 which action shall, at the request of either
4 party to such action, be tried by the court
5 with a jury.

6 (ii) PROCEDURES.—A proceeding
7 under clause (i) shall be governed by the
8 same legal burdens of proof specified in
9 paragraph (3). The court shall have juris-
10 diction to grant all relief necessary to
11 make the employee whole, including injunc-
12 tive relief and compensatory damages, in-
13 cluding—

14 (I) reinstatement with the same
15 seniority status that the employee
16 would have had, but for the discharge
17 or discrimination;

18 (II) the amount of back pay, with
19 interest; and

20 (III) compensation for any spe-
21 cial damages sustained as a result of
22 the discharge or discrimination, in-
23 cluding litigation costs, expert witness
24 fees, and reasonable attorney fees.

1 (E) OTHER APPEALS.—Unless the com-
2 plainant brings an action under subparagraph
3 (D), any person adversely affected or aggrieved
4 by a final order issued under subparagraph (A)
5 may file a petition for review of the order in the
6 United States Court of Appeals for the circuit
7 in which the violation with respect to which the
8 order was issued, allegedly occurred or the cir-
9 cuit in which the complainant resided on the
10 date of such violation, not later than 60 days
11 after the date of the issuance of the final order
12 of the Secretary of Labor under subparagraph
13 (A). Review shall conform to chapter 7 of title
14 5, United States Code. The commencement of
15 proceedings under this subparagraph shall not,
16 unless ordered by the court, operate as a stay
17 of the order. An order of the Secretary of
18 Labor with respect to which review could have
19 been obtained under this subparagraph shall
20 not be subject to judicial review in any criminal
21 or other civil proceeding.

22 (5) FAILURE TO COMPLY WITH ORDER.—

23 (A) ACTIONS BY THE SECRETARY.—If any
24 person has failed to comply with a final order
25 issued under paragraph (4), the Secretary of

1 Labor may file a civil action in the United
2 States district court for the district in which
3 the violation was found to have occurred, or in
4 the United States district court for the District
5 of Columbia, to enforce such order. In actions
6 brought under this paragraph, the district
7 courts shall have jurisdiction to grant all appro-
8 priate relief including injunctive relief and com-
9 pensatory damages.

10 (B) CIVIL ACTIONS TO COMPEL COMPLI-
11 ANCE.—A person on whose behalf an order was
12 issued under paragraph (4) may commence a
13 civil action against the person to whom such
14 order was issued to require compliance with
15 such order. The appropriate United States dis-
16 trict court shall have jurisdiction, without re-
17 gard to the amount in controversy or the citi-
18 zenship of the parties, to enforce such order.

19 (C) AWARD OF COSTS AUTHORIZED.—The
20 court, in issuing any final order under this
21 paragraph, may award costs of litigation (in-
22 cluding reasonable attorney and expert witness
23 fees) to any party, whenever the court deter-
24 mines such award is appropriate.

1 (D) MANDAMUS PROCEEDINGS.—Any non-
2 discretionary duty imposed by this section shall
3 be enforceable in a mandamus proceeding
4 brought under section 1361 of title 28, United
5 States Code.

6 (d) UNENFORCEABILITY OF CERTAIN AGREE-
7 MENTS.—

8 (1) NO WAIVER OF RIGHTS AND REMEDIES.—
9 Except as provided under paragraph (3), and not-
10 withstanding any other provision of law, the rights
11 and remedies provided for in this section may not be
12 waived by any agreement, policy, form, or condition
13 of employment, including by any predispute arbitra-
14 tion agreement.

15 (2) NO PREDISPUTE ARBITRATION AGREE-
16 MENTS.—Except as provided under paragraph (3),
17 and notwithstanding any other provision of law, no
18 predispute arbitration agreement shall be valid or
19 enforceable to the extent that it requires arbitration
20 of a dispute arising under this section.

21 (3) EXCEPTION.—Notwithstanding paragraphs
22 (1) and (2), an arbitration provision in a collective
23 bargaining agreement shall be enforceable as to dis-
24 putes arising under subsection (a)(4), unless the Bu-

1 reau determines, by rule, that such provision is in-
2 consistent with the purposes of this title.

3 **SEC. 1058. EFFECTIVE DATE.**

4 This subtitle shall become effective on the designated
5 transfer date.

6 **Subtitle F—Transfer of Functions**
7 **and Personnel; Transitional**
8 **Provisions**

9 **SEC. 1061. TRANSFER OF CONSUMER FINANCIAL PROTEC-**
10 **TION FUNCTIONS.**

11 (a) **DEFINED TERMS.**—For purposes of this sub-
12 title—

13 (1) the term “consumer financial protection
14 functions” means—

15 (A) all authority to prescribe rules or issue
16 orders or guidelines pursuant to any Federal
17 consumer financial law, including performing
18 appropriate functions to promulgate and review
19 such rules, orders, and guidelines; and

20 (B) the examination authority described in
21 subsection (c)(1), with respect to a person de-
22 scribed in subsection 1025(a); and

23 (2) the terms “transferor agency” and “trans-
24 feror agencies” mean, respectively—

1 (A) the Board of Governors (and any Fed-
2 eral reserve bank, as the context requires), the
3 Federal Deposit Insurance Corporation, the
4 Federal Trade Commission, the National Credit
5 Union Administration, the Office of the Comp-
6 troller of the Currency, the Office of Thrift Su-
7 pervision, and the Department of Housing and
8 Urban Development, and the heads of those
9 agencies; and

10 (B) the agencies listed in subparagraph
11 (A), collectively.

12 (b) IN GENERAL.—Except as provided in subsection
13 (c), consumer financial protection functions are trans-
14 ferred as follows:

15 (1) BOARD OF GOVERNORS.—

16 (A) TRANSFER OF FUNCTIONS.—All con-
17 sumer financial protection functions of the
18 Board of Governors are transferred to the Bu-
19 reau.

20 (B) BOARD OF GOVERNORS AUTHORITY.—
21 The Bureau shall have all powers and duties
22 that were vested in the Board of Governors, re-
23 lating to consumer financial protection func-
24 tions, on the day before the designated transfer
25 date.

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1 (2) COMPTROLLER OF THE CURRENCY.—

2 (A) TRANSFER OF FUNCTIONS.—All con-
3 sumer financial protection functions of the
4 Comptroller of the Currency are transferred to
5 the Bureau.

6 (B) COMPTROLLER AUTHORITY.—The Bu-
7 reau shall have all powers and duties that were
8 vested in the Comptroller of the Currency, re-
9 lating to consumer financial protection func-
10 tions, on the day before the designated transfer
11 date.

12 (3) DIRECTOR OF THE OFFICE OF THRIFT SU-
13 PERVISION.—

14 (A) TRANSFER OF FUNCTIONS.—All con-
15 sumer financial protection functions of the Di-
16 rector of the Office of Thrift Supervision are
17 transferred to the Bureau.

18 (B) DIRECTOR AUTHORITY.—The Bureau
19 shall have all powers and duties that were vest-
20 ed in the Director of the Office of Thrift Super-
21 vision, relating to consumer financial protection
22 functions, on the day before the designated
23 transfer date.

24 (4) FEDERAL DEPOSIT INSURANCE CORPORA-
25 TION.—

1 (A) TRANSFER OF FUNCTIONS.—All con-
2 sumer financial protection functions of the Fed-
3 eral Deposit Insurance Corporation are trans-
4 ferred to the Bureau.

5 (B) CORPORATION AUTHORITY.—The Bu-
6 reau shall have all powers and duties that were
7 vested in the Federal Deposit Insurance Cor-
8 poration, relating to consumer financial protec-
9 tion functions, on the day before the designated
10 transfer date.

11 (5) FEDERAL TRADE COMMISSION.—

12 (A) TRANSFER OF FUNCTIONS.—The au-
13 thority of the Federal Trade Commission under
14 an enumerated consumer law to prescribe rules,
15 issue guidelines, or conduct a study or issue a
16 report mandated under such law shall be trans-
17 ferred to the Bureau on the designated transfer
18 date. Nothing in this title shall be construed to
19 require a mandatory transfer of any employee
20 of the Federal Trade Commission.

21 (B) BUREAU AUTHORITY.—

22 (i) IN GENERAL.—The Bureau shall
23 have all powers and duties under the enu-
24 merated consumer laws to prescribe rules,
25 issue guidelines, or to conduct studies or

1 issue reports mandated by such laws, that
2 were vested in the Federal Trade Commis-
3 sion on the day before the designated
4 transfer date.

5 (ii) FEDERAL TRADE COMMISSION
6 ACT.—Subject to subtitle B, the Bureau
7 may enforce a rule prescribed under the
8 Federal Trade Commission Act by the
9 Federal Trade Commission with respect to
10 an unfair or deceptive act or practice to
11 the extent that such rule applies to a cov-
12 ered person or service provider with re-
13 spect to the offering or provision of a con-
14 sumer financial product or service as if it
15 were a rule prescribed under section 1031
16 of this title.

17 (C) AUTHORITY OF THE FEDERAL TRADE
18 COMMISSION.—

19 (i) IN GENERAL.—No provision of this
20 title shall be construed as modifying, lim-
21 iting, or otherwise affecting the authority
22 of the Federal Trade Commission (includ-
23 ing its authority with respect to affiliates
24 described in section 1025(a)(1)) under the
25 Federal Trade Commission Act or any

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1 other law, other than the authority under
2 an enumerated consumer law to prescribe
3 rules, issue official guidelines, or conduct a
4 study or issue a report mandated under
5 such law.

6 (ii) COMMISSION AUTHORITY RELAT-
7 ING TO RULES PRESCRIBED BY THE BU-
8 REAU.—Subject to subtitle B, the Federal
9 Trade Commission shall have authority to
10 enforce under the Federal Trade Commis-
11 sion Act (15 U.S.C. 41 et seq.) a rule pre-
12 scribed by the Bureau under this title with
13 respect to a covered person subject to the
14 jurisdiction of the Federal Trade Commis-
15 sion under that Act, and a violation of
16 such a rule by such a person shall be treat-
17 ed as a violation of a rule issued under sec-
18 tion 18 of that Act (15 U.S.C. 57a) with
19 respect to unfair or deceptive acts or prac-
20 tices.

21 (D) COORDINATION.—To avoid duplication
22 of or conflict between rules prescribed by the
23 Bureau under section 1031 of this title and the
24 Federal Trade Commission under section
25 18(a)(1)(B) of the Federal Trade Commission

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1 Act that apply to a covered person or service
2 provider with respect to the offering or provi-
3 sion of consumer financial products or services,
4 the agencies shall negotiate an agreement with
5 respect to rulemaking by each agency, including
6 consultation with the other agency prior to pro-
7 posing a rule and during the comment period.

8 (E) DEFERENCE.—No provision of this
9 title shall be construed as altering, limiting, ex-
10 panding, or otherwise affecting the deference
11 that a court affords to the—

12 (i) Federal Trade Commission in
13 making determinations regarding the
14 meaning or interpretation of any provision
15 of the Federal Trade Commission Act, or
16 of any other Federal law for which the
17 Commission has authority to prescribe
18 rules; or

19 (ii) Bureau in making determinations
20 regarding the meaning or interpretation of
21 any provision of a Federal consumer finan-
22 cial law (other than any law described in
23 clause (i)).

24 (6) NATIONAL CREDIT UNION ADMINISTRA-
25 TION.—

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1 (A) TRANSFER OF FUNCTIONS.—All con-
2 sumer financial protection functions of the Na-
3 tional Credit Union Administration are trans-
4 ferred to the Bureau.

5 (B) NATIONAL CREDIT UNION ADMINIS-
6 TRATION AUTHORITY.—The Bureau shall have
7 all powers and duties that were vested in the
8 National Credit Union Administration, relating
9 to consumer financial protection functions, on
10 the day before the designated transfer date.

11 (7) DEPARTMENT OF HOUSING AND URBAN DE-
12 VELOPMENT.—

13 (A) TRANSFER OF FUNCTIONS.—All con-
14 sumer protection functions of the Secretary of
15 the Department of Housing and Urban Devel-
16 opment relating to the Real Estate Settlement
17 Procedures Act of 1974 (12 U.S.C. 2601 et
18 seq.), the Secure and Fair Enforcement for
19 Mortgage Licensing Act of 2008 (12 U.S.C.
20 5102 et seq.), and the Interstate Land Sales
21 Full Disclosure Act (15 U.S.C. 1701 et seq.)
22 are transferred to the Bureau.

23 (B) AUTHORITY OF THE DEPARTMENT OF
24 HOUSING AND URBAN DEVELOPMENT.—The
25 Bureau shall have all powers and duties that

1 were vested in the Secretary of the Department
2 of Housing and Urban Development relating to
3 the Real Estate Settlement Procedures Act of
4 1974 (12 U.S.C. 2601 et seq.), the Secure and
5 Fair Enforcement for Mortgage Licensing Act
6 of 2008 (12 U.S.C. 5101 et seq.), and the
7 Interstate Land Sales Full Disclosure Act (15
8 U.S.C. 1701 et seq.), on the day before the des-
9 ignated transfer date.

10 (c) AUTHORITIES OF THE PRUDENTIAL REGU-
11 LATORS.—

12 (1) EXAMINATION.—A transferor agency that is
13 a prudential regulator shall have—

14 (A) authority to require reports from and
15 conduct examinations for compliance with Fed-
16 eral consumer financial laws with respect to a
17 person described in section 1025(a), that is in-
18 cidental to the backup and enforcement proce-
19 dures provided to the regulator under section
20 1025(c); and

21 (B) exclusive authority (relative to the Bu-
22 reau) to require reports from and conduct ex-
23 aminations for compliance with Federal con-
24 sumer financial laws with respect to a person
25 described in section 1026(a), except as provided

1 to the Bureau under subsections (b) and (c) of
2 section 1026.

3 (2) ENFORCEMENT.—

4 (A) LIMITATION.—The authority of a
5 transferor agency that is a prudential regulator
6 to enforce compliance with Federal consumer fi-
7 nancial laws with respect to a person described
8 in section 1025(a), shall be limited to the
9 backup and enforcement procedures in de-
10 scribed in section 1025(c).

11 (B) EXCLUSIVE AUTHORITY.—A transferor
12 agency that is a prudential regulator shall have
13 exclusive authority (relative to the Bureau) to
14 enforce compliance with Federal consumer fi-
15 nancial laws with respect to a person described
16 in section 1026(a), except as provided to the
17 Bureau under subsections (b) and (c) of section
18 1026.

19 (C) STATUTORY ENFORCEMENT.—For pur-
20 poses of carrying out the authorities under, and
21 subject to the limitations of, subtitle B, each
22 prudential regulator may enforce compliance
23 with the requirements imposed under this title,
24 and any rule or order prescribed by the Bureau
25 under this title, under—

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1 (i) the Federal Credit Union Act (12
2 U.S.C. 1751 et seq.), by the National
3 Credit Union Administration Board with
4 respect to any covered person or service
5 provider that is an insured credit union, or
6 service provider thereto, or any affiliate of
7 an insured credit union, who is subject to
8 the jurisdiction of the Board under that
9 Act; and

10 (ii) section 8 of the Federal Deposit
11 Insurance Act (12 U.S.C. 1818), by the
12 appropriate Federal banking agency, as de-
13 fined in section 3(q) of the Federal De-
14 posit Insurance Act (12 U.S.C. 1813(q)),
15 with respect to a covered person or service
16 provider that is a person described in sec-
17 tion 3(q) of that Act and who is subject to
18 the jurisdiction of that agency, as set forth
19 in sections 3(q) and 8 of the Federal De-
20 posit Insurance Act; or

21 (iii) the Bank Service Company Act
22 (12 U.S.C. 1861 et seq.).

23 (d) EFFECTIVE DATE.—Subsections (b) and (c) shall
24 become effective on the designated transfer date.

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1 **SEC. 1062. DESIGNATED TRANSFER DATE.**

2 (a) IN GENERAL.—Not later than 60 days after the
3 date of enactment of this Act, the Secretary shall—

4 (1) in consultation with the Chairman of the
5 Board of Governors, the Chairperson of the Cor-
6 poration, the Chairman of the Federal Trade Com-
7 mission, the Chairman of the National Credit Union
8 Administration Board, the Comptroller of the Cur-
9 rency, the Director of the Office of Thrift Super-
10 vision, the Secretary of the Department of Housing
11 and Urban Development, and the Director of the Of-
12 fice of Management and Budget, designate a single
13 calendar date for the transfer of functions to the
14 Bureau under section 1061; and

15 (2) publish notice of that designated date in the
16 Federal Register.

17 (b) CHANGING DESIGNATION.—The Secretary—

18 (1) may, in consultation with the Chairman of
19 the Board of Governors, the Chairperson of the Fed-
20 eral Deposit Insurance Corporation, the Chairman
21 of the Federal Trade Commission, the Chairman of
22 the National Credit Union Administration Board,
23 the Comptroller of the Currency, the Director of the
24 Office of Thrift Supervision, the Secretary of the
25 Department of Housing and Urban Development,
26 and the Director of the Office of Management and

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1 Budget, change the date designated under sub-
2 section (a); and

3 (2) shall publish notice of any changed des-
4 ignated date in the Federal Register.

5 (c) PERMISSIBLE DATES.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (2), any date designated under this section
8 shall be not earlier than 180 days, nor later than 12
9 months, after the date of enactment of this Act.

10 (2) EXTENSION OF TIME.—The Secretary may
11 designate a date that is later than 12 months after
12 the date of enactment of this Act if the Secretary
13 transmits to appropriate committees of Congress—

14 (A) a written determination that orderly
15 implementation of this title is not feasible be-
16 fore the date that is 12 months after the date
17 of enactment of this Act;

18 (B) an explanation of why an extension is
19 necessary for the orderly implementation of this
20 title; and

21 (C) a description of the steps that will be
22 taken to effect an orderly and timely implemen-
23 tation of this title within the extended time pe-
24 riod.

1 (3) EXTENSION LIMITED.—In no case may any
2 date designated under this section be later than 18
3 months after the date of enactment of this Act.

4 **SEC. 1063. SAVINGS PROVISIONS.**

5 (a) BOARD OF GOVERNORS.—

6 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
7 TIONS NOT AFFECTED.—Section 1061(b)(1) does
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 Bureau by this title; and

16 (B) existed on the day before the des-
17 ignated transfer date.

18 (2) CONTINUATION OF SUITS.—No provision of
19 this Act shall abate any proceeding commenced by
20 or against the Board of Governors (or any Federal
21 reserve bank) before the designated transfer date
22 with respect to any consumer financial protection
23 function of the Board of Governors (or any Federal
24 reserve bank) transferred to the Bureau by this title,
25 except that the Bureau, subject to sections 1024,

1 1025, and 1026, shall be substituted for the Board
2 of Governors (or Federal reserve bank) as a party
3 to any such proceeding as of the designated transfer
4 date.

5 (b) FEDERAL DEPOSIT INSURANCE CORPORATION.—

6 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
7 TIONS NOT AFFECTED.—Section 1061(b)(4) does
8 not affect the validity of any right, duty, or obliga-
9 tion of the United States, the Federal Deposit In-
10 surance Corporation, the Board of Directors of that
11 Corporation, or any other person, that—

12 (A) arises under any provision of law relat-
13 ing to any consumer financial protection func-
14 tion of the Federal Deposit Insurance Corpora-
15 tion transferred to the Bureau by this title; and

16 (B) existed on the day before the des-
17 ignated transfer date.

18 (2) CONTINUATION OF SUITS.—No provision of
19 this Act shall abate any proceeding commenced by
20 or against the Federal Deposit Insurance Corpora-
21 tion (or the Board of Directors of that Corporation)
22 before the designated transfer date with respect to
23 any consumer financial protection function of the
24 Federal Deposit Insurance Corporation transferred
25 to the Bureau by this title, except that the Bureau,

1 subject to sections 1024, 1025, and 1026, shall be
2 substituted for the Federal Deposit Insurance Cor-
3 poration (or Board of Directors) as a party to any
4 such proceeding as of the designated transfer date.

5 (c) FEDERAL TRADE COMMISSION.—Section
6 1061(b)(5) does not affect the validity of any right, duty,
7 or obligation of the United States, the Federal Trade
8 Commission, or any other person, that—

9 (1) arises under any provision of law relating to
10 any consumer financial protection function of the
11 Federal Trade Commission transferred to the Bu-
12 reau by this title; and

13 (2) existed on the day before the designated
14 transfer date.

15 (d) NATIONAL CREDIT UNION ADMINISTRATION.—

16 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
17 TIONS NOT AFFECTED.—Section 1061(b)(6) does
18 not affect the validity of any right, duty, or obliga-
19 tion of the United States, the National Credit Union
20 Administration, the National Credit Union Adminis-
21 tration Board, or any other person, that—

22 (A) arises under any provision of law relat-
23 ing to any consumer financial protection func-
24 tion of the National Credit Union Administra-
25 tion transferred to the Bureau by this title; and

1 (B) existed on the day before the des-
2 igned transfer date.

3 (2) CONTINUATION OF SUITS.—No provision of
4 this Act shall abate any proceeding commenced by
5 or against the National Credit Union Administration
6 (or the National Credit Union Administration
7 Board) before the designated transfer date with re-
8 spect to any consumer financial protection function
9 of the National Credit Union Administration trans-
10 ferred to the Bureau by this title, except that the
11 Bureau, subject to sections 1024, 1025, and 1026,
12 shall be substituted for the National Credit Union
13 Administration (or National Credit Union Adminis-
14 tration Board) as a party to any such proceeding as
15 of the designated transfer date.

16 (e) OFFICE OF THE COMPTROLLER OF THE CUR-
17 RENCY.—

18 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
19 TIONS NOT AFFECTED.—Section 1061(b)(2) does
20 not affect the validity of any right, duty, or obliga-
21 tion of the United States, the Comptroller of the
22 Currency, the Office of the Comptroller of the Cur-
23 rency, or any other person, that—

24 (A) arises under any provision of law relat-
25 ing to any consumer financial protection func-

1 tion of the Comptroller of the Currency trans-
2 ferred to the Bureau by this title; and

3 (B) existed on the day before the des-
4 ignated transfer date.

5 (2) CONTINUATION OF SUITS.—No provision of
6 this Act shall abate any proceeding commenced by
7 or against the Comptroller of the Currency (or the
8 Office of the Comptroller of the Currency) with re-
9 spect to any consumer financial protection function
10 of the Comptroller of the Currency transferred to
11 the Bureau by this title before the designated trans-
12 fer date, except that the Bureau, subject to sections
13 1024, 1025, and 1026, shall be substituted for the
14 Comptroller of the Currency (or the Office of the
15 Comptroller of the Currency) as a party to any such
16 proceeding as of the designated transfer date.

17 (f) OFFICE OF THRIFT SUPERVISION.—

18 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
19 TIONS NOT AFFECTED.—Section 1061(b)(3) does
20 not affect the validity of any right, duty, or obliga-
21 tion of the United States, the Director of the Office
22 of Thrift Supervision, the Office of Thrift Super-
23 vision, or any other person, that—

24 (A) arises under any provision of law relat-
25 ing to any consumer financial protection func-

1 tion of the Director of the Office of Thrift Su-
2 pervision transferred to the Bureau by this
3 title; and

4 (B) that existed on the day before the des-
5 ignated transfer date.

6 (2) CONTINUATION OF SUITS.—No provision of
7 this Act shall abate any proceeding commenced by
8 or against the Director of the Office of Thrift Su-
9 pervision (or the Office of Thrift Supervision) with
10 respect to any consumer financial protection func-
11 tion of the Director of the Office of Thrift Super-
12 vision transferred to the Bureau by this title before
13 the designated transfer date, except that the Bu-
14 reau, subject to sections 1024, 1025, and 1026,
15 shall be substituted for the Director (or the Office
16 of Thrift Supervision) as a party to any such pro-
17 ceeding as of the designated transfer date.

18 (g) DEPARTMENT OF HOUSING AND URBAN DEVEL-
19 OPMENT.—

20 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
21 TIONS NOT AFFECTED.—Section 1061(b)(7) shall
22 not affect the validity of any right, duty, or obliga-
23 tion of the United States, the Secretary of the De-
24 partment of Housing and Urban Development (or

1 the Department of Housing and Urban Develop-
2 ment), or any other person, that—

3 (A) arises under any provision of law relat-
4 ing to any function of the Secretary of the De-
5 partment of Housing and Urban Development
6 with respect to the Real Estate Settlement Pro-
7 cedures Act of 1974 (12 U.S.C. 2601 et seq.),
8 the Secure and Fair Enforcement for Mortgage
9 Licensing Act of 2008 (12 U.S.C. 5102 et
10 seq.), or the Interstate Land Sales Full Disclo-
11 sure Act (15 U.S.C. 1701 et seq) transferred to
12 the Bureau by this title; 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 Secretary of the Department of Housing and
18 Urban Development (or the Department of Housing
19 and Urban Development) with respect to any con-
20 sumer financial protection function of the Secretary
21 of the Department of Housing and Urban Develop-
22 ment transferred to the Bureau by this title before
23 the designated transfer date, except that the Bu-
24 reau, subject to sections 1024, 1025, and 1026,
25 shall be substituted for the Secretary of the Depart-

1 ment of Housing and Urban Development (or the
2 Department of Housing and Urban Development) as
3 a party to any such proceeding as of the designated
4 transfer date.

5 (h) CONTINUATION OF EXISTING ORDERS, RULINGS,
6 DETERMINATIONS, AGREEMENTS, AND RESOLUTIONS.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2) and under subsection (i), all orders, reso-
9 lutions, determinations, agreements, and rulings that
10 have been issued, made, prescribed, or allowed to be-
11 come effective by any transferor agency or by a
12 court of competent jurisdiction, in the performance
13 of consumer financial protection functions that are
14 transferred by this title and that are in effect on the
15 day before the designated transfer date, shall con-
16 tinue in effect according to the terms of those or-
17 ders, resolutions, determinations, agreements, and
18 rulings, and shall not be enforceable by or against
19 the Bureau.

20 (2) EXCEPTION FOR ORDERS APPLICABLE TO
21 PERSONS DESCRIBED IN SECTION 1025(a).—All or-
22 ders, resolutions, determinations, agreements, and
23 rulings that have been issued, made, prescribed, or
24 allowed to become effective by any transferor agency
25 or by a court of competent jurisdiction, in the per-

1 formance of consumer financial protection functions
2 that are transferred by this title and that are in ef-
3 fect on the day before the designated transfer date
4 with respect to any person described in section
5 1025(a), shall continue in effect according to the
6 terms of those orders, resolutions, determinations,
7 agreements, and rulings, and shall be enforceable by
8 or against the Bureau or transferor agency.

9 (i) IDENTIFICATION OF RULES AND ORDERS CON-
10 TINUED.—Not later than the designated transfer date, the
11 Bureau—

12 (1) shall, after consultation with the head of
13 each transferor agency, identify the rules and orders
14 continued under subsection (h) that will be enforced
15 by the Bureau; and

16 (2) shall publish a list of such rules and orders
17 in the Federal Register.

18 (j) STATUS OF RULES PROPOSED OR NOT YET EF-
19 FECTIVE.—

20 (1) PROPOSED RULES.—Any proposed rule of a
21 transferor agency which that agency, in performing
22 consumer financial protection functions transferred
23 by this title, has proposed before the designated
24 transfer date, but has not been published as a final

1 rule before that date, shall be deemed to be a pro-
2 posed rule of the Bureau.

3 (2) RULES NOT YET EFFECTIVE.—Any interim
4 or final rule of a transferor agency which that agen-
5 cy, in performing consumer financial protection
6 functions transferred by this title, has published be-
7 fore the designated transfer date, but which has not
8 become effective before that date, shall become effec-
9 tive as a rule of the Bureau according to its terms.

10 **SEC. 1064. TRANSFER OF CERTAIN PERSONNEL.**

11 (a) IN GENERAL.—

12 (1) CERTAIN FEDERAL RESERVE SYSTEM EM-
13 PLOYEES TRANSFERRED.—

14 (A) IDENTIFYING EMPLOYEES FOR TRANS-
15 FER.—The Bureau and the Board of Governors
16 shall—

17 (i) jointly determine the number of
18 employees of the Board of Governors nec-
19 essary to perform or support the consumer
20 financial protection functions of the Board
21 of Governors that are transferred to the
22 Bureau by this title; and

23 (ii) consistent with the number deter-
24 mined under clause (i), jointly identify em-
25 ployees of the Board of Governors for

1 transfer to the Bureau, in a manner that
2 the Bureau and the Board of Governors, in
3 their sole discretion, determine equitable.

4 (B) IDENTIFIED EMPLOYEES TRANS-
5 FERRED.—All employees of the Board of Gov-
6 ernors identified under subparagraph (A)(ii)
7 shall be transferred to the Bureau for employ-
8 ment.

9 (C) FEDERAL RESERVE BANK EMPLOY-
10 EES.—Employees of any Federal reserve bank
11 who are performing consumer financial protec-
12 tion functions on behalf of the Board of Gov-
13 ernors shall be treated as employees of the
14 Board of Governors for purposes of subpara-
15 graphs (A) and (B).

16 (2) CERTAIN FDIC EMPLOYEES TRANS-
17 FERRED.—

18 (A) IDENTIFYING EMPLOYEES FOR TRANS-
19 FER.—The Bureau and the Board of Directors
20 of the Federal Deposit Insurance Corporation
21 shall—

22 (i) jointly determine the number of
23 employees of that Corporation necessary to
24 perform or support the consumer financial
25 protection functions of the Corporation

1 that are transferred to the Bureau by this
2 title; and

3 (ii) consistent with the number deter-
4 mined under clause (i), jointly identify em-
5 ployees of the Corporation for transfer to
6 the Bureau, in a manner that the Bureau
7 and the Board of Directors of the Corpora-
8 tion, in their sole discretion, determine eq-
9 uitable.

10 (B) IDENTIFIED EMPLOYEES TRANS-
11 FERRED.—All employees of the Corporation
12 identified under subparagraph (A)(ii) shall be
13 transferred to the Bureau for employment.

14 (3) CERTAIN NCUA EMPLOYEES TRANS-
15 FERRED.—

16 (A) IDENTIFYING EMPLOYEES FOR TRANS-
17 FER.—The Bureau and the National Credit
18 Union Administration Board shall—

19 (i) jointly determine the number of
20 employees of the National Credit Union
21 Administration necessary to perform or
22 support the consumer financial protection
23 functions of the National Credit Union Ad-
24 ministration that are transferred to the
25 Bureau by this title; and

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1 (ii) consistent with the number deter-
2 mined under clause (i), jointly identify em-
3 ployees of the National Credit Union Ad-
4 ministration for transfer to the Bureau, in
5 a manner that the Bureau and the Na-
6 tional Credit Union Administration Board,
7 in their sole discretion, determine equi-
8 table.

9 (B) IDENTIFIED EMPLOYEES TRANS-
10 FERRED.—All employees of the National Credit
11 Union Administration identified under subpara-
12 graph (A)(ii) shall be transferred to the Bureau
13 for employment.

14 (4) CERTAIN OFFICE OF THE COMPTROLLER OF
15 THE CURRENCY EMPLOYEES TRANSFERRED.—

16 (A) IDENTIFYING EMPLOYEES FOR TRANS-
17 FER.—The Bureau and the Comptroller of the
18 Currency shall—

19 (i) jointly determine the number of
20 employees of the Office of the Comptroller
21 of the Currency necessary to perform or
22 support the consumer financial protection
23 functions of the Office of the Comptroller
24 of the Currency that are transferred to the
25 Bureau by this title; and

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1 (ii) consistent with the number deter-
2 mined under clause (i), jointly identify em-
3 ployees of the Office of the Comptroller of
4 the Currency for transfer to the Bureau, in
5 a manner that the Bureau and the Office
6 of the Comptroller of the Currency, in
7 their sole discretion, determine equitable.

8 (B) IDENTIFIED EMPLOYEES TRANS-
9 FERRED.—All employees of the Office of the
10 Comptroller of the Currency identified under
11 subparagraph (A)(ii) shall be transferred to the
12 Bureau for employment.

13 (5) CERTAIN OFFICE OF THRIFT SUPERVISION
14 EMPLOYEES TRANSFERRED.—

15 (A) IDENTIFYING EMPLOYEES FOR TRANS-
16 FER.—The Bureau and the Director of the Of-
17 fice of Thrift Supervision shall—

18 (i) jointly determine the number of
19 employees of the Office of Thrift Super-
20 vision necessary to perform or support the
21 consumer financial protection functions of
22 the Office of Thrift Supervision that are
23 transferred to the Bureau by this title; and

24 (ii) consistent with the number deter-
25 mined under clause (i), jointly identify em-

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1 employees of the Office of Thrift Supervision
2 for transfer to the Bureau, in a manner
3 that the Bureau and the Office of Thrift
4 Supervision, in their sole discretion, deter-
5 mine equitable.

6 (B) IDENTIFIED EMPLOYEES TRANS-
7 FERRED.—All employees of the Office of Thrift
8 Supervision identified under subparagraph
9 (A)(ii) shall be transferred to the Bureau for
10 employment.

11 (6) CERTAIN EMPLOYEES OF DEPARTMENT OF
12 HOUSING AND URBAN DEVELOPMENT TRANS-
13 FERRED.—

14 (A) IDENTIFYING EMPLOYEES FOR TRANS-
15 FER.—The Bureau and the Secretary of the
16 Department of Housing and Urban Develop-
17 ment shall—

18 (i) jointly determine the number of
19 employees of the Department of Housing
20 and Urban Development necessary to per-
21 form or support the consumer protection
22 functions of the Department that are
23 transferred to the Bureau by this title; and

24 (ii) consistent with the number deter-
25 mined under clause (i), jointly identify em-

1 ployees of the Department of Housing and
2 Urban Development for transfer to the Bu-
3 reau in a manner that the Bureau and the
4 Secretary of the Department of Housing
5 and Urban Development, in their sole dis-
6 cretion, deem equitable.

7 (B) IDENTIFIED EMPLOYEES TRANS-
8 FERRED.—All employees of the Department of
9 Housing and Urban Development identified
10 under subparagraph (A)(ii) shall be transferred
11 to the Bureau for employment.

12 (7) CONSUMER EDUCATION, FINANCIAL LIT-
13 ERACY, CONSUMER COMPLAINTS, AND RESEARCH
14 FUNCTIONS.—The Bureau and each of the trans-
15 feror agencies shall jointly determine the number of
16 employees and the types and grades of employees
17 necessary to perform the functions of the Bureau
18 under subtitle A, including consumer education, fi-
19 nancial literacy, policy analysis, responses to con-
20 sumer complaints and inquiries, research, and simi-
21 lar functions. All employees jointly identified under
22 this paragraph shall be transferred to the Bureau
23 for employment.

24 (8) AUTHORITY OF THE PRESIDENT TO RE-
25 SOLVE DISPUTES.—

1 (A) ACTION AUTHORIZED.—In the event
2 that the Bureau and a transferor agency are
3 unable to reach an agreement under paragraphs
4 (1) through (7) by the designated transfer date,
5 the President, or the designee thereof, may
6 issue an order or directive to the transferor
7 agency to effect the transfer of personnel and
8 property under this subtitle.

9 (B) TRANSMITTAL TO CONGRESS RE-
10 QUIRED.—If an order or directive is issued
11 under subparagraph (A), the President shall
12 transmit a copy of the written determination
13 made with respect to such order or directive, in-
14 cluding an explanation for the need for the
15 order or directive, to the Committee on Bank-
16 ing, Housing, and Urban Affairs and the Com-
17 mittee on Appropriations of the Senate and the
18 Committee on Financial Services and the Com-
19 mittee on Appropriations of the House of Rep-
20 resentatives.

21 (C) SUNSET.—The authority provided in
22 this paragraph shall terminate 3 years after the
23 designated transfer date.

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1 (9) APPOINTMENT AUTHORITY FOR EXCEPTED
2 SERVICE AND SENIOR EXECUTIVE SERVICE TRANS-
3 FERRED.—

4 (A) IN GENERAL.—In the case of an em-
5 ployee occupying a position in the excepted
6 service or the Senior Executive Service, any ap-
7 pointment authority established pursuant to law
8 or regulations of the Office of Personnel Man-
9 agement for filling such positions shall be
10 transferred, subject to subparagraph (B).

11 (B) DECLINING TRANSFERS ALLOWED.—
12 An agency or entity may decline to make a
13 transfer of authority under subparagraph (A)
14 (and the employees appointed pursuant thereto)
15 to the extent that such authority relates to posi-
16 tions excepted from the competitive service be-
17 cause of their confidential, policy-making, pol-
18 icy-determining, or policy-advocating character,
19 and non-career positions in the Senior Execu-
20 tive Service (within the meaning of section
21 3132(a)(7) of title 5, United States Code).

22 (b) TIMING OF TRANSFERS AND POSITION ASSIGN-
23 MENTS.—Each employee to be transferred under this sec-
24 tion shall—

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

3 (2) receive notice of a position assignment not
4 later than 120 days after the effective date of his or
5 her transfer.

6 (c) TRANSFER OF FUNCTION.—

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

11 (2) PRIORITY OF THIS TITLE.—If any provi-
12 sions of this title conflict with any protection pro-
13 vided to transferred employees under section 3503 of
14 title 5, United States Code, the provisions of this
15 title shall control.

16 (d) EQUAL STATUS AND TENURE POSITIONS.—

17 (1) EMPLOYEES TRANSFERRED FROM THE
18 FEDERAL RESERVE SYSTEM, FDIC, HUD, NCUA, OCC,
19 AND OTS.—Each employee transferred to the Bu-
20 reau from the Board of Governors, a Federal reserve
21 bank, the Federal Deposit Insurance Corporation,
22 the Department of Housing and Urban Develop-
23 ment, the National Credit Union Administration, the
24 Office of the Comptroller of the Currency, or the Of-
25 fice of Thrift Supervision shall be placed in a posi-

1 tion at the Bureau with the same status and tenure
2 as that employee held on the day before the des-
3 ignated transfer date.

4 (2) EMPLOYEES TRANSFERRED FROM THE
5 FEDERAL RESERVE SYSTEM.—For purposes of de-
6 termining the status and position placement of a
7 transferred employee, any period of service with the
8 Board of Governors or a Federal reserve bank shall
9 be credited as a period of service with a Federal
10 agency.

11 (e) ADDITIONAL CERTIFICATION REQUIREMENTS
12 LIMITED.—Examiners transferred to the Bureau are not
13 subject to any additional certification requirements before
14 being placed in a comparable examiner position at the Bu-
15 reau examining the same types of institutions as they ex-
16 amined before they were transferred.

17 (f) PERSONNEL ACTIONS LIMITED.—

18 (1) 2-YEAR PROTECTION.—Except as provided
19 in paragraph (2), each transferred employee holding
20 a permanent position on the day before the des-
21 ignated transfer date may not, during the 2-year pe-
22 riod beginning on the designated transfer date, be
23 involuntarily separated, or involuntarily reassigned
24 outside his or her locality pay area.

1 (2) EXCEPTIONS.—Paragraph (1) does not
2 limit the right of the Bureau—

3 (A) to separate an employee for cause or
4 for unacceptable performance;

5 (B) to terminate an appointment to a posi-
6 tion excepted from the competitive service be-
7 cause of its confidential policy-making, policy-
8 determining, or policy-advocating character; or

9 (C) to reassign a supervisory employee out-
10 side of his or her locality pay area when the
11 Bureau determines that the reassignment is
12 necessary for the efficient operation of the Bu-
13 reau.

14 (g) PAY.—

15 (1) 2-YEAR PROTECTION.—

16 (A) IN GENERAL.—Except as provided in
17 paragraph (2), each transferred employee shall,
18 during the 2-year period beginning on the des-
19 ignated transfer date, receive pay at a rate
20 equal to not less than the basic rate of pay (in-
21 cluding any geographic differential) that the
22 employee received during the pay period imme-
23 diately preceding the date of transfer.

24 (B) LIMITATION.—Notwithstanding sub-
25 paragraph (A), if the employee was receiving a

1 higher rate of basic pay on a temporary basis
2 (because of a temporary assignment, temporary
3 promotion, or other temporary action) imme-
4 diately before the date of transfer, the Bureau
5 may reduce the rate of basic pay on the date
6 on which the rate would have been reduced but
7 for the transfer, and the protected rate for the
8 remainder of the 2-year period shall be the re-
9 duced rate that would have applied, but for the
10 transfer.

11 (2) EXCEPTIONS.—Paragraph (1) does not
12 limit the right of the Bureau to reduce the rate of
13 basic pay of a transferred employee—

- 14 (A) for cause;
15 (B) for unacceptable performance; or
16 (C) with the consent of the employee.

17 (3) PROTECTION ONLY WHILE EMPLOYED.—
18 Paragraph (1) applies to a transferred employee
19 only while that employee remains employed by the
20 Bureau.

21 (4) PAY INCREASES PERMITTED.—Paragraph
22 (1) does not limit the authority of the Bureau to in-
23 crease the pay of a transferred employee.

24 (h) REORGANIZATION.—

25 (1) BETWEEN 1ST AND 3RD YEAR.—

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1 (A) IN GENERAL.—If the Bureau deter-
2 mines, during the 2-year period beginning 1
3 year after the designated transfer date, that a
4 reorganization of the staff of the Bureau is re-
5 quired—

6 (i) that reorganization shall be
7 deemed a “substantial reorganization” for
8 purposes of affording affected employees
9 retirement under section 8336(d)(2) or
10 8414(b)(1)(B) of title 5, United States
11 Code;

12 (ii) before the reorganization occurs,
13 all employees in the same locality pay area
14 as defined by the Office of Personnel Man-
15 agement shall be placed in a uniform posi-
16 tion classification system; and

17 (iii) any resulting reduction in force
18 shall be governed by the provisions of
19 chapter 35 of title 5, United States Code,
20 except that the Bureau shall—

21 (I) establish competitive areas
22 (as that term is defined in regulations
23 issued by the Office of Personnel
24 Management) to include at a min-
25 imum all employees in the same local-

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1 ity pay area as defined by the Office
2 of Personnel Management;

3 (II) establish competitive levels
4 (as that term is defined in regulations
5 issued by the Office of Personnel
6 Management) without regard to
7 whether the particular employees have
8 been appointed to positions in the
9 competitive service or the excepted
10 service; and

11 (III) afford employees appointed
12 to positions in the excepted service
13 (other than to a position excepted
14 from the competitive service because
15 of its confidential policy-making, pol-
16 icy-determining, or policy-advocating
17 character) the same assignment rights
18 to positions within the Bureau as em-
19 ployees appointed to positions in the
20 competitive service.

21 (B) SERVICE CREDIT FOR REDUCTIONS IN
22 FORCE.—For purposes of this paragraph, peri-
23 ods of service with a Federal home loan bank,
24 a joint office of the Federal home loan banks,
25 the Board of Governors, a Federal reserve

1 bank, the Federal Deposit Insurance Corpora-
2 tion, or the National Credit Union Administra-
3 tion shall be credited as periods of service with
4 a Federal agency.

5 (2) AFTER 3RD YEAR.—

6 (A) IN GENERAL.—If the Bureau deter-
7 mines, at any time after the 3-year period be-
8 ginning on the designated transfer date, that a
9 reorganization of the staff of the Bureau is re-
10 quired, any resulting reduction in force shall be
11 governed by the provisions of chapter 35 of title
12 5, United States Code, except that the Bureau
13 shall establish competitive levels (as that term
14 is defined in regulations issued by the Office of
15 Personnel Management) without regard to
16 types of appointment held by particular employ-
17 ees transferred under this section.

18 (B) SERVICE CREDIT FOR REDUCTIONS IN
19 FORCE.—For purposes of this paragraph, peri-
20 ods of service with a Federal home loan bank,
21 a joint office of the Federal home loan banks,
22 the Board of Governors, a Federal reserve
23 bank, the Federal Deposit Insurance Corpora-
24 tion, or the National Credit Union Administra-

1 tion shall be credited as periods of service with
2 a Federal agency.

3 (i) BENEFITS.—

4 (1) RETIREMENT BENEFITS FOR TRANSFERRED
5 EMPLOYEES.—

6 (A) IN GENERAL.—

7 (i) CONTINUATION OF EXISTING RE-
8 TIREMENT PLAN.—Unless an election is
9 made under clause (iii) or subparagraph
10 (B), each employee transferred pursuant to
11 this subtitle shall remain enrolled in the
12 existing retirement plan of that employee
13 as of the date of transfer, through any pe-
14 riod of continuous employment with the
15 Bureau.

16 (ii) EMPLOYER CONTRIBUTION.—The
17 Bureau shall pay any employer contribu-
18 tions to the existing retirement plan of
19 each transferred employee, as required
20 under that plan.

21 (iii) OPTION TO ELECT INTO THE
22 FEDERAL RESERVE SYSTEM RETIREMENT
23 PLAN AND FEDERAL RESERVE SYSTEM
24 THRIFT PLAN.—Any employee transferred
25 or appointed pursuant to this subtitle may,

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1 during the 1-year period beginning 6
2 months after the designated transfer date,
3 elect to end their participation and benefit
4 accruals under their existing retirement
5 plan or plans and elect to participate in
6 both the Federal Reserve System Retirement
7 Plan and the Federal Reserve System Thrift
8 Plan, through any period of
9 continuous employment with the Bureau,
10 under the same terms as are applicable to
11 Federal Reserve System transferred em-
12 ployees, as provided in subparagraph (C).
13 An election of coverage by the Federal Re-
14 serve System Retirement Plan and the
15 Federal Reserve System Thrift Plan shall
16 begin on the day following the end of the
17 18-month period beginning on the des-
18 ignated transfer date, and benefit accruals
19 under the existing retirement plan of the
20 transferred employee shall end on the last
21 day of the 18-month period beginning on
22 the designated transfer date. If an em-
23 ployee elects to participate in the Federal
24 Reserve System Retirement Plan and the
25 Federal Reserve System Thrift Plan, all of

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1 the service of the employee that was cred-
2 itable under their existing retirement plan
3 shall be transferred to the Federal Reserve
4 System Retirement Plan on the day fol-
5 lowing the end of the 18-month period be-
6 ginning on the designated transfer date.

7 (iv) BUREAU CONTRIBUTION.—The
8 Bureau shall pay an employer contribution
9 to the Federal Reserve System Retirement
10 Plan, in the amount established as an em-
11 ployer contribution under the Federal Em-
12 ployees Retirement System, as established
13 under chapter 84 of title 5, United States
14 Code, for each Bureau employee who elects
15 to participate in the Federal Reserve Sys-
16 tem Retirement Plan under this subpara-
17 graph. The Bureau shall pay an employer
18 contribution to the Federal Reserve Sys-
19 tem Thrift Plan for each Bureau employee
20 who elects to participate in such plan, as
21 required under the terms of the Federal
22 Reserve System Thrift Plan.

23 (v) ADDITIONAL FUNDING.—The Bu-
24 reau shall transfer to the Federal Reserve
25 System Retirement Plan an amount deter-

1 mined by the Board of Governors, in con-
2 sultation with the Bureau, to be necessary
3 to reimburse the Federal Reserve System
4 Retirement Plan for the costs to such plan
5 of providing benefits to employees electing
6 coverage under the Federal Reserve Sys-
7 tem Retirement Plan under subparagraph
8 (iii), and who were transferred to the Bu-
9 reau from outside of the Federal Reserve
10 System.

11 (vi) OPTION TO ELECT INTO THRIFT
12 PLAN CREATED BY THE BUREAU.—If the
13 Bureau chooses to establish a thrift plan,
14 the employees transferred pursuant to this
15 subtitle shall have the option to elect,
16 under such terms and conditions as the
17 Bureau may establish, coverage under such
18 a thrift plan established by the Bureau.
19 Transferred employees may not remain in
20 the thrift plan of the agency from which
21 the employee transferred under this sub-
22 title, if the employee elects to participate
23 in a thrift plan established by the Bureau.

24 (B) OPTION FOR EMPLOYEES TRANS-
25 FERRED FROM FEDERAL RESERVE SYSTEM TO

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1 BE SUBJECT TO THE FEDERAL EMPLOYEE RE-
2 TIREMENT PROGRAM.—

3 (i) ELECTION.—Any Federal Reserve
4 System transferred employee who was en-
5 rolled in the Federal Reserve System Re-
6 tirement Plan on the day before the date
7 of his or her transfer to the Bureau may,
8 during the 1-year period beginning 6
9 months after the designated transfer date,
10 elect to be subject to the Federal Employee
11 Retirement Program.

12 (ii) EFFECTIVE DATE OF COV-
13 ERAGE.—An election of coverage by the
14 Federal Employee Retirement Program
15 under this subparagraph shall begin on the
16 day following the end of the 18-month pe-
17 riod beginning on the designated transfer
18 date, and benefit accruals under the exist-
19 ing retirement plan of the Federal Reserve
20 System transferred employee shall end on
21 the last day of the 18-month period begin-
22 ning on the designated transfer date.

23 (C) BUREAU PARTICIPATION IN FEDERAL
24 RESERVE SYSTEM RETIREMENT PLAN.—

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1 (II) for administering an existing
2 retirement plan (including the Federal
3 Reserve System Retirement Plan or
4 Federal Reserve System Thrift Plan);
5 or

6 (III) for ensuring the plans com-
7 ply with applicable laws, fiduciary
8 rules, and related responsibilities.

9 (iii) TAX QUALIFIED STATUS.—Not-
10 withstanding any other provision of law,
11 providing benefits to Federal Reserve Sys-
12 tem employees transferred to the Bureau
13 pursuant to this subtitle, and to employees
14 who elect coverage pursuant to subpara-
15 graph (A)(iii) or under section
16 1013(a)(2)(B), shall not cause any existing
17 retirement plan (including the Federal Re-
18 serve System Retirement Plan and the
19 Federal Reserve System Thrift Plan) to
20 lose its tax-qualified status under sections
21 401(a) and 501(a) of the Internal Revenue
22 Code of 1986.

23 (iv) BUREAU CONTRIBUTION.—The
24 Bureau shall pay any employer contribu-
25 tions to the existing retirement plan (in-

1 including the Federal Reserve System Re-
2 tirement Plan and the Federal Reserve
3 System Thrift Plan) for each Federal Re-
4 serve System transferred employee partici-
5 pating in those plans, as required under
6 the plan, after the designated transfer
7 date.

8 (v) CONTROLLED GROUP STATUS.—
9 The Bureau is the same employer as the
10 Federal Reserve System (as comprised of
11 the Board of Governors and each of the 12
12 Federal reserve banks prior to the date of
13 enactment of this Act) for purposes of sub-
14 sections (b), (c), (m), and (o) of section
15 414 of the Internal Revenue Code of 1986
16 (26 U.S.C. 414).

17 (D) DEFINITIONS.—For purposes of this
18 paragraph—

19 (i) the term “existing retirement
20 plan” means, with respect to an employee
21 transferred pursuant to this subtitle, the
22 retirement plan (including the Financial
23 Institutions Retirement Fund) and any as-
24 sociated thrift savings plan, of the agency
25 from which the employee was transferred

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1 under this subtitle, in which the employee
2 was enrolled on the day before the date on
3 which the employee was transferred;

4 (ii) the term “Federal Employee Re-
5 tirement Program” means either the Civil
6 Service Retirement System established
7 under chapter 83 of title 5, United States
8 Code, or the Federal Employees Retire-
9 ment System established under chapter 84
10 of title 5, United States Code, depending
11 upon the service history of the individual;

12 (iii) the term “Federal Reserve Sys-
13 tem transferred employee” means a trans-
14 ferred employee who is an employee of the
15 Board of Governors or a Federal reserve
16 bank on the day before the designated
17 transfer date, and who is transferred to
18 the Bureau on the designated transfer date
19 pursuant to this subtitle;

20 (iv) the term “Federal Reserve Sys-
21 tem Retirement Plan” means the Retire-
22 ment Plan for Employees of the Federal
23 Reserve System; and

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1 (v) the term “Federal Reserve System
2 Thrift Plan” means the Thrift Plan for
3 Employees of the Federal Reserve System.

4 (2) BENEFITS OTHER THAN RETIREMENT BEN-
5 EFITS FOR TRANSFERRED EMPLOYEES.—

6 (A) DURING 1ST YEAR.—

7 (i) EXISTING PLANS CONTINUE.—

8 Each employee transferred pursuant to
9 this subtitle may, for 1 year after the des-
10 ignated transfer date, retain membership
11 in any other employee benefit program of
12 the agency or bank from which the em-
13 ployee transferred, including a medical,
14 dental, vision, long term care, or life insur-
15 ance program, to which the employee be-
16 longed on the day before the designated
17 transfer date.

18 (ii) EMPLOYER CONTRIBUTION.—The
19 Bureau shall reimburse the agency or bank
20 from which an employee was transferred
21 for any cost incurred by that agency or
22 bank in continuing to extend coverage in
23 the benefit program to the employee, as re-
24 quired under that program or negotiated
25 agreements.

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1 (B) MEDICAL, DENTAL, VISION, OR LIFE
2 INSURANCE AFTER FIRST YEAR.—If, at the end
3 of the 1-year period beginning on the des-
4 ignated transfer date, the Bureau has not es-
5 tablished its own, or arranged for participation
6 in another entity's, medical, dental, vision, or
7 life insurance program, an employee transferred
8 pursuant to this subtitle who was a member of
9 such a program at the agency or Federal re-
10 serve bank from which the employee transferred
11 may, before the coverage of that employee ends
12 under subparagraph (A)(i), elect to enroll, with-
13 out regard to any regularly scheduled open sea-
14 son, in—

15 (i) the enhanced dental benefits pro-
16 gram established under chapter 89A of
17 title 5, United States Code;

18 (ii) the enhanced vision benefits estab-
19 lished under chapter 89B of title 5, United
20 States Code;

21 (iii) the Federal Employees Group
22 Life Insurance Program established under
23 chapter 87 of title 5, United States Code,
24 without regard to any requirement of in-
25 surability; and

1 (iv) the Federal Employees Health
2 Benefits Program established under chap-
3 ter 89 of title 5, United States Code.

4 (C) LONG TERM CARE INSURANCE AFTER
5 1ST YEAR.—If, at the end of the 1-year period
6 beginning on the designated transfer date, the
7 Bureau has not established its own, or arranged
8 for participation in another entity's, long term
9 care insurance program, an employee trans-
10 ferred pursuant to this subtitle who was a
11 member of such a program at the agency or
12 Federal reserve bank from which the employee
13 transferred may, before the coverage of that
14 employee ends under subparagraph (A)(i), elect
15 to apply for coverage under the Federal Long
16 Term Care Insurance Program established
17 under chapter 90 of title 5, United States Code,
18 under the underwriting requirements applicable
19 to a new active workforce member (as defined
20 in part 875 of title 5, Code of Federal Regula-
21 tions).

22 (D) EMPLOYEE CONTRIBUTION.—An indi-
23 vidual enrolled in the Federal Employees
24 Health Benefits program shall pay any em-
25 ployee contribution required by the plan.

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1 (E) ADDITIONAL FUNDING.—The Bureau
2 shall transfer to the Federal Employees Health
3 Benefits Fund established under section 8909
4 of title 5, United States Code, an amount deter-
5 mined by the Director of the Office of Per-
6 sonnel Management, after consultation with the
7 Bureau and the Office of Management and
8 Budget, to be necessary to reimburse the Fund
9 for the cost to the Fund of providing benefits
10 under this paragraph.

11 (F) CREDIT FOR TIME ENROLLED IN
12 OTHER PLANS.—For employees transferred
13 under this title, enrollment in a health benefits
14 plan administered by a transferor agency or a
15 Federal reserve bank, as the case may be, im-
16 mediately before enrollment in a health benefits
17 plan under chapter 89 of title 5, United States
18 Code, shall be considered as enrollment in a
19 health benefits plan under that chapter for pur-
20 poses of section 8905(b)(1)(A) of title 5, United
21 States Code.

22 (G) SPECIAL PROVISIONS TO ENSURE CON-
23 TINUATION OF LIFE INSURANCE BENEFITS.—

24 (i) IN GENERAL.—An annuitant (as
25 defined in section 8901(3) of title 5,

1 United States Code) who is enrolled in a
2 life insurance plan administered by a
3 transferor agency on the day before the
4 designated transfer date shall be eligible
5 for coverage by a life insurance plan under
6 sections 8706(b), 8714a, 8714b, and
7 8714c of title 5, United States Code, or in
8 a life insurance plan established by the
9 Bureau, without regard to any regularly
10 scheduled open season and requirement of
11 insurability.

12 (ii) EMPLOYEE CONTRIBUTION.—An
13 individual enrolled in a life insurance plan
14 under this subparagraph shall pay any em-
15 ployee contribution required by the plan.

16 (iii) ADDITIONAL FUNDING.—The Bu-
17 reau shall transfer to the Employees' Life
18 Insurance Fund established under section
19 8714 of title 5, United States Code, an
20 amount determined by the Director of the
21 Office of Personnel Management, after
22 consultation with the Bureau and the Of-
23 fice of Management and Budget, to be nec-
24 essary to reimburse the Fund for the cost
25 to the Fund of providing benefits under

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1 this subparagraph not otherwise paid for
2 by the employee under clause (ii).

3 (iv) CREDIT FOR TIME ENROLLED IN
4 OTHER PLANS.—For employees transferred
5 under this title, enrollment in a life insur-
6 ance plan administered by a transferor
7 agency 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 (3) OPM RULES.—The Office of Personnel
15 Management shall issue such rules as are necessary
16 to carry out this subsection.

17 (j) IMPLEMENTATION OF UNIFORM PAY AND CLASSI-
18 FICATION SYSTEM.—Not later than 2 years after the des-
19 ignated transfer date, the Bureau shall implement a uni-
20 form pay and classification system for all employees trans-
21 ferred under this title.

22 (k) EQUITABLE TREATMENT.—In administering the
23 provisions of this section, the Bureau—

24 (1) shall take no action that would unfairly dis-
25 advantage transferred employees relative to each

1 other based on their prior employment by the Board
2 of Governors, the Federal Deposit Insurance Cor-
3 poration, the Department of Housing and Urban
4 Development, the National Credit Union Adminis-
5 tration, the Office of the Comptroller of the Cur-
6 rency, the Office of Thrift Supervision, a Federal re-
7 serve bank, a Federal home loan bank, or a joint of-
8 fice of the Federal home loan banks; and

9 (2) may take such action as is appropriate in
10 individual cases so that employees transferred under
11 this section receive equitable treatment, with respect
12 to the status, tenure, pay, benefits (other than bene-
13 fits under programs administered by the Office of
14 Personnel Management), and accrued leave or vaca-
15 tion time of those employees, for prior periods of
16 service with any Federal agency, including the
17 Board of Governors, the Corporation, the Depart-
18 ment of Housing and Urban Development, the Na-
19 tional Credit Union Administration, the Office of the
20 Comptroller of the Currency, the Office of Thrift
21 Supervision, a Federal reserve bank, a Federal home
22 loan bank, or a joint office of the Federal home loan
23 banks.

24 (1) IMPLEMENTATION.—In implementing the provi-
25 sions of this section, the Bureau shall coordinate with the

1 Office of Personnel Management and other entities having
2 expertise in matters related to employment to ensure a
3 fair and orderly transition for affected employees.

4 **SEC. 1065. 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 enactment of this
15 Act.

16 **SEC. 1066. INTERIM AUTHORITY OF THE SECRETARY.**

17 (a) IN GENERAL.—The Secretary is authorized to
18 perform the functions of the Bureau under this subtitle
19 until the Director of the Bureau is confirmed by the Sen-
20 ate in accordance with section 1011.

21 (b) INTERIM ADMINISTRATIVE SERVICES BY THE
22 DEPARTMENT OF THE TREASURY.—The Department of
23 the Treasury may provide administrative services nec-
24 essary to support the Bureau before the designated trans-
25 fer date.

1 **SEC. 1067. TRANSITION OVERSIGHT.**

2 (a) PURPOSE.—The purpose of this section is to en-
3 sure that the Bureau—

4 (1) has an orderly and organized startup;

5 (2) attracts and retains a qualified workforce;

6 and

7 (3) establishes comprehensive employee training
8 and benefits programs.

9 (b) REPORTING REQUIREMENT.—

10 (1) IN GENERAL.—The Bureau shall submit an
11 annual report to the Committee on Banking, Hous-
12 ing, and Urban Affairs of the Senate and the Com-
13 mittee on Financial Services of the House of Rep-
14 resentatives that includes the plans described in
15 paragraph (2).

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

18 (A) TRAINING AND WORKFORCE DEVELOP-
19 MENT PLAN.—The Bureau shall submit a train-
20 ing and workforce development plan that in-
21 cludes, to the extent practicable—

22 (i) identification of skill and technical
23 expertise needs and actions taken to meet
24 those requirements;

25 (ii) steps taken to foster innovation
26 and creativity;

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- 1 (iii) leadership development and suc-
2 cession planning; and
3 (iv) effective use of technology by em-
4 ployees.

5 (B) WORKPLACE FLEXIBILITIES PLAN.—

6 The Bureau shall submit a workforce flexibility
7 plan that includes, to the extent practicable—

- 8 (i) telework;
9 (ii) flexible work schedules;
10 (iii) phased retirement;
11 (iv) reemployed annuitants;
12 (v) part-time work;
13 (vi) job sharing;
14 (vii) parental leave benefits and
15 childcare assistance;
16 (viii) domestic partner benefits;
17 (ix) other workplace flexibilities; or
18 (x) any combination of the items de-
19 scribed in clauses (i) through (ix).

20 (C) RECRUITMENT AND RETENTION

21 PLAN.—The Bureau shall submit a recruitment
22 and retention plan that includes, to the extent
23 practicable, provisions relating to—

1 (i) the steps necessary to target highly
2 qualified applicant pools with diverse back-
3 grounds;

4 (ii) streamlined employment applica-
5 tion processes;

6 (iii) the provision of timely notifica-
7 tion of the status of employment applica-
8 tions to applicants; and

9 (iv) the collection of information to
10 measure indicators of hiring effectiveness.

11 (c) EXPIRATION.—The reporting requirement under
12 subsection (b) shall terminate 5 years after the date of
13 enactment of this Act.

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

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

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

22 (e) PARTICIPATION IN EXAMINATIONS.—In order to
23 prepare the Bureau to conduct examinations under section
24 1025 upon the designated transfer date, the Bureau and
25 the applicable prudential regulator may agree to include,

1 on a sampling basis, examiners on examinations of the
2 compliance with Federal consumer financial law of institu-
3 tions described in section 1025(a) conducted by the pru-
4 dential regulators prior to the designated transfer date.

5 **Subtitle G—Regulatory**
6 **Improvements**

7 **SEC. 1071. SMALL BUSINESS DATA COLLECTION.**

8 (a) IN GENERAL.—The Equal Credit Opportunity
9 Act (15 U.S.C. 1691 et seq.) is amended by inserting after
10 section 704A the following:

11 **“SEC. 704B. SMALL BUSINESS LOAN DATA COLLECTION.**

12 “(a) PURPOSE.—The purpose of this section is to fa-
13 cilitate enforcement of fair lending laws and enable com-
14 munities, governmental entities, and creditors to identify
15 business and community development needs and opportu-
16 nities of women-owned, minority-owned, and small busi-
17 nesses.

18 “(b) INFORMATION GATHERING.—Subject to the re-
19 quirements of this section, in the case of any application
20 to a financial institution for credit for women-owned, mi-
21 nority-owned, or small business, the financial institution
22 shall—

23 “(1) inquire whether the business is a women-
24 owned, minority-owned, or small business, without
25 regard to whether such application is received in

1 person, by mail, by telephone, by electronic mail or
2 other form of electronic transmission, or by any
3 other means, and whether or not such application is
4 in response to a solicitation by the financial institu-
5 tion; and

6 “(2) maintain a record of the responses to such
7 inquiry, separate from the application and accom-
8 panying information.

9 “(c) RIGHT TO REFUSE.—Any applicant for credit
10 may refuse to provide any information requested pursuant
11 to subsection (b) in connection with any application for
12 credit.

13 “(d) NO ACCESS BY UNDERWRITERS.—

14 “(1) LIMITATION.—Where feasible, no loan un-
15 derwriter or other officer or employee of a financial
16 institution, or any affiliate of a financial institution,
17 involved in making any determination concerning an
18 application for credit shall have access to any infor-
19 mation provided by the applicant pursuant to a re-
20 quest under subsection (b) in connection with such
21 application.

22 “(2) LIMITED ACCESS.—If a financial institu-
23 tion determines that a loan underwriter or other of-
24 ficer or employee of a financial institution, or any
25 affiliate of a financial institution, involved in making

1 any determination concerning an application for
2 credit should have access to any information pro-
3 vided by the applicant pursuant to a request under
4 subsection (b), the financial institution shall provide
5 notice to the applicant of the access of the under-
6 writer to such information, along with notice that
7 the financial institution may not discriminate on the
8 basis of such information.

9 “(e) FORM AND MANNER OF INFORMATION.—

10 “(1) IN GENERAL.—Each financial institution
11 shall compile and maintain, in accordance with regu-
12 lations of the Bureau, a record of the information
13 provided by any loan applicant pursuant to a request
14 under subsection (b).

15 “(2) ITEMIZATION.—Information compiled and
16 maintained under paragraph (1) shall be itemized in
17 order to clearly and conspicuously disclose—

18 “(A) the number of the application and the
19 date on which the application was received;

20 “(B) the type and purpose of the loan or
21 other credit being applied for;

22 “(C) the amount of the credit or credit
23 limit applied for, and the amount of the credit
24 transaction or the credit limit approved for such
25 applicant;

1 “(D) the type of action taken with respect
2 to such application, and the date of such action;

3 “(E) the census tract in which is located
4 the principal place of business of the women-
5 owned, minority-owned, or small business loan
6 applicant;

7 “(F) the gross annual revenue of the busi-
8 ness in the last fiscal year of the women-owned,
9 minority-owned, or small business loan appli-
10 cant preceding the date of the application;

11 “(G) the race, sex, and ethnicity of the
12 principal owners of the business; and

13 “(H) any additional data that the Bureau
14 determines would aid in fulfilling the purposes
15 of this section.

16 “(3) NO PERSONALLY IDENTIFIABLE INFORMA-
17 TION.—In compiling and maintaining any record of
18 information under this section, a financial institution
19 may not include in such record the name, specific
20 address (other than the census tract required under
21 paragraph (1)(E)), telephone number, electronic
22 mail address, or any other personally identifiable in-
23 formation concerning any individual who is, or is
24 connected with, the women-owned, minority-owned,
25 or small business loan applicant.

1 “(4) DISCRETION TO DELETE OR MODIFY PUB-
2 LICLY AVAILABLE DATA.—The Bureau may, at its
3 discretion, delete or modify data collected under this
4 section which is or will be available to the public, if
5 the Bureau determines that the deletion or modifica-
6 tion of the data would advance a privacy interest.

7 “(f) AVAILABILITY OF INFORMATION.—

8 “(1) SUBMISSION TO BUREAU.—The data re-
9 quired to be compiled and maintained under this
10 section by any financial institution shall be sub-
11 mitted annually to the Bureau.

12 “(2) AVAILABILITY OF INFORMATION.—Infor-
13 mation compiled and maintained under this section
14 shall be—

15 “(A) retained for not less than 3 years
16 after the date of preparation;

17 “(B) made available to any member of the
18 public, upon request, in the form required
19 under regulations prescribed by the Bureau;

20 “(C) annually made available to the public
21 generally by the Bureau, in such form and in
22 such manner as is determined by the Bureau,
23 by regulation.

24 “(3) COMPILATION OF AGGREGATE DATA.—The
25 Bureau may, at its discretion—

1 “(A) compile and aggregate data collected
2 under this section for its own use; and

3 “(B) make public such compilations of ag-
4 gregate data.

5 “(g) BUREAU ACTION.—

6 “(1) IN GENERAL.—The Bureau shall prescribe
7 such rules and issue such guidance as may be nec-
8 essary to carry out, enforce, and compile data pursu-
9 ant to this section.

10 “(2) EXCEPTIONS.—The Bureau, by rule or
11 order, may adopt exceptions to any requirement of
12 this section and may, conditionally or uncondition-
13 ally, exempt any financial institution or class of fi-
14 nancial institutions from the requirements of this
15 section, as the Bureau deems necessary or appro-
16 priate to carry out the purposes of this section.

17 “(3) GUIDANCE.—The Bureau shall issue guid-
18 ance designed to facilitate compliance with the re-
19 quirements of this section, including assisting finan-
20 cial institutions in working with applicants to deter-
21 mine whether the applicants are women-owned, mi-
22 nority-owned, or small businesses for purposes of
23 this section.

24 “(h) DEFINITIONS.—For purposes of this section, the
25 following definitions shall apply:

1 “(1) FINANCIAL INSTITUTION.—The term ‘fi-
2 nancial institution’ means any partnership, com-
3 pany, corporation, association (incorporated or unin-
4 corporated), trust, estate, cooperative organization,
5 or other entity that engages in any financial activity.

6 “(2) SMALL BUSINESS.—The term ‘small busi-
7 ness’ has the same meaning as the term ‘small busi-
8 ness concern’ in section 3 of the Small Business Act
9 (15 U.S.C. 632).

10 “(3) SMALL BUSINESS LOAN.—The term ‘small
11 business loan’ means a loan made to a small busi-
12 ness.

13 “(4) MINORITY.—The term ‘minority’ has the
14 same meaning as in section 1204(c)(3) of the Finan-
15 cial Institutions Reform, Recovery, and Enforcement
16 Act of 1989.

17 “(5) MINORITY-OWNED BUSINESS.—The term
18 ‘minority-owned business’ means a business—

19 “(A) more than 50 percent of the owner-
20 ship or control of which is held by 1 or more
21 minority individuals; and

22 “(B) more than 50 percent of the net prof-
23 it or loss of which accrues to 1 or more minor-
24 ity individuals.

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1 “(6) WOMEN-OWNED BUSINESS.—The term
2 ‘women-owned business’ means a business—

3 “(A) more than 50 percent of the owner-
4 ship or control of which is held by 1 or more
5 women; and

6 “(B) more than 50 percent of the net prof-
7 it or loss of which accrues to 1 or more
8 women.”.

9 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
10 Section 701(b) of the Equal Credit Opportunity Act (15
11 U.S.C. 1691(b)) is amended—

12 (1) in paragraph (3), by striking “or” at the
13 end;

14 (2) in paragraph (4), by striking the period at
15 the end and inserting “; or”; and

16 (3) by inserting after paragraph (4), the fol-
17 lowing:

18 “(5) to make an inquiry under section 704B, in
19 accordance with the requirements of that section.”.

20 (c) CLERICAL AMENDMENT.—The table of sections
21 for title VII of the Consumer Credit Protection Act is
22 amended by inserting after the item relating to section
23 704A the following new item:

 “704B. Small business loan data collection.”.

24 (d) EFFECTIVE DATE.—This section shall become ef-
25 fective on the designated transfer date.

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1 **SEC. 1072. ASSISTANCE FOR ECONOMICALLY VULNERABLE**
2 **INDIVIDUALS AND FAMILIES.**

3 (a) HERA AMENDMENTS.—Section 1132 of the
4 Housing and Economic Recovery Act of 2008 (12 U.S.C.
5 1701x note) is amended—

6 (1) in subsection (a), by inserting in each of
7 paragraphs (1), (2), (3), and (4) “or economically
8 vulnerable individuals and families” after “home-
9 buyers” each place that term appears;

10 (2) in subsection (b)(1), by inserting “or eco-
11 nomically vulnerable individuals and families” after
12 “homebuyers”;

13 (3) in subsection (c)(1)—

14 (A) in subparagraph (A), by striking “or”
15 at the end;

16 (B) in subparagraph (B), by striking the
17 period at the end and inserting “; or”; and

18 (C) by adding at the end the following:

19 “(C) a nonprofit corporation that—

20 “(i) is exempt from taxation under
21 section 501(c)(3) of the Internal Revenue
22 Code of 1986; and

23 “(ii) specializes or has expertise in
24 working with economically vulnerable indi-
25 viduals and families, but whose primary

1 purpose is not provision of credit coun-
2 seling services.”; and

3 (4) in subsection (d)(1), by striking “not more
4 than 5”.

5 (b) APPLICABILITY.—Amendments made by sub-
6 section (a) shall not apply to programs authorized by sec-
7 tion 1132 of the Housing and Economic Recovery Act of
8 2008 (12 U.S.C. 1701x note) that are funded with appro-
9 priations prior to fiscal year 2011.

10 **SEC. 1073. REMITTANCE TRANSFERS.**

11 (a) TREATMENT OF REMITTANCE TRANSFERS.—The
12 Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.)
13 is amended—

14 (1) in section 902(b) (15 U.S.C. 1693(b)), by
15 inserting “and remittance” after “electronic fund”;

16 (2) in section 904(c) (15 U.S.C. 1693b(c)), in
17 the first sentence, by inserting “or remittance trans-
18 fers” after “electronic fund transfers”;

19 (3) by redesignating sections 919, 920, 921,
20 and 922 as sections 920, 921, 922, and 923, respec-
21 tively; and

22 (4) by inserting after section 918 the following:

23 **“SEC. 919. REMITTANCE TRANSFERS.**

24 “(a) DISCLOSURES REQUIRED FOR REMITTANCE
25 TRANSFERS.—

1 “(1) IN GENERAL.—Each remittance transfer
2 provider shall make disclosures as required under
3 this section and in accordance with rules prescribed
4 by the Board. Disclosures required under this sec-
5 tion shall be in addition to any other disclosures ap-
6 plicable under this title.

7 “(2) DISCLOSURES.—Subject to rules pre-
8 scribed by the Board, a remittance transfer provider
9 shall provide, in writing and in a form that the send-
10 er may keep, to each sender requesting a remittance
11 transfer, as applicable to the transaction—

12 “(A) at the time at which the sender re-
13 quests a remittance transfer to be initiated, and
14 prior to the sender making any payment in con-
15 nection with the remittance transfer, a disclo-
16 sure describing—

17 “(i) the amount of currency that will
18 be received by the designated recipient,
19 using the values of the currency into which
20 the funds will be exchanged;

21 “(ii) the amount of transfer and any
22 other fees charged by the remittance trans-
23 fer provider for the remittance transfer;
24 and

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1 “(iii) any exchange rate to be used by
2 the remittance transfer provider for the re-
3 mittance transfer, to the nearest 1/100th
4 of a point; and

5 “(B) at the time at which the sender
6 makes payment in connection with the remit-
7 tance transfer—

8 “(i) a receipt showing—

9 “(I) the information described in
10 subparagraph (A);

11 “(II) the promised date of deliv-
12 ery to the designated recipient; and

13 “(III) the name and either the
14 telephone number or the address of
15 the designated recipient, if either the
16 telephone number or the address of
17 the designated recipient is provided by
18 the sender; and

19 “(ii) a statement containing—

20 “(I) information about the rights
21 of the sender under this section re-
22 garding the resolution of errors; and

23 “(II) appropriate contact infor-
24 mation for—

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1 “(aa) the remittance trans-
2 fer provider; and

3 “(bb) the State agency that
4 regulates the remittance transfer
5 provider and the Board, includ-
6 ing the toll-free telephone num-
7 ber established under section
8 1013 of the Consumer Financial
9 Protection Act of 2010.

10 “(3) REQUIREMENTS RELATING TO DISCLO-
11 SURES.—With respect to each disclosure required to
12 be provided under paragraph (2) a remittance trans-
13 fer provider shall—

14 “(A) provide an initial notice and receipt,
15 as required by subparagraphs (A) and (B) of
16 paragraph (2), and an error resolution state-
17 ment, as required by subsection (d), that clearly
18 and conspicuously describe the information re-
19 quired to be disclosed therein; and

20 “(B) with respect to any transaction that
21 a sender conducts electronically, comply with
22 the Electronic Signatures in Global and Na-
23 tional Commerce Act (15 U.S.C. 7001 et seq.).

24 “(4) EXCEPTION FOR DISCLOSURES OF
25 AMOUNT RECEIVED.—

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1 “(A) IN GENERAL.—Subject to the rules
2 prescribed by the Board, and except as provided
3 under subparagraph (B), the disclosures re-
4 quired regarding the amount of currency that
5 will be received by the designated recipient shall
6 be deemed to be accurate, so long as the dislo-
7 sures provide a reasonably accurate estimate of
8 the foreign currency to be received. This para-
9 graph shall apply only to a remittance transfer
10 provider who is an insured depository institu-
11 tion, as defined in section 3 of the Federal De-
12 posit Insurance Act (12 U.S.C. 1813), or an in-
13 sured credit union, as defined in section 101 of
14 the Federal Credit Union Act (12 U.S.C.
15 1752), and if—

16 “(i) a remittance transfer is con-
17 ducted through a demand deposit, savings
18 deposit, or other asset account that the
19 sender holds with such remittance transfer
20 provider; and

21 “(ii) at the time at which the sender
22 requests the transaction, the remittance
23 transfer provider is unable to know, for
24 reasons beyond its control, the amount of

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1 currency that will be made available to the
2 designated recipient.

3 “(B) DEADLINE.—The application of sub-
4 paragraph (A) shall terminate 5 years after the
5 date of enactment of the Consumer Financial
6 Protection Act of 2010, unless the Board deter-
7 mines that termination of such provision would
8 negatively affect the ability of remittance trans-
9 fer providers described in subparagraph (A) to
10 send remittances to locations in foreign coun-
11 tries, in which case, the Board may, by rule, ex-
12 tend the application of subparagraph (A) to not
13 longer than 10 years after the date of enact-
14 ment of the Consumer Financial Protection Act
15 of 2010.

16 “(5) EXEMPTION AUTHORITY.—The Board
17 may, by rule, permit a remittance transfer provider
18 to satisfy the requirements of—

19 “(A) paragraph (2)(A) orally, if the trans-
20 action is conducted entirely by telephone;

21 “(B) paragraph (2)(B), in the case of a
22 transaction conducted entirely by telephone, by
23 mailing the disclosures required under such
24 subparagraph to the sender, not later than 1
25 business day after the date on which the trans-

1 action is conducted, or by including such docu-
2 ments in the next periodic statement, if the
3 telephone transaction is conducted through a
4 demand deposit, savings deposit, or other asset
5 account that the sender holds with the remit-
6 tance transfer provider;

7 “(C) subparagraphs (A) and (B) of para-
8 graph (2) together in one written disclosure,
9 but only to the extent that the information pro-
10 vided in accordance with paragraph (3)(A) is
11 accurate at the time at which payment is made
12 in connection with the subject remittance trans-
13 fer; and

14 “(D) paragraph (2)(A), without compliance
15 with section 101(c) of the Electronic Signatures
16 in Global Commerce Act, if a sender initiates
17 the transaction electronically and the informa-
18 tion is displayed electronically in a manner that
19 the sender can keep.

20 “(6) STOREFRONT AND INTERNET NOTICES.—

21 “(A) IN GENERAL.—

22 “(i) PROMINENT POSTING.—Subject
23 to subparagraph (B), the Board may pre-
24 scribe rules to require a remittance trans-
25 fer provider to prominently post, and time-

1 ly update, a notice describing a model re-
2 mittance transfer for one or more
3 amounts, as the Board may determine,
4 which notice shall show the amount of cur-
5 rency that will be received by the des-
6 ignated recipient, using the values of the
7 currency into which the funds will be ex-
8 changed.

9 “(ii) ONSITE DISPLAYS.—The Board
10 may require the notice prescribed under
11 this subparagraph to be displayed in every
12 physical storefront location owned or con-
13 trolled by the remittance transfer provider.

14 “(iii) INTERNET NOTICES.—Subject to
15 paragraph (3), the Board shall prescribe
16 rules to require a remittance transfer pro-
17 vider that provides remittance transfers via
18 the Internet to provide a notice, com-
19 parable to a storefront notice described in
20 this subparagraph, located on the home
21 page or landing page (with respect to such
22 remittance transfer services) owned or con-
23 trolled by the remittance transfer provider.

24 “(iv) RULEMAKING AUTHORITY.—In
25 prescribing rules under this subparagraph,

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1 the Board may impose standards or re-
2 quirements regarding the provision of the
3 storefront and Internet notices required
4 under this subparagraph and the provision
5 of the disclosures required under para-
6 graphs (2) and (3).

7 “(B) STUDY AND ANALYSIS.—Prior to pro-
8 posing rules under subparagraph (A), the
9 Board shall undertake appropriate studies and
10 analyses, which shall be consistent with section
11 904(a)(2), and may include an advanced notice
12 of proposed rulemaking, to determine whether a
13 storefront notice or Internet notice facilitates
14 the ability of a consumer—

15 “(i) to compare prices for remittance
16 transfers; and

17 “(ii) to understand the types and
18 amounts of any fees or costs imposed on
19 remittance transfers.

20 “(b) FOREIGN LANGUAGE DISCLOSURES.—The dis-
21 closures required under this section shall be made in
22 English and in each of the foreign languages principally
23 used by the remittance transfer provider, or any of its
24 agents, to advertise, solicit, or market, either orally or in
25 writing, at that office.

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1 “(c) REGULATIONS REGARDING TRANSFERS TO CER-
2 TAIN NATIONS.—If the Board determines that a recipient
3 nation does not legally allow, or the method by which
4 transactions are made in the recipient country do not
5 allow, a remittance transfer provider to know the amount
6 of currency that will be received by the designated recipi-
7 ent, the Board may prescribe rules (not later than 18
8 months after the date of enactment of the Consumer Fi-
9 nancial Protection Act of 2010) addressing the issue,
10 which rules shall include standards for a remittance trans-
11 fer provider to provide—

12 “(1) a receipt that is consistent with sub-
13 sections (a) and (b); and

14 “(2) a reasonably accurate estimate of the for-
15 eign currency to be received, based on the rate pro-
16 vided to the sender by the remittance transfer pro-
17 vider at the time at which the transaction was initi-
18 ated by the sender.

19 “(d) REMITTANCE TRANSFER ERRORS.—

20 “(1) ERROR RESOLUTION.—

21 “(A) IN GENERAL.—If a remittance trans-
22 fer provider receives oral or written notice from
23 the sender within 180 days of the promised
24 date of delivery that an error occurred with re-
25 spect to a remittance transfer, including the

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1 amount of currency designated in subsection
2 (a)(3)(A) that was to be sent to the designated
3 recipient of the remittance transfer, using the
4 values of the currency into which the funds
5 should have been exchanged, but was not made
6 available to the designated recipient in the for-
7 eign country, the remittance transfer provider
8 shall resolve the error pursuant to this sub-
9 section and investigate the reason for the error.

10 “(B) REMEDIES.—Not later than 90 days
11 after the date of receipt of a notice from the
12 sender pursuant to subparagraph (A), the re-
13 mittance transfer provider shall, as applicable
14 to the error and as designated by the sender—

15 “(i) refund to the sender the total
16 amount of funds tendered by the sender in
17 connection with the remittance transfer
18 which was not properly transmitted;

19 “(ii) make available to the designated
20 recipient, without additional cost to the
21 designated recipient or to the sender, the
22 amount appropriate to resolve the error;

23 “(iii) provide such other remedy, as
24 determined appropriate by rule of the
25 Board for the protection of senders; or

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1 “(iv) provide written notice to the
2 sender that there was no error with an ex-
3 planation responding to the specific com-
4 plaint of the sender.

5 “(2) RULES.—The Board shall establish, by
6 rule issued not later than 18 months after the date
7 of enactment of the Consumer Financial Protection
8 Act of 2010, clear and appropriate standards for re-
9 mittance transfer providers with respect to error res-
10 olution relating to remittance transfers, to protect
11 senders from such errors. Standards prescribed
12 under this paragraph shall include appropriate
13 standards regarding record keeping, as required, in-
14 cluding documentation—

15 “(A) of the complaint of the sender;

16 “(B) that the sender provides the remit-
17 tance transfer provider with respect to the al-
18 leged error; and

19 “(C) of the findings of the remittance
20 transfer provider regarding the investigation of
21 the alleged error that the sender brought to
22 their attention.

23 “(3) CANCELLATION AND REFUND POLICY
24 RULES.—Not later than 18 months after the date of
25 enactment of the Consumer Financial Protection Act

1 of 2010, the Board shall issue final rules regarding
2 appropriate remittance transfer cancellation and re-
3 fund policies for consumers.

4 “(e) APPLICABILITY OF THIS TITLE.—

5 “(1) IN GENERAL.—A remittance transfer that
6 is not an electronic fund transfer, as defined in sec-
7 tion 903, shall not be subject to any of the provi-
8 sions of sections 905 through 913. A remittance
9 transfer that is an electronic fund transfer, as de-
10 fined in section 903, shall be subject to all provisions
11 of this title, except for section 908, that are other-
12 wise applicable to electronic fund transfers under
13 this title.

14 “(2) RULE OF CONSTRUCTION.—Nothing in
15 this section shall be construed—

16 “(A) to affect the application to any trans-
17 action, to any remittance provider, or to any
18 other person of any of the provisions of sub-
19 chapter II of chapter 53 of title 31, United
20 States Code, section 21 of the Federal Deposit
21 Insurance Act (12 U.S.C. 1829b), or chapter 2
22 of title I of Public Law 91–508 (12 U.S.C.
23 1951–1959), or any regulations promulgated
24 thereunder; or

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1 “(B) to cause any fund transfer that would
2 not otherwise be treated as such under para-
3 graph (1) to be treated as an electronic fund
4 transfer, or as otherwise subject to this title, for
5 the purposes of any of the provisions referred to
6 in subparagraph (A) or any regulations promul-
7 gated thereunder.

8 “(f) ACTS OF AGENTS.—

9 “(1) IN GENERAL.—A remittance transfer pro-
10 vider shall be liable for any violation of this section
11 by any agent, authorized delegate, or person affili-
12 ated with such provider, when such agent, author-
13 ized delegate, or affiliate acts for that remittance
14 transfer provider.

15 “(2) OBLIGATIONS OF REMITTANCE TRANSFER
16 PROVIDERS.—The Board shall prescribe rules to im-
17 plement appropriate standards or conditions of, li-
18 ability of a remittance transfer provider, including a
19 provider who acts through an agent or authorized
20 delegate. An agency charged with enforcing the re-
21 quirements of this section, or rules prescribed by the
22 Board under this section, may consider, in any ac-
23 tion or other proceeding against a remittance trans-
24 fer provider, the extent to which the provider had es-
25 tablished and maintained policies or procedures for

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1 compliance, including policies, procedures, or other
2 appropriate oversight measures designed to assure
3 compliance by an agent or authorized delegate act-
4 ing for such provider.

5 “(g) DEFINITIONS.—As used in this section—

6 “(1) the term ‘designated recipient’ means any
7 person located in a foreign country and identified by
8 the sender as the authorized recipient of a remit-
9 tance transfer to be made by a remittance transfer
10 provider, except that a designated recipient shall not
11 be deemed to be a consumer for purposes of this
12 Act;

13 “(2) the term ‘remittance transfer’—

14 “(A) means the electronic (as defined in
15 section 106(2) of the Electronic Signatures in
16 Global and National Commerce Act (15 U.S.C.
17 7006(2))) transfer of funds requested by a
18 sender located in any State to a designated re-
19 cipient that is initiated by a remittance transfer
20 provider, whether or not the sender holds an ac-
21 count with the remittance transfer provider or
22 whether or not the remittance transfer is also
23 an electronic fund transfer, as defined in sec-
24 tion 903; and

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1 “(B) does not include a transfer described
2 in subparagraph (A) in an amount that is equal
3 to or lesser than the amount of a small-value
4 transaction determined, by rule, to be excluded
5 from the requirements under section 906(a);

6 “(3) the term ‘remittance transfer provider’
7 means any person or financial institution that pro-
8 vides remittance transfers for a consumer in the nor-
9 mal course of its business, whether or not the con-
10 sumer holds an account with such person or finan-
11 cial institution; and

12 “(4) the term ‘sender’ means a consumer who
13 requests a remittance provider to send a remittance
14 transfer for the consumer to a designated recipi-
15 ent.”.

16 (b) AUTOMATED CLEARINGHOUSE SYSTEM.—

17 (1) EXPANSION OF SYSTEM.—The Board of
18 Governors shall work with the Federal reserve banks
19 and the Department of the Treasury to expand the
20 use of the automated clearinghouse system and
21 other payment mechanisms for remittance transfers
22 to foreign countries, with a focus on countries that
23 receive significant remittance transfers from the
24 United States, based on—

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1 (A) the number, volume, and size of such
2 transfers;

3 (B) the significance of the volume of such
4 transfers relative to the external financial flows
5 of the receiving country, including—

6 (i) the total amount transferred; and

7 (ii) the total volume of payments
8 made by United States Government agen-
9 cies to beneficiaries and retirees living
10 abroad;

11 (C) the feasibility of such an expansion;

12 and

13 (D) the ability of the Federal Reserve Sys-
14 tem to establish payment gateways in different
15 geographic regions and currency zones to re-
16 ceive remittance transfers and route them
17 through the payments systems in the destina-
18 tion countries.

19 (2) REPORT TO CONGRESS.—Not later than one
20 calendar year after the date of enactment of this
21 Act, and on April 30 biennially thereafter during the
22 10-year period beginning on that date of enactment,
23 the Board of Governors shall submit a report to the
24 Committee on Banking, Housing, and Urban Affairs
25 of the Senate and the Committee on Financial Serv-

1 ices of the House of Representatives on the status
2 of the automated clearinghouse system and its
3 progress in complying with the requirements of this
4 subsection. The report shall include an analysis of
5 adoption rates of International ACH Transactions
6 rules and formats, the efficacy of increasing adop-
7 tion rates, and potential recommendations to in-
8 crease adoption.

9 (c) EXPANSION OF FINANCIAL INSTITUTION PROVI-
10 SION OF REMITTANCE TRANSFERS.—

11 (1) PROVISION OF GUIDELINES TO INSTITU-
12 TIONS.—Each of the Federal banking agencies and
13 the National Credit Union Administration shall pro-
14 vide guidelines to financial institutions under the ju-
15 risdiction of the agency regarding the offering of
16 low-cost remittance transfers and no-cost or low-cost
17 basic consumer accounts, as well as agency services
18 to remittance transfer providers.

19 (2) ASSISTANCE TO FINANCIAL LITERACY COM-
20 MISSION.—As part of its duties as members of the
21 Financial Literacy and Education Commission, the
22 Bureau, the Federal banking agencies, and the Na-
23 tional Credit Union Administration shall assist the
24 Financial Literacy and Education Commission in
25 executing the Strategy for Assuring Financial Em-

1 powerment (or the “SAFE Strategy”), as it relates
2 to remittances.

3 (d) FEDERAL CREDIT UNION ACT CONFORMING
4 AMENDMENT.—Paragraph (12) of section 107 of the Fed-
5 eral Credit Union Act (12 U.S.C. 1757) is amended to
6 read as follows:

7 “(12) in accordance with regulations prescribed
8 by the Board—

9 “(A) to sell, to persons in the field of
10 membership, negotiable checks (including trav-
11 elers checks), money orders, and other similar
12 money transfer instruments (including inter-
13 national and domestic electronic fund transfers
14 and remittance transfers, as defined in section
15 919 of the Electronic Fund Transfer Act); and

16 “(B) to cash checks and money orders for
17 persons in the field of membership for a fee;”.

18 (e) REPORT ON FEASIBILITY OF AND IMPEDIMENTS
19 TO USE OF REMITTANCE HISTORY IN CALCULATION OF
20 CREDIT SCORE.—Before the end of the 365-day period
21 beginning on the date of enactment of this Act, the Direc-
22 tor shall submit a report to the President, the Committee
23 on Banking, Housing, and Urban Affairs of the Senate,
24 and the Committee on Financial Services of the House of
25 Representatives regarding—

1 (1) the manner in which the remittance history
2 of a consumer could be used to enhance the credit
3 score of the consumer;

4 (2) the current legal and business model bar-
5 riers and impediments that impede the use of the re-
6 mittance history of the consumer to enhance the
7 credit score of the consumer; and

8 (3) recommendations on the manner in which
9 maximum transparency and disclosure to consumers
10 of exchange rates for remittance transfers subject to
11 this title and the amendments made by this title
12 may be accomplished, whether or not such exchange
13 rates are known at the time of origination or pay-
14 ment by the consumer for the remittance transfer,
15 including disclosure to the sender of the actual ex-
16 change rate used and the amount of currency that
17 the recipient of the remittance transfer received,
18 using the values of the currency into which the
19 funds were exchanged, as contained in sections
20 919(a)(2)(D) and 919(a)(3) of the Electronic Fund
21 Transfer Act (as amended by this section).

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1 **SEC. 1074. DEPARTMENT OF THE TREASURY STUDY ON**
2 **ENDING THE CONSERVATORSHIP OF FANNIE**
3 **MAE, FREDDIE MAC, AND REFORMING THE**
4 **HOUSING FINANCE SYSTEM.**

5 (a) STUDY REQUIRED.—

6 (1) IN GENERAL.—The Secretary of the Treas-
7 ury shall conduct a study of and develop rec-
8 ommendations regarding the options for ending the
9 conservatorship of the Federal National Mortgage
10 Association (in this section referred to as “Fannie
11 Mae”) and the Federal Home Loan Mortgage Cor-
12 poration (in this section referred to as “Freddie
13 Mac”), while minimizing the cost to taxpayers, in-
14 cluding such options as—

15 (A) the gradual wind-down and liquidation
16 of such entities;

17 (B) the privatization of such entities;

18 (C) the incorporation of the functions of
19 such entities into a Federal agency;

20 (D) the dissolution of Fannie Mae and
21 Freddie Mac into smaller companies; or

22 (E) any other measures the Secretary de-
23 termines appropriate.

24 (2) ANALYSES.—The study required under
25 paragraph (1) shall include an analysis of—

1 (A) the role of the Federal Government in
2 supporting a stable, well-functioning housing fi-
3 nance system, and whether and to what extent
4 the Federal Government should bear risks in
5 meeting Federal housing finance objectives;

6 (B) how the current structure of the hous-
7 ing finance system can be improved;

8 (C) how the housing finance system should
9 support the continued availability of mortgage
10 credit to all segments of the market;

11 (D) how the housing finance system should
12 be structured to ensure that consumers con-
13 tinue to have access to 30-year, fixed rate, pre-
14 payable mortgages and other mortgage products
15 that have simple terms that can be easily un-
16 derstood;

17 (E) the role of the Federal Housing Ad-
18 ministration and the Department of Veterans
19 Affairs in a future housing system;

20 (F) the impact of reforms of the housing
21 finance system on the financing of rental hous-
22 ing;

23 (G) the impact of reforms of the housing
24 finance system on secondary market liquidity;

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1 (H) the role of standardization in the
2 housing finance system;

3 (I) how housing finance systems in other
4 countries offer insights that can help inform op-
5 tions for reform in the United States; and

6 (J) the options for transition to a reformed
7 housing finance system.

8 (b) REPORT AND RECOMMENDATIONS.—Not later
9 than January 31, 2011, the Secretary of the Treasury
10 shall submit the report and recommendations required
11 under subsection (a) to the Committee on Banking, Hous-
12 ing, and Urban Affairs of the Senate and the Committee
13 on Financial Services of the House of Representatives.

14 **SEC. 1075. REASONABLE FEES AND RULES FOR PAYMENT**
15 **CARD TRANSACTIONS.**

16 (a) IN GENERAL.—The Electronic Fund Transfer
17 Act (15 U.S.C. 1693 et seq.) is amended—

18 (1) by redesignating sections 920 and 921 as
19 sections 921 and 922, respectively; and

20 (2) by inserting after section 919 the following:

21 **“SEC. 920. REASONABLE FEES AND RULES FOR PAYMENT**
22 **CARD TRANSACTIONS.**

23 **“(a) REASONABLE INTERCHANGE TRANSACTION**
24 **FEES FOR ELECTRONIC DEBIT TRANSACTIONS.—**

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1 “(1) REGULATORY AUTHORITY OVER INTER-
2 CHANGE TRANSACTION FEES.—The Board may pre-
3 scribe regulations, pursuant to section 553 of title 5,
4 United States Code, regarding any interchange
5 transaction fee that an issuer may receive or charge
6 with respect to an electronic debit transaction, to
7 implement this subsection (including related defini-
8 tions), and to prevent circumvention or evasion of
9 this subsection.

10 “(2) REASONABLE INTERCHANGE TRANSACTION
11 FEES.—The amount of any interchange transaction
12 fee that an issuer may receive or charge with respect
13 to an electronic debit transaction shall be reasonable
14 and proportional to the cost incurred by the issuer
15 with respect to the transaction.

16 “(3) RULEMAKING REQUIRED.—

17 “(A) IN GENERAL.—The Board shall pre-
18 scribe regulations in final form not later than
19 9 months after the date of enactment of the
20 Consumer Financial Protection Act of 2010, to
21 establish standards for assessing whether the
22 amount of any interchange transaction fee de-
23 scribed in paragraph (2) is reasonable and pro-
24 portional to the cost incurred by the issuer with
25 respect to the transaction.

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1 “(B) INFORMATION COLLECTION.—The
2 Board may require any issuer (or agent of an
3 issuer) or payment card network to provide the
4 Board with such information as may be nec-
5 essary to carry out the provisions of this sub-
6 section and the Board, in issuing rules under
7 subparagraph (A) and on at least a bi-annual
8 basis thereafter, shall disclose such aggregate
9 or summary information concerning the costs
10 incurred, and interchange transaction fees
11 charged or received, by issuers or payment card
12 networks in connection with the authorization,
13 clearance or settlement of electronic debit
14 transactions as the Board considers appropriate
15 and in the public interest.

16 “(4) CONSIDERATIONS; CONSULTATION.—In
17 prescribing regulations under paragraph (3)(A), the
18 Board shall—

19 “(A) consider the functional similarity be-
20 tween—

21 “(i) electronic debit transactions; and

22 “(ii) checking transactions that are
23 required within the Federal Reserve bank
24 system to clear at par;

25 “(B) distinguish between—

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1 “(i) the incremental cost incurred by
2 an issuer for the role of the issuer in the
3 authorization, clearance, or settlement of a
4 particular electronic debit transaction,
5 which cost shall be considered under para-
6 graph (2); and

7 “(ii) other costs incurred by an issuer
8 which are not specific to a particular elec-
9 tronic debit transaction, which costs shall
10 not be considered under paragraph (2);
11 and

12 “(C) consult, as appropriate, with the
13 Comptroller of the Currency, the Board of Di-
14 rectors of the Federal Deposit Insurance Cor-
15 poration, the Director of the Office of Thrift
16 Supervision, the National Credit Union Admin-
17 istration Board, the Administrator of the Small
18 Business Administration, and the Director of
19 the Bureau of Consumer Financial Protection.

20 “(5) ADJUSTMENTS TO INTERCHANGE TRANS-
21 ACTION FEES FOR FRAUD PREVENTION COSTS.—

22 “(A) ADJUSTMENTS.—The Board may
23 allow for an adjustment to the fee amount re-
24 ceived or charged by an issuer under paragraph
25 (2), if—

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1 “(i) such adjustment is reasonably
2 necessary to make allowance for costs in-
3 curred by the issuer in preventing fraud in
4 relation to electronic debit transactions in-
5 volving that issuer; and

6 “(ii) the issuer complies with the
7 fraud-related standards established by the
8 Board under subparagraph (B), which
9 standards shall—

10 “(I) be designed to ensure that
11 any fraud-related adjustment of the
12 issuer is limited to the amount de-
13 scribed in clause (i) and takes into ac-
14 count any fraud-related reimburse-
15 ments (including amounts from
16 charge-backs) received from con-
17 sumers, merchants, or payment card
18 networks in relation to electronic debit
19 transactions involving the issuer; and

20 “(II) require issuers to take ef-
21 fective steps to reduce the occurrence
22 of, and costs from, fraud in relation
23 to electronic debit transactions, in-
24 cluding through the development and

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1 implementation of cost-effective fraud
2 prevention technology.

3 “(B) RULEMAKING REQUIRED.—

4 “(i) IN GENERAL.—The Board shall
5 prescribe regulations in final form not later
6 than 9 months after the date of enactment
7 of the Consumer Financial Protection Act
8 of 2010, to establish standards for making
9 adjustments under this paragraph.

10 “(ii) FACTORS FOR CONSIDER-
11 ATION.—In issuing the standards and pre-
12 scribing regulations under this paragraph,
13 the Board shall consider—

14 “(I) the nature, type, and occur-
15 rence of fraud in electronic debit
16 transactions;

17 “(II) the extent to which the oc-
18 currence of fraud depends on whether
19 authorization in an electronic debit
20 transaction is based on signature,
21 PIN, or other means;

22 “(III) the available and economi-
23 cal means by which fraud on elec-
24 tronic debit transactions may be re-
25 duced;

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1 “(IV) the fraud prevention and
2 data security costs expended by each
3 party involved in electronic debit
4 transactions (including consumers,
5 persons who accept debit cards as a
6 form of payment, financial institu-
7 tions, retailers and payment card net-
8 works);

9 “(V) the costs of fraudulent
10 transactions absorbed by each party
11 involved in such transactions (includ-
12 ing consumers, persons who accept
13 debit cards as a form of payment, fi-
14 nancial institutions, retailers and pay-
15 ment card networks);

16 “(VI) the extent to which inter-
17 change transaction fees have in the
18 past reduced or increased incentives
19 for parties involved in electronic debit
20 transactions to reduce fraud on such
21 transactions; and

22 “(VII) such other factors as the
23 Board considers appropriate.

24 “(6) EXEMPTION FOR SMALL ISSUERS.—

1 “(A) IN GENERAL.—This subsection shall
2 not apply to any issuer that, together with its
3 affiliates, has assets of less than
4 \$10,000,000,000, and the Board shall exempt
5 such issuers from regulations prescribed under
6 paragraph (3)(A).

7 “(B) DEFINITION.—For purposes of this
8 paragraph, the term “issuer” shall be limited to
9 the person holding the asset account that is
10 debited through an electronic debit transaction.

11 “(7) EXEMPTION FOR GOVERNMENT-ADMINIS-
12 TERED PAYMENT PROGRAMS AND RELOADABLE PRE-
13 PAID CARDS.—

14 “(A) IN GENERAL.—This subsection shall
15 not apply to an interchange transaction fee
16 charged or received with respect to an electronic
17 debit transaction in which a person uses—

18 “(i) a debit card or general-use pre-
19 paid card that has been provided to a per-
20 son pursuant to a Federal, State or local
21 government-administered payment pro-
22 gram, in which the person may only use
23 the debit card or general-use prepaid card
24 to transfer or debit funds, monetary value,

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1 or other assets that have been provided
2 pursuant to such program; or

3 “(ii) a plastic card, payment code, or
4 device that is—

5 “(I) linked to funds, monetary
6 value, or assets which are purchased
7 or loaded on a prepaid basis;

8 “(II) not issued or approved for
9 use to access or debit any account
10 held by or for the benefit of the card
11 holder (other than a subaccount or
12 other method of recording or tracking
13 funds purchased or loaded on the card
14 on a prepaid basis);

15 “(III) redeemable at multiple,
16 unaffiliated merchants or service pro-
17 viders, or automated teller machines;

18 “(IV) used to transfer or debit
19 funds, monetary value, or other as-
20 sets; and

21 “(V) reloadable and not mar-
22 keted or labeled as a gift card or gift
23 certificate.

24 “(B) EXCEPTION.—Notwithstanding sub-
25 paragraph (A), after the end of the 1-year pe-

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1 “(ii) any network of automated teller
2 machines identified by the issuer that pro-
3 vides reasonable and convenient access to
4 the issuer’s customers.

5 “(D) REPORTING.—Beginning 12 months
6 after the date of enactment of the Consumer
7 Financial Protection Act of 2010, the Board
8 shall annually provide a report to the Congress
9 regarding —

10 “(i) the prevalence of the use of gen-
11 eral-use prepaid cards in Federal, State or
12 local government-administered payment
13 programs; and

14 “(ii) the interchange transaction fees
15 and cardholder fees charged with respect
16 to the use of such general-use prepaid
17 cards.

18 “(8) REGULATORY AUTHORITY OVER NETWORK
19 FEES.—

20 “(A) IN GENERAL.—The Board may pre-
21 scribe regulations, pursuant to section 553 of
22 title 5, United States Code, regarding any net-
23 work fee.

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1 “(B) LIMITATION.—The authority under
2 subparagraph (A) to prescribe regulations shall
3 be limited to regulations to ensure that—

4 “(i) a network fee is not used to di-
5 rectly or indirectly compensate an issuer
6 with respect to an electronic debit trans-
7 action; and

8 “(ii) a network fee is not used to cir-
9 cumvent or evade the restrictions of this
10 subsection and regulations prescribed
11 under such subsection.

12 “(C) RULEMAKING REQUIRED.—The
13 Board shall prescribe regulations in final form
14 before the end of the 9-month period beginning
15 on the date of the enactment of the Consumer
16 Financial Protection Act of 2010, to carry out
17 the authorities provided under subparagraph
18 (A).

19 “(9) EFFECTIVE DATE.—This subsection shall
20 take effect at the end of the 12-month period begin-
21 ning on the date of the enactment of the Consumer
22 Financial Protection Act of 2010.

23 “(b) LIMITATION ON PAYMENT CARD NETWORK RE-
24 STRICTIONS.—

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1 “(1) PROHIBITIONS AGAINST EXCLUSIVITY AR-
2 RANGEMENTS.—

3 “(A) NO EXCLUSIVE NETWORK.—The
4 Board shall, before the end of the 1-year period
5 beginning on the date of the enactment of the
6 Consumer Financial Protection Act of 2010,
7 prescribe regulations providing that an issuer or
8 payment card network shall not directly or
9 through any agent, processor, or licensed mem-
10 ber of a payment card network, by contract, re-
11 quirement, condition, penalty, or otherwise, re-
12 strict the number of payment card networks on
13 which an electronic debit transaction may be
14 processed to—

15 “(i) 1 such network; or

16 “(ii) 2 or more such networks which
17 are owned, controlled, or otherwise oper-
18 ated by —

19 “(I) affiliated persons; or

20 “(II) networks affiliated with
21 such issuer.

22 “(B) NO ROUTING RESTRICTIONS.—The
23 Board shall, before the end of the 1-year period
24 beginning on the date of the enactment of the
25 Consumer Financial Protection Act of 2010,

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1 prescribe regulations providing that an issuer or
2 payment card network shall not, directly or
3 through any agent, processor, or licensed mem-
4 ber of the network, by contract, requirement,
5 condition, penalty, or otherwise, inhibit the abil-
6 ity of any person who accepts debit cards for
7 payments to direct the routing of electronic
8 debit transactions for processing over any pay-
9 ment card network that may process such
10 transactions.

11 “(2) LIMITATION ON RESTRICTIONS ON OFFER-
12 ING DISCOUNTS FOR USE OF A FORM OF PAY-
13 MENT.—

14 “(A) IN GENERAL.—A payment card net-
15 work shall not, directly or through any agent,
16 processor, or licensed member of the network,
17 by contract, requirement, condition, penalty, or
18 otherwise, inhibit the ability of any person to
19 provide a discount or in-kind incentive for pay-
20 ment by the use of cash, checks, debit cards, or
21 credit cards to the extent that—

22 “(i) in the case of a discount or in-
23 kind incentive for payment by the use of
24 debit cards, the discount or in-kind incen-

1 tive does not differentiate on the basis of
2 the issuer or the payment card network;

3 “(ii) in the case of a discount or in-
4 kind incentive for payment by the use of
5 credit cards, the discount or in-kind incen-
6 tive does not differentiate on the basis of
7 the issuer or the payment card network;
8 and

9 “(iii) to the extent required by Fed-
10 eral law and applicable State law, such dis-
11 count or in-kind incentive is offered to all
12 prospective buyers and disclosed clearly
13 and conspicuously.

14 “(B) **LAWFUL DISCOUNTS.**—For purposes
15 of this paragraph, the network may not penalize
16 any person for the providing of a discount that
17 is in compliance with Federal law and applica-
18 ble State law.

19 “(3) **LIMITATION ON RESTRICTIONS ON SET-**
20 **TING TRANSACTION MINIMUMS OR MAXIMUMS.**—

21 “(A) **IN GENERAL.**—A payment card net-
22 work shall not, directly or through any agent,
23 processor, or licensed member of the network,
24 by contract, requirement, condition, penalty, or
25 otherwise, inhibit the ability—

1899

1 “(i) of any person to set a minimum
2 dollar value for the acceptance by that per-
3 son of credit cards, to the extent that —

4 “(I) such minimum dollar value
5 does not differentiate between issuers
6 or between payment card networks;
7 and

8 “(II) such minimum dollar value
9 does not exceed \$10.00; or

10 “(ii) of any Federal agency or institu-
11 tion of higher education to set a maximum
12 dollar value for the acceptance by that
13 Federal agency or institution of higher
14 education of credit cards, to the extent
15 that such maximum dollar value does not
16 differentiate between issuers or between
17 payment card networks.

18 “(B) INCREASE IN MINIMUM DOLLAR
19 AMOUNT.—The Board may, by regulation pre-
20 scribed pursuant to section 553 of title 5,
21 United States Code, increase the amount of the
22 dollar value listed in subparagraph (A)(i)(II).

23 “(4) RULE OF CONSTRUCTION:—No provision
24 of this subsection shall be construed to authorize
25 any person—

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1 “(A) to discriminate between debit cards
2 within a payment card network on the basis of
3 the issuer that issued the debit card; or

4 “(B) to discriminate between credit cards
5 within a payment card network on the basis of
6 the issuer that issued the credit card.

7 “(c) DEFINITIONS.—For purposes of this section, the
8 following definitions shall apply:

9 “(1) AFFILIATE.—The term ‘affiliate’ means
10 any company that controls, is controlled by, or is
11 under common control with another company.

12 “(2) DEBIT CARD.—The term ‘debit card’—

13 “(A) means any card, or other payment
14 code or device, issued or approved for use
15 through a payment card network to debit an
16 asset account (regardless of the purpose for
17 which the account is established), whether au-
18 thorization is based on signature, PIN, or other
19 means;

20 “(B) includes a general-use prepaid card,
21 as that term is defined in section 915(a)(2)(A);
22 and

23 “(C) does not include paper checks.

1901

1 “(3) CREDIT CARD.—The term ‘credit card’ has
2 the same meaning as in section 103 of the Truth in
3 Lending Act.

4 “(4) DISCOUNT.—The term ‘discount’—

5 “(A) means a reduction made from the
6 price that customers are informed is the regular
7 price; and

8 “(B) does not include any means of in-
9 creasing the price that customers are informed
10 is the regular price.

11 “(5) ELECTRONIC DEBIT TRANSACTION.—The
12 term ‘electronic debit transaction’ means a trans-
13 action in which a person uses a debit card.

14 “(6) FEDERAL AGENCY.—The term ‘Federal
15 agency’ means—

16 “(A) an agency (as defined in section 101
17 of title 31, United States Code); and

18 “(B) a Government corporation (as defined
19 in section 103 of title 5, United States Code).

20 “(7) INSTITUTION OF HIGHER EDUCATION.—
21 The term ‘institution of higher education’ has the
22 same meaning as in 101 and 102 of the Higher
23 Education Act of 1965 (20 U.S.C. 1001, 1002).

24 “(8) INTERCHANGE TRANSACTION FEE.—The
25 term ‘interchange transaction fee’ means any fee es-

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1 established, charged or received by a payment card
2 network for the purpose of compensating an issuer
3 for its involvement in an electronic debit transaction.

4 “(9) ISSUER.—The term ‘issuer’ means any
5 person who issues a debit card, or credit card, or the
6 agent of such person with respect to such card.

7 “(10) NETWORK FEE.—The term ‘network fee’
8 means any fee charged and received by a payment
9 card network with respect to an electronic debit
10 transaction, other than an interchange transaction
11 fee.

12 “(11) PAYMENT CARD NETWORK.—The term
13 ‘payment card network’ means an entity that di-
14 rectly, or through licensed members, processors, or
15 agents, provides the proprietary services, infrastruc-
16 ture, and software that route information and data
17 to conduct debit card or credit card transaction au-
18 thorization, clearance, and settlement, and that a
19 person uses in order to accept as a form of payment
20 a brand of debit card, credit card or other device
21 that may be used to carry out debit or credit trans-
22 actions.

23 “(d) ENFORCEMENT.—

1903

1 “(1) IN GENERAL.—Compliance with the re-
2 quirements imposed under this section shall be en-
3 forced under section 918.

4 “(2) EXCEPTION.—Sections 916 and 917 shall
5 not apply with respect to this section or the require-
6 ments imposed pursuant to this section.”.

7 (b) AMENDMENT TO THE FOOD AND NUTRITION ACT
8 OF 2008.—Section 7(h)(10) of the Food and Nutrition
9 Act of 2008 (7 U.S.C. 2016(h)(10)) is amended to read
10 as follows:

11 “(10) FEDERAL LAW NOT APPLICABLE.—Sec-
12 tion 920 of the Electronic Fund Transfer Act shall
13 not apply to electronic benefit transfer or reimburse-
14 ment systems under this Act.”.

15 (c) AMENDMENT TO THE FARM SECURITY AND
16 RURAL INVESTMENT ACT OF 2002.—Section 4402 of the
17 Farm Security and Rural Investment Act of 2002 (7
18 U.S.C. 3007) is amended by adding at the end the fol-
19 lowing new subsection:

20 “(f) FEDERAL LAW NOT APPLICABLE.—Section 920
21 of the Electronic Fund Transfer Act shall not apply to
22 electronic benefit transfer systems established under this
23 section.”.

24 (d) AMENDMENT TO THE CHILD NUTRITION ACT OF
25 1966.—Section 11 of the Child Nutrition Act of 1966 (42

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1 U.S.C. 1780) is amended by adding at the end the fol-
2 lowing:

3 “(c) FEDERAL LAW NOT APPLICABLE.—Section 920
4 of the Electronic Fund Transfer Act shall not apply to
5 electronic benefit transfer systems established under this
6 Act or the Richard B. Russell National School Lunch Act
7 (42 U.S.C. 1751 et seq.).”.

8 **SEC. 1076. USE OF CONSUMER REPORTS.**

9 Section 615 of the Fair Credit Reporting Act (15
10 U.S.C. 1681m) is amended—

11 (1) in subsection (a)—

12 (A) by redesignating paragraphs (2) and
13 (3) as paragraphs (3) and (4), respectively;

14 (B) by inserting after paragraph (1) the
15 following:

16 “(2) provide to the consumer written or elec-
17 tronic disclosure—

18 “(A) of a numerical credit score as defined
19 in section 609(f)(2)(A) used by such person in
20 taking any adverse action based in whole or in
21 part on any information in a consumer report;
22 and

23 “(B) of the information set forth in sub-
24 paragraphs (B) through (E) of section
25 609(f)(1);”; and

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1 (C) in paragraph (4) (as so redesignated),
2 by striking “paragraph (2)” and inserting
3 “paragraph (3)”; and
4 (2) in subsection (h)(5)—

5 (A) in subparagraph (C), by striking “;
6 and” and inserting a semicolon;

7 (B) in subparagraph (D), by striking the
8 period and inserting “; and”; and

9 (C) by inserting at the end the following:
10 “(E) include a statement informing the
11 consumer of—

12 “(i) a numerical credit score as de-
13 fined in section 609(f)(2)(A), used by such
14 person in making the credit decision de-
15 scribed in paragraph (1) based in whole or
16 in part on any information in a consumer
17 report; and

18 “(ii) the information set forth in sub-
19 paragraphs (B) through (E) of section
20 609(f)(1).”.

21 **SEC. 1077. REVERSE MORTGAGE STUDY AND REGULATIONS.**

22 (a) **STUDY.**—Not later than 1 year after the des-
23 ignated transfer date, the Bureau shall conduct a study
24 on reverse mortgage transactions.

25 (b) **REGULATIONS.**—

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1 (1) IN GENERAL.—If the Bureau determines
2 through the study required under subsection (a) that
3 conditions or limitations on reverse mortgage trans-
4 actions are necessary or appropriate for accom-
5 plishing the purposes and objectives of this title, in-
6 cluding protecting borrowers with respect to the ob-
7 taining of reverse mortgage loans for the purpose of
8 funding investments, annuities, and other investment
9 products and the suitability of a borrower in obtain-
10 ing a reverse mortgage for such purpose.

11 (2) IDENTIFIED PRACTICES AND INTEGRATED
12 DISCLOSURES.—The regulations prescribed under
13 paragraph (1) may, as the Bureau may so deter-
14 mine—

15 (A) identify any practice as unfair, decep-
16 tive, or abusive in connection with a reverse
17 mortgage transaction; and

18 (B) provide for an integrated disclosure
19 standard and model disclosures for reverse
20 mortgage transactions, consistent with section
21 4302(d), that combines the relevant disclosures
22 required under the Truth in Lending Act (15
23 U.S.C. 1601 et seq.) and the Real Estate Set-
24 tlement Procedures Act, with the disclosures re-
25 quired to be provided to consumers for Home

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1 Equity Conversion Mortgages under section 255
2 of the National Housing Act.

3 (c) **RULE OF CONSTRUCTION.**—This section shall not
4 be construed as limiting the authority of the Bureau to
5 issue regulations, orders, or guidance that apply to reverse
6 mortgages prior to the completion of the study required
7 under subsection (a).

8 **SEC. 1078. REPORT ON PRIVATE EDUCATION LOANS AND**
9 **PRIVATE EDUCATIONAL LENDERS.**

10 (a) **REPORT.**—Not later than 2 years after the date
11 of enactment of this Act, the Director and the Secretary
12 of Education, in consultation with the Commissioners of
13 the Federal Trade Commission, and the Attorney General
14 of the United States, shall submit a report to the Com-
15 mittee on Banking, Housing, and Urban Affairs and the
16 Committee on Health, Education, Labor, and Pensions of
17 the Senate and the Committee on Financial Services and
18 the Committee on Education and Labor of the House of
19 Representatives, on private education loans (as that term
20 is defined in section 140 of the Truth in Lending Act (15
21 U.S.C. 1650)) and private educational lenders (as that
22 term is defined in such section).

23 (b) **CONTENT.**—The report required by this section
24 shall examine, at a minimum—

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1 (1) the growth and changes of the private edu-
2 cation loan market in the United States;

3 (2) factors influencing such growth and
4 changes;

5 (3) the extent to which students and parents of
6 students rely on private education loans to finance
7 postsecondary education and the private education
8 loan indebtedness of borrowers;

9 (4) the characteristics of private education loan
10 borrowers, including—

11 (A) the types of institutions of higher edu-
12 cation that they attend;

13 (B) socioeconomic characteristics (includ-
14 ing income and education levels, racial charac-
15 teristics, geographical background, age, and
16 gender);

17 (C) what other forms of financing bor-
18 rowers use to pay for education;

19 (D) whether they exhaust their Federal
20 loan options before taking out a private loan;

21 (E) whether such borrowers are dependent
22 or independent students (as determined under
23 part F of title IV of the Higher Education Act
24 of 1965) or parents of such students;

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1 (F) whether such borrowers are students
2 enrolled in a program leading to a certificate, li-
3 cense, or credential other than a degree, an as-
4 sociates degree, a baccalaureate degree, or a
5 graduate or professional degree; and

6 (G) if practicable, employment and repay-
7 ment behaviors;

8 (5) the characteristics of private educational
9 lenders, including whether such creditors are for-
10 profit, non-profit, or institutions of higher education;

11 (6) the underwriting criteria used by private
12 educational lenders, including the use of cohort de-
13 fault rate (as such term is defined in section 435(m)
14 of the Higher Education Act of 1965);

15 (7) the terms, conditions, and pricing of private
16 education loans;

17 (8) the consumer protections available to pri-
18 vate education loan borrowers, including the effec-
19 tiveness of existing disclosures and requirements and
20 borrowers' awareness and understanding about
21 terms and conditions of various financial products;

22 (9) whether Federal regulators and the public
23 have access to information sufficient to provide them
24 with assurances that private education loans are
25 provided in accord with the Nation's fair lending

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1 laws and that allows public officials to determine
2 lender compliance with fair lending laws; and

3 (10) any statutory or legislative recommenda-
4 tions necessary to improve consumer protections for
5 private education loan borrowers and to better en-
6 able Federal regulators and the public to ascertain
7 private educational lender compliance with fair lend-
8 ing laws.

9 **SEC. 1079. STUDY AND REPORT ON CREDIT SCORES.**

10 (a) STUDY.—The Bureau shall conduct a study on
11 the nature, range, and size of variations between the credit
12 scores sold to creditors and those sold to consumers by
13 consumer reporting agencies that compile and maintain
14 files on consumers on a nationwide basis (as defined in
15 section 603(p) of the Fair Credit Reporting Act; 15
16 U.S.C. 1681a(p)), and whether such variations disadvan-
17 tage consumers.

18 (b) REPORT TO CONGRESS.—The Bureau shall sub-
19 mit a report to Congress on the results of the study con-
20 ducted under subsection (a) not later than 1 year after
21 the date of enactment of this Act.

22 **SEC. 1079A. REVIEW, REPORT, AND PROGRAM WITH RE-**
23 **SPECT TO EXCHANGE FACILITATORS.**

24 (a) REVIEW.—The Director shall review all Federal
25 laws and regulations relating to the protection of con-

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1 sumers who use exchange facilitators for transactions pri-
2 marily for personal, family, or household purposes.

3 (b) REPORT.—Not later than 1 year after the des-
4 ignated transfer date, the Director shall submit to Con-
5 gress a report describing—

6 (1) recommendations for legislation to ensure
7 the appropriate protection of consumers who use ex-
8 change facilitators for transactions primarily for per-
9 sonal, family, or household purposes;

10 (2) recommendations for updating the regula-
11 tions of Federal departments and agencies to ensure
12 the appropriate protection of such consumers; and

13 (3) recommendations for regulations to ensure
14 the appropriate protection of such consumers.

15 (c) PROGRAM.—Not later than 2 years after the date
16 of the submission of the report under subsection (b), the
17 Bureau shall, consistent with subtitle B, propose regula-
18 tions or otherwise establish a program to protect con-
19 sumers who use exchange facilitators.

20 (d) EXCHANGE FACILITATOR DEFINED.—In this sec-
21 tion, the term “exchange facilitator” means a person
22 that—

23 (1) facilitates, for a fee, an exchange of like
24 kind property by entering into an agreement with a
25 taxpayer by which the exchange facilitator acquires

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1 from the taxpayer the contractual rights to sell the
2 taxpayer's relinquished property and transfers a re-
3 placement property to the taxpayer as a qualified
4 intermediary (within the meaning of Treasury Regu-
5 lations section 1.1031(k)-1(g)(4)) or enters into an
6 agreement with the taxpayer to take title to a prop-
7 erty as an exchange accommodation titleholder
8 (within the meaning of Revenue Procedure 2000-37)
9 or enters into an agreement with a taxpayer to act
10 as a qualified trustee or qualified escrow holder
11 (within the meaning of Treasury Regulations section
12 1.1031(k)-1(g)(3));

13 (2) maintains an office for the purpose of solici-
14 ting business to perform the services described in
15 paragraph (1); or

16 (3) advertises any of the services described in
17 paragraph (1) or solicits clients in printed publica-
18 tions, direct mail, television or radio advertisements,
19 telephone calls, facsimile transmissions, or other
20 electronic communications directed to the general
21 public for purposes of providing any such services.

22 **SEC. 1079B. FINANCIAL FRAUD PROVISIONS.**

23 (a) SENTENCING GUIDELINES.—

24 (1) SECURITIES FRAUD.—

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1 (II) the need for an effective de-
2 terrent and appropriate punishment
3 to prevent the offenses; and

4 (III) the effectiveness of incarcer-
5 ation in furthering the objectives de-
6 scribed in subclauses (I) and (II);

7 (ii) consider the extent to which the
8 guidelines appropriately account for the
9 potential and actual harm to the public
10 and the financial markets resulting from
11 the offenses;

12 (iii) ensure reasonable consistency
13 with other relevant directives and guide-
14 lines and Federal statutes;

15 (iv) make any necessary conforming
16 changes to guidelines; and

17 (v) ensure that the guidelines ade-
18 quately meet the purposes of sentencing,
19 as set forth in section 3553(a)(2) of title
20 18, United States Code.

21 (2) FINANCIAL INSTITUTION FRAUD.—

22 (A) DIRECTIVE.—Pursuant to its authority
23 under section 994 of title 28, United States
24 Code, and in accordance with this paragraph,
25 the United States Sentencing Commission shall

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1 review and, if appropriate, amend the Federal
2 Sentencing Guidelines and policy statements
3 applicable to persons convicted of fraud offenses
4 relating to financial institutions or federally re-
5 lated mortgage loans and any other similar pro-
6 visions of law, to reflect the intent of Congress
7 that the penalties for the offenses under the
8 guidelines and policy statements ensure appro-
9 priate terms of imprisonment for offenders in-
10 volved in substantial bank frauds or other
11 frauds relating to financial institutions.

12 (B) REQUIREMENTS.—In making any
13 amendments to the Federal Sentencing Guide-
14 lines and policy statements under subparagraph
15 (A), the United States Sentencing Commission
16 shall—

17 (i) ensure that the guidelines and pol-
18 icy statements reflect—

19 (I) the serious nature of the of-
20 fenses described in subparagraph (A);

21 (II) the need for an effective de-
22 terrent and appropriate punishment
23 to prevent the offenses; and

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1 (III) the effectiveness of incarceration
2 ation in furthering the objectives de-
3 scribed in subclauses (I) and (II);

4 (ii) consider the extent to which the
5 guidelines appropriately account for the
6 potential and actual harm to the public
7 and the financial markets resulting from
8 the offenses;

9 (iii) ensure reasonable consistency
10 with other relevant directives and guide-
11 lines and Federal statutes;

12 (iv) make any necessary conforming
13 changes to guidelines; and

14 (v) ensure that the guidelines ade-
15 quately meet the purposes of sentencing,
16 as set forth in section 3553(a)(2) of title
17 18, United States Code.

18 (b) EXTENSION OF STATUTE OF LIMITATIONS FOR
19 SECURITIES FRAUD VIOLATIONS.—

20 (1) IN GENERAL.—Chapter 213 of title 18,
21 United States Code, is amended by adding at the
22 end the following:

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1 **“§ 3301. Securities fraud offenses**

2 “(a) DEFINITION.—In this section, the term ‘securi-
3 ties fraud offense’ means a violation of, or a conspiracy
4 or an attempt to violate—

5 “(1) section 1348;

6 “(2) section 32(a) of the Securities Exchange
7 Act of 1934 (15 U.S.C. 78ff(a));

8 “(3) section 24 of the Securities Act of 1933
9 (15 U.S.C. 77x);

10 “(4) section 217 of the Investment Advisers Act
11 of 1940 (15 U.S.C. 80b–17);

12 “(5) section 49 of the Investment Company Act
13 of 1940 (15 U.S.C. 80a–48); or

14 “(6) section 325 of the Trust Indenture Act of
15 1939 (15 U.S.C. 77yyy).

16 “(b) LIMITATION.—No person shall be prosecuted,
17 tried, or punished for a securities fraud offense, unless the
18 indictment is found or the information is instituted within
19 6 years after the commission of the offense.”.

20 (2) TECHNICAL AND CONFORMING AMEND-
21 MENT.—The table of sections for chapter 213 of
22 title 18, United States Code, is amended by adding
23 at the end the following:

“3301. Securities fraud offenses.”.

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1 (c) AMENDMENTS TO THE FALSE CLAIMS ACT RE-
2 LATING TO LIMITATIONS ON ACTIONS.—Section 3730(h)
3 of title 31, United States Code, is amended—

4 (1) in paragraph (1), by striking “or agent on
5 behalf of the employee, contractor, or agent or asso-
6 ciated others in furtherance of other efforts to stop
7 1 or more violations of this subchapter” and insert-
8 ing “agent or associated others in furtherance of an
9 action under this section or other efforts to stop 1
10 or more violations of this subchapter”; and

11 (2) by adding at the end the following:

12 “(3) LIMITATION ON BRINGING CIVIL AC-
13 TION.—A civil action under this subsection may not
14 be brought more than 3 years after the date when
15 the retaliation occurred.”.

16 **Subtitle H—Conforming**
17 **Amendments**

18 **SEC. 1081. AMENDMENTS TO THE INSPECTOR GENERAL**
19 **ACT.**

20 Effective on the date of enactment of this Act, the
21 Inspector General Act of 1978 (5 U.S.C. App. 3) is
22 amended—

23 (1) in section 8G(a)(2), by inserting “and the
24 Bureau of Consumer Financial Protection” after

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1 “Board of Governors of the Federal Reserve Sys-
2 tem”;

3 (2) in section 8G(c), by adding at the end the
4 following: “For purposes of implementing this sec-
5 tion, the Chairman of the Board of Governors of the
6 Federal Reserve System shall appoint the Inspector
7 General of the Board of Governors of the Federal
8 Reserve System and the Bureau of Consumer Finan-
9 cial Protection. The Inspector General of the Board
10 of Governors of the Federal Reserve System and the
11 Bureau of Consumer Financial Protection shall have
12 all of the authorities and responsibilities provided by
13 this Act with respect to the Bureau of Consumer Fi-
14 nancial Protection, as if the Bureau were part of the
15 Board of Governors of the Federal Reserve Sys-
16 tem.”; and

17 (3) in section 8G(g)(3), by inserting “and the
18 Bureau of Consumer Financial Protection” after
19 “Board of Governors of the Federal Reserve Sys-
20 tem” the first place that term appears.

21 **SEC. 1082. AMENDMENTS TO THE PRIVACY ACT OF 1974.**

22 Effective on the date of enactment of this Act, section
23 552a of title 5, United States Code, is amended by adding
24 at the end the following:

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1 “(w) APPLICABILITY TO BUREAU OF CONSUMER FI-
2 NANCIAL PROTECTION.—Except as provided in the Con-
3 sumer Financial Protection Act of 2010, this section shall
4 apply with respect to the Bureau of Consumer Financial
5 Protection.”.

6 **SEC. 1083. AMENDMENTS TO THE ALTERNATIVE MORT-**
7 **GAGE TRANSACTION PARITY ACT OF 1982.**

8 (a) IN GENERAL.—The Alternative Mortgage Trans-
9 action Parity Act of 1982 (12 U.S.C. 3801 et seq.) is
10 amended—

11 (1) in section 803 (12 U.S.C. 3802(1)), by
12 striking “1974” and all that follows through “de-
13 scribed and defined” and inserting the following:
14 “1974), in which the interest rate or finance charge
15 may be adjusted or renegotiated, described and de-
16 fined”; and

17 (2) in section 804 (12 U.S.C. 3803)—

18 (A) in subsection (a)—

19 (i) in each of paragraphs (1), (2), and
20 (3), by inserting after “transactions made”
21 each place that term appears “on or before
22 the designated transfer date, as deter-
23 mined under section 1062 of the Consumer
24 Financial Protection Act of 2010,”;

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1 (ii) in paragraph (2), by striking
2 “and” at the end;

3 (iii) in paragraph (3), by striking the
4 period at the end and inserting “; and”;
5 and

6 (iv) by adding at the end the following
7 new paragraph:

8 “(4) with respect to transactions made after the
9 designated transfer date, only in accordance with
10 regulations governing alternative mortgage trans-
11 actions, as issued by the Bureau of Consumer Fi-
12 nancial Protection for federally chartered housing
13 creditors, in accordance with the rulemaking author-
14 ity granted to the Bureau of Consumer Financial
15 Protection with regard to federally chartered hous-
16 ing creditors under provisions of law other than this
17 section.”;

18 (B) by striking subsection (c) and insert-
19 ing the following:

20 “(c) PREEMPTION OF STATE LAW.—An alternative
21 mortgage transaction may be made by a housing creditor
22 in accordance with this section, notwithstanding any State
23 constitution, law, or regulation that prohibits an alter-
24 native mortgage transaction. For purposes of this sub-
25 section, a State constitution, law, or regulation that pro-

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1 hibits an alternative mortgage transaction does not in-
2 clude any State constitution, law, or regulation that regu-
3 lates mortgage transactions generally, including any re-
4 striction on prepayment penalties or late charges.”; and

5 (C) by adding at the end the following:

6 “(d) BUREAU ACTIONS.—The Bureau of Consumer
7 Financial Protection shall—

8 “(1) review the regulations identified by the
9 Comptroller of the Currency and the National Credit
10 Union Administration, (as those rules exist on the
11 designated transfer date), as applicable under para-
12 graphs (1) through (3) of subsection (a);

13 “(2) determine whether such regulations are
14 fair and not deceptive and otherwise meet the objec-
15 tives of the Consumer Financial Protection Act of
16 2010; and

17 “(3) promulgate regulations under subsection
18 (a)(4) after the designated transfer date.

19 “(e) DESIGNATED TRANSFER DATE.—As used in
20 this section, the term ‘designated transfer date’ means the
21 date determined under section 1062 of the Consumer Fi-
22 nancial Protection Act of 2010.”.

23 (b) EFFECTIVE DATE.—This section and the amend-
24 ments made by this section shall become effective on the
25 designated transfer date.

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1 (c) RULE OF CONSTRUCTION.—The amendments
2 made by subsection (a) shall not affect any transaction
3 covered by the Alternative Mortgage Transaction Parity
4 Act of 1982 (12 U.S.C. 3801 et seq.) and entered into on
5 or before the designated transfer date.

6 **SEC. 1084. AMENDMENTS TO THE ELECTRONIC FUND**
7 **TRANSFER ACT.**

8 The Electronic Fund Transfer Act (15 U.S.C. 1693
9 et seq.) is amended—

10 (1) by striking “Board” each place that term
11 appears and inserting “Bureau”, except in sub-
12 sections (a) and (e) of section 904 (as amended in
13 paragraph (3) of this section) and in 918 (15 U.S.C.
14 1693o) (as so designated by the Credit Card Act of
15 2009) and section 920 (as added by section 1076);

16 (2) in section 903 (15 U.S.C. 1693a)—

17 (A) by redesignating paragraphs (3)
18 through (11) as paragraphs (4) through (12),
19 respectively; and

20 (B) by inserting after paragraph (3) the
21 following:

22 “(4) the term ‘Bureau’ means the Bureau of
23 Consumer Financial Protection;”;

24 (3) in section 904 (15 U.S.C. 1693b)—

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1 (A) in subsection (a), by striking “(a)
2 PRESCRIPTION BY BOARD.—The Board shall
3 prescribe regulations to carry out the purposes
4 of this title.” and inserting the following:

5 “(a) PRESCRIPTION BY THE BUREAU AND THE
6 BOARD.—

7 “(1) IN GENERAL.—Except as provided in para-
8 graph (2), the Bureau shall prescribe rules to carry
9 out the purposes of this title.

10 “(2) AUTHORITY OF THE BOARD.—The Board
11 shall have sole authority to prescribe rules—

12 “(A) to carry out the purposes of this title
13 with respect to a person described in section
14 1029(a) of the Consumer Financial Protection
15 Act of 2010; and

16 “(B) to carry out the purposes of section
17 920.”; and

18 (B) by adding at the end the following new
19 subsection:

20 “(e) DEFERENCE.—No provision of this title may be
21 construed as altering, limiting, or otherwise affecting the
22 deference that a court affords to—

23 “(1) the Bureau in making determinations re-
24 garding the meaning or interpretation of any provi-

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1 sion of this title for which the Bureau has authority
2 to prescribe regulations; or

3 “(2) the Board in making determinations re-
4 garding the meaning or interpretation of section
5 920.”.

6 (4) in section 916(d) (15 U.S.C. 1693m) (as so
7 designated by the Credit CARD Act of 2009)—

8 (A) in the subsection heading, by striking
9 “OF BOARD OR APPROVAL OF DULY AUTHOR-
10 IZED OFFICIAL OR EMPLOYEE OF FEDERAL
11 RESERVE SYSTEM”;

12 (B) by inserting “Bureau or the” before
13 “Board” each place that term appears; and

14 (C) by inserting “Bureau of Consumer Fi-
15 nancial Protection or the” before “Federal Re-
16 serve System”; and

17 (5) in section 918 (15 U.S.C. 1693o) (as so
18 designated by the Credit CARD Act of 2009)—

19 (A) in subsection (a)—

20 (i) by striking “Compliance” and in-
21 sserting “Subject to subtitle B of the Con-
22 sumer Financial Protection Act of 2010,
23 compliance”;

24 (ii) by striking paragraphs (1) and
25 (2), and inserting the following:

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1 “(1) section 8 of the Federal Deposit Insurance
2 Act, by the appropriate Federal banking agency, as
3 defined in section 3(q) of the Federal Deposit Insur-
4 ance Act (12 U.S.C. 1813(q)), with respect to—

5 “(A) national banks, Federal savings asso-
6 ciations, and Federal branches and Federal
7 agencies of foreign banks;

8 “(B) member banks of the Federal Reserve
9 System (other than national banks), branches
10 and agencies of foreign banks (other than Fed-
11 eral branches, Federal agencies, and insured
12 State branches of foreign banks), commercial
13 lending companies owned or controlled by for-
14 eign banks, and organizations operating under
15 section 25 or 25A of the Federal Reserve Act;
16 and

17 “(C) banks and State savings associations
18 insured by the Federal Deposit Insurance Cor-
19 poration (other than members of the Federal
20 Reserve System), and insured State branches of
21 foreign banks;”;

22 (iii) by redesignating paragraphs (3)
23 through (5) as paragraphs (2) through (4),
24 respectively;

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1 (iv) in paragraph (2) (as so redesignated),
2 nated), by striking the period at the end
3 and inserting a semicolon;

4 (v) in paragraph (3) (as so redesignated),
5 by striking “and” at the end;

6 (vi) in paragraph (4) (as so redesignated),
7 by striking the period at the end
8 and inserting “and”; and

9 (vii) by adding at the end the following:
10

11 “(5) subtitle E of the Consumer Financial Protection
12 Act of 2010, by the Bureau, with respect to
13 any person subject to that subtitle E, except that
14 the Bureau shall not have authority to enforce the
15 requirements of section 920 or any regulations prescribed
16 by the Board under section 920.”;

17 (B) in subsection (b), by inserting “any of
18 paragraphs (1) through (4) of” before “subsection
19 (a)” each place that term appears; and

20 (C) by striking subsection (c) and inserting
21 the following:

22 “(c) OVERALL ENFORCEMENT AUTHORITY OF THE
23 FEDERAL TRADE COMMISSION.—Except to the extent
24 that enforcement of the requirements imposed under this
25 title is specifically committed to some other Government

1 agency under any of paragraphs (1) through (4) of sub-
2 section (a), and subject to subtitle B of the Consumer Fi-
3 nancial Protection Act of 2010, the Federal Trade Com-
4 mission shall be authorized to enforce such requirements.
5 For the purpose of the exercise by the Federal Trade
6 Commission of its functions and powers under the Federal
7 Trade Commission Act, a violation of any requirement im-
8 posed under this title shall be deemed a violation of a re-
9 quirement imposed under that Act. All of the functions
10 and powers of the Federal Trade Commission under the
11 Federal Trade Commission Act are available to the Fed-
12 eral Trade Commission to enforce compliance by any per-
13 son subject to the jurisdiction of the Federal Trade Com-
14 mission with the requirements imposed under this title,
15 irrespective of whether that person is engaged in com-
16 merce or meets any other jurisdictional tests under the
17 Federal Trade Commission Act.”.

18 **SEC. 1085. AMENDMENTS TO THE EQUAL CREDIT OPPOR-**
19 **TUNITY ACT.**

20 The Equal Credit Opportunity Act (15 U.S.C. 1691
21 et seq.) is amended—

22 (1) by striking “Board” each place that term
23 appears, other than in section 704(a)(4) (15 U.S.C.
24 1691e(a)(4)), and inserting “Bureau”;

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1 (2) in section 702 (15 U.S.C. 1691a), by strik-
2 ing subsection (c) and inserting the following:

3 “(c) The term ‘Bureau’ means the Bureau of Con-
4 sumer Financial Protection.”;

5 (3) in section 703 (15 U.S.C. 1691b)—

6 (A) by striking the section heading and in-
7 serting the following:

8 **“SEC. 703. PROMULGATION OF REGULATIONS BY THE BU-
9 REAU.”;**

10 (B) by striking “(a) REGULATIONS.—”;

11 (C) by striking subsection (b);

12 (D) by redesignating paragraphs (1)
13 through (5) as subsections (a) through (e), re-
14 spectively;

15 (E) in subsection (c), as so redesignated,
16 by striking “paragraph (2)” and inserting “sub-
17 section (b)”;

18 (F) by adding at the end the following:

19 “(f) BOARD AUTHORITY.—Notwithstanding sub-
20 section (a), the Board shall prescribe regulations to carry
21 out the purposes of this title with respect to a person de-
22 scribed in section 1029(a) of the Consumer Financial Pro-
23 tection Act of 2010. These regulations may contain but
24 are not limited to such classifications, differentiation, or
25 other provision, and may provide for such adjustments and

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1 exceptions for any class of transactions, as in the judg-
2 ment of the Board are necessary or proper to effectuate
3 the purposes of this title, to prevent circumvention or eva-
4 sion thereof, or to facilitate or substantiate compliance
5 therewith.

6 “(g) DEFERENCE.—Notwithstanding any power
7 granted to any Federal agency under this title, the def-
8 erence that a court affords to a Federal agency with re-
9 spect to a determination made by such agency relating to
10 the meaning or interpretation of any provision of this title
11 that is subject to the jurisdiction of such agency shall be
12 applied as if that agency were the only agency authorized
13 to apply, enforce, interpret, or administer the provisions
14 of this title”;

15 (4) in section 704 (15 U.S.C. 1691c)—

16 (A) in subsection (a)—

17 (i) by striking “Compliance” and in-
18 sserting “Subject to subtitle B of the Con-
19 sumer Protection Financial Protection Act
20 of 2010”;

21 (ii) by striking paragraphs (1) and (2)
22 and inserting the following:

23 “(1) section 8 of the Federal Deposit Insurance
24 Act, by the appropriate Federal banking agency, as

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1 defined in section 3(q) of the Federal Deposit Insur-
2 ance Act (12 U.S.C. 1813(q)), with respect to—

3 “(A) national banks, Federal savings asso-
4 ciations, and Federal branches and Federal
5 agencies of foreign banks;

6 “(B) member banks of the Federal Reserve
7 System (other than national banks), branches
8 and agencies of foreign banks (other than Fed-
9 eral branches, Federal agencies, and insured
10 State branches of foreign banks), commercial
11 lending companies owned or controlled by for-
12 eign banks, and organizations operating under
13 section 25 or 25A of the Federal Reserve Act;
14 and

15 “(C) banks and State savings associations
16 insured by the Federal Deposit Insurance Cor-
17 poration (other than members of the Federal
18 Reserve System), and insured State branches of
19 foreign banks;”;

20 (iii) by redesignating paragraphs (3)
21 through (9) as paragraphs (2) through (8),
22 respectively;

23 (iv) in paragraph (7) (as so redesign-
24 nated), by striking “and” at the end;

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1 (v) in paragraph (8) (as so redesignig-
2 nated), by striking the period at the end,
3 and inserting “; and”; and

4 (vi) by adding at the end the fol-
5 lowing:

6 “(9) Subtitle E of the Consumer Financial Pro-
7 tection Act of 2010, by the Bureau, with respect to
8 any person subject to this title.”;

9 (B) by striking subsection (c) and insert-
10 ing the following:

11 “(c) OVERALL ENFORCEMENT AUTHORITY OF FED-
12 ERAL TRADE COMMISSION.—Except to the extent that en-
13 forcement of the requirements imposed under this title is
14 specifically committed to some other Government agency
15 under any of paragraphs (1) through (8) of subsection (a),
16 and subject to subtitle B of the Consumer Financial Pro-
17 tection Act of 2010, the Federal Trade Commission shall
18 be authorized to enforce such requirements. For the pur-
19 pose of the exercise by the Federal Trade Commission of
20 its functions and powers under the Federal Trade Com-
21 mission Act (15 U.S.C. 41 et seq.), a violation of any re-
22 quirement imposed under this subchapter shall be deemed
23 a violation of a requirement imposed under that Act. All
24 of the functions and powers of the Federal Trade Commis-
25 sion under the Federal Trade Commission Act are avail-

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1 able to the Federal Trade Commission to enforce compli-
2 ance by any person with the requirements imposed under
3 this title, irrespective of whether that person is engaged
4 in commerce or meets any other jurisdictional tests under
5 the Federal Trade Commission Act, including the power
6 to enforce any rule prescribed by the Bureau under this
7 title in the same manner as if the violation had been a
8 violation of a Federal Trade Commission trade regulation
9 rule.”; and

10 (C) in subsection (d), by striking “Board”
11 and inserting “Bureau”;

12 (5) in section 706(e) (15 U.S.C. 1691e(e))—

13 (A) in the subsection heading—

14 (i) by striking “BOARD” each place
15 that term appears and inserting “BU-
16 REAU”; and

17 (ii) by striking “FEDERAL RESERVE
18 SYSTEM” and inserting “BUREAU OF CON-
19 SUMER FINANCIAL PROTECTION”; and

20 (B) by striking “Federal Reserve System”
21 and inserting “Bureau of Consumer Financial
22 Protection”;

23 (6) in section 706(g) (15 U.S.C. 1691e(g)), by
24 striking “(3)” and inserting “(9)”; and

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1 (7) in section 706(f) (15 U.S.C. 1691e(f)), by
2 striking “two years from” each place that term ap-
3 pears and inserting “5 years after”.

4 **SEC. 1086. AMENDMENTS TO THE EXPEDITED FUNDS**
5 **AVAILABILITY ACT.**

6 (a) AMENDMENT TO SECTION 603.—Section
7 603(d)(1) of the Expedited Funds Availability Act (12
8 U.S.C. 4002) is amended by inserting after “Board” the
9 following “, jointly with the Director of the Bureau of
10 Consumer Financial Protection,”.

11 (b) AMENDMENTS TO SECTION 604.—Section 604 of
12 the Expedited Funds Availability Act (12 U.S.C. 4003)
13 is amended—

14 (1) by inserting after “Board” each place that
15 term appears, other than in subsection (f), the fol-
16 lowing: “, jointly with the Director of the Bureau of
17 Consumer Financial Protection,”; and

18 (2) in subsection (f), by striking “Board.” each
19 place that term appears and inserting the following:
20 “Board, jointly with the Director of the Bureau of
21 Consumer Financial Protection.”.

22 (c) AMENDMENTS TO SECTION 605.—Section 605 of
23 the Expedited Funds Availability Act (12 U.S.C. 4004)
24 is amended—

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1 (1) by inserting after “Board” each place that
2 term appears, other than in the heading for section
3 605(f)(1), the following: “, jointly with the Director
4 of the Bureau of Consumer Financial Protection,”;
5 and

6 (2) in subsection (f)(1), in the paragraph head-
7 ing, by inserting “AND BUREAU” after “BOARD”.

8 (d) AMENDMENTS TO SECTION 609.—Section 609 of
9 the Expedited Funds Availability Act (12 U.S.C. 4008)
10 is amended:

11 (1) in subsection (a), by inserting after
12 “Board” the following “, jointly with the Director of
13 the Bureau of Consumer Financial Protection,”; and

14 (2) by striking subsection (e) and inserting the
15 following:

16 “(e) CONSULTATIONS.—In prescribing regulations
17 under subsections (a) and (b), the Board and the Director
18 of the Bureau of Consumer Financial Protection, in the
19 case of subsection (a), and the Board, in the case of sub-
20 section (b), shall consult with the Comptroller of the Cur-
21 rency, the Board of Directors of the Federal Deposit In-
22 surance Corporation, and the National Credit Union Ad-
23 ministration Board.”.

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1 (e) EXPEDITED FUNDS AVAILABILITY IMPROVE-
2 MENTS.—Section 603 of the Expedited Funds Availability
3 Act (12 U.S.C. 4002) is amended—

4 (1) in subsection (a)(2)(D), by striking “\$100”
5 and inserting “\$200”; and

6 (2) in subsection (b)(3)(C), in the subpara-
7 graph heading, by striking “\$100” and inserting
8 “\$200”; and

9 (3) in subsection (c)(1)(B)(iii), in the clause
10 heading, by striking “\$100” and inserting “\$200”.

11 (f) REGULAR ADJUSTMENTS FOR INFLATION.—Sec-
12 tion 607 of the Expedited Funds Availability Act (12
13 U.S.C. 4006) is amended by adding at the end the fol-
14 lowing:

15 “(f) ADJUSTMENTS TO DOLLAR AMOUNTS FOR IN-
16 FLATION.—The dollar amounts under this title shall be
17 adjusted every 5 years after December 31, 2011, by the
18 annual percentage increase in the Consumer Price Index
19 for Urban Wage Earners and Clerical Workers, as pub-
20 lished by the Bureau of Labor Statistics, rounded to the
21 nearest multiple of \$25.”.

22 **SEC. 1087. AMENDMENTS TO THE FAIR CREDIT BILLING**
23 **ACT.**

24 The Fair Credit Billing Act (15 U.S.C. 1666–1666j)
25 is amended by striking “Board” each place that term ap-

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1 pears, other than in section 105(i) (as added by this sub-
2 title) and inserting “Bureau”.

3 **SEC. 1088. AMENDMENTS TO THE FAIR CREDIT REPORTING**
4 **ACT AND THE FAIR AND ACCURATE CREDIT**
5 **TRANSACTIONS ACT OF 2003.**

6 (a) FAIR CREDIT REPORTING ACT.—The Fair Credit
7 Reporting Act (15 U.S.C. 1681 et seq.) is amended—

8 (1) in section 603 (15 U.S.C. 1681a)—

9 (A) by redesignating subsections (w) and
10 (x) as subsections (x) and (y), respectively; and

11 (B) by inserting after subsection (v) the
12 following:

13 “(w) The term ‘Bureau’ means the Bureau of Con-
14 sumer Financial Protection.”; and

15 (2) except as otherwise specifically provided in
16 this subsection—

17 (A) by striking “Federal Trade Commis-
18 sion” each place that term appears and insert-
19 ing “Bureau”;

20 (B) by striking “FTC” each place that
21 term appears and inserting “Bureau”;

22 (C) by striking “the Commission” each
23 place that term appears, other than sections
24 615(e) (15 U.S.C. 1681m(e)) and 628(a)(1)

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1 (15 U.S.C. 1681w(a)(1)), and inserting “the
2 Bureau”; and

3 (D) by striking “The Federal banking
4 agencies, the National Credit Union Adminis-
5 tration, and the Commission shall jointly” each
6 place that term appears, other than section
7 615(e)(1) (15 U.S.C. 1681m(e)) and section
8 628(a)(1) (15 U.S.C. 1681w(a)(1)), and insert-
9 ing “The Bureau shall”;

10 (3) in section 603(k)(2) (15 U.S.C.
11 1681a(k)(2)), by striking “Board of Governors of
12 the Federal Reserve System” and inserting “Bu-
13 reau”;

14 (4) in section 604(g) (15 U.S.C. 1681b(g))—

15 (A) in paragraph (3), by striking subpara-
16 graph (C) and inserting the following:

17 “(C) as otherwise determined to be nec-
18 essary and appropriate, by regulation or order,
19 by the Bureau or the applicable State insurance
20 authority (with respect to any person engaged
21 in providing insurance or annuities).”; and

22 (B) by striking paragraph (5) and insert-
23 ing the following:

24 “(5) REGULATIONS AND EFFECTIVE DATE FOR
25 PARAGRAPH (2).—

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1 “(A) REGULATIONS REQUIRED.—The Bu-
2 reau may, after notice and opportunity for com-
3 ment, prescribe regulations that permit trans-
4 actions under paragraph (2) that are deter-
5 mined to be necessary and appropriate to pro-
6 tect legitimate operational, transactional, risk,
7 consumer, and other needs (and which shall in-
8 clude permitting actions necessary for adminis-
9 trative verification purposes), consistent with
10 the intent of paragraph (2) to restrict the use
11 of medical information for inappropriate pur-
12 poses.”;

13 (5) in section 605(h)(2)(A) (15 U.S.C.
14 1681c(h)(2)(A)), by striking “with respect to the en-
15 tities that are subject to their respective enforcement
16 authority under section 621” and inserting “, in
17 consultation with the Federal banking agencies, the
18 National Credit Union Administration, and the Fed-
19 eral Trade Commission,”.

20 (6) in section 611(e)(2) (15 U.S.C. 1681i(e)),
21 by striking paragraph (2) and inserting the fol-
22 lowing:

23 “(2) EXCLUSION.—Complaints received or ob-
24 tained by the Bureau pursuant to its investigative

1 authority under the Consumer Financial Protection
2 Act of 2010 shall not be subject to paragraph (1).”;

3 (7) in section 615(d)(2)(B) (15 U.S.C.
4 1681m(d)(2)(B)), by striking “the Federal banking
5 agencies” and inserting “the Federal Trade Com-
6 mission, the Federal banking agencies,”;

7 (8) in section 615(e)(1) (15 U.S.C.
8 1681m(e)(1)), by striking “and the Commission”
9 and inserting “the Federal Trade Commission, the
10 Commodity Futures Trading Commission, and the
11 Securities and Exchange Commission”;

12 (9) in section 615(h)(6) (15 U.S.C.
13 1681m(h)(6)), by striking subparagraph (A) and in-
14 serting the following:

15 “(A) RULES REQUIRED.—The Bureau
16 shall prescribe rules to carry out this sub-
17 section.”;

18 (10) in section 621 (15 U.S.C. 1681s)—

19 (A) by striking subsection (a) and insert-
20 ing the following:

21 “(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
22 SION.—

23 “(1) IN GENERAL.—The Federal Trade Com-
24 mission shall be authorized to enforce compliance
25 with the requirements imposed by this title under

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1 the Federal Trade Commission Act (15 U.S.C. 41 et
2 seq.), with respect to consumer reporting agencies
3 and all other persons subject thereto, except to the
4 extent that enforcement of the requirements imposed
5 under this title is specifically committed to some
6 other Government agency under any of subpara-
7 graphs (A) through (G) of subsection (b)(1), and
8 subject to subtitle B of the Consumer Financial Pro-
9 tection Act of 2010, subsection (b). For the purpose
10 of the exercise by the Federal Trade Commission of
11 its functions and powers under the Federal Trade
12 Commission Act, a violation of any requirement or
13 prohibition imposed under this title shall constitute
14 an unfair or deceptive act or practice in commerce,
15 in violation of section 5(a) of the Federal Trade
16 Commission Act (15 U.S.C. 45(a)), and shall be
17 subject to enforcement by the Federal Trade Com-
18 mission under section 5(b) of that Act with respect
19 to any consumer reporting agency or person that is
20 subject to enforcement by the Federal Trade Com-
21 mission pursuant to this subsection, irrespective of
22 whether that person is engaged in commerce or
23 meets any other jurisdictional tests under the Fed-
24 eral Trade Commission Act. The Federal Trade
25 Commission shall have such procedural, investiga-

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1 tive, and enforcement powers, including the power to
2 issue procedural rules in enforcing compliance with
3 the requirements imposed under this title and to re-
4 quire the filing of reports, the production of docu-
5 ments, and the appearance of witnesses, as though
6 the applicable terms and conditions of the Federal
7 Trade Commission Act were part of this title. Any
8 person violating any of the provisions of this title
9 shall be subject to the penalties and entitled to the
10 privileges and immunities provided in the Federal
11 Trade Commission Act as though the applicable
12 terms and provisions of such Act are part of this
13 title.

14 “(2) PENALTIES.—

15 “(A) KNOWING VIOLATIONS.—Except as
16 otherwise provided by subtitle B of the Con-
17 sumer Financial Protection Act of 2010, in the
18 event of a knowing violation, which constitutes
19 a pattern or practice of violations of this title,
20 the Federal Trade Commission may commence
21 a civil action to recover a civil penalty in a dis-
22 trict court of the United States against any
23 person that violates this title. In such action,
24 such person shall be liable for a civil penalty of
25 not more than \$2,500 per violation.

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1 “(B) DETERMINING PENALTY AMOUNT.—

2 In determining the amount of a civil penalty
3 under subparagraph (A), the court shall take
4 into account the degree of culpability, any his-
5 tory of such prior conduct, ability to pay, effect
6 on ability to continue to do business, and such
7 other matters as justice may require.

8 “(C) LIMITATION.—Notwithstanding para-
9 graph (2), a court may not impose any civil
10 penalty on a person for a violation of section
11 623(a)(1), unless the person has been enjoined
12 from committing the violation, or ordered not to
13 commit the violation, in an action or proceeding
14 brought by or on behalf of the Federal Trade
15 Commission, and has violated the injunction or
16 order, and the court may not impose any civil
17 penalty for any violation occurring before the
18 date of the violation of the injunction or
19 order.”;

20 (B) by striking subsection (b) and insert-
21 ing the following:

22 “(b) ENFORCEMENT BY OTHER AGENCIES.—

23 “(1) IN GENERAL.—Subject to subtitle B of the
24 Consumer Financial Protection Act of 2010, compli-
25 ance with the requirements imposed under this title

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1 with respect to consumer reporting agencies, persons
2 who use consumer reports from such agencies, per-
3 sons who furnish information to such agencies, and
4 users of information that are subject to section
5 615(d) shall be enforced under—

6 “(A) section 8 of the Federal Deposit In-
7 surance Act (12 U.S.C. 1818), by the appro-
8 priate Federal banking agency, as defined in
9 section 3(q) of the Federal Deposit Insurance
10 Act (12 U.S.C. 1813(q)), with respect to—

11 “(i) any national bank or State sav-
12 ings association, and any Federal branch
13 or Federal agency of a foreign bank;

14 “(ii) any member bank of the Federal
15 Reserve System (other than a national
16 bank), a branch or agency of a foreign
17 bank (other than a Federal branch, Fed-
18 eral agency, or insured State branch of a
19 foreign bank), a commercial lending com-
20 pany owned or controlled by a foreign
21 bank, and any organization operating
22 under section 25 or 25A of the Federal
23 Reserve Act; and

24 “(iii) any bank or Federal savings as-
25 sociation insured by the Federal Deposit

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1 Insurance Corporation (other than a mem-
2 ber of the Federal Reserve System) and
3 any insured State branch of a foreign
4 bank;

5 “(B) the Federal Credit Union Act (12
6 U.S.C. 1751 et seq.), by the Administrator of
7 the National Credit Union Administration with
8 respect to any Federal credit union;

9 “(C) subtitle IV of title 49, United States
10 Code, by the Secretary of Transportation, with
11 respect to all carriers subject to the jurisdiction
12 of the Surface Transportation Board;

13 “(D) the Federal Aviation Act of 1958 (49
14 U.S.C. App. 1301 et seq.), by the Secretary of
15 Transportation, with respect to any air carrier
16 or foreign air carrier subject to that Act;

17 “(E) the Packers and Stockyards Act,
18 1921 (7 U.S.C. 181 et seq.) (except as provided
19 in section 406 of that Act), by the Secretary of
20 Agriculture, with respect to any activities sub-
21 ject to that Act;

22 “(F) the Commodity Exchange Act, with
23 respect to a person subject to the jurisdiction of
24 the Commodity Futures Trading Commission;

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1 “(G) the Federal securities laws, and any
2 other laws that are subject to the jurisdiction of
3 the Securities and Exchange Commission, with
4 respect to a person that is subject to the juris-
5 diction of the Securities and Exchange Commis-
6 sion; and

7 “(H) subtitle E of the Consumer Financial
8 Protection Act of 2010, by the Bureau, with re-
9 spect to any person subject to this title.

10 “(2) INCORPORATED DEFINITIONS.—The terms
11 used in paragraph (1) that are not defined in this
12 title or otherwise defined in section 3(s) of the Fed-
13 eral Deposit Insurance Act (12 U.S.C. 1813(s)) have
14 the same meanings as in section 1(b) of the Inter-
15 national Banking Act of 1978 (12 U.S.C. 3101).”;

16 (C) in subsection (c)(2)—

17 (i) by inserting “and the Federal
18 Trade Commission” before “or the appro-
19 priate”; and

20 (ii) by inserting “and the Federal
21 Trade Commission” before “or appro-
22 priate” each place that term appears;

23 (D) in subsection (c)(4), by inserting be-
24 fore “or the appropriate” each place that term

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1 appears the following: “, the Federal Trade
2 Commission,”;

3 (E) by striking subsection (e) and insert-
4 ing the following:

5 “(e) REGULATORY AUTHORITY.—

6 “(1) IN GENERAL.—The Bureau shall prescribe
7 such regulations as are necessary to carry out the
8 purposes of this title, except with respect to sections
9 615(e) and 628. The Bureau may prescribe regula-
10 tions as may be necessary or appropriate to admin-
11 ister and carry out the purposes and objectives of
12 this title, and to prevent evasions thereof or to facili-
13 tate compliance therewith. Except as provided in
14 section 1029(a) of the Consumer Financial Protec-
15 tion Act of 2010, the regulations prescribed by the
16 Bureau under this title shall apply to any person
17 that is subject to this title, notwithstanding the en-
18 forcement authorities granted to other agencies
19 under this section.

20 “(2) DEFERENCE.—Notwithstanding any power
21 granted to any Federal agency under this title, the
22 deference that a court affords to a Federal agency
23 with respect to a determination made by such agen-
24 cy relating to the meaning or interpretation of any
25 provision of this title that is subject to the jurisdic-

1948

1 tion of such agency shall be applied as if that agency
2 were the only agency authorized to apply, enforce,
3 interpret, or administer the provisions of this title
4 The regulations prescribed by the Bureau under this
5 title shall apply to any person that is subject to this
6 title, notwithstanding the enforcement authorities
7 granted to other agencies under this section.”; and

8 (F) in subsection (f)(2), by striking “the
9 Federal banking agencies” and insert “the Fed-
10 eral Trade Commission, the Federal banking
11 agencies,”;

12 (11) in section 623 (15 U.S.C. 1681s-2)—

13 (A) in subsection (a)(7), by striking sub-
14 paragraph (D) and inserting the following:

15 “(D) MODEL DISCLOSURE.—

16 “(i) DUTY OF BUREAU.—The Bureau
17 shall prescribe a brief model disclosure
18 that a financial institution may use to
19 comply with subparagraph (A), which shall
20 not exceed 30 words.

21 “(ii) USE OF MODEL NOT RE-
22 QUIRED.—No provision of this paragraph
23 may be construed to require a financial in-
24 stitution to use any such model form pre-
25 scribed by the Bureau.

1949

1 “(iii) COMPLIANCE USING MODEL.—A
2 financial institution shall be deemed to be
3 in compliance with subparagraph (A) if the
4 financial institution uses any model form
5 prescribed by the Bureau under this sub-
6 paragraph, or the financial institution uses
7 any such model form and rearranges its
8 format.”;

9 (B) in subsection (a)(8), by inserting “, in
10 consultation with the Federal Trade Commis-
11 sion, the Federal banking agencies, and the Na-
12 tional Credit Union Administration,” before
13 “shall jointly”; and

14 (C) by striking subsection (e) and inserting
15 the following:

16 “(e) ACCURACY GUIDELINES AND REGULATIONS RE-
17 QUIRED.—

18 “(1) GUIDELINES.—The Bureau shall, with re-
19 spect to persons or entities that are subject to the
20 enforcement authority of the Bureau under section
21 621—

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-

1950

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 for 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 Bureau 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

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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 (12) in section 628(a)(1) (15 U.S.C.
8 1681w(a)(1)), by striking “Not later than” and all
9 that follows through “Exchange Commission,” and
10 inserting “The Federal Trade Commission, the Se-
11 curities and Exchange Commission, the Commodity
12 Futures Trading Commission, the Federal banking
13 agencies, and the National Credit Union Administra-
14 tion, with respect to the entities that are subject to
15 their respective enforcement authority under section
16 621,”; and

17 (13) in section 628(a)(3) (15 U.S.C.
18 1681w(a)(3)), by striking “the Federal banking
19 agencies, the National Credit Union Administration,
20 the Commission, and the Securities and Exchange
21 Commission” and inserting “the agencies identified
22 in paragraph (1)”.

23 (b) FAIR AND ACCURATE CREDIT TRANSACTIONS
24 ACT OF 2003.—The Fair and Accurate Credit Trans-
25 actions Act of 2003 (Public Law 108–159) is amended—

1952

1 (1) in section 112(b) (15 U.S.C. 1681e–1 note),
2 by striking “Commission” and inserting “Bureau”;

3 (2) in section 211(d) (15 U.S.C. 1681j note),
4 by striking “Commission” each place that term ap-
5 pears and inserting “Bureau”;

6 (3) in section 214(b) (15 U.S.C. 1681s–3 note),
7 by striking paragraph (1) and inserting the fol-
8 lowing:

9 “(1) IN GENERAL.—Regulations to carry out
10 section 624 of the Fair Credit Reporting Act (15
11 U.S.C. 1681s–3), shall be prescribed, as described in
12 paragraph (2), by—

13 “(A) the Commodity Futures Trading
14 Commission, with respect to entities subject to
15 its enforcement authorities;

16 “(B) the Securities and Exchange Commis-
17 sion, with respect to entities subject to its en-
18 forcement authorities; and

19 “(C) the Bureau, with respect to other en-
20 tities subject to this Act.”; and

21 (4) in section 214(e)(1) (15 U.S.C. 1681s–3
22 note), by striking “Commission” and inserting “Bu-
23 reau”.

1953

1 **SEC. 1089. AMENDMENTS TO THE FAIR DEBT COLLECTION**
2 **PRACTICES ACT.**

3 The Fair Debt Collection Practices Act (15 U.S.C.
4 1692 et seq.) is amended—

5 (1) by striking “Commission” each place that
6 term appears and inserting “Bureau”;

7 (2) in section 803 (15 U.S.C. 1692a)—

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

10 “(1) The term ‘Bureau’ means the Bureau of
11 Consumer Financial Protection.”;

12 (3) in section 814 (15 U.S.C. 1692l)—

13 (A) by striking subsection (a) and insert-
14 ing the following:

15 “(a) FEDERAL TRADE COMMISSION.—The Federal
16 Trade Commission shall be authorized to enforce compli-
17 ance with this title, except to the extent that enforcement
18 of the requirements imposed under this title is specifically
19 committed to another Government agency under any of
20 paragraphs (1) through (5) of subsection (b), subject to
21 subtitle B of the Consumer Financial Protection Act of
22 2010. For purpose of the exercise by the Federal Trade
23 Commission of its functions and powers under the Federal
24 Trade Commission Act (15 U.S.C. 41 et seq.), a violation
25 of this title shall be deemed an unfair or deceptive act
26 or practice in violation of that Act. All of the functions

1954

1 and powers of the Federal Trade Commission under the
2 Federal Trade Commission Act are available to the Fed-
3 eral Trade Commission to enforce compliance by any per-
4 son with this title, irrespective of whether that person is
5 engaged in commerce or meets any other jurisdictional
6 tests under the Federal Trade Commission Act, including
7 the power to enforce the provisions of this title, in the
8 same manner as if the violation had been a violation of
9 a Federal Trade Commission trade regulation rule.”; and

10 (B) in subsection (b)—

11 (i) by striking “Compliance” and in-
12 serting “Subject to subtitle B of the Con-
13 sumer Financial Protection Act of 2010,
14 compliance”;

15 (ii) by striking paragraphs (1) and (2)
16 and inserting the following:

17 “(1) section 8 of the Federal Deposit Insurance
18 Act, by the appropriate Federal banking agency, as
19 defined in section 3(q) of the Federal Deposit Insur-
20 ance Act (12 U.S.C. 1813(q)), with respect to—

21 “(A) national banks, Federal savings asso-
22 ciations, and Federal branches and Federal
23 agencies of foreign banks;

24 “(B) member banks of the Federal Reserve
25 System (other than national banks), branches

1955

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 25A of the Federal Reserve Act;
7 and

8 “(C) banks and State savings associations
9 insured by the Federal Deposit Insurance Cor-
10 poration (other than members of the Federal
11 Reserve System), and insured State branches of
12 foreign banks;”;

13 (iii) by redesignating paragraphs (3)
14 through (6), as paragraphs (2) through
15 (5), respectively;

16 (iv) in paragraph (4) (as so redesi-
17 gnated), by striking “and” at the end;

18 (v) in paragraph (5) (as so redesi-
19 gnated), by striking the period at the end
20 and inserting “; and”; and

21 (vi) by inserting before the undesig-
22 nated matter at the end the following:

23 “(6) subtitle E of the Consumer Financial Pro-
24 tection Act of 2010, by the Bureau, with respect to
25 any person subject to this subtitle.”.

1956

1 (4) in subsection (d), by striking “Neither the
2 Commission” and all that follows through the end of
3 the subsection and inserting the following: “Except
4 as provided in section 1029(a) of the Consumer Fi-
5 nancial Protection Act of 2010, the Bureau may
6 prescribe rules with respect to the collection of debts
7 by debt collectors, as defined in this title.”.

8 **SEC. 1090. AMENDMENTS TO THE FEDERAL DEPOSIT IN-**
9 **SURANCE ACT.**

10 The Federal Deposit Insurance Act (12 U.S.C. 1811
11 et seq.) is amended—

12 (1) in section 8(t) (12 U.S.C. 1818(t)), by add-
13 ing at the end the following:

14 “(6) REFERRAL TO BUREAU OF CONSUMER FI-
15 NANCIAL PROTECTION.—Subject to subtitle B of the
16 Consumer Financial Protection Act of 2010, each
17 appropriate Federal banking agency shall make a re-
18 ferral to the Bureau of Consumer Financial Protec-
19 tion when the Federal banking agency has a reason-
20 able belief that a violation of an enumerated con-
21 sumer law, as defined in the Consumer Financial
22 Protection Act of 2010, has been committed by any
23 insured depository institution or institution-affiliated
24 party within the jurisdiction of that appropriate
25 Federal banking agency.”; and

1957

1 (2) in section 43 (12 U.S.C. 1831t)—

2 (A) in subsection (c), by striking “Federal
3 Trade Commission” and inserting “Bureau”;

4 (B) in subsection (d), by striking “Federal
5 Trade Commission” and inserting “Bureau”;

6 (C) in subsection (e)—

7 (i) in paragraph (2), by striking
8 “Federal Trade Commission” and insert-
9 ing “Bureau”; and

10 (ii) by adding at the end the following
11 new paragraph:

12 “(5) BUREAU.—The term ‘Bureau’ means the
13 Bureau of Consumer Financial Protection.”; and

14 (D) in subsection (f)—

15 (i) by striking paragraph (1) and in-
16 serting the following:

17 “(1) LIMITED ENFORCEMENT AUTHORITY.—

18 Compliance with the requirements of subsections (b),
19 (c), and (e), and any regulation prescribed or order
20 issued under such subsection, shall be enforced
21 under the Consumer Financial Protection Act of
22 2010, by the Bureau, subject to subtitle B of the
23 Consumer Financial Protection Act of 2010, and
24 under the Federal Trade Commission Act (15

1958

1 U.S.C. 41 et seq.) by the Federal Trade Commis-
2 sion.”; and

3 (ii) in paragraph (2), by striking sub-
4 paragraph (C) and inserting the following:

5 “(C) LIMITATION ON STATE ACTION
6 WHILE FEDERAL ACTION PENDING.—If the Bu-
7 reau or Federal Trade Commission has insti-
8 tuted an enforcement action for a violation of
9 this section, no appropriate State supervisory
10 agency may, during the pendency of such ac-
11 tion, bring an action under this section against
12 any defendant named in the complaint of the
13 Bureau or Federal Trade Commission for any
14 violation of this section that is alleged in that
15 complaint.”.

16 **SEC. 1091. AMENDMENT TO FEDERAL FINANCIAL INSTITU-**
17 **TIONS EXAMINATION COUNCIL ACT OF 1978.**

18 Section 1004(a)(4) of the Federal Financial Institu-
19 tions Examination Council Act of 1978 (12 U.S.C.
20 3303(a)(4)) is amended by striking “Director, Office of
21 Thrift Supervision” and inserting “Director of the Con-
22 sumer Financial Protection Bureau”.

1959

1 **SEC. 1092. AMENDMENTS TO THE FEDERAL TRADE COM-**
2 **MISSION ACT.**

3 Section 18(f) of the Federal Trade Commission Act
4 (15 U.S.C. 57a(f)) is amended—

5 (1) by striking the subsection heading and in-
6 serting the following:

7 “(f) DEFINITIONS OF BANKS, SAVINGS AND LOAN
8 INSTITUTIONS, AND FEDERAL CREDIT UNIONS.—”.

9 (2) by striking paragraph (1) and inserting the
10 following:

11 “(1) [Repealed.]”;

12 (3) by striking paragraphs (5) through (7);

13 (4) in paragraph (2)—

14 (A) by striking “(2) ENFORCEMENT” and
15 all that follows through “in the case of” and in-
16 serting the following:

17 “(2) DEFINITION.—For purposes of this Act,
18 the term ‘bank’ means”;

19 (B) in subparagraph (A), by striking “, by
20 the division” and all that follows through “Cur-
21 rency”;

22 (C) in subparagraph (B)—

23 (i) by striking “, by the division” and
24 all that follows through “System”; and

25 (ii) by striking “25(a)” and inserting
26 “25A”; and

1960

1 (D) in subparagraph (C)—

2 (i) by striking “(other” and inserting

3 “(other than”; and

4 (ii) by striking “, by the division” and

5 all that follows through “Corporation”;

6 (5) in paragraph (3), as so redesignated, by

7 striking “Compliance” and all that follows through

8 “as defined in” and inserting the following: “For

9 purposes of this Act, the term “savings and loan in-

10 stitution” has the same meaning as in”; and

11 (6) in paragraph (4), as so redesignated by

12 striking “Compliance” and all that follows through

13 “credit unions under” and inserting the following:

14 “For purposes of this Act, the term “Federal credit

15 union” has the same meaning as in”.

16 **SEC. 1093. AMENDMENTS TO THE GRAMM-LEACH-BLILEY**

17 **ACT.**

18 Title V of the Gramm-Leach-Bliley Act (15 U.S.C.

19 6801 et seq.) is amended—

20 (1) in section 501(b) (15 U.S.C. 6801(b)), by

21 inserting “, other than the Bureau of Consumer Fi-

22 nancial Protection,” after “505(a)”;

23 (2) in section 502(e)(5) (15 U.S.C. 6802(e)(5)),

24 by inserting “the Bureau of Consumer Financial

25 Protection” after “(including”;

1961

1 (3) in section 504(a) (15 U.S.C. 6804(a))—

2 (A) by striking paragraphs (1) and (2) and
3 inserting the following:

4 “(1) RULEMAKING.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (C), the Bureau of Consumer Fi-
7 nancial Protection and the Securities and Ex-
8 change Commission shall have authority to pre-
9 scribe such regulations as may be necessary to
10 carry out the purposes of this subtitle with re-
11 spect to financial institutions and other persons
12 subject to their respective jurisdiction under
13 section 505 (and notwithstanding subtitle B of
14 the Consumer Financial Protection Act of
15 2010), except that the Bureau of Consumer Fi-
16 nancial Protection shall not have authority to
17 prescribe regulations with respect to the stand-
18 ards under section 501.

19 “(B) CFTC.—The Commodity Futures
20 Trading Commission shall have authority to
21 prescribe such regulations as may be necessary
22 to carry out the purposes of this subtitle with
23 respect to financial institutions and other per-
24 sons subject to the jurisdiction of the Com-

1962

1 commodity Futures Trading Commission under sec-
2 tion 5g of the Commodity Exchange Act.

3 “(C) FEDERAL TRADE COMMISSION AU-
4 THORITY.—Notwithstanding the authority of
5 the Bureau of Consumer Financial Protection
6 under subparagraph (A), the Federal Trade
7 Commission shall have authority to prescribe
8 such regulations as may be necessary to carry
9 out the purposes of this subtitle with respect to
10 any financial institution that is a person de-
11 scribed in section 1029(a) of the Consumer Fi-
12 nancial Protection Act of 2010.

13 “(D) RULE OF CONSTRUCTION.—Nothing
14 in this paragraph shall be construed to alter,
15 affect, or otherwise limit the authority of a
16 State insurance authority to adopt regulations
17 to carry out this subtitle.

18 “(2) COORDINATION, CONSISTENCY, AND COM-
19 PARABILITY.—Each of the agencies authorized
20 under paragraph (1) to prescribe regulations shall
21 consult and coordinate with the other such agencies
22 and, as appropriate, and with representatives of
23 State insurance authorities designated by the Na-
24 tional Association of Insurance Commissioners, for
25 the purpose of assuring, to the extent possible, that

1963

1 the regulations prescribed by each such agency are
2 consistent and comparable with the regulations pre-
3 scribed by the other such agencies.”; and

4 (B) in paragraph (3), by striking “, and
5 shall be issued in final form not later than 6
6 months after the date of enactment of this
7 Act”;

8 (4) in section 505(a) (15 U.S.C. 6805(a))—

9 (A) by striking “This subtitle” and all that
10 follows through “as follows:” and inserting
11 “Subject to subtitle B of the Consumer Finan-
12 cial Protection Act of 2010, this subtitle and
13 the regulations prescribed thereunder shall be
14 enforced by the Bureau of Consumer Financial
15 Protection, the Federal functional regulators,
16 the State insurance authorities, and the Federal
17 Trade Commission with respect to financial in-
18 stitutions and other persons subject to their ju-
19 risdiction under applicable law, as follows:”;

20 (B) in paragraph (1)—

21 (i) in the matter preceding subpara-
22 graph (A), by inserting “by the appro-
23 priate Federal banking agency, as defined
24 in section 3(q) of the Federal Deposit In-
25 surance Act,” after “Act,”;

1964

1 (ii) in subparagraph (A), by striking
2 “, by the Office of the Comptroller of the
3 Currency”;

4 (iii) in subparagraph (B), by striking
5 “, by the Board of Governors of the Fed-
6 eral Reserve System”;

7 (iv) in subparagraph (C), by striking
8 “, by the Board of Directors of the Federal
9 Deposit Insurance Corporation”; and

10 (v) in subparagraph (D), by striking
11 “, by the Director of the Office of Thrift
12 Supervision”; and

13 (C) by adding at the end the following:

14 “(8) Under subtitle E of the Consumer Finan-
15 cial Protection Act of 2010, by the Bureau of Con-
16 sumer Financial Protection, in the case of any finan-
17 cial institution and other covered person or service
18 provider that is subject to the jurisdiction of the Bu-
19 reau and any person subject to this subtitle, but not
20 with respect to the standards under section 501.”;

21 (5) in section 505(b)(1) (15 U.S.C.
22 6805(b)(1)), by inserting “, other than the Bureau
23 of Consumer Financial Protection,” after “sub-
24 section (a)”;

1965

1 (6) in section 507(b) (15 U.S.C. 6807), by
2 striking “Federal Trade Commission” and inserting
3 “Bureau of Consumer Financial Protection”.

4 **SEC. 1094. AMENDMENTS TO THE HOME MORTGAGE DIS-**
5 **CLOSURE ACT OF 1975.**

6 The Home Mortgage Disclosure Act of 1975 (12
7 U.S.C. 2801 et seq.) is amended—

8 (1) by striking “Board” each place that term
9 appears, other than in sections 303, 304(h), 305(b)
10 (as amended by this section), and 307(a) (as amend-
11 ed by this section) and inserting “Bureau”.

12 (2) in section 303 (12 U.S.C. 2802)—

13 (A) by redesignating paragraphs (1)
14 through (6) as paragraphs (2) through (7), re-
15 spectively; and

16 (B) by inserting before paragraph (2) the
17 following:

18 “(1) the term ‘Bureau’ means the Bureau of
19 Consumer Financial Protection;”;

20 (3) in section 304 (12 U.S.C. 2803)—

21 (A) in subsection (b)—

22 (i) in paragraph (4), by inserting
23 “age,” before “and gender”;

24 (ii) in paragraph (3), by striking
25 “and” at the end;

1966

1 (iii) in paragraph (4), by striking the
2 period at the end and inserting a semi-
3 colon; and

4 (iv) by adding at the end the fol-
5 lowing:

6 “(5) the number and dollar amount of mort-
7 gage loans grouped according to measurements of—

8 “(A) the total points and fees payable at
9 origination in connection with the mortgage as
10 determined by the Bureau, taking into account
11 15 U.S.C. 1602(aa)(4);

12 “(B) the difference between the annual
13 percentage rate associated with the loan and a
14 benchmark rate or rates for all loans;

15 “(C) the term in months of any prepay-
16 ment penalty or other fee or charge payable on
17 repayment of some portion of principal or the
18 entire principal in advance of scheduled pay-
19 ments; and

20 “(D) such other information as the Bureau
21 may require; and

22 “(6) the number and dollar amount of mort-
23 gage loans and completed applications grouped ac-
24 cording to measurements of—

1967

1 “(A) the value of the real property pledged
2 or proposed to be pledged as collateral;

3 “(B) the actual or proposed term in
4 months of any introductory period after which
5 the rate of interest may change;

6 “(C) the presence of contractual terms or
7 proposed contractual terms that would allow the
8 mortgagor or applicant to make payments other
9 than fully amortizing payments during any por-
10 tion of the loan term;

11 “(D) the actual or proposed term in
12 months of the mortgage loan;

13 “(E) the channel through which applica-
14 tion was made, including retail, broker, and
15 other relevant categories;

16 “(F) as the Bureau may determine to be
17 appropriate, a unique identifier that identifies
18 the loan originator as set forth in section 1503
19 of the S.A.F.E. Mortgage Licensing Act of
20 2008;

21 “(G) as the Bureau may determine to be
22 appropriate, a universal loan identifier;

23 “(H) as the Bureau may determine to be
24 appropriate, the parcel number that cor-

1968

1 responds to the real property pledged or pro-
2 posed to be pledged as collateral;

3 “(I) the credit score of mortgage appli-
4 cants and mortgagors, in such form as the Bu-
5 reau may prescribe; and

6 “(J) such other information as the Bureau
7 may require.”;

8 (B) by striking subsection (h) and insert-
9 ing the following:

10 “(h) SUBMISSION TO AGENCIES.—

11 “(1) IN GENERAL.—The data required to be
12 disclosed under subsection (b) shall be submitted to
13 the Bureau or to the appropriate agency for the in-
14 stitution reporting under this title, in accordance
15 with rules prescribed by the Bureau. Notwith-
16 standing the requirement of subsection (a)(2)(A) for
17 disclosure by census tract, the Bureau, in consulta-
18 tion with other appropriate agencies described in
19 paragraph (2) and, after notice and comment, shall
20 develop regulations that—

21 “(A) prescribe the format for such diselo-
22 sures, the method for submission of the data to
23 the appropriate agency, and the procedures for
24 disclosing the information to the public;

1969

1 “(B) require the collection of data required
2 to be disclosed under subsection (b) with re-
3 spect to loans sold by each institution reporting
4 under this title;

5 “(C) require disclosure of the class of the
6 purchaser of such loans;

7 “(D) permit any reporting institution to
8 submit in writing to the Bureau or to the ap-
9 propriate agency such additional data or expla-
10 nations as it deems relevant to the decision to
11 originate or purchase mortgage loans; and

12 “(E) modify or require modification of
13 itemized information, for the purpose of pro-
14 tecting the privacy interests of the mortgage
15 applicants or mortgagors, that is or will be
16 available to the public.

17 “(2) OTHER APPROPRIATE AGENCIES.—The ap-
18 propriate agencies described in this paragraph are—

19 “(A) the appropriate Federal banking
20 agencies, as defined in section 3(q) of the Fed-
21 eral Deposit Insurance Act (12 U.S.C.
22 1813(q)), with respect to the entities that are
23 subject to the jurisdiction of each such agency,
24 respectively;

1970

1 “(B) the Federal Deposit Insurance Cor-
2 poration for banks insured by the Federal De-
3 posit Insurance Corporation (other than mem-
4 bers of the Federal Reserve System), mutual
5 savings banks, insured State branches of for-
6 eign banks, and any other depository institution
7 described in section 303(2)(A) which is not oth-
8 erwise referred to in this paragraph;

9 “(C) the National Credit Union Adminis-
10 tration Board with respect to credit unions; and

11 “(D) the Secretary of Housing and Urban
12 Development with respect to other lending insti-
13 tutions not regulated by the agencies referred
14 to in subparagraph (A) or (B).

15 “(3) RULES FOR MODIFICATIONS UNDER PARA-
16 GRAPH (1).—

17 “(A) APPLICATION.—A modification under
18 paragraph (1)(E) shall apply to information
19 concerning—

20 “(i) credit score data described in
21 subsection (b)(6)(I), in a manner that is
22 consistent with the purpose described in
23 paragraph (1)(E); and

24 “(ii) age or any other category of data
25 described in paragraph (5) or (6) of sub-

1971

1 section (b), as the Bureau determines to be
2 necessary to satisfy the purpose described
3 in paragraph (1)(E), and in a manner con-
4 sistent with that purpose.

5 “(B) STANDARDS.—The Bureau shall pre-
6 scribe standards for any modification under
7 paragraph (1)(E) to effectuate the purposes of
8 this title, in light of the privacy interests of
9 mortgage applicants or mortgagors. Where nec-
10 essary to protect the privacy interests of mort-
11 gage applicants or mortgagors, the Bureau
12 shall provide for the disclosure of information
13 described in subparagraph (A) in aggregate or
14 other reasonably modified form, in order to ef-
15 fectuate the purposes of this title.”;

16 (C) in subsection (i), by striking “sub-
17 section (b)(4)” and inserting “subsections
18 (b)(4), (b)(5), and (b)(6)”;

19 (D) in subsection (j)—

20 (i) by striking paragraph (3) and in-
21 serting the following:

22 “(3) CHANGE OF FORM NOT REQUIRED.—A de-
23 pository institution meets the disclosure requirement
24 of paragraph (1) if the institution provides the infor-

1972

1 mation required under such paragraph in such for-
2 mats as the Bureau may require”; and

3 (ii) in paragraph (2)(A), by striking
4 “in the format in which such information
5 is maintained by the institution” and in-
6 serting “in such formats as the Bureau
7 may require”;

8 (E) in subsection (m), by striking para-
9 graph (2) and inserting the following:

10 “(2) FORM OF INFORMATION.—In complying
11 with paragraph (1), a depository institution shall
12 provide the person requesting the information with
13 a copy of the information requested in such formats
14 as the Bureau may require.”; and

15 (F) by adding at the end the following:

16 “(n) TIMING OF CERTAIN DISCLOSURES.—The data
17 required to be disclosed under subsection (b) shall be sub-
18 mitted to the Bureau or to the appropriate agency for any
19 institution reporting under this title, in accordance with
20 regulations prescribed by the Bureau. Institutions shall
21 not be required to report new data under paragraph (5)
22 or (6) of subsection (b) before the first January 1 that
23 occurs after the end of the 9-month period beginning on
24 the date on which regulations are issued by the Bureau
25 in final form with respect to such disclosures.”;

1973

1 (4) in section 305 (12 U.S.C. 2804)—

2 (A) by striking subsection (b) and insert-
3 ing the following:

4 “(b) POWERS OF CERTAIN OTHER AGENCIES.—

5 “(1) IN GENERAL.—Subject to subtitle B of the
6 Consumer Financial Protection Act of 2010, compli-
7 ance with the requirements of this title shall be en-
8 forced—

9 “(A) under section 8 of the Federal De-
10 posit Insurance Act, the appropriate Federal
11 banking agency, as defined in section 3(q) of
12 the Federal Deposit Insurance Act (12 U.S.C.
13 1813(q)), with respect to—

14 “(i) any national bank or Federal sav-
15 ings association, and any Federal branch
16 or Federal agency of a foreign bank;

17 “(ii) any member bank of the Federal
18 Reserve System (other than a national
19 bank), branch or agency of a foreign bank
20 (other than a Federal branch, Federal
21 agency, and insured State branch of a for-
22 eign bank), commercial lending company
23 owned or controlled by a foreign bank, and
24 any organization operating under section
25 25 or 25A of the Federal Reserve Act; and

1974

1 “(iii) any bank or State savings asso-
2 ciation insured by the Federal Deposit In-
3 surance Corporation (other than a member
4 of the Federal Reserve System), any mu-
5 tual savings bank as, defined in section
6 3(f) of the Federal Deposit Insurance Act
7 (12 U.S.C. 1813(f)), any insured State
8 branch of a foreign bank, and any other
9 depository institution not referred to in
10 this paragraph or subparagraph (B) or
11 (C);

12 “(B) under subtitle E of the Consumer Fi-
13 nancial Protection Act of 2010, by the Bureau,
14 with respect to any person subject to this sub-
15 title;

16 “(C) under the Federal Credit Union Act,
17 by the Administrator of the National Credit
18 Union Administration with respect to any in-
19 sured credit union; and

20 “(D) with respect to other lending institu-
21 tions, by the Secretary of Housing and Urban
22 Development.

23 “(2) INCORPORATED DEFINITIONS.—The terms
24 used in paragraph (1) that are not defined in this
25 title or otherwise defined in section 3(s) of the Fed-

1975

1 eral Deposit Insurance Act (12 U.S.C. 1813(s))
2 shall have the same meanings as in section 1(b) of
3 the International Banking Act of 1978 (12 U.S.C.
4 3101).”; and

5 (B) by adding at the end the following:

6 “(d) OVERALL ENFORCEMENT AUTHORITY OF THE
7 BUREAU OF CONSUMER FINANCIAL PROTECTION.—Sub-
8 ject to subtitle B of the Consumer Financial Protection
9 Act of 2010, enforcement of the requirements imposed
10 under this title is committed to each of the agencies under
11 subsection (b). To facilitate research, examinations, and
12 enforcement, all data collected pursuant to section 302
13 shall be available to the entities listed under subsection
14 (b). The Bureau may exercise its authorities under the
15 Consumer Financial Protection Act of 2010 to exercise
16 principal authority to examine and enforce compliance by
17 any person with the requirements of this title.”;

18 (5) in section 306 (12 U.S.C. 2805(b)), by
19 striking subsection (b) and inserting the following:

20 “(b) EXEMPTION AUTHORITY.—The Bureau may, by
21 regulation, exempt from the requirements of this title any
22 State-chartered depository institution within any State or
23 subdivision thereof, if the agency determines that, under
24 the law of such State or subdivision, that institution is
25 subject to requirements that are substantially similar to

1976

1 those imposed under this title, and that such law contains
2 adequate provisions for enforcement. Notwithstanding any
3 other provision of this subsection, compliance with the re-
4 quirements imposed under this subsection shall be en-
5 forced by the Office of the Comptroller of the Currency
6 under section 8 of the Federal Deposit Insurance Act, in
7 the case of national banks and Federal savings associa-
8 tions, the deposits of which are insured by the Federal
9 Deposit Insurance Corporation.”; and

10 (6) by striking section 307 (12 U.S.C. 2806)

11 and inserting the following:

12 **“SEC. 307. COMPLIANCE IMPROVEMENT METHODS.**

13 “(a) IN GENERAL.—

14 “(1) CONSULTATION REQUIRED.—The Director
15 of the Bureau of Consumer Financial Protection,
16 with the assistance of the Secretary, the Director of
17 the Bureau of the Census, the Board of Governors
18 of the Federal Reserve System, the Federal Deposit
19 Insurance Corporation, and such other persons as
20 the Bureau deems appropriate, shall develop or as-
21 sist in the improvement of, methods of matching ad-
22 dresses and census tracts to facilitate compliance by
23 depository institutions in as economical a manner as
24 possible with the requirements of this title.

1977

1 “(2) AUTHORIZATION OF APPROPRIATIONS.—

2 There are authorized to be appropriated, such sums
3 as may be necessary to carry out this subsection.

4 “(3) CONTRACTING AUTHORITY.—The Director
5 of the Bureau of Consumer Financial Protection is
6 authorized to utilize, contract with, act through, or
7 compensate any person or agency in order to carry
8 out this subsection.

9 “(b) RECOMMENDATIONS TO CONGRESS.—The Di-
10 rector of the Bureau of Consumer Financial Protection
11 shall recommend to the Committee on Banking, Housing,
12 and Urban Affairs of the Senate and the Committee on
13 Financial Services of the House of Representatives, such
14 additional legislation as the Director of the Bureau of
15 Consumer Financial Protection deems appropriate to
16 carry out the purpose of this title.”.

17 **SEC. 1095. 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 subsection (a)—

22 (A) by striking “Compliance” and all that
23 follows through the end of paragraph (1) and
24 inserting the following: “Subject to subtitle B
25 of the Consumer Financial Protection Act of

1978

1 2010, compliance with the requirements im-
2 posed under this Act shall be enforced under—
3 “(1) section 8 of the Federal Deposit Insurance
4 Act, by the appropriate Federal banking agency (as
5 defined in section 3(q) of that Act), with respect
6 to—

7 “(A) insured depository institutions (as de-
8 fined in section 3(c)(2) of that Act);

9 “(B) depository institutions described in
10 clause (i), (ii), or (iii) of section 19(b)(1)(A) of
11 the Federal Reserve Act which are not insured
12 depository institutions (as defined in section
13 3(c)(2) of the Federal Deposit Insurance Act);
14 and

15 “(C) depository institutions described in
16 clause (v) or (vi) of section 19(b)(1)(A) of the
17 Federal Reserve Act which are not insured de-
18 pository institutions (as defined in section
19 3(c)(2) of the Federal Deposit Insurance
20 Act);”;

21 (B) in paragraph (2), by striking “and” at
22 the end;

23 (C) in paragraph (3), by striking the pe-
24 riod at the end and inserting “; and”; and

25 (D) by adding at the end the following:

1979

1 “(4) subtitle E of the Consumer Financial Pro-
2 tection Act of 2010, by the Bureau of Consumer Fi-
3 nancial Protection, with respect to any person sub-
4 ject to this Act.”; and

5 (2) in subsection (b)(2), by inserting before the
6 period at the end the following: “, subject to subtitle
7 B of the Consumer Financial Protection Act of
8 2010”.

9 **SEC. 1096. AMENDMENTS TO THE HOME OWNERSHIP AND**
10 **EQUITY PROTECTION ACT OF 1994.**

11 The Home Ownership and Equity Protection Act of
12 1994 (15 U.S.C. 1601 note) is amended—

13 (1) in section 158(a), by striking “Board of
14 Governors of the Federal Reserve System, in con-
15 sultation with the Consumer Advisory Council of the
16 Board” and inserting “Bureau, in consultation with
17 the Advisory Board to the Bureau”; and

18 (2) in section 158(b), by striking “Board of
19 Governors of the Federal Reserve System” and in-
20 sserting “Bureau”.

21 **SEC. 1097. AMENDMENTS TO THE OMNIBUS APPROPRIA-**
22 **TIONS ACT, 2009.**

23 Section 626 of the Omnibus Appropriations Act,
24 2009 (15 U.S.C. 1638 note) is amended—

1980

1 (1) by striking subsection (a) and inserting the
2 following:

3 “(a)(1) The Bureau of Consumer Financial Protec-
4 tion shall have authority to prescribe rules with respect
5 to mortgage loans in accordance with section 553 of title
6 5, United States Code. Such rulemaking shall relate to
7 unfair or deceptive acts or practices regarding mortgage
8 loans, which may include unfair or deceptive acts or prac-
9 tices involving loan modification and foreclosure rescue
10 services. Any violation of a rule prescribed under this
11 paragraph shall be treated as a violation of a rule prohib-
12 iting unfair, deceptive, or abusive acts or practices under
13 the Consumer Financial Protection Act of 2010 and a vio-
14 lation of a rule under section 18 of the Federal Trade
15 Commission Act (15 U.S.C. 57a) regarding unfair or de-
16 ceptive acts or practices.

17 “(2) The Bureau of Consumer Financial Protection
18 shall enforce the rules issued under paragraph (1) in the
19 same manner, by the same means, and with the same ju-
20 risdiction, powers, and duties, as though all applicable
21 terms and provisions of the Consumer Financial Protec-
22 tion Act of 2010 were incorporated into and made part
23 of this subsection.

24 “(3) Subject to subtitle B of the Consumer Financial
25 Protection Act of 2010, the Federal Trade Commission

1981

1 shall enforce the rules issued under paragraph (1), in the
2 same manner, by the same means, and with the same ju-
3 risdiction, as though all applicable terms and provisions
4 of the Federal Trade Commission Act were incorporated
5 into and made part of this section.”; and

6 (2) in subsection (b)—

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

9 “(1) Except as provided in paragraph (6), in
10 any case in which the attorney general of a State
11 has reason to believe that an interest of the resi-
12 dents of the State has been or is threatened or ad-
13 versely affected by the engagement of any person
14 subject to a rule prescribed under subsection (a) in
15 practices that violate such rule, the State, as *parens*
16 *patriae*, may bring a civil action on behalf of its resi-
17 dents in an appropriate district court of the United
18 States or other court of competent jurisdiction—

19 “(A) to enjoin that practice;

20 “(B) to enforce compliance with the rule;

21 “(C) to obtain damages, restitution, or
22 other compensation on behalf of the residents of
23 the State; or

24 “(D) to obtain penalties and relief provided
25 under the Consumer Financial Protection Act

1982

1 of 2010, the Federal Trade Commission Act,
2 and such other relief as the court deems appro-
3 priate.”;

4 (B) in paragraphs (2) and (3), by striking
5 “the primary Federal regulator” each time the
6 term appears and inserting “the Bureau of
7 Consumer Financial Protection or the Commis-
8 sion, as appropriate”;

9 (C) in paragraph (3), by inserting “and
10 subject to subtitle B of the Consumer Financial
11 Protection Act of 2010,” after “paragraph
12 (2),”; and

13 (D) in paragraph (6), by striking “the pri-
14 mary Federal regulator” each place that term
15 appears and inserting “the Bureau of Con-
16 sumer Financial Protection or the Commis-
17 sion”.

18 **SEC. 1098. AMENDMENTS TO THE REAL ESTATE SETTLE-**
19 **MENT PROCEDURES ACT OF 1974.**

20 The Real Estate Settlement Procedures Act of 1974
21 (12 U.S.C. 2601 et seq.) is amended—

22 (1) in section 3 (12 U.S.C. 2602)—

23 (A) in paragraph (7), by striking “and” at
24 the end;

1983

1 (B) in paragraph (8), by striking the pe-
2 riod at the end and inserting “; and”; and

3 (C) by adding at the end the following:

4 “(9) the term ‘Bureau’ means the Bureau of
5 Consumer Financial Protection.”;

6 (2) in section 4 (12 U.S.C. 2603)—

7 (A) in subsection (a), by striking the first
8 sentence and inserting the following: “The Bu-
9 reau shall publish a single, integrated disclosure
10 for mortgage loan transactions (including real
11 estate settlement cost statements) which in-
12 cludes the disclosure requirements of this sec-
13 tion and section 5, in conjunction with the dis-
14 closure requirements of the Truth in Lending
15 Act that, taken together, may apply to a trans-
16 action that is subject to both or either provi-
17 sions of law. The purpose of such model disclo-
18 sure shall be to facilitate compliance with the
19 disclosure requirements of this title and the
20 Truth in Lending Act, and to aid the borrower
21 or lessee in understanding the transaction by
22 utilizing readily understandable language to
23 simplify the technical nature of the disclo-
24 sures.”;

1984

1 (B) by striking “Secretary” each place
2 that term appears and inserting “Bureau”; and

3 (C) by striking “form” each place that
4 term appears and inserting “forms”;

5 (3) in section 5 (12 U.S.C. 2604)—

6 (A) by striking “Secretary” each place that
7 term appears and inserting “Bureau”; and

8 (B) in subsection (a), by striking the first
9 sentence and inserting the following: “The Bu-
10 reau shall prepare and distribute booklets joint-
11 ly addressing compliance with the requirements
12 of the Truth in Lending Act and the provisions
13 of this title, in order to help persons borrowing
14 money to finance the purchase of residential
15 real estate better to understand the nature and
16 costs of real estate settlement services.”;

17 (4) in section 6(j)(3) (12 U.S.C. 2605(j)(3))—

18 (A) by striking “Secretary” and inserting
19 “Bureau”; and

20 (B) by striking “, by regulations that shall
21 take effect not later than April 20, 1991,”;

22 (5) in section 7(b) (12 U.S.C. 2606(b)) by
23 striking “Secretary” and inserting “Bureau”;

24 (6) in section 8(c)(5) (12 U.S.C. 2607(c)(5)),
25 by striking “Secretary” and inserting “Bureau”;

1985

1 (7) in section 8(d) (12 U.S.C. 2607(d))—

2 (A) in the subsection heading, by inserting

3 “BUREAU AND” before “SECRETARY”; and

4 (B) by striking paragraph (4), and insert-
5 ing the following:

6 “(4) The Bureau, the Secretary, or the attorney
7 general or the insurance commissioner of any State
8 may bring an action to enjoin violations of this sec-
9 tion. Except, to the extent that a person is subject
10 to the jurisdiction of the Bureau, the Secretary, or
11 the attorney general or the insurance commissioner
12 of any State, the Bureau shall have primary author-
13 ity to enforce or administer this section, subject to
14 subtitle B of the Consumer Financial Protection Act
15 of 2010.”;

16 (8) in section 10(c) (12 U.S.C. 2609(c) and
17 (d)), by striking “Secretary” and inserting “Bu-
18 reau”;

19 (9) in section 16 (12 U.S.C. 2614), by inserting
20 “the Bureau,” before “the Secretary”;

21 (10) in section 18 (12 U.S.C. 2616), by striking
22 “Secretary” each place that term appears and in-
23 serting “Bureau”; and

24 (11) in section 19 (12 U.S.C. 2617)—

1986

1 (A) in the section heading by striking
2 “**SECRETARY**” and inserting “**BUREAU**”;

3 (B) in subsection (a), by striking “Sec-
4 retary” each place that term appears and in-
5 serting “Bureau”; and

6 (C) in subsections (b) and (c), by striking
7 “the Secretary” each place that term appears
8 and inserting “the Bureau”.

9 **SEC. 1098A. AMENDMENTS TO THE INTERSTATE LAND**
10 **SALES FULL DISCLOSURE ACT.**

11 The Interstate Land Sales Full Disclosure Act (15
12 U.S.C. 1701 et seq.) is amended—

13 (1) by striking “Secretary” each place that
14 term appears and inserting “Director”;

15 (2) by striking “Department of Housing and
16 Urban Development” each place that term appears
17 and inserting “Bureau of Consumer Financial Pro-
18 tection”;

19 (3) by striking “Department” each place that
20 term appears and inserting “Bureau”;

21 (4) in section 1402 (15 U.S.C. 1701)—

22 (A) by striking paragraph (1) and insert-
23 ing the following:

24 “(1) ‘Director’ means the Director of the Bu-
25 reau of Consumer Financial Protection;”;

1987

1 (B) in paragraph (10), by striking “and”
2 at the end;

3 (C) in paragraph (11), by striking the pe-
4 riod at the end and inserting “; and”; and

5 (D) by adding at the end the following:

6 “(12) ‘Bureau’ means the Bureau of Consumer
7 Financial Protection.”; and

8 (5) in section 1416(a) (15 U.S.C. 1715(a)), by
9 striking “Secretary of Housing and Urban Develop-
10 ment” and inserting “Director of the Bureau of
11 Consumer Financial Protection”.

12 **SEC. 1099. AMENDMENTS TO THE RIGHT TO FINANCIAL**
13 **PRIVACY ACT OF 1978.**

14 The Right to Financial Privacy Act of 1978 (12
15 U.S.C. 3401 et seq.) is amended—

16 (1) in section 1101—

17 (A) in paragraph (6)—

18 (i) in subparagraph (A), by inserting
19 “and” after the semicolon;

20 (ii) in subparagraph (B), by striking
21 “and” at the end; and

22 (iii) by striking subparagraph (C);
23 and

24 (B) in paragraph (7), by striking subpara-
25 graph (B), and inserting the following:

1988

1 “(B) the Bureau of Consumer Financial
2 Protection;”;

3 (2) in section 1112(e) (12 U.S.C. 3412(e)), by
4 striking “and the Commodity Futures Trading Com-
5 mission is permitted” and inserting “the Commodity
6 Futures Trading Commission, and the Bureau of
7 Consumer Financial Protection is permitted”; and

8 (3) in section 1113 (12 U.S.C. 3413), by add-
9 ing at the end the following new subsection:

10 “(r) DISCLOSURE TO THE BUREAU OF CONSUMER
11 FINANCIAL PROTECTION.—Nothing in this title shall
12 apply to the examination by or disclosure to the Bureau
13 of Consumer Financial Protection of financial records or
14 information in the exercise of its authority with respect
15 to a financial institution.”.

16 **SEC. 1100. AMENDMENTS TO THE SECURE AND FAIR EN-**
17 **FORCEMENT FOR MORTGAGE LICENSING ACT**
18 **OF 2008.**

19 The S.A.F.E. Mortgage Licensing Act of 2008 (12
20 U.S.C. 5101 et seq.) is amended—

21 (1) by striking “a Federal banking agency”
22 each place that term appears, other than in para-
23 graphs (7) and (11) of section 1503 and section
24 1507(a)(1), and inserting “the Bureau”;

1989

1 (2) by striking “Federal banking agencies”
2 each place that term appears and inserting “Bu-
3 reau”; and

4 (3) by striking “Secretary” each place that
5 term appears and inserting “Director”;

6 (4) in section 1503 (12 U.S.C. 5102)—

7 (A) by redesignating paragraphs (2)
8 through (12) as (3) through (13), respectively;

9 (B) by striking paragraph (1) and insert-
10 ing the following:

11 “(1) BUREAU.—The term ‘Bureau’ means the
12 Bureau of Consumer Financial Protection.

13 “(2) FEDERAL BANKING AGENCY.—The term
14 ‘Federal banking agency’ means the Board of Gov-
15 ernors of the Federal Reserve System, the Office of
16 the Comptroller of the Currency, the National Credit
17 Union Administration, and the Federal Deposit In-
18 surance Corporation.”; and

19 (C) by striking paragraph (10), as so des-
20 ignated by this section, and inserting the fol-
21 lowing:

22 “(10) DIRECTOR.—The term ‘Director’ means
23 the Director of the Bureau of Consumer Financial
24 Protection.”; and

25 (5) in section 1507 (12 U.S.C. 5106)—

1990

1 (A) in subsection (a)—

2 (i) by striking paragraph (1) and in-
3 serting the following:

4 “(1) IN GENERAL.—The Bureau shall develop
5 and maintain a system for registering employees of
6 a depository institution, employees of a subsidiary
7 that is owned and controlled by a depository institu-
8 tion and regulated by a Federal banking agency, or
9 employees of an institution regulated by the Farm
10 Credit Administration, as registered loan originators
11 with the Nationwide Mortgage Licensing System and
12 Registry. The system shall be implemented before
13 the end of the 1-year period beginning on the date
14 of enactment of the Consumer Financial Protection
15 Act of 2010.”; and

16 (ii) in paragraph (2)—

17 (I) by striking “appropriate Fed-
18 eral banking agency and the Farm
19 Credit Administration” and inserting
20 “Bureau”; and

21 (II) by striking “employees’s
22 identity” and inserting “identity of
23 the employee”; and

24 (B) in subsection (b), by striking “through
25 the Financial Institutions Examination Council,

1991

1 and the Farm Credit Administration”, and in-
2 sserting “and the Bureau of Consumer Financial
3 Protection”;

4 (6) in section 1508 (12 U.S.C. 5107)—

5 (A) by striking the section heading and in-
6 sserting the following: “**SEC. 1508. BUREAU OF**
7 **CONSUMER FINANCIAL PROTECTION**
8 **BACKUP AUTHORITY TO ESTABLISH LOAN**
9 **ORIGINATOR LICENSING SYSTEM.**”; and

10 (B) by adding at the end the following:

11 “(f) REGULATION AUTHORITY.—

12 “(1) IN GENERAL.—The Bureau is authorized
13 to promulgate regulations setting minimum net
14 worth or surety bond requirements for residential
15 mortgage loan originators and minimum require-
16 ments for recovery funds paid into by loan origina-
17 tors.

18 “(2) CONSIDERATIONS.—In issuing regulations
19 under paragraph (1), the Bureau shall take into ac-
20 count the need to provide originators adequate in-
21 centives to originate affordable and sustainable
22 mortgage loans, as well as the need to ensure a com-
23 petitive origination market that maximizes consumer
24 access to affordable and sustainable mortgage
25 loans.”;

1992

1 (7) by striking section 1510 (12 U.S.C. 5109)

2 and inserting the following:

3 **“SEC. 1510. FEES.**

4 “The Bureau, the Farm Credit Administration, and
5 the Nationwide Mortgage Licensing System and Registry
6 may charge reasonable fees to cover the costs of maintain-
7 ing and providing access to information from the Nation-
8 wide Mortgage Licensing System and Registry, to the ex-
9 tent that such fees are not charged to consumers for ac-
10 cess to such system and registry.”;

11 (8) by striking section 1513 (12 U.S.C. 5112)

12 and inserting the following:

13 **“SEC. 1513. LIABILITY PROVISIONS.**

14 “The Bureau, any State official or agency, or any or-
15 ganization serving as the administrator of the Nationwide
16 Mortgage Licensing System and Registry or a system es-
17 tablished by the Director under section 1509, or any offi-
18 cer or employee of any such entity, shall not be subject
19 to any civil action or proceeding for monetary damages
20 by reason of the good faith action or omission of any offi-
21 cer or employee of any such entity, while acting within
22 the scope of office or employment, relating to the collec-
23 tion, furnishing, or dissemination of information con-
24 cerning persons who are loan originators or are applying
25 for licensing or registration as loan originators.”; and

1993

1 (9) in section 1514 (12 U.S.C. 5113) in the
2 section heading, by striking “**UNDER HUD BACKUP**
3 **LICENSING SYSTEM**” and inserting “**BY THE BU-**
4 **REAU**”.

5 **SEC. 1100A. AMENDMENTS TO THE TRUTH IN LENDING ACT.**

6 The Truth in Lending Act (15 U.S.C. 1601 et seq.)
7 is amended—

8 (1) in section 103 (15 U.S.C. 1602)—

9 (A) by redesignating subsections (b)
10 through (bb) as subsections (c) through (cc),
11 respectively; and

12 (B) by inserting after subsection (a) the
13 following:

14 “(b) BUREAU.—The term ‘Bureau’ means the Bu-
15 reau of Consumer Financial Protection.”;

16 (2) by striking “Board” each place that term
17 appears, other than in section 140(d) and sections
18 105(i) and 108(a), as amended by this section, and
19 inserting “Bureau”;

20 (3) by striking “Federal Trade Commission”
21 each place that term appears, other than in section
22 108(c) and section 129(m), as amended by this Act,
23 and other than in the context of a reference to the
24 Federal Trade Commission Act, and inserting “Bu-
25 reau”;

1994

1 (4) in section 105(a) (15 U.S.C. 1604(a)), in
2 the second sentence—

3 (A) by striking “Except in the case of a
4 mortgage referred to in section 103(aa), these
5 regulations may contain such” and inserting
6 “Except with respect to the provisions of sec-
7 tion 129 that apply to a mortgage referred to
8 in section 103(aa), such regulations may con-
9 tain such additional requirements,”; and

10 (B) by inserting “all or” after “exceptions
11 for”;

12 (5) in section 105(b) (15 U.S.C. 1604(b)), by
13 striking the first sentence and inserting the fol-
14 lowing: “The Bureau shall publish a single, inte-
15 grated disclosure for mortgage loan transactions (in-
16 cluding real estate settlement cost statements) which
17 includes the disclosure requirements of this title in
18 conjunction with the disclosure requirements of the
19 Real Estate Settlement Procedures Act of 1974
20 that, taken together, may apply to a transaction that
21 is subject to both or either provisions of law. The
22 purpose of such model disclosure shall be to facili-
23 tate compliance with the disclosure requirements of
24 this title and the Real Estate Settlement Procedures
25 Act of 1974, and to aid the borrower or lessee in un-

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1 derstanding the transaction by utilizing readily un-
2 derstandable language to simplify the technical na-
3 ture of the disclosures.”;

4 (6) in section 105(f)(1) (15 U.S.C. 1604(f)(1)),
5 by inserting “all or” after “from all or part of this
6 title”;

7 (7) in section 105 (15 U.S.C. 1604), by adding
8 at the end the following:

9 “(i) AUTHORITY OF THE BOARD TO
10 PRESCRIBE RULES.—Notwithstanding sub-
11 section (a), the Board shall have authority
12 to prescribe rules under this title with re-
13 spect to a person described in section
14 1029(a) of the Consumer Financial Protec-
15 tion Act of 2010. Regulations prescribed
16 under this subsection may contain such
17 classifications, differentiations, or other
18 provisions, as in the judgment of the
19 Board are necessary or proper to effec-
20 tuate the purposes of this title, to prevent
21 circumvention or evasion thereof, or to fa-
22 cilitate compliance therewith.”;

23 (8) in section 108 (15 U.S.C. 1604), by adding
24 at the end the following:

1996

1 (A) by striking subsection (a) and insert-
2 ing the following:

3 “(a) ENFORCING AGENCIES.—Subject to subtitle B
4 of the Consumer Financial Protection Act of 2010, compli-
5 ance with the requirements imposed under this title shall
6 be enforced under—

7 “(1) section 8 of the Federal Deposit Insurance
8 Act, by the appropriate Federal banking agency, as
9 defined in section 3(q) of the Federal Deposit Insur-
10 ance Act (12 U.S.C. 1813(q)), with respect to—

11 “(A) national banks, Federal savings asso-
12 ciations, and Federal branches and Federal
13 agencies of foreign banks;

14 “(B) member banks of the Federal Reserve
15 System (other than national banks), branches
16 and agencies of foreign banks (other than Fed-
17 eral branches, Federal agencies, and insured
18 State branches of foreign banks), commercial
19 lending companies owned or controlled by for-
20 eign banks, and organizations operating under
21 section 25 or 25A of the Federal Reserve Act;
22 and

23 “(C) banks and State savings associations
24 insured by the Federal Deposit Insurance Cor-
25 poration (other than members of the Federal

1997

1 Reserve System), and insured State branches of
2 foreign banks;

3 “(2) the Federal Credit Union Act, by the Di-
4 rector of the National Credit Union Administration,
5 with respect to any Federal credit union;

6 “(3) the Federal Aviation Act of 1958, by the
7 Secretary of Transportation, with respect to any air
8 carrier or foreign air carrier subject to that Act;

9 “(4) the Packers and Stockyards Act, 1921 (ex-
10 cept as provided in section 406 of that Act), by the
11 Secretary of Agriculture, with respect to any activi-
12 ties subject to that Act;

13 “(5) the Farm Credit Act of 1971, by the Farm
14 Credit Administration with respect to any Federal
15 land bank, Federal land bank association, Federal
16 intermediate credit bank, or production credit asso-
17 ciation; and

18 “(6) subtitle E of the Consumer Financial Pro-
19 tection Act of 2010, by the Bureau, with respect to
20 any person subject to this title.”; and

21 (B) by striking subsection (c) and insert-
22 ing the following:

23 “(c) OVERALL ENFORCEMENT AUTHORITY OF THE
24 FEDERAL TRADE COMMISSION.—Except to the extent
25 that enforcement of the requirements imposed under this

1998

1 title is specifically committed to some other Government
2 agency under any of paragraphs (1) through (5) of sub-
3 section (a), and subject to subtitle B of the Consumer Fi-
4 nancial Protection Act of 2010, the Federal Trade Com-
5 mission shall be authorized to enforce such requirements.
6 For the purpose of the exercise by the Federal Trade
7 Commission of its functions and powers under the Federal
8 Trade Commission Act, a violation of any requirement im-
9 posed under this title shall be deemed a violation of a re-
10 quirement imposed under that Act. All of the functions
11 and powers of the Federal Trade Commission under the
12 Federal Trade Commission Act are available to the Fed-
13 eral Trade Commission to enforce compliance by any per-
14 son with the requirements under this title, irrespective of
15 whether that person is engaged in commerce or meets any
16 other jurisdictional tests under the Federal Trade Com-
17 mission Act.”; and

18 (9) in section 129 (15 U.S.C. 1639), by striking
19 subsection (m) and inserting the following:

20 “(m) CIVIL PENALTIES IN FEDERAL TRADE COM-
21 MISSION ENFORCEMENT ACTIONS.—For purposes of en-
22 forcement by the Federal Trade Commission, any violation
23 of a regulation issued by the Bureau pursuant to sub-
24 section (l)(2) shall be treated as a violation of a rule pro-
25 mulgated under section 18 of the Federal Trade Commis-

1999

1 sion Act (15 U.S.C. 57a) regarding unfair or deceptive
2 acts or practices.”; and

3 (10) in chapter 5 (15 U.S.C. 1667 et seq.)—

4 (A) by striking “the Board” each place
5 that term appears and inserting “the Bureau”;
6 and

7 (B) by striking “The Board” each place
8 that term appears and inserting “The Bureau”.

9 **SEC. 1100B. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.**

10 The Truth in Savings Act (12 U.S.C. 4301 et seq.)
11 is amended—

12 (1) by striking “Board” each place that term
13 appears, other than in section 272(b) (12 U.S.C.
14 4311), and inserting “Bureau”;

15 (2) in section 270(a) (12 U.S.C. 4309)—

16 (A) by striking “Compliance” and all that
17 follows through the end of paragraph (1) and
18 inserting: “Subject to subtitle B of the Con-
19 sumer Financial Protection Act of 2010, com-
20 pliance with the requirements imposed under
21 this subtitle shall be enforced under—

22 “(1) section 8 of the Federal Deposit Insurance
23 Act by the appropriate Federal banking agency (as
24 defined in section 3(q) of that Act), with respect
25 to—

2000

1 “(A) insured depository institutions (as de-
2 fined in section 3(c)(2) of that Act);

3 “(B) depository institutions described in
4 clause (i), (ii), or (iii) of section 19(b)(1)(A) of
5 the Federal Reserve Act which are not insured
6 depository institutions (as defined in section
7 3(c)(2) of the Federal Deposit Insurance Act);
8 and

9 “(C) depository institutions described in
10 clause (v) or (vi) of section 19(b)(1)(A) of the
11 Federal Reserve Act which are not insured de-
12 pository institutions (as defined in section
13 3(c)(2) of the Federal Deposit Insurance
14 Act);”;

15 (B) in paragraph (2), by striking the pe-
16 riod at the end and inserting “; and”; and

17 (C) by adding at the end the following:

18 “(3) subtitle E of the Consumer Financial Pro-
19 tection Act of 2010, by the Bureau, with respect to
20 any person subject to this subtitle.”;

21 (3) in section 272(b) (12 U.S.C. 4311(b)), by
22 striking “regulation prescribed by the Board” each
23 place that term appears and inserting “regulation
24 prescribed by the Bureau”; and

2001

1 (4) in section 274 (12 U.S.C. 4313), by striking
2 paragraph (4) and inserting the following:

3 “(4) BUREAU.—The term ‘Bureau’ means the
4 Bureau of Consumer Financial Protection.”.

5 **SEC. 1100C. AMENDMENTS TO THE TELEMARKETING AND**
6 **CONSUMER FRAUD AND ABUSE PREVENTION**
7 **ACT.**

8 (a) AMENDMENTS TO SECTION 3.—Section 3 of the
9 Telemarketing and Consumer Fraud and Abuse Preven-
10 tion Act (15 U.S.C. 6102) is amended by striking sub-
11 sections (b) and (c) and inserting the following:

12 “(b) RULEMAKING AUTHORITY.—The Commission
13 shall have authority to prescribe rules under subsection
14 (a), in accordance with section 553 of title 5, United
15 States Code. In prescribing a rule under this section that
16 relates to the provision of a consumer financial product
17 or service that is subject to the Consumer Financial Pro-
18 tection Act of 2010, including any enumerated consumer
19 law thereunder, the Commission shall consult with the Bu-
20 reau of Consumer Financial Protection regarding the con-
21 sistency of a proposed rule with standards, purposes, or
22 objectives administered by the Bureau of Consumer Fi-
23 nancial Protection.

24 “(c) VIOLATIONS.—Any violation of any rule pre-
25 scribed under subsection (a)—

2002

1 “(1) shall be treated as a violation of a rule
2 under section 18 of the Federal Trade Commission
3 Act regarding unfair or deceptive acts or practices;
4 and

5 “(2) that is committed by a person subject to
6 the Consumer Financial Protection Act of 2010
7 shall be treated as a violation of a rule under section
8 1031 of that Act regarding unfair, deceptive, or abu-
9 sive acts or practices.”.

10 (b) AMENDMENTS TO SECTION 4.—Section 4(d) of
11 the Telemarketing and Consumer Fraud and Abuse Pre-
12 vention Act (15 U.S.C. 6103(d)) is amended by inserting
13 after “Commission” each place that term appears the fol-
14 lowing: “or the Bureau of Consumer Financial Protec-
15 tion”.

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 that term appears the fol-
20 lowing: “or the Bureau of Consumer Financial Protec-
21 tion”.

22 (d) AMENDMENT TO SECTION 6.—Section 6 of the
23 Telemarketing and Consumer Fraud and Abuse Preven-
24 tion Act (15 U.S.C. 6105) is amended by adding at the
25 end the following:

2003

1 “(d) ENFORCEMENT BY BUREAU OF CONSUMER FI-
2 NANCIAL PROTECTION.—Except as otherwise provided in
3 sections 3(d), 3(e), 4, and 5, and subject to subtitle B
4 of the Consumer Financial Protection Act of 2010, this
5 Act shall be enforced by the Bureau of Consumer Finan-
6 cial Protection under subtitle E of the Consumer Finan-
7 cial Protection Act of 2010, with respect to the offering
8 or provision of a consumer financial product or service
9 subject to that Act.”.

10 **SEC. 1100D. AMENDMENTS TO THE PAPERWORK REDUC-**
11 **TION ACT.**

12 (a) DESIGNATION AS AN INDEPENDENT AGENCY.—
13 Section 2(5) of the Paperwork Reduction Act (44 U.S.C.
14 3502(5)) is amended by inserting “the Bureau of Con-
15 sumer Financial Protection, the Office of Financial Re-
16 search,” after “the Securities and Exchange Commis-
17 sion,”.

18 (b) COMPARABLE TREATMENT.—Section 3513 of
19 title 44, United States Code, is amended by adding at the
20 end the following:

21 “(c) COMPARABLE TREATMENT.—Notwithstanding
22 any other provision of law, the Director shall treat or re-
23 view a rule or order prescribed or proposed by the Director
24 of the Bureau of Consumer Financial Protection on the
25 same terms and conditions as apply to any rule or order

2004

1 prescribed or proposed by the Board of Governors of the
2 Federal Reserve System.”.

3 **SEC. 1100E. ADJUSTMENTS FOR INFLATION IN THE TRUTH**
4 **IN LENDING ACT.**

5 (a) CAPS.—

6 (1) CREDIT TRANSACTIONS.—Section 104(3) of
7 the Truth in Lending Act (15 U.S.C. 1603(3)) is
8 amended by striking “\$25,000” and inserting
9 “\$50,000”.

10 (2) CONSUMER LEASES.—Section 181(1) of the
11 Truth in Lending Act (15 U.S.C. 1667(1)) is
12 amended by striking “\$25,000” and inserting
13 “\$50,000”.

14 (b) ADJUSTMENTS FOR INFLATION.—On and after
15 December 31, 2011, the Bureau shall adjust annually the
16 dollar amounts described in sections 104(3) and 181(1)
17 of the Truth in Lending Act (as amended by this section),
18 by the annual percentage increase in the Consumer Price
19 Index for Urban Wage Earners and Clerical Workers, as
20 published by the Bureau of Labor Statistics, rounded to
21 the nearest multiple of \$100, or \$1,000, as applicable.

22 **SEC. 1100F. SMALL BUSINESS FAIRNESS AND REGULATORY**
23 **TRANSPARENCY.**

24 (a) PANEL REQUIREMENT.—Section 609(d) of title
25 5, United States Code, is amended by striking “means

2005

1 the” and all that follows and inserting the following:

2 “means—

3 “(1) the Environmental Protection Agency;

4 “(2) the Consumer Financial Protection Bureau
5 of the Federal Reserve System; and

6 “(3) the Occupational Safety and Health Ad-
7 ministration of the Department of Labor.”.

8 (b) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—

9 Section 603 of title 5, United States Code, is amended
10 by adding at the end the following:

11 “(d)(1) For a covered agency, as defined in section
12 609(d)(2), each initial regulatory flexibility analysis shall
13 include a description of—

14 “(A) any projected increase in the cost of credit
15 for small entities;

16 “(B) any significant alternatives to the pro-
17 posed rule which accomplish the stated objectives of
18 applicable statutes and which minimize any increase
19 in the cost of credit for small entities; and

20 “(C) advice and recommendations of represent-
21 atives of small entities relating to issues described in
22 subparagraphs (A) and (B) and subsection (b).

23 “(2) A covered agency, as defined in section
24 609(d)(2), shall, for purposes of complying with para-
25 graph (1)(C)—

2006

1 “(A) identify representatives of small entities in
2 consultation with the Chief Counsel for Advocacy of
3 the Small Business Administration; and

4 “(B) collect advice and recommendations from
5 the representatives identified under subparagraph
6 (A) relating to issues described in subparagraphs
7 (A) and (B) of paragraph (1) and subsection (b).”.

8 (c) FINAL REGULATORY FLEXIBILITY ANALYSIS.—
9 Section 604(a) of title 5, United States Code, is amend-
10 ed—

11 (1) in paragraph (4), by striking “and” at the
12 end;

13 (2) in paragraph (5), by striking the period at
14 the end and inserting “; and”; and

15 (3) by adding at the end the following:

16 “(6) for a covered agency, as defined in section
17 609(d)(2), a description of the steps the agency has
18 taken to minimize any additional cost of credit for
19 small entities.”.

20 **SEC. 1100G. EFFECTIVE DATE.**

21 Except as otherwise provided in this subtitle and the
22 amendments made by this subtitle, this subtitle and the
23 amendments made by this subtitle, other than sections
24 1081 and 1082, shall become effective on the designated
25 transfer date.

2007

1 **TITLE XI—FEDERAL RESERVE**
2 **SYSTEM PROVISIONS**

3 **SEC. 1101. FEDERAL RESERVE ACT AMENDMENTS ON**
4 **EMERGENCY LENDING AUTHORITY.**

5 (a) FEDERAL RESERVE ACT.—The third undesig-
6 nated paragraph of section 13 of the Federal Reserve Act
7 (12 U.S.C. 343) (relating to emergency lending authority)
8 is amended—

9 (1) by inserting “(3)(A)” before “In unusual”;

10 (2) by striking “individual, partnership, or cor-
11 poration” the first place that term appears and in-
12 serting the following: “participant in any program or
13 facility with broad-based eligibility”;

14 (3) by striking “exchange for an individual or
15 a partnership or corporation” and inserting “ex-
16 change,”;

17 (4) by striking “such individual, partnership, or
18 corporation” and inserting the following: “such par-
19 ticipant in any program or facility with broad-based
20 eligibility”;

21 (5) by striking “for individuals, partnerships,
22 corporations” and inserting “for any participant in
23 any program or facility with broad-based eligibility”;

24 (6) by striking “may prescribe.” and inserting
25 the following: “may prescribe.

2008

1 “(B)(i) As soon as is practicable after the
2 date of enactment of this subparagraph, the
3 Board shall establish, by regulation, in con-
4 sultation with the Secretary of the Treasury,
5 the policies and procedures governing emer-
6 gency lending under this paragraph. Such poli-
7 cies and procedures shall be designed to ensure
8 that any emergency lending program or facility
9 is for the purpose of providing liquidity to the
10 financial system, and not to aid a failing finan-
11 cial company, and that the security for emer-
12 gency loans is sufficient to protect taxpayers
13 from losses and that any such program is ter-
14 minated in a timely and orderly fashion. The
15 policies and procedures established by the
16 Board shall require that a Federal reserve bank
17 assign, consistent with sound risk management
18 practices and to ensure protection for the tax-
19 payer, a lendable value to all collateral for a
20 loan executed by a Federal reserve bank under
21 this paragraph in determining whether the loan
22 is secured satisfactorily for purposes of this
23 paragraph.

24 “(ii) The Board shall establish procedures
25 to prohibit borrowing from programs and facili-

2009

1 ties by borrowers that are insolvent. Such pro-
2 cedures may include a certification from the
3 chief executive officer (or other authorized offi-
4 cer) of the borrower, at the time the borrower
5 initially borrows under the program or facility
6 (with a duty by the borrower to update the cer-
7 tification if the information in the certification
8 materially changes), that the borrower is not in-
9 solvent. A borrower shall be considered insol-
10 vent for purposes of this subparagraph, if the
11 borrower is in bankruptcy, resolution under title
12 II of the Restoring American Financial Sta-
13 bility Act of 2010, or any other Federal or
14 State insolvency proceeding.

15 “(iii) A program or facility that is struc-
16 tured to remove assets from the balance sheet
17 of a single and specific company, or that is es-
18 tablished for the purpose of assisting a single
19 and specific company avoid bankruptcy, resolu-
20 tion under title II of the Restoring American
21 Financial Stability Act of 2010, or any other
22 Federal or State insolvency proceeding, shall
23 not be considered a program or facility with
24 broad-based eligibility.

2010

1 “(iv) The Board may not establish any
2 program or facility under this paragraph with-
3 out the prior approval of the Secretary of the
4 Treasury.

5 “(C) The Board shall provide to the Com-
6 mittee on Banking, Housing, and Urban Affairs
7 of the Senate and the Committee on Financial
8 Services of the House of Representatives—

9 “(i) not later than 7 days after the
10 Board authorizes any loan or other finan-
11 cial assistance under this paragraph, a re-
12 port that includes—

13 “(I) the justification for the exer-
14 cise of authority to provide such as-
15 sistance;

16 “(II) the identity of the recipi-
17 ents of such assistance;

18 “(III) the date and amount of
19 the assistance, and form in which the
20 assistance was provided; and

21 “(IV) the material terms of the
22 assistance, including—

23 “(aa) duration;

24 “(bb) collateral pledged and
25 the value thereof;

2012

1 “(D) The information required to be sub-
2 mitted to Congress under subparagraph (C) re-
3 lated to—

4 “(i) the identity of the participants in
5 an emergency lending program or facility
6 commenced under this paragraph;

7 “(ii) the amounts borrowed by each
8 participant in any such program or facility;

9 “(iii) identifying details concerning
10 the assets or collateral held by, under, or
11 in connection with such a program or facil-
12 ity,

13 shall be kept confidential, upon the written re-
14 quest of the Chairman of the Board, in which
15 case such information shall be made available
16 only to the Chairpersons or Ranking Members
17 of the Committees described in subparagraph
18 (C).

19 “(E) If an entity to which a Federal re-
20 serve bank has provided a loan under this para-
21 graph becomes a covered financial company, as
22 defined in section 203 of the Restoring Amer-
23 ican Financial Stability Act of 2010, at any
24 time while such loan is outstanding, and the
25 Federal reserve bank incurs a realized net loss

2013

1 on the loan, then the Federal reserve bank shall
2 have a claim equal to the amount of the net re-
3 realized loss against the covered entity, with the
4 same priority as an obligation to the Secretary
5 of the Treasury under sections 210(n) and
6 210(o) of the Restoring American Financial
7 Stability Act of 2010.”.

8 (b) CONFORMING AMENDMENT.—Section 507(a)(2)
9 of title 11, United States Code, is amended by inserting
10 “unsecured claims of any Federal reserve bank related to
11 loans made through programs or facilities authorized
12 under section 13(3) of the Federal Reserve Act (12 U.S.C.
13 343),” after “this title,”.

14 (c) REFERENCES.—On and after the date of enact-
15 ment of this Act, any reference in any provision of Federal
16 law to the third undesignated paragraph of section 13 of
17 the Federal Reserve Act (12 U.S.C. 343) shall be deemed
18 to be a reference to section 13(3) of the Federal Reserve
19 Act, as so designated by this section.

20 **SEC. 1102. REVIEWS OF SPECIAL FEDERAL RESERVE CRED-**
21 **IT FACILITIES.**

22 (a) REVIEWS.—Section 714 of title 31, United States
23 Code, is amended by adding at the end the following:

24 “(f) REVIEWS OF CREDIT FACILITIES OF THE FED-
25 ERAL RESERVE SYSTEM.—

2014

1 “(1) DEFINITIONS.—In this subsection, the fol-
2 lowing definitions shall apply:

3 “(A) CREDIT FACILITY.—The term ‘credit
4 facility’ means a program or facility, including
5 any special purpose vehicle or other entity es-
6 tablished by or on behalf of the Board of Gov-
7 ernors of the Federal Reserve System or a Fed-
8 eral reserve bank, authorized by the Board of
9 Governors under section 13(3) of the Federal
10 Reserve Act (12 U.S.C. 343), that is not sub-
11 ject to audit under subsection (e).

12 “(B) COVERED TRANSACTION.—The term
13 ‘covered transaction’ means any open market
14 transaction or discount window advance that
15 meets the definition of ‘covered transaction’ in
16 section 11(s) of the Federal Reserve Act.

17 “(2) AUTHORITY FOR REVIEWS AND EXAMINA-
18 TIONS.—Subject to paragraph (3), and notwith-
19 standing any limitation in subsection (b) on the au-
20 diting and oversight of certain functions of the
21 Board of Governors of the Federal Reserve System
22 or any Federal reserve bank, the Comptroller Gen-
23 eral of the United States may conduct reviews, in-
24 cluding onsite examinations, of the Board of Gov-
25 ernors, a Federal reserve bank, or a credit facility,

2015

1 if the Comptroller General determines that such re-
2 views are appropriate, solely for the purposes of as-
3 sassing, with respect to a credit facility or a covered
4 transaction—

5 “(A) the operational integrity, accounting,
6 financial reporting, and internal controls gov-
7 erning the credit facility or covered transaction;

8 “(B) the effectiveness of the security and
9 collateral policies established for the facility or
10 covered transaction in mitigating risk to the rel-
11 evant Federal reserve bank and taxpayers;

12 “(C) whether the credit facility or the con-
13 duct of a covered transaction inappropriately
14 favors one or more specific participants over
15 other institutions eligible to utilize the facility;
16 and

17 “(D) the policies governing the use, selec-
18 tion, or payment of third-party contractors by
19 or for any credit facility or to conduct any cov-
20 ered transaction.

21 “(3) REPORTS AND DELAYED DISCLOSURE.—

22 “(A) REPORTS REQUIRED.—A report on
23 each review conducted under paragraph (2)
24 shall be submitted by the Comptroller General
25 to the Congress before the end of the 90-day

2016

1 period beginning on the date on which such re-
2 view is completed.

3 “(B) CONTENTS.—The report under sub-
4 paragraph (A) shall include a detailed descrip-
5 tion of the findings and conclusions of the
6 Comptroller General with respect to the matters
7 described in paragraph (2) that were reviewed
8 and are the subject of the report, together with
9 such recommendations for legislative or admin-
10 istrative action relating to such matters as the
11 Comptroller General may determine to be ap-
12 propriate.

13 “(C) DELAYED RELEASE OF CERTAIN IN-
14 FORMATION.—

15 “(i) IN GENERAL.—The Comptroller
16 General shall not disclose to any person or
17 entity, including to Congress, the names or
18 identifying details of specific participants
19 in any credit facility or covered trans-
20 action, the amounts borrowed by or trans-
21 ferred by or to specific participants in any
22 credit facility or covered transaction, or
23 identifying details regarding assets or col-
24 lateral held or transferred by, under, or in
25 connection with any credit facility or cov-

2017

1 ered transaction, and any report provided
2 under subparagraph (A) shall be redacted
3 to ensure that such names and details are
4 not disclosed.

5 “(ii) DELAYED RELEASE.—The non-
6 disclosure obligation under clause (i) shall
7 expire with respect to any participant on
8 the date on which the Board of Governors,
9 directly or through a Federal reserve bank,
10 publicly discloses the identity of the subject
11 participant or the identifying details of the
12 subject assets, collateral, or transaction.

13 “(iii) GENERAL RELEASE.—The
14 Comptroller General shall release a non-
15 redacted version of any report on a credit
16 facility 1 year after the effective date of
17 the termination by the Board of Governors
18 of the authorization for the credit facility.
19 For purposes of this clause, a credit facil-
20 ity shall be deemed to have terminated 24
21 months after the date on which the credit
22 facility ceases to make extensions of credit
23 and loans, unless the credit facility is oth-
24 erwise terminated by the Board of Gov-
25 ernors.

2018

1 “(iv) EXCEPTIONS.—The nondisclo-
2 sure obligation under clause (i) shall not
3 apply to the credit facilities Maiden Lane,
4 Maiden Lane II, and Maiden Lane III.

5 “(v) RELEASE OF COVERED TRANS-
6 ACTION INFORMATION.—The Comptroller
7 General shall release a nonredacted version
8 of any report regarding covered trans-
9 actions upon the release of the information
10 regarding such covered transactions by the
11 Board of Governors of the Federal Reserve
12 System, as provided in section 11(s) of the
13 Federal Reserve Act.”.

14 (b) ACCESS TO RECORDS.—Section 714(d) of title
15 31, United States Code, is amended—

16 (1) in paragraph (2), by inserting “or any per-
17 son or entity described in paragraph (3)(A)” after
18 “used by an agency”;

19 (2) in paragraph (3), by inserting “or (f)” after
20 “subsection (e)” each place that term appears;

21 (3) in paragraph (3)(A)(i), by inserting “or the
22 Federal Reserve banks” after “by the Board”;

23 (4) in paragraph (3)(A)(ii)—

24 (A) by inserting “or the Federal Reserve
25 banks” after “by the Board”; and

2019

1 (B) by inserting “participating in or” after
2 “any entity”; and
3 (5) in paragraph (3)(B), by adding at the end
4 the following: “The Comptroller General may make
5 and retain copies of books, accounts, and other
6 records provided under subparagraph (A) as the
7 Comptroller General deems appropriate. The Com-
8 ptroller General shall provide to any person or entity
9 described in subparagraph (A) a current list of offi-
10 cers and employees to whom, with proper identifica-
11 tion, records and property may be made available,
12 and who may make notes or copies necessary to
13 carry out a review or examination under this sub-
14 section.”.

15 **SEC. 1103. PUBLIC ACCESS TO INFORMATION.**

16 (a) IN GENERAL.—Section 2B of the Federal Reserve
17 Act (12 U.S.C. 225b) is amended by adding at the end
18 the following:

19 “(c) PUBLIC ACCESS TO INFORMATION.—The Board
20 shall place on its home Internet website, a link entitled
21 ‘Audit’, which shall link to a webpage that shall serve as
22 a repository of information made available to the public
23 for a reasonable period of time, not less than 6 months
24 following the date of release of the relevant information,
25 including—

2020

1 “(1) the reports prepared by the Comptroller
2 General under section 714 of title 31, United States
3 Code;

4 “(2) the annual financial statements prepared
5 by an independent auditor for the Board in accord-
6 ance with section 11B;

7 “(3) the reports to the Committee on Banking,
8 Housing, and Urban Affairs of the Senate required
9 under section 13(3) (relating to emergency lending
10 authority); and

11 “(4) such other information as the Board rea-
12 sonably believes is necessary or helpful to the public
13 in understanding the accounting, financial reporting,
14 and internal controls of the Board and the Federal
15 reserve banks.”.

16 (b) FEDERAL RESERVE TRANSPARENCY AND RE-
17 LEASE OF INFORMATION.—Section 11 of the Federal Re-
18 serve Act (12 U.S.C. 248) is amended by adding at the
19 end the following new subsection:

20 “(s) FEDERAL RESERVE TRANSPARENCY AND RE-
21 LEASE OF INFORMATION.—

22 “(1) IN GENERAL.—In order to ensure the dis-
23 closure in a timely manner consistent with the pur-
24 poses of this Act of information concerning the bor-
25 rowers and counterparties participating in emer-

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1 agency credit facilities, discount window lending pro-
2 grams, and open market operations authorized or
3 conducted by the Board or a Federal reserve bank,
4 the Board of Governors shall disclose, as provided in
5 paragraph (2)—

6 “(A) the names and identifying details of
7 each borrower, participant, or counterparty in
8 any credit facility or covered transaction;

9 “(B) the amount borrowed by or trans-
10 ferred by or to a specific borrower, participant,
11 or counterparty in any credit facility or covered
12 transaction;

13 “(C) the interest rate or discount paid by
14 each borrower, participant, or counterparty in
15 any credit facility or covered transaction; and

16 “(D) information identifying the types and
17 amounts of collateral pledged or assets trans-
18 ferred in connection with participation in any
19 credit facility or covered transaction.

20 “(2) MANDATORY RELEASE DATE.—In the case
21 of—

22 “(A) a credit facility, the Board shall dis-
23 close the information described in paragraph
24 (1) on the date that is 1 year after the effective

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1 date of the termination by the Board of the au-
2 thorization of the credit facility; and

3 “(B) a covered transaction, the Board
4 shall disclose the information described in para-
5 graph (1) on the last day of the eighth calendar
6 quarter following the calendar quarter in which
7 the covered transaction was conducted.

8 “(3) EARLIER RELEASE DATE AUTHORIZED.—
9 The Chairman of the Board may publicly release the
10 information described in paragraph (1) before the
11 relevant date specified in paragraph (2), if the
12 Chairman determines that such disclosure would be
13 in the public interest and would not harm the effec-
14 tiveness of the relevant credit facility or the purpose
15 or conduct of covered transactions.

16 “(4) DEFINITIONS.—For purposes of this sub-
17 section, the following definitions shall apply:

18 “(A) CREDIT FACILITY.—The term ‘credit
19 facility’ has the same meaning as in section
20 714(f)(1)(A) of title 31, United States Code.

21 “(B) COVERED TRANSACTION.—The term
22 ‘covered transaction’ means—

23 “(i) any open market transaction with
24 a nongovernmental third party conducted
25 under the first undesignated paragraph of

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1 section 14 or subparagraph (a), (b), or (c)
2 of the 2nd undesignated paragraph of such
3 section, after the date of enactment of the
4 Restoring American Financial Stability Act
5 of 2010; and

6 “(ii) any advance made under section
7 10B after the date of enactment of that
8 Act.

9 “(5) TERMINATION OF CREDIT FACILITY BY OP-
10 ERATION OF LAW.—A credit facility shall be deemed
11 to have terminated as of the end of the 24-month
12 period beginning on the date on which the credit fa-
13 cility ceases to make extensions of credit and loans,
14 unless the credit facility is otherwise terminated by
15 the Board before such date.

16 “(6) CONSISTENT TREATMENT OF INFORMA-
17 TION.—Except as provided in this subsection or sec-
18 tion 13(3)(D), or in section 714(f)(3)(C) of title 31,
19 United States Code, the information described in
20 paragraph (1) and information concerning the trans-
21 actions described in section 714(f) of such title, shall
22 be confidential, including for purposes of section
23 552(b)(3) of title 5 of such Code, until the relevant
24 mandatory release date described in paragraph (2),
25 unless the Board determines that earlier disclosure

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1 of such information would be in the public interest
2 and would not harm the effectiveness of the relevant
3 credit facility or the purpose of conduct of the rel-
4 evant transactions.

5 “(7) PROTECTION OF PERSONAL PRIVACY.—
6 This subsection and section 13(3)(C), section
7 714(f)(3)(C) of title 31, United States Code, and
8 section 1109(a) or (c) of the Restoring American Fi-
9 nancial Stability Act of 2010 shall not be construed
10 as requiring any disclosure of nonpublic personal in-
11 formation (as defined for purposes of section 502 of
12 the Gramm-Leach-Bliley Act (12 U.S.C. 6802)) con-
13 cerning any individual who is referenced in collateral
14 pledged or assets transferred in connection with a
15 credit facility or covered transaction, unless the per-
16 son is a borrower, participant, or counterparty under
17 the credit facility or covered transaction.

18 “(8) RULE OF CONSTRUCTION.—Nothing in
19 this section is meant to affect any pending litigation
20 or lawsuit filed under section 552 of title 5, United
21 States Code (popularly known as the Freedom of In-
22 formation Act), on or before the date of enactment
23 of the Restoring American Financial Stability Act of
24 2010.”.

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1 **SEC. 1104. LIQUIDITY EVENT DETERMINATION.**

2 (a) DETERMINATION AND WRITTEN RECOMMENDA-
3 TION.—

4 (1) DETERMINATION REQUEST.—The Secretary
5 may request the Corporation and the Board of Gov-
6 ernors to determine whether a liquidity event exists
7 that warrants use of the guarantee program author-
8 ized under section 1105.

9 (2) REQUIREMENTS OF DETERMINATION.—Any
10 determination pursuant to paragraph (1) shall—

11 (A) be written; and

12 (B) contain an evaluation of the evidence
13 that—

14 (i) a liquidity event exists;

15 (ii) failure to take action would have
16 serious adverse effects on financial stability
17 or economic conditions in the United
18 States; and

19 (iii) actions authorized under section
20 1105 are needed to avoid or mitigate po-
21 tential adverse effects on the United States
22 financial system or economic conditions.

23 (b) PROCEDURES.—Notwithstanding any other provi-
24 sion of Federal or State law, upon the determination of
25 both the Corporation (upon a vote of not fewer than $\frac{2}{3}$
26 of the members of the Corporation then serving) and the

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1 Board of Governors (upon a vote of not fewer than $\frac{2}{3}$
2 of the members of the Board of Governors then serving)
3 under subsection (a) that a liquidity event exists that war-
4 rants use of the guarantee program authorized under sec-
5 tion 1105, and with the written consent of the Secretary—

6 (1) the Corporation shall take action in accord-
7 ance with section 1105(a); and

8 (2) the Secretary (in consultation with the
9 President) shall take action in accordance with sec-
10 tion 1105(c).

11 (c) DOCUMENTATION AND REVIEW.—

12 (1) DOCUMENTATION.—The Secretary shall—

13 (A) maintain the written documentation of
14 each determination of the Corporation and the
15 Board of Governors under this section; and

16 (B) provide the documentation for review
17 under paragraph (2).

18 (2) GAO REVIEW.—The Comptroller General of
19 the United States shall review and report to Con-
20 gress on any determination of the Corporation and
21 the Board of Governors under subsection (a), includ-
22 ing—

23 (A) the basis for the determination; and

24 (B) the likely effect of the actions taken.

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1 (d) REPORT TO CONGRESS.—On the earlier of the
2 date of a submission made to Congress under section
3 1105(c), or within 30 days of the date of a determination
4 under subsection (a), the Secretary shall provide written
5 notice of the determination of the Corporation and the
6 Board of Governors to the Committee on Banking, Hous-
7 ing, and Urban Affairs of the Senate and the Committee
8 on Financial Services of the House of Representatives, in-
9 cluding a description of the basis for the determination.

10 **SEC. 1105. EMERGENCY FINANCIAL STABILIZATION.**

11 (a) IN GENERAL.—Upon the written determination
12 of the Corporation and the Board of Governors under sec-
13 tion 1104, the Corporation shall create a widely available
14 program to guarantee obligations of solvent insured depos-
15 itory institutions or solvent depository institution holding
16 companies (including any affiliates thereof) during times
17 of severe economic distress, except that a guarantee of ob-
18 ligations under this section may not include the provision
19 of equity in any form.

20 (b) RULEMAKING AND TERMS AND CONDITIONS.—

21 (1) POLICIES AND PROCEDURES.—As soon as is
22 practicable after the date of enactment of this Act,
23 the Corporation shall establish, by regulation, and in
24 consultation with the Secretary, policies and proce-
25 dures governing the issuance of guarantees author-

1 ized by this section. Such policies and procedures
2 may include a requirement of collateral as a condi-
3 tion of any such guarantee.

4 (2) TERMS AND CONDITIONS.—The terms and
5 conditions of any guarantee program shall be estab-
6 lished by the Corporation, with the concurrence of
7 the Secretary.

8 (c) DETERMINATION OF GUARANTEED AMOUNT.—

9 (1) IN GENERAL.—In connection with any pro-
10 gram established pursuant to subsection (a) and
11 subject to paragraph (2) of this subsection, the Sec-
12 retary (in consultation with the President) shall de-
13 termine the maximum amount of debt outstanding
14 that the Corporation may guarantee under this sec-
15 tion, and the President may transmit to Congress a
16 written report on the plan of the Corporation to ex-
17 ercise the authority under this section to issue guar-
18 antees up to that maximum amount and a request
19 for approval of such plan. The Corporation shall ex-
20 ercise the authority under this section to issue guar-
21 antees up to that specified maximum amount upon
22 passage of the joint resolution of approval, as pro-
23 vided in subsection (d). Absent such approval, the
24 Corporation shall issue no such guarantees.

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1 (2) ADDITIONAL DEBT GUARANTEE AUTHOR-
2 ITY.—If the Secretary (in consultation with the
3 President) determines, after a submission to Con-
4 gress under paragraph (1), that the maximum guar-
5 antee amount should be raised, and the Council con-
6 curs with that determination, the President may
7 transmit to Congress a written report on the plan of
8 the Corporation to exercise the authority under this
9 section to issue guarantees up to the increased max-
10 imum debt guarantee amount. The Corporation shall
11 exercise the authority under this section to issue
12 guarantees up to that specified maximum amount
13 upon passage of the joint resolution of approval, as
14 provided in subsection (d). Absent such approval,
15 the Corporation shall issue no such guarantees.

16 (d) RESOLUTION OF APPROVAL.—

17 (1) ADDITIONAL DEBT GUARANTEE AUTHOR-
18 ITY.—A request by the President under this section
19 shall be considered granted by Congress upon adop-
20 tion of a joint resolution approving such request.
21 Such joint resolution shall be considered in the Sen-
22 ate under expedited procedures.

23 (2) FAST TRACK CONSIDERATION IN SENATE.—

24 (A) RECONVENING.—Upon receipt of a re-
25 quest under subsection (c), if the Senate has

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1 adjourned or recessed for more than 2 days, the
2 majority leader of the Senate, after consultation
3 with the minority leader of the Senate, shall no-
4 tify the Members of the Senate that, pursuant
5 to this section, the Senate shall convene not
6 later than the second calendar day after receipt
7 of such message.

8 (B) PLACEMENT ON CALENDAR.—Upon in-
9 troduction in the Senate, the joint resolution
10 shall be placed immediately on the calendar.

11 (C) FLOOR CONSIDERATION.—

12 (i) IN GENERAL.—Notwithstanding
13 Rule XXII of the Standing Rules of the
14 Senate, it is in order at any time during
15 the period beginning on the 4th day after
16 the date on which Congress receives a re-
17 quest under subsection (c), and ending on
18 the 7th day after that date (even though a
19 previous motion to the same effect has
20 been disagreed to) to move to proceed to
21 the consideration of the joint resolution,
22 and all points of order against the joint
23 resolution (and against consideration of
24 the joint resolution) are waived. The mo-
25 tion to proceed is not debatable. The mo-

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1 tion is not subject to a motion to postpone.
2 A motion to reconsider the vote by which
3 the motion is agreed to or disagreed to
4 shall not be in order. If a motion to pro-
5 ceed to the consideration of the resolution
6 is agreed to, the joint resolution shall re-
7 main the unfinished business until dis-
8 posed of.

9 (ii) DEBATE.—Debate on the joint
10 resolution, and on all debatable motions
11 and appeals in connection therewith, shall
12 be limited to not more than 10 hours,
13 which shall be divided equally between the
14 majority and minority leaders or their des-
15 ignees. A motion further to limit debate is
16 in order and not debatable. An amendment
17 to, or a motion to postpone, or a motion to
18 proceed to the consideration of other busi-
19 ness, or a motion to recommit the joint
20 resolution is not in order.

21 (iii) VOTE ON PASSAGE.—The vote on
22 passage shall occur immediately following
23 the conclusion of the debate on the joint
24 resolution, and a single quorum call at the

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1 conclusion of the debate if requested in ac-
2 cordance with the rules of the Senate.

3 (iv) RULINGS OF THE CHAIR ON PRO-
4 CEDURE.—Appeals from the decisions of
5 the Chair relating to the application of the
6 rules of the Senate, as the case may be, to
7 the procedure relating to a joint resolution
8 shall be decided without debate.

9 (3) RULES.—

10 (A) COORDINATION WITH ACTION BY
11 HOUSE OF REPRESENTATIVES.—If, before the
12 passage by the Senate of a joint resolution of
13 the Senate, the Senate receives a joint resolu-
14 tion, from the House of Representatives, then
15 the following procedures shall apply:

16 (i) The joint resolution of the House
17 of Representatives shall not be referred to
18 a committee.

19 (ii) With respect to a joint resolution
20 of the Senate—

21 (I) the procedure in the Senate
22 shall be the same as if no joint resolu-
23 tion had been received from the other
24 House; but

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1 (II) the vote on passage shall be
2 on the joint resolution of the House of
3 Representatives.

4 (B) TREATMENT OF JOINT RESOLUTION
5 OF HOUSE OF REPRESENTATIVES.—If the Sen-
6 ate fails to introduce or consider a joint resolu-
7 tion under this section, the joint resolution of
8 the House of Representatives shall be entitled
9 to expedited floor procedures under this sub-
10 section.

11 (C) TREATMENT OF COMPANION MEAS-
12 URES.—If, following passage of the joint resolu-
13 tion in the Senate, the Senate then receives the
14 companion measure from the House of Rep-
15 resentatives, the companion measure shall not
16 be debatable.

17 (D) RULES OF THE SENATE.—This sub-
18 section is enacted by Congress—

19 (i) as an exercise of the rulemaking
20 power of the Senate, and as such it is
21 deemed a part of the rules of the Senate,
22 but applicable only with respect to the pro-
23 cedure to be followed in the Senate in the
24 case of a joint resolution, and it supersedes

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1 other rules, only to the extent that it is in-
2 consistent with such rules; and

3 (ii) with full recognition of the con-
4 stitutional right of the Senate to change
5 the rules (so far as relating to the proce-
6 dure of the Senate) at any time, in the
7 same manner, and to the same extent as in
8 the case of any other rule of the Senate.

9 (4) DEFINITION.—As used in this subsection,
10 the term “joint resolution” means only a joint reso-
11 lution—

12 (A) that is introduced not later than 3 cal-
13 endar days after the date on which the request
14 referred to in subsection (c) is received by Con-
15 gress;

16 (B) that does not have a preamble;

17 (C) the title of which is as follows: “Joint
18 resolution relating to the approval of a plan to
19 guarantee obligations under section 1105 of the
20 Restoring American Financial Stability Act of
21 2010”; and

22 (D) the matter after the resolving clause of
23 which is as follows: “That Congress approves
24 the obligation of any amount described in sec-

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1 tion 1105(c) of the Restoring American Finan-
2 cial Stability Act of 2010.”.

3 (e) FUNDING.—

4 (1) FEES AND OTHER CHARGES.—The Corpora-
5 tion shall charge fees and other assessments to all
6 participants in the program established pursuant to
7 this section, in such amounts as are necessary to off-
8 set projected losses and administrative expenses, in-
9 cluding amounts borrowed pursuant to paragraph
10 (3), and such amounts shall be available to the Cor-
11 poration.

12 (2) EXCESS FUNDS.—If, at the conclusion of
13 the program established under this section, there are
14 any excess funds collected from the fees associated
15 with such program, the funds shall be deposited in
16 the General Fund of the Treasury.

17 (3) AUTHORITY OF CORPORATION.—The Cor-
18 poration—

19 (A) may borrow funds from the Secretary
20 of the Treasury and issue obligations of the
21 Corporation to the Secretary for amounts bor-
22 rowed, and the amounts borrowed shall be
23 available to the Corporation for purposes of car-
24 rying out a program established pursuant to
25 this section, including the payment of reason-

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1 able costs of administering the program, and
2 the obligations issued shall be repaid in full
3 with interest through fees and charges paid by
4 participants in accordance with paragraphs (1)
5 and (4), as applicable; and

6 (B) may not borrow funds from the De-
7 posit Insurance Fund established pursuant to
8 section 11(a)(4) of the Federal Deposit Insur-
9 ance Act.

10 (4) BACKUP SPECIAL ASSESSMENTS.—To the
11 extent that the funds collected pursuant to para-
12 graph (1) are insufficient to cover any losses or ex-
13 penses, including amounts borrowed pursuant to
14 paragraph (3), arising from a program established
15 pursuant to this section, the Corporation shall im-
16 pose a special assessment solely on participants in
17 the program, in amounts necessary to address such
18 insufficiency, and which shall be available to the
19 Corporation to cover such losses or expenses.

20 (5) AUTHORITY OF THE SECRETARY.—The Sec-
21 retary may purchase any obligations issued under
22 paragraph (3)(A). For such purpose, the Secretary
23 may use the proceeds of the sale of any securities
24 issued under chapter 31 of title 31, United States
25 Code, and the purposes for which securities may be

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1 issued under that chapter 31 are extended to include
2 such purchases, and the amount of any securities
3 issued under that chapter 31 for such purpose shall
4 be treated in the same manner as securities issued
5 under section 208(n)(3)(B).

6 (f) RULE OF CONSTRUCTION.—For purposes of this
7 section, a guarantee of deposits held by insured depository
8 institutions shall not be treated as a debt guarantee pro-
9 gram.

10 (g) DEFINITIONS.—For purposes of this section, the
11 following definitions shall apply:

12 (1) COMPANY.—The term “company” means
13 any entity other than a natural person that is incor-
14 porated or organized under Federal law or the laws
15 of any State.

16 (2) DEPOSITORY INSTITUTION HOLDING COM-
17 PANY.—The term “depository institution holding
18 company” has the same meaning as in section 3 of
19 the Federal Deposit Insurance Act (12 U.S.C.
20 1813).

21 (3) LIQUIDITY EVENT.—The term “liquidity
22 event” means—

23 (A) an exceptional and broad reduction in
24 the general ability of financial market partici-
25 pants—

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1 (i) to sell financial assets without an
2 unusual and significant discount; or

3 (ii) to borrow using financial assets as
4 collateral without an unusual and signifi-
5 cant increase in margin; or

6 (B) an unusual and significant reduction
7 in the ability of financial market participants to
8 obtain unsecured credit.

9 (4) SOLVENT.—The term “solvent” means that
10 the value of the assets of an entity exceed its obliga-
11 tions to creditors.

12 **SEC. 1106. ADDITIONAL RELATED AMENDMENTS.**

13 (a) SUSPENSION OF PARALLEL FEDERAL DEPOSIT
14 INSURANCE ACT AUTHORITY.—Effective upon the date of
15 enactment of this section, the Corporation may not exer-
16 cise its authority under section 13(c)(4)(G)(i) of the Fed-
17 eral Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i))
18 to establish any widely available debt guarantee program
19 for which section 1105 would provide authority.

20 (b) FEDERAL DEPOSIT INSURANCE ACT.—Section
21 13(c)(4)(G) of the Federal Deposit Insurance Act (12
22 U.S.C. 1823(c)(4)(G)) is amended—

23 (1) in clause (i)—

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1 (A) in subclause (I), by inserting “for
2 which the Corporation has been appointed re-
3 ceiver” before “would have serious”; and

4 (B) in the undesignated matter following
5 subclause (II), by inserting “for the purpose of
6 winding up the insured depository institution
7 for which the Corporation has been appointed
8 receiver” after “provide assistance under this
9 section”; and

10 (2) in clause (v)(I), by striking “The” and in-
11 serting “Not later than 3 days after making a deter-
12 mination under clause (i), the”.

13 (c) EFFECT OF DEFAULT ON AN FDIC GUAR-
14 ANTEE.—If an insured depository institution or depository
15 institution holding company (as those terms are defined
16 in section 3 of the Federal Deposit Insurance Act) partici-
17 pating in a program under section 1105, or any partici-
18 pant in a debt guarantee program established pursuant
19 to section 13(c)(4)(G)(i) of the Federal Deposit Insurance
20 Act defaults on any obligation guaranteed by the Corpora-
21 tion after the date of enactment of this Act, the Corpora-
22 tion shall—

23 (1) appoint itself as receiver for the insured de-
24 pository institution that defaults; and

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1 (2) with respect to any other participating com-
2 pany that is not an insured depository institution
3 that defaults—

4 (A) require—

5 (i) consideration of whether a deter-
6 mination shall be made, as provided in sec-
7 tion 202 to resolve the company under sec-
8 tion 203; and

9 (ii) the company to file a petition for
10 bankruptcy under section 301 of title 11,
11 United States Code, if the Corporation is
12 not appointed receiver pursuant to section
13 203 within 30 days of the date of default;
14 or

15 (B) file a petition for involuntary bank-
16 ruptcy on behalf of the company under section
17 303 of title 11, United States Code.

18 **SEC. 1107. FEDERAL RESERVE ACT AMENDMENTS ON FED-**

19 **ERAL RESERVE BANK GOVERNANCE.**

20 The 5th subparagraph of the 4th undesignated para-
21 graph of section 4 of the Federal Reserve Act (12 U.S.C.
22 341) is amended by striking the 2nd sentence and insert-
23 ing the following: “The president shall be the chief execu-
24 tive officer of the bank and shall be appointed by the Class
25 B and Class C directors of the bank, with the approval

1 of the Board of Governors of the Federal Reserve System,
2 for a term of 5 years; and all other executive officers and
3 all employees of the bank shall be directly responsible to
4 the President.”.

5 **SEC. 1108. FEDERAL RESERVE ACT AMENDMENTS ON SU-**
6 **PERVISION AND REGULATION POLICY.**

7 (a) ESTABLISHMENT OF THE POSITION OF VICE
8 CHAIRMAN FOR SUPERVISION.—

9 (1) POSITION ESTABLISHED.—The second un-
10 designated paragraph of section 10 of the Federal
11 Reserve Act (12 U.S.C. 242) (relating to the Chair-
12 man and Vice Chairman of the Board) is amended
13 by striking the third sentence and inserting the fol-
14 lowing: “Of the persons thus appointed, 1 shall be
15 designated by the President, by and with the advice
16 and consent of the Senate, to serve as Chairman of
17 the Board for a term of 4 years, and 2 shall be des-
18 ignated by the President, by and with the advice and
19 consent of the Senate, to serve as Vice Chairmen of
20 the Board, each for a term of 4 years, 1 of whom
21 shall serve in the absence of the Chairman, as pro-
22 vided in the fourth undesignated paragraph of this
23 section, and 1 of whom shall be designated Vice
24 Chairman for Supervision. The Vice Chairman for
25 Supervision shall develop policy recommendations for

1 the Board regarding supervision and regulation of
2 depository institution holding companies and other
3 financial firms supervised by the Board, and shall
4 oversee the supervision and regulation of such
5 firms.”.

6 (2) EFFECTIVE DATE.—The amendment made
7 by subsection (a) takes effect on the date of enact-
8 ment of this title and applies to individuals who are
9 designated by the President on or after that date to
10 serve as Vice Chairman of Supervision.

11 (b) FINANCIAL STABILITY AS BOARD FUNCTION.—
12 Section 10 of the Federal Reserve Act (12 U.S.C. 241)
13 is amended by adding at the end the following:

14 “(11) FINANCIAL STABILITY FUNCTION.—The
15 Board of Governors shall identify, measure, monitor,
16 and mitigate risks to the financial stability of the
17 United States.”.

18 (c) APPEARANCES BEFORE CONGRESS.—Section 10
19 of the Federal Reserve Act (12 U.S.C. 241) is amended
20 by adding at the end the following:

21 “(12) APPEARANCES BEFORE CONGRESS.—The
22 Vice Chairman for Supervision shall appear before
23 the Committee on Banking, Housing, and Urban Af-
24 fairs of the Senate and the Committee on Financial
25 Services of the House of Representatives and at

1 semi-annual hearings regarding the efforts, activi-
2 ties, objectives, and plans of the Board with respect
3 to the conduct of supervision and regulation of de-
4 pository institution holding companies and other fi-
5 nancial firms supervised by the Board.”.

6 (d) BOARD RESPONSIBILITY TO SET SUPERVISION
7 AND REGULATORY POLICY.—Section 11 of the Federal
8 Reserve Act (12 U.S.C. 248) (relating to enumerated pow-
9 ers of the Board) is amended by adding at the end of sub-
10 section (k) (relating to delegation) the following: “The
11 Board of Governors may not delegate to a Federal reserve
12 bank its functions for the establishment of policies for the
13 supervision and regulation of depository institution hold-
14 ing companies and other financial firms supervised by the
15 Board of Governors.”.

16 (e) EXERCISE OF FEDERAL RESERVE AUTHORITY.—

17 (1) NO DECISIONS BY FEDERAL RESERVE BANK
18 PRESIDENTS.—No provision of title I relating to the
19 authority of the Board of Governors shall be con-
20 strued as conferring any decision-making authority
21 on presidents of Federal reserve banks.

22 (2) VOTING DECISIONS BY BOARD.—The Board
23 of Governors shall not delegate the authority to
24 make any voting decision that the Board of Gov-
25 ernors is authorized or required to make under this

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

3 **SEC. 1109. GAO AUDIT OF THE FEDERAL RESERVE FACILI-**
4 **TIES; PUBLICATION OF BOARD ACTIONS.**

5 (a) GAO AUDIT.—

6 (1) IN GENERAL.—Notwithstanding section
7 714(b) of title 31, United States Code, or any other
8 provision of law, the Comptroller General of the
9 United States (in this subsection referred to as the
10 “Comptroller General”) shall conduct a one-time
11 audit of all loans and other financial assistance pro-
12 vided during the period beginning on December 1,
13 2007 and ending on the date of enactment of this
14 Act by the Board of Governors or a Federal reserve
15 bank under the Asset-Backed Commercial Paper
16 Money Market Mutual Fund Liquidity Facility, the
17 Term Asset-Backed Securities Loan Facility, the
18 Primary Dealer Credit Facility, the Commercial
19 Paper Funding Facility, the Term Securities Lend-
20 ing Facility, the Term Auction Facility, Maiden
21 Lane, Maiden Lane II, Maiden Lane III, the agency
22 Mortgage-Backed Securities program, foreign cur-
23 rency liquidity swap lines, and any other program
24 created as a result of section 13(3) of the Federal
25 Reserve Act (as so designated by this title).

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1 (2) ASSESSMENTS.—In conducting the audit
2 under paragraph (1), the Comptroller General shall
3 assess—

4 (A) the operational integrity, accounting,
5 financial reporting, and internal controls of the
6 credit facility;

7 (B) the effectiveness of the security and
8 collateral policies established for the facility in
9 mitigating risk to the relevant Federal reserve
10 bank and taxpayers;

11 (C) whether the credit facility inappropri-
12 ately favors one or more specific participants
13 over other institutions eligible to utilize the fa-
14 cility;

15 (D) the policies governing the use, selec-
16 tion, or payment of third-party contractors by
17 or for any credit facility; and

18 (E) whether there were conflicts of interest
19 with respect to the manner in which such facil-
20 ity was established or operated.

21 (3) TIMING.—The audit required by this sub-
22 section shall be commenced not later than 30 days
23 after the date of enactment of this Act, and shall be
24 completed not later than 12 months after that date
25 of enactment.

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1 (4) REPORT REQUIRED.—The Comptroller Gen-
2 eral shall submit a report on the audit conducted
3 under paragraph (1) to the Congress not later than
4 12 months after the date of enactment of this Act,
5 and such report shall be made available to—

6 (A) the Speaker of the House of Rep-
7 resentatives;

8 (B) the majority and minority leaders of
9 the House of Representatives;

10 (C) the majority and minority leaders of
11 the Senate;

12 (D) the Chairman and Ranking Member of
13 the Committee on Banking, Housing, and
14 Urban Affairs of the Senate and of the Com-
15 mittee on Financial Services of the House of
16 Representatives; and

17 (E) any member of Congress who requests
18 it.

19 (b) AUDIT OF FEDERAL RESERVE BANK GOVERN-
20 ANCE.—

21 (1) AUDIT.—

22 (A) IN GENERAL.—Not later than 1 year
23 after the date of enactment of this Act, the
24 Comptroller General shall complete an audit of

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1 the governance of the Federal reserve bank sys-
2 tem.

3 (B) REQUIRED EXAMINATIONS.—The audit
4 required under subparagraph (A) shall—

5 (i) examine the extent to which the
6 current system of appointing Federal re-
7 serve bank directors effectively represents
8 “the public, without discrimination on the
9 basis of race, creed, color, sex or national
10 origin, and with due but not exclusive con-
11 sideration to the interests of agriculture,
12 commerce, industry, services, labor, and
13 consumers” in the selection of bank direc-
14 tors, as such requirement is set forth
15 under section 4 of the Federal Reserve
16 Act;

17 (ii) examine whether there are actual
18 or potential conflicts of interest created
19 when the directors of Federal reserve
20 banks, which execute the supervisory func-
21 tions of the Board of Governors of the
22 Federal Reserve System, are elected by
23 member banks;

24 (iii) examine the establishment and
25 operations of each facility described in sub-

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1 section (a)(1) and each Federal reserve
2 bank involved in the establishment and op-
3 erations thereof; and

4 (iv) identify changes to selection pro-
5 cedures for Federal reserve bank directors,
6 or to other aspects of Federal reserve bank
7 governance, that would—

8 (I) improve how the public is rep-
9 resented;

10 (II) eliminate actual or potential
11 conflicts of interest in bank super-
12 vision;

13 (III) increase the availability of
14 information useful for the formation
15 and execution of monetary policy; or

16 (IV) in other ways increase the
17 effectiveness or efficiency of reserve
18 banks.

19 (2) REPORT REQUIRED.—A report on the audit
20 conducted under paragraph (1) shall be submitted
21 by the Comptroller General to the Congress before
22 the end of the 90-day period beginning on the date
23 on which such audit is completed, and such report
24 shall be made available to—

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1 (A) the Speaker of the House of Rep-
2 resentatives;

3 (B) the majority and minority leaders of
4 the House of Representatives;

5 (C) the majority and minority leaders of
6 the Senate;

7 (D) the Chairman and Ranking Member of
8 the Committee on Banking, Housing, and
9 Urban Affairs of the Senate and of the Com-
10 mittee on Financial Services of the House of
11 Representatives; and

12 (E) any member of Congress who requests
13 it.

14 (c) PUBLICATION OF BOARD ACTIONS.—Notwith-
15 standing any other provision of law, the Board of Gov-
16 ernors shall publish on its website, not later than Decem-
17 ber 1, 2010, with respect to all loans and other financial
18 assistance provided during the period beginning on De-
19 cember 1, 2007 and ending on the date of enactment of
20 this Act under the Asset-Backed Commercial Paper
21 Money Market Mutual Fund Liquidity Facility, the Term
22 Asset-Backed Securities Loan Facility, the Primary Deal-
23 er Credit Facility, the Commercial Paper Funding Facil-
24 ity, the Term Securities Lending Facility, the Term Auc-
25 tion Facility, Maiden Lane, Maiden Lane II, Maiden Lane

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1 III, the agency Mortgage-Backed Securities program, for-
2 eign currency liquidity swap lines, and any other program
3 created as a result of section 13(3) of the Federal Reserve
4 Act (as so designated by this title)—

5 (1) the identity of each business, individual, en-
6 tity, or foreign central bank to which the Board of
7 Governors has provided such assistance;

8 (2) the type of financial assistance provided to
9 that business, individual, entity, or foreign central
10 bank;

11 (3) the value or amount of that financial assist-
12 ance;

13 (4) the date on which the financial assistance
14 was provided;

15 (5) the specific terms of any repayment ex-
16 pected, including the repayment time period, interest
17 charges, collateral, limitations on executive com-
18 pensation or dividends, and other material terms;
19 and

20 (6) the specific rationale for each such facility
21 or program.

1 **TITLE XII—IMPROVING ACCESS**
2 **TO MAINSTREAM FINANCIAL**
3 **INSTITUTIONS**

4 **SEC. 1201. SHORT TITLE.**

5 This title may be cited as the “Improving Access to
6 Mainstream Financial Institutions Act of 2010”.

7 **SEC. 1202. PURPOSE.**

8 The purpose of this title is to encourage initiatives
9 for financial products and services that are appropriate
10 and accessible for millions of Americans who are not fully
11 incorporated into the financial mainstream.

12 **SEC. 1203. DEFINITIONS.**

13 In this title, the following definitions shall apply:

14 (1) **ACCOUNT.**—The term “account” means an
15 agreement between an individual and an eligible en-
16 tity under which the individual obtains from or
17 through the entity 1 or more banking products and
18 services, and includes a deposit account, a savings
19 account (including a money market savings ac-
20 count), an account for a closed-end loan, and other
21 products or services, as the Secretary deems appro-
22 priate.

23 (2) **COMMUNITY DEVELOPMENT FINANCIAL IN-**
24 **STITUTION.**—The term “community development fi-
25 nancial institution” has the same meaning as in sec-

1 tion 103(5) of the Community Development Banking
2 and Financial Institutions Act of 1994 (12 U.S.C.
3 4702(5)).

4 (3) ELIGIBLE ENTITY.—The term “eligible enti-
5 ty” means—

6 (A) an organization described in section
7 501(c)(3) of the Internal Revenue Code of
8 1986, and exempt from tax under section
9 501(a) of such Code;

10 (B) a federally insured depository institu-
11 tion;

12 (C) a community development financial in-
13 stitution;

14 (D) a State, local, or tribal government en-
15 tity; or

16 (E) a partnership or other joint venture
17 comprised of 1 or more of the entities described
18 in subparagraphs (A) through (D), in accord-
19 ance with regulations prescribed by the Sec-
20 retary under this title.

21 (4) FEDERALLY INSURED DEPOSITORY INSTI-
22 TUTION.—The term “federally insured depository in-
23 stitution” means any insured depository institution
24 (as that term is defined in section 3 of the Federal
25 Deposit Insurance Act (12 U.S.C. 1813)) and any

1 insured credit union (as that term is defined in sec-
2 tion 101 of the Federal Credit Union Act (12 U.S.C.
3 1752)).

4 **SEC. 1204. EXPANDED ACCESS TO MAINSTREAM FINANCIAL**
5 **INSTITUTIONS.**

6 (a) IN GENERAL.—The Secretary is authorized to es-
7 tablish a multiyear program of grants, cooperative agree-
8 ments, financial agency agreements, and similar contracts
9 or undertakings to promote initiatives designed—

10 (1) to enable low- and moderate-income individ-
11 uals to establish one or more accounts in a federally
12 insured depository institution that are appropriate to
13 meet the financial needs of such individuals; and

14 (2) to improve access to the provision of ac-
15 counts, on reasonable terms, for low- and moderate-
16 income individuals.

17 (b) PROGRAM ELIGIBILITY AND ACTIVITIES.—

18 (1) IN GENERAL.—The Secretary shall restrict
19 participation in any program established under sub-
20 section (a) to an eligible entity. Subject to regula-
21 tions prescribed by the Secretary under this title, 1
22 or more eligible entities may participate in 1 or sev-
23 eral programs established under subsection (a).

24 (2) ACCOUNT ACTIVITIES.—Subject to regula-
25 tions prescribed by the Secretary, an eligible entity

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1 may, in participating in a program established under
2 subsection (a), offer or provide to low- and mod-
3 erate-income individuals products and services relat-
4 ing to accounts, including—

5 (A) small-dollar value loans; and

6 (B) financial education and counseling re-
7 lating to conducting transactions in and man-
8 aging accounts.

9 **SEC. 1205. LOW-COST ALTERNATIVES TO SMALL DOLLAR**
10 **LOANS.**

11 (a) **GRANTS AUTHORIZED.**—The Secretary is author-
12 ized to establish multiyear demonstration programs by
13 means of grants, cooperative agreements, financial agency
14 agreements, and similar contracts or undertakings, with
15 eligible entities to provide low-cost, small loans to con-
16 sumers that will provide alternatives to more costly small
17 dollar loans.

18 (b) **TERMS AND CONDITIONS.**—

19 (1) **IN GENERAL.**—Loans under this section
20 shall be made on terms and conditions, and pursu-
21 ant to lending practices, that are reasonable for con-
22 sumers.

23 (2) **FINANCIAL LITERACY AND EDUCATION OP-**
24 **PORTUNITIES.**—

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1 (A) IN GENERAL.—Each eligible entity
2 awarded a grant under this section shall pro-
3 mote and take appropriate steps to ensure the
4 provision of financial literacy and education op-
5 portunities, such as relevant counseling services,
6 educational courses, or wealth building pro-
7 grams, to each consumer provided with a loan
8 pursuant to this section.

9 (B) AUTHORITY TO EXPAND ACCESS.—As
10 part of the grants, agreements, and under-
11 takings established under this section, the Sec-
12 retary may implement reasonable measures or
13 programs designed to expand access to financial
14 literacy and education opportunities, including
15 relevant counseling services, educational
16 courses, or wealth building programs to be pro-
17 vided to individuals who obtain loans from eligi-
18 ble entities under this section.

19 **SEC. 1206. GRANTS TO ESTABLISH LOAN-LOSS RESERVE**
20 **FUNDS.**

21 The Community Development Banking and Financial
22 Institutions Act of 1994 (12 U.S.C. 4701 et seq.) is
23 amended by adding at the end the following:

1 **“SEC. 122. GRANTS TO ESTABLISH LOAN-LOSS RESERVE**
2 **FUNDS.**

3 “(a) PURPOSES.—The purposes of this section are—

4 “(1) to make financial assistance available from
5 the Fund in order to help community development
6 financial institutions defray the costs of operating
7 small dollar loan programs, by providing the
8 amounts necessary for such institutions to establish
9 their own loan loss reserve funds to mitigate some
10 of the losses on such small dollar loan programs;
11 and

12 “(2) to encourage community development fi-
13 nancial institutions to establish and maintain small
14 dollar loan programs that would help give consumers
15 access to mainstream financial institutions and com-
16 bat high cost small dollar lending.

17 “(b) GRANTS.—

18 “(1) LOAN-LOSS RESERVE FUND GRANTS.—The
19 Fund shall make grants to community development
20 financial institutions or to any partnership between
21 such community development financial institutions
22 and any other federally insured depository institu-
23 tion with a primary mission to serve targeted invest-
24 ment areas, as such areas are defined under section
25 103(16), to enable such institutions or any partner-
26 ship of such institutions to establish a loan-loss re-

1 serve fund in order to defray the costs of a small
2 dollar loan program established or maintained by
3 such institution.

4 “(2) MATCHING REQUIREMENT.—A community
5 development financial institution or any partnership
6 of institutions established pursuant to paragraph (1)
7 shall provide non-Federal matching funds in an
8 amount equal to 50 percent of the amount of any
9 grant received under this section.

10 “(3) USE OF FUNDS.—Any grant amounts re-
11 ceived by a community development financial institu-
12 tion or any partnership between or among such in-
13 stitutions under paragraph (1)—

14 “(A) may not be used by such institution
15 to provide direct loans to consumers;

16 “(B) may be used by such institution to
17 help recapture a portion or all of a defaulted
18 loan made under the small dollar loan program
19 of such institution; and

20 “(C) may be used to designate and utilize
21 a fiscal agent for services normally provided by
22 such an agent.

23 “(4) TECHNICAL ASSISTANCE GRANTS.—The
24 Fund shall make technical assistance grants to com-
25 munity development financial institutions or any

1 partnership between or among such institutions to
2 support and maintain a small dollar loan program.
3 Any grant amounts received under this paragraph
4 may be used for technology, staff support, and other
5 costs associated with establishing a small dollar loan
6 program.

7 “(c) DEFINITIONS.—For purposes of this section—

8 “(1) the term ‘consumer reporting agency that
9 compiles and maintains files on consumers on a na-
10 tionwide basis’ has the same meaning given such
11 term in section 603(p) of the Fair Credit Reporting
12 Act (15 U.S.C. 1681a(p)); and

13 “(2) the term ‘small dollar loan program’
14 means a loan program wherein a community devel-
15 opment financial institution or any partnership be-
16 tween or among such institutions offers loans to con-
17 sumers that—

18 “(A) are made in amounts not exceeding
19 \$2,500;

20 “(B) must be repaid in installments;

21 “(C) have no pre-payment penalty;

22 “(D) the institution has to report pay-
23 ments regarding the loan to at least 1 of the
24 consumer reporting agencies that compiles and

1 maintains files on consumers on a nationwide
2 basis; and

3 “(E) meet any other affordability require-
4 ments as may be established by the Adminis-
5 trator.”.

6 **SEC. 1207. PROCEDURAL PROVISIONS.**

7 An eligible entity desiring to participate in a program
8 or obtain a grant under this title shall submit an applica-
9 tion to the Secretary, in such form and containing such
10 information as the Secretary may require.

11 **SEC. 1208. AUTHORIZATION OF APPROPRIATIONS.**

12 (a) AUTHORIZATION TO THE SECRETARY.—There
13 are authorized to be appropriated to the Secretary, such
14 sums as are necessary to both administer and fund the
15 programs and projects authorized by this title, to remain
16 available until expended.

17 (b) AUTHORIZATION TO THE FUND.—There is au-
18 thorized to be appropriated to the Fund for each fiscal
19 year beginning in fiscal year 2010, an amount equal to
20 the amount of the administrative costs of the Fund for
21 the operation of the grant program established under this
22 title.

1 **SEC. 1209. REGULATIONS.**

2 (a) IN GENERAL.—The Secretary is authorized to
3 promulgate regulations to implement and administer the
4 grant programs and undertakings authorized by this title.

5 (b) REGULATORY AUTHORITY.—Regulations pre-
6 scribed under this section may contain such classifications,
7 differentiations, or other provisions, and may provide for
8 such adjustments and exceptions for any class of grant
9 programs, undertakings, or eligible entities, as, in the
10 judgment of the Secretary, are necessary or proper to ef-
11 fectuate the purposes of this title, to prevent circumven-
12 tion or evasion of this title, or to facilitate compliance with
13 this title.

14 **SEC. 1210. EVALUATION AND REPORTS TO CONGRESS.**

15 For each fiscal year in which a program or project
16 is carried out under this title, the Secretary shall submit
17 a report to the Committee on Banking, Housing, and
18 Urban Affairs of the Senate and the Committee on Finan-
19 cial Services of the House of Representatives containing
20 a description of the activities funded, amounts distributed,
21 and measurable results, as appropriate and available.

22 **TITLE XIII—PAY IT BACK ACT**

23 **SEC. 1301. SHORT TITLE.**

24 This title may be cited as the “Pay It Back Act”.

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1 **SEC. 1302. AMENDMENT TO REDUCE TARP AUTHORIZA-**
2 **TION.**

3 Section 115(a) of the Emergency Economic Stabiliza-
4 tion Act of 2008 (12 U.S.C. 5225(a)) is amended—

5 (1) in paragraph (3)—

6 (A) by striking “If” and inserting “Except
7 as provided in paragraph (4), if”;

8 (B) by striking “, \$700,000,000,000, as
9 such amount is reduced by \$1,259,000,000, as
10 such amount is reduced by \$1,244,000,000”
11 and inserting “\$550,000,000,000”; and

12 (C) by striking “outstanding at any one
13 time”; and

14 (2) by adding at the end the following:

15 “(4) If the Secretary, with the concurrence of
16 the Chairman of the Board of Governors of the Fed-
17 eral Reserve System, determines that there is an im-
18 mediate and substantial threat to the economy aris-
19 ing from financial instability, the Secretary is au-
20 thorized to purchase troubled assets under this Act
21 in an amount equal to amounts received by the Sec-
22 retary before, on, or after the date of enactment of
23 the Pay It Back Act for repayment of the principal
24 of financial assistance by an entity that has received
25 financial assistance under the TARP or any other
26 program enacted by the Secretary under the authori-

1 ties granted to the Secretary under this Act, but
2 only—

3 “(A) to the extent necessary to address the
4 threat; and

5 “(B) upon transmittal of such determina-
6 tion, in writing, to the appropriate committees
7 of Congress.”.

8 **SEC. 1303. REPORT.**

9 Section 106 of the Emergency Economic Stabilization
10 Act of 2008 (12 U.S.C. 5216) is amended by inserting
11 at the end the following:

12 “(f) REPORT.—The Secretary of the Treasury shall
13 report to Congress every 6 months on amounts received
14 and transferred to the general fund under subsection
15 (d).”.

16 **SEC. 1304. AMENDMENTS TO HOUSING AND ECONOMIC RE-**
17 **COVERY ACT OF 2008.**

18 (a) SALE OF FANNIE MAE OBLIGATIONS AND SECURITIES BY THE TREASURY; DEFICIT REDUCTION.—Sec-
19 tion 304(g)(2) of the Federal National Mortgage Associa-
20 tion Charter Act (12 U.S.C. 1719(g)(2)) is amended—

22 (1) by redesignating subparagraph (C) as sub-
23 paragraph (D); and

24 (2) by inserting after subparagraph (B) the fol-
25 lowing:

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1 “(C) DEFICIT REDUCTION.—The Secretary
2 of the Treasury shall deposit in the General
3 Fund of the Treasury any amounts received by
4 the Secretary from the sale of any obligation
5 acquired by the Secretary under this subsection,
6 where such amounts shall be—

7 “(i) dedicated for the sole purpose of
8 deficit reduction; and

9 “(ii) prohibited from use as an offset
10 for other spending increases or revenue re-
11 ductions.”.

12 (b) SALE OF FREDDIE MAC OBLIGATIONS AND SE-
13 CURITIES BY THE TREASURY; DEFICIT REDUCTION.—
14 Section 306(l)(2) of the Federal Home Loan Mortgage
15 Corporation Act (12 U.S.C. 1455(l)(2)) is amended—

16 (1) by redesignating subparagraph (C) as sub-
17 paragraph (D); and

18 (2) by inserting after subparagraph (B) the fol-
19 lowing:

20 “(C) DEFICIT REDUCTION.—The Secretary
21 of the Treasury shall deposit in the General
22 Fund of the Treasury any amounts received by
23 the Secretary from the sale of any obligation
24 acquired by the Secretary under this subsection,
25 where such amounts shall be—

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1 “(i) dedicated for the sole purpose of
2 deficit reduction; and

3 “(ii) prohibited from use as an offset
4 for other spending increases or revenue re-
5 ductions.”.

6 (c) SALE OF FEDERAL HOME LOAN BANKS OBLIGA-
7 TIONS BY THE TREASURY; DEFICIT REDUCTION.—Sec-
8 tion 11(l)(2) of the Federal Home Loan Bank Act (12
9 U.S.C. 1431(l)(2)) is amended—

10 (1) by redesignating subparagraph (C) as sub-
11 paragraph (D); and

12 (2) by inserting after subparagraph (B) the fol-
13 lowing:

14 “(C) DEFICIT REDUCTION.—The Secretary
15 of the Treasury shall deposit in the General
16 Fund of the Treasury any amounts received by
17 the Secretary from the sale of any obligation
18 acquired by the Secretary under this subsection,
19 where such amounts shall be—

20 “(i) dedicated for the sole purpose of
21 deficit reduction; and

22 “(ii) prohibited from use as an offset
23 for other spending increases or revenue re-
24 ductions.”.

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1 (d) REPAYMENT OF FEES.—Any periodic commit-
2 ment fee or any other fee or assessment paid by the Fed-
3 eral National Mortgage Association or Federal Home
4 Loan Mortgage Corporation to the Secretary of the Treas-
5 ury as a result of any preferred stock purchase agreement,
6 mortgage-backed security purchase program, or any other
7 program or activity authorized or carried out pursuant to
8 the authorities granted to the Secretary of the Treasury
9 under section 1117 of the Housing and Economic Recov-
10 ery Act of 2008 (Public Law 110–289; 122 Stat. 2683),
11 including any fee agreed to by contract between the Sec-
12 retary and the Association or Corporation, shall be depos-
13 ited in the General Fund of the Treasury where such
14 amounts shall be—

15 (1) dedicated for the sole purpose of deficit re-
16 duction; and

17 (2) prohibited from use as an offset for other
18 spending increases or revenue reductions.

19 **SEC. 1305. FEDERAL HOUSING FINANCE AGENCY REPORT.**

20 The Director of the Federal Housing Finance Agency
21 shall submit to Congress a report on the plans of the
22 Agency to continue to support and maintain the Nation’s
23 vital housing industry, while at the same time guaran-
24 teeing that the American taxpayer will not suffer unneces-
25 sary losses.

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1 **SEC. 1306. REPAYMENT OF UNOBLIGATED ARRA FUNDS.**

2 (a) REJECTION OF ARRA FUNDS BY STATE.—Sec-
3 tion 1607 of the American Recovery and Reinvestment Act
4 of 2009 (Public Law 111–5; 123 Stat. 305) is amended
5 by adding at the end the following:

6 “(d) STATEWIDE REJECTION OF FUNDS.—If funds
7 provided to any State in any division of this Act are not
8 accepted for use by the Governor of the State pursuant
9 to subsection (a) or by the State legislature pursuant to
10 subsection (b), then all such funds shall be—

11 “(1) rescinded; and

12 “(2) deposited in the General Fund of the
13 Treasury where such amounts shall be—

14 “(A) dedicated for the sole purpose of def-
15 icit reduction; and

16 “(B) prohibited from use as an offset for
17 other spending increases or revenue reduc-
18 tions.”.

19 (b) WITHDRAWAL OR RECAPTURE OF UNOBLIGATED
20 FUNDS.—Title XVI of the American Recovery and Rein-
21 vestment Act of 2009 (Public Law 111–5; 123 Stat. 302)
22 is amended by adding at the end the following:

23 **“SEC. 1613. WITHDRAWAL OR RECAPTURE OF UNOBLI-
24 GATED FUNDS.**

25 “Notwithstanding any other provision of this Act, if
26 the head of any executive agency withdraws or recaptures

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1 for any reason funds appropriated or otherwise made
2 available under this division, and such funds have not been
3 obligated by a State to a local government or for a specific
4 project, such recaptured funds shall be—

5 “(1) rescinded; and

6 “(2) deposited in the General Fund of the
7 Treasury where such amounts shall be—

8 “(A) dedicated for the sole purpose of def-
9 icit reduction; and

10 “(B) prohibited from use as an offset for
11 other spending increases or revenue reduc-
12 tions.”.

13 (c) RETURN OF UNOBLIGATED FUNDS BY END OF
14 2012.—Section 1603 of the American Recovery and Rein-
15 vestment Act of 2009 (Public Law 111–5; 123 Stat. 302)
16 is amended by—

17 (1) striking “All funds” and inserting “(a) IN
18 GENERAL.—All funds”; and

19 (2) adding at the end the following:

20 “(b) REPAYMENT OF UNOBLIGATED FUNDS.—Any
21 discretionary appropriations made available in this divi-
22 sion that have not been obligated as of December 31,
23 2012, are hereby rescinded, and such amounts shall be
24 deposited in the General Fund of the Treasury where such
25 amounts shall be—

1 “(1) dedicated for the sole purpose of deficit re-
2 duction; and

3 “(2) prohibited from use as an offset for other
4 spending increases or revenue reductions.

5 “(c) PRESIDENTIAL WAIVER AUTHORITY.—

6 “(1) IN GENERAL.—The President may waive
7 the requirements under subsection (b), if the Presi-
8 dent determines that it is not in the best interest of
9 the Nation to rescind a specific unobligated amount
10 after December 31, 2012.

11 “(2) REQUESTS.—The head of an executive
12 agency may also apply to the President for a waiver
13 from the requirements under subsection (b).”.

14 **TITLE XIV—MORTGAGE REFORM**
15 **AND ANTI-PREDATORY LEND-**
16 **ING ACT**

17 **SEC. 1400. SHORT TITLE; DESIGNATION AS ENUMERATED**
18 **CONSUMER LAW.**

19 (a) SHORT TITLE.—This title may be cited as the
20 “Mortgage Reform and Anti-Predatory Lending Act”.

21 (b) DESIGNATION AS ENUMERATED CONSUMER LAW
22 UNDER THE PURVIEW OF THE BUREAU OF CONSUMER
23 FINANCIAL PROTECTION.—Subtitles A, B, C, and E and
24 sections 1471, 1472, 1475, and 1476, and the amend-
25 ments made by such subtitles and sections, shall be enu-

1 merated consumer laws, as defined in section 1002, and
2 come under the purview of the Bureau of Consumer Fi-
3 nancial Protection for purposes of title X, including the
4 transfer of functions and personnel under subtitle F of
5 title X and the savings provisions of such subtitle.

6 (c) REGULATIONS; EFFECTIVE DATE.—

7 (1) REGULATIONS.—The regulations required
8 to be prescribed under this title or the amendments
9 made by this title shall—

10 (A) be prescribed in final form before the
11 end of the 18-month period beginning on the
12 designated transfer date; and

13 (B) take effect not later than 12 months
14 after the date of issuance of the regulations in
15 final form.

16 (2) EFFECTIVE DATE ESTABLISHED BY
17 RULE.—Except as provided in paragraph (3), a sec-
18 tion, or provision thereof, of this title shall take ef-
19 fect on the date on which the final regulations imple-
20 menting such section, or provision, take effect.

21 (3) EFFECTIVE DATE.—A section of this title
22 for which regulations have not been issued on the
23 date that is 18 months after the designated transfer
24 date shall take effect on such date.

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1 **Subtitle A—Residential Mortgage**
2 **Loan Origination Standards**

3 **SEC. 1401. DEFINITIONS.**

4 Section 103 of the Truth in Lending Act (15 U.S.C.
5 1602) is amended by adding at the end the following new
6 subsection:

7 “(cc) **DEFINITIONS RELATING TO MORTGAGE ORIGI-**
8 **NATION AND RESIDENTIAL MORTGAGE LOANS.—**

9 “(1) **COMMISSION.**—Unless otherwise specified,
10 the term ‘Commission’ means the Federal Trade
11 Commission.

12 “(2) **MORTGAGE ORIGINATOR.**—The term
13 ‘mortgage originator’—

14 “(A) means any person who, for direct or
15 indirect compensation or gain, or in the expec-
16 tation of direct or indirect compensation or
17 gain—

18 “(i) takes a residential mortgage loan
19 application;

20 “(ii) assists a consumer in obtaining
21 or applying to obtain a residential mort-
22 gage loan; or

23 “(iii) offers or negotiates terms of a
24 residential mortgage loan;

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1 “(B) includes any person who represents
2 to the public, through advertising or other
3 means of communicating or providing informa-
4 tion (including the use of business cards, sta-
5 tionery, brochures, signs, rate lists, or other
6 promotional items), that such person can or will
7 provide any of the services or perform any of
8 the activities described in subparagraph (A);

9 “(C) does not include any person who is (i)
10 not otherwise described in subparagraph (A) or
11 (B) and who performs purely administrative or
12 clerical tasks on behalf of a person who is de-
13 scribed in any such subparagraph, or (ii) an
14 employee of a retailer of manufactured homes
15 who is not described in clause (i) or (iii) of sub-
16 paragraph (A) and who does not advise a con-
17 sumer on loan terms (including rates, fees, and
18 other costs);

19 “(D) does not include a person or entity
20 that only performs real estate brokerage activi-
21 ties and is licensed or registered in accordance
22 with applicable State law, unless such person or
23 entity is compensated by a lender, a mortgage
24 broker, or other mortgage originator or by any

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1 agent of such lender, mortgage broker, or other
2 mortgage originator;

3 “(E) does not include, with respect to a
4 residential mortgage loan, a person, estate, or
5 trust that provides mortgage financing for the
6 sale of 3 properties in any 12-month period to
7 purchasers of such properties, each of which is
8 owned by such person, estate, or trust and
9 serves as security for the loan, provided that
10 such loan—

11 “(i) is not made by a person, estate,
12 or trust that has constructed, or acted as
13 a contractor for the construction of, a resi-
14 dence on the property in the ordinary
15 course of business of such person, estate,
16 or trust;

17 “(ii) is fully amortizing;

18 “(iii) is with respect to a sale for
19 which the seller determines in good faith
20 and documents that the buyer has a rea-
21 sonable ability to repay the loan;

22 “(iv) has a fixed rate or an adjustable
23 rate that is adjustable after 5 or more
24 years, subject to reasonable annual and

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1 lifetime limitations on interest rate in-
2 creases; and

3 “(v) meets any other criteria the
4 Board may prescribe;

5 “(F) does not include the creditor (except
6 the creditor in a table-funded transaction)
7 under paragraph (1), (2), or (4) of section
8 129B(c); and

9 “(G) does not include a servicer or servicer
10 employees, agents and contractors, including
11 but not limited to those who offer or negotiate
12 terms of a residential mortgage loan for pur-
13 poses of renegotiating, modifying, replacing and
14 subordinating principal of existing mortgages
15 where borrowers are behind in their payments,
16 in default or have a reasonable likelihood of
17 being in default or falling behind.

18 “(3) NATIONWIDE MORTGAGE LICENSING SYS-
19 TEM AND REGISTRY.—The term ‘Nationwide Mort-
20 gage Licensing System and Registry’ has the same
21 meaning as in the Secure and Fair Enforcement for
22 Mortgage Licensing Act of 2008.

23 “(4) OTHER DEFINITIONS RELATING TO MORT-
24 GAGE ORIGINATOR.—For purposes of this sub-
25 section, a person ‘assists a consumer in obtaining or

1 applying to obtain a residential mortgage loan’ by,
2 among other things, advising on residential mort-
3 gage loan terms (including rates, fees, and other
4 costs), preparing residential mortgage loan packages,
5 or collecting information on behalf of the consumer
6 with regard to a residential mortgage loan.

7 “(5) RESIDENTIAL MORTGAGE LOAN.—The
8 term ‘residential mortgage loan’ means any con-
9 sumer credit transaction that is secured by a mort-
10 gage, deed of trust, or other equivalent consensual
11 security interest on a dwelling or on residential real
12 property that includes a dwelling, other than a con-
13 sumer credit transaction under an open end credit
14 plan or, for purposes of sections 129B and 129C
15 and section 128(a) (16), (17), (18), and (19), and
16 sections 128(f) and 130(k), and any regulations pro-
17 mulgated thereunder, an extension of credit relating
18 to a plan described in section 101(53D) of title 11,
19 United States Code.

20 “(6) SECRETARY.—The term ‘Secretary’, when
21 used in connection with any transaction or person
22 involved with a residential mortgage loan, means the
23 Secretary of Housing and Urban Development.

24 “(7) SERVICER.—The term ‘servicer’ has the
25 same meaning as in section 6(i)(2) of the Real Es-

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1 tate Settlement Procedures Act of 1974 (12 U.S.C.
2 2605(i)(2)).”.

3 **SEC. 1402. RESIDENTIAL MORTGAGE LOAN ORIGINATION.**

4 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
5 ing Act (15 U.S.C. 1631 et seq.) is amended—

6 (1) by redesignating the 2nd of the 2 sections
7 designated as section 129 (15 U.S.C. 1639a) (relat-
8 ing to duty of servicers of residential mortgages) as
9 section 129A; and

10 (2) by inserting after section 129A (as so redesi-
11 gnated) the following new section:

12 **“§ 129B. Residential mortgage loan origination**

13 “(a) FINDING AND PURPOSE.—

14 “(1) FINDING.—The Congress finds that eco-
15 nomic stabilization would be enhanced by the protec-
16 tion, limitation, and regulation of the terms of resi-
17 dential mortgage credit and the practices related to
18 such credit, while ensuring that responsible, afford-
19 able mortgage credit remains available to consumers.

20 “(2) PURPOSE.—It is the purpose of this sec-
21 tion and section 129C to assure that consumers are
22 offered and receive residential mortgage loans on
23 terms that reasonably reflect their ability to repay
24 the loans and that are understandable and not un-
25 fair, deceptive or abusive.

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1 “(b) DUTY OF CARE.—

2 “(1) STANDARD.—Subject to regulations pre-
3 scribed under this subsection, each mortgage origi-
4 nator shall, in addition to the duties imposed by oth-
5 erwise applicable provisions of State or Federal
6 law—

7 “(A) be qualified and, when required, reg-
8 istered and licensed as a mortgage originator in
9 accordance with applicable State or Federal
10 law, including the Secure and Fair Enforcement
11 for Mortgage Licensing Act of 2008; and

12 “(B) include on all loan documents any
13 unique identifier of the mortgage originator
14 provided by the Nationwide Mortgage Licensing
15 System and Registry.

16 “(2) COMPLIANCE PROCEDURES REQUIRED.—
17 The Board shall prescribe regulations requiring de-
18 pository institutions to establish and maintain proce-
19 dures reasonably designed to assure and monitor the
20 compliance of such depository institutions, the sub-
21 sidiaries of such institutions, and the employees of
22 such institutions or subsidiaries with the require-
23 ments of this section and the registration procedures
24 established under section 1507 of the Secure and

1 Fair Enforcement for Mortgage Licensing Act of
2 2008.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for chapter 2 of the Truth in Lending Act is amended
5 by inserting after the item relating to section 129 the fol-
6 lowing new items:

“129A. Fiduciary duty of servicers of pooled residential mortgages.

“129B. Residential mortgage loan origination.”.

7 **SEC. 1403. PROHIBITION ON STEERING INCENTIVES.**

8 Section 129B of the Truth in Lending Act (as added
9 by section 1402(a)) is amended by inserting after sub-
10 section (b) the following new subsection:

11 “(c) PROHIBITION ON STEERING INCENTIVES.—

12 “(1) IN GENERAL.—For any mortgage loan, no
13 mortgage originator shall receive from any person
14 and no person shall pay to a mortgage originator,
15 directly or indirectly, compensation that varies based
16 on the terms of the loan (other than the amount of
17 the principal).

18 “(2) RESTRUCTURING OF FINANCING ORIGINA-
19 TION FEE.—

20 “(A) IN GENERAL.—For any mortgage
21 loan, a mortgage originator may not receive
22 from any person other than the consumer and
23 no person, other than the consumer, who knows
24 or has reason to know that a consumer has di-

1 rectly compensated or will directly compensate
2 a mortgage originator may pay a mortgage
3 originator any origination fee or charge except
4 bona fide third party charges not retained by
5 the creditor, mortgage originator, or an affiliate
6 of the creditor or mortgage originator .

7 “(B) EXCEPTION.—Notwithstanding sub-
8 paragraph (A), a mortgage originator may re-
9 ceive from a person other than the consumer an
10 origination fee or charge, and a person other
11 than the consumer may pay a mortgage origi-
12 nator an origination fee or charge, if—

13 “(i) the mortgage originator does not
14 receive any compensation directly from the
15 consumer; and

16 “(ii) the consumer does not make an
17 upfront payment of discount points, origi-
18 nation points, or fees, however denomi-
19 nated (other than bona fide third party
20 charges not retained by the mortgage origi-
21 nator, creditor, or an affiliate of the cred-
22 itor or originator), except that the Board
23 may, by rule, waive or provide exemptions
24 to this clause if the Board determines that

1 such waiver or exemption is in the interest
2 of consumers and in the public interest.

3 “(3) REGULATIONS.—The Board shall prescribe
4 regulations to prohibit—

5 “(A) mortgage originators from steering
6 any consumer to a residential mortgage loan
7 that—

8 “(i) the consumer lacks a reasonable
9 ability to repay (in accordance with regula-
10 tions prescribed under section 129C(a)); or

11 “(ii) has predatory characteristics or
12 effects (such as equity stripping, excessive
13 fees, or abusive terms);

14 “(B) mortgage originators from steering
15 any consumer from a residential mortgage loan
16 for which the consumer is qualified that is a
17 qualified mortgage (as defined in section
18 129C(b)(2)) to a residential mortgage loan that
19 is not a qualified mortgage;

20 “(C) abusive or unfair lending practices
21 that promote disparities among consumers of
22 equal credit worthiness but of different race,
23 ethnicity, gender, or age; and

24 “(D) mortgage originators from—

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1 “(i) mischaracterizing the credit his-
2 tory of a consumer or the residential mort-
3 gage loans available to a consumer;

4 “(ii) mischaracterizing or suborning
5 the mischaracterization of the appraised
6 value of the property securing the exten-
7 sion of credit; or

8 “(iii) if unable to suggest, offer, or
9 recommend to a consumer a loan that is
10 not more expensive than a loan for which
11 the consumer qualifies, discouraging a con-
12 sumer from seeking a home mortgage loan
13 secured by a consumer’s principal dwelling
14 from another mortgage originator.

15 “(4) RULES OF CONSTRUCTION.—No provision
16 of this subsection shall be construed as—

17 “(A) permitting any yield spread premium
18 or other similar compensation that would, for
19 any mortgage loan, permit the total amount of
20 direct and indirect compensation from all
21 sources permitted to a mortgage originator to
22 vary based on the terms of the loan (other than
23 the amount of the principal);

24 “(B) limiting or affecting the amount of
25 compensation received by a creditor upon the

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1 sale of a consummated loan to a subsequent
2 purchaser;

3 “(C) restricting a consumer’s ability to fi-
4 nance, at the option of the consumer, including
5 through principal or rate, any origination fees
6 or costs permitted under this subsection, or the
7 mortgage originator’s right to receive such fees
8 or costs (including compensation) from any per-
9 son, subject to paragraph (2)(B), so long as
10 such fees or costs do not vary based on the
11 terms of the loan (other than the amount of the
12 principal) or the consumer’s decision about
13 whether to finance such fees or costs; or

14 “(D) prohibiting incentive payments to a
15 mortgage originator based on the number of
16 residential mortgage loans originated within a
17 specified period of time.”.

18 **SEC. 1404. LIABILITY.**

19 Section 129B of the Truth in Lending Act is amend-
20 ed by inserting after subsection (c) (as added by section
21 1403) the following new subsection:

22 “(d) LIABILITY FOR VIOLATIONS.—

23 “(1) IN GENERAL.—For purposes of providing
24 a cause of action for any failure by a mortgage origi-
25 nator, other than a creditor, to comply with any re-

1 requirement imposed under this section and any regu-
2 lation prescribed under this section, section 130
3 shall be applied with respect to any such failure by
4 substituting ‘mortgage originator’ for ‘creditor’ each
5 place such term appears in each such subsection.

6 “(2) MAXIMUM.—The maximum amount of any
7 liability of a mortgage originator under paragraph
8 (1) to a consumer for any violation of this section
9 shall not exceed the greater of actual damages or an
10 amount equal to 3 times the total amount of direct
11 and indirect compensation or gain accruing to the
12 mortgage originator in connection with the residen-
13 tial mortgage loan involved in the violation, plus the
14 costs to the consumer of the action, including a rea-
15 sonable attorney’s fee.”.

16 **SEC. 1405. REGULATIONS.**

17 (a) DISCRETIONARY REGULATORY AUTHORITY.—
18 Section 129B of the Truth in Lending Act is amended
19 by inserting after subsection (d) (as added by section
20 1404) the following new subsection:

21 “(e) DISCRETIONARY REGULATORY AUTHORITY.—

22 “(1) IN GENERAL.—The Board shall, by regula-
23 tions, prohibit or condition terms, acts or practices
24 relating to residential mortgage loans that the Board
25 finds to be abusive, unfair, deceptive, predatory, nec-

1 essary or proper to ensure that responsible, afford-
2 able mortgage credit remains available to consumers
3 in a manner consistent with the purposes of this sec-
4 tion and section 129C, necessary or proper to effec-
5 tuate the purposes of this section and section 129C,
6 to prevent circumvention or evasion thereof, or to fa-
7 cilitate compliance with such sections, or are not in
8 the interest of the borrower.

9 “(2) APPLICATION.—The regulations prescribed
10 under paragraph (1) shall be applicable to all resi-
11 dential mortgage loans and shall be applied in the
12 same manner as regulations prescribed under section
13 105.

14 “(f) Section 129B and any regulations promulgated
15 thereunder do not apply to an extension of credit relating
16 to a plan described in section 101(53D) of title 11, United
17 States Code.”.

18 (b) DISCLOSURES.—Notwithstanding any other pro-
19 vision of this title, in order to improve consumer aware-
20 ness and understanding of transactions involving residen-
21 tial mortgage loans through the use of disclosures, the
22 Board may, by rule, exempt from or modify disclosure re-
23 quirements, in whole or in part, for any class of residential
24 mortgage loans if the Board determines that such exemp-

1 tion or modification is in the interest of consumers and
2 in the public interest.

3 **SEC. 1406. STUDY OF SHARED APPRECIATION MORTGAGES.**

4 (a) **STUDY.**—The Secretary of Housing and Urban
5 Development, in consultation with the Secretary of the
6 Treasury and other relevant agencies, shall conduct a com-
7 prehensive study to determine prudent statutory and regu-
8 latory requirements sufficient to provide for the wide-
9 spread use of shared appreciation mortgages to strengthen
10 local housing markets, provide new opportunities for af-
11 fordable homeownership, and enable homeowners at risk
12 of foreclosure to refinance or modify their mortgages.

13 (b) **REPORT.**—Not later than the expiration of the
14 6-month period beginning on the date of the enactment
15 of this Act, the Secretary of Housing and Urban Develop-
16 ment shall submit a report to the Congress on the results
17 of the study, which shall include recommendations for the
18 regulatory and legislative requirements referred to in sub-
19 section (a).

20 **Subtitle B—Minimum Standards**
21 **For Mortgages**

22 **SEC. 1411. ABILITY TO REPAY.**

23 (a) **IN GENERAL.**—

24 (1) **RULE OF CONSTRUCTION.**—No regulation,
25 order, or guidance issued by the Bureau under this

1 title shall be construed as requiring a depository in-
2 stitution to apply mortgage underwriting standards
3 that do not meet the minimum underwriting stand-
4 ards required by the appropriate prudential regu-
5 lator of the depository institution.

6 (2) AMENDMENT TO TRUTH IN LENDING
7 ACT.—Chapter 2 of the Truth in Lending Act (15
8 U.S.C. 1631 et seq.) is amended by inserting after
9 section 129B (as added by section 1402(a)) the fol-
10 lowing new section:

11 **“§ 129C. Minimum standards for residential mortgage**
12 **loans**

13 “(a) ABILITY TO REPAY.—

14 “(1) IN GENERAL.—In accordance with regula-
15 tions prescribed by the Board, no creditor may make
16 a residential mortgage loan unless the creditor
17 makes a reasonable and good faith determination
18 based on verified and documented information that,
19 at the time the loan is consummated, the consumer
20 has a reasonable ability to repay the loan, according
21 to its terms, and all applicable taxes, insurance (in-
22 cluding mortgage guarantee insurance), and assess-
23 ments.

24 “(2) MULTIPLE LOANS.—If the creditor knows,
25 or has reason to know, that 1 or more residential

1 mortgage loans secured by the same dwelling will be
2 made to the same consumer, the creditor shall make
3 a reasonable and good faith determination, based on
4 verified and documented information, that the con-
5 sumer has a reasonable ability to repay the com-
6 bined payments of all loans on the same dwelling ac-
7 cording to the terms of those loans and all applicable
8 taxes, insurance (including mortgage guarantee in-
9 surance), and assessments.

10 “(3) BASIS FOR DETERMINATION.—A deter-
11 mination under this subsection of a consumer’s abil-
12 ity to repay a residential mortgage loan shall include
13 consideration of the consumer’s credit history, cur-
14 rent income, expected income the consumer is rea-
15 sonably assured of receiving, current obligations,
16 debt-to-income ratio or the residual income the con-
17 sumer will have after paying non-mortgage debt and
18 mortgage-related obligations, employment status,
19 and other financial resources other than the con-
20 sumer’s equity in the dwelling or real property that
21 secures repayment of the loan. A creditor shall de-
22 termine the ability of the consumer to repay using
23 a payment schedule that fully amortizes the loan
24 over the term of the loan.

1 “(4) INCOME VERIFICATION.—A creditor mak-
2 ing a residential mortgage loan shall verify amounts
3 of income or assets that such creditor relies on to
4 determine repayment ability, including expected in-
5 come or assets, by reviewing the consumer’s Internal
6 Revenue Service Form W-2, tax returns, payroll re-
7 ceipts, financial institution records, or other third-
8 party documents that provide reasonably reliable evi-
9 dence of the consumer’s income or assets. In order
10 to safeguard against fraudulent reporting, any con-
11 sideration of a consumer’s income history in making
12 a determination under this subsection shall include
13 the verification of such income by the use of—

14 “(A) Internal Revenue Service transcripts
15 of tax returns; or

16 “(B) a method that quickly and effectively
17 verifies income documentation by a third party
18 subject to rules prescribed by the Board.

19 “(5) EXEMPTION.—With respect to loans made,
20 guaranteed, or insured by Federal departments or
21 agencies identified in subsection (b)(3)(B)(ii), such
22 departments or agencies may exempt refinancings
23 under a streamlined refinancing from this income
24 verification requirement as long as the following con-
25 ditions are met:

1 “(A) The consumer is not 30 days or more
2 past due on the prior existing residential mort-
3 gage loan.

4 “(B) The refinancing does not increase the
5 principal balance outstanding on the prior exist-
6 ing residential mortgage loan, except to the ex-
7 tent of fees and charges allowed by the depart-
8 ment or agency making, guaranteeing, or insur-
9 ing the refinancing.

10 “(C) Total points and fees (as defined in
11 section 103(aa)(4), other than bona fide third
12 party charges not retained by the mortgage
13 originator, creditor, or an affiliate of the cred-
14 itor or mortgage originator) payable in connec-
15 tion with the refinancing do not exceed 3 per-
16 cent of the total new loan amount.

17 “(D) The interest rate on the refinanced
18 loan is lower than the interest rate of the origi-
19 nal loan, unless the borrower is refinancing
20 from an adjustable rate to a fixed-rate loan,
21 under guidelines that the department or agency
22 shall establish for loans they make, guarantee,
23 or issue.

24 “(E) The refinancing is subject to a pay-
25 ment schedule that will fully amortize the refi-

1 nancing in accordance with the regulations pre-
2 scribed by the department or agency making,
3 guaranteeing, or insuring the refinancing.

4 “(F) The terms of the refinancing do not
5 result in a balloon payment, as defined in
6 subsection (b)(2)(A)(ii).

7 “(G) Both the residential mortgage loan
8 being refinanced and the refinancing satisfy all
9 requirements of the department or agency mak-
10 ing, guaranteeing, or insuring the refinancing.

11 “(6) NONSTANDARD LOANS.—

12 “(A) VARIABLE RATE LOANS THAT DEFER
13 REPAYMENT OF ANY PRINCIPAL OR INTER-
14 EST.—For purposes of determining, under this
15 subsection, a consumer’s ability to repay a vari-
16 able rate residential mortgage loan that allows
17 or requires the consumer to defer the repay-
18 ment of any principal or interest, the creditor
19 shall use a fully amortizing repayment schedule.

20 “(B) INTEREST-ONLY LOANS.—For pur-
21 poses of determining, under this subsection, a
22 consumer’s ability to repay a residential mort-
23 gage loan that permits or requires the payment
24 of interest only, the creditor shall use the pay-

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1 ment amount required to amortize the loan by
2 its final maturity.

3 “(C) CALCULATION FOR NEGATIVE AMOR-
4 TIZATION.—In making any determination under
5 this subsection, a creditor shall also take into
6 consideration any balance increase that may ac-
7 cruer from any negative amortization provision.

8 “(D) CALCULATION PROCESS.—For pur-
9 poses of making any determination under this
10 subsection, a creditor shall calculate the month-
11 ly payment amount for principal and interest on
12 any residential mortgage loan by assuming—

13 “(i) the loan proceeds are fully dis-
14 bursed on the date of the consummation of
15 the loan;

16 “(ii) the loan is to be repaid in sub-
17 stantially equal monthly amortizing pay-
18 ments for principal and interest over the
19 entire term of the loan with no balloon
20 payment, unless the loan contract requires
21 more rapid repayment (including balloon
22 payment), in which case the calculation
23 shall be made (I) in accordance with regu-
24 lations prescribed by the Board, with re-
25 spect to any loan which has an annual per-

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1 centage rate that does not exceed the aver-
2 age prime offer rate for a comparable
3 transaction, as of the date the interest rate
4 is set, by 1.5 or more percentage points for
5 a first lien residential mortgage loan; and
6 by 3.5 or more percentage points for a
7 subordinate lien residential mortgage loan;
8 or (II) using the contract's repayment
9 schedule, with respect to a loan which has
10 an annual percentage rate, as of the date
11 the interest rate is set, that is at least 1.5
12 percentage points above the average prime
13 offer rate for a first lien residential mort-
14 gage loan; and 3.5 percentage points above
15 the average prime offer rate for a subordi-
16 nate lien residential mortgage loan; and

17 “(iii) the interest rate over the entire
18 term of the loan is a fixed rate equal to the
19 fully indexed rate at the time of the loan
20 closing, without considering the introduc-
21 tory rate.

22 “(E) REFINANCE OF HYBRID LOANS WITH
23 CURRENT LENDER.—In considering any appli-
24 cation for refinancing an existing hybrid loan
25 by the creditor into a standard loan to be made

1 by the same creditor in any case in which there
2 would be a reduction in monthly payment and
3 the mortgagor has not been delinquent on any
4 payment on the existing hybrid loan, the cred-
5 itor may—

6 “(i) consider the mortgagor’s good
7 standing on the existing mortgage;

8 “(ii) consider if the extension of new
9 credit would prevent a likely default should
10 the original mortgage reset and give such
11 concerns a higher priority as an acceptable
12 underwriting practice; and

13 “(iii) offer rate discounts and other
14 favorable terms to such mortgagor that
15 would be available to new customers with
16 high credit ratings based on such under-
17 writing practice.

18 “(7) FULLY-INDEXED RATE DEFINED.—For
19 purposes of this subsection, the term ‘fully indexed
20 rate’ means the index rate prevailing on a residential
21 mortgage loan at the time the loan is made plus the
22 margin that will apply after the expiration of any in-
23 troductory interest rates.

24 “(8) REVERSE MORTGAGES AND BRIDGE
25 LOANS.—This subsection shall not apply with re-

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1 spect to any reverse mortgage or temporary or
2 bridge loan with a term of 12 months or less, includ-
3 ing to any loan to purchase a new dwelling where
4 the consumer plans to sell a different dwelling within
5 12 months.

6 “(9) SEASONAL INCOME.—If documented in-
7 come, including income from a small business, is a
8 repayment source for a residential mortgage loan, a
9 creditor may consider the seasonality and irregu-
10 larity of such income in the underwriting of and
11 scheduling of payments for such credit.”.

12 (b) CLERICAL AMENDMENT.—The table of sections
13 for chapter 2 of the Truth in Lending Act is amended
14 by inserting after the item relating to section 129B (as
15 added by section 1402(b)) the following new item:

“129C. Minimum standards for residential mortgage loans.”.

16 **SEC. 1412. SAFE HARBOR AND REBUTTABLE PRESUMPTION.**

17 Section 129C of the Truth in Lending Act is amend-
18 ed by inserting after subsection (a) (as added by section
19 1411) the following new subsection:

20 “(b) PRESUMPTION OF ABILITY TO REPAY.—

21 “(1) IN GENERAL.—Any creditor with respect
22 to any residential mortgage loan, and any assignee
23 of such loan subject to liability under this title, may
24 presume that the loan has met the requirements of
25 subsection (a), if the loan is a qualified mortgage.

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

3 “(A) QUALIFIED MORTGAGE.—The term
4 ‘qualified mortgage’ means any residential
5 mortgage loan—

6 “(i) for which the regular periodic
7 payments for the loan may not—

8 “(I) result in an increase of the
9 principal balance; or

10 “(II) except as provided in sub-
11 paragraph (E), allow the consumer to
12 defer repayment of principal;

13 “(ii) except as provided in subpara-
14 graph (E), the terms of which do not re-
15 sult in a balloon payment, where a ‘balloon
16 payment’ is a scheduled payment that is
17 more than twice as large as the average of
18 earlier scheduled payments;

19 “(iii) for which the income and finan-
20 cial resources relied upon to qualify the ob-
21 ligors on the loan are verified and docu-
22 mented;

23 “(iv) in the case of a fixed rate loan,
24 for which the underwriting process is based
25 on a payment schedule that fully amortizes

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1 the loan over the loan term and takes into
2 account all applicable taxes, insurance, and
3 assessments;

4 “(v) in the case of an adjustable rate
5 loan, for which the underwriting is based
6 on the maximum rate permitted under the
7 loan during the first 5 years, and a pay-
8 ment schedule that fully amortizes the loan
9 over the loan term and takes into account
10 all applicable taxes, insurance, and assess-
11 ments;

12 “(vi) that complies with any guide-
13 lines or regulations established by the
14 Board relating to ratios of total monthly
15 debt to monthly income or alternative
16 measures of ability to pay regular expenses
17 after payment of total monthly debt, tak-
18 ing into account the income levels of the
19 borrower and such other factors as the
20 Board may determine relevant and con-
21 sistent with the purposes described in
22 paragraph (3)(B)(i);

23 “(vii) for which the total points and
24 fees (as defined in subparagraph (C)) pay-

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1 able in connection with the loan do not ex-
2 ceed 3 percent of the total loan amount;

3 “(viii) for which the term of the loan
4 does not exceed 30 years, except as such
5 term may be extended under paragraph
6 (3), such as in high-cost areas; and

7 “(ix) in the case of a reverse mort-
8 gage (except for the purposes of subsection
9 (a) of section 129C, to the extent that
10 such mortgages are exempt altogether
11 from those requirements), a reverse mort-
12 gage which meets the standards for a
13 qualified mortgage, as set by the Board in
14 rules that are consistent with the purposes
15 of this subsection.

16 “(B) AVERAGE PRIME OFFER RATE.—The
17 term ‘average prime offer rate’ means the aver-
18 age prime offer rate for a comparable trans-
19 action as of the date on which the interest rate
20 for the transaction is set, as published by the
21 Board..

22 “(C) POINTS AND FEES.—

23 “(i) IN GENERAL.—For purposes of
24 subparagraph (A), the term ‘points and
25 fees’ means points and fees as defined by

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1 section 103(aa)(4) (other than bona fide
2 third party charges not retained by the
3 mortgage originator, creditor, or an affil-
4 iate of the creditor or mortgage origi-
5 nator).

6 “(ii) COMPUTATION.—For purposes of
7 computing the total points and fees under
8 this subparagraph, the total points and
9 fees shall exclude either of the amounts de-
10 scribed in the following subclauses, but not
11 both:

12 “(I) Up to and including 2 bona
13 fide discount points payable by the
14 consumer in connection with the mort-
15 gage, but only if the interest rate
16 from which the mortgage’s interest
17 rate will be discounted does not ex-
18 ceed by more than 1 percentage point
19 the average prime offer rate.

20 “(II) Unless 2 bona fide discount
21 points have been excluded under sub-
22 clause (I), up to and including 1 bona
23 fide discount point payable by the
24 consumer in connection with the mort-
25 gage, but only if the interest rate

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1 from which the mortgage's interest
2 rate will be discounted does not ex-
3 ceed by more than 2 percentage
4 points the average prime offer rate.

5 “(iii) BONA FIDE DISCOUNT POINTS
6 DEFINED.—For purposes of clause (ii), the
7 term ‘bona fide discount points’ means
8 loan discount points which are knowingly
9 paid by the consumer for the purpose of
10 reducing, and which in fact result in a
11 bona fide reduction of, the interest rate or
12 time-price differential applicable to the
13 mortgage.

14 “(iv) INTEREST RATE REDUCTION.—
15 Subclauses (I) and (II) of clause (ii) shall
16 not apply to discount points used to pur-
17 chase an interest rate reduction unless the
18 amount of the interest rate reduction pur-
19 chased is reasonably consistent with estab-
20 lished industry norms and practices for
21 secondary mortgage market transactions.

22 “(D) SMALLER LOANS.—The Board shall
23 prescribe rules adjusting the criteria under sub-
24 paragraph (A)(vii) in order to permit lenders
25 that extend smaller loans to meet the require-

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1 ments of the presumption of compliance under
2 paragraph (1). In prescribing such rules, the
3 Board shall consider the potential impact of
4 such rules on rural areas and other areas where
5 home values are lower.

6 “(E) BALLOON LOANS.—The Board may,
7 by regulation, provide that the term ‘qualified
8 mortgage’ includes a balloon loan—

9 “(i) that meets all of the criteria for
10 a qualified mortgage under subparagraph
11 (A) (except clauses (i)(II), (ii), (iv), and
12 (v) of such subparagraph);

13 “(ii) for which the creditor makes a
14 determination that the consumer is able to
15 make all scheduled payments, except the
16 balloon payment, out of income or assets
17 other than the collateral;

18 “(iii) for which the underwriting is
19 based on a payment schedule that fully
20 amortizes the loan over a period of not
21 more than 30 years and takes into account
22 all applicable taxes, insurance, and assess-
23 ments; and

24 “(iv) that is extended by a creditor
25 that—

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1 “(I) operates predominantly in
2 rural or underserved areas;

3 “(II) together with all affiliates,
4 has total annual mortgage loan origi-
5 nations that do not exceed a limit set
6 by the Board;

7 “(III) retains the balloon loans in
8 portfolio; and

9 “(IV) meets any asset size
10 threshold and any other criteria as the
11 Board may establish, consistent with
12 the purposes of this subtitle.

13 “(3) REGULATIONS.—

14 “(A) IN GENERAL.—The Board shall pre-
15 scribe regulations to carry out the purposes of
16 this subsection.

17 “(B) REVISION OF SAFE HARBOR CRI-
18 TERIA.—

19 “(i) IN GENERAL.—The Board may
20 prescribe regulations that revise, add to, or
21 subtract from the criteria that define a
22 qualified mortgage upon a finding that
23 such regulations are necessary or proper to
24 ensure that responsible, affordable mort-
25 gage credit remains available to consumers

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1 in a manner consistent with the purposes
2 of this section, necessary and appropriate
3 to effectuate the purposes of this section
4 and section 129B, to prevent circumven-
5 tion or evasion thereof, or to facilitate
6 compliance with such sections.

7 “(ii) LOAN DEFINITION.—The fol-
8 lowing agencies shall, in consultation with
9 the Board, prescribe rules defining the
10 types of loans they insure, guarantee, or
11 administer, as the case may be, that are
12 qualified mortgages for purposes of para-
13 graph (2)(A), and such rules may revise,
14 add to, or subtract from the criteria used
15 to define a qualified mortgage under para-
16 graph (2)(A), upon a finding that such
17 rules are consistent with the purposes of
18 this section and section 129B, to prevent
19 circumvention or evasion thereof, or to fa-
20 cilitate compliance with such sections:

21 “(I) The Department of Housing
22 and Urban Development, with regard
23 to mortgages insured under the Na-
24 tional Housing Act (12 U.S.C. 1707
25 et seq.).

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1 “(II) The Department of Vet-
2 erans Affairs, with regard to a loan
3 made or guaranteed by the Secretary
4 of Veterans Affairs.

5 “(III) The Department of Agri-
6 culture, with regard loans guaranteed
7 by the Secretary of Agriculture pursu-
8 ant to 42 U.S.C. 1472(h).

9 “(IV) The Rural Housing Serv-
10 ice, with regard to loans insured by
11 the Rural Housing Service.”.

12 **SEC. 1413. DEFENSE TO FORECLOSURE.**

13 Section 130 of the Truth in Lending Act (15 U.S.C.
14 1640) is amended by adding at the end the following new
15 subsection:

16 “(k) DEFENSE TO FORECLOSURE.—

17 “(1) IN GENERAL.—Notwithstanding any other
18 provision of law, when a creditor, assignee, or other
19 holder of a residential mortgage loan or anyone act-
20 ing on behalf of such creditor, assignee, or holder,
21 initiates a judicial or nonjudicial foreclosure of the
22 residential mortgage loan, or any other action to col-
23 lect the debt in connection with such loan, a con-
24 sumer may assert a violation by a creditor of para-
25 graph (1) or (2) of section 129B(c), or of section

1 129C(a), as a matter of defense by recoupment or
2 set off without regard for the time limit on a private
3 action for damages under subsection (e).

4 “(2) AMOUNT OF RECOUPMENT OR SETOFF.—

5 “(A) IN GENERAL.—The amount of
6 recoupment or set-off under paragraph (1) shall
7 equal the amount to which the consumer would
8 be entitled under subsection (a) for damages for
9 a valid claim brought in an original action
10 against the creditor, plus the costs to the con-
11 sumer of the action, including a reasonable at-
12 torney’s fee.

13 “(B) SPECIAL RULE.—Where such judg-
14 ment is rendered after the expiration of the ap-
15 plicable time limit on a private action for dam-
16 ages under subsection (e), the amount of
17 recoupment or set-off under paragraph (1) de-
18 rived from damages under subsection (a)(4)
19 shall not exceed the amount to which the con-
20 sumer would have been entitled under sub-
21 section (a)(4) for damages computed up to the
22 day preceding the expiration of the applicable
23 time limit.”.

1 **SEC. 1414. ADDITIONAL STANDARDS AND REQUIREMENTS.**

2 (a) IN GENERAL.—Section 129C of the Truth in
3 Lending Act is amended by inserting after subsection (b)
4 (as added by this title) the following new subsections:

5 “(c) PROHIBITION ON CERTAIN PREPAYMENT PEN-
6 ALTIES.—

7 “(1) PROHIBITED ON CERTAIN LOANS.—

8 “(A) IN GENERAL.—A residential mort-
9 gage loan that is not a ‘qualified mortgage’, as
10 defined under subsection (b)(2), may not con-
11 tain terms under which a consumer must pay a
12 prepayment penalty for paying all or part of the
13 principal after the loan is consummated.

14 “(B) EXCLUSIONS.—For purposes of this
15 subsection, a ‘qualified mortgage’ may not in-
16 clude a residential mortgage loan that—

17 “(i) has an adjustable rate; or

18 “(ii) has an annual percentage rate
19 that exceeds the average prime offer rate
20 for a comparable transaction, as of the
21 date the interest rate is set—

22 “(I) by 1.5 or more percentage
23 points, in the case of a first lien resi-
24 dential mortgage loan having a origi-
25 nal principal obligation amount that is
26 equal to or less than the amount of

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1 the maximum limitation on the origi-
2 nal principal obligation of mortgage in
3 effect for a residence of the applicable
4 size, as of the date of such interest
5 rate set, pursuant to the 6th sentence
6 of section 305(a)(2) the Federal
7 Home Loan Mortgage Corporation
8 Act (12 U.S.C. 1454(a)(2));

9 “(II) by 2.5 or more percentage
10 points, in the case of a first lien resi-
11 dential mortgage loan having a origi-
12 nal principal obligation amount that is
13 more than the amount of the max-
14 imum limitation on the original prin-
15 cipal obligation of mortgage in effect
16 for a residence of the applicable size,
17 as of the date of such interest rate
18 set, pursuant to the 6th sentence of
19 section 305(a)(2) the Federal Home
20 Loan Mortgage Corporation Act (12
21 U.S.C. 1454(a)(2)); and

22 “(III) by 3.5 or more percentage
23 points, in the case of a subordinate
24 lien residential mortgage loan.

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1 “(2) PUBLICATION OF AVERAGE PRIME OFFER
2 RATE AND APR THRESHOLDS.—The Board—

3 “(A) shall publish, and update at least
4 weekly, average prime offer rates;

5 “(B) may publish multiple rates based on
6 varying types of mortgage transactions; and

7 “(C) shall adjust the thresholds established
8 under subclause (I), (II), and (III) of para-
9 graph (1)(B)(ii) as necessary to reflect signifi-
10 cant changes in market conditions and to effec-
11 tuate the purposes of the Mortgage Reform and
12 Anti-Predatory Lending Act.

13 “(3) PHASED-OUT PENALTIES ON QUALIFIED
14 MORTGAGES.—A qualified mortgage (as defined in
15 subsection (b)(2)) may not contain terms under
16 which a consumer must pay a prepayment penalty
17 for paying all or part of the principal after the loan
18 is consummated in excess of the following limita-
19 tions:

20 “(A) During the 1-year period beginning
21 on the date the loan is consummated, the pre-
22 payment penalty shall not exceed an amount
23 equal to 3 percent of the outstanding balance
24 on the loan.

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1 “(B) During the 1-year period beginning
2 after the period described in subparagraph (A),
3 the prepayment penalty shall not exceed an
4 amount equal to 2 percent of the outstanding
5 balance on the loan.

6 “(C) During the 1-year period beginning
7 after the 1-year period described in subpara-
8 graph (B), the prepayment penalty shall not ex-
9 ceed an amount equal to 1 percent of the out-
10 standing balance on the loan.

11 “(D) After the end of the 3-year period be-
12 ginning on the date the loan is consummated,
13 no prepayment penalty may be imposed on a
14 qualified mortgage.

15 “(4) OPTION FOR NO PREPAYMENT PENALTY
16 REQUIRED.—A creditor may not offer a consumer a
17 residential mortgage loan product that has a prepay-
18 ment penalty for paying all or part of the principal
19 after the loan is consummated as a term of the loan
20 without offering the consumer a residential mort-
21 gage loan product that does not have a prepayment
22 penalty as a term of the loan.

23 “(d) SINGLE PREMIUM CREDIT INSURANCE PROHIB-
24 ITED.—No creditor may finance, directly or indirectly, in
25 connection with any residential mortgage loan or with any

1 extension of credit under an open end consumer credit
2 plan secured by the principal dwelling of the consumer,
3 any credit life, credit disability, credit unemployment, or
4 credit property insurance, or any other accident, loss-of-
5 income, life, or health insurance, or any payments directly
6 or indirectly for any debt cancellation or suspension agree-
7 ment or contract, except that—

8 “(1) insurance premiums or debt cancellation or
9 suspension fees calculated and paid in full on a
10 monthly basis shall not be considered financed by
11 the creditor; and

12 “(2) this subsection shall not apply to credit
13 unemployment insurance for which the unemploy-
14 ment insurance premiums are reasonable, the cred-
15 itor receives no direct or indirect compensation in
16 connection with the unemployment insurance pre-
17 miums, and the unemployment insurance premiums
18 are paid pursuant to another insurance contract and
19 not paid to an affiliate of the creditor.

20 “(e) ARBITRATION.—

21 “(1) IN GENERAL.—No residential mortgage
22 loan and no extension of credit under an open end
23 consumer credit plan secured by the principal dwell-
24 ing of the consumer may include terms which re-
25 quire arbitration or any other nonjudicial procedure

1 as the method for resolving any controversy or set-
2 tling any claims arising out of the transaction.

3 “(2) POST-CONTROVERSY AGREEMENTS.—Sub-
4 ject to paragraph (3), paragraph (1) shall not be
5 construed as limiting the right of the consumer and
6 the creditor or any assignee to agree to arbitration
7 or any other nonjudicial procedure as the method for
8 resolving any controversy at any time after a dispute
9 or claim under the transaction arises.

10 “(3) NO WAIVER OF STATUTORY CAUSE OF AC-
11 TION.—No provision of any residential mortgage
12 loan or of any extension of credit under an open end
13 consumer credit plan secured by the principal dwell-
14 ing of the consumer, and no other agreement be-
15 tween the consumer and the creditor relating to the
16 residential mortgage loan or extension of credit re-
17 ferred to in paragraph (1), shall be applied or inter-
18 preted so as to bar a consumer from bringing an ac-
19 tion in an appropriate district court of the United
20 States, or any other court of competent jurisdiction,
21 pursuant to section 130 or any other provision of
22 law, for damages or other relief in connection with
23 any alleged violation of this section, any other provi-
24 sion of this title, or any other Federal law.

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1 “(f) MORTGAGES WITH NEGATIVE AMORTIZATION.—

2 No creditor may extend credit to a borrower in connection
3 with a consumer credit transaction under an open or
4 closed end consumer credit plan secured by a dwelling or
5 residential real property that includes a dwelling, other
6 than a reverse mortgage, that provides or permits a pay-
7 ment plan that may, at any time over the term of the ex-
8 tension of credit, result in negative amortization unless,
9 before such transaction is consummated—

10 “(1) the creditor provides the consumer with a
11 statement that—

12 “(A) the pending transaction will or may,
13 as the case may be, result in negative amortiza-
14 tion;

15 “(B) describes negative amortization in
16 such manner as the Board shall prescribe;

17 “(C) negative amortization increases the
18 outstanding principal balance of the account;
19 and

20 “(D) negative amortization reduces the
21 consumer’s equity in the dwelling or real prop-
22 erty; and

23 “(2) in the case of a first-time borrower with
24 respect to a residential mortgage loan that is not a
25 qualified mortgage, the first-time borrower provides

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1 the creditor with sufficient documentation to dem-
2 onstrate that the consumer received homeownership
3 counseling from organizations or counselors certified
4 by the Secretary of Housing and Urban Develop-
5 ment as competent to provide such counseling.”.

6 (b) CONFORMING AMENDMENT RELATING TO EN-
7 FORCEMENT.—Section 108(a) of the Truth in Lending
8 Act (15 U.S.C. 1607(a)) is amended by inserting after
9 paragraph (6) the following new paragraph:

10 “(7) sections 21B and 21C of the Securities
11 Exchange Act of 1934, in the case of a broker or
12 dealer, other than a depository institution, by the
13 Securities and Exchange Commission.”.

14 (c) PROTECTION AGAINST LOSS OF ANTI-DEFI-
15 CIENCY PROTECTION.—Section 129C of the Truth in
16 Lending Act is amended by inserting after subsection (f)
17 (as added by subsection (a)) the following new subsection:

18 “(g) PROTECTION AGAINST LOSS OF ANTI-DEFI-
19 CIENCY PROTECTION.—

20 “(1) DEFINITION.—For purposes of this sub-
21 section, the term ‘anti-deficiency law’ means the law
22 of any State which provides that, in the event of
23 foreclosure on the residential property of a consumer
24 securing a mortgage, the consumer is not liable, in
25 accordance with the terms and limitations of such

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1 State law, for any deficiency between the sale price
2 obtained on such property through foreclosure and
3 the outstanding balance of the mortgage.

4 “(2) NOTICE AT TIME OF CONSUMMATION.—In
5 the case of any residential mortgage loan that is, or
6 upon consummation will be, subject to protection
7 under an anti-deficiency law, the creditor or mort-
8 gage originator shall provide a written notice to the
9 consumer describing the protection provided by the
10 anti-deficiency law and the significance for the con-
11 sumer of the loss of such protection before such loan
12 is consummated.

13 “(3) NOTICE BEFORE REFINANCING THAT
14 WOULD CAUSE LOSS OF PROTECTION.—In the case
15 of any residential mortgage loan that is subject to
16 protection under an anti-deficiency law, if a creditor
17 or mortgage originator provides an application to a
18 consumer, or receives an application from a con-
19 sumer, for any type of refinancing for such loan that
20 would cause the loan to lose the protection of such
21 anti-deficiency law, the creditor or mortgage origi-
22 nator shall provide a written notice to the consumer
23 describing the protection provided by the anti-defi-
24 ciency law and the significance for the consumer of

1 the loss of such protection before any agreement for
2 any such refinancing is consummated.”.

3 (d) POLICY REGARDING ACCEPTANCE OF PARTIAL
4 PAYMENT.—Section 129C of the Truth in Lending Act
5 is amended by inserting after subsection (g) (as added by
6 subsection (c)) the following new subsection:

7 “(h) POLICY REGARDING ACCEPTANCE OF PARTIAL
8 PAYMENT.—In the case of any residential mortgage loan,
9 a creditor shall disclose prior to settlement or, in the case
10 of a person becoming a creditor with respect to an existing
11 residential mortgage loan, at the time such person be-
12 comes a creditor—

13 “(1) the creditor’s policy regarding the accept-
14 ance of partial payments; and

15 “(2) if partial payments are accepted, how such
16 payments will be applied to such mortgage and if
17 such payments will be placed in escrow.

18 “(i) TIMESHARE PLANS.—This section and any regu-
19 lations promulgated under this section do not apply to an
20 extension of credit relating to a plan described in section
21 101(53D) of title 11, United States Code.”.

22 **SEC. 1415. RULE OF CONSTRUCTION.**

23 Except as otherwise expressly provided in section
24 129B or 129C of the Truth in Lending Act (as added by
25 this title), no provision of such section 129B or 129C shall

1 be construed as superseding, repealing, or affecting any
2 duty, right, obligation, privilege, or remedy of any person
3 under any other provision of the Truth in Lending Act
4 or any other provision of Federal or State law.

5 **SEC. 1416. AMENDMENTS TO CIVIL LIABILITY PROVISIONS.**

6 (a) INCREASE IN AMOUNT OF CIVIL MONEY PEN-
7 ALTIES FOR CERTAIN VIOLATIONS.—Section 130(a) of
8 the Truth in Lending Act (15 U.S.C. 1640(a)) is amend-
9 ed—

10 (1) in paragraph (2)(A)(ii)—

11 (A) by striking “\$100” and inserting
12 “\$200”; and

13 (B) by striking “\$1,000” and inserting
14 “\$2,000”;

15 (2) in paragraph (2)(B), by striking
16 “\$500,000” and inserting “\$1,000,000”; and

17 (3) in paragraph (4), by inserting “, paragraph
18 (1) or (2) of section 129B(e), or section 129C(a)”
19 after “section 129”.

20 (b) STATUTE OF LIMITATIONS EXTENDED FOR SEC-
21 TION 129 VIOLATIONS.—Section 130(e) of the Truth in
22 Lending Act (15 U.S.C. 1640(e)) is amended—

23 (1) in the first sentence, by striking “Any ac-
24 tion” and inserting “Except as provided in the sub-
25 sequent sentence, any action”; and

1 (2) by inserting after the first sentence the fol-
2 lowing new sentence: “Any action under this section
3 with respect to any violation of section 129, 129B,
4 or 129C may be brought in any United States dis-
5 trict court, or in any other court of competent juris-
6 diction, before the end of the 3-year period begin-
7 ning on the date of the occurrence of the violation.”.

8 **SEC. 1417. LENDER RIGHTS IN THE CONTEXT OF BOR-**
9 **ROWER DECEPTION.**

10 Section 130 of the Truth in Lending Act (15 U.S.C.
11 1640) is amended by adding after subsection (k) (as added
12 by this title) the following new subsection:

13 “(l) EXEMPTION FROM LIABILITY AND RESCISSION
14 IN CASE OF BORROWER FRAUD OR DECEPTION.—In ad-
15 dition to any other remedy available by law or contract,
16 no creditor or assignee shall be liable to an obligor under
17 this section, if such obligor, or co-obligor has been con-
18 victed of obtaining by actual fraud such residential mort-
19 gage loan.”.

20 **SEC. 1418. SIX-MONTH NOTICE REQUIRED BEFORE RESET**
21 **OF HYBRID ADJUSTABLE RATE MORTGAGES.**

22 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
23 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
24 after section 128 the following new section:

1 **“§ 128A. Reset of hybrid adjustable rate mortgages**

2 “(a) HYBRID ADJUSTABLE RATE MORTGAGES DE-
3 FINED.—For purposes of this section, the term ‘hybrid ad-
4 justable rate mortgage’ means a consumer credit trans-
5 action secured by the consumer’s principal residence with
6 a fixed interest rate for an introductory period that ad-
7 justs or resets to a variable interest rate after such period.

8 “(b) NOTICE OF RESET AND ALTERNATIVES.—Dur-
9 ing the 1-month period that ends 6 months before the date
10 on which the interest rate in effect during the introductory
11 period of a hybrid adjustable rate mortgage adjusts or
12 resets to a variable interest rate or, in the case of such
13 an adjustment or resetting that occurs within the first 6
14 months after consummation of such loan, at consumma-
15 tion, the creditor or servicer of such loan shall provide a
16 written notice, separate and distinct from all other cor-
17 respondence to the consumer, that includes the following:

18 “(1) Any index or formula used in making ad-
19 justments to or resetting the interest rate and a
20 source of information about the index or formula.

21 “(2) An explanation of how the new interest
22 rate and payment would be determined, including an
23 explanation of how the index was adjusted, such as
24 by the addition of a margin.

25 “(3) A good faith estimate, based on accepted
26 industry standards, of the creditor or servicer of the

1 amount of the monthly payment that will apply after
2 the date of the adjustment or reset, and the assump-
3 tions on which this estimate is based.

4 “(4) A list of alternatives consumers may pur-
5 sue before the date of adjustment or reset, and de-
6 scriptions of the actions consumers must take to
7 pursue these alternatives, including—

8 “(A) refinancing;

9 “(B) renegotiation of loan terms;

10 “(C) payment forbearances; and

11 “(D) pre-foreclosure sales.

12 “(5) The names, addresses, telephone numbers,
13 and Internet addresses of counseling agencies or
14 programs reasonably available to the consumer that
15 have been certified or approved and made publicly
16 available by the Secretary of Housing and Urban
17 Development or a State housing finance authority
18 (as defined in section 1301 of the Financial Institu-
19 tions Reform, Recovery, and Enforcement Act of
20 1989).

21 “(6) The address, telephone number, and Inter-
22 net address for the State housing finance authority
23 (as so defined) for the State in which the consumer
24 resides.

1 “(c) SAVINGS CLAUSE.—The Board may require the
2 notice in paragraph (b) or other notice consistent with this
3 Act for adjustable rate mortgage loans that are not hybrid
4 adjustable rate mortgage loans.”.

5 (b) CLERICAL AMENDMENT.—The table of sections
6 for chapter 2 of the Truth in Lending Act is amended
7 by inserting after the item relating to section 128 the fol-
8 lowing new item:

 “128A. Reset of hybrid adjustable rate mortgages.”.

9 **SEC. 1419. REQUIRED DISCLOSURES.**

10 Section 128(a) of Truth in Lending Act (15 U.S.C.
11 1638(a)) is amended by adding at the end the following
12 new paragraphs:

13 “(16) In the case of a variable rate residential
14 mortgage loan for which an escrow or impound ac-
15 count will be established for the payment of all ap-
16 plicable taxes, insurance, and assessments—

17 “(A) the amount of initial monthly pay-
18 ment due under the loan for the payment of
19 principal and interest, and the amount of such
20 initial monthly payment including the monthly
21 payment deposited in the account for the pay-
22 ment of all applicable taxes, insurance, and as-
23 sessments; and

24 “(B) the amount of the fully indexed
25 monthly payment due under the loan for the

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1 payment of principal and interest, and the
2 amount of such fully indexed monthly payment
3 including the monthly payment deposited in the
4 account for the payment of all applicable taxes,
5 insurance, and assessments.

6 “(17) In the case of a residential mortgage
7 loan, the aggregate amount of settlement charges for
8 all settlement services provided in connection with
9 the loan, the amount of charges that are included in
10 the loan and the amount of such charges the bor-
11 rower must pay at closing, the approximate amount
12 of the wholesale rate of funds in connection with the
13 loan, and the aggregate amount of other fees or re-
14 quired payments in connection with the loan.

15 “(18) In the case of a residential mortgage
16 loan, the aggregate amount of fees paid to the mort-
17 gage originator in connection with the loan, the
18 amount of such fees paid directly by the consumer,
19 and any additional amount received by the originator
20 from the creditor.

21 “(19) In the case of a residential mortgage
22 loan, the total amount of interest that the consumer
23 will pay over the life of the loan as a percentage of
24 the principal of the loan. Such amount shall be com-
25 puted assuming the consumer makes each monthly

1 payment in full and on-time, and does not make any
2 over-payments.”.

3 **SEC. 1420. DISCLOSURES REQUIRED IN MONTHLY STATE-**
4 **MENTS FOR RESIDENTIAL MORTGAGE**
5 **LOANS.**

6 Section 128 of the Truth in Lending Act (15 U.S.C.
7 1638) is amended by adding at the end the following new
8 subsection:

9 “(f) PERIODIC STATEMENTS FOR RESIDENTIAL
10 MORTGAGE LOANS.—

11 “(1) IN GENERAL.—The creditor, assignee, or
12 servicer with respect to any residential mortgage
13 loan shall transmit to the obligor, for each billing
14 cycle, a statement setting forth each of the following
15 items, to the extent applicable, in a conspicuous and
16 prominent manner:

17 “(A) The amount of the principal obliga-
18 tion under the mortgage.

19 “(B) The current interest rate in effect for
20 the loan.

21 “(C) The date on which the interest rate
22 may next reset or adjust.

23 “(D) The amount of any prepayment fee
24 to be charged, if any.

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1 “(E) A description of any late payment
2 fees.

3 “(F) A telephone number and electronic
4 mail address that may be used by the obligor to
5 obtain information regarding the mortgage.

6 “(G) The names, addresses, telephone
7 numbers, and Internet addresses of counseling
8 agencies or programs reasonably available to
9 the consumer that have been certified or ap-
10 proved and made publicly available by the Sec-
11 retary of Housing and Urban Development or a
12 State housing finance authority (as defined in
13 section 1301 of the Financial Institutions Re-
14 form, Recovery, and Enforcement Act of 1989).

15 “(H) Such other information as the Board
16 may prescribe in regulations.

17 “(2) DEVELOPMENT AND USE OF STANDARD
18 FORM.—The Board shall develop and prescribe a
19 standard form for the disclosure required under this
20 subsection, taking into account that the statements
21 required may be transmitted in writing or electroni-
22 cally.

23 “(3) EXCEPTION.—Paragraph (1) shall not
24 apply to any fixed rate residential mortgage loan
25 where the creditor, assignee, or servicer provides the

1 obligor with a coupon book that provides the obligor
2 with substantially the same information as required
3 in paragraph (1).”.

4 **SEC. 1421. REPORT BY THE GAO.**

5 (a) REPORT REQUIRED.—The Comptroller General
6 of the United States shall conduct a study to determine
7 the effects the enactment of this Act will have on the avail-
8 ability and affordability of credit for consumers, small
9 businesses, homebuyers, and mortgage lending, including
10 the effect—

11 (1) on the mortgage market for mortgages that
12 are not within the safe harbor provided in the
13 amendments made by this subtitle;

14 (2) on the ability of prospective homebuyers to
15 obtain financing;

16 (3) on the ability of homeowners facing resets
17 or adjustments to refinance—for example, do they
18 have fewer refinancing options due to the unavail-
19 ability of certain loan products that were available
20 before the enactment of this Act;

21 (4) on minorities’ ability to access affordable
22 credit compared with other prospective borrowers;

23 (5) on home sales and construction;

24 (6) of extending the rescission right, if any, on
25 adjustable rate loans and its impact on litigation;

1 (7) of State foreclosure laws and, if any, an in-
2 vestor's ability to transfer a property after fore-
3 closure;

4 (8) of expanding the existing provisions of the
5 Home Ownership and Equity Protection Act of
6 1994;

7 (9) of prohibiting prepayment penalties on
8 high-cost mortgages; and

9 (10) of establishing counseling services under
10 the Department of Housing and Urban Development
11 and offered through the Office of Housing Coun-
12 seling.

13 (b) REPORT.—Before the end of the 1-year period be-
14 ginning on the date of the enactment of this Act, the
15 Comptroller General shall submit a report to the Congress
16 containing the findings and conclusions of the Comptroller
17 General with respect to the study conducted pursuant to
18 subsection (a).

19 (c) EXAMINATION RELATED TO CERTAIN CREDIT
20 RISK RETENTION PROVISIONS.—The report required by
21 subsection (b) shall also include an analysis by the Comp-
22 troller General of the effect on the capital reserves and
23 funding of lenders of credit risk retention provisions for
24 non-qualified mortgages, including an analysis of the ex-
25 ceptions and adjustments authorized in section

1 129C(b)(3) of the Truth in Lending Act and a rec-
2 ommendation on whether a uniform standard is needed.

3 (d) ANALYSIS OF CREDIT RISK RETENTION PROVI-
4 SIONS.—The report required by subsection (b) shall also
5 include—

6 (1) an analysis by the Comptroller General of
7 whether the credit risk retention provisions have sig-
8 nificantly reduced risks to the larger credit market
9 of the repackaging and selling of securitized loans on
10 a secondary market; and

11 (2) recommendations to the Congress on adjust-
12 ments that should be made, or additional measures
13 that should be undertaken.

14 **SEC. 1422. STATE ATTORNEY GENERAL ENFORCEMENT AU-**
15 **THORITY.**

16 Section 130(e) of the Truth in Lending Act (15
17 U.S.C. 1640(e)) is amended by striking “section 129 may
18 also” and inserting “section 129, 129B, 129C, 129D,
19 129E, 129F, 129G, or 129H of this Act may also”.

20 **Subtitle C—High-Cost Mortgages**

21 **SEC. 1431. DEFINITIONS RELATING TO HIGH-COST MORT-**
22 **GAGES.**

23 (a) HIGH-COST MORTGAGE DEFINED.—Section
24 103(aa) of the Truth in Lending Act (15 U.S.C.

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1 1602(aa)) is amended by striking all that precedes para-
2 graph (2) and inserting the following:

3 “(aa) HIGH-COST MORTGAGE.—

4 “(1) DEFINITION.—

5 “(A) IN GENERAL.—The term ‘high-cost
6 mortgage’, and a mortgage referred to in this
7 subsection, means a consumer credit trans-
8 action that is secured by the consumer’s prin-
9 cipal dwelling, other than a reverse mortgage
10 transaction, if—

11 “(i) in the case of a credit transaction
12 secured—

13 “(I) by a first mortgage on the
14 consumer’s principal dwelling, the an-
15 nual percentage rate at consummation
16 of the transaction will exceed by more
17 than 6.5 percentage points (8.5 per-
18 centage points, if the dwelling is per-
19 sonal property and the transaction is
20 for less than \$50,000) the average
21 prime offer rate, as defined in section
22 129C(b)(2)(B), for a comparable
23 transaction; or

24 “(II) by a subordinate or junior
25 mortgage on the consumer’s principal

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1 dwelling, the annual percentage rate
2 at consummation of the transaction
3 will exceed by more than 8.5 percent-
4 age points the average prime offer
5 rate, as defined in section
6 129C(b)(2)(B), for a comparable
7 transaction;

8 “(ii) the total points and fees payable
9 in connection with the transaction, other
10 than bona fide third party charges not re-
11 tained by the mortgage originator, cred-
12 itor, or an affiliate of the creditor or mort-
13 gage originator, exceed—

14 “(I) in the case of a transaction
15 for \$20,000 or more, 5 percent of the
16 total transaction amount; or

17 “(II) in the case of a transaction
18 for less than \$20,000, the lesser of 8
19 percent of the total transaction
20 amount or \$1,000 (or such other dol-
21 lar amount as the Board shall pre-
22 scribe by regulation); or

23 “(iii) the credit transaction documents
24 permit the creditor to charge or collect pre-
25 payment fees or penalties more than 36

1 months after the transaction closing or
2 such fees or penalties exceed, in the aggregate,
3 more than 2 percent of the amount
4 prepaid.

5 “(B) INTRODUCTORY RATES TAKEN INTO
6 ACCOUNT.—For purposes of subparagraph
7 (A)(i), the annual percentage rate of interest
8 shall be determined based on the following interest
9 rate:

10 “(i) In the case of a fixed-rate transaction
11 in which the annual percentage rate
12 will not vary during the term of the loan,
13 the interest rate in effect on the date of
14 consummation of the transaction.

15 “(ii) In the case of a transaction in
16 which the rate of interest varies solely in
17 accordance with an index, the interest rate
18 determined by adding the index rate in effect
19 on the date of consummation of the
20 transaction to the maximum margin permitted
21 at any time during the loan agreement.
22

23 “(iii) In the case of any other transaction
24 in which the rate may vary at any
25 time during the term of the loan for any

1 reason, the interest charged on the trans-
2 action at the maximum rate that may be
3 charged during the term of the loan.

4 “(C) MORTGAGE INSURANCE.—For the
5 purposes of computing the total points and fees
6 under paragraph (4), the total points and fees
7 shall exclude—

8 “(i) any premium provided by an
9 agency of the Federal Government or an
10 agency of a State;

11 “(ii) any amount that is not in excess
12 of the amount payable under policies in ef-
13 fect at the time of origination under sec-
14 tion 203(c)(2)(A) of the National Housing
15 Act (12 U.S.C. 1709(c)(2)(A)), provided
16 that the premium, charge, or fee is re-
17 quired to be refundable on a pro-rated
18 basis and the refund is automatically
19 issued upon notification of the satisfaction
20 of the underlying mortgage loan; and

21 “(iii) any premium paid by the con-
22 sumer after closing.”.

23 (b) ADJUSTMENT OF PERCENTAGE POINTS.—Section
24 103(aa)(2) of the Truth in Lending Act (15 U.S.C.

1 1602(aa)(2)) is amended by striking subparagraph (B)
2 and inserting the following new subparagraph:

3 “(B) An increase or decrease under sub-
4 paragraph (A)—

5 “(i) may not result in the number of
6 percentage points referred to in paragraph
7 (1)(A)(i)(I) being less than 6 percentage
8 points or greater than 10 percentage
9 points; and

10 “(ii) may not result in the number of
11 percentage points referred to in paragraph
12 (1)(A)(i)(II) being less than 8 percentage
13 points or greater than 12 percentage
14 points.”.

15 (c) POINTS AND FEES DEFINED.—

16 (1) IN GENERAL.—Section 103(aa)(4) of the
17 Truth in Lending Act (15 U.S.C. 1602(aa)(4)) is
18 amended—

19 (A) by striking subparagraph (B) and in-
20 serting the following:

21 “(B) all compensation paid directly or indi-
22 rectly by a consumer or creditor to a mortgage
23 originator from any source, including a mort-
24 gage originator that is also the creditor in a
25 table-funded transaction;”;

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1 (B) by redesignating subparagraph (D) as
2 subparagraph (G); and

3 (C) by inserting after subparagraph (C)
4 the following new subparagraphs:

5 “(D) premiums or other charges payable at
6 or before closing for any credit life, credit dis-
7 ability, credit unemployment, or credit property
8 insurance, or any other accident, loss-of-income,
9 life or health insurance, or any payments di-
10 rectly or indirectly for any debt cancellation or
11 suspension agreement or contract, except that
12 insurance premiums or debt cancellation or sus-
13 pension fees calculated and paid in full on a
14 monthly basis shall not be considered financed
15 by the creditor;

16 “(E) the maximum prepayment fees and
17 penalties which may be charged or collected
18 under the terms of the credit transaction;

19 “(F) all prepayment fees or penalties that
20 are incurred by the consumer if the loan refi-
21 nances a previous loan made or currently held
22 by the same creditor or an affiliate of the cred-
23 itor; and”.

24 (2) CALCULATION OF POINTS AND FEES FOR
25 OPEN-END CONSUMER CREDIT PLANS.—Section

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1 103(aa) of the Truth in Lending Act (15 U.S.C.
2 1602(aa)) is amended—

3 (A) by redesignating paragraph (5) as
4 paragraph (6); and

5 (B) by inserting after paragraph (4) the
6 following new paragraph:

7 “(5) CALCULATION OF POINTS AND FEES FOR
8 OPEN-END CONSUMER CREDIT PLANS.—In the case
9 of open-end consumer credit plans, points and fees
10 shall be calculated, for purposes of this section and
11 section 129, by adding the total points and fees
12 known at or before closing, including the maximum
13 prepayment penalties which may be charged or col-
14 lected under the terms of the credit transaction, plus
15 the minimum additional fees the consumer would be
16 required to pay to draw down an amount equal to
17 the total credit line.”.

18 (d) BONA FIDE DISCOUNT LOAN DISCOUNT
19 POINTS.—Section 103 of the Truth in Lending Act (15
20 U.S.C. 1602) is amended by inserting after subsection (cc)
21 (as added by section 1401) the following new subsection:

22 “(dd) BONA FIDE DISCOUNT POINTS AND PREPAY-
23 MENT PENALTIES.—For the purposes of determining the
24 amount of points and fees for purposes of subsection (aa),

1 either the amounts described in paragraph (1) or (2) of
2 the following paragraphs, but not both, shall be excluded:

3 “(1) Up to and including 2 bona fide discount
4 points payable by the consumer in connection with
5 the mortgage, but only if the interest rate from
6 which the mortgage’s interest rate will be discounted
7 does not exceed by more than 1 percentage point—

8 “(A) the average prime offer rate, as de-
9 fined in section 129C; or

10 “(B) if secured by a personal property
11 loan, the average rate on a loan in connection
12 with which insurance is provided under title I
13 of the National Housing Act (12 U.S.C. 1702
14 et seq.).

15 “(2) Unless 2 bona fide discount points have
16 been excluded under paragraph (1), up to and in-
17 cluding 1 bona fide discount point payable by the
18 consumer in connection with the mortgage, but only
19 if the interest rate from which the mortgage’s inter-
20 est rate will be discounted does not exceed by more
21 than 2 percentage points—

22 “(A) the average prime offer rate, as de-
23 fined in section 129C; or

24 “(B) if secured by a personal property
25 loan, the average rate on a loan in connection

1 with which insurance is provided under title I
2 of the National Housing Act (12 U.S.C. 1702
3 et seq.).

4 “(3) For purposes of paragraph (1), the term
5 ‘bona fide discount points’ means loan discount
6 points which are knowingly paid by the consumer for
7 the purpose of reducing, and which in fact result in
8 a bona fide reduction of, the interest rate or time-
9 price differential applicable to the mortgage.

10 “(4) Paragraphs (1) and (2) shall not apply to
11 discount points used to purchase an interest rate re-
12 duction unless the amount of the interest rate reduc-
13 tion purchased is reasonably consistent with estab-
14 lished industry norms and practices for secondary
15 mortgage market transactions.”.

16 **SEC. 1432. AMENDMENTS TO EXISTING REQUIREMENTS**
17 **FOR CERTAIN MORTGAGES.**

18 (a) PREPAYMENT PENALTY PROVISIONS.—Section
19 129(c)(2) of the Truth in Lending Act (15 U.S.C.
20 1639(c)(2)) is hereby repealed.

21 (b) NO BALLOON PAYMENTS.—Section 129(e) of the
22 Truth in Lending Act (15 U.S.C. 1639(e)) is amended to
23 read as follows:

24 “(e) NO BALLOON PAYMENTS.—No high-cost mort-
25 gage may contain a scheduled payment that is more than

1 twice as large as the average of earlier scheduled pay-
2 ments. This subsection shall not apply when the payment
3 schedule is adjusted to the seasonal or irregular income
4 of the consumer.”.

5 **SEC. 1433. ADDITIONAL REQUIREMENTS FOR CERTAIN**
6 **MORTGAGES.**

7 (a) **ADDITIONAL REQUIREMENTS FOR CERTAIN**
8 **MORTGAGES.**—Section 129 of the Truth in Lending Act
9 (15 U.S.C. 1639) is amended—

10 (1) by redesignating subsections (j), (k), (l) and
11 (m) as subsections (n), (o), (p), and (q) respectively;
12 and

13 (2) by inserting after subsection (i) the fol-
14 lowing new subsections:

15 “(j) **RECOMMENDED DEFAULT.**—No creditor shall
16 recommend or encourage default on an existing loan or
17 other debt prior to and in connection with the closing or
18 planned closing of a high-cost mortgage that refinances
19 all or any portion of such existing loan or debt.

20 “(k) **LATE FEES.**—

21 “(1) **IN GENERAL.**—No creditor may impose a
22 late payment charge or fee in connection with a
23 high-cost mortgage—

24 “(A) in an amount in excess of 4 percent
25 of the amount of the payment past due;

1 “(B) unless the loan documents specifically
2 authorize the charge or fee;

3 “(C) before the end of the 15-day period
4 beginning on the date the payment is due, or in
5 the case of a loan on which interest on each in-
6 stallment is paid in advance, before the end of
7 the 30-day period beginning on the date the
8 payment is due; or

9 “(D) more than once with respect to a sin-
10 gle late payment.

11 “(2) COORDINATION WITH SUBSEQUENT LATE
12 FEES.—If a payment is otherwise a full payment for
13 the applicable period and is paid on its due date or
14 within an applicable grace period, and the only delin-
15 quency or insufficiency of payment is attributable to
16 any late fee or delinquency charge assessed on any
17 earlier payment, no late fee or delinquency charge
18 may be imposed on such payment.

19 “(3) FAILURE TO MAKE INSTALLMENT PAY-
20 MENT.—If, in the case of a loan agreement the
21 terms of which provide that any payment shall first
22 be applied to any past due principal balance, the
23 consumer fails to make an installment payment and
24 the consumer subsequently resumes making install-
25 ment payments but has not paid all past due install-

1 ments, the creditor may impose a separate late pay-
2 ment charge or fee for any principal due (without
3 deduction due to late fees or related fees) until the
4 default is cured.

5 “(l) ACCELERATION OF DEBT.—No high-cost mort-
6 gage may contain a provision which permits the creditor
7 to accelerate the indebtedness, except when repayment of
8 the loan has been accelerated by default in payment, or
9 pursuant to a due-on-sale provision, or pursuant to a ma-
10 terial violation of some other provision of the loan docu-
11 ment unrelated to payment schedule.

12 “(m) RESTRICTION ON FINANCING POINTS AND
13 FEES.—No creditor may directly or indirectly finance, in
14 connection with any high-cost mortgage, any of the fol-
15 lowing:

16 “(1) Any prepayment fee or penalty payable by
17 the consumer in a refinancing transaction if the
18 creditor or an affiliate of the creditor is the
19 noteholder of the note being refinanced.

20 “(2) Any points or fees.”.

21 (b) PROHIBITIONS ON EVASIONS.—Section 129 of
22 the Truth in Lending Act (15 U.S.C. 1639) is amended
23 by inserting after subsection (q) (as so redesignated by
24 subsection (a)(1)) the following new subsection:

1 “(r) PROHIBITIONS ON EVASIONS, STRUCTURING OF
2 TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—A
3 creditor may not take any action in connection with a
4 high-cost mortgage—

5 “(1) to structure a loan transaction as an open-
6 end credit plan or another form of loan for the pur-
7 pose and with the intent of evading the provisions of
8 this title; or

9 “(2) to divide any loan transaction into sepa-
10 rate parts for the purpose and with the intent of
11 evading provisions of this title.”.

12 (c) MODIFICATION OR DEFERRAL FEES.—Section
13 129 of the Truth in Lending Act (15 U.S.C. 1639) is
14 amended by inserting after subsection (r) (as added by
15 subsection (b) of this section) the following new sub-
16 section:

17 “(s) MODIFICATION AND DEFERRAL FEES PROHIB-
18 ITED.—A creditor, successor in interest, assignee, or any
19 agent of any of the above, may not charge a consumer
20 any fee to modify, renew, extend, or amend a high-cost
21 mortgage, or to defer any payment due under the terms
22 of such mortgage.”.

23 (d) PAYOFF STATEMENT.—Section 129 of the Truth
24 in Lending Act (15 U.S.C. 1639) is amended by inserting

1 after subsection (s) (as added by subsection (c) of this
2 section) the following new subsection:

3 “(t) PAYOFF STATEMENT.—

4 “(1) FEES.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), no creditor or servicer may
7 charge a fee for informing or transmitting to
8 any person the balance due to pay off the out-
9 standing balance on a high-cost mortgage.

10 “(B) TRANSACTION FEE.—When payoff in-
11 formation referred to in subparagraph (A) is
12 provided by facsimile transmission or by a cou-
13 rier service, a creditor or servicer may charge a
14 processing fee to cover the cost of such trans-
15 mission or service in an amount not to exceed
16 an amount that is comparable to fees imposed
17 for similar services provided in connection with
18 consumer credit transactions that are secured
19 by the consumer’s principal dwelling and are
20 not high-cost mortgages.

21 “(C) FEE DISCLOSURE.—Prior to charging
22 a transaction fee as provided in subparagraph
23 (B), a creditor or servicer shall disclose that
24 payoff balances are available for free pursuant
25 to subparagraph (A).

1 “(D) MULTIPLE REQUESTS.—If a creditor
2 or servicer has provided payoff information re-
3 ferred to in subparagraph (A) without charge,
4 other than the transaction fee allowed by sub-
5 paragraph (B), on 4 occasions during a cal-
6 endar year, the creditor or servicer may there-
7 after charge a reasonable fee for providing such
8 information during the remainder of the cal-
9 endar year.

10 “(2) PROMPT DELIVERY.—Payoff balances shall
11 be provided within 5 business days after receiving a
12 request by a consumer or a person authorized by the
13 consumer to obtain such information.”.

14 (e) PRE-LOAN COUNSELING REQUIRED.—Section
15 129 of the Truth in Lending Act (15 U.S.C. 1639) is
16 amended by inserting after subsection t) (as added by sub-
17 section (d) of this section) the following new subsection:

18 “(u) PRE-LOAN COUNSELING.—

19 “(1) IN GENERAL.—A creditor may not extend
20 credit to a consumer under a high-cost mortgage
21 without first receiving certification from a counselor
22 that is approved by the Secretary of Housing and
23 Urban Development, or at the discretion of the Sec-
24 retary, a State housing finance authority, that the
25 consumer has received counseling on the advisability

1 of the mortgage. Such counselor shall not be em-
2 ployed by the creditor or an affiliate of the creditor
3 or be affiliated with the creditor.

4 “(2) DISCLOSURES REQUIRED PRIOR TO COUN-
5 SELING.—No counselor may certify that a consumer
6 has received counseling on the advisability of the
7 high-cost mortgage unless the counselor can verify
8 that the consumer has received each statement re-
9 quired (in connection with such loan) by this section
10 or the Real Estate Settlement Procedures Act of
11 1974 with respect to the transaction.

12 “(3) REGULATIONS.—The Board may prescribe
13 such regulations as the Board determines to be ap-
14 propriate to carry out the requirements of paragraph
15 (1).”.

16 (f) CORRECTIONS AND UNINTENTIONAL VIOLA-
17 TIONS.—Section 129 of the Truth in Lending Act (15
18 U.S.C. 1639) is amended by inserting after subsection (u)
19 (as added by subsection (e)) the following new subsection:

20 “(v) CORRECTIONS AND UNINTENTIONAL VIOLA-
21 TIONS.—A creditor or assignee in a high-cost mortgage
22 who, when acting in good faith, fails to comply with any
23 requirement under this section will not be deemed to have
24 violated such requirement if the creditor or assignee estab-
25 lishes that either—

1 “(1) within 30 days of the loan closing and
2 prior to the institution of any action, the consumer
3 is notified of or discovers the violation, appropriate
4 restitution is made, and whatever adjustments are
5 necessary are made to the loan to either, at the
6 choice of the consumer—

7 “(A) make the loan satisfy the require-
8 ments of this chapter; or

9 “(B) in the case of a high-cost mortgage,
10 change the terms of the loan in a manner bene-
11 ficial to the consumer so that the loan will no
12 longer be a high-cost mortgage; or

13 “(2) within 60 days of the creditor’s discovery
14 or receipt of notification of an unintentional viola-
15 tion or bona fide error and prior to the institution
16 of any action, the consumer is notified of the compli-
17 ance failure, appropriate restitution is made, and
18 whatever adjustments are necessary are made to the
19 loan to either, at the choice of the consumer—

20 “(A) make the loan satisfy the require-
21 ments of this chapter; or

22 “(B) in the case of a high-cost mortgage,
23 change the terms of the loan in a manner bene-
24 ficial so that the loan will no longer be a high-
25 cost mortgage.”.

1 **Subtitle D—Office of Housing**
2 **Counseling**

3 **SEC. 1441. SHORT TITLE.**

4 This subtitle may be cited as the “Expand and Pre-
5 serve Home Ownership Through Counseling Act”.

6 **SEC. 1442. ESTABLISHMENT OF OFFICE OF HOUSING COUN-**
7 **SELING.**

8 Section 4 of the Department of Housing and Urban
9 Development Act (42 U.S.C. 3533) is amended by adding
10 at the end the following new subsection:

11 “(g) OFFICE OF HOUSING COUNSELING.—

12 “(1) ESTABLISHMENT.—There is established,
13 in the Department, the Office of Housing Coun-
14 seling.

15 “(2) DIRECTOR.—There is established the posi-
16 tion of Director of Housing Counseling. The Direc-
17 tor shall be the head of the Office of Housing Coun-
18 seling and shall be appointed by, and shall report to,
19 the Secretary. Such position shall be a career-re-
20 served position in the Senior Executive Service.

21 “(3) FUNCTIONS.—

22 “(A) IN GENERAL.—The Director shall
23 have primary responsibility within the Depart-
24 ment for all activities and matters relating to

1 homeownership counseling and rental housing
2 counseling, including—

3 “(i) research, grant administration,
4 public outreach, and policy development re-
5 lating to such counseling; and

6 “(ii) establishment, coordination, and
7 administration of all regulations, require-
8 ments, standards, and performance meas-
9 ures under programs and laws adminis-
10 tered by the Department that relate to
11 housing counseling, homeownership coun-
12 seling (including maintenance of homes),
13 mortgage-related counseling (including
14 home equity conversion mortgages and
15 credit protection options to avoid fore-
16 closure), and rental housing counseling, in-
17 cluding the requirements, standards, and
18 performance measures relating to housing
19 counseling.

20 “(B) SPECIFIC FUNCTIONS.—The Director
21 shall carry out the functions assigned to the Di-
22 rector and the Office under this section and any
23 other provisions of law. Such functions shall in-
24 clude establishing rules necessary for—

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1 “(i) the counseling procedures under
2 section 106(g)(1) of the Housing and
3 Urban Development Act of 1968 (12
4 U.S.C. 1701x(h)(1));

5 “(ii) carrying out all other functions
6 of the Secretary under section 106(g) of
7 the Housing and Urban Development Act
8 of 1968, including the establishment, oper-
9 ation, and publication of the availability of
10 the toll-free telephone number under para-
11 graph (2) of such section;

12 “(iii) contributing to the distribution
13 of home buying information booklets pur-
14 suant to section 5 of the Real Estate Set-
15 tlement Procedures Act of 1974 (12
16 U.S.C. 2604);

17 “(iv) carrying out the certification
18 program under section 106(e) of the Hous-
19 ing and Urban Development Act of 1968
20 (12 U.S.C. 1701x(e));

21 “(v) carrying out the assistance pro-
22 gram under section 106(a)(4) of the Hous-
23 ing and Urban Development Act of 1968,
24 including criteria for selection of applica-
25 tions to receive assistance;

1 “(vi) carrying out any functions re-
2 garding abusive, deceptive, or unscrupulous
3 lending practices relating to residential
4 mortgage loans that the Secretary con-
5 siders appropriate, which shall include con-
6 ducting the study under section 6 of the
7 Expand and Preserve Home Ownership
8 Through Counseling Act;

9 “(vii) providing for operation of the
10 advisory committee established under para-
11 graph (4) of this subsection;

12 “(viii) collaborating with community-
13 based organizations with expertise in the
14 field of housing counseling; and

15 “(ix) providing for the building of ca-
16 pacity to provide housing counseling serv-
17 ices in areas that lack sufficient services,
18 including underdeveloped areas that lack
19 basic water and sewer systems, electricity
20 services, and safe, sanitary housing.

21 “(4) ADVISORY COMMITTEE.—

22 “(A) IN GENERAL.—The Secretary shall
23 appoint an advisory committee to provide advice
24 regarding the carrying out of the functions of
25 the Director.

1 “(B) MEMBERS.—Such advisory committee
2 shall consist of not more than 12 individuals,
3 and the membership of the committee shall
4 equally represent the mortgage and real estate
5 industry, including consumers and housing
6 counseling agencies certified by the Secretary.

7 “(C) TERMS.—Except as provided in sub-
8 paragraph (D), each member of the advisory
9 committee shall be appointed for a term of 3
10 years. Members may be reappointed at the dis-
11 cretion of the Secretary.

12 “(D) TERMS OF INITIAL APPOINTEES.—As
13 designated by the Secretary at the time of ap-
14 pointment, of the members first appointed to
15 the advisory committee, 4 shall be appointed for
16 a term of 1 year and 4 shall be appointed for
17 a term of 2 years.

18 “(E) PROHIBITION OF PAY; TRAVEL EX-
19 PENSES.—Members of the advisory committee
20 shall serve without pay, but shall receive travel
21 expenses, including per diem in lieu of subsist-
22 ence, in accordance with applicable provisions
23 under subchapter I of chapter 57 of title 5,
24 United States Code.

1 “(F) ADVISORY ROLE ONLY.—The advi-
2 sory committee shall have no role in reviewing
3 or awarding housing counseling grants.

4 “(5) SCOPE OF HOMEOWNERSHIP COUN-
5 SELING.—In carrying out the responsibilities of the
6 Director, the Director shall ensure that homeowner-
7 ship counseling provided by, in connection with, or
8 pursuant to any function, activity, or program of the
9 Department addresses the entire process of home-
10 ownership, including the decision to purchase a
11 home, the selection and purchase of a home, issues
12 arising during or affecting the period of ownership
13 of a home (including refinancing, default and fore-
14 closure, and other financial decisions), and the sale
15 or other disposition of a home.”.

16 **SEC. 1443. COUNSELING PROCEDURES.**

17 (a) IN GENERAL.—Section 106 of the Housing and
18 Urban Development Act of 1968 (12 U.S.C. 1701x) is
19 amended by adding at the end the following new sub-
20 section:

21 “(g) PROCEDURES AND ACTIVITIES.—

22 “(1) COUNSELING PROCEDURES.—

23 “(A) IN GENERAL.—The Secretary shall
24 establish, coordinate, and monitor the adminis-
25 tration by the Department of Housing and

1 Urban Development of the counseling proce-
2 dures for homeownership counseling and rental
3 housing counseling provided in connection with
4 any program of the Department, including all
5 requirements, standards, and performance
6 measures that relate to homeownership and
7 rental housing counseling.

8 “(B) HOMEOWNERSHIP COUNSELING.—
9 For purposes of this subsection and as used in
10 the provisions referred to in this subparagraph,
11 the term ‘homeownership counseling’ means
12 counseling related to homeownership and resi-
13 dential mortgage loans. Such term includes
14 counseling related to homeownership and resi-
15 dential mortgage loans that is provided pursu-
16 ant to—

17 “(i) section 105(a)(20) of the Housing
18 and Community Development Act of 1974
19 (42 U.S.C. 5305(a)(20));

20 “(ii) in the United States Housing
21 Act of 1937—

22 “(I) section 9(e) (42 U.S.C.
23 1437g(e));

24 “(II) section 8(y)(1)(D) (42
25 U.S.C. 1437f(y)(1)(D));

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1 “(III) section 18(a)(4)(D) (42
2 U.S.C. 1437p(a)(4)(D));

3 “(IV) section 23(c)(4) (42 U.S.C.
4 1437u(c)(4));

5 “(V) section 32(e)(4) (42 U.S.C.
6 1437z-4(e)(4));

7 “(VI) section 33(d)(2)(B) (42
8 U.S.C. 1437z-5(d)(2)(B));

9 “(VII) sections 302(b)(6) and
10 303(b)(7) (42 U.S.C. 1437aaa-
11 1(b)(6), 1437aaa-2(b)(7)); and

12 “(VIII) section 304(c)(4) (42
13 U.S.C. 1437aaa-3(c)(4));

14 “(iii) section 302(a)(4) of the Amer-
15 ican Homeownership and Economic Oppor-
16 tunity Act of 2000 (42 U.S.C. 1437f note);

17 “(iv) sections 233(b)(2) and 258(b) of
18 the Cranston-Gonzalez National Affordable
19 Housing Act (42 U.S.C. 12773(b)(2),
20 12808(b));

21 “(v) this section and section 101(e) of
22 the Housing and Urban Development Act
23 of 1968 (12 U.S.C. 1701x, 1701w(e));

24 “(vi) section 220(d)(2)(G) of the Low-
25 Income Housing Preservation and Resident

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1 Homeownership Act of 1990 (12 U.S.C.
2 4110(d)(2)(G));

3 “(vii) sections 422(b)(6), 423(b)(7),
4 424(c)(4), 442(b)(6), and 443(b)(6) of the
5 Cranston-Gonzalez National Affordable
6 Housing Act (42 U.S.C. 12872(b)(6),
7 12873(b)(7), 12874(c)(4), 12892(b)(6),
8 and 12893(b)(6));

9 “(viii) section 491(b)(1)(F)(iii) of the
10 McKinney-Vento Homeless Assistance Act
11 (42 U.S.C. 11408(b)(1)(F)(iii));

12 “(ix) sections 202(3) and
13 810(b)(2)(A) of the Native American
14 Housing and Self-Determination Act of
15 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));

16 “(x) in the National Housing Act—

17 “(I) in section 203 (12 U.S.C.
18 1709), the penultimate undesignated
19 paragraph of paragraph (2) of sub-
20 section (b), subsection (c)(2)(A), and
21 subsection (r)(4);

22 “(II) subsections (a) and (c)(3)
23 of section 237 (12 U.S.C. 1715z-2);
24 and

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1 “(III) subsections (d)(2)(B) and
2 (m)(1) of section 255 (12 U.S.C.
3 1715z-20);

4 “(xi) section 502(h)(4)(B) of the
5 Housing Act of 1949 (42 U.S.C.
6 1472(h)(4)(B));

7 “(xii) section 508 of the Housing and
8 Urban Development Act of 1970 (12
9 U.S.C. 1701z-7); and

10 “(xiii) section 106 of the Energy Pol-
11 icy Act of 1992 (42 U.S.C. 12712 note).

12 “(C) RENTAL HOUSING COUNSELING.—
13 For purposes of this subsection, the term ‘rent-
14 al housing counseling’ means counseling related
15 to rental of residential property, which may in-
16 clude counseling regarding future homeown-
17 ership opportunities and providing referrals for
18 renters and prospective renters to entities pro-
19 viding counseling and shall include counseling
20 related to such topics that is provided pursuant
21 to—

22 “(i) section 105(a)(20) of the Housing
23 and Community Development Act of 1974
24 (42 U.S.C. 5305(a)(20));

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1 “(ii) in the United States Housing
2 Act of 1937—

3 “(I) section 9(e) (42 U.S.C.
4 1437g(e));

5 “(II) section 18(a)(4)(D) (42
6 U.S.C. 1437p(a)(4)(D));

7 “(III) section 23(c)(4) (42
8 U.S.C. 1437u(c)(4));

9 “(IV) section 32(e)(4) (42 U.S.C.
10 1437z-4(e)(4));

11 “(V) section 33(d)(2)(B) (42
12 U.S.C. 1437z-5(d)(2)(B)); and

13 “(VI) section 302(b)(6) (42
14 U.S.C. 1437aaa-1(b)(6));

15 “(iii) section 233(b)(2) of the Cran-
16 ston-Gonzalez National Affordable Housing
17 Act (42 U.S.C. 12773(b)(2));

18 “(iv) section 106 of the Housing and
19 Urban Development Act of 1968 (12
20 U.S.C. 1701x);

21 “(v) section 422(b)(6) of the Cran-
22 ston-Gonzalez National Affordable Housing
23 Act (42 U.S.C. 12872(b)(6));

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1 “(vi) section 491(b)(1)(F)(iii) of the
2 McKinney-Vento Homeless Assistance Act
3 (42 U.S.C. 11408(b)(1)(F)(iii));

4 “(vii) sections 202(3) and
5 810(b)(2)(A) of the Native American
6 Housing and Self-Determination Act of
7 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));
8 and

9 “(viii) the rental assistance program
10 under section 8 of the United States Hous-
11 ing Act of 1937 (42 U.S.C. 1437f).

12 “(2) STANDARDS FOR MATERIALS.—The Sec-
13 retary, in consultation with the advisory committee
14 established under subsection (g)(4) of the Depart-
15 ment of Housing and Urban Development Act, shall
16 establish standards for materials and forms to be
17 used, as appropriate, by organizations providing
18 homeownership counseling services, including any re-
19 cipients of assistance pursuant to subsection (a)(4).

20 “(3) MORTGAGE SOFTWARE SYSTEMS.—

21 “(A) CERTIFICATION.—The Secretary shall
22 provide for the certification of various computer
23 software programs for consumers to use in eval-
24 uating different residential mortgage loan pro-
25 posals. The Secretary shall require, for such

1 certification, that the mortgage software sys-
2 tems take into account—

3 “(i) the consumer’s financial situation
4 and the cost of maintaining a home, in-
5 cluding insurance, taxes, and utilities;

6 “(ii) the amount of time the consumer
7 expects to remain in the home or expected
8 time to maturity of the loan; and

9 “(iii) such other factors as the Sec-
10 retary considers appropriate to assist the
11 consumer in evaluating whether to pay
12 points, to lock in an interest rate, to select
13 an adjustable or fixed rate loan, to select
14 a conventional or government-insured or
15 guaranteed loan and to make other choices
16 during the loan application process.

17 If the Secretary determines that available exist-
18 ing software is inadequate to assist consumers
19 during the residential mortgage loan application
20 process, the Secretary shall arrange for the de-
21 velopment by private sector software companies
22 of new mortgage software systems that meet
23 the Secretary’s specifications.

24 “(B) USE AND INITIAL AVAILABILITY.—
25 Such certified computer software programs

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1 shall be used to supplement, not replace, hous-
2 ing counseling. The Secretary shall provide that
3 such programs are initially used only in connec-
4 tion with the assistance of housing counselors
5 certified pursuant to subsection (e).

6 “(C) AVAILABILITY.—After a period of ini-
7 tial availability under subparagraph (B) as the
8 Secretary considers appropriate, the Secretary
9 shall take reasonable steps to make mortgage
10 software systems certified pursuant to this
11 paragraph widely available through the Internet
12 and at public locations, including public librar-
13 ies, senior-citizen centers, public housing sites,
14 offices of public housing agencies that admin-
15 ister rental housing assistance vouchers, and
16 housing counseling centers.

17 “(D) BUDGET COMPLIANCE.—This para-
18 graph shall be effective only to the extent that
19 amounts to carry out this paragraph are made
20 available in advance in appropriations Acts.

21 “(4) NATIONAL PUBLIC SERVICE MULTIMEDIA
22 CAMPAIGNS TO PROMOTE HOUSING COUNSELING.—

23 “(A) IN GENERAL.—The Director of Hous-
24 ing Counseling shall develop, implement, and
25 conduct national public service multimedia cam-

1 paigns designed to make persons facing mort-
2 gage foreclosure, persons considering a
3 subprime mortgage loan to purchase a home, el-
4 derly persons, persons who face language bar-
5 riers, low-income persons, minorities, and other
6 potentially vulnerable consumers aware that it
7 is advisable, before seeking or maintaining a
8 residential mortgage loan, to obtain homeowner-
9 ship counseling from an unbiased and reliable
10 sources and that such homeownership coun-
11 seling is available, including through programs
12 sponsored by the Secretary of Housing and
13 Urban Development.

14 “(B) CONTACT INFORMATION.—Each seg-
15 ment of the multimedia campaign under sub-
16 paragraph (A) shall publicize the toll-free tele-
17 phone number and website of the Department
18 of Housing and Urban Development through
19 which persons seeking housing counseling can
20 locate a housing counseling agency in their
21 State that is certified by the Secretary of Hous-
22 ing and Urban Development and can provide
23 advice on buying a home, renting, defaults,
24 foreclosures, credit issues, and reverse mort-
25 gages.

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1 “(C) AUTHORIZATION OF APPROPRIA-
2 TIONS.—There are authorized to be appro-
3 priated to the Secretary, not to exceed
4 \$3,000,000 for fiscal years 2009, 2010, and
5 2011, for the development, implementation, and
6 conduct of national public service multimedia
7 campaigns under this paragraph.

8 “(D) FORECLOSURE RESCUE EDUCATION
9 PROGRAMS.—

10 “(i) IN GENERAL.—Ten percent of
11 any funds appropriated pursuant to the
12 authorization under subparagraph (C)
13 shall be used by the Director of Housing
14 Counseling to conduct an education pro-
15 gram in areas that have a high density of
16 foreclosure. Such program shall involve di-
17 rect mailings to persons living in such
18 areas describing—

19 “(I) tips on avoiding foreclosure
20 rescue scams;

21 “(II) tips on avoiding predatory
22 lending mortgage agreements;

23 “(III) tips on avoiding for-profit
24 foreclosure counseling services; and

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1 “(IV) local counseling resources
2 that are approved by the Department
3 of Housing and Urban Development.

4 “(ii) PROGRAM EMPHASIS.—In con-
5 ducting the education program described
6 under clause (i), the Director of Housing
7 Counseling shall also place an emphasis on
8 serving communities that have a high per-
9 centage of retirement communities or a
10 high percentage of low-income minority
11 communities.

12 “(iii) TERMS DEFINED.—For pur-
13 poses of this subparagraph:

14 “(I) HIGH DENSITY OF FORE-
15 CLOSURES.—An area has a ‘high den-
16 sity of foreclosures’ if such area is one
17 of the metropolitan statistical areas
18 (as that term is defined by the Direc-
19 tor of the Office of Management and
20 Budget) with the highest home fore-
21 closure rates.

22 “(II) HIGH PERCENTAGE OF RE-
23 TIREMENT COMMUNITIES.—An area
24 has a ‘high percentage of retirement
25 communities’ if such area is one of

1 the metropolitan statistical areas (as
2 that term is defined by the Director of
3 the Office of Management and Budg-
4 et) with the highest percentage of
5 residents aged 65 or older.

6 “(III) HIGH PERCENTAGE OF
7 LOW-INCOME MINORITY COMMU-
8 NITIES.—An area has a ‘high percent-
9 age of low-income minority commu-
10 nities’ if such area contains a higher-
11 than-normal percentage of residents
12 who are both minorities and low-in-
13 come, as defined by the Director of
14 Housing Counseling.

15 “(5) EDUCATION PROGRAMS.—The Secretary
16 shall provide advice and technical assistance to
17 States, units of general local government, and non-
18 profit organizations regarding the establishment and
19 operation of, including assistance with the develop-
20 ment of content and materials for, educational pro-
21 grams to inform and educate consumers, particularly
22 those most vulnerable with respect to residential
23 mortgage loans (such as elderly persons, persons
24 facing language barriers, low-income persons, mi-
25 norities, and other potentially vulnerable con-

1 sumers), regarding home mortgages, mortgage refi-
2 nancing, home equity loans, home repair loans, and
3 where appropriate by region, any requirements and
4 costs associated with obtaining flood or other dis-
5 aster-specific insurance coverage.”.

6 (b) CONFORMING AMENDMENTS TO GRANT PRO-
7 GRAM FOR HOMEOWNERSHIP COUNSELING ORGANIZA-
8 TIONS.—Section 106(c)(5)(A)(ii) of the Housing and
9 Urban Development Act of 1968 (12 U.S.C.
10 1701x(c)(5)(A)(ii)) is amended—

11 (1) in subclause (III), by striking “and” at the
12 end;

13 (2) in subclause (IV) by striking the period at
14 the end and inserting “; and”; and

15 (3) by inserting after subclause (IV) the fol-
16 lowing new subclause:

17 “(V) notify the housing or mort-
18 gage applicant of the availability of
19 mortgage software systems provided
20 pursuant to subsection (g)(3).”.

21 **SEC. 1444. GRANTS FOR HOUSING COUNSELING ASSIST-**
22 **ANCE.**

23 Section 106(a) of the Housing and Urban Develop-
24 ment Act of 1968 (12 U.S.C. 1701x(a)) is amended by
25 adding at the end the following new paragraph:

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1 “(4) HOMEOWNERSHIP AND RENTAL COUNSELING
2 ASSISTANCE.—

3 “(A) IN GENERAL.—The Secretary shall make
4 financial assistance available under this paragraph
5 to HUD-approved housing counseling agencies and
6 State housing finance agencies.

7 “(B) QUALIFIED ENTITIES.—The Secretary
8 shall establish standards and guidelines for eligibility
9 of organizations (including governmental and non-
10 profit organizations) to receive assistance under this
11 paragraph, in accordance with subparagraph (D).

12 “(C) DISTRIBUTION.—Assistance made avail-
13 able under this paragraph shall be distributed in a
14 manner that encourages efficient and successful
15 counseling programs and that ensures adequate dis-
16 tribution of amounts for rural areas having tradi-
17 tionally low levels of access to such counseling serv-
18 ices, including areas with insufficient access to the
19 Internet. In distributing such assistance, the Sec-
20 retary may give priority consideration to entities
21 serving areas with the highest home foreclosure
22 rates.

23 “(D) LIMITATION ON DISTRIBUTION OF ASSIST-
24 ANCE.—

1 “(i) IN GENERAL.—None of the amounts
2 made available under this paragraph shall be
3 distributed to—

4 “(I) any organization which has been
5 convicted for a violation under Federal law
6 relating to an election for Federal office; or

7 “(II) any organization which employs
8 applicable individuals.

9 “(ii) DEFINITION OF APPLICABLE INDIVID-
10 UALS.—In this subparagraph, the term ‘appli-
11 cable individual’ means an individual who—

12 “(I) is—

13 “(aa) employed by the organiza-
14 tion in a permanent or temporary ca-
15 pacity;

16 “(bb) contracted or retained by
17 the organization; or

18 “(cc) acting on behalf of, or with
19 the express or apparent authority of,
20 the organization; and

21 “(II) has been convicted for a viola-
22 tion under Federal law relating to an elec-
23 tion for Federal office.

24 “(E) GRANTMAKING PROCESS.—In making as-
25 sistance available under this paragraph, the Sec-

1 retary shall consider appropriate ways of stream-
2 lining and improving the processes for grant applica-
3 tion, review, approval, and award.

4 “(F) AUTHORIZATION OF APPROPRIATIONS.—
5 There are authorized to be appropriated
6 \$45,000,000 for each of fiscal years 2009 through
7 2012 for—

8 “(i) the operations of the Office of Hous-
9 ing Counseling of the Department of Housing
10 and Urban Development;

11 “(ii) the responsibilities of the Director of
12 Housing Counseling under paragraphs (2)
13 through (5) of subsection (g); and

14 “(iii) assistance pursuant to this para-
15 graph for entities providing homeownership and
16 rental counseling.”.

17 **SEC. 1445. REQUIREMENTS TO USE HUD-CERTIFIED COUN-**
18 **SELORS UNDER HUD PROGRAMS.**

19 Section 106(e) of the Housing and Urban Develop-
20 ment Act of 1968 (12 U.S.C. 1701x(e)) is amended—

21 (1) by striking paragraph (1) and inserting the
22 following new paragraph:

23 “(1) REQUIREMENT FOR ASSISTANCE.—An or-
24 ganization may not receive assistance for counseling
25 activities under subsection (a)(1)(iii), (a)(2), (a)(4),

1 (c), or (d) of this section, or under section 101(e),
2 unless the organization, or the individuals through
3 which the organization provides such counseling, has
4 been certified by the Secretary under this subsection
5 as competent to provide such counseling.”;

6 (2) in paragraph (2)—

7 (A) by inserting “and for certifying organi-
8 zations” before the period at the end of the
9 first sentence; and

10 (B) in the second sentence by striking “for
11 certification” and inserting “, for certification
12 of an organization, that each individual through
13 which the organization provides counseling shall
14 demonstrate, and, for certification of an indi-
15 vidual,”;

16 (3) in paragraph (3), by inserting “organiza-
17 tions and” before “individuals”;

18 (4) by redesignating paragraph (3) as para-
19 graph (5); and

20 (5) by inserting after paragraph (2) the fol-
21 lowing new paragraphs:

22 “(3) REQUIREMENT UNDER HUD PROGRAMS.—
23 Any homeownership counseling or rental housing
24 counseling (as such terms are defined in subsection
25 (g)(1)) required under, or provided in connection

1 with, any program administered by the Department
2 of Housing and Urban Development shall be pro-
3 vided only by organizations or counselors certified by
4 the Secretary under this subsection as competent to
5 provide such counseling.

6 “(4) OUTREACH.—The Secretary shall take
7 such actions as the Secretary considers appropriate
8 to ensure that individuals and organizations pro-
9 viding homeownership or rental housing counseling
10 are aware of the certification requirements and
11 standards of this subsection and of the training and
12 certification programs under subsection (f).”.

13 **SEC. 1446. STUDY OF DEFAULTS AND FORECLOSURES.**

14 The Secretary of Housing and Urban Development
15 shall conduct an extensive study of the root causes of de-
16 fault and foreclosure of home loans, using as much empir-
17 ical data as are available. The study shall also examine
18 the role of escrow accounts in helping prime and nonprime
19 borrowers to avoid defaults and foreclosures, and the role
20 of computer registries of mortgages, including those used
21 for trading mortgage loans. Not later than 12 months
22 after the date of the enactment of this Act, the Secretary
23 shall submit to the Congress a preliminary report regard-
24 ing the study. Not later than 24 months after such date
25 of enactment, the Secretary shall submit a final report re-

1 guarding the results of the study, which shall include any
2 recommended legislation relating to the study, and rec-
3 ommendations for best practices and for a process to iden-
4 tify populations that need counseling the most.

5 **SEC. 1447. DEFAULT AND FORECLOSURE DATABASE.**

6 (a) ESTABLISHMENT.—The Secretary of Housing
7 and Urban Development and the Director of the Bureau,
8 in consultation with the Federal agencies responsible for
9 regulation of banking and financial institutions involved
10 in residential mortgage lending and servicing, shall estab-
11 lish and maintain a database of information on fore-
12 closures and defaults on mortgage loans for one- to four-
13 unit residential properties and shall make such informa-
14 tion publicly available, subject to subsection (e).

15 (b) CENSUS TRACT DATA.—Information in the data-
16 base may be collected, aggregated, and made available on
17 a census tract basis.

18 (c) REQUIREMENTS.—Information collected and
19 made available through the database shall include—

20 (1) the number and percentage of such mort-
21 gage loans that are delinquent by more than 30
22 days;

23 (2) the number and percentage of such mort-
24 gage loans that are delinquent by more than 90
25 days;

1 (3) the number and percentage of such prop-
2 erties that are real estate-owned;

3 (4) number and percentage of such mortgage
4 loans that are in the foreclosure process;

5 (5) the number and percentage of such mort-
6 gage loans that have an outstanding principal obli-
7 gation amount that is greater than the value of the
8 property for which the loan was made; and

9 (6) such other information as the Secretary of
10 Housing and Urban Development and the Director
11 of the Bureau consider appropriate.

12 (d) **RULE OF CONSTRUCTION.**—Nothing in this sec-
13 tion shall be construed to encourage discriminatory or un-
14 sound allocation of credit or lending policies or practices.

15 (e) **PRIVACY AND CONFIDENTIALITY.**—In estab-
16 lishing and maintaining the database described in sub-
17 section (a), the Secretary of Housing and Urban Develop-
18 ment and the Director of the Bureau shall—

19 (1) be subject to the standards applicable to
20 Federal agencies for the protection of the confiden-
21 tiality of personally identifiable information and for
22 data security and integrity;

23 (2) implement the necessary measures to con-
24 form to the standards for data integrity and security
25 described in paragraph (1); and

1 (3) collect and make available information
2 under this section, in accordance with paragraphs
3 (5) and (6) of section 1022(c) and the rules pre-
4 scribed under such paragraphs, in order to protect
5 privacy and confidentiality.

6 **SEC. 1448. DEFINITIONS FOR COUNSELING-RELATED PRO-**
7 **GRAMS.**

8 Section 106 of the Housing and Urban Development
9 Act of 1968 (12 U.S.C. 1701x), as amended by the pre-
10 ceding provisions of this subtitle, is amended by adding
11 at the end the following new subsection:

12 “(h) DEFINITIONS.—For purposes of this section:

13 “(1) NONPROFIT ORGANIZATION.—The term
14 ‘nonprofit organization’ has the meaning given such
15 term in section 104(5) of the Cranston-Gonzalez Na-
16 tional Affordable Housing Act (42 U.S.C.
17 12704(5)), except that subparagraph (D) of such
18 section shall not apply for purposes of this section.

19 “(2) STATE.—The term ‘State’ means each of
20 the several States, the Commonwealth of Puerto
21 Rico, the District of Columbia, the Commonwealth
22 of the Northern Mariana Islands, Guam, the Virgin
23 Islands, American Samoa, the Trust Territories of
24 the Pacific, or any other possession of the United
25 States.

1 “(3) UNIT OF GENERAL LOCAL GOVERN-
2 MENT.—The term ‘unit of general local government’
3 means any city, county, parish, town, township, bor-
4 ough, village, or other general purpose political sub-
5 division of a State.

6 “(4) HUD-APPROVED COUNSELING AGENCY.—
7 The term ‘HUD-approved counseling agency’ means
8 a private or public nonprofit organization that is—

9 “(A) exempt from taxation under section
10 501(c) of the Internal Revenue Code of 1986;
11 and

12 “(B) certified by the Secretary to provide
13 housing counseling services.

14 “(5) STATE HOUSING FINANCE AGENCY.—The
15 term ‘State housing finance agency’ means any pub-
16 lic body, agency, or instrumentality specifically cre-
17 ated under State statute that is authorized to fi-
18 nance activities designed to provide housing and re-
19 lated facilities throughout an entire State through
20 land acquisition, construction, or rehabilitation.”.

21 **SEC. 1449. ACCOUNTABILITY AND TRANSPARENCY FOR**
22 **GRANT RECIPIENTS.**

23 Section 106 of the Housing and Urban Development
24 Act of 1968 (12 U.S.C. 1701x), as amended by the pre-

1 ceding provisions of this subtitle, is amended by adding
2 at the end the following:

3 “(i) ACCOUNTABILITY FOR RECIPIENTS OF COVERED
4 ASSISTANCE.—

5 “(1) TRACKING OF FUNDS.—The Secretary
6 shall—

7 “(A) develop and maintain a system to en-
8 sure that any organization or entity that re-
9 ceives any covered assistance uses all amounts
10 of covered assistance in accordance with this
11 section, the regulations issued under this sec-
12 tion, and any requirements or conditions under
13 which such amounts were provided; and

14 “(B) require any organization or entity, as
15 a condition of receipt of any covered assistance,
16 to agree to comply with such requirements re-
17 garding covered assistance as the Secretary
18 shall establish, which shall include—

19 “(i) appropriate periodic financial and
20 grant activity reporting, record retention,
21 and audit requirements for the duration of
22 the covered assistance to the organization
23 or entity to ensure compliance with the
24 limitations and requirements of this sec-
25 tion, the regulations under this section,

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1 and any requirements or conditions under
2 which such amounts were provided; and

3 “(ii) any other requirements that the
4 Secretary determines are necessary to en-
5 sure appropriate administration and com-
6 pliance.

7 “(2) MISUSE OF FUNDS.—If any organization
8 or entity that receives any covered assistance is de-
9 termined by the Secretary to have used any covered
10 assistance in a manner that is materially in violation
11 of this section, the regulations issued under this sec-
12 tion, or any requirements or conditions under which
13 such assistance was provided—

14 “(A) the Secretary shall require that, with-
15 in 12 months after the determination of such
16 misuse, the organization or entity shall reim-
17 burse the Secretary for such misused amounts
18 and return to the Secretary any such amounts
19 that remain unused or uncommitted for use;
20 and

21 “(B) such organization or entity shall be
22 ineligible, at any time after such determination,
23 to apply for or receive any further covered as-
24 sistance.

1 The remedies under this paragraph are in addition
2 to any other remedies that may be available under
3 law.

4 “(3) COVERED ASSISTANCE.—For purposes of
5 this subsection, the term ‘covered assistance’ means
6 any grant or other financial assistance provided
7 under this section.”.

8 **SEC. 1450. UPDATING AND SIMPLIFICATION OF MORTGAGE**
9 **INFORMATION BOOKLET.**

10 Section 5 of the Real Estate Settlement Procedures
11 Act of 1974 (12 U.S.C. 2604) is amended—

12 (1) in the section heading, by striking “SPE-
13 CIAL” and inserting “HOME BUYING”;

14 (2) by striking subsections (a) and (b) and in-
15 serting the following new subsections:

16 “(a) PREPARATION AND DISTRIBUTION.—The Direc-
17 tor of the Bureau of Consumer Financial Protection (here-
18 after in this section referred to as the ‘Director’) shall pre-
19 pare, at least once every 5 years, a booklet to help con-
20 sumers applying for federally related mortgage loans to
21 understand the nature and costs of real estate settlement
22 services. The Director shall prepare the booklet in various
23 languages and cultural styles, as the Director determines
24 to be appropriate, so that the booklet is understandable
25 and accessible to homebuyers of different ethnic and cul-

1 tural backgrounds. The Director shall distribute such
2 booklets to all lenders that make federally related mort-
3 gage loans. The Director shall also distribute to such lend-
4 ers lists, organized by location, of homeownership coun-
5 selors certified under section 106(e) of the Housing and
6 Urban Development Act of 1968 (12 U.S.C. 1701x(e)) for
7 use in complying with the requirement under subsection
8 (c) of this section.

9 “(b) CONTENTS.—Each booklet shall be in such form
10 and detail as the Director shall prescribe and, in addition
11 to such other information as the Director may provide,
12 shall include in plain and understandable language the fol-
13 lowing information:

14 “(1) A description and explanation of the na-
15 ture and purpose of the costs incident to a real es-
16 tate settlement or a federally related mortgage loan.
17 The description and explanation shall provide gen-
18 eral information about the mortgage process as well
19 as specific information concerning, at a minimum—

20 “(A) balloon payments;

21 “(B) prepayment penalties;

22 “(C) the advantages of prepayment; and

23 “(D) the trade-off between closing costs
24 and the interest rate over the life of the loan.

1 “(2) An explanation and sample of the uniform
2 settlement statement required by section 4.

3 “(3) A list and explanation of lending practices,
4 including those prohibited by the Truth in Lending
5 Act or other applicable Federal law, and of other un-
6 fair practices and unreasonable or unnecessary
7 charges to be avoided by the prospective buyer with
8 respect to a real estate settlement.

9 “(4) A list and explanation of questions a con-
10 sumer obtaining a federally related mortgage loan
11 should ask regarding the loan, including whether the
12 consumer will have the ability to repay the loan,
13 whether the consumer sufficiently shopped for the
14 loan, whether the loan terms include prepayment
15 penalties or balloon payments, and whether the loan
16 will benefit the borrower.

17 “(5) An explanation of the right of rescission as
18 to certain transactions provided by sections 125 and
19 129 of the Truth in Lending Act.

20 “(6) A brief explanation of the nature of a vari-
21 able rate mortgage and a reference to the booklet
22 entitled ‘Consumer Handbook on Adjustable Rate
23 Mortgages’, published by the Director, or to any
24 suitable substitute of such booklet that the Director
25 may subsequently adopt pursuant to such section.

1 “(7) A brief explanation of the nature of a
2 home equity line of credit and a reference to the
3 pamphlet required to be provided under section
4 127A of the Truth in Lending Act.

5 “(8) Information about homeownership coun-
6 seling services made available pursuant to section
7 106(a)(4) of the Housing and Urban Development
8 Act of 1968 (12 U.S.C. 1701x(a)(4)), a rec-
9 ommendation that the consumer use such services,
10 and notification that a list of certified providers of
11 homeownership counseling in the area, and their
12 contact information, is available.

13 “(9) An explanation of the nature and purpose
14 of escrow accounts when used in connection with
15 loans secured by residential real estate and the re-
16 quirements under section 10 of this Act regarding
17 such accounts.

18 “(10) An explanation of the choices available to
19 buyers of residential real estate in selecting persons
20 to provide necessary services incidental to a real es-
21 tate settlement.

22 “(11) An explanation of a consumer’s respon-
23 sibilities, liabilities, and obligations in a mortgage
24 transaction.

1 “(12) An explanation of the nature and purpose
2 of real estate appraisals, including the difference be-
3 tween an appraisal and a home inspection.

4 “(13) Notice that the Office of Housing of the
5 Department of Housing and Urban Development has
6 made publicly available a brochure regarding loan
7 fraud and a World Wide Web address and toll-free
8 telephone number for obtaining the brochure.

9 The booklet prepared pursuant to this section shall take
10 into consideration differences in real estate settlement pro-
11 cedures that may exist among the several States and terri-
12 tories of the United States and among separate political
13 subdivisions within the same State and territory.”;

14 (3) in subsection (c), by inserting at the end
15 the following new sentence: “Each lender shall also
16 include with the booklet a reasonably complete or
17 updated list of homeownership counselors who are
18 certified pursuant to section 106(e) of the Housing
19 and Urban Development Act of 1968 (12 U.S.C.
20 1701x(e)) and located in the area of the lender.”;
21 and

22 (4) in subsection (d), by inserting after the pe-
23 riod at the end of the first sentence the following:
24 “The lender shall provide the booklet in the version

1 that is most appropriate for the person receiving
2 it.”.

3 **SEC. 1451. HOME INSPECTION COUNSELING.**

4 (a) PUBLIC OUTREACH.—

5 (1) IN GENERAL.—The Secretary of Housing
6 and Urban Development (in this section referred to
7 as the “Secretary”) shall take such actions as may
8 be necessary to inform potential homebuyers of the
9 availability and importance of obtaining an inde-
10 pendent home inspection. Such actions shall in-
11 clude—

12 (A) publication of the HUD/FHA form
13 HUD 92564–CN entitled “For Your Protec-
14 tion: Get a Home Inspection”, in both English
15 and Spanish languages;

16 (B) publication of the HUD/FHA booklet
17 entitled “For Your Protection: Get a Home In-
18 spection”, in both English and Spanish lan-
19 guages;

20 (C) development and publication of a HUD
21 booklet entitled “For Your Protection—Get a
22 Home Inspection” that does not reference
23 FHA-insured homes, in both English and Span-
24 ish languages; and

1 (D) publication of the HUD document en-
2 titled “Ten Important Questions To Ask Your
3 Home Inspector”, in both English and Spanish
4 languages.

5 (2) AVAILABILITY.—The Secretary shall make
6 the materials specified in paragraph (1) available for
7 electronic access and, where appropriate, inform po-
8 tential homebuyers of such availability through home
9 purchase counseling public service announcements
10 and toll-free telephone hotlines of the Department of
11 Housing and Urban Development. The Secretary
12 shall give special emphasis to reaching first-time and
13 low-income homebuyers with these materials and ef-
14 forts.

15 (3) UPDATING.—The Secretary may periodi-
16 cally update and revise such materials, as the Sec-
17 retary determines to be appropriate.

18 (b) REQUIREMENT FOR FHA-APPROVED LEND-
19 ERS.—Each mortgagee approved for participation in the
20 mortgage insurance programs under title II of the Na-
21 tional Housing Act shall provide prospective homebuyers,
22 at first contact, whether upon pre-qualification, pre-ap-
23 proval, or initial application, the materials specified in
24 subparagraphs (A), (B), and (D) of subsection (a)(1).

1 (c) REQUIREMENTS FOR HUD-APPROVED COUN-
2 SELING AGENCIES.—Each counseling agency certified
3 pursuant by the Secretary to provide housing counseling
4 services shall provide each of their clients, as part of the
5 home purchase counseling process, the materials specified
6 in subparagraphs (C) and (D) of subsection (a)(1).

7 (d) TRAINING.—Training provided the Department
8 of Housing and Urban Development for housing coun-
9 seling agencies, whether such training is provided directly
10 by the Department or otherwise, shall include—

11 (1) providing information on counseling poten-
12 tial homebuyers of the availability and importance of
13 getting an independent home inspection;

14 (2) providing information about the home in-
15 spection process, including the reasons for specific
16 inspections such as radon and lead-based paint test-
17 ing;

18 (3) providing information about advising poten-
19 tial homebuyers on how to locate and select a quali-
20 fied home inspector; and

21 (4) review of home inspection public outreach
22 materials of the Department.

1 **SEC. 1452. WARNINGS TO HOMEOWNERS OF FORECLOSURE**
2 **RESCUE SCAMS.**

3 (a) ASSISTANCE TO NRC.—Notwithstanding any
4 other provision of law, of any amounts made available for
5 any fiscal year pursuant to section 106(a)(4)(F) of the
6 Housing and Urban Development Act of 1968 (12 U.S.C.
7 1701x(a)(4)(F)) (as added by section 1444), 10 percent
8 shall be used only for assistance to the Neighborhood Re-
9 investment Corporation for activities, in consultation with
10 servicers of residential mortgage loans, to provide notice
11 to borrowers under such loans who are delinquent with
12 respect to payments due under such loans that makes such
13 borrowers aware of the dangers of fraudulent activities as-
14 sociated with foreclosure.

15 (b) NOTICE.—The Neighborhood Reinvestment Cor-
16 poration, in consultation with servicers of residential mort-
17 gage loans, shall use the amounts provided pursuant to
18 subsection (a) to carry out activities to inform borrowers
19 under residential mortgage loans—

20 (1) that the foreclosure process is complex and
21 can be confusing;

22 (2) that the borrower may be approached dur-
23 ing the foreclosure process by persons regarding sav-
24 ing their home and they should use caution in any
25 such dealings;

1 (3) that there are Federal Government and
2 nonprofit agencies that may provide information
3 about the foreclosure process, including the Depart-
4 ment of Housing and Urban Development;

5 (4) that they should contact their lender imme-
6 diately, contact the Department of Housing and
7 Urban Development to find a housing counseling
8 agency certified by the Department to assist in
9 avoiding foreclosure, or visit the Department's
10 website regarding tips for avoiding foreclosure; and

11 (5) of the telephone number of the loan servicer
12 or successor, the telephone number of the Depart-
13 ment of Housing and Urban Development housing
14 counseling line, and the Uniform Resource Locators
15 (URLs) for the Department of Housing and Urban
16 Development Web sites for housing counseling and
17 for tips for avoiding foreclosure.

18 **Subtitle E—Mortgage Servicing**

19 **SEC. 1461. ESCROW AND IMPOUND ACCOUNTS RELATING** 20 **TO CERTAIN CONSUMER CREDIT TRANS-** 21 **ACTIONS.**

22 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
23 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
24 after section 129C (as added by section 1411) the fol-
25 lowing new section:

1 **“§ 129D. Escrow or impound accounts relating to cer-**
2 **tain consumer credit transactions**

3 “(a) IN GENERAL.—Except as provided in subsection
4 (b), (c), (d), or (e), a creditor, in connection with the con-
5 summation of a consumer credit transaction secured by
6 a first lien on the principal dwelling of the consumer, other
7 than a consumer credit transaction under an open end
8 credit plan or a reverse mortgage, shall establish, before
9 the consummation of such transaction, an escrow or im-
10 pound account for the payment of taxes and hazard insur-
11 ance, and, if applicable, flood insurance, mortgage insur-
12 ance, ground rents, and any other required periodic pay-
13 ments or premiums with respect to the property or the
14 loan terms, as provided in, and in accordance with, this
15 section.

16 “(b) WHEN REQUIRED.—No impound, trust, or other
17 type of account for the payment of property taxes, insur-
18 ance premiums, or other purposes relating to the property
19 may be required as a condition of a real property sale con-
20 tract or a loan secured by a first deed of trust or mortgage
21 on the principal dwelling of the consumer, other than a
22 consumer credit transaction under an open end credit plan
23 or a reverse mortgage, except when—

24 “(1) any such impound, trust, or other type of
25 escrow or impound account for such purposes is re-
26 quired by Federal or State law;

1 “(2) a loan is made, guaranteed, or insured by
2 a State or Federal governmental lending or insuring
3 agency;

4 “(3) the transaction is secured by a first mort-
5 gage or lien on the consumer’s principal dwelling
6 having an original principal obligation amount
7 that—

8 “(A) does not exceed the amount of the
9 maximum limitation on the original principal
10 obligation of mortgage in effect for a residence
11 of the applicable size, as of the date such inter-
12 est rate set, pursuant to the sixth sentence of
13 section 305(a)(2) the Federal Home Loan
14 Mortgage Corporation Act (12 U.S.C.
15 1454(a)(2)), and the annual percentage rate
16 will exceed the average prime offer rate as de-
17 fined in section 129C by 1.5 or more percent-
18 age points; or

19 “(B) exceeds the amount of the maximum
20 limitation on the original principal obligation of
21 mortgage in effect for a residence of the appli-
22 cable size, as of the date such interest rate set,
23 pursuant to the sixth sentence of section
24 305(a)(2) the Federal Home Loan Mortgage
25 Corporation Act (12 U.S.C. 1454(a)(2)), and

1 the annual percentage rate will exceed the aver-
2 age prime offer rate as defined in section 129C
3 by 2.5 or more percentage points; or

4 “(4) so required pursuant to regulation.

5 “(c) EXEMPTIONS.—The Board may, by regulation,
6 exempt from the requirements of subsection (a) a creditor
7 that—

8 “(1) operates predominantly in rural or under-
9 served areas;

10 “(2) together with all affiliates, has total an-
11 nual mortgage loan originations that do not exceed
12 a limit set by the Board;

13 “(3) retains its mortgage loan originations in
14 portfolio; and

15 “(4) meets any asset size threshold and any
16 other criteria the Board may establish, consistent
17 with the purposes of this subtitle.

18 “(d) DURATION OF MANDATORY ESCROW OR IM-
19 POUND ACCOUNT.—An escrow or impound account estab-
20 lished pursuant to subsection (b) shall remain in existence
21 for a minimum period of 5 years, beginning with the date
22 of the consummation of the loan, unless and until—

23 “(1) such borrower has sufficient equity in the
24 dwelling securing the consumer credit transaction so

1 as to no longer be required to maintain private
2 mortgage insurance;

3 “(2) such borrower is delinquent;

4 “(3) such borrower otherwise has not complied
5 with the legal obligation, as established by rule; or

6 “(4) the underlying mortgage establishing the
7 account is terminated.

8 “(e) LIMITED EXEMPTIONS FOR LOANS SECURED BY
9 SHARES IN A COOPERATIVE OR IN WHICH AN ASSOCIA-
10 TION MUST MAINTAIN A MASTER INSURANCE POLICY.—
11 Escrow accounts need not be established for loans secured
12 by shares in a cooperative. Insurance premiums need not
13 be included in escrow accounts for loans secured by dwell-
14 ings or units, where the borrower must join an association
15 as a condition of ownership, and that association has an
16 obligation to the dwelling or unit owners to maintain a
17 master policy insuring the dwellings or units.

18 “(f) CLARIFICATION ON ESCROW ACCOUNTS FOR
19 LOANS NOT MEETING STATUTORY TEST.—For mort-
20 gages not covered by the requirements of subsection (b),
21 no provision of this section shall be construed as pre-
22 cluding the establishment of an impound, trust, or other
23 type of account for the payment of property taxes, insur-
24 ance premiums, or other purposes relating to the prop-
25 erty—

1 “(1) on terms mutually agreeable to the parties
2 to the loan;

3 “(2) at the discretion of the lender or servicer,
4 as provided by the contract between the lender or
5 servicer and the borrower; or

6 “(3) pursuant to the requirements for the
7 escrowing of flood insurance payments for regulated
8 lending institutions in section 102(d) of the Flood
9 Disaster Protection Act of 1973.

10 “(g) ADMINISTRATION OF MANDATORY ESCROW OR
11 IMPOUND ACCOUNTS.—

12 “(1) IN GENERAL.—Except as may otherwise
13 be provided for in this title or in regulations pre-
14 scribed by the Board, escrow or impound accounts
15 established pursuant to subsection (b) shall be estab-
16 lished in a federally insured depository institution or
17 credit union.

18 “(2) ADMINISTRATION.—Except as provided in
19 this section or regulations prescribed under this sec-
20 tion, an escrow or impound account subject to this
21 section shall be administered in accordance with—

22 “(A) the Real Estate Settlement Proce-
23 dures Act of 1974 and regulations prescribed
24 under such Act;

1 “(B) the Flood Disaster Protection Act of
2 1973 and regulations prescribed under such
3 Act; and

4 “(C) the law of the State, if applicable,
5 where the real property securing the consumer
6 credit transaction is located.

7 “(3) APPLICABILITY OF PAYMENT OF INTER-
8 EST.—If prescribed by applicable State or Federal
9 law, each creditor shall pay interest to the consumer
10 on the amount held in any impound, trust, or escrow
11 account that is subject to this section in the manner
12 as prescribed by that applicable State or Federal
13 law.

14 “(4) PENALTY COORDINATION WITH RESPA.—
15 Any action or omission on the part of any person
16 which constitutes a violation of the Real Estate Set-
17 tlement Procedures Act of 1974 or any regulation
18 prescribed under such Act for which the person has
19 paid any fine, civil money penalty, or other damages
20 shall not give rise to any additional fine, civil money
21 penalty, or other damages under this section, unless
22 the action or omission also constitutes a direct viola-
23 tion of this section.

24 “(h) DISCLOSURES RELATING TO MANDATORY ES-
25 CROW OR IMPOUND ACCOUNT.—In the case of any im-

1 pound, trust, or escrow account that is required under
2 subsection (b), the creditor shall disclose by written notice
3 to the consumer at least 3 business days before the con-
4 summation of the consumer credit transaction giving rise
5 to such account or in accordance with timeframes estab-
6 lished in prescribed regulations the following information:

7 “(1) The fact that an escrow or impound ac-
8 count will be established at consummation of the
9 transaction.

10 “(2) The amount required at closing to initially
11 fund the escrow or impound account.

12 “(3) The amount, in the initial year after the
13 consummation of the transaction, of the estimated
14 taxes and hazard insurance, including flood insur-
15 ance, if applicable, and any other required periodic
16 payments or premiums that reflects, as appropriate,
17 either the taxable assessed value of the real property
18 securing the transaction, including the value of any
19 improvements on the property or to be constructed
20 on the property (whether or not such construction
21 will be financed from the proceeds of the trans-
22 action) or the replacement costs of the property.

23 “(4) The estimated monthly amount payable to
24 be escrowed for taxes, hazard insurance (including

1 flood insurance, if applicable) and any other re-
2 quired periodic payments or premiums.

3 “(5) The fact that, if the consumer chooses to
4 terminate the account in the future, the consumer
5 will become responsible for the payment of all taxes,
6 hazard insurance, and flood insurance, if applicable,
7 as well as any other required periodic payments or
8 premiums on the property unless a new escrow or
9 impound account is established.

10 “(6) Such other information as the Board de-
11 termines necessary for the protection of the con-
12 sumer.

13 “(i) DEFINITIONS.—For purposes of this section, the
14 following definitions shall apply:

15 “(1) FLOOD INSURANCE.—The term ‘flood in-
16 surance’ means flood insurance coverage provided
17 under the national flood insurance program pursu-
18 ant to the National Flood Insurance Act of 1968.

19 “(2) HAZARD INSURANCE.—The term ‘hazard
20 insurance’ shall have the same meaning as provided
21 for ‘hazard insurance’, ‘casualty insurance’, ‘home-
22 owner’s insurance’, or other similar term under the
23 law of the State where the real property securing the
24 consumer credit transaction is located.”.

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1 (b) EXEMPTIONS AND MODIFICATIONS.—The Board
2 may prescribe rules that revise, add to, or subtract from
3 the criteria of section 129D(b) of the Truth in Lending
4 Act if the Board determines that such rules are in the
5 interest of consumers and in the public interest.

6 (c) CLERICAL AMENDMENT.—The table of sections
7 for chapter 2 of the Truth in Lending Act is amended
8 by inserting after the item relating to section 129C (as
9 added by section 1411) the following new item:

“129D. Escrow or impound accounts relating to certain consumer credit trans-
actions.”.

10 **SEC. 1462. DISCLOSURE NOTICE REQUIRED FOR CON-**
11 **SUMERS WHO WAIVE ESCROW SERVICES.**

12 Section 129D of the Truth in Lending Act (as added
13 by section 1461) is amended by adding at the end the fol-
14 lowing new subsection:

15 “(j) DISCLOSURE NOTICE REQUIRED FOR CON-
16 SUMERS WHO WAIVE ESCROW SERVICES.—

17 “(1) IN GENERAL.—If—

18 “(A) an impound, trust, or other type of
19 account for the payment of property taxes, in-
20 surance premiums, or other purposes relating to
21 real property securing a consumer credit trans-
22 action is not established in connection with the
23 transaction; or

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1 “(B) a consumer chooses, and provides
2 written notice to the creditor or servicer of such
3 choice, at any time after such an account is es-
4 tablished in connection with any such trans-
5 action and in accordance with any statute, reg-
6 ulation, or contractual agreement, to close such
7 account,

8 the creditor or servicer shall provide a timely and
9 clearly written disclosure to the consumer that ad-
10 vises the consumer of the responsibilities of the con-
11 sumer and implications for the consumer in the ab-
12 sence of any such account.

13 “(2) DISCLOSURE REQUIREMENTS.—Any dis-
14 closure provided to a consumer under paragraph (1)
15 shall include the following:

16 “(A) Information concerning any applica-
17 ble fees or costs associated with either the non-
18 establishment of any such account at the time
19 of the transaction, or any subsequent closure of
20 any such account.

21 “(B) A clear and prominent statement that
22 the consumer is responsible for personally and
23 directly paying the non-escrowed items, in addi-
24 tion to paying the mortgage loan payment, in
25 the absence of any such account, and the fact

1 that the costs for taxes, insurance, and related
2 fees can be substantial.

3 “(C) A clear explanation of the con-
4 sequences of any failure to pay non-escrowed
5 items, including the possible requirement for
6 the forced placement of insurance by the cred-
7 itor or servicer and the potentially higher cost
8 (including any potential commission payments
9 to the servicer) or reduced coverage for the con-
10 sumer in the event of any such creditor-placed
11 insurance.

12 “(D) Such other information as the Board
13 determines necessary for the protection of the
14 consumer.”.

15 **SEC. 1463. REAL ESTATE SETTLEMENT PROCEDURES ACT**
16 **OF 1974 AMENDMENTS.**

17 (a) **SERVICER PROHIBITIONS.**—Section 6 of the Real
18 Estate Settlement Procedures Act of 1974 (12 U.S.C.
19 2605) is amended by adding at the end the following new
20 subsections:

21 “(k) **SERVICER PROHIBITIONS.**—

22 “(1) **IN GENERAL.**—A servicer of a federally re-
23 lated mortgage shall not—

24 “(A) obtain force-placed hazard insurance
25 unless there is a reasonable basis to believe the

1 borrower has failed to comply with the loan
2 contract's requirements to maintain property
3 insurance;

4 “(B) charge fees for responding to valid
5 qualified written requests (as defined in regula-
6 tions which the Bureau of Consumer Financial
7 Protection shall prescribe) under this section;

8 “(C) fail to take timely action to respond
9 to a borrower's requests to correct errors relat-
10 ing to allocation of payments, final balances for
11 purposes of paying off the loan, or avoiding
12 foreclosure, or other standard servicer's duties;

13 “(D) fail to respond within 10 business
14 days to a request from a borrower to provide
15 the identity, address, and other relevant contact
16 information about the owner or assignee of the
17 loan; or

18 “(E) fail to comply with any other obliga-
19 tion found by the Bureau of Consumer Finan-
20 cial Protection, by regulation, to be appropriate
21 to carry out the consumer protection purposes
22 of this Act.

23 “(2) FORCE-PLACED INSURANCE DEFINED.—
24 For purposes of this subsection and subsections (l)
25 and (m), the term ‘force-placed insurance’ means

1 hazard insurance coverage obtained by a servicer of
2 a federally related mortgage when the borrower has
3 failed to maintain or renew hazard insurance on
4 such property as required of the borrower under the
5 terms of the mortgage.

6 “(1) REQUIREMENTS FOR FORCE-PLACED INSUR-
7 ANCE.—A servicer of a federally related mortgage shall
8 not be construed as having a reasonable basis for obtain-
9 ing force-placed insurance unless the requirements of this
10 subsection have been met.

11 “(1) WRITTEN NOTICES TO BORROWER.—A
12 servicer may not impose any charge on any borrower
13 for force-placed insurance with respect to any prop-
14 erty securing a federally related mortgage unless—

15 “(A) the servicer has sent, by first-class
16 mail, a written notice to the borrower con-
17 taining—

18 “(i) a reminder of the borrower’s obli-
19 gation to maintain hazard insurance on the
20 property securing the federally related
21 mortgage;

22 “(ii) a statement that the servicer
23 does not have evidence of insurance cov-
24 erage of such property;

1 “(iii) a clear and conspicuous state-
2 ment of the procedures by which the bor-
3 rower may demonstrate that the borrower
4 already has insurance coverage; and

5 “(iv) a statement that the servicer
6 may obtain such coverage at the borrower’s
7 expense if the borrower does not provide
8 such demonstration of the borrower’s exist-
9 ing coverage in a timely manner;

10 “(B) the servicer has sent, by first-class
11 mail, a second written notice, at least 30 days
12 after the mailing of the notice under subpara-
13 graph (A) that contains all the information de-
14 scribed in each clause of such subparagraph;
15 and

16 “(C) the servicer has not received from the
17 borrower any demonstration of hazard insur-
18 ance coverage for the property securing the
19 mortgage by the end of the 15-day period be-
20 ginning on the date the notice under subpara-
21 graph (B) was sent by the servicer.

22 “(2) SUFFICIENCY OF DEMONSTRATION.—A
23 servicer of a federally related mortgage shall accept
24 any reasonable form of written confirmation from a
25 borrower of existing insurance coverage, which shall

1 include the existing insurance policy number along
2 with the identity of, and contact information for, the
3 insurance company or agent, or as otherwise re-
4 quired by the Bureau of Consumer Financial Protec-
5 tion.

6 “(3) TERMINATION OF FORCE-PLACED INSUR-
7 ANCE.—Within 15 days of the receipt by a servicer
8 of confirmation of a borrower’s existing insurance
9 coverage, the servicer shall—

10 “(A) terminate the force-placed insurance;
11 and

12 “(B) refund to the consumer all force-
13 placed insurance premiums paid by the bor-
14 rower during any period during which the bor-
15 rower’s insurance coverage and the force-placed
16 insurance coverage were each in effect, and any
17 related fees charged to the consumer’s account
18 with respect to the force-placed insurance dur-
19 ing such period.

20 “(4) CLARIFICATION WITH RESPECT TO FLOOD
21 DISASTER PROTECTION ACT.—No provision of this
22 section shall be construed as prohibiting a servicer
23 from providing simultaneous or concurrent notice of
24 a lack of flood insurance pursuant to section 102(e)
25 of the Flood Disaster Protection Act of 1973.

1 “(m) LIMITATIONS ON FORCE-PLACED INSURANCE
2 CHARGES.—All charges, apart from charges subject to
3 State regulation as the business of insurance, related to
4 force-placed insurance imposed on the borrower by or
5 through the servicer shall be bona fide and reasonable.”.

6 (b) INCREASE IN PENALTY AMOUNTS.—Section 6(f)
7 of the Real Estate Settlement Procedures Act of 1974 (12
8 U.S.C. 2605(f)) is amended—

9 (1) in paragraphs (1)(B) and (2)(B), by strik-
10 ing “\$1,000” each place such term appears and in-
11 serting “\$2,000”; and

12 (2) in paragraph (2)(B)(i), by striking
13 “\$500,000” and inserting “\$1,000,000”.

14 (c) DECREASE IN RESPONSE TIMES.—Section 6(e) of
15 the Real Estate Settlement Procedures Act of 1974 (12
16 U.S.C. 2605(e)) is amended—

17 (1) in paragraph (1)(A), by striking “20 days”
18 and inserting “5 days”;

19 (2) in paragraph (2), by striking “60 days” and
20 inserting “30 days”; and

21 (3) by adding at the end the following new
22 paragraph:

23 “(4) LIMITED EXTENSION OF RESPONSE
24 TIME.—The 30-day period described in paragraph
25 (2) may be extended for not more than 15 days if,

1 before the end of such 30-day period, the servicer
2 notifies the borrower of the extension and the rea-
3 sons for the delay in responding.”.

4 (d) PROMPT REFUND OF ESCROW ACCOUNTS UPON
5 PAYOFF.—Section 6(g) of the Real Estate Settlement
6 Procedures Act of 1974 (12 U.S.C. 2605(g)) is amended
7 by adding at the end the following new sentence: “Any
8 balance in any such account that is within the servicer’s
9 control at the time the loan is paid off shall be promptly
10 returned to the borrower within 20 business days or cred-
11 ited to a similar account for a new mortgage loan to the
12 borrower with the same lender.”.

13 **SEC. 1464. TRUTH IN LENDING ACT AMENDMENTS.**

14 (a) REQUIREMENTS FOR PROMPT CREDITING OF
15 HOME LOAN PAYMENTS.—Chapter 2 of the Truth in
16 Lending Act (15 U.S.C. 1631 et seq.) is amended by in-
17 serting after section 129E (as added by section 1472) the
18 following new section:

19 **“§ 129F. Requirements for prompt crediting of home**
20 **loan payments**

21 “(a) IN GENERAL.—In connection with a consumer
22 credit transaction secured by a consumer’s principal dwell-
23 ing, no servicer shall fail to credit a payment to the con-
24 sumer’s loan account as of the date of receipt, except when
25 a delay in crediting does not result in any charge to the

1 consumer or in the reporting of negative information to
2 a consumer reporting agency, except as required in sub-
3 section (b).

4 “(b) EXCEPTION.—If a servicer specifies in writing
5 requirements for the consumer to follow in making pay-
6 ments, but accepts a payment that does not conform to
7 the requirements, the servicer shall credit the payment as
8 of 5 days after receipt.”.

9 (b) REQUESTS FOR PAYOFF AMOUNTS.—Chapter 2
10 of the Truth in Lending Act (15 U.S.C. 1631 et seq.),
11 as amended by this title, is amended by inserting after
12 section 129F (as added by subsection (a)) the following
13 new section:

14 **“§ 129G. Requests for payoff amounts of home loan**

15 “A creditor or servicer of a home loan shall send an
16 accurate payoff balance within a reasonable time, but in
17 no case more than 7 business days, after the receipt of
18 a written request for such balance from or on behalf of
19 the borrower.”.

20 **SEC. 1465. ESCROWS INCLUDED IN REPAYMENT ANALYSIS.**

21 Section 128(b) of the Truth in Lending Act (15
22 U.S.C. 1638(b)) is amended by adding at the end the fol-
23 lowing new paragraph:

24 “(4) REPAYMENT ANALYSIS REQUIRED TO IN-
25 CLUDE ESCROW PAYMENTS.—

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1 “(A) IN GENERAL.—In the case of any
2 consumer credit transaction secured by a first
3 mortgage or lien on the principal dwelling of
4 the consumer, other than a consumer credit
5 transaction under an open end credit plan or a
6 reverse mortgage, for which an impound, trust,
7 or other type of account has been or will be es-
8 tablished in connection with the transaction for
9 the payment of property taxes, hazard and flood
10 (if any) insurance premiums, or other periodic
11 payments or premiums with respect to the
12 property, the information required to be pro-
13 vided under subsection (a) with respect to the
14 number, amount, and due dates or period of
15 payments scheduled to repay the total of pay-
16 ments shall take into account the amount of
17 any monthly payment to such account for each
18 such repayment in accordance with section
19 10(a)(2) of the Real Estate Settlement Proce-
20 dures Act of 1974.

21 “(B) ASSESSMENT VALUE.—The amount
22 taken into account under subparagraph (A) for
23 the payment of property taxes, hazard and flood
24 (if any) insurance premiums, or other periodic
25 payments or premiums with respect to the

1 property shall reflect the taxable assessed value
2 of the real property securing the transaction
3 after the consummation of the transaction, in-
4 cluding the value of any improvements on the
5 property or to be constructed on the property
6 (whether or not such construction will be fi-
7 nanced from the proceeds of the transaction), if
8 known, and the replacement costs of the prop-
9 erty for hazard insurance, in the initial year
10 after the transaction.”.

11 **Subtitle F—Appraisal Activities**

12 **SEC. 1471. PROPERTY APPRAISAL REQUIREMENTS.**

13 Chapter 2 of the Truth in Lending Act (15 U.S.C.
14 1631 et seq.) is amended by inserting after 129G (as
15 added by section 1464(b)) the following new section:

16 **“§ 129H. Property appraisal requirements**

17 “(a) IN GENERAL.—A creditor may not extend credit
18 in the form of a higher-risk mortgage to any consumer
19 without first obtaining a written appraisal of the property
20 to be mortgaged prepared in accordance with the require-
21 ments of this section.

22 “(b) APPRAISAL REQUIREMENTS.—

23 “(1) PHYSICAL PROPERTY VISIT.—Subject to
24 the rules prescribed under paragraph (4), an ap-
25 praisal of property to be secured by a higher-risk

1 mortgage does not meet the requirement of this sec-
2 tion unless it is performed by a certified or licensed
3 appraiser who conducts a physical property visit of
4 the interior of the mortgaged property.

5 “(2) SECOND APPRAISAL UNDER CERTAIN CIR-
6 CUMSTANCES.—

7 “(A) IN GENERAL.—If the purpose of a
8 higher-risk mortgage is to finance the purchase
9 or acquisition of the mortgaged property from
10 a person within 180 days of the purchase or ac-
11 quisition of such property by that person at a
12 price that was lower than the current sale price
13 of the property, the creditor shall obtain a sec-
14 ond appraisal from a different certified or li-
15 censed appraiser. The second appraisal shall in-
16 clude an analysis of the difference in sale
17 prices, changes in market conditions, and any
18 improvements made to the property between the
19 date of the previous sale and the current sale.

20 “(B) NO COST TO APPLICANT.—The cost
21 of any second appraisal required under sub-
22 paragraph (A) may not be charged to the appli-
23 cant.

1 “(3) CERTIFIED OR LICENSED APPRAISER DE-
2 FINED.—For purposes of this section, the term ‘cer-
3 tified or licensed appraiser’ means a person who—

4 “(A) is, at a minimum, certified or licensed
5 by the State in which the property to be ap-
6 praised is located; and

7 “(B) performs each appraisal in con-
8 formity with the Uniform Standards of Profes-
9 sional Appraisal Practice and title XI of the Fi-
10 nancial Institutions Reform, Recovery, and En-
11 forcement Act of 1989, and the regulations pre-
12 scribed under such title, as in effect on the date
13 of the appraisal.

14 “(4) REGULATIONS.—

15 “(A) IN GENERAL.—The Board, the
16 Comptroller of the Currency, the Federal De-
17 posit Insurance Corporation, the National Cred-
18 it Union Administration Board, the Federal
19 Housing Finance Agency, and the Bureau shall
20 jointly prescribe regulations to implement this
21 section.

22 “(B) EXEMPTION.—The agencies listed in
23 subparagraph (A) may jointly exempt, by rule,
24 a class of loans from the requirements of this
25 subsection or subsection (a) if the agencies de-

1 termine that the exemption is in the public in-
2 terest and promotes the safety and soundness
3 of creditors.

4 “(c) FREE COPY OF APPRAISAL.—A creditor shall
5 provide 1 copy of each appraisal conducted in accordance
6 with this section in connection with a higher-risk mortgage
7 to the applicant without charge, and at least 3 days prior
8 to the transaction closing date.

9 “(d) CONSUMER NOTIFICATION.—At the time of the
10 initial mortgage application, the applicant shall be pro-
11 vided with a statement by the creditor that any appraisal
12 prepared for the mortgage is for the sole use of the cred-
13 itor, and that the applicant may choose to have a separate
14 appraisal conducted at the expense of the applicant.

15 “(e) VIOLATIONS.—In addition to any other liability
16 to any person under this title, a creditor found to have
17 willfully failed to obtain an appraisal as required in this
18 section shall be liable to the applicant or borrower for the
19 sum of \$2,000.

20 “(f) HIGHER-RISK MORTGAGE DEFINED.—For pur-
21 poses of this section, the term ‘higher-risk mortgage’
22 means a residential mortgage loan, other than a reverse
23 mortgage loan that is a qualified mortgage, as defined in
24 section 129C, secured by a principal dwelling—

1 “(1) that is not a qualified mortgage, as de-
2 fined in section 129C; and

3 “(2) with an annual percentage rate that ex-
4 ceeds the average prime offer rate for a comparable
5 transaction, as defined in section 129C, as of the
6 date the interest rate is set—

7 “(A) by 1.5 or more percentage points, in
8 the case of a first lien residential mortgage loan
9 having an original principal obligation amount
10 that does not exceed the amount of the max-
11 imum limitation on the original principal obliga-
12 tion of mortgage in effect for a residence of the
13 applicable size, as of the date of such interest
14 rate set, pursuant to the sixth sentence of sec-
15 tion 305(a)(2) the Federal Home Loan Mort-
16 gage Corporation Act (12 U.S.C. 1454(a)(2));

17 “(B) by 2.5 or more percentage points, in
18 the case of a first lien residential mortgage loan
19 having an original principal obligation amount
20 that exceeds the amount of the maximum limi-
21 tation on the original principal obligation of
22 mortgage in effect for a residence of the appli-
23 cable size, as of the date of such interest rate
24 set, pursuant to the sixth sentence of section

1 305(a)(2) the Federal Home Loan Mortgage
2 Corporation Act (12 U.S.C. 1454(a)(2)); and
3 “(C) by 3.5 or more percentage points for
4 a subordinate lien residential mortgage loan.”.

5 **SEC. 1472. APPRAISAL INDEPENDENCE REQUIREMENTS.**

6 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
7 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
8 after section 129D (as added by section 1461(a)) the fol-
9 lowing new section:

10 **“§ 129E. Appraisal independence requirements**

11 “(a) IN GENERAL.—It shall be unlawful, in extending
12 credit or in providing any services for a consumer credit
13 transaction secured by the principal dwelling of the con-
14 sumer, to engage in any act or practice that violates ap-
15 praisal independence as described in or pursuant to regu-
16 lations prescribed under this section.

17 “(b) APPRAISAL INDEPENDENCE.—For purposes of
18 subsection (a), acts or practices that violate appraisal
19 independence shall include—

20 “(1) any appraisal of a property offered as se-
21 curity for repayment of the consumer credit trans-
22 action that is conducted in connection with such
23 transaction in which a person with an interest in the
24 underlying transaction compensates, coerces, extorts,
25 colludes, instructs, induces, bribes, or intimidates a

1 person, appraisal management company, firm, or
2 other entity conducting or involved in an appraisal,
3 or attempts, to compensate, coerce, extort, collude,
4 instruct, induce, bribe, or intimidate such a person,
5 for the purpose of causing the appraised value as-
6 signed, under the appraisal, to the property to be
7 based on any factor other than the independent
8 judgment of the appraiser;

9 “(2) mischaracterizing, or suborning any
10 mischaracterization of, the appraised value of the
11 property securing the extension of the credit;

12 “(3) seeking to influence an appraiser or other-
13 wise to encourage a targeted value in order to facili-
14 tate the making or pricing of the transaction; and

15 “(4) withholding or threatening to withhold
16 timely payment for an appraisal report or for ap-
17 praisal services rendered when the appraisal report
18 or services are provided for in accordance with the
19 contract between the parties.

20 “(c) EXCEPTIONS.—The requirements of subsection
21 (b) shall not be construed as prohibiting a mortgage lend-
22 er, mortgage broker, mortgage banker, real estate broker,
23 appraisal management company, employee of an appraisal
24 management company, consumer, or any other person

1 with an interest in a real estate transaction from asking
2 an appraiser to undertake 1 or more of the following:

3 “(1) Consider additional, appropriate property
4 information, including the consideration of addi-
5 tional comparable properties to make or support an
6 appraisal.

7 “(2) Provide further detail, substantiation, or
8 explanation for the appraiser’s value conclusion.

9 “(3) Correct errors in the appraisal report.

10 “(d) PROHIBITIONS ON CONFLICTS OF INTEREST.—

11 No certified or licensed appraiser conducting, and no ap-
12 praisal management company procuring or facilitating, an
13 appraisal in connection with a consumer credit transaction
14 secured by the principal dwelling of a consumer may have
15 a direct or indirect interest, financial or otherwise, in the
16 property or transaction involving the appraisal.

17 “(e) MANDATORY REPORTING.—Any mortgage lend-
18 er, mortgage broker, mortgage banker, real estate broker,
19 appraisal management company, employee of an appraisal
20 management company, or any other person involved in a
21 real estate transaction involving an appraisal in connection
22 with a consumer credit transaction secured by the prin-
23 cipal dwelling of a consumer who has a reasonable basis
24 to believe an appraiser is failing to comply with the Uni-
25 form Standards of Professional Appraisal Practice, is vio-

1 lating applicable laws, or is otherwise engaging in uneth-
2 ical or unprofessional conduct, shall refer the matter to
3 the applicable State appraiser certifying and licensing
4 agency.

5 “(f) NO EXTENSION OF CREDIT.—In connection with
6 a consumer credit transaction secured by a consumer’s
7 principal dwelling, a creditor who knows, at or before loan
8 consummation, of a violation of the appraisal independ-
9 ence standards established in subsections (b) or (d) shall
10 not extend credit based on such appraisal unless the cred-
11 itor documents that the creditor has acted with reasonable
12 diligence to determine that the appraisal does not materi-
13 ally misstate or misrepresent the value of such dwelling.

14 “(g) RULES AND INTERPRETIVE GUIDELINES.—

15 “(1) IN GENERAL.—Except as provided under
16 paragraph (2), the Board, the Comptroller of the
17 Currency, the Federal Deposit Insurance Corpora-
18 tion, the National Credit Union Administration
19 Board, the Federal Housing Finance Agency, and
20 the Bureau may jointly issue rules, interpretive
21 guidelines, and general statements of policy with re-
22 spect to acts or practices that violate appraisal inde-
23 pendence in the provision of mortgage lending serv-
24 ices for a consumer credit transaction secured by the
25 principal dwelling of the consumer and mortgage

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1 brokerage services for such a transaction, within the
2 meaning of subsections (a), (b), (c), (d), (e), (f), (h),
3 and (i).

4 “(2) INTERIM FINAL REGULATIONS.—The
5 Board shall, for purposes of this section, prescribe
6 interim final regulations no later than 90 days after
7 the date of enactment of this section defining with
8 specificity acts or practices that violate appraisal
9 independence in the provision of mortgage lending
10 services for a consumer credit transaction secured by
11 the principal dwelling of the consumer or mortgage
12 brokerage services for such a transaction and defin-
13 ing any terms in this section or such regulations.
14 Rules prescribed by the Board under this paragraph
15 shall be deemed to be rules prescribed by the agen-
16 cies jointly under paragraph (1).

17 “(h) APPRAISAL REPORT PORTABILITY.—Consistent
18 with the requirements of this section, the Board, the
19 Comptroller of the Currency, the Federal Deposit Insur-
20 ance Corporation, the National Credit Union Administra-
21 tion Board, the Federal Housing Finance Agency, and the
22 Bureau may jointly issue regulations that address the
23 issue of appraisal report portability, including regulations
24 that ensure the portability of the appraisal report between
25 lenders for a consumer credit transaction secured by a 1-

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1 4 unit single family residence that is the principal dwelling
2 of the consumer, or mortgage brokerage services for such
3 a transaction.

4 “(i) CUSTOMARY AND REASONABLE FEE.—

5 “(1) IN GENERAL.—Lenders and their agents
6 shall compensate fee appraisers at a rate that is cus-
7 tomary and reasonable for appraisal services per-
8 formed in the market area of the property being ap-
9 praised. Evidence for such fees may be established
10 by objective third-party information, such as govern-
11 ment agency fee schedules, academic studies, and
12 independent private sector surveys. Fee studies shall
13 exclude assignments ordered by known appraisal
14 management companies.

15 “(2) FEE APPRAISER DEFINITION.—For pur-
16 poses of this section, the term ‘fee appraiser’ means
17 a person who is not an employee of the mortgage
18 loan originator or appraisal management company
19 engaging the appraiser and is—

20 “(A) a State licensed or certified appraiser
21 who receives a fee for performing an appraisal
22 and certifies that the appraisal has been pre-
23 pared in accordance with the Uniform Stand-
24 ards of Professional Appraisal Practice; or

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1 “(B) a company not subject to the require-
2 ments of section 1124 of the Financial Institu-
3 tions Reform, Recovery, and Enforcement Act
4 of 1989 (12 U.S.C. 3331 et seq.) that utilizes
5 the services of State licensed or certified ap-
6 praisers and receives a fee for performing ap-
7 praisals in accordance with the Uniform Stand-
8 ards of Professional Appraisal Practice.

9 “(3) EXCEPTION FOR COMPLEX ASSIGN-
10 MENTS.—In the case of an appraisal involving a
11 complex assignment, the customary and reasonable
12 fee may reflect the increased time, difficulty, and
13 scope of the work required for such an appraisal and
14 include an amount over and above the customary
15 and reasonable fee for non-complex assignments.

16 “(j) SUNSET.—Effective on the date the interim final
17 regulations are promulgated pursuant to subsection (g),
18 the Home Valuation Code of Conduct announced by the
19 Federal Housing Finance Agency on December 23, 2008,
20 shall have no force or effect.

21 “(k) PENALTIES.—

22 “(1) FIRST VIOLATION.—In addition to the en-
23 forcement provisions referred to in section 130, each
24 person who violates this section shall forfeit and pay

1 a civil penalty of not more than \$10,000 for each
2 day any such violation continues.

3 “(2) SUBSEQUENT VIOLATIONS.—In the case of
4 any person on whom a civil penalty has been im-
5 posed under paragraph (1), paragraph (1) shall be
6 applied by substituting ‘\$20,000’ for ‘\$10,000’ with
7 respect to all subsequent violations.

8 “(3) ASSESSMENT.—The agency referred to in
9 subsection (a) or (c) of section 108 with respect to
10 any person described in paragraph (1) shall assess
11 any penalty under this subsection to which such per-
12 son is subject.”.

13 (b) CLERICAL AMENDMENT.—The table of sections
14 for chapter 2 of the Truth in Lending Act is amended
15 by inserting after the item relating to section 129D (as
16 added by section 1461(c)) the following new items:

“129E. Appraisal independence requirements.

“129F. Requirements for prompt crediting of home loan payments.

“129G. Requests for payoff amounts of home loan.

“129H. Property appraisal requirements.”.

17 (c) DEFERENCE.—Section 105 of the Truth in Lend-
18 ing Act (15 U.S.C. 1604) is amended by adding at the
19 end the following:

20 “(h) DEFERENCE.—Notwithstanding any power
21 granted to any Federal agency under this title, the def-
22 erence that a court affords to the Bureau with respect to
23 a determination made by the Bureau relating to the mean-

1 ing or interpretation of any provision of this title, other
2 than section 129E or 129H, shall be applied as if the Bu-
3 reau were the only agency authorized to apply, enforce,
4 interpret, or administer the provisions of this title.”.

5 (d) CONFORMING AMENDMENTS IN TITLE X NOT
6 APPLICABLE TO SECTIONS 129E AND 129H.—Notwith-
7 standing section 1099A, the term “Board” in sections
8 129E and 129H, as added by this subtitle, shall not be
9 substituted by the term “Bureau”.

10 **SEC. 1473. AMENDMENTS RELATING TO APPRAISAL SUB-**
11 **COMMITTEE OF FFIEC, APPRAISER INDE-**
12 **PENDENCE MONITORING, APPROVED AP-**
13 **PRAISER EDUCATION, APPRAISAL MANAGE-**
14 **MENT COMPANIES, APPRAISER COMPLAINT**
15 **HOTLINE, AUTOMATED VALUATION MODELS,**
16 **AND BROKER PRICE OPINIONS.**

17 (a) THRESHOLD LEVELS.—Section 1112(b) of the
18 Financial Institutions Reform, Recovery, and Enforce-
19 ment Act of 1989 (12 U.S.C. 3341(b)) is amended by in-
20 serting before the period the following: “, and receives con-
21 currence from the Bureau of Consumer Financial Protec-
22 tion that such threshold level provides reasonable protec-
23 tion for consumers who purchase 1–4 unit single-family
24 residences”.

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1 (b) ANNUAL REPORT OF APPRAISAL SUB-
2 COMMITTEE.—Section 1103(a) of the Financial Institu-
3 tions Reform, Recovery, and Enforcement Act of 1989 (12
4 U.S.C. 3332(a)) is amended at the end by inserting the
5 following new paragraph:

6 “(5) transmit an annual report to the Congress
7 not later than June 15 of each year that describes
8 the manner in which each function assigned to the
9 Appraisal Subcommittee has been carried out during
10 the preceding year. The report shall also detail the
11 activities of the Appraisal Subcommittee, including
12 the results of all audits of State appraiser regulatory
13 agencies, and provide an accounting of disapproved
14 actions and warnings taken in the previous year, in-
15 cluding a description of the conditions causing the
16 disapproval and actions taken to achieve compli-
17 ance.”.

18 (c) OPEN MEETINGS.—Section 1104(b) of the Finan-
19 cial Institutions Reform, Recovery, and Enforcement Act
20 of 1989 (12 U.S.C. 3333(b)) is amended—

21 (1) by inserting “in public session after notice
22 in the Federal Register, but may close certain por-
23 tions of these meetings related to personnel and re-
24 view of preliminary State audit reports,” after “shall
25 meet”; and

1 (2) by adding after the final period the fol-
2 lowing: “The subject matter discussed in any closed
3 or executive session shall be described in the Federal
4 Register notice of the meeting.”.

5 (d) REGULATIONS.—Section 1106 of the Financial
6 Institutions Reform, Recovery, and Enforcement Act of
7 1989 (12 U.S.C. 3335) is amended—

8 (1) by inserting “prescribe regulations in ac-
9 cordance with chapter 5 of title 5, United States
10 Code (commonly referred to as the Administrative
11 Procedures Act) after notice and opportunity for
12 comment,” after “hold hearings”; and

13 (2) at the end by inserting “Any regulations
14 prescribed by the Appraisal Subcommittee shall (un-
15 less otherwise provided in this title) be limited to the
16 following functions: temporary practice, national reg-
17 istry, information sharing, and enforcement. For
18 purposes of prescribing regulations, the Appraisal
19 Subcommittee shall establish an advisory committee
20 of industry participants, including appraisers, lend-
21 ers, consumer advocates, real estate agents, and gov-
22 ernment agencies, and hold meetings as necessary to
23 support the development of regulations.”.

24 (e) APPRAISAL REVIEWS AND COMPLEX APPRAIS-
25 ALS.—

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1 (1) SECTION 1110.—Section 1110 of the Finan-
2 cial Institutions Reform, Recovery, and Enforcement
3 Act of 1989 (12 U.S.C. 3339) is amended—

4 (A) in paragraph (1), by striking “and”;

5 (B) in paragraph (2), by striking the pe-
6 riod at the end and inserting “; and”; and

7 (C) by inserting after paragraph (2) the
8 following:

9 “(3) that such appraisals shall be subject to ap-
10 propriate review for compliance with the Uniform
11 Standards of Professional Appraisal Practice.”.

12 (2) SECTION 1113.—Section 1113 of the Finan-
13 cial Institutions and Reform, Recovery, and Enforce-
14 ment Act of 1989 (12 U.S.C. 3342) is amended by
15 inserting before the period the following: “, where a
16 complex 1-to-4 unit single family residential ap-
17 praisal means an appraisal for which the property to
18 be appraised, the form of ownership, the property
19 characteristics, or the market conditions are atyp-
20 ical”.

21 (f) APPRAISAL MANAGEMENT SERVICES.—

22 (1) SUPERVISION OF THIRD PARTY PROVIDERS
23 OF APPRAISAL MANAGEMENT SERVICES.—Section
24 1103(a) of the Financial Institutions Reform, Recov-
25 ery, and Enforcement Act of 1989 (12 U.S.C.

1 3332(a)) (as previously amended by this section) is
2 amended—

3 (A) by amending paragraph (1) to read as
4 follows:

5 “(1) monitor the requirements established by
6 States—

7 “(A) for the certification and licensing of
8 individuals who are qualified to perform ap-
9 praisals in connection with federally related
10 transactions, including a code of professional
11 responsibility; and

12 “(B) for the registration and supervision
13 of the operations and activities of an appraisal
14 management company;” and

15 (B) by adding at the end the following new
16 paragraph:

17 “(6) maintain a national registry of appraisal
18 management companies that either are registered
19 with and subject to supervision of a State appraiser
20 certifying and licensing agency or are operating sub-
21 sidiaries of a Federally regulated financial institu-
22 tion.”.

23 (2) APPRAISAL MANAGEMENT COMPANY MIN-
24 IMUM REQUIREMENTS.—Title XI of the Financial
25 Institutions Reform, Recovery, and Enforcement Act

1 of 1989 (12 U.S.C. 3331 et seq.) is amended by
2 adding at the end the following new section (and
3 amending the table of contents accordingly):

4 **“SEC. 1124. APPRAISAL MANAGEMENT COMPANY MINIMUM**
5 **REQUIREMENTS.**

6 “(a) IN GENERAL.—The Board of Governors of the
7 Federal Reserve System, the Comptroller of the Currency,
8 the Federal Deposit Insurance Corporation, the National
9 Credit Union Administration Board, the Federal Housing
10 Finance Agency, and the Bureau of Consumer Financial
11 Protection shall jointly, by rule, establish minimum re-
12 quirements to be applied by a State in the registration
13 of appraisal management companies. Such requirements
14 shall include a requirement that such companies—

15 “(1) register with and be subject to supervision
16 by a State appraiser certifying and licensing agency
17 in each State in which such company operates;

18 “(2) verify that only licensed or certified ap-
19 praisers are used for federally related transactions;

20 “(3) require that appraisals coordinated by an
21 appraisal management company comply with the
22 Uniform Standards of Professional Appraisal Prac-
23 tice; and

24 “(4) require that appraisals are conducted inde-
25 pendently and free from inappropriate influence and

1 coercion pursuant to the appraisal independence
2 standards established under section 129E of the
3 Truth in Lending Act.

4 “(b) RELATION TO STATE LAW.—Nothing in this
5 section shall be construed to prevent States from estab-
6 lishing requirements in addition to any rules promulgated
7 under subsection (a).

8 “(c) FEDERALLY REGULATED FINANCIAL INSTITU-
9 TIONS.—The requirements of subsection (a) shall apply to
10 an appraisal management company that is a subsidiary
11 owned and controlled by a financial institution and regu-
12 lated by a Federal financial institution regulatory agency.
13 An appraisal management company that is a subsidiary
14 owned and controlled by a financial institution regulated
15 by a Federal financial institution regulatory agency shall
16 not be required to register with a State.

17 “(d) REGISTRATION LIMITATIONS.—An appraisal
18 management company shall not be registered by a State
19 or included on the national registry if such company, in
20 whole or in part, directly or indirectly, is owned by any
21 person who has had an appraiser license or certificate re-
22 fused, denied, cancelled, surrendered in lieu of revocation,
23 or revoked in any State. Additionally, each person that
24 owns more than 10 percent of an appraisal management
25 company shall be of good moral character, as determined

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1 by the State appraiser certifying and licensing agency, and
2 shall submit to a background investigation carried out by
3 the State appraiser certifying and licensing agency.

4 “(e) REPORTING.—The Board of Governors of the
5 Federal Reserve System, the Comptroller of the Currency,
6 the Federal Deposit Insurance Corporation, the National
7 Credit Union Administration Board, the Federal Housing
8 Finance Agency, and the Bureau of Consumer Financial
9 Protection shall jointly promulgate regulations for the re-
10 porting of the activities of appraisal management compa-
11 nies to the Appraisal Subcommittee in determining the
12 payment of the annual registry fee.

13 “(f) EFFECTIVE DATE.—

14 “(1) IN GENERAL.—No appraisal management
15 company may perform services related to a federally
16 related transaction in a State after the date that is
17 36 months after the date on which the regulations
18 required to be prescribed under subsection (a) are
19 prescribed in final form unless such company is reg-
20 istered with such State or subject to oversight by a
21 Federal financial institutions regulatory agency.

22 “(2) EXTENSION OF EFFECTIVE DATE.—Sub-
23 ject to the approval of the Council, the Appraisal
24 Subcommittee may extend by an additional 12
25 months the requirements for the registration and su-

1 pervision of appraisal management companies if it
2 makes a written finding that a State has made sub-
3 stantial progress in establishing a State appraisal
4 management company registration and supervision
5 system that appears to conform with the provisions
6 of this title.”.

7 (3) STATE APPRAISER CERTIFYING AND LI-
8 CENSING AGENCY AUTHORITY.—Section 1117 of the
9 Financial Institutions Reform, Recovery, and En-
10 forcement Act of 1989 (12 U.S.C. 3346) is amended
11 by adding at the end the following: “The duties of
12 such agency may additionally include the registra-
13 tion and supervision of appraisal management com-
14 panies and the addition of information about the ap-
15 praisal management company to the national reg-
16 istry.”.

17 (4) APPRAISAL MANAGEMENT COMPANY DEFINI-
18 TION.—Section 1121 of the Financial Institutions
19 Reform, Recovery, and Enforcement Act of 1989
20 (12 U.S.C. 3350) is amended by adding at the end
21 the following:

22 “(11) APPRAISAL MANAGEMENT COMPANY.—
23 The term ‘appraisal management company’ means,
24 in connection with valuing properties collateralizing
25 mortgage loans or mortgages incorporated into a

1 securitization, any external third party authorized ei-
2 ther by a creditor of a consumer credit transaction
3 secured by a consumer's principal dwelling or by an
4 underwriter of or other principal in the secondary
5 mortgage markets, that oversees a network or panel
6 of more than 15 certified or licensed appraisers in
7 a State or 25 or more nationally within a given
8 year—

9 “(A) to recruit, select, and retain apprais-
10 ers;

11 “(B) to contract with licensed and certified
12 appraisers to perform appraisal assignments;

13 “(C) to manage the process of having an
14 appraisal performed, including providing admin-
15 istrative duties such as receiving appraisal or-
16 ders and appraisal reports, submitting com-
17 pleted appraisal reports to creditors and under-
18 writers, collecting fees from creditors and un-
19 derwriters for services provided, and reimburs-
20 ing appraisers for services performed; or

21 “(D) to review and verify the work of ap-
22 praisers.”.

23 (g) STATE AGENCY REPORTING REQUIREMENT.—
24 Section 1109(a) of the Financial Institutions Reform, Re-

1 covery, and Enforcement Act of 1989 (12 U.S.C. 3338(a))
2 is amended—

3 (1) by striking “and” after the semicolon in
4 paragraph (1);

5 (2) by redesignating paragraph (2) as para-
6 graph (4); and

7 (3) by inserting after paragraph (1) the fol-
8 lowing new paragraphs:

9 “(2) transmit reports on the issuance and re-
10 newal of licenses and certifications, sanctions, dis-
11 ciplinary actions, license and certification revoca-
12 tions, and license and certification suspensions on a
13 timely basis to the national registry of the Appraisal
14 Subcommittee;

15 “(3) transmit reports on a timely basis of su-
16 pervisory activities involving appraisal management
17 companies or other third-party providers of apprais-
18 als and appraisal management services, including in-
19 vestigations initiated and disciplinary actions taken;
20 and”.

21 (h) REGISTRY FEES MODIFIED.—

22 (1) IN GENERAL.—Section 1109(a) of the Fi-
23 nancial Institutions Reform, Recovery, and Enforce-
24 ment Act of 1989 (12 U.S.C. 3338(a)) is amend-
25 ed—

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1 (A) by amending paragraph (4) (as modi-
2 fied by section 1473(g)) to read as follows:

3 “(4) collect—

4 “(A) from such individuals who perform or
5 seek to perform appraisals in federally related
6 transactions, an annual registry fee of not more
7 than \$40, such fees to be transmitted by the
8 State agencies to the Council on an annual
9 basis; and

10 “(B) from an appraisal management com-
11 pany that either has registered with a State ap-
12 praiser certifying and licensing agency in ac-
13 cordance with this title or operates as a sub-
14 subsidiary of a federally regulated financial institu-
15 tion, an annual registry fee of—

16 “(i) in the case of such a company
17 that has been in existence for more than a
18 year, \$25 multiplied by the number of ap-
19 praisers working for or contracting with
20 such company in such State during the
21 previous year, but where such \$25 amount
22 may be adjusted, up to a maximum of \$50,
23 at the discretion of the Appraisal Sub-
24 committee, if necessary to carry out the

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1 Subcommittee's functions under this title;
2 and

3 “(ii) in the case of such a company
4 that has not been in existence for more
5 than a year, \$25 multiplied by an appro-
6 priate number to be determined by the Ap-
7 praisal Subcommittee, and where such
8 number will be used for determining the
9 fee of all such companies that were not in
10 existence for more than a year, but where
11 such \$25 amount may be adjusted, up to
12 a maximum of \$50, at the discretion of the
13 Appraisal Subcommittee, if necessary to
14 carry out the Subcommittee's functions
15 under this title.”; and

16 (B) by amending the matter following
17 paragraph (4), as redesignated, to read as fol-
18 lows:

19 “Subject to the approval of the Council, the Appraisal
20 Subcommittee may adjust the dollar amount of registry
21 fees under paragraph (4)(A), up to a maximum of \$80
22 per annum, as necessary to carry out its functions under
23 this title. The Appraisal Subcommittee shall consider at
24 least once every 5 years whether to adjust the dollar
25 amount of the registry fees to account for inflation. In

1 implementing any change in registry fees, the Appraisal
2 Subcommittee shall provide flexibility to the States for
3 multi-year certifications and licenses already in place, as
4 well as a transition period to implement the changes in
5 registry fees. In establishing the amount of the annual
6 registry fee for an appraisal management company, the
7 Appraisal Subcommittee shall have the discretion to im-
8 pose a minimum annual registry fee for an appraisal man-
9 agement company to protect against the under reporting
10 of the number of appraisers working for or contracted by
11 the appraisal management company.”.

12 (2) INCREMENTAL REVENUES.—Incremental
13 revenues collected pursuant to the increases required
14 by this subsection shall be placed in a separate ac-
15 count at the United States Treasury, entitled the
16 “Appraisal Subcommittee Account”.

17 (i) GRANTS AND REPORTS.—Section 1109(b) of the
18 Financial Institutions Reform, Recovery, and Enforce-
19 ment Act of 1989 (12 U.S.C. 3338(b)) is amended—

20 (1) by striking “and” after the semicolon in
21 paragraph (3);

22 (2) by striking the period at the end of para-
23 graph (4) and inserting a semicolon;

24 (3) by adding at the end the following new
25 paragraphs:

1 “(5) to make grants to State appraiser certi-
2 fying and licensing agencies, in accordance with poli-
3 cies to be developed by the Appraisal Subcommittee,
4 to support the efforts of such agencies to comply
5 with this title, including—

6 “(A) the complaint process, complaint in-
7 vestigations, and appraiser enforcement activi-
8 ties of such agencies; and

9 “(B) the submission of data on State li-
10 censed and certified appraisers and appraisal
11 management companies to the National ap-
12 praisal registry, including information affirming
13 that the appraiser or appraisal management
14 company meets the required qualification cri-
15 teria and formal and informal disciplinary ac-
16 tions; and

17 “(6) to report to all State appraiser certifying
18 and licensing agencies when a license or certification
19 is surrendered, revoked, or suspended.”.

20 Obligations authorized under this subsection may not ex-
21 ceed 75 percent of the fiscal year total of incremental in-
22 crease in fees collected and deposited in the “Appraisal
23 Subcommittee Account” pursuant to subsection (h).

1 (j) CRITERIA.—Section 1116 of the Financial Institu-
2 tions Reform, Recovery, and Enforcement Act of 1989 (12
3 U.S.C. 3345) is amended—

4 (1) in subsection (c), by inserting “whose cri-
5 teria for the licensing of a real estate appraiser cur-
6 rently meet or exceed the minimum criteria issued
7 by the Appraisal Qualifications Board of The Ap-
8 praisal Foundation for the licensing of real estate
9 appraisers” before the period at the end; and

10 (2) by striking subsection (e) and inserting the
11 following new subsection:

12 “(e) MINIMUM QUALIFICATION REQUIREMENTS.—
13 Any requirements established for individuals in the posi-
14 tion of ‘Trainee Appraiser’ and ‘Supervisory Appraiser’
15 shall meet or exceed the minimum qualification require-
16 ments of the Appraiser Qualifications Board of The Ap-
17 praisal Foundation. The Appraisal Subcommittee shall
18 have the authority to enforce these requirements.”.

19 (k) MONITORING OF STATE APPRAISER CERTIFYING
20 AND LICENSING AGENCIES.—Section 1118 of the Finan-
21 cial Institutions Reform, Recovery, and Enforcement Act
22 of 1989 (12 U.S.C. 3347) is amended—

23 (1) by amending subsection (a) to read as fol-
24 lows:

1 “(a) IN GENERAL.—The Appraisal Subcommittee
2 shall monitor each State appraiser certifying and licensing
3 agency for the purposes of determining whether such
4 agency—

5 “(1) has policies, practices, funding, staffing,
6 and procedures that are consistent with this title;

7 “(2) processes complaints and completes inves-
8 tigations in a reasonable time period;

9 “(3) appropriately disciplines sanctioned ap-
10 praisers and appraisal management companies;

11 “(4) maintains an effective regulatory program;
12 and

13 “(5) reports complaints and disciplinary actions
14 on a timely basis to the national registries on ap-
15 praisers and appraisal management companies main-
16 tained by the Appraisal Subcommittee.

17 The Appraisal Subcommittee shall have the authority to
18 remove a State licensed or certified appraiser or a reg-
19 istered appraisal management company from a national
20 registry on an interim basis, not to exceed 90 days, pend-
21 ing State agency action on licensing, certification, reg-
22 istration, and disciplinary proceedings. The Appraisal
23 Subcommittee and all agencies, instrumentalities, and
24 Federally recognized entities under this title shall not rec-
25 ognize appraiser certifications and licenses from States

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1 whose appraisal policies, practices, funding, staffing, or
2 procedures are found to be inconsistent with this title. The
3 Appraisal Subcommittee shall have the authority to im-
4 pose sanctions, as described in this section, against a State
5 agency that fails to have an effective appraiser regulatory
6 program. In determining whether such a program is effec-
7 tive, the Appraisal Subcommittee shall include an analysis
8 of the licensing and certification of appraisers, the reg-
9 istration of appraisal management companies, the
10 issuance of temporary licenses and certifications for ap-
11 praisers, the receiving and tracking of submitted com-
12 plaints against appraisers and appraisal management
13 companies, the investigation of complaints, and enforce-
14 ment actions against appraisers and appraisal manage-
15 ment companies. The Appraisal Subcommittee shall have
16 the authority to impose interim actions and suspensions
17 against a State agency as an alternative to, or in advance
18 of, the derecognition of a State agency.”.

19 (2) in subsection (b)(2), by inserting after “au-
20 thority” the following: “or sufficient funding”.

21 (1) RECIPROCIITY.—Subsection (b) of section 1122 of
22 the Financial Institutions Reform, Recovery, and Enforce-
23 ment Act of 1989 (12 U.S.C. 3351(b)) is amended to read
24 as follows:

1 “(b) RECIPROcity.—Notwithstanding any other pro-
2 visions of this title, a federally related transaction shall
3 not be appraised by a certified or licensed appraiser unless
4 the State appraiser certifying or licensing agency of the
5 State certifying or licensing such appraiser has in place
6 a policy of issuing a reciprocal certification or license for
7 an individual from another State when—

8 “(1) the appraiser licensing and certification
9 program of such other State is in compliance with
10 the provisions of this title; and

11 “(2) the appraiser holds a valid certification
12 from a State whose requirements for certification or
13 licensing meet or exceed the licensure standards es-
14 tablished by the State where an individual seeks ap-
15 praisal licensure.”.

16 (m) CONSIDERATION OF PROFESSIONAL APPRAISAL
17 DESIGNATIONS.—Section 1122(d) of the Financial Insti-
18 tutions Reform, Recovery, and Enforcement Act of 1989
19 (12 U.S.C. 3351(d)) is amended by striking “shall not ex-
20 clude” and all that follows through the end of the sub-
21 section and inserting the following: “may include edu-
22 cation achieved, experience, sample appraisals, and ref-
23 erences from prior clients. Membership in a nationally rec-
24 ognized professional appraisal organization may be a cri-
25 teria considered, though lack of membership therein shall

1 not be the sole bar against consideration for an assign-
2 ment under these criteria.”.

3 (n) APPRAISER INDEPENDENCE.—Section 1122 of
4 the Financial Institutions Reform, Recovery, and Enforce-
5 ment Act of 1989 (12 U.S.C. 3351) is amended by adding
6 at the end the following new subsection:

7 “(g) APPRAISER INDEPENDENCE MONITORING.—
8 The Appraisal Subcommittee shall monitor each State ap-
9 praiser certifying and licensing agency for the purpose of
10 determining whether such agency’s policies, practices, and
11 procedures are consistent with the purposes of maintain-
12 ing appraiser independence and whether such State has
13 adopted and maintains effective laws, regulations, and
14 policies aimed at maintaining appraiser independence.”.

15 (o) APPRAISER EDUCATION.—Section 1122 of the
16 Financial Institutions Reform, Recovery, and Enforce-
17 ment Act of 1989 (12 U.S.C. 3351) is amended by insert-
18 ing after subsection (g) (as added by subsection (l) of this
19 section) the following new subsection:

20 “(h) APPROVED EDUCATION.—The Appraisal Sub-
21 committee shall encourage the States to accept courses ap-
22 proved by the Appraiser Qualification Board’s Course Ap-
23 proval Program.”.

24 (p) APPRAISAL COMPLAINT HOTLINE.—Section 1122
25 of the Financial Institutions Reform, Recovery, and En-

1 enforcement Act of 1989 (12 U.S.C. 3351), as amended by
2 this section, is amended by adding at the end the following
3 new subsection:

4 “(i) APPRAISAL COMPLAINT NATIONAL HOTLINE.—
5 If, 6 months after the date of the enactment of this sub-
6 section, the Appraisal Subcommittee determines that no
7 national hotline exists to receive complaints of non-compli-
8 ance with appraisal independence standards and Uniform
9 Standards of Professional Appraisal Practice, including
10 complaints from appraisers, individuals, or other entities
11 concerning the improper influencing or attempted im-
12 proper influencing of appraisers or the appraisal process,
13 the Appraisal Subcommittee shall establish and operate
14 such a national hotline, which shall include a toll-free tele-
15 phone number and an email address. If the Appraisal Sub-
16 committee operates such a national hotline, the Appraisal
17 Subcommittee shall refer complaints for further action to
18 appropriate governmental bodies, including a State ap-
19 praiser certifying and licensing agency, a financial institu-
20 tion regulator, or other appropriate legal authorities. For
21 complaints referred to State appraiser certifying and li-
22 censing agencies or to Federal regulators, the Appraisal
23 Subcommittee shall have the authority to follow up such
24 complaint referrals in order to determine the status of the
25 resolution of the complaint.”.

1 (q) AUTOMATED VALUATION MODELS.—Title XI of
2 the Financial Institutions Reform, Recovery, and Enforce-
3 ment Act of 1989 (12 U.S.C. 3331 et seq.), as amended
4 by this section, is amended by adding at the end the fol-
5 lowing new section (and amending the table of contents
6 accordingly):

7 **“SEC. 1125. AUTOMATED VALUATION MODELS USED TO ES-**
8 **TIMATE COLLATERAL VALUE FOR MORT-**
9 **GAGE LENDING PURPOSES.**

10 “(a) IN GENERAL.—Automated valuation models
11 shall adhere to quality control standards designed to—

12 “(1) ensure a high level of confidence in the es-
13 timates produced by automated valuation models;

14 “(2) protect against the manipulation of data;

15 “(3) seek to avoid conflicts of interest;

16 “(4) require random sample testing and re-
17 views; and

18 “(5) account for any other such factor that the
19 agencies listed in subsection (b) determine to be ap-
20 propriate.

21 “(b) ADOPTION OF REGULATIONS.—The Board, the
22 Comptroller of the Currency, the Federal Deposit Insur-
23 ance Corporation, the National Credit Union Administra-
24 tion Board, the Federal Housing Finance Agency, and the
25 Bureau of Consumer Financial Protection, in consultation

1 with the staff of the Appraisal Subcommittee and the Ap-
2 praisal Standards Board of the Appraisal Foundation,
3 shall promulgate regulations to implement the quality con-
4 trol standards required under this section.

5 “(c) ENFORCEMENT.—Compliance with regulations
6 issued under this subsection shall be enforced by—

7 “(1) with respect to a financial institution, or
8 subsidiary owned and controlled by a financial insti-
9 tution and regulated by a Federal financial institu-
10 tion regulatory agency, the Federal financial institu-
11 tion regulatory agency that acts as the primary Fed-
12 eral supervisor of such financial institution or sub-
13 sidiary; and

14 “(2) with respect to other participants in the
15 market for appraisals of 1-to-4 unit single family
16 residential real estate, the Federal Trade Commis-
17 sion, the Bureau of Consumer Financial Protection,
18 and a State attorney general.

19 “(d) AUTOMATED VALUATION MODEL DEFINED.—
20 For purposes of this section, the term ‘automated valu-
21 ation model’ means any computerized model used by mort-
22 gage originators and secondary market issuers to deter-
23 mine the collateral worth of a mortgage secured by a con-
24 sumer’s principal dwelling.”.

1 (r) **BROKER PRICE OPINIONS.**—Title XI of the Fi-
2 nancial Institutions Reform, Recovery, and Enforcement
3 Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this
4 section, is amended by adding at the end the following
5 new section (and amending the table of contents accord-
6 ingly):

7 **“SEC. 1126. BROKER PRICE OPINIONS.**

8 “(a) **GENERAL PROHIBITION.**—In conjunction with
9 the purchase of a consumer’s principal dwelling, broker
10 price opinions may not be used as the primary basis to
11 determine the value of a piece of property for the purpose
12 of a loan origination of a residential mortgage loan se-
13 cured by such piece of property.

14 “(b) **BROKER PRICE OPINION DEFINED.**—For pur-
15 poses of this section, the term ‘broker price opinion’ means
16 an estimate prepared by a real estate broker, agent, or
17 sales person that details the probable selling price of a
18 particular piece of real estate property and provides a
19 varying level of detail about the property’s condition, mar-
20 ket, and neighborhood, and information on comparable
21 sales, but does not include an automated valuation model,
22 as defined in section 1125(c).”.

23 (s) **AMENDMENTS TO APPRAISAL SUBCOMMITTEE.**—
24 Section 1011 of the Federal Financial Institutions Exam-

1 ination Council Act of 1978 (12 U.S.C. 3310) is amend-
2 ed—

3 (1) in the first sentence, by adding before the
4 period the following: “, the Bureau of Consumer Fi-
5 nancial Protection, and the Federal Housing Fi-
6 nance Agency”; and

7 (2) by inserting at the end the following: “At
8 all times at least one member of the Appraisal Sub-
9 committee shall have demonstrated knowledge and
10 competence through licensure, certification, or pro-
11 fessional designation within the appraisal profes-
12 sion.”.

13 (t) TECHNICAL CORRECTIONS.—

14 (1) Section 1119(a)(2) of the Financial Institu-
15 tions Reform, Recovery, and Enforcement Act of
16 1989 (12 U.S.C. 3348(a)(2)) is amended by striking
17 “council,” and inserting “Council,”.

18 (2) Section 1121(6) of the Financial Institu-
19 tions Reform, Recovery, and Enforcement Act of
20 1989 (12 U.S.C. 3350(6)) is amended by striking
21 “Corporations,” and inserting “Corporation,”.

22 (3) Section 1121(8) of the Financial Institu-
23 tions Reform, Recovery, and Enforcement Act of
24 1989 (12 U.S.C. 3350(8)) is amended by striking
25 “council” and inserting “Council”.

1 (4) Section 1122 of the Financial Institutions
2 Reform, Recovery, and Enforcement Act of 1989
3 (12 U.S.C. 3351) is amended—

4 (A) in subsection (a)(1) by moving the left
5 margin of subparagraphs (A), (B), and (C) 2
6 ems to the right; and

7 (B) in subsection (c)—

8 (i) by striking “Federal Financial In-
9 stitutions Examination Council” and in-
10 sserting “Financial Institutions Examina-
11 tion Council”; and

12 (ii) by striking “the council’s func-
13 tions” and inserting “the Council’s func-
14 tions”.

15 **SEC. 1474. EQUAL CREDIT OPPORTUNITY ACT AMENDMENT.**

16 Subsection (e) of section 701 of the Equal Credit Op-
17 portunity Act (15 U.S.C. 1691) is amended to read as
18 follows:

19 “(e) COPIES FURNISHED TO APPLICANTS.—

20 “(1) IN GENERAL.—Each creditor shall furnish
21 to an applicant a copy of any and all written ap-
22 praisals and valuations developed in connection with
23 the applicant’s application for a loan that is secured
24 or would have been secured by a first lien on a
25 dwelling promptly upon completion, but in no case

1 later than 3 days prior to the closing of the loan,
2 whether the creditor grants or denies the applicant's
3 request for credit or the application is incomplete or
4 withdrawn.

5 “(2) WAIVER.—The applicant may waive the 3
6 day requirement provided for in paragraph (1), ex-
7 cept where otherwise required in law.

8 “(3) REIMBURSEMENT.—The applicant may be
9 required to pay a reasonable fee to reimburse the
10 creditor for the cost of the appraisal, except where
11 otherwise required in law.

12 “(4) FREE COPY.—Notwithstanding paragraph
13 (3), the creditor shall provide a copy of each written
14 appraisal or valuation at no additional cost to the
15 applicant.

16 “(5) NOTIFICATION TO APPLICANTS.—At the
17 time of application, the creditor shall notify an ap-
18 plicant in writing of the right to receive a copy of
19 each written appraisal and valuation under this sub-
20 section.

21 “(6) VALUATION DEFINED.—For purposes of
22 this subsection, the term ‘valuation’ shall include
23 any estimate of the value of a dwelling developed in
24 connection with a creditor's decision to provide cred-
25 it, including those values developed pursuant to a

1 policy of a government sponsored enterprise or by an
2 automated valuation model, a broker price opinion,
3 or other methodology or mechanism.”.

4 **SEC. 1475. REAL ESTATE SETTLEMENT PROCEDURES ACT**
5 **OF 1974 AMENDMENT RELATING TO CERTAIN**
6 **APPRAISAL FEES.**

7 Section 4 of the Real Estate Settlement Procedures
8 Act of 1974 is amended by adding at the end the following
9 new subsection:

10 “(c) The standard form described in subsection (a)
11 may include, in the case of an appraisal coordinated by
12 an appraisal management company (as such term is de-
13 fined in section 1121(11) of the Financial Institutions Re-
14 form, Recovery, and Enforcement Act of 1989 (12 U.S.C.
15 3350(11))), a clear disclosure of—

16 “(1) the fee paid directly to the appraiser by
17 such company; and

18 “(2) the administration fee charged by such
19 company.”.

1 **SEC. 1476. GAO STUDY ON THE EFFECTIVENESS AND IM-**
2 **PACT OF VARIOUS APPRAISAL METHODS,**
3 **VALUATION MODELS AND DISTRIBUTIONS**
4 **CHANNELS, AND ON THE HOME VALUATION**
5 **CODE OF CONDUCT AND THE APPRAISAL**
6 **SUBCOMMITTEE.**

7 (a) IN GENERAL.—The Government Accountability
8 Office shall conduct a study on—

9 (1) the effectiveness and impact of—

10 (A) appraisal methods, including the cost
11 approach, the comparative sales approach, the
12 income approach, and others that may be avail-
13 able;

14 (B) appraisal valuation models, including
15 licensed and certified appraisals, broker-priced
16 opinions, and automated valuation models; and

17 (C) appraisal distribution channels, includ-
18 ing appraisal management companies, inde-
19 pendent appraisal operations within mortgage
20 originators, and fee-for-service appraisers;

21 (2) the Home Valuation Code of Conduct; and

22 (3) the Appraisal Subcommittee's functions
23 pursuant to title XI of the Financial Institutions Re-
24 form, Recovery, and Enforcement Act of 1989.

25 (b) STUDY.—Not later than—

1 (1) 12 months after the date of enactment of
2 this Act, the Government Accountability Office shall
3 submit a study to the Committee on Banking, Hous-
4 ing, and Urban Affairs of the Senate and the Com-
5 mittee on Financial Services of the House of Rep-
6 resentatives; and

7 (2) 90 days after the date of enactment of this
8 Act, the Government Accountability Office shall pro-
9 vide a report on the status of the study and any pre-
10 liminary findings to the Committee on Banking,
11 Housing, and Urban Affairs of the Senate and the
12 Committee on Financial Services of the House of
13 Representatives.

14 (c) CONTENT OF STUDY.—The study required by this
15 section shall include an examination of the following:

16 (1) APPRAISAL APPROACHES, VALUATION MOD-
17 ELS, AND DISTRIBUTION CHANNELS.—

18 (A) The prevalence, alone or in combina-
19 tion, of certain appraisal approaches, models,
20 and channels in purchase-money and refinance
21 mortgage transactions.

22 (B) The accuracy of these approaches,
23 models, and channels in assessing the property
24 as collateral.

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1 (C) Whether and how these approaches,
2 models, and channels contributed to price spec-
3 ulation during the previous cycle.

4 (D) The costs to consumers of these ap-
5 proaches, models, and channels.

6 (E) The disclosure of fees to consumers in
7 the appraisal process.

8 (F) To what extent the usage of these ap-
9 proaches, models, and channels may be influ-
10 enced by a conflict of interest between the
11 mortgage lender and the appraiser and the
12 mechanism by which the lender selects and
13 compensates the appraiser.

14 (G) The suitability of these approaches,
15 models, and channels in rural versus urban
16 areas.

17 (2) HOME VALUATION CODE OF CONDUCT
18 (HVCC).—

19 (A) How the HVCC affects mortgage lend-
20 ers' selection of appraisers.

21 (B) How the HVCC affects State regula-
22 tion of appraisers and appraisal distribution
23 channels.

1 (C) How the HVCC affects the quality and
2 cost of appraisals and the length of time to ob-
3 tain an appraisal.

4 (D) How the HVCC affects mortgage bro-
5 kers, small businesses, and consumers.

6 (d) ADDITIONAL STUDY REQUIRED.—

7 (1) IN GENERAL.—Not later than 18 months
8 after the date of enactment of this Act, the Govern-
9 ment Accountability Office shall submit a study to
10 the Committee on Banking, Housing, and Urban Af-
11 fairs of the Senate and the Committee on Financial
12 Services of the House of Representatives.

13 (2) CONTENT OF ADDITIONAL STUDY.—The
14 study required under paragraph (1) shall include—

15 (A) an examination of—

16 (i) the Appraisal Subcommittee's abil-
17 ity to monitor and enforce State and Fed-
18 eral certification requirements and stand-
19 ards, including by providing a summary
20 with a statistical breakdown of enforce-
21 ment actions taken during the last 10
22 years;

23 (ii) whether existing Federal financial
24 institutions regulatory agency exemptions

1 on appraisals for federally related trans-
2 actions needs to be revised; and

3 (iii) whether new means of data col-
4 lection, such as the establishment of a na-
5 tional repository, would benefit the Ap-
6 praisal Subcommittee's ability to perform
7 its functions; and

8 (B) recommendations from this examina-
9 tion for administrative and legislative action at
10 the Federal and State level.

11 **Subtitle G—Mortgage Resolution** 12 **and Modification**

13 **SEC. 1481. MULTIFAMILY MORTGAGE RESOLUTION PRO-** 14 **GRAM.**

15 (a) ESTABLISHMENT.—The Secretary of Housing
16 and Urban Development shall develop a program under
17 this subsection to ensure the protection of current and fu-
18 ture tenants and at-risk multifamily properties, where fea-
19 sible, based on criteria that may include—

20 (1) creating sustainable financing of such prop-
21 erties, that may take into consideration such factors
22 as—

23 (A) the rental income generated by such
24 properties; and

1 (B) the preservation of adequate operating
2 reserves;

3 (2) maintaining the level of Federal, State, and
4 city subsidies in effect as of the date of the enact-
5 ment of this Act;

6 (3) providing funds for rehabilitation; and

7 (4) facilitating the transfer of such properties,
8 when appropriate and with the agreement of owners,
9 to responsible new owners and ensuring affordability
10 of such properties.

11 (b) COORDINATION.—The Secretary of Housing and
12 Urban Development may, in carrying out the program de-
13 veloped under this section, coordinate with the Secretary
14 of the Treasury, the Federal Deposit Insurance Corpora-
15 tion, the Board of Governors of the Federal Reserve Sys-
16 tem, the Federal Housing Finance Agency, and any other
17 Federal Government agency that the Secretary considers
18 appropriate.

19 (c) DEFINITION.—For purposes of this section, the
20 term “multifamily properties” means a residential struc-
21 ture that consists of 5 or more dwelling units.

22 (d) PREVENTION OF QUALIFICATION FOR CRIMINAL
23 APPLICANTS.—

24 (1) IN GENERAL.—No person shall be eligible
25 to begin receiving assistance from the Making Home

1 Affordable Program authorized under the Emer-
2 gency Economic Stabilization Act of 2008 (12
3 U.S.C. 5201 et seq.), or any other mortgage assist-
4 ance program authorized or funded by that Act, on
5 or after 60 days after the date of the enactment of
6 this Act, if such person, in connection with a mort-
7 gage or real estate transaction, has been convicted,
8 within the last 10 years, of any one of the following:

9 (A) Felony larceny, theft, fraud, or for-

10 gery.

11 (B) Money laundering.

12 (C) Tax evasion.

13 (2) PROCEDURES.—The Secretary shall estab-
14 lish procedures to ensure compliance with this sub-
15 section.

16 (3) REPORT.—The Secretary shall report to the
17 Committee on Financial Services of the House of
18 Representatives and the Committee on Banking,
19 Housing, and Urban Affairs of the Senate regarding
20 the implementation of this provision. The report
21 shall also describe the steps taken to implement this
22 subsection.

1 **SEC. 1482. HOME AFFORDABLE MODIFICATION PROGRAM**
2 **GUIDELINES.**

3 (a) NET PRESENT VALUE INPUT DATA.—The Sec-
4 retary of the Treasury (in this section referred to as the
5 “Secretary”) shall revise the supplemental directives and
6 other guidelines for the Home Affordable Modification
7 Program of the Making Home Affordable initiative of the
8 Secretary of the Treasury, authorized under the Emer-
9 gency Economic Stabilization Act of 2008 (Public Law
10 110–343), to require each mortgage servicer participating
11 in such program to provide each borrower under a mort-
12 gage whose request for a mortgage modification under the
13 Program is denied with all borrower-related and mort-
14 gage-related input data used in any net present value
15 (NPV) analyses performed in connection with the subject
16 mortgage. Such input data shall be provided to the bor-
17 rower at the time of such denial.

18 (b) WEB-BASED SITE FOR NPV CALCULATOR AND
19 APPLICATION.—

20 (1) NPV CALCULATOR.—In carrying out the
21 Home Affordable Modification Program, the Sec-
22 retary shall establish and maintain a site on the
23 World Wide Web that provides a calculator for net
24 present value analyses of a mortgage, based on the
25 Secretary’s methodology for calculating such value,
26 that mortgagors can use to enter information re-

1 regarding their own mortgages and that provides a de-
2 termination after entering such information regard-
3 ing a mortgage of whether such mortgage would be
4 accepted or rejected for modification under the Pro-
5 gram, using such methodology.

6 (2) DISCLOSURE.—Such Web site shall also
7 prominently disclose that each mortgage servicer
8 participating in such Program may use a method for
9 calculating net present value of a mortgage that is
10 different than the method used by such calculator.

11 (3) APPLICATION.—The Secretary shall make a
12 reasonable effort to include on such World Wide
13 Web site a method for homeowners to apply for a
14 mortgage modification under the Home Affordable
15 Modification Program.

16 (c) PUBLIC AVAILABILITY OF NPV METHODOLOGY,
17 COMPUTER MODEL, AND VARIABLES.—The Secretary
18 shall make publicly available, including by posting on a
19 World Wide Web site of the Secretary—

20 (1) the Secretary's methodology and computer
21 model, including all formulae used in such computer
22 model, used for calculating net present value of a
23 mortgage that is used by the calculator established
24 pursuant to subsection (b); and

1 (2) all non-proprietary variables used in such
2 net present value analysis.

3 **SEC. 1483. PUBLIC AVAILABILITY OF INFORMATION OF**
4 **MAKING HOME AFFORDABLE PROGRAM.**

5 (a) REVISIONS TO PROGRAM GUIDELINES.—The Sec-
6 retary of the Treasury (in this section referred to as the
7 “Secretary”) shall revise the guidelines for the Home Af-
8 fordable Modification Program of the Making Home Af-
9 fordable initiative of the Secretary of the Treasury, au-
10 thorized under the Emergency Economic Stabilization Act
11 of 2008 (Public Law 110–343), to provide that the data
12 being collected by the Secretary from each mortgage
13 servicer and lender participating in the Program is made
14 public in accordance with subsection (b).

15 (b) PUBLIC AVAILABILITY.—Data shall be made
16 available according to the following guidelines:

17 (1) Not more than 14 days after each monthly
18 deadline for submission of data by mortgage
19 servicers and lenders participating in the Program,
20 reports shall be made publicly available by means of
21 a World Wide Web site of the Secretary, and by sub-
22 mitting a report to the Congress, that shall includes
23 the following information:

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1 (A) The number of requests for mortgage
2 modifications under the Program that the
3 servicer or lender has received.

4 (B) The number of requests for mortgage
5 modifications under the Program that the
6 servicer or lender has processed.

7 (C) The number of requests for mortgage
8 modifications under the Program that the
9 servicer or lender has approved.

10 (D) The number of requests for mortgage
11 modifications under the Program that the
12 servicer or lender has denied.

13 (2) Not more than 60 days after each monthly
14 deadline for submission of data by mortgage
15 servicers and lenders participating in the Program,
16 the Secretary shall make data tables available to the
17 public at the individual record level. The Secretary
18 shall issue regulations prescribing—

19 (A) the procedures for disclosing such data
20 to the public; and

21 (B) such deletions as the Secretary may
22 determine to be appropriate to protect any pri-
23 vacy interest of any mortgage modification ap-
24 plicant, including the deletion or alteration of
25 the applicant's name and identification number.

1 **SEC. 1484. PROTECTING TENANTS AT FORECLOSURE EX-**
2 **TENSION AND CLARIFICATION.**

3 The Protecting Tenants at Foreclosure Act is amend-
4 ed—

5 (1) in section 702 (12 U.S.C. 5220 note)—

6 (A) in subsection (a)(2), by striking “, as
7 of the date of such notice of foreclosure”; and

8 (B) in subsection (c), by inserting after the
9 period the following: “For purposes of this sec-
10 tion, the date of a notice of foreclosure shall be
11 deemed to be the date on which complete title
12 to a property is transferred to a successor enti-
13 ty or person as a result of an order of a court
14 or pursuant to provisions in a mortgage, deed
15 of trust, or security deed.”; and

16 (2) in section 704 (12 U.S.C. 5201 note), by
17 striking “2012” and inserting “2014”.

18 **Subtitle H—Miscellaneous**
19 **Provisions**

20 **SEC. 1491. SENSE OF CONGRESS REGARDING THE IMPOR-**
21 **TANCE OF GOVERNMENT-SPONSORED EN-**
22 **TERPRISES REFORM TO ENHANCE THE PRO-**
23 **TECTION, LIMITATION, AND REGULATION OF**
24 **THE TERMS OF RESIDENTIAL MORTGAGE**
25 **CREDIT.**

26 (a) FINDINGS.—The Congress finds as follows:

1 (1) The Government-sponsored enterprises,
2 Federal National Mortgage Association (Fannie
3 Mae) and the Federal Home Loan Mortgage Cor-
4 poration (Freddie Mac), were chartered by Congress
5 to ensure a reliable and affordable supply of mort-
6 gage funding, but enjoy a dual legal status as pri-
7 vately owned corporations with Government man-
8 dated affordable housing goals.

9 (2) In 1996, the Department of Housing and
10 Urban Development required that 42 percent of
11 Fannie Mae's and Freddie Mac's mortgage financing
12 should go to borrowers with income levels below the
13 median for a given area.

14 (3) In 2004, the Department of Housing and
15 Urban Development revised those goals, increasing
16 them to 56 percent of their overall mortgage pur-
17 chases by 2008, and additionally mandated that 12
18 percent of all mortgage purchases by Fannie Mae
19 and Freddie Mac be "special affordable" loans made
20 to borrowers with incomes less than 60 percent of an
21 area's median income, a target that ultimately in-
22 creased to 28 percent for 2008.

23 (4) To help fulfill those mandated affordable
24 housing goals, in 1995 the Department of Housing
25 and Urban Development authorized Fannie Mae and

1 Freddie Mac to purchase subprime securities that
2 included loans made to low-income borrowers.

3 (5) After this authorization to purchase
4 subprime securities, subprime and near-prime loans
5 increased from 9 percent of securitized mortgages in
6 2001 to 40 percent in 2006, while the market share
7 of conventional mortgages dropped from 78.8 per-
8 cent in 2003 to 50.1 percent by 2007 with a cor-
9 responding increase in subprime and Alt-A loans
10 from 10.1 percent to 32.7 percent over the same pe-
11 riod.

12 (6) In 2004 alone, Fannie Mae and Freddie
13 Mac purchased \$175,000,000,000 in subprime mort-
14 gage securities, which accounted for 44 percent of
15 the market that year, and from 2005 through 2007,
16 Fannie Mae and Freddie Mac purchased approxi-
17 mately \$1,000,000,000,000 in subprime and Alt-A
18 loans, while Fannie Mae's acquisitions of mortgages
19 with less than 10 percent down payments almost tri-
20 pled.

21 (7) According to data from the Federal Hous-
22 ing Finance Agency (FHFA) for the fourth quarter
23 of 2008, Fannie Mae and Freddie Mac own or guar-
24 antee 75 percent of all newly originated mortgages,
25 and Fannie Mae and Freddie Mac currently own

1 13.3 percent of outstanding mortgage debt in the
2 United States and have issued mortgage-backed se-
3 curities for 31.0 percent of the residential debt mar-
4 ket, a combined total of 44.3 percent of outstanding
5 mortgage debt in the United States.

6 (8) On September 7, 2008, the FHFA placed
7 Fannie Mae and Freddie Mac into conservatorship,
8 with the Treasury Department subsequently agree-
9 ing to purchase at least \$200,000,000,000 of pre-
10 ferred stock from each enterprise in exchange for
11 warrants for the purchase of 79.9 percent of each
12 enterprise's common stock.

13 (9) The conservatorship for Fannie Mae and
14 Freddie Mac has potentially exposed taxpayers to
15 upwards of \$5,300,000,000,000 worth of risk.

16 (10) The hybrid public-private status of Fannie
17 Mae and Freddie Mac is untenable and must be re-
18 solved to assure that consumers are offered and re-
19 ceive residential mortgage loans on terms that rea-
20 sonably reflect their ability to repay the loans and
21 that are understandable and not unfair, deceptive, or
22 abusive.

23 (b) SENSE OF THE CONGRESS.—It is the sense of
24 the Congress that efforts to enhance by the protection,
25 limitation, and regulation of the terms of residential mort-

1 gage credit and the practices related to such credit would
2 be incomplete without enactment of meaningful structural
3 reforms of Fannie Mae and Freddie Mac.

4 **SEC. 1492. GAO STUDY REPORT ON GOVERNMENT EFFORTS**
5 **TO COMBAT MORTGAGE FORECLOSURE RES-**
6 **CUE SCAMS AND LOAN MODIFICATION**
7 **FRAUD.**

8 (a) STUDY.—The Comptroller General of the United
9 States shall conduct a study of the current inter-agency
10 efforts of the Secretary of the Treasury, the Secretary of
11 Housing and Urban Development, the Attorney General,
12 and the Federal Trade Commission to crackdown on mort-
13 gage foreclosure rescue scams and loan modification fraud
14 in order to advise the Congress to the risks and
15 vulnerabilities of emerging schemes in the loan modifica-
16 tion arena.

17 (b) REPORT.—

18 (1) IN GENERAL.—The Comptroller General
19 shall submit a report to the Congress on the study
20 conducted under subsection (a) containing such rec-
21 ommendations for legislative and administrative ac-
22 tions as the Comptroller General may determine to
23 be appropriate in addition to the recommendations
24 required under paragraph (2).

1 (2) SPECIFIC TOPICS.—The report made under
2 paragraph (1) shall include—

3 (A) an evaluation of the effectiveness of
4 the inter-agency task force current efforts to
5 combat mortgage foreclosure rescue scams and
6 loan modification fraud scams;

7 (B) specific recommendations on agency or
8 legislative action that are essential to properly
9 protect homeowners from mortgage foreclosure
10 rescue scams and loan modification fraud
11 scams; and

12 (C) the adequacy of financial resources
13 that the Federal Government is allocating to—

14 (i) crackdown on loan modification
15 and foreclosure rescue scams; and

16 (ii) the education of homeowners
17 about fraudulent scams relating to loan
18 modification and foreclosure rescues.

19 **SEC. 1493. REPORTING OF MORTGAGE DATA BY STATE.**

20 (a) IN GENERAL.—Section 104(a) of the Helping
21 Families Save Their Homes Act of 2009 (division A of
22 Public Law 111–22) is amended—

23 (1) in paragraph (2), by striking “resulting”
24 and inserting “in each State that result”;

1 (2) in paragraph (3), by inserting “each State
2 for” after “modifications in”; and

3 (3) in paragraph (4), by inserting “in each
4 State” after “total number of loans”.

5 (b) CONFORMING AMENDMENT.—Section
6 104(b)(1)(A) of such Act is amended by adding at the end
7 the following sentence: “Not later than 60 days after the
8 date of the enactment of the Dodd-Frank Wall Street Re-
9 form and Consumer Protection Act, the Comptroller of the
10 Currency and the Director of the Office of Thrift Super-
11 vision shall update such requirements to reflect amend-
12 ments made to this section by such Act.”.

13 **SEC. 1494. STUDY OF EFFECT OF DRYWALL PRESENCE ON**
14 **FORECLOSURES.**

15 (a) STUDY.—The Secretary of Housing and Urban
16 Development, in consultation with the Secretary of the
17 Treasury, shall conduct a study of the effect on residential
18 mortgage loan foreclosures of—

19 (1) the presence in residential structures sub-
20 ject to such mortgage loans of drywall that was im-
21 ported from China during the period beginning with
22 2004 and ending at the end of 2007; and

23 (2) the availability of property insurance for
24 residential structures in which such drywall is
25 present.

1 (b) REPORT.—Not later than the expiration of the
2 120-day period beginning on the date of the enactment
3 of this Act, the Secretary of Housing and Urban Develop-
4 ment shall submit to the Congress a report on the study
5 conducted under subsection (a) containing its findings,
6 conclusions, and recommendations.

7 **SEC. 1495. DEFINITION.**

8 For purposes of this title, the term “designated
9 transfer date” means the date established under section
10 1062 of this Act.

11 **SEC. 1496. EMERGENCY MORTGAGE RELIEF.**

12 (a) EMERGENCY HOMEOWNERS’ RELIEF FUND.—
13 Effective October 1, 2010, and notwithstanding any other
14 provision of law, there is hereby made available to the Sec-
15 retary of Housing and Urban Development such sums as
16 are necessary to provide \$1,000,000,000 in assistance
17 through the Emergency Homeowners’ Relief Fund, which
18 such Secretary shall establish pursuant to section 107 of
19 the Emergency Housing Act of 1975 (12 U.S.C. 2706),
20 as such Act is amended by this section, for use for emer-
21 gency mortgage assistance in accordance with title I of
22 such Act.

23 (b) REAUTHORIZATION OF EMERGENCY MORTGAGE
24 RELIEF PROGRAM.—Title I of the Emergency Housing
25 Act of 1975 is amended—

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1 (1) in section 103 (12 U.S.C. 2702)—

2 (A) in paragraph (2)—

3 (i) by striking “have indicated” and
4 all that follows through “regulation of the
5 holder” and insert “have certified”;

6 (ii) by striking “(such as the volume
7 of delinquent loans in its portfolio)”; and

8 (iii) by striking “, except that such
9 statement” and all that follows through
10 “purposes of this title”; and

11 (B) in paragraph (4), by inserting “or
12 medical conditions” after “adverse economic
13 conditions”;

14 (2) in section 104 (12 U.S.C. 2703)—

15 (A) in subsection (b), by striking “, but
16 such assistance” and all that follows through
17 the period at the end and inserting the fol-
18 lowing: “. The amount of assistance provided to
19 a homeowner under this title shall be an
20 amount that the Secretary determines is rea-
21 sonably necessary to supplement such amount
22 as the homeowner is capable of contributing to-
23 ward such mortgage payment, except that the
24 aggregate amount of such assistance provided
25 for any homeowner shall not exceed \$50,000.”;

1 (B) in subsection (d), by striking “interest
2 on a loan or advance” and all that follows
3 through the end of the subsection and inserting
4 the following: “(1) the rate of interest on any
5 loan or advance of credit insured under this
6 title shall be fixed for the life of the loan or ad-
7 vance of credit and shall not exceed the rate of
8 interest that is generally charged for mortgages
9 on single-family housing insured by the Sec-
10 retary of Housing and Urban Development
11 under title II of the National Housing Act at
12 the time such loan or advance of credit is made,
13 and (2) no interest shall be charged on interest
14 which is deferred on a loan or advance of credit
15 made under this title. In establishing rates,
16 terms and conditions for loans or advances of
17 credit made under this title, the Secretary shall
18 take into account a homeowner’s ability to
19 repay such loan or advance of credit.”; and

20 (C) in subsection (e), by inserting after the
21 period at the end of the first sentence the fol-
22 lowing: “Any eligible homeowner who receives a
23 grant or an advance of credit under this title
24 may repay the loan in full, without penalty, by
25 lump sum or by installment payments at any

1 time before the loan becomes due and pay-
2 able.”;

3 (3) in section 105 (12 U.S.C. 2704)—

4 (A) by striking subsection (b);

5 (B) in subsection (e)—

6 (i) by inserting “and emergency mort-
7 gage relief payments made under section
8 106” after “insured under this section”;
9 and

10 (ii) by striking “\$1,500,000,000 at
11 any one time” and inserting
12 “\$3,000,000,000”;

13 (C) by redesignating subsections (c), (d),
14 and (e) as subsections (b), (c), and (d), respec-
15 tively; and

16 (D) by adding at the end the following new
17 subsection:

18 “(e) The Secretary shall establish underwriting
19 guidelines or procedures to allocate amounts made avail-
20 able for loans and advances insured under this section and
21 for emergency relief payments made under section 106
22 based on the likelihood that a mortgagor will be able to
23 resume mortgage payments, pursuant to the requirement
24 under section 103(5).”;

25 (4) in section 107—

1 (A) by striking “(a)”; and

2 (B) by striking subsection (b);

3 (5) in section 108 (12 U.S.C. 2707), by adding
4 at the end the following new subsection:

5 “(d) COVERAGE OF EXISTING PROGRAMS.—The Sec-
6 retary shall allow funds to be administered by a State that
7 has an existing program that is determined by the Sec-
8 retary to provide substantially similar assistance to home-
9 owners. After such determination is made such State shall
10 not be required to modify such program to comply with
11 the provisions of this title.”;

12 (6) in section 109 (12 U.S.C. 2708)—

13 (A) in the section heading, by striking
14 “AUTHORIZATION AND”;

15 (B) by striking subsection (a);

16 (C) by striking “(b)”; and

17 (D) by striking “1977” and inserting
18 “2011”;

19 (7) by striking sections 110, 111, and 113 (12
20 U.S.C. 2709, 2710, 2712); and

21 (8) by redesignating section 112 (12 U.S.C.
22 2711) as section 110.

1 **SEC. 1497. ADDITIONAL ASSISTANCE FOR NEIGHBORHOOD**
2 **STABILIZATION PROGRAM.**

3 (a) IN GENERAL.—Effective October 1, 2010, out of
4 funds in the Treasury not otherwise appropriated, there
5 is hereby made available to the Secretary of Housing and
6 Urban Development \$1,000,000,000, and the Secretary of
7 Housing and Urban Development shall use such amounts
8 for assistance to States and units of general local govern-
9 ment for the redevelopment of abandoned and foreclosed
10 homes, in accordance with the same provisions applicable
11 under the second undesignated paragraph under the head-
12 ing “Community Planning and Development—Community
13 Development Fund” in title XII of division A of the Amer-
14 ican Recovery and Reinvestment Act of 2009 (Public Law
15 111–5; 123 Stat. 217) to amounts made available under
16 such second undesignated paragraph, except as follows:

17 (1) Notwithstanding the matter of such second
18 undesignated paragraph that precedes the first pro-
19 viso, amounts made available by this section shall re-
20 main available until expended.

21 (2) The 3rd, 4th, 5th, 6th, 7th, and 15th pro-
22 visos of such second undesignated paragraph shall
23 not apply to amounts made available by this section.

24 (3) Amounts made available by this section
25 shall be allocated based on a funding formula for
26 such amounts established by the Secretary in ac-

1 cordance with section 2301(b) of the Housing and
2 Economic Recovery Act of 2008 (42 U.S.C. 5301
3 note), except that—

4 (A) notwithstanding paragraph (2) of such
5 section 2301(b), the formula shall be estab-
6 lished not later than 30 days after the date of
7 the enactment of this Act;

8 (B) notwithstanding such section 2301(b),
9 each State shall receive, at a minimum, not less
10 than 0.5 percent of funds made available under
11 this section;

12 (C) the Secretary may establish a min-
13 imum grant amount for direct allocations to
14 units of general local government located within
15 a State, which shall not exceed \$1,000,000;

16 (D) each State and local government re-
17 ceiving grant amounts shall establish proce-
18 dures to create preferences for the development
19 of affordable rental housing for properties as-
20 sisted with amounts made available by this sec-
21 tion; and

22 (E) the Secretary may use not more than
23 2 percent of the funds made available under
24 this section for technical assistance to grantees.

1 (4) Paragraph (1) of section 2301(c) of the
2 Housing and Economic Recovery Act of 2008 shall
3 not apply to amounts made available by this section.

4 (5) The fourth proviso from the end of such
5 second undesignated paragraph shall be applied to
6 amounts made available by this section by sub-
7 stituting “2013” for “2012”.

8 (6) Notwithstanding section 2301(a) of the
9 Housing and Economic Recovery Act of 2008, the
10 term “State” means any State, as defined in section
11 102 of the Housing and Community Development
12 Act of 1974 (42 U.S.C. 5302), and the District of
13 Columbia, for purposes of this section and this title,
14 as applied to amounts made available by this sec-
15 tion.

16 (7)(A) None of the amounts made available by
17 this section shall be distributed to—

18 (i) any organization which has been con-
19 victed for a violation under Federal law relating
20 to an election for Federal office; or

21 (ii) any organization which employs appli-
22 cable individuals.

23 (B) In this paragraph, the term “applicable in-
24 dividual” means an individual who—

25 (i) is—

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1 (I) employed by the organization in a
2 permanent or temporary capacity;

3 (II) contracted or retained by the or-
4 ganization; or

5 (III) acting on behalf of, or with the
6 express or apparent authority of, the orga-
7 nization; and

8 (ii) has been convicted for a violation
9 under Federal law relating to an election for
10 Federal office.

11 (8) An eligible entity receiving a grant under
12 this section shall, to the maximum extent feasible,
13 provide for the hiring of employees who reside in the
14 vicinity, as such term is defined by the Secretary, of
15 projects funded under this section or contract with
16 small businesses that are owned and operated by
17 persons residing in the vicinity of such projects.

18 (b) ADDITIONAL AMENDMENTS.—

19 (1) SECTION 2301.—Section 2301(f)(3)(A)(ii) of
20 the Housing and Economic Recovery Act of 2008
21 (42 U.S.C. 5301(f)(3)(A)(ii))—

22 (A) is amended by striking “for the pur-
23 chase and redevelopment of abandoned and
24 foreclosed upon homes or residential properties
25 that will be used”; and

1 (B) shall apply with respect to any unex-
2 pended or unobligated balances, including re-
3 captured and reallocated funds made available
4 under this Act, section 2301 of the Housing
5 and Economic Recovery Act of 2008 (42 U.S.C.
6 5301), and the heading “Community Planning
7 and Development—Community Development
8 Fund” in title XII of division A of the Amer-
9 ican Recovery and Reinvestment Act of 2009
10 (Public Law 111-5; 123 Stat. 217).

11 (2) NOTICE OF FORECLOSURE.—For any
12 amounts made available under this section, under di-
13 vision B, title III of the Housing and Economic Re-
14 covery Act of 2008 (42 U.S.C. 5301), or under the
15 heading “Community Planning and Development—
16 Community Development Fund” in title XII of divi-
17 sion A of the American Recovery and Reinvestment
18 Act of 2009 (Public Law 111-5; 123 Stat. 217), the
19 date of a notice of foreclosure shall be deemed to be
20 the date on which complete title to a property is
21 transferred to a successor entity or person as a re-
22 sult of an order of a court or pursuant to provisions
23 in a mortgage, deed of trust, or security deed.

1 **SEC. 1498. LEGAL ASSISTANCE FOR FORECLOSURE-RE-**
2 **LATED ISSUES.**

3 (a) ESTABLISHMENT.—The Secretary of Housing
4 and Urban Development (hereafter in this section referred
5 to as the “Secretary”) shall establish a program for mak-
6 ing grants for providing a full range of foreclosure legal
7 assistance to low- and moderate-income homeowners and
8 tenants related to home ownership preservation, home
9 foreclosure prevention, and tenancy associated with home
10 foreclosure.

11 (b) COMPETITIVE ALLOCATION.—The Secretary shall
12 allocate amounts made available for grants under this sec-
13 tion to State and local legal organizations on the basis
14 of a competitive process. For purposes of this subsection
15 “State and local legal organizations” are those State and
16 local organizations whose primary business or mission is
17 to provide legal assistance.

18 (c) PRIORITY TO CERTAIN AREAS.—In allocating
19 amounts in accordance with subsection (b), the Secretary
20 shall give priority consideration to State and local legal
21 organizations that are operating in the 125 metropolitan
22 statistical areas (as that term is defined by the Director
23 of the Office of Management and Budget) with the highest
24 home foreclosure rates.

25 (d) LEGAL ASSISTANCE.—

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1 (1) IN GENERAL.—Any State or local legal or-
2 ganization that receives financial assistance pursu-
3 ant to this section may use such amounts only to as-
4 sist—

5 (A) homeowners of owner-occupied homes
6 with mortgages in default, in danger of default,
7 or subject to or at risk of foreclosure; and

8 (B) tenants at risk of or subject to eviction
9 as a result of foreclosure of the property in
10 which such tenant resides.

11 (2) COMMENCE USE WITHIN 90 DAYS.—Any
12 State or local legal organization that receives finan-
13 cial assistance pursuant to this section shall begin
14 using any financial assistance received under this
15 section within 90 days after receipt of the assist-
16 ance.

17 (3) PROHIBITION ON CLASS ACTIONS.—No
18 funds provided to a State or local legal organization
19 under this section may be used to support any class
20 action litigation.

21 (4) LIMITATION ON LEGAL ASSISTANCE.—Legal
22 assistance funded with amounts provided under this
23 section shall be limited to mortgage-related default,
24 eviction, or foreclosure proceedings, without regard
25 to whether such foreclosure is judicial or nonjudicial.

1 (5) EFFECTIVE DATE.—Notwithstanding any
2 other provision of this Act, this subsection shall take
3 effect on the date of the enactment of this Act.

4 (e) LIMITATION ON DISTRIBUTION OF ASSIST-
5 ANCE.—

6 (1) IN GENERAL.—None of the amounts made
7 available under this section shall be distributed to—

8 (A) any organization which has been con-
9 victed for a violation under Federal law relating
10 to an election for Federal office; or

11 (B) any organization which employs appli-
12 cable individuals.

13 (2) DEFINITION OF APPLICABLE INDIVID-
14 UALS.—In this subsection, the term “applicable indi-
15 vidual” means an individual who—

16 (A) is—

17 (i) employed by the organization in a
18 permanent or temporary capacity;

19 (ii) contracted or retained by the or-
20 ganization; or

21 (iii) acting on behalf of, or with the
22 express or apparent authority of, the orga-
23 nization; and

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1 (B) has been convicted for a violation
2 under Federal law relating to an election for
3 Federal office.

4 (f) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated to the Secretary
6 \$35,000,000 for each of fiscal years 2011 through 2012
7 for grants under this section.

8 **TITLE XV—MISCELLANEOUS**
9 **PROVISIONS**

10 **SEC. 1501. RESTRICTIONS ON USE OF UNITED STATES**
11 **FUNDS FOR FOREIGN GOVERNMENTS; PRO-**
12 **TECTION OF AMERICAN TAXPAYERS.**

13 The Bretton Woods Agreements Act (22 U.S.C. 286
14 et seq.) is amended by adding at the end the following:

15 **“SEC. 68. RESTRICTIONS ON USE OF UNITED STATES**
16 **FUNDS FOR FOREIGN GOVERNMENTS; PRO-**
17 **TECTION OF AMERICAN TAXPAYERS.**

18 “(a) IN GENERAL.—The Secretary of the Treasury
19 shall instruct the United States Executive Director at the
20 International Monetary Fund—

21 “(1) to evaluate, prior to consideration by the
22 Board of Executive Directors of the Fund , any pro-
23 posal submitted to the Board for the Fund to make
24 a loan to a country if—

1 “(A) the amount of the public debt of the
2 country exceeds the gross domestic product of
3 the country as of the most recent year for
4 which such information is available; and

5 “(B) the country is not eligible for assist-
6 ance from the International Development Asso-
7 ciation.

8 “(2) OPPOSITION TO LOANS UNLIKELY TO BE
9 REPAID IN FULL.—If any such evaluation indicates
10 that the proposed loan is not likely to be repaid in
11 full, the Secretary of the Treasury shall instruct the
12 United States Executive Director at the Fund to use
13 the voice and vote of the United States to oppose the
14 proposal.

15 “(b) REPORTS TO CONGRESS.—Within 30 days after
16 the Board of Executive Directors of the Fund approves
17 a proposal described in subsection (a), and annually there-
18 after by June 30, for the duration of any program ap-
19 proved under such proposals, the Secretary of the Treas-
20 ury shall report in writing to the Committee on Financial
21 Services of the House of Representatives and the Com-
22 mittee on Foreign Relations and the Committee on Bank-
23 ing, Housing, and Urban Affairs of the Senate assessing
24 the likelihood that loans made pursuant to such proposals
25 will be repaid in full, including—

1 “(1) the borrowing country’s current debt sta-
2 tus, including, to the extent possible, its maturity
3 structure, whether it has fixed or floating rates,
4 whether it is indexed, and by whom it is held;

5 “(2) the borrowing country’s external and inter-
6 nal vulnerabilities that could potentially affect its
7 ability to repay; and

8 “(3) the borrowing country’s debt management
9 strategy.”.

10 **SEC. 1502. CONFLICT MINERALS.**

11 (a) SENSE OF CONGRESS ON EXPLOITATION AND
12 TRADE OF CONFLICT MINERALS ORIGINATING IN THE
13 DEMOCRATIC REPUBLIC OF THE CONGO.—It is the sense
14 of Congress that the exploitation and trade of conflict min-
15 erals originating in the Democratic Republic of the Congo
16 is helping to finance conflict characterized by extreme lev-
17 els of violence in the eastern Democratic Republic of the
18 Congo, particularly sexual- and gender-based violence, and
19 contributing to an emergency humanitarian situation
20 therein, warranting the provisions of section 13(p) of the
21 Securities Exchange Act of 1934, as added by subsection
22 (b).

23 (b) DISCLOSURE RELATING TO CONFLICT MINERALS
24 ORIGINATING IN THE DEMOCRATIC REPUBLIC OF THE
25 CONGO.—Section 13 of the Securities Exchange Act of

1 1934 (15 U.S.C. 78m), as amended by this Act, is amend-
2 ed by adding at the end the following new subsection:

3 “(p) DISCLOSURES RELATING TO CONFLICT MIN-
4 ERALS ORIGINATING IN THE DEMOCRATIC REPUBLIC OF
5 THE CONGO.—

6 “(1) REGULATIONS.—

7 “(A) IN GENERAL.—Not later than 270
8 days after the date of the enactment of this
9 subsection, the Commission shall promulgate
10 regulations requiring any person described in
11 paragraph (2) to disclose annually, beginning
12 with the person’s first full fiscal year that be-
13 gins after the date of promulgation of such reg-
14 ulations, whether conflict minerals that are nec-
15 essary as described in paragraph (2)(B), in the
16 year for which such reporting is required, did
17 originate in the Democratic Republic of the
18 Congo or an adjoining country and, in cases in
19 which such conflict minerals did originate in
20 any such country, submit to the Commission a
21 report that includes, with respect to the period
22 covered by the report—

23 “(i) a description of the measures
24 taken by the person to exercise due dili-
25 gence on the source and chain of custody

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1 of such minerals, which measures shall in-
2 clude an independent private sector audit
3 of such report submitted through the Com-
4 mission that is conducted in accordance
5 with standards established by the Comp-
6 troller General of the United States, in ac-
7 cordance with rules promulgated by the
8 Commission, in consultation with the Sec-
9 retary of State; and

10 “(ii) a description of the products
11 manufactured or contracted to be manu-
12 factured that are not DRC conflict free
13 (‘DRC conflict free’ is defined to mean the
14 products that do not contain minerals that
15 directly or indirectly finance or benefit
16 armed groups in the Democratic Republic
17 of the Congo or an adjoining country), the
18 entity that conducted the independent pri-
19 vate sector audit in accordance with clause
20 (i), the facilities used to process the con-
21 flict minerals, the country of origin of the
22 conflict minerals, and the efforts to deter-
23 mine the mine or location of origin with
24 the greatest possible specificity.

1 “(B) CERTIFICATION.—The person sub-
2 mitting a report under subparagraph (A) shall
3 certify the audit described in clause (i) of such
4 subparagraph that is included in such report.
5 Such a certified audit shall constitute a critical
6 component of due diligence in establishing the
7 source and chain of custody of such minerals.

8 “(C) UNRELIABLE DETERMINATION.—If a
9 report required to be submitted by a person
10 under subparagraph (A) relies on a determina-
11 tion of an independent private sector audit, as
12 described under subparagraph (A)(i), or other
13 due diligence processes previously determined
14 by the Commission to be unreliable, the report
15 shall not satisfy the requirements of the regula-
16 tions promulgated under subparagraph (A)(i).

17 “(D) DRC CONFLICT FREE.—For pur-
18 poses of this paragraph, a product may be la-
19 beled as ‘DRC conflict free’ if the product does
20 not contain conflict minerals that directly or in-
21 directly finance or benefit armed groups in the
22 Democratic Republic of the Congo or an adjoining
23 country.

24 “(E) INFORMATION AVAILABLE TO THE
25 PUBLIC.—Each person described under para-

1 graph (2) shall make available to the public on
2 the Internet website of such person the infor-
3 mation disclosed by such person under subpara-
4 graph (A).

5 “(2) PERSON DESCRIBED.—A person is de-
6 scribed in this paragraph if—

7 “(A) the person is required to file reports
8 with the Commission pursuant to paragraph
9 (1)(A); and

10 “(B) conflict minerals are necessary to the
11 functionality or production of a product manu-
12 factured by such person.

13 “(3) REVISIONS AND WAIVERS.—The Commis-
14 sion shall revise or temporarily waive the require-
15 ments described in paragraph (1) if the President
16 transmits to the Commission a determination that—

17 “(A) such revision or waiver is in the na-
18 tional security interest of the United States and
19 the President includes the reasons therefor; and

20 “(B) establishes a date, not later than 2
21 years after the initial publication of such ex-
22 emption, on which such exemption shall expire.

23 “(4) TERMINATION OF DISCLOSURE REQUIRE-
24 MENTS.—The requirements of paragraph (1) shall
25 terminate on the date on which the President deter-

1 mines and certifies to the appropriate congressional
2 committees, but in no case earlier than the date that
3 is one day after the end of the 5-year period begin-
4 ning on the date of the enactment of this subsection,
5 that no armed groups continue to be directly in-
6 volved and benefitting from commercial activity in-
7 volving conflict minerals.

8 “(5) DEFINITIONS.—For purposes of this sub-
9 section, the terms ‘adjoining country’, ‘appropriate
10 congressional committees’, ‘armed group’, and ‘con-
11 flict mineral’ have the meaning given those terms
12 under section 1502 of the Dodd-Frank Wall Street
13 Reform and Consumer Protection Act.”.

14 (c) STRATEGY AND MAP TO ADDRESS LINKAGES BE-
15 TWEEN CONFLICT MINERALS AND ARMED GROUPS.—

16 (1) STRATEGY.—

17 (A) IN GENERAL.—Not later than 180
18 days after the date of the enactment of this
19 Act, the Secretary of State, in consultation with
20 the Administrator of the United States Agency
21 for International Development, shall submit to
22 the appropriate congressional committees a
23 strategy to address the linkages between human
24 rights abuses, armed groups, mining of conflict
25 minerals, and commercial products.

1 (B) CONTENTS.—The strategy required by
2 subparagraph (A) shall include the following:

3 (i) A plan to promote peace and secu-
4 rity in the Democratic Republic of the
5 Congo by supporting efforts of the Govern-
6 ment of the Democratic Republic of the
7 Congo, including the Ministry of Mines
8 and other relevant agencies, adjoining
9 countries, and the international commu-
10 nity, in particular the United Nations
11 Group of Experts on the Democratic Re-
12 public of Congo, to—

13 (I) monitor and stop commercial
14 activities involving the natural re-
15 sources of the Democratic Republic of
16 the Congo that contribute to the ac-
17 tivities of armed groups and human
18 rights violations in the Democratic
19 Republic of the Congo; and

20 (II) develop stronger governance
21 and economic institutions that can fa-
22 cilitate and improve transparency in
23 the cross-border trade involving the
24 natural resources of the Democratic
25 Republic of the Congo to reduce ex-

1 exploitation by armed groups and pro-
2 mote local and regional development.

3 (ii) A plan to provide guidance to
4 commercial entities seeking to exercise due
5 diligence on and formalize the origin and
6 chain of custody of conflict minerals used
7 in their products and on their suppliers to
8 ensure that conflict minerals used in the
9 products of such suppliers do not directly
10 or indirectly finance armed conflict or re-
11 sult in labor or human rights violations.

12 (iii) A description of punitive meas-
13 ures that could be taken against individ-
14 uals or entities whose commercial activities
15 are supporting armed groups and human
16 rights violations in the Democratic Repub-
17 lic of the Congo.

18 (2) MAP.—

19 (A) IN GENERAL.—Not later than 180
20 days after the date of the enactment of this
21 Act, the Secretary of State shall, in accordance
22 with the recommendation of the United Nations
23 Group of Experts on the Democratic Republic
24 of the Congo in their December 2008 report—

1 (i) produce a map of mineral-rich
2 zones, trade routes, and areas under the
3 control of armed groups in the Democratic
4 Republic of the Congo and adjoining coun-
5 tries based on data from multiple sources,
6 including—

7 (I) the United Nations Group of
8 Experts on the Democratic Republic
9 of the Congo;

10 (II) the Government of the
11 Democratic Republic of the Congo,
12 the governments of adjoining coun-
13 tries, and the governments of other
14 Member States of the United Nations;
15 and

16 (III) local and international non-
17 governmental organizations;

18 (ii) make such map available to the
19 public; and

20 (iii) provide to the appropriate con-
21 gressional committees an explanatory note
22 describing the sources of information from
23 which such map is based and the identi-
24 fication, where possible, of the armed

1 groups or other forces in control of the
2 mines depicted.

3 (B) DESIGNATION.—The map required
4 under subparagraph (A) shall be known as the
5 “Conflict Minerals Map”, and mines located in
6 areas under the control of armed groups in the
7 Democratic Republic of the Congo and adjoining
8 countries, as depicted on such Conflict Min-
9 erals Map, shall be known as “Conflict Zone
10 Mines”.

11 (C) UPDATES.—The Secretary of State
12 shall update the map required under subpara-
13 graph (A) not less frequently than once every
14 180 days until the date on which the disclosure
15 requirements under paragraph (1) of section
16 13(p) of the Securities Exchange Act of 1934,
17 as added by subsection (b), terminate in accord-
18 ance with the provisions of paragraph (4) of
19 such section 13(p).

20 (D) PUBLICATION IN FEDERAL REG-
21 ISTER.—The Secretary of State shall add min-
22 erals to the list of minerals in the definition of
23 conflict minerals under section 1502, as appro-
24 priate. The Secretary shall publish in the Fed-
25 eral Register notice of intent to declare a min-

1 eral as a conflict mineral included in such defi-
2 nition not later than one year before such dec-
3 laration.

4 (d) REPORTS.—

5 (1) BASELINE REPORT.—Not later than 1 year
6 after the date of the enactment of this Act and an-
7 nually thereafter until the termination of the disclo-
8 sure requirements under section 13(p) of the Securi-
9 ties Exchange Act of 1934, the Comptroller General
10 of the United States shall submit to appropriate con-
11 gressional committees a report that includes an as-
12 sessment of the rate of sexual- and gender-based vio-
13 lence in war-torn areas of the Democratic Republic
14 of the Congo and adjoining countries.

15 (2) REGULAR REPORT ON EFFECTIVENESS.—
16 Not later than 2 years after the date of the enact-
17 ment of this Act and annually thereafter, the Comp-
18 troller General of the United States shall submit to
19 the appropriate congressional committees a report
20 that includes the following:

21 (A) An assessment of the effectiveness of
22 section 13(p) of the Securities Exchange Act of
23 1934, as added by subsection (b), in promoting
24 peace and security in the Democratic Republic
25 of the Congo and adjoining countries.

1 (B) A description of issues encountered by
2 the Securities and Exchange Commission in
3 carrying out the provisions of such section
4 13(p).

5 (C)(i) A general review of persons de-
6 scribed in clause (ii) and whether information is
7 publicly available about—

8 (I) the use of conflict minerals by
9 such persons; and

10 (II) whether such conflict minerals
11 originate from the Democratic Republic of
12 the Congo or an adjoining country.

13 (ii) A person is described in this clause
14 if—

15 (I) the person is not required to file
16 reports with the Securities and Exchange
17 Commission pursuant to section
18 13(p)(1)(A) of the Securities Exchange
19 Act of 1934, as added by subsection (b);
20 and

21 (II) conflict minerals are necessary to
22 the functionality or production of a prod-
23 uct manufactured by such person.

24 (3) REPORT ON PRIVATE SECTOR AUDITING.—

25 Not later than 30 months after the date of the en-

1 actment of this Act, and annually thereafter, the
2 Secretary of Commerce shall submit to the appro-
3 priate congressional committees a report that in-
4 cludes the following:

5 (A) An assessment of the accuracy of the
6 independent private sector audits and other due
7 diligence processes described under section
8 13(p) of the Securities Exchange Act of 1934.

9 (B) Recommendations for the processes
10 used to carry out such audits, including ways
11 to—

12 (i) improve the accuracy of such au-
13 dits; and

14 (ii) establish standards of best prac-
15 tices.

16 (C) A listing of all known conflict mineral
17 processing facilities worldwide.

18 (e) DEFINITIONS.—For purposes of this section:

19 (1) ADJOINING COUNTRY.—The term “adjoin-
20 ing country”, with respect to the Democratic Repub-
21 lic of the Congo, means a country that shares an
22 internationally recognized border with the Demo-
23 cratic Republic of the Congo.

1 (2) APPROPRIATE CONGRESSIONAL COMMIT-
2 TEES.—The term “appropriate congressional com-
3 mittees” means—

4 (A) the Committee on Appropriations, the
5 Committee on Foreign Affairs, the Committee
6 on Ways and Means, and the Committee on Fi-
7 nancial Services of the House of Representa-
8 tives; and

9 (B) the Committee on Appropriations, the
10 Committee on Foreign Relations, the Com-
11 mittee on Finance, and the Committee on
12 Banking, Housing, and Urban Affairs of the
13 Senate.

14 (3) ARMED GROUP.—The term “armed group”
15 means an armed group that is identified as perpetra-
16 tors of serious human rights abuses in the annual
17 Country Reports on Human Rights Practices under
18 sections 116(d) and 502B(b) of the Foreign Assist-
19 ance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b))
20 relating to the Democratic Republic of the Congo or
21 an adjoining country.

22 (4) CONFLICT MINERAL.—The term “conflict
23 mineral” means—

24 (A) columbite-tantalite (coltan), cassiterite,
25 gold, wolframite, or their derivatives; or

1 (B) any other mineral or its derivatives de-
2 termined by the Secretary of State to be financ-
3 ing conflict in the Democratic Republic of the
4 Congo or an adjoining country.

5 (5) UNDER THE CONTROL OF ARMED
6 GROUPS.—The term “under the control of armed
7 groups” means areas within the Democratic Repub-
8 lic of the Congo or adjoining countries in which
9 armed groups—

10 (A) physically control mines or force labor
11 of civilians to mine, transport, or sell conflict
12 minerals;

13 (B) tax, extort, or control any part of
14 trade routes for conflict minerals, including the
15 entire trade route from a Conflict Zone Mine to
16 the point of export from the Democratic Repub-
17 lic of the Congo or an adjoining country; or

18 (C) tax, extort, or control trading facilities,
19 in whole or in part, including the point of ex-
20 port from the Democratic Republic of the
21 Congo or an adjoining country.

22 **SEC. 1503. REPORTING REQUIREMENTS REGARDING COAL**
23 **OR OTHER MINE SAFETY.**

24 (a) REPORTING MINE SAFETY INFORMATION.—Each
25 issuer that is required to file reports pursuant to section

1 13(a) or 15(d) of the Securities Exchange Act of 1934
2 (15 U.S.C. 78m, 78o) and that is an operator, or that
3 has a subsidiary that is an operator, of a coal or other
4 mine shall include, in each periodic report filed with the
5 Commission under the securities laws on or after the date
6 of enactment of this Act, the following information for the
7 time period covered by such report:

8 (1) For each coal or other mine of which the
9 issuer or a subsidiary of the issuer is an operator—

10 (A) the total number of violations of man-
11 datory health or safety standards that could
12 significantly and substantially contribute to the
13 cause and effect of a coal or other mine safety
14 or health hazard under section 104 of the Fed-
15 eral Mine Safety and Health Act of 1977 (30
16 U.S.C. 814) for which the operator received a
17 citation from the Mine Safety and Health Ad-
18 ministration;

19 (B) the total number of orders issued
20 under section 104(b) of such Act (30 U.S.C.
21 814(b));

22 (C) the total number of citations and or-
23 ders for unwarrantable failure of the mine oper-
24 ator to comply with mandatory health or safety

1 standards under section 104(d) of such Act (30
2 U.S.C. 814(d));

3 (D) the total number of flagrant violations
4 under section 110(b)(2) of such Act (30 U.S.C.
5 820(b)(2));

6 (E) the total number of imminent danger
7 orders issued under section 107(a) of such Act
8 (30 U.S.C. 817(a));

9 (F) the total dollar value of proposed as-
10 sements from the Mine Safety and Health
11 Administration under such Act (30 U.S.C. 801
12 et seq.); and

13 (G) the total number of mining-related fa-
14 talities.

15 (2) A list of such coal or other mines, of which
16 the issuer or a subsidiary of the issuer is an oper-
17 ator, that receive written notice from the Mine Safe-
18 ty and Health Administration of—

19 (A) a pattern of violations of mandatory
20 health or safety standards that are of such na-
21 ture as could have significantly and substan-
22 tially contributed to the cause and effect of coal
23 or other mine health or safety hazards under
24 section 104(e) of such Act (30 U.S.C. 814(e));
25 or

1 (B) the potential to have such a pattern.

2 (3) Any pending legal action before the Federal
3 Mine Safety and Health Review Commission involv-
4 ing such coal or other mine.

5 (b) REPORTING SHUTDOWNS AND PATTERNS OF
6 VIOLATIONS.—Beginning on and after the date of enact-
7 ment of this Act, each issuer that is an operator, or that
8 has a subsidiary that is an operator, of a coal or other
9 mine shall file a current report with the Commission on
10 Form 8–K (or any successor form) disclosing the following
11 regarding each coal or other mine of which the issuer or
12 subsidiary is an operator:

13 (1) The receipt of an imminent danger order
14 issued under section 107(a) of the Federal Mine
15 Safety and Health Act of 1977 (30 U.S.C. 817(a)).

16 (2) The receipt of written notice from the Mine
17 Safety and Health Administration that the coal or
18 other mine has—

19 (A) a pattern of violations of mandatory
20 health or safety standards that are of such na-
21 ture as could have significantly and substan-
22 tially contributed to the cause and effect of coal
23 or other mine health or safety hazards under
24 section 104(e) of such Act (30 U.S.C. 814(e));
25 or

1 (B) the potential to have such a pattern.

2 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
3 tion shall be construed to affect any obligation of a person
4 to make a disclosure under any other applicable law in
5 effect before, on, or after the date of enactment of this
6 Act.

7 (d) COMMISSION AUTHORITY.—

8 (1) ENFORCEMENT.—A violation by any person
9 of this section, or any rule or regulation of the Com-
10 mission issued under this section, shall be treated
11 for all purposes in the same manner as a violation
12 of the Securities Exchange Act of 1934 (15 U.S.C.
13 78a et seq.) or the rules and regulations issued
14 thereunder, consistent with the provisions of this
15 section, and any such person shall be subject to the
16 same penalties, and to the same extent, as for a vio-
17 lation of such Act or the rules or regulations issued
18 thereunder.

19 (2) RULES AND REGULATIONS.—The Commis-
20 sion is authorized to issue such rules or regulations
21 as are necessary or appropriate for the protection of
22 investors and to carry out the purposes of this sec-
23 tion.

24 (e) DEFINITIONS.—In this section—

1 (1) the terms “issuer” and “securities laws”
2 have the meaning given the terms in section 3 of the
3 Securities Exchange Act of 1934 (15 U.S.C. 78c);

4 (2) the term “coal or other mine” means a coal
5 or other mine, as defined in section 3 of the Federal
6 Mine Safety and Health Act of 1977 (30 U.S.C.
7 802), that is subject to the provisions of such Act
8 (30 U.S.C. 801 et seq.); and

9 (3) the term “operator” has the meaning given
10 the term in section 3 of the Federal Mine Safety and
11 Health Act of 1977 (30 U.S.C. 802).

12 (f) EFFECTIVE DATE.—This section shall take effect
13 on the day that is 30 days after the date of enactment
14 of this Act.

15 **SEC. 1504. DISCLOSURE OF PAYMENTS BY RESOURCE EX-**
16 **TRACTION ISSUERS.**

17 Section 13 of the Securities Exchange Act of 1934
18 (15 U.S.C. 78m), as amended by this Act, is amended by
19 adding at the end the following:

20 “(q) DISCLOSURE OF PAYMENTS BY RESOURCE EX-
21 TRACTION ISSUERS.—

22 “(1) DEFINITIONS.—In this subsection—

23 “(A) the term ‘commercial development of
24 oil, natural gas, or minerals’ includes explo-
25 ration, extraction, processing, export, and other

1 significant actions relating to oil, natural gas,
2 or minerals, or the acquisition of a license for
3 any such activity, as determined by the Com-
4 mission;

5 “(B) the term ‘foreign government’ means
6 a foreign government, a department, agency, or
7 instrumentality of a foreign government, or a
8 company owned by a foreign government, as de-
9 termined by the Commission;

10 “(C) the term ‘payment’—

11 “(i) means a payment that is—

12 “(I) made to further the commer-
13 cial development of oil, natural gas, or
14 minerals; and

15 “(II) not de minimis; and

16 “(ii) includes taxes, royalties, fees (in-
17 cluding license fees), production entitle-
18 ments, bonuses, and other material bene-
19 fits, that the Commission, consistent with
20 the guidelines of the Extractive Industries
21 Transparency Initiative (to the extent
22 practicable), determines are part of the
23 commonly recognized revenue stream for
24 the commercial development of oil, natural
25 gas, or minerals;

1 “(D) the term ‘resource extraction issuer’
2 means an issuer that—

3 “(i) is required to file an annual re-
4 port with the Commission; and

5 “(ii) engages in the commercial devel-
6 opment of oil, natural gas, or minerals;

7 “(E) the term ‘interactive data format’
8 means an electronic data format in which pieces
9 of information are identified using an inter-
10 active data standard; and

11 “(F) the term ‘interactive data standard’
12 means standardized list of electronic tags that
13 mark information included in the annual report
14 of a resource extraction issuer.

15 “(2) DISCLOSURE.—

16 “(A) INFORMATION REQUIRED.—Not later
17 than 270 days after the date of enactment of
18 the Dodd-Frank Wall Street Reform and Con-
19 sumer Protection Act, the Commission shall
20 issue final rules that require each resource ex-
21 traction issuer to include in an annual report of
22 the resource extraction issuer information relat-
23 ing to any payment made by the resource ex-
24 traction issuer, a subsidiary of the resource ex-
25 traction issuer, or an entity under the control

1 of the resource extraction issuer to a foreign
2 government or the Federal Government for the
3 purpose of the commercial development of oil,
4 natural gas, or minerals, including—

5 “(i) the type and total amount of such
6 payments made for each project of the re-
7 source extraction issuer relating to the
8 commercial development of oil, natural gas,
9 or minerals; and

10 “(ii) the type and total amount of
11 such payments made to each government.

12 “(B) CONSULTATION IN RULEMAKING.—In
13 issuing rules under subparagraph (A), the Com-
14 mission may consult with any agency or entity
15 that the Commission determines is relevant.

16 “(C) INTERACTIVE DATA FORMAT.—The
17 rules issued under subparagraph (A) shall re-
18 quire that the information included in the an-
19 nual report of a resource extraction issuer be
20 submitted in an interactive data format.

21 “(D) INTERACTIVE DATA STANDARD.—

22 “(i) IN GENERAL.—The rules issued
23 under subparagraph (A) shall establish an
24 interactive data standard for the informa-

1 tion included in the annual report of a re-
2 source extraction issuer.

3 “(ii) ELECTRONIC TAGS.—The inter-
4 active data standard shall include elec-
5 tronic tags that identify, for any payments
6 made by a resource extraction issuer to a
7 foreign government or the Federal Govern-
8 ment—

9 “(I) the total amounts of the
10 payments, by category;

11 “(II) the currency used to make
12 the payments;

13 “(III) the financial period in
14 which the payments were made;

15 “(IV) the business segment of
16 the resource extraction issuer that
17 made the payments;

18 “(V) the government that re-
19 ceived the payments, and the country
20 in which the government is located;

21 “(VI) the project of the resource
22 extraction issuer to which the pay-
23 ments relate; and

24 “(VII) such other information as
25 the Commission may determine is nec-

1 essary or appropriate in the public in-
2 terest or for the protection of inves-
3 tors.

4 “(E) INTERNATIONAL TRANSPARENCY EF-
5 FORTS.—To the extent practicable, the rules
6 issued under subparagraph (A) shall support
7 the commitment of the Federal Government to
8 international transparency promotion efforts re-
9 lating to the commercial development of oil,
10 natural gas, or minerals.

11 “(F) EFFECTIVE DATE.—With respect to
12 each resource extraction issuer, the final rules
13 issued under subparagraph (A) shall take effect
14 on the date on which the resource extraction
15 issuer is required to submit an annual report
16 relating to the fiscal year of the resource ex-
17 traction issuer that ends not earlier than 1 year
18 after the date on which the Commission issues
19 final rules under subparagraph (A).

20 “(3) PUBLIC AVAILABILITY OF INFORMATION.—

21 “(A) IN GENERAL.—To the extent prac-
22 ticable, the Commission shall make available
23 online, to the public, a compilation of the infor-
24 mation required to be submitted under the rules
25 issued under paragraph (2)(A).

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1 “(B) OTHER INFORMATION.—Nothing in
2 this paragraph shall require the Commission to
3 make available online information other than
4 the information required to be submitted under
5 the rules issued under paragraph (2)(A).

6 “(4) AUTHORIZATION OF APPROPRIATIONS.—
7 There are authorized to be appropriated to the Com-
8 mission such sums as may be necessary to carry out
9 this subsection.”.

10 **SEC. 1505. STUDY BY THE COMPTROLLER GENERAL.**

11 (a) IN GENERAL.—Not later than 1 year after the
12 date of enactment of this Act, the Comptroller General
13 of the United States shall issue a report assessing the rel-
14 ative independence, effectiveness, and expertise of presi-
15 dentially appointed inspectors general and inspectors gen-
16 eral of designated Federal entities, as such term is defined
17 under section 8G of the Inspector General Act of 1978,
18 and the effects on independence of the amendments to the
19 Inspector General Act of 1978 made by this Act.

20 (b) REPORT.—The report required by subsection (a)
21 shall be issued to the Committees on Financial Services
22 and Oversight and Government Reform of the House of
23 Representatives and the Committees on Banking, Hous-
24 ing, and Urban Affairs and Homeland Security and Gov-
25 ernmental Affairs of the Senate.

1 **SEC. 1506. STUDY ON CORE DEPOSITS AND BROKERED DE-**
2 **POSITS.**

3 (a) **STUDY.**—The Corporation shall conduct a study
4 to evaluate—

5 (1) the definition of core deposits for the pur-
6 pose of calculating the insurance premiums of banks;

7 (2) the potential impact on the Deposit Insur-
8 ance Fund of revising the definitions of brokered de-
9 posits and core deposits to better distinguish be-
10 tween them;

11 (3) an assessment of the differences between
12 core deposits and brokered deposits and their role in
13 the economy and banking sector of the United
14 States;

15 (4) the potential stimulative effect on local
16 economies of redefining core deposits; and

17 (5) the competitive parity between large institu-
18 tions and community banks that could result from
19 redefining core deposits.

20 (b) **REPORT TO CONGRESS.**—Not later than 1 year
21 after the date of enactment of this Act, the Corporation
22 shall submit to the Committee on Banking, Housing, and
23 Urban Affairs of the Senate and the Committee on Finan-
24 cial Services of the House of Representatives a report on
25 the results of the study under subsection (a) that includes
26 legislative recommendations, if any, to address concerns

1 arising in connection with the definitions of core deposits
2 and brokered deposits.

3 **TITLE XVI—FINANCIAL CRISIS**
4 **ASSESSMENT AND FUND**

5 **SEC. 1601. FINANCIAL CRISIS SPECIAL ASSESSMENT.**

6 (a) SPECIAL ASSESSMENT.—The Council shall im-
7 pose, and the Corporation shall collect on behalf of the
8 Council, one or more special assessments on the financial
9 companies identified in subsections (e) and (f) to collect,
10 in the aggregate, the lesser of—

11 (1) \$19,000,000,000; and

12 (2) the product of $1\frac{1}{3}$ and the amount nec-
13 essary to fully offset the net deficit effects of the
14 provisions of this Act (excluding the effects of sec-
15 tions 1601 and 1602) for the period starting on the
16 date of enactment of this Act and through Sep-
17 tember 30, 2020, which amount shall be determined
18 by the Director of the Office of Management and
19 Budget—

20 (A) by reference to the latest statement
21 submitted for printing in the Congressional
22 Record by the Chairmen of the House and Sen-
23 ate Budget Committees titled “Budgetary Ef-
24 fects of PAYGO Legislation” for this Act, ex-
25 cluding the net deficit effects of the special as-

1 assessments imposed under sections 1601 and
2 1602, provided that such statement has been
3 submitted prior to the vote on passage in the
4 House acting first on the conference report for
5 that Act; or

6 (B) in all other circumstances, using the
7 Director's estimate of such amount upon the
8 enactment of this Act, provided that such esti-
9 mate shall be based on the approaches to
10 scorekeeping set forth in section 308 of the
11 Congressional Budget Act of 1974, and section
12 4(g)(4) of the Statutory Pay-As-You-Go Act of
13 2010, and shall use the same economic and
14 technical assumptions as used in the most re-
15 cent budget submitted by the President under
16 section 1105(a) of title 31 of the United States
17 Code.

18 (b) TIMING OF PAYMENTS.—The special assessments
19 described under subsection (a) shall be collected on an an-
20 nual basis, with the first payment due no later than Sep-
21 tember 30, 2012, and subsequent payments due no later
22 than September 30, 2013, no later than September 30,
23 2014, and no later than September 30, 2015, respectively.

24 (c) ASSESSMENTS PLACED IN THE FINANCIAL CRISIS
25 SPECIAL ASSESSMENT FUND.—Special assessments col-

1 lected pursuant to this section shall be deposited by the
2 Corporation as follows:

3 (1) The first \$15,000,000 in special assess-
4 ments collected pursuant to this section shall be de-
5 posited in an account to be maintained by the Cor-
6 poration for the payment of reasonable implementa-
7 tion and administrative expenses of the Corporation
8 associated with the collection of assessments for the
9 Financial Crisis Special Assessment Fund estab-
10 lished under section 1602; and

11 (2) the remainder of the special assessments
12 shall be deposited into the Financial Crisis Special
13 Assessment Fund established under section 1602.

14 (d) RULEMAKING REQUIREMENT.—The Chairperson
15 of the Council shall prescribe regulations to carry out this
16 section.

17 (e) COMPANIES SUBJECT TO ASSESSMENT.—The
18 Council shall impose risk-based assessments on and the
19 Corporation shall collect such assessments from financial
20 companies in such amount and manner and subject to
21 such terms and conditions that the Council determines are
22 necessary in order to satisfy the requirements of sub-
23 sections (a), (f), (g) and (h).

24 (f) MINIMUM ASSESSMENT THRESHOLD.—

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1 (1) IN GENERAL.—The Council shall not assess
2 financial companies with less than \$50,000,000,000,
3 adjusted for inflation, in assets on a consolidated
4 basis and shall assess financial companies with
5 \$50,000,000,000, adjusted for inflation, or more in
6 assets in accordance with subsections (g) and (h).

7 (2) HEDGE FUNDS.—The Council shall not as-
8 sess financial companies that manage hedge funds
9 (as defined by the Council, in consultation with the
10 Securities and Exchange Commission, for purposes
11 of this section) with less than \$10,000,000,000, ad-
12 justed for inflation, of assets under management on
13 a consolidated basis, and shall assess any financial
14 companies that manage hedge funds with
15 \$10,000,000,000 or more of assets under manage-
16 ment in accordance with subsections (g) and (h).

17 (g) FACTORS.—The Council shall establish a risk ma-
18 trix to be used in establishing the special assessment that
19 takes into account—

20 (1) the need to satisfy the requirement of sub-
21 section (a);

22 (2) any assessments imposed on a financial
23 company or an affiliate of a financial company
24 that—

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1 (A) is an insured depository institution, as-
2 sessed pursuant to section 7 or 13(c)(4)(G) of
3 the Federal Deposit Insurance Act;

4 (B) is a member of the Securities Investor
5 Protection Corporation, assessed pursuant to
6 section 4 of the Securities Investor Protection
7 Act of 1970 (15 U.S.C. 78ddd);

8 (C) is an insured credit union, assessed
9 pursuant to section 202(c)(1)(A)(i) of the Fed-
10 eral Credit Union Act (12 U.S.C.
11 1782(c)(1)(A)(i)); or

12 (D) is an insurance company, assessed
13 pursuant to applicable State law to cover (or re-
14 imburse payments made to cover) the costs of
15 the rehabilitation, liquidation, or other State in-
16 solvency proceeding with respect to 1 or more
17 insurance companies;

18 (3) the extent of the company's leverage;

19 (4) the extent and nature of the company's off
20 balance sheet exposures;

21 (5) the extent and nature of the company's
22 transactions and relationships with other financial
23 companies;

24 (6) the company's importance as a source of
25 credit for households, businesses, and State and

1 local governments and as a source of liquidity for
2 the financial system;

3 (7) the company's importance as a source of
4 credit for low-income, minority, or underserved com-
5 munities and the impact the failure of such company
6 would have on the availability of credit in such com-
7 munities;

8 (8) the extent to which assets are simply man-
9 aged and not owned by the financial company and
10 the extent to which ownership of assets under man-
11 agement is diffuse;

12 (9) the nature, scope, and mix of the company's
13 activities;

14 (10) the degree to which the company is already
15 regulated by one or more Federal financial regu-
16 latory agencies or, in the case of a foreign financial
17 parent, the extent to which such foreign parent is
18 subject to prudential standards on a consolidated
19 basis in the home country of such financial parent
20 that are administered and enforced by a comparable
21 foreign supervisory authority;

22 (11) the amount and nature of the company's
23 financial assets;

1 (12) the amount and nature of the company's
2 liabilities, including the degree of reliance on short
3 term funding; and

4 (13) such other risk-related factors as the
5 Council may determine to be appropriate.

6 (h) REQUIREMENT FOR EQUITABLE TREATMENT IN
7 ASSESSMENTS.—In establishing the special assessment
8 system under this section, the Council shall consider dif-
9 ferences among financial companies based on complexity
10 of operations or organization, interconnectedness, size, di-
11 rect or indirect activities, and any other risk-related fac-
12 tors the Council may deem appropriate to ensure that the
13 assessments charged take into account the risk posed to
14 the financial system by particular classes of financial com-
15 panies.

16 (i) INFORMATION GATHERING AND VERIFICATION;
17 PAYMENTS.—

18 (1) IN GENERAL.—The Council may require
19 each financial company to make available such infor-
20 mation as the Council may require—

21 (A) for purposes of—

22 (i) determining the financial com-
23 pany's assessments under this section; and

24 (ii) verifying the accuracy of informa-
25 tion; and

1 (B) for such other purposes as may be ap-
2 propriate and necessary to determine appro-
3 priate risk-based assessments in accordance
4 with this section.

5 (2) USE OF EXISTING REPORTS.—The Council
6 shall, to the fullest extent possible, accept—

7 (A) reports that a financial company has
8 provided or been required to provide to other
9 Federal or State supervisors or to appropriate
10 self-regulatory organizations;

11 (B) information that is otherwise required
12 to be reported publicly; and

13 (C) externally audited financial statements.

14 (3) AUTHORITY FOR ON-SITE INSPECTION.—
15 The appropriate Federal supervisory agency (or the
16 Board of Governors in the absence of any such agen-
17 cy) may make on-site inspections of a financial com-
18 pany's books and records as necessary to carry out
19 the purposes of this subsection.

20 (4) RULEMAKING.—The Chairperson of the
21 Council, in consultation with the Corporation, may
22 promulgate such regulations as are necessary or ap-
23 propriate to implement this subsection.

24 (5) PAYMENTS OF ASSESSMENTS REQUIRED.—

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1 (A) IN GENERAL.—Any financial company
2 subject to an assessment under this section
3 shall pay to the Corporation such assessment.

4 (B) COLLECTION OF ASSESSMENTS.—The
5 assessments required under this section shall be
6 collected in such manner and at such time or
7 times as the Corporation, in consultation with
8 the Council, shall prescribe by regulation.

9 (6) PENALTY FOR FAILURE TO TIMELY PAY AS-
10 SEMENTS.—Any financial company that fails or
11 refuses to pay any assessment under this section
12 shall be subject to a penalty under section 18(h) of
13 the Federal Deposit Insurance Act, as if that finan-
14 cial company were an insured depository institution.

15 (j) DEFINITIONS.—For purposes of this section, the
16 following definitions shall apply:

17 (1) COUNCIL.—The term “Council” means the
18 Financial Stability Oversight Council established
19 under section 111.

20 (2) FINANCIAL COMPANY.—The term “financial
21 company” means any company that—

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

24 (B) is—

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

5 (ii) any savings and loan holding com-
6 pany as defined in section 10(a)(1)(D) of
7 the Home Owners' Loan Act (12 U.S.C.
8 1467a(a)(1)(D));

9 (iii) any nonbank financial company
10 supervised by the Board of Governors of
11 the Federal Reserve System, as defined in
12 section 113;

13 (iv) any insurance company;

14 (v) any company predominantly en-
15 gaged in activities that are financial in na-
16 ture or incidental thereto for purposes of
17 section 4(k) of the Bank Holding Company
18 Act of 1956 (12 U.S.C. 1843(k)) or activi-
19 ties that the Council identified as war-
20 ranting new or heightened prudential
21 standards under section 120; or

22 (vi) any subsidiary of companies de-
23 scribed in clause (i), (ii), (iii), (iv), or (v)
24 (other than an insured depository institu-
25 tion or any broker or dealer registered with

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1 the Securities and Exchange Commission
2 under section 15(b) of the Securities Ex-
3 change Act of 1934 (15 U.S.C. 78o(b))
4 that is a member of the Securities Investor
5 Protection Corporation);

6 (C) that is not a Farm Credit System in-
7 stitution chartered under and subject to the
8 provisions of the Farm Credit Act of 1971 (12
9 U.S.C. 2001 et seq.);

10 (D) that is not a Federal home loan bank,
11 the Federal National Mortgage Association, or
12 the Federal Home Loan Mortgage Corporation;

13 (E) that is not an investment company
14 registered with the Securities and Exchange
15 Commission under the Investment Company
16 Act of 1940;

17 (F) that is not a common trust fund de-
18 scribed under section 3(c)(3) of the Investment
19 Company Act of 1940;

20 (G) that is not a collective investment fund
21 described under section 3(c)(3) of the Invest-
22 ment Company Act of 1940; and

23 (H) is not an insured depository institution
24 (as defined in section 3(c) of the Federal De-
25 posit Insurance act), a Federal credit union or

1 a State-chartered credit union (as such terms
2 are defined in section 101 of the Federal Credit
3 Union Act), or a government-sponsored enter-
4 prise (as such term is defined in section 1004(f)
5 of the Financial Institutions Reform, Recovery
6 and Enforcement Act of 1989 (12 U.S.C. 1811
7 note)).

8 **SEC. 1602. FINANCIAL CRISIS SPECIAL ASSESSMENT FUND.**

9 (a) **ESTABLISHMENT.**—There is established in the
10 Treasury of the United States a separate fund to be
11 known as the Financial Crisis Special Assessment Fund
12 (hereafter in this section referred to as the “Fund”).

13 (b) **SEPARATE HOLDING.**—Assessments deposited
14 into the Fund—

15 (1) shall be assets of the Fund only; and

16 (2) may not be consolidated with any other
17 funds within the Treasury of the United States.

18 (c) **SOURCE OF FUNDS.**—The Fund shall be funded
19 from assessments in accordance with section 1601. Such
20 assessments shall only be imposed and collected from fi-
21 nancial companies as described in such section.

22 (d) **INVESTMENT OF FUNDS.**—Funds held in the
23 Fund shall be invested in obligations of the United States
24 issued directly to the Fund having suitable maturities and

1 paying suitable interest rates, as determined by the Sec-
2 retary.

3 (e) RECORDKEEPING.—The Secretary of the Treas-
4 ury shall establish books and records reflecting the assets
5 attributable to the Fund, which shall include all earnings
6 from investments and which shall be updated as appro-
7 priate.

8 (f) LIMITATION.—The Fund shall not be used in con-
9 nection with the liquidation of any financial company
10 under title II or any financial stabilization action taken
11 under this Act.

12 (g) TERMINATION OF FUND.—Amounts in the Fund
13 shall not be utilized, expended, or otherwise made avail-
14 able for any obligation or purpose for a period of 25 years
15 from the date of the enactment of this Act and at the
16 conclusion of such period shall only be used for the pur-
17 pose of reducing the debt of the United States Govern-
18 ment.

19 **SEC. 1603. CERTAIN SWAPS, ETC., NOT TREATED AS SEC-**
20 **TION 1256 CONTRACTS.**

21 (a) IN GENERAL.—Subsection (b) of section 1256 of
22 the Internal Revenue Code of 1986 is amended—

23 (1) by redesignating paragraphs (1) through
24 (5) as subparagraphs (A) through (E), respectively,

1 and by indenting such subparagraphs (as so redesignated) accordingly,

2 (2) by striking “For purposes of” and inserting the following:

3 “(1) IN GENERAL.—For purposes of”, and

4 (3) by striking the last sentence and inserting the following new paragraph:

5 “(2) EXCEPTIONS.—The term ‘section 1256 contract’ shall not include—

6 “(A) any securities futures contract or option on such a contract unless such contract or option is a dealer securities futures contract, or

7 “(B) any interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap, credit default swap, or similar agreement.”.

8 (b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.