IN THE SENATE OF THE UNITED STATES

JANUARY 20, 2010

Received; read twice and referred to the Committee on Banking, Housing, and Urban Affairs

AN ACT

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Wall Street Reform and Consumer Protection Act of 2009”.

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

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

3 (a) Short Title.—This title may be cited as the “Financial Stability Improvement Act of 2009”.

4 (b) Definitions.—For purposes of this title, the following definitions shall apply:

5 (1) The term “Board” means the Board of Governors of the Federal Reserve System.
(2) The term “Council” means the Financial Services Oversight Council established under section 1001.

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

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

(A) that is—

(i) incorporated or organized under the laws of the United States or any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands; or

(ii) a company incorporated in or organized in a country other than the United States that has significant operations in the United States (hereafter in this title referred to as a “foreign financial parent”) after through—

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

(II) a United States affiliate or other United States operating entity;

(B) that is, in whole or in part, directly or indirectly, engaged in financial activities; and

(C) that is not a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 et seq.).

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

(A) a financial company that has been subjected to stricter prudential standards under subtitle B; or

(B) in the case of a financial company described in subparagraph (A) that is required to establish an intermediate holding company under section 6 of the Bank Holding Company Act, the section 6 holding company through which the financial company is required to conduct its financial activities.
(6) The term “primary financial regulatory agency” means the following:

(A) The Comptroller of the Currency, with respect to any national bank, any Federal branch or Federal agency of a foreign bank, and, after the date on which the functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision are transferred under subtitle C, a Federal savings association.

(B) The Board, with respect to—

(i) any State member bank;

(ii) any bank holding company and any subsidiary of such company (as such terms are defined in the Bank Holding Company Act), other than a subsidiary that is described in any other subparagraph of this paragraph to the extent that the subsidiary is engaged in an activity described in such subparagraph;

(iii) any financial holding company subject to stricter standards and any subsidiary (as such term is defined in the Bank Holding Company Act) of such company, other than a subsidiary that is de-
scribed in any other subparagraph of this paragraph to the extent that the subsidiary is engaged in an activity described in such subparagraph;

(iv) after the date on which the functions of the Office of Thrift Supervision are transferred under subtitle C, any savings and loan holding company (as defined in section 10(a)(1)(D) of the Home Owners’ Loan Act) and any subsidiary (as such term is defined in the Bank Holding Company Act of 1956) of such company, other than a subsidiary that is described in any other subparagraph of this paragraph, to the extent that the subsidiary is engaged in an activity described in such subparagraph;

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

(vi) any foreign bank or company that is treated as a bank holding company under subsection (a) of section 8 of the International Banking Act of 1978 and
any subsidiary (other than a bank or other subsidiary that is described in any other subparagraph of this paragraph) of any such foreign bank or company.

(C) The Federal Deposit Insurance Corporation, with respect to any State nonmember bank, any insured State branch of a foreign bank (as such terms are defined in section 3 of the Federal Deposit Insurance Act), and, after the date on which the functions of the Office of Thrift Supervision are transferred under subtitle C, any State savings association.

(D) The National Credit Union Administration, with respect to any insured credit union under the Federal Credit Union Act (12 U.S.C. 1751 et seq.).

(E) The Securities and Exchange Commission, with respect to—

(i) any broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

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

(iii) any investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) with respect to the investment advisory activities of such company and activities incidental to such advisory activities;

(iv) any clearing agency (as defined in section 3(a)(23) of the Securities Exchange Act of 1934);

(v) a securities-based swap execution facility that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);


(vii) any credit rating agency registered with the Securities and Exchange

(viii) any securities information processor registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); and


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

(i) any futures commission merchant, any commodity trading adviser, any retail foreign exchange dealer, and any commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.) with respect to the commodities activities of such entity and activities incidental to such commodities activities; and

(ii) any derivatives clearing organization, designated contract market, or swap
execution facility (as defined in the Commodity Exchange Act).


(H) The State insurance authority of the State in which an insurance company is domiciled, with respect to the insurance activities and activities incidental to such insurance activities of an insurance company that is subject to supervision by the State insurance authority under State insurance law.

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

(7) TERMS DEFINED IN OTHER LAWS.—

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

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

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

(a) IN GENERAL.—Notwithstanding any other provision of law, the Comptroller General of the United States shall perform an audit of all actions taken by the Board of Governors of the Federal Reserve System and the Federal reserve banks during the current economic crisis pursuant to the authority granted under section 13(c) of the Federal Reserve Act. Such audit shall be completed as expeditiously as possible, but no later than 2 years, after the date of the enactment of the Financial Stability Improvement Act of 2009.

(b) REPORT.—

(1) REQUIRED.—Not later than the end of the 90-day period beginning on the date the audit referred to in subsection (a) is completed, the Comptroller General of the United States shall submit a report to the Congress, and make such report available to the public.

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

Subtitle A—The Financial Services
Oversight Council

SEC. 1001. FINANCIAL SERVICES OVERSIGHT COUNCIL ES-
TABLED.

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

(b) Membership.—The Council shall consist of the
following:

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

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

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

(C) The Comptroller of the Currency.

(D) The Director of the Office of Thrift
Supervision, until the functions of the Director
of the Office of Thrift Supervision are trans-
ferred pursuant to subtitle C.
(E) The Chairman of the Securities and Exchange Commission.

(F) The Chairman of the Commodity Futures Trading Commission.

(G) The Chairperson of the Federal Deposit Insurance Corporation.

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

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

(J) The head of the Consumer Financial Protection Agency.

(2) NONVOTING MEMBERS.—Nonvoting members, who shall serve in an advisory capacity and shall not be excluded from any of the Council’s proceedings, meetings, discussions, and deliberations:

(A) The Director of the Federal Insurance Office.

(B) A State insurance commissioner, to be designated by a selection process determined by the State insurance commissioners, provided that the term for which a State insurance commissioner may serve shall last no more than the 2-year period beginning on the date that the commissioner is selected.
(C) A State banking supervisor, to be designated by a selection process determined by the State bank supervisors, provided that the term for which a State banking supervisor may serve shall last no more than the 2-year period beginning on the date that the supervisor is selected.

(D) A State securities commissioner (or an officer performing like functions), to be designated by a selection process determined by such State securities commissioners, provided that the term for which a State securities commissioner may serve shall last no more than the 2-year period beginning on the date that the commissioner is selected.

(e) Duties.—The Council shall have the following duties:

   (1) To advise the Congress on financial domestic and international regulatory developments, including insurance and accounting developments, and make recommendations that will enhance the integrity, efficiency, competitiveness, and stability of the United States financial markets.
(2) To monitor the financial services marketplace to identify potential threats to the stability of the United States financial system.

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

(4) To develop strategies (and conduct exercises in furtherance of those strategies) to prepare for potential threats identified under paragraphs (2) and (3). In doing so, the Council shall collaborate with participants in the financial sector, financial sector coordinating councils, and any other parties the Council determines to be appropriate.

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

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

(7) To monitor international regulatory developments, including both insurance and accounting developments, and to identify those developments that may conflict with the policies of the United States
or place United States financial services firms or United States financial markets at a competitive dis-
advantage.

(8) To facilitate information sharing and co-
ordination among the members of the Council re-
garding financial services policy development,
rulemakings, examinations, reporting requirements,
and enforcement actions.

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

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

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

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

(a) REQUEST FOR DISPUTE RESOLUTION.—The Council shall resolve a dispute among 2 or more Federal financial regulatory agencies if—
(1) a Federal financial regulatory agency has a dispute with another Federal financial regulatory agency about the agencies’ respective jurisdiction over a particular financial company or financial activity or product (excluding matters for which a dispute mechanism specifically has been provided under section 4204 or title III);

(2) the disputing agencies cannot, after a demonstrated good faith effort, resolve the dispute among themselves; and

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

(A) provides all other disputants prior notice of its intent to request dispute resolution by the Council; and

(B) requests in writing, no earlier than 14 days after providing the notice described in paragraph (A), that the Council resolve the dispute.

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

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

(2) after consideration of relevant information provided by each party to the dispute; and
(3) by agreeing with 1 of the disputants regarding the entirety of the matter or by determining a compromise position.

(c) Form and Binding Effect.—A Council decision under this section shall be in writing and include an explanation and shall be binding on all Federal financial regulatory agencies that are parties to the dispute.

SEC. 1003. TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.

The Council is authorized to appoint—

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

(2) such temporary special advisory, technical, or professional committees as may be useful in carrying out its functions, which may be composed of Council members and their staff, other persons, or a combination.

SEC. 1004. FINANCIAL SERVICES OVERSIGHT COUNCIL MEETINGS AND COUNCIL GOVERNANCE.

(a) Meetings.—The Council shall meet as frequently as the Chairman deems necessary, but not less than quarterly.

(b) Voting.—Unless otherwise provided, the Council shall make all decisions the Council is required or author-
IZED TO MAKE BY A MAJORITY OF THE TOTAL VOTING MEMBERSHIP
OF THE COUNCIL UNDER SECTION 1001(b)(1).

SEC. 1005. COUNCIL STAFF AND FUNDING.

(a) VOTING MEMBERS OF THE COUNCIL.—The Secretary of the Treasury shall and all other voting members
of the Council may, with the approval of the Council—

(1) detail permanent staff from the Department
of the Treasury to provide the Council (and any
temporary special advisory, technical, or professional
committees appointed by the Council) with profes-
sional and expert support; and

(2) provide such other services and facilities
necessary for the performance of the Council’s func-
tions and fulfillment of the duties and mission of the
Council.

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

(1) detail department or agency staff on a tem-
porary basis to provide additional support to the
Council (and any special advisory, technical, or pro-
fessional committees appointed by the Council); and
(2) provide such services, and facilities as the
other departments or agencies may determine advis-
able.

(c) STAFF STATUS; COUNCIL FUNDING.—

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

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

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

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

SEC. 1006. REPORTS TO THE CONGRESS.

(a) IN GENERAL.—Semiannually the Council shall
submit a report to the Committee on Ways and Means,
the Committee on Agriculture, and the Committee on Fi-
nancial Services of the House of Representatives and the
Committee on Finance, the Committee on Agriculture,
and the Committee on Banking, Housing, and Urban Af-
fairs of the Senate, and the Comptroller General of the
United States that—
(1) describes significant financial and regulatory developments, including insurance and accounting regulations and standards, and assesses the impact of those developments on the stability of the financial system;

(2) recommends actions that will improve financial stability;

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

(4) describes strategies developed by the Council to respond to potential threats to the stability of the United States financial system and the outcome of exercises conducted in furtherance of those strategies;

(5) describes the nature and scope of any company or activities identified under subtitle B and steps taken to address them; and

(6) describes any dispute resolutions undertaken under section 1002 and the result of such resolutions.

(b) Evaluation of Annual Report by GAO.—Not later than 120 days after receiving the report required by subsection (a), the Comptroller General of the United
States shall submit an evaluation of such report to the Committee on Ways and Means, the Committee on Agriculture, and the Committee on Financial Services of the House of Representatives and the Committee on Finance, the Committee on Agriculture, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(c) **Statements by Voting Members of the Council.**—At the time each report is submitted under subsection (a), each voting member of the Council shall—

(1) if such member believes that the Council, the Government, and the private sector are taking all reasonable steps to ensure financial stability and to prevent systemic risk that would negatively affect the economy, submit a signed statement to the Committee on Ways and Means, the Committee on Agriculture, and the Committee on Financial Services of the House of Representatives and the Committee on Finance, the Committee on Agriculture, and the Committee on Banking, Housing, and Urban Affairs of the Senate stating such belief; or

(2) if such member does not believe that all reasonable steps described under paragraph (1) are being taken, submit a signed statement to the Committee on Ways and Means, the Committee on Agriculture, and the Committee on Financial Services of
the House of Representatives and the Committee on Finance, the Committee on Agriculture, and the Committee on Banking, Housing, and Urban Affairs of the Senate stating what actions such member believes need to be taken in order to ensure that all reasonable steps described under paragraph (1) are taken.

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

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

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

(e) STUDY OF EFFECTS CONSUMER FINANCIAL PROTECTION AGENCY REGULATIONS AND STANDARDS.—

(1) STUDY REQUIRED.—The Council shall conduct a study of the effects that regulations and standards of the Consumer Financial Protection Agency will have on all covered persons (as such term is defined in section 4002(9)), including non-depository institution covered persons. The Director
of the Consumer Financial Protection Agency shall take the findings of the study into account when issuing regulations.

(2) VALUE OF NONBANK PRODUCTS.—The study shall include an evaluation and assessment of the appropriateness of using “APR” as a true measure of the value of all nonbank products.

(3) SUBMISSION.—Not later than 240 days after the date of the enactment of this Act, the Director of the Consumer Financial Protection Agency shall submit the study to Congress and include any recommendations the Director may have for changes in law and regulations to improve consumer protections and maintain access to credit.

SEC. 1007. APPLICABILITY OF CERTAIN FEDERAL LAWS.

(a) The Federal Advisory Committee Act shall not apply to the Financial Services Oversight Council, or any special advisory, technical, or professional committees appointed by the Council (except that, if an advisory, technical, or professional committee has one or more members who are not employees of or affiliated with the United States government, the Council shall publish a list of the names of the members of such committee).

(b) The Council shall not be deemed an “agency” for purposes of any State or Federal law.
SEC. 1008. OVERSIGHT BY GAO.

(a) AUTHORITY TO AUDIT.—The Comptroller General of the United States may audit the activities and financial transactions of—

(1) the Council; and

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

(b) ACCESS TO INFORMATION.—

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

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

(B) any records or other information under the control of a person or entity acting on behalf of or under the authority of the Council, to the extent such records or other information is relevant to an audit under subsection (a); and

(C) the officers, directors, employees, financial advisors, staff, working groups, and agents and representatives of the Council (as related to the agent’s or representative’s activi-
ties on behalf of the Council) at such reasonable times as the Comptroller General may request.

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

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

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

(3) COPIES.—Comptroller General may make and retain copies of such books, accounts, and other records access to which is granted under this provision as the Comptroller General considers appropriate.

(c) PERIODIC EVALUATIONS.—The Comptroller General of the United States shall periodically evaluate the processes and activities of the Council and the extent to which the Council is fulfilling its duties under this title. The Comptroller General shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the results of each such evaluation.
Subtitle B—Prudential Regulation of Companies and Activities for Financial Stability Purposes

SEC. 1100. FEDERAL RESERVE BOARD AUTHORITY THAT OF AGENT ACTING ON BEHALF OF COUNCIL.

For purposes of this subtitle, the Board of Governors of the Federal Reserve System shall act in the capacity of agent for the Council, acting on behalf of the Council.

SEC. 1101. COUNCIL AND BOARD AUTHORITY TO OBTAIN INFORMATION.

(a) In General.—The Council and the Board are authorized to receive, and may request the production of, any data or information from members of the Council, as necessary—

(1) to monitor the financial services marketplace to identify potential threats to the stability of the United States financial system;

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

(3) to otherwise carry out any of the provisions of this title, including to ascertain a primary financial regulatory agency’s implementation of recommended prudential standards under this subtitle.
(b) Submission by Council Members.—Notwithstanding any provision of law, any voting or nonvoting member of the Council is authorized to provide information to the Council, and the members of the Council shall maintain the confidentiality of such information.

(e) Financial Company Data Collection.—

(1) In general.—The Council or the Board may require the submission of periodic and other reports from any financial company solely for the purpose of assessing the extent to which a financial activity or financial market in which the financial company participates, or the company itself, poses a threat to financial stability.

(2) Mitigation of report burden.—Before requiring the submission of reports from financial companies that are regulated by the primary financial regulatory agencies, the Council or the Board shall coordinate with such agencies and shall, whenever possible, rely on information already being collected by such agencies.

(3) Mitigation requirements in case of foreign financial parents.—Before requiring the submission of reports from a company that is a foreign financial parent, the Council or the Board shall, to the extent appropriate, coordinate with any
appropriate foreign regulator of such company and
any appropriate multilateral organization and, when-
ever possible, rely on information already being col-
lected by such foreign regulator or multilateral orga-
nizational with English translation.

(d) Consultation With Agencies and Entities.—The Council or the Board, as appropriate, may
consult with Federal and State agencies and other entities
(including the Federal Insurance Office) to carry out any
of the provisions of this subtitle.

(e) Additional Provisions.—

(1) Data and Information Sharing.—The
Chairman of the Council, in consultation with the
other members of the Council, may—

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

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

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

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

(2) Applicable privileges not waived.—A Federal financial regulator, State financial regulator, United States financial company, foreign financial company operating in the United States, financial market utility, or other person shall not be compelled to waive and shall not be deemed to have waived any privilege otherwise applicable to any data or information by transferring the data or information to, or permitting that data or information to be used by—

(A) the Council;

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

(C) any other agency of the Federal Government (as defined in section 6 of title 18, United States Code).

(3) Disclosure exemption.—Any information obtained by the Council under this section shall be exempt from the disclosure requirements under section 552 of title 5, United States Code.

(4) Consultation with foreign governments.—Under the supervision of the President, and in a manner consistent with section 207 of the
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Foreign Service Act of 1980 (22 U.S.C. 3927), the Chairman of the Council, in consultation with the other members of the Council, shall regularly consult with the financial regulatory entities and other appropriate organizations of foreign governments or international organizations on matters relating to systemic risk to the international financial system.

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

SEC. 1102. COUNCIL PRUDENTIAL REGULATION RECOMMENDATIONS TO FEDERAL FINANCIAL REGULATORY AGENCIES; AGENCY AUTHORITY.

(a) IN GENERAL.—The Council is authorized to issue formal recommendations, publicly or privately, that a Federal financial regulatory agency adopt stricter prudential standards for firms it regulates to mitigate systemic risk.
(b) AGENCY AUTHORITY TO IMPLEMENT STANDARDS.—

(1) A Federal financial regulatory agency specifically may, in response to a Council recommendation under this section or otherwise, impose, require reports regarding, examine for compliance with, and enforce stricter prudential standards and safeguards for the firms it regulates to mitigate systemic risk. This authority is in addition to and does not limit any other authority of the Federal financial regulatory agencies. Compliance by an entity with actions taken by a Federal financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective Federal financial regulatory agency’s jurisdiction over the entity as if the agency action were taken under those statutes.

(2) APPLYING STANDARDS TO FOREIGN FINANCIAL PARENTS.—In applying standards under paragraph (1) to any foreign financial parent, or to any branch of, subsidiary of, or other operating entity related to such foreign financial parent that operates within the United States, the Federal financial regulatory agency shall—
(A) give due regard to the principles of national treatment and equality of competitive opportunity; and

(B) take into account the extent to which the foreign financial parent is subject to comparable standards on a consolidated basis in the home country of such foreign financial parent that are administered by a comparable foreign supervisory authority.

(c) AGENCY NOTICE TO COUNCIL.—A Federal financial regulatory agency shall, within 60 days of receiving a Council recommendation under this section, notify the Council in writing regarding—

(1) the actions the Federal financial regulatory agency has taken in response to the Council’s recommendation, additional actions contemplated, and timetables therefore; or

(2) the reason the Federal financial regulatory agency has failed to respond to the Council’s request.

SEC. 1103. SUBJECTING FINANCIAL COMPANIES TO STRICTER PRUDENTIAL STANDARDS FOR FINANCIAL STABILITY PURPOSES.

(a) IN GENERAL.—The Council shall, in consultation with the Board and any other primary financial regulatory
agency that regulates the financial company or a subsidiary of such company, and, in the case of a financial holding company subject to stricter standards that is an insurance company, the Federal Insurance Office, subject a financial company to stricter prudential standards under this subtitle if the Council determines that—

(1) material financial distress at the company could pose a threat to financial stability or the economy; or

(2) the nature, scope, size, scale, concentration, and interconnectedness, or mix of the company’s activities could pose a threat to financial stability or the economy.

(b) CRITERIA.—In making a determination under subsection (a), the Council shall consider the following criteria:

(1) The extent of the company’s leverage.

(2) The extent and nature of the company’s off-balance sheet exposures.

(3) The extent and nature of the company’s transactions and relationships with other financial companies.

(4) The company’s importance as a source of credit for households, businesses, and State and
local governments and as a source of liquidity for
the financial system.

(5) The company’s importance as a source of
credit for low-income, minority, or underserved com-
munities and the impact the failure of such company
would have on the availability of credit in such com-
munities.

(6) The extent to which assets are simply man-
aged and not owned by the financial company and
the extent to which ownership of assets under man-
agement is diffuse.

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

(8) The degree to which the company is already
regulated by one or more Federal financial regu-
latory agencies or, in the case of a foreign financial
parent, the extent to which such foreign parent is
subject to prudential standards on a consolidated
basis in the home country of such financial parent
that are administered and enforced by a comparable
foreign supervisory authority.

(9) The amount and nature of the company’s fi-
nancial assets.
(10) The amount and nature of the company’s liabilities, including the degree of reliance on short-term funding.

(11) Any other factors that the Council deems appropriate.

(c) NOTIFICATION OF DECISION.—The Board, in an executive capacity on behalf of the Council, shall immediately upon the Council’s decision notify the financial company by order, which shall be public, that the financial company is subject to stricter prudential standards, as prescribed by the Board in accordance with section 1104.

(d) PERIODIC REVIEW AND RESCISSION OF FINDINGS.—

(1) SUBMISSION OF ASSESSMENT.—The Board shall periodically submit a report to the Council containing an assessment of whether each company subjected to stricter prudential standards should continue to be subject to such standards.

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

(A) review the assessment submitted pursuant to paragraph (1) and any information or recommendation submitted by members of the Council regarding whether a financial holding
company subject to stricter standards continues
to merit stricter prudential standards; and

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

(e) APPEAL.—

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

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

(f) EFFECT OF COUNCIL DECISION.—

(1) APPLICATION OF FEDERAL LAWS.—

(A) APPLICATION OF BANK HOLDING COM-
PANY ACT AND FEDERAL DEPOSIT INSURANCE
ACT.—A financial company subject to stricter standards that does not own a bank (as defined in section 2 of the Bank Holding Company Act of 1956) and that is not a foreign bank or company that is treated as a bank holding company under section 8 of the International Banking Act of 1978 shall be subject to section 4, subsections (b), (c), (d), (e), (f), and (g) of section 5, and section 8 of the Bank Holding Company Act of 1956, and section 8 of the Federal Deposit Insurance Act in the same manner and to the same extent as if such financial holding company subject to stricter standards were a bank holding company that has elected to be a financial holding company (as such terms are defined in the Bank Holding Company Act of 1956), its subsidiaries were subsidiaries of a bank holding company, and the Board was its appropriate Federal banking agency (as such term is defined under the Federal Deposit Insurance Act).

(B) BOARD AUTHORITY.—For purposes of administering and enforcing the provisions of this title, the Board may take any action with respect to a financial holding company subject
to stricter standards described in subparagraph (A) or its subsidiaries under the authorities described in subparagraph (A) as if such financial holding company subject to stricter standards were a bank holding company that has elected to be a financial holding company (as such terms are defined in the Bank Holding Company Act of 1956), its subsidiaries were subsidiaries of a bank holding company, and the Board was its appropriate Federal banking agency (as such term is defined under the Federal Deposit Insurance Act).

(2) APPLICATION OF ACTIVITY RESTRICTIONS AND SECTION 6 HOLDING COMPANY REQUIREMENTS.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C)—

(i) a financial holding company subject to stricter standards that conducts activities that do not comply with section 4 of the Bank Holding Company Act shall be required to establish or designate a section 6 holding company in accordance with section 6 of the Bank Holding Company Act of 1956 through which it conducts activi-
ties of the company that are determined to 
be financial in nature or incidental thereto 
under section 4(k) of the such Act; and 
(ii) such section 6 holding company 
shall be the financial holding company sub-
ject to stricter standards for purposes of 
this title.

(B) Exceptions from section 6 holding 
company requirements.—

(i) General requirement for 
board to consider exceptions.—Before such time as a financial holding com-
pany subject to stricter standards is re-
quired to establish or designate a section 6 
holding company under section 6 of the 
Bank Holding Company Act, and in con-
sultation with the financial holding com-
pany subject to stricter standards and any 
appropriate Federal or State financial reg-
ulators (and, in the case of a financial 
holding company subject to stricter stand-
ards that is an insurance company, the 
Federal Insurance Office)—

(I) the Board shall consider 
whether to grant any of the exemp-
tions from the requirements applicable to section 6 holding companies under section 6(a)(6)(A) of the Bank Holding Company Act of 1956, in accordance with that provision; and

(II) the Board, at the request of a financial holding company subject to stricter standards that is predominant-ly engaged in activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act, shall consider whether to exempt the financial holding company subject to stricter standards from the requirement to establish a section 6 holding company, taking into consideration paragraph (2)(D), and the extent to which the exemption would: facilitate the extension of credit to individuals, households and businesses; improve efficiency or customer service or result in other public benefits; potentially threaten the safety and soundness of the financial holding company or any
of its subsidiaries; potentially increase systemic risk or threaten the stability of the overall financial system; potentially result in unfair competition; and potentially have anticompetitive effects that would not be outweighed by public benefits.

(ii) BOARD DETERMINATION NOT TO EXEMPT.—

(I) IN GENERAL.—If the Board determines not to exempt the financial holding company subject to stricter standards from the requirement to establish a section 6 holding company, the financial holding company subject to stricter standards shall establish a section 6 holding company within 90 days after the Board’s determination.

(II) EXTENSION OF PERIOD.—The Board may extend the time by which the financial holding company subject to stricter standards is required to establish a section 6 holding company for an additional reasonable
period of time, not to exceed 180
days.

(iii) BOARD DETERMINATION TO EX-
EMPT.——

(I) IN GENERAL.—If the Board
grants the requested exemption from
the requirement to establish a section
6 holding company, the financial hold-
ing company subject to stricter stand-
ards shall at all times remain pre-
dominantly engaged in activities that
are determined to be financial in na-
ture or incidental thereto under sec-
tion 4(k) of the Bank Holding Com-
pany Act of 1956, and shall be the fi-
nancial holding company subject to
stricter standards for purposes of this
title.

(II) SUBSEQUENT LOSS OF EX-
EMPTION.—Upon a determination by
the Board, in consultation with any
relevant Federal or State regulators
of the financial holding company sub-
ject to stricter standards, and, in the
case of a financial holding company
subject to stricter standards that is an insurance company, the Federal Insurance Office, that the financial holding company subject to stricter standards fails to comply with this subsection, the financial holding company subject to stricter standards shall lose the exemption from the section 6 holding company requirement and shall establish a section 6 holding company within the time periods described in clause (ii)(I).

(C) Activities Conducted Abroad.—Section 4 of the Bank Holding Company Act of 1956 shall not apply to any activities that a foreign financial holding company subject to stricter standards conducts solely outside the United States if such activities are conducted solely by a company or other entity that is located outside the United States.

(D) Flexible Application.—In applying the activity restrictions and ownership limitations of section 4 of the Bank Holding Company Act of 1956 to financial holding companies subject to stricter standards described in
paragraph (1)(A), the Board shall flexibly adapt such requirements taking into account the usual and customary practices in the business sector of the financial company subject to stricter standards so as to avoid unnecessary burden and expense.

(3) Leverage Limitation.—The Board shall require each financial holding company subject to stricter standards to maintain a debt to equity ratio of no more than 15 to 1, and the Board shall issue regulations containing procedures and timelines for how a financial holding company subject to stricter standards with a debt to equity ratio of more than 15 to 1 at the time such company becomes a financial holding company subject to stricter standards shall reduce such ratio.

SEC. 1104. STRICTER PRUDENTIAL STANDARDS FOR CERTAIN FINANCIAL HOLDING COMPANIES FOR FINANCIAL STABILITY PURPOSES.

(a) Stricter Prudential Standards.—

(1) In general.—To mitigate risks to financial stability and the economy posed by a financial holding company that has been subjected to stricter prudential standards in accordance with section 1103, the Board, as agent of the Council, shall im-
pose stricter prudential standards on such company. Such standards shall be designed to maximize financial stability taking costs to long-term financial and economic growth into account, be heightened when compared to the standards that otherwise would apply to financial holding companies that are not subjected to stricter prudential standards pursuant to this subtitle (including by addressing additional or different types of risks than otherwise applicable standards), and reflect the potential risk posed to financial stability by the financial holding company subject to stricter standards.

(2) Standards.—

(A) Required standards.—The stricter standards imposed by the Board under this section shall include—

(i) risk-based capital requirements and leverage limits, unless the Board determines that such requirements are not appropriate for a financial holding company subject to stricter standards because of such company’s activities (such as investment company activities or assets under management) or structure, in which case the Board shall apply other standards...
that result in appropriately stringent con-
trols.

(ii) liquidity requirements;

(iii) concentration requirements (as
specified in subsection (c));

(iv) prompt corrective action require-
ments (as specified in subsection (e));

(v) resolution plan requirements (as
specified in subsection (f)); and

(vi) overall risk management require-
ments.

(B) ADDITIONAL STANDARDS.—The
heightened standards imposed by the Board
under this section also may include short-term
debt limits prescribed in accordance with sub-
section (d) and any other prudential standards
that the Board deems advisable, including tak-
ing actions to mitigate systemic risk.

(C) CONSULTATION WITH FEDERAL FI-
NANCIAL REGULATORY AGENCIES AND THE
FEDERAL INSURANCE OFFICE.—The Board, in
developing stricter prudential standards under
this subsection, shall consult with other Federal
financial regulatory agencies with respect to
any standard that is likely to have a significant
impact on a functionally regulated subsidiary, or a subsidiary depository institution, of a financial holding company that is subject to stricter prudential standards under this title. With respect to a financial holding company subject to stricter standards that is an insurance company or any insurance company subsidiary of such a financial holding company subject to stricter standards, the Board shall also consult with the Federal Insurance Office.

(3) APPLICATION OF REQUIRED STANDARDS.—In imposing prudential standards under this section, the Board—

(A) may differentiate among financial holding companies subject to stricter standards on an individual basis or by category, taking into consideration their capital structure, risk, complexity, financial activities, the financial activities of their subsidiaries, and any other factors that the Board deems appropriate; and

(B) shall take into consideration whether and to what extent a financial holding company subject to stricter standards that is not a bank holding company or treated as a bank holding company owns or controls a depository institu-
tion and shall adapt the prudential standards
applied to such company as appropriate in light
of any predominant line of business of such
company, including assets under management
or other activities for which capital require-
ments are not appropriate.

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

(5) APPLICATION TO FOREIGN FINANCIAL COM-
PANIES.—The Board shall prescribe regulations re-
garding the application of stricter prudential stand-
ards to a foreign financial parent and to a Federal
or State branch, subsidiary, or operating entity that
is owned or controlled by a foreign financial parent,
giving due regard to principles of national treatment
and equality of competitive opportunity and taking
into account the extent to which the foreign financial
parent is subject on a consolidated basis to home
country standards comparable to those applied to fi-
nancial holding companies in the United States.

(6) INCLUSION OF OFF BALANCE SHEET AC-
TIVITIES IN COMPUTING CAPITAL REQUIREMENTS.—
(A) IN GENERAL.—In the case of any financial holding company subject to stricter standards, the computation of capital requirements shall take into account off balance sheet activities for such a company.

(B) EXEMPTION.—If the Board determines that an exemption from the requirements under subparagraph (A) is appropriate, the Board may exempt a financial holding company subject to stricter standards from the requirements under subparagraph (A) or any transaction or transactions engaged in by such a company.

(C) OFF BALANCE SHEET ACTIVITIES DEFINED.—For purposes of this paragraph, the term “off balance sheet activities” means a liability that is not currently a balance sheet liability but may become one upon the happening of some future event, including the following transactions, to the extent they may create a liability:

(i) Direct credit substitutes in which a bank substitutes its own credit for a third party, including standby letters of credit.
(ii) Irrevocable letters of credit that guarantee repayment of commercial paper or tax-exempt securities.

(iii) Risk participation in bankers’ acceptances.

(iv) Sale and repurchase agreements.

(v) Asset sales with recourse against the seller.

(vi) Interest rate swaps.

(vii) Credit swaps.

(viii) Commodity contracts.

(ix) Forward contracts.

(x) Securities contracts.

(xi) Such other activities or transactions as the Board may, by rule, define.

(b) PRUDENTIAL STANDARDS AT FUNCTIONALLY REGULATED SUBSIDIARIES AND SUBSIDIARY DEPOSITORY INSTITUTIONS.—

(1) BOARD AUTHORITY TO RECOMMEND STANDARDS.—With respect to a functionally regulated subsidiary (as such term is defined in section 5 of the Bank Holding Company Act) or a subsidiary depository institution of a financial holding company subject to stricter standards, the Board may recommend that the relevant Federal financial regu-
latory agency for such functionally regulated sub-
sidiary or subsidiary depository institution prescribe
stricter prudential standards on such functionally
regulated subsidiary or subsidiary depository institu-
tion. Any standards recommended by the Board
under this section shall be of the same type as those
described in subsection (a)(2) that the Board is re-
quired or authorized to impose directly on the finan-
cial holding company subject to stricter standards.

(2) AGENCY AUTHORITY TO IMPLEMENT
HEIGHTENED STANDARDS AND SAFEGUARDS.—Each
Federal financial regulatory agency that receives a
Board recommendation under paragraph (1) is au-
thorized to impose, require reports regarding, exam-
ine for compliance with, and enforce standards
under this subsection with respect to the entities
such agency regulates as described in section
1006(b)(6). This authority is in addition to and does
not limit any other authority of the Federal financial
regulatory agencies. Compliance by an entity with
actions taken by a Federal financial regulatory agen-
cy under this section shall be enforceable in accord-
ance with the statutes governing the respective agen-
cy’s jurisdiction over the entity as if the agency ac-
tion were taken under those statutes.
(3) IMPOSITION OF STANDARDS.—Standards imposed by a Federal financial regulatory agency under this subsection shall be the standards recommended by the Board in accordance with paragraph (1) or any other similar standards that the Board deems acceptable after consultation between the Board and the primary financial regulatory agency and, with respect to an insurance company, the Federal Insurance Office.

(4) FEDERAL FINANCIAL REGULATORY AGENCY RESPONSE; NOTICE TO COUNCIL AND BOARD.—A Federal financial regulatory agency shall notify the Council and the Board in writing on whether and to what extent the agency has imposed the stricter prudential standards described in paragraph (3) within 60 days of the Board’s recommendation under paragraph (1). A Federal financial regulatory agency that fails to impose such standards shall provide specific justification for such failure to act in the written notice from the agency to the Council and Board.

(c) CONCENTRATION LIMITS FOR FINANCIAL HOLDING COMPANIES SUBJECT TO STRICter STANDARDS.—

(1) STANDARDS.—In order to limit the risks that the failure of any company could pose to a fi-
financial holding company subject to stricter standards and to the stability of the United States financial system, the Board, by regulation, shall prescribe standards that limit the risks posed by the exposure of a financial holding company subject to stricter standards to any other company.

(2) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Board shall prohibit each financial holding company subject to stricter standards from having credit exposure to any unaffiliated company that exceeds 25 percent of capital stock and surplus of the financial holding company subject to stricter standards, or such lower amount as the Board may determine by regulation to be necessary to mitigate risks to financial stability.

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

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

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

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

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

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

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

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

(4) Attribution Rule.—For purposes of this
subsection, any transaction by a financial holding
company subject to stricter standards with any per-
son is deemed a transaction with a company to the
extent that the proceeds of the transaction are used
for the benefit of, or transferred to, that company.

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

(6) EXEMPTIONS.—

(A) IN GENERAL.—

(i) FEDERAL HOME LOAN BANKS.—

This subsection shall not apply to any Federal home loan bank, but Federal home loan banks are not exempt from any other provision of this title except as specifically provided in this title.

(ii) APPLICABILITY TO OTHER ENTITIES.—The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation are not exempt from any provision of this title except as specifically provided in this title.

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

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

(d) Short-Term Debt Limits for Certain Financial Holding Companies.—

(1) In general.—In order to limit the risks that an overaccumulation of short-term debt could pose to financial holding companies and to the stability of the United States financial system, the Board may by regulation prescribe a limit on the amount of short-term debt, including off-balance sheet exposures, that may be accumulated by any financial holding company subject to stricter standards for purposes of this title.

(2) Basis of limit.—Any limit prescribed under paragraph (1) shall be based on a financial holding company’s short-term debt as a percentage of its capital stock and surplus or on such other measure as the Board considers appropriate.

(3) Short-term debt defined.—For purposes of this subsection, the term “short-term debt” means such liabilities with short-dated maturity that the Board identifies by regulation, except that such term does not include insured deposits.
(4) Rulemaking authority.—In addition to prescribing regulations under paragraphs (1) and (3), the Board may prescribe such regulations, including definitions consistent with this subsection, and issue such orders as may be necessary to carry out this subsection.

(5) Authority to issue exemptions and adjustments.—Notwithstanding the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), the Board may, if it determines such action is necessary to ensure appropriate heightened prudential supervision, with respect to a financial holding company that does not control an insured depository institution, issue to such company an exemption from or adjustment to the limit prescribed under paragraph (1).

(e) Prompt corrective action for financial holding companies subject to stricter standards.—

(1) Prompt corrective action required.—The Board shall take prompt corrective action to resolve the problems of financial holding companies subject to stricter standards. Except as specifically provided otherwise, this subsection shall apply only
to financial holding companies that are incorporated
or organized under United States laws.

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

(A) CAPITAL CATEGORIES.—

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

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

(iii) SIGNIFICANTLY UNDERCAPITAL-
IZED.—A financial holding company sub-
ject to stricter standards is “significantly
undercapitalized” if it is significantly below
the required minimum level for any rel-
evant capital measure. The Board shall de-
fine by rule or regulation the term “signifi-
cantly undercapitalized” at a threshold the
Board determines to be prudent for the ef-
effective monitoring, management and over-
sight of the financial system.

(iv) Critically undercapital-
ized.—A financial holding company sub-
ject to stricter standards is “critically
undercapitalized” if it fails to meet any
level specified in paragraph (4)(C)(i).

(3) Other definitions.—

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

(B) Capital distribution.—The term
“capital distribution” means—

(i) a distribution of cash or other
property by a financial holding company
subject to stricter standards to its owners
made on account of that ownership, but
not including any dividend consisting only
of shares of the financial holding company
subject to stricter standards or rights to
purchase such shares;
(ii) a payment by a financial holding company subject to stricter standards to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit to finance any person’s acquisition of those shares or interests; and

(iii) a transaction that the Board determines, by order or regulation, to be in substance a distribution of capital to the owners of the financial holding company subject to stricter standards.

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

(D) COMPENSATION.—The term “compensation” includes any payment of money or provision of any other thing of value in consideration of employment.

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

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

(G) **Senior Executive Officer.**—The term “senior executive officer” has the same meaning as the term “executive officer” in section 22(h) of the Federal Reserve Act (12 U.S.C. 375b).

(4) **Capital Standards.**—

(A) **Relevant Capital Measures.**—

(i) **In General.**—Except as provided in clause (ii)(II), the capital standards prescribed by the Board under section 1104(a)(2) shall include—

(I) a leverage limit; and

(II) a risk-based capital requirement.

(ii) **Other Capital Measures.**—The Board may by regulation—

(I) establish any additional relevant capital measures to carry out this section; or

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

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

(C) CRITICAL CAPITAL.—

(i) BOARD TO SPECIFY LEVEL.—

(I) LEVERAGE LIMIT.—The Board shall, by regulation, specify the ratio of tangible equity to total assets at which a financial holding company subject to stricter standards is critically undercapitalized.

(II) OTHER RELEVANT CAPITAL MEASURES.—The Board may, by regulation, specify for 1 or more other relevant capital measures, the level at which a financial holding company subject to stricter standards is critically undercapitalized.
(ii) Leverage limit range.—The level specified under clause (i)(I) shall require tangible equity in an amount—

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

(II) except as provided in sub-clause (I), not more than 65 percent of the required minimum level of capital under the leverage limit.

(5) Capital distributions restricted.—

(A) In general.—A financial holding company subject to stricter standards shall make no capital distribution if, after making the distribution, the financial holding company subject to stricter standards would be undercapitalized.

(B) Exception.—Notwithstanding sub-paragraph (A), the Board may permit a financial holding company subject to stricter standards to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

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

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

(6) Provisions applicable to under-
capitalized financial holding company sub-
ject to stricter standards.—

(A) Monitoring required.—The Board
shall—

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

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

(iii) periodically review the plan, re-
strictions, and requirements applicable to
any undercapitalized financial holding com-
pany subject to stricter standards to determine whether the plan, restrictions, and requirements are effective.

(B) CAPITAL RESTORATION PLAN REQUIRED.—

(i) IN GENERAL.—Any undercapitalized financial holding company subject to stricter standards shall submit an acceptable capital restoration plan to the Board within the time allowed by the Board under clause (iv).

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

(I) specify—

(aa) the steps the financial holding company subject to stricter standards will take to become well capitalized;

(bb) the levels of capital to be attained by the financial holding company subject to stricter standards during each year in which the plan will be in effect;

(cc) how the financial holding company subject to stricter
standards will comply with the restrictions or requirements then in effect under this section; and

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

(II) contain such other information that the Board may require.

(iii) Criteria for Accepting Plan.—The Board shall not accept a capital restoration plan unless it determines that the plan—

(I) complies with clause (ii);

(II) is based on realistic assumptions, and is likely to succeed in restoring the capital of the financial holding company subject to stricter standards; and

(III) would not appreciably increase the risk (including credit risk, interest-rate risk, and other types of risk) to which the financial holding
company subject to stricter standards
is exposed.

(iv) **Deadlines for Submission and**
**Review of Plans.**—The Board shall, by
regulation, establish deadlines that—

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

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

(C) **Asset Growth Restricted.**—An
undercapitalized financial holding company sub-
ject to stricter standards shall not permit its
average total assets during any calendar quar-
ter to exceed its average total assets during the
preceding calendar quarter unless—
(i) the Board has accepted the capital restoration plan of the financial holding company subject to stricter standards;
(ii) any increase in total assets is consistent with the plan; and
(iii) the ratio of tangible equity to total assets of the financial holding company subject to stricter standards increases during the calendar quarter at a rate sufficient to enable it to become well capitalized within a reasonable time.

(D) PRIOR APPROVAL REQUIRED FOR ACQUISITIONS AND NEW LINES OF BUSINESS.—An undercapitalized financial holding company subject to stricter standards shall not, directly or indirectly, acquire any interest in any company or insured depository institution, or engage in any new line of business, unless—

(i) the Board has accepted the capital restoration plan of the financial holding company subject to stricter standards, the financial holding company subject to stricter standards is implementing the plan, and the Board determines that the proposed
action is consistent with and will further the achievement of the plan;

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

(iii) the Board has exempted the financial holding company subject to stricter standards from the requirements of this paragraph with respect to the class of acquisitions that includes the proposed action.

(E) DISCRETIONARY SAFEGUARDS.—The Board may, with respect to any undercapitalized financial holding company subject to stricter standards, take actions described in any clause of paragraph (7)(B) if the Board determines that those actions are necessary. The Board, in determining whether to impose any requirement under this subparagraph that is likely to have a significant effect on a functionally regulated subsidiary, subsidiary depository institution, or insurance company subsidiary of a financial holding company subject to stricter standards, shall consult with the primary financial regulatory agency for such subsidiary. In the case of an insurance company subsidiary of
a financial holding company subject to stricter standards, the Board shall consult with the Federal Insurance Office.

(7) **Provisions applicable to significantly undercapitalized financial holding companies subject to stricter standards and undercapitalized financial holding companies subject to stricter standards that fail to submit and implement capital restoration plans.**—

(A) *In general.*—This paragraph shall apply with respect to any financial holding company subject to stricter standards that—

(i) is significantly undercapitalized; or

(ii) is undercapitalized and—

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

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

(B) **Specific actions authorized.**—The Board shall carry out this paragraph by taking 1 or more of the following actions—
(i) Requiring recapitalization.—

Doing one or more of the following:

(I) Requiring the financial holding company subject to stricter standards to sell enough shares or obligations of the financial holding company subject to stricter standards so that the financial holding company subject to stricter standards will be well capitalized after the sale.

(II) Further requiring that instruments sold under subclause (I) be voting shares.

(III) Requiring the financial holding company subject to stricter standards to be acquired by or combine with another company.

(ii) Restricting transactions with affiliates.—

(I) Requiring the financial holding company subject to stricter standards to comply with section 23A of the Federal Reserve Act (12 U.S.C. 371c), as if it were a member bank.
(II) Further restricting the transactions of the financial holding company subject to stricter standards with affiliates and insiders.

(iii) Restricting Asset Growth.—Restricting the asset growth of the financial holding company subject to stricter standards more stringently than paragraph (6)(C), or requiring the financial holding company subject to stricter standards to reduce its total assets.

(iv) Restricting Activities.—Requiring the financial holding company subject to stricter standards or any of its subsidiaries to alter, reduce, or terminate any activity that the Board determines poses excessive risk to the financial holding company subject to stricter standards.

(v) Improving Management.—Doing one or more of the following:

(I) New Election of Directors.—Ordering a new election for the board of directors of the financial holding company subject to stricter standards.
(II) Dismissing directors or senior executive officers.—Requiring the financial holding company subject to stricter standards to dismiss from office any director or senior executive officer who had held office for more than 180 days immediately before the financial holding company subject to stricter standards became undercapitalized. Dismissal under this clause shall not be construed to be a removal under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

(III) Employing qualified senior executive officers.—Requiring the financial holding company subject to stricter standards to employ qualified senior executive officers (who, if the Board so specifies, shall be subject to approval by the Board).

(vi) Requiring divestiture.—Requiring the financial holding company subject to stricter standards to divest itself of or liquidate any subsidiary if the Board de-
termines that the subsidiary is in danger of becoming insolvent, poses a significant risk to the financial holding company subject to stricter standards, or is likely to cause a significant dissipation of the assets or earnings of the financial holding company subject to stricter standards.

(vii) REQUIRING OTHER ACTION.—Requiring the financial holding company subject to stricter standards to take any other action that the Board determines will better carry out the purpose of this section than any of the actions described in this subparagraph.

(C) P RESUMPTION IN FAVOR OF CERTAIN ACTIONS.—In complying with subparagraph (B), the Board shall take the following actions, unless the Board determines that the actions would not be appropriate:

(i) The action described in subclause (I) or (III) of subparagraph (B)(i) (relating to requiring the sale of shares or obligations, or requiring the financial holding company subject to stricter standards to be
acquired by or combine with another com-
pany).

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

(D) Senior executive officers’ com-
pensation restricted.—

(i) In general.—The financial hold-
ing company subject to stricter standards
shall not do any of the following without
the prior written approval of the Board:

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

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

(ii) Failing to submit plan.—The
Board shall not grant any approval under
clause (i) with respect to a financial holding company subject to stricter standards that has failed to submit an acceptable capital restoration plan.

(E) Consultation with other regulators.—Before the Board makes a determination under subparagraph (B)(vi) with respect to a subsidiary that is a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, the Board shall consult with the Securities and Exchange Commission and, in the case of any other subsidiary which is subject to any financial responsibility or capital requirement, any other appropriate regulator of such subsidiary with respect to the proposed determination of the Board and actions pursuant to such determination.

(8) More stringent treatment based on other supervisory criteria.—

(A) In general.—If the Board determines (after notice and an opportunity for hearing) that a financial holding company subject to stricter standards is in an unsafe or unsound condition or, pursuant to section 8(b)(8)
of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(8)), deems the financial holding company subject to stricter standards to be engaging in an unsafe or unsound practice, the Board may—

(i) if the financial holding company subject to stricter standards is well capitalized, require the financial holding company subject to stricter standards to comply with one or more provisions of paragraphs (6) and (7), as if the institution were undercapitalized; or

(ii) if the financial holding company subject to stricter standards is undercapitalized, take any one or more actions authorized under paragraph (7)(B) as if the financial holding company subject to stricter standards were significantly undercapitalized, after consultation with the primary financial regulatory agency for any functionally regulated subsidiary, subsidiary depository institution, or insurance company subsidiary that is likely to be significantly affected by such actions. In the case of an insurance company subsidiary of
a financial holding company subject to stricter standards, the Board shall consult with the Federal Insurance Office.

(B) Contents of plan.—A plan that may be required pursuant to subparagraph (A)(i) shall specify the steps that the financial holding company subject to stricter standards will take to correct the unsafe or unsound condition or practice.

(9) Implementation.—The Board shall prescribe such regulations, issue such orders, and take such other actions the Board determines to be necessary to carry out this subsection.

(10) Other authority not affected.—This section does not limit any authority of the Board, any other Federal regulatory agency, or a State to take action in addition to (but not in derogation of) that required under this section.

(11) Consultation.—The Board and the Secretary of the Treasury shall consult with their foreign counterparts and through appropriate multilateral organizations to reach agreement to extend comprehensive and robust prudential supervision and regulation to all highly leveraged and substantially interconnected financial companies.
(12) **Administrative review of dismissal orders.**—

(A) **Timely petition required.**—A director or senior executive officer dismissed pursuant to an order under paragraph (7)(B)(v)(II) may obtain review of that order by filing a written petition for reinstatement with the Board not later than 10 days after receiving notice of the dismissal.

(B) **Procedure.**—

(i) **Hearing required.**—The Board shall give the petitioner an opportunity to—

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

(II) appear, personally or through counsel, before 1 or more members of the Board or designated employees of the Board.

(ii) **Deadline for hearing.**—The Board shall—

(I) schedule the hearing referred to in clause (i)(II) promptly after the petition is filed; and
(II) hold the hearing not later than 30 days after the petition is filed, unless the petitioner requests that the hearing be held at a later time.

(iii) Deadline for Decision.—Not later than 60 days after the date of the hearing, the Board shall—

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

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

(III) notify the petitioner of the order.

(C) Standard for Review of Dismissal Orders.—The petitioner shall bear the burden of proving that the petitioner’s continued employment would materially strengthen the ability of the financial holding company subject to stricter standards—

(i) to become well capitalized, to the extent that the order is based on the capital level of the financial holding company subject to stricter standards or such com-
pany’s failure to submit or implement a
capital restoration plan; and

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

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

(A) TERMINATION AUTHORITY.—If the
Board believes that a condition, practice, or ac-
tivity of a foreign financial holding company
subject to stricter standards does not comply
with this title or the rules or orders prescribed
by the Board under this title or otherwise poses
a threat to financial stability, the Board may,
after notice and opportunity for a hearing, take
such actions as necessary to mitigate such risk,
including ordering a foreign financial holding
company subject to stricter standards in the
United States to terminate the activities of such
branch, agency, or subsidiary.

(B) DISCRETION TO DENY HEARING.—The
Board may issue an order under paragraph (1)
without providing for an opportunity for a hear-
ing if the Board determines that expeditious ac-

tion is necessary in order to protect the public

interest.

(f) **Reports Regarding Rapid and Orderly Res-

olution and Credit Exposure.**—

(1) **In general.**—The Board shall require

each financial holding company subject to stricter

standards incorporated or organized in the United

States to report periodically to the Board on—

(A) its plan for rapid and orderly resolu-

tion in the event of severe financial distress;

(B) the nature and extent to which the fi-

nancial holding company subject to stricter

standards has credit exposure to other signifi-

cant financial companies; and

(C) the nature and extent to which other

significant financial companies have credit ex-

posure to the financial holding company subject

to stricter standards.

(2) **No limiting effect.**—A rapid resolution

plan submitted in accordance with this subsection

shall not be binding on a receiver appointed under

subtitle G, a bankruptcy court, or any other author-

ity that is authorized or required to resolve the fi-
financial holding company subject to stricter standards or any of its subsidiaries or affiliates.

(3) **Reporting triggered by stress test results.**—

**(A) Financial holding companies subject to stricter standards.**—Each time the results of a quarterly stress test under baseline or adverse conditions conducted by a financial holding company subject to stricter standards under section 1114(a) or the results of a stress test of that financial holding company subject to stricter standards conducted by the Board under subsection (g) indicate that the financial holding company subject to stricter standards is, in the determination of the Board, significantly or critically undercapitalized, that financial holding company subject to stricter standards shall submit a rapid resolution plan in accordance with this subsection that has been revised to address the causes of those results.

**(B) Financial companies that are not financial holding companies subject to stricter standards.**—Each time the results of a semiannual stress test under baseline or
adverse conditions conducted by a financial company under section 1114(b) indicate that the financial company is, in the determination of the Board, significantly or critically under-capitalized, that financial company shall be required to report under this subsection. The Board shall prescribe regulations establishing expedited procedures for such reporting.

(C) TRANSPARENCY.—Any rapid resolution plan submitted pursuant to this paragraph shall be subject to any restrictions regarding the disclosure of any other rapid resolution plan submitted pursuant to this subsection.

(g) STRESS TESTS.—

(1) The Board, in coordination with the appropriate primary financial regulatory agency, shall conduct annual stress tests of each financial holding company subject to stricter standards. The Board may, as the Board determines appropriate, conduct stress tests of financial companies that are not financial holding companies subject to stricter standards. The Board shall publish a summary of the results of such stress tests.

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

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

(i) RESOLUTION PLANS REQUIRED.—

(1) IN GENERAL.—The Corporation and the Board, after consultation with the Council, shall jointly issue regulations requiring financial holding companies subject to stricter standards to develop plans designed to assist in the rapid and orderly resolution of the company.

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

(A) define the scope of financial holding companies subject to stricter standards covered by these requirements and may exempt financial holding companies subject to stricter standards from the requirements of this subsection if the Corporation and the Board jointly deter-
mine that exemption is consistent with the purposes of this title;

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

(C) require that each plan include information detailing—

(i) the nature and extent to which the financial holding company subject to stricter standards has credit exposure to other significant financial companies;

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

(iii) full descriptions of the financial holding company subject to stricter standards’ ownership structure, assets, liabilities, and contractual obligations; and

(iv) the cross-guarantees tied to different securities, a list of major counter-
parties, and a process for determining
where the financial holding company sub-
ject to stricter standards’ collateral is
pledged; and

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

(3) REVIEW OF PLANS.—

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

(B) REVIEW.—Upon the submission of a
plan pursuant to subparagraph (A), and not
less often than annually thereafter, the Cor-
poration and the Board, after consultation with
any Federal financial regulatory agencies with
jurisdiction over the financial holding company
subject to stricter standards (and, if the finan-
cial holding company subject to stricter stand-
ards is an insurance company, the Federal In-
surance Office), shall jointly review such plan
and may require a financial holding company
subject to stricter standards to revise its plan
consistent with the standards established pursuant to paragraph (2).

(4) ENFORCEMENT.—

(A) IN GENERAL.—The Corporation, after consultation with the Board, shall have the authority to take any enforcement action in section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) against any financial holding company subject to stricter standards that fails to comply with the requirements of this section or any regulations issued pursuant to this section.

(B) NO LIMITATION ON BOARD AUTHORITY.—Nothing under this subsection shall be construed as limiting any enforcement authority available to the Board under any other provision of law.

(5) NO LIMITING EFFECT ON RECEIVER.—A rapid resolution plan submitted under this section shall not be binding on a receiver appointed under subtitle G, a bankruptcy court, or any other authority that is authorized or required to resolve the financial holding company subject to stricter standards or any of its subsidiaries or affiliates.
(6) NO PRIVATE RIGHT OF ACTION.—No private right of action may be based on any resolution plan submitted under this section.

(j) Rule of Construction Regarding Consumer Protection Standards.—The prudential standards imposed or recommended by the Board or the Council under this section shall not be construed as superseding—

(1) any consumer protection standards promulgated under a State or Federal consumer protection law, including the Consumer Financial Protection Agency Act and the Federal Trade Commission Act; or

(2) any investor protection standard that protects consumers (including public reporting requirements) imposed under State or Federal securities laws, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1944, and the Investment Advisors Act of 1944.

(k) Rulemaking Authority.—The Board may prescribe such regulations and issue such orders as the Board, in consultation with the Council, determines to be necessary to carry out the provisions of this subtitle.
SEC. 1105. MITIGATION OF SYSTEMIC RISK.

(a) Council Authority to Restrict Operations and Activities.—If the Council determines, after notice and an opportunity for hearing, that despite the higher prudential standards imposed pursuant to section 1104(a)(2), the size of a financial holding company subject to stricter standards or the scope, nature, scale, concentration, interconnectedness, or mix of activities directly or indirectly conducted by a financial holding company subject to stricter standards poses a grave threat to the financial stability or economy of the United States, the Council shall require the company to undertake 1 or more mitigatory actions described in subsection (d).

(b) Consultation with Federal Financial Regulatory Agencies.—The Council, in determining whether to impose any requirement under this section that is likely to have a significant impact on a functionally regulated subsidiary, or a subsidiary depository institution, of a financial holding company subject to stricter standards under this title, shall consult with the Federal financial regulatory agency for any such subsidiary. With respect to any requirements under this section that is likely to have a significant effect on an insurance company, the Council shall consult with the Federal Insurance Office.

(c) Factors for Consideration.—In reaching a determination described in subsection (a), the Council
shall take into consideration the following factors, as appropriate—

(1) the amount and nature of the company’s financial assets;

(2) the amount and nature of the company’s liabilities, including the degree of reliance on short-term funding;

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

(4) the company’s reliance on leverage;

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

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

(7) the scope, nature, size, scale, concentration, interconnectedness and mix of the company’s activities;

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

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

(d) MITIGATORY ACTIONS.—
(1) IN GENERAL.—Mitigatory action may include—

(A) modifying the stricter prudential standards imposed pursuant to section 1104(a);

(B) terminating 1 or more activities;

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

(D) limiting the ability to merge with, acquire, consolidate with, or otherwise become affiliated with another company;

(E) restricting the ability to offer a financial product or products; and

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

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

(A) the need to maintain the international competitiveness of the United States financial services industry; and
(B) the extent to which other countries with a significant financial services industry have established corresponding regimes to mitigate threats to financial stability or the economy posed by financial companies.

(e) DUE PROCESS.—

(1) NOTICE AND HEARING.—The Council shall give notice to a financial holding company subject to stricter standards, and opportunity for hearing if requested, that the financial holding company subject to stricter standards is being considered for mitigatory action pursuant to subsection (a). The hearing shall occur no later than 30 days after the financial company receives notice of the proposed action from the Council.

(2) NOTICE.—The Council shall notify the financial holding company subject to stricter standards of the Council’s determination, and, if the Council determines that mitigatory action is appropriate, require the company to submit a plan to the Council to implement the required mitigatory action.

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

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

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

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

(B) direct the Board to require a financial
holding company subject to stricter standards
to comply with the plan to implement mitiga-
tory action or actions within a reasonable time-
frame after the Council’s approval and in ac-
cordance with such deadlines established in the
plan.
(f) Treasury Secretary Concurrence.—Mitigatory action imposed by the Council involving the sale, divestiture, or transfer of more than $10,000,000,000 in total assets by a financial holding company subject to stricter standards shall require the Secretary of the Treasury’s concurrence before the issuance of the notice in subsection (e)(5)(A). If the sale, divestiture, or transfer of total assets by a financial holding company subject to stricter standards exceeds $100,000,000,000, the Secretary of the Treasury shall consult with the President before concurrence. The aforementioned amounts shall be indexed to inflation.

(g) Failure to Implement the Plan.—If a financial holding company subject to stricter standards fails to implement a plan for mitigatory action imposed pursuant to this section within a reasonable timeframe, the Council shall direct the Board to take such actions as necessary to ensure compliance with the plan.

(h) Judicial Review.—For any plan required under this section, a financial holding company subject to stricter standards may, not later than 30 days after receipt of the Council’s notice under subsection (e)(2), bring an action in the United States district court for the judicial district in which the home office of such company is located, or in the United States District Court for the District of
Columbia, for an order requiring that the requirement for
a mitigatory action be rescinded. Judicial review under
this section shall be limited to the imposition of a mitigat-
tory action pursuant to subsection (e)(5). In reviewing the
Council’s imposition of a mitigatory action, the court shall
rescind or dismiss only those mitigatory actions it finds
to be imposed in an arbitrary and capricious manner.

(i) RULE OF CONSTRUCTION.—Nothing in subsection
(h) shall be construed as limiting the authority of a Fed-
eral financial regulatory agency to take action with respect
to a financial company subject to the jurisdiction of such
agency pursuant to applicable law other than this section.

SEC. 1106. SUBJECTING ACTIVITIES OR PRACTICES TO
STRICER PRUDENTIAL STANDARDS FOR FI-
NANCIAL STABILITY PURPOSES.

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

(1) Submission of assessment.—The Board shall periodically submit a report to the Council containing an assessment of whether each activity or practice subjected to stricter prudential standards should continue to be subject to such standards.

(2) Review and rescission.—The Council shall—

(A) review the assessment submitted pursuant to paragraph (1) and any information or recommendation submitted by members of the Council regarding whether a financial activity subjected to stricter prudential standards continues to merit stricter prudential standards; and

(B) rescind the action subjecting an activity to heightened prudential supervision if the Council determines that the activity no longer meets the criteria in subsection (a).

(c) Procedure for Subjecting or Ceasing to Subject an Activity or Practice to Stricter Prudential Standards.—

(1) Council and Board Coordination.—The Council shall inform the Board if the Council is con-
considering whether to subject or cease to subject an activity to stricter prudential standards in accordance with this section.

(2) Notice and opportunity for consideration of written materials.—

(A) In general.—The Board shall, in an executive capacity on behalf of the Council, provide notice to financial companies that the Council is considering whether to subject an activity or practice to heightened prudential regulation, and shall provide a financial company engaged in such activity or practice 30 days to submit written materials to inform the Council’s decision. The Council shall decide, and the Board shall provide notice of the Council’s decision, within 60 days of the due date for such written materials.

(B) Emergency exception.—The Council may waive or modify the requirements of subparagraph (A) if the Council determines that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by an activity to financial stability. The Board shall, in an executive capacity on behalf of the Council, provide notice of such waiver or modi-
ification to financial companies as soon as practicable, which shall be no later than 24 hours after the waiver or modification.

(3) FORM OF DECISION.—The Board shall provide all notices required under this subsection by posting a notice on the Board’s web site and publishing a notice in the Federal Register.

SEC. 1107. STRICTER REGULATION OF ACTIVITIES AND PRACTICES FOR FINANCIAL STABILITY PURPOSES.

(a) PRUDENTIAL STANDARDS.—

(1) BOARD AUTHORITY TO RECOMMEND.—

(A) IN GENERAL.—To mitigate the risks to United States financial stability and the United States economy posed by financial activities and practices that the Council identifies for stricter prudential standards under section 1106 the Board, as agent of the Council, shall recommend prudential standards to the appropriate primary financial regulatory agencies to apply to such identified activities and practices.

(B) CONSULTATION WITH PRIMARY FINANCIAL REGULATORY AGENCIES.—The Board, in developing recommendations under this subsection, shall consult with the relevant primary
financial regulatory agencies with respect to any standard that is likely to have a significant effect on entities described in section 1000(b)(6). With respect to any standard that is likely to have a significant effect on insurance companies, the Board also shall consult with the Federal Insurance Office.

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

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

(B) may include prescribing the conduct of the activity or practice in specific ways (such as by limiting its scope, nature, size, scale, concentration, or interconnectedness, or applying particular capital or risk-management requirements to the conduct of the activity) or prohibiting the activity or practice altogether.

(3) EXCEPTION.—The standards recommended by the Board and adopted by a primary financial regulatory agency pursuant to this section shall not apply to activities that a foreign financial parent conducts solely outside the United States if such activities are conducted solely by a company or other
operating entity that is located outside the United States.

(b) IMPLEMENTATION OF RECOMMENDED STANDARDS.—

(1) ROLE OF PRIMARY FINANCIAL REGULATORY AGENCY.—Each primary financial regulatory agency is authorized to impose, require reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities described in section 1000(b)(6) for which it is the primary financial regulatory agency. This authority is in addition to and does not limit any other authority of the primary financial regulatory agencies. Compliance by an entity with actions taken by a primary financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective primary financial regulatory agency’s jurisdiction over the entity as if the agency action were taken under those statutes.

(2) IMPOSITION OF STANDARDS.—Standards imposed under this subsection shall be the standards recommended by the Board in accordance with subsection (a) or any other similar standards that the Board deems acceptable after consultation between
the Board and the primary financial regulatory
agency.

(3) PRIMARY FINANCIAL REGULATORY AGENCY
RESPONSE.—A primary financial regulatory agency
shall notify the Council and the Board in writing on
whether and to what extent the agency has imposed
the stricter prudential standards described in para-
graph (2) within 60 days of the Board’s rec-
ommendation. A primary financial regulatory agency
that fails to impose such standards shall provide
specific justification for such failure to act in the
written notice from the agency to the Council and
Board.

SEC. 1108. EFFECT OF RESCISSION OF IDENTIFICATION.

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

(b) DETERMINATION OF PRIMARY FINANCIAL REGU-
LATORY AGENCY TO CONTINUE.—A primary financial
regulatory agency that has imposed stricter prudential
standards for financial stability purposes under this sub-
title shall determine whether standards that it has im-
posed under this subtitle should remain in effect.
SEC. 1109. EMERGENCY FINANCIAL STABILIZATION.

(a) IN GENERAL.—Upon the written determination of the Council that a liquidity event exists that could destabilize the financial system (which determination shall be made upon a vote of not less than two-thirds of the members of the Council then serving) and with the written consent of the Secretary of the Treasury (after certification by the President that an emergency exists), the Corporation may create a widely-available program designed to avoid or mitigate adverse effects on systemic economic conditions or financial stability by guaranteeing obligations of solvent insured depository institutions or solvent depository institution holding companies (including any affiliates thereof), if necessary to prevent systemic financial instability during times of severe economic distress, except that a guarantee of obligations under this section may not include provision of equity in any form.

(b) POLICIES AND PROCEDURES.—Prior to exercising any authority under this section, the Corporation shall establish policies and procedures governing the issuance of guarantees. The terms and conditions of any guarantees issued shall be established by the Corporation with the approval of the Secretary of the Treasury and the Financial Stability Oversight Council. Such terms and conditions may include the Corporation requiring collateral as a condition of any such guarantee.
(c) CAP FOR GUARANTEED AMOUNT.—

(1) IN GENERAL.—In connection with any program established pursuant to subsection (a) and subject to paragraph (2), the Corporation may not have guaranteed debt outstanding at any time of more than $500,000,000,000 (as indexed to reflect growth in assets of insured depository institutions and depository institution holding companies as determined by the Corporation).

(2) ADDITIONAL DEBT GUARANTEE AUTHORITY.—If the Corporation, with the concurrence of the Council and the Secretary (in consultation with the President), determines that the Corporation must guarantee debt in excess of $500,000,000,000 (as indexed pursuant to paragraph (1)) to prevent systemic financial instability, the Corporation may transmit to the Congress a request for authority to guarantee debt in excess of $500,000,000,000 (as indexed pursuant to paragraph (1)). Such request shall be considered granted by Congress upon adoption of a joint resolution approving such request. Such joint resolution shall be considered in the Senate under expedited procedures.

(d) FUNDING.—
(1) Administrative expenses and cost of guarantees.—A program established pursuant to this section shall require funding only for the purposes of paying administrative expenses and for paying a guarantee in the event that a guaranteed loan defaults.

(2) Fees and other charges.—The Corporation shall charge fees or other charges to all participants in such program established pursuant to this section to offset projected losses and administrative expenses. To the extent that a program established pursuant to this section has expenses or losses, the program will be funded entirely through fees or other charges assessed on participants in such program.

(3) Excess funds.—If at the conclusion of such program there are any excess funds collected from the fees associated with such program, the funds will be deposited into the Systemic Dissolution Fund established pursuant to section 1609(n).

(4) Authority of Corporation.—For purposes of conducting a program established pursuant to this section, the Corporation—

(A) may borrow funds from the Secretary of the Treasury, which shall be repaid in full
with interest through fees and charges paid by participants in accordance with paragraph (2), and there shall be available to the Corporation amounts in the Treasury not otherwise appropriated, including for the payment of reasonable administrative expenses;

(B) may not borrow funds from the Deposit Insurance Fund established pursuant to section 11(a)(4) of the Federal Deposit Insurance Act; and

(C) may not borrow funds from the Systemic Dissolution Fund established pursuant to section 1609(n).

(5) Back-up Special Assessment.—To the extent that the funds collected pursuant to paragraph (2) are insufficient to cover any losses or expenses (including monies borrowed pursuant to paragraph (4)) arising from a program established pursuant to this section, the Corporation shall impose a special assessment solely on participants in the program.

(c) Plan for Maintenance or Increase of Lending.—In connection with any application or request to participate in such program authorized pursuant to this section, a solvent entity seeking to participate in such pro-
gram shall be required to submit to the Corporation a plan
detailing how the use of such guaranteed funds will facili-
tate the increase or maintenance of such solvent com-
pany’s level of lending to consumers or small businesses.

(f) SUNSET OF CORPORATION’S AUTHORITY.—The
Corporation’s authority under subsections (a) and (d) and
the authority to borrow funds from the Treasury under
section 1609(o) shall expire on December 31, 2013.

(g) RULE OF CONSTRUCTION.—For purposes of this
section, a guarantee of deposits held by insured depository
institutions shall not be treated as a debt guarantee pro-
gram.

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

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

(2) DEPOSITORY INSTITUTION HOLDING COM-
PANY.—The term “depository institution holding
company” has the meaning given the term in section
3 of the Federal Deposit Insurance Act (12 U.S.C.
1813).

(3) INSURED DEPOSITORY INSTITUTION.—The
term “insured depository institution” has the mean-
ing given the term in section 3 of the Federal De-
(4) Solvent.—The term “solvent” means assets are more than the obligations to creditors.

SEC. 1110. ADDITIONAL RELATED AMENDMENTS.

(a) Federal Deposit Insurance Act Related Amendments.—

(1) Suspension of Parallel Federal Deposit Insurance Act Authority.—Effective upon the date of the enactment of this section through December 31, 2013, the Corporation may not exercise its authority under section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) to establish any widely-available debt guarantee program for which section 1109 would provide authority.

(2) Federal Deposit Insurance Act Authority Preserved.—Effective December 31, 2013, the Corporation shall have the same authority pursuant to section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act as the Corporation had prior to the date of enactment of this Act.

(b) Effect of Default on an FDIC Guarantee.—If an insured depository institution or depository institution holding company participating in a program under section 1109 or any participant in a debt guarantee program established pursuant to section 13(c)(4)(G)(i) of
the Federal Deposit Insurance Act defaults on any obligation guaranteed by the Corporation after the date of enactment of this Act, the Corporation may—

(1) appoint itself as receiver for the insured depository institution that defaults;

(2) with respect to any other participating company that is not an insured depository institution that defaults—

(A) require consideration of whether a determination shall be made as provided in section 1603 to resolve the company under subtitle G; and

(B) if the Corporation is not appointed receiver pursuant to subtitle G within 30 days of the date of default, require the company to file a petition for bankruptcy under section 301 of title 11, United States Code, or file a petition for bankruptcy against the company under section 303 of title 11, United States Code.

(c) AUTHORITY TO FILE INVOLUNTARY PETITION FOR BANKRUPTCY.—Section 303 of title 11, United States Code, is amended by adding at the end the following:

“(m) Notwithstanding subsections (a) and (b), an involuntary case may be commenced by the Federal Deposit
Insurance Corporation against a depository institution holding company as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or other company participating in a guarantee program established by the Corporation on the ground that the company has defaulted on a debt or obligation guaranteed by the Corporation.”.

(d) Bankruptcy Priority for Defaults on Debt Guaranteed Pursuant to Section 1109.—Section 507(a)(9) of title 11, United States Code, is amended by inserting before the period at the end the following:

“and allowed unsecured claims based upon any debt to the Federal Deposit Insurance Corporation that arose prior to the commencement of the case under this title, as a result of the debtor’s default on a guarantee provided by the Corporation pursuant to section 1109 of the Financial Stability Improvement Act of 2009 or the Federal Deposit Insurance Act, under a program established by the Corporation after the date of enactment of the Financial Stability Improvement Act of 2009”.

SEC. 1111. CORPORATION MAY RECEIVE WARRANTS WHEN PAYING OR RISKING TAXPAYER FUNDS.

(a) In General.—In connection with any payment, credit extension, or guarantee or any commitment under section 1109 or 1604, the Corporation may obtain from the insured depository institution, depository institution
holding company (including any affiliates thereof), or covered financial company, as the case may be—

(1) in the case of an insured depository institution, depository institution holding company (including any affiliates thereof), or covered financial company, the securities of which are traded on a national securities exchange, a warrant giving the right to the Corporation to receive nonvoting common stock or preferred stock in such financial institution, or voting stock with respect to which, the Corporation agrees not to exercise voting power, as the Corporation determines appropriate; or

(2) in the case of any insured depository institution, depository institution holding company (including any affiliates thereof), or covered financial company other than one described in paragraph (1), a warrant for common or preferred stock, or a senior debt instrument from such financial institution, as described in subsection (b)(3).

(b) TERMS AND CONDITIONS.—The terms and conditions of any warrant or senior debt instrument required under subsection (a) shall meet the following requirements:

(1) PURPOSES.—Such terms and conditions shall, at a minimum, be designed—
(A) to provide for reasonable participation by the Corporation, for the benefit of taxpayers, in equity appreciation in the case of a warrant or other equity security, or a reasonable interest rate premium, in the case of a debt instrument; and

(B) to provide additional protection for the taxpayer against losses from such payment, extension of credit, or guarantee by the Corporation under this title.

(2) Authority to sell, exercise, or surrender.—The Corporation may sell, exercise, or surrender a warrant or any senior debt instrument received under this subsection, based on the conditions established under paragraph (1).

(3) Conversion.—The warrant shall provide that if, after the warrant is received by the Corporation under this subsection, the financial company that issued the warrant is no longer listed or traded on a national securities exchange or securities association, as described in subsection (a)(1), such warrants shall convert to senior debt, or contain appropriate protections for the Corporation to ensure that the Corporation is appropriately compensated for the
value of the warrant, in an amount determined by
the Corporation.

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

(5) EXERCISE PRICE.—The exercise price for
any warrant issued pursuant to this subsection shall
be set by the Corporation, in the interest of the tax-
payers.

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

(c) Exceptions.—

(1) The Corporation shall establish an exception to the requirements of this section and appropriate alternative requirements for any participating financial company that is legally prohibited from issuing securities and debt instruments, so as not to allow circumvention of the requirements of this section.

(2) If the Corporation is providing a payment, extension of credit, or guarantee with regard to its authority under section 1604 and the Corporate determines that it is certain that at the conclusion of the Resolution Process the shareholders of all classes shall lose their entire investment and receive nothing therefor, then the requirements of this section shall not apply.

SEC. 1112. EXAMINATIONS AND ENFORCEMENT ACTIONS FOR INSURANCE AND RESOLUTIONS PURPOSES.

(a) Examinations for Insurance and Resolutions Purposes.—Section 10(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(3)) is amended by striking “whenever the Board of Directors determines”
and all that follows through the period and inserting “or financial holding company subject to stricter standards (as defined in section 1000(b)(5) of the Financial Stability Improvement Act of 2009) whenever the Board of Directors determines a special examination of any such depository institution is necessary to determine the condition of such depository institution for insurance or such financial holding company subject to stricter standards for resolution purposes.”.

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

(1) in paragraph (2)—

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

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

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

“(D) the conduct or threatened conduct (including any acts or omissions) of the depository institution holding company poses a risk to the Deposit Insurance Fund.”; and

(2) by adding at the end the following new paragraph:
“(6) For purposes of this subsection:

“(A) The Corporation shall have the same powers with respect to a depository institution holding company and its affiliates as the appropriate Federal banking agency has with respect to the holding company and its affiliates; and

“(B) the holding company and its affiliates shall have the same duties and obligations with respect to the Corporation as the holding company and its affiliates have with respect to the appropriate Federal banking agency.”.

SEC. 1113. STUDY OF THE EFFECTS OF SIZE AND COMPLEXITY OF FINANCIAL INSTITUTIONS ON CAPITAL MARKET EFFICIENCY AND ECONOMIC GROWTH.

(a) Study Required.—The Chairman of the Council shall carry out a study of the economic impact of possible financial services regulatory limitations intended to reduce systemic risk. Such study shall estimate the effect on the efficiency of capital markets, costs imposed on the financial sector, and on national economic growth, of—

(1) explicit or implicit limits on the maximum size of banks, bank holding companies, and other large financial institutions;
(2) limits on the organizational complexity and
diversification of large financial institutions;

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

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

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

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

(7) segregation requirements between tradit-
ional financial activities and trading or other high-
risk operations in large financial institutions; and

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

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

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

SEC. 1114. EXERCISE OF FEDERAL RESERVE AUTHORITY.

(a) No Decisions by Federal Reserve Bank Presidents.—No provision of this title relating to the authority of the Board shall be construed as conferring any decision-making authority on presidents of Federal reserve banks.

(b) Voting Decisions by Board.—The Board of Governors of the Federal Reserve System shall not delegate the authority to make any voting decision that the Board is authorized or required to make under this title in contravention of section 11(k) of the Federal Reserve Act.

SEC. 1115. STRESS TESTS.

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

(1) conduct quarterly stress tests; and

(2) submit a report on its quarterly stress test to the head of the primary financial regulatory agency and to the Board at such time, in such form, and containing such information as the head of the primary financial regulatory agency may require.
(b) A financial company that has more than $10,000,000,000 in total assets and is not a financial holding company subject to stricter standards shall—

(1) conduct semiannual stress tests; and

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

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

(1) Baseline.

(2) Adverse.

(3) Severely adverse.

(d) The head of each primary financial regulatory agency, in coordination with the Board, shall issue regulations to define the term “stress test” for purposes of this section.

SEC. 1116. CONTINGENT CAPITAL.

(a) IN GENERAL.—The Board, in coordination with the appropriate primary financial regulatory agency, may, after notice and opportunity for comment, promulgate regulations that require a financial holding company subject to stricter standards to maintain a minimum amount of long-term hybrid debt that is convertible to equity when—
(1) the Board determines that a specified financial company fails to meet prudential standards established by the Board; or

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

(b) FACTORS TO CONSIDER.—In establishing regulations under this section, the Board shall consider—

(1) an appropriate transition period for implementation of a conversion under this section;

(2) capital requirements applicable to the specified financial company and its subsidiaries; and

(3) any other factor that the Board deems appropriate.

(c) STUDY REQUIRED.—The Chairman of the Council shall carry out a study to determine an optimal implementation of contingent capital requirements to maximize financial stability, minimize the probability of drawing on the Systemic Resolution Fund established under section 1609(n) in a financial crisis, and minimize costs for financial holding companies subject to stricter standards. To the extent practicable, the study shall take place with input from industry participants and international financial regulators. Such study shall include—
(1) an evaluation of the characteristics and amounts of convertible debt that should be required, including possible tranche structure;

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

(3) an estimate of the costs of carrying contingent capital;

(4) an estimate of the effectiveness of contingent capital requirements in reducing losses to the systemic resolution fund in cases of single-firm or systemic failure; and

(5) recommendations for implementing legislation.

(d) REPORT.—Not later than the end of the 180-day period beginning on the date of the enactment of this title, the Chairman of Council shall issue a report to the Congress containing any findings and determinations made in carrying out the study required under subsection (c).
SEC. 1117. RESTRICTION ON PROPRIETARY TRADING BY DESIGNATED FINANCIAL HOLDING COMPANIES.

(a) IN GENERAL.—If the Board determines that propriety trading by a financial holding company subject to stricter standards poses an existing or foreseeable threat to the safety and soundness of such company or to the financial stability of the United States, the Board may prohibit such company from engaging in propriety trading.

(b) EXCEPTIONS PERMITTED.—The Board may exempt from the prohibition of subsection (a) proprietary trading that the Board determines to be ancillary to other operations of such company and not to pose a threat to the safety and soundness of such company or to the financial stability of the United States, including—

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

(2) hedging or managing risk;

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

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

(c) RULEMAKING AUTHORITY.—The primary financial regulatory agencies of banks and bank holding companies shall jointly issue regulations to carry out this section.
(d) **Effective Date.**—The provisions of this section shall take effect after the end of the 180-day period beginning on the date of the enactment of this title.

(e) **Proprietary Trading Defined.**—For purposes of this section and with respect to a company, the term “proprietary trading” means the trading of stocks, bonds, options, commodities, derivatives, or other financial instruments with the company’s own money and for the company’s own account.

**SEC. 1118. RULE OF CONSTRUCTION.**

(a) **Construction.**—The authorities granted to agencies under this subtitle are in addition to any rule-making, report-related, examination, enforcement, or other authority that such agencies may have under other law and in no way shall be construed to limit such other authority, except that any standards imposed for financial stability purposes under this subtitle shall supersede any conflicting less stringent requirements of the primary financial regulatory agency but only the extent of the conflict.

(b) **Agent Responsibilities.**—For purposes of this subtitle, the term “agent” means the Board acting under section 1103(c) and coordinating with the Council in exercising authority under sections 1104 and 1107.
SEC. 1119. ANTITRUST SAVINGS CLAUSE.

Nothing in this subtitle shall be construed to modify, impair, or supercede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term “antitrust laws” has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section relates to unfair methods of competition.

Subtitle C—Improvements to Supervision and Regulation of Federal Depository Institutions

SEC. 1201. DEFINITIONS.

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

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

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


(4) OFFICE OF THRIFT SUPERVISION.—The term “Office of Thrift Supervision” means the office

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

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

(7) **CERTAIN OTHER TERMS.**—The terms “affiliate”, “bank holding company”, “control” (when used with respect to a depository institution), “depository institution”, “Federal banking agency”, “Federal savings association”, “including”, “insured branch”, “insured depository institution”, “savings association”, “State savings association”, and “subsidiary” have the same meanings as in section 3 of the Federal Deposit Insurance Act.

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

(a) **Amendments to Section 2.**—Section 2 of the Home Owners’ Loan Act (12 U.S.C. 1462) is amended—

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

“(1) **BOARD OF GOVERNORS.**—The term ‘Board of Governors’ means the Board of Governors of the Federal Reserve System.”; and
(2) by striking paragraph (3) and inserting the following new paragraph:

“(3) [repealed]”.

(b) Amendments to Section 3.—Section 3 of the Home Owners’ Loan Act (12 U.S.C. 1462a) is amended—

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

“(a) Establishment of Division of Thrift Supervision.—To carry out the purposes of this Act, there is hereby established the Division of Thrift Supervision, which shall be a division within the Office of the Comptroller of the Currency.”;

(2) in subsection (b)—

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

“(1) In general.—The Division of Thrift Supervision shall be headed by a Senior Deputy Comptroller of the Currency who shall be subject to the general oversight of the Comptroller of the Currency.”;

(B) in paragraph (2), by striking “Director” and inserting “Comptroller of the Currency”; and

(C) by striking paragraphs (3) and (4);
(3) by striking subsections (c), (d), and (e) and inserting the following new subsection:

“(c) Powers of the Comptroller of the Currency.—The Comptroller of the Currency shall have all the powers, duties, and functions transferred by the Financial Stability Improvement Act of 2009 to the Comptroller of the Currency to carry out this Act.”;

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

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

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

(7) in subsection (e) (as so redesignated), by striking “compensation of the Director and other employees of the Office and all other expenses thereof” and inserting “expenses incurred by the Comptroller of the Currency in carrying out this Act”.

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

(d) Amendments to Section 5.—

(1) Universal.—Section 5 of the Home Owners’ Loan Act (12 U.S.C. 1464) is amended—
(A) by striking “Director” and “Director of the Office of Thrift Supervision” each place such terms appear and inserting “Comptroller of the Currency”; and

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

(2) SPECIFIC PROVISIONS.—

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

(B) Section 5(d)(3)(B) of the Home Owners’ Loan Act is amended by striking “or the Resolution Trust Corporation”.

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

(f) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) SECTION 3.—The heading for section 3 of the Home Owners’ Loan Act is amended by striking “DIRECTOR OF THE OFFICE OF THRIFT SUPER-
VISION” and inserting “DIVISION OF THRIFT SUPERVISION”.

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

(g) Clerical Amendment.—The table of contents section for the Home Owners’ Loan Act is amended by striking the item relating to section 3 and inserting the following new item:

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

SEC. 1203. AMENDMENTS TO THE REVISED STATUTES.

(a) Amendment to Section 324.—Section 324 of the Revised Statutes of the United States (12 U.S.C. 1) is amended to read as follows:

“SEC. 324. COMPTROLLER OF THE CURRENCY.

“There shall be in the Department of the Treasury a bureau, the chief officer of which bureau shall be called the Comptroller of the Currency, and shall perform the duties of the Comptroller of the Currency under the general direction of the Secretary of the Treasury. The Comptroller of the Currency shall have the same authority over matters as were vested in the Director of the Office of Thrift Supervision or the Office of Thrift Supervision on the day before the date of enactment of the Financial Stability Improvement Act of 2009 other than those authori-
ties with respect to savings and loan holding companies and any affiliate of any such company (other than a savings association) as were vested in the Director of the Office of Thrift Supervision on such date. The Secretary of the Treasury may not delay or prevent the issuance of any rule or the promulgation of any regulation by the Comptroller of the Currency and may not intervene in any matter or proceeding before the Comptroller of the Currency (including agency enforcement actions) unless otherwise specifically provided by law.”.

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

“SEC. 327. DEPUTY COMPTROLLERS.

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

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

“(2) 1 of whom shall be designated the Senior Deputy Comptroller for Thrift Supervision, who shall oversee the regulation and supervision of Federal savings associations, and who shall coordinate
with the Office of Thrift Supervision pursuant to section 1211.

“(b) PAY.—The Secretary of the Treasury shall fix the compensation of the Deputy Comptrollers of the Currency and provide such other benefits as the Secretary may determine to be appropriate.

“(c) OATH OF OFFICE; DUTIES.—Each Deputy Comptroller shall take the oath of office and shall perform such duties as the Comptroller of the Currency shall direct.

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

(c) Amendment to Section 329.—Section 329 of the Revised Statutes of the United States (12 U.S.C. 11) is amended by inserting “or any Federal savings association” before the period at the end.

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

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

(f) Effective Date.—Subsection (b) shall take ef-
fect on the date of the enactment of this Act.

SEC. 1204. POWER AND DUTIES TRANSFERRED.

(a) Director of the Office of Thrift Super-
vision.—

(1) Transfer of functions.—Except as oth-
erwise provided in this subtitle, all functions of the
Director of the Office of Thrift Supervision are
transferred to the Office of the Comptroller of the
Currency.
(2) **Comptroller’s Authority.**—Except as otherwise provided in this subtitle, the Comptroller of the Currency shall succeed to all powers, authorities, rights, and duties that were vested in the Director of the Office of Thrift Supervision under Federal law, including the Home Owners’ Loan Act, on the day before the transfer date other than those powers, authorities, rights, and duties with respect to savings and loan holding companies and any affiliate of any such company (other than a savings association) as were vested in the Director of the Office of Thrift Supervision on such date.

(3) **Functions relating to supervision of state savings associations.**—

(A) **Transfer of functions.**—All functions of the Director of the Office of Thrift Supervision relating to the supervision and regulation of State savings associations are transferred to the Corporation.

(B) **Corporation’s authority.**—The Corporation shall succeed to all powers, authorities, rights, and duties that were vested in the Director of the Office of Thrift Supervision under Federal law, including the Home Owners’ Loan Act, on the day before the transfer date,
relating to the supervision and regulation of State savings associations.

(4) Functions relating to supervision of Savings and Loan Holding Companies.—

(A) Transfer of functions.—All functions of the Director of the Office of Thrift Supervision relating to the supervision and regulation of Savings and Loan Holding Companies are transferred to the Board.

(B) Board authority.—The Board shall succeed to all powers, authorities, rights, and duties that were vested in the Director of the Office of Thrift Supervision under Federal law, including the Home Owners’ Loan Act, on the day before the transfer date, relating to the supervision and regulation of Savings and Loan Holding Companies.

(b) Appropriate Federal Banking Agency.—Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended in subsection (q)—

(1) by amending paragraph (1) to read as follows:

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

(2) in paragraph (2)(E), by striking “and” at the end;

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

(4) after paragraph (2)(F), by inserting the following new subparagraph:

“(G) any savings and loan holding company and any subsidiary of a savings and loan holding company (other than a savings association); and”;

(5) by amending paragraph (3) to read as follows:

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

(6) by striking paragraph (4).

(e) TRANSFER OF CONSUMER FINANCIAL PROTECTION FUNCTIONS.—Nothing in subsection (a) or (b) shall affect any transfer of consumer financial protection functions of the Comptroller of the Currency and the Director of the Office of Thrift Supervision to the Consumer Finan-
clal Protection Agency as provided in the Consumer Fi-
nancial Protection Agency Act of 2009.

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

SEC. 1205. TRANSFER DATE.

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

(b) EXTENSION PERMITTED.—

(1) NOTICE REQUIRED.—The Secretary, in con-
sultation with the Comptroller of the Currency and
the Director of the Office of Thrift Supervision, may
designate a calendar date for the transfer of func-
tions of the Office of Thrift Supervision to the Of-

cial on the Comptroller of the Currency, and the Cor-

A) transmits to the Committee on Bank-
ing, Housing, and Urban Affairs of the Senate
and the Committee on Financial Services of the

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(i) a written determination that orderly implementation of this subtitle is not feasible on the date that is 1 year after the date of enactment of this subtitle;

(ii) an explanation of why an extension is necessary for the orderly implementation of this subtitle; and

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

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

(2) EXTENSION LIMITED.—In no case shall any date designated under paragraph (1) be later than 18 months after the date of enactment of this subtitle.

(3) EFFECT ON REFERENCES TO “TRANSFER DATE”.—If the Secretary takes the actions provided in paragraph (1) for designating a date for the transfer of functions to the Office of the Comptroller of the Currency, and the Corporation under section 1204, references in this title to “transfer date” shall mean the date designated by the Secretary.
SEC. 1206. EXPIRATION OF TERM OF COMPTROLLER.

(a) IN GENERAL.—Notwithstanding section 325 of the Revised Statutes of the United States, the term of the person serving as Comptroller on the date of the enactment of this title shall terminate as of such date.

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

SEC. 1207. OFFICE OF THRIFT SUPERVISION ABOLISHED.

Effective 90 days after the transfer date, the position of Director of the Office of Thrift Supervision and the Office of Thrift Supervision are abolished.

SEC. 1208. SAVINGS PROVISIONS.

(a) OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 1204(a) and 1207 shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that existed on the day before the transfer date.
(2) CONTINUATION OF SUITS.—This subtitle shall not abate any action or proceeding commenced by or against the Director of the Office of Thrift Supervision or the Office of Thrift Supervision before the transfer date, except that—

(A) for any action or proceeding arising out of a function of the Director of the Office of Thrift Supervision transferred to the Comptroller of the Currency by this title, the Comptroller of the Currency or the Office of the Comptroller of the Currency shall be substituted for the Director of the Office of Thrift Supervision or the Office of Thrift Supervision, as the case may be, as a party to the action or proceeding as of the transfer date; and

(B) for any action or proceeding arising out of a function of the Director of the Office of Thrift Supervision transferred to the Corporation by this title, the Chairman of the Corporation shall be substituted for the Director of the Office of Thrift Supervision as a party to the action or proceeding as of the transfer date.

(b) CONTINUATION OF EXISTING OTS ORDERS, RESOLUTIONS, DETERMINATIONS, AGREEMENTS, REGULATIONS, ETC.—All orders, resolutions, determinations,
agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, that have been issued, made, prescribed, or allowed to become effective by the Office of Thrift Supervision, or by a court of competent jurisdiction, in the performance of functions that are transferred by this title and that are in effect on the day before the transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, and shall be enforceable by or against—

(1) the Office of the Comptroller of the Currency, in the case of a function of the Director of the Office of Thrift Supervision transferred to the Comptroller of the Currency, until modified, terminated, set aside, or superseded in accordance with applicable law by the Office of the Comptroller of the Currency, by any court of competent jurisdiction, or by operation of law; and

(2) the Corporation, in the case of a function of the Director of the Office of Thrift Supervision transferred to the Corporation, until modified, terminated, set aside, or superseded in accordance with
applicable law by the Corporation, by any court of
competent jurisdiction, or by operation of law.

(c) **Continuation of Existing OTS Enforcement Actions.**—Any formal or informal enforcement ac-
tion taken by the Director of the Office of Thrift Super-
vision with respect to a savings and loan holding company,
a subsidiary of a savings and loan holding company (other
than a savings association) or an institution-affiliated
party of a savings and loan holding company or such a
subsidiary, that is in effect on the day before the date of
the enactment of this title shall continue to be effective
and enforceable against such company, subsidiary, or in-
stitution-affiliated party after such date as if—

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

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

(d) **Identification of Regulations Continued.**—

(1) **By Office of the Comptroller of the
Currency.**—Not later than the transfer date, the
Comptroller of the Currency shall—
(A) after consultation with the Chairperson of the Corporation, identify the regulations continued under subsection (b) that will be enforced by the Office of the Comptroller of the Currency; and

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

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

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

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

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

(1) PROPOSED REGULATIONS.—Any proposed regulation of the Office of Thrift Supervision, which agency, in performing functions transferred by this title, has proposed before the transfer date but has not published as a final regulation before that date, shall be deemed to be a proposed regulation of the Office of the Comptroller of the Currency, or the Corporation, as appropriate, according to its terms.
(2) REGULATIONS NOT YET EFFECTIVE.—Any interim or final regulation of the Office of Thrift Supervision, which that agency, in performing functions transferred by this title, has published before the transfer date but which has not become effective before that date, shall become effective as a regulation of the Office of the Comptroller of the Currency, or the Corporation, as appropriate, according to its terms.

SEC. 1209. REGULATIONS AND ORDERS.

In addition to any powers transferred to the Comptroller of the Currency by this title, the Comptroller of the Currency may prescribe such regulations and issue such orders as the Comptroller of the Currency determines to be appropriate to carry out this title and the powers and duties transferred to the Comptroller of the Currency by this title.

SEC. 1210. COORDINATION OF TRANSITION ACTIVITIES.

Before the transfer date, the Comptroller of the Currency shall—

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

(2) determine and redetermine, from time to time—
(A) the amount of funds necessary to pay any expenses associated with the transfer of functions (including expenses for personnel, property, and administrative services) during the period beginning on the date of enactment of this title and ending on the transfer date;

(B) what personnel are appropriate to facilitate the orderly transfer of functions by this title; and

(C) what property and administrative services are necessary to support the Office of the Comptroller of the Currency during the period beginning on the date of enactment of this title and ending on the transfer date; and

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

SEC. 1211. INTERIM RESPONSIBILITIES OF OFFICE OF THE COMPTROLLER OF THE CURRENCY AND OFFICE OF THRIFT SUPERVISION.

(a) In general.—When requested by the Comptroller of the Currency to do so before the transfer date, the Office of Thrift Supervision shall—

(1) pay to the Comptroller of the Currency, from funds obtained by the Office of Thrift Supervision through assessments, fees, or other charges
that the Office of Thrift Supervision is authorized
by law to impose, such amounts that the Com-
troller of the Currency determines to be necessary
under section 1210(2)(A);

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

(3) make available to the Office of the Compt-
troller of the Currency such property and provide
the Office of the Comptroller of the Currency such
administrative services as the Comptroller of the
Currency determines to be necessary under section
1210(2)(C).

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

SEC. 1212. EMPLOYEES TRANSFERRED.

(a) IN GENERAL.—

(1) OTS EMPLOYEES.—

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

(B) ALLOCATING EMPLOYEES FOR TRANSFER TO RECEIVING AGENCIES.—The Director of the Office of Thrift Supervision, the Comptroller of the Currency, and the Chairperson of the Corporation shall—

(i) jointly determine the number of employees of the Office of Thrift Supervision necessary to perform or support—

(I) the functions of the Office of Thrift Supervision that are transferred to the Office of the Comptroller of the Currency by this title; and

(II) the functions of the Office of Thrift Supervision that are transferred to the Corporation by this title;

(ii) consistent with the numbers determined under clause (ii), jointly identify employees of the Office of Thrift Supervision for transfer to the Office of the Comptroller of the Currency or the Corporation in a manner that the Director of the Office of Thrift Supervision, the Comptroller of the Currency, and the Chair-
person of the Corporation, in their discre-
tion, deem equitable.

(2) Transfer of Employees Performing Consumer Financial Protection Functions.—
Nothing in paragraph (1) shall affect the transfer of employees performing or supporting consumer financial protection functions of the Comptroller of the Currency and the Director of the Office of Thrift Supervision to the Consumer Financial Protection Agency as provided in the Consumer Financial Protection Agency Act of 2009.

(3) Appointment Authority for Excepted Service Transferred.—

(A) In General.—In the case of employees occupying positions in the excepted service, any appointment authority established pursuant to law or regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to subparagraph (B).

(B) Declining Transfers Allowed.—
The Office of the Comptroller of the Currency and the Corporation may decline to accept a transfer of authority under subparagraph (A) (and the employees appointed pursuant thereto) to the extent that such authority relates to posi-
tions excepted from the competitive service be-

cause of their confidential, policy-making, pol-

icy-determining, or policy-advocating character.

(b) TIMING OF TRANSFERS AND POSITION ASSIGN-

MENTS.—Each employee to be transferred under this sec-

tion shall—

(1) be transferred not later than 90 days after

the transfer date; and

(2) receive notice of his or her position assign-

ment not later than 120 days after the effective date

of his or her transfer.

(c) TRANSFER OF FUNCTION.—

(1) IN GENERAL.—Notwithstanding any other

provision of law, the transfer of employees shall be

deemed a transfer of functions for the purpose of

section 3503 of title 5, United States Code.

(2) PRIORITY OF THIS SUBTITLE.—If any pro-

vision of this subtitle conflicts with any protection

provided to transferred employees under section

3503 of title 5, United States Code, the provisions

of this subtitle shall control.

(d) EMPLOYEES’ STATUS AND ELIGIBILITY.—The

transfer of functions and employees under this title, and

the abolition of the Office of Thrift Supervision, shall not

affect the status of the transferred employees as employ-
ees of an agency of the United States under any provision of law.

(c) Equal Status and Tenure Positions.—Each employee transferred from the Office of Thrift Supervision shall be placed in a position at either the Office of the Comptroller of the Currency or the Corporation with the same status and tenure as he or she held on the day before the transfer date.

(f) No Additional Certification Requirements.—Examiners transferred to the Office of the Comptroller of the Currency or the Corporation shall not be subject to any additional certification requirements before being placed in a comparable examiner’s position at the Office of the Comptroller of the Currency or the Corporation examining the same types of institutions as they examined before they were transferred.

(g) Personnel Actions Limited.—

(1) 3-Year Protection.—

(A) In General.—Except as provided in paragraph (2), each affected employee shall not, during the 3-year period beginning on the transfer date, be involuntarily separated, or involuntarily reassigned outside his or her locality pay area as defined by the Office of Personnel Management.
(B) AFFECTED EMPLOYEES.—For purposes of this paragraph, the term “affected employee” means—

(i) an employee transferred from the Office of Thrift Supervision holding a permanent position on the day before the transfer date; and

(ii) an employee of the Office of the Comptroller of the Currency holding a permanent position on the day before the transfer date.

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

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

(B) terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character.

(h) PAY.—

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

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

(A) for cause;

(B) for unacceptable performance; or

(C) with the employee’s consent.

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

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

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED
EMPLOYEES.—

(A) IN GENERAL.—
(i) **Continuation of existing retirement plan.**—Each employee transferred from the Office of Thrift Supervision may remain enrolled in his or her existing retirement plan or plans as long as he or she remains employed by the Office of the Comptroller of the Currency or the Corporation.

(ii) **Employer’s contribution.**—The Office of the Comptroller of the Currency or the Corporation shall pay any employer contributions to the existing retirement plan of each employee transferred from the Office of Thrift Supervision as required under that plan.

(B) **Definition.**—For purposes of this paragraph, the term “existing retirement plan” means, with respect to any employee transferred under this section, the particular retirement plan (including the Financial Institutions Retirement Fund) and any associated thrift savings plan of the agency from which the employee was transferred, which the employee was enrolled in on the day before the transfer date.
(2) Benefits other than retirement ben-

efits.—

(A) During 1st year.—

   (i) Existing plans continue.—

   Each transferred employee may, for 1 year
   after the transfer date, retain membership
   in any other employee benefit program of
   the Office of Thrift Supervision, including
   a dental, vision, long term care, or life in-
   surance program, to which the employee
   belonged on the day before the transfer
date.

   (ii) Employer’s contribution.—

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

(B) Dental, vision, or life insurance

after 1st year.—If, after the 1-year period
beginning on the transfer date, the Office of the
Comptroller of the Currency or the Corporation
decides not to continue participation in any
dental, vision, or life insurance program of the
Office of Thrift Supervision, an employee transferred from the Office of Thrift Supervision pursuant to this title who is a member of such a program may, before the decision of the Office of the Comptroller of the Currency or the Corporation takes effect, elect to enroll, without regard to any regularly scheduled open season, in—

(i) the enhanced dental benefits program established by chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established by chapter 89B of title 5, United States Code; and

(iii) the Federal Employees Group Life Insurance Program established by chapter 87 of title 5, United States Code, without regard to any requirement of insurability.

(C) Long Term Care Insurance After 1st Year.—If, after the 1-year period beginning on the transfer date, the Office of the Comptroller of the Currency or the Corporation decides not to continue participation in any long term care insurance program of the Office
of Thrift Supervision, an employee transferred
from the Office of Thrift Supervision pursuant
to this title who is a member of such a program
may, before the decision of the Office of the
Comptroller of the Currency or the Corporation
takes effect, elect to apply for coverage under
the Federal Long Term Care Insurance Pro-
gram established by chapter 90 of title 5,
United States Code, under the underwriting re-
quirements applicable to a new active workforce
member (as defined in Part 875, title 5, Code
of Federal Regulations).

(D) EMPLOYEE’S CONTRIBUTION.—

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

(ii) COST DIFFERENTIAL.—The dif-
ference in costs between the benefits that
the Office of Thrift Supervision is pro-
viding on the date of enactment of this
title and the benefits provided by this sec-
tion shall be paid by the Comptroller of the
Currency or the Corporation.
(iii) Funds Transfer.—The Office of the Comptroller of the Currency or the Corporation shall transfer to the Federal Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Office of the Comptroller of the Currency or the Corporation and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under clause (i).

(E) Special Provisions to Ensure Continuation of Life Insurance Benefits.—

(i) In General.—An annuitant (as defined in section 8901(3) of title 5, United States Code) who is enrolled in a life insurance plan administered by the Office of Thrift Supervision on the day before the transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, and 8714c of
title 5, United States Code, or in a life insurance plan established by the Office of the Comptroller of the Currency or the Corporation, without regard to any regularly scheduled open season and requirement of insurability.

(ii) EMPLOYEE’S CONTRIBUTION.—

(I) IN GENERAL.—Subject to subclause (II), an individual enrolled in a life insurance plan under this clause shall pay any employee contribution required by the plan.

(II) COST DIFFERENTIAL.—The difference in costs between the benefits that the Office of Thrift Supervision is providing on the date of enactment of this title and the benefits provided by this section shall be paid by the Comptroller of the Currency or the Corporation.

(III) FUNDS TRANSFER.—The Office of the Comptroller of the Currency or the Corporation shall transfer to the Employees’ Life Insurance Fund established under section 8714
of title 5, United States Code, an
amount determined by the Director of
the Office of Personnel Management,
after consultation with the Office of
the Comptroller of the Currency or
the Corporation and the Office of
Management and Budget, to be nec-
essary to reimburse the Fund for the
cost to the Fund of providing benefits
under this subparagraph not other-
wise paid for by the employee under
subclause (I).

(IV) CREDIT FOR TIME EN-
ROLLED IN OTHER PLANS.—For em-
ployees transferred under this section,
enrollment in a life insurance plan ad-
ministered by the Office of the Com-
troller of the Currency, the Office of
Thrift Supervision, or the Corporation
immediately before enrollment in a life
insurance plan under chapter 87 of
title 5, United States Code, shall be
considered as enrollment in a life in-
surance plan under that chapter for
purposes of section 8706(b)(1)(A) of title 5, United States Code.

(j) EQUITABLE TREATMENT.—In administering the provisions of this section, the Office of the Comptroller of the Currency and the Corporation—

(1) shall take no action that would unfairly dis-advantage transferred employees relative to other employees of the Office of the Comptroller of the Currency or the Corporation based on their prior employment by the Office of Thrift Supervision;

(2) may take such action as is appropriate in individual cases so that employees transferred under this section receive equitable treatment, with respect to those employees’ status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time, for prior periods of service with any Federal agency;

(3) shall, jointly with the Director of the Office of Thrift Supervision, develop and adopt procedures and safeguards designed to ensure that the requirements of this subsection are met; and

(4) shall conduct a study detailing the position assignments of all employees transferred pursuant to subsection (a), describing the procedures and safe-
guards adopted pursuant to paragraph (3), and
demonstrating that the requirements of this sub-
section have been met; and shall, not later than 365
days after the transfer date, submit a copy of such
study to Congress.

SEC. 1213. PROPERTY TRANSFERRED.

(a) In general.—Not later than 90 days after the
transfer date, all property of the Office of Thrift Super-
vision shall be transferred to the Office of the Comptroller
of the Currency or the Corporation, allocated in a manner
consistent with section 1212(a).

(b) Contracts related to property transferred.—All contracts, agreements, leases, licenses, per-
mits, and similar arrangements relating to property trans-
ferred to the Office of the Comptroller of the Currency
or the Corporation by this section shall be transferred to
the Office of the Comptroller of the Currency or the Cor-
poration together with that property.

(c) Preservation of property.—Property identi-
ified for transfer under this section shall not be altered,
destroyed, or deleted before transfer under this section.

(d) Property defined.—For purposes of this sec-
tion, the term “property” includes all real property (in-
cluding leaseholds) and all personal property (including
computers, furniture, fixtures, equipment, books, ac-
counts, records, reports, files, memoranda, paper, reports
of examination, work papers and correspondence related
to such reports, and any other information or materials).

SEC. 1214. FUNDS TRANSFERRED.

Except to the extent needed to dispose of affairs
under section 1215, all funds that, on the day before the
transfer date, are available to the Director of the Office
of Thrift Supervision to pay the expenses of the Office
of Thrift Supervision shall be transferred to the Office of
the Comptroller of the Currency or the Corporation, allo-
cated in a manner consistent with section 1212(a), on the
transfer date.

SEC. 1215. DISPOSITION OF AFFAIRS.

(a) In General.—During the 90-day period begin-
ing on the transfer date, the Director of the Office of
Thrift Supervision—

(1) shall, solely for the purpose of winding up
the affairs of the agency related to any function
transferred to the Office of the Comptroller of the
Currency or the Corporation by this subtitle—

(A) manage any employees of the Office of
Thrift Supervision and provide for the payment
of the compensation and benefits of any such
employees that accrue before the transfer date;

and
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(B) manage any property of the Office of Thrift Supervision until the property is transferred under section 1213; and

(2) may take any other action necessary to wind up the affairs of the Office of Thrift Supervision relating to the transferred functions.

(b) AUTHORITY AND STATUS OF DIRECTOR.—

(1) IN GENERAL.—Notwithstanding the transfers of functions under this subtitle, the Director of the Office of Thrift Supervision shall, during the 90-day period beginning on the transfer date, retain and may exercise any authority vested in the Director on the day before the transfer date that is necessary to carry out the requirements of this subtitle during that period.

(2) OTHER PROVISIONS.—For purposes of paragraph (1), the Director of the Office of Thrift Supervision shall, during the 90-day period beginning on the transfer date, continue to be—

(A) treated as an officer of the United States; and

(B) entitled to receive compensation at the same annual rate of basic pay that he or she was receiving on the day before the transfer date.
SEC. 1216. CONTINUATION OF SERVICES.

Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, that was, before the transfer date, providing support services to the Office of Thrift Supervision in connection with functions to be transferred to the Office of the Comptroller of the Currency or the Corporation, shall—

(1) continue to provide those services, subject to reimbursement, until the transfer of those functions is complete; and

(2) consult with any such agency to coordinate and facilitate a prompt and orderly transition.

SEC. 1217. CONTRACTING AND LEASING AUTHORITY.

In addition to any powers transferred to the Comptroller of the Currency by this subtitle, the Comptroller of the Currency may—

(1) enter into and perform contracts, execute instruments, and acquire in any lawful manner such goods and services, or real or personal property, or interest in property, as the Comptroller of the Currency determines to be necessary or convenient to carry out the duties and responsibilities of the Comptroller of the Currency; and

(2) hold, maintain, sell, lease, or otherwise dispose of any real or personal property or interest in
property without regard to title 40, United States Code, title III of the Federal Properties and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), and other Federal laws of a similar type governing the procurement of goods and services or the acquisition or disposition of any property or interest in property by Federal agencies.

SEC. 1218. TREATMENT OF SAVINGS AND LOAN HOLDING COMPANIES.

Section 10 of the Home Owners’ Loan Act (12 U.S.C. 1467a) is amended as follows:

(1) In subsection (a)—

(A) in paragraph (1)(A), by striking “Director” and inserting “Board”;

(B) in paragraph (1)(D), by striking clause (i) and inserting: “(i) In general.—

“(i) IN GENERAL.—Except as provided in clause (ii), the term ‘savings and loan holding company’ means any company that directly or indirectly controls a savings association or that controls any company that is a savings and loan holding company, and that is either—
“(I) a fraternal beneficiary society, as defined in section 501(c)(8) of the Internal Revenue Code of 1986; or

“(II) a company that is, together with all of its affiliates on a consolidated basis, predominantly engaged in the business of insurance.”;

(C) in paragraph (1)(F), by striking “Director” and inserting “Board”;

(D) in paragraph (1), by inserting at the end the following new subparagraph:

“(K) BOARD.—The term ‘Board’ means the Board of Governors of the Federal Reserve System.”.

(E) in paragraph (2)(D), by striking “Director” and inserting “Board”;

(F) in paragraph (3)(A), by striking “Director” and inserting “Board”; and

(G) in paragraph (4), by striking “Director” and inserting “Board”.

(2) In subsection (b), by striking “Director” each place it appears and inserting “Board”.

(3) In subsection (c)—

(A) in paragraph, (2)(F)(i)—
(i) by striking “of Governors of the Federal Reserve System”; and

(ii) by striking “Director” and inserting “Board”;

(B) in paragraph (2)(G), by striking “Director” and inserting “Board”;

(C) in paragraph (4)(A), by striking “Director” and inserting “Board”;

(D) in paragraph (4)(B)—

(i) in the heading, by striking “director” and inserting “Board”; and

(ii) by striking “the Director shall” and inserting “the Board shall”;

(E) in paragraph (4)(C)—

(i) in the heading, by striking “director” and inserting “Board”; and

(ii) by striking “the Director may” and inserting “the Board may”;

(F) in paragraph (5), by striking “Director” and inserting “Board”;

(G) in paragraph (6)(D)—

(i) in the heading, by striking “director” and inserting “Board”; and

(ii) by striking “Director” each place it appears and inserting “Board”;
(H) in paragraph (9)(A)(ii), by inserting “,
but only if the conditions for engaging in ex-
panded financial activities set forth in section
4(l) of the Bank Holding Company Act of 1956
have been met” after “1956”; and

(I) in paragraph (9)(E), by striking “Di-
rector” each place it appears and inserting
“Board”.

(4) In subsection (e)—

(A) in paragraph (1)(A)—

(i) in clause (i), by striking “Direc-
tor” and inserting “Board”;

(ii) in clause (ii), by striking “Direc-
tor” and inserting “Board”;

(iii) in clause (iii), by striking “Direc-
tor” each place it appears and inserting
“Board”; and

(iv) in clause (iv), by striking “Direc-
tor” each place it appears and inserting
“Board”;

(B) in paragraph (1)(B), by striking “Di-
rector” each place it appears and inserting
“Board”;
(C) in paragraph (2), by striking “Director” each place it appears and inserting “Board”;

(D) in paragraph (3), by striking “Director” and inserting “Board”;

(E) in paragraph (4)(A), by striking “Director” and inserting “Board”; and

(F) in paragraph (5), by striking “Director” each place it appears and inserting “Board”.

(5) In subsection (f), by striking “Director” each place it appears and inserting “Board”.

(6) In subsection (g), by striking “Director” each place it appears and inserting “Board”.

(7) In subsection (h)—

(A) in paragraph (2), by striking “Director” and inserting “Board”; and

(B) in paragraph (3), by striking “Director” and inserting “Board”.

(8) In subsection (i)—

(A) in paragraph (1)(A), by striking “Director” and inserting “Board”;

(B) in paragraph (2)(B), by striking “Director” and inserting “Board”;
(C) in paragraph (2)(F), by striking “Director” and inserting “Board”;  
(D) in paragraph (3)(B), by striking “Director” and inserting “Board”;  
(E) in paragraph (3)(F), by striking “Director” and inserting “Board”;  
(F) in paragraph (4), by striking “Director” and inserting “Board”; and  
(G) in paragraph (5), by striking “Director” and inserting “Board”.  
(9) In subsection (j), by striking “Director” each place it appears and inserting “Board”.  
(10) In subsection (l)—  
(A) in paragraph (1), by striking “Director” and inserting “Board, in consultation with the Comptroller of the Currency,”; and  
(B) in paragraph (2), by striking “Director” and inserting “Board, in consultation with the Comptroller of the Currency,”.  
(11) In subsection (m)—  
(A) in paragraph (2), by striking “Director” and inserting “Comptroller”;  
(B) in paragraph (2), by striking “Director may grant” and inserting “Comptroller of the Currency may grant”;
(C) in paragraph (2), by striking “the Director deems” and inserting “the Comptroller deems”;

(D) in paragraph (2)(A), by striking “Director” and inserting “Comptroller”;

(E) in paragraph (2)(B), by striking “Director” and inserting “Comptroller”;

(F) in paragraph (2)(B)(iii), by striking “Director” and inserting “Comptroller”;

(G) by striking subparagraph (A) of paragraph (3) and inserting the following new subparagraph:

“(A) IN GENERAL.—A savings association that fails to become or remain a qualified thrift lender shall—

“(i) immediately be subject to the restrictions in subparagraph (B); and

“(ii) become one or more banks (other than a savings bank) within one year after the date on which the savings association should have become or ceases to be a qualified thrift lender, except as provided in subparagraph (C)(i).”;}
(H) by striking subclause (III) of paragraph (3)(B)(i) and inserting the following new subclause:

“(III) DIVIDENDS.—The savings association shall be prohibited from paying dividends except for such dividends—

“(aa) as would be permissible for a national bank;

“(bb) that are necessary to meet obligations of a company that controls such savings association; and

“(cc) that are specifically approved by the Comptroller and the Board of Governors after prior written request of at least 30 days to the Comptroller and the Board of Governors.”;

(I) by striking clause (ii) of paragraph (3)(B);

(J) by striking subparagraphs (C) and (D) of paragraph (3) and inserting the following new subparagraphs:
“(C) **REGULATORY AUTHORITY.**—A savings association that fails to become or remain a qualified thrift lender shall be deemed to have violated section 5 of the Home Owners’ Loan Act and subject to actions authorized by section 5(d) of the Home Owners’ Loan Act.

“(D) **REQUALIFICATIONS.**—

“(i) A savings association that should have become or ceases to be a qualified thrift lender shall not be subject to subparagraph (A)(ii) if the savings association becomes a qualified thrift lender by meeting the qualified thrift lender requirement in paragraph (1) on a monthly average basis in 9 out of the preceding 12 months and remains a qualified thrift lender.

“(ii) If the savings association referred to in clause (i) (or any savings association that acquired all or substantially all of its assets from that savings association) at any time thereafter ceases to be a qualified thrift lender it shall immediately be subject to subparagraph (A)(ii) as if the 1-year time period provided for in subparagraph (A)(ii) already has expired, and as if
the exception in clause (i) was not applicable or available to such savings association.”;

(K) in paragraph (4)(D) by striking “Director” and inserting “Comptroller”;

(L) in paragraph (4)(E) by striking “Director” and inserting “Comptroller”; and

(M) in paragraph (7)(B) by striking “Director” and inserting “Comptroller”.

(12) In subsection (o)—

(A) in paragraph (3) in the heading by striking “DIRECTOR” and inserting “BOARD”;

(B) in paragraph (3)(A) by striking “Director” and inserting “Board”;

(C) in paragraph (3)(B) by striking “Director” and inserting “Board”;

(D) in paragraph (3)(C) by striking “Director” and inserting “Board”;

(E) in paragraph (3)(D) by striking “Director” and inserting “Comptroller”;

(F) in paragraph (5)(E), by striking “activities described in subsection (c)(2) or (c)(9)(A)(ii)” and inserting “activities otherwise permissible for the company pursuant to, and in
accordance with, section 4 of the Bank Holding Company Act of 1956’’;

(G) in paragraph (7) by striking “chartered by the Director” and inserting “chartered by the Comptroller”; and

(H) in paragraph (7) by striking “regulations as the Director may” and inserting “regulations as the Board may”.

(13) In subsections (p), (q), (r), and (s), by striking “Director” each place it appears and inserting “Board”.

SEC. 1219. PRACTICES OF CERTAIN MUTUAL THRIFT HOLDING COMPANIES PRESERVED.

(a) Treatment of Dividends by Certain Mutual Holding Companies.—Section 3(g) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(g)) is amended by adding at the end the following new paragraphs:

“(3) Declaration of Dividends.—Every subsidiary savings association of a mutual holding company shall give the Board not less than 30 days advance notice of the proposed declaration by its directors of any dividend on its guaranty, permanent, or other nonwithdrawable stock. Such notice period shall commence to run from the date of receipt of
such notice by the Board. Any such dividend declared within such period, or without the giving of such notice to the Board, shall be invalid and shall confer no rights or benefits upon the holder of any such stock.

“(4) Waiver of dividends.—Any mutual thrift holding company organized under section 10(b) of the Home Owners’ Loan Act shall be permitted to waive such company’s right to receive any dividend declared by a subsidiary, if—

“(A) no insider of the mutual holding company, associate of an insider, or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company holds any share of the stock in the class of stock to which the waiver would apply; or

“(B) the mutual holding company provides the Board with written notice of its intent to waive its right to receive dividends 30 days prior to the proposed date of payment of the dividend and the Board does not object.

“(5) Standards for waiver of dividend.—The Board shall not object to a notice of intent to waive dividends under paragraph (4) if—
“(A) the waiver would not be detrimental to the safe and sound operation of the savings association; and

“(B) the board of directors of the mutual holding company expressly determines that a waiver of the dividend by the mutual holding company is consistent with the directors’ fiduciary duties to the mutual members of such company.

“(6) Resolution included in waiver notice.—A dividend waiver notice shall include a copy of the resolution of the board of directors of the mutual holding company, in form and substance satisfactory to the Board, together with any supporting materials relied upon by the board of directors, concluding that the proposed dividend waiver is consistent with the board of director’s fiduciary duties to the mutual members of the mutual holding company.

“(7) Valuation.—

“(A) In general.—The Board shall consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.
“(B) EXCEPTION.—In the case of a savings association which has reorganized into a mutual thrift holding company under section 10(b) of the Home Owners’ Loan Act and has issued minority stock either from its mid-tier stock holding company or its subsidiary stock savings association prior to December 1, 2009, the Board shall not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.”.

SEC. 1220. IMPLEMENTATION PLAN AND REPORTS.

(a) PLAN SUBMISSION.—Within 90 days of the enactment of the Financial Stability Improvement Act of 2009, the Secretary and the Corporation, in consultation with the Office of the Comptroller of the Currency and the Office of Thrift Supervision, shall jointly submit a plan to the Congress and the Inspectors General of the Department of the Treasury and of the Corporation detailing the steps the Secretary, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision will take to implement the provisions of sections 1201 through 1216, and the provisions of the amendments made by such sections.

(b) INSPECTORS GENERAL REVIEW OF THE PLAN.—Within 60 days of the date on which the Congress receives
the plan required under subsection (a), the Inspectors General of the Department of the Treasury and of the Corporation shall jointly provide a written report to the Secretary and the Corporation and shall submit a copy to the Congress detailing whether the plan conforms with the intent of the provisions of sections 1201 through 1216, and the provisions of the amendments made by such sections, including—

(1) whether the plan sufficiently takes into consideration the orderly transfer of personnel;

(2) whether the plan describes procedures and safeguards to ensure that the Office of Thrift Supervision employees are not unfairly disadvantaged relative to employees of the Office of the Comptroller of the Currency and the Corporation;

(3) whether the plan sufficiently takes into consideration the orderly transfer of authority and responsibilities;

(4) whether the plan sufficiently takes into consideration the effective transfer of funds;

(5) whether the plan sufficiently takes in consideration the orderly transfer of property; and

(6) any additional recommendations for an orderly and effective process.
(c) Implementation Reports.—Not later than 6 months after the date on which the Congress receives the report required under subsection (b), and every 6 months thereafter until all aspects of the plan have been implemented, the Inspectors General of the Department of the Treasury and the Corporation shall jointly provide a written report on the status of the implementation of the plan to the Secretary and the Corporation and shall submit a copy to the Congress.

SEC. 1221. COMPOSITION OF BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION.

Section 2 of the Federal Deposit Insurance Act (12 U.S.C. 1812) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (B), by striking “Director of the Office of Thrift Supervision” and inserting “Chairman of the Board of Governors of the Federal Reserve System, or such other member of the Board of Governors as the Chairman of the Board of Governors shall designate”;

(2) by amending subsection (d)(2) to read as follows:
“(2) Acting officials may serve.—In the event of a vacancy in the office of the Comptroller of the Currency and pending the appointment of a successor, or during the absence or disability of the Comptroller of the Currency, the acting Comptroller of the Currency shall be a member of the Board of Directors in the place of the Comptroller of the Currency.”; and

(3) in subsection (f)(2), by striking “or of the Office of Thrift Supervision”.

SEC. 1222. AMENDMENTS TO SECTION 3.

Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended—

(1) in subsection (b)(1)(C) (relating to the definition of the term “savings association”), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”;

(2) in subsection (l)(5) (relating to the definition of the term “deposit”), in the introductory text, by striking “Director of the Office of Thrift Supervision,”; and

(3) in subsection (z) (relating to the definition of the term “Federal banking agency”), by striking “the Director of the Office of Thrift Supervision,”.
SEC. 1223. AMENDMENTS TO SECTION 7.

Section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended—

1. in paragraph (2)(A)—
   (A) in the first sentence, by striking “the Director of the Office of Thrift Supervision”;
   (B) in the second sentence, by striking “the Director of the Office of Thrift Supervision,”;

2. in paragraph (3), in the first sentence, by striking “, the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency and the Chairman of the Board of Governors of the Federal Reserve System”; and

3. in paragraph (7), by striking “, the Director of the Office of Thrift Supervision,”.

SEC. 1224. AMENDMENTS TO SECTION 8.

Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended—

1. in subsection (a)(8)(B)(ii), in the last sentence—
   (A) by striking “Director of the Office of Thrift Supervision” each place it appears and inserting “Comptroller of the Currency”; and
(B) by inserting “the Office of Thrift Supervision, as a successor to” after “as a successor to”; 

(2) in subsection (o), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and 

(3) in subsection (w)(3)(A), by striking “Office of Thrift Supervision” and inserting “Office of the Comptroller of the Currency”. 

SEC. 1225. AMENDMENTS TO SECTION 11.

Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended— 

(1) in subsection (c)(6)— 

(A) in the heading, by striking “DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION” and inserting “COMPTROLLER OF THE CURRENCY”; 

(B) in subparagraph (A), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; 

(C) in subparagraph (B), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; 

(2) in subsection (d)— 

(A) in paragraph (17)(A)—
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(i) by striking “, or the Director of
the Office of Thrift Supervision”; and

(ii) by striking “appropriate”; and

(B) in paragraph (18)(B), by striking “or
the Director of the Office of Thrift Super-
vision”; and

(3) in subsection (n)—

(A) in paragraph (1)(A), by striking “the
Director of the Office of Thrift Supervision,
with respect to 1 or more insured”;

(B) in paragraph (2)(A), by striking “the
Director of the Office of Thrift Supervision”;

(C) in paragraph (4)(D), by striking “and
the Director of the Office of Thrift Supervision,
as appropriate,”;

(D) in paragraph (4)(G), by striking “and
the Director of the Office of Thrift Supervision,
as appropriate,”; and

(E) in paragraph (12)(B), by striking “or
the Director of the Office of Thrift Supervision,
as appropriate,”.

SEC. 1226. AMENDMENTS TO SECTION 13.

Section 13(k)(1)(A)(iv) of the Federal Deposit Insur-
ance Act (12 U.S.C. 1823(k)(1)(A)(iv)) is amended by
striking “Director of the Office of Thrift Supervision” and
inserting “Comptroller of the Currency”.

SEC. 1227. AMENDMENTS TO SECTION 18.

Section 18 of the Federal Deposit Insurance Act (12
U.S.C. 1828) is amended—

(1) in subsection (c)(2)—

(A) in subparagraph (A), by striking
“bank;” and inserting “bank or a savings asso-
ciation; and”;

(B) in subparagraph (B), by inserting
“and” at the end after the semicolon;

(C) in subparagraph (C), by striking
“bank (except a savings bank supervised by the
Director of the Office of Thrift Supervision);
and” and inserting “bank or State savings as-
sociation.”; and

(D) by striking subparagraph (D);

(2) in subsection (i)(2)—

(A) by striking subparagraph (B) and in-
serting the following new subparagraph:

“(B) the Corporation, if the resulting insti-
tution is to be a State nonmember insured bank
or insured State savings association.”; and

(B) by striking subparagraph (C); and

(3) in subsection (m)—
(A) in paragraph (1)—

   (i) in subparagraph (A), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

   (ii) in subparagraph (B), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”;

(B) in paragraph (2)—

   (i) in subparagraph (A), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

   (ii) in subparagraph (B)—

       (I) by striking “Director of the Office of Thrift Supervision” each place it appears and inserting “Comptroller of the Currency”; and

       (II) by striking “Director may deem appropriate” and inserting “Comptroller may deem appropriate”; and

(C) in paragraph (3)—
(i) in subparagraph (A), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(ii) in subparagraph (B), by striking “Office of Thrift Supervision” and inserting “Comptroller of the Currency”.

SEC. 1228. AMENDMENTS TO SECTION 28.

Section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831e) is amended—

(1) in subsection (e)—

(A) in paragraph (2)—

(i) in subparagraph (A)(ii), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”;

(ii) in subparagraph (C), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(iii) in subparagraph (F), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(B) in paragraph (3)—
(i) in subparagraph (A), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(ii) in subparagraph (B), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(2) in subsection (h)(2), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”.

SEC. 1229. AMENDMENTS TO THE ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.

(a) Amendments to Section 802.—Section 802(a)(3) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801(a)(3)) is amended—

(1) by striking “Comptroller of the Currency,” and inserting “Comptroller of the Currency and”; and

(2) by striking “, and the Director of the Office of Thrift Supervision”.

(b) Amendments to Section 804.—Section 804(a) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3803(a)) is amended—
(1) by amending paragraph (1) to read as follows:

“(1) with respect to banks, savings associations, mutual savings banks, and savings banks, only to transactions made in accordance with regulations governing alternative mortgage transactions as prescribed by the Comptroller of the Currency to the extent that such regulations are authorized by rule-making authority granted to the Comptroller of the Currency under laws other than this section; and”;

(2) in paragraph (2), by striking “; and” and inserting a period; and

(3) by striking paragraph (3).

SEC. 1230. AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.

Section 4(f)(12)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)(12)(A)) is amended striking “the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or” and inserting “the Federal Deposit Insurance Corporation or”.

SEC. 1231. AMENDMENTS TO THE BANK PROTECTION ACT OF 1968.

Section 2 of the Bank Protection Act of 1968 (12 U.S.C. 1881) is amended—
(1) in paragraph (1), by striking “national banks,” and inserting “national banks and federal savings associations,”;

(2) in paragraph (2), by inserting “and” at the end;

(3) in paragraph (3), by striking “, and” and inserting a period; and

(4) by striking paragraph (4).

SEC. 1232. AMENDMENTS TO THE BANK SERVICE COMPANY ACT.

Section 1(b) of the Bank Service Company Act (12 U.S.C. 1861(b)) is amended—

(1) in paragraph (4), by striking “insured bank,” and inserting “insured bank or”;

(2) by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(3) by striking “, the Federal Savings and Loan Insurance Corporation,”.

SEC. 1233. AMENDMENTS TO THE COMMUNITY REINVESTMENT ACT OF 1977.

Section 803 of the Community Reinvestment Act of 1977 (12 U.S.C. 2902) is amended—

(1) in paragraph (1)—
(A) in subparagraph (A), by striking “national banks” and inserting “national banks or savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)”; and

(B) in subparagraph (B), by striking “and bank holding companies;” and inserting “, bank holding companies and savings and loan holding companies;”; and

(2) by striking the first paragraph (2) (relating to section 8 of the Federal Deposit Insurance Act).

SEC. 1234. AMENDMENTS TO THE DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT.

(a) Amendment to Section 207.—Section 207 of the Depository Institution Management Interlocks Act (12 U.S.C. 3206) is amended—

(1) in paragraph (1), by striking “national banks,” and inserting “national banks and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),”; and

(2) in paragraph (2), by striking “and bank holding companies,” and inserting “, bank holding companies, and savings and loan holding companies,”;
(3) by striking paragraph (4); and

(4) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(b) Amendment to Section 209.—Section 209 of the Depository Institution Management Interlocks Act (12 U.S.C. 3207) is amended—

(1) in paragraph (1), by striking “national banks,” and inserting “national banks and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),”; 

(2) in paragraph (2), by striking “and bank holding companies,” and inserting “, bank holding companies, and savings and loan holding companies,”;

(3) at the end of paragraph (3), by inserting “and” after the comma;

(4) by striking paragraph (4); and

(5) by redesignating paragraph (5) as paragraph (4).

(c) Amendment to Section 210.—Subsection 210(a) of the Depository Institution Management Interlocks Act (12 U.S.C. 3208(a)) is amended—

(1) by striking “his” and inserting “the”; and
(2) by inserting “of the Attorney General” after “enforcement functions”.

SEC. 1235. AMENDMENTS TO THE EMERGENCY HOMEOWNERS’ RELIEF ACT.

Section 110 of the Emergency Homeowners’ Relief Act (12 U.S.C. 2709) is amended—

(1) by striking the “Federal Home Loan Bank Board” and inserting “Federal Housing Finance Agency”; and

(2) by striking “the Federal Savings and Loan Insurance Corporation,”.

SEC. 1236. AMENDMENTS TO THE EQUAL CREDIT OPPORTUNITY ACT.

Section 704(a) of the Equal Credit Opportunity Act (15 U.S.C. 1691c(a)) is amended—

(1) in paragraph (1)(A), by striking “and Federal branches and Federal agencies of foreign banks,” and inserting “Federal branches and Federal agencies of foreign banks, or a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation,”;

(2) by striking paragraph (2); and

(3) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8).
SEC. 1237. AMENDMENTS TO THE FEDERAL CREDIT UNION ACT.

(a) Amendments to Section 206.—Section 206(g)(7) of the Federal Credit Union Act (12 U.S.C. 1786(g)(7)) is amended—

(1) in subparagraph (A)—

(A) in clause (v), by inserting “and” after the semicolon;

(B) in clause (vi)—

(i) by striking “Federal Housing Finance Board” and inserting “Federal Housing Finance Agency”; and

(ii) by striking “; and” and inserting a period; and

(C) by striking clause (vii); and

(2) in subparagraph (D)—

(A) in clause (iii), by inserting “and” after the semicolon;

(B) in clause (iv), by striking “; and” and inserting a period; and

(C) by striking clause (v).

SEC. 1238. AMENDMENTS TO THE FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978.

(a) Amendment to Section 1002.—Section 1002 of the Federal Financial Institutions Examination Council Act of 1978.

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(b) Amendment to Section 1003.—Section 1003(1) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3302(1)) is amended by striking “the Office of Thrift Supervision.”.

(c) Amendments to Section 1004.—Section 1004(a) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3303(a)) is amended—

1. (1) by striking paragraph (4); and
2. (2) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

15 SEC. 1239. AMENDMENTS TO THE FEDERAL HOME LOAN BANK ACT.

(a) Amendments to Section 18.—Section 18(c) of the Federal Home Loan Bank Act (12 U.S.C. 1438(c)) is amended—

1. (1) by striking “Director of the Office of Thrift Supervision” each place it appears and inserting “Comptroller of the Currency”;
2. (2) in paragraph (1)(B), by striking “and the agencies under its administration or supervision”;

and
(3) in paragraph (5), by striking “and such agencies”.

(b) REPEAL OF SECTION 21A.—Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is hereby repealed.

SEC. 1240. AMENDMENTS TO THE FEDERAL RESERVE ACT.

Section 19(b) of the Federal Reserve Act (12 U.S.C. 461) is amended—

(1) in paragraph (1)(F), by striking “the Director of the Office of Thrift Supervision” and inserting “the Comptroller of the Currency”; and

(2) in paragraph (4)(B), by striking “the Director of the Office of Thrift Supervision” and inserting “the Comptroller of the Currency”.

SEC. 1241. AMENDMENTS TO THE FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989.

(a) Amendments to Section 302.—Section 302(1) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is amended by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”.

(b) Amendment to Section 305.—Section 305(b)(1) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is amended by striking “Di-
rector of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”.

(c) Amendment to Section 308.—Section 308(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1463 note) is amended by striking “Director of the Office of Supervision” and inserting “Comptroller of the Currency”.

(d) Amendments to Section 402.—Section 402 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1437 note) is amended—

(1) in subsection (a), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”;

(2) in subsection (b), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(3) in subsection (e)—

(A) in paragraph (1), by striking “Office of Thrift Supervision” and inserting “Office of the Comptroller of the Currency”;

(B) in paragraph (2), by striking “Director of the Office of Thrift Supervision” each place it appears and inserting “Comptroller of the Currency”;
(C) in paragraph (3), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(D) in paragraph (4), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”.

(e) Amendment to Section 1103.—Section 1103(a)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)(2)) is amended by striking “and the Resolution Trust Corporation”.

(f) Amendments to Section 1205.—Subsection 1205(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1818 note) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by striking “Director of the Office of Thrift Supervision, or the Director’s designee” and inserting “Comptroller of the Currency, or the Comptroller’s designee”;  

(B) by striking subparagraph (D); and

(C) by redesignating subparagraphs (E) and (F) as subparagraphs (D) and (E), respectively;
(2) in paragraph (2), by striking “paragraph (1)(F)” and inserting “paragraph (1)(E)”; (3) in paragraph (3), by striking “paragraph (1)(F)” and inserting “paragraph (1)(E)”; and (4) in paragraph (5), by striking “through (E)” and inserting “through (D)”.

(g) Amendments to Section 1206.—Section 1206(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b(a)) is amended— (1) by striking “the Oversight Board of the Resolution Trust Corporation” and inserting “and”; and (2) by striking “, and the Office of Thrift Supervision,”.

(h) Amendments to Section 1216.—Section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833e) is amended— (1) in subsection (a)— (A) by striking paragraphs (2), (5), and (6); (B) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and (C) in paragraph (2) (as redesignated), by adding “and” at the end;
(2) in subsection (c)—

(A) by striking “the Director of the Office of Thrift Supervision,” and inserting “and’’; and

(B) by striking “, the Oversight Board of the Resolution Trust Corporation, and the Resolution Trust Corporation”; and

(3) in subsection (d)—

(A) by striking paragraphs (3), (5), and (6); and

(B) by redesignating paragraphs (4), (7), and (8) as paragraphs (3), (4), and (5), respectively.

SEC. 1242. AMENDMENTS TO THE HOUSING ACT OF 1948.

Section 502(c) of the Housing Act of 1948 (12 U.S.C. 1701c(c)) is amended in the introductory text by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”.


(a) Amendments to Section 543 of the Housing and Community Development Act of 1992.—Section
(1) in subsection (c)(1)—
(A) by striking subparagraphs (D) through (F); and
(B) by redesignating subparagraphs (G) and (H) as subparagraphs (D) and (E), respec-
(2) in subsection (f)—
(A) in paragraph (2)—
(i) by striking “the Office of Thrift Supervision,”; and
(ii) in subparagraph (D), by striking “the Office of Thrift Supervision,”; and
(B) in paragraph (3)—
(i) by striking “the Office of Thrift Supervision,”; and
(ii) in subparagraph (D), by striking “Office of Thrift Supervision,” and insert-
(b) Amendment to Section 1315 of the Federal Housing Enterprises Financial Safety and
Soundness Act of 1992.—Section 1315(b) of the Federal Housing Enterprises Financial Safety and Soundness
Act of 1992 (12 U.S.C. 4515(b)) is amended by striking
“the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.” and inserting “and the Federal Deposit Insurance Corporation.”

(c) Amendment to Section 1317 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.—Section 1317(c) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4517(c)) is amended by striking “the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision” and inserting “or the Federal Deposit Insurance Corporation”.


SEC. 1245. Amendments to the National Housing Act.

Section 202(f) of the National Housing Act is amended—

(1) by amending paragraph (5) to read as follows:

“(5) if the mortgagee is a national bank, a subsidiary or affiliate of such a bank, a Federal savings
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association or a subsidiary or affiliate of a savings
association, the Comptroller of the Currency’’;

(2) in paragraph (6), by adding ‘‘and’’ at the
end;

(3) in paragraph (7)—

(A) by inserting ‘‘or State savings associa-
tion’’ after ‘‘State bank’’; and

(B) by striking ‘‘; and’’ and inserting a pe-
riod; and

(4) by striking paragraph (8).

SEC. 1246. AMENDMENTS TO THE RIGHT TO FINANCIAL
PRIVACY ACT OF 1978.

Section 1101(7) of the Right to Financial Privacy
Act of 1978 (12 U.S.C. 3401(7)) is amended by striking
subparagraph (B).

SEC. 1247. AMENDMENTS TO THE BALANCED BUDGET AND
EMERGENCY DEFICIT CONTROL ACT OF 1985.

(a) Amendments to Section 255.—Section
255(g)(1)(A) of the Balanced Budget and Emergency
Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is
amended by striking ‘‘Office of Thrift Supervision (20–
4108–0–3–373);’’.

(b) Amendments to Section 256.—Section
256(h)(4) of the Balanced Budget and Emergency Deficit
Control Act of 1985 (2 U.S.C. 906(h)(4)) is amended—
(1) by striking subparagraphs (C) and (G); and
(2) by redesignating subparagraphs (D), (E), (F), and (H) as subparagraphs (C) through (G), respectively.

SEC. 1248. AMENDMENTS TO THE CRIME CONTROL ACT OF 1990.

(a) Amendments to Section 2539.—Section 2539(c)(2) of the Crime Control Act of 1990 (Public Law 101–647) is amended by striking subparagraph (F) and redesignating subparagraphs (G) and (H) as subparagraphs (F) through (G), respectively.

(b) Amendment to Section 2554.—Section 2554(b)(2) of the Crime Control Act of 1990 (Public Law 101–647) is amended by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”.


Section 3(a)(5) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4003(a)(5)) is amended by striking “the Office of Thrift Supervision,”.

SEC. 1250. AMENDMENT TO THE INVESTMENT COMPANY ACT OF 1940.

Section 6(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–6(a)(3)) is amended by striking
SEC. 1251. AMENDMENT TO THE NEIGHBORHOOD REINVESTMENT CORPORATION ACT.

Section 606(c)(3) of the Neighborhood Reinvestment Corporation Act is amended by striking “Federal Home Loan Bank Board” and inserting “Federal Housing Finance Agency”.

SEC. 1252. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

(a) AMENDMENTS TO SECTION 3.—Section 3(a)(34) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)) is amended—

(1) in subparagraph (A)—

(A) in clause (i), by striking “bank;” and inserting “bank, or a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, a subsidiary or a department or division of any such savings association, or a savings and loan holding;”;

(B) in clause (iii), by adding “and” at the end;

(C) by striking clause (iv); and
(D) by redesignating clause (v) as clause (iv);

(2) in subparagraph (B)—

(A) in clause (i), by striking “bank;” and inserting “bank, or a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813 (b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, a subsidiary or a department or division of any such savings association, or a savings and loan holding;”;

(B) in clause (iii), by adding “and” at the end;

(C) by striking clause (iv); and

(D) by redesignating clause (v) as clause (iv);

(3) in subparagraph (C)—

(A) in clause (i), by striking “bank;” and inserting “bank, or a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813 (b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, a subsidiary or a department or division of any such savings association, or a savings and loan holding;”;

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(B) in clause (iii), by adding “and” at the end;

(C) by striking clause (iv); and

(D) by redesignating clause (v) as clause (iv); and

(4) in subparagraph (F)—

(A) in clause (i), by striking “bank;” and inserting “or a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813 (b))), the deposits of which are insured by the Federal Deposit Insurance Corporation;”;

(B) by striking clause (ii); and

(C) redesignating clauses (iii), (iv), and (v) as clauses (ii), (iii) and (iv), respectively.

(b) Amendments to Section 15C.—Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5) is amended in subsection (g)(1) by striking “the Director of the Office of Thrift Supervision, the Federal Savings and Loan Insurance Corporation,.”

SEC. 1253. AMENDMENTS TO TITLE 18, UNITED STATES CODE.

(a) Amendment to Section 212.—Section 212(c)(2) of title 18, United States Code, is amended—

(1) by striking subparagraph (C); and
(2) by redesignating subparagraphs (D) through (H) as subparagraphs (C) through (G), respectively.

(b) Amendment to Section 657.—Section 657 of title 18, United States Code, is amended by striking “Office of Thrift Supervision, the Resolution Trust Corporation,”.

(c) Amendment to Section 981.—Section 981(a)(1)(D) of title 18, United States Code, is amended—

(1) by striking “the Resolution Trust Corporation,”; and

(2) by striking “or the Office of Thrift Supervision”.

(d) Amendment to Section 982.—Section 982(a)(3) of title 18, United States Code, is amended—

(1) by striking “the Resolution Trust Corporation,”; and

(2) by striking “or the Office of Thrift Supervision”.

(e) Amendment to Section 1006.—Section 1006 of title 18, United States Code, is amended—

(1) by striking “Office of Thrift Supervision,”; and
(2) by striking “the Resolution Trust Corpora-

(f) Amendment to Section 1014.—Section 1014
of title 18, United States Code, is amended—

(1) by striking “the Office of Thrift Super-

vision,”; and

(2) by striking “the Resolution Trust Corpora-

(g) Amendment to Section 1032.—Section
1032(1) of title 18, United States Code, is amended—

(1) by striking “the Resolution Trust Corpora-

(2) by striking “or the Director of the Office of

Thrift Supervision”.

Sec. 1254. Amendments to Title 31, United States
Code.

(a) Amendment to Section 309.—Section 309 of
title 31, United States Code, is amended to read as fol-
lows:

“§ 309. Division of Thrift Supervision

“The Division of Thrift Supervision established
under section 3(a) of the Home Owners’ Loan Act shall
be a division in the Office of the Comptroller of the Cur-
rency.”.
(b) AMENDMENTS TO SECTION 321.—Section 321 of title 31, United States Code, is amended—

(1) in subsection (c)—

(A) in paragraph (1), by adding “and” at the end;

(B) in paragraph (2), by striking “; and” and inserting a period; and

(C) by striking paragraph (3); and

(2) by striking subsection (e).

(c) AMENDMENTS TO SECTION 714.—Section 714 of title 31, United States Code, is amended—

(1) in subsection (a), by striking “the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.” and inserting “and the Office of the Comptroller of the Currency.”;

(2) in subsection (b), by striking all after “has consented in writing.” and inserting the following:

“Audits of the Federal Reserve Board and Federal reserve banks shall not include unreleased transcripts or minutes of meetings of the Board of Governors or of the Federal Open Market Committee.

To the extent that an audit deals with individual market actions, records related to such actions shall only be released by the Comptroller General after
180 days have elapsed following the effective date of such actions.”;

(3) in subsection (c)(1), in the first sentence, by striking “subsection,” and inserting “subsection or in the audits or audit reports referring or relating to the Federal Reserve Board or Reserve Banks,”;

and

(4) by adding at the end the following:

“(f) AUDIT AND REPORT OF THE FEDERAL RESERVE SYSTEM.—

“(1) IN GENERAL.—An audit of the Board of Governors of the Federal Reserve System and the Federal reserve banks under subsection (b) shall be completed within 12 months of the enactment of the Financial Stability Improvement Act of 2009.

“(2) REPORT.—

“(A) REQUIRED.—A report on the audit referred to in paragraph (1) shall be submitted by the Comptroller General to the Congress before the end of the 90-day period beginning on the date on which such audit is completed and made available to—

“(i) the Speaker of the House of Representatives;
“(ii) the majority and minority leaders of the House of Representatives;

“(iii) the majority and minority leaders of the Senate;

“(iv) the Chairman and Ranking Member of the committee and each subcommittee of jurisdiction in the House of Representatives and the Senate; and

“(v) any other Member of Congress who requests it.

“(B) CONTENTS.—The report under subparagraph (A) shall include a detailed description of the findings and conclusion of the Comptroller General with respect to the audit that is the subject of the report.

“(3) CONSTRUCTION.—Nothing in this subsection shall be construed—

“(A) as interference in or dictation of monetary policy to the Federal Reserve System by the Congress or the Government Accountability Office; or

“(B) to limit the ability of the Government Accountability Office to perform additional audits of the Board of Governors of the Federal
Reserve System or of the Federal reserve banks.”.

SEC. 1255. REQUIREMENT FOR COUNTERCYCLICAL CAPITAL REQUIREMENTS.

Section 908(a) of the International Lending Supervision Act of 1983 (12 U.S.C. 3907(a)) is amended by adding at the end the following new paragraph:

“(3) Each appropriate Federal banking agency shall, in establishing capital requirements under this Act or other provisions of Federal law for banking institutions, seek to make such requirements countercyclical so that the amount of capital required to be maintained by a banking institution increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the institution.”.

SEC. 1256. TRANSFER OF AUTHORITY TO THE BOARD WITH RESPECT TO SAVINGS AND LOAN HOLDING COMPANIES.

(a) TRANSFER OF FUNCTIONS.—Notwithstanding any other provision of this subtitle, all functions of the Director of the Office of Thrift Supervision with respect to savings and loan holding companies that are a fraternal beneficiary society, as defined in section 501(c)(8) of the Internal Revenue Code of 1986, or a company that is, to-
gether with all of its affiliates on a consolidated basis, pre-
dominantly engaged in the business of insurance are
transferred to the Board.

(b) Board’s Authority.—Notwithstanding any
other provision of this subtitle, the Board shall succeed
to all powers, authorities, rights, and duties with respect
to savings and loan holding companies that are a fraternal
beneficiary society, as defined in section 501(c)(8) of the
Internal Revenue Code of 1986, or a company that is, to-
gether with all of its affiliates on a consolidated basis, pre-
dominantly engaged in the business of insurance that were
vested in the Director of the Office of Thrift Supervision
under Federal law, including the Home Owners’ Loan Act,
on the day before the transfer date.

(c) Savings and Loan Holding Company De-
fixed.—The term “savings and loan holding company”
shall have the meaning given such term under section 10
of the Home Owners’ Loan Act.

SEC. 1257. EFFECTIVE DATE.

Except as otherwise provided in this subtitle, the
amendments made by sections 1221 through section 1253
and 1256 and subsections (a), (b), and (c)(1) of section
1254 shall take effect on the transfer date.
Subtitle D—Further Improvements to the Regulation of Bank Holding Companies and Depository Institutions

SEC. 1301. TREATMENT OF INDUSTRIAL LOAN COMPANIES, SAVINGS ASSOCIATIONS, AND CERTAIN OTHER COMPANIES UNDER THE BANK HOLDING COMPANY ACT.

(a) DEFINITIONS.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended—

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

“(a) BANK HOLDING COMPANY.—

“(1) IN GENERAL.—Except as provided in paragraph (5), the term ‘bank holding company’ means—

“(A) any company, other than a company described in section 4(p), which has control over any bank or over any company that is or becomes a bank holding company by virtue of this Act; and

“(B) any section 6 holding company established by a company described in section 6(a)(1)(C).”.
(2) in subsection (a)(5), by adding at the end the following new subparagraph:

“(G) No company is a bank holding company by virtue of its ownership or control of a section 6 holding company or any subsidiary of a section 6 holding company, so long as the requirements of sections 4(p) and 6 of this Act are met, as applicable, by the section 6 holding company;”;

(3) in subsection (c)(1)(A), by striking “insured bank” and inserting “insured depository institution”, and by striking “section 3(h) of the Federal Deposit Insurance Act” and inserting “section 3(c)(2) of the Federal Deposit Insurance Act”;

(4) in subsection (c)(2)—

(A) in subparagraph (B), by inserting before the period the following: “that is controlled by a company that is a fraternal beneficiary society, as defined in section 501(c)(8) of the Internal Revenue Code of 1986, or a company that is, together with all of its affiliates on a consolidated basis, predominantly engaged in the business of insurance”; and

(B) in subparagraph (F)(i), by inserting before the semicolon the following: “, including
issuing credit cards and other credit devices (including virtual or intangible devices) that function as credit cards’’;

(C) in subparagraph (F)(v), by inserting before the semicolon the following: ‘‘, other than loans that otherwise meet the requirements of this subparagraph and are made to businesses that meet the criteria for a small business concern to be eligible for business loans under regulations established by the Small Business Administration under part 121 of title 13, Code of Federal Regulations’’; and

(D) by striking subparagraph (H) and inserting the following:

“(H) An industrial loan company, industrial bank, or other similar institution which—

“(i) is an institution organized under the laws of a State which, on March 5, 1987, had in effect or had under consideration in such State’s legislature a statute which required or would require such institution to obtain insurance under the Federal Deposit Insurance Act;

“(ii) either—
“(I) does not accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties;

“(II) has total assets of less than $100,000,000; or

“(III) the control of which is not acquired by any company after August 10, 1987;

“(iii) predominantly provides financial products and services to current and former members of the military and their families; and

“(iv) is controlled by a savings and loan holding company, as defined in section 10(a) of the Home Owners’ Loan Act.

This subparagraph shall cease to apply to any institution which permits any overdraft (including any intraday overdraft), or which incurs any such overdraft in such institution’s account at a Federal Reserve bank, on behalf of an affiliate, if such overdraft is not the result of an inadvertent computer or accounting error that is beyond the control of both the institution and the affiliate, or that is otherwise permissible for
a bank controlled by a company described in
section 1843(f)(1) of this title.”; and
(5) by adding at the end the following new sub-
section:
“(r) Section 6 holding companies.—The term
’section 6 holding company’ means a company that is re-
quired to be established as an intermediate holding com-
pany under section 6 of this Act.”.
(b) Nonbanking activities exceptions.—Section
1843) is amended—
(1) in subsection (f)(1)(B) by striking “for pur-
poses of this Act” and inserting “for purposes of
section 4(a)”;
(2) in subsection (f)(2)—
(A) in subparagraph (B)(ii), by striking “; or” and inserting a semicolon;
(B) in subparagraph (C), by striking the
period and inserting “; or”; and
(C) by adding at the end the following new
subparagraph:
“(D) such company fails to—
“(i) establish and register a section 6
holding company pursuant to section 6 of
this Act within 180 days after the adoption of rules required by this section; and

“(ii) conduct all such activities which are permissible for a financial holding company, as determined under section 4(k), through such section 6 holding company, other than—

“(I) internal financial activities conducted for such company or any affiliate, including, but not limited to internal treasury, investment, and employee benefit functions, provided that with respect to any internal financial activity engaged in for the company or an affiliate and a nonaffiliate during the year prior to date of enactment, the company (or an affiliate not a subsidiary of the section 6 company) may continue to engage in that activity so long as the at least two-thirds of the assets or two-thirds of the revenues generated from the activity are from or attributable to the company or an affiliate, subject to review by the Board to determine whether en-
gaging in such activity presents undue risk to the section 6 company or undue systemic risk; and

“(II) financial activities involving the provision of credit for the purchase or lease of products or services from an affiliate or for the purchase or lease of products produced by an affiliate of such section 6 holding company that is not a subsidiary of such section six holding company, in accordance with regulations prescribed by or orders issued by the Board, pursuant to section 6 of this Act.”; and

(3) by inserting at the end the following new subsections:

“(p) Certain Companies Not Subject to This Act.—

“(1) In general.—Except as provided in paragraphs (6) and (7), any company which—

“(A) was—

“(i) on the date of enactment of the Financial Stability Improvement Act of 2009, a unitary savings and loan holding company that continues to control not
fewer than one savings association that it
controlled on May 4, 1999, or that it ac-
quired pursuant to an application pending
before the Office of Thrift Supervision on
or before that date, and that became a
bank for purposes of the Bank Holding
Company Act as a result of the enactment
of section 1301(a)(3) of the Financial Sta-
bility Improvement Act of 2009; or

“(ii) on November 23, 2009—

“(I) controlled an institution
which became a bank as a result of
the enactment of section
1301(a)(4)(B) of the Financial Sta-
bility Improvement Act of 2009;

“(II) had an application pending,
or approved but not executed, before
the Federal Deposit Insurance Cor-
poration, that, if approved, would per-
mit the applicant to control an indus-
trial loan company, industrial bank, or
other similar institution—

“(aa) that is a federally in-
sured, State-chartered depository
institution;
“(bb) that is organized under the laws of a State that on March 5, 1987, had in effect, or had under consideration in the legislature of such State, a statute that required such institution to obtain insurance under the Federal Deposit Insurance Act; and

“(cc) that—

“(AA) does not accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties; or

“(BB) maintains total assets of less than $100,000,000; or

“(III) controlled an institution it has continuously controlled since March 5, 1987, which became a bank as a result of the enactment of the Competitive Equality Banking Act of 1987, pursuant to subsection (f);

“(B) was not on June 30, 2009—
“(i) a bank holding company; or

“(ii) subject to the Bank Holding Company Act of 1956 by reason of section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)); and

“(C) on June 30, 2009, directly or indirectly controlled shares or engaged in activities that did not, on the day before the date of enactment of the Financial Stability Act of 2009, comply with the activity or investment restrictions on financial holding companies in section 4 in accordance with regulations prescribed by the Board,

shall not be treated as a bank holding company for purposes of this Act solely by virtue of such company’s control of such institution and control of a section 6 holding company established pursuant to section 6.

“(2) LOSS OF EXEMPTION.—A company described in paragraph (1) shall no longer qualify for the exemption provided under that paragraph if—

“(A) such company fails to—

“(i) establish and register a section 6 holding company pursuant to section 6 of this Act within 180 days after adoption of
rules required by this section, unless the Board grants an extension of such period for compliance which shall not exceed 180 additional days; and

“(ii) maintain a section 6 holding company in compliance with all the requirements for a section 6 holding company under section 6 of this Act.

“(B) such company directly or indirectly (including through the section 6 holding company it must form pursuant to this subsection and section 6 of this Act) acquires control of an additional bank or insured depository institution after June 30, 2009, provided that such company directly or indirectly (including through the section 6 holding company) may acquire—

“(i) shares held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

“(ii) shares held by any person as a bona fide fiduciary solely for the benefit of employees of either the company described in paragraph (1) or any subsidiary of that
company and the beneficiaries of those employees;

“(iii) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

“(iv) shares held in an account solely for trading purposes;

“(v) shares over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

“(vi) loans or other accounts receivable acquired from an insured depository institution in the normal course of business;

“(vii) shares or assets acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Board may permit if the Board determines that such an extension will not be detrimental to the public interest;
“(viii) shares or assets acquired directly or indirectly by a depository institution controlled by such company in a transaction involving an insured depository institution for which the Federal Deposit Insurance Corporation has been appointed as receiver or which has been found to be in danger of default (as defined in section 3 of the Federal Deposit Insurance Act) by the appropriate Federal or State authority;

“(ix) shares or assets of another industrial loan company meeting the requirements of this Act if such company continuously controlled an industrial loan company since the date of enactment of the Financial Stability Improvement Act of 2009; and

“(x) shares or assets of a savings association acquired directly or indirectly by the savings association controlled by such company if such company continuously controlled a savings association since the date of enactment of the Financial Stability Improvement Act of 2009;
“(C)(i) the section 6 holding company required to be established by such company, or any subsidiary bank of such company undergoes a change in control after the date of enactment of the Financial Stability Improvement Act of 2009, other than—

“(I) the merger or whole acquisition of such parent company in a bona fide merger or acquisition (as shall be determined by the Board, which is authorized to find that a transaction is not a bona fide merger or acquisition and thus results in the loss of exemption), with a company that is predominantly engaged in activities not permissible for a financial holding company pursuant to section 4(k);

“(II) a change of control of an industrial bank, its section 6 holding company, or any entity that directly or indirectly controls the industrial bank, in a transaction other than a merger described in subclause (I), by an acquiring company that is predominately engaged in activities not permissible for a financial holding company pursuant to subsection (k), if—
“(aa) the transaction is approved by the appropriate Federal banking agency and the Board; and

“(bb) the industrial bank does not thereafter establish a domestic branch as defined in section 3(o) of the Federal Deposit Insurance Act (12 U.S.C. 1813(o));

“(III) an inadvertent acquisition of control, as determined by the Board, if such inadvertent acquisition of control is reversed or rectified within 180 days of its discovery; or

“(IV) the acquisition of additional shares by a company that owned or controlled 7.5 percent or more of any class of such parent company’s outstanding voting stock on or before June 30, 2009, and continuously owned or controlled at least such 7.5 percent since June 30, 2009.

“(ii) Nothing in this subparagraph shall be construed as preventing the Board from requiring compliance with this subsection, section 6 or the requirements of the Change in Bank Control Act, as applicable to a company that is
permitted to acquire control without loss of the
exemption in this subsection 4(p)(2); or

“(D) any subsidiary bank of such company
engages in any activity after the date of enact-
ment of the Financial Stability Improvement
Act of 2009 which would have caused such in-
stitution to be a bank (as defined in section
2(c) of this Act, as in effect before such date)
if such activities had been engaged in before
such date.

“(3) Divestiture in case of loss of ex-
emption.—If any company described in paragraph
(1) fails to qualify for the exemption provided under
paragraph (1) by operation of paragraph (2), such
exemption shall cease to apply to such company and
such company shall divest control of each bank it
controls before the end of the 180-day period begin-
ning on the date on which the company receives no-
tice from the Board that the company has failed to
continue to qualify for such exemption, unless, be-
fore the end of such 180-day period, the company
has—

“(A) either—

“(i) corrected the condition or ceased
the activity that caused the company to
fail to continue to qualify for the exemp-
ion; or
“(ii) submitted a plan to the Board
for approval to cease the activity or correct
the condition in a timely manner (which
shall not exceed 1 year); and
“(B) implemented procedures that are rea-
sonably adapted to avoid the reoccurrence of
such condition or activity.
“(4) Subsection ceases to apply under
certain circumstances.—This subsection shall
cease to apply to any company described in para-
graph (1) if such company—
“(A) registers as a bank holding company
under section 2(a) of this Act;
“(B) immediately upon such registration,
complies with all of the requirements of this
chapter, and regulations prescribed by the
Board pursuant to this chapter, including the
nonbanking restrictions of this section; and
“(C) does not, at the time of such registra-
tion, control banks in more than one State, the
acquisition of which would be prohibited by sec-
tion 3(d) of this Act if an application for such
acquisition by such company were filed under
section 3(a) of this Act.

“(5) INFORMATION REQUIREMENT.—Each com-
pany described in paragraph (1) shall, within 60
days after the date of enactment of the Financial
Stability Improvement Act of 2009, provide the
Board with the name and address of such company,
the name and address of each bank such company
controls, and a description of each such bank’s ac-
tivities.

“(6) EXAMINATIONS AND REPORTS.—The
Board may, from time to time, examine a company
described in paragraph (1) or a bank controlled by
such a company, and may require reports under
oath from a company described in paragraph (1),
and appropriate officers or directors of such com-
pany, in each case solely for purposes of assuring
compliance with the provisions of this subsection and
enforcing such compliance.

“(7) LIMITED ENFORCEMENT.—

“(A) IN GENERAL.—In addition to any
other power of the Board, the Board may en-
force compliance with the provisions of this sub-
section which are applicable to any company de-
scribed in paragraph (1), and any bank con-
trolled by such company, under section 8 of the Federal Deposit Insurance Act, and such company or bank shall be subject to such section (for such purposes) in the same manner and to the same extent as if such company were a bank holding company.

“(B) Application of other act.—Any violation of this subsection by any company described in paragraph (1) or any bank controlled by such a company, may also be treated as a violation of the Federal Deposit Insurance Act for purposes of subparagraph (A).

“(C) No effect on other authority.—No provision of this paragraph shall be construed as limiting any authority of the Board or any other Federal agency under any other provision of law.

“(8) Unitary savings and loan holding company defined.—For purposes of this subsection, the term ‘unitary savings and loan holding company’ means a company that was a savings and loan holding company on May 4, 1999 (as then defined), or that became a savings and loan holding company pursuant to an application pending before
the Office of Thrift Supervision on or before that
date, and—

“(A) that controls—

“(i) only 1 savings association; or

“(ii) more than 1 savings association,

if all, or all but 1, of the savings associa-
tion subsidiaries of such company were ini-
tially acquired by the company pursuant to
a supervisory transaction under section
1823(e), 1823(i), or 1823(k) of this title,
or section 408(m) of the National Housing
Act (12 U.S.C. 1730a(m));

“(B) all of the savings association subsidi-
daries of such company are qualified thrift lend-
ers (as determined under section 10 of the
Home Owners’ Loan Act); and

“(C) that continues to control not fewer
than 1 savings association that it controlled on
May 4, 1999, or that it acquired pursuant to an
application pending before the Office of Thrift
Supervision on or before that date.

“(q) PRESERVATION OF CERTAIN SAVINGS AND
LOAN HOLDING COMPANY AUTHORITIES.—Notwith-
standing subsection (a), a company that was a savings and
loan holding company on June 30, 2009, that became a
bank holding company by operation of section 1301 of the Financial Stability Improvement Act of 2009 may con-
tinue to engage in the following activities in which such company was continuously engaged on June 30, 2009, through the day of enactment of the Financial Stability Improvement Act of 2009:

“(1) Furnishing or performing management services for a savings association subsidiary of such company.

“(2) Conducting an insurance agency or escrow business.

“(3) Holding, managing, or liquidating assets owned or acquired from a savings association sub-
sidiary of such company.

“(4) Holding or managing properties used or occupied by a savings association subsidiary of such company.

“(5) Acting as trustee under deed of trust.

“(6) Any other activity in which multiple savings and loan holding companies were authorized (by regulation) to directly engage on March 5, 1987.”.

(c) Section 6 Holding Companies.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by inserting after section 5 the following new section:
SEC. 6. SPECIAL-PURPOSE HOLDING COMPANIES.

“(a) Establishment, Purpose and Requirements of Special Purpose Holding Companies.—

“(1) Requirement.—A special purpose holding company (hereafter in this section referred to as a ‘section 6 holding company’) shall be established and maintained by a company—

“(A) described in section 4(f)(1) as required by section 4(f)(2)(D) of this Act;

“(B) described in section 4(p)(1) as required by section 4(p)(2)(A) of this Act; or

“(C) that—

“(i) is subject to stricter prudential standards under section 1103 of the Financial Stability Improvement Act of 2009;

“(ii) is not—

“(I) a bank holding company; or

“(II) subject to the Bank Holding Company Act by reason of section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)); and

“(iii) directly or indirectly controlled shares or engaged in activities that did not, on the date the company is first subject to stricter prudential standards pursu-
ant to subtitle B of the Financial Stability Improvement Act of 2009, comply with the activity or investment restrictions on financial holding companies in section 4 in accordance with regulations prescribed by the Board.

“(2) PURPOSE.—

“(A) The purpose of this section is to provide for consolidated supervision of certain financial companies by the Board.

“(B) A company that is required to form a section 6 holding company shall conduct all such activities which are permissible for a financial holding company, as determined under section 4(k), through such section 6 holding company, other than—

“(i) internal financial activities conducted for such company or any affiliate, including, but not limited to internal treasury, investment, and employee benefit functions, provided that with respect to any internal financial activity engaged in for the company or an affiliate and a non-affiliate during the year prior to date of enactment, the company (or an affiliate
not a subsidiary of the section 6 company) may continue to engage in that activity so long as the at least \( \frac{2}{3} \) of the assets or \( \frac{2}{3} \) of the revenues generated from the activity are from or attributable to the company or an affiliate, subject to review by the Board to determine whether engaging in such activity presents undue risk to the section 6 company or undue systemic risk; and

“(ii) financial activities involving the provision of credit for the purchase or lease of products or services from an affiliate or for the purchase or lease of products produced by an affiliate of such section 6 holding company that is not a subsidiary of such section 6 holding company, in accordance with regulations prescribed by or orders issued by the Board, pursuant to section 6 of this Act.

“(C) A section 6 holding company shall be prohibited from conducting any nonbanking activities or investing in any nonbank companies other than those permissible for a financial holding company under sections 3 and 4, unless the Board specifically determines otherwise in
accordance with paragraph (6), and provided that, for purposes of this paragraph, a company designated as a section 6 holding company and described under paragraph (4) (or any permitted successor) is not prohibited from continuing to engage in any impermissible activity in which it was engaged continuously during the 6 months prior to the date of enactment, from owning any shares or types of assets related to such activity, or continuing to own such other shares or assets that it owned on the date of enactment.

“(3) Registration.—

“(A) A section 6 holding company required to be established by a company described in paragraph (1)(A) shall be established, and such company shall register with the Board as a bank holding company, pursuant to the requirements in section 4(f).

“(B) A section 6 holding company required to be established by a company described in paragraph (1)(B) shall be established, and such company shall register with the Board as a bank holding company, pursuant to the requirements in section 4(p).
“(C) A section 6 holding company required
to be established by a company described in
paragraph (1)(C) shall be—

“(i) established, and such company
shall register with the Board within 90
days after such company or such com-
pany’s parent holding company has been
notified by the Board that such company is
subject to stricter prudential standards
under section 1103 of the Financial Sta-

tility Improvement Act of 2009, unless the
Board grants an extension of such period
for compliance which shall not exceed 180
additional days;

“(ii) subject to the provisions of this
Act and other Federal law as provided in
section 1103(g) of the Financial Stability
Improvement Act of 2009; and

“(iii) subject to the authority of the
Board to enforce compliance with the pro-
visions of this section under section 8 of
the Federal Deposit Insurance Act in the
same manner and to the same extent as if
such company were a bank holding com-
pany.
“(4) Rule of Construction.—For purposes of this section, designation of an already established intermediate holding company that will serve as the section 6 holding company shall satisfy the requirement to establish a section 6 holding company, provided that such existing intermediate holding company complies with all other provisions applicable to a section 6 holding company.

“(5) Limitations on Authority of Commercial Parent.—A company that is not a bank holding company or treated as a bank holding company pursuant to section 8(a) of the International Bank Act of 1978 that has been notified that it is a financial holding company subject to stricter standards, pursuant to section 1103 of the Financial Stability Improvement Act of 2009, shall—

“(A) not be deemed to be, or treated as, a bank holding company, solely because of its ownership or control of a section 6 holding company; and

“(B) not be subject to this Act, except for such provisions as are explicitly made applicable in this section.

“(6) Board Authority.—
“(A) Rules and Exemptions.—In addition to any other authority of the Board, the Board shall prescribe rules and regulations or issue orders providing for the establishment and registration of section 6 holding companies and shall provide exemptions from the requirements of this Act (including an order in response to a request from an affected company), including, but not limited to, exemptions—

“(i) with respect to the requirement to conduct such activities which are financial in nature, as determined under section 4(k), other than financial activities conducted for such company or any affiliate, including any financial activity engaged in for both the company or an affiliate and a nonaffiliate as permitted under section 4(f)(2)(D) or section 6(a)(2)(B) and financial activities involving the provision of credit for the purchase or lease of products or services from an affiliate or for the purchase or lease of products produced by an affiliate of such section 6 holding company that is not a subsidiary of such section 6 holding company, through such section 6
holding company, if the Board makes a finding that such exemption—

“(I)(aa) would facilitate the extension of credit to individuals, households, and businesses; or

“(bb) would allow for greater efficiency, improved customer service, or other public benefits in the conduct of financial activities by affected companies;

“(II) would not threaten the safety and soundness of the section 6 holding company, or of any insured depository institution or other subsidiary of the section 6 holding company;

“(III) would not increase systemic risk or threaten the stability of the overall financial system;

“(IV) would not, as applied to the activities that are the subject of the rule, order or request, result in substantially lessening competition, or to tend to create a monopoly, or which in any other manner would be in re-
straint of trade, unless the Board finds that the anticompetitive effects are outweighed in the public interest by the probable effect of the exemption in meeting the convenience and needs of the community to be served; and

“(V) would meet the financial and managerial standards for financial holding companies described in subparagraphs (A) and (B) of section 4(j)(4); and

“(ii) from the affiliate transaction requirements of subsection (b), including but not limited to exemptions that would facilitate extensions of credit to unaffiliated persons for the personal, household, or business purposes of such unaffiliated persons, unless the Board makes a finding that such exemption—

“(I) is not consistent with the purposes of section 23A and section 23B of the Federal Reserve Act;

“(II) would threaten the safety and soundness of the section 6 hold-
ing company, or any insured depository institution or other subsidiary of the section 6 holding company;

“(III) would increase systemic risk or threaten the stability of the overall financial system;

“(IV) would not, as applied to the activities that are the subject of the rule, order or request result in substantially lessening competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects are outweighed in the public interest by the probable effect of the exemption in meeting the convenience and needs of the community to be served; or

“(V) would permit an unfair, deceptive, abusive, or unsafe-and-unsound act or practice.

“(B) Parent Company Reports.—The Board may, from time to time, require reports under oath from a company that controls a sec-
tion 6 holding company, and appropriate offi-
cers or directors of such company, solely for
purposes of ensuring compliance with the provi-
sions of this section (including assessing the
company’s ability to serve as a source of finan-
cial strength pursuant to subsection (g)) and
enforcing such compliance.

“(C) LIMITED PARENT COMPANY EN-
FORCEMENT.—

“(i) IN GENERAL.—In addition to any
other power of the Board, the Board may
enforce compliance with the provisions of
this subsection which are applicable to any
company described in paragraph (1), and
any bank controlled by such company,
under section 8 of the Federal Deposit In-
surance Act and such company or bank
shall be subject to such section (for such
purposes) in the same manner and to the
same extent as if such company were a
bank holding company.

“(ii) APPLICATION OF OTHER ACT.—
Any violation of this subsection by any
company that controls a section 6 holding
company or any bank controlled by such a
company, may also be treated as a violation of the Federal Deposit Insurance Act for purposes of clause (i).

“(iii) NO EFFECT ON OTHER AUTHORITY.—No provision of this subparagraph shall be construed as limiting any authority of the Board or any other Federal agency under any other provision of law.

“(b) RESTRICTIONS ON AFFILIATE TRANSACTIONS.—

“(1) SECTION 23A AND 23B APPLICABILITY.—

“(A) IN GENERAL.—Transactions between a section 6 holding company (or any nonbank subsidiary thereof) and any affiliate not controlled by the section 6 holding company shall be subject to the restrictions and limitations contained in section 23A and section 23B of the Federal Reserve Act as if the section 6 holding company were a member bank, provided, that a transaction that otherwise would be a covered transaction shall not be a covered transaction if the transaction is in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods or services but shall be sub-
ject to review under section 23A(f)(1) of such Act.

“(B) COVERED TRANSACTIONS.—A depository institution controlled by a section 6 holding company may not engage in a covered transaction (as defined in section 23A(b)(7) of the Federal Reserve Act) with any affiliate that is not the section 6 holding company or a subsidiary of the section 6 holding company; provided that, for purposes of the prohibition, a transaction that otherwise would be a covered transaction shall not be a covered transaction if the transaction is in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods or services, but shall be subject to review under section 23A(f)(1) of the Federal Reserve Act.

“(2) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as exempting any subsidiary insured depository institution of a section 6 holding company from compliance with section 23A or 23B of the Federal Reserve Act with respect to each affiliate of such institution (as defined in section 23A or 23B of the Federal Reserve Act), including any affiliate that is the section 6 holding
company or subsidiary of the section 6 holding com-
pany.

“(c) Tying Provisions.—A company that directly or
indirectly controls a section 6 holding company shall be—

“(1) treated as a bank holding company for
purposes of section 106 of the Bank Holding Com-
pany Act Amendments of 1970 and section 22(h) of
the Federal Reserve Act and any regulation pre-
scribed under any such section; and

“(2) subject to the restrictions of section 106 of
the Bank Holding Company Act Amendments of
1970, in connection with any transaction involving
the products or services of such company or affiliate
and those of a bank affiliate, as if such company or
affiliate were a bank and such bank were a sub-
sidiary of a bank holding company.

“(d) Financial Holding Company Require-
ments.—A section 6 holding company shall be subject
to—

“(1) the conditions for engaging in expanded fi-
nancial activities in section 4(l); and

“(2) the provisions applicable to financial hold-
ing companies that fail to meet certain requirements
in section 4(m).
“(e) INDEPENDENCE OF SECTION 6 HOLDING COMPANY.—

“(1) No less than 25 percent of the members of the board of directors of a section 6 holding company, and each subsidiary of a section 6 holding company, shall be independent of the parent company of the section 6 holding company and any subsidiary of such parent company. For purposes of this subsection, a director shall be independent of the parent company if such person is not currently serving, and has not within the previous 2-year period served, as a director, officer, or employee of any affiliate of the section 6 holding company that is not a subsidiary of the section 6 holding company.

“(2) No executive officer of a section 6 holding company or any subsidiary of a section 6 holding company may serve as a director, officer, or employee of an affiliate of the section 6 holding company that is not a subsidiary of the section 6 holding company.

“(3) The Board shall issue regulations that require effective legal and operational separation of the functions of a section 6 holding company from its affiliates that are not subsidiaries of such section 6 holding company, provided, however that such
rules shall not require operational separation of in-
ternal functions including, but not limited to, human
resources management, employee benefit plans, and
information technology.

“(f) Source of Strength.—A company that di-
rectly or indirectly controls a section 6 holding company
shall serve as a source of financial strength to its sub-
sidiary section 6 holding company.”.

SEC. 1302. REGISTRATION OF CERTAIN COMPANIES AS
BANK HOLDING COMPANIES.

Section 5 of the Bank Holding Company Act of 1956
(12 U.S.C. 1844) is amended by inserting at the end the
following new subsection:

“(h) Conversion to Bank Holding Company by
Operation of Law.—

“(1) Conversion by operation of law.—A
company that, on the day before the date of enact-
ment of the Financial Stability Improvement Act of
2009, was not a bank holding company but which,
by reason of section 1301 of the Financial Stability
Improvement Act of 2009 becomes a bank holding
company, other than a section 6 holding company,
by operation of law, shall register as a bank holding
company with the Board in accordance with section
5(a) within 90 days of the date of enactment of that Act.

“(2) Compliance with bank holding company act.—With respect to any company described in paragraph (1), the Board may grant temporary exemptions or provide other appropriate temporary relief to permit such company to implement measures necessary to comply with the requirements under the Bank Holding Company Act.”.

SEC. 1303. REPORTS AND EXAMINATIONS OF BANK HOLDING COMPANIES; REGULATION OF FUNCTIONALLY REGULATED SUBSIDIARIES.

(a) Reports of Bank Holding Companies.—Sections 5(c)(1)(A) and (B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(1)(A) and (B)) are amended to read as follows:

“(A) In general.—The Board, from time to time, may require a bank holding company and any subsidiary of such company to submit reports under oath that the Board determines are necessary or appropriate for the Board to carry out the purposes of this chapter, prevent evasions thereof, and monitor compliance by the company or subsidiary with the applicable provisions of law.
“(B) USE OF EXISTING REPORTS.—

“(i) IN GENERAL.—The Board shall, to the fullest extent possible, use—

“(I) reports that a bank holding company or any subsidiary of such company has been required to provide to other Federal or State regulatory agencies;

“(II) information that is otherwise required to be reported publicly; and

“(III) externally audited financial statements.

“(ii) AVAILABILITY.—A bank holding company or a subsidiary of such company shall promptly provide to the Board, at the request of the Board, a report referred to in clause (i)(I).”.

(b) FUNCTIONALLY REGULATED SUBSIDIARY.—Section 5(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(1)) is amended by inserting at the end the following new subparagraph:

“(C) DEFINITION.—For purposes of this subsection and section 6, the term ‘functionally regulated subsidiary’ means any subsidiary
(other than a depository institution) of a bank holding company that is—

“(i) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, for which the Securities and Exchange Commission is the Federal regulatory agency;

“(ii) an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, for which the Securities and Exchange Commission is the Federal regulatory agency;

“(iii) an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940, for which the Securities and Exchange Commission is the Federal regulatory agency, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities; and

“(iv) a futures commission merchant, commodity trading advisor, and commodity
pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act, for which the Commodity Futures Trading Commission is the Federal regulatory agency, with respect to the commodities activities of such entity and activities incidental to such commodities activities.’’.

(e) Examinations of Bank Holding Companies.—Sections 5(c)(2)(A) and (B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(e)(2)(A) and (B)) are amended to read as follows:

“(A) In General.—The Board may make examinations of a bank holding company and any subsidiary of such a company to carry out the purposes of this chapter, prevent evasions thereof, and monitor compliance by the company or subsidiary with applicable provisions of law.

“(B) Functionally Regulated and Depository Institution Subsidiaries.—The Board shall, to the fullest extent possible, use reports of examination of functionally regulated subsidiaries and subsidiary depository institu-
tions made by other Federal or State regulatory authorities.”.

(d) Regulation of Financial Holding Companies.—Section 5(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)) is amended by striking subparagraphs (C), (D), and (E).


SEC. 1304. REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES TO REMAIN WELL CAPITALIZED AND WELL MANAGED.

Section 4(l)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(l)(1)) is amended—

(1) in subparagraph (B), by striking “and”;

(2) by redesignating subparagraph (C) as subparagraph (D);

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

“(C) the bank holding company is well capitalized and well managed; and”;

(4) in subparagraph (D) (as so redesignated) by amending clause (ii) to read as follows:
“(ii) a certification that the company meets the requirements of subparagraphs (A) through (C).”.

SEC. 1305. STANDARDS FOR INTERSTATE ACQUISITIONS.


(1) by striking “adequately capitalized” and inserting “well capitalized”; and

(2) by striking “adequately managed” and inserting “well managed”.

(b) Federal Deposit Insurance Act Amendment.—Section 44(b)(4)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(b)(4)(B)) is amended to read as follows:

“(B) the responsible agency determines that the resulting bank will be well capitalized and well managed upon the consummation of the transaction.”.

SEC. 1306. ENHANCING EXISTING RESTRICTIONS ON BANK TRANSACTIONS WITH AFFILIATES.

(a) Section 23A of the Federal Reserve Act (12 U.S.C. 371e) is amended—
(1) in subsection (b)(1), by striking subparagraph (D) and inserting the following new subparagraph:

“(D) any investment fund with respect to which a member bank or affiliate thereof is an investment adviser; and”;

(2) in subsection (b)(7)(A), by inserting “(including a purchase of assets subject to an agreement to repurchase)” after “affiliate”;

(3) in subsection (b)(7)(C), by striking “, including assets subject to an agreement to repurchase,”;

(4) in subsection (b)(7)(D)—

(A) by inserting “or other debt obligations” after “acceptance of securities”; and

(B) by striking “or” after the semicolon;

(5) in subsection (b)(7), by inserting at the end the following new subparagraphs:

“(F) any securities borrowing and lending transactions with an affiliate to the extent that the transactions create credit exposure of the member bank to the affiliate; or

“(G) current and potential future credit exposure to the affiliate on derivative transactions with the affiliate;”;}
(6) in subsection (c)(1), by striking “at the time of the transaction,” and inserting “at all times”;

(7) in subsection (c)—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively;

(8) in subsection (c)(3) (as so redesignated by paragraph (7)), by inserting “or other debt obligations” after “securities”;

(9) in subsection (f)(2), by inserting at the end the following: “The Board may not, by regulation or order, grant an exemption under this section unless the Board obtains the concurrence of the Chairman of the Federal Deposit Insurance Corporation.”; and

(10) in subsection (f)—

(A) by redesignating paragraph (3) as paragraph (4); and

(B) and inserting after paragraph (2) the following new paragraph:

“(3) CONCURRENCE OF THE COMPTROLLER OF THE CURRENCY.—With respect to a transaction or relationship involving a national bank or Federal savings association, the Board may not grant an ex-
emption under this section unless the Board obtains
the concurrence of the Comptroller of the Currency
(in addition to obtaining the concurrence of the
Chairman of the Federal Deposit Insurance Cor-
poration under paragraph (2)).”.
(b) TECHNICAL AND CONFORMING AMENDMENT.—
Section 23B(e) of the Federal Reserve Act (12 U.S.C.
371–1(e)), is amended by inserting at the end the fol-
lowing new paragraph:
“(3) The Board may not grant an exemption or
exclusion under this section unless the Board ob-
tains the concurrence of the Chairman of the Fed-
eral Deposit Insurance Corporation.”.
SEC. 1307. ELIMINATING EXCEPTIONS FOR TRANSACTIONS
WITH FINANCIAL SUBSIDIARIES.
Section 23A(e) of the Federal Reserve Act (12 U.S.C.
371c(e)) is amended—
(1) by striking paragraph (3); and
(2) by redesignating paragraph (4) as para-
graph (3).
SEC. 1308. LENDING LIMITS APPLICABLE TO CREDIT EXPOSURE ON DERIVATIVE TRANSACTIONS, REPURCHASE AGREEMENTS, REVERSE REPURCHASE AGREEMENTS, AND SECURITIES LENDING AND BORROWING TRANSACTIONS.

Section 5200 of the Revised Statutes of the United States (12 U.S.C. 84) is amended—

(1) in subsection (b)(1), by striking “shall include all direct or indirect” and all that follows through “commitment;” and inserting: “shall include—

“(A) all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person;

“(B) to the extent specified by the Comptroller of the Currency, such term shall also include any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and

“(C) credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing
transaction between the national banking asso-
ciation and the person;”;

(2) in subsection (b)(2) by striking the period
at the end and inserting “; and”;

(3) in subsection (b), by inserting after para-
graph (2) the following new paragraph:

“(3) the term ‘derivative transaction’ means
any transaction that is a contract, agreement, swap,
warrant, note, or option that is based, in whole or
in part, on the value of, any interest in, or any
quantitative measure or the occurrence of any event
relating to, one or more commodities, securities, cur-
currencies, interest or other rates, indices, or other as-
sets.”; and

(4) in subsection (d), by inserting after para-
graph (2) the following new paragraph:

“(3) The Comptroller of the Currency shall pre-
scribe rules to administer and carry out the pur-
poses of this section with respect to credit exposures
arising from any derivative transaction, repurchase
agreement, reverse repurchase agreement, securities
lending transaction, or securities borrowing trans-
action. Rules required to be prescribed under this
paragraph (3) shall take effect, in final form, not
later than 180 days after the date of enactment of
the Financial Stability Improvement Act of 2009.”.

SEC. 1309. RESTRICTION ON CONVERSIONS OF TROUBLED
BANKS AND THRIFTS.

(a) Conversion of a National Banking Association to a State Bank.—The National Bank Consolidation and Merger Act (12 U.S.C. 215 et seq.) is amended by redesignating section 7 as section 8 and by inserting after section 6 the following:

“SEC. 7. PROHIBITION ON CERTAIN CONVERSIONS.

“A national bank may not convert to a State bank during any period of time in which it is subject to a cease and desist order, memorandum of understanding, or other enforcement action entered into with or issued by the Comptroller of the Currency.”.

(b) Conversion of a State Bank to a National Bank.—Section 5154 of the Revised Statutes (12 U.S.C. 35) is amended by adding at the end the following new sentence: “The Comptroller of the Currency shall not approve the conversion of a State bank to a national bank during any period of time in which the State bank is subject to a cease and desist order, memorandum of understanding, or other enforcement action entered into or issued by a State bank supervisor, the Federal Deposit
Insurance Corporation, the Board of Governors of the Federal Reserve System or a Federal Reserve Bank.”.

(c) CONVERSION BETWEEN A FEDERAL SAVINGS ASSOCIATION AND A STATE SAVINGS ASSOCIATION.—Section 5(i) of the Home Owners’ Loan Act (12 U.S.C. 1464(i)) is amended by adding at the end the following new paragraph:

“(6) PROHIBITION ON CERTAIN CONVERSIONS.—A Federal savings association may not convert to a State savings association, and a State savings association may not convert to a Federal savings association, during any period of time in which such savings association is subject to a cease and desist order, memorandum of understanding, or other enforcement action entered into with or issued by the Director of the Office of Thrift Supervision or a State savings association supervisor.”.

SEC. 1310. LENDING LIMITS TO INSIDERS.

Section 22(h)(9)(D)(ii) of the Federal Reserve Act (12 U.S.C. 375b(h)(9)(D)(ii)) is amended by inserting “, except that a member bank shall be deemed to have extended credit to a person if the member bank has credit exposure to the person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities bor-
rowing transaction between the member bank and the person” before the period at the end.

SEC. 1311. LIMITATIONS ON PURCHASES OF ASSETS FROM INSIDERS.

(a) Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by inserting at the end the following new subsection:

“(y) GENERAL PROHIBITION.—An insured depository institution shall not purchase an asset from, or sell an asset to, one of its executive officers, directors, or principal shareholders or any related interest of such person (as such terms are defined in section 22(h) of Federal Reserve Act) unless the transaction is on market terms and, if the transaction represents more than 10 percent of the institution’s capital stock and surplus, the transaction has been approved in advance by a majority of the institution’s board of directors (with interested directors of the insured depository institution not participating in the approval of the transaction).”.

(b) FDIC RULEMAKING AUTHORITY.—The Federal Deposit Insurance Corporation may prescribe rules to implement the requirements of subsection (a) and the amendments made by subsection (a).
Amendments to the Federal Reserve Act.—Section 22 of the Federal Reserve Act (12 U.S.C. 375) is amended by striking subsection (d).

SEC. 1312. RULES REGARDING CAPITAL LEVELS OF BANK HOLDING COMPANIES.

Section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)) is amended by inserting “, including regulations relating to the capital levels of bank holding companies” before the period at the end.

SEC. 1313. ENHANCEMENTS TO FACTORS TO BE CONSIDERED IN CERTAIN ACQUISITIONS.

(a) Bank Acquisitions.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended by inserting at the end the following new paragraph:

“(7) Financial Stability.—

“(A) In general.—In every case, the Board shall take into consideration the extent to which the proposed acquisition, merger, or consolidation may pose risk to the stability of the United States financial system or the economy of the United States, including the resulting scope, nature, size, scale, concentration, or interconnectedness of activities that are financial in nature.
“(B) Standards for approval.—The Board may in its sole discretion disapprove any acquisition, merger, or consolidation of, or by, a financial holding company subject to stricter standards if the Board determines that the resulting concentration of liabilities on a consolidated basis is likely to pose a great threat to financial stability during times of severe economic distress.”.

(b) Nonbank Acquisitions.—

(1) Section 4(j)(2)(A) of the Bank Holding Company is amended by—

(A) striking “or” before “unsound banking practices”; and

(B) inserting before the period at the end the following: “, or risk to the stability of the United States financial system or the economy of the United States”.

(2) Section 4(k)(6) of the Bank Holding Company Act of 1956 is amended by striking subparagraph (B) and inserting the following new subparagraph:

“(B) A financial holding company may commence any activity or acquire any company, pursuant to paragraph (4) or any regulation
prescribed or order issued under paragraph (5),
without prior approval of the Board, except—

“(i) for a transaction in which the
total assets to be acquired by the financial
holding company exceed $25 billion; and
“(ii) as provided in subsection (j) with
regard to the acquisition of a savings asso-
ciation.”.

(3) Section 4(j) of the Bank Holding Company
Act of 1956 is amended by inserting after paragraph
(4) the following new paragraph (and redesignating
succeeding paragraphs accordingly):

“(5) FINANCIAL STABILITY.—

“(A) IN GENERAL.—In every case, the
Board shall take into consideration the extent
to which the proposed acquisition, merger, or
consolidation may pose risk to the stability of
the United States financial system or the econ-
omy of the United States, including the result-
ing scope, nature, size, scale, concentration, or
interconnectedness of activities that are finan-
cial in nature.

“(B) STANDARDS FOR APPROVAL.—The
Board may, in the sole discretion of the Board,
disapprove any acquisition, merger, or consoli-
dation of, or by, a financial holding company subject to stricter standards if the Board determines that the resulting concentration of liabilities on a consolidated basis is likely to pose a great threat to financial stability during times of severe economic distress.”.

(c) Bank Merger Act Transactions.—Section 18(c)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended by—

(1) in paragraph (5), by striking “and” before “the convenience and needs of the community to be served”;

(2) in paragraph (5), by inserting before the period at the end the following: “, and the risk to the stability of the United States financial system and the economy of the United States based on, among other things, the scope, nature, size, scale, concentration, or interconnectedness of activities that are financial in nature”; and

(3) in paragraph (7)(B), by inserting “subparagraphs (A) and (B) of” before “paragraph”.

SEC. 1314. ELIMINATION OF ELECTIVE INVESTMENT BANK HOLDING COMPANY FRAMEWORK.

SEC. 1315. EXAMINATION FEES FOR LARGE BANK HOLDING COMPANIES.

The Bank Holding Company Act of 1956 is amended by inserting after section 5 the following new section:

“SEC. 5A. EXAMINATION FEES.

“The Board of Governors of the Federal Reserve System or the Federal Reserve Banks shall assess fees on bank holding companies with total consolidated assets of $10 billion or more. Such fees shall be sufficient to defray the cost of the examination of such bank holding companies.”.

SEC. 1316. MUTUAL NATIONAL BANKS AND FEDERAL MUTUAL BANK HOLDING COMPANIES AUTHORIZED.

(a) In General.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5133 the following new sections:

“SEC. 5133A. MUTUAL NATIONAL BANKS.

“(a) In General.—Notwithstanding the section designated the ‘Third’ of section 5134, in order to provide mutual institutions for the deposit of funds, the extension
of credit, and provision of other services, the Comptroller of the Currency may charter mutual national banks either de novo or through a conversion of any insured depository institution or any State mutual bank or credit union, subject to regulations prescribed by the Comptroller of the Currency in accordance with this section. The powers conferred by this section are intended to provide for the creation and maintenance of mutual national banks as bodies corporate existing in perpetuity for the benefit of their depositors and the communities in which they operate.

“(b) Regulations.—

“(1) Regulations of the Comptroller.— The Comptroller of the Currency is authorized to prescribe appropriate regulations for the organization, incorporation, examination, operation, and regulation of mutual national banks. Except to the extent that such existing regulations conflict with sections 5133A and 5133B, mutual national banks shall be subject to the regulations of the Director of the Office of Thrift Supervision governing corporate organization, governance, and conversion of mutual institutions, as in effect on the date of the enactment of the Wall Street Reform and Consumer Protection Act of 2009, including parts 543, 544, 546, 563b, and 563c of chapter V of title 12, Code of
Federal Regulations (as in effect on that date), for up to 3 years beginning on the date of the enactment of the Wall Street Reform and Consumer Protection Act of 2009.

“(2) APPLICABILITY OF CAPITAL STOCK REQUIREMENTS.—The Comptroller of the Currency shall prescribe regulations regarding the manner in which requirements of this title with respect to capital stock, and limitations imposed on national banks under this title based on capital stock, shall apply to mutual national banks.

“(c) CONVERSIONS.—

“(1) CONVERSION OF A MUTUAL DEPOSITORY TO A MUTUAL NATIONAL BANK.—Subject to such regulations as the Comptroller of the Currency may prescribe for the protection of depositors’ rights and for any other purpose the Comptroller of the Currency may consider appropriate, any mutual depository may convert to a mutual national bank by filing with the Comptroller of the Currency a notice of its election to convert on a specified date that is not earlier than 30 days after the date on which the notice is filed, and the mutual depository shall be converted to a mutual national bank charter on the date specified in the notice.
“(2) Conversion to stock national bank.—Subject to such regulations as the Comptroller of the Currency may prescribe for the protection of depositors’ rights and for any other purpose the Comptroller of the Currency may consider appropriate, any national bank that is organized in the mutual form under subsection (a) may reorganize as a stock national bank.

“(3) Conversion to state banks.—Any national mutual bank may convert to a State bank charter in accordance with regulations prescribed by the Comptroller of the Currency and applicable State law.

“(d) Terminating mutuality.—If a mutual national bank elects to terminate mutuality, it must do so by—

“(1) liquidating; or

“(2) converting to a national banking association operating in stock form.

“(e) Status and rights of members.—

“(1) In general, the status of a member is primarily that of a depositor and secondarily that of a holder of a contingent right to participate in the equity of a mutual national bank upon a liquidation or conversion.
“(2) Each member of a mutual national bank shall have the following rights:

“(A) Such rights as may be agreed upon, by contract, between the member and the mutual national bank.

“(B) The right to vote for members of the board of directors of the mutual national bank.

“(C) The right to attend any meeting of members properly called by the board of directors of a mutual national bank.

“(D) In the event the board of directors, in its sole discretion, determines a conversion of a mutual national bank to a national banking association operating in stock form is in the best interests of the community in which the bank operates and the members approve the conversion through a special proxy, then the members as of a record date set by the board of directors shall have the first right to subscribe for and purchase stock in the converted bank.

“(E) In the event the board of directors, in its sole discretion, determines a liquidation of the mutual national bank is in the best interests of the community in which the bank oper-
ates and the members approve the liquidation, or if for any other reason the bank is liquidated by operation of law, then the members as of the date of liquidation shall have the right to have credited to their accounts, on a pro rata basis, any residual assets left after the liquidation of the mutual national bank.

“(3) In the consideration of all questions requiring action by the members of a national mutual bank, the bank may provide in its charter that each member shall be permitted (i) one vote per member, or (ii) to cast one vote for each $100, or fraction thereof, of the withdrawal value of the member’s account, but not more than 1,000 votes per member.

“(f) PROXIES.—

“(1) A member may give, in writing or electronically, a perpetual proxy to a committee of the board of directors of a mutual depository, provided that the member may revoke such a proxy in writing or electronically, with such revocation to take effect after 6 business days.

“(2) Such proxies may be used to vote on any issue requiring approval of the members, including the conversion of a mutual depository into a mutual national bank and the reorganization of a mutual
national bank into a Federal mutual bank holding company, except that, without a prior finding by the regulator of the mutual national bank that such action is needed to avoid loss to the Federal Deposit Insurance Corporation’s deposit insurance fund or to protect the stability of the United States financial system, such proxies may not be used to vote in favor of—

“(A) terminating mutuality for a mutual national bank or a Federal mutual bank holding company;

“(B) permitting the modification of a Federal mutual bank holding company; or

“(C) issuing mutual capital certificates (except when used to found a mutual national bank or a Federal mutual bank holding company de novo).

“(3) Proxies given by a member, in writing or electronically, to management of, or to a committee of the board of directors of, a mutual depository shall not be deemed to have been revoked solely because of, and shall continue to exist following, a conversion to a mutual national bank and any concurrent or subsequent reorganization to a Federal mutual bank holding company.
“(g) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) INSURED DEPOSITORY INSTITUTION.—The term ‘insured depository institution’ has the same meaning as in section 3 of the Federal Deposit Insurance Act.

“(2) MUTUAL NATIONAL BANK.—The term ‘mutual national bank’ means a national banking association that operates in mutual form and is chartered by the Comptroller of the Currency under this section.

“(3) MUTUAL DEPOSITORY.—The term ‘mutual depository’ means a depository institution that is organized in non-stock form, including a Federal non-stock depository and any form of non-stock depository provided for under State law, the deposits of which are insured by an instrumentality of the Federal Government.

“(4) MUTUALITY.—The term ‘mutuality’ means the quality of being an insured depository institution organized under a Federal or State law providing for the organization of non-stock depository institutions, or a holding company organized under a Federal or State law providing for the organization of non-stock
entities that control one or more depository institutions.

“(5) MEMBER.—The term ‘member’ means each tax-liable depositor in a mutual depository’s savings, demand, or other authorized depository accounts and each tax-liable depositor in such an account in a depository subsidiary of a Federal mutual bank holding company.

“(6) TAX LIABLE DEPOSITOR.—The term ‘tax liable depositor’ means the single person responsible for paying any Federal taxes due on any interest paid on any deposits held within any savings, demand, or other authorized depository account or accounts with any mutual depository.

“(7) MEMBERSHIP RIGHTS.—The term ‘membership rights’ means the rights of each member under this section.

“(h) CONFORMING REFERENCES.—Unless otherwise provided by the Comptroller of the Currency—

“(1) any reference in any Federal law to a national bank operating in stock form, including a reference to the term ‘national banking association’, ‘member bank’, ‘national bank’, ‘national association’, ‘bank’, ‘insured bank’, ‘insured depository in-
stitution’, or ‘depository institution’, shall be deemed to refer also to a mutual national bank;

“(2) any reference in any Federal law to the term ‘board of directors’, ‘director’, or ‘directors’ of a national bank operating in stock form shall be deemed to refer also to the board of a mutual national bank; and


“SEC. 5133B. FEDERAL MUTUAL BANK HOLDING COMPANIES.

“(a) REORGANIZATION OF MUTUAL NATIONAL BANK AS A HOLDING COMPANY.—

“(1) IN GENERAL.—Subject to approval under the Bank Holding Company Act of 1956, a mutual national bank may reorganize so as to become a Federal mutual bank holding company by submitting
a reorganization plan to the appropriate bank holding company regulator.

“(2) PLAN APPROVAL.—Upon the approval of the reorganization plan by the appropriate bank holding company regulator and the issuance of the appropriate charters—

“(A) the substantial part of the mutual national bank’s assets and liabilities, including all of the bank’s insured liabilities, shall be transferred to a national banking association, a majority of the shares of voting stock of which is owned, directly or indirectly, by the mutual national bank that is to become a Federal mutual bank holding company; and

“(B) the mutual national bank shall become a Federal mutual bank holding company.

“(b) DIRECTORS AND CERTAIN ACCOUNT HOLDERS’ APPROVAL OF PLAN REQUIRED.—This subsection does not authorize a reorganization unless—

“(1) a majority of the mutual national bank’s board of directors has approved the plan providing for such reorganization; and

“(2) a majority of members has approved the plan at a meeting held at the call of the directors
under the procedures prescribed by the bank’s charter and bylaws.

“(c) Ownership of Depository Subsidiaries.—To avoid terminating mutuality, a Federal mutual bank holding company must own, directly or indirectly, a majority of the shares of voting stock of each of its depository subsidiaries.

“(d) No Termination of Mutuality.—Neither a reorganization of a mutual depository nor a modification of a Federal mutual bank holding company shall cause a termination of mutuality.

“(e) Retention of Capital.—In connection with a transaction described in subsection (a), a mutual national bank may, subject to the approval of the appropriate bank holding company regulator, retain capital at the holding company level to the extent that the capital retained at the holding company level exceeds the amount of capital required for the national banking association chartered as a part of a transaction described in subsection (a) to meet all relevant capital standards established by the Comptroller of the Currency for national banking associations.

“(f) Terminating Mutuality.—If a Federal mutual bank holding company elects to terminate mutuality, it must do so by either liquidating or converting to a bank holding company operating in stock form.
“(g) Membership Rights.—Holders of savings, demand, or other authorized depository accounts in a depository subsidiary of a Federal mutual bank holding company shall have the same membership rights with respect to the Federal mutual bank holding company as those holders would have had if the depository subsidiary of the Federal mutual bank holding company had been a mutual national bank.

“(h) Regulation.—A Federal mutual bank holding company shall be—

“(1) chartered by the appropriate bank holding company regulator and shall be subject to such regulations as the appropriate bank holding company regulator shall prescribe; and

“(2) regulated under the Bank Holding Company Act of 1956 on the same terms and subject to the same limitations as any other company that controls a bank.

“(i) Capital Improvement.—

“(1) Pledge of stock of national bank subsidiary.—This section shall not prohibit a Federal mutual bank holding company from pledging all or a portion of the stock of the national banking association chartered as part of a transaction de-
scribed in subsection (a) to raise capital for such na-
tional banking association.

“(2) Issuance of Nonvoting Shares.—This
section shall not prohibit a national banking associa-
tion chartered as part of a transaction described in
subsection (a) from issuing any nonvoting shares or
less than 50 percent of the voting shares of such
bank to any person other than the Federal mutual
bank holding company.

“(j) Insolvency and Liquidation.—

“(1) In General.—Notwithstanding any other
provision of law, the appropriate bank holding com-
pany regulator may file a petition under chapter 7
of title 11, United States Code, with respect to a
Federal mutual bank holding company upon—

“(A) the default of any national bank—

“(i) the stock of which is owned by
the Federal mutual bank holding company;
and

“(ii) that was chartered in a trans-
action described in subsection (a); or

“(B) a foreclosure on a pledge by the Fed-
eral mutual bank holding company described in
subsection (i)(1).
“(2) Distribution of net proceeds.—Except as provided in paragraph (3), the net proceeds of any liquidation of any Federal mutual bank holding company under paragraph (1) shall be transferred to persons who hold membership interests in such Federal mutual bank holding company.

“(3) Recovery by FDIC.—If the Federal Deposit Insurance Corporation incurs a loss as a result of the default of any insured bank subsidiary of a Federal mutual bank holding company that is liquidated under paragraph (1), the Federal Deposit Insurance Corporation shall succeed to the interests of the depositors of the bank as members in the Federal mutual bank holding company, to the extent of the Federal Deposit Insurance Corporation’s loss.

“(k) Definitions.—

“(1) Federal mutual bank holding company.—The term ‘Federal mutual bank holding company’ means a holding company that is organized in mutual form and owns, directly or indirectly, a majority of the shares of voting stock of one or more depository subsidiaries of a Federal mutual bank holding company.

“(2) Depository subsidiary of a federal mutual bank holding company.—The term ‘de-
pository subsidiary of a Federal mutual bank holding company’ means a depository institution organized in stock form that is insured by the Federal Deposit Insurance Corporation, the majority of the shares of voting stock of which are owned by the Federal mutual bank holding company or its wholly owned subsidiaries and none of the shares of stock of which are pledged or otherwise subjected to lien except as permitted in subsection (i).

“(3) Reorganization of a Mutual Depository.—The term ‘reorganization of a mutual depository’ means the conversion of a mutual depository into a depository subsidiary of a Federal mutual bank holding company.

“(4) Modification of a Federal Mutual Bank Holding Company.—The term ‘modification of a Federal mutual bank holding company’ means either: (A) the sale of shares of common or preferred stock in a depository subsidiary of a Federal mutual bank holding company to any party other than the subsidiary’s parent Federal mutual bank holding company or a wholly owned subsidiary of that parent; or (B) the voluntary grant of a lien on shares of common or preferred stock in a depository subsidiary of a Federal mutual bank holding company.
“(5) Default.—With respect to a national bank, the term ‘default’ means an adjudication or other official determination by any court of competent jurisdiction, the Comptroller of the Currency, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for the national bank.

“(1) Conforming references.—Unless otherwise provided by the appropriate bank holding company regulator—

“(1) any reference in any Federal law to a bank holding company operating in stock form shall be deemed to refer also to a Federal mutual bank holding company;

“(2) any reference in any Federal law to the term ‘board of directors’, ‘director’, or ‘directors’ of a national bank operating in stock form shall be deemed to refer also to the board of a Federal mutual bank holding company; and

class of stock’, ‘cumulate such shares’, ‘par value’, ‘preferred stock’ shall not apply to a Federal mutual bank holding company, unless the appropriate bank holding company regulator determines that the context requires otherwise.”.

(b) **LIMITATION ON FEDERAL REGULATION OF STATE BANKS.**—Except as otherwise provided in Federal law, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation may not adopt or enforce any regulation that contravenes the corporate governance rules prescribed by State law or regulation for State banks unless the Director, Board, or Corporation finds that the Federal regulation is necessary to assure the safety and soundness of the State banks.

(c) **TECHNICAL AMENDMENT.**—The table of sections for chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after the item relating to section 5133 the following new items:

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“5133A. Mutual national banks.
“5133B. Federal mutual bank holding companies.”.
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(d) **APPROPRIATE FEDERAL BANKING AGENCY FOR FEDERAL MUTUAL BANK HOLDING COMPANIES.**—Section 3(q)(1) of the Federal Deposit Insurance Act (12
U.S.C. 1813(q)(2)) is amended by inserting after subpara-
graph (F) the following new subparagraph:

“(G) supervisory or regulatory proceedings
arising from the authority given to the appro-
priate bank holding company regulator under
section 5133B of the Revised Statutes of the
United States.”.

(e) MUTUAL HOLDING COMPANY CONVERSION.—

(1) IN GENERAL.—Any mutual holding com-
pany, including any form of mutual depository hold-
ing company provided for under State law, may con-
vert to a Federal mutual bank holding company by
filing with the appropriate bank holding company
regulator a notice of its election to convert on a
specified date that is not earlier than 30 days after
the date on which the notice is filed, and the mutual
holding company shall be converted to a Federal mu-
tual holding company charter on the date specified
in the notice.

(2) DEFINITIONS.—For purposes of this sub-
section, the following definitions shall apply:

(A) FEDERAL MUTUAL BANK HOLDING
COMPANY.—The term “Federal mutual bank
holding company” has the same meaning as in
section 5133B of the Revised Statutes of the United States (as added by this section); and

(B) Mutual holding company.—The term “mutual holding company” has the same meaning as in section 10(o)(10)(A) of the Home Owners Loan Act as in effect on the day before the date of enactment of this Act.

(f) Effective Date.—This section shall take effect on the date of enactment of this Act.

SEC. 1317. Nationwide deposit cap for interstate acquisitions.

(a) Amendments to the Bank Holding Company Act of 1956.—

(1) Concentration limit for bank holding companies.—Section 3(d)(2)(A) of the Bank Holding Company Act (12 U.S.C. 1842(d)(2)(A)) is amended by striking “paragraph (1)(A)” and inserting “subsection (a) of this section”.

(2) Removal of nonbank savings association provision in light of being defined as a bank.—Section 4 of the Bank Holding Company Act is amended by striking subsection (i) and inserting the following new subsection:

“(i) [Repealed.]”.

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(b) Amendments to the Federal Deposit Insurance Act.—

(1) In General.—Section 18(e) of the Federal Deposit Insurance Act (12 U.S.C. 1828(e)) is amended—

(A) by redesignating paragraph (12) as paragraph (13); and

(B) by inserting after paragraph (11), the following new paragraph:

“(12) Nationwide Deposit Cap.—The responsible agency may not approve an application for an interstate merger transaction if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of, the total amount of deposits of insured depository institutions in the United States.”.

(2) Parallel Requirement.—Section 44(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(b)(2)(A) is amended to read as follows:

“(A) Nationwide Concentration Limits.—The responsible agency may not approve an application for an interstate merger trans-
action involving two or more insured depository
institutions if the resulting insured depository
institution (including all insured depository in-
stitutions which are affiliates of such institu-
tion), upon consummation of the transaction
would control more than 10 percent of the total
amount of deposits of insured depository insti-
tutions in the United States.”.

(e) Amendments to the Home Owners’ Loan
Act.—Section 10(e)(2) of the Home Owners’ Loan Act
(12 U.S.C. 467a(e)(2)) is amended—

(1) by striking “or” at the end of subparagraph
(C); and

(2) by striking the period at the end of sub-
paragraph (D), the following new subparagraph:

“(E) in the case of an application involving
an interstate acquisition, if the applicant (in-
cluding all insured depository institutions which
are affiliates of the applicant) controls, or upon
consummation of the acquisition for which such
application is filed would control, more than 10
percent of the total amount of deposits of ins-
sured depository institutions in the United
States.”.
SEC. 1318. DE NOVO BRANCHING INTO STATES.

(a) NATIONAL BANKS.—Section 5155(g)(1)(A) of the Revised Statutes (12 U.S.C. 36(g)(1)(A)) is amended to read as follows:

“(A) the law of the State where the branch is located, or is to be located, would permit establishment of the branch if the national bank were a state bank chartered by such State;”.

(b) STATE INSURED BANKS.—Section 18(d)(4)(A)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)(4)(A)(i)) is amended to read as follows:

“(i) the law of the State where the branch is located, or is to be located, would permit establishment of the branch if the bank were a State bank chartered by such State;”.

Subtitle E—Improvements to the Federal Deposit Insurance Fund

SEC. 1401. ACCOUNTING FOR ACTUAL RISK TO THE DEPOSIT INSURANCE FUND.

(a) Section 7(b)(1)(C) of the Federal Deposit Insurance Act is amended to read as follows:

“(C) ‘Risk-based assessment system’ defined.—For purposes of this paragraph, the term ‘risk-based assessment system’ means a
system for calculating a depository institution’s assessment based on—

“(i) the probability that the Deposit Insurance Fund will incur a loss with respect to the institution;

“(ii) the likely amount of any such loss;

“(iii) the risks to the Deposit Insurance Fund attributable to such depository institution, including risks posed by its affiliates to the extent the Corporation determines appropriate, taking into account—

“(I) the amount, different categories, and concentrations of assets of the insured depository institution and its affiliates, including both on-balance sheet and off-balance sheet assets;

“(II) the amount, different categories, and concentrations of liabilities, both insured and uninsured, contingent and noncontingent, including both on-balance sheet and off-balance sheet liabilities, of the insured depository institution and its affiliates; and
“(III) any other factors the Corporation determines are relevant to assessing the risks; and
“(iv) the revenue needs of the Deposit Insurance Fund.”.

(b) Section 7(b)(2) of the Federal Deposit Insurance Act is amended by striking subparagraph (D) and by redesignating subparagraph (E) as subparagraph (D).

SEC. 1402. CREATING A RISK-FOCUSED ASSESSMENT BASE.

Section 7(b)(2) of such Act, as amended, is further amended by amending subparagraph (C) to read as follows:

“(C) ASSESSMENT.—The assessment of any insured depository institution imposed under this subsection shall be an amount equal to the product of—

“(i) an assessment rate established by the Corporation; and
“(ii) the amount of the insured depository institution’s average total assets during the assessment period minus the amount of the insured depository institution’s average tangible equity during the assessment period, minus additional deductions or adjustments necessary to establish
assessments consistent with the definition under section 7(b)(1)(C) of the Federal Deposit Insurance Act for custodial banks (as defined by the Corporation based on factors including percentage of total revenues generated by custodial businesses and the level of assets under custody) or a bankers’ bank (as referred to in section 5136 of the Revised Statutes of the United States).”.

SEC. 1403. ELIMINATION OF PROCYCLICAL ASSESSMENTS.

Section 7(e) of the Federal Deposit Insurance Act is amended—

(1) in paragraph (2)—

(A) by amending subparagraph (B) to read as follows:

“(B) LIMITATION.—The Board of Directors may, in its sole discretion, suspend or limit the declaration of payment of dividends under subparagraph (A).”;

(B) by amending subparagraph (C) to read as follows:

“(C) NOTICE AND OPPORTUNITY FOR COMMENT.—The Corporation shall prescribe, by regulation, after notice and opportunity for
comment, the method for the declaration, calculation, distribution, and payment of dividends under this paragraph”; and

(C) by striking subparagraphs (D) through (G); and

(2) in paragraph (4)(A) by striking “paragraphs (2)(D) and” and inserting “paragraphs (2) and”.

SEC. 1404. ENHANCED ACCESS TO INFORMATION FOR DEPOSIT INSURANCE PURPOSES.

(a) Section 7(a)(2)(B) of the Federal Deposit Insurance Act is amended by striking “, after agreement with the Comptroller of the Curreny, the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision, as appropriate, “.

(b) Section 7(b)(1)(E) of the Federal Deposit Insurance Act is amended—

(1) in clause (i), by striking “such as” and inserting “including”; and

(2) by striking clause (iii).

SEC. 1405. TRANSITION RESERVE RATIO REQUIREMENTS TO REFLECT NEW ASSESSMENT BASE.

(a) Section 7(b)(3)(B) of the Federal Deposit Insurance Act is amended to read as follows:
“(B) MINIMUM RESERVE RATIO.—The reserve ratio designated by the Board of Directors for any year may not be less than 1.15 percent of estimated insured deposits, or the comparable percentage of the assessment base set forth in paragraph (2)(C).”.

(b) Section 3(y)(3) of the Federal Deposit Insurance Act is amended by inserting “, or such comparable percentage of the assessment base set forth in section 7(b)(2)(C)” before the period.

(c) For a period of not less than 5 years after the date of the enactment of this title, the Federal Deposit Insurance Corporation shall make available to the public the reserve ratio and the designated reserve ratio using both estimated insured deposits and the assessment base under section 7(b)(2)(C) of the Federal Deposit Insurance Act.

Subtitle F—Improvements to the Asset-backed Securitization Process

SEC. 1501. SHORT TITLE.

This subtitle may be cited as the “Credit Risk Retention Act of 2009”.
SEC. 1502. CREDIT RISK RETENTION.

(a) Amendment.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 28 the following new section:

“SEC. 29. CREDIT RISK RETENTION.

“(a) In General.—

“(1) Interest in loans made by creditors.—Within 180 days of the date of the enactment of this section, the appropriate agencies shall prescribe regulations to require any creditor that makes a loan to retain an economic interest in a material portion of the credit risk of any such loan that the creditor transfers, sells, or conveys to a third party, including for the purpose of including such loan in a pool of loans backing an issuance of asset-backed securities.

“(2) Interest in assets backing asset-backed securities.—The appropriate agencies shall prescribe regulations to require any securitizer of asset-backed securities that are backed by assets not described in paragraph (1) to retain an economic interest in a material portion of any such asset used to back an issuance of securities.

“(b) Alternative Risk Retention for Credit Securitizers.—The appropriate agencies may apply the risk retention requirements of this section to securitizers
of loans or particular types of loans in addition to or in substitution for any or all of the requirements that apply to creditors that make such loans or types of loans, if the agencies determine that applying the requirements to such securitizers would—

“(1) be consistent with helping to ensure high quality underwriting standards for creditors, taking into account other applicable laws, regulations, and standards; and

“(2) facilitate appropriate risk management practices by such creditors, improve access of consumers to credit on reasonable terms, or otherwise serve the public interest.

“(c) STANDARDS FOR REGULATION.—Regulations prescribed under subsections (a) and (b) shall—

“(1) prohibit a creditor or securitizer from directly or indirectly hedging or otherwise transferring the credit risk such creditor or securitizer is required to retain under the regulations;

“(2) require a creditor or securitizer to retain 5 percent of the credit risk on any loan that is transferred, sold, or conveyed by such creditor or securitized by such securitizer except—

“(A) an appropriate agency may specify that the percentage of risk may be less than 5
percent of the credit risk, or exempt such credi-
itor or securitizer from the risk retention re-
quirement, if—

“(i) the credit underwriting by the
creditor or the due diligence by the
securitizer meets such standards as an ap-
propriate agency prescribes; and

“(ii) the loan that is transferred, sold,
or conveyed by such creditor or securitized
by such securitizer meets terms, condi-
tions, and characteristics that are deter-
mimed by an appropriate agency to reflect
loans with reduced credit risk, such as
loans that meet certain interest rate
thresholds, loans that are fully amortizing,
and loans that are included in a
securitization in which a third-party pur-
chaser specifically negotiates for the pur-
chase of the first-loss position and provides
due diligence on all individual loans in the
pool prior to the issuance of the asset-
backed securities, and retains a first-loss
position; and

“(B) an appropriate agency may specify
that the percentage of risk may be more than
5 percent of the credit risk if the underwriting
by the creditor or due diligence by the
securitizer is insufficient;
“(3) specify that the credit risk retained must
be no less at risk for loss than the average of the
credit risk not so retained; and
“(4) set the minimum duration of the required
risk retention.
“(d) EXEMPTIONS AND ADJUSTMENTS.—
“(1) IN GENERAL.—The appropriate agencies
shall have authority to provide exemptions or adjust-
ments to the requirements of this section, including
exemptions or adjustments relating to the percent-
age of risk retention required to be held and the
hedging prohibition.
“(2) APPLICABLE STANDARDS.—Any exemp-
tions or adjustments provided under paragraph (1)
shall—
“(A) be consistent with the purpose of en-
suring high quality underwriting standards for
creditors, taking into account other applicable
laws, regulations, or standards; and
“(B) facilitate appropriate risk manage-
ment practices by such creditors, improve ac-
cess for consumers to credit on reasonable terms, or otherwise serve the public interest.

“(e) APPROPRIATE AGENCY DEFINED.—For purposes of this section, the term ‘appropriate agency’ means any of the following agencies with regard to the respective loans and asset-backed securities:

“(1) BANKING AGENCIES.—The Federal banking agencies, the National Credit Union Administration Board, and the Commission, with respect to any loan or asset-backed security for which there is no appropriate agency under paragraph (2).

“(2) OTHER AGENCIES.—

“(A) With regard to any mortgage insured under title II of the National Housing Act, the Secretary of Housing and Urban Development.

“(B) With regard to any loan meeting the conforming loan standards of the Federal National Mortgage Corporation or the Federal Home Loan Mortgage Corporation or any asset-backed security issued by either such corporation, the Federal Housing Finance Agency.

“(C) With regard to any loan insured by the Rural Housing Service, the Rural Housing Service.
“(f) JOINT APPROPRIATE AGENCY REGULATIONS.—
All regulations prescribed by the agencies identified in subsection (e)(1) shall be prescribed jointly by such agencies.

“(g) ENFORCEMENT.—
“(1) Compliance with the requirements imposed under this section shall be enforced under—
“(A) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—
“(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;
“(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, bank holding companies, and subsidiaries of bank holding companies (other
than insured depository institutions), by
the Board; and

“(iii) banks insured by the Federal
Deposit Insurance Corporation (other than
members of the Federal Reserve System)
and insured State branches of foreign
banks, by the Board of Directors of the
Federal Deposit Insurance Corporation;

“(B) section 8 of the Federal Deposit In-
surance Act (12 U.S.C. 1818), by the Director
of the Office of Thrift Supervision, in the case
of a savings association the deposits of which
are insured by the Federal Deposit Insurance
Corporation and a savings and loan holding
company and to any subsidiary (other than a
bank or subsidiary of that bank); and

“(C) the Federal Credit Union Act (12
U.S.C. 1751 et seq.), by the National Credit
Union Administration Board with respect to
any Federal credit union.

“(2) Except to the extent that enforcement of
the requirements imposed under this section is spe-
cifically committed to some other Federal agency
under paragraph (1), the Commission shall enforce
such requirements.
“(3) The authority of the Commission under this section shall be in addition to its existing au-

thority to enforce the securities laws.

“(h) EXCLUSIONS.—Notwithstanding any other pro-

vision of this section, the requirements of this section shall 

not apply to any loan—

“(1) insured, guaranteed, or administered by 

the Secretary of Education, the Secretary of Agri-

culture, the Secretary of Veterans Affairs, or the 

Small Business Administration; or 

“(2) made, insured, guaranteed, or purchased 

by any person that is subject to the supervision of 

the Farm Credit Administration, including the Fed-

eral Agricultural Mortgage Corporation. 

“(i) DEFINITIONS.—For purposes of this section:

“(1) The term ‘asset-backed security’ has the 

meaning given such term in section 229.1101(c) of 

title 17, Code of Federal Regulations, or any suc-

cessor thereto. 

“(2) The term ‘Federal banking agencies’ 

means the Board of Governors of the Federal Re-

serve System, the Office of the Comptroller of the 

Currency, the Office of Thrift Supervision, and the 

Federal Deposit Insurance Corporation.
“(3) The term ‘insured depository institution’ has the meaning given such term in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

“(4) The term ‘securitization vehicle’ means a trust, corporation, partnership, limited liability entity, special purpose entity, or other structure that—

“(A) is the issuer, or is created by the issuer, of pass-through certificates, participation certificates, asset-backed securities, or other similar securities backed by a pool of assets that includes loans; and

“(B) holds such loans.

“(5) The term ‘securitizer’ means the person that transfers, conveys, or assigns, or causes the transfer, conveyance, or assignment of, loans, including through a special purpose vehicle, to any securitization vehicle, excluding any trustee that holds such loans for the benefit of the securitization vehicle.”.

(b) STUDY ON RISK RETENTION.—

(1) Study.—The Board, in coordination and consultation with the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Securities and Ex-
change Commission, shall conduct a study of the combined impact by each individual class of asset-backed security of—

(A) the new credit risk retention requirements contained in the amendment made by subsection (a); and

(B) the Financial Accounting Statements 166 and 167 issued by the Financial Accounting Standards Board.

(2) REPORT.—Not later than 90 days after the date of enactment of this title, the Board shall submit to Congress a report on the study conducted under paragraph (1). Such report shall include statutory and regulatory recommendations for eliminating any negative impacts on the continued viability of the asset-backed securitization markets and on the availability of credit for new lending identified by the study conducted under paragraph (1).

SEC. 1503. PERIODIC AND OTHER REPORTING UNDER THE SECURITIES EXCHANGE ACT OF 1934 FOR ASSET-BACKED SECURITIES.

Section 15(d) of Securities Exchange Act of 1934 (15 U.S.C. 78o(d)) is amended—

(1) by inserting “, other than securities of any class of asset-backed security (as defined in section
229.1101(c) of title 17, Code of Federal Regulations, or any successor thereto),” after “securities of each class”;

(2) by inserting at the end the following: “The Commission may by rules and regulations provide for the suspension or termination of the duty to file under this subsection for any class of issuer of asset-backed security upon such terms and conditions and for such period or periods as it deems necessary or appropriate in the public interest or for the protection of investors. The Commission may, for the purposes of this subsection, classify issuers and prescribe requirements appropriate for each class of issuer of asset-backed security.”; and

(3) by inserting after the fifth sentence the following: “The Commission shall adopt regulations under this subsection requiring each issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security. In adopting regulations under this subsection, the Commission shall set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate comparison of such data across securities in similar types of asset classes. The Commis-
sion shall require issuers of asset-backed securities at a minimum to disclose asset-level or loan-level data necessary for investors to independently perform due diligence. Asset-level or loan-level data shall include data with unique identifiers relating to loan brokers or originators, the nature and extent of the compensation of the broker or originator of the assets backing the security, and the amount of risk retention of the originator or the securitizer of such assets.”.

SEC. 1504. REPRESENTATIONS AND WARRANTIES IN ASSET-BACKED OFFERINGS.

The Commission shall prescribe regulations on the use of representations and warranties in the asset-backed securities market that—

(1) require credit rating agencies to include in reports accompanying credit ratings a description of the representations, warranties, and enforcement mechanisms available to investors and how they differ from representations, warranties, and enforcement mechanisms in similar issuances; and

(2) require disclosure on fulfilled repurchase requests across all trusts aggregated by originator, so that investors may identify asset originators with clear underwriting deficiencies.
SEC. 1505. EXEMPTED TRANSACTIONS UNDER THE SECURITIES ACT OF 1933.

(a) In General.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended—

(1) by striking paragraph (5); and

(2) by redesignating paragraph (6) as paragraph (5).


SEC. 1506. STUDY ON THE MACROECONOMIC EFFECTS OF RISK RETENTION REQUIREMENTS.

(a) Study Required.—The Chairman of the Financial Services Oversight Council shall carry out a study on the macroeconomic effects of the risk retention requirements under this subtitle, and the amendments made by this subtitle, with emphasis placed on potential beneficial effects with respect to stabilizing the real estate market. Such study shall include—

(1) an analysis of the effects of risk retention on real estate asset price bubbles, including a retrospective estimate of what fraction of real estate losses may have been averted had such requirements been in force in recent years;
(2) an analysis of the feasibility of minimizing real estate price bubbles by proactively adjusting the percentage of risk retention that must be borne by creditors and securitizers of real estate debt, as a function of regional or national market conditions;

(3) a comparable analysis for proactively adjusting mortgage origination requirements;

(4) an assessment of whether such proactive adjustments should be made by an independent regulator, or in a formulaic and transparent manner;

(5) an assessment of whether such adjustments should take place independently or in concert with monetary policy; and

(6) recommendations for implementation and enabling legislation.

(b) REPORT.—Not later than the end of the 180-day period beginning on the date of the enactment of this title, the Chairman of the Financial Services Oversight Council shall issue a report to the Congress containing any findings and determinations made in carrying out the study required under subsection (a).
Subtitle G—Enhanced Dissolution Authority

SEC. 1601. SHORT TITLE; PURPOSE.

(a) SHORT TITLE.—This subtitle may be cited as the “Dissolution Authority for Large, Interconnected Financial Companies Act of 2009”.

(b) PURPOSE.—The purpose of this subtitle is to protect the financial system of the United States in times of severe crisis by providing for the orderly resolution of large, interconnected financial companies whose failure could create, or increase, the risk of significant liquidity, credit, or other financial problems spreading among financial institutions or markets and thereby threaten the stability of the overall financial system of the United States. There shall be a strong presumption that resolution under the bankruptcy laws will remain the primary method of resolving financial companies, and the authorities contained in this subtitle will only be used in the most exigent circumstances.

SEC. 1602. DEFINITIONS.

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

(1) Appropriate regulatory agency.—

   (A) Corporation and commission.—The term “appropriate regulatory agency” means—
(i) the Corporation;

(ii) the Commission, if the financial company, or an affiliate thereof, is a broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b) (other than an insured depository institution)); and

(iii) if the financial company or an affiliate of the financial company is an insurance company (other than an insured depository institution), the applicable State insurance authority of the State in which the insurance company is domiciled.

(B) RULES OF CONSTRUCTION.—More than 1 agency may be an appropriate regulatory agency with respect to any given financial company. In such instances, the Commission shall be the appropriate regulatory agency for purposes of section 1603 if the largest subsidiary of the financial company is a broker or dealer as measured by total assets as of the end of the previous calendar quarter, the applicable State insurance authority of the State in which the insurance company is domiciled shall be the
appropriate regulatory agency for purposes of section 1603 if the financial company is an insurance company or if the largest subsidiary of the financial company is an insurance company as measured by total assets as of the end of the previous calendar quarter, and otherwise the Corporation shall be the appropriate regulatory agency for purposes of section 1603.

(2) **BRIDGE FINANCIAL COMPANY.**—The term “bridge financial company” means a new financial company organized in accordance with section 1609(h) by the Corporation.

(3) **COMMISSION.**—The term “Commission” means the Securities and Exchange Commission.

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

(5) **COVERED FINANCIAL COMPANY.**—The term “covered financial company” means a financial company for which a determination has been made pursuant to and in accordance with section 1603(b).

(6) **COVERED SUBSIDIARY.**—The term “covered subsidiary” means a subsidiary covered in paragraph (9)(B)(v).
(7) Customer property.—The term “customer property” has the meaning ascribed to it in the Securities Investor Protection Act of 1970.

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

(9) Financial company.—The term “financial company” means any company that—

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

(B) is—

(i) any bank holding company as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a));

(ii) any company that has been subjected to stricter prudential regulation under section 1103;

(iii) any insurance company;

(iv) any company predominantly engaged in activities that are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) or activities that have been identified for stricter
prudential standards under section 1103 of
this title; or

(v) any subsidiary of companies de-
scribed in clauses (i) through (iv) (other
than an insured depository institution or
any broker or dealer registered with the
Commission under section 15(b) of the Se-
78o(b)) that is a member of the Securities
Investor Protection Corporation);

(C) that is not a Farm Credit System in-
stitution chartered under and subject to the
provisions of the Farm Credit Act of 1971, as
amended (12 U.S.C. 2001 et seq.);

(D) that is not a Federal home loan bank,
the Federal National Mortgage Association, or
the Federal Home Loan Mortgage Corporation;
and

(E) is not an insured depository institution
(as defined in section 3(c) of the Federal De-
posit Insurance act), a Federal credit union or
a State-chartered credit union (as such terms
are defined in section 101 of the Federal Credit
Union Act), or a government-sponsored enter-
prise (as such term is defined in section 1004(f)
of the Financial Institutions Reform, Recovery
note)).

(10) Fund.—The term “Fund” means the Sys-
temic Dissolution Fund established in accordance
with section 1609(n).

(11) Insurance company.—The term “insur-
ance company” means any entity covered by a State
law designed specifically to deal with the rehabilita-
tion, liquidation, or insolvency of an insurance com-
pany.

(12) Secretary.—The term “Secretary” shall
mean the Secretary of the Treasury.

(13) State.—The term “State” means any
State, commonwealth, territory, or possession of the
United States, the District of Columbia, the Com-
monwealth of Puerto Rico, the Commonwealth of the
Northern Mariana Islands, American Samoa, Guam,
and the United States Virgin Islands.

(14) Certain other terms.—The terms “af-
iliate”, “company”, “control”, “deposit”, “deposi-
tory institution”, “foreign bank”, “insured deposit-
tory institution”, and “subsidiary” have the same
meanings as in section 3 of the Federal Deposit In-
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SEC. 1603. SYSTEMIC RISK DETERMINATION.

(a) Written Recommendation of the Federal Reserve Board and the Appropriate Regulatory Agency.—

(1) Vote required.—

(A) In general.—At the request of the Secretary, the Chairman of the Federal Reserve Board, or the appropriate regulatory agency, the Board and the appropriate regulatory agency shall, or on their own initiative the Board and the appropriate regulatory agency may, consider whether to make the written recommendation provided for in paragraph (2) with respect to a financial company.

(B) Two-thirds agreement.—Any recommendation under subparagraph (A) shall be made upon a vote of not less than two-thirds of the members of the Federal Reserve Board then serving and not less than two thirds of any members of the board or commission then serving of the appropriate regulatory agency, as applicable.

(2) Recommendation required.—Any written recommendations made by the Federal Reserve Board and the appropriate regulatory agency under paragraph (1) shall contain the following:
(A) A description of the effect that the default of the financial company would have on economic conditions or financial stability in the United States.

(B) A description of the effect that the default of the financial company would have on economic conditions or financial stability for low-income, minority, or underserved communities.

(C) A recommendation regarding the nature and the extent of actions that the Board and the appropriate regulatory agency recommend be taken under section 1604 regarding the financial company.

(b) DETERMINATION BY THE SECRETARY.—Notwithstanding any other provision of Federal law or the law of any State, if, upon the written recommendation of the Federal Reserve Board and the appropriate regulatory agency as provided for in subsection (a)(1), the Secretary (in consultation with the President) determines that—

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

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

(3) any action under section 1604 would avoid or mitigate such adverse effects, taking into consideration the effectiveness of the action in mitigating potential adverse effects on the financial system or economic conditions, the cost to the general fund of the Treasury, and the potential to increase moral hazard on the part of creditors, counterparties, and shareholders in the financial company,

then the Secretary must take action under section 1604(a), the Corporation must act in accordance with section 1604(b), and the Corporation may take 1 or more actions specified in section 1604(c) in accordance with the requirements of that subsection, except that, prior to the Secretary or Corporation taking any action under section 1604, the Federal Reserve Board or the appropriate Federal regulatory agency shall take action to avoid or mitigate potential adverse effects on low-income, minority, or underserved communities affected by the failure of such financial company.

(c) DOCUMENTATION AND REVIEW.—

(1) IN GENERAL.—The Secretary shall—

(A) document any determination under subsection (b); and
(B) retain the documentation for review under paragraph (2).

(2) GAO REVIEW.—The Comptroller General of the United States shall review and report to the Congress on any determination under subsection (b), including—

(A) the basis for the determination;

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

(C) the likely effect of the determination and such action on the incentives and conduct of financial companies and their creditors, counterparties, and shareholders.

(3) REPORT TO CONGRESS.—Within 48 hours after a determination is made under subsection (b), the Secretary shall provide written notice of the determination to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives. The notice shall include a description of the basis for the determination.

(d) DEFAULT OR IN DANGER OF DEFAULT.—For purposes of subsection (b), a financial company shall be considered to be in default or in danger of default if any
of the following conditions exist, as determined in accordance with that subsection:

(1) A case has been, or likely will promptly be, commenced with respect to the financial company under title 11, United States Code.

(2) The financial company is critically undercapitalized, as such term has been or may be defined by the Federal Reserve Board.

(3) The financial company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion without assistance under section 1604.

(4) The assets of the financial company are, or are likely to be, less than its obligations to creditors and others.

(5) The financial company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

SEC. 1604. DISSOLUTION; STABILIZATION.

(a) APPOINTMENT OF RECEIVER.—

(1) IN GENERAL.—Upon the Secretary making a determination in accordance with section 1603(b),
the Secretary shall appoint the Corporation as receiver for the covered financial company.

(2) Time limit on receivership authority.—Any appointment of the Corporation as receiver under paragraph (1) shall terminate on the date that is the end of the 1-year period beginning on the date such appointment is made.

(3) Extension of time limit.—The time limit established in paragraph (2) may be extended by the Secretary for up to 1 additional year if—

(A) the Corporation has not completed the dissolution of the company within the time provided in paragraph (2); and

(B) the Secretary certifies in writing that continuation of the receivership is necessary—

(i) to protect the best interests of the taxpayers of the United States; and

(ii) to protect the stability of the financial system and the economy of the United States.

(4) Further extension.—The time limit, as extended in paragraph (3), may be extended for up to 1 additional year if—

(A) the conditions of paragraph (3) are met; and
(B) the Corporation submits a report to the Congress, no later than 60 days before the receivership will expire under the extended limit under paragraph (3), that describes in detail—

(i) the basis for the determination by the Corporation that a second extension is necessary; and

(ii) the specific plan of the Corporation for concluding the receivership before the end of the proposed additional year.

(b) DISSOLUTION LIMITATIONS.—

(1) IN GENERAL.—An insolvent financial company may be dissolved under this subtitle only if the failure and dissolution of such company under title 11, United States Code, would be systemically destabilizing, as determined by the appropriate Federal regulatory agencies and the Secretary of the Treasury (in consultation with the President) in accordance with section 1603(b).

(2) LIQUIDATION.—A financial company that comes within coverage of this subtitle for dissolution shall be placed in liquidation, and the associated liquidation costs shall be paid from the company’s assets and borne by the shareholders and unsecured creditors of such company.
(3) **ASSESSMENT FOR EXCESS LIQUIDATION COSTS.**—Any liquidation costs that exceed the amount of liquidated assets of the company shall be paid through assessments on large financial companies.

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

(1) shall consult with the regulators of the covered financial company and its covered subsidiaries for purposes of ensuring an orderly dissolution of the covered financial company;

(2) may consult with, or under section 1609(a)(1)(B)(v) or section 1609(a)(1)(K) acquire services of, any outside experts as appropriate to inform and aid the Corporation in the dissolution process; and

(3) shall consult with the primary regulators of any subsidiaries of the covered financial company that are not covered subsidiaries as described in section 1602(9)(B)(v) and coordinate with such regulators regarding the treatment of such solvent subsidiaries and the separate dissolution of any such insolvent subsidiaries under other governmental authority, as appropriate.

(d) **EMERGENCY STABILIZATION AFTER APPOINTMENT OF RECEIVER.**—Upon the Secretary appointing the
Corporation as receiver under subsection (a), the Corporation may, in its corporate capacity and as an agency of the United States, with the approval of the Secretary and subject to the conditions in subsections (f) through (g), take the following actions under such terms and conditions that the Corporation and the Secretary jointly deem appropriate:

(1) Making loans to, or purchasing any debt obligation of, the covered financial company or any covered subsidiary.

(2) Purchasing assets of the covered financial company or any covered subsidiary directly or through an entity established by the Corporation for such purpose.

(3) Assuming or guaranteeing the obligations of the covered financial company or any covered subsidiary to one or more third parties.

(4) Taking a lien on any or all assets of the covered financial company or any covered subsidiary, including a first priority lien on all unencumbered assets of the company or any covered subsidiary to secure repayment of any transactions conducted under this subsection.

(5) Selling or transferring all, or any part thereof, of such acquired assets, liabilities, or obliga-
tions of the covered financial company or any covered subsidiary.

(e) Treatment of Insurance Companies and Insurance Company Subsidiaries.—

(1) In general.—Notwithstanding subsection (a), if an insurance company covered by a State law designed specifically to deal with the rehabilitation, liquidation or insolvency of an insurance company is a covered financial company or a subsidiary of a covered financial company, resolution of such insurance company, and any subsidiary of such company, will be conducted as provided under such State law.

(2) Exception for covered subsidiaries.—The requirement of paragraph (1) shall not apply with respect to any covered subsidiary of such an insurance company, that is not itself an insurance company.

(3) Backup authority.—Notwithstanding paragraph (1), with respect to a covered financial company described under paragraph (1), if, after the end of the 60-day period beginning on the date a determination is made under section 1603(b) with respect to such company, the appropriate regulatory agency has not filed the appropriate judicial action in the appropriate State court to place such com-
pany into dissolution under the State’s laws and requirements, the Corporation shall have the authority to stand in the place of the appropriate regulatory agency and file the appropriate judicial action in the appropriate State court to place such company into dissolution under the State’s laws and requirements.

(f) Mandatory Terms and Conditions for All Stabilization Actions.—The Corporation as receiver is authorized to take the stabilization actions listed in subsection (d) only if—

(1) the Secretary and the Corporation determine that such action is necessary for the purpose of financial stability and not for the purpose of preserving the covered financial company;

(2) the Corporation ensures that the shareholders of a covered financial company do not receive payment until after all other claims are fully paid;

(3) the Corporation ensures that any funds from taxpayers shall be repaid as part of the resolution process before payments are made to creditors;

(4) the Corporation ensures that unsecured creditors bear losses;

(5) the Corporation ensures that management responsible for the failed condition of the covered fi-
nancial company is removed (if such management has not already been removed at the time the Corporation is appointed as receiver); and

(6) the Corporation ensures that the members of the board of directors (or body performing similar functions) responsible for the failed condition of the covered financial company are removed (if such members have not already been removed at the time the Corporation is appointed as receiver).

(g) **RECOUPMENT OF FUNDS EXPENDED FOR SYSTEMIC STABILIZATION PURPOSES.**—Amounts expended from the Fund by the Corporation under this section shall be repaid in full to the Fund only from the following sources:

(1) **DISSOLUTION PROCESS.**—Amounts attributable to the proceeds of the sale of, or income from, the assets of the covered financial company.

(2) **INDUSTRY ASSESSMENTS.**—If the sources described in paragraph (1) are insufficient to repay the amount of the stabilization action in full, the difference shall be recouped through assessments on financial companies in accordance with section 1609(o).
SEC. 1605. JUDICIAL REVIEW.

If a receiver is appointed in accordance with section 1604, the covered financial company may, not later than 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such covered financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the receiver be removed, and the court shall, upon the merits, dismiss such action or direct the receiver to be removed. Review of such an action shall be limited to the appointment of a receiver under section 1604.

SEC. 1606. DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF RECEIVER.

The members of the board of directors (or body performing similar functions) of a covered financial company shall not be liable to the covered financial company’s shareholders or creditors for acquiescing in or consenting in good faith to—

(1) the Secretary’s appointment of the Corporation as receiver for the covered financial company under section 1604; or

(2) an acquisition, combination, or transfer of assets or liabilities under section 1609.
SEC. 1607. TERMINATION AND EXCLUSION OF OTHER ACTIONS.

(a) Termination and Exclusion of Bankruptcy.—The Corporation’s acting as receiver for a covered financial company under this subtitle shall immediately, and by operation of law, terminate any case commenced with respect to the covered financial company under title 11, United States Code, or any proceeding under any State insolvency law with respect to the covered financial company, and no such case or proceeding may be commenced with respect to the covered financial company at any time while the Corporation acts as receiver for the covered financial company.

(b) Conversion to Bankruptcy.—

(1) Conversion.—The Corporation may at any time, with the approval of the Secretary and after consulting with the Council, convert the receivership of a covered financial company to a proceeding under chapter 7 or 11 of title 11, United States Code, by filing a petition against the covered financial company under section 303(m) of such title. The Corporation may serve as the trustee for the covered financial company in bankruptcy.

(2) Bridge Financial Company.—The Corporation’s exercise of authority under paragraph (1) shall not affect any powers or duties of the Corporat-
tion with regard to any bridge financial company es-
established under section 1609(h).

(c) Reporting to the Congress.—

(1) In general.—

(A) Initial report.—Upon the appoint-
ment of the Corporation as receiver under sec-
tion 1604(a), the Corporation shall issue a re-
port on the issue described under paragraph
(3)(A).

(B) Continuing reports.—At the end of
each 180-day period after the appointment of
the Corporation as receiver under section
1604(a), and continuing while the Corporation
is acting as receiver, the Corporation shall issue
a report on the issues described under subpara-
graphs (A) through (C) of paragraph (3).

(2) Committees to receive reports.—Re-
ports issued under this subsection shall be issued to
the Committee on Banking, Housing, and Urban Af-
fairs and the Committee on the Judiciary of the
Senate and the Committee on Financial Services and
the Committee on the Judiciary of the House of
Representatives.

(3) Reporting issues.—
(A) Why the receivership should continue instead of converting the receivership into a proceeding under chapter 7 or 11 of title 11, United States Code.

(B) The extent to which unsecured creditors are likely to receive at least as much as they would receive if the receivership of the covered financial company was converted to a case under chapter 7 of title 11, United States Code.

(C) An explanation of each instance where the Corporation as receiver of a covered financial company waived the requirement of 12 CFR Part 366 with respect to conflicts of interest by any person in the private sector who was retained to provide services to the Corporation in connection with such receivership.

SEC. 1608. RULEMAKING.

The Corporation may, after following the notice and comment rulemaking requirements under the Administrative Procedure Act, prescribe such regulations as the Corporation considers necessary or appropriate to implement the provisions of this title.

SEC. 1609. POWERS AND DUTIES OF CORPORATION.

(a) Powers and Authorities.—

(1) General powers.—
(A) Successor to covered financial company.—The Corporation shall, upon appointment as receiver for a covered financial company under section 1604, and by operation of law, succeed to—

(i) all rights, titles, powers, and privileges of the covered financial company, and of any stockholder, member, officer, or director of such institution with respect to the covered financial company and the assets of the covered financial company; and

(ii) title to the books, records, and assets of any previous receiver or other legal custodian of such covered financial company.

(B) Operate the covered financial company.—The Corporation as receiver for a covered financial company may—

(i) take over the assets of and operate the covered financial company with all the powers of the members or shareholders, the directors, and the officers of the covered financial company and conduct all business of the covered financial company;
(ii) collect all obligations and money
due the covered financial company;

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

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

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

(C) FUNCTIONS OF COVERED FINANCIAL
COMPANY’S OFFICERS, DIRECTORS, AND SHARE-
HOLDERS.—

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

(ii) PRESUMPTION.—There shall be a
strong presumption that the Corporation,
as receiver, will remove management re-
sponsible for the failed condition of the
covered financial company (if such man-
agement has not already been removed at
the time the Corporation is appointed as
receiver).

(D) ADDITIONAL POWERS AS RECEIVER.—
The Corporation may, as receiver, and subject
to all legally enforceable and perfected security
interests, place the covered financial company
in liquidation and proceed to realize upon the
assets of the covered financial company in such
manner as the Corporation deems appropriate,
including through the sale of assets, the trans-
fer of assets to a bridge financial company es-
tablished under subsection (h), or the exercise
of any other rights or privileges granted to the
receiver under this section.

(E) ORGANIZATION OF NEW COMPANIES.—
The Corporation as receiver may organize a
bridge financial company under subsection (h).

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

(i) IN GENERAL.—Subject to clause
(ii), the Corporation as receiver may—

(I) merge the covered financial
comppany with another company; or
(II) transfer any asset or liability of the covered financial company (including assets and liabilities associated with any trust or custody business) without obtaining any approval, assignment, or consent with respect to such transfer.

(ii) **Federal Agency Approval; Antitrust Review.** —

(I) **In General.** —If a transaction described in clause (i) requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval, a report on competitive factors is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If notification
under section 7A of the Clayton Act is
required with respect to such trans-
action, then the required waiting pe-
riod shall end on the 15th day after
the date on which the Attorney Gen-
eral and the Federal Trade Commis-
sion receive such notification, unless
the waiting period is terminated ear-
lier under subsection (b)(2) of such
section, or is extended pursuant to
subsection (e)(2) of such section.

(II) EMERGENCY.—If the Sec-
retary in consultation with the Chair-
man of the Federal Reserve Board
has found that the Corporation must
act immediately to prevent the prob-
able failure of the covered financial
company involved, the approval and
prior notification referred to in sub-
clause (I) shall not be required and
the transaction may be consummated
immediately by the Corporation. The
preceding sentence shall not otherwise
modify, impair, or supercede the oper-
ation of any of the antitrust laws (as
defined in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 relates to unfair methods of competition).

(G) PAYMENT OF VALID OBLIGATIONS.—
The Corporation, as receiver, shall, to the extent funds are available, pay all valid obligations of the covered financial company that are due and payable at the time of the appointment of the Corporation as receiver in accordance with the prescriptions and limitations of this title.

(H) SUBPOENA AUTHORITY.—

(i) IN GENERAL.—The Corporation may, for purposes of carrying out any power, authority, or duty with respect to a covered financial company (including determining any claim against the covered financial company and determining and realizing upon any asset of any person in the course of collecting money due the covered financial company), exercise any power established under section 8(n) of the Federal
Deposit Insurance Act as if the covered financial company were an insured depository institution.

(ii) RULE OF CONSTRUCTION.—This section shall not be construed as limiting any rights that the Corporation, in any capacity, might otherwise have to exercise any powers described in clause (i) under any other provision of law.

(I) INCIDENTAL POWERS.—The Corporation, as receiver, may—

(i) exercise all powers and authorities specifically granted to receivers under this section and such incidental powers as shall be necessary to carry out such powers; and

(ii) take any action authorized by this section, which the Corporation determines is in the best interests of the covered financial company, its customers, its creditors, its counterparties, or the stability of the financial system.

(J) UTILIZATION OF PRIVATE SECTOR.—In carrying out its responsibilities in the management and disposition of assets from a covered financial company, the Corporation, as receiver,
may utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, if such services are available in the private sector and the Corporation determines utilization of such services is practicable, efficient, and cost effective.

(K) SHAREHOLDERS AND CREDITORS OF COVERED FINANCIAL COMPANY.—Notwithstanding any other provision of law, the Corporation as receiver for a covered financial company pursuant to this section and its succession, by operation of law, to the rights, titles, powers, and privileges described in subparagraph (A) shall terminate all rights and claims that the stockholders and creditors of the covered financial company may have against the assets of the covered financial company or the Corporation arising out of their status as stockholders or creditors, except for their right to payment, resolution, or other satisfaction of their claims, as permitted under this section. The Corporation shall ensure that shareholders and unsecured creditors bear losses, consistent
with the priority of claims provisions in section 1609(b).

(L) COORDINATION WITH FOREIGN FINANCIAL AUTHORITIES.—The Corporation as receiver for a covered financial company shall coordinate with the appropriate foreign financial authorities regarding the dissolution of subsidiaries of the covered financial company that are established in a country other than the United States.

(M) APPOINTMENT OF CONSUMER PRIVACY ADVISOR.—

(i) APPOINTMENT.—Upon the appointment of the Corporation as receiver under section 1604(a), the Corporation shall appoint a Consumer Privacy Advisor.

(ii) DUTIES.—The Consumer Privacy Advisor appointed under clause (i) shall advise the Corporation with respect to—

(I) the covered financial company’s consumer privacy policies;

(II) the potential losses or gains of privacy to consumers upon any sale, lease, or other transfer of mate-
rial assets of the covered financial
company;

(III) the potential costs or bene-
fits to consumers upon any sale, lease,
or other transfer of material assets of
the covered financial company; and

(IV) the potential alternatives
that would mitigate potential privacy
loses or potential costs to consumers.

(2) Authority of Corporation to deter-
mine claims.—

(A) In general.—The Corporation may,
as receiver, determine claims in accordance with
the requirements of this subsection and regula-
tions prescribed under paragraph (3).

(B) Notice requirements.—The re-
ceiver, in any case involving the liquidation or
winding up of the affairs of a covered financial
company, shall—

(i) promptly publish a notice to the
covered financial company’s creditors to
present their claims, together with proof,
to the receiver by a date specified in the
notice which shall be not less than 90 days
after the publication of such notice; and
(ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

(C) Mailing Required.—The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the covered financial company’s books—

(i) at the creditor’s last address appearing in such books; or

(ii) upon discovery of the name and address of a claimant not appearing on the covered financial company’s books, within 30 days after the discovery of such name and address.

(3) Rulemaking Authority Relating to Determination of Claims.—

(A) In General.—Subject to subsection (b), the Corporation shall, after following the notice and comment rulemaking requirements under the Administrative Procedure Act, prescribe rules and regulations regarding the allowance or disallowance of claims by the Corporation and providing for administrative deter-
mination of claims and review of such determination.

(B) Existing Rules.—The Corporation may elect to use the regulations adopted pursuant to the provisions of section 11 of the Federal Deposit Insurance Act with respect to the determination of claims for a covered financial company as if the covered financial company were an insured depository institution.

(4) Procedures for Determination of Claims.—

(A) Determination Period.—

(i) In General.—Before the end of the 180-day period beginning on the date any claim against a covered financial company is filed with the Corporation as receiver, the Corporation shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

(ii) Extension of Time.—The period described in clause (i) may be extended by a written agreement between the claimant and the Corporation.
(iii) Mailing of Notice Sufficient.—The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

(I) on the covered financial company's books;

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

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

(iv) Contents of Notice of Disallowance.—If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

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

(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

(B) Allowance of Proven Claim.—The Corporation shall allow any claim received on or before the date specified in the notice published
under paragraph (2)(B)(i) by the Corporation from any claimant which is proved to the satisfaction of the Corporation.

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

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

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

(I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

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

(D) AUTHORITY TO DISALLOW CLAIMS.—

(i) IN GENERAL.—The Corporation may disallow any portion of any claim by
a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the Corporation.

(ii) Payments to less than fully secured creditors.—In the case of a claim of a creditor against a covered financial company which is secured by any property or other asset of such covered financial company, the receiver—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the covered financial company; and

(II) may not make any payment with respect to such unsecured portion of the claim other than in connection with the disposition of all claims of unsecured creditors of the covered financial company.

(iii) Exceptions.—No provision of this paragraph shall apply with respect to—
(I) any extension of credit from any Federal Reserve bank, or the Cor-
poration, to any covered financial company; or

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

(iv) PAYMENTS TO FULLY SECURED CREDITORS.—Notwithstanding any other provision of law, in any receivership of a covered financial company in which amounts realized from the dissolution are insufficient to satisfy completely any amounts owed to the United States or to the Fund, as determined in the receiver’s sole discretion, an allowed claim under a legally enforceable or perfected security interest in assets of the covered financial company arising under a qualified financial contract (as defined under subsection (c)(8)(D)(i)) with an original term of 30 days or less (except that, for a contract for a term linked to a calendar month, the
original term must be less than 1 calendar month), secured by collateral other than securities issued by the United States Treasury, the Board of Governors of the Federal Reserve System, any agency of the United States, any Federal Reserve bank, or any Government Sponsored Enterprise, that became a legally enforceable or perfected security interest after the date of the enactment of this clause, and that is not a security interest of the Federal Government in any of the assets of the covered financial company in receivership may be treated as an unsecured claim in the amount specified under clause (v) as necessary to satisfy any amounts owed to the United States or to the Fund. Any balance of such claim that is treated as an unsecured claim under this subparagraph shall be paid as a general liability of the covered financial company. This clause shall not apply with respect to debt obligations secured by real property. This clause may only be implemented with respect to secured creditors if, as a result of the dis-
solution of the covered financial company,
no funds are available to satisfy, in whole
or in part, any claims of unsecured credi-
tors or shareholders.

(v) Amount Specified.—For pur-
poses of clause (iv), the amount specified
under this clause, in the case of a secured
creditor, is the amount of up to 10 per-
cent.

(E) No Judicial Review of Determina-
tion Pursuant to Subparagraph (D).—No
court may review the Corporation determination
pursuant to subparagraph (D) to disallow a
claim.

(F) Legal Effect of Filing.—

(i) Statute of Limitation
Tolled.—For purposes of any applicable
statute of limitations, the filing of a claim
with the Corporation shall constitute a
commencement of an action.

(ii) No Prejudice to Other Ac-
tions.—Subject to paragraph (9), the fil-
ing of a claim with the Corporation shall
not prejudice any right of the claimant to
continue any action which was filed before
the appointment of the Corporation as receiver for the covered financial company.

(5) Provision for Judicial Determination of Claims.—

(A) In General.—Before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (4)(A)(i) (or, if extended by agreement of the Corporation and the claimant, the period described in paragraph (4)(A)(ii)) with respect to any claim against a covered financial company for which the Corporation is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (4)(A)(i),

the claimant may file suit on a claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the covered financial company’s principal place of business is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim).
(B) Statute of Limitations.—If any claimant fails to file suit on such claim (or continue an action commenced before the appointment of the receiver) before the end of the 60-day period described in subparagraph (A), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(6) Expedited Determination of Claims.—

(A) Establishment Required.—The Corporation shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (4) for claimants who—

(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any covered financial company for which the Corporation has been appointed as receiver; and

(ii) allege that irreparable injury will occur if the routine claims procedure is followed.
(B) Determination Period.—Before the end of the 90-day period beginning on the date any claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall—

(i) determine—

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

(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (4); and

(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining judicial determination.

(C) Period for Filing or Renewing Suit.—Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue such a suit filed before the appointment of the Corporation as receiver, seeking a determination of the claimant’s rights with respect to such security interest after the earlier of—
(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date the Corporation denies the claim.

(D) STATUTE OF LIMITATIONS.—If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

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

(7) AGREEMENTS AGAINST INTEREST OF THE RECEIVER.—No agreement that tends to diminish or defeat the interest of the Corporation as receiver in any asset acquired by the receiver under this section shall be valid against the receiver unless such agreement is in writing and executed by an authorized officer or representative of the covered financial company.

(8) PAYMENT OF CLAIMS.—

(A) IN GENERAL.—The Corporation as receiver may, in its discretion and to the extent funds are available, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

(i) allowed by the receiver;

(ii) approved by the Corporation pursuant to a final determination pursuant to paragraph (6); or

(iii) determined by the final judgment of any court of competent jurisdiction.
(B) Payment of dividends on claims.—The receiver may, in the receiver’s sole discretion and to the extent otherwise permitted by this section, pay dividends on proven claims at any time, and no liability shall attach to the Corporation (in the Corporation’s capacity as receiver), by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(C) Rulemaking authority of corporation.—The Corporation may prescribe such rules, including definitions of terms, as it deems appropriate to establish a single uniform interest rate for, or to make payments of post insolvency interest to creditors holding proven claims against the receivership estates of a covered financial company following satisfaction by the receiver of the principal amount of all creditor claims.

(9) Suspension of legal actions.—

(A) In general.—After the appointment of the Corporation as receiver for a covered financial company, the Corporation may request a stay for a period not to exceed 90 days in any
noncriminal judicial action or proceeding to which such covered financial company is or becomes a party.

(B) Grant of stay by all courts required.—Upon receipt of a request by the Corporation pursuant to subparagraph (A) for a stay of any non-criminal judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(10) Additional rights and duties.—

(A) Prior final adjudication.—The Corporation shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Corporation as receiver.

(B) Rights and remedies of receiver.—In the event of any appealable judgment, the Corporation as receiver shall—

(i) have all the rights and remedies available to the covered financial company (before the appointment of the receiver under section 1604) and the Corporation, including but not limited to removal to Federal court and all appellate rights; and
(ii) not be required to post any bond
in order to pursue such remedies.

(C) NO ATTACHMENT OR EXECUTION.—No
attachment or execution may issue by any court
upon assets in the possession of the receiver.

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

(i) any claim or action for payment
from, or any action seeking a determination of rights with respect to, the assets of
any covered financial company for which
the Corporation has been appointed receiver, including any assets which the Cor-
poration may acquire from itself as such
receiver; or

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

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

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

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

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

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

(v) ensures timely and adequate competition and fair and consistent treatment of offerors; and

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

(11) Statute of Limitations for Actions Brought by Receiver.—

(A) In General.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as receiver shall be—
(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date the claim accrues; or

(II) the period applicable under State law; and

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

(I) the 3-year period beginning on the date the claim accrues; or

(II) the period applicable under State law.

(B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

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

(ii) the date on which the cause of action accrues.

(C) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—
(i) IN GENERAL.—In the case of any tort claim described in clause (ii) for which the statute of limitation applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Corporation as receiver, the Corporation may bring an action as receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.

(ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the covered financial company.

(12) FRAUDULENT TRANSFERS.—

(A) IN GENERAL.—The Corporation, as receiver for any covered financial company, may avoid a transfer of any interest of an institution affiliated party, or any person who the Corporation determines is a debtor of the covered financial company, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Cor-
poration was appointed receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the covered financial company or the Corporation.

(B) PREFERENTIAL TRANSFERS.—The Corporation as receiver for any covered financial company may avoid a transfer of an interest of the covered financial company in property that—

(i) was made to or for the benefit of a creditor;

(ii) was made for or on account of an antecedent debt that was owed by the covered financial company before the transfer was made;

(iii) was made while the covered financial company was insolvent;

(iv) was made—

(I) on or within 90 days before the date on which the Corporation was appointed receiver; or

(II) between 90 days and one year before the date that the Corporation was appointed receiver, if such
creditor at the time of the transfer
was an insider, as that term is defined
in section 101(31) of title 11, United
States Code; and

(v) enables such creditor to receive
more than such creditor would receive in
the liquidation of the covered financial
company if—

(I) the transfer had not been
made; and

(II) such creditor received pay-
ment of such debt to the extent pro-
vided by the provisions of this sub-
title.

(C) POST-RECEIVERSHIP TRANSACTIONS.—
The Corporation as receiver for any covered fi-
nancial company may avoid a transfer of prop-
erty of the receivership that occurred after the
Corporation was appointed receiver that was
not authorized under this title.

(D) RIGHT OF RECOVERY.—To the extent
that a transfer is avoided under subparagraph
(A), (B) or (C), the Corporation may recover,
for the benefit of the covered financial com-
pany, the property transferred or, if a court so
orders, the value of such property from—

(i) the initial transferee of such trans-
fer or the entity for whose benefit such
transfer was made; or

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

(E) RIGHTS OF TRANSFEREE OR OBLI-
GEE.—The Corporation may not recover under
subparagraph (D)(ii)—

(i) from a transferee that takes for
value, including satisfaction or securing of
a present or antecedent debt, in good faith,
and without knowledge of the violability of
the transfer avoided; or

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

(F) DEFENSES.—A transferee or obligee
from whom the Corporation seeks to recover a
transfer or avoid an obligation under subpara-
graph (A), (B) or (C) shall have the same af-
firmative defenses and rights to liens on the
property transferred to the extent they would be
available to a transferee or obligee from whom
a trustee under title 11 seeks to recover a
transfer under sections 547, 548, and 549 of title 11, United States Code.

(G) LIMITATIONS ON AVOIDING POWERS.—The rights of the Corporation under subparagraph (A), (B) or (C) are restricted to the same extent as the rights of a trustee in bankruptcy under section 546(b)(1) of the Bankruptcy Code.

(H) PRESUMPTION OF INSOLVENCY.—For purposes of subparagraph (B), the covered financial company is presumed to have been insolvent on and during the 90 days immediately preceding the date on which the Corporation is appointed as receiver.

(I) RIGHTS UNDER THIS SUBSECTION.—The rights of the Corporation as receiver for a covered financial company under this subsection shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency of a Federal Home Loan Bank) under title 11, United States Code.

(J) RIGHT OF RECOVERY.—To the extent a transfer is avoided under subparagraph (A), the Corporation may recover, for the benefit of the covered financial company, the property
transferred or, if a court so orders, the value of such property (at the time of such transfer) from—

(i) the initial transferee of such transfer or the institution-affiliated party or person for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(K) RIGHTS OF TRANSFEE OR OBLIGEE.—The Corporation may not recover under subparagraph (B)—

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

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

(L) RIGHTS UNDER THIS SUBSECTION.—The rights of the Corporation as receiver of a covered financial company under this subsection shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.
(M) DEFINITION.—For purposes of this subsection, the term “institution affiliated party” means—

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

(ii) any shareholder, consultant, joint venture partner, and any other person as determined by the Corporation (by regulation or otherwise) who participates in the conduct of the affairs of a covered financial company; and

(iii) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

(I) any violation of any law or regulation;

(II) any breach of fiduciary duty;

or

(III) any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a sig-
nificant adverse effect on, the covered financial company.

(13) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (14), any court of competent jurisdiction may, at the request of the Corporation, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation under the control of the court and appointing a trustee to hold such assets.

(14) STANDARDS.—

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

(B) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party’s right to due process as Rule 65 (as modified with respect to such proceeding by subpara-
graph (A)), the relief sought by the Corporation pursuant to paragraph (14) may be requested under the laws of such State.

(15) **TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE CORPORATION AS RECEIVER.**—Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against the Corporation as receiver for a covered financial company for the breach of an agreement executed or approved by the Corporation after the date of its appointment shall be paid as an administrative expense of the receiver. Nothing in this paragraph shall be construed to limit the power of a receiver to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(16) **ACCOUNTING AND RECORDKEEPING REQUIREMENTS.**—

(A) **IN GENERAL.**—The Corporation as receiver shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each receivership or other disposition of any covered financial company.
(B) **Annual Accounting or Report.**—

With respect to each receivership to which the Corporation was appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary and the Comptroller General of the United States.

(C) **Availability of Reports.**—Any report prepared pursuant to subparagraph (B) shall be made available by the Corporation upon request to any member of the public.

(D) **Recordkeeping Requirement.**—

(i) **In General.**—Except as provided in clause (ii), after the end of the 6-year period beginning on the date the Corporation is appointed as receiver of a covered financial company the Corporation may destroy any records of such covered financial company which the Corporation, in the Corporation’s discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(ii) **Old Records.**—Notwithstanding clause (i), the Corporation may destroy records of a covered financial company...
which are at least 10 years old as of the
date on which the Corporation is appointed
as the receiver of such company in accord-
ance with clause (i) at any time after such
appointment is final, without regard to the
6-year period of limitation contained in
clause (i).

(b) PRIORITY OF EXPENSES AND UNSECURED
CLAIMS.—

(1) IN GENERAL.—Unsecured claims against a
covered financial company, or the receiver for such
covered financial company under this section, that
are proven to the satisfaction of the receiver shall
have priority in the following order:

(A) Administrative expenses of the re-
ceiver.

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

(C) Wages, salaries, or commissions, in-
cluding vacation, severance, and sick leave pay
carried by an individual (other than manage-
ment responsible for the failed condition of the
covered financial company who have been re-
moved), subject to the limitations for such pay-
ments contained in title 11, United States Code, including the amount (11 U.S.C. 507(a)(4)) and restrictions on severance payments to insiders (11 U.S.C. 503(c)).

(D) Contributions to employee benefit plans, subject to the limitations in title 11, United States Code (11 U.S.C. 507(a)(5)).

(E) Any other general or senior liability of the covered financial company (which is not a liability described under subparagraph (F) or (G)).

(F) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (G)).

(G) Any obligation to shareholders, members, general partners, limited partners or other persons with interests in the equity of the covered financial company arising as a result of their status as shareholders, members, general partners, limited partners or other persons with interests in the equity of the covered financial company.

(2) POST-RECEIVERSHIP FINANCING PRIORITY.—In the event that the Corporation as receiver is unable to obtain unsecured credit for the
covered financial company from commercial sources, the Corporation as receiver may obtain credit or incur debt on the part of the covered financial company which shall have priority over any or all administrative expenses of the receiver under paragraph (1)(A).

(3) Claims of the United States.—Unsecured claims of the United States shall, at a minimum, have a higher priority than liabilities of the covered financial company that count as regulatory capital.

(4) Creditors similarly situated.—Subject to the priorities established under paragraphs (2) and (3), all claimants of a covered financial company that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the receiver may take any action (including making payments) that does not comply with this subsection, if—

(A) the Corporation determines that such action is necessary to maximize the value of the assets of the covered financial company, to maximize the present value return from the sale or other disposition of the assets of the covered financial company, to minimize the amount of
any loss realized upon the sale or other disposition of the assets of the covered financial company, or to contain or address serious adverse effects on financial stability or the U.S. economy; and

(B) all claimants that are similarly situated under paragraph (1) receive not less than the amount provided in subsection (d)(2).

(5) Secured claims unaffected.—This subsection shall not affect secured claims, except to the extent that the security is insufficient to satisfy the claim and then only with regard to the difference between the claim and the amount realized from the security.

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

(A) the actual, necessary costs and expenses incurred by the receiver in preserving the assets of a covered financial company or liquidating or otherwise dissolving the affairs of a covered financial company for which the Corporation has been appointed as receiver; and

(B) any obligations that the receiver determines are necessary and appropriate to facili-
tate the smooth and orderly liquidation or other
dissolution of the covered financial company.

(7) Rulemaking.—The Corporation shall,
after following the notice and comment rulemaking
requirements under the Administrative Procedure
Act, prescribe rules to carry out this section.

(e) Provisions Relating to Contracts Entered
Into Before Appointment of Receiver.—

(1) Authority to repudiate contracts.—
In addition to any other rights a receiver may have,
the Corporation as receiver for any covered financial
company may disaffirm or repudiate any contract or
lease—

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

(B) the performance of which the receiver,
in the receiver’s discretion, determines to be
burdensome; and

(C) the disaffirmance or repudiation of
which the receiver determines, in the receiver’s
discretion, will promote the orderly administra-
tion of the covered financial company’s affairs.

(2) Timing of repudiation.—The receiver
appointed for any covered financial company under
section 1604 shall determine whether or not to exer-
cise the rights of repudiation under this subsection within a reasonable period following such appoint-
ment.

(3) Claims for damages for repudi-
ation.—

(A) In general.—Except as otherwise provided in subparagraph (C) and paragraphs (4), (5), and (6), the liability of the receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the receiver; or

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

(B) No liability for other dam-
ages.—For purposes of subparagraph (A), the term “actual direct compensatory damages” does not include—

(i) punitive or exemplary damages;
(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) Measure of damages for repudiation of qualified financial contracts.—
In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this subsection and subsection (d) except as otherwise specifically provided in this subsection.

(4) Leases under which the covered financial company is the lessee.—

(A) In general.—If the receiver disaffirms or repudiates a lease under which the covered financial company was the lessee, the receiver shall not be liable for any damages (other than damages determined pursuant to
subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) Payments of Rent.—Notwithstanding subparagraph (A), the lessor under a lease to which such subparagraph applies shall—

(i) be entitled to the contractual rent accruing before the later of the date—

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

(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

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

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this subsection and subsection (d).

(5) Leases under which the Covered Financial Company is the lessor.—
(A) **IN GENERAL.**—If the receiver repudiates an unexpired written lease of real property of the covered financial company under which the covered financial company is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) **PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.**—If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of such subparagraph—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease;
(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the covered financial company under the lease after such date; and

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

(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

(A) IN GENERAL.—If the receiver repudiates any contract (which meets the requirements of subsection (a)(7)) for the sale of real property and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

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

(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of such subparagraph—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

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

(ii) the receiver shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);
(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) ASSIGNMENT AND SALE ALLOWED.—

(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the receiver to assign the contract described in subparagraph (A) and sell the property subject to the contract and the provisions of this paragraph.

(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described in clause (i) is consummated, the receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for
services between any person and any covered fin-
nancial company for which the Corporation has
been appointed receiver, any claim of such per-
son for services performed before the appoint-
ment of the receiver shall be—

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

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

(B) Services performed after ap-
pointment and prior to repudiation.—If,
in the case of any contract for services de-
dscribed in subparagraph (A), the receiver ac-
cepts performance by the other person before
the receiver makes any determination to exer-
cise the right of repudiation of such contract
under this section—

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

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

(C) Acceptance of performance no
bar to subsequent repudiation.—The ac-
ceptance by any receiver of services referred to in subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the receiver to repudiate such contract under this section at any time after such performance.

(8) Certain qualified financial contracts.—

(A) Rights of parties to contracts.—

Subject to paragraphs (9) and (10) of this subsection and notwithstanding any other provision of this section (other than subsection (a)(7)), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a covered financial company which arises upon the appointment of the Corporation as receiver for such covered financial company at any time after such appointment;

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

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (a)(9) shall apply in the case of any judicial action or proceeding brought against any receiver referred to in subparagraph (A), or the covered financial company for which such receiver was appointed, by any party to a contract or agreement described in subparagraph (A)(i) with such company.

(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

(i) IN GENERAL.—Notwithstanding paragraph (11), section 5242 of the Revised Statutes of the United States or any other provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation,
whether acting as such or as receiver of a
covered financial company, may not avoid
any transfer of money or other property in
connection with any qualified financial con-
tract with a covered financial company.

(ii) EXCEPTION FOR CERTAIN TRANS-
FERS.—Clause (i) shall not apply to any
transfer of money or other property in con-
nection with any qualified financial con-
tract with a covered financial company if
the Corporation determines that the trans-
feree had actual intent to hinder, delay, or
defraud such company, the creditors of
such company, or any receiver appointed
for such company.

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

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

(ii) Securities contract.—The
term “securities contract”—

(I) means a contract for the pur-
chase, sale, or loan of a security, a
certificate of deposit, a mortgage loan,
any interest in a mortgage loan, a
group or index of securities, certifi-
cates of deposit, or mortgage loans or
interests therein (including any inter-
est therein or based on the value
thereof) or any option on any of the
foregoing, including any option to
purchase or sell any such security,
certificate of deposit, mortgage loan,
interest, group or index, or option,
and including any repurchase or re-
verse repurchase transaction on any
such security, certificate of deposit,
mortgage loan, interest, group or
index, or option (whether or not such
repurchase or reverse repurchase
transaction is a “repurchase agree-
ment,” as defined in clause (v));
(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

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

(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option
(whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II));

(V) means any margin loan;

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

(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(IX) means any combination of the agreements or transactions referred to in this clause;

(X) means any option to enter into any agreement or transaction referred to in this clause;
(XI) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X); and

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection
with any agreement or transaction referred to in this clause.

(iii) **Commodity Contract.**—The term “commodity contract” means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

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

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade.
that is cleared by such clearing organization;

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

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

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

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

(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall
be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

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

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with
a maturity date more than 2 days
after the date the contract is entered
into, including a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a "repurchase agreement", as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

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

(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement
or transaction that is not a forward contract under this clause, except that the master agreement shall be consid-
ered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or ar-
rangement or other credit enhance-
ment related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obliga-
tion in connection with any agreement or transaction referred to in any such subclause.

(v) Repurchase agreement.—The term “repurchase agreement” (which defi-
nition also applies to a reverse repurchase agreement)—

(I) means an agreement, includ-
ing related terms, which provides for the transfer of one or more certifi-
cates of deposit, mortgage-related se-
curities (as such term is defined in
the Securities Exchange Act of 1934),
mortgage loans, interests in mortgage-
related securities or mortgage loans,
eligible bankers’ acceptances, qualified
foreign government securities (which
for purposes of this clause shall mean
a security that is a direct obligation
of, or that is fully guaranteed by, the
central government of a member of
the Organization for Economic Co-
operation and Development as deter-
mined by regulation or order adopted
by the Federal Reserve Board) or se-
curities that are direct obligations of,
or that are fully guaranteed by, the
United States or any agency of the
United States against the transfer of
funds by the transferee of such certifi-
cates of deposit, eligible bankers’ ac-
ceptances, securities, mortgage loans,
or interests with a simultaneous
agreement by such transferee to
transfer to the transferor thereof cer-
tificates of deposit, eligible bankers’
acceptances, securities, mortgage
loans, or interests as described above,
at a date certain not later than 1 year
after such transfers or on demand,
against the transfer of funds, or any
other similar agreement;

(II) does not include any repur-
purchase obligation under a participation
in a commercial mortgage loan unless
the Corporation determines by regula-
tion, resolution, or order to include
any such participation within the
meaning of such term;

(III) means any combination of
agreements or transactions referred to
in subclauses (I) and (IV);

(IV) means any option to enter
into any agreement or transaction re-
ferred to in subclause (I) or (III);

(V) means a master agreement
that provides for an agreement or
transaction referred to in subclause
(I), (III), or (IV), together with all
supplements to any such master
agreement, without regard to whether
the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(vi) SWAP AGREEMENT.—The term “swap agreement” means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option,
future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has
been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;
(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.
(vii) Definitions relating to default.—When used in this paragraph and paragraph (10)—

(I) The term “default” shall mean, with respect to a covered financial company, any adjudication or other official determination by any court of competent jurisdiction, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed; and

(II) The term “in danger of default” shall mean a covered financial company with respect to which the Corporation or appropriate State authority has determined that—

(aa) in the opinion of the Corporation or such authority—

(AA) the covered financial company is not likely to be able to pay its obligations in the normal course of business; and

(BB) there is no reasonable prospect that the
covered financial company will be able to pay such obligations without Federal assistance; or

(CC) in the opinion of the Corporation or such authority—

(bb) the covered financial company has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(cc) there is no reasonable prospect that the capital will be replenished without Federal assistance.

(viii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial
contact. If a master agreement contains provisions relating to agreements or trans-
actions that are not themselves qualified fi-
nancial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those trans-
actions that are themselves qualified finan-
cial contracts.

(ix) TRANSFER.—The term “transfer” means every mode, direct or indirect, abso-
lute or conditional, voluntary or involun-
tary, of disposing of or parting with prop-
erty or with an interest in property, includ-
ing retention of title as a security interest and foreclosure of the covered financial company’s equity of redemption.

(x) PERSON.—The term “person” in-
cludes any governmental entity in addition to any entity included in the definition of such term in section 1, title 1, United States Code.

(E) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any man-
ner, the right or power of the Corporation to
transfer any qualified financial contract in ac-
cordance with paragraphs (9) and (10) of this
subsection or to disaffirm or repudiate any such
contract in accordance with subsection (c)(1) of
this section.

(F) **Walkaway Clauses Not Effective.**—

(i) **In General.**—Notwithstanding
the provisions of subparagraph (A) and
sections 403 and 404 of the Federal De-
posit Insurance Corporation Improvement
Act of 1991, no walkaway clause shall be
enforceable in a qualified financial contract
of a covered financial company in default.

(ii) **Limited Suspension of Certain
Obligations.**—In the case of a qualified
financial contract referred to in clause (i),
any payment or delivery obligations other-
wise due from a party pursuant to the
qualified financial contract shall be sus-
pended from the time the receiver is ap-
pointed until the earlier of—

(I) the time such party receives
notice that such contract has been
transferred pursuant to paragraph 
(10)(A); or 

(II) 5:00 p.m. (eastern time) on 
the business day following the date of 
the appointment of the receiver. 

(iii) **Walkaway Clause Defined.**— 

For purposes of this subparagraph, the 
term “walkaway clause” means any provi-
sion in a qualified financial contract that 
suspends, conditions, or extinguishes a 
payment obligation of a party, in whole or 
in part, or does not create a payment obli-
gation of a party that would otherwise 
exist, solely because of such party’s status 
as a nondefaulting party in connection 
with the insolvency of a covered financial 
company that is a party to the contract or 
the appointment of or the exercise of rights 
or powers by a receiver of such covered fi-
nancial company, and not as a result of a 
party’s exercise of any right to offset, 
setoff, or net obligations that exist under 
the contract, any other contract between 
those parties, or applicable law.
(G) Recordkeeping.—The Corporation, in consultation with the Federal Reserve Board, may prescribe regulations requiring that the covered financial company maintain such records with respect to qualified financial contracts (including market valuations) as the Corporation determines to be necessary or appropriate in order to assist the receiver of the covered financial company in being able to exercise its rights and fulfill its obligations under this paragraph or paragraph (9) or (10).

(9) Transfer of Qualified Financial Contracts.—

(A) In General.—In making any transfer of assets or liabilities of a covered financial company in default which includes any qualified financial contract, the receiver for such covered financial company shall either—

(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—
(I) all qualified financial contracts between any person or any affiliate of such person and the covered financial company in default;

(II) all claims of such person or any affiliate of such person against such covered financial company under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such company);

(III) all claims of such covered financial company against such person or any affiliate of such person under any such contract; and

(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i)
(with respect to such person and any affiliate of such person).

(B) Transfer to foreign bank, financial institution, or branch or agency thereof.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the receiver for the covered financial company shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(C) Transfer of contracts subject to the rules of a clearing organiza-
TION.—In the event that a receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) DEFINITIONS.—For purposes of this paragraph, the term “financial institution” means a broker or dealer, a depository institution, a futures commission merchant, a bridge financial company, or any other institution determined by the Corporation by regulation to be a financial institution, and the term “clearing organization” has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(10) NOTIFICATION OF TRANSFER.—

(A) IN GENERAL.—If—

(i) the receiver for a covered financial company in default or in danger of default transfers any assets and liabilities of the covered financial company; and
(ii) the transfer includes any qualified financial contract,

the receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver.

(B) Certain rights not enforceable.—

(i) Receivership.—A person who is a party to a qualified financial contract with a covered financial company may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection solely by reason of or incidental to the appointment under this section of a receiver for the covered financial company (or the insolvency or financial condition of the covered financial company for which the receiver has been appointed)—

(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or
(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) NOTICE.—For purposes of this paragraph, the receiver for a covered financial company shall be deemed to have notified a person who is a party to a qualified financial contract with such covered financial company if the receiver has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) TREATMENT OF BRIDGE FINANCIAL COMPANY.—For purposes of paragraph (9), a bridge financial company shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding.

(D) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term “business day” means any day other than any Saturday, Sunday, or any day on which either the New
York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) Disaffirmance or Repudiation of Qualified Financial Contracts.—In exercising the rights of disaffirmance or repudiation of a receiver with respect to any qualified financial contract to which a covered financial company is a party, the receiver for such covered financial shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

(i) any person or any affiliate of such person; and

(ii) the covered financial company in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) Certain Security and Customer Interests Not Avoidable.—No provision of this subsection shall be construed as permitting the avoidance of any—

(A) legally enforceable or perfected security interest in any of the assets of any covered financial company except where such an inter-
est is taken in contemplation of the company’s
insolvency or with the intent to hinder, delay, or
defraud the company or the creditors of such
compny; or

(B) legally enforceable interest in customer
property.

(13) AUTHORITY TO ENFORCE CONTRACTS.—

(A) IN GENERAL.—The receiver may en-
force any contract, other than a director’s or of-
ficer’s liability insurance contract or a financial
institution bond, entered into by the covered fi-
nancial company notwithstanding any provision
of the contract providing for termination, de-
fault, acceleration, or exercise of rights upon, or
solely by reason of, insolvency or the appoint-
ment of or the exercise of rights or powers by
a receiver.

(B) CERTAIN RIGHTS NOT AFFECTED.—
No provision of this paragraph may be con-
strued as impairing or affecting any right of the
receiver to enforce or recover under a director’s
or officer’s liability insurance contract or finan-
cial institution bond under other applicable law.

(C) CONSENT REQUIREMENT.—
(i) IN GENERAL.—Except as otherwise provided by this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the covered financial company is a party, or to obtain possession of or exercise control over any property of the covered financial company or affect any contractual rights of the covered financial company, without the consent of the receiver, as appropriate, of the covered financial company during the 90-day period beginning on the date of the appointment of the receiver, as applicable.

(ii) CERTAIN EXCEPTIONS.—No provision of this subparagraph shall apply to a director or officer liability insurance contract or a financial institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or to the rights of parties to netting contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall be construed as permit-
ting the receiver to fail to comply with other-
wise enforceable provisions of such con-
tract.

(14) Exception for Federal Reserve Banks and Corporation Security Interest.—
No provision of this subsection shall apply with re-
spect to—

(A) any extension of credit from any Fed-
eral Reserve bank or the Corporation to any covered financial company; or

(B) any security interest in the assets of the covered financial company securing any such extension of credit.

(15) Savings Clause.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including, but not limited to, the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.
16) AUTHORITY REGARDING COLLECTIVE BARGAINING AGREEMENTS.—The Corporation as receiver for any covered financial company shall not disaffirm or repudiate any collective bargaining agreement to which the covered financial company is a party unless the Corporation determines that repudiation is necessary for the orderly resolution of the covered financial company after taking into consideration the cost to taxpayers and the financial stability of the United States.

(d) VALUATION OF CLAIMS IN DEFAULT.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method which the Corporation determines to utilize with respect to a covered financial company, including transactions authorized under subsection (h), this subsection shall govern the rights of the creditors of such covered financial company.

(2) MAXIMUM LIABILITY.—The maximum liability of the Corporation, acting as receiver or in any other capacity, to any person having a claim against the receiver or the covered financial company for which such receiver is appointed shall equal the amount such claimant would have received if—
(A) a determination had not been made under section 1603(b) with respect to the covered financial company; and

(B) the covered financial company had been liquidated under title 11, United States Code, or any case related to title 11, United States Code (including a case initiated by the Securities Investor Protection Corporation with respect to a financial company subject to the Securities Investor Protection Act of 1970), or any State insolvency law.

(3) ADDITIONAL PAYMENTS AUTHORIZED.—

(A) IN GENERAL.—The Corporation may, as receiver and with the approval of the Secretary, make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants of a covered financial company if the Corporation determines that such payments or credits are necessary or appropriate to—

(i) minimize losses to the receiver from the dissolution of the covered financial company under this section; or
(ii) prevent or mitigate serious adverse effects to financial stability or the United States economy.

(B) MANNER OF PAYMENT.—The Corporation may make payments or credit amounts under subparagraph (A) directly to the claimants or may make such payments or credit such amounts to a company other than a covered financial company or a bridge financial company established with respect thereto in order to induce such other company to accept liability for such claims.

(e) LIMITATION ON COURT ACTION.—Except as provided in this section or at the request of the receiver appointed for a covered financial company, no court may take any action to restrain or affect the exercise of powers or functions of the receiver hereunder.

(f) LIABILITY OF DIRECTORS AND OFFICERS.—

(1) IN GENERAL.—A director or officer of a covered financial company may be held personally liable for monetary damages in any civil action described in paragraph (2) by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—
(A) acting as receiver of such covered financial company;

(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver; or

(C) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by a covered financial company or its affiliate in connection with assistance provided under section 1604.

(2) ACTIONS COVERED.—Paragraph (1) shall apply with respect to actions for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law.

(3) SAVINGS CLAUSE.—Nothing in this subsection shall impair or affect any right of the Corporation under other applicable law.

(g) DAMAGES.—In any proceeding related to any claim against a covered financial company’s director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to a
covered financial company, recoverable damages determined to result from the improvident or otherwise improper use or investment of any covered financial company’s assets shall include principal losses and appropriate interest.

(h) Bridge Financial Companies.—

(1) Organization.—

(A) Purpose.—The Corporation, as receiver of one or more covered financial companies may organize one or more bridge financial companies in accordance with this subsection.

(B) Authorities.—Upon the creation of a bridge financial company under subparagraph (A) with respect to a covered financial company, such bridge financial company may—

(i) assume such liabilities (including liabilities associated with any trust or custody business but excluding any liabilities that count as regulatory capital) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate;

(ii) purchase such assets (including assets associated with any trust or custody business) of such covered financial com-
pany as the Corporation may, in its discre-
tion, determine to be appropriate; and

(iii) perform any other temporary
function which the Corporation may, in its
discretion, prescribe in accordance with
this section.

(2) CHARTER AND ESTABLISHMENT.—

(A) E STABLISHMENT.—If the Corporation
is appointed as receiver for a covered financial
company, the Corporation may grant a Federal
charter to and approve articles of association
for one or more bridge financial company or
companies with respect to such covered finan-
cial company which shall, by operation of law
and immediately upon issuance of its charter
and approval of its articles of association, be es-
tablished and operate in accordance with, and
subject to, such charter, articles, and this sec-
tion.

(B) M ANAGEMENT.—Upon its establish-
ment, a bridge financial company shall be under
the management of a board of directors ap-
pointed by the Corporation.

(C) ARTICLES OF ASSOCIATION.—The arti-
cles of association and organization certificate
of a bridge financial shall have such terms as
the Corporation may provide, and shall be exe-
cuted by such representatives as the Corpora-
tion may designate.

(D) TERMS OF CHARTER; RIGHTS AND
PRIVILEGES.—Subject to and in accordance
with the provisions of this subsection, the Cor-
poration shall—

(i) establish the terms of the charter
of a bridge financial company and the
rights, powers, authorities and privileges of
a bridge financial company granted by the
charter or as an incident thereto; and

(ii) provide for, and establish the
terms and conditions governing, the man-
agement (including, but not limited to, the
bylaws and the number of directors of the
board of directors) and operations of the
bridge financial company.

(E) TRANSFER OF RIGHTS AND PRIVI-
LEGES OF COVERED FINANCIAL COMPANY.—

(i) IN GENERAL.—Notwithstanding
any other provision of Federal law or the
law of any State, the Corporation may pro-
vide for a bridge financial company to suc-
ceed to and assume any rights, powers, author- 

ities or privileges of the covered finan- 

cial company with respect to which the 

bridge financial company was established 

and, upon such determination by the Cor-

toration, the bridge financial company 

shall immediately and by operation of law 

succeed to and assume such rights, powers, 

authorities and privileges.

(ii) Effective without ap-

proval.—Any succession to or assumption 

by a bridge financial company of rights, 

powers, authorities or privileges of a cov-

ered financial company under clause (i) or 

otherwise shall be effective without any 

further approval under Federal or State 

law, assignment, or consent with respect 

thereto.

(F) Corporate governance and elec-

tion and designation of body of law.—To 

the extent permitted by the Corporation and 

consistent with this section and any rules, regu-

lations or directives issued by the Corporation 

under this section, a bridge financial company 

may elect to follow the corporate governance
practices and procedures as are applicable to a
corporation incorporated under the general cor-
poration law of the State of Delaware, or the
State of incorporation or organization of the
covered financial company with respect to which
the bridge financial company was established,
as such law may be amended from time to time.

(G) CAPITAL.—

(i) CAPITAL NOT REQUIRED.—Not-
withstanding any other provision of Fed-
eral or State law, a bridge financial com-
pany may, if permitted by the Corporation,
operate without any capital or surplus, or
with such capital or surplus as the Cor-
poration may in its discretion determine to
be appropriate.

(ii) NO CONTRIBUTION BY THE COR-
PORATION REQUIRED.—The Corporation is
not required to pay capital into a bridge fi-
nancial company or to issue any capital
stock on behalf of a bridge financial com-
pany established under this subsection.

(iii) AUTHORITY.—If the Corporation
determines that such action is advisable,
the Corporation may cause capital stock or
other securities of a bridge financial company established with respect to a covered financial company to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

(3) INTERESTS IN AND ASSETS AND OBLIGATIONS OF COVERED FINANCIAL COMPANY.—Notwithstanding paragraph (1) or (2) or any other provision of law—

(A) a bridge financial company shall assume, acquire, or succeed to the assets or liabilities of a covered financial company (including the assets or liabilities associated with any trust or custody business) only to the extent that such assets or liabilities are transferred by the Corporation to the bridge financial company in accordance with, and subject to the restrictions set forth in, paragraph (1)(B); and

(B) a bridge financial company shall not assume, acquire, or succeed to any obligation that a covered financial company for which a receiver has been appointed may have to any shareholder, member, general partner, limited partner, or other person with an interest in the
equity of the covered financial company that arises as a result of the status of that person having an equity claim in the covered financial company.

(4) Bridge financial company treated as being in default for certain purposes.—A bridge financial company shall be treated as a covered financial company in default at such times and for such purposes as the Corporation may, in its discretion, determine.

(5) Transfer of assets and liabilities.—

(A) Transfer of assets and liabilities.—The Corporation, as receiver, may transfer any assets and liabilities of a covered financial company (including any assets or liabilities associated with any trust or custody business) to one or more bridge financial companies in accordance with and subject to the restrictions of paragraph (1)(B).

(B) Subsequent transfers.—At any time after the establishment of a bridge financial company with respect to a covered financial company, the Corporation, as receiver, may transfer any assets and liabilities of such covered financial company as the Corporation may,
in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1)(B).

(C) Treatment of Trust or Custody Business.—For purposes of this paragraph, the trust or custody business, including fiduciary appointments, held by any covered financial company is included among its assets and liabilities.

(D) Effective Without Approval.—The transfer of any assets or liabilities, including those associated with any trust or custody business of a covered financial company to a bridge financial company shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(E) Equitable Treatment of Similarly Situated Creditors.—The Corporation shall treat all creditors of a covered financial company that are similarly situated under subsection (b)(1) in a similar manner in exercising the authority of the Corporation under this subsection to transfer any assets or liabilities of the covered financial company to one or
more bridge financial companies established
with respect to such covered financial company,
except that the Corporation may take actions
(including making payments) that do not com-
ply with this subparagraph, if—

(i) the Corporation determines that
such actions are necessary to maximize the
value of the assets of the covered financial
company, to maximize the present value
return from the sale or other disposition of
the assets of the covered financial com-
pany, to minimize the amount of any loss
realized upon the sale or other disposition
of the assets of the covered financial com-
pany, or to contain or address serious ad-
verse effects to financial stability or the
United States economy; and

(ii) all creditors that are similarly sit-
uated under subsection (b)(1) receive not
less than the amount provided in sub-
section (d)(2).

(F) LIMITATION ON TRANSFER OF LIABIL-
ITIES.—Notwithstanding any other provision of
law, the aggregate amount of liabilities of a cov-
ered financial company that are transferred to,
or assumed by, a bridge financial company from a covered financial company may not exceed the aggregate amount of the assets of the covered financial company that are transferred to, or purchased by, the bridge financial company from the covered financial company.

(6) **STAY OF JUDICIAL ACTION.**—Any judicial action to which a bridge financial company becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a covered financial company shall be stayed from further proceedings for a period of up to 45 days (or such longer period as may be agreed to upon the consent of all parties) at the request of the bridge financial company.

(7) **AGREEMENTS AGAINST INTEREST OF THE BRIDGE FINANCIAL COMPANY.**—No agreement that tends to diminish or defeat the interest of the bridge financial company in any asset of a covered financial company acquired by the bridge financial company shall be valid against the bridge financial company unless such agreement is in writing and executed by an authorized officer or representative of the covered financial company.

(8) **NO FEDERAL STATUS.**—
(A) AGENCY STATUS.—A bridge financial company is not an agency, establishment, or instrumentality of the United States.

(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), directors, officers, employees, or agents of a bridge financial company are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), director, officer, employee, or agent of a bridge financial company shall not—

   (i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law; or

   (ii) receive any salary or benefits for service in any such capacity with respect to a bridge financial company in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.
(9) **Exempt Tax Status.—**

(A) **Exemption from Federal Income Tax.**—Subsection (l) of section 501 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(4) Any bridge financial company organized under section 1609(h) of the Financial Stability Improvement Act of 2009.”.

(B) **Exemption from Certain Other Taxes.**—Notwithstanding any other provision of Federal or State law, a bridge financial company, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by any territory, dependency, or possession of the United States, or by any State, county, municipality, or local taxing authority.

(10) **Federal Agency Approval; Antitrust Review.**—

(A) **In General.**—If a transaction involving the merger or sale of a bridge financial company requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection
with any such approval a report on competitive
factors from the Attorney General is required,
the Federal agency responsible for such ap-
proval shall promptly notify the Attorney Gen-
eral of the proposed transaction and the Attor-
ey General shall provide the required report
within 10 days of the request. If notification
under section 7A of the Clayton Act is required
with respect to such transaction, then the re-
quired waiting period shall end on the 15th day
after the date on which the Attorney General
and the Federal Trade Commission receive such
notification, unless the waiting period is termi-
nated earlier under subsection (b)(2) of such
section, or is extended pursuant to subsection
(e)(2) of such section.

(B) EMERGENCY.—If the Secretary, in
consultation with the Chairman of the Federal
Reserve Board, has found that the Corporation
must act immediately to prevent the probable
failure of the covered financial company in-
volved, the approval and prior notification re-
ferred to in subparagraph (A) shall not be re-
quired and the transaction may be con-
summated immediately by the Corporation. The
preceding sentence shall not otherwise modify, impair, or supercede the operation of any of the antitrust laws (as defined in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 relates to unfair methods of competition).

(11) **Duration of bridge financial company.**—Subject to paragraphs (12), (13), and (14), the status of a bridge financial company as such shall terminate at the end of the 2-year period following the date it was granted a charter. The Corporation may, in its discretion, extend the status of the bridge financial company as such for 3 additional 1-year periods.

(12) **Termination of bridge financial company status.**—The status of any bridge financial company as such shall terminate upon the earliest of—

(A) the merger or consolidation of the bridge financial company with a company that is not a bridge financial company;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the
bridge financial company to a company other than the Corporation and other than another bridge financial company;

(C) the sale of 80 percent, or more, of the capital stock of the bridge financial company to a person other than the Corporation and other than another bridge financial company;

(D) at the election of the Corporation, either the assumption of all or substantially all of the liabilities of the bridge financial company by a company that is not a bridge financial company, or the acquisition of all or substantially all of the assets of the bridge financial company by a company that is not a bridge financial company, or other entity as permitted under applicable law; and

(E) the expiration of the period provided in paragraph (11), or the earlier dissolution of the bridge financial company as provided in paragraph (14).

(13) EFFECT OF TERMINATION EVENTS.—

(A) MERGER OR CONSOLIDATION.—A merger or consolidation as provided in paragraph (12)(A) shall be conducted in accordance with, and shall have the effect provided in, the
provisions of applicable law. For the purpose of effecting such a merger or consolidation, the bridge financial company shall be treated as a corporation organized under the laws of the State of Delaware (unless the law of another State has been selected by the bridge financial company in accordance with paragraph (2)(F)), and the Corporation shall be treated as the sole shareholder thereof, notwithstanding any other provision of State or Federal law.

(B) CHARTER CONVERSION.—Following the sale of a majority of the capital stock of the bridge financial company as provided in paragraph (12)(B), the Corporation may amend the charter of the bridge financial company to reflect the termination of the status of the bridge financial company as such, whereupon the company shall have all of the rights, powers, and privileges under its constituent documents and applicable State or Federal law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of State or Federal law, such State-char-
tered corporation shall be deemed to succeed by operation of law to such rights, titles, powers and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

(C) SALE OF STOCK.—Following the sale of 80 percent or more of the capital stock of a bridge financial company as provided in paragraph (12)(C), the company shall have all of the rights, powers, and privileges under its constituent documents and applicable State or Federal law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of State or Federal law, the State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the
State-chartered corporation under provisions of the corporate laws of such State.

(D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.—Following the assumption of all or substantially all of the liabilities of the bridge financial company, or the sale of all or substantially all of the assets of the bridge financial company, as provided in paragraph (12)(D), at the election of the Corporation the bridge financial company may retain its status as such for the period provided in paragraph (11) or may be dissolved at the election of the Corporation.

(E) AMENDMENTS TO CHARTER.—Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (12), the charter of the resulting company shall be amended to reflect the termination of bridge financial company status, if appropriate.

(14) DISSOLUTION OF BRIDGE FINANCIAL COMPANY.—

(A) IN GENERAL.—Notwithstanding any other provision of State or Federal law, if a bridge financial company’s status as such has
not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (12)—

(i) the Corporation may, in its discretion, dissolve the bridge financial company in accordance with this paragraph at any time; and

(ii) the Corporation shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date the bridge financial company was chartered, or any extension thereof, as provided in paragraph (11).

(B) PROCEDURES.—The Corporation shall remain the receiver of a bridge financial company for the purpose of dissolving the bridge financial company. The Corporation as such receiver shall wind up the affairs of the bridge financial company in conformity with the provisions of law relating to the liquidation of covered financial companies. With respect to any such bridge financial company, the Corporation as receiver shall have all the rights, powers, and privileges and shall perform the duties related
to the exercise of such rights, powers, or privileges granted by law to a receiver of a covered financial company and, notwithstanding any other provision of law, in the exercise of such rights, powers, and privileges the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

(15) AUTHORITY TO OBTAIN CREDIT.—

(A) IN GENERAL.—A bridge financial company may obtain unsecured credit and issue unsecured debt.

(B) INABILITY TO OBTAIN CREDIT.—If a bridge financial company is unable to obtain unsecured credit or issue unsecured debt, the Corporation may authorize the obtaining of credit or the issuance of debt by the bridge financial company—

(i) with priority over any or all of the obligations of the bridge financial company;

(ii) secured by a lien on property of the bridge financial company that is not otherwise subject to a lien; or
(iii) secured by a junior lien on property of the bridge financial company that is subject to a lien.

(C) LIMITATIONS.—

(i) IN GENERAL.—The Corporation, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a bridge financial company that is secured by a senior or equal lien on property of the bridge financial company that is subject to a lien only if—

(I) the bridge financial company is unable to otherwise obtain such credit or issue such debt; and

(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

(D) BURDEN OF PROOF.—In any hearing under this subsection, the Corporation has the burden of proof on the issue of adequate protection.

(16) EFFECT ON DEBTS AND LIENS.—The reversal or modification on appeal of an authorization
under this subsection to obtain credit or issue debt,
or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

(i) **Sharing Records.**—Whenever the Corporation has been appointed as receiver for a covered financial company, the Federal Reserve Board and the company’s primary appropriate regulatory agency, if any, shall each make all records relating to the company available to the receiver which may be used by the receiver in any manner the receiver determines to be appropriate.

(j) ** Expedited Procedures for Certain Claims.**—

(1) **Time for filing notice of appeal.**—The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against a covered financial company’s director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to a covered financial company
shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

(2) SCHEDULING.—A court of the United States shall expedite the consideration of any case brought by the Corporation against a covered financial company’s director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to a covered financial company. As far as practicable, the court shall give such case priority on its docket.

(3) JUDICIAL DISCRETION.—The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

(k) FOREIGN INVESTIGATIONS.—The Corporation, as receiver of any covered financial company and for purposes of carrying out any power, authority, or duty with respect to a covered financial company—
(1) may request the assistance of any foreign financial authority and provide assistance to any foreign financial authority in accordance with section 8(v) of the Federal Deposit Insurance Act as if the covered financial company were an insured depository institution, the Corporation were the appropriate Federal banking agency for the company and any foreign financial authority were the foreign banking authority; and

(2) may maintain an office to coordinate foreign investigations or investigations on behalf of foreign financial authorities.

(l) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND PROTECTIVE ORDERS.—The Corporation may not enter into any agreement or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corporation in its capacity as receiver for a covered financial company.

(m) LIQUIDATION OF CERTAIN COVERED FINANCIAL COMPANIES OR BRIDGE FINANCIAL COMPANIES.—Notwithstanding any other provision of law (other than a conflicting provision of this section), the Corporation, in connection with the liquidation of any covered financial com-
pany or bridge financial company with respect to which
the Corporation has been appointed as receiver, shall—

(1) in the case of any covered financial com-
pany or bridge financial company that is or has a
subsidiary that is a stockbroker (as that term is de-
finite in section 101 of title 11 of the United States
Code) but is not a member of the Securities Investor
Protection Corporation, apply the provisions of sub-
chapter III of chapter 7 of title 11 of the United
States Code in respect of the distribution to any
“customer” of all “customer name securities” and
“customer property” (as such terms are defined in
section 741 of such title 11) as if such covered fi-
nancial company or bridge financial company were a
debtor for purposes of such subchapter; or

(2) in the case of any covered financial com-
pany or bridge financial company that is a com-
modity broker (as that term is defined in section
101 of title 11 of the United States Code), apply the
provisions of subchapter IV of chapter 7 of title 11
of the United States Code in respect of the distribu-
tion to any “customer” of all “customer property”
(as such terms are defined in section 761 of such
title 11) as if such covered financial company or
bridge financial company were a debtor for purposes of such subchapter.

(n) **SYSTEMIC DISSOLUTION FUND.**—

(1) **ESTABLISHMENT AND PURPOSE.**—

(A) **IN GENERAL.**—There is established in the Treasury a separate fund to be known as the “Systemic Dissolution Fund”—

(i) to facilitate and provide for the orderly and complete dissolution of any failed financial company or companies that pose a systemic threat to the financial markets or economy, as determined under 1603(b); and

(ii) to ensure that any taxpayer funds utilized to facilitate such liquidations are fully repaid from assessments levied on financial companies that have assets of $50,000,000,000, adjusted for inflation, or more.

(B) **ADJUSTMENT OF THRESHOLD.**—The threshold referred to in subparagraph (A)(ii) shall be adjusted on an annual basis, based on the growth of assets owned or managed by financial companies (as defined in section 1602(9)).
(2) AUTHORITY.—The Systemic Dissolution Fund shall be administered by the Corporation, which shall have exclusive authority to—

(A) impose assessments on covered financial companies in accordance with paragraphs (6) through (8);

(B) maintain and administer the Fund in a manner so as to make clear to the general public that such Fund is unrelated to any other Fund maintained and administered by the Corporation, including the Deposit Insurance Fund;

(C) utilize the Fund to facilitate the dissolution of a covered financial company (as defined by section 1602(5)) as provided in paragraph (3), or take such other actions as are authorized by this subtitle;

(D) invest the Fund in accordance with section 13(a) of the Federal Deposit Insurance Act; and

(E) exercise borrowing authority as prescribed in subsection (o).

(3) USES.—
(A) The Fund shall be available to the Corporation for use with respect to the dissolution of a covered financial company to—

(i) cover the costs incurred by the Corporation, including as receiver, in exercising its rights, authorities, and powers and fulfilling its obligations and responsibilities under this section;

(ii) repay such funds in accordance with subsection (o)(6); and

(iii) cover the costs of systemic stabilization actions, pursuant to subsections (d) and (f) of section 1604.

(B) The Fund shall not be used in any manner to benefit any officer or director of such company removed pursuant to section 1604(f)(6).

(4) DEPOSITS TO FUND.—All amounts assessed against a financial company under this section shall be deposited into the Fund.

(5) SIZE OF FUND.—The Corporation shall, by rule, establish the minimum size of the Fund consistent with subparagraphs (C) and (D) of paragraph (6).

(6) ASSESSMENTS.—
(A) Assessments to Maintain Fund.—
The Corporation shall impose risk-based assessments on financial companies in such amount and manner and subject to such terms and conditions that the Corporation determines, by regulation and in consultation with the Council, are necessary for the amount in the Fund to at least equal the minimum size established pursuant to paragraph (5).

(B) Assessments to Replenish the Fund.—If the Fund falls below the minimum size established pursuant to paragraph (5), the Corporation shall impose assessments on financial companies in such amounts and manner and subject to such terms and conditions as the Corporation determines, by regulation and in consultation with the Council, are necessary to replenish the fund subject to the limitations in subparagraph (D).

(C) Minimum Assessment Threshold.—

(i) In General.—The Corporation shall not assess financial companies with less than $50,000,000,000, adjusted for inflation, of assets on a consolidated basis, subject to any differentiation as permitted
in paragraph (8) and shall assess financial
companies with $50,000,000,000, adjusted
for inflation, or more in assets in accord-
ance with paragraphs (7) and (8).

(ii) HEDGE FUNDS.—The Corporation
shall not assess financial companies that
manage hedge funds (as defined by the
Corporation for the purpose of this section,
in consultation with the Securities and Ex-
change Commission) with less than
$10,000,000,000, adjusted for inflation, of
assets, under management on a consoli-
dated basis, subject to any differentiation
as permitted in paragraph (8) and shall
assess any financial companies that man-
age hedge funds with $10,000,000,000 or
more of assets under management in ac-
cordance with paragraphs (7) and (8).

(D) MAXIMUM SIZE OF FUND VIA ASSESS-
MENTS.—

(i) IN GENERAL.—The Corporation
shall suspend assessments on financial
companies on the day after the date on
which the total of the assessments, exclud-
ing interest or other earnings from invest-
ments made pursuant to paragraph (2)(D),
equals $150,000,000,000.

(ii) EXCEPTIONS.—Any suspension of
assessments under clause (i)—

(I) may be set aside if the Fund
falls below $150,000,000,000; and

(II) shall be set aside if the Fund
falls below the minimum level estab-
lished in subparagraph (C).

(E) ADDITIONAL AUTHORIZED ASSESS-
MENTS.—The Corporation is authorized to con-
duct risk-based assessments on financial compa-
nies in such amount and manner and subject to
terms and conditions that the Corporation de-
determines, with the concurrence of the Secretary
of the Treasury and the Federal Reserve Board,
are necessary to pay any shortfall in the Trou-
bled Asset Relief Program established by the
that would add to the deficit or national debt,
as identified by the Director of the Office of
Management and Budget, in consultation with
the Director of the Congressional Budget Office
pursuant to section 134 of such Act (12 U.S.C.
5239).
(7) **Factors.**—The Corporation, in consultation with the Council shall establish a risk matrix to be used in establishing assessments that takes into account—

(A) the actual or expected risk of losses to the Fund;

(B) economic conditions generally affecting financial companies so as to allow assessments and the Fund to increase during more favorable economic conditions and to decrease during less favorable economic conditions;

(C) any assessments imposed on a financial company or an affiliate of a financial company that—

(i) is an insured depository institution, assessed pursuant to section 7 or 13(c)(4)(G) of the Federal Deposit Insurance Act;

(ii) is a member of the Securities Investor Protection Corporation, assessed pursuant to section 4 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd);

(iii) is an insured credit union, assessed pursuant to section 202(c)(1)(A)(i)
of the Federal Credit Union Act (12 U.S.C. 1782(e)(1)(A)(i)); or

(iv) is an insurance company, assessed pursuant to applicable State law to cover (or reimburse payments made to cover) the costs of the rehabilitation, liquidation or other State insolvency proceeding with respect to 1 or more insurance companies;

(D) the risks presented by the financial company to the financial system and the extent to which the financial company has benefitted, or likely would benefit, from the dissolution of a financial company under this title, including—

(i) the amount, different categories, and concentrations of assets of the financial company and its affiliates, including both on-balance sheet and off-balance sheet assets;

(ii) the activities of the financial company and its affiliates;

(iii) the relevant market share of the financial company and its affiliates;

(iv) the extent to which the financial company is leveraged;
(v) the potential exposure to sudden calls on liquidity precipitated by economic distress;

(vi) the amount, maturity, volatility, and stability of the company’s financial obligations to, and relationship with, other financial companies;

(vii) the amount, maturity, volatility, and stability of the company’s liabilities, including the degree of reliance on short-term funding, taking into consideration existing systems for measuring a company’s risk-based capital;

(viii) the stability and variety of the company’s sources of funding;

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

(x) the extent to which assets are simply managed and not owned by the financial company and the extent to which ownership of assets under management is diffuse; and
(xi) the amount, different categories, and concentrations of liabilities, both insured and uninsured, contingent and non-contingent, including both on-balance sheet and off-balance sheet liabilities, of the financial company and its affiliates; and

(E) such other factors as the Corporation, in consultation with the Council, may determine to be appropriate.

(8) **Requirement for equitable treatment in assessments.**—In establishing the assessment system for the Fund, the Corporation, by regulation and in consultation with the Council, shall differentiate among financial companies based on complexity of operations or organization, interconnectedness, size, direct or indirect activities, and any other factors the Corporation or the Council may deem appropriate to ensure that the assessments charged equitably reflect the risk posed to the Fund by particular classes of financial companies.

(9) **Minimum comment period.**—In order to ensure sufficient opportunity for public and congressional review and evaluation of any assessment system, any proposed regulations regarding the implementation of the assessment system under this sub-
title shall provide an opportunity for public comment
during a period of not less than 60 days.

(o) **Borrowing Authority.**—

(1) **Borrowing from Treasury.**—

(A) **In general.**—Subject to paragraphs
(3), (4), and (5), the Corporation may borrow
from the Treasury, and the Secretary of the
Treasury is authorized to lend to the Corpora-
tion on such terms as may be fixed by the Cor-
poration and the Secretary, such funds as in
the judgment of the Board of Directors of the
Corporation are required, in addition to the
funds available in the Systemic Dissolution
Fund, to permit the orderly dissolution of 1 or
more covered systemically significant financial
companies, covered affiliates, or covered sub-
sidiaries under this title.

(B) **Rate of interest.**—The rate of in-
terest to be charged in connection with any loan
made pursuant to this subsection shall not be
less than an amount determined by the Sec-
retary of the Treasury, taking into consider-
ation current market yields on outstanding
marketable obligations of the United States of
comparable maturities.
(2) Public debt issuances.—For the purposes described in subsection (1), the Secretary of the Treasury may use as a public-debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include such loans. All loans and repayments under this subsection shall be treated as public-debt transactions of the United States.

(3) Borrowing authority when fund assets are less than $150,000,000,000.—

(A) Subject to paragraph (B), the borrowing authority granted in paragraph (1) shall be available to the Corporation where—

(i) the value of the Fund is less than $150,000,000,000;

(ii) the Corporation determines that the immediate dissolution of a financial company or financial companies requires more funds than are available in the Fund; and

(iii) the Corporation has provided a specific plan for repayment under paragraph (7)(A).
(B) The Corporation may borrow, and the Secretary may lend, any amount of funds that, when added to the amount available in the Fund on the date the Corporation makes a request to borrow funds, would not exceed $150,000,000,000.

(C) For purposes of paragraph (1), the Corporation’s total debt may not exceed $150,000,000,000 (not including any funds borrowed pursuant to subsection (s)).

(4) ADDITIONAL BORROWING AUTHORITY.—

(A) If at any time the Corporation anticipates that the dissolution of any financial company or financial companies will require funds in excess of $150,000,000,000—

(i) the Corporation shall submit to the Secretary and the President a written request for additional borrowing authority subject to the limitation in subparagraph (5), which shall be accompanied by a certification indicating the anticipated amount needed, the basis on which such amount was determined, and any such information as the Secretary may deem necessary; and
(ii) the President shall transmit a request to the House of Representatives and the Senate requesting the additional borrowing authority, which shall include the certification referred to in clause (i) and which includes a repayment schedule as outlined in paragraph (7).

(B) Any request for borrowing authority under paragraph (A) shall be effective only if approved by affirmative vote of the House of Representatives and the Senate in accordance with subsection (s).

(5) LIMITATIONS ON ADDITIONAL BORROWING AUTHORITY.—

(A) No request for borrowing authority is permitted under paragraph (4) unless the President, in consultation with the Council, certifies to the House of Representatives and the Senate that the borrowing authority is necessary to avoid or mitigate an imminent financial emergency.

(B) The amount of borrowing authority requested under subparagraph (A)(i) may not exceed $50,000,000,000.
(6) Proceeds from liquidation, repayment of funds.—

(A) In general.—The Corporation shall take such measures as may be appropriate to maximize the amount of funds from any dissolution that may be available for repayment under subparagraph (B) consistent with systemic concerns.

(B) Repayment priority.—Amounts realized from the dissolution of any financial company under this subtitle that are not otherwise utilized by the Corporation to dissolve a financial company under subsection (n)(3)(A) shall be paid—

(i) first, to repay any costs incurred in exercising the borrowing authority granted in paragraph (1); and

(ii) second, to recapitalize the Fund, subject to the requirements of section 1604(g), to such level as the Corporation deems necessary, but not to exceed $150,000,000,000.

(7) Repayment plan and schedules required for any borrowing.—
(A) IN GENERAL.—No amount may be
provided by the Secretary of the Treasury to
the Corporation under paragraph (1) unless an
agreement is in effect between the Secretary
and the Corporation which—

(i) provides a specific plan and sched-
ule for assessments under (n)(6) to achieve
the repayment of the outstanding amount
of any borrowing under such subsection;
and

(ii) demonstrates that income to the
Corporation from assessments under this
section will be sufficient to amortize the
outstanding balance within the period es-
tablished in the repayment schedule and
pay the interest accruing on such balance.

(B) CONSULTATION WITH AND REPORT TO
CONGRESS.—The Secretary of the Treasury and
the Corporation shall—

(i) consult with the Committee on Fi-
nancial Services of the House of Rep-
resentatives and the Committee on Bank-
ing, Housing, and Urban Affairs of the
Senate on the terms of any repayment
schedule agreement; and
(ii) submit a copy of each repayment schedule agreement to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate before the end of the 30-day period beginning on the date any amount is provided by the Secretary of the Treasury to the Corporation under paragraph (1).

(p) INFORMATION GATHERING AND VERIFICATION;

Payments.—

(1) IN GENERAL.—The Corporation may require each financial company to make available such information as the Corporation may require—

(A) for purposes of—

(i) determining the financial company’s assessment under this section;

(ii) verifying the accuracy of information; and

(iii) preparing for dissolution, including a dissolution plan as required by this section; and

(B) for such other purposes as may be appropriate and necessary to promote the orderly dissolution of the financial company.
(2) **Use of existing reports.**—The Corporation shall, to the fullest extent possible, accept—

(A) reports that a financial company has provided or been required to provide to other Federal or State supervisors or to appropriate self-regulatory organizations;

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

(C) externally audited financial statements.

(3) **Authority for on-site inspection.**—The Corporation may make on-site inspections of a financial company’s books and records as necessary to carry out the purposes of this subsection.

(4) **Rulemaking.**—The Corporation may promulgate such rules or regulations as are necessary or appropriate to implement this subsection.

(5) **Payments of assessments required.**—

(A) **In general.**—Any financial company subject to an assessment under this section shall pay to the Corporation such assessment.

(B) **Form of payment.**—The payments required under this section shall be made in such manner and at such time or times as the Corporation, in consultation with the Council, shall prescribe by regulation.
(6) Penalty for failure to timely pay assessments.—Any financial company that fails or
refuses to pay any assessment under this section shall be subject to a penalty under section 18(h) of
the Federal Deposit Insurance Act, as if that financial company were an insured depository institution.

(q) Assessment Actions.—

(1) In general.—The Corporation, in any court of competent jurisdiction, shall be entitled to
recover from any financial company the amount of any unpaid assessment lawfully payable by such company.

(2) Statute of limitations.—Notwithstanding any other provision in Federal law, or the law of any State—

(A) any action by a financial company to recover from the Corporation the overpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to subparagraph (C);

(B) any action by the Corporation to recover from a financial company the underpaid amount of any assessment shall be brought within 3 years after the date the assessment
payment was due, subject to subparagraph (C); and

(C) if a financial company has made a false or fraudulent statement with intent to evade any or all of its assessment, the Corporation shall have until 3 years after the date of discovery of the false or fraudulent statement in which to bring an action to recover the underpaid amount.

(r) REQUIREMENT TO MAINTAIN SYSTEMIC DISSOLUTION FUND AS SEPARATE FUND.—The Systemic Dissolution Fund shall at all times be administered in a manner that is separate and distinct from the Deposit Insurance Fund, and the Corporation shall take such actions as may be necessary to ensure that such distinction is made with respect to internal processes and procedures as well as with regard to any public information, discussion or other communications involving either Fund.

(s) CONGRESSIONAL APPROVAL OF ADDITIONAL BORROWING AUTHORITY.—

(1) INTRODUCTION.—On the day on which the request of the President is received by the House of Representatives and the Senate under subsection (o)(4)(A)(ii), a joint resolution specified in paragraph (5) shall be introduced in the House by the
majority leader of the House and in the Senate by
the majority leader of the Senate. If either House is
not in session on the day on which such a request
is received, the joint resolution with respect to such
request shall be introduced in that House, as pro-
vided in the preceding sentence, on the first day
thereafter on which that House is in session.

(2) Consideration in the House of Rep-
resentatives.—

(A) Reporting and discharge.—Any
committee of the House of Representatives to
which a joint resolution introduced under para-
graph (1) is referred shall report such joint res-
olution to the House not later than 5 calendar
days after the applicable date of introduction of
the joint resolution. If a committee fails to re-
port such joint resolution within that period,
the committee shall be discharged from further
consideration of the joint resolution and the
joint resolution shall be referred to the appro-
priate calendar.

(B) Proceeding to consideration.—
After all committees authorized to consider a
joint resolution have reported such joint resolu-
tion to the House or have been discharged from
its consideration, it shall be in order, not later
than the sixth day after the applicable date of
introduction of the joint resolution, for the ma-
ajority leader to move to proceed to consider the
joint resolution in the House. Such a motion
shall not be in order after the House has dis-
posed of a motion to proceed on the joint reso-
lution and shall not be in order if the House
has received a message from the Senate under
paragraph (4)(C). The previous question shall
be considered as ordered on the motion to its
adoption without intervening motion. A motion
to reconsider the vote by which the motion is
disposed of shall not be in order.

(C) CONSIDERATION.—The joint resolution
shall be considered in the House and shall be
considered as read. All points of order against
a joint resolution and against its consideration
are waived. The previous question shall be con-
sidered as ordered on the joint resolution to its
passage without intervening motion except two
hours of debate equally divided and controlled
by the proponent and an opponent. A motion to
reconsider the vote on passage of a joint resolu-
tion shall not be in order.
(3) **Consideration in the Senate.**—

(A) **Placement on Calendar.**—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

(B) **Floor Consideration.**—

(i) **In General.**—Notwithstanding rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the fourth day after the applicable date of introduction in the Senate and ending on the sixth day after the applicable date of introduction in the Senate (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolu-
tion shall remain the unfinished business until disposed of.

(ii) Debate.—Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(iii) Vote on Passage.—The vote on passage shall occur immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

(iv) Rulings of the Chair on Procedure.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to
the procedure relating to a joint resolution shall be decided without debate.

(4) Rules relating to Senate and House of Representatives.—

(A) Coordination with action by other House.—If, before the passage by one House of a joint resolution of that House, that House receives from the other House a joint resolution, then the following procedures shall apply:

(i) The joint resolution of the other House shall not be referred to a committee.

(ii) With respect to the joint resolution of the House receiving the resolution, the procedure in that House shall be the same as if no such joint resolution had been received from the other House; but the vote on passage shall be on the joint resolution of the other House.

(B) Treatment of companion measures.—If, following passage of a joint resolution in the Senate, the Senate then receives the companion measure from the House of Rep-
resentatives, the companion measure shall not be debatable.

(C) Failure of joint resolution in the Senate.—

(i) If, in the Senate, the motion to proceed to the consideration of the joint resolution fails on adoption, the Secretary of the Senate shall transmit a message to that effect to the House of Representatives.

(ii) If, in the Senate, the joint resolution fails on passage, the Secretary of the Senate shall transmit a message to that effect to the House of Representatives.

(D) Rules of house of representatives and senate.—This paragraph and the preceding paragraphs are enacted by Congress—

(i) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resol-
tion, and it supersedes other rules only to
the extent that it is inconsistent with such
rules; and

(ii) with full recognition of the con-
stitutional right of either House to change
the rules (so far as relating to the proce-
dure of that House) at any time, in the
same manner, and to the same extent as in
the case of any other rule of that House.

(5) DEFINITION.—In this section, the term
“joint resolution” means only a joint resolution—

(A) which does not have a preamble;

(B) the title of which is as follows: “Joint
resolution relating to the approval of request
for borrowing authority under the Financial
Stability Improvement Act of 2009.”; and

(C) the sole matter after the resolving
clause of which is as follows: “That the Con-
gress approves the request for additional bor-
rowing authority transmitted to the Congress
on ______ by the President under section
1609(o)(4)(A)(ii) of the Financial Stability Im-
provement Act of 2009.”, the blank space being
filled with the appropriate date.

(t) NO FEDERAL STATUS.—
(1) **Agency Status.**—A covered financial company (or any covered subsidiary thereof) that is placed into receivership is not a department, agency, or instrumentality of the United States for purposes of statutes that confer powers on or impose obligations on government entities.

(2) **Employee Status.**—Interim directors, directors, officers, employees, or agents of a covered financial company that is placed into receivership are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation, acting as receiver or of any Federal agency who serves at the request of the receiver as an interim director, director, officer, employee, or agent of a covered financial company that is placed into receivership shall not—

(A) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law, or;

(B) receive any salary or benefits for service in any such capacity with respect to a covered financial company that is placed into receivership in addition to such salary or benefits
as are obtained through employment with the Corporation or other Federal agency.

(u) **Study of Payment of Consumer Claims.**—Not later than 6 months following the dissolution of a covered financial company under section 1603(b), the Comptroller General of the United States shall carry out a study, and report on such study to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives, regarding the satisfaction of claims arising from violations of the provisions of the Truth in Lending Act, if any, in instances where any assets were transferred from such covered financial company.

**Sec. 1610. Clarification of Prohibition Regarding Concealment of Assets From Receiver or Liquidating Agent.**

(a) **In General.**—Section 1032 of title 18, United States Code, is amended in paragraph (1) by deleting “or” before “the National Credit Union Administration Board,” and by inserting immediately thereafter “or the Corporation, as defined in section 1602 of the Dissolution Authority for Large, Interconnected Financial Companies Act of 2009,”.

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(b) CONFORMING CHANGE.—The heading of section 1032 of title 18, United States Code, is amended by striking “of financial institution”.

SEC. 1611. OFFICE OF DISSOLUTION.

(a) TRIGGER OF AND PLAN FOR ESTABLISHMENT.—

(1) TRIGGER.—If the Secretary appoints the Corporation as receiver for a financial company under section 1604, the Inspector General of the Corporation shall, as soon as possible after such appointment, establish in accordance with this section the Office of Dissolution as an office within the Office of the Inspector General of the Corporation.

(2) PLAN.—The Inspector General of the Corporation shall, in consultation with the Council of Inspectors General on Financial Oversight established under section 1702, formulate and maintain a plan to allow for the timely establishment of an Office of Dissolution in accordance with paragraph (1). The Inspector General of the Corporation shall make such plan available to the Financial Services Oversight Council established under section 1001.

(b) SPECIAL DEPUTY INSPECTOR GENERAL.—The head of the Office of Dissolution is the Special Deputy Inspector General for Dissolution (in this section referred to as the “Special Deputy Inspector General”), who shall
be appointed by and report to the Inspector General of
the Corporation.

(c) Duties.—

(1) Audits and Investigations.—It shall be
the duty of the Special Deputy Inspector General, in
consultation with and subject to the approval of the
Inspector General of the Corporation, to conduct,
supervise, and coordinate audits and investigations
of the activities of the Corporation in its capacity as
receiver for a financial company under section 1604,
including by collecting the following information:

(A) A description of each financial com-
pany for which the Corporation has been ap-
pointed as receiver under section 1604.

(B) A description of the activities and fu-
ture plans of the Corporation with respect to
each financial company for which it has been
appointed as receiver, and an analysis of wheth-
er such activities and plans conform to the re-
quirements of this subtitle and other applicable
law and are in the best interest of the overall
stability of the financial system.

(C) Such other information as the Special
Deputy Inspector General considers appro-
priate, in consultation with and subject to the
approval of the Inspector General of the Corporation.

(2) ADDITIONAL DUTIES.—

(A) SYSTEMS, PROCEDURES, AND CONTROLS.—The Special Deputy Inspector General shall establish, maintain, and oversee such systems, procedures, and controls as the Special Deputy Inspector General considers appropriate, in consultation with and subject to the approval of the Inspector General of the Corporation, to discharge the duties under paragraph (1).

(B) REPORTING OF CRIMINAL VIOLATIONS TO ATTORNEY GENERAL.—If the Special Deputy Inspector General, in carrying out this section, discovers facts that give the Special Deputy Inspector General reasonable grounds to believe there has been a violation of Federal criminal law, the Special Deputy Inspector General shall expeditiously report such facts to the Attorney General.

(C) MINIMIZING DUPLICATION OF EFFORT.—The Inspector General of the Corporation and the Special Deputy Inspector General shall coordinate to minimize duplication of ef-
fort in the oversight of the Corporation’s activi-

ties as receiver for financial companies under
section 1604.

(3) Duties under the Inspector General
Act of 1978.—In addition to the duties specified in
paragraphs (1) and (2), the Special Deputy Inspec-
tor General shall assist the Inspector General of the
Corporation in carrying out such duties and respon-
sibilities of inspectors general under the Inspector
General Act of 1978 as the Inspector General of the
Corporation considers appropriate.

(d) Authorities Under the Inspector General
Act of 1978.—The Inspector General of the Corporation
may confer on the Special Deputy Inspector General such
authorities provided to the Inspector General of the Cor-
poration in section 6 of the Inspector General Act of 1978
as the Inspector General of the Corporation considers nec-
essary to enable the Special Deputy Inspector General to
carry out the duties specified in subsection (c).

(e) Personnel, Facilities, and Other Re-
sources.—

(1) In general.—The Special Deputy Inspec-
tor General may, in consultation with and subject to
the approval of the Inspector General of the Cor-
poration, expend such amounts from the fund estab-
lished under section 1609(n) as are necessary to carry out the duties described in subsection (c) and to submit the reports required by subsection (h).

(2) **ADDITIONAL FUNDS.**—If the fund established under section 1609(n) is insufficient to enable the Special Deputy Inspector General to begin carrying out the duties of the Special Deputy Inspector General in a timely fashion or later becomes insufficient to enable the Special Deputy Inspector General to carry out such duties, the Inspector General of the Corporation shall detail the necessary personnel, facilities, or other resources to the Special Deputy Inspector General.

(f) **CORRECTIVE RESPONSES TO AUDIT PROBLEMS.**—The Chairman of the Corporation shall—

(1) take action to address deficiencies identified by a report or investigation of the Special Deputy Inspector General; or

(2) certify to the appropriate committees of Congress that no action is necessary or appropriate.

(g) **COOPERATION AND COORDINATION WITH OTHER ENTITIES.**—In carrying out the duties, responsibilities, and authorities of the Special Deputy Inspector General under this section, the Special Deputy Inspector General shall work with each of the inspectors general who is a
member of the Council of Inspectors General on Financial
Oversight established under section 1703(a)(1), in order
to avoid duplication of effort and ensure comprehensive
oversight of the Corporation’s activities as a receiver ap-
pointed under section 1604.

(h) Reports.—

(1) IN GENERAL.—In lieu of the semiannual re-
ports required by section 5(a) of the Inspector Gen-
eral Act of 1978, the Special Deputy Inspector Gen-
eral shall submit to the appropriate committees of
Congress at the following times a report prepared in
consultation with and approved by the Inspector
General of the Corporation:

(A) Not later than 30 days after the ap-
pointment of the Special Deputy Inspector Gen-
eral.

(B) During the first 3 years after such ap-
pointment, not later than 30 days after the end
of each fiscal quarter during which the Cor-
poration acts as receiver for a financial com-
pany under section 1604.

(C) During the 4th year after such ap-
pointment and each year thereafter, not later
than 30 days after the end of the 2nd and the
4th fiscal quarters, if the Corporation acts as
receiver for a financial company under section 1604 during such semiannual period.

(2) CONTENT OF REPORTS.—Each report required by paragraph (1) shall include a summary, for the period since the last required report (or, in the case of the first report, for the period since the Corporation was first appointed as a receiver under section 1604) of—

(A) the activities of the Special Deputy Inspector General; and

(B) the activities and future plans of the Corporation with respect to each financial company for which it served as receiver.

(i) TERMINATION.—The Office of Dissolution shall terminate 6 months after the Corporation ceases to serve as a receiver for any financial company under section 1604, subject to reestablishment pursuant to subsection (a)(1).

SEC. 1612. MISCELLANEOUS PROVISIONS.

(a) BANKRUPTCY CODE AMENDMENTS.—

(1) Section 109(b)(2) of title 11 of the United States Code is amended by inserting "covered financial company (as that term is defined in section 1602(5) of the Dissolution Authority for Large,
Interconnected Financial Companies Act of 2009),”

after “a domestic insurance company,”.

(2) Section 303 of title 11, United States Code, is amended—

(A) in subsection (h)—

(i) by striking “or” at the end of paragraph (1);

(ii) by striking the period at the end of paragraph (2) and inserting “; or”; and

(iii) by adding at the end the following new paragraph:

“(3) an involuntary case is filed against a covered financial company, as defined in section 1602(5) of the Dissolution Authority for Large, Interconnected Financial Companies Act of 2009, by the Federal Deposit Insurance Corporation under section 1607 of that Act.”; and

(B) by adding at the end the following new subsection:

“(m) Notwithstanding subsections (a) and (b) of this section and section 109(b)(2), an involuntary case may be commenced by the Federal Deposit Insurance Corporation against a covered financial company (as defined in section 1602(5) of the Dissolution Authority for Large, Interconnected Financial Companies Act of 2009). Such invol-
unary case may be commenced by the Federal Deposit
Insurance Corporation in accordance with section 1607 of
that Act.”.

(3) Title 11, United States Code, is amended by
inserting after section 303 the following new section:

“SEC. 304. CASES INVOLVING FDIC DISSOLUTION AUTHORITY.

“(a) APPOINTMENT.—In any case commenced by the
Federal Deposit Insurance Corporation under section
303(m), on the request of the Federal Deposit Insurance
Corporation, such Corporation shall be appointed to serve
as trustee in such case, notwithstanding any other provi-

sion of this title.

“(b) QUALIFICATION.—Sections 321, 322, 324, and
326 shall not apply with respect to the appointment or
service of such Corporation as trustee in any case so com-
menced.”.

(b) FEDERAL DEPOSIT INSURANCE ACT AND FED-
ERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT
ACT OF 1991.—

(1) Section 18(c)(4)(G)(i) of the Federal De-
posit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) is
amended by inserting at the end the following new
sentence: “The determination with regard to the
Corporation’s exercise of authority under this sub-
paragraph shall apply to only an insured depository institution except when severe financial conditions exist which threaten the stability of a significant number of insured depository institutions.”.


SEC. 1613. AMENDMENT TO FEDERAL DEPOSIT INSURANCE ACT.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 11A the following new section:

“SEC. 11B. SYSTEMIC DISSOLUTION AUTHORITY AND FUND.

“(a) Systemic Dissolution Authority.—The Corporation shall establish a Systemic Dissolution Authority, which shall function as a subsidiary of the Corporation.

“(b) Systemic Dissolution Fund.—Any fund established for the purpose of facilitating the dissolution of
a financial company under subtitle G of the Financial Sta-

tility Improvement Act shall be called the Systemic Dis-
solution Fund, which shall be managed by the Corpora-
tion, through the Systemic Dissolution Authority.

“(c) MANAGEMENT OF FUND.—

“(1) SEPARATE MAINTENANCE.—The Systemic

Dissolution Fund shall be separately maintained and

not commingled with any other fund of the Corpora-
tion.

“(2) TREATMENT OF AND ACCOUNTING FOR AS-

SETS.—The assets and liabilities of the Systemic

Dissolution Fund—

“(A) shall be the assets and liabilities of

the Fund and not of the Corporation; and

“(B) shall not be consolidated with the as-

sets and liabilities of the Deposit Insurance

Fund or the Corporation for accounting, report-
ing, or any other purpose.

“(d) RIGHTS, POWERS, AND DUTIES.—

“(1) IN GENERAL.—The Corporation, in addi-
tion to any rights, powers, and duties under this Act

or any other law, shall, through the Systemic Dis-
solution Authority, have all rights, powers, and du-
ties necessary to implement and maintain the Sys-
temic Dissolution Fund in accordance with subtitle

“(2) Powers as Receiver for Covered Financial Company.—When acting as receiver with respect to any covered financial company, as defined in subtitle G of the Financial Stability Improvement Act of 2009, the Corporation, through the Systemic Dissolution Authority, shall have all rights, powers, and duties that the Corporation has as receiver under such subtitle.

“(3) Specific and Incidental Powers.—The Corporation, through the Systemic Dissolution Authority, or any duly authorized officer or agent of the Authority, may exercise all powers specifically granted by the provisions of this Act and subtitle G of the Financial Stability Improvement Act and such incidental powers as shall be necessary to carry out the powers so granted and accomplish the purposes of subtitle G of the Financial Stability Improvement Act.

“(e) Staff and Resources.—

“(1) In General.—The Corporation shall assign such staff, and provide such administrative and other support services to the Systemic Dissolution
Authority as is necessary to fulfill the statutory responsibilities of the Authority.

“(2) ADMINISTRATIVE EXPENSES.—The cost of all personnel, services, and resources provided on behalf of the Systemic Dissolution Authority shall be paid from the Systemic Dissolution Fund.”.

SEC. 1614. APPLICATION OF EXECUTIVE COMPENSATION LIMITATIONS.

At any time that the Corporation has borrowed from the Treasury pursuant to section 1609(o) to resolve a covered financial company, the Corporation shall apply the executive compensation limits under section 111 of the Emergency Economic Stabilization Act of 2008 to such company for so long as such company is in receivership.

SEC. 1615. STUDY ON THE EFFECT OF SAFE HARBOR PROVISIONS IN INSOLVENCY CASES.

(a) Study.—The Comptroller General of the United States shall conduct a study of the safe harbor provisions under Federal law for derivatives, swaps, and securities transactions addressing—

(1) how the safe harbor provisions have been applied in insolvency cases;

(2) how such provisions impact the rights of parties in interest in insolvency cases;
(3) whether these provisions impede or interfere
with allowing a debtor a reasonable period of time
to pursue rehabilitation and reorganization; and

(4) whether these provisions had an adverse im-
pact on the financial marketplace.

(b) REPORT TO THE CONGRESS.—Not later than 180
days after the date of the enactment of this title, the
Comptroller General shall submit to the President pro
tempore of the Senate and the Speaker of the House of
Representatives a report on the results of the study con-
ducted under subsection (a), together with any re-
ommendations for legislation to address any adverse im-
pacts presented by the Federal safe harbor provisions.

SEC. 1616. TREASURY STUDY.

(a) STUDY REQUIRED.—The Secretary shall carry
out a study analyzing how the resolution authority pro-
vided under this subtitle should be funded. Such study
shall consider the following factors:

(1) The consequences of any assessments on the
overall recovery of the economy of the United States.

(2) Any immediate or continuing consequences
of assessments on other aspects of the economy of
the United States, including job creation, public and
private investments, small business loans, and gen-
eral credit availability.
(3) The consequences of any assessments on individual sectors of the financial services industry.

(4) The consequences of any assessments on the financial integrity on individual firms within each sector of the financial services industry.

(5) The appropriateness and effect of assessments on firms that are subject to separate assessments under existing State or Federal depositor, policyholder, or investor protection mechanisms and the consequences of any such assessments on these mechanisms themselves.

(6) The implications of assessments on all relevant stakeholders, including taxpayers, depositors, insurance policyholders, investors, counterparties, and creditors.

(7) Evaluation of the appropriate assessment base, including but not limited to factors such as assets and liabilities, assets under management, policyholder reserves, other reserves, statutory and regulatory capital requirements, trusteed assets, and deposits and inflationary factors.

(b) REPORT.—Not later than the end of the 6-month period beginning on the date of the enactment of this subtitle, the Secretary shall issue a report to the Congress containing all determinations and conclusions made by the
Secretary in carrying out the study required under subsection (a).

SEC. 1617. PRIORITY OF CLAIMS IN FEDERAL DEPOSIT INSURANCE ACT.

Section 11(d)(11)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(11)(A)) is amended—

(1) by redesignating clauses (iii) through (v) as clauses (iv) through (vi), respectively; and

(2) by inserting after clause (ii) the following new clause (iii):

“(iii) Any obligation of the institution owed to the Corporation as a result of the institution’s default on a Corporation-guaranteed debt.”.

Subtitle H—Additional Improvements for Financial Crisis Management

SEC. 1701. ADDITIONAL IMPROVEMENTS FOR FINANCIAL CRISIS MANAGEMENT.

Section 13 of the Federal Reserve Act (12 U.S.C. 343) is amended by striking the 3rd undesignated paragraph and inserting the following new subsection:

“(e) FINANCIAL CRISIS MANAGEMENT.—

“(1) IN GENERAL.—In unusual and exigent circumstances, the Board of Governors of the Federal
Reserve System, upon the written determination, pursuant to section 1109 of the Financial Stability Improvement Act of 2009, of the Financial Stability Oversight Council, that a liquidity event exists that could destabilize the financial system (which determination shall be made upon a vote of not less than two-thirds of the members of such Council then serving), and with the written consent of the Secretary of the Treasury (after certification by the President that an emergency exists), may authorize any Federal reserve bank, during such periods as the Board may determine and at rates established in accordance with the provision designated as (d) of section 14, to discount for an individual, partnership, or corporation, notes, drafts, and bills of exchange when such notes, drafts, and bills of exchange are indorsed or otherwise secured to the satisfaction of the Federal reserve bank and in conformance with regulations or guidelines issued by the Board of Governors regarding the quality of notes, drafts, and bills of exchange available for discount and of the security for those notes, drafts and bills of exchange, unless a joint resolution (as defined in paragraph (5)) is adopted. Upon making any determination under this paragraph, with the consent of the Sec-
retary of the Treasury, the Financial Stability Over-
sight Council shall promptly submit a notice of such
determination to the House of Representatives and
the Senate. The amounts made available under this
subsection shall not exceed $4,000,000,000,000.

“(2) Clarification of ‘secured to the sat-
isfaction of the Federal Reserve Bank’.—No
member of the Board of Governors of the Federal
Reserve System shall vote to authorize any action
permitted under paragraph (1) and the Secretary of
the Treasury shall not provide the written consent
required by paragraph (1) unless that member be-
lieves and the Secretary of the Treasury believes:

“(A) that there is at least a 99 percent
likelihood that all funds disbursed or put at risk
by such action will be repaid to the Federal Re-
serve System; and

“(B) that there is at least a 99 percent
likelihood that all interest due on any funds dis-
bursed will also be paid to the Federal Reserve
System.

“(3) Low quality assets excluded.—The
notes, drafts, and bills of exchange available for dis-
count for purposes of paragraph (1), and the secu-
rity for those notes, drafts and bills of exchange may
only include any of the following assets if such asset is used to further enhance the security for those notes, drafts and bills of exchange which shall be fully secured with assets that are not any of the following assets:

“(A) An asset (including a security) that would be classified as “substandard,” “doubtful,” or “loss,” or treated as “special mention” or “other transfer risk problems,” in a report of examination or inspection of bank or an affiliate of a bank prepared by either a Federal or State supervisory agency or in any internal classification system used by such individual, partnership or corporation.

“(B) An asset in a nonaccrual status.

“(C) An asset on which principal or interest payments are more than 30 days past due.

“(D) An asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor unless such asset has been performing for at least 6 months since the renegotiation.

“(4) No single or specific beneficiaries.—The Board of Governors of the Federal Reserve System may authorize a Federal reserve
bank to discount notes, drafts, or bills of exchange
under this section only as part of a broadly available
credit or other facility and may not authorize a Fed-
eral Reserve bank to discount notes, drafts, or bills
of exchange for only a single and specific individual,
partnership, or corporation.

“(5) Evidence of Unavailability of Credit.—Before discounting any note, draft, or bill of ex-
change under this subsection for an individual, a
partnership or corporation as part of a broadly
available credit or other facility the Federal reserve
bank shall obtain evidence that such individual, part-
nership, or corporation is unable to secure adequate
credit accommodations from other banking institu-
tions. All discounts under this subsection for individ-
uals, partnerships, or corporations shall be subject
to such limitations, restrictions, and regulations as
the Board of Governors of the Federal Reserve Sys-
tem may prescribe.

“(6) Congressional Disapproval of Additional Borrowing Authority.—

“(A) Introduction.—Within 90 days of
the day on which notice from the Financial Sta-
bility Oversight Council is received by the
House of Representatives and the Senate under
paragraph (1), a joint resolution specified in
subparagraph (E) may be introduced in the
House by the majority leader and in the Senate
by the majority leader.

“(B) Consideration in the House of
Representatives.—

“(i) Reporting and Discharge.—
Any committee of the House of Represent-
atives to which a joint resolution intro-
duced under subparagraph (A) is referred
shall report such joint resolution to the
House not later than 5 calendar days after
the applicable date of introduction of the
joint resolution. If a committee fails to re-
port such joint resolution within that pe-
riod, the committee shall be discharged
from further consideration of the joint res-
olution and the joint resolution shall be re-
ferred to the appropriate calendar.

“(ii) Proceeding to Consider-
ation.—After all committees authorized to
consider a joint resolution have reported
such joint resolution to the House or have
been discharged from its consideration, it
shall be in order, not later than the sixth
day after the applicable date of introduc-
tion of the joint resolution, for the major-
ity leader to move to proceed to consider
the joint resolution in the House. Such a
motion shall not be in order after the
House has disposed of a motion to proceed
on the joint resolution and shall not be in
order if the House has received a message
from the Senate under subparagraph
(D)(iii)(I). The previous question shall be
considered as ordered on the motion to its
adoption without intervening motion. A
motion to reconsider the vote by which the
motion is disposed of shall not be in order.

“(iii) CONSIDERATION.—The joint
resolution shall be considered in the House
and shall be considered as read. All points
of order against a joint resolution and
against its consideration are waived. The
previous question shall be considered as or-
dered on the joint resolution to its passage
without intervening motion except two
hours of debate equally divided and con-
trolled by the proponent and an opponent.
A motion to reconsider the vote on passage of a joint resolution shall not be in order.

“(C) CONSIDERATION IN THE SENATE.—

“(i) PLACEMENT ON CALENDAR.—

Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

“(ii) FLOOR CONSIDERATION.—

“(I) IN GENERAL.—Notwithstanding rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the fourth day after the applicable date of introduction of the joint resolution in the Senate and ending on the sixth day after the applicable date of introduction in the Senate (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is
not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

“(II) DEBATE.—Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

“(III) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the conclusion of the
debate on a joint resolution, and a
single quorum call at the conclusion of
the debate if requested in accordance
with the rules of the Senate.

“(IV) Rulings of the Chair
on Procedure.—Appeals from the
decisions of the Chair relating to the
application of the rules of the Senate,
as the case may be, to the procedure
relating to a joint resolution shall be
decided without debate.

“(D) Rules Relating to Senate and
House of Representatives.—

“(i) Coordination with Action by
Other House.—If, before the passage by
one House of a joint resolution of that
House, that House receives from the other
House a joint resolution, then the following
procedures shall apply:

“(I) The joint resolution of the
other House shall not be referred to a
committee.

“(II) With respect to the joint
resolution of the House receiving the
resolution, the procedure in that
House shall be the same as if no such joint resolution had been received from the other House; but the vote on passage shall be on the joint resolution of the other House.

“(ii) TREATMENT OF COMPANION MEASURES.—If, following passage of a joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

“(iii) FAILURE OF JOINT RESOLUTION IN THE SENATE.—

“(I) If, in the Senate, the motion to proceed to the consideration of the joint resolution fails on adoption, the Secretary of the Senate shall transmit a message to that effect to the House of Representatives.

“(II) If, in the Senate, the joint resolution fails on passage, the Secretary of the Senate shall transmit a message to that effect to the House of Representatives.
“(iv) Rules of House of Representatives and Senate.—This paragraph and the preceding paragraphs are enacted by Congress—

“(I) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

“(II) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

“(E) Definition.—In this paragraph, the term ‘joint resolution’ means only a joint resolution—
“(i) which does not have a preamble;

“(ii) the title of which is as follows: ‘Joint resolution relating to the use of authority relevant to section 13(c) of the Federal Reserve Act under the Financial Stability Improvement Act of 2009.’; and

“(iii) the sole matter after the resolving clause of which is as follows: ‘That the Congress disapproves the use of authority pursuant to section 13(c) of the Federal Reserve Act transmitted to the Congress on ______ by the Board of Governors of the Federal Reserve System’, the blank space being filled with the appropriate date.

“(F) NONSCORING OF JOINT RESOLUTIONS OF DISAPPROVAL.—A joint resolution of disapproval shall be treated as having no budgetary effect by the Congressional Budget Office and the Office of Management and Budget for any purpose under the Rules of the House of Representatives, the Standing Rules of the Senate, the Congressional Budget Act of 1974, or any statutory pay-as-you-go requirement.”.
SEC. 1702. CERTAIN RESTRICTIONS RELATED TO FOREIGN CURRENCY SWAP AUTHORITY.

Section 14 of the Federal Reserve Act is amended by adding at the end the following new subsection:

“(h) CERTAIN RESTRICTIONS RELATED TO FOREIGN CURRENCY SWAP AUTHORITY.—A Federal reserve bank may not take any action pursuant to the authority provided under this section with respect to foreign currency swaps unless—

“(1) such action is approved in advance by the affirmative vote of not less than five members of the Board of Governors of the Federal Reserve System; and

“(2) such action is taken with the written concurrence of the Secretary of the Treasury.”.

SEC. 1703. ADDITIONAL OVERSIGHT OF FINANCIAL REGULATORY SYSTEM.

(a) COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—

(1) Establishment and membership.—
There is established a Council of Inspectors General on Financial Oversight (in this section referred to as the “Council of Inspectors General”) chaired by the Inspector General of the Department of the Treasury and composed of the inspectors general of the following:
(A) The Board of Governors of the Federal Reserve System.

(B) The Commodity Futures Trading Commission.

(C) The Department of Housing and Urban Development.

(D) The Department of the Treasury.

(E) The Federal Deposit Insurance Corporation.

(F) The Federal Housing Finance Agency.

(G) The National Credit Union Administration.

(H) The Securities and Exchange Commission.

(I) The Troubled Asset Relief Program (until the termination of the authority of the Special Inspector General for such program under section 121(h) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231(h))).

(2) DUTIES.—

(A) MEETINGS.—The Council of Inspectors General shall meet not less than once each quarter, or more frequently if the chair considers it appropriate, to facilitate the sharing of
information among inspectors general and to
discuss the ongoing work of each inspector gen-
eral who is a member of the Council of Inspect-
tors General, with a focus on concerns that may
apply to the broader financial sector and ways
to improve financial oversight.

(B) ANNUAL REPORT.—The Council of In-
spectors General shall, each year within a time-
frame that permits consideration by the Finan-
cial Services Oversight Council (in this section
referred to as the “Oversight Council”) prior to
the submission of its report for such year under
section 1006, submit to the Oversight Council
and to Congress a report including—

(i) for each inspector general who is a
member of the Council of Inspectors Gen-
eral, a section within the exclusive editorial
control of such inspector general that high-
lights the concerns and recommendations
of such inspector general in such inspector
general’s ongoing and completed work,
with a focus on issues that may apply to
the broader financial sector; and

(ii) a summary of the general observa-
tions of the Council of Inspectors General
based on the views expressed by each inspector general as required by clause (i), with a focus on measures that should be taken to improve financial oversight.

(3) Council of inspectors general working groups.—

(A) Working groups to evaluate oversight council.—

(i) Convening a working group.—
The Council of Inspectors General may, by majority vote, convene a Council of Inspectors General Working Group to evaluate the effectiveness and internal operations of the Oversight Council.

(ii) Personnel and resources.—
The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this subparagraph to enable it to carry out its duties.

(iii) Reports.—A Council of Inspectors General Working Group established under this subparagraph shall submit regular reports to the Oversight Council and
to Congress on its evaluations pursuant to
this subparagraph.

(B) WORKING GROUPS FOR FINANCIAL
COMPANIES UNDERGOING RESOLUTION.—

(i) CONVENING A WORKING GROUP.—
The Council of Inspectors General shall
convene a Council of Inspectors General
Working Group for each financial company
for which the Secretary of the Treasury
appoints the Federal Deposit Insurance
Corporation as receiver under section
1604.

(ii) PERSONNEL AND RESOURCES.—
The inspectors general who are members
of the Council of Inspectors General may
detail staff and resources to a Council of
Inspectors General Working Group estab-
lished under this subparagraph to enable it
to carry out its duties.

(iii) REPORTS.—Not later than 270
days after the appointment of the Federal
Deposit Insurance Corporation as receiver
for the financial company for which a
Council of Inspectors General Working
Group is convened under clause (i), such
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Working Group shall submit to the primary financial regulatory agency and to Congress a report that includes—

(I) the reasons for such financial company’s failure;

(II) the reasons for the Secretary of the Treasury’s appointment of the Federal Deposit Insurance Corporation as receiver for such financial company; and

(III) recommendations for preventing future failures of financial companies.

(b) RESPONSE TO REPORT BY OVERSIGHT COUNCIL.—The Oversight Council shall include in its annual report under section 1006 responses to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year.

Subtitle I—Miscellaneous

SEC. 1801. INCLUSION OF MINORITIES AND WOMEN; DIVERSITY IN AGENCY WORKFORCE.

(a) OFFICE OF MINORITY AND WOMEN INCLUSION.—

(1) ESTABLISHMENT.—Not later than 180 days following the enactment of this title, each agency
shall establish an Office of Minority and Women Inclusion (hereinafter in this section referred to as the “Office”) that shall advise the agency administrator of the impact of policies and regulations of the agency on minority-owned and women-owned businesses (as such terms are defined in subsection (c)(1)), and shall be responsible for all matters of the agency relating to diversity in management, employment, and business activities, including the coordination of technical assistance, in accordance with such standards and requirements as the Director of the Office shall establish.

(2) CONSOLIDATION.—Each agency that has assigned these or comparable responsibilities to existing offices shall ensure that such responsibilities are consolidated within the Office.

(b) DIRECTOR.—

(1) IN GENERAL.—For each Office, the President shall appoint, by and with the advice and consent of the Senate, a Director of Minority and Women Inclusion (hereinafter in this section referred to as the “Director”), who shall also hold a title within such agency comparable to that of other senior level staff who are, as applicable, either appointed by the President, by and with the advice and
consent of the Senate, or act in a managerial capac-
ity that requires reporting directly to the agency ad-
ministrator.

(2) DUTIES.—Each Director shall—

(A) ensure equal employment opportunity
and the racial, ethnic and gender diversity of
the agency’s workforce and senior management;

(B) increase the participation of minority-
owned and women-owned businesses in the pro-
grams and contracts of the agency;

(C) provide guidance to the agency admin-
istrator to ensure that the policies and regula-
tions of the agency strengthen minority-owned
and women-owned businesses; and

(D) conduct an assessment, as part of the
examination process for the entities regulated
or monitored by the agency of the diversity and
inclusion efforts by such entities.

(c) INCLUSION IN ALL LEVELS OF BUSINESS ACTIVI-
TIES.—

(1) IN GENERAL.—Each Director shall develop
and implement standards and procedures to ensure,
to the maximum extent possible, the inclusion and
utilization of minorities (as such term is defined in
section 1204(c) of the Financial Institutions Re-
form, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)), women, and minority-owned and women-owned businesses (as such terms are defined in section 21A(r)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(r)(4)) (including financial institutions, investment banking firms, mortgage banking firms, asset management firms, broker-dealers, financial services firms, underwriters, accountants, brokers, investment consultants, and providers of legal services) in all business and activities of the agency at all levels, including in procurement, insurance, and all types of contracts (including, as applicable, contracts for the issuance or guarantee of any debt, equity, or security, the sale of assets, the management of its assets, the making of its equity investments, and the implementation of programs to address economic recovery).

(2) CONTRACTS.—The processes established by each agency for review and evaluation for contract proposals and to hire service providers shall include a component that gives consideration to the diversity of the applicant.

(3) WRITTEN ASSURANCE.—All such contract proposals, provided such proposals are of an amount greater than $50,000 and the contractor employs
more than 50 employees, shall include a written as-
surance, in a form and substance that the Director
shall prescribe, that the contractor shall ensure, to
the maximum extent possible, the inclusion of mi-
norities and women in its workforce and, as applica-
ble, by its subcontractors.

(4) TERMINATION.—A Director may terminate
any contract upon a finding that the contractor has
failed to make a good faith effort to comply with
paragraph (3), except that a contractor may appeal
such finding and termination to the agency adminis-
trator within a reasonable amount of time as deter-
mined by the Director.

(d) APPLICABILITY.—This section shall apply to all
contracts of an agency for services of any kind, including
services that require the services of investment banking,
asset management entities, broker-dealers, financial serv-
ices entities, underwriters, accountants, investment con-
sultants, and providers of legal services.

(e) REPORTS.—Not later than 90 days before the end
of each Federal fiscal year, each Director shall report to
the Congress detailed information describing the actions
taken by the agency and the Director pursuant to this sec-
tion, which shall—
(1) to the extent contracts exceed the contract amount and employment levels established in subsection (c)(3), include a statement of the total amounts paid by the agency to third party contractors since the last such report;

(2) the percentage of such amounts paid to businesses described in subsection (c)(1);

(3) the successes achieved and challenges faced by the agency in operating minority and women outreach programs;

(4) the challenges the agency may face in hiring qualified minority and women employees and contracting with qualified minority-owned and women-owned businesses; and

(5) such other information, findings, conclusions, and recommendations for legislative or agency action, as the Director may determine to be appropriate to include in such report.

(f) DIVERSITY IN AGENCY WORKFORCE.—Each agency shall take affirmative steps to seek diversity in its workforce at all levels of the agency consistent with the demographic diversity of the United States and the Federal government, which shall include—

(1) heavily recruiting at historically black colleges and universities, Hispanic-serving institutions,
women’s colleges, and colleges that typically serve majority minority populations;

(2) sponsoring and recruiting at job fairs in urban communities, and placing employment advertisements in newspapers and magazines oriented toward women and people of color;

(3) partnering with organizations that are focused on developing opportunities for minorities and women to place talented young minorities and women in industry internships, summer employment, and full-time positions;

(4) where feasible, partnering with inner-city high schools, girls’ high schools, and high schools with majority minority populations to establish or enhance financial literacy programs and provide mentoring; and

(5) such other mass media communications that the Director determines are necessary.

(g) DEFINITIONS.—For purposes of this section:

(1) AGENCY.—The term “agency” means—

(A) the Department of the Treasury;

(B) the Federal Deposit Insurance Corporation;

(C) the Federal Housing Finance Agency;

(D) each of the Federal reserve banks;
(E) the Board;
(F) the National Credit Union Administra-
tion;
(G) the Office of the Comptroller of the
Currency;
(H) the Office of Thrift Supervision;
(I) the Securities and Exchange Commiss-
ion;
(J) the Consumer Financial Protection
Agency; and
(K) the Federal Insurance Office,
and any successors to such entities.

(2) AGENCY ADMINISTRATOR.—The term
“agency administrator” means the head of an agen-
cy.

SEC. 1802. FEDERAL HOUSING FINANCE AGENCY ADVISORY
ROLE IN FIEC.

After section 1007 of the Federal Financial Institu-
insert the following new section:

“SEC. 1007A. FEDERAL HOUSING FINANCE AGENCY ADVI-
SORY ROLE.

“Whenever the Council takes any actions with respect
to issues that relate to the Federal National Mortgage As-
sociation, the Federal Home Loan Mortgage Corporation,
or the Federal home loan banks, the Federal Housing Fi-
nance Agency shall participate in the Council’s pro-
ceedings in an advisory role.”.

Subtitle J—International Policy
Coordination

SEC. 1901. INTERNATIONAL POLICY COORDINATION.

The President of the United States, or a designee of
the President, shall coordinate through all available inter-
national policy channels similar policies as found in United
States law related to limiting the scope, nature, size, scale,
concentration, and interconnectedness of financial compa-
nies in order to protect financial stability and the global
economy.

Subtitle K—International Financial
Provisions

SEC. 1951. ACCESS TO UNITED STATES FINANCIAL MARKET
BY FOREIGN INSTITUTIONS.

(a) Establishment of Foreign Bank Offices in
the United States.—Subsection 7(d)(3) of the Inter-
national Banking Act of 1978 (12 U.S.C. 3105(d)(3)) is
amended—

(1) by striking “and” at the end of subpara-
graph (C);

(2) by striking the period at the end of sub-
paragraph (D) and inserting “; and”; and
(3) by adding at the end the following new sub-
paragraph:

“(E) for a foreign bank that presents a
systemic risk to the United States, whether the
home country of the foreign bank has adopted,
or is making demonstrable progress toward
adopting, an appropriate system of financial
regulation for the financial system of such
home country to mitigate such systemic risk.”.

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

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

(2) by striking the period at the end of sub-
paragraph (B) and inserting “; or”; and

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

“(C) for a foreign bank that presents a
systemic risk to the United States, the home
country of the foreign bank has not adopted or
made demonstrable progress toward adopting
an appropriate system of financial regulation to
mitigate such systemic risk.”.
(c) Registration or Succession to United States Brokerage or Dealer and Termination of Such Registration.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsections:

“(k) Registration or Succession to a United States Broker or Dealer.—In determining whether to permit a foreign person or an affiliate of a foreign person to register as a United States broker or dealer, or succeed to the registration of a United States broker or dealer, the Securities and Exchange Commission may consider whether, for a foreign person, or an affiliate of a foreign person that presents a systemic risk to the United States, the home country of the foreign person has adopted or made demonstrable progress toward adopting an appropriate system of financial regulation to mitigate such systemic risk.

“(l) Termination of a United States Broker or Dealer.—For a foreign person or an affiliate of a foreign person that presents such a systemic risk to the United States, the Securities and Exchange Commission may determine to terminate the registration of such foreign person or an affiliate of such foreign person as a broker or dealer in the United States if the Commission determines that the home country of the foreign person
has not adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such systemic risk.”.

SEC. 1952. REDUCING TARP FUNDS TO OFFSET COSTS.

Section 115(a)(3) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5225(a)(3)) is amended by striking “$700,000,000,000, as such amount is reduced by $1,259,000,000,, as such amount is reduced by $1,244,000,000, outstanding at any one time” and inserting “$700,000,000,000, as such amount is reduced by $23,625,000,000, outstanding at any one time”.

Subtitle L—Securities Holding Companies

SEC. 1961. SECURITIES HOLDING COMPANIES.

(a) Supervision of a Securities Holding Company Not Having a Bank or Savings Association Affiliate.—

(1) In general.—A securities holding company that is required by a foreign regulator or foreign law to be subject to comprehensive consolidated supervision and that is not—

(A) a financial holding company subject to stricter standards;

(B) an affiliate of an insured bank (other than an institution described in subparagraphs

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(D) or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956) or a savings association;

(C) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978;

(D) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.); or

(E) subject to comprehensive consolidated supervision by a foreign regulator,

may register with the Board to become supervised, pursuant to paragraph (2). Any securities holding company filing such a registration shall be supervised in accordance with this section and comply with the rules and orders prescribed by the Board applicable to supervised securities holding companies.

(2) REGISTRATION AS A SUPERVISED SECURITIES HOLDING COMPANY.—A securities holding company described in paragraph (1) shall register by filing with the Board such information and documents concerning such securities holding company as the Board, by regulation, may prescribe as necessary or
appropriate in furtherance of the purposes of this section. Such supervision shall become effective 45 days after the date of receipt of such registration by the Board or within such shorter time period as the Board, by rule or order, may determine.

(b) Supervision of Securities Holding Companies.—

(1) Recordkeeping and reporting.—

(A) In general.—Every supervised securities holding company and each affiliate of such company shall make and keep for prescribed periods such records, furnish copies of records, and make such reports, as the Board determines to be necessary or appropriate for the Board to carry out the purposes of this section, prevent evasions, and monitor compliance by the company or affiliate with applicable provisions of law.

(B) Form and contents.—Such records and reports shall be prepared in such form and according to such specifications (including certification by a registered public accounting firm), as the Board may require and shall be provided promptly at any time upon request by
the Board. Such records and reports may include—

(i) a balance sheet and income statement;

(ii) an assessment of the consolidated capital of the supervised securities holding company;

(iii) an independent auditor’s report attesting to the supervised securities holding company’s compliance with its internal risk management and internal control objectives; and

(iv) reports concerning the extent to which the company or affiliate has complied with the provisions of this section and any regulations prescribed and orders issued under this section.

(2) USE OF EXISTING REPORTS.—

(A) IN GENERAL.—The Board shall, to the fullest extent possible, accept reports in fulfillment of the requirements under this paragraph that the supervised securities holding company or its affiliates have been required to provide to another appropriate regulatory agency or self-regulatory organization.
(B) **Availability.**—A supervised securities holding company or an affiliate of such company shall provide to the Board, at the request of the Board, any report referred to in subparagraph (A), as permitted by law.

(3) **Examination Authority.**—

(A) **Focus of Examination Authority.**—The Board may make examinations of any supervised securities holding company and any affiliate of such company to carry out the purposes of this subsection, prevent evasions thereof, and monitor compliance by the company or affiliate with applicable provisions of law.

(B) **Deference to Other Examinations.**—For purposes of this subparagraph, the Board shall, to the fullest extent possible, use the reports of examination made by other appropriate Federal or State regulatory authorities with respect to any functionally regulated subsidiary, as defined under section 5(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(1)), or an institution described in subparagraphs (D) or (G) of section 1841(c)(2).
(c) CAPITAL AND RISK MANAGEMENT.—

(1) The Board shall, by regulation or order, prescribe capital adequacy and other risk management standards for a supervised securities holding company appropriate to protect the safety and soundness of the company and address the risks posed to financial stability by a supervised securities holding company. Standards imposed under this subparagraph shall take account of differences among types of business activities and—

(A) the amount and nature of the company’s financial assets;

(B) the amount and nature of the company’s liabilities, including the degree of reliance on short-term funding;

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

(D) the extent and nature of the company’s transactions and relationships with other financial companies;

(E) the company’s importance as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the financial system; and
(F) the nature, scope, and mix of the company’s activities.

(2) In imposing standards under this subsection, the Board may differentiate among supervised securities holding companies on an individual basis or by category, taking into consideration the criteria specified above.

(3) Any capital requirements imposed under this subsection shall not take effect until the expiration of 180 days after a supervised securities holding company is provided notice of such requirement.

(d) OTHER PROVISIONS.—

(1) Subsections (b), (c) through (s), and (u) of section 8 of the Federal Deposit Insurance Act shall apply to any supervised securities holding company, and to any subsidiary (other than a bank) of a supervised securities holding company, in the same manner as they apply to a bank holding company. For purposes of applying such subsections to a supervised securities holding company or a subsidiary (other than a bank) of a supervised securities holding company, the Board shall be considered the appropriate Federal banking agency for the supervised securities holding company or subsidiary.
(2) Except as the Board may otherwise provide by regulation or order, a supervised securities holding company shall be subject to the provisions of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) in the same manner and to the same extent that bank holding companies are subject to such provisions, except that any such supervised securities holding company shall not by reason of this subparagraph be deemed a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956.

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

(1) SECURITIES HOLDING COMPANY.—The term “securities holding company” means—

(A) any person other than a natural person that owns or controls one or more brokers or dealers as defined in section 3 of the Securities Exchange Act; and

(B) the associated persons of the securities holding company.

(2) SUPERVISED SECURITIES HOLDING COMPANY.—The term “supervised securities holding company” means any securities holding company
that is supervised by the Board pursuant to this sec-

(3) Other Banking Terms.—The terms “af-

(4) Insured Bank.—The term “insured bank”

(5) Foreign Bank.—The term “foreign bank”

(6) Associated Persons.—The terms “person

associated with a securities holding company” and

“associated person of a securities holding company”

mean any person directly or indirectly controlling,

controlled by, or under common control with, a secu-

rities holding company.

Title II—Corporate and Finan-

TICAL INSTITUTION COM-

PENSATION FAIRNESS ACT

Section 2001. Short Title.

This title may be cited as the “Corporate and Finan-

cial Institution Compensation Fairness Act of 2009”.

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SEC. 2002. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION DISCLOSURES.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

“(i) Annual Shareholder Approval of Executive Compensation.—

“(1) Annual vote.—Any proxy or consent or authorization (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for an annual meeting of the shareholders to elect directors (or a special meeting in lieu of such meeting) where proxies are solicited in respect of any security registered under section 12 occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), shall provide for a separate shareholder vote to approve the compensation of executives as disclosed pursuant to the Commission’s compensation disclosure rules for named executive officers (which disclosure shall include the compensation committee report, the compensation discussion and analysis, the compensation tables, and any related materials, to the extent required by such rules). The shareholder vote shall not be binding on the issuer or the board of directors and shall not be construed as overruling...
a decision by such board, nor to create or imply any
dditional fiduciary duty by such board, nor shall
such vote be construed to restrict or limit the ability
of shareholders to make proposals for inclusion in
such proxy materials related to executive compensa-
tion.

“(2) SHAREHOLDER APPROVAL OF GOLDEN
PARACHUTE COMPENSATION.—

“(A) DISCLOSURE.—In any proxy or con-
sent solicitation material (the solicitation of
which is subject to the rules of the Commission
pursuant to subsection (a)) for a meeting of the
shareholders occurring on or after the date that
is 6 months after the date on which final rules
are issued under paragraph (4), at which share-
holders are asked to approve an acquisition,
merger, consolidation, or proposed sale or other
disposition of all or substantially all the assets
of an issuer, the person making such solicita-
tion shall disclose in the proxy or consent solici-
tation material, in a clear and simple form in
accordance with regulations to be promulgated
by the Commission, any agreements or under-
standings that such person has with any named
executive officers of such issuer (or of the ac-
quiring issuer, if such issuer is not the acquir-
ing issuer) concerning any type of compensation
(whether present, deferred, or contingent) that
is based on or otherwise relates to the acquisi-
tion, merger, consolidation, sale, or other dis-
position of all or substantially all of the assets
of the issuer and the aggregate total of all such
compensation that may (and the conditions
upon which it may) be paid or become payable
to or on behalf of such executive officer.

“(B) Shareholder Approval.—Any
proxy or consent or authorization relating to
the proxy or consent solicitation material con-
taining the disclosure required by subparagraph
(A) shall provide for a separate shareholder
vote to approve such agreements or under-
standings and compensation as disclosed, unless
such agreements or understandings have been
subject to a shareholder vote under paragraph
(1). A vote by the shareholders shall not be
binding on the issuer or the board of directors
of the issuer or the person making the solicita-
tion and shall not be construed as overruling a
decision by any such person or issuer, nor to
create or imply any additional fiduciary duty by
any such person or issuer.

“(3) Disclosure of votes.—Every institu-
tional investment manager subject to section 13(f)
shall report at least annually how it voted on any
shareholder vote pursuant to paragraph (1) or (2) of
this section, unless such vote is otherwise required to
be reported publicly by rule or regulation of the
Commission.

“(4) Rulemaking.—Not later than 6 months
after the date of the enactment of the Corporate and
Financial Institution Compensation Fairness Act of
2009, the Commission shall issue final rules to im-
plement this subsection.

“(5) Exemption authority.—The Commis-
sion may exempt certain categories of issuers from
the requirements of this subsection, where appro-
 priate in view of the purpose of this subsection. In
determining appropriate exemptions, the Commis-
ion shall take into account, among other consid-
erations, the potential impact on smaller reporting
issuers.”.

SEC. 2003. COMPENSATION COMMITTEE INDEPENDENCE.

(a) Standards relating to compensation com-
mittees.—The Securities Exchange Act of 1934 (15
U.S.C. 78a et seq.) is amended by inserting after section 10A the following new section:

“SEC. 10B. STANDARDS RELATING TO COMPENSATION COMMITTEES.

“(a) Commission Rules.—

“(1) In general.—Effective not later than 9 months after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any class of equity security of an issuer that is not in compliance with the requirements of any portion of subsections (b) through (f).

“(2) Opportunity to cure defects.—The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under paragraph (1) before the imposition of such prohibition.

“(3) Exemption authority.—The Commission may exempt certain categories of issuers from the requirements of subsections (b) through (f), where appropriate in view of the purpose of this section. In determining appropriate exemptions, the
Commission shall take into account, among other considerations, the potential impact on smaller reporting issuers.

“(b) INDEPENDENCE OF COMPENSATION COMMITTEES.—

“(1) IN GENERAL.—Each member of the compensation committee of the board of directors of the issuer shall be independent.

“(2) CRITERIA.—In order to be considered to be independent for purposes of this subsection, a member of a compensation committee of an issuer may not, other than in his or her capacity as a member of the compensation committee, the board of directors, or any other board committee accept any consulting, advisory, or other compensatory fee from the issuer.

“(3) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of paragraph (2) a particular relationship with respect to compensation committee members, where appropriate in view of the purpose of this section.

“(4) DEFINITION.—As used in this section, the term ‘compensation committee’ means—

“(A) a committee (or equivalent body) established by and amongst the board of directors
of an issuer for the purpose of determining and
approving the compensation arrangements for
the executive officers of the issuer; and

“(B) if no such committee exists with re-
spect to an issuer, the independent members of
the entire board of directors.

“(c) Independence Standards for Compensation Consultants and Other Committee Advisors.—Any compensation consultant or other similar ad-
viser to the compensation committee of any issuer shall
meet standards for independence established by the Com-
mission by regulation.

“(d) Compensation Committee Authority Re-

tating to Compensation Consultants.—

“(1) In general.—The compensation com-
mittee of each issuer, in its capacity as a committee
of the board of directors, shall have the authority,
in its sole discretion, to retain and obtain the advice
of a compensation consultant meeting the standards
for independence promulgated pursuant to sub-
section (c), and the compensation committee shall be
directly responsible for the appointment, compensa-
tion, and oversight of the work of such independent
compensation consultant. This provision shall not be
construed to require the compensation committee to
implement or act consistently with the advice or recommenda-
firmation of the compensation consultant, and
shall not otherwise affect the compensation commit-
tee’s ability or obligation to exercise its own judg-
ment in fulfillment of its duties.

“(2) DISCLOSURE.—In any proxy or consent
solicitation material for an annual meeting of the
shareholders (or a special meeting in lieu of the an-
nual meeting) occurring on or after the date that is
1 year after the date of enactment of the Corporate
and Financial Institution Compensation Fairness
Act of 2009, each issuer shall disclose in the proxy
or consent material, in accordance with regulations
to be promulgated by the Commission whether the
compensation committee of the issuer retained and
obtained the advice of a compensation consultant
meeting the standards for independence promul-
gated pursuant to subsection (c).

“(3) REGULATIONS.—In promulgating regula-
tions under this subsection or any other provision of
law with respect to compensation consultants, the
Commission shall ensure that such regulations are
competitively neutral among categories of consult-
ants and preserve the ability of compensation com-
mittees to retain the services of members of any such category.

“(e) Authority To Engage Independent Counsel and Other Advisors.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of independent counsel and other advisers meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent counsel and other advisers. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of such independent counsel and other advisers, and shall not otherwise affect the compensation committee’s ability or obligation to exercise its own judgment in fulfillment of its duties.

“(f) Funding.—Each issuer shall provide for appropriate funding, as determined by the compensation committee, in its capacity as a committee of the board of directors, for payment of compensation—

“(1) to any compensation consultant to the compensation committee that meets the standards
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for independence promulgated pursuant to sub-
section (e); and

“(2) to any independent counsel or other ad-
viser to the compensation committee.”.

(b) STUDY AND REVIEW REQUIRED.—

(1) IN GENERAL.—The Securities and Ex-
change Commission shall conduct a study and review
of the use of compensation consultants meeting the
standards for independence promulgated pursuant to
section 10B(c) of the Securities Exchange Act of
1934 (as added by subsection (a)), and the effects
of such use.

(2) REPORT TO CONGRESS.—Not later than 2
years after the rules required by the amendment
made by this section take effect, the Commission
shall submit a report to the Congress on the results
of the study and review required by this paragraph.

SEC. 2004. ENHANCED COMPENSATION STRUCTURE RE-
PORTING TO REDUCE PERVERSE INCEN-
TIVES.

(a) ENHANCED DISCLOSURE AND REPORTING OF
COMPENSATION ARRANGEMENTS.—

(1) IN GENERAL.—Not later than 9 months
after the date of enactment of this title, the appro-
priate Federal regulators jointly shall prescribe regu-
lations to require each covered financial institution
to disclose to the appropriate Federal regulator the
structures of all incentive-based compensation ar-
rangements offered by such covered financial institu-
tions sufficient to determine whether the compensa-
tion structure—

(A) is aligned with sound risk manage-
ment;

(B) is structured to account for the time
horizon of risks; and

(C) meets such other criteria as the appro-
priate Federal regulators jointly may determine
to be appropriate to reduce unreasonable incen-
tives offered by such institutions for employees
to take undue risks that—

(i) could threaten the safety and
soundness of covered financial institutions;
or

(ii) could have serious adverse effects
on economic conditions or financial sta-

(2) RULES OF CONSTRUCTION.—Nothing in
this subsection shall be construed as requiring the
reporting of the actual compensation of particular
individuals. Nothing in this subsection shall be con-
strued to require a covered financial institution that
does not have an incentive-based payment arrange-
ment to make the disclosures required under this
subsection.

(b) Prohibition on Certain Compensation Ar-
rangements.—Not later than 9 months after the date
of enactment of this title, and taking into account the fac-
tors described in subparagraphs (A), (B), and (C) of sub-
section (a)(1), the appropriate Federal regulators shall
jointly prescribe regulations that prohibit any incentive-
based payment arrangement, or any feature of any such
arrangement, that the regulators determine encourages in-
appropriate risks by covered financial institutions that—

(1) could threaten the safety and soundness of
covered financial institutions; or

(2) could have serious adverse effects on eco-
nomic conditions or financial stability.

(c) Enforcement.—The provisions of this section
shall be enforced under section 505 of the Gramm-Leach-
Bliley Act and, for purposes of such section, a violation
of this section shall be treated as a violation of subtitle
A of title V of such Act.

(d) Definitions.—As used in this section—

(1) the term “appropriate Federal regulator”

means—
(A) the Board of Governors of the Federal Reserve System;

(B) the Office of the Comptroller of the Currency;

(C) the Board of Directors of the Federal Deposit Insurance Corporation;

(D) the Director of the Office of Thrift Supervision;

(E) the National Credit Union Administration Board;

(F) the Securities and Exchange Commission; and

(G) the Federal Housing Finance Agency;

and

(2) the term “covered financial institution” means—

(A) a depository institution or depository institution holding company, as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) a broker-dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o);

(C) a credit union, as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act;
(D) an investment advisor, as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11));

(E) the Federal National Mortgage Association;

(F) the Federal Home Loan Mortgage Corporation; and

(G) any other financial institution that the appropriate Federal regulators, jointly, by rule, determine should be treated as a covered financial institution for purposes of this section.

(e) EXEMPTION FOR CERTAIN FINANCIAL INSTITUTIONS.—The requirements of this section shall not apply to covered financial institutions with assets of less than $1,000,000,000.

(f) LIMITATION.—No regulation promulgated pursuant to this section shall be allowed to require the recovery of incentive-based compensation under compensation arrangements in effect on the date of enactment of this title, provided such compensation agreements are for a period of no more than 24 months. Nothing in this title shall prevent or limit the recovery of incentive-based compensation under any other applicable law.

(g) GAO STUDY.—

(1) STUDY REQUIRED.—
(A) IN GENERAL.—The Comptroller General of the United States shall carry out a study to determine whether there is a correlation between compensation structures and excessive risk taking.

(B) FACTORS TO CONSIDER.—In carrying out the study required under subparagraph (A), the Comptroller General shall—

(i) consider compensation structures used by companies from 2000 to 2008; and

(ii) compare companies that failed, or nearly failed but for government assistance, to companies that remained viable throughout the housing and credit market crisis of 2007 and 2008, including the compensation practices of all such companies.

(C) DETERMINING COMPANIES THAT FAILED OR NEARLY FAILED.—In determining whether a company failed, or nearly failed but for government assistance, for purposes of subparagraph (B)(ii), the Comptroller General shall focus on—

(i) companies that received exceptional assistance under the Troubled Asset
Relief Program under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.) or other forms of significant government assistance, including under the Automotive Industry Financing Program, the Targeted Investment Program, the Asset Guarantee Program, and the Systemically Significant Failing Institutions Program;

(ii) the Federal National Mortgage Association;

(iii) the Federal Home Loan Mortgage Corporation; and

(iv) companies that participated in the Security and Exchange Commission’s Consolidated Supervised Entities Program as of January 2008.

(2) REPORT.—Not later than the end of the 1-year period beginning on the date of the enactment of this title, the Comptroller General shall issue a report to the Congress containing the results of the study required under paragraph (1).
TITLE III—DERIVATIVE MARKETS TRANSPARENCY AND ACCOUNTABILITY ACT

SEC. 3001. SHORT TITLE.

This title may be cited as the “Derivative Markets Transparency and Accountability Act of 2009”.

SEC. 3002. REVIEW OF REGULATORY AUTHORITY.

(a) Consultation.—

(1) CFTC.—Before commencing any rulemaking or issuing an order regarding swaps, swap dealers, major swap participants, swap repositories, persons associated with a swap dealer or major swap participant, eligible contract participants, or swap execution facilities pursuant to subtitle A, the Commodity Futures Trading Commission shall consult with the Securities and Exchange Commission and the Prudential Regulators.

(2) SEC.—Before commencing any rulemaking or issuing an order regarding security-based swaps, security-based swap dealers, major security-based swap participants, security-based swap repositories, persons associated with a security-based swap dealer or major security-based swap participant, eligible contract participants with regard to security-based swaps, or swap execution facilities pursuant to sub-
title B, the Securities and Exchange Commission shall consult with the Commodity Futures Trading Commission and the Prudential Regulators.

(3) In developing and promulgating rules or orders pursuant to this subsection, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall consider each other’s views and the views of the Prudential Regulators.

(4) In adopting a rule or order described in paragraph (1) or (2), the Commodity Futures Trading Commission and the Securities and Exchange Commission shall treat functionally or economically similar products or entities similarly.

(5) Paragraph (4) shall not be construed to require the Commodity Futures Trading Commission or the Securities Exchange Commission to adopt a rule or order that treats functionally or economically similar products or entities identically.

(b) LIMITATION.—

(1) CFTC.—Nothing in this title, unless specifically provided, shall be construed to confer jurisdiction on the Commodity Futures Trading Commission to issue a rule, regulation, or order providing for oversight or regulation of—

(A) security-based swaps; or
(B) with regard to their activities or functions concerning security-based swaps—

(i) security-based swap dealers;

(ii) major security-based swap participants;

(iii) security-based swap repositories;

(iv) persons associated with a security-based swap dealer or major security-based swap participant;

(v) eligible contract participants with respect to security-based swaps; or

(vi) swap execution facilities.

(2) SEC.—Nothing in this title, unless specifically provided, shall be construed to confer jurisdiction on the Securities and Exchange Commission to issue a rule, regulation, or order providing for oversight or regulation of—

(A) swaps; or

(B) with regard to their activities or functions concerning swaps—

(i) swap dealers;

(ii) major swap participants;

(iii) swap repositories;

(iv) persons associated with a swap dealer or major swap participant;
(v) eligible contract participants with respect to swaps; or

(vi) swap execution facilities.

(c) OBJECTION TO COMMISSION REGULATION.—

(1) FILING OF PETITION FOR REVIEW.—If either Commission referred to in this section believes that a final rule, regulation, or order of the other such Commission conflicts with subsection (a)(4) or (b), then the complaining Commission may obtain review thereof in the United States Court of Appeals for the District of Columbia Circuit by filing in the court, not later than 60 days after the date of publication of the final rule, regulation, or order, a written petition requesting that the rule, regulation, or order be set aside. Any such proceeding shall be expedited by the Court of Appeals.

(2) TRANSMITTAL OF PETITION AND RECORD.—A copy of a petition described in paragraph (1) shall be transmitted not later than 1 business day after filing by the complaining Commission to the Secretary of the responding Commission. On receipt of the petition, the responding Commission shall file with the court a copy of the rule, regulation, or order under review and any documents re-
ferred to therein, and any other materials prescribed
by the court.

(3) STANDARD OF REVIEW.—The court, giving
deference to the views of neither Commission, shall
determine to affirm or set aside a rule, regulation,
or order of the responding Commission under this
subsection, based on the determination of the court,
as to whether the rule, regulation, or order is in con-
fiict with subsection (a)(4) or (b), as applicable.

(4) JUDICIAL STAY.—The filing of a petition by
the complaining Commission pursuant to paragraph
(1) shall operate as a stay of the rule, regulation, or
order, until the date on which the determination of
the court is final (including any appeal of the deter-
mination).

(d) DEFINITIONS.—In this section, the terms “Pru-
dential Regulators”, “swap”, “swap dealer”, “major swap
participant”, “swap repository”, “person associated with
a swap dealer or major swap participant”, “eligible con-
tract participant”, “swap execution facility”, “security-
based swap”, “security-based swap dealer”, “major secu-
riaty-based swap participant”, “security-based swap reposi-
tory”, and “person associated with a security-based swap
dealer or major security-based swap participant” shall
have the meanings provided, respectively, in the Com-
modity Exchange Act, including any modification of the meanings under section 3101(b) of this Act.

(c)(1) Notwithstanding subsections (b) and (e), the Commodity Futures Trading Commission and the Securities Exchange Commission shall jointly adopt rules to—

(A) define the terms “security-based swap agreement” in section 3(a)(76) of the Securities Exchange Act of 1934 and “swap” in section 1a(35)(A)(v) of the Commodity Exchange Act;

(B) require the maintenance of records of all activities related to transactions defined in subparagraph (A) that are not cleared; and

(C) make available to the Securities and Exchange Commission information relating to transactions defined in subparagraph (A) that are uncleared.

(2) In the event that the Commodity Futures Trading Commission and the Securities Exchange Commission fail to jointly prescribe rules pursuant to paragraph (1) in a timely manner, at the request of either Commission, the Financial Services Oversight Council shall resolve the dispute—

(A) within a reasonable time after receiving the request;
(B) after consideration of relevant information provided by each Commission; and

(C) by agreeing with one of the Commissions regarding the entirety of the matter or by deter-
mining a compromise position.

SEC. 3003. INTERNATIONAL HARMONIZATION.

(a) In order to promote effective and consistent global regulation of contracts of sale of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Prudential Regulators (as defined in section 1a(42) of the Commodity Exchange Act), as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of contracts of sale of swaps and security-based swaps, and may agree to such information-sharing arrangements as may be deemed to be necessary or appro-
priate in the public interest or for the protection of inves-
tors, swap counterparties, and security-based swap counter-parties.

(b) In order to promote effective and consistent global regulation of contracts of sale of a commodity for future delivery, the Commodity Futures Trading Commission shall consult and coordinate with foreign regulatory au-
thorities on the establishment of consistent international
standards with respect to the regulation of contracts of sale of a commodity for future delivery, and may agree to such information-sharing arrangements as may be deemed necessary or appropriate in the public interest for the protection users of contracts of sale of a commodity for future delivery.

SEC. 3004. PROHIBITION AGAINST GOVERNMENT ASSISTANCE.

(a) IN GENERAL.—No provision of this title shall be construed to authorize Federal assistance to support clearing operations or liquidation of a derivatives clearing organization described in the Commodity Exchange Act or a clearing agency described in the Securities Exchange Act of 1934, except where explicitly authorized by an Act of Congress.

(b) DEFINITION.—For the purposes of this section, the term “Federal assistance” means the use of public funds for the purposes of—

(1) making loans to, or purchasing any debt obligation of, a derivatives clearing organization, a clearing agency, or a subsidiary of either;

(2) purchasing assets of a derivatives clearing organization, a clearing agency, or a subsidiary of either;
(3) assuming or guaranteeing the obligations of 
a derivatives clearing organization, a clearing agen-
cy, or a subsidiary of either; or

(4) acquiring any type of equity interest or se-
curity of a derivatives clearing organization, a clear-
ing agency, or a subsidiary of either.

SEC. 3005. STUDIES.

(a) Study on Effects of Position Limits on 
Trading on Exchanges in the United States.—

(1) Study.—The Commodity Futures Trading
Commission, in consultation with each entity that is 
a designated contract market under the Commodity 
Exchange Act, shall conduct a study of the effects 
(if any) of the position limits imposed pursuant to 
the other provisions of this title on excessive specula-
tion and on the movement of transactions from ex-
changes in the United States to trading venues out-
side the United States.

(2) Report to the Congress.—Within 12 
months after the imposition of position limits pursu-
ant to the other provisions of this title, the Com-
modity Futures Trading Commission, in consultation 
with each entity that is a designated contract mar-
ket under the Commodity Exchange Act, shall sub-
mit to the Congress a report on the matters de-
scribed in paragraph (1).

(3) Within 30 legislative days after the submis-
sion to the Congress of the report described in para-
graph (2), the Committee on Agriculture of the
House of Representatives shall hold a hearing exam-
ining the findings of the report.

(4) In addition to the study required in para-
graph (1), the Chairman of the Commodity Futures
Trading Commission shall prepare and submit to the
Congress biennial reports on the growth or decline
of the derivatives markets in the United States and
abroad, which shall include assessments of the
causes of any such growth or decline, the effective-
ness of regulatory regimes in managing systemic
risk, a comparison of the costs of compliance at the
time of the report for market participants subject to
regulation by the United States with the costs of
compliance in December 2008 for the market par-
ticipants, and the quality of the available data. In
preparing the report, the Chairman shall solicit the
views of, consult with, and address the concerns
raised by, market participants, regulators, legisla-
tors, and other interested parties.
(b) Study on Feasibility of Requiring Use of Standardized Algorithmic Descriptions for Financial Derivatives.—

(1) In general.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall conduct a joint study of the feasibility of requiring the derivatives industry to adopt standardized computer-readable algorithmic descriptions which may be used to describe complex and standardized financial derivatives.

(2) Goals.—The algorithmic descriptions defined in the study shall be designed to facilitate computerized analysis of individual derivative contracts and to calculate net exposures to complex derivatives. The algorithmic descriptions shall be optimized for simultaneous use by:

(A) commercial users and traders of derivatives;

(B) derivative clearing houses, exchanges and electronic trading platforms;

(C) trade repositories and regulator investigations of market activities; and

(D) systemic risk regulators.

The study will also examine the extent to which the algorithmic description, together with standardized
and extensible legal definitions, may serve as the
binding legal definition of derivative contracts. The
study will examine the logistics of possible imple-
mentations of standardized algorithmic descriptions
for derivatives contracts. The study shall be limited
to electronic formats for exchange of derivative con-
tract descriptions and will not contemplate disclo-
sure of proprietary valuation models.

(3) INTERNATIONAL COORDINATION.—In con-
ducting the study, the Securities and Exchange
Commission and the Commodity Futures Trading
Commission shall coordinate the study with inter-
national financial institutions and regulators as ap-
propriate and practical.

(4) REPORT.—Within 8 months after the date
of the enactment of this Act, the Securities and Ex-
change Commission and the Commodity Futures
Trading Commission shall jointly submit to the
Committees on Agriculture and on Financial Serv-
ices of the House of Representatives and the Com-
mittees on Agriculture, Nutrition, and Forestry and
on Banking, Housing, and Urban Affairs of the Sen-
ate a written report which contains the results of the
study required by paragraphs (1) through (3).
(c) Study of Desirability and Feasibility of Establishing Single Regulator for All Transactions Involving Financial Derivatives.—

(1) In general.—The Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall conduct a joint study of the desirability and feasibility of establishing, by January 1, 2012, a single regulator for all transactions involving financial derivatives.

(2) Report to the Congress.—Not later than December 1, 2010, Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs of the Senate a written report that contains the results of the study required by paragraph (1).

SEC. 3006. RECOMMENDATIONS FOR CHANGES TO INSOLVENCY LAWS.

Not later than 180 days after the date of the enactment of this Act, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and
the Prudential Regulators (as defined in section 1a of the Commodity Exchange Act, as amended by section 3111 of this Act) shall transmit to Congress recommendations for legislative changes to the Federal insolvency laws—

(1) in order to enhance the legal certainty with respect to swap participants clearing non-proprietary swap positions with a swap clearinghouse, including—

(A) customer rights to recover margin deposits or custodial property held at or through an insolvent swap clearinghouse, or clearing participant; and

(B) the enforceability of clearing rules relating to the portability of customer swap positions (and associated margin) upon the insolvency of a clearing participant;

(2) to clarify and harmonize the insolvency law framework applicable to entities that are both commodity brokers (as defined in section 101(6) of title 11, United States Code) and registered brokers or dealers (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); and

(3) to facilitate the portfolio margining of securities and commodity futures and options positions held through entities that are both futures commiss-
sion merchants (as defined in section 1a of the Com-
mmodity Exchange Act) and registered brokers or
dealers (as defined in section 3 of the Securities Ex-
change Act of 1934 (15 U.S.C. 78c(a))).

SEC. 3007. ABUSIVE SWAPS.

The Commodity Futures Trading Commission and
the Securities and Exchange Commission may, by rule or
order, jointly collect information as may be necessary con-
cerning the markets for any types of swap (as defined in
section 1a(35) of the Commodity Exchange Act) or secu-
rity-based swap (as defined in section 1a(38) of such Act)
and jointly issue a report with respect to any types of
swaps or security-based swaps which the Commodity Fu-
tures Trading Commission and the Securities and Ex-
change Commission find are detrimental to the stability
of a financial market or of participants in a financial mar-
ket.

SEC. 3008. AUTHORITY TO PROHIBIT PARTICIPATION IN
SWAP ACTIVITIES.

If the Commodity Futures Trading Commission or
the Securities and Exchange Commission determines that
the regulation of swaps or security-based swaps markets
in a foreign country undermines the stability of the United
States financial system, either Commission, in consulta-
tion with the Secretary of the Treasury, may prohibit an
entity domiciled in that country from participating in the
United States in any swap or security-based swap activi-
ties.

SEC. 3009. MEMORANDUM.

(a)(1) The Commodity Futures Trading Commission
and the Federal Energy Regulatory Commission shall, not
later than 180 days after the date of the enactment of
this section, negotiate a memorandum of understanding
to establish procedures for—

(A) applying their respective authorities in a
manner so as to ensure effective and efficient regula-
tion in the public interest;

(B) resolving conflicts concerning overlapping
jurisdiction between the two agencies; and

(C) avoiding, to the extent possible, conflicting
or duplicative regulation.

(2) Such memorandum and any subsequent amend-
ments to the memorandum shall be promptly submitted
to the appropriate committees of Congress.

(b) The Commodity Futures Trading Commission
and the Federal Energy Regulatory Commission shall, not
later than 180 days after the date of the enactment of
this section, negotiate a memorandum of understanding
to share information that may be requested where either
Commission is conducting an investigation into potential
manipulation, fraud, or market power abuse in markets subject to such Commission’s regulation or oversight. Shared information shall remain subject to the same restrictions on disclosure applicable to the Commission initially holding the information.

Subtitle A—Regulation of Swap Markets

SEC. 3101. DEFINITIONS.

(a) Amendments to Definitions in the Commodity Exchange Act.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) in paragraph (12)(A)—

(A) in clause (vii)(III), by striking “$25,000,000” and inserting “$50,000,000”; and

(B) in clause (xi), by striking “total assets in an amount” and inserting “amounts invested on a discretionary basis”; 

(2) in paragraph (29)—

(A) in subparagraph (D), by striking “and”; 

(B) by redesignating subparagraph (E) as subparagraph (G); and 

(C) by inserting after subparagraph (D) the following:
“(E) a swap execution facility registered under section 5h;
“(F) a swap repository; and”; and

(3) by adding at the end the following:
“(35) SWAP.—
“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘swap’ means any agreement, contract, or transaction that—

“(i) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

“(ii) provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

“(iii) provides on an executory basis for the exchange, on a fixed or contingent
basis, of 1 or more payments based on the
value or level of 1 or more interest or other
rates, currencies, commodities, securities,
instruments of indebtedness, indices, quan-
titative measures, or other financial or eco-
monic interests or property of any kind, or
any interest therein or based on the value
thereof, and that transfers, as between the
parties to the transaction, in whole or in
part, the financial risk associated with a
future change in any such value or level
without also conveying a current or future
direct or indirect ownership interest in an
asset (including any enterprise or invest-
ment pool) or liability that incorporates the
financial risk so transferred, and includes
any agreement, contract, or transaction
commonly known as an interest rate swap,
a rate floor, rate cap, rate collar, cross-curr-
ency rate swap, basis swap, currency
swap, total return swap, equity index swap,
equity swap, debt index swap, debt swap,
credit spread, credit default swap, credit
swap, weather swap, energy swap, metal
swap, agricultural swap, emissions swap, or commodity swap;

“(iv) is, or in the future becomes, commonly known to the trade as a swap;

“(v) meets the definition of ‘swap agreement’ as defined in section 206A of the Gramm-Leach-Bliley Act of which a material term of which is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein; or

“(vi) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v).

“(B) EXCLUSIONS.—The term ‘swap’ does not include—

“(i) any contract of sale of a commodity for future delivery (or any option on such a contract) or security futures product traded on or subject to the rules of any board of trade designated as a contract market under section 5 or 5f;

“(ii) any sale of a nonfinancial commodity or security for deferred shipment or
delivery, so long as the transaction is intended to be physically settled;

“(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

“(iv) any put, call, straddle, option, or privilege relating to foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

“(v) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a fixed basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

“(vi) any agreement, contract, or transaction providing for the purchase or
sale of 1 or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless the agreement, contract, or transaction predicates the purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

“(vii) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

“(viii) any agreement, contract, or transaction that is—

“(I) based on a security; and

“(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933) (15 U.S.C. 77b(a)(11)) by the issuer of the security for the purposes of raising capital, unless the
agreement, contract, or transaction is entered into to manage a risk associated with capital-raising;

“(ix) any foreign exchange forward;

“(x) any foreign exchange swap;

“(xi) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the United States government or an agency of the United States government that is expressly backed by the full faith and credit of the United States; and

“(xii) any security-based swap.

“(C) Rule of Construction Regarding Master Agreements.—The term ‘swap’ shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a swap only with respect to each agree-
ment, contract, or transaction under the master agreement that is a swap pursuant to subpara-

``(D) FOREIGN EXCHANGE SWAPS AND FORWARDS EXCEPTION.—
``

``(i) IN GENERAL.—Notwithstanding clauses (ix) and (x) of subparagraph (B), foreign exchange swaps and foreign exchange forwards shall be considered swaps under this paragraph if the Commission makes a determination that either foreign exchange swaps or foreign exchange forwards or both should be regulated as swaps under this Act and the Secretary concurs with such determination.
``

``(ii) SCOPE OF AUTHORITY.—
``

``(I) The Commission and the Secretary shall jointly determine which of the authorities under this Act regarding swaps the Commission shall exercise over foreign exchange swaps and foreign exchange forwards. Such authorities shall subsequently be exercised solely by the Commission. The Commission and the Secretary
may jointly amend any previously
made determination under this sub-
clause.

“(II) Notwithstanding clause (i),
the Commission and the Secretary of
the Treasury may determine that ei-
ther foreign exchange swaps or for-
gain exchange forwards or both should
not be regulated as swaps under this
Act if such determination is jointly
made.

“(iii) REPORTING.—Notwithstanding
clauses (ix) and (x) of subparagraph (B)
and subparagraph (D)(ii), all foreign ex-
change swaps and foreign exchange for-
wards shall be reported to either a swap
repository, or, if there is no swap reposi-
tory that would accept such swaps or for-
wards, to the Commission pursuant to sec-
tion 4r within such time period as the
Commission may by rule or regulation pre-
scribe.

“(iv) SECRETARY.—For purposes of
this subparagraph only, the term ‘Sec-
retary’ means the Secretary of the Treasury.

“(36) Board.—The term ‘Board’ means the Board of Governors of the Federal Reserve System.

“(37) Security-based swap.—The term ‘security-based swap’ has the same meaning as in section 3(a)(68) of the Securities and Exchange Act of 1934.

“(38) Swap dealer.—

“(A) In general.—The term ‘swap dealer’ means any person who—

“(i) holds itself out as a dealer in swaps;

“(ii) makes a market in swaps;

“(iii) regularly engages in the purchase of swaps and their resale to customers in the ordinary course of a business; or

“(iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps.

“(B) A person may be designated a swap dealer for a single type or single class or cat-
category of swap and considered not a swap dealer for other types, classes, or categories of swaps.

“(C) DE MINIMUS EXCEPTION.—The Commission shall make a determination to exempt from designation as a swap dealer an entity that engages in a de minimus amount of swap dealing in connection with transactions with or on the behalf of its customers.

“(39) MAJOR SWAP PARTICIPANT.—

“(A) IN GENERAL.—The term ‘major swap participant’ means any person who is not a swap dealer, and—

“(i) maintains a substantial net position in outstanding swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk, including operating and balance sheet risk; or

“(ii) whose outstanding swaps create substantial net counterparty exposure among the aggregate of its counterparties that could expose those counterparties to significant credit losses.

“(B) DEFINITION OF SUBSTANTIAL NET POSITION.—The Commission shall define by
rule or regulation the terms ‘substantial net position’, ‘substantial net counterparty exposure’, and ‘significant credit losses’ at thresholds that the Commission determines prudent for the effective monitoring, management and oversight of entities which are systemically important or can significantly impact the financial system through counterparty credit risk. In setting the definitions, the Commission shall consider the person’s relative position in uncleared as opposed to cleared swaps.

“(C) A person may be designated a major swap participant for 1 or more individual types of swaps without being classified as a major swap participant for all classes of swaps.

“(40) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term ‘major security-based swap participant’ has the same meaning as in section 3(a)(67) of the Securities Exchange Act of 1934.

“(41) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal banking agency’ has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

“(42) PRUDENTIAL REGULATOR.—The term ‘Prudential Regulator’ means—
“(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

“(i) a State-chartered bank that is a member of the Federal Reserve System; or

“(ii) a State-chartered branch or agency of a foreign bank;

“(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

“(i) a national bank; or

“(ii) a federally chartered branch or agency of a foreign bank; and

“(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is a State-chartered bank that is not a member of the Federal Reserve System.

“(43) SECURITY-BASED SWAP DEALER.—The term ‘security-based swap dealer’ has the same meaning as in section 3(a)(71) of the Securities Exchange Act of 1934.
“(44) Foreign exchange forward.—The term ‘foreign exchange forward’ means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed at the inception of the contract.

“(45) Foreign exchange swap.—The term ‘foreign exchange swap’ means a transaction that solely involves the exchange of 2 different currencies on a specific date at a fixed rate agreed at the inception of the contract, and a reverse exchange of the same 2 currencies at a date further in the future and at a fixed rate agreed at the inception of the contract.

“(46) Person associated with a security-based swap dealer or major security-based swap participant.—The term ‘person associated with a security-based swap dealer or major security-based swap participant’ or ‘associated person of a security-based swap dealer or major security-based swap participant’ has the same meaning as in section 3(a)(70) of the Securities Exchange Act of 1934.

“(47) Person associated with a swap dealer or major swap participant.—The term ‘person associated with a swap dealer or major swap
participant’ or ‘associated person of a swap dealer or major swap participant’ means any partner, officer, director, or branch manager of a swap dealer or major swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a swap dealer or major swap participant, or any employee of a swap dealer or major swap participant, except that any person associated with a swap dealer or major swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of the term other than for purposes of section 4s(b)(6).

“(48) Swap repository.—The term ‘swap repository’ means any person that collects, calculates, prepares or maintains information or records with respect to transactions or positions in or the terms and conditions of swaps entered into by third parties.

“(49) Swap execution facility.—The term ‘swap execution facility’ means a person or entity that facilitates the execution or trading of swaps between two persons through any means of interstate commerce, but which is not a designated contract
market, including any electronic trade execution or voice brokerage facility.

“(50) DERIVATIVE.—The term ‘derivative’ means—

“(A) a contract of sale of a commodity for future delivery; or

“(B) a swap.”.

(b) AUTHORITY TO FURTHER DEFINE TERMS.—The Commodity Futures Trading Commission shall adopt a rule further defining the terms “swap”, “swap dealer”, “major swap participant”, and “eligible contract participant” for the purpose of including transactions and entities that have been structured to evade this title.

(c) EXEMPTIONS.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 4(c)) is amended by adding at the end the following: “The Commission shall not have the authority to grant exemptions from the provisions of sections 3101(a), 3101(c), 3104, 3105, 3106, 3107, 3109, 3110, 3113, 3115, 3120, and 3121 of the Derivative Markets Transparency and Accountability Act of 2009, except as expressly authorized under the provisions of that Act. Notwithstanding the preceding sentence, the Commodity Futures Trading Commission may exempt from any provision of the Commodity Exchange Act, pursuant to this subsection, an agreement, contract, or transaction that is
entered into pursuant to a tariff approved by the Federal
Energy Regulatory Commission, if the Commodity Fu-
tures Trading Commission determines that the exemption
would be consistent with the public interest, and shall con-
sider and not unreasonably deny any request made by the
Federal Energy Regulatory Commission for such an ex-
emption.”.

SEC. 3102. JURISDICTION.

(a) EXCLUSIVE JURISDICTION.—Section 2(a)(1) of
the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is
amended—

(1) in the 1st sentence of subparagraph (A)—

(A) by striking “(c) through (i)” and in-
serting “(c) and (f)”;

(B) by inserting “swaps, or” before “con-
tracts of sale”; 

(C) by striking “derivatives transaction
execution facility” and inserting “swap execu-
tion facility”; and

(D) by striking “5a” and inserting “5h”; 

and

(2) by adding at the end the following:

“(G)(i) Nothing in this paragraph shall
limit the jurisdiction conferred on the Securities
and Exchange Commission by the Derivative
Markets Transparency and Accountability Act of 2009 with regard to security-based swap agreements as defined pursuant to section 3002(e) of such Act, and security-based swaps.

“(ii) In addition to the authority of the Securities Exchange Commission described in clause (i), nothing in this subparagraph shall limit or affect any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i).

“(H)(i) Nothing in this Act shall limit or affect any statutory authority of the Federal Energy Regulatory Commission with respect to an agreement, contract, or transaction that is—

“(I) not executed, traded, or cleared on a registered entity or trading facility; and

“(II) entered into pursuant to a tariff or rate schedule approved by the Federal Energy Regulatory Commission.

“(ii) In addition to the authority of the Federal Energy Regulatory Commission described in clause (i), nothing in this subparagraph shall limit or affect any statutory authority of the Commission with respect to an agree-
ment, contract, or transaction described in clause (i).”.

(b) ADDITIONS.—Section 2(c)(2)(A) of such Act (7 U.S.C. 2(e)(2)(A)) is amended—

(1) in clause (i) by striking “or” at the end;

(2) by redesignating clause (ii) as clause (iii); and

(3) by inserting after clause (i) the following:

“(ii) a swap; or”.

(c) Section 12(e) of such Act (7 U.S.C. 16(e)) is amended—

(1) in paragraph (1)(B), by inserting “or (3)” after “paragraph (2)”;

(2) in paragraph (2), by striking subparagraphs (A) and (B) and inserting the following:

“(A) a swap; and

“(B) an agreement, contract, or transaction that is excluded from this Act under section 2(c) or 2(f) of this Act or title IV of the Commodity Futures Modernization Act of 2000 or exempted under section 4(c) of this Act (regardless of whether any such agreement, contract, or transaction is otherwise subject to this Act).”; and

(3) by adding at the end the following:
“(3) A swap may not be regulated as an insurance contract under State law.

“(4) The provisions of this Act relating to swaps that were enacted by the Derivative Markets Transparency and Accountability Act of 2009, including any rule or regulation thereunder, shall not apply to activities outside the United States unless those activities—

“(A) have a direct and significant connection with activities in or effect on United States commerce; or

“(B) contravene such rules or regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Derivative Markets Transparency and Accountability Act of 2009.”.

(d) Nothing in the Derivative Markets Transparency and Accountability Act of 2009 or the amendments to the Commodity Exchange Act made by such Act shall limit or affect any statutory enforcement authority of the Federal Energy Regulatory Commission pursuant to Section 222 of the Federal Power Act and Section 4A of the Natural Gas Act that existed prior to the date of enactment

SEC. 3103. CLEARING AND EXECUTION TRANSPARENCY.

(a) Clearing and Execution Transparency Requirements.—

(1) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by striking subsections (d), (e), (g), and (h).

(2)(A) Prior to the final effective dates in this title, a person may petition the Commodity Futures Trading Commission to remain subject to paragraphs (3) through (7) of section 2(h) of the Commodity Exchange Act.

(B) The Commodity Futures Trading Commission shall consider any petition submitted under subparagraph (A) in a prompt manner and may allow a person to continue operating subject to paragraphs (3) through (7) of section 2(h) of the Commodity Exchange Act for up to one year after the effective date of this subtitle.

(3) Section 2 of such Act (7 U.S.C. 2) is further amended by inserting after subsection (c) the following:

“(d) Swaps.—Nothing in this Act (other than subsections (a)(1)(A), (a)(1)(B), (e)(2)(A)(ii), (e), (f), (j),
and (k), sections 4a, 4b, 4b-1, 4e(a), 4e(b), 4o, 4r, 4s, 4t, 5, 5b, 5c, 5h, 6(e), 6(d), 6e, 6d, 8, 8a, 9, 12(e)(2), 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provisions of this Act as are applicable by their terms to registered entities and Commission registrants) governs or applies to a swap.

“(e) Limitation on Participation.—It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on or subject to the rules of a board of trade designated as a contract market under section 5.”.

(4) Section 2 of such Act (7 U.S.C. 2) is further amended by inserting after subsection (i) the following:

“(j) Clearing Requirement.—

“(1) In general.—

“(A) Standard for clearing.—A swap shall be submitted for clearing if a derivatives clearing organization that is registered under this Act will accept the swap for clearing, and the Commission has determined under paragraph (2)(B)(ii) that the swap is required to be cleared.
“(B) Open access.—The rules of a derivatives clearing organization described in subparagraph (A) shall—

“(i) prescribe that all swaps submitted to the derivatives clearing organization with the same terms and conditions are economically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization; and

“(ii) provide for non-discriminatory clearing of a swap executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility.

“(2) Commission review.—

“(A) Commission-initiated review.—

“(i) The Commission shall review each swap, or any group, category, type or class of swaps to make a determination as to whether the swap or group, category, type, or class of swaps should be required to be cleared.

“(ii) The Commission shall provide at least a 30-day public comment period re-
garding any determination made under clause (i).

“(B) SWAP SUBMISSIONS.—

“(i) A derivatives clearing organization shall submit to the Commission each swap, or any group, category, type or class of swaps that it plans to accept for clearing, and provide notice to its members (in a manner to be determined by the Commission) of the submission.

“(ii) The Commission shall—

“(I) make available to the public any submission received under clause (i);

“(II) review each submission made under clause (i), and determine whether the swap, or group, category, type, or class of swaps described in the submission is required to be cleared; and

“(III) provide at least a 30-day public comment period regarding its determination as to whether the clearing requirement under paragraph (1)(A) shall apply to the submission.
“(C) Deadline.—The Commission shall make its determination under subparagraph (B)(ii) not later than 90 days after receiving a submission made under subparagraph (B)(i), unless the submitting derivatives clearing organization agrees to an extension for the time limitation established under this subparagraph.

“(D) Determination.—

“(i) In reviewing a submission made under subparagraph (B), the Commission shall review whether the submission is consistent with section 5b(c)(2).

“(ii) In reviewing a swap, group of swaps, or class of swaps pursuant to subparagraph (A) or a submission made under subparagraph (B), the Commission shall take into account the following factors:

“(I) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.

“(II) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the con-
tract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

“(III) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract.

“(IV) The effect on competition, including appropriate fees and charges applied to clearing.

“(V) The existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or 1 or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.

“(iii) In making a determination under subparagraph (B)(ii) that the clearing requirement shall apply, the Commission may require such terms and condi-
tions to the requirement as the Commission determines to be appropriate.

“(E) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for a derivatives clearing organization’s submission for review, pursuant to this paragraph, of a swap, or a group, category, type or class of swaps, that it seeks to accept for clearing.

“(3) STAY OF CLEARING REQUIREMENT.—

“(A) After a determination pursuant to paragraph (2)(B), the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the swap (or the group, category, type or class of swaps) and the clearing arrangement.

“(B) DEADLINE.—The Commission shall complete a review undertaken pursuant to sub-paragraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group, category, type or class of swaps, agrees
to an extension of the time limitation established under this subparagraph.

“(C) Determination.—Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may—

“(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type or class of swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with paragraph (2)(D); or

“(ii) determine that the clearing requirement of paragraph (1) shall not apply to the swap, or group, category, type or class of swaps.

“(D) Rules.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a derivatives clearing organization’s clearing of a swap, or a group, category, type or class of swaps, that it has accepted for clearing.
“(4) Prevention of Evasion.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent evasions of this subsection.

“(5) Required Reporting.—

“(A) In General.—All swaps that are not accepted for clearing by any derivatives clearing organization shall be reported either to a swap repository described in section 21 or, if there is no repository that would accept the swap, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe. Counterparties to a swap may agree which counterparty will report the swap as required by this paragraph.

“(B) Swap Dealer Designation.—With regard to swaps where only 1 counterparty is a swap dealer, the swap dealer shall report the swap as required by this paragraph.

“(6) Reporting Transition Rules.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

“(A) Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap repository or the
Commission no later than 180 days after the effective date of this subsection; and

“(B) Swaps entered into on or after such date of enactment shall be reported to a registered swap repository or the Commission no later than the later of—

“(i) 90 days after such effective date;
or

“(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

“(7) CLEARING TRANSITION RULES.—

“(A) Swaps entered into before the date of the enactment of this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (6)(A).

“(B) Swaps entered into before application of the clearing requirement pursuant to this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (6)(B).

“(8) EXCEPTIONS.—
“(A) IN GENERAL.—The requirements of paragraph (1) shall not apply to a swap if one of the counterparties to the swap—

“(i) is not a swap dealer or major swap participant;

“(ii) is using swaps to hedge or mitigate commercial risk, including operating or balance sheet risk; and

“(iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps.

“(B) ABUSE OF EXCEPTION.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent abuse of the exemption in subparagraph (A) by swap dealers and major swap participants.

“(C) OPTION TO CLEAR.—The application of the clearing exception in subparagraph (A) is solely at the discretion of the counterparty to the swap that meets the conditions of clauses (i) through (iii) of subparagraph (A).

“(k) EXECUTION TRANSPARENCY.—
“(1) REQUIREMENT.—A swap that is subject to
the clearing requirement of subsection (j) shall not
be traded except on or through a board of trade des-
ignated as a contract market under section 5, or on
or through a swap execution facility registered under
section 5h, that makes the swap available for trad-
ing.

“(2) EXCEPTIONS.—The requirement of para-
graph (1) shall not apply to a swap if no designated
contract market or swap execution facility makes the
swap available for trading.

“(3) AGRICULTURAL SWAPS.—No person shall
offer to enter into, enter into or confirm the execu-
tion of, any swap in an agricultural commodity (as
defined by the Commission) that is subject to para-
graphs (1) and (2) except pursuant to a rule or reg-
ulation of the Commission allowing the swap under
such terms and conditions as the Commission shall
prescribe.

“(4) REQUIRED REPORTING.—If the exception
of paragraph (2) applies and there is no facility that
makes the swap available to trade, the counterpar-
ties shall comply with any recordkeeping and trans-
action reporting requirements that may be pre-
scribed by the Commission with respect to swaps subject to the requirements of paragraph (1).

“(5) EXCHANGE TRADING.—In adopting rules and regulations, the Commission shall endeavor to eliminate unnecessary impediments to the trading on boards of trade designated as contract markets under section 5 of contracts, agreements, or transactions that would be security-based swaps but for the trading of such contracts, agreements or transactions on such a designated contract market.”.

(b) DERIVATIVES CLEARING ORGANIZATIONS.—

(1) Subsections (a) and (b) of section 5b of such Act (7 U.S.C. 7a–1) are amended to read as follows:

“(a) REGISTRATION REQUIREMENT.—

“(1) IN GENERAL.—It shall be unlawful for any entity, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization described in section 1a(10) of this Act with respect to—

“(A) a contract of sale of a commodity for future delivery (or option on such a contract) or
option on a commodity, in each case unless the contract or option is—

“(i) excluded from this Act by section 2(a)(1)(C)(i), 2(e), or 2(f); or

“(ii) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

“(B) a swap.

“(2) Existing banks and clearing agencies.—A bank or a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 required to be registered as a derivatives clearing organization under this section is deemed to be registered under this section to the extent that the bank cleared swaps, as defined in this Act, as a multilateral clearing organization or the clearing agency cleared swaps, as defined in this Act, before the enactment of this subsection. A bank to which this paragraph applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the bank, be converted into a State corporation, partnership, limited liability company, or other similar legal form.
pursuant to a plan of conversion, if the conversion
is not in contravention of applicable State law.

“(b) VOLUNTARY REGISTRATION.—A person that
clears agreements, contracts, or transactions that are not
required to be cleared under this Act may register with
the Commission as a derivatives clearing organization.”.

(2) Section 5b of such Act (7 U.S.C. 7a–1) is
amended by adding at the end the following:

“(g) RULES.—Not later than 1 year after the date
of the enactment of the Derivative Markets Transparency
and Accountability Act of 2009, the Commission shall
adopt rules governing persons that are registered as de-
rivatives clearing organizations for swaps under this sub-
section.

“(h) EXEMPTIONS.—

“(1) IN GENERAL.—The Commission may ex-
empt, conditionally or unconditionally, a derivatives
clearing organization from registration under this
section for the clearing of swaps if the Commission
finds that the derivatives clearing organization is
subject to comparable, comprehensive supervision
and regulation on a consolidated basis by a Pruden-
tial Regulator or the appropriate governmental au-
thorities in the organization’s home country.
“(2) A person that is required to be registered as a derivatives clearing organization under this section, whose principal business is clearing securities and options on securities and which is a clearing agency registered with the Securities Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), shall be unconditionally exempt from registration under this section solely for the purpose of clearing swaps, unless the Commission finds that the clearing agency is not subject to comparable, comprehensive supervision and regulation by the Securities and Exchange Commission.

“(i) Designation of Compliance Officer.—

“(1) In general.—Each derivatives clearing organization shall designate an individual to serve as a compliance officer.

“(2) Duties.—The compliance officer—

“(A) shall report directly to the board or to the senior officer of the derivatives clearing organization; and

“(B) shall—

“(i) review compliance with the core principles in section 5b(c)(2).

“(ii) in consultation with the board of the derivatives clearing organization, a
body performing a function similar to that of a board, or the senior officer of the derivatives clearing organization, resolve any conflicts of interest that may arise;

“(iii) be responsible for administering the policies and procedures required to be established pursuant to this section; and

“(iv) ensure compliance with this Act and the rules and regulations issued under this Act; and

“(C) shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. The procedures shall establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

“(3) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the derivatives clearing organization with this Act and the policies and procedures of the derivatives clearing organization, including the code of ethics and conflict of interest policies of the derivatives clearing organization, in accord-
ance with rules prescribed by the Commission. The compliance report shall accompany the financial reports of the derivatives clearing organization that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.”.

(3) Section 5b(c)(2) of such Act (7 U.S.C. 7a–1(e)(2)) is amended to read as follows:

“(2) Core principles for derivatives clearing organizations.—

“(A) In general.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with the core principles specified in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, a derivatives clearing organization shall have reasonable discretion in establishing the manner in which the organization complies with the core principles.

“(B) Financial resources.—
“(i) The derivatives clearing organization shall have adequate financial, operational, and managerial resources to discharge the responsibilities of the organization.

“(ii) The financial resources of the derivatives clearing organization shall at a minimum exceed the total amount that would—

“(I) enable the organization to meet the financial obligations of the organization to the members of, and participants in, the organization, notwithstanding a default by the member or participant creating the largest financial exposure for the organization in extreme but plausible market conditions; and

“(II) enable the organization to cover the operating costs of the organization for a period of 1 year, calculated on a rolling basis.

“(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—
“(i) The derivatives clearing organization shall establish—

“(I) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the organization) for members of and participants in the organization; and

“(II) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the organization for clearing.

“(ii) The derivatives clearing organization shall have procedures in place to verify that participation and membership requirements are met on an ongoing basis.

“(iii) The participation and membership requirements of the derivatives clearing organization shall be objective, publicly disclosed, and permit fair and open access.

“(D) Risk management.—

“(i) The derivatives clearing organization shall have the ability to manage the risks associated with discharging the re-
sponsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.

“(ii) The derivatives clearing organization shall measure the credit exposures of the organization to the members of, and participants in, the organization at least once each business day and shall monitor the exposures throughout the business day.

“(iii) Through margin requirements and other risk control mechanisms, a derivatives clearing organization shall limit the exposures of the organization to potential losses from defaults by the members of, and participants in, the organization so that the operations of the organization would not be disrupted and non-defaulting members or participants would not be exposed to losses that they cannot anticipate or control.

“(iv) Margin required from all members and participants shall be sufficient to cover potential exposures in normal market conditions.
“(v) The models and parameters used in setting margin requirements shall be risk-based and reviewed regularly.

“(E) SETTLEMENT PROCEDURES.—The derivatives clearing organization shall—

“(i) complete money settlements on a timely basis, and not less than once each business day;

“(ii) employ money settlement arrangements that eliminate or strictly limit the exposure of the organization to settlement bank risks, such as credit and liquidity risks from the use of banks to effect money settlements;

“(iii) ensure money settlements are final when effected;

“(iv) maintain an accurate record of the flow of funds associated with each money settlement;

“(v) have the ability to comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations; and

“(vi) for physical settlements, establish rules that clearly state the obligations
of the organization with respect to physical deliveries, including how risks from these obligations shall be identified and managed.

“(F) TREATMENT OF FUNDS.—

“(i) The derivatives clearing organization shall have standards and procedures designed to protect and ensure the safety of member and participant funds and assets.

“(ii) The derivatives clearing organization shall hold member and participant funds and assets in a manner whereby risk of loss or of delay in the access of the organization to the assets and funds is minimized.

“(iii) Assets and funds invested by the derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks.

“(G) DEFAULT RULES AND PROCEDURES.—

“(i) The derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and
safe management of events when members
or participants become insolvent or other-
wise default on their obligations to the or-
ganization.

“(ii) The default procedures of the de-
rivatives clearing organization shall be
clearly stated, and they shall ensure that
the organization can take timely action to
contain losses and liquidity pressures and
to continue meeting the obligations of the
organization.

“(iii) The default procedures shall be
publicly available.

“(H) RULE ENFORCEMENT.—The deriva-
tives clearing organization shall—

“(i) maintain adequate arrangements
and resources for the effective monitoring
and enforcement of compliance with rules
of the organization and for resolution of
disputes; and

“(ii) have the authority and ability to
discipline, limit, suspend, or terminate the
activities of a member or participant for
violations of rules of the organization.
“(I) System safeguards.—The derivatives clearing organization shall—

“(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

“(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the organization; and

“(iii) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

“(J) Reporting.—The derivatives clearing organization shall provide to the Commis-
sion all information necessary for the Commission to conduct oversight of the organization.

“(K) RECORDKEEPING.—The derivatives clearing organization shall maintain records of all activities related to the business of the organization as a derivatives clearing organization in a form and manner acceptable to the Commission for a period of 5 years.

“(L) PUBLIC INFORMATION.—

“(i) The derivatives clearing organization shall provide market participants with sufficient information to identify and evaluate accurately the risks and costs associated with using the services of the organization.

“(ii) The derivatives clearing organization shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) of the organization available to market participants.

“(iii) The derivatives clearing organization shall disclose publicly and to the Commission information concerning—
“(I) the terms and conditions of contracts, agreements, and transactions cleared and settled by the organization;

“(II) clearing and other fees that the organization charges the members of, and participants in, the organization;

“(III) the margin-setting methodology and the size and composition of the financial resource package of the organization;

“(IV) other information relevant to participation in the settlement and clearing activities of the organization; and

“(V) daily settlement prices, volume, and open interest for all contracts settled or cleared by the organization.

“(M) INFORMATION-SHARING.—The derivatives clearing organization shall—

“(i) enter into and abide by the terms of all appropriate and applicable domestic
and international information-sharing agreements; and

“(ii) use relevant information obtained from the agreements in carrying out the risk management program of the organization.

“(N) ANTITRUST CONSIDERATIONS.—The derivatives clearing organization shall avoid—

“(i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or

“(ii) imposing any material anti-competitive burden.

“(O) GOVERNANCE FITNESS STANDARDS.—

“(i) The derivatives clearing organization shall establish governance arrangements that are transparent in order to fulfill public interest requirements and to support the objectives of the owners of, and participants in, the organization.

“(ii) The derivatives clearing organization shall establish and enforce appropriate fitness standards for the directors, members of any disciplinary committee,
and members of the organization, and any other persons with direct access to the settlement or clearing activities of the organization, including any parties affiliated with any of the persons described in this subparagraph.

“(P) CONFLICTS OF INTEREST.—The derivatives clearing organization shall establish and enforce rules to minimize conflicts of interest in the decision-making process of the organization and establish a process for resolving the conflicts of interest.

“(Q) COMPOSITION OF THE BOARDS.—The derivatives clearing organization shall ensure that the composition of the governing board or committee includes market participants.

“(R) LEGAL RISK.—The derivatives clearing organization shall have a well founded, transparent, and enforceable legal framework for each aspect of its activities.”.

(4) Section 5b of such Act (7 U.S.C. 7a–1) is further amended by adding after subsection (i), as added by this section, the following:

“(j) REPORTING.—
“(1) IN GENERAL.—A derivatives clearing organization that clears swaps shall provide to the Commission all information determined by the Commission to be necessary to perform the responsibilities of the Commission under this Act. The Commission shall adopt data collection and maintenance requirements for swaps cleared by derivatives clearing organizations that are comparable to the corresponding requirements for swaps accepted by swap repositories and swaps traded on swap execution facilities. The Commission shall share the information, upon request, with the Board, the Securities and Exchange Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, and the Department of Justice or other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries that comply with the provisions of section 8.

“(2) PUBLIC INFORMATION.—A derivatives clearing organization that clears swaps shall provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to
comply with the public reporting requirements contained in section 8(j).

“(3) A derivatives clearing organization shall keep any such books and records relating to swaps defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission.”.

(5) Section 8(e) of such Act (7 U.S.C. 12(e)) is amended in the last sentence by inserting “central bank and ministries” after “department” each place it appears.

(c) LEGAL CERTAINTY FOR IDENTIFIED BANKING PRODUCTS.—

(1) REPEAL.—Sections 402(d), 404, 407, 408(b), and 408(c)(2) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(d), 27b, 27e, 27f(b), and 27f(c)(2)) are repealed.

(2) LEGAL CERTAINTY.—Section 403 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a) is amended to read as follows:

“SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.

“(a) EXCLUSION.—Except as provided in subsection (b) or (e)—

“(1) the Commodity Exchange Act shall not apply to, and the Commodity Futures Trading Com-
mission shall not exercise regulatory authority under such Act with respect to, an identified banking prod-
and
“(2) the definitions of ‘security-based swap’ in section 3(a)(68) of the Securities Exchange Act of 1934 and ‘security-based swap agreement’ in section 3(a)(76) of the Securities Exchange Act of 1934 do not include any identified banking product.
“(b) EXCEPTION.—An appropriate Federal banking agency may except an identified banking product of a bank under its regulatory jurisdiction from the exclusions in subsection (a) if the agency determines, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, that the product—
“(1) would meet the definition of swap in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)) or security-based swap in section 3(a)(68) of the Securities and Exchange Act of 1934; and
“(2) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act

“(c) EXCEPTION.—The exclusions in subsection (a) shall not apply to an identified banking product that—

“(1) is a product of a bank that is not under the regulatory jurisdiction of an appropriate Federal banking agency;

“(2) meets the definition of swap in section 1a(35) of the Commodity Exchange Act or security-based swap in section 3(a)(68) of the Securities and Exchange Act of 1934; and

“(3) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).”.

SEC. 3104. PUBLIC REPORTING OF AGGREGATE SWAP DATA.

Section 8 of the Commodity Exchange Act (7 U.S.C. 12) is amended by adding at the end the following:

“(j) PUBLIC REPORTING OF AGGREGATE SWAP DATA.—
“(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on swap trading volumes and positions from the sources set forth in paragraph (3).

“(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a derivatives clearing organization or a swap repository to carry out the public reporting described in paragraph (1).

“(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

“(A) derivatives clearing organizations pursuant to section 5b(j)(2); 

“(B) swap repositories pursuant to section 21(e)(3); and

“(C) reports received by the Commission pursuant to section 4r.”.

SEC. 3105. SWAP REPOSITORIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 20 the following:

“SEC. 21. SWAP REPOSITORIES.

“(a) REGISTRATION REQUIREMENT.—
“(1) IN GENERAL.—It shall be unlawful for any person, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap repository.

“(2) INSPECTION AND EXAMINATION.—Registered swap repositories shall be subject to inspection and examination by any representative of the Commission.

“(b) STANDARD SETTING.—

“(1) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap repository.

“(2) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for swap repositories.

“(3) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations that clear swaps.

“(c) DUTIES.—A swap repository shall—

“(1) accept data prescribed by the Commission for each swap under subsection (b);
“(2) maintain the data in such form and manner and for such period as may be required by the Commission;

“(3) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j); and

“(4) make available, on a confidential basis pursuant to section 8, all data obtained by the swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, the Securities and Exchange Commission, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

“(d) Rules.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing persons that are registered under this section, including rules that specify the data elements that shall be collected and maintained.
“(e) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap repository from the requirements of this section if the Commission finds that the swap repository is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization’s home country.”.

SEC. 3106. REPORTING AND RECORDKEEPING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4q the following:

“SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN SWAPS.

“(a) IN GENERAL.—Any person who enters into a swap and—

“(1) did not have the swap cleared in accordance with section 2(j)(1); and

“(2) did not have data regarding the swap accepted by a swap repository in accordance with rules (including timeframes) adopted by the Commission under section 21,

shall meet the requirements in subsection (b).

“(b) REPORTS.—Any person described in subsection (a) shall—
“(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the swaps held by the person; and

“(2) keep books and records pertaining to the swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Securities and Exchange Commission, the Financial Services Oversight Council, and the Department of Justice.

“(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or a more comprehensive set of data than the Commission requires swap repositories to collect under section 21.”.

SEC. 3107. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4r (as added by section 3106) the following:
“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

“(a) Registration.—

“(1) It shall be unlawful for any person to act as a swap dealer unless the person is registered as a swap dealer with the Commission.

“(2) It shall be unlawful for any person to act as a major swap participant unless the person is registered as a major swap participant with the Commission.

“(b) Requirements.—

“(1) In general.—A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.

“(2) Contents.—The application shall be made in such form and manner as prescribed by the Commission, giving any information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged. The person, when registered as a swap dealer or major swap participant, shall continue to report and furnish to the Commission such information pertaining to the person’s business as the Commission may require.
“(3) Expiration.—Each registration shall expire at such time as the Commission may by rule or regulation prescribe.

“(4) Rules.—Except as provided in subsections (c), (d) and (e), the Commission may prescribe rules applicable to swap dealers and major swap participants, including rules that limit the activities of swap dealers and major swap participants. Except with regard to subsection (d)(1)(A), the Commission may provide conditional or unconditional exemptions from some or all of the rules or requirements prescribed under this section for swap dealers and major swap participants.

“(5) Transition.—Rules adopted under this section shall provide for the registration of swap dealers and major swap participants no later than 1 year after the effective date of the Derivative Markets Transparency and Accountability Act of 2009.

“(6) Statutory Disqualification.—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major swap participant to permit any person associated with a swap dealer or a major swap participant who is subject to a statutory disqualification to effect or be involved in effecting
swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

“(c) RULES.—

“(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this section, the Commission shall adopt rules for persons that are registered as swap dealers or major swap participants under this section.

“(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission shall not prescribe rules imposing prudential requirements on swap dealers or major swap participants for which there is a Prudential Regulator. This provision shall not be construed as limiting the authority of the Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

“(d) CAPITAL AND MARGIN REQUIREMENTS.—

“(1) IN GENERAL.—

“(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each registered swap dealer and major swap participant for which there is a Prudential Regulator shall meet such minimum capital requirements and minimum
initial and variation margin requirements as the
Prudential Regulators shall by rule or regula-
tion jointly prescribe that:

“(i) help ensure the safety and sound-
ness of the swap dealer or major swap par-
ticipant; and

“(ii) are appropriate for the risk asso-
ciated with the non-cleared swaps held as
a swap dealer or major swap participant.

“(B) NON-BANK SWAP DEALERS AND
MAJOR SWAP PARTICIPANTS.—Each registered
swap dealer and major swap participant for
which there is not a Prudential Regulator shall
meet such minimum capital requirements and
minimum initial and variation margin require-
ments as the Commission shall by rule or regu-
lation prescribe that—

“(i) help ensure the safety and sound-
ness of the swap dealer or major swap par-
ticipant; and

“(ii) are appropriate for the risk asso-
ciated with the non-cleared swaps held as
a swap dealer or major swap participant.

“(2) Rules.—
“(A) Bank swap dealers and major swap participants.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Prudential Regulators, in consultation with the Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant for which there is a Prudential Regulator.

“(B) Non-bank swap dealers and major swap participants.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants for which there is no Prudential Regulator.

“(3) Authority.—Nothing in this section shall limit the authority of the Commission to set capital requirements for a registered futures commission
merchant or introducing broker in accordance with section 4f.

“(e) REPORTING AND RECORDKEEPING.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant—

“(A) shall make such reports as are prescribed by the Commission by rule or regulation regarding the transactions and positions and financial condition of the person;

“(B) for which—

“(i) there is a Prudential Regulator, shall keep books and records of all activities related to its business as a swap dealer or major swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

“(ii) there is no Prudential Regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

“(C) shall keep the books and records open to inspection and examination by any representative of the Commission; and
“(D) shall keep any such books and records relating to swaps defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission.

“(2) Rules.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing reporting and recordkeeping for swap dealers and major swap participants.

“(f) Daily Trading Records.—

“(1) In General.—Each registered swap dealer and major swap participant shall maintain daily trading records of its swaps and all related records (including related cash or forward transactions) and recorded communications including but not limited to electronic mail, instant messages, and recordings of telephone calls, for such period as may be prescribed by the Commission by rule or regulation.

“(2) Information Requirements.—The daily trading records shall include such information as the Commission shall prescribe by rule or regulation.

“(3) Customer Records.—Each registered swap dealer and major swap participant shall main-
tain daily trading records for each customer or counterparty in such manner and form as to be identifiable with each swap transaction.

“(4) AUDIT TRAIL.—Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

“(5) RULES.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing daily trading records for swap dealers and major swap participants.

“(g) BUSINESS CONDUCT STANDARDS.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with business conduct standards as may be prescribed by the Commission by rule or regulation addressing—

“(A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);

“(B) diligent supervision of its business as a swap dealer;

“(C) adherence to all applicable position limits; and
“(D) such other matters as the Commission shall determine to be necessary or appropriate.

“(2) BUSINESS CONDUCT REQUIREMENTS.— Business conduct requirements adopted by the Commission shall—

“(A) establish the standard of care for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

“(B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer or major swap participant) of—

“(i) information about the material risks and characteristics of the swap;

“(ii) for cleared swaps, upon the request of the counterparty, the daily mark from the appropriate derivatives clearing organization, and for non-cleared swaps, upon request of the counterparty, the daily mark of the swap dealer or major swap participant; and

“(iii) any other material incentives or conflicts of interest that the swap dealer or
major swap participant may have in connection with the swap; and

“(C) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

“(3) RULES.—The Commission shall prescribe rules under this subsection governing business conduct standards for swap dealers and major swap participants no later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009.

“(h) DOCUMENTATION STANDARDS.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with standards, as may be prescribed by the Commission by rule or regulation, addressing timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

“(2) RULES.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing the stand-
ards described in paragraph (1) for swap dealers and major swap participants.

“(i) Dealer Responsibilities.—Each registered swap dealer and major swap participant at all times shall comply with the following requirements:

“(1) Monitoring of Trading.—The swap dealer or major swap participant shall monitor its trading in swaps to prevent violations of applicable position limits.

“(2) Disclosure of General Information.—The swap dealer or major swap participant shall disclose to the Commission or to the Prudential Regulator for the swap dealer or major swap participant, as applicable, information concerning—

“(A) terms and conditions of its swaps;

“(B) swap trading operations, mechanisms, and practices;

“(C) financial integrity protections relating to swaps; and

“(D) other information relevant to its trading in swaps.

“(3) Ability to Obtain Information.—The swap dealer or major swap participant shall—

“(A) establish and enforce internal systems and procedures to obtain any necessary infor-
information to perform any of the functions described in this section; and

“(B) provide the information to the Commission or to the Prudential Regulator for the swap dealer or major swap participant, as applicable, upon request.

“(4) CONFLICTS OF INTEREST.—The swap dealer and major swap participant shall implement conflict-of-interest systems and procedures that—

“(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

“(B) address such other issues as the Commission determines appropriate.

“(5) ANTITRUST CONSIDERATIONS.—The swap dealer or major swap participant shall avoid—
“(A) adopting any processes or taking any actions that result in any unreasonable restraints of trade; or

“(B) imposing any material anticompetitive burden on trading.”.

SEC. 3108. CONFLICTS OF INTEREST.

Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by—

(1) redesignating subsection (c) as subsection (d); and

(2) inserting after subsection (b) the following:

“(c) CONFLICTS OF INTEREST.—The Commission shall require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures that—

“(1) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and
“(2) address such other issues as the Commission determines appropriate.”.

SEC. 3109. SWAP EXECUTION FACILITIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5g the following:

“SEC. 5h. SWAP EXECUTION FACILITIES.

“(a) REGISTRATION.—A person may not operate a swap execution facility unless the facility is registered under this section or is registered with the Commission as a designated contract market under section 5 or a swap execution facility under section 5.

“(b) REQUIREMENTS FOR TRADING.—

“(1) A swap execution facility that is registered under subsection (a) may make available for trading any swap.

“(2) RULES FOR TRADING THROUGH THE FACILITY.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules to allow a swap to be traded through the facilities of a designated contract market or a swap execution facility. Such rules shall permit an intermediary, acting as principal or agent, to enter into or execute a swap, notwithstanding section 2(k), if the swap is executed, reported, recorded,
or confirmed in accordance with the rules of the designated contract market or swap execution facility.

“(3) AGRICULTURAL SWAPS.—A swap execution facility may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.

“(c) TRADING BY CONTRACT MARKETS.—A board of trade that operates a contract market shall, to the extent that the board of trade also operates a swap execution facility and uses the same electronic trade execution system for trading on the contract market and the swap execution facility, identify whether the electronic trading is taking place on the contract market or the swap execution facility.

“(d) CORE PRINCIPLES FOR SWAP EXECUTION FACILITIES.—

“(1) IN GENERAL.—To be registered as, and to maintain its registration as, a swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Com-
mission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.

“(2) Compliance with rules.—The swap execution facility shall—

“(A) monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of the swaps traded on or through the facility and any limitations on access to the facility; and

“(B) establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to—

“(i) provide market participants with impartial access to the market; and

“(ii) capture information that may be used in establishing whether rule violations have occurred.

“(3) Swaps not readily susceptible to manipulation.—The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.
“(4) MONITORING OF TRADING.—The swap execution facility shall—

“(A) establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities; and

“(B) monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

“(5) ABILITY TO OBTAIN INFORMATION.—The swap execution facility shall—

“(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;

“(B) provide the information to the Commission upon request; and
“(C) have the capacity to carry out such
international information-sharing agreements as
the Commission may require.

“(6) POSITION LIMITS OR ACCOUNTABILITY.—

“(A) To reduce the potential threat of
market manipulation or congestion, especially
during trading in the delivery month, a swap
execution facility that is a trading facility shall
adopt for each of its contracts made available
for trading on the trading facility, where nec-
essary and appropriate, position limitations or
position accountability for speculators who es-
tablish positions in the contract.

“(B) For any contract of a swap execution
facility that is subject to a position limitation
established by the Commission pursuant to sec-
tion 4a(a), the swap execution facility—

“(i) may set a position limitation at a
level that is lower than the Commission
limitation; and

“(ii) shall monitor positions estab-
lished on or through the swap execution fa-
cility for compliance with the limit set by
the Commission and the limit, if any, set
by the swap execution facility.
“(7) **FINANCIAL INTEGRITY OF TRANSACTIONS.**—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through its facilities, including the clearance and settlement of the swaps pursuant to section 2(j)(1).

“(8) **EMERGENCY AUTHORITY.**—The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap.

“(9) **TIMELY PUBLICATION OF TRADING INFORMATION.**—The swap execution facility shall make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission. The Commission shall evaluate the impact of public disclosure on market liquidity in the relevant market, and shall seek to avoid public disclosure of information in a manner that would significantly reduce market liquidity. The Commission shall not disclose information related to the internal business decisions of particular market participants.
“(10) RECORDKEEPING AND REPORTING.—The swap execution facility shall maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years, and report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission. The swap execution facility shall keep any such records relating to swaps defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission. The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap repositories.

“(11) ANTITRUST CONSIDERATIONS.—The swap execution facility shall avoid—

“(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or
“(B) imposing any material anticompetitive burden on trading on the swap execution facility.

“(12) CONFLICTS OF INTEREST.—The swap execution facility shall—

“(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

“(B) establish a process for resolving the conflicts of interest.

“(13) FINANCIAL RESOURCES.—

“(A) The swap execution facility shall have adequate financial, operational, and managerial resources to discharge its responsibilities.

“(B) The financial resources of the swap execution facility shall be considered adequate if their value exceeds the total amount that would enable the facility to cover its operating costs for a period of 1 year, calculated on a rolling basis.

“(14) SYSTEM SAFEGUARDS.—The swap execution facility shall—

“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the
development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the swap execution facility’s responsibilities and obligation; and

“(C) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

“(15) Designation of Compliance Officer.—

“(A) In general.—Each swap execution facility shall designate an individual to serve as a compliance officer.

“(B) Duties.—The compliance officer—

“(i) shall report directly to the board or to the senior officer of the facility;

“(ii) shall—
“(I) review compliance with the core principles in this subsection;

“(II) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

“(III) be responsible for administering the policies and procedures required to be established pursuant to this section; and

“(IV) ensure compliance with this Act and the rules and regulations issued under this Act, including rules prescribed by the Commission pursuant to this section; and

“(iii) shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints, and for the handling, management response, remediation, re-
testing, and closing of non-compliant
issues.

“(C) ANNUAL REPORTS REQUIRED.—The
compliance officer shall annually prepare and
sign a report on the compliance of the facility
with this Act and its policies and procedures,
including its code of ethics and conflict of inter-
est policies, in accordance with rules prescribed
by the Commission. The compliance report shall
accompany the financial reports of the facility
that are required to be furnished to the Com-
mission pursuant to this section and shall in-
clude a certification that, under penalty of law,
the report is accurate and complete.

“(e) EXEMPTIONS.—The Commission may exempt,
conditionally or unconditionally, a swap execution facility
from registration under this section if the Commission
finds that the facility is subject to comparable, comprehen-
sive supervision and regulation on a consolidated basis by
the Securities and Exchange Commission, a Prudential
Regulator or the appropriate governmental authorities in
the organization’s home country.

“(f) RULES.—No later than 1 year after the date of
the enactment of the Derivative Markets Transparency
and Accountability Act of 2009, the Commission shall pre-
scribe rules governing the regulation of swap execution fa-
cilities under this section.”.

**SEC. 3110. DERIVATIVES TRANSACTION EXECUTION FACILI-
TIES AND EXEMPT BOARDS OF TRADE.**

(a) Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 1 et seq.) are repealed.

(b)(1) Prior to the final effective dates in this title, a person may petition the Commodity Futures Trading Commission to remain subject to the provisions of section 5d of the Commodity Exchange Act, as such provisions existed prior to the effective date of this subtitle.

(2) The Commodity Futures Trading Commission shall consider any petition submitted under paragraph (1) in a prompt manner and may allow a person to continue operating subject to the provisions of section 5d of the Commodity Exchange Act for up to 1 year after the effective date of this subtitle.

**SEC. 3111. DESIGNATED CONTRACT MARKETS.**

(a) Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by striking paragraphs (1) and (2) and inserting the following:

“(1) In general.—To be designated as, and to maintain the designation of a board of trade as a contract market, the board of trade shall comply with the core principles specified in this subsection

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and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise, by rule or regulation, the board of trade shall have reasonable discretion in establishing the manner in which it complies with the core principles.

“(2) COMPLIANCE WITH RULES.—

“(A) The board of trade shall monitor and enforce compliance with the rules of the contract market, including access requirements, the terms and conditions of any contracts to be traded on the contract market and the contract market’s abusive trade practice prohibitions.

“(B) The board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to, any person or entity that violates the rules.

“(C) The rules shall provide the board of trade with the ability and authority to obtain any necessary information to perform any of the functions described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.”.
(b) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by striking paragraphs (4) and (5) and inserting the following:

“(4) PREVENTION OF MARKET DISRUPTION.—

The board of trade shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

“(5) POSITION LIMITATIONS OR ACCOUNTABILITY.—

“(A) To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt for each of its contracts, where necessary and appropriate, position limitations or position accountability for speculators.

“(B) For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the board of trade shall set its position limitation at a level
no higher than the Commission-established limitation.”.

(c) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by striking paragraph (7) and inserting the following:

“(7) Availability of general information.—The board of trade shall make available to market authorities, market participants, and the public accurate information concerning—

“(A) the terms and conditions of the contracts of the contract market; and

“(B) the rules, regulations and mechanisms for executing transactions on or through the facilities of the contract market, and the rules and specifications describing the operation of the board of trade’s electronic matching platform or other trade execution facility.”.

(d) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by striking paragraph (9) and inserting the following:

“(9) Execution of transactions.—

“(A) The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that pro-
tects the price discovery process of trading in
the board of trade’s centralized market.

“(B) The rules may authorize, for bona
fide business purposes—

“(i) transfer trades or office trades;
“(ii) an exchange of—

“(I) futures in connection with a
cash commodity transaction;
“(II) futures for cash commod-
ities; or
“(III) futures for swaps; or
“(iii) A futures commission merchant,
acting as principal or agent, to enter into
or confirm the execution of a contract for
the purchase or sale of a commodity for fu-
ture delivery if the contract is reported, re-
corded, or cleared in accordance with the
rules of the contract market or a deriva-
tives clearing organization.”.

(e) Section 5(d)(17) of such Act (7 U.S.C. 7(d)(17))
is amended by adding at the end the following: “The board
of trade shall keep any such records relating to swaps de-
defined in section 1a(35)(A)(v) open to inspection and exam-
ination by the Securities and Exchange Commission.”.
(f) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by adding at the end the following:

“(19) FINANCIAL RESOURCES.—The board of trade shall have adequate financial, operational, and managerial resources to discharge the responsibilities of a contract market. For the financial resources of a board of trade to be considered adequate, their value shall exceed the total amount that would enable the contract market to cover its operating costs for a period of 1 year, calculated on a rolling basis.

“(20) SYSTEM SAFEGUARDS.—The board of trade shall—

“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and give adequate scalable capacity;

“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfill-
ment of the board of trade’s responsibilities and obligations; and

“(C) periodically conduct tests to verify that back-up resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

“(21) DIVERSITY OF BOARDS OF DIRECTORS.—The board of trade, if a publicly traded company, shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

“(22) DISCIPLINARY PROCEDURES.—The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.”.
(g) Section 5 of such Act (7 U.S.C. 7) is amended by striking subsection (b).

SEC. 3112. MARGIN.

(a) Section 8a(7)(C) of the Commodity Exchange Act (7 U.S.C. 12a(7)(C)) is amended by striking “, excepting the setting of levels of margin”.

(b) Section 8a(7) of such Act (7 U.S.C. 12a(7)) is amended by redesignating subparagraphs (D) through (F) as subparagraphs (E) through (G), respectively, and inserting after subparagraph (C) the following:

“(D) margin requirements, provided that such rules, regulations, or orders shall—

“(i) be limited to protecting the financial integrity of the derivatives clearing organization;

“(ii) be designed for risk management purposes in order to protect the financial integrity of transactions; and

“(iii) not set specific margin amounts.”.

SEC. 3113. POSITION LIMITS.

(a) Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended by—

(1) inserting “(1)” after “(a)”;}
(2) striking “on electronic trading facilities with respect to a significant price discovery contract” in the first sentence and inserting “swaps that perform or affect a significant price discovery function with respect to registered entities”; 

(3) inserting “, including any group or class of traders,” in the second sentence after “held by any person”; 

(4) striking “on an electronic trading facility with respect to a significant price discovery contract,” in the second sentence and inserting “swaps that perform or affect a significant price discovery function with respect to registered entities,”; and 

(5) inserting at the end the following: 

“(2)(A) In accordance with the standards set forth in paragraph (1) of this subsection and consistent with the good faith exception cited in subsection (b)(2), with respect to physical commodities other than excluded commodities as defined by the Commission, the Commission shall by rule, regulation, or order establish limits on the amount of positions, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to contracts of sale for future delivery or with respect to options on the contracts or commodities
traded on or subject to the rules of a designated contract market.

“(B)(i) For exempt commodities, the limits shall be established within 180 days after the date of the enactment of this paragraph.

“(ii) For agricultural commodities, the limits shall be established within 270 days after the date of the enactment of this paragraph.

“(C) In establishing the limits, the Commission shall strive to ensure that trading on foreign boards of trade in the same commodity will be subject to comparable limits and that any limits to be imposed by the Commission will not cause price discovery in the commodity to shift to trading on the foreign boards of trade.

“(3) In establishing the limits required in paragraph (2), the Commission, as appropriate, shall set limits—

“(A) on the number of positions that may be held by any person for the spot month, each other month, and the aggregate number of positions that may be held by any person for all months; and

“(B) to the maximum extent practicable, in its discretion—
“(i) to diminish, eliminate, or prevent excessive speculation as described under this section;

“(ii) to deter and prevent market manipulation, squeezes, and corners;

“(iii) to ensure sufficient market liquidity for bona fide hedgers; and

“(iv) to ensure that the price discovery function of the underlying market is not disrupted.

“(4)(A) Not later than 150 days after the establishment of position limits pursuant to paragraph (2), and biannually thereafter, the Commission shall hold 2 public hearings, 1 for agriculture commodities and 1 for energy commodities as such terms are defined by the Commission, in order to receive recommendations regarding the position limits to be established in paragraph (2).

“(B) Each public hearing held pursuant to sub-paragraph (A) shall, at a minimum providing there is sufficient interest, receive recommendations from—

“(i) 7 predominantly commercial short hedgers of the actual physical commodity for future delivery;
“(ii) 7 predominantly commercial long
hedgers of the actual physical commodity for
future delivery;
“(iii) 4 non-commercial participants in
markets for commodities for future delivery;
and
“(iv) each designated contract market
upon which a contract in the commodity for fu-
ture delivery is traded.
“(C) Within 60 days after each public hearing
held pursuant to subparagraph (A), the Commission
shall publish in the Federal Register its response to
the recommendations regarding position limits heard
at the hearing.
“(5) Significant price discovery func-
tion.—In making a determination whether a swap
performs or affects a significant price discovery
function with respect to regulated markets, the Com-
mission shall consider, as appropriate:
“(A) Price linkage.—The extent to
which the swap uses or otherwise relies on a
daily or final settlement price, or other major
price parameter, of another contract traded on
a regulated market based upon the same under-
lying commodity, to value a position, transfer or
convert a position, financially settle a position, or close out a position;

“(B) ARBITRAGE.—The extent to which the price for the swap is sufficiently related to the price of another contract traded on a regulated market based upon the same underlying commodity so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the swaps on a frequent and recurring basis;

“(C) MATERIAL PRICE REFERENCE.—The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a contract traded on a regulated market are directly based on, or are determined by referencing, the price generated by the swap;

“(D) MATERIAL LIQUIDITY.—The extent to which the volume of swaps being traded in the commodity is sufficient to have a material effect on another contract traded on a regulated market; and

“(E) OTHER MATERIAL FACTORS.—Such other material factors as the Commission specifies by rule or regulation as relevant to deter-
mine whether a swap serves a significant price
discovery function with respect to a regulated
market.

“(6) ECONOMICALLY EQUIVALENT CON-
TRACTS.—

“(A) Notwithstanding any other provision
of this section, the Commission shall establish
limits on the amount of positions, including ag-
gregate position limits, as appropriate, other
than bona fide hedge positions, that may be
held by any person with respect to swaps that
are economically equivalent to contracts of sale
for future delivery or to options on the con-
tracts or commodities traded on or subject to
the rules of a designated contract market sub-
ject to paragraph (2).

“(B) In establishing limits pursuant to
subparagraph (A), the Commission shall—

“(i) develop the limits concurrently
with limits established under paragraph
(2), and the limits shall have similar re-
quirements as under paragraph (3)(B);
and
“(ii) establish the limits simultaneously with limits established under paragraph (2).

“(7) AGGREGATE POSITION LIMITS.—The Commission shall, by rule or regulation, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based upon the same underlying commodity (as defined by the Commission) that may be held by any person, including any group or class of traders, for each month across—

“(A) contracts listed by designated contract markets;

“(B) with respect to an agreement contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to its electronic trading and order matching system; and

“(C) swap contracts that perform or affect a significant price discovery function with respect to regulated entities.
“(8) EXEMPTIONS.—The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class of options, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.”.

(b) Section 4a(b) of such Act (7 U.S.C. 6a(b)) is amended—

(1) in paragraph (1), by striking “or derivatives transaction execution facility or facilities or electronic trading facility” and inserting “or swap execution facility or facilities”; and

(2) in paragraph (2), by striking “or derivatives transaction execution facility or facilities or electronic trading facility” and inserting “or swap execution facility”.

(c) Section 4a(c) of such Act is amended—

(1) by inserting “(1)” after “(c)”; and

(2) by adding after and below the end the following:

“(2) For the purposes of implementation of subsection (a)(2) for contracts of sale for future de-
livery or options on the contracts or commodities, the Commission shall define what constitutes a bona fide hedging transaction or position as a transaction or position that—

“(A)(i) represents a substitute for transactions made or to be made or positions taken or to be taken at a later time in a physical marketing channel;

“(ii) is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise; and

“(iii) arises from the potential change in the value of—

“(I) assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

“(II) liabilities that a person owns or anticipates incurring; or

“(III) services that a person provides, purchases, or anticipates providing or purchasing; or

“(B) reduces risks attendant to a position resulting from a swap that—
“(i) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to subparagraph (A); or
“(ii) meets the requirements of subparagraph (A).”.

(d) This section shall become effective on the date of its enactment.

SEC. 3114. ENHANCED AUTHORITY OVER REGISTERED ENTITIES.

(a) Section 5c(a) of the Commodity Exchange Act (7 U.S.C. 7a–2(a)) is amended—

(1) in paragraph (1), by striking “5a(d) and 5b(e)(2)” and inserting “5b(e)(2) and 5h(e)”;

(2) in paragraph (2), by striking “shall not” and inserting “may”.

(b) Section 5c(b) of such Act (7 U.S.C. 7a–2(b)) is amended in each of paragraphs (1), (2), and (3) by inserting “or swap execution facility” after “contract market” each place it appears.

(c) Section 5c(c)(1) of such Act (7 U.S.C. 7a–2(c)(1)) is amended—

(1) by inserting “(A)” after “IN GENERAL.—”;

and

(2) by adding at the end the following:
“(B) The new rule or rule amendment shall become effective, pursuant to the registered entity’s certification and notice of such certification to its members (in a manner to be determined by the Commission), 10 business days after the Commission’s receipt of the certification (or such shorter period determined by the Commission by rule or regulation) unless the Commission notifies the registered entity within such time that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with this Act (including regulations under this Act).

“(C)(i) A notification by the Commission pursuant to subparagraph (B) shall stay the certification of the new contract or instrument or clearing of the new contract or instrument, new rule or new amendment for up to an additional 90 days from the date of the notification.

“(ii) The Commission shall provide at least a 30-day public comment period, within the 90-day period in which the stay is in effect described in clause (i), whenever it reviews a rule or rule amendment
pursuant to a notification by the Commission under
this paragraph.”.

(d) Section 5c(d) of such Act (7 U.S.C. 7a–2(d)) is
repealed.

SEC. 3115. FOREIGN BOARDS OF TRADE.

(a) IN GENERAL.—Section 4 of the Commodity Ex-
change Act (7 U.S.C. 6) is amended by adding at the end
the following:

“(e) FOREIGN BOARDS OF TRADE.—

“(1) IN GENERAL.—The Commission may not
permit a foreign board of trade to provide to the
members of the foreign board of trade or other par-
ticipants located in the United States direct access
to the electronic trading and order-matching system
of the foreign board of trade with respect to an
agreement, contract, or transaction that settles
against any price (including the daily or final settle-
ment price) of 1 or more contracts listed for trading
on a registered entity, unless the Commission deter-
mines that—

“(A) the foreign board of trade makes pub-
lic daily trading information regarding the
agreement, contract, or transaction that is com-
parable to the daily trading information pub-
lished by the registered entity for the 1 or more
contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

“(B) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

“(i) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable, taking into consideration the relative sizes of the respective markets, to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

“(ii) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in sec-
tion 4a, price distortion, or disruption of delivery or the cash settlement process;

“(iii) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

“(I) the information that the foreign board of trade will make publicly available;

“(II) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

“(III) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

“(IV) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;
“(iv) provides information to the
Commission regarding large trader posi-
tions in the agreement, contract, or trans-
action that is comparable to the large trad-
er position information collected by the
Commission for the 1 or more contracts
against which the agreement, contract, or
transaction traded on the foreign board of
trade settles; and

“(v) provides the Commission with in-
formation necessary to publish reports on
aggregate trader positions for the agree-
ment, contract, or transaction traded on
the foreign board of trade that are com-
parable to the reports on aggregate trader
positions for the 1 or more contracts
against which the agreement, contract, or
transaction traded on the foreign board of
trade settles.

“(2) Existing foreign boards of trade.—
Paragraph (1) shall not be effective with respect to
any foreign board of trade to which the Commission
has granted direct access permission before the date
of the enactment of this subsection until the date
that is 180 days after such date of enactment.
"(3) Persons located in the United States.—"

(b) Liability of Registered Persons Trading on a Foreign Board of Trade.—

(1) Section 4(a) of such Act (7 U.S.C. 6(a)) is amended by inserting "or by subsection (f)" after "Unless exempted by the Commission pursuant to subsection (c)"; and

(2) Section 4 of such Act (7 U.S.C. 6) is further amended by adding at the end the following:

"(f)(1) A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person—

"(A) has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that is—

"(i) legally organized under the laws of a foreign country;

"(ii) authorized to act as a board of trade by a foreign futures authority; and

"(iii) subject to regulation by the foreign futures authority; and
“(B) has not been determined by the Commission to be operating in violation of subsection (a).

“(2) Nothing in this subsection shall be construed as implying or creating any presumption that a board of trade, exchange, or market is located outside the United States, or its territories or possessions, for purposes of subsection (a).”.

(c) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—Section 22(a) of such Act (7 U.S.C. 25(a)) is amended by adding at the end the following:

“(5) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—A contract of sale of a commodity for future delivery traded or executed on or through the facilities of a board of trade, exchange, or market located outside the United States for purposes of section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract shall not be entitled to rescind or recover any payment made with respect to the contract, based on the failure of the foreign board of trade to comply with any provision of this Act.”.

SEC. 3116. LEGAL CERTAINTY FOR SWAPS.

Section 22(a)(4) of the Commodity Exchange Act (7 U.S.C. 25(a)(4)) is amended to read as follows:
“(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—

“(A) A hybrid instrument sold to any investor shall not be void, voidable, or unenforceable, and a party to such a hybrid instrument shall not be entitled to rescind, or recover any payment made with respect to, such a hybrid instrument under this section or any other provision of Federal or State law, based solely on the failure of the hybrid instrument to comply with the terms or conditions of section 2(f) or regulations of the Commission; and

“(B) An agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall not be void, voidable, or unenforceable, and a party thereto shall not be entitled to rescind, or recover any payment made with respect to, such an agreement, contract, or transaction under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction to meet the definition of a swap set forth in section 1a, be traded in the manner set forth in section 2(k)(1), or be cleared pursu-
ant to 2(j)(1) or regulations of the Commission pursuant thereto.”

SEC. 3117. FDICIA AMENDMENTS.

Sections 408 and 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421 and 4422) are repealed.

SEC. 3118. ENFORCEMENT AUTHORITY.

(a) The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4b the following:

“SEC. 4b–1. ENFORCEMENT AUTHORITY.

“(a) CFTC.—Except as provided in subsection (b), the Commission shall have exclusive authority to enforce the provisions of subtitle A of the Derivative Markets Transparency and Accountability Act of 2009 with respect to any person.

“(b) PRUDENTIAL REGULATORS.—The Prudential Regulators shall have exclusive authority to enforce the provisions of section 4s(d) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks that are swap dealers or major swap participants.

“(c) REFERRAL.—(1) If the Prudential Regulator for a swap dealer or major swap participant has cause to believe that the swap dealer or major swap participant may
have engaged in conduct that constitutes a violation of the
nonprudential requirements of section 4s or rules adopted
by the Commission thereunder, that Prudential Regulator
may recommend in writing to the Commission that the
Commission initiate an enforcement proceeding as author-
ized under this Act. The recommendation shall be accom-
panied by a written explanation of the concerns giving rise
to the recommendation.

“(2) If the Commission has cause to believe that a
swap dealer or major swap participant that has a Pruden-
tial Regulator may have engaged in conduct that con-
stitutes a violation of the prudential requirements of sec-
tion 4s or rules adopted thereunder, the Commission may
recommend in writing to the Prudential Regulator that
the Prudential Regulator initiate an enforcement pro-
ceeding as authorized under this Act. The recommenda-
tion shall be accompanied by a written explanation of the
concerns given rise to the recommendation.”.

(b)(1) Section 4c(a) of such Act (7 U.S.C. 6c(a)) is
amended by adding at the end the following:

“(3) DISRUPTIVE PRACTICES.—It shall be un-
lawful for any person to engage in any trading or
practice on or subject to the rules of a registered en-
tity that—
“(A) violates bids and offers (intentionally bidding at a price higher than the lowest offer, or offering at a price lower than the highest bid);

“(B) is, is of the character of, or is commonly known to the trade as ‘marking the close’ (bidding or offering during or near the market’s closing period with the intent to influence the settlement price);

“(C) is, is of the character of, or is commonly known to the trade as ‘spoofing’ (bidding or offering with the intent to cancel the bid or offer before execution); or

“(D) constitutes uneconomic trading (trading that has no legitimate economic purpose but for the effect on price).

“(4) The Commission may make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to prohibit any other trading practice that is disruptive of fair and equitable trading.”.

(2) The amendment made by paragraph (1) shall become effective upon enactment.
SEC. 3119. ENFORCEMENT.

(a) Section 4b(a)(2) of the Commodity Exchange Act (7 U.S.C. 6b(a)(2)) is amended by striking “or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g),” and inserting “or swap,”.

(b) Section 4b(b) of such Act (7 U.S.C. 6b(b)) is amended by striking “or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g),” and inserting “or swap,”.

(c) Section 4c(a) of such Act (7 U.S.C. 6c(a)) is amended by inserting “or swap” before “if the transaction is used or may be used”.

(d) Section 9(a)(2) of such Act (7 U.S.C. 13(a)(2)) is amended by inserting “or of any swap,” before “or to corner”.

(e) Section 9(a)(4) of such Act (7 U.S.C. 13(a)(4)) is amended by inserting “swap repository,” before “or futures association”.

(f) Section 9(e)(1) of such Act (7 U.S.C. 13(e)(1)) is amended by inserting “swap repository,” before “or registered futures association” and by inserting “, or swaps,” before “on the basis”.

(g) Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended by redesignating paragraphs (6) through (10) as paragraphs (7) through (11),
respectively, and inserting after paragraph (5) the follow-

“(6) This section shall apply to any swap dealer,

(6) This section shall apply to any swap deal-
der, major swap participant, security-based swap
dealer, major security-based swap participant, der-
ivatives clearing organization, swap repository, se-
curity-based swap repository, or swap execution fa-
cility, whether or not it is an insured depository in-
nstitution, for which the Board, the Corporation, or
the Office of the Comptroller of the Currency is the
appropriate Federal banking agency or Prudential
Regulator for purposes of the Derivative Markets
Transparency and Accountability Act of 2009.”.

SEC. 3120. RETAIL COMMODITY TRANSACTIONS.

(a) Section 2(c) of the Commodity Exchange Act (7
U.S.C. 2(e)) is amended—

(1) in paragraph (1), by striking “(other than
section 5a (to the extent provided in section 5a(g)),
5b, 5d, or 12(e)(2)(B))” and inserting “(other than
section 5b or 12(e)(2)(B))”; and

(2) in paragraph (2), by inserting after sub-

paragraph (C) the following:

“(D) RETAIL COMMODITY TRANS-

ACTIONS,—
“(i) This subparagraph shall apply to, and the Commission shall have jurisdiction over, any agreement, contract, or transaction in any commodity that is—

“(I) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity; and

“(II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

“(ii) Clause (i) shall not apply to—

“(I) an agreement, contract, or transaction described in paragraph (1) or subparagraphs (A), (B), or (C), including any agreement, contract, or transaction specifically excluded from subparagraph (A), (B), or (C);

“(II) any security;

“(III) a contract of sale that—
“(aa) results in actual delivery within 28 days or such other longer period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved; or

“(bb) creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.

“(IV) an agreement, contract, or transaction that is listed on a national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

“(V) an identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)).
“(iii) Sections 4(a), 4(b) and 4b shall apply to any agreement, contract or transaction described in clause (i), that is not excluded from clause (i) by clause (ii), as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.

“(iv) This subparagraph shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this Act over an agreement, contract, or transaction that is a contract of sale of a commodity for future delivery;

“(v) This subparagraph shall not be construed to limit any jurisdiction that the Commission or the Securities and Exchange Commission may otherwise have under any other provisions of this Act with respect to security futures products and persons effecting transactions in security futures products;

“(vi) For the purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered an eligi-
ble commercial entity for any agreement,
contract, or transaction for a commodity in
connection with its line of business.”.

(b) The amendments made by subsection (a) shall be-
come effective on the date of the enactment of this section.

SEC. 3121. LARGE SWAP TRADER REPORTING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.)
is amended by inserting after section 4t (as added by sec-
tion 3107 of this Act) the following:

“SEC. 4t. LARGE SWAP TRADER REPORTING.

“(a) It shall be unlawful for any person to enter into
any swap that performs or affects a significant price dis-
cover function with respect to registered entities if—

“(1) the person directly or indirectly enters into
such swaps during any 1 day in an amount equal to
or in excess of such amount as shall be fixed from
time to time by the Commission; and

“(2) such person directly or indirectly has or
obtains a position in such swaps equal to or in ex-
cess of such amount as shall be fixed from time to
time by the Commission,

unless the person files or causes to be filed with the prop-
erly designated officer of the Commission such reports re-
garding any transactions or positions described in para-
graphs (1) and (2) as the Commission may by rule or reg-
ulation require and unless, in accordance with the rules and regulations of the Commission, the person keeps books and records of all such swaps and any transactions and positions in any related commodity traded on or subject to the rules of any board of trade, and of cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.

“(b) The books and records shall show complete details concerning all transactions and positions as the Commission may by rule or regulation prescribe.

“(c) The books and records shall be open at all times to inspection and examination by any representative of the Commission.

“(d) For the purpose of this subsection, the swaps, futures and cash or spot transactions and positions of any person shall include the transactions and positions of any persons directly or indirectly controlled by the person.

“(e) In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider the factors set forth in section 4a(a)(3).”.
3122. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is further amended by inserting after section 4t the following:

"SEC. 4u. SEGREGATION OF ASSETS HELD AS COLLATERAL IN OVER-THE-COUNTER SWAP TRANSACTIONS.

(a) SEGREGATION.—At the request of a swap counterparty who provides funds or other property to a swap dealer initial margin or collateral to secure the obligations of the counterparty under a swap between the counterparty and the swap dealer that is not submitted for clearing to a derivatives clearing organization, the swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the initial margin or collateral in an account which is carried by an independent third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator may prescribe. If a swap counterparty is a swap dealer or major swap participant who owns more than 20 percent of, or has more than 50 percent representation on the board of directors of a custodian, the custodian shall not be considered independent from the swap counterparties for purposes of the pre-
ceding sentence. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment.

“(b) FURTHER AUDIT REPORTING.—If a swap dealer does not segregate funds pursuant to the request of a swap counterparty in accordance with subsection (a), the swap dealer shall report to its counterparty on a quarterly basis that its procedures relating to margin and collateral requirements are in compliance with the agreement of the counterparties.”.

SEC. 3123. OTHER AUTHORITY.

Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Commission, the Securities and Exchange Commission, or other Federal or State agency, of any authority derived from any other applicable law.

SEC. 3124. ANTITRUST.

Nothing in the amendments made by this subtitle shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of this subtitle, the term “antitrust laws” has the same meaning given the term in subsection (a) of the first section of the Clayton Act, except that the term includes section 5 of...
the Federal Trade Commission Act to the extent that such
section 5 applies to unfair methods of competition.

SEC. 3125. REVIEW OF PRIOR ACTIONS.

Notwithstanding any other provision of the Com-
modity Exchange Act, the Commodity Futures Trading
Commission shall review, as appropriate, all regulations,
rules, exemptions, exclusions, guidance, no action letters,
orders, other actions taken by or on behalf of the Commis-
sion, and any action taken pursuant to the Commodity
Exchange Act by an exchange, self-regulatory organiza-
tion, or any other registered entity, that are currently in
effect, to ensure that such prior actions are in compliance
with the provisions of this title.

SEC. 3126. EXPEDITED PROCESS.

The Commodity Futures Trading Commission may
use emergency and expedited procedures (including any
administrative or other procedure as appropriate) to carry
out this title if, in its discretion, it deems it necessary to
do so.

SEC. 3127. EFFECTIVE DATE.

(a) Unless otherwise provided, the provisions of this
subtitle shall become effective the later of 270 days after
the date of the enactment of this subtitle or, to the extent
a provision of this subtitle requires rulemaking, no less

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than 60 days after publication of a final rule or regulation implementing such provision of this subtitle.

(b) Subsection (a) shall not preclude the Commodity Futures Trading Commission from any rulemaking required or directed under this subtitle to implement the provisions of this subtitle.

Subtitle B—Regulation of Security-Based Swap Markets

SEC. 3201. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

(a) Definitions.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in paragraph (5)(A) and (B), by inserting “(but not security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants)” after the word “securities” in each place it appears;

(2) in paragraph (10), by inserting “security-based swap,” after “security future,”;

(3) in paragraph (13), by adding at the end the following: “For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of
rights or obligations under, a security-based swap, as the context may require.”;

(4) in paragraph (14), by adding at the end the following: “For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.”;

(5) in paragraph (39)—

(A) by striking “or government securities dealer” and adding “government securities dealer, security-based swap dealer or major security-based swap participant” in its place in subparagraph (B)(i)(I);

(B) by adding “security-based swap dealer, major security-based swap participant,” after “government securities dealer,” in subparagraph (B)(i)(II);

(C) by striking “or government securities dealer” and adding “government securities dealer, security-based swap dealer or major security-based swap participant” in its place in subparagraph (C); and
(D) by adding “security-based swap dealer, major security-based swap participant,” after “government securities dealer,” in subparagraph (D); and

(6) by adding at the end the following:

“(65) ELIGIBLE CONTRACT PARTICIPANT.—The term ‘eligible contract participant’ has the same meaning as in section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)).

“(66) MAJOR SWAP PARTICIPANT.—The term ‘major swap participant’ has the same meaning as in section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a(39)).

“(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

“(A) IN GENERAL.—The term ‘major security-based swap participant’ means any person who is not a security-based swap dealer, and—

“(i) maintains a substantial net position in outstanding security-based swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk, including operating and balance sheet risk; or
“(ii) whose outstanding security-based swaps create substantial net counterparty exposure among the aggregate of its counterparties that could expose those counterparties to significant credit losses.

“(B) Definition of ‘substantial net position’.—The Commission shall define by rule or regulation the terms ‘substantial net position’, ‘substantial net counterparty exposure’, and ‘significant credit losses’ at thresholds that the Commission determines prudent for the effective monitoring, management and oversight of entities which are systemically important or can significantly impact the financial system through counterparty credit risk. In setting the definitions, the Commission shall consider the person’s relative position in uncleared as opposed to cleared swaps.

“(C) A person may be designated a major security-based swap participant for 1 or more individual types of security-based swaps without being classified as a major security-based swap participant for all classes of security-based swaps.

“(68) Security-based swap.—
“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘security-based swap’ means any agreement, contract, or transaction that would be a swap under section 1a(35) of the Commodity Exchange Act, and that—

“(i) is primarily based on an index that is a narrow-based security index, including any interest therein or based on the value thereof;

“(ii) is primarily based on a single security or loan, including any interest therein or based on the value thereof; or

“(iii) is primarily based on the occurrence, non-occurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event must directly affect the financial statements, financial condition, or financial obligations of the issuer.

“(B) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term ‘security-based swap’ shall be construed to include a master agreement that provides for an agree-
ment, contract, or transaction that is a secu-

rity-based swap pursuant to subparagraph (A),
together with all supplements to any such mas-
ter agreement, without regard to whether the
master agreement contains an agreement, con-
tact, or transaction that is not a security-based
swap pursuant to subparagraph (A), except
that the master agreement shall be considered
to be a security-based swap only with respect to
each agreement, contract, or transaction under
the master agreement that is a security-based
swap pursuant to subparagraph (A).

“(C) Exclusion.—The term ‘security-
based swap’ does not include any agreement,
contract, or transaction that meets the defini-
tion of a security-based swap only because it
references, is based upon, or settles through the
transfer, delivery, or receipt of an exempted se-
curity under section 3(a)(12) of the Securities
Exchange Act of 1934 as in effect on the date
of enactment of the Futures Trading Act of
1982 (other than any municipal security as de-

fined in section 3(a)(29) as in effect on the date
of enactment of the Futures Trading Act of
1982), unless such agreement, contract, or
transaction is of the character of, or is commonly known in the trade as, a put, call, or other option.

“(69) Swap.—The term ‘swap’ has the same meaning as in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)).

“(70) Person associated with a security-based swap dealer or major security-based swap participant.—The term ‘person associated with a security-based swap dealer or major security-based swap participant’ or ‘associated person of a security-based swap dealer or major security-based swap participant’ means any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant, or any employee of such security-based swap dealer or major security-based swap participant, except that any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial shall not be included in the
meaning of such term other than for purposes of section 15F(e)(2).

“(71) SECURITY-BASED SWAP DEALER.—

“(A) IN GENERAL.—The term ‘security-based swap dealer’ means any person that—

“(i) holds itself out as a dealer in security-based swaps;

“(ii) makes a market in security-based swaps;

“(iii) regularly engages in the purchase of security-based swaps and their resale to customers in the ordinary course of a business; or

“(iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps.

“(B) DESIGNATION BY TYPE OR CLASS.—A person may be designated a security-based swap dealer for a single type or single class or category of security-based swap and considered not a security-based swap dealer for other types, classes, or categories of security-based swaps.
“(C) DE MINIMUS EXCEPTION.—The Commission shall make a determination to exempt from designation as a security-based swap dealer an entity that engages in a de minimus amount of security-based swap dealing in connection with transactions with or on the behalf of its customers.

“(72) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal banking agency’ has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

“(73) BOARD.—The term ‘Board’ means the Board of Governors of the Federal Reserve System.

“(74) PRUDENTIAL REGULATOR.—The term ‘Prudential Regulator’ means—

“(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—

“(i) a State-chartered bank that is a member of the Federal Reserve System; or 

“(ii) a State-chartered branch or agency of a foreign bank;

“(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major
swap participant, security-based swap dealer or major security-based swap participant that is—

“(i) a national bank; or

“(ii) a federally chartered branch or agency of a foreign bank; and

“(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is a state-chartered bank that is not a member of the Federal Reserve System.

“(75) Swap dealer.—The term ‘swap dealer’ has the same meaning as in section 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(38)).

“(76) Security-based swap agreement.—

“(A) In general.—For purposes of sections 10, 16, 20, and 21A of this Act, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term ‘security-based swap agreement’ means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.
“(B) Exclusions.—The term ‘security-based swap agreement’ does not include any security-based swap.

“(76) Security-based swap repository.—The term ‘security-based swap repository’ means any person that collects, calculates, prepares or maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties.

“(77) Swap execution facility.—The term ‘swap execution facility’ means a person or entity that facilitates the execution or trading of security-based swaps between two persons through any means of interstate commerce, but which is not a national securities exchange, including any electronic trade execution or voice brokerage facility.”.

(b) Authority to Further Define Terms.—The Securities and Exchange Commission may adopt a rule further defining the terms “security-based swap”, “security-based swap dealer”, “major security-based swap participant”, and “eligible contract participant” with regard to security-based swaps (as such terms are defined in the amendments made by subsection (a)) for the purpose of
including transactions and entities that have been structured to evade this title.

SEC. 3202. REPEAL OF PROHIBITION ON REGULATION OF SECURITY-BASED SWAPS.

(a) REPEAL OF LAW.—Section 206B of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) is repealed.

(b) CONFORMING AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) Section 2A(b) of the Securities Act of 1933 (15 U.S.C. 77b–1) is amended by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” each place that such term appears.

(2) Section 17 of the Securities Act of 1933 (15 U.S.C. 77q) is amended—

(A) in subsection (a)—

(i) by inserting “(including security-based swaps)” after “securities”; and

(ii) by striking “206B of the Gramm-Leach-Bliley Act” and inserting “3(a)(76) of the Securities Exchange Act of 1934”;

and

(B) in subsection (d), by striking “206B of the Gramm-Leach-Bliley Act” and inserting “3(a)(76) of the Securities Exchange Act of 1934”.

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(c) Conforming Amendments to the Securities Exchange Act of 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended as follows:

(1) Section 3A (15 U.S.C. 78c–1) is amended by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” each place that the term appears.

(2) Section 9(a) (15 U.S.C. 78i(a)) is amended by striking paragraphs (2) through (5) and inserting:

“(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap or security-based swap agreement with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

“(3) If a dealer, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap or security-based swap agreement with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange or any security-based swap
or security-based swap agreement with respect to such se-
curity by the circulation or dissemination in the ordinary
course of business of information to the effect that the
price of any such security will or is likely to rise or fall
because of market operations of any one or more persons
conducted for the purpose of raising or depressing the
price of such security.

“(4) If a dealer, broker, security-based swap dealer,
major security-based swap participant or other person sell-
ing or offering for sale or purchasing or offering to pur-
chase the security, or a security-based swap or security-
based swap agreement with respect to such security, to
make, regarding any security registered on a national se-
curities exchange or any security-based swap or security-
based swap agreement with respect to such security, for
the purpose of inducing the purchase or sale of such secu-
ritv or such security-based swap or security-based swap
agreement, any statement which was at the time and in
the light of the circumstances under which it was made,
false or misleading with respect to any material fact, and
which he knew or had reasonable ground to believe was
so false or misleading.

“(5) For a consideration, received directly or indi-
rectly from a dealer, broker, security-based swap dealer,
major security-based swap participant or other person sell-
ing or offering for sale or purchasing or offering to pur-
chase the security, or a security-based swap or security-
based swap agreement with respect to such security, to
induce the purchase of any security registered on a na-
tional securities exchange or any security-based swap or
security-based swap agreement with respect to such secu-
ry by the circulation or dissemination of information to
the effect that the price of any such security will or is
likely to rise or fall because of the market operations of
any one or more persons conducted for the purpose of rais-
ing or depressing the price of such security.”.

(3) Section 9(i) (15 U.S.C. 78i(i)) is amended
by striking “(as defined in section 206B of the
Gramm-Leach-Bliley Act)”;

(4) Section 10 (15 U.S.C. 78j) is amended by
striking “(as defined in section 206B of the Gramm-
Leach-Bliley Act)” each place that the term appears.

(5) Section 15(c)(1) is amended—

(A) in subparagraph (A), by striking “, or
any security-based swap agreement (as defined
in section 206B of the Gramm-Leach-Bliley
Act),”; and

(B) in subparagraphs (B) and (C), by
striking “agreement (as defined in section 206B
of the Gramm-Leach-Bliley Act)” in each place that the term appears.

(6) Section 15(i) (15 U.S.C. 78o(i), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (Public Law 106–554; 114 Stat. 2763A–455) is amended by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”.

(7) Section 16 (15 U.S.C. 78p) is amended—

(A) in subsection (a)(2)(C), by striking “(as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note))”;

(B) in subsection (b), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” in each place that the term appears; and

(C) in subsection (g), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(8) Section 20 (15 U.S.C. 78t) is amended—

(A) in subsection (d), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”; and
(B) in subsection (f), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;
and
(9) Section 21A (15 U.S.C. 78u–1) is amended—
(A) in subsection (a)(1), by striking “(as defined in section 206B of the Gramm-Leach-
Bliley Act)”;
and
(B) in subsection (g), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”.

SEC. 3203. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

(a) CLEARING FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding the following section after section 3A:

“SEC. 3B. CLEARING FOR SECURITY-BASED SWAPS.

“(a) IN GENERAL.—

“(1) STANDARD FOR CLEARING.—A security-based swap shall be submitted for clearing if a clearing agency that is registered under this Act will accept the security-based swap for clearing, and the Commission has determined under paragraph
(2)(B)(ii) of subsection (b) that the security-based swap is required to be cleared.

“(2) OPEN ACCESS.—The rules of a clearing agency described in paragraph (1) shall—

“(A) prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are economically equivalent within the clearing agency and may be offset with each other within the clearing agency; and

“(B) provide for non-discriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or swap execution facility.

“(b) COMMISSION REVIEW.—

“(1) COMMISSION-INITIATED REVIEW.—

“(A) The Commission shall review each security-based swap, or any group, category, type or class of security-based swaps to make a determination that such security-based swap, or group, category, type or class of security-based swaps should be required to be cleared.
“(B) The Commission shall provide at least a 30-day public comment period regarding any determination under subparagraph (A).

“(2) SWAP SUBMISSIONS.—

“(A) A clearing agency shall submit to the Commission each security-based swap, or any group, category, type or class of security-based swaps that it plans to accept for clearing and provide notice to its members (in a manner to be determined by the Commission) of such submission.

“(B) The Commission shall—

“(i) make available to the public any submission received under subparagraph (A);

“(ii) review each submission made under subparagraph (A), and determine whether the security-based swap, or group, category, type, or class of security-based swaps, described in the submission is required to be cleared; and

“(iii) provide at least a 30-day public comment period regarding its determination whether the clearing requirement
under subsection (a)(1) shall apply to the submission.

“(3) **Deadline.**—The Commission shall make its determination under paragraph (2)(B) not later than 90 days after receiving a submission made under paragraph (2)(A), unless the submitting clearing agency agrees to an extension for the time limitation established under this paragraph.

“(4) **Determination.**—

“(A) In reviewing a submission made under paragraph (2), the Commission shall review whether the submission is consistent with section 5b(c)(2).

“(B) In reviewing a security-based swap, group of security-based swaps or class of security-based swaps pursuant to paragraph (1) or a submission made under paragraph (2), the Commission shall take into account the following factors:

“(i) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.

“(ii) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastruc-
ture to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

“(iii) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the clearing agency available to clear the contract.

“(iv) The effect on competition, including appropriate fees and charges applied to clearing.

“(v) The existence of reasonable legal certainty in the event of the insolvency of the relevant clearing agency or 1 or more of its clearing members with regard to the treatment of customer and security-based swap counterparty positions, funds, and property.

“(C) In making a determination under paragraph (2)(B) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.
“(5) Rules.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for a clearing agency’s submission for review, pursuant to this subsection, of a security-based swap, or a group, category, type or class of security-based swaps, that it seeks to accept for clearing.

“(c) Stay of Clearing Requirement.—

“(1) After an determination pursuant to subsection (b)(2), the Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of subsection (a)(1) until the Commission completes a review of the terms of the security-based swap (or the group, category, type or class of security-based swaps) and the clearing arrangement.

“(2) Deadline.—The Commission shall complete a review undertaken pursuant to paragraph (1) not later than 90 days after issuance of the stay, unless the clearing agency that clears the security-based swap, or group, category, type or class of security-based swaps, agrees to an extension of the time limitation established under this paragraph.
“(3) Determination.—Upon completion of the review undertaken pursuant to paragraph (1), the Commission may—

“(A) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or group, category, type or class of security-based swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with subsection (b)(4); or

“(B) determine that the clearing requirement of subsection (a)(1) shall not apply to the security-based swap, or group, category, type or class of security-based swaps.

“(4) Rules.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this subsection, a clearing agency’s clearing of a security-based swap, or a group, category, type or class of security-based swaps, that it has accepted for clearing.

“(d) Prevention of Evasion.—The Commission may prescribe rules under this subsection, or issue inter-
pretations of the rules, as necessary to prevent evasions
of this section.

“(e) REQUIRED REPORTING.—

“(1) IN GENERAL.—All security-based swaps
that are not accepted for clearing by any clearing
agency shall be reported either to a security-based
swap repository described in subsection 13(n) or, if
there is no security-based swap repository that
would accept the security-based swap, to the Com-
mission pursuant to section 13A within such time
period as the Commission may by rule or regulation
prescribe. Counterparties to a security-based swap
may agree which counterparty will report the secu-

rity-based swap as required by this paragraph.

“(2) SWAP DEALER DESIGNATION.—With re-
gard to security-based swaps where only 1
counterparty is a security-based swap dealer, the se-
curity-based swap dealer shall report the security-
based swap as required by this subsection.

“(f) REPORTING TRANSITION RULES.—Rules adopt-
ed by the Commission under this section shall provide for
the reporting of data, as follows:

“(1) Security-based swaps entered into before
the date of the enactment of this section shall be re-
ported to a registered security-based swap repository
or the Commission no later than 180 days after the effective date of this section; and

“(2) Security-based swaps entered into on or after such date of enactment shall be reported to a registered security-based swap repository or the Commission no later than the later of—

“(A) 90 days after such effective date; or

“(B) such other time after entering into the security-based swap as the Commission may prescribe by rule or regulation.

“(g) CLEARING TRANSITION RULES.—

“(1) Security-based swaps entered into before the date of the enactment of this section are exempt from the clearing requirements of this subsection if reported pursuant to subsection (f)(1).

“(2) Security-based swaps entered into before application of the clearing requirement pursuant to this section are exempt from the clearing requirements of this section if reported pursuant to subsection (f)(2).

“(h) EXCEPTIONS.—

“(1) IN GENERAL.—The requirements of subsection (a)(1) shall not apply to a security-based swap if one of the counterparties to the security-based swap—
“(A) is not a security-based swap dealer or major security-based swap participant;

“(B) is using security-based swaps to hedge or mitigate commercial risk, including operating or balance sheet risk; and

“(C) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared security-based swaps.

“(2) Abuse of Exception.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent abuse of the exemption in paragraph (1) by security-based swap dealers and major security-based swap participants.

“(3) Option to Clear.—The application of the clearing exception in paragraph (1) is solely at the discretion the counterparty to the swap that meets the conditions of subparagraphs (A) through (C) of paragraph (1).”.

(b) Clearing Agency Requirements.—Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by adding at the end the following new subsections:
“(g) Registration Requirement.—It shall be unlawful for a clearing agency, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to a swap.

“(h) Voluntary Registration.—A person that clears agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a clearing agency.

“(i) Existing Banks and Derivatives Clearing Organizations.—A bank or a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act required to be a registered as a clearing agency under this title, solely because it clears security-based swaps, is deemed to be a registered clearing agency under this title solely for the purpose of clearing security-based swaps to the extent that the bank cleared security-based swaps, as defined in this Act, as a multilateral clearing organization or the derivatives clearing organization cleared security-based swaps, as defined in this title pursuant to an exemption from registration as a clearing agency, before the enactment of this section. A bank or derivative clearing organization to which this subsection applies shall continue to
comply with the requirements in section 17A(b)(3) of this title. A bank to which this subsection applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of such bank, be converted into a State corporation, partnership, limited liability company, or other similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

“(j) Reporting.—

“(1) In general.—A clearing agency that clears security-based swaps shall provide to the Commission all information determined by the Commission to be necessary to perform its responsibilities under this Act. The Commission shall adopt data collection and maintenance requirements for security-based swaps cleared by clearing agencies that are comparable to the corresponding requirements for security-based swaps accepted by security-based swap repositories and security-based swaps traded on swap execution facilities. Subject to section 24, the Commission shall share such information, upon request, with the Board, the Commodity Futures Trading Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, and the Department of Justice or to other per-
sons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

“(2) PUBLIC INFORMATION.—A clearing agency that clears security-based swaps shall provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 13.

“(k) DESIGNATION OF COMPLIANCE OFFICER.—

“(1) IN GENERAL.—Each clearing agency that clears security-based swaps shall designate an individual to serve as a compliance officer.

“(2) DUTIES.—The compliance officer shall—

“(A) report directly to the board or to the senior officer of the clearing agency;

“(B) in consultation with the board of the clearing agency, a body performing a function similar to that of a board, or the senior officer of the clearing agency, resolve any conflicts of interest that may arise;
“(C) be responsible for administering the policies and procedures required to be established pursuant to this section;

“(D) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

“(E) establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

“(3) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the clearing agency with the securities laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the clearing agency that are required to be furnished to the Commission pursuant to this section and shall include a certifi-
cation that, under penalty of law, the report is accurate and complete.

“(l) Standards for Clearing Agencies Clearing Swap Transactions.—To be registered and to maintain registration as a clearing agency that clears swap transactions, a clearing agency shall comply with such standards as the Commission may establish by rule. In establishing any such standards, and in the exercise of its oversight of such a clearing agency pursuant to this title, the Commission may conform such standards or oversight to reflect evolving United States and international standards. Except where the Commission determines otherwise by rule or regulation, a clearing agency shall have reasonable discretion in establishing the manner in which it complies with any such standards.

“(m) Rules.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing persons that are registered as clearing agencies for security-based swaps under this Act.

“(n) Exemptions.—

“(1) In general.—The Commission may exempt, conditionally or unconditionally, a clearing agency from registration under this section for the clearing of security-based swaps if the Commission
finds that such clearing agency is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator, or the appropriate governmental authorities in the organization’s home country or if necessary or appropriate in the public interest and consistent with the purpose of this Act.

“(2) A person that is required to be registered as clearing agency under this section, whose principal business is clearing commodity futures and options on commodity futures transactions and which is a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), shall be unconditionally exempt from registration under this section solely for the purpose of clearing security-based swaps, unless the Commission finds that such derivatives clearing organization is not subject to comparable, comprehensive supervision and regulation by the Commodity Futures Trading Commission.”.

(e) Execution of Security-Based Swaps.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 5 the following:
“SEC. 5A. EXECUTION OF SECURITY-BASED SWAPS.

“(a) EXECUTION TRANSPARENCY.—

“(1) REQUIREMENT.—A security-based swap that is subject to the clearing requirement of section 3B shall not be traded except on or through a national securities exchange or on or through an swap execution facility registered under section 5h, that makes the security-based swap available for trading.

“(2) EXCEPTIONS.—The requirement of paragraph (1) shall not apply to a security-based swap if no national securities exchange or swap execution facility makes the security-based swap available for trading.

“(3) REQUIRED REPORTING.—If the exception of paragraph (2) applies and there is no national securities exchange or swap execution facility that makes the security-based swap available to trade, the counterparties shall comply with any record-keeping and transaction reporting requirements as may be prescribed by the Commission with respect to security-based swaps subject to the requirements of paragraph (1).

“(b) EXCHANGE TRADING.—In adopting rules and regulations, the Commission shall endeavor to eliminate unnecessary impediments to the trading on national securities exchanges of contracts, agreements, or transactions
that would be swaps but for the trading of such contracts,
agreements or transactions on such a national securities
exchange.".

(d) SWAP EXECUTION FACILITIES.—The Securities
by adding after section 3B (as added by subsection (a))
the following:

"SEC. 3C. SWAP EXECUTION FACILITIES.

"(a) REGISTRATION.—No person may operate a facil-
ity for the trading of security-based swaps unless the facil-
ity is registered as a swap execution facility under this
section.

"(b) REQUIREMENTS FOR TRADING.—

"(1) IN GENERAL.—A swap execution facility
that is registered under subsection (a) may list for
trading any security-based swap.

"(2) RULES FOR TRADING THROUGH THE FA-
cILITY.—Not later than 1 year after the date of the
enactment of the Derivative Markets Transparency
and Accountability Act of 2009, the Commission
shall adopt rules to allow a security-based swap to
be traded through the facilities of an exchange or a
swap execution facility. Such rules shall permit an
intermediary, acting as principal or agent, to enter
into or execute a security-based swap, notwith-
standing section 3B(b), if the security-based swap is reported, recorded, or confirmed in accordance with the rules of the exchange or swap execution facility.

“(c) TRADING BY EXCHANGES.—An exchange shall, to the extent that the exchange also operates a swap execution facility and uses the same electronic trade execution system for trading on the exchange and the swap execution facility, identify whether the electronic trading is taking place on the exchange or the swap execution facility.

“(d) CORE PRINCIPLES FOR SWAP EXECUTION FACILITIES.—

“(1) IN GENERAL.—To be registered as, and to maintain its registration as, a swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.

“(2) COMPLIANCE WITH RULES.—The swap execution facility shall—

“(A) monitor and enforce compliance with any of the rules of the facility, including the
terms and conditions of the swaps traded on or through the facility and any limitations on access to the facility; and

“(B) establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to—

“(i) provide market participants with impartial access to the market; and

“(ii) capture information that may be used in establishing whether rule violations have occurred.

“(3) Security-based swaps not readily susceptible to manipulation.—The swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.

“(4) Monitoring of trading.—The swap execution facility shall—

“(A) establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities; and
“(B) monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

“(5) ABILITY TO OBTAIN INFORMATION.—The swap execution facility shall—

“(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;

“(B) provide the information to the Commission upon request; and

“(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

“(6) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through its facilities, including the clear-
anci and settlement of the security-based swaps pur-
suant to section 3B.

“(7) Emergency Authority.—The swap exe-
cution facility shall adopt rules to provide for the ex-
ercise of emergency authority, in consultation or co-
operation with the Commission, where necessary and
appropriate, including the authority to suspend or
curtail trading in a security-based swap.

“(8) Timely Publication of Trading Infor-
mation.—The swap execution facility shall make
public timely information on price, trading volume,
and other trading data to the extent prescribed by
the Commission. The Commission shall evaluate the
impact of public disclosure on market liquidity in the
relevant market, and shall seek to avoid public dis-
closure of information in a manner that would sig-
nificantly reduce market liquidity. The Commission
shall not disclose information related to the internal
business decisions of particular market participants.

“(9) Recordkeeping and Reporting.—The
swap execution facility shall maintain records of all
activities related to the business of the facility, in-
cluding a complete audit trail, in a form and manner
acceptable to the Commission for a period of 5
years, and report to the Commission all information
determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission. The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for clearing agencies and security-based swap repositories.

“(10) CONFLICTS OF INTEREST.—The swap execution facility shall—

“(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

“(B) establish a process for resolving the conflicts of interest.

“(11) FINANCIAL RESOURCES.—The swap execution facility shall have adequate financial, operational, and managerial resources to discharge its responsibilities. Such financial resources shall be considered adequate if their value exceeds the total amount that would enable the facility to cover its operating costs for a period of one year, calculated on a rolling basis.

“(12) SYSTEM SAFEGUARDS.—The swap execution facility shall—
“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the swap execution facility’s responsibilities and obligation; and

“(C) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

“(13) DESIGNATION OF COMPLIANCE OFFICER.—

“(A) IN GENERAL.—Each swap execution facility shall designate an individual to serve as a compliance officer.

“(B) DUTIES.—The compliance officer—
“(i) shall report directly to the board or to the senior officer of the facility; and

“(ii) shall—

“(I) review compliance with the core principles in section 3B(e).

“(II) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

“(III) be responsible for administering the policies and procedures required to be established pursuant to this section; and

“(IV) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

“(iii) shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through vali-
dated complaints and to establish the han-
dling, management response, remediation,
re-testing, and closing of non-compliant
issues.

“(C) **ANNUAL REPORTS REQUIRED.**—The
compliance officer shall annually prepare and
sign a report on the compliance of the facility
with the securities laws and its policies and pro-
cedures, including its code of ethics and conflict
of interest policies, in accordance with rules
prescribed by the Commission. Such compliance
report shall accompany the financial reports of
the facility that are required to be furnished to
the Commission pursuant to this section and
shall include a certification that, under penalty
of law, the report is accurate and complete.

“(e) **EXEMPTIONS.**—The Commission may exempt,
conditionally or unconditionally, a swap execution facility
from registration under this section if the Commission
finds that such organization is subject to comparable,
comprehensive supervision and regulation on a consoli-
dated basis by the Commodity Futures Trading Commis-
sion, a Prudential Regulator or the appropriate govern-
mental authorities in the organization’s home country or
if necessary or appropriate in the public interest and consistent with the purpose of this Act.

“(f) Rules.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall prescribe rules governing the regulation of swap execution facilities under this section.”.

(e) Segregation of Assets Held as Collateral in Swap Transactions.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is further amended by adding after section 3C (as added by subsection (b)) the following:

“SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SECURITY-BASED SWAP TRANSACTIONS.

“(a) Over-the-Counter Swaps.—At the request of a counterparty to a security-based swap who provides funds or other property to a security-based swap dealer as initial margin or collateral to secure the obligations of the counterparty under a security-based swap between the counterparty and the security-based swap dealer that is not submitted for clearing to a derivatives clearing agency, the security-based swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the funds or other property in an account which is carried by a third-party custodian and designated as

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a segregated account for the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator may prescribe. If a security-based swap counterparty is a security-based swap dealer or major security-based swap participant who owns more than 20 percent of, or has more than 50 percent representation on the board of directors of a custodian, the custodian shall not be considered independent from the security-based swap counterparties for purposes of the preceding sentence. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment.

“(b) Further Audit Reporting.—If a security-based swap dealer does not segregate funds pursuant to the request of a security-based swap counterparty in accordance with subsection (a), the security-based swap dealer shall report to its counterparty on a quarterly basis that its procedures relating to margin and collateral requirements are in compliance with the agreement of the counterparties.”.

(f) Trading in Security-based Swaps.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:
“(l) It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).”.

(g) ADDITIONS OF SECURITY-BASED SWAPS TO CERTAIN ENFORCEMENT PROVISIONS.—Paragraphs (1) through (3) of section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)(1)–(3)) are amended to read as follows:

“(1) any transaction in connection with any security whereby any party to such transaction acquires (A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so; (B) any security futures product on the security; or (C) any security-based swap involving the security or the issuer of the security; or

“(2) any transaction in connection with any security with relation to which he has, directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege; (B) such security futures product; or (C) such security-based swap; or

“(3) any transaction in any security for the account of any person who he has reason to believe
has, and who actually has, directly or indirectly, any
interest in any (A) such put, call, straddle, option,
or privilege; (B) such security futures product with
relation to such security; or (C) any security-based
swap involving such security or the issuer of such se-
curity.”.

(h) **RULEMAKING AUTHORITY TO PREVENT FRAUD, MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-BASED SWAPS.**—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding at the end the following:

“(i) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap, in connection with which such person engages in any fraudulent, deceptive, or manipula-
tive act or practice, makes any fictitious quotation, or en-
gages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person. The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reason-
ably designed to prevent, such transactions, acts, prac-
ties, and courses of business as are fraudulent, deceptive, or manipulative, and such quotations as are fictitious.”.


“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS AND LARGE TRADER REPORTING.

“(a) Position Limits.—As a means reasonably designed to prevent fraud and manipulation, the Commission may, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors, establish limits (including related hedge exemption provisions) on the size of positions in any security-based swap that may be held by any person. In establishing such limits, the Commission may require any person to aggregate positions in—

“(1) any security-based swap and any security or loan or group or index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any other instrument relating to such
security or loan or group or index of securities or
loans; or

“(2) any security-based swap and (A) any secu-

rity or group or index of securities, the price, yield,
value, or volatility of which, or of which any interest
therein, is the basis for a material term of such se-
curity-based swap as described in section 3(a)(76)
and (B) any security-based swap and any other in-
strument relating to the same security or group or
index of securities.

“(b) EXEMPTIONS.—The Commission, by rule, regu-

lation, or order, may conditionally or unconditionally ex-
empt any person or class of persons, any security-based
swap or class of security-based swaps, or any transaction
or class of transactions from any requirement it may es-

ablish under this section with respect to position limits.

“(c) SRO RULES.—

“(1) IN GENERAL.—As a means reasonably de-
signed to prevent fraud or manipulation, the Com-
mission, by rule, regulation, or order, as necessary
or appropriate in the public interest, for the protec-
tion of investors, or otherwise in furtherance of the
purposes of this title, may direct a self-regulatory
organization—
“(A) to adopt rules regarding the size of
positions in any security-based swap that may
be held by—

“(i) any member of such self-regu-
laratory organization; or

“(ii) any person for whom a member
of such self-regulatory organization effects
transactions in such security-based swap;
and

“(B) to adopt rules reasonably designed to
ensure compliance with requirements prescribed
by the Commission under subsection (c)(1)(A).

“(2) REQUIREMENT TO AGGREGATE POsi-
TIONS.—In establishing such limits, the self-regu-
laratory organization may require such member or per-
sion to aggregate positions in—

“(A) any security-based swap and any se-
curity or loan or group or index of securities or
loans on which such security-based swap is
based, which such security-based swap ref-
ences, or to which such security-based swap is
related as described in section 3(a)(68), and
any other instrument relating to such security
or loan or group or index of securities or loans;
or
“(B)(i) any security-based swap; and

“(ii) any security-based swap and any other instrument relating to the same security or group or index of securities.

“(d) LARGE TRADER REPORTING.—The Commission, by rule or regulation, may require any person that effects transactions for such person’s own account or the account of others in any securities-based swap or uncleared security-based swap agreement and any security or loan or group or index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section to report such information as the Commission may prescribe regarding any position or positions in any security-based swap or uncleared security-based swap agreement and any security or loan or group or index of securities or loans and any other instrument relating to such security or loan or group or index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section.”.

(j) PUBLIC REPORTING AND REPOSITORIES FOR SECURITY-BASED SWAPS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

“(m) PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA.—
“(1) In General.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on security-based swap trading volumes and positions from the sources set forth in paragraph (3).

“(2) Designee of the Commission.—The Commission may designate a clearing agency or a security-based swap repository to carry out the public reporting described in paragraph (1).

“(3) Sources of Information.—The sources of the information to be publicly reported as described in paragraph (1) are—

“(A) clearing agencies pursuant to section 3A;

“(B) security-based swap repositories pursuant to subsection (n); and

“(C) reports received by the Commission pursuant to section 13A.

“(n) Security-Based Swap Repositories.—

“(1) Registration Requirement.—

“(A) In General.—It shall be unlawful for a security-based swap repository, unless reg-
istered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap repository.

“(B) Inspection and examination.—Registered security-based swap repositories shall be subject to inspection and examination by any representatives of the Commission.

“(2) Standard setting.—

“(A) Data identification.—The Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each security-based swap repository.

“(B) Data collection and maintenance.—The Commission shall prescribe data collection and data maintenance standards for security-based swap repositories.

“(C) Comparability.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies that clear security-based swaps.
“(3) DUTIES.—A security-based swap repository shall—

“(A) accept data prescribed by the Commission for each security-based swap under this paragraph (2);

“(B) maintain such data in such form and manner and for such period as may be required by the Commission;

“(C) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in subsection (m); and

“(D) make available, on a confidential basis, all data obtained by the security-based swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors
(including foreign futures authorities), foreign central banks, and foreign ministries.

“(4) Rules.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing persons that are registered under this section, including rules that specify the data elements that shall be collected and maintained.

“(5) Exemptions.—The Commission may exempt, conditionally or unconditionally, a security-based swap repository from the requirements of this section if the Commission finds that such security-based swap repository is subject to comparable, comprehensive supervision or regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization’s home country or if necessary or appropriate in the public interest and consistent with the purpose of this Act.”.
SEC. 3204. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.


“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.

“(a) Registration.—

“(1) It shall be unlawful for any person to act as a security-based swap dealer unless such person is registered as a security-based swap dealer with the Commission.

“(2) It shall be unlawful for any person to act as a major security-based swap participant unless such person is registered as a major security-based swap participant with the Commission.

“(b) Requirements.—

“(1) In general.—A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

“(2) Contents.—The application shall be made in such form and manner as prescribed by the Commission, giving any information and facts as the Commission may deem necessary concerning the
business in which the applicant is or will be engaged.

Such person, when registered as a security-based swap dealer or major security-based swap participant, shall continue to report and furnish to the Commission such information pertaining to such person’s business as the Commission may require.

“(3) Expiration.—Each registration shall expire at such time as the Commission may by rule or regulation prescribe.

“(4) Rules.—Except as provided in subsections (c) and (d), the Commission may prescribe rules applicable to security-based swap dealers and major security-based swap participants, including rules that limit the activities of security-based swap dealers and major security-based swap participants. Except as provided in subsection (d)(1)(A), the Commission may provide conditional or unconditional exemptions from some or all of the rules or requirements prescribed under this section for security-based swap dealers and major security-based swap participants.

“(5) Transition.—Rules adopted under this section shall provide for the registration of security-based swap dealers and major security-based swap participants no later than 1 year after the effective

“(c) Rules.—

“(1) In General.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for persons that are registered as security-based swap dealers or major security-based swap participants under this Act.

“(2) Exception for Prudential Requirements.—The Commission shall not prescribe rules imposing prudential requirements on security-based swap dealers or major security-based swap participants for which there is a Prudential Regulator. This provision shall not be construed as limiting the authority of the Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

“(d) Capital and Margin Requirements.—

“(1) In General.—

“(A) Bank Security-Based Swap Dealers and Major Security-Based Swap Participants.—Each registered security-based swap dealer and major security-based swap participant for which there is a Prudential Regu-
lator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Prudential Regulators shall by rule or regulation jointly prescribe that—

“(i) help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant; and

“(ii) are appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.

“(B) Non-bank security-based swap dealers and major security-based swap participants.—Each registered security-based swap dealer and major security-based swap participant for which there is not a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe that—

“(i) help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant; and
“(ii) are appropriate for the risk associated with the non-cleared swaps held as the swap dealer or major swap participant.

“(2) Rules.—

“(A) Bank security-based swap dealers and major security-based swap participants.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Prudential Regulators, in consultation with the Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants, with respect to their activities as a security-based swap dealer or major security-based swap participant for which there is a Prudential Regulator.

“(B) Non-bank security-based swap dealers and major security-based swap participants.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and
major security-based swap participants for
which there is no Prudential Regulator.

“(3) Authority.—Nothing in this section shall
limit the authority of the Commission to set capital
requirements for a broker or dealer registered in ac-
cordance with section 15 of this Act.

“(e) Reporting and Recordkeeping.—

“(1) In General.—Each registered security-
based swap dealer and major security-based swap
participant—

“(A) shall make such reports as are pre-
scribed by the Commission by rule or regulation
regarding the transactions and positions and fi-
nancial condition of such person;

“(B) for which—

“(i) there is a Prudential Regulator
shall keep books and records of all activi-
ties related to its business as a security-
based swap dealer or major security-based
swap participant in such form and manner
and for such period as may be prescribed
by the Commission by rule or regulation;

“(ii) there is no Prudential Regulator
shall keep books and records in such form
and manner and for such period as may be
prescribed by the Commission by rule or
regulation; and

“(C) shall keep such books and records
open to inspection and examination by any rep-
resentative of the Commission.

“(2) RULES.—Not later than 1 year after the
date of enactment of the Derivative Markets Trans-
pareny and Accountability Act of 2009, the Com-
mission shall adopt rules governing reporting and
recordkeeping for security-based swap dealers and
major security-based swap participants.

“(f) DAILY TRADING RECORDS.—

“(1) IN GENERAL.—Each registered security-
based swap dealer and major security-based swap
participant shall maintain daily trading records of
its security-based swaps and all related records (in-
cluding related transactions) and recorded commu-
nications including but not limited to electronic mail,
instant messages, and recordings of telephone calls,
for such period as may be prescribed by the Com-
mission by rule or regulation.

“(2) INFORMATION REQUIREMENTS.—The daily
trading records shall include such information as the
Commission shall prescribe by rule or regulation.
“(3) CUSTOMER RECORDS.—Each registered security-based swap dealer or major security-based swap participant shall maintain daily trading records for each customer or counterparty in such manner and form as to be identifiable with each security-based swap transaction.

“(4) AUDIT TRAIL.—Each registered security-based swap dealer or major security-based swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

“(5) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing daily trading records for security-based swap dealers and major security-based swap participants.

“(g) BUSINESS CONDUCT STANDARDS.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with business conduct standards as may be prescribed by the Commission by rule or regulation addressing—

“(A) fraud, manipulation, and other abusive practices involving security-based swaps
(including security-based swaps that are offered but not entered into);

“(B) diligent supervision of its business as a security-based swap dealer;

“(C) adherence to all applicable position limits; and

“(D) such other matters as the Commission shall determine to be necessary or appropriate.

“(2) BUSINESS CONDUCT REQUIREMENTS.— Business conduct requirements adopted by the Commission shall—

“(A) establish the standard of care for a security-based swap dealer or major security-based swap participant to verify that any security-based swap counterparty meets the eligibility standards for an eligible contract participant;

“(B) require disclosure by the security-based swap dealer or major security-based swap participant to any counterparty to the security-based swap (other than a security-based swap dealer or major security-based swap participant) of:
“(i) information about the material risks and characteristics of the security-based swap;

“(ii) for cleared security-based swaps, upon the request of the counterparty, the daily mark from the appropriate clearing agency, and for non-cleared security-based swaps, upon request of the counterparty, the daily mark of the security-based swap dealer or major security-based swap participant; and

“(iii) any other material incentives or conflicts of interest that the security-based swap dealer or major security-based swap participant may have in connection with the security-based swap; and

“(C) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

“(3) Rules.—The Commission shall prescribe rules under this subsection governing business conduct standards for security-based swap dealers and major security-based swap participants not later
than 1 year after the date of enactment of the Derivative Markets Transparency and Accountability Act of 2009.

“(h) DOCUMENTATION STANDARDS.—

“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with standards, as may be prescribed by the Commission by rule or regulation, addressing timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.

“(2) RULES.—Not later than 1 year after the date of enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission and the appropriate Federal banking agencies, shall adopt rules governing the standards described in paragraph (1) for security-based swap dealers and major security-based swap participants.

“(i) DEALER RESPONSIBILITIES.—Each registered security-based swap dealer and major security-based swap participant at all times shall comply with the following requirements:

“(1) MONITORING OF TRADING.—The security-based swap dealer or major security-based swap participant shall monitor its trading in security-based
swaps to prevent violations of applicable position limits.

“(2) Disclosure of General Information.—The security-based swap dealer or major security-based swap participant shall disclose to the Commission or to the Prudential Regulator for such security-based swap dealer or major security-based swap participant, as applicable, information concerning—

“(A) terms and conditions of its security-based swaps;

“(B) security-based swap trading operations, mechanisms, and practices;

“(C) financial integrity protections relating to security-based swaps; and

“(D) other information relevant to its trading in security-based swaps.

“(3) Ability to Obtain Information.—The security-based swap dealer or major swap security-based participant shall—

“(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and
“(B) provide the information to the Commission or to the Prudential Regulator for such security-based swap dealer or major security-based swap participant, as applicable, upon request.

“(4) CONFLICTS OF INTEREST.—The security-based swap dealer and major security-based swap participant shall implement conflict-of-interest systems and procedures that—

“(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any security are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

“(B) address such other issues as the Commission determines appropriate.

“(j) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-
based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such statutory disqualification.

“(k) Enforcement and Administrative Proceeding Authority.—

“(1) Primary enforcement authority.—

“(A) SEC.—Except as provided in subparagraph (B), the Commission shall have exclusive authority to enforce the amendments made by subtitle B of the Derivative Markets Transparency and Accountability Act of 2009 with respect to any person.

“(B) Prudential regulators.—The Prudential Regulators shall have exclusive authority to enforce the provisions of section 15F(d) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks that are security-based swap dealers or major security-based swap participants.
“(C) Referral.—

“(i) Violations of nonprudential requirements.—If the Prudential Regulator for a security-based swap dealer or major security-based swap participant has cause to believe that such security-based swap dealer or major security-based swap participant may have engaged in conduct that constitutes a violation of the non-prudential requirements of section 15F or rules adopted by the Commission thereunder, that Prudential Regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

“(ii) Violations of prudential requirements.—If the Commission has cause to believe that a securities-based swap dealer or major securities-based swap participant that has a Prudential Regulator may have engaged in conduct that constitute a violation of the prudential re-
quirements of section 15F(e) or rules adopted thereunder, the Commission may recommend in writing to the Prudential Regulator that the Prudential Regulator initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

“(2) CENSURE, DENIAL, SUSPENSION; NOTICE AND HEARING.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or revocation is in the public interest and that such security-based swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap participant effecting or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based
swap participant, whether prior or subsequent to becoming so associated—

“(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

“(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

“(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

“(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

“(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

“(3) ASSOCIATED PERSONS.—With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to be-
come associated with a security-based swap dealer or major security-based swap participant for the purpose of effecting or being involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a security-based swap dealer or major security-based swap participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

“(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

“(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;
“(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

“(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

“(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

“(4) UNLAWFUL CONDUCT.—It shall be unlawful—

“(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or

“(B) for any security-based swap dealer or major security-based swap participant to permit such a person, without the consent of the Commission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in contr-
travention of such order, if such security-based
swap dealer or major security-based swap par-
ticipant knew, or in the exercise of reasonable
care should have known, of such order.”.

SEC. 3205. REPORTING AND RECORDKEEPING.

78a et seq.) is amended by inserting after section 13 the
following section:

“SEC. 13A. REPORTING AND RECORDKEEPING FOR CERT-
TAIN SECURITY-BASED SWAPS.

“(a) IN GENERAL.—Any person who enters into a se-
curity-based swap and—

“(1) did not clear the security-based swap in
accordance with section 3A; and

“(2) did not have data regarding the security-
based swap accepted by a security-based swap repos-
itory in accordance with rules adopted by the Com-
mission under section 13(n),

shall meet the requirements in subsection (b).

“(b) REPORTS.—Any person described in subsection
(a) shall—

“(1) make such reports in such form and man-
ner and for such period as the Commission shall pre-
scribe by rule or regulation regarding the security-
based swaps held by the person; and
“(2) keep books and records pertaining to the security-based swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice.

“(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or more comprehensive data than the Commission requires security-based swap repositories to collect under subsection (n).”.

(b) BENEFICIAL OWNERSHIP REPORTING.—

(1) Section 13(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by inserting “or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule, and” after “Alaska Native Claims Settlement Act,”; and

(2) Section 13(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by
inserting “or otherwise becomes or is deemed to be-
come a beneficial owner of any security of a class de-
scribed in subsection (d)(1) upon the purchase or
sale of a security-based swap or other derivative in-
strument that the Commission may define by rule”
after “subsection (d)(1) of this section”.

(c) REPORTS BY INSTITUTIONAL INVESTMENT MAN-
AGERS.—Section 13(f)(1) of the Securities Exchange Act
of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting
“or otherwise becomes or is deemed to become a beneficial
owner of any security of a class described in subsection
(d)(1) upon the purchase or sale of a security-based swap
or other derivative instrument that the Commission may
define by rule,” after “subsection (d)(1) of this section”.

(d) ADMINISTRATIVE PROCEEDING AUTHORITY.—
Section 15(b)(4) of the Securities Exchange Act of 1934
(15 U.S.C. 78o(b)(4)) is amended—

(1) in subparagraph (C), by adding “security-
based swap dealer, major security-based swap partic-
ipant,” after “government securities dealer,”; and

(2) in subparagraph (F), by adding “, or secu-
rities-based swap dealer, or a major security-based
swap participant” after “or dealer”.

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(e) Derivatives Beneficial Ownership.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

“(o) Beneficial Ownership.—For purposes of this section and section 16, a person shall be deemed to acquire beneficial ownership of an equity security based on the purchase or sale of a security-based swap or other derivative instrument only to the extent that the Commission, by rule, determines after consultation with the Prudential Regulators and the Secretary of the Treasury, that the purchase or sale of the security-based swap or other derivative instrument, or class of security-based swaps or other derivative instruments, provides incidents of ownership comparable to direct ownership of the equity security, and that it is necessary to achieve the purposes of this section that the purchase or sale of the security-based swaps or instrument, or class of security-based swap or instruments, be deemed the acquisition of beneficial ownership of the equity security.”.

SEC. 3206. STATE GAMING AND BUCKET SHOP LAWS.

Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended to read as follows:

“(a) Except as provided in subsection (f), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist...
at law or in equity; but no person permitted to maintain
a suit for damages under the provisions of this title shall
recover, through satisfaction of judgment in one or more
actions, a total amount in excess of his actual damages
on account of the act complained of. Except as otherwise
specifically provided in this title, nothing in this title shall
affect the jurisdiction of the securities commission (or any
agency or officer performing like functions) of any State
over any security or any person insofar as it does not con-

cflict with the provisions of this title or the rules and regu-
lations thereunder. No State law which prohibits or regu-
lates the making or promoting of wagering or gaming con-
tracts, or the operation of ‘bucket shops’ or other similar
or related activities, shall invalidate (1) any put, call,
straddle, option, privilege, or other security subject to this
title (except any security that has a pari-mutuel payout
or otherwise is determined by the Commission, acting by
rule, regulation, or order, to be appropriately subject to
such laws), or apply to any activity which is incidental or
related to the offer, purchase, sale, exercise, settlement,
or closeout of any such security, (2) any security-based
swap between eligible contract participants, or (3) any se-
curity-based swap effected on a national securities ex-
change registered pursuant to section 6(b). No provision
of State law regarding the offer, sale, or distribution of
securities shall apply to any transaction in a security-based swap or a security futures product, except that this sentence shall not be construed as limiting any State anti-fraud law of general applicability. A security-based swap may not be regulated as an insurance contract under State law.”.

SEC. 3207. AMENDMENTS TO THE SECURITIES ACT OF 1933;
TREATMENT OF SECURITY-BASED SWAPS.

(a) DEFINITIONS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

(1) in paragraph (1), by inserting “security-based swap,” after “security future,”;

(2) in paragraph (3) by adding at the end the following: “Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities.”; and

(3) by adding at the end the following:

“(17) The terms ‘swap’ and ‘security-based swap’ have the same meanings as provided in sections 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)) and section 3(a)(68) of the Securities Exchange Act of 1934.

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“(18) The terms ‘purchase’ or ‘sale’ of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.”.

(b) EXEMPTION FROM REGISTRATION.—Section 3(a) of the Securities Act of 1933 is amended by adding at the end the following:

“(15) Any security-based swap, as defined in section 2(a)(17) that is not otherwise a security as defined in section 2(a)(1) and that satisfies such conditions as established by rule or regulation by the Commission consistent with the provisions of the Derivative Markets Transparency and Accountability Act of 2009. The Commission shall promulgate rules implementing this exemption.”.

(c) REGISTRATION OF SECURITY-BASED SWAPS.—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) is amended by adding at the end the following:

“(d) Notwithstanding the provisions of section 3 or section 4, unless a registration statement meeting the requirements of subsection (a) of section 10 is in effect as to a security-based swap, it shall be unlawful for any per-
son, directly or indirectly, to make use of any means or instruments of transportation or communication in inter-state commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)).”.

SEC. 3208. OTHER AUTHORITY.

Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Commission, the Commodity Futures Trading Commission, or other Federal or State agency, of any authority derived from any other applicable law.

SEC. 3209. JURISDICTION.

(a) Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) is amended by adding at the end the following new subsection:

“(c) DERIVATIVES.—The Commission shall not grant exemptions from the security-based swap provisions of the Derivative Markets Transparency and Accountability Act of 2009, except as expressly authorized under the provisions of that Act.”.

(b) Section 30 of the Securities Exchange Act of 1934 is amended by adding at the end the following:
“(c) No provision of this Act that was added by the Derivative Markets Transparency and Accountability Act of 2009 or any rule or regulation thereunder shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States unless he transacts such business in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of any provision of this Act that was added by the Derivative Markets Transparency and Accountability Act of 2009. This subsection shall not be construed to limit the jurisdiction of the Commission under any provision of this Act as in effect prior to enactment of the Derivative Markets Transparency and Accountability Act of 2009.”.

SEC. 3210. EFFECTIVE DATE.

(a) Unless otherwise provided, the provisions of this subtitle shall become effective the later of 270 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires rulemaking, no less than 60 days after publication of a final rule or regulation implementing such provision of this subtitle.

(b) Subsection (a) shall not preclude the Securities Exchange Commission from any rulemaking required to implement the provisions of this subtitle.
Subtitle C—Improved Financial and Commodity Markets Oversight and Accountability

SEC. 3301. ELEVATION OF CERTAIN INSPECTORS GENERAL TO APPOINTMENT PURSUANT TO SECTION 3 OF THE INSPECTOR GENERAL ACT OF 1978.

(a) INCLUSION IN CERTAIN DEFINITIONS.—Section 12 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by striking “or the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code;” and inserting “the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code; the Chairman of the Board of Governors of the Federal Reserve System; the Chairman of the Commodity Futures Trading Commission; the Chairman of the National Credit Union Administration; the Director of the Pension Benefit Guaranty Corporation; the Chairman of the Securities and Exchange Commission; or the Director of the Consumer Financial Protection Agency;”; and

(2) in paragraph (2), by striking “or the Commissions established under section 15301 of title 40,
United States Code,” and inserting “the Commissions established under section 15301 of title 40, United States Code, the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, or the Director of the Consumer Financial Protection Agency,”.

(b) EXCLUSION FROM DEFINITION OF DESIGNATED FEDERAL ENTITY.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by striking “the Board of Governors of the Federal Reserve System,”;

(2) by striking “the Commodity Futures Trading Commission,”;

(3) by striking “the National Credit Union Administration,”; and

(4) by striking “the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission,”.
SEC. 3302. CONTINUATION OF PROVISIONS RELATING TO
PERSONNEL.

(a) In General.—The Inspector General Act of
1978 (5 U.S.C. App.) is amended by inserting after sec-
tion 8L the following:

"SEC. 8M. SPECIAL PROVISIONS CONCERNING CERTAIN ES-
TABLISHMENTS.

"(a) Definition.—For purposes of this section, the
term ‘covered establishment’ means the Board of Gov-
ernors of the Federal Reserve System, the Commodity Fu-
tures Trading Commission, the National Credit Union Ad-
ministration, the Pension Benefit Guaranty Corporation,
and the Securities and Exchange Commission.

"(b) Provisions Relating to All Covered Es-
tablishments.—

"(1) Provisions relating to inspectors
general.—In the case of the Inspector General of
a covered establishment, subsections (b) and (c) of
section 4 of the Inspector General Reform Act of
2008 (Public Law 110–409) shall apply in the same
manner as if such covered establishment were a des-
ignated Federal entity under section 8G. An Inspec-
tor General who is subject to the preceding sentence
shall not be subject to section 3(e).

"(2) Provisions relating to other per-
sonnel.—Notwithstanding paragraphs (7) and (8)
of section 6(a), the Inspector General of a covered establishment may select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General of such establishment and to obtain the temporary or intermittent services of experts or consultants or an organization of experts or consultants, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within such establishment.

“(c) Provision Relating to the Board of Governors of the Federal Reserve System.—The provisions of subsection (a) of section 8D (other than the provisions of subparagraphs (A), (B), (C), and (E) of paragraph (1) of such subsection (a)) shall apply to the Inspector General of the Board of Governors of the Federal Reserve System and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the Department of the Treasury and the Secretary of the Treasury, respectively.”.

(b) Conforming Amendment.—Paragraph (3) of section 8G(g) of the Inspector General Act of 1978 (5 U.S.C. App.) is repealed.
SEC. 3303. CORRECTIVE RESPONSES BY HEADS OF CERTAIN ESTABLISHMENTS TO DEFICIENCIES IDENTIFIED BY INSPECTORS GENERAL.

The Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Commodity Futures Trading Commission, the Chairman of the National Credit Union Administration, the Director of the Pension Benefit Guaranty Corporation, and the Chairman of the Securities and Exchange Commission shall each—

(1) take action to address deficiencies identified by a report or investigation of the Inspector General of the establishment concerned; or

(2) certify to both Houses of Congress that no action is necessary or appropriate in connection with a deficiency described in paragraph (1).

SEC. 3304. EFFECTIVE DATE; TRANSITION RULE.

(a) EFFECTIVE DATE.—This subtitle and the amendments made by this subtitle shall take effect 30 days after the date of the enactment of this subtitle.

(b) TRANSITION RULE.—An individual serving as Inspector General of the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, or the Securities and Exchange Commission on the effective date of this subtitle pursuant to an appointment made under section

(1) may continue so serving until the President makes an appointment under section 3(a) of such Act with respect to the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, or the Securities and Exchange Commission, as the case may be, consistent with the amendments made by section 301; and

(2) shall, while serving under paragraph (1), remain subject to the provisions of section 8G of such Act which, immediately before the effective date of this subtitle, applied with respect to the Inspector General of the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, or the Securities and Exchange Commission, as the case may be, and suffer no reduction in pay.
SEC. 3305. AUTHORITY OF THE COMMODITY FUTURES TRADING COMMISSION TO DEFINE “COMMERCIAL RISK”, “OPERATING RISK”, AND “BALANCE SHEET RISK”.

(a) IN GENERAL.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a), as amended by the preceding provisions of this Act, is amended by adding at the end the following:

“(51) COMMERCIAL RISK; OPERATING RISK; BALANCE SHEET RISK.—The terms ‘commercial risk’, ‘operating risk’, and ‘balance sheet risk’ shall have such meanings as the Commission may prescribe.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in subtitle A.

SEC. 3306. CONFLICTS OF INTEREST IN CLEARING ORGANIZATIONS.

(a) COMMODITY EXCHANGE ACT.—

(1) DEFINITION OF RESTRICTED OWNER.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) (as amended by the preceding provisions of this Act) is further amended by adding at the end the following:

“(51) RESTRICTED OWNER.—The term ‘restricted owner’ means any swap dealer, security-
based swap dealer, major swap participant, or major
security-based swap participant, that is an identified
financial holding company as defined in Section
1000(b)(5) of the Financial Stability Improvement
Act of 2009, or a person associated with a swap
dealer or a major swap participant that is an identi-
fied financial holding company, or a person associ-
ated with a security-based swap dealer or major se-
curity-based swap participant that is an identified fi-
nancial holding company.”.

(2) CONFLICTS OF INTEREST.—

(A) Subparagraph (P) of section 5b(c)(2)
of the Commodity Exchange Act (as added by
the preceding provisions of this Act) is amended
by adding at the end of such subparagraph the
following: “The rules of the derivatives clearing
organization that clears swaps shall provide
that a restricted owner shall not be permitted
directly or indirectly to acquire beneficial own-
ership of interests in the organization or in per-
sons with a controlling interest in the organiza-
tion, to the extent that such an acquisition
would result in restricted owners being entitled
to vote, cause the voting of, or cause the with-
holding of votes of, more than 20 percent of the
votes entitled to be cast on any matter by the holders of the ownership interests. The rules of the derivatives clearing organization shall provide that a majority of the directors of the organization shall not be associated with a restricted owner. This subparagraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational derivatives clearing organization acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.”.

(B) Section 4s(g)(1) of the Commodity Exchange Act (as added by the preceding provisions of this Act) is amended—

(i) by striking “and” at the end of subparagraph (C); and

(ii) by redesignating subparagraph (D) as subparagraph (E) and insert after subparagraph (C) the following:
“(D) the prevention of self-dealing, by limiting the extent to which such a swap dealer or major swap participant may conduct business with a derivatives clearing organization, a board of trade, or an alternative swap execution facility that clears or trades swaps and in which such a swap dealer or major swap participant has a material debt or equity investment; and”.

(C) Paragraph (12) of section 5h(d) of the Commodity Exchange Act (as added by the preceding provisions of this Act) is amended by adding at the end the following new subparagraph:

“(C) The rules of the swap execution facility shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the facility or in persons with a controlling interest in the facility, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This subparagraph shall not be construed to require
divestiture of any interest of a restricted owner in an established and operational swap execution facility acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.

“(D) The rules of the swap execution facility shall provide that a majority of the directors of the facility shall not be associated with a restricted owner.”.

(D) Section 5(d) of the Commodity Exchange Act (as amended by the preceding provisions of this Act) is further amended by striking paragraph (15) and inserting the following:

“(15) CONFLICTS OF INTEREST.—

“(A) The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market, and establish a process for resolving any such conflicts of interest.
“(B) The rules of a board of trade that trades swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the board of trade or in persons with a controlling interest in the board of trade, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This paragraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational board of trade acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.

“(C) The rules of a board of trade that trades swaps shall provide that a majority of
the directors of the board of trade shall not be associated with a restricted owner.”.

(b) Securities Exchange Act of 1934.—

(1) Definition of restricted owner.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) (as amended by the preceding provisions of this Act) is further amended by adding at the end the following:

“(78) Restricted owner.—The term ‘restricted owner’ has the same meaning as in section 1a(51) of the Commodity Exchange Act.”.

(2) Conflicts of interest.—

(A) Paragraph (10) of section 3C(d) of the Securities Exchange Act of 1934 (as added by the preceding provisions of this Act) is amended by adding after subparagraph (B) the following:

“The rules of the swap execution facility shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the facility or in persons with a controlling interest in the facility, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. The rules of the swap
execution facility shall provide that a majority of the directors of the facility shall not be associated with a restricted owner. This paragraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational swap execution facility acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.”.

(B) Section 15F(g)(1) of the Securities Exchange Act of 1934 (as added by the preceding provisions of this Act) is amended—

(i) in subparagraph (C), strike “and”; and

(ii) insert after subparagraph (C) the following (and redesignate the succeeding subparagraph accordingly):

“(D) the prevention of self-dealing by limiting the extent to which a security-based swap dealer or major security-based swap participant may conduct business with a clearing agency, an exchange, or an alternative swap execution
facility that clears or trades security-based
swaps and in which such a dealer or participant
has a material debt or equity investment; and’’.

(C) Section 6(b) of the Securities Ex-
change Act of 1934 (15 U.S.C. 78f(b)) is
amended by adding at the end the following
new paragraphs:

“(10) The rules of the exchange minimize con-
flicts of interest in its decision-making process and
establish a process for resolving such conflicts of in-
terest.

“(11) The rules of an exchange that trades se-
curity-based swaps provide that a majority of the di-
rectors of the exchange shall not be associated with
a restricted owner.

“(12) The rules of an exchange that trades se-
curity-based swaps provide that a restricted owner
shall not be permitted directly or indirectly to ac-
quire beneficial ownership of interests in the ex-
change or in persons with a controlling interest in
the exchange, to the extent that such an acquisition
would result in restricted owners being entitled to
vote, cause the voting of, or cause the withholding
of votes of, more than 20 percent of the votes enti-
tled to be cast on any matter by the holders of the
ownership interests. This paragraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational exchange acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.”.

(D) Section 17A(b)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end the following new subparagraphs:

“(J) The rules of a clearing agency that clears security-based swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the agency or in persons with a controlling interest in the agency, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be
cast on any matter by the holders of the ownership interests. This subparagraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational clearing agency acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.

“(K) The rules of the clearing agency shall provide that a majority of the directors of the agency shall not be associated with a restricted owner.”.

SEC. 3307. DEFINITIONS OF MAJOR SWAP PARTICIPANT AND MAJOR SECURITY-BASED SWAP PARTICIPANT.

(a) MAJOR SWAP PARTICIPANT.—Section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a), as added by the preceeding provisions of this Act, is amended to read as follows:

“(39) MAJOR SWAP PARTICIPANT.—
“(A) IN GENERAL.—The term ‘major swap participant’ means any person who is not a swap dealer, and—

“(i) maintains a substantial net position in outstanding swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk; or

“(ii) whose outstanding swaps create substantial net counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets.

“(B) DEFINITION OF SUBSTANTIAL NET POSITION.—The Commission shall define by rule or regulation the term ‘substantial net position’ at a threshold that the Commission determines prudent for the effective monitoring, management, and oversight of entities which are systemically important or can significantly impact the financial system. In setting the definitions, the Commission shall consider the person’s relative position in uncleared as opposed to cleared swaps.
“(C) A person may be designated a major swap participant for 1 or more individual types of swaps without being classified as a major swap participant for all classes of swaps.”.

(b) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

Section 3(a)(67) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), as added by the preceding provisions of this Act, is amended to read as follows:

“(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

“(A) IN GENERAL.—The term ‘major security-based swap participant’ means any person who is not a security-based swap dealer, and—

“(i) maintains a substantial net position in outstanding security-based swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk; or

“(ii) whose outstanding security-based swaps create substantial net counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets.
“(B) DEFINITION OF SUBSTANTIAL NET POSITION.—The Commission shall define by rule or regulation the term ‘substantial net position’ at a threshold that the Commission determines prudent for the effective monitoring, management, and oversight of entities which are systemically important or can significantly impact the financial system. In setting the definitions, the Commission shall consider the person’s relative position in uncleared as opposed to cleared security-based swaps.

“(C) A person may be designated a major security-based swap participant for 1 or more individual types of security-based swaps without being classified as a major security-based swap participant for all classes of security-based swaps.”.

(c) EFFECTIVE DATES.—

(1) MAJOR SWAP PARTICIPANT.—The amendment made by subsection (a)(1) shall take effect as if included in subtitle A.

(2) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The amendment made by subsection (a)(2) shall take effect as if included in subtitle B.
TITLE IV—CONSUMER FINANCIAL PROTECTION AGENCY ACT

SEC. 4001. SHORT TITLE.

This title may be cited as the “Consumer Financial Protection Agency Act of 2009”.

SEC. 4002. DEFINITIONS.

For the purposes of subtitles A through F of this title, the following definitions shall apply:

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

(2) AGENCY.—The term “Agency” means—

(A) before the Agency conversion date, the Consumer Financial Protection Agency; and

(B) on and after the Agency conversion date, the commission established under section 4103.

(3) BANK HOLDING COMPANY.—The term “bank holding company” has the same meaning as in section 2(a) of the Bank Holding Company Act of 1956.

(4) BOARD.—Except when used in connection with the term “Board of Governors”, the term
“Board” means the Consumer Financial Protection Oversight Board.

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

(6) **BUSINESS OF INSURANCE.**—The term “business of insurance” means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.

(7) **CONSUMER.**—The term “consumer” means an individual or an agent, trustee, or representative acting on behalf of an individual.

(8) **CONSUMER FINANCIAL PRODUCT OR SERVICE.**—The term “consumer financial product or service” means any financial product, other than a Federal tax return, or service to be used by a consumer primarily for personal, family, or household purposes.

(9) **COVERED PERSON.**—
(A) IN GENERAL.—The term “covered person” means any person who engages directly or indirectly in a financial activity, in connection with the provision of a consumer financial product or service.

(B) EXCLUSION.—The term “covered person” shall not include the Secretary, the Department of the Treasury, any agency or bureau under the jurisdiction of the Secretary, or any person collecting Federal taxes for the United States to the extent such person is acting in such capacity.

(10) CREDIT.—The term “credit” means the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.

(11) CREDIT UNION.—The term “credit union” means a Federal credit union or a State credit union as defined in section 101 of the Federal Credit Union Act.

(12) DEPOSIT.—The term “deposit”—

(A) has the same meaning as in section 3(l) of the Federal Deposit Insurance Act; and
(B) includes a share in a member account (as defined in section 101(5) of the Federal Credit Union Act) at a credit union.

(13) Deposit-taking, money acceptance, or money movement activity.—The term “deposit-taking, money acceptance, or money movement activities” means—

(A) the acceptance of deposits, the maintenance of deposit accounts, or the provision of services related to the acceptance of deposits;

(B) the acceptance of money, the provision of other services related to the acceptance of money, or the maintenance of members’ share accounts by a credit union; or

(C) the receipt of money or its equivalent, as the Director may determine by regulation or order, received or held by the covered person (or an agent for the person) for the purpose of facilitating a payment or transferring funds or value of funds by a consumer to a third party.

(14) Designated transfer date.—The term “designated transfer date” has the meaning provided in section 4602.

(15) Director.—The term “Director” means—
(A) before the Agency conversion date, the Director of the Agency; and

(B) on and after the Agency conversion date, the commission established under section 4103.

(16) ENUMERATED CONSUMER LAWS.—The term “enumerated consumer laws” means each of the following:


(B) The Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.).

(C) The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.).

(D) The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of such Act.


(F) Subsections (b), (c), (d), (e), and (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t).

(G) Sections 502, 503, 504, 505, 506, 507, 508, and 509 of the Gramm-Leach-Bliley
Act (15 U.S.C. 6802 et seq.) except for section 505 as it applies to section 501(b).


(K) The Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. 5101 et seq.).


(N) Section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8).

(O) The Unlawful Internet Gambling Enforcement Act of 2006.

(17) FEDERAL BANKING AGENCY.—The term “Federal banking agency” means the Board of Governors, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, or the National...
Credit Union Administration and the term “Federal banking agencies” means all of such agencies.

(18) FAIR LENDING.—The term “fair lending” means fair, equitable, and nondiscriminatory access to credit for both individuals and communities.

(19) FINANCIAL ACTIVITY.—

(A) IN GENERAL.—The term “financial activity” means any of the following activities:

(i) Deposit-taking, money acceptance, or money movement activities.

(ii) Extending credit and servicing loans, including—

(I) acquiring, purchasing, selling, brokering, or servicing loans or other extensions of credit; and

(II) engaging in any other activity usual in connection with extensions of credit or servicing loans, including performing appraisals of real estate and personal property.

(iii) Check cashing and check-guaranty services, including—

(I) authorizing a subscribing merchant to accept personal checks tendered by the merchant’s customers
in payment for goods and services;
and

(II) purchasing from a subscribing merchant validly authorized checks that are subsequently dishonored.

(iv) Collecting, analyzing, maintaining, and providing consumer report information or other account information by covered persons, including information relating to the credit history of consumers and providing the information to a credit grantor who is considering a consumer application for credit or who has extended credit to the borrower, except that furnishing a consumer report to another person that it has reason to believe intends to use the information for employment purposes, including for security investigations, government licensing and evaluating a consumer’s residential or tenant history shall not be considered a financial activity.

(v) Collection of debt related to any consumer financial product or service.
(vi) Providing real estate settlement services.

(vii) Leasing personal or real property or acting as agent, broker, or adviser in leasing such property if—

(I) the lease is on a non-operating basis;

(II) the initial term of the lease is at least 90 days; and

(III) in the case of leases involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the Director.

(viii) Acting as an investment adviser to any person (excluding an investment adviser that is a person regulated by the Commodity Futures Trading Commission, the Securities and Exchange Commission, or a person regulated as an investment adviser by any securities commission (or any agency or office performing like functions) of any State).
(ix) Acting as financial adviser to any person (excluding an investment adviser that is a person regulated by the Commodity Futures Trading Commission, the Securities and Exchange Commission, or any securities commission (or any agency or office performing like functions) of any State), including—

(I) providing financial and other related advisory services;

(II) providing educational courses, and instructional materials to consumers on individual financial management matters;

(III) providing credit counseling or tax planning services to any person (excluding the preparation of returns, or claims for refund, of tax imposed by the Internal Revenue Code or advice with respect to positions taken therein, or services regulated by the Secretary of the Treasury under section 330 of title 31, United States Code); or
(IV) providing services to assist a consumer with debt management or debt settlement, with modifying the terms of any extension of credit, or with avoiding foreclosure.

(x) For purposes of this title, the following shall not be considered acting as financial adviser:

(I) Publishing any bona fide newspaper, news magazine or business or financial publication of general and regular circulation, including publishing market data, news, or data analytics or investment information or recommendations that are not tailored to the individual needs of a particular consumer.

(II) Providing advice, analyses, or reports that do not relate to any securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a di-
rect or indirect interest which shall
have been designated by the Secretary
of the Treasury, pursuant to section
3(a)(12) of the Securities Exchange
Act of 1934, as exempted securities
for the purposes of that Act.

(xi) Financial data processing by any
technological means, including providing
data processing, access to or use of data-
bases or facilities, or advice regarding
processing or archiving, if the data to be
processed, furnished, stored, or archived
are financial, banking, or economic, except
that it shall not be considered a “financial
activity” with respect to financial data
processing—

(I) to the extent the person is
providing interactive computer service,
as defined in section 230 of the Com-
munications Act of 1934 (47 U.S.C.
230); or

(II) if the person—

(aa) unknowingly or inciden-
tally transmits, processes, or
stores financial data in a manner
that such data is undifferentiated from other types of data that the person transmits, processes, or stores;

(bb) does not provide to any consumer a consumer financial product or service in connection with or relating to in any manner financial data processing; and

(cc) does not provide a material service to any covered person in connection with the provision of a consumer financial product or service.

(xii) Money transmitting.

(xiii) Sale, provision or issuance of stored value, except that, in the case of a sale, only if the seller influences the terms or conditions of the stored value provided to the consumer.

(xiv) Acting as a money services business.

(xv) Acting as a custodian of money or any financial instrument.
(xvi)(I) Any other activity that the Director defines, by regulation, as a financial activity after finding that—

(aa) the activity is financial in nature or is otherwise a permissible activity for a bank or bank holding company, including a financial holding company, under any provision of Federal law or regulation applicable to a bank or bank holding company, including a financial holding company;

(bb) the activity is incidental or complementary to any other financial activity regulated by the Agency; or

(cc) the activity is entered into or conducted as a subterfuge or with a purpose to evade any requirement under this title, the enumerated consumer laws, and the authorities transferred under subtitles F and H.
(II) For purposes of subclause (I)(bb), the following activities provided to a covered person shall not be “incidental or complementary”:

(aa) Providing information products or services to a covered person for identity authentication.

(bb) Providing information products or services for fraud or identify theft detection, prevention, or investigation.

(cc) Providing document retrieval or delivery services.

(dd) Providing public records information retrieval.

(ee) Providing information products or services for anti-money laundering activities.

(B) EXCEPTIONS.—The term “financial activity” shall not include the business of insurance or the provision of electronic data transmission, routing, intermediate or transient storage, or connections to a system or network, where the person providing such services does not select or modify the content of the elec-
tronic data, is not the sender or the intended
recipient of the data, and such person trans-
mits, routes, stores, or provides connections for
electronic data, including financial data, in a
manner that such financial data is undifferen-
tiated from other types of data that such per-
son transmits, routes, stores, or provides con-
nections.

(20) FINANCIAL PRODUCT OR SERVICE.—The
term “financial product or service” means any prod-
uct or service that, directly or indirectly, results
from or is related to engaging in 1 or more financial
activities.

(21) FOREIGN EXCHANGE.—The term “foreign
exchange” means the exchange, for compensation, of
currency of the United States or of a foreign govern-
ment for currency of another government.

(22) INSURED CREDIT UNION.—The term “in-
sured credit union” has the same meaning as in sec-
tion 101 of the National Credit Union Act.

(23) INSURED DEPOSITORY INSTITUTION.—The
term “insured depository institution” has the same
meaning as in section 3 of the Federal Deposit In-
surance Act and shall include any uninsured branch
or agency of a foreign bank or a commercial lending company owned or controlled by a foreign bank.

(24) Money services business.—The term “money services business” means a person that—

(A) receives currency, monetary value, or payment instruments for the purpose of exchanging or transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services, or other businesses that facilitate third-party transfers within the United States or to or from the United States; or

(B) issues payment instruments or stored value.

(25) Money transmitting.—The term “money transmitting” means the receipt by a person of currency, monetary value, or payment instruments for the purpose of transmitting the same to any third-party by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services.

(26) Payment instrument.—The term “payment instrument” means a check, draft, warrant, money order, traveler’s check, electronic instrument,
or other instrument, payment of money, or monetary value (other than currency).

(27) PERSON.—The term “person” means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(28) PERSON REGULATED BY A STATE INSURANCE REGULATOR.—The term “person regulated by a State insurance regulator” means any person who is—

(A) engaged in the business of insurance; and

(B) subject to regulation by any State insurance regulator,

but only to the extent that such person acts in such capacity.

(29) PERSON REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—The term “person regulated by the Commodity Futures Trading Commission” means any futures commission merchant, commodity trading adviser, commodity pool operator, introducing broker, boards of trade, derivatives clearing organizations, multilateral clearing organizations, retail foreign exchange dealer, or swap execution facility to the extent that such person’s ac-
tions are subject to the jurisdiction of the Com-
modity Futures Trading Commission under the
Commodity Exchange Act and any agent, employee,
or contractor acting on behalf of, registered with, or
providing services to such person but only to the ex-
tent the person, or the employee, agent, or con-
tractor of such person, acts in a registered capacity.

(30) **Person regulated by the Securities**
**and Exchange Commission.**—The term “person
regulated by the Securities and Exchange Commiss-
ion” means—

(A) a broker or dealer that is required to
be registered under the Securities Exchange Act
of 1934;

(B) an investment adviser that is reg-
istered under the Investment Advisers Act of
1940;

(C) an investment company that—

(i) is required to be registered under
the Investment Company Act of 1940; or

(ii) is excepted from the definition of
investment company under section 3(c) of
such Act, or any successor provision;
(D) a national securities exchange that is required to be registered under the Securities Exchange Act of 1934;

(E) a transfer agent that is required to be registered under the Securities Exchange Act of 1934;

(F) a clearing corporation that is required to be registered under the Securities Exchange Act of 1934;

(G) any municipal securities dealer that is registered with the Securities and Exchange Commission;

(H) any self-regulatory organization that is registered with the Securities and Exchange Commission;

(I) any national securities exchange or other entity that is required to be registered under the Securities Exchange Act of 1934; and

(J) the Municipal Securities Rulemaking Board,

and any employee, agent, or contractor acting on behalf of, registered with, or providing services to, any such person, but only to the extent that any person described in any subparagraph of this paragraph, or
the employee agent, or contractor of such person, acts in a registered capacity, or, with respect to a person described in subparagraph (C)(ii), any employee, agent, or contractor acting on behalf of, or providing services to any such person, but only to the extent that such person, or the employee, agent, or contractor of such person acts in such exempt capacity.

(31) Provision of a Consumer Financial Product or Service.—The terms “provision of a consumer financial product or service” and “providing a consumer financial product or service” mean the advertisement, marketing, solicitation, sale, disclosure, delivery, or account maintenance or servicing of a consumer financial product or service.

(32) Person That Performs Income Tax Preparation Activities for Consumers.—The term “person that performs income tax preparation activities for consumers” means—

(A) any tax return preparer (as defined in section 7701(a)(36) of the Internal Revenue Code of 1986), regardless of whether compensated, but only to the extent that the person acts in such capacity;
(B) any person regulated by the Secretary of the Treasury under section 330 of title 31, United States Code, but only to the extent that the person acts in such capacity; and

(C) any authorized IRS e-file Providers (as defined for purposes of section 7216 of the Internal Revenue Code of 1986), but only to the extent that the person acts in such capacity.

(33) RELATED PERSON.—

(A) IN GENERAL.—The term “related person”, when used in connection with a covered person that is not a bank holding company, credit union, depository institution, means—

   (i) any director, officer, employee charged with managerial responsibility, or controlling stockholder of, or agent for, such covered person;

   (ii) any shareholder, consultant, joint venture partner, and any other person as determined by the Director (by regulation or on a case-by-case basis) who materially participates in the conduct of the affairs of such covered person; and

   (iii) any independent contractor (including any attorney, appraiser, or ac-
accountant), with respect to such covered person, who knowingly or recklessly participes in any—

(I) violation of any law or regulation; or

(II) breach of fiduciary duty.

(B) TREATMENT OF A RELATED PERSON AS A COVERED PERSON.—Any person who is a related person under subparagraph (A) shall be deemed to be a covered person for all purposes of this title, any enumerated consumer law, and any law for which authorities were transferred by subtitles F and H.

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

(35) SERVICE PROVIDER.—

(A) IN GENERAL.—The term “service provider” means any person who provides a material service to a covered person in the provision of a consumer financial product or service, including a person who—

(i) facilitates the design of, or operations relating to the provision of, the consumer financial product or service;
(ii) has direct interaction with a consumer (whether in person or via telecommunication device or other similar technology) regarding the consumer financial product or service; or

(iii) processes transactions relating to the consumer financial product or service.

(B) EXCEPTIONS.—The term “service provider” shall not apply to a person solely by virtue of such person providing or selling to a covered person—

(i) a support service of a type provided to businesses generally or a similar ministerial service;

(ii) a service that does not materially affect the terms or conditions of the consumer financial product or service, its performance or operation, or the propensity of a consumer to obtain or use such product or service; or

(iii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.
(36) STATE.—The term “State” means any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands or any federally recognized Indian tribe as defined by the Secretary of the Interior under section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1(a)).

(37) STORED VALUE.—The term “stored value”—

(A) means funds or monetary value represented in any electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically; and

(B) includes a prepaid debit card or product (other than a card or product used solely for telephone services) or any other similar product,

regardless of whether the amount of the funds or monetary value may be increased or reloaded.
(38) Agency conversion date.—The term “Agency conversion date” means the date that is 2 years after the designated transfer date.

Subtitle A—Establishment of the Agency

SEC. 4101. ESTABLISHMENT OF THE CONSUMER FINANCIAL PROTECTION AGENCY.

(a) Agency Established.—There is established the Consumer Financial Protection Agency as an independent agency to regulate the provision of consumer financial products or services under this title, the enumerated consumer laws, and the authorities transferred under subtitles F and H.

(b) Agency Structure.—

(1) Initial Structure.—The Agency shall be led by a Director or Acting Director, established pursuant to section 4102, until the day before the Agency conversion date.

(2) Subsequent Structure.—On and after the Agency conversion date, the Agency shall consist of the commission established under section 4103.

(c) Principal Office.—The principal office of the Agency shall be located in the city of Washington, District of Columbia, at 1 or more sites.
SEC. 4102. DIRECTOR.

(a) Establishment of Position.—

(1) In general.—There is hereby established
the position of the Director of the Agency who shall
be the head of the Agency.

(2) Authority to prescribe regulations.—The Director may prescribe such regula-
tions and issue such orders in accordance with this
title as the Director may determine to be necessary
for carrying out this title and all other laws within
the Director’s jurisdiction and shall exercise any au-
thorities granted under this title and all other laws
within the Director’s jurisdiction.

(b) Appointment; Term.—

(1) Nomination.—Within 60 days after the
date of enactment of this title, the President shall
nominate the Director, from among individuals
who—

(A) are citizens of the United States; and

(B) have strong competencies and experi-
ences related to consumer financial protection.

(2) Appointment subject to confirmation.—The Director nominated under paragraph
(1) shall be appointed by and with the advice and
consent of the Senate.
(3) Acting Director before Senate Confirmation.—The individual nominated pursuant to paragraph (1) shall serve as Acting Director with full authorities granted to the Director under this title until the Director is confirmed by the Senate.

(4) Term.—The Director shall be appointed for a term that ends on the Agency conversion date.

(5) Removal.—The Director may be removed before the end of a term only for cause.

(6) Vacancy.—

(A) In General.—A vacancy in the position of Director which occurs before the expiration of the term for which a Director was appointed shall be filled in the manner established in paragraph (2) and the Director appointed to fill such vacancy shall be appointed only for the remainder of such term.

(B) Acting Director.—

(i) In General.—In the event of vacancy or during the absence of the Director (who has been confirmed by the Senate pursuant to paragraph (2)), an Acting Director shall be appointed in the manner provided in section 3345 of title 5, United States Code.
(ii) AUTHORITY OF ACTING DIRECTOR.—Any individual serving as Acting Director under this subparagraph shall be vested with all authority, duties, and privileges of the Director.

(7) SERVICE AFTER END OF TERM.—An individual may serve as Director after the expiration of the term for which appointed until a successor Director has been appointed and qualified.

(c) PROHIBITION ON FINANCIAL INTERESTS.—The Director shall not have a direct or indirect financial interest in any covered person.

(d) COMPENSATION.—The Director shall receive compensation at the rate prescribed for Level I of the Executive Schedule under section 5313 of title 5, United States Code.

SEC. 4103. ESTABLISHMENT AND COMPOSITION OF THE COMMISSION.

(a) ESTABLISHMENT OF THE COMMISSION.—

(1) IN GENERAL.—On the Agency conversion date, there shall be established a commission (hereinafter in this section referred to as the “Commission”) that shall by operation of law succeed to all of the authorities of the Director of the Agency granted under this title and any other law.
(2) Authority to prescribe regulations.—The Commission may prescribe such regulations and issue such orders in accordance with this title as the Commission may determine to be necessary for carrying out this title and all other laws within the Commission’s jurisdiction and shall exercise any authorities granted under this title and all other laws within the Commission’s jurisdiction.

(b) Composition of the Commission.—

(1) In general.—The Commission shall be composed of 5 members who shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who—

(A) are citizens of the United States; and

(B) have strong competencies and experiences related to consumer financial protection.

(2) Initial appointments.—

(A) In general.—The initial members of the Commission, other than the initial Chair, may be appointed by the President, by and with the advice and consent of the Senate, prior to the Agency conversion date, but may not serve in their positions until such date.

(B) Staggering.—Except as provided under subsection (d)(1), the members of the
Commission shall serve staggered terms, which initially shall be established by the President for terms of 1, 2, 4, and 5 years, respectively.

(3) TERMS.—

(A) IN GENERAL.—Except as provided in subsection (d)(1), each member of the Commission, including the Chair, shall serve for a term of 5 years.

(B) REMOVAL FOR CAUSE.—The President may remove any member of the Commission only for inefficiency, neglect of duty, or malfeasance in office.

(C) VACANCIES.—Any member of the Commission appointed to fill a vacancy occurring before the expiration of the term to which that member’s predecessor was appointed (including the Chair) shall be appointed only for the remainder of the term.

(D) CONTINUATION OF SERVICE.—Each member of the Commission may continue to serve after the expiration of the term of office to which that member was appointed until a successor has been appointed by the President and confirmed by the Senate, except that a member may not continue to serve more than 1
year after the date on which that member’s
term would otherwise expire.

(E) OTHER EMPLOYMENT PROHIBITED.—
No member of the Commission shall engage in
any other business, vocation, or employment.

(c) AFFILIATION.—With respect to members ap-
pointed pursuant to subsection (b), not more than 3 shall
be members of any one political party.

(d) CHAIR OF THE COMMISSION.—

(1) APPOINTMENT.—

(A) INITIAL CHAIR.—The first Chair of the
Commission shall be the Director or Acting Di-
rector serving on the day before the Agency
conversion date, and such individual shall serve
in the position of Chair for a period of 3 years.

(B) SUBSEQUENT CHAIRS.—Subsequent
chairs shall be appointed by the President from
among the members of the Commission to serve
as the Chair.

(2) AUTHORITY.—The Chair shall be the prin-
cipal executive officer of the Agency, and shall exer-
cise all of the executive and administrative functions
of the Agency, including with respect to—

(A) the appointment and supervision of
personnel employed under the Agency (other
than personnel employed regularly and full time 
in the immediate offices of members of the 
Commission other than the Chair); 

(B) the distribution of business among per-
sonnel appointed and supervised by the Chair 
and among administrative units of the Agency; 
and 

(C) the use and expenditure of funds. 

(3) LIMITATION.—In carrying out any of the 
Chair’s functions under the provisions of this sub-
section the Chair shall be governed by general poli-
cies of the Commission and by such regulatory deci-
sions, findings, and determinations as the Commis-
sion may by law be authorized to make. 

(4) REQUESTS OR ESTIMATES RELATED TO AP-
PROPRIATIONS.—Requests or estimates for regular, 
supplemental, or deficiency appropriations on behalf 
of the Commission may not be submitted by the 
Chair without the prior approval of the commission. 

(e) NO IMPAIRMENT BY REASON OF VACANCIES.— 
No vacancy in the members of the Commission shall im-
pair the right of the remaining members of the Commis-
sion to exercise all the powers of the Commission. Three 
members of the Commission shall constitute a quorum for 
the transaction of business, except that if there are only
3 members serving on the Commission because of vacancies in the Commission, 2 members of the Commission shall constitute a quorum for the transaction of business. If there are only 2 members serving on the Commission because of vacancies in the Commission, 2 members shall constitute a quorum for the 6-month period beginning on the date of the vacancy which caused the number of Commission members to decline to 2.

(f) Seal.—The Commission shall have an official seal.

(g) Compensation.—

(1) Chair.—The Chair shall receive compensation at the rate prescribed for level I of the Executive Schedule under section 5313 of title 5, United States Code.

(2) Other Members of the Commission.— The 4 other members of the Commission shall each receive compensation at the rate prescribed for level II of the Executive Schedule under section 5314 of title 5, United States Code.

(h) Initial Quorum Established.—During any time period prior to the confirmation of at least two members of the Commission under subsection (b)(2), one member of the Commission shall constitute a quorum for the transaction of business. Following the confirmation of at
least 2 additional commissioners, the quorum require-
ments of subsection (e) shall apply.

(i) DEFINITIONS.—Notwithstanding section 4002, for purposes of this section:

(1) AGENCY.—The term “Agency” means the Consumer Financial Protection Agency.

(2) DIRECTOR.—The term “Director” means the Director of the Agency.

SEC. 4104. CONSUMER FINANCIAL PROTECTION OVER-
SIGHT BOARD.

(a) ESTABLISHED.—There is hereby established the Consumer Financial Protection Oversight Board as an in-
strumentality of the United States.

(b) DUTIES AND POWERS.—

(1) DUTY TO ADVISE DIRECTOR.—The Board shall advise the Director on—

(A) the consistency of a proposed regula-
tion of the Director with prudential, market, or systemic objectives administered by the agencies that comprise the Board;

(B) the overall strategies and policies in carrying out the duties of the Director under this title; and
(C) actions the Director can take to enhance and ensure that all consumers are subject to robust financial protection.

(2) LIMITATION ON POWERS.—The Board may not exercise any executive authority, and the Director may not delegate to the Board any of the functions, powers, or duties of the Director.

(c) COMPOSITION.—The Board shall be comprised of 7 members as follows:

(1) The Chairman of the Board of Governors.

(2) The head of the agency responsible for chartering and regulating national banks.

(3) The Chairperson of the Federal Deposit Insurance Corporation.

(4) The Chairman of the National Credit Union Administration.


(6) The Secretary of Housing and Urban Development.

(7) The Chairman of the liaison committee of representatives of State agencies to the Financial Institutions Examination Council.

(d) REPRESENTATIVE OF ADDITIONAL INTERESTS.—
(1) COMPOSITION.—Notwithstanding subsection (e), the President, by and with the advice and consent of the Senate, shall appoint 5 additional members of the Board from among experts in the fields of consumer protection, fair lending and civil rights, representatives of depository institutions that primarily serve underserved communities, or representatives of communities that have been significantly impacted by higher-priced mortgage loans, as such communities are identified by the Director through an analysis of data received by reason of the provisions of the Home Mortgage Disclosure Act of 1975 or other data on lending patterns.

(2) AFFILIATION.—With respect to members appointed pursuant to paragraph (1), not more than 3 shall be members of any one political party.

(e) MEETINGS.—

(1) IN GENERAL.—The Board shall meet upon notice by the Director, but in no event shall the Board meet less frequently than once every 3 months.

(2) SPECIAL MEETINGS.—Any member of the Board may, upon giving written notice to the Director, require a special meeting of the Board.
(f) **Prohibition on Additional Compensation.**—Members of the Board may not receive additional pay, allowances, or benefits by reason of their service on the Board.

(g) **Complaints Related to Required Offering of Specific Financial Products or Services.**—The Board shall establish procedures to receive and analyze complaints from any person claiming that the Director is not in compliance with the requirements under section 4311.

SEC. 4105. **EXECUTIVE AND ADMINISTRATIVE POWERS.**

The Director may exercise all executive and administrative functions of the Agency, including to—

1. establish regulations for conducting the Agency’s general business in a manner not inconsistent with this title;
2. bind the Agency and enter into contracts;
3. direct the establishment of and maintain divisions or other offices within the Agency in order to fulfill the responsibilities of this title, the enumerated consumer laws, and the authorities transferred under subtitles F and H, and to satisfy the requirements of other applicable law, except that the Director shall not exercise any authorities that are grant-
ed to State insurance authorities under section 505(a)(6) of the Gramm-Leach-Bliley Act;

(4) coordinate and oversee the operation of all administrative, enforcement, and research activities of the Agency;

(5) adopt and use a seal;

(6) determine the character of and the necessity for the Agency’s obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid;

(7) delegate authority, at the Director’s discretion, to any officer or employee of the Agency to take action under any provision of this title or under other applicable law;

(8) to implement this title and the Agency’s authorities under the enumerated consumer laws and under subtitles F and H through regulations, orders, guidance, interpretations, statements of policy, examinations, and enforcement actions; and

(9) perform such other functions as may be authorized or required by law.

**SEC. 4106. ADMINISTRATION.**

(a) OFFICERS.—The Director shall appoint the following officials:
(1) A secretary, who shall be charged with maintaining the records of the Agency and performing such other activities as the Director directs.

(2) A general counsel, who shall be charged with overseeing the legal affairs of the Agency and performing such other activities as the Director directs.

(3) An inspector general, who shall have the authority and functions of an inspector general of an establishment under the Inspector General Act of 1978 (5 U.S.C. App. 3).

(4) An Ombudsperson, who shall—

(A) develop and maintain expertise in and understanding of the law relating to consumer financial products;

(B) at the request of a Federal agency or a State agency, and with the prior approval of the Director, advise such agency with respect to actions that may affect consumers;

(C) advise consumers who may have a legitimate potential or actual claim against a Federal agency involving the provision of consumer financial products regarding their rights under this title;
(D) identify Federal agency actions that have potential implications for consumers and, if appropriate, and with the prior approval of the Director, advise the relevant Federal agencies with respect to those implications;

(E) provide information to private citizens, civic groups, Federal agencies, State agencies, and other interested parties regarding the rights of those parties under this title;

(F) develop, maintain, and provide expertise designed to assist covered persons, especially smaller depository institutions and other smaller entities to comply with regulations and other requirements issued to implement the provisions of this title, and where such assistance for smaller depository institutions shall be provided jointly by the Agency and the appropriate Federal banking agency;

(G) develop procedures to assist covered persons, especially smaller depository institutions and other smaller entities, in responding to or challenging actions taken by the Director or the Agency to implement the provisions of this title and to ensure that safeguards exist to
preserve the confidentiality of covered persons
using those procedures; and

(H) perform such other duties as the Di-
rector may delegate to the Ombudsperson.

(b) PERSONNEL.—

(1) APPOINTMENT.—The Director may fix the
number of, and appoint and direct, all employees of
the Agency.

(2) COMPENSATION.—

(A) PAY.—The Director shall fix, adjust,
and administer the pay for all employees of the
Agency without regard to the provisions of
chapter 51 or subchapter III of chapter 53 of
title 5, United States Code.

(B) BENEFITS.—The Director may provide
additional benefits to Agency employees if the
same type of benefits are then being provided
by the Board of Governors or, if not then being
provided, could be provided by the Board of
Governors under applicable provisions of law or
regulations.

(C) MINIMUM STANDARD.—The Director
shall at all times provide compensation and ben-
efits to classes of employees that, at a min-
imum, are equivalent to the compensation and
benefits provided by the Board of Governors for the corresponding class of employees in any fiscal year.

(c) Specific Functional Units.—

(1) Research.—The Agency shall establish a unit whose functions shall include—

(A) conducting research on consumer financial counseling and education, including—

(i) on the topics of debt, credit, savings, financial product usage, and financial planning;

(ii) exploring effective methods, tools, and approaches; and

(iii) identifying ways to incorporate new technology for the delivery and evaluation of financial counseling and education efforts;

(B) researching, analyzing, and reporting on—

(i) current and prospective developments in markets for consumer financial products or services, including market areas of alternative consumer financial products or services with high growth rates;
(ii) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products or services;

(iii) consumer awareness and understanding of costs, risks, and benefits of consumer financial products or services;

(iv) consumer behavior with respect to consumer financial products or services, including performance on mortgage loan;

(v) experiences of traditionally underserved consumers, including un-banked and under-banked consumers, regarding consumer financial products or services, and the impact of Federal policies, including resource limits in means-tested Federal benefit programs (as defined in section 318 of the Higher Education Act of 1965; 20 U.S.C. 1059e), on such consumers in influencing banking behavior; and

(vi) the nature, range, and size of variations between the credit scores sold to creditors and those sold to consumers by consumer reporting agencies that compile and maintain files on consumers on a na-
tionwide basis (as defined in section 603(p) of the Fair Credit Reporting Act; 15 U.S.C. 1681a(p)), and whether such variations disadvantage consumers;

(C) identifying priorities for consumer financial education efforts, based on consumer complaints, research or analysis conducted pursuant to subparagraph (A), or other information; and

(D) testing and identifying methods of educating consumers to determine which methods are most effective.

(2) COMMUNITY AFFAIRS.—The Director shall establish a unit whose functions shall include providing information, guidance, and technical assistance regarding the provision of consumer financial products or services to traditionally underserved consumers and communities.

(3) CONSUMER COMPLAINTS.—

(A) IN GENERAL.—The Director shall establish a unit whose functions shall include establishing a central database, or utilizing an existing database, for collecting and tracking information on consumer complaints about con-
sumer financial products or services and resolution of complaints.

(B) COORDINATION.—In performing the functions described in subparagraph (A), the Director shall coordinate with the Federal banking agencies, the Federal Trade Commission, other Federal agencies, and other regulatory agencies or enforcement authorities.

(C) DATA SHARING REQUIRED.—To the extent permitted by law and the regulations prescribed by the Director regarding the confidential treatment of information, the Director shall share data relating to consumer complaints with Federal banking agencies, the Federal Trade Commission, other Federal agencies, and State regulators. To the extent permitted by law and the regulations prescribed by the Federal banking agencies and other Federal agencies regarding the confidential treatment of information, the Federal banking agencies and other Federal agencies, respectively, shall share data relating to consumer complaints with the Director and the Agency.

(D) CONSUMER COMPLAINT WEB SITE.—The Director shall establish an Internet Web
site for consumer complaints and inquiries concerning institutions regulated by the Agency. The Web site shall be interoperable with the database established under subparagraph (A).

(4) CONSUMER FINANCIAL EDUCATION.—

(A) IN GENERAL.—The Agency shall establish a unit to be named the Office of Financial Literacy, whose functions shall include activities designed to facilitate the education of consumers on consumer financial products and services, including through the dissemination of materials to consumers on such topics.

(B) DIRECTOR.—The Office of Financial Literacy shall be headed by a director.

(C) DUTIES.—Such unit shall—

(i) develop goals for programs to be provided by persons that provide consumer financial education and counseling, including programs through which such persons—

(I) provide one-on-one financial counseling;

(II) help individuals understand basic banking and savings tools;
(III) help individuals understand their credit history and credit score;

(IV) assist individuals in efforts to plan for major purchases, reduce their debt, and improve their financial stability; and

(V) work with individuals to design plans for long-term savings;

(ii) develop recommendations regarding effective certification of persons providing programs, or performing the activities, described in clause (i), including recommendations regarding—

(I) certification processes and standards for certification;

(II) appropriate certifying bodies;

and

(III) mechanisms for funding the certification processes;

(iii) develop a technology tool to collect data on financial education and counseling outcomes; and

(iv) conduct research to identify effective methods, tools, technology, and strategies to educate and counsel consumers
about personal finance management, including on the topics of debt, credit, savings, financial product usage, and financial planning.

(D) COORDINATION.—Such unit shall coordinate with other units within the Agency in carrying out its functions, including—

(i) working with the unit established under paragraph (2) to—

(I) provide information and resources to community organizations, nonprofit organizations, and other entities to assist in helping educate consumers about consumer financial products and services; and

(II) develop a marketing strategy to promote financial education and one-on-one counseling; and

(ii) working with the unit established under paragraph (1) to conduct research related to consumer financial education and counseling.

(d) SINGLE TOLL-FREE TELEPHONE NUMBER FOR CONSUMER COMPLAINTS AND INQUIRIES.—
(1) CALL INTAKE SYSTEM.—The Consumer Financial Protection Agency shall establish a single, toll-free telephone number for consumer complaints and inquiries concerning institutions regulated by such agencies and a system for collecting and monitoring complaints and, as soon as practicable, a system for routing such calls to the Federal financial institution regulatory agency that primarily supervises the financial institution, or that is otherwise the appropriate Federal agency to address the subject of the complaint or inquiry.

(2) ROUTING CALLS TO STATES.—To the extent practicable, State agencies may receive appropriate call transfers from the system established under paragraph (1) if—

(A) the State agency’s system has the functional capacity to receive calls routed by the system; and

(B) the State agency has satisfied any conditions of participation in the system that the Council, coordinating with State agencies through the chairperson of the State Liaison Committee, may establish.

(c) REPORT TO THE CONGRESS.—Before the end of the 6-month period beginning on the date of the enact-
ment of this title, the Federal financial institution regu-
larly agencies shall submit a report to the Committee on
Financial Services of the House of Representatives and
the Committee on Banking, Housing, and Urban Affairs
of the Senate describing the agencies’ efforts to estab-
lish—

(1) a public interagency Web site for directing
and referring Internet consumer complaints and in-
quiries concerning any financial institution to the
Consumer Financial Protection Agency for purposes
of collecting, monitoring, and responding to such
complaints and, where appropriate, a system for re-
ferring complaints to the Federal financial institu-
tion regulatory agency, other Federal agency, or
State agency that is otherwise the appropriate agen-
cy to address the subject of the complaint or inquiry;
and

(2) a system to expedite the prompt and effec-
tive rerouting of any misdirected consumer com-
plaint or inquiry documents between or among the
agencies, with prompt referral of any complaint or
inquiry to the appropriate Federal financial institu-
tion regulatory agency, and to participating State
agencies.
(f) OFFICE OF FINANCIAL PROTECTION FOR OLDER AMERICANS.—

(1) Establishment.—Before the end of the 180-day period beginning on the date of the enactment of this title, the Director shall establish within the Agency the Office of Financial Protection for Older Americans, whose functions shall include activities designed to facilitate the financial literacy of individuals who have attained the age of 62 years or more (in this paragraph, referred to as "seniors") on protection from unfair and deceptive practices and on current and future financial choices, including through the dissemination of materials to seniors on such topics.

(2) Director.—The Office of Financial Protection for Older Americans shall be headed by a director.

(3) Duties.—Such unit shall perform the following duties:

(A) Develop goals for programs that provide seniors financial literacy and counseling, including programs that—

(i) help seniors recognize warning signs of unfair and deceptive practices,

protect themselves from such practices;
(ii) provide one-on-one financial counseling on issues including long-term savings and later-life economic security; and

(iii) provide personal consumer credit advocacy to respond to consumer problems caused by unfair and deceptive practices.

(B) Monitor certifications or designations of financial advisors who advise seniors and alert the Securities and Exchange Commission and State regulators of certifications or designations that are identified as unfair or deceptive.

(C) Not later than 18 months after the date of the establishment of the Office of Financial Protection for Older Americans, submit to Congress and the Securities and Exchange Commission recommendations of the best practices for any legislative and regulatory—

(i) disseminating information regarding the legitimacy of certifications of financial advisers who advise seniors;

(ii) methods in which a senior can identify the financial advisor most appropriate for the senior’s needs; and
(iii) methods in which a senior can verify a financial advisor’s credentials.

(D) Conduct research to identify best practices and effective methods, tools, technology and strategies to educate and counsel seniors about personal finance management with a focus on—

(i) protecting themselves from unfair and deceptive practices;

(ii) long-term savings; and

(iii) planning for retirement and long-term care.

(E) Coordinate consumer protection efforts of seniors with other Federal agencies and State regulators, as appropriate, to promote consistent, effective, and efficient enforcement.

(F) Work with community organizations, non-profit organizations, and other entities that are involved with educating or assisting seniors (including the National Education and Resource Center on Women and Retirement Planning).

(g) Office of Fair Lending and Equal Opportunity.—
(1) Establishment.—Before the end of the 180-day period beginning on the date of the enactment of this title, the Director shall establish within the Agency the Office of Fair Lending and Equal Opportunity.

(2) Functions.—The Office of Fair Lending and Equal Opportunity shall have such powers and duties as the Director may delegate the Office which shall include the following functions:

(A) Providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Agency, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act.

(B) Coordinating fair lending enforcement efforts of the Agency with other Federal agencies and State regulators, as appropriate, to promote consistent, efficient and effective enforcement of Federal fair lending laws.

(C) Working with private industry, fair lending, civil rights, consumer and community advocates on the promotion of fair lending compliance and education.
(D) Providing annual reports to the Congress on the Agency’s efforts to fulfill its fair lending mandate.

(3) Administration of Office.—There is hereby established the position of Assistant Director of the Agency for Fair Lending and Equal Opportunity who—

(A) shall be appointed by the Director;

(B) shall carry out such duties as the Director may delegate to such Assistant Director; and

(C) shall serve as the Director of the Office of Fair Lending and Equal Opportunity.

(4) Prohibitions on Participation in Programs with Respect to Certain Indicted Organizations.—

(A) Prohibition.—The Director of the Office of Fair Lending and Equal Opportunity may not allow a covered organization to participate in any program established by such Director.

(B) Covered Organization.—In this paragraph, the term “covered organization” means any of the following:
(i) Any organization that has been indicted for a violation under any Federal or State law governing the financing of a campaign for election for public office or any law governing the administration of an election for public office, including a law relating to voter registration.

(ii) Any organization that had its State corporate charter terminated due to its failure to comply with Federal or State lobbying disclosure requirements.

(iii) Any organization that has filed a fraudulent form with any Federal or State regulatory agency.

(iv) Any organization that—

(I) employs any applicable individual, in a permanent or temporary capacity;

(II) has under contract or retains any applicable individual; or

(III) has any applicable individual acting on the organization’s behalf or with the express or apparent authority of the organization.
(C) ADDITIONAL DEFINITIONS.—In this paragraph:

(i) The term “organization” includes the Association of Community Organizations for Reform Now (in this paragraph referred to as “ACORN”) and any ACORN-related affiliate.

(ii) The term “ACORN-related affiliate” means any of the following:

(I) Any State chapter of ACORN registered with the Secretary of State’s office in that State.

(II) Any organization that shares directors, employees, or independent contractors with ACORN.

(III) Any organization that has a financial stake in ACORN.

(IV) Any organization whose finances, whether federally funded, donor-funded, or raised through organizational goods and services, are shared or controlled by ACORN.

(iii) The term “applicable individual” means an individual who has been indicted for a violation under Federal or State law.
relating to an election for Federal or State office.

(D) Revision of Federal Acquisition Regulation.—The Federal Acquisition Regulation shall be revised to carry out the provisions of this paragraph relating to contracts.

(E) Severability.—If any provision of this section or any application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this section and the application of the provision to any other person or circumstance shall not be affected.

SEC. 4107. CONSUMER ADVISORY BOARD.

(a) Establishment Required.—The Director shall establish a Consumer Advisory Board to advise and consult with the Director in the exercise of the functions of the Director and the Agency under this title, the enumerated consumer laws, and to provide information on emerging practices in the consumer financial products or services industry.

(b) Membership.—

(1) In General.—In appointing the members of the Consumer Advisory Board, the Director shall seek—
(A) to assemble experts in financial services, community development, fair lending and civil rights, consumer protection, and consumer financial products or services; and

(B) to represent the interests of covered persons and consumers.

(2) Prohibition on membership with respect to certain indicted organizations.—The director may not appoint an employee of a covered organization (as defined in section 4105(f)(4)(B)) to the Consumer Advisory Board.

(c) Political affiliation.—Not more than 1 more than half of the members of the Consumer Advisory Board may be members of the same political party.

(d) Meetings.—The Consumer Advisory Board shall meet from time to time at the call of the Director, but, at a minimum, shall meet at least twice in each year.

(e) Compensation and travel expenses.—Members of the Consumer Advisory Board who are not full-time employees of the United States shall—

(1) be entitled to receive compensation at a rate fixed by the Director while attending meetings of the Consumer Advisory Board, including travel time; and
(2) be allowed travel expenses, including trans-
portation and subsistence, while away from their
homes or regular places of business.

SEC. 4108. COORDINATION.

(a) Coordination with Other Federal Agencies
and State Regulators.—The Director shall co-
dordinate with the Securities and Exchange Commission,
the Commodity Futures Trading Commission, the Sec-
retary of the Treasury, the Federal Trade Commission,
and other Federal agencies and State regulators, as appro-
priate, to promote consistent regulatory treatment of, and
enforcement related to, consumer and investment prod-
ucts, services, and laws.

(b) Coordination of Consumer Education Ini-
tiatives.—

(1) In General.—The Director shall coordi-
nate with each agency that is a member of the Fi-
nancial Literacy and Education Commission estab-
lished by the Financial Literacy and Education Im-
provement Act (20 U.S.C. 9701 et seq.) to assist
each agency in enhancing its existing financial lit-
eracy and education initiatives to better achieve the
goals in paragraph (2) and to ensure the consistency
of such initiatives across Federal agencies.
(2) GOALS OF COORDINATION.—In coordinating with the agencies described in paragraph (1), the Director shall seek to improve efforts to educate consumers about financial matters generally, the management of their own financial affairs, and their judgments about the appropriateness of certain financial products.

(c) COORDINATION.—The Agency may coordinate investigations, compliance examinations, information sharing, and related activities in support of activities undertaken pursuant to the Fair Housing Act by other Federal agencies.

SEC. 4109. REPORTS TO THE CONGRESS.

(a) REPORTS REQUIRED.—The Director shall prepare and submit to the President and the appropriate committees of the Congress a report at the beginning of each regular session of the Congress, beginning with the session following the designated transfer date.

(b) CONTENTS.—The reports required by subsection (a) shall include—

(1) a list of the significant regulations and orders adopted by the Director, as well as other significant initiatives conducted by the Director, during the preceding year and the Director’s plan for regu-
lations, orders, or other initiatives to be undertaken during the upcoming period;

(2) an analysis of the major problems consumers of financial products and services were confronted with during the preceding year, including a description of the nature of such problems, and recommendations for such administrative and legislative action as may be appropriate to resolve such problems;

(3) a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Agency is a party (including adjudication proceedings conducted under subtitle E) during the preceding year;

(4) the actions taken regarding regulations, orders, and supervisory actions with respect to covered persons which are not credit unions or depository institutions, including descriptions of the types of such covered persons, financial activities, and consumer financial products or services affected by such regulations, orders, and supervisory actions;

(5) an appraisal of significant actions, including actions under Federal or State law, by State attorneys general or State regulators relating to this title,
the authorities transferred under subtitles F and H, and the enumerated consumer laws;

(6) an analysis of the Agency’s efforts to increase workforce and contracting diversity consistent with subtitle I of title I of this Act;

(7) an analysis of the Agency’s efforts to fulfill the fair lending mission of the Agency; and

(8) an appraisal of the regulatory and legal difficulties encountered by the Agency in carrying out the mission and duties of the Agency with respect to consumer protection, including a description of—

(A) the difficulties and hardships encountered with respect to coordinating with other Federal and State government entities;

(B) the regulatory and enforcement limitations placed on the Agency by this title;

(C) the practices of persons, covered and uncovered under this title, that allow such persons to harm consumers and escape regulation or enforcement, including any trends identified; and

(D) legislative and administrative recommendations with respect to solving or alleviating identified difficulties.
(c) **Annual Appearance Before the Congress.**—The Director shall appear before the House Committee on Financial Services and the House Committee on Energy and Commerce at an annual hearing, after the report is submitted under subsection (a)—

(1) to discuss the efforts, activities, objectives and plans of the Agency; and

(2) discuss and answer questions concerning such report.

**SEC. 4110. GAO Small Business Studies.**

(a) **Studies Required.**—Not later than the end of the 3-year period beginning on the designated transfer date, and also 3 years thereafter, the Comptroller General of the United States shall carry out a study to examine the effects that regulations issued by the Agency have on small businesses.

(b) **Report.**—At the conclusion of each study required under subsection (a), the Comptroller General of the United States shall issue a report to the Congress containing the finding and determinations made by the Comptroller General in carrying out such study.

**SEC. 4111. Funding; Fees and Assessments; Penalties and Fines.**

(a) **Transfer of Funds From the Board of Governors.**—
(1) **Transfer Required.**—Each year, beginning on the designated transfer date, the Board of Governors shall transfer funds in an amount equaling 10 percent of the Federal Reserve System’s total system expenses (as reported in the Budget Review of the Board of Governors most recent Annual Report to Congress) to the Director for the purposes of carrying out the authorities granted in this title, under the enumerated consumer laws, and transferred under subtitles F and H.

(2) **Procedures.**—The Board of Governors, in consultation with the Agency, shall make appropriate arrangements to transfer funds to the Director in accordance with this subsection.

(b) **Fees and Assessments.**—

(1) **Assessment Required.**—

(A) **In General.**—Taking into account such other sums available to the Agency and subject to the provisions of this subsection and subsection (d), the Director shall assess fees on covered persons to meet the Agency’s expenses for carrying out the duties and responsibilities of the Agency, including supervising such covered persons.
(B) BASIS FOR ASSESSMENT.—The Agency shall assess fees on covered persons pursuant to this subsection based on the size, complexity of, risk posed by, and the compliance record of the covered person under the enumerated consumer laws, the laws and authorities transferred under subtitles F and H, and this title.

(2) REGULATIONS.—

(A) IN GENERAL.—The Director shall prescribe regulations to govern the imposition and collection of fees and assessments.

(B) FACTORS REQUIRED TO BE ADDRESSED.—Regulations prescribed by the Director under this subsection shall specify and define—

(i) the basis of fees or assessments (such as the outstanding number of consumer credit accounts, off-balance sheet receivables attributable to the covered person, total consolidated assets, total assets under management, or volume of consumer financial transactions or use of service providers);

(ii) the amount and frequency of fees or assessments; and
(iii) such other factors that the Director determines are appropriate, which shall include a covered person’s compliance record under the enumerated consumer laws, the authorities transferred under subtitles F and H, and this title.

(3) ASSESSMENTS ON DEPOSITORY INSTITUTION COVERED PERSONS.—

(A) DEPOSITORY INSTITUTION COVERED PERSON DEFINED.—For purposes of this section, the term “depository institution covered person” means a covered person that is an insured depository institution or credit union.

(B) ASSESSMENTS.—

(i) FEES REQUIRED.—The Director shall assess fees for supervision as are appropriate on depository institution covered persons, taking into account the size, complexity of, risk posed by, and the compliance record of the covered person under the enumerated consumer laws, the laws and authorities transferred under subtitles F and H, and this title.

(ii) LIMITATION ON CERTAIN FEES.—The Agency shall not assess examination
fees on an institution referred to in section 4203(a), or an institution whose examination responsibilities have been delegated to an appropriate agency, pursuant to section 4202(e)(11).

(iii) Basis for fee amounts.—Fees assessed by the Director under this subparagraph may be established at levels necessary to meet the Agency’s expenses for carrying out the duties and responsibilities of the Director and the Agency under this title with regard to depository institution covered persons.

(C) Coordination during implementation period.—The Director and the agencies responsible for chartering and or supervising depository institution covered persons shall coordinate on the levels of fees assessed on depository institution covered persons under this paragraph, so that levels of assessments under this subparagraph combined with levels of assessments by agencies responsible for chartering and or supervising depository institution covered persons in each of the first 3 years following the date of enactment of this Act shall
be no more than the assessments such depository institution covered person was required to pay for the calendar year immediately preceding the designated transfer date.

(D) MARGINAL ASSESSMENT RATE.—

(i) IN GENERAL.—In setting assessment rates for depository institution covered persons, the Director shall not impose assessments that, on a risk-adjusted basis, result in higher marginal assessment rates for depository institution covered persons with assets of less than $25,000,000,000 than the marginal rates for depository institutions covered persons with assets that exceed that amount.

(ii) RULE OF CONSTRUCTION.—
Clause (i) shall not be construed as limiting or impairing the authority of the Director to set assessments that would result in higher marginal assessment rates on the larger depository institution covered persons or to set assessments that would result in higher marginal assessments on the depository institution covered persons with assets of less than $25,000,000,000 if
based on the compliance record of or higher risks posed by such covered persons.

(E) LIMITATIONS ON ASSESSMENTS.—

(i) ASSESSMENTS FOR ADMINISTRATIVE COSTS.—Notwithstanding any provision in this title, no depository institution covered person shall be charged an assessment to be used for the supervision, examination, or enforcement activities by the Agency of nondepository covered persons.

(ii) AMOUNTS PAID FOR CONSUMER COMPLIANCE SUPERVISION.—Notwithstanding any provision in this title, no depository institution covered person shall pay more for consumer compliance supervision so that levels of assessments under this subparagraph combined with levels of assessments by an agency responsible for chartering and/or supervising the depository institution covered person shall be no more than it paid before the date of enactment of this title.

(4) ASSESSMENTS ON NONDEPOSITORY COVERED PERSONS.—
(A) **Nondepository Covered Person Defined.**—For purposes of this section, the term “nondepository covered person”—

(i) means a covered person that is not a credit union or insured depository institution; and

(ii) includes any bank holding company.

(B) **Assessments.**—

(i) **Fees Required.**—The Director shall assess fees for registration, examination, and supervision of nondepository covered persons.

(ii) **Basis for Fee Amounts.**—Fees assessed by the Director under this subparagraph may be established at levels necessary to meet the Agency’s expenses for carrying out the duties and responsibilities of the Director and the Agency, including supervising such covered persons, taking into account such other sums available to the Agency.

(iii) **Registration Fee Minimums.**—Registration fees imposed on a nondepository covered person under this paragraph
shall, at a minimum, be imposed on such
covered person at the time the person reg-
isters (or periodically renews any such reg-
istration) with the Agency, in accordance
with regulations prescribed by the Direc-
tor.

(C) NONDEPOSITORY COVERED PERSON
ASSESSMENT NOT LESS THAN FOR DEPOSITORY
COVERED PERSONS.—Assessment rates levied
by the Director under this section on a non-
depository institution covered persons shall be
no less than assessments levied by the Agency
under this section on a depository institution
covered person with similar characteristics.

(D) OFFSETTING COLLECTIONS.—Fees as-
sessed under this paragraph—

(i) shall not be collected for any fiscal
year except to the extent provided in ad-
advance in appropriation Acts; and

(ii) shall be deposited and credited as
offsetting collections to the account pro-
viding appropriations to the Agency.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—For the purposes of carrying
out the authorities granted in this title, under the
enumerated consumer laws, and the laws and au-
thorities transferred under subtitles F and H, there
are authorized to be appropriated to the Director
$200,000,000 for each of fiscal years 2010, 2011,

(2) Apportionment.—Notwithstanding any
other provision of law, such amounts shall be subject
to apportionment under section 1517 of title 31,
United States Code, and restrictions that generally
apply to the use of appropriated funds in title 31,
United States Code, and other laws.

(3) Other available funds taken into ac-
count.—Sums appropriated under this subsection
shall take into account such other sums available to
the Agency under this section.

(d) Consumer Financial Protection Agency
Depository Institution Fund.—

(1) Establishment.—

(A) In general.—There is established in
the Treasury a separate fund to be known as
the “Consumer Financial Protection Agency
Depository Institution Fund” (hereafter in this
section referred to as the “CFPA Depository
Fund”).
(B) Amounts in fund not available for certain purposes.—Other than pursuant to subsection (f), amounts on deposit in the CFPA Depository Fund shall not be used in the supervision and examination of nondepository institution covered persons.

(2) All transferred funds deposited.—All amounts transferred to the Agency under subsection (a) shall be deposited into the CFPA Depository Fund or the CFPA Nondepository Fund, at the discretion of the Agency.

(3) All applicable supervisory fees and assessments deposited.—The Director shall deposit all amounts received from assessments under subsection (b)(3) in the CFPA Depository Fund.

(e) Consumer Financial Protection Agency Nondepository Institution Fund.—

(1) Establishment.—

(A) In general.—There is established in the Treasury a separate fund called the Consumer Financial Protection Agency Nondepository Institution Fund (hereafter in this section referred to as the "CFPA Nondepository Fund").
(B) AMOUNTS IN FUND NOT AVAILABLE FOR CERTAIN PURPOSES.—Other than pursuant to subsection (f), amounts on deposit in the CFPA Nondepository Fund shall not be used for the supervision and examination of depository institution covered persons.

(2) ALL APPLICABLE SUPERVISORY FEES AND ASSESSMENTS DEPOSITED.—The Director shall deposit all amounts received from assessments under subsection (b)(4) in the CFPA Nondepository Fund.

(f) GENERAL PROVISIONS RELATING TO FUNDS.—

(1) MAINTENANCE OF FUNDS.—

(A) AGENCY FUNDS MAINTAINED BY TREASURY.—The Consumer Financial Protection Agency Depository Institution Fund established under subsection (d) and the Consumer Financial Protection Agency Nondepository Institution Fund established under subsection (e) shall each be—

(i) maintained and administered by the Secretary; and

(ii) maintained separately and not commingled.

(B) AGENCY’S AUTHORITY.—Any provision of this title forbidding the commingling or use
of the CFPA Depository Fund and the CFPA Nondepository Fund shall not be construed as limiting or impairing the authority of the Agency to use the same facilities and resources in the course of conducting supervisory and regulatory functions with respect to depository institutions and nondepository institutions, or to integrate such functions.

(C) ACCOUNTING REQUIREMENTS.—

(i) ACCOUNTING FOR USE OF FACILITIES AND RESOURCES.—The Agency shall keep a full and complete accounting of all costs and expenses associated with the use of any facility or resource used in the course of any function specified in subparagraph (B) and shall allocate, in the manner provided in subparagraph (D), any such costs and expenses incurred by the Agency—

(I) with respect to depository institution covered persons, to the CFPA Depository Fund; and

(II) with respect to nondepository covered persons, to the CFPA Non-depository fund.
(D) Allocation of Administrative Expenses.—Any personnel, administrative, or other overhead expense of the Agency shall be allocated—

(i) fully to the CFPA Depository Fund if the expense was incurred directly as a result of the Agency’s responsibilities solely with respect to depository institution covered persons;

(ii) fully to the CFPA Nondepository Fund, if the expense was incurred directly as a result of the Agency’s responsibilities solely with respect to nondepository covered persons;

(iii) between the CFPA Depository Fund and the CFPA Nondepository Fund, in amounts reflecting the relative degree to which the expense was incurred that are reasonably related as a general matter to activities of depository institution covered persons, and nondepository covered persons; and

(iv) if the Director is unable to make a complete allocation under clause (i), (ii), or (iii), between the CFPA Depository
Fund and the CFPA Nondepository Fund, in amounts reflecting the relative proportion that, as of the end of the preceding year—

(I) the aggregate assets of all depository institution covered persons bears to the aggregate assets of all covered persons; and

(II) the aggregate assets of all nondepository covered persons bears to the aggregate assets of all covered persons.

(E) AGENCY FUND.—The “Agency fund” means the Consumer Financial Protection Agency Depository Institution Fund established under subsection (d), and, the Consumer Financial Protection Agency Nondepository Institution Fund established under subsection (e), and the Consumer Financial Protection Agency Civil Penalty Fund established under subsection (g).

(2) INVESTMENT.—

(A) AMOUNTS IN FUNDS MAY BE INVESTED.—The Director may request the Secretary to invest the portion of any Agency fund
that, in the Director’s judgment, is not required
to meet the current needs of such fund.

(B) Eligible Investments.—Invest-
ments pursuant to subparagraph (A) shall be
made by the Secretary in obligations of the
United States or obligations that are guaran-
teed as to principal and interest by the United
States, with maturities suitable to the needs of
the Agency fund involved, as determined by the
Director.

(C) Interest and Proceeds Cred-
ited.—The interest on, and the proceeds from
the sale or redemption of, any obligations held
in the respective Agency Fund shall be credited
to and form a part of the respective Agency
Fund.

(3) Exception.—Notwithstanding paragraph
(1), an attorney’s activities related to assisting an-
other person in preventing a foreclosure shall be
subject to this title except to the extent such activi-
ties constitute, or are incidental to, the provision of
legal services to a client of the attorney.

(g) Penalties and Fines.—

(1) Establishment of Victims Relief
Fund.—There is established in the Treasury of the
United States a fund to be known as the “Consumer Financial Protection Agency Civil Penalty Fund” (hereafter in this section referred to as the “Civil Penalty Fund”).

(2) DEPOSITS.—If the Agency obtains a civil penalty against any person in any judicial or administrative action under this title, any law or authority transferred under subtitles F and H, or any enumerated consumer law, the Agency shall deposit into the Civil Penalty Fund the amount of the penalty collected.

(3) PAYMENT TO VICTIMS.—Amounts in the Civil Penalty Fund shall be available to the Director, without fiscal year limitation, for payments to the victims of activities for which civil penalties have been imposed under this title, the law and authorities transferred under subtitles F and H, or any enumerated consumer law.

(4) FINANCIAL EDUCATION AND COUNSELING PROGRAM.—

(A) IN GENERAL.—To the extent such victims cannot be located or such payments are otherwise not practicable, 5 percent of the Victims Relief Fund shall be transferred, up to $10,000,000 on an annual basis, to the Sec-
retary of the Treasury so that the Secretary may carry out the Financial Education and Counseling Grant Program established under section 1132 of the Housing and Economic Recovery Act of 2008 (12 U.S.C. 1701).

(B) Memorandum of Understanding.—Not later than 12 months after the date of enactment of this subtitle, the Director shall enter into a memorandum of understanding with the Secretary of the Treasury to coordinate the release of Civil Penalty Fund amounts under subparagraph (A).

(C) Assistance for Individuals at Financial Risk.—Section 1132 of the Housing and Economic Recovery Act of 2008 (12 U.S.C. 1701) is amended—

(i) in subsection (a), by striking “prospective homebuyers” each place that term appears and inserting “individuals at financial risk”; (ii) in subsection (b)—

(I) in paragraph (1), by striking “prospective homebuyers” and inserting “individuals at financial risk”; and
(II) by adding at the end the following:

“(3) DETERMINATION OF FINANCIAL RISK.—

For purposes of this section, the Director of the Consumer Financial Protection Agency shall establish the criteria used to determine whether an individual is at financial risk, and the Secretary shall use such criteria when selecting organizations under paragraph (2).”; and

(iii) in subsection (c)(1)—

(I) in subparagraph (A), by striking “or”;

(II) in subparagraph (B), by striking the period and inserting “; or”; and

(III) by adding at the end the following:

“(C) a nonprofit corporation that—

“(i) is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986; and

“(ii) specializes or has expertise in working with individuals at financial risk.”.
(h) Assessments for Certain Nondepository Institution Covered Persons.—

(1) In general.—Notwithstanding any other provision of this Act, a nondepository institution covered person shall not be subject to assessments by the Agency if—

(A) the assets that are financial activities of that nondepository covered person represent less than a substantial portion of its total assets; and

(B) the gross revenues derived from financial activities of that nondepository covered person are less than a substantial portion of its gross revenues.

(2) Extensive Consumer Financial Products or Services Operations.—Paragraph (1) shall not apply to nondepository institution covered person that the Director determines has a level of assets or revenues derived from financial activities, a number of transactions in consumer financial products or services, or a number of accounts relating to consumer financial products or services that the Director determines represents an extensive consumer financial products or services operation.
SEC. 4112. AMENDMENTS RELATING TO OTHER ADMINISTRATIVE PROVISIONS.

(a) Act of October 28, 1974.—Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended by inserting “the Consumer Financial Protection Agency,” after “Federal Deposit Insurance Corporation,”.

(b) Paperwork Reduction Act.—Section 2(5) of the Paperwork Reduction Act (44 U.S.C. 3502(5)) by inserting “the Consumer Financial Protection Agency,” after “the Securities and Exchange Commission,”.

SEC. 4113. OVERSIGHT BY GAO.

(a) Authority.—The Comptroller General may audit the programs, activities, receipts, expenditures, and financial transactions of the Agency and of any agents and representatives of the Agency as related to the agent’s or representative’s activities on behalf of or under authority of the Agency.

(b) Access.—Notwithstanding any other provision of law, the Comptroller General shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by the Agency, or any vehicles established by the Agency under this Act, and to the directors, officers, employees, independent public accountants, financial advisors, staff, working groups, and agents and represent-
atives of the Agency (as related to the agent’s or representative’s activities on behalf of the Agency) or any vehicle established by the Agency at such reasonable time as the Comptroller General may request. The Comptroller General may make and retain copies of such books, accounts, and other records as the Comptroller General deems appropriate.

SEC. 4114. EFFECTIVE DATE.

This subtitle shall take effect on the date of the enactment of this title.

Subtitle B—General Powers of the Director and Agency

SEC. 4201. MANDATE AND OBJECTIVES.

(a) MANDATE.—The Director shall seek to promote transparency, simplicity, fairness, accountability, and equal access in the market for consumer financial products or services.

(b) OBJECTIVES.—The Director may exercise the authorities granted in this title, in the enumerated consumer laws, and transferred under subtitles F and H for the purposes of ensuring that, with respect to consumer financial products or services—

(1) consumers have and can use the information they need to make responsible decisions about consumer financial products or services;
(2) consumers are protected from abuse, unfairness, deception, and discrimination;

(3) markets for consumer financial products or services operate fairly and efficiently with ample room for sustainable growth and innovation; and

(4) traditionally underserved consumers and communities have equal access to responsible financial services.

SEC. 4202. AUTHORITIES.

(a) IN GENERAL.—The Director may exercise the authorities granted in this title, in the enumerated consumer laws, and transferred under subtitles F and H, to administer, enforce, and otherwise implement the provisions of this title, the authorities transferred in subtitles F and H, and the enumerated consumer laws.

(b) RULEMAKING, ORDERS, AND GUIDANCE.—

(1) IN GENERAL.—The Director may prescribe regulations and issue orders and guidance as may be necessary or appropriate to enable it to administer and carry out the purposes and objectives of this title, the authorities transferred under subtitles F and H, and the enumerated consumer laws, and to prevent evasions of this title, any such authority, and any such law.
(2) Standards for Rulemaking.—In prescribing a regulation under this title or pursuant to the authorities transferred under subtitles F and H or the enumerated consumer laws, the Director shall—

(A) consider the potential benefits and costs to consumers, covered persons, and the Federal Government, including the potential reduction of consumers’ access to consumer financial products or services, resulting from such regulation; and

(B) consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, or other Federal agencies, as appropriate, regarding the consistency of a proposed regulation with prudential, consumer protection, civil rights, market, or systemic objectives administered by such agencies or supervisors and whether such regulation will have an inconsistent effect on nondepository institution covered persons and depository institution covered persons.

(3) Exemptions.—

(A) In General.—The Director, by regulation or order, may conditionally or uncondi-
tionally exempt any covered person, service pro-
vider, or any consumer financial product or
service or any class of covered persons, class of
service providers, or consumer financial prod-
ucts or services, from any provision of this title,
any enumerated consumer law, or from any reg-
ulation under any such provision or law, as the
Director deems necessary or appropriate to
carry out the purposes and objectives of this
title taking into consideration the factors in
subparagraph (B).

(B) FACTORS.—In issuing an exemption
by regulation or order as permitted in subpara-
graph (A), the Director shall as appropriate
take into consideration the following:

(i) The total assets of the covered per-
son.

(ii) The volume of transactions involv-
ing consumer financial products or services
in which the covered person engages.

(iii) The extent to which the covered
person engages in 1 or more financial ac-
tivities.

(iv) Existing laws or regulations which
are applicable to the consumer financial
product or service and the extent to which such laws or regulations provide consumers with adequate protections.

(C) RULE OF CONSTRUCTION.—No provision of this section shall be construed as altering, amending, or affecting any authority under sections 304(a), 304(i), 305(a), and 306(b) of the Home Mortgage Disclosure Act of 1975 and sections 703(a)(1), 703(a)(2), 703(a)(3), 705(f), and 705(g) of the Equal Credit Opportunity Act for determining whether a covered person should be provided an exemption.

(e) EXAMINATIONS AND REPORTS.—

(1) IN GENERAL.—Except as provided under section 4203, the Director may on a periodic basis examine a covered person or service provider, with respect to any consumer financial product or service, for purposes of ensuring compliance with the requirements of this title, the enumerated consumer laws, and any regulations prescribed by the Director under this title or pursuant to the authorities transferred under subtitles F and H, and enforcing compliance with such requirements.

(2) EXAMINATION PROGRAM.—The Director shall exercise any authority of the Director under
paragraph (1) in a manner designed to ensure that such authorities are exercised with respect to covered persons or service providers, without regard to charter or corporate form, based on the Director’s assessment of the risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable, the following factors:

(A) The asset size of the covered persons.

(B) The volume of transactions involving consumer financial products or services in which the covered persons engage.

(C) The risks to consumers created by the provision of such consumer financial products or services.

(D) In the case of State-chartered institutions, the extent to which such institutions are subject to oversight by State authorities for consumer protection.

(3) COORDINATION.—The Director shall coordinate the Agency’s supervisory activities with the supervisory activities conducted by the Federal banking agencies and the State bank supervisors, including establishing their respective schedules for exam-
ining covered persons and requirements regarding reports to be submitted by covered persons.

(4) REPORTS.—The Director may require reports from a covered person for purposes of ensuring compliance with the requirements of this title, the enumerated consumers laws, and any regulation prescribed by the Director under this title or pursuant to the authorities transferred under subtitles F and H, and enforcing compliance with such requirements.

(5) CONTENT OF REPORTS.—The reports authorized in paragraph (4) may include such information as necessary to keep the Agency informed as to—

(A) the compliance systems or procedures of the covered person or any affiliate thereof, with applicable provisions of this title or any other law that the Agency has jurisdiction to enforce; and

(B) matters related to the provision of consumer financial products or services including the servicing or maintenance of accounts or extensions of credit.

(6) USE OF EXISTING REPORTS.—In general, the Agency shall, to the fullest extent possible, use—
(A) reports that a covered person, or any affiliate thereof, or any service provider to such covered person or affiliate, has provided or been required to provide to a Federal or State agency; and

(B) information that has been reported publicly.

(7) ACCESS BY THE AGENCY TO REPORTS OF OTHER REGULATORS.—

(A) EXAMINATION AND FINANCIAL CONDITION REPORTS.—Upon providing reasonable assurances of confidentiality, the Agency shall have access to any report of examination or financial condition, including a report containing data regarding consumer complaints, made by a Federal banking agency or other Federal agency having supervision of a covered person, or a service provider, (other than returns and return information described in section 6103 of the Internal Revenue Code of 1986) and to all revisions made to any such report.

(B) PROVISION OF OTHER REPORTS TO AGENCY.—In addition to the reports described in subparagraph (A), a Federal banking agency may, in its discretion, furnish to the Agency
any other report or other confidential supervisory information concerning any insured depository institution, any credit union, or other entity examined by such agency under authority of any Federal law.

(8) Access by Other Regulators to Reports of the Agency.—

(A) Examination Reports.—Upon providing reasonable assurances of confidentiality, a Federal banking agency, a State regulator, or any other Federal agency having supervision of a covered person shall have access to any report of examination made by the Agency with respect to the covered person or service provider, and to all revisions made to any such report.

(B) Provision of Other Reports to Other Regulators.—In addition to the reports described in paragraph (A), the Agency may, in the discretion of the Agency, furnish to a Federal banking agency any other report or other confidential supervisory information concerning any insured depository institution, any credit union, or other entity examined by the Agency under authority of any Federal law.
(9) **Preservation of Authority.**—No provision in paragraph (3) shall be construed as preventing the Agency from conducting an examination authorized by this title or under the authorities transferred under subtitles F and H or pursuant to any enumerated consumer law. No provision of this title shall be construed as limiting the authority of the Director to require reports from a covered person, as permitted under paragraph (4), regarding information owned or under the control of the covered person, regardless of whether such information is maintained, stored, or processed by another person.

(10) **Reports of Tax Law Noncompliance.**—The Director shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(11) **Delegation.**—

(A) In General.—The Director may delegate the examination authorities of the Agency under this title to any appropriate agency, as defined in section 4203, for any insured depository institution or insured credit union that is not subject to section 4203 upon a petition by an appropriate agency.
(B) Standard for delegation.—The Director shall provide such delegation if, in the Director’s sole discretion, the Director determines that—

(i) the delegation is consistent with the public interest;

(ii) the appropriate agency is capable of enforcing compliance with this title, and with any regulation prescribed under this title; and

(iii) such capability is comparable to or superior to the capability of the Agency, in terms of expertise, demonstrated commitment, and overall effectiveness, in enforcing such compliance.

(C) Effect of delegation.—The insured depository institution or insured credit union shall be subject to the examination process described in section 4203(b).

(D) No effect on enforcement.—The Director’s delegation authority under this paragraph shall not apply to the Director’s enforcement responsibilities under subsection (e).

(d) Exclusive rulemaking and examination authority.—Notwithstanding any other provision of
Federal law other than section 4203 and subsections (f) and (h) of this section, to the extent that a Federal law authorizes the Director and another Federal agency to prescribe regulations, issue guidance, conduct examinations, or require reports under a provision of that law for purposes of assuring compliance with this title, a provision of any enumerated consumer law, any provision of the laws for which authorities were transferred under subtitles F and H, and any regulations prescribed under this title or pursuant to any such authority, the Director shall have the exclusive authority under that provision of law to prescribe regulations, issue guidance, conduct examinations, require reports, or issue exemptions with regard to any person subject to that law and with respect to any activity regulated under any enumerated consumer law.

(e) **PRIMARY ENFORCEMENT AUTHORITY.**—

(1) **THE AGENCY TO HAVE PRIMARY ENFORCEMENT AUTHORITY.**—To the extent that a Federal law authorizes the Agency and another Federal agency to enforce a provision of a law, the Agency shall have primary enforcement authority to enforce the provision of that Federal law with respect to any person in accordance with this subsection.

(2) **COORDINATION WITH THE FEDERAL TRADE COMMISSION.**—
(A) NOTICE.—If the Federal Trade Commission is authorized to enforce any Federal law described in paragraph (1), or a regulation prescribed under any such Federal law, either the Agency or the Federal Trade Commission shall serve written notice to the other of any enforcement action prior to initiating such an enforcement action, except that if the agency or commission filing the action determines that prior notice is not feasible, that agency or commission may provide notice immediately upon initiating such enforcement action.

(B) INTERVENTION BY EITHER ENTITY.—Upon receiving any notice under subparagraph (A) with respect to an enforcement action, the Agency or Federal Trade Commission may intervene in such enforcement action, and upon intervening—

(i) be heard on all matters arising in such enforcement action; and

(ii) file petitions for appeal in such enforcement action.

(C) PENDENCY OF ACTION.—Whenever a civil action has been instituted by or on behalf of the Agency or the Federal Trade Commission
for any violation of any Federal law described in paragraph (1), or a regulation prescribed under any such Federal law, the other entity may not, during the pendency of that action, institute a civil action under such law or regulation against any defendant named in the complaint in such pending action for any violation alleged in the complaint.

(D) AGREEMENTS BETWEEN ENTITIES.—

(i) NEGOTIATIONS AUTHORIZED.—

The Agency and the Federal Trade Commission may negotiate an agreement to establish procedures to ensure that the enforcement actions of the 2 agencies are appropriately coordinated.

(ii) SCOPE OF NEGOTIATED AGREEMENT.—The terms of any agreement negotiated pursuant to clause (i) may modify or supersede the provisions of subparagraphs (A), (B), and (C).

(3) COORDINATION WITH OTHER FEDERAL AGENCY.—

(A) REFERRAL.—Any Federal agency (other than the Federal Trade Commission) that is authorized to enforce a Federal law de-
scribed in paragraph (1) may recommend in writing to the Director that the Agency initiate an enforcement proceeding to the extent the Agency is authorized by that Federal law or by this title. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(B) BACKSTOP ENFORCEMENT AUTHORITY OF OTHER FEDERAL AGENCY.—If the Agency does not, before the end of the 120-day period beginning on the date on which the Director receives a recommendation under subparagraph (A), initiate an enforcement proceeding, the other agency referred to in subparagraph (A) may initiate an enforcement proceeding as permitted by that Federal law.

(4) INSTITUTIONS SUBJECT TO SPECIAL EXAMINATION AND ENFORCEMENT PROCEDURES.—This subsection shall not apply to institutions subject to section 4203.

(f) PRESERVATION OF OTHER AUTHORITY.—

(1) ATTORNEY GENERAL.—No provision of this title shall be construed as affecting any authority of the Attorney General.
(2) **Secretary of the Treasury.**—No provision of this title shall be construed as affecting any authority of the Secretary of the Treasury, including with respect to prescribing regulations, initiating enforcement proceedings, or taking other actions with respect to a person providing tax planning or tax preparation services.

(3) **Fair Housing Act.**—No provision of this title shall be construed as affecting any authority arising under the Fair Housing Act.

(g) **Effect on Other Authority.**—No provision of this section or section 4203 shall be construed as modifying or limiting the authority of any appropriate Federal banking agency or the Director or Agency to interpret, or take enforcement action under, any law or regulation the interpretation or enforcement of which is committed to the banking agency or the Director or Agency, which shall include, in the case of the Director and the Agency, this title, the enumerated consumer laws, and the regulations prescribed under this title or such laws.

(h) **Preservation of Federal Trade Commission Authority.**—No provision of this title shall be construed as modifying, limiting, or otherwise affecting the authority of the Federal Trade Commission under the
Federal Trade Commission Act or other laws other than the enumerated consumer laws.

(i) **Preservation of Farm Credit Administration Authority.**—No provision of this title shall be construed as modifying, limiting, or otherwise affecting the authority of the Farm Credit Administration.

**SEC. 4203. EXAMINATION AND ENFORCEMENT FOR SMALL BANKS, THRIFTS, AND CREDIT UNIONS.**

(a) **Scope of Institutions Subject to This Section.**—

(1) **Institutions covered.**—This section shall apply to—

(A) any insured depository institution with total assets of $10,000,000,000 or less; or

(B) any insured credit union with total assets of $10,000,000,000 or less.

(2) **Appropriate Agency.**—For purposes of this title, the term “appropriate agency” means—

(A) in the case of an insured depository institution, the appropriate Federal banking agency as such term is defined in section 3 of the Federal Deposit Insurance Act; and

(B) in the case of an insured credit union, the National Credit Union Administration.

(b) **Examinations.**—
(1) In general.—The appropriate agency shall on a periodic basis examine, or require reports from, an institution referred to in subsection (a) for purposes of ensuring compliance with the requirements of this title, the enumerated consumer laws, and any regulation prescribed by the Director under this title or pursuant to the authorities transferred under subtitles F and H, and enforcing compliance with such requirements.

(2) Agency role in examinations.—

(A) The appropriate agency shall provide all reports, records, and documentation related to the examination process to the Agency on a timely and ongoing basis.

(B) The Director and Agency may, at its discretion, include an examiner on any examination conducted under paragraph (1). The appropriate agency shall involve such Agency examiner in the entire examination process, including setting the scope of an examination, participating in the examination, and providing input on the examination report, matters requiring attention and examination ratings.

(c) Enforcement.—
(1) IN GENERAL.—Notwithstanding any other provision of this title other than this subsection, the appropriate agency shall have primary authority to enforce violations identified at institutions referred to in subsection (a) of any of the requirements of this title, the enumerated consumers laws, and any regulation prescribed by the Director under this title or pursuant to the authorities transferred under subtitles F and H.

(2) COORDINATION WITH APPROPRIATE AGENCY.—

(A) REFERRAL.—

(i) IN GENERAL.—The Agency may recommend in writing to the appropriate agency that the appropriate agency initiate an enforcement proceeding to the extent the appropriate agency is authorized by that Federal law or by this title.

(ii) EXPLANATION.—Any recommendation under clause (i) shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(B) BACKSTOP ENFORCEMENT AUTHORITY OF AGENCY.—If the appropriate agency does
not, before the end of the 120-day period beginning on the date on which the appropriate agency receives a recommendation under subparagraph (A), initiate an enforcement proceeding, the Agency may initiate an enforcement proceeding as permitted by Federal law.

(d) Actions Arising Out of Consumer Complaint System.—Notwithstanding any provision of this section, if through the consumer complaint system administered by the Agency under section 4105(c)(3), the Director has reasonable cause to believe that an institution referred to in subsection (a) demonstrates noncompliance with any provision of this title, the enumerated consumer laws, or any regulation prescribed by the Director under this title or pursuant to the authorities transferred under subtitles F and H, the Director may directly investigate such institution for such noncompliance and take any action permitted under subtitle E that the Director deems appropriate.

(e) Removal of Appropriate Agency for Particular Institution.—

(1) Heightened supervision.—The Director—
(A) may provide notice to an appropriate agency that the Director is considering issuing a removal order under paragraph (2); and

(B) shall have an Agency examiner participate in the examination process under subsection (b) for at least 1 examination cycle.

(2) REMOVAL BY ORDER.—If, after the completion of at least 1 examination cycle following the provision of notice to an appropriate agency under paragraph (1), the Director determines in writing that the appropriate agency has failed to adequately conduct consumer compliance examinations or bring appropriate enforcement actions against an institution referred to in subsection (a), the Director may order the removal of the appropriate agency from its responsibilities under this section for such institution.

(3) AGENCY AUTHORITY UPON REMOVAL.—Upon removal pursuant to paragraph (2), the Agency shall examine and enforce against such institution as if the institution were subject to section 4202.

(4) EFFECTIVE DATE.—An order under paragraph (2) shall take effect 30 days after a determination by the Secretary of the Treasury pursuant to paragraphs (5) and (6).
(5) **AUTOMATIC APPEAL.**—An order issued by the Director pursuant to paragraph (2) shall be automatically appealed to the Secretary.

(6) **DECISION BY THE SECRETARY OF THE TREASURY.**—

(A) **DETERMINATION.**—The order issued pursuant to paragraph (2) shall be deemed affirmed unless the Secretary of the Treasury denies the determination of the Director within 120 days of the issuance of the order pursuant to paragraph (2).

(B) **RULE OF CONSTRUCTION.**—Nothing in subparagraph (A) shall be construed as prohibiting the Secretary of the Treasury from making a determination to either affirm or deny an order issued pursuant to paragraph (2) prior to the passage of the time period in subparagraph (A).

(7) **REGULATIONS.**—By the transfer date, the Secretary shall issue regulations that establish the standards the Director shall apply in making a determination to remove an appropriate agency and the process, procedures, and standards for an appeal. Such standards shall require the Director to consider at least the following in issuing an order re-
moving an appropriate agency for an institution referred to in subsection (a)(1):

(A) Reports of examination of such institution.

(B) Any enforcement actions taken by an appropriate agency against such institution and the results of those actions.

(C) Consumer complaints issued against such institution.

(D) Actions taken by State attorneys general and private rights of action against such institution.

(f) POLICIES AND PROCEDURES.—Within 180 days after the designated transfer date, the Agency and the appropriate agency shall develop policies and procedures for implementing this section.

(g) ASSESSMENTS.—

(1) LIMITATION ON CERTAIN FEES.—The Agency shall not assess examination fees on an institution referred to in subsection (a).

(2) RULE OF CONSTRUCTION.—No provision of this section shall be construed as preventing the appropriate agency from assessing fees on an institution referred to in paragraph (1) to meet the appropriate agency’s expenses for carrying out such exam-
ination and supervision responsibilities pursuant to this section.

(h) ASSISTIVE DIVISION FOR COMMUNITY FINANCIAL INSTITUTIONS.—

(1) ESTABLISHMENT; PURPOSE.—There is established in the Agency an office to be known as the “Assistive Division for Community Financial Institutions” to advise the Director on the impact of Agency policies and regulations on community financial institutions and to help ensure that the policies and regulations of the Agency do not unduly burden community financial institutions.

(2) ADDITIONAL DUTIES.—The Assistive Division for Community Financial Institutions shall also—

(A) provide assistance to and respond to inquiries from community financial institutions regarding policies of the Agency and the effects of such policies on community financial institutions;

(B) provide educational materials, training aides, and support to community financial institutions with respect to any new regulatory obligations the Agency establishes during the initial rule-making period;
(C) establish and maintain a toll-free telephone number, to be available at least 8 hours a day and 7 days a week, at which community financial institution may make inquiries and receive assistance under subparagraph (A); and

(D) perform other duties and exercise such other powers set by the Director.

SEC. 4204. SIMULTANEOUS AND COORDINATED SUPERVISIONARY ACTION.

(a) Examinations.—A Federal banking agency and the Agency shall, with respect to each insured depository institution, credit union, or other covered person supervised by the Federal banking agency and the Agency, respectively—

(1) coordinate the scheduling of examinations of the insured depository institution, and credit union, or other covered person;

(2) conduct simultaneous examinations of each insured depository institution, credit union or other covered person, unless such institution requests examinations to be conducted separately;

(3) share each draft report of examination with the other agency and permit the receiving agency a reasonable opportunity (which shall not be less than a period of 30 days after the date of receipt) to com-
ment on the draft report before such report is made final; and

(4) prior to issuing a final report of examination or taking supervisory action, an agency shall take into consideration concerns, if any, raised in the comments made by the other agency.

(b) Coordination With State Bank Supervisors.—The Agency shall pursue arrangements and agreements with State bank supervisors to coordinate examinations consistent with subsection (a).

(c) Resolution of Conflict in Supervision.—

(1) Request of Depository Institution.—

(A) In General.—If the proposed material supervisory determinations of the Agency and a Federal banking agency are conflicting, an insured depository institution, credit union, or other covered person may request the agencies to coordinate and present a joint statement of coordinated supervisory action.

(B) Limitation.—A request of an insured depository institution, credit union, or other covered person shall not be used to appeal a supervisory rating or determination by the Agency or a Federal banking agency.
(2) JOINT STATEMENT.—The agencies receiving a request from an insured depository institution, credit union, or covered person under paragraph (1) shall provide a joint statement resolving the conflict under such subparagraph before the end of the 30-day period beginning on the date the agencies receive such request.

(d) APPEALS TO GOVERNING PANEL.—

(1) IN GENERAL.—If the agencies receiving a request from an insured depository institution, credit union, or covered person under subsection (c)(1) do not issue a joint statement under subsection (c)(2), or if either agency takes or attempts to take any supervisory action relating to the request for the joint statement without the consent of the other agency, the insured depository institution, credit union, or other covered person may institute an appeal to a governing panel under this subsection.

(2) TIMETABLE.—Any appeal under paragraph (1) with regard to a failure of agencies to issue a joint statement shall be filed before the end of the 30-day period beginning at the end of the 30-day period during which such joint statement was due under subsection (c)(2).
(c) COMPOSITION OF GOVERNING PANEL.—The governor panel for an appeal under this section shall be composed of—

(1) 2 individuals—

(A) 1 of whom is a representative from the Agency;

(B) 1 of whom is a representative of the Federal banking agency which received the request to which the appeal relates; and

(C) neither of whom—

(i) have participated in the material supervisory determinations under appeal; and

(ii) report directly or indirectly to the individual who made the supervisory determinations under appeal; and

(2) 1 individual who is a representative from—

(A) the Federal banking agency that heads the Financial Institution Examination Council; or

(B) if the Financial Institutions Examination Council is headed by a Federal banking agency that is a party to the appeal, the Federal banking agency that is next scheduled to
head the Financial Institutions Examination
Council.

(f) **Conduct of Appeal.**—

(1) **Content of Filing Appeal.**—The insured
depository institution, credit union, or other covered
person which institutes an appeal under subsection
d(d)(1) shall include in the filing of such appeal all
the facts and legal arguments pertaining to the mat-
ter appealed.

(2) **Appearance.**—The insured depository in-
stitution, credit union, or other covered person which
institutes an appeal under this section may appear
before the governing panel in person or by telephone,
through counsel, employees, or representatives of, or
for, such institution, credit union, or other covered
person.

(3) **Requests for Additional Information.**—Any governing panel convened under this
section may request the insured depository institu-
tion, credit union, or other covered person, the
Agency, or the Federal banking agency to produce
additional information relevant to the appeal.

(4) **Final Written Determinations.**—Any
governing panel convened under this section, by a
majority vote of the members of the panel, shall pro-
vide a final determination, in writing, within 30 days of the filing of an informationally complete appeal, or such longer period as the panel and the insured depository institution, credit union, or other covered person may jointly agree.

(5) Public Information.—A redacted copy of any determination by a governing panel convened under this section shall be made public upon the issuance of such determination.

(g) Prohibition Against Retaliation.—The Director and the Federal banking agencies shall prescribe regulations to provide safeguards from retaliation against any insured depository institution, credit union, or other covered person which institutes an appeal under this section, as well as against any officer or and employee of any such institution, credit union, or other person.

(h) Material Supervisory Determination Defined.—For purposes of this section, the term “material supervisory determination”—

(1) includes any action relating to any supervision or examinations; and

(2) does not include—

(A) a determination by any Federal banking agency to appoint a conservator or receiver for an insured depository institution or a liqui-
dating agent for an insured credit union, as the case may be, or a decision to take action pursuant to section 38 of the Federal Deposit Insurance Act or section 212 of the Federal Credit Union Act, as the case may be; or

(B) any regulation or guidance, or order of general applicability.

SEC. 4205. LIMITATIONS ON AUTHORITY OF AGENCY AND DIRECTOR.

(a) EXCLUSION FOR MERCHANTS, RETAILERS, AND SELLERS OF NONFINANCIAL SERVICES.—

(1) IN GENERAL.—Notwithstanding any provision of this title (other than paragraph (4)) and subject to paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, under this title with respect to—

(A) credit extended directly by a merchant, retailer, or seller of nonfinancial goods or services to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service, exclusively for the purpose of enabling that consumer to purchase such goods or services directly from
the merchant, retailer, or seller of nonfinancial
services; or

(B) collection of debt, directly by the mer-
chant, retailer, or seller of nonfinancial services,

arising from such credit extended.

In the application of this paragraph, the extension
of credit and the collection of debt described in sub-
paragraphs (A) and (B), respectively, shall not be
considered a consumer financial product or service.

(2) EXCEPTION FOR EXISTING AUTHORITY.—
The Director may exercise any rulemaking authority
regarding an extension of credit described in para-
graph (1)(A) or the collection of debt arising from
such extension, as may be authorized by the enumer-
ated consumer laws or any law or authority trans-
ferred under subtitle F or H.

(3) RULE OF CONSTRUCTION.—No provision of
this title shall be construed as modifying, limiting,
or superseding the authority of the Federal Trade
Commission or any agency other than the Agency
with respect to credit extended, or the collection of
debt arising from such extension, directly by a mer-
chant or retailer to a consumer exclusively for the
purpose of enabling that consumer to purchase
goods or services directly from the merchant or re-
tailer.

(4) **Exclusion not applicable to certain**
credit transactions.—Paragraph (1) shall not
apply to—

(A) any credit transaction, including the
collection of the debt arising from such exten-
sion, in which the merchant, retailer, or seller
of nonfinancial services assigns, sells, or other-
wise conveys such debt owed by the consumer
to another person;

(B) any credit transaction—

(i) in which the credit provided sig-
nificantly exceeds the market value of the
product or service provided; and

(ii) with respect to which the Director
finds that the sale of the product or service
is done as a subterfuge so as to evade or
circumvent the provisions of this title; or

(C) any credit transaction involving a per-
son who operates a line of business that in-
volves the extension of retail credit or retail
leases involving motor vehicles, if—
(i) the extension of retail credit or retail leases is provided directly to consumers; and

(ii) the contracts governing such extension of retail credit or retail leases are not assigned to a third party finance or leasing source, except on a de minimis basis.

(b) EXCLUSION FOR PERSONS REGULATED BY THE SECURITIES AND EXCHANGE COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Securities and Exchange Commission or any securities commission (or any agency or office performing like functions) of any State to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Securities and Exchange Commission or any securities commission (or any agency or office performing like functions) of any State. The Director and Agency shall have no rule-making, supervisory, enforcement or other authority, including the authority to order assessments, under this title with respect to a person regulated by the Securities and Exchange Commission or any securi-
ties commission (or any agency or office performing like functions) of any State.

(2) Consultation and Coordination.—Notwithstanding paragraph (1), the Securities and Exchange Commission shall consult and coordinate with the Director with respect to any rule (including any advance notice of proposed rulemaking) regarding an investment product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Agency under this title or under any other law.

(c) Exclusion for Persons Regulated by the Commodity Futures Trading Commission.—

(1) In General.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Commodity Futures Trading Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commodity Futures Trading Commission. The Director and the Agency shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commodity Futures Trading Commission.
(2) Consultation and Coordination.—Notwithstanding paragraph (1), the Commodity Futures Trading Commission shall consult and coordinate with the Director with respect to any rule (including any advance notice of proposed rulemaking) regarding a product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Agency under this title or under any other law.

(d) Persons Regulated by a State Securities Commission.—

(1) In General.—No provision of this title shall be construed as altering, amending, or affecting the authority of any securities commission (or any agency or office performing like functions) of any State to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State. Except as permitted in paragraph (2) and subsection (m), the Director and the Agency shall have no authority to exercise any power to enforce this title with respect to a person regulated by any securities commission (or any agency or office per-
forming like functions) of any State, but only to the extent that the person acts in such regulated capacity.

(2) Description of Activities.—Paragraph (1) shall not apply to any person to the extent such person is engaged in any financial activity described in any subparagraph of section 101(19) or is otherwise subject to any enumerated consumer law or any law or authority transferred under subtitle F or H.

(c) Exclusion for Persons Regulated by a State Insurance Regulator.—

(1) In General.—No provision of this title shall be construed as altering, amending, or affecting the authority of any State insurance regulator to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any State insurance regulator. Except as provided in paragraphs (2) and (3), the Agency shall have no authority to exercise any power to enforce this title with respect to a person regulated by any State insurance regulator.

(2) Description of Activities.—Paragraph (1) shall not apply to any person described in such paragraph to the extent such person is engaged in any financial activity described in any subparagraph
of section 4002(19) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(3) **Preservation of Certain Authorities.**—No provision of this title shall be construed as limiting the authority of the Director and the Agency from exercising powers under this Act with respect to a person, other than a person regulated by a State insurance regulator, who provides a product or service for or on behalf of a person regulated by a State insurance regulator in connection with a financial activity.

(f) **Exclusion for Persons Regulated by the Federal Housing Finance Agency.**—No provision of this title shall be construed as altering, amending, or affecting the authority of the Federal Housing Finance Agency to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Federal Housing Finance Agency. The Director and Agency shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Federal Housing Finance Agency. For purposes of this subsection, the term “person regulated by the Federal Housing Finance Agency” means any Federal home loan
bank, and any joint office of 1 or more Federal home loan
banks.

(g) Exclusion for Persons Regulated by the
Farm Credit Administration.—No provision of this
title shall be constructed as altering, amending, or affect-
ing the authority of the Farm Credit Administration to
adopt rules, institute enforcement proceedings, or take any
other action with respect to a person regulated by the
Farm Credit Administration. The Director and Agency
shall have no authority to exercise any power to enforce
this title, compel registration, or to order assessments with
respect to a person regulated by the Farm Credit Adminis-
tration. For purposes of this subsection, the term “person
regulated by the Farm Credit Administration” means any
Farm Credit System Institution.

(h) Employee Benefit and Compensation Plans
and Certain Other Arrangements Under the In-
ternal Revenue Code of 1986.—

(1) Authority retained by other agen-
cies.—No provision of this title shall be construed
as altering, amending, or affecting the authority of
the Secretary of the Treasury, the Secretary of
Labor, or the Commissioner of Internal Revenue to
adopt regulations, initiate enforcement proceedings,
or take any actions with respect to any specified plan or arrangement.

(2) Activities not constituting financial activities.—For the purposes of this title, a person shall not be treated as having engaged in a financial activity, as defined in section 4002(19), solely because such person is a specified plan or arrangement or is engaged in the activity of establishing or maintaining, for the benefit of employees of such person (or for members of an employee organization), any specified plan or arrangement.

(3) Regulatory coordination.—In the case of regulations promulgated under this title that address any financial activity specifically pertaining to the administration and maintenance of a specified plan or arrangement, the Director shall coordinate with the Secretary of Labor and the Secretary of Treasury, as appropriate.

(4) Specified plan or arrangement.—For purposes of this subsection, the term “specified plan or arrangement” means any plan, account, or arrangement described in section 220, 223, 401(a), 403(a), 403(b), 408, 408A, 529, or 530 of the Internal Revenue Code of 1986, or any employee benefit or compensation plan or arrangement, including a
plan that is subject to title I of the Employee Retirement Income Security Act of 1974.

(i) **Exclusion for Accountants and Tax Preparers.**—

(1) **In general.**—Except as permitted in paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, over—

(A) any person that is a certified public accountant, permitted to practice as a certified public accounting firm, or certified or licensed for such purpose by a State, or any individual who is employed by or holds an ownership interest with respect to a person described in this subparagraph when such person is performing or offering to perform customary and usual accounting activities, including the provision of accounting, tax, advisory, other services that are subject to the regulatory authority of a state board of accountancy or a Federal authority, or other services that are incidental to such customary and usual accounting activities, to the extent that such incidental services are not offered or provided by the person separate and
apart from such customary and usual accounting activities and are not offered or provided to consumers who are not receiving such customary and usual accounting activities; or

(B) any person other than a person described in subparagraph (A) that performs income tax preparation activities for consumers.

(2) CERTAIN ACTIVITIES NOT EXCLUDED.—

(A) IN GENERAL.—In no event shall paragraph (1) apply to any activity which involves the sale of securities or extension of credit which is provided by a person described in paragraph (1)(A).

(B) DEFINITION.—For purposes of subparagraph (A), the term “extension of credit” shall not include an ordinary account receivable.

(3) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to—

(A) any person described in paragraph (1)(A) to the extent such person is engaged in any activity which is not a customary and usual accounting activity described in paragraph (1)(A) or incidental thereto but which is a financial activity described in any subparagraph of section 4002(19);
(B) any person described in paragraph (1)(B) to the extent such person is engaged in any activity which is a financial activity described in any subparagraph of section 4002(19); or

(C) any person described in paragraph (1)(A) or (1)(B) that is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(j) EXCLUSION FOR REAL ESTATE LICENSEES.—

(1) IN GENERAL.—Except as permitted in paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, over a person that is licensed or registered as a real estate broker, real estate agent, in accordance with State law, but only to the extent that such person—

(A) acts as a real estate agent or broker for a buyer, seller, lessor, or lessee of real property;

(B) brings together parties interested in the sale, purchase, lease, rental, or exchange of real property;
(C) negotiates, on behalf of any party, any
portion of a contract relating to the sale, pur-
chase, lease, rental, or exchange of real prop-
erty (other than in connection with providing fi-
nancing with respect to any such transaction);

(D) engages in any activity for which a
person engaged in the activity is required to be
registered or licensed as a real estate agent or
real estate broker under any applicable law; or

(E) offers to engage in any activity, or act
in any capacity, described in subparagraph (A),
(B), (C), or (D).

(2) Description of Activities.—Paragraph
(1) shall not apply to any person described in such
paragraph to the extent such person is engaged in
any financial activity described in any subparagraph
of section 4002(19) or is otherwise subject to any of
the enumerated consumer laws or the authorities
transferred under subtitle F or H.

(k) Exclusion for Auto Dealers.—

(1) In General.—The Director and the Agen-
cy may not exercise any rulemaking, supervisory, en-
forcement or any other authority, including author-
ity to order assessments, over a motor vehicle dealer
that is primarily engaged in the sale and servicing
of motor vehicles, the leasing and servicing of motor
vehicles, or both.

(2) CERTAIN FUNCTIONS EXCEPTED.—The pro-
visions of paragraph (1) shall not apply to any per-
son to the extent that person—

(A) provides consumers with any services
related to residential mortgages; or

(B) operates a line of business that in-
volves the extension of retail credit or retail
leases involving motor vehicles, and in which—

(i) the extension of retail credit or re-
tail leases is routinely provided directly to
consumers; and

(ii) the contract governing such exten-
sion of retail credit or retail leases is not
routinely assigned to a third party finance
or leasing source.

(3) NO IMPACT ON PRIOR AUTHORITY.—Noth-
ing in this subsection shall be construed to modify,
limit, or supersede the rulemaking or enforcement
authority over motor vehicle dealers that could be
exercised by any Federal department or agency on
the day prior to the enactment of this title.

(4) NO TRANSFER OF CERTAIN AUTHORITY.—
Notwithstanding subtitle F or any other provision of
law under this title, the consumer financial protec-
tion functions of the Board of Governors and the
Federal Trade Commission shall not be transferred
to the Director or the Agency to the extent such
functions are with respect to a person described
under paragraph (1).

(5) DEFINITIONS.—For purposes of this sub-
section:

(A) MOTOR VEHICLE.—The term “motor
vehicle” means any self-propelled vehicle de-
signed for transporting persons or property on
a street, highway, or other road.

(B) MOTOR VEHICLE DEALER.—The term
“motor vehicle dealer” means any person resi-
dent in the United States or any territory of
the United States, and licensed by a State, a
territory of the United States, or the District of
Columbia to engage in the sale of motor vehi-
cles.

(l) NO AUTHORITY TO IMPOSE USURY LIMIT.—No
provision of this title shall be construed as conferring au-
 thority on the Director or the Agency to establish a usury
limit applicable to an extension of credit offered or made
by a covered person to a consumer, unless explicitly au-
 thorized by law.
(m) Exclusion for Manufactured Home Retailers and Modular Home Retailers.—

(1) In general.—The Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, over a person to the extent such person—

(A) acts as an agent or broker for a buyer or seller of a manufactured home or a modular home;

(B) facilitates the purchase by a consumer of a manufactured home or modular home, by negotiating the purchase price or terms of the sales contract (other than providing financing with respect to such transaction); or

(C) offers to engage in any activity described in subparagraph (A) or (B).

(2) Description of activities.—Paragraph (1) shall not apply to any person described in such paragraph to the extent such person is engaged in any financial activity described in any subparagraph of section 4002(19) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.
(3) DEFINITIONS.—For purposes of this sub-
section:

(A) MANUFACTURED HOME.—The term
“manufactured home” has the meaning given
such term in section 603 of the National Manu-
factured Housing Construction and Safety

(B) MODULAR HOME.—The term “mod-
ular home” means a house built in a factory in
two or more modules that meet the State or
local building codes where the house will be lo-
cated and where such modules are transported
to the building site, installed on foundations,
and completed.

(n) EXCLUSION FOR PRACTICE OF LAW.—

(1) IN GENERAL.—Except as provided under
paragraph (2), nothing in this title shall apply with
respect to an activity engaged in by an attorney, or
engaged in under the direction of an attorney, as
part of the practice of law under the laws of a State
in which the attorney is licensed to practice law.

(2) RULE OF CONSTRUCTION.—

(A) IN GENERAL.—Paragraph (1) shall not
be construed to limit the exercise by the Direc-
tor and the Agency of any rulemaking, super-
visory, enforcement, or other authority, including authority to order assessments, regarding any activity that is a financial activity described in any subparagraph of section 4002(19) and is not engaged in as—

(i) part of the practice of law; or

(ii) incidental to the practice of law, to the extent that such activity is provided exclusively within the scope of the attorney-client relationship and is not otherwise provided by or under the direction of the attorney to any consumer who is not receiving legal advice or services from the attorney in connection with such activity.

(B) CONSTRUCTION.—Paragraph (1) shall not be construed to limit the authority of the Director and the Agency with respect to any activity to the extent that such activity is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(3) EXCEPTION.—Notwithstanding paragraph (1), an individual who provides legal advice or services related to preventing a foreclosure shall be sub-
ject to this title unless such individual provides fore-
closure prevention services in connection with—

(A) the preparation and filing of a bank-
ruptcy petition; or

(B) court proceedings to avoid a fore-
closure.

(o) EXCLUSION FOR PAWNBROKERS.—

(1) I N GENERAL.—The Director and the Agen-

cy may not exercise any rulemaking, supervisory, en-
forcement, or other authority, including authority to
order assessments, under this title with respect to
any pawnbroker licensed by a State or political sub-
division thereof, a territory of the United States, or
the District of Columbia, but only to the extent that
such person acts in such capacity and provides ei-
ther—

(A) non-recourse credit secured by a
possessory security interest in tangible goods
physically delivered by the consumer to the
pawnbroker for which the consumer does not
provide a written or electronic promise, order or
authorization to pay, or in any other manner
authorize a debit of a deposit account, prior to
or contemporaneously with the disbursement of
the original proceeds; or
(B) credit or any other financial activity issued directly by a pawnbroker to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service, exclusively for the purpose of enabling that consumer to purchase goods or services directly from the pawnbroker.

(2) Rule of construction.—

(A) FTC authority preserved.—Except as provided in subparagraph (B), no provision of this title shall be construed as modifying, limiting, or superseding the authority of the Federal Trade Commission with respect to the activities described under paragraph (1).

(B) Exercise of rulemaking authority.—The Director may exercise any rulemaking authority regarding the activities described in paragraph (1) only as may be authorized by the enumerated consumer laws or any law or authority transferred under subtitle F or H.

(p) Exclusion for certain consumer reporting agencies.—

(1) In general.—Except as permitted in paragraph (2), the Director and the Agency may not ex-
exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, over a person that is a consumer reporting agency, as such term is defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), but only to the extent that such consumer reporting agency furnishes a consumer report to another person that it has reason to believe intends to use the information for employment purposes, including for security investigations, government licensing and evaluating a consumer’s residential or tenant history.

(2) Description of Activities.—Paragraph (1) shall not apply to any person described in such paragraph to the extent such person is engaged in any financial activity described in any subparagraph of section 4002(19) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(q) Limited Authority of the Agency to Obtain Information.—Notwithstanding subsections (a), (f), (g), (h), (i), and (k), the Director may request or require information from any person subject to or described in any such subsection in order to carry out the respon-
sibilities and functions of the Agency and in accordance with section 4206, 4501, or 4502.

(r) EXCLUSION FOR ACTIVITIES RELATING TO CHARITABLE CONTRIBUTIONS.—

(1) The Director and the Agency may not exercise any rulemaking, supervisory, enforcement, or other authority, including authority to order assessments or penalties, over any activities related to the solicitation or making of voluntary contributions to or through a tax-exempt organization as recognized by the Internal Revenue Service, by any agent, volunteer or representative of such organizations to the extent the organization, agent, volunteer or representative thereof is soliciting or providing advice, information, education or instruction to donor(s) or potential donor(s) relating to a contribution to or through the organization.

(2) This exclusion shall not apply to other activities not described in the paragraph above and are financial activities as described in any subparagraph of section 4002(19), or otherwise subject to any of the enumerated consumer laws, or the authorities transferred under subtitle F or H.
SEC. 4206. COLLECTION OF INFORMATION; CONFIDENTIALITY REGULATIONS.

(a) COLLECTION OF INFORMATION.—

(1) IN GENERAL.—In conducting research on the provision of consumer financial products or services, the Director shall have the power to gather information from time to time regarding the organization, business conduct, and practices of covered persons or service providers.

(2) SPECIFIC AUTHORITY.—In order to gather such information, the Director shall have the power—

(A) to gather and compile information;

(B) to require persons to file with the Agency, in such form and within such reasonable period of time as the Director may prescribe, by regulation or order, annual or special reports, or answers in writing to specific questions, furnishing information the Director may require; and

(C) to make public such information obtained by it under this section as is in the public interest in reports or otherwise in the manner best suited for public information and use.

(b) CONFIDENTIALITY REGULATIONS.—The Director shall prescribe regulations regarding the confidential
treatment of information obtained from persons in connection with the exercise of any authority of the Agency or Director under this title and the enumerated consumer laws and the authorities transferred under subtiltes F and H.

(c) PRIVACY CONSIDERATIONS.—In collecting information from any person, publicly releasing information held by the Agency, or requiring covered persons to publicly report information, the Director and the Agency shall take steps to ensure that proprietary, personal or confidential consumer information that are protected from public disclosure under section 552(b) or 552a of title 5, United States Code, or any other provision of law are not made public under this title.

SEC. 4207. MONITORING; ASSESSMENTS OF SIGNIFICANT REGULATIONS; REPORTS.

(a) MONITORING.—

(1) IN GENERAL.—The Agency shall monitor for risks to consumers in the provision of consumer financial products or services, including developments in markets for such products or services.

(2) MEANS OF MONITORING.—Such monitoring may be conducted by examinations of covered persons or service providers, analysis of reports obtained from covered persons or service providers, as-
essment of consumer complaints, surveys and inter-
views of covered persons, service providers, and con-
sumers, and review of available databases.

(3) CONSIDERATIONS.—In allocating the re-
sources of the Agency to perform the monitoring re-
quired by this section, the Director may consider,
among other factors—

(A) likely risks and costs to consumers as-
associated with buying or using a type of con-
sumer financial product or service;

(B) consumers’ understanding of the risks
of a type of consumer financial product or serv-
ice;

(C) the state of the law that applies to the
provision of a consumer financial product or
service, including the extent to which the law is
likely to adequately protect consumers;

(D) rates of growth in the provision of a
consumer financial product or service;

(E) extent, if any, to which the risks of a
consumer financial product or service may dis-
proportionately affect traditionally underserved
consumers, if any; or
(F) types, number, and other pertinent characteristics of covered persons that provide the product or service.

(4) REPORTS.—The Agency shall publish at least 1 report of significant findings of the monitoring required by paragraph (1) in each calendar year, beginning in the calendar year that is 1 year after the designated transfer date.

(b) ASSESSMENT OF SIGNIFICANT REGULATIONS.—

(1) IN GENERAL.—The Agency shall conduct an assessment of each significant regulation prescribed or order issued by the Director under this title, under the authorities transferred under subtitles F and H or pursuant to any enumerated consumer law that addresses, among other relevant factors, the effectiveness of the regulation in meeting the purposes and objectives of this title and the specific goals stated by the Director.

(2) BASIS FOR ASSESSMENT.—The assessment shall reflect available evidence and any data that the Agency reasonably may collect.

(3) REPORTS.—The Agency shall publish a report of an assessment under this subsection not later than 3 years after the effective date of the regulation or order, unless the Director determines that
3 years is not sufficient time to study or review the
impact of the regulation, but in no event shall the
Agency publish a report of such assessment more
than 5 years after the effective date of the regula-
tion or order.

(4) Public comment required.—Before pub-
ishing a report of its assessment, the Agency shall
invite, with sufficient time allotted, public comment
on, and may hold public hearings on, recommendations for modifying, expanding, or eliminating the
newly adopted significant regulation or order.

(c) Information gathering.—In conducting any
monitoring or assessment required by this section, the
Agency may gather information through a variety of meth-
ods, including by conducting surveys or interviews of con-
sumers.

SEC. 4208. AUTHORITY TO RESTRICT MANDATORY
PREDISPUTE ARBITRATION.

(a) In general.—The Director, by regulation, may
prohibit or impose conditions or limitations on the use of
any agreement between a covered person and a consumer
for a consumer financial product or service providing for
arbitration of any future dispute between the parties if
the Director finds that such a prohibition or imposition
of conditions or limitations are in the public interest and
for the protection of consumers. This authority shall not
prohibit or restrict a consumer from entering into a vol-
untary arbitration agreement with a covered person after
a dispute has arisen.

(b) EFFECTIVE DATE.—Notwithstanding any other
provision of law, any regulation prescribed by the Director
under subsection (a) shall apply, consistent with the terms
of the regulation, to any agreement between a consumer
and a covered person entered into after the end of the
180-day period beginning on the effective date of the regu-
lation, as established by the Director.

SEC. 4209. REGISTRATION AND SUPERVISION OF NON-
DEPOSITORY COVERED PERSONS.

(a) RISK-BASED PROGRAMS.—

(1) IN GENERAL.—The Agency shall develop
risk-based programs to supervise covered persons
that are not credit unions, depository institutions, or
persons excluded under section 4205 by prescribing
registration requirements, reporting requirements,
and examination standards and procedures.

(2) BASIS FOR PROGRAMS.—The risk-based su-
pervisory programs established pursuant to para-
graph (1) shall be based on—
(A) relevant registration and reporting information about such covered persons, as determined by the Agency; and

(B) the Agency’s assessment of risks posed to consumers in the relevant geographic markets and markets for consumer financial products and services.

(b) Registration.—

(1) In general.—The Director shall prescribe regulations regarding registration requirements for covered persons that are not credit unions or depository institutions.

(2) Consultation with state agencies.—In developing and implementing registration requirements under this subsection, the Agency shall consult with State agencies regarding requirements or systems for registration (including coordinated or combined systems), where appropriate.

(3) Exception for related persons.—The Agency shall not impose requirements regarding the registration of a related person.

(4) Registration information.—Subject to regulations prescribed by the Director, the Agency shall publicly disclose the registration information about a covered person which is not a bank holding
company, credit union, or depository institution for
the purposes of facilitating the ability of consumers
to identify the covered person as registered with the
Agency.

(c) Reporting Requirements.—

(1) In General.—The Agency may require re-
ports from covered persons that are not credit
unions or depository institutions, or service providers
thereeto, for the purposes of facilitating supervision
of such covered persons or service providers.

(2) Consistency of Reporting Require-
ments and Risk-Based Standards.—The Agency
shall impose reporting requirements under this sub-
section that are consistent with the risk-based stand-
ard developed and implemented under this section
and the registration information pertaining to the
relevant types or classes of covered persons.

(3) Contents of Reports.—Reporting re-
quirements imposed under this paragraph may in-
clude information regarding—

(A) the nature of the covered person’s
business;

(B) the covered person’s name, legal form,
ownership and management structure, and re-
lated persons;
(C) the covered person’s locations of operation;

(D) the covered person’s types and number of consumer financial products and services provided by the covered person;

(E) compliance with any requirement imposed or enforced by the Agency, including any requirement relating to registration, licensing, fees, or assessments; and

(F) the financial condition of such covered person, including a related person, for the purpose of assessing the ability of such person to perform its obligation to consumers.

(4) Consultation with the Federal Trade Commission.—In developing and implementing report requirements under this subsection, the Agency shall consult with the Federal Trade Commission, where appropriate.

(5) Exception for Related Persons.—Other than reports permitted under paragraph (3)(F) or in connection with a supervisory action or examination or pursuant to the powers granted in subtitle E, the Agency shall not impose requirements regarding reports of any related person.

(d) Examinations.—
(1) **EXAMINATIONS REQUIRED.**—The Agency shall conduct examinations of covered persons that are not credit unions or depository institutions as part of the programs implemented under paragraphs (2) and (3) of section 4202(c).

(2) **EXAMINATION STANDARDS AND PROCEDURES.**—The Director shall establish risk-based standards and procedures for conducting examinations of covered persons required to be examined under paragraph (1), including the frequency and scope of such examinations, except that the Agency shall conduct examinations of such covered persons that are determined to pose the highest risk to consumers based on factors determined by the Director, such as the operations, sales practices, or consumer financial products or services provided by such covered persons.

(e) **AUTHORITY TO COLLECT INFORMATION REGARDING FEES OR ASSESSMENTS.**—To the extent permitted by Federal law, the Agency may obtain from the Secretary of the Treasury information relating to a covered person which is not a bank holding company, credit union, or depository institution, including information regarding compliance with a reporting or registration requirement under the subchapter II of chapter 53 of title 31, United States
Code, for the purposes of, and only to the extent necessary in, investigating, determining, or enforcing compliance with a requirement relating to any fee or assessment imposed by the Agency under this title.

SEC. 4210. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

Subtitle C—Specific Authorities

SEC. 4301. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES.

(a) IN GENERAL.—The Agency may take any action authorized under subtitle E to prevent a person from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

(b) REGULATIONS.—

(1) IN GENERAL.—The Director may prescribe regulations identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service or the offering of a consumer financial product or service.
(2) INCLUDES PREVENTION MEASURES.—Regulations prescribed under this section may include requirements for the purpose of preventing such acts or practices.

(c) UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES DEFINED.—

(1) UNFAIR ACTS OR PRACTICES.—Any determination by the Director and the Agency that an act or practice is unfair shall be consistent with the standard set forth under section 5 of the Federal Trade Commission Act and with the policy statement adopted by the Federal Trade Commission pursuant to section 5 of the Federal Trade Commission Act and dated December 17, 1980.

(2) DECEPTIVE ACTS OR PRACTICES.—Any determination by the Director and the Agency that an act or practice is deceptive shall be consistent with the policy statement adopted by the Federal Trade Commission pursuant to section 5 of the Federal Trade Commission Act and dated October 14, 1983.

(3) ABUSIVE ACTS OR PRACTICES.—The Director and the Agency may determine that an act or practice is abusive only if the Director finds that—

(A) the act or practice is reasonably likely to result in a consumer’s inability to under-
stand the terms and conditions of a financial
product or service or to protect their own inter-
ests in selecting or using a financial product or
service; and

(B) the widespread use of the act or prac-
tice is reasonably likely to contribute to insta-
bility and greater risk in the financial system.

(4) CONSIDER AS UNFAIR CERTAIN PRACTICES
WITH REGARD TO THE PROVISION OF CREDIT
SCORES.—Subject to regulations prescribed by the
Director, it shall be considered unfair for any con-
sumer reporting agency that compiles and maintains
files on consumers on a nationwide basis (as defined
in section 603(p) of the Fair Credit Reporting Act;
15 U.S.C. 1681a(p)) to make available for purchase
by creditors any credit score for a consumer that is
not also available for purchase by that consumer at
the same price as other credit scores sold to con-
sumers by such agency.

(d) CONSULTATION.—In prescribing any regulation
under this section, the Director shall consult with the Fed-
eral banking agencies, State bank supervisors, the Federal
Trade Commission, or other Federal agencies, as appro-
priate, regarding the consistency of a proposed regulation
with prudential, consumer protection, civil rights, market,
or systemic objectives administered by such agencies or supervisors.

SEC. 4302. DISCLOSURES.

(a) IN GENERAL.—The Director may prescribe regulations to ensure the timely, appropriate and effective disclosure to consumers of the costs, benefits, and risks associated with any consumer financial product or service.

(b) COORDINATION WITH OTHER LAWS.—In prescribing regulations under subsection (a), the Director shall take into account disclosure requirements under other laws in order to enhance consumer compliance and reduce regulatory burden.

(c) COMPLIANCE.—

(1) MODEL DISCLOSURES.—The Agency may provide model disclosures to facilitate compliance with the requirements of regulations prescribed under this section.

(2) PER SE COMPLIANCE.—Compliance by a covered person with the model disclosures issued by the Agency under this subsection shall per se constitute compliance with the disclosure requirements of this section.

(3) ADDITIONAL GUIDANCE.—The Agency may issue exemptions, no action letters, and other guid-
ance to promote compliance with disclosures require-
ments of regulations prescribed under this section.

(d) Combined Mortgage Loan Disclosure.—
Within 1 year after the designated transfer date, the Di-
rector shall propose for public comment regulations and
model disclosures that combine the disclosures required
under the Truth in Lending Act and the Real Estate Set-
tlement Procedures Act into a single, integrated disclosure
for mortgage loan transactions covered by those laws, un-
less the Director determines that any proposal issued by
the Board of Governors and the Department of Housing
and Urban Development carries out the same purpose.

SEC. 4303. SALES PRACTICES.

The Director may prescribe regulations and issue or-
ders and guidance regarding the manner, settings, and cir-
cumstances for the provision of any consumer financial
products or services to ensure that the risks, costs, and
benefits of the products or services, both initially and over
the term of the products or services, are fully and accu-
rately represented to consumers.

SEC. 4304. PILOT DISCLOSURES.

(a) Pilot Disclosures.—The Agency shall estab-
lish standards and procedures for approval of pilot disclo-
sures to be provided or made available by a covered person
to consumers in connection with the provision of a con-
sumer financial product or service, or the offering of a consumer financial product or service.

(b) Standards.—The procedures shall provide that a pilot disclosure must be limited in time and scope and reasonably designed to contribute materially to the understanding of consumer awareness and understanding of, and responses to, disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(c) Transparency.—The procedures shall provide for public disclosure of pilots, but the Agency may limit disclosure to the extent necessary to encourage covered persons to conduct effective pilots.

SEC. 4305. ADOPTING OPERATIONAL STANDARDS TO DETER UNFAIR, DECEPTIVE, OR ABUSIVE PRACTICES.

(a) Authority to Prescribe Standards.—The States are encouraged to prescribe standards applicable to covered persons who are not insured depository institutions or credit unions, or service providers, to deter and detect unfair, deceptive, abusive, fraudulent, or illegal transactions in the provision of consumer financial products or services, including standards for—

(1) background checks for principals, officers, directors, or key personnel;
(2) registration, licensing, or certification;

(3) bond or other appropriate financial requirements to provide reasonable assurance of ability to perform its obligations to consumers;

(4) creating and maintaining records of transactions or accounts; or

(5) procedures and operations relating to the provision of, or maintenance of accounts for, consumer financial products or services.

(b) AGENCY AUTHORITY TO PRESCRIBE STANDARDS.—

(1) IN GENERAL.—The Director may prescribe regulations establishing minimum standards under this section for any class of covered persons other than covered persons which are subject to the jurisdiction of a Federal banking agency or a State bank supervisor, or for any service provider.

(2) REGISTRATION AND LICENSING STANDARDS.—In addition to prescribing standards for the purposes described in subsection (a), the Director may prescribe registration or licensing standards applicable to covered persons for the purposes of imposing fees or assessments in accordance with this title.
(3) **Enforcement of Standards.**—The Director may enforce under subtitle E compliance with standards adopted by the Director or a State pursuant to this section for covered persons or service providers operating in that State.

(c) **Consultation.**—In prescribing minimum standards under this section, the Director shall consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, or other Federal agencies, as appropriate, regarding the consistency of a proposed regulation with prudential, consumer protection, civil rights, market, or systemic objectives administered by such agencies or supervisors.

**SEC. 4306. DUTIES.**

(a) **In General.**—

(1) **Regulations Ensuring Fair Dealing with Consumers.**—The Director shall prescribe regulations imposing duties on a covered person, or an employee of a covered person, or an agent or independent contractor for a covered person, who deals or communicates directly with consumers in the provision of a consumer financial product or service, as the Director deems appropriate or necessary to ensure fair dealing with consumers.
(2) Considerations for duties.—In prescribing such regulations, the Director shall consider whether—

(A) the covered person, employee, agent, or independent contractor represents implicitly or explicitly that the person, employee, agent, or contractor is acting in the interest of the consumer with respect to any aspect of the transaction;

(B) the covered person, employee, agent, or independent contractor provides the consumer with advice with respect to any aspect of the transaction;

(C) the consumer’s reliance on or use of any advice from the covered person, employee, agent, or independent contractor would be reasonable and justifiable under the circumstances;

(D) the benefits to consumers of imposing a particular duty would outweigh the costs; and

(E) any other factors as the Director considers appropriate.

(3) Duties relating to compensation practices.—

(A) In general.—The Director may prescribe regulations establishing duties regarding
compensation practices applicable to a covered person, employee, agent, or independent contractor who deals or communicates directly with a consumer in the provision of a consumer financial product or service for the purpose of promoting fair dealing with consumers.

(B) No Compensation Caps.—The Director may not prescribe a limit on the total dollar amount of compensation paid to any person.

(C) Disparity Treatment Prohibited.—The Director may not prescribe regulations that directly or indirectly disparately treat, or are interpreted to disparately treat, or disparately impact any entity that employs covered persons.

(4) Requirement to Include Disclaimer on Public Statements.—The Director shall ensure that the Agency’s website, and any statement made by the Director or the Agency to the public, includes a disclaimer stating that the Agency does not endorse any particular financial product or service and consumers are expected to exercise due diligence in deciding what financial products and services are appropriate for them.

(b) Administrative Proceedings.—
(1) IN GENERAL.—Any regulation prescribed by the Director under this section shall be enforceable only by the Agency through an adjudication proceeding under subtitle E or by a State regulator through an appropriate administrative proceeding as permitted under State law.

(2) EXCLUSIVITY OF REMEDY.—No action may be commenced in any court to enforce any requirement of a regulation prescribed under this section (other than by the Agency, or by a State regulator, as may be necessary to enforce an administrative order under this section), and no court may exercise supplemental jurisdiction over a claim asserted under a regulation prescribed under this section based on allegations or evidence of conduct that otherwise may be subject to such regulation.

(3) RULE OF CONSTRUCTION.—The Agency, the Attorney General, and any State attorney general or State regulator shall not be precluded from enforcing any other Federal or State law against a person with respect to conduct that may be subject to a regulation prescribed by the Director under this section.
(c) **Exclusions.**—This section shall not be construed as authorizing the Director to prescribe regulations applicable to—

(1) an attorney licensed to practice law and in compliance with the applicable rules and standards of professional conduct, but only to the extent that the consumer financial product or service provided is within the attorney-client relationship with the consumer; or

(2) any trustee, custodian, or other person that holds a fiduciary duty in connection with a trust, including a fiduciary duty to a grantor or beneficiary of a trust, that is subject to and in compliance with the applicable law relating to such trust.

**SEC. 4307. CONSUMER RIGHTS TO ACCESS INFORMATION.**

(a) **In General.**—Subject to regulations prescribed by the Director, a covered person shall make available to a consumer, in an electronic form usable by the consumer, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person including information relating to any transaction, series of transactions, or to the account including costs, charges and usage data.
(b) EXCEPTIONS.—A covered person shall not be re-
quired by this section to make available to the consumer—

(1) any confidential commercial information, in-
cluding an algorithm used to derive credit scores or
other risk scores or predictors;

(2) any information collected by the covered
person for the purpose of preventing fraud or money
laundering, or detecting, or making any report re-
garding other unlawful or potentially unlawful con-
duct;

(3) any information required to be kept con-
fidential by any other law (including section 6103 of
the Internal Revenue Code of 1986); or

(4) any information that the covered person
cannot retrieve in the ordinary course of its business
with respect to that information.

(c) NO DUTY TO MAINTAIN RECORDS.—No provision
of this section shall be construed as imposing any duty
on a covered person to maintain or keep any information
about a consumer.

(d) STANDARDIZED FORMATS FOR DATA.—The Di-
rector, by regulation, shall prescribe standards applicable
to covered persons to promote the development and use
of standardized formats for information, including
through the use of machine readable files, to be made
available to consumers under this section.

(c) **Consultation.**—The Director shall, when pre-
scribing any regulation under this section, consult with the
Federal banking agencies, State bank supervisors, the
Federal Trade Commission, and the Commissioner of In-
ternal Revenue to ensure that the regulations—

1. impose substantively similar requirements
   on covered persons;

2. take into account conditions under which
   covered persons do business both in the United
   States and in other countries; and

3. do not require or promote the use of any
   particular technology in order to develop systems for
   compliance.

**SEC. 4308. PROHIBITED ACTS.**

It shall be unlawful for any person—

1. to advertise, market, offer, sell, enforce, or
   attempt to enforce, any term, agreement, change in
   terms, fee, or charge in connection with a consumer
   financial product or service that is not in conformity
   with this title or applicable regulation prescribed or
   order issued by the Director or to engage in any un-
   fair, deceptive, or abusive act or practice, except that
   no person shall be held to have violated this sub-
section solely by virtue of providing or selling time
or space to a person placing an advertisement;

(2) to fail or refuse to pay any fee or assessment imposed by the Agency under this title, to fail
or refuse to permit access to or copying of records, to fail or refuse to establish or maintain records, or
to fail or refuse to make reports or provide information to the Agency, as required by this title, an
enumerated consumer law, or pursuant to the authorities transferred by subtitles F and H, or any regulations prescribed or order issued by the Director this
title or pursuant to any such authority; or

(3) to knowingly or recklessly provide substantial assistance to another person in violation of the
provisions of section 4301, or any regulation prescribed or order issued under such section, and, notwithstanding any other provision of this title, any
such person shall be deemed to be in violation of that section to the same extent as the person to
whom such assistance is provided.

Nothing in this section shall be construed as limiting or
superseding the protection provided to any provider or
user qualifying for protection under section 230(c)(1) of
the Communications Act of 1934 (47 U.S.C. 230(c)(1)).
SEC. 4309. TREATMENT OF REMITTANCE TRANSFERS.

(a) DISCLOSURES REQUIRED FOR REMITTANCE TRANSFERS.—

(1) IN GENERAL.—Each remittance transfer provider shall make disclosures to consumers, as specified by this section and by regulation prescribed by the Director.

(2) SPECIFIC DISCLOSURES.—In addition to any other disclosures applicable under this title, a remittance transfer provider shall—

(A) disclose clearly and conspicuously, in writing and in a form that the consumer may keep, to each consumer who requests information regarding the fees or exchange rate for a remittance transfer, prior to the consumer making any payment in connection with the transfer—

(i) the total amount in United States dollars that will be required to be paid by the consumer in connection with the remittance transfer;

(ii) the amount of currency that the designated recipient of the remittance transfer will receive, using the values of the currency into which the funds will be exchanged;
(iii) the fee charged by the remittance transfer provider for the remittance transfer;

(iv) any exchange rate to be used by the remittance transfer provider for the remittance transfer, unless the exchange rate is not fixed on send;

(v) the amount of time for which the information specified in this subparagraph (A) will be in effect;

(vi) the expected time interval within which the funds being transferred will be made available to the recipient; and

(vii) the location where the funds being transferred will be made available to the recipient if the funds are to be made available only at one location, or if the remittance transfer provider permits the recipient to choose from multiple locations where the funds being transferred will be made available to the recipient, the remittance transfer provider shall make available to the consumer or the recipient a resource that lists such locations;
(B) at the time at which the consumer makes payment in connection with the remittance transfer, a receipt in writing disclosing clearly and conspicuously—

(i) the information described in subparagraph (A);

(ii) the expected time interval within which the funds being transferred will be made available to the recipient, which shall be not more than ten days after the date the consumer makes payment in connection with the remittance transfer unless otherwise prohibited by applicable State or Federal law or the law of another country, or as may be specified by the consumer so long as the consumer has the choice to order that the funds be made available to the recipient not more than ten days after the consumer makes payment in connection with the remittance transfer;

(iii) the location where the funds being transferred will be made available to the recipient if the funds are to be made available only at one location, or if the remittance transfer provider permits the re-
recipient to choose from multiple locations
where the funds being transferred will be
made available to the recipient, the remit-
tance transfer provider shall make avail-
able to the consumer or the recipient a re-
source that lists such locations;

(iv) the name and telephone number
or address of the designated recipient, if
provided to the remittance transfer pro-
dvider by the consumer;

(v) information about the rights of the
consumer under this section to cancel the
remittance transfer, to resolve errors and
to receive refunds;

(vi) appropriate contact information
for the remittance transfer provider;

(vii) a transaction reference number
unique to that remittance transfer; and

(viii) information as to when the ex-
change rate will be calculated (for example,
when the funds are received by the recipi-
ent), if the customer has been notified that
the exchange rate is not fixed on send;

(C) at the time at which the consumer ini-
tiates the remittance transfer, offer to provide
in writing, prior to making any payment in connection with the transfer, the information listed in subparagraph (A); and

(D) in the case of an exchange rate not fixed on send, the remittance provider shall also disclose, at the time at which the consumer initiates the remittance transfer, the range, using the high and low rates, for the prior 30 day period, that the consumer would have received if a representative amount had been exchanged by the remittance transfer provider, as well as a clear and conspicuous notice that the actual exchange rate may vary.

If the actual rate used for the transfer is known to the remittance provider, either because such rate was set by the remittance provider itself or because the remittance provider receives confirmation of the actual exchange rate used, the remittance provider shall make available to consumers written or electronic confirmation of the actual exchange rate used and the amount of currency that the recipient or the remittance transfer received, using the values of the currency into which the funds were exchanged. The Director shall within 2 years after the date of the enactment of the Consumer Financial Protection
Agency Act of 2009 prescribe consumer disclosures for transfers with rates not fixed on send that are functionally equivalent to those applicable to remittances where the exchange rate is specified by the remittance transfer provider at the time the consumer initiates the remittance transfer. To the greatest extent possible, the Director shall ensure that functional equivalence will enable remittance transfer providers to comply with all requirements in this title and provide consumers with information sufficient to compare services providers, to time their use of the product, to discover errors in transmission and to seek remedies.

(3) EXEMPTION.—Notwithstanding requirements under paragraph (2)(A)(ii), (2)(A)(iv), or (2)(B)(i), no such disclosure is required—

(A) because of the requirements of another law, including the law of another country;

(B) because the transfer is being routed through the Directo a México offered by the Federal reserve banks; or

(C) because of any other circumstance deemed permissible by regulation of the Director; If the actual rate used for the transfer is known to the remittance provider, the remit-
tance provider shall make available to con-
sumers written or electronic confirmation of the 
actual exchange rate used and the amount of 
currency that the recipient of the remittance 
transfer received, using the values of the cur-
rency into which the funds were exchanged.

(4) Provision of Toll-Free Number and 
Web Access.—

(A) In addition to providing the disclosures 
required by this section to a consumer at a re-
mittance transfer provider location, a remit-
tance transfer provider shall provide a toll-free 
television number or local number, and an 
Internet website that a consumer can access for 
which access no remittance transfer provider 
may assess a charge, to obtain the information 
required by paragraph (2)(A) for remittance 
transfers offered by that remittance transfer 
provider or information about the status of a 
remittance transfer for which a consumer has 
made payment.

(B) A remittance transfer provider that on 
an aggregate basis originates 30,000 or fewer 
transfers on a calendar year basis (or such 
other amount as may be prescribed by the Di-
rector) is not required to offer the web access
prescribed in subparagraph (A), but is required
to provide a toll-free telephone number or local
number as prescribed in subparagraph (A).

(5) ALTERNATIVE METHODS OF DISCLOSURE.—
Subject to subsection (e)(2), a remittance transfer
provider may—

(A) if the transaction is conducted entirely
by telephone (which shall include, but not be
limited to, a mobile telephone) satisfy the re-
quirements of paragraph (2)(A) orally or, at the
option of the consumer, electronically through a
message sent to the consumer through any elec-
tronic means (including, but not limited to, an
electronic mail address or a mobile telephone)
as designated by the consumer;

(B) satisfy the requirements of paragraph
(2)(A) electronically if the transfer is initiated
by the consumer electronically through the re-
mittance transfer provider’s website or through
any other electronic means; and

(C) satisfy the requirements of paragraph
(2)(B) by mailing (or transmitting electronically
if the transfer is initiated electronically by the
consumer through the remittance transfer pro-
vider’s website or the consumer otherwise consents in accordance with the provisions of section 101 of the Electronic Signatures in Global and National Commerce Act) the information required under such paragraph to the consumer not later than one business day after the date on which the transaction is conducted, if the transaction is conducted entirely by telephone (or electronically) and the consumer requests a written receipt.

(b) Written Foreign Language Disclosures.—

(1) In general.—The disclosures required under subsections (a)(2)(A) and (a)(2)(B)(i) shall be made in English and—

(A) at each remittance transfer provider location, shall be made in the same languages principally used by the remittance transfer provider, or any of its agents, to advertise, solicit, or market its remittance transfers business, either orally or in writing, at that location, if other than English, provided that such languages are those for which the Director has issued model disclosures as provided in subsection (g); or
(B) on a remittance transfer provider’s website, shall at a minimum be made in any other language for which the Director has issued model disclosures as provided in subsection (g) if the remittance transfer provider, or any of its agents, advertises, solicits, or markets its remittance transfers business in such language.

(2) Disputes concerning terms.—If a disclosure is required by this section to be in English and another language, the English version of the disclosure shall govern any dispute concerning the terms of the receipt. However, any discrepancies between the English version and any other version due to the translation of the receipt from English to another language including errors or ambiguities shall be construed against the remittance transfer provider or its agent and the remittance transfer provider or its agent shall be liable for any damages caused by these discrepancies.

(c) Remittance transfer cancellations, refunds, and errors.—

(1) Cancellations.—
(A) After receiving the receipt required under subsection (a)(2)(B), a consumer may cancel the currency transaction—

(i) before leaving the premises of the remittance transfer provider where the consumer received the receipt; and

(ii) not later than 30 minutes after the time the consumer initiated the remittance transfer with the remittance transfer provider.

(B) If a consumer cancels the transaction, the remittance transfer provider shall immediately refund to the consumer the fees paid and the currency to be transferred, and issue a receipt indicating that the transaction has been cancelled.

(C) A consumer may not cancel a remittance transfer after the remittance transfer provider has sent the funds to the recipient.

(D) A remittance transfer provider shall not be required to provide a refund if providing a refund would violate State or Federal law.

(2) REFUNDS.—

(A) If a remittance transfer provider receives written notice from the consumer within
10 days of the promised date of delivery of a remittance transfer that no amount of the funds to be remitted was made available to the designated recipient in the foreign country, the remittance transfer provider shall—

(i) refund to the consumer the total amount in U.S. dollars that was paid by the consumer in connection with such remittance transfer;

(ii) promptly transmit the remittance transfer in accordance with the terms in the written receipt provided to the consumer pursuant to subsection (a)(2)(B);

(iii) provide such other remedy, as determined appropriate by rule of the Director for the protection of consumers; or

(iv) demonstrate to the consumer that the proceeds of the remittance transfer were made available to the recipient of the remittance provider.

(B) A remittance transfer provider shall not be required to provide a refund if providing a refund would violate State or Federal law.

(3) Error resolution.—
(A) IN GENERAL.—If a remittance transfer provider receives written notice from the consumer within 60 days of the promised date of delivery that an error occurred with respect to a remittance transfer, including that the full amount of the funds to be remitted was not made available to the designated recipient in the foreign country, the remittance transfer provider shall resolve the error pursuant to this paragraph.

(B) REMEDIES.—Not later than 120 days after the date of receipt of a notice from the consumer pursuant to subparagraph (A), the remittance transfer provider shall—

(i) as applicable to the error and as designated by the consumer—

(I) refund to the consumer the total amount in United States dollars that was paid by the consumer in connection with the remittance transfer that was not properly transmitted;

(II) make available to the designated recipient, without additional cost to the designated recipient or to
the consumer, the amount appropriate

to resolve the error;

(III) provide such other remedy,
as determined appropriate by regula-
tion of the Director for the protection
of consumers; or

(ii) demonstrate to the consumer that

there was no error.

(4) REGULATIONS.—The Director, in order to
protect consumers, shall establish, by regulation,
clear and appropriate standards for remittance
transfer providers with respect to error resolution,
cancellation and refunds.

(d) ENFORCEMENT AUTHORITY.—The Director shall
have the sole authority to enforce the provisions of this
section, and any regulations established pursuant to this
section.

(e) APPLICABILITY OF OTHER PROVISIONS OF
LAW.—

(1) APPLICABILITY OF TITLE 18 AND TITLE 31
PROVISIONS.—A remittance transfer provider that is
a money transmitting business as defined in section
5330 of title 31, United States Code, may provide
remittance transfers only if such provider is in com-
pliance with the requirements of section 5330 of title
31, United States Code, and section 1960 of title
18, United States Code, as applicable.

(2) RULE OF CONSTRUCTION.—Nothing in this
section shall be construed—

(A) to affect the application to any trans-
action, to any remittance provider, or to any
other person of any of the provisions of sub-
chapter II of chapter 53 of title 31, United
States Code, section 21 of the Federal Deposit
Insurance Act, or chapter 2 of title I of Public
Law 91–508, or any regulations promulgated
thereunder; or

(B) to cause any fund transfer that would
not otherwise be treated as such under para-
graph (2) to be treated as an electronic fund
transfer, or as otherwise subject to this title, for
the purposes of any of the provisions referred to
in subparagraph (A) or any regulation pre-
scribed under such subparagraph.

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

(1) DEPOSITORY INSTITUTION.—the term “de-
pository institution” has the same meaning as in
section 3 of the Federal Deposit Insurance Act and
includes a credit union.
(2) NOT FIXED ON SEND.—The term “not fixed on send” when referring to an exchange rate used in a remittance transfer means an exchange rate that is not set by the remittance transfer provider at the time the consumer initiates the remittance transfer.

(3) REMITTANCE TRANSFER.—The term “remittance transfer” means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act) transfer of funds to be effected or used primarily for personal, family, or household purposes at the request of a consumer located in any State to a person in another country that is initiated by a remittance transfer provider, whether or not the consumer is an account holder of the remittance transfer provider or whether or not the remittance transfer is also an electronic fund transfer, as defined in section 903 of the Electronic Fund Transfer Act.

(4) REMITTANCE TRANSFER PROVIDER.—The term “remittance transfer provider” means any person or depository institution, or agent thereof, that originates remittance transfers on behalf of consumers in the normal course of its business, whether
or not the consumer is an account holder of that
person or depository institution.

(g) MODEL DISCLOSURES.—

(1) PUBLICATION.—Notwithstanding any provi-
sions of this title, the Director shall establish and
publish model disclosure forms to facilitate compli-
ance with the disclosure requirements of this section
and to aid the consumer in understanding the trans-
action to which the subject disclosure form relates.

(2) LANGUAGES TO BE USED IN MODEL DIS-
cLOSURES.—The Director shall make these disclo-
sures available within 1 year of the effective date of
this title—

(A) in English; and

(B) the ten most frequently spoken lan-
guages in the United States, other than
English, used by consumers initiating remit-
tance transfers, as may be determined by the
Director.

(3) USE OF AUTOMATED EQUIPMENT.—In es-
stablishing model forms under this subsection, the
Director shall consider the use by lessors of data
processing or similar automated equipment.

(4) USE OPTIONAL.—A remittance transfer pro-
pvider may utilize a model disclosure form established
by the Director under this subsection for purposes
of compliance with this section, at the discretion of
the remittance transfer provider.

(5) Effect of use.—Any remittance transfer
provider that properly uses the material aspects of
any model disclosure form established by the Direc-
tor under this subsection shall be deemed to be in
compliance with the disclosure requirements to
which the form relates.

(h) Regulation and Exemption Authority.—
Notwithstanding any other provisions of this title, the Di-
rector, in the sole discretion of the Director, in consulta-
tion with relevant Federal and State government agencies
may by regulation exempt from one or more requirements
of this section, any category of remittance transfer pro-
vider if the Director determines that under applicable Fed-
eral or State law that such category of remittance transfer
provider is subject to requirements substantially similar
to those imposed under this section or that such law gives
greater protection and benefit to the consumer, and that
there is adequate provision for enforcement.

(i) Applicability of State Law.—

(1) This section does not annul, alter, affect, or
exempt any person subject to the provisions of this
section from complying with other applicable Federal
law and the laws of any State relating to remittance transfers and remittance transfer providers, except to the extent that those laws are inconsistent with the provisions of this section, and then only to the extent of the inconsistency.

(2) Notwithstanding any other provisions of this title, the Director may determine whether such inconsistencies exist. A State law is not inconsistent with this section if the protection such law affords any consumer is greater than the protection afforded by this section. If the Director determines that a State requirement is inconsistent, remittance transfer providers shall incur no liability under the law of that State for a good faith failure to comply with that law, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason. This section does not extend the applicability of any such law to any class of persons or transactions to which it would not otherwise apply.

(3) This section does not annul, alter, or affect the laws of any State relating to the licensing or registration, supervision or examination of remittance transfer providers.
(4) Nothing in this section shall be construed as limiting the authority of a State attorney general or State regulator to bring an action or other regulatory proceeding arising solely under the law of that State.

(j) FEDERAL CREDIT UNION ACT AMENDMENT.—

Paragraph (12)(A) of section 107 of the Federal Credit Union Act (12 U.S.C. 1757(12)(A)) is amended by inserting “and remittance transfers, as defined in section 4309 of the Consumer Financial Protection Agency Act of 2009” after “and domestic electronic fund transfers”.

(k) AUTOMATED CLEARINGHOUSE SYSTEM.—

(1) Expansion of system.—The Board of Governors of the Federal Reserve System shall work with the Federal reserve banks to expand the use of the automated clearinghouse system for remittance transfers to foreign countries, with a focus on countries that receive significant remittance transfers from the United States, based on—

(A) the volume and dollar amount of remittance transfers to those countries;

(B) the significance of the volume of such transfers, relative to the external financial flows of the receiving country; and

(C) the feasibility of such an expansion.
(2) REPORT TO THE CONGRESS.—Before the end of the 180-day period beginning on the date of the enactment of this title, and on April 30 biennially thereafter, the Board of Governors of the Federal Reserve System shall submit a report to the Director, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives on the status of the automated clearinghouse system and its progress in complying with the requirements of this section.

(I) REGULATORY GUIDANCE ON REMITTANCE TRANSFERS.—

(1) PROVISION OF GUIDELINES TO INSTITUTIONS.—The Director shall provide guidelines to all remittance transfer providers regarding—

(A) the offering of low-cost remittance transfers;

(B) the availability of agency services to remittance transfer providers;

(C) compliance with the provisions of this title; and

(D) specific options that allow remittance transfer providers to take advantage of automated clearing systems, including the FedACH
International Services offered by the Board of Governors of the Federal Reserve System and the Federal reserve banks, to transmit remittances at low cost.

(2) CONTENT OF GUIDELINES.—Guidelines provided to remittance transfer providers under this section shall include—

(A) information as to the methods of providing remittance transfer services;

(B) the potential economic opportunities in providing low-cost remittance transfers; and

(C) the potential value to depository institutions of broadening their financial bases to include persons that use remittance transfers.

(3) ASSISTANCE TO FINANCIAL LITERACY COMMISSION.—The Secretary of the Treasury and each agency referred to in subsection (a) shall, as part of their duties as members of the Financial Literacy and Education Commission, assist that Commission in improving the financial literacy and education of consumers who send remittances.

(m) REPORT ON FEASIBILITY OF AND IMPEDIMENTS TO USE OF REMITTANCE HISTORY IN CALCULATION OF CREDIT SCORE.—Before the end of the 365-day period beginning on the date of the enactment of this title, the
Director shall submit a report to the President, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives regarding—

(1) the manner in which a consumer’s remittance history could be used to enhance a consumer’s credit score;

(2) the current legal and business model barriers and impediments that impede the use of a consumer’s remittance history to enhance the consumer’s credit score; and

(3) recommendations on the manner in which maximum transparency and disclosure to consumers of exchange rates for remittance transfers subject to this title may be accomplished, whether or not such exchange rates are known at the time of origination or payment by the consumer for the remittance transfer, including disclosure to the sender of the actual exchange rate used and the amount of currency that the recipient of the remittance transfer received, using the values of the currency into which the funds were exchanged, as contained in section 919(a)(2)(D) and 919(a)(3) of the Electronic Fund Transfer Act (as amended by subsection (a)).
(n) EFFECTIVE DATE.—This section shall apply with respect to remittance transfers made after the end of the 180-day period beginning on the date of the enactment of this title.

SEC. 4310. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

SEC. 4311. NO AUTHORITY TO REQUIRE THE OFFERING OF FINANCIAL PRODUCTS OR SERVICES.

The Director may not prescribe any regulation, issue any order or guidance, or take any other action, including any enforcement action, the effect of which would be to require a covered person to offer to any consumer a specific financial product or service.

SEC. 4312. APPRAISAL INDEPENDENCE REQUIREMENTS.

(a) PROMULGATION OF NEW REQUIREMENTS.—The Director shall lead a Negotiated Rulemaking Committee under the Federal Advisory Committee Act and the Negotiated Rulemaking Act to promulgate appraisal independence requirements for residential loan purposes, and such Committee shall promulgate such requirements not later than the end of the 60-day period beginning on the date of the enactment of this title.
(b) Certain Regulation Requirements.—Regulations promulgated by the Negotiated Rulemaking Committee under this section—

(1) shall not prohibit lenders, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation from accepting any appraisal report completed by an appraiser selected, retained, or compensated in any manner by a mortgage loan originator—

(A) licensed or registered in accordance with section 1501 et seq. of the SAFE Mortgage Licensing Act of 2008; and

(B) subject to State or Federal laws that make it unlawful for a mortgage loan originator to make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property, except that nothing in this section shall prohibit a person with an interest in a real estate transaction from asking an appraiser to—

(i) consider additional, appropriate property information;
(ii) provide further detail, substantiation, or explanation for the appraiser’s value conclusion; or

(iii) correct errors in the appraisal report; and

(2) shall include a requirement that lenders and their agents compensate appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised.

(c) S UNSET.—Effective on the date the appraisal independence requirements are promulgated pursuant to subsection (a), the Home Valuation Code of Conduct announced by the Federal Housing Finance Agency on December 23, 2008, shall have no force or effect.

SEC. 4313. OVERDRAFT PROTECTION NOTICE REQUIREMENTS.

Not later than 180 days after the date of the enactment of this Act, the Director shall promulgate a new rule that requires banks to prominently place in each consumer branch office information regarding the fees and charges associated with enrollment in the bank’s overdraft protection program.
SEC. 4314. REVIEW, REPORT, AND PROGRAM WITH RESPECT TO EXCHANGE FACILITATORS.

(a) Review.—The Director shall review all Federal laws and regulations relating to the protection of persons who utilize exchange facilitators.

(b) Report.—Not later than 180 days after the effective date of this subtitle, the Director shall submit to Congress a report describing—

(1) recommendations for legislation to ensure the appropriate protection of persons who utilize exchange facilitators;

(2) recommendations for updating the regulations of Federal departments and agencies to ensure the appropriate protection of such persons; and

(3) recommendations for Agency regulations to ensure the appropriate protection of such persons.

(c) Program.—Not later than 180 days after the date of the submission of the report under subsection (b), the Director shall establish and carry out a program, utilizing the authorities of the Agency, to protect persons who utilize exchange facilitators.

(d) Exchange Facilitator Defined.—In this section, the term “exchange facilitator” means a person that—

(1) facilitates, for a fee, an exchange of like-kind property by entering into an agreement with a
taxpayer by which the exchange facilitator acquires
from the taxpayer the contractual rights to sell the
taxpayer’s relinquished property and transfers a re-
placement property to the taxpayer as a qualified
intermediary (within the meaning of Treasury Regu-
lations section 1.1031(k)(1(g)(4)) or enters into an
agreement with the taxpayer to take title to a prop-
erty as an exchange accommodation titleholder
(within the meaning of Revenue Procedure 2000–37)
or enters into an agreement with a taxpayer to act
as a qualified trustee or qualified escrow holder
(within the meaning of Treasury Regulations section
1.1031(k)(1(g)(3));

(2) maintains an office for the purpose of solic-
it ing business as an exchange facilitator; or

(3) purports to be an exchange facilitator by
advertising any of the services listed in paragraph
(1) or soliciting clients in printed publications, direct
mail, television or radio advertisements, telephone
calls, facsimile transmissions, or other electronic
communications directed to the general public for
purposes of providing any such services.

SEC. 4315. REGULATION OF PERSON-TO-PERSON LENDING.

(a) Scope of Exemption From Federal Securities Regulation.—Section 3(a) of the Securities Act of
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1933 (15 U.S.C. 77c(a)) is amended by adding at the end
the following new paragraph:

“(15) PERSON-TO-PERSON LENDING.—

“(A) IN GENERAL.—Any consumer loan,
and any note representing a whole or fractional
interest in any such loan, funded or sold
through a person-to-person lending platform.

“(B) DEFINITIONS.—For purposes of this
paragraph:

“(i) CONSUMER LOAN.—The term
‘consumer loan’ means a loan made to a
natural person, the proceeds of which are
intended primarily for personal, family,
educational, household, or business use.

“(ii) PERSON-TO-PERSON LENDING
PLATFORM.—

“(I) IN GENERAL.—The term
‘person-to-person lending platform’
means an Internet website, the pri-
mary purpose of which is to provide a
transaction platform for the funding
or sale of individual consumer loans,
or the sale of notes representing whole
or fractional interests in individual
consumer loans, by matching natural
persons who wish to obtain such loans
with persons who wish to fund them,
or by matching persons who wish to
sell such loans or notes with persons
who wish to purchase them.

“(II) PROHIBITION ON MULTIPLE
LOANS IN A SINGLE TRANSACTION.—
The term ‘person-to-person lending
platform’ does not include any plat-
form on which multiple loans may be
funded or sold in a single transaction,
or on which a note representing an in-
terest in multiple loans or other debt
obligations may be sold.”.

(b) REGULATION BY THE AGENCY.—

(1) IN GENERAL.—Primary jurisdiction for the
regulation of the lending activities of person-to-per-
son lending and person-to-person lending platforms
is hereby vested in the Agency.

(2) INTERIM REQUIREMENTS.—Until the Direc-
tor issues and adopts disclosure requirements with
respect to the sale of consumer loans, or notes rep-
resenting whole or fractional interests therein, on
person-to-person lending platforms, a person-to-per-
son lending platform that registers the offer and sale
of any such notes under the Securities Act of 1933 shall, with respect to such registered offer and sale, provide the disclosure required under the Securities Act of 1933 to be contained in the registration statement and prospectus and provide such disclosure required in any periodic reports required to be filed by such person-to-person lender pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934.

(3) DEFINITIONS.—For purposes of this subsection, the terms “consumer loan”, “person-to-person lending platform”, “prospectus”, and “registration statement” shall have the meaning given such term under the Securities Act of 1933.

(c) RULEMAKING.—The Director may prescribe such regulations and issue such orders as the Director considers necessary or appropriate to implement the provisions of this section and to provide borrower protection, lender protection, consumer choice, and expanded consumer access to fair and reasonable credit choices.

(d) EFFECTIVE DATE.—Notwithstanding section 4310, this section shall take effect on the date of the enactment of this title.
SEC. 4316. TREATMENT OF REVERSE MORTGAGES.

(a) IN GENERAL.—The Director shall examine the practices of covered persons in connection with any reverse mortgage transaction (as defined in section 103(bb) of the Truth in Lending Act (15 U.S.C. 1602)) and shall prescribe regulations identifying any acts or practices as unlawful, unfair, deceptive, or abusive in connection with a reverse mortgage transaction or the offering of a reverse mortgage.

(b) REGULATIONS.—In prescribing regulations under subsection (a), the Director shall ensure that such regulations shall—

(1) include requirements for—

(A) the purpose of preventing unlawful, unfair, deceptive or abusive acts and practices in connection with a reverse mortgage transaction; and

(B) the purpose of providing timely, appropriate, and effective disclosure to consumers in connection with a reverse mortgage transaction that are consistent with requirements prescribed by the Director in connection with other consumer mortgage products or services under this title;

(2) with respect to the requirements under paragraph (1), be consistent with requirements pre-
scribed by the Director in connection with other consumer mortgage products or services under this title; and

(3) provide for an integrated disclosure standard and model disclosures for reverse mortgage transactions, consistent with section 4302(d), that combines the relevant disclosures required under the Truth in Lending Act (15 U.S.C. 1601 et seq.) and the Real Estate Settlement Procedures Act, with the disclosures required to be provided to consumers for Home Equity Conversion Mortgages under section 255 of the National Housing Act.

(e) CONSULTATION.—In connection with the issuance of any regulations under this section, the Director shall consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, and the Department of Housing and Urban Development, as appropriate, to ensure that any proposed regulation—

(1) imposes substantially similar requirements on all covered persons; and

(2) is consistent with prudential, consumer protection, civil rights, market or systemic objectives administered by such agencies or supervisors.

(d) DEADLINE FOR RULEMAKING.—The Director shall commence the rulemaking required under subsection
(a) not later than 12 months after the date of the enactment of this Act.

Subtitle D—Preservation of State Law

SEC. 4401. RELATION TO STATE LAW.

(a) IN GENERAL.—

(1) RULE OF CONSTRUCTION.—This title shall not be construed as annulling, altering, or affecting, or exempting any person subject to the provisions of this title from complying with, the laws, regulations, orders, or interpretations, in effect in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this title and then only to the extent of the inconsistency.

(2) GREATER PROTECTION UNDER STATE LAW.—For the purposes of this subsection, a statute, regulation, order, or interpretation in effect in any State is not inconsistent with the provisions of this title if the protection such statute, regulation, order, or interpretation affords consumers is greater than the protection provided under this title. A determination regarding whether a statute, regulation, order, or interpretation in effect in any State is inconsistent with the provisions of this title may be
made by the Agency on its own motion or in re-
response to a nonfrivolous petition initiated by any in-
terested person.

(b) Relation to Other Provisions of Enumer-
ated Consumer Laws That Relate to State Law.—
No provision of this title, except as provided in section
4803, shall be construed as modifying, limiting, or super-
seding the operation of any provision of an enumerated
consumer law that relates to the application of a law in
effect in any State with respect to such Federal law.

(c) Additional Consumer Protection Regula-
tions in Response to State Action.—

(1) Notice of Proposed Rule Required.—
The Agency shall issue a notice of proposed rule-
making whenever a majority of the States has en-
acted a resolution in support of the establishment or
modification of a consumer protection regulation by
the Agency.

(2) Agency Considerations Required for
Issuance of Final Regulation.—Before pre-
scribing a final regulation based upon a notice
issued pursuant to paragraph (1), the Agency shall
take into account whether—
(A) the proposed regulation would afford greater protection to consumers than any existing regulation;

(B) the intended benefits of the proposed regulation for consumers would outweigh any increased costs or inconveniences for consumers, and would not discriminate unfairly against any category or class of consumers; and

(C) a Federal banking agency has advised that the proposed regulation is likely to present an unacceptable safety and soundness risk to insured depository institutions.

(3) EXPLANATION OF CONSIDERATIONS.—The Agency—

(A) shall include a discussion of the considerations required in subsection (b) in the Federal Register notice of a final regulation prescribed pursuant to this section; and

(B) whenever the Agency determines not to prescribe a final regulation, shall publish an explanation of such determination in the Federal Register, and provide a copy of such explanation to each State that enacted a resolution in support of the proposed regulation, the Committee on Financial Services of the House of
Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(4) Reservation of Authority.—No provision of this section shall be construed as limiting or restricting the authority of the Agency to enhance consumer protection standards established pursuant to this title in response to its own motion or in response to a request by any other interested person.

(5) Rule of Construction.—No provision of this section shall be construed as exempt the Agency from complying with subchapter II of chapter 5 of title 5, United States Code.

(6) Definition.—For purposes of this section, the term “consumer protection regulation” means a regulation that the Agency is authorized to prescribe under this title, the enumerated consumer laws, or any law or authority transferred under subtitle F or H.

SEC. 4402. PRESERVATION OF ENFORCEMENT POWERS OF STATES.

(a) In General.—

(1) Action by State.—Any State attorney general may bring a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any district court of the
United States or State court having jurisdiction of
the defendant, to enforce and secure remedies under
provisions of this title or regulations issued there-
under, or otherwise provided under other law.

(2) RULE OF CONSTRUCTION.—No provision of
this title shall be construed as modifying, limiting,
or superseding the operation of any provision of an
enumerated consumer law that relates to the author-
ity of a State attorney general or State regulator to
enforce such Federal law.

(b) CONSULTATION REQUIRED.—

(1) NOTICE.—

(A) IN GENERAL.—Before initiating any
action in a court or other administrative or reg-
ulatory proceeding against any covered person
to enforce any provision of this title, including
any regulation prescribed by the Director under
this title, a State attorney general or State reg-
ulator shall timely provide a copy of the com-
plete complaint to be filed and written notice
describing such action or proceeding to the
Agency, or the Agency’s designee.

(B) EMERGENCY ACTION.—If prior notice
is not practicable, the State attorney general or
State regulator shall provide a copy of the com-
plete complaint and the notice to the Agency immediately upon instituting the action or proceeding.

(C) CONTENTS OF NOTICE.—The notification required under this section shall, at a minimum, describe—

(i) the identity of the parties;

(ii) the alleged facts underlying the proceeding; and

(iii) whether there may be a need to coordinate the prosecution of the proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Director or Agency or another Federal agency.

(2) AGENCY RESPONSE.—In any action described in paragraph (1), the Agency may—

(A) intervene in the action as a party;

(B) upon intervening—

(i) remove the action to the appropriate United States district court, if the action was not originally brought there; and

(ii) be heard on all matters arising in the action; and
(C) appeal any order or judgment to the same extent as any other party in the proceeding may.

(e) Regulations.—The Director shall prescribe regulations to implement the requirements of this section and, from time to time, provide guidance in order to further coordinate actions with the State attorneys general and other regulators.

(d) Preservation of State Authority.—

(1) State claims.—No provision of this section shall be construed as limiting the authority of a State attorney general or State regulator to bring an action or other regulatory proceeding arising solely under the law of that State.

(2) State securities regulators.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State securities commission (or any agency or office performing like functions) under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or authority.

(3) State insurance regulators.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State insurance
commission or State insurance regulator under State
law to adopt rules, initiate enforcement proceedings,
or take any other action with respect to a person
regulated by such commission or regulator.

SEC. 4403. PRESERVATION OF EXISTING CONTRACTS.

This title, and regulations, orders, guidance, and in-
terpretations prescribed, issued, and established by the
Agency, shall not be construed to alter or affect the appli-
cability of any regulation, order, guidance, or interpreta-
tion prescribed, issued, and established by the Comptroller
of the Currency or the Director of the Office of Thrift
Supervision regarding the applicability of State law under
Federal banking law to any contract entered into on or
before the date of the enactment of this title, by national
banks, Federal savings associations, or subsidiaries there-
of that are regulated and supervised by the Comptroller
of the Currency or the Director of the Office of Thrift
Supervision, respectively.

SEC. 4404. STATE LAW PREEMPTION STANDARDS FOR NA-
TIONAL BANKS AND SUBSIDIARIES CLARI-
FIED.

(a) In General.—Chapter one of title LXII of the
Revised Statutes of the United States (12 U.S.C. 21 et
seq.) is amended by inserting after section 5136B the
following new section:
“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NA-
TIONAL BANKS AND SUBSIDIARIES CLAR-
IFIED.

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

“(1) NATIONAL BANK.—The term ‘national
bank’ includes—

“(A) any bank organized under the laws of
the United States; and

“(B) any Federal branch established in ac-
cordance with the International Banking Act of
1978.

“(2) STATE CONSUMER FINANCIAL LAWS.—The
term ‘State consumer financial law’ means a State
law that does not directly or indirectly discriminate
against national banks and that directly and specifi-
cally regulates the manner, content, or terms and
conditions of any financial transaction (as may be
authorized for national banks to engage in), or any
account related thereto, with respect to a consumer.

“(3) OTHER DEFINITIONS.—The terms ‘affil-
iate’, ‘subsidiary’, ‘includes’, and ‘including’ have the
same meaning as in section 3 of the Federal Deposit
Insurance Act.

“(b) PREEMPTION STANDARD.—
“(1) IN GENERAL.—State consumer financial laws are preempted only if—

“(A) application of a State consumer financial law would have a discriminatory effect on national banks in comparison with the effect of the law on a bank chartered by that State;

“(B) the State consumer financial law prevents, significantly interferes with, or materially impairs the ability of an institution chartered as a national bank to engage in the business of banking. Any preemption determination under this subparagraph may be made by a court or by regulation or order of the Comptroller of the Currency in accordance with applicable law, on a case-by-case basis. Any such determination by a court shall comply with the standards set forth in subsection (d) of this section, with the court making the subsection (d) finding de novo; or

“(C) the State consumer financial law is preempted by Federal law other than this Act.

“(2) SAVINGS CLAUSE.—This Act does not pre-empt or alter the applicability of any State law to any subsidiary or affiliate of a national bank (other
than an institution chartered as a national bank) that is not a depository institution.

“(3) CASE-BY-CASE DETERMINATION.—

“(A) DEFINITION.—The term ‘case-by-case determination pursuant to this section’ means a determination made by the Comptroller concerning the impact of a particular State consumer financial law on any national bank that is subject to that law, or the law of any other State with substantively equivalent terms.

“(B) CONSULTATION.—When making case-by-case determination pursuant to this section that a State consumer financial law of another State has a substantively equivalent terms as one that the Comptroller is preempts, the Comptroller shall first consult with the Consumer Financial Protection Agency and shall take such Agency’s views into account when making the determination.

“(4) RULE OF CONSTRUCTION.—This Act does not occupy the field in any area of State law.

“(5) STANDARDS OF REVIEW.—

“(A) PREEMPTION.—A court reviewing any determinations made by the Comptroller regarding preemption of a State law by this Act
shall assess the validity of such determinations
depending upon the thoroughness evident in the
agency’s consideration, the validity of the agen-
cy’s reasoning, the consistency with other valid
determinations made by the agency, and other
factors which the court finds persuasive and rel-

evant to its decision.

“(B) SAVINGS CLAUSE.—Except as pro-
vided in subparagraph (A), nothing in this sec-
tion shall affect the deference that a court may
afford to the Comptroller in making determina-
tions regarding the meaning or interpretation of
title LXII of the Revised Statutes of the United
States or other Federal laws.

“(6) COMPTROLLER DETERMINATION NOT DEL-
egable.—Any regulation, order or determination
made by the Comptroller of the Currency under sub-
section (b)(1)(B) shall be made by the Comptroller
and shall not be delegable to another officer or em-
ployee of the Comptroller of the Currency.

“(c) SUBSTANTIAL EVIDENCE.—No regulation or
order of the Comptroller of the Currency prescribed under
subsection (b)(1)(B), shall be interpreted or applied so as
to invalidate, or otherwise declare inapplicable to a na-
tional bank, the provision of the State consumer financial
law unless substantial evidence, made on the record of the proceeding, supports the specific finding that the provision prevents, significantly interferes with, or materially impairs the ability of a national bank to engage in the business of banking.

“(d) OTHER FEDERAL LAWS.—Notwithstanding any other provision of law, the Comptroller of the Currency may not prescribe a regulation or order pursuant to subsection (b)(1)(B) until the Comptroller of the Currency, after consultation with the Consumer Financial Protection Agency, makes a finding, in writing, that a Federal law provides a substantive standard, applicable to a national bank, which regulates the particular conduct, activity, or authority that is subject to such provision of the State consumer financial law.

“(e) PERIODIC REVIEW OF PREEMPTION DETERMINATIONS.—The Comptroller of the Currency shall periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The agency shall conduct such review within the 5-year period after prescribing or otherwise issuing such determination, and at least once during each 5-year period thereafter. After conducting the review of, and inspecting the comments made on, the determination, the agency shall timely pro-
pose to continue, amend or rescind it, as may be appro-
priate, in accordance with the procedures set forth in sub-
sections (a) and (b) of section 5244 (12 U.S.C. 43(a) and
(b)).

“(f) Application of State Consumer Financial Law to Subsidiaries and Affiliates.—Notwith-
standing any provision of this title, a State consumer fi-
nancial law shall apply to a subsidiary or affiliate of a
national bank to the same extent that the State consumer
financial law applies to any person, corporation, or other
entity subject to such State law.

“(g) Preservation of Powers Related to Charging Interest.—No provision of this title shall be
construed as altering or otherwise affecting the authority
conferred by section 5197 of the Revised Statutes of the
United States (12 U.S.C. 85) for the charging of interest
by a national bank at the rate allowed by the laws of the
State, territory or district where the bank is located, in-
cluding with respect to the meaning of ‘interest’ under
such provision.

“(h) Transparency of OCC Preemption Determinations.—The Comptroller of the Currency shall pub-
lish and update no less frequently than quarterly, a list
of preemption determinations by the Comptroller of the
Currency then in effect that identifies the activities and
practices covered by each determination and the require-
ments and constraints determined to be preempted.”.

(b) CLERICAL AMENDMENT.—The table of sections
for chapter one of title LXII of the Revised Statutes of
the United States is amended by inserting after the item
relating to section 5136B the following new item:

“5136C. State law preemption standards for national banks and subsidiaries
clarified.”.

SEC. 4405. VISITORIAL STANDARDS.

Section 5136C of the Revised Statutes of the United
States (as added by section 4404) is amended by adding
at the end the following new subsections:

“(g) VISITORIAL POWERS.—

“(1) RULE OF CONSTRUCTION.—No provision
of this title which relates to visitorial powers or oth-
erwise limits or restricts the visitorial authority to
which any national bank is subject shall be con-
strued as limiting or restricting the authority of any
attorney general (or other chief law enforcement of-
fi cer) of any State to bring any action in any court
of appropriate jurisdiction—

“(A) to enforce any applicable Federal or
State law, as authorized by such law; or

“(B) on behalf of residents of such State,
to enforce any applicable provision of any Fed-
eral or nonpreempted State law against a na-
tional bank, as authorized by such law, or to seek relief as authorized by such law.

“(2) CONSULTATION.—The attorney general (or other chief law enforcement officer) of any State shall consult with the head of the agency responsible for chartering and regulating national banks before acting under paragraph (1).

“(h) ENFORCEMENT ACTIONS.—The ability of the head of the agency responsible for chartering and regulating national banks to bring an enforcement action under this title or section 5 of the Federal Trade Commission Act shall not be construed as precluding private parties from enforcing rights granted under Federal or State law in the courts.”.

SEC. 4406. CLARIFICATION OF LAW APPLICABLE TO NON-DEPOSITORY INSTITUTION SUBSIDIARIES.

Section 5136C of the Revised Statutes of the United States is amended by inserting after subsection (h) (as added by section 4405) the following new subsection:

“(i) CLARIFICATION OF LAW APPLICABLE TO NON-DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF NATIONAL BANKS.—

“(1) DEFINITIONS.—For purposes of this section, the following definitions shall apply:
“(A) Depository institution, subsidiary, affiliate.—The terms ‘depository institution’, ‘subsidiary’, and ‘affiliate’ have the same meanings as in section 3 of the Federal Deposit Insurance Act.

“(B) Nondepository institution.—The term ‘nondepository institution’ means any entity that is not a depository institution.

“(2) In general.—No provision of this title shall be construed as annulling, altering, or affecting the applicability of State law to any nondepository institution, subsidiary, other affiliate, or agent of a national bank.”.

SEC. 4407. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS AND SUBSIDIARIES CLARIFIED.

(a) In general.—The Home Owners’ Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 5 the following new section:

“SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS CLARIFIED.

“(a) State consumer financial law defined.—For purposes of this section, the term ‘State consumer financial law’ means a State law that does not directly or indirectly discriminate against Federal savings
associations and that directly and specifically regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for Federal savings associations to engage in), or any account related thereto, with respect to a consumer.

“(b) Preemption Standard.—

“(1) In general.—State consumer financial laws are preempted only if—

“(A) application of a State consumer financial law would have a discriminatory effect on Federal savings associations in comparison with the effect of the law on a bank chartered by that State;

“(B) the State consumer financial law prevents, significantly interferes with, or materially impairs the ability of an institution chartered as a Federal savings association to engage in the business of banking. Any preemption determination under this subparagraph may be made by a court or by regulation or order of the Director of the Office of Thrift Supervision in accordance with applicable law, on a case-by-case basis. Any such determination by a court shall comply with the standards set forth in sub-
section (d) of this section, with the court making the subsection (d) finding de novo; or

“(C) the State consumer financial law is preempted by Federal law other than this Act.

“(2) SAVINGS CLAUSE.—This Act does not preempt or alter the applicability of any State law to any subsidiary or affiliate of a Federal savings association (other than an institution chartered as a Federal savings association) that is not a depository institution.

“(3) CASE-BY-CASE DETERMINATION.—

“(A) DEFINITION.—The term ‘case-by-case determination pursuant to this section’ means a determination made by the Director concerning the impact of a particular State consumer financial law on any Federal savings association that is subject to that law, or the law of any other State with substantively equivalent terms.

“(B) CONSULTATION.—When making case-by-case determination pursuant to this section that a State consumer financial law of another State has a substantively equivalent terms as one that the Director of the Office of Thrift Supervision is preempting, the Director shall first consult with the Consumer Financial Pro-
tection Agency and shall take such Agency’s views into account when making the determination.

“(4) Rule of Construction.—This Act does not occupy the field in any area of State law.

“(5) Standards of Review.—

“(A) Preemption.—A court reviewing any determinations made by the Director regarding preemption of a State law by this Act shall assess the validity of such determinations depending upon the thoroughness evident in the agency’s consideration, the validity of the agency’s reasoning, the consistency with other valid determinations made by the agency, and other factors which the court finds persuasive and relevant to its decision.

“(B) Savings Clause.—Except as provided in subparagraph (A), nothing in this section shall affect the deference that a court may afford to the Director in making determinations regarding the meaning or interpretation of the Home Owners’ Loan Act or other Federal laws.

“(6) OTS Determination Not Delegable.—Any regulation, order, or determination made by the Director of the Office of Thrift Supervision under
subsection (b)(1)(B) shall be made by the Director and shall not be delegable to another officer or employee of the Director of the Office of Thrift Supervision.

“(c) Other Federal Law.—Notwithstanding any other provision of law, the Director of the Office of Thrift Supervision may not prescribe any regulation or order pursuant to subsection (b)(1)(B) until such Director, after consultation with the Consumer Financial Protection Agency, makes a finding, in writing, that a Federal law provides a substantive standard, applicable to a Federal savings association, which regulates the particular conduct, activity, or authority that is subject to such provision of the State consumer financial law.

“(d) Substantial Evidence.—No regulation or order prescribed by the Director of the Office of Thrift Supervision issued under subsection (b)(1)(B) shall be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a Federal savings association, the provision of the State consumer financial law unless substantial evidence, made on the record of the proceeding, supports the specific finding that the provision prevents, significantly interferes with, or materially impairs the ability of a Federal savings association to engage in the business of banking.
“(e) Periodic Review of Preemption Determinations.—The Director of the Office of Thrift Supervision shall periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The agency shall conduct such review within the 5-year period after prescribing or otherwise issuing such determination, and at least once during each 5-year period thereafter. After conducting the review of, and inspecting the comments made on, the determination, the agency shall timely propose to continue, amend or rescind it, as may be appropriate, in accordance with the procedures set forth in subsections (a) and (b) of section 5244 of the Revised Statutes of the United States (12 U.S.C. 43(a) and (b)).

“(f) Application of State Consumer Financial Law to Subsidiaries and Affiliates.—Notwithstanding any provision of this Act, a State consumer financial law shall apply to a subsidiary or affiliate of a Federal savings association to the same extent that the State consumer financial law applies to any person, corporation, or other entity subject to such State law and consistent with Federal law.

“(g) Preservation of Powers Related to Charging of Interest.—No provision of this title shall
be construed as altering or otherwise affecting the authority conferred by section 4(g) of the Home Owners’ Loan Act (12 U.S.C. 1463(g)) for the charging of interest by a Federal savings association at the rate allowed by the laws of the State, territory, or district where the bank is located, including with respect to the meaning of ‘interest’ under such provision.

“(h) Transparency of OTS Preemption Determinations.—The Director of the Office of Thrift Supervision shall publish and update no less frequently than quarterly, a list of preemption determinations by such Director then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.”.

(b) Clerical Amendment.—The table of sections for the Home Owners’ Loan Act (12 U.S.C. 1461 et seq.) is amended by striking the item relating to section 6 and inserting the following new item:

“Sec. 6. State law preemption standards for Federal savings associations clarified.”.

SEC. 4408. VISITORIAL STANDARDS.

Section 6 of the Home Owners’ Loan Act (as added by section 4407 of this title) is amended by adding at the end the following new subsections:

“(g) Visitorial Powers.—
“(1) IN GENERAL.—No provision of this Act shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring any action in any court of appropriate jurisdiction—

“(A) to enforce any applicable Federal or State law, as authorized by such law; or

“(B) on behalf of residents of such State, to enforce any applicable provision of any Federal or State law against a Federal savings association, as authorized by such law, or to seek relief as authorized by such law.

“(2) CONSULTATION.—The attorney general (or other chief law enforcement officer) of any State shall consult with the Director or any successor agency before acting under paragraph (1).

“(h) ENFORCEMENT ACTIONS.—The ability of the Director or any successor officer or agency to bring an enforcement action under this Act or section 5 of the Federal Trade Commission Act shall not be construed as precluding private parties from enforcing rights granted under Federal or State law in the courts.”.
SEC. 4409. CLARIFICATION OF LAW APPLICABLE TO NON-
DEPOSITORY INSTITUTION SUBSIDIARIES.

Section 6 of the Home Owners’ Loan Act is amended by adding after subsection (h) (as added by section 4408) the following new subsection:

“(i) CLARIFICATION OF LAW APPLICABLE TO NON-
depository Institution Subsidiaries and Affiliates of Federal Savings Associations.—

“(1) Definitions.—For purposes of this section, the following definitions shall apply:

“(A) Depository institution, subsidiary, affiliate.—The terms ‘depository institution’, ‘subsidiary’, and ‘affiliate’ have the same meanings as in section 3 of the Federal Deposit Insurance Act.

“(B) Nondepository institution.—The term ‘nondepository institution’ means any entity that is not a depository institution.

“(2) In general.—No provision of this title shall be construed as preempting the applicability of State law to any nondepository institution, subsidiary, other affiliate, or agent of a Federal savings association.”.

SEC. 4410. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.
Subtitle E—Enforcement Powers

SEC. 4501. DEFINITIONS.

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

(1) **AGENCY INVESTIGATION.**—The term “Agency investigation” means any inquiry conducted by an Agency investigator for the purpose of ascertaining whether any person is or has been engaged in any conduct that violates this title, any enumerated consumer law, or any regulation prescribed or order issued by the Director under this title or under the authorities transferred under subtitles F and H.

(2) **AGENCY INVESTIGATOR.**—The term “Agency investigator” means any attorney or investigator employed by the Agency who is charged with the duty of enforcing or carrying into effect any provisions of this title, any enumerated consumer law, the authorities transferred under subtitles F and H, or any regulation prescribed or order issued under this title or pursuant to any such authority by the Director.

(3) **COVERED EMPLOYEE.**—The term “covered employee” means any individual performing tasks
related to the provision of a financial product or
service to a consumer.

(4) **CUSTODIAN.**—The term “custodian” means
the custodian or any deputy custodian designated by
the Agency.

(5) **DOCUMENTARY MATERIAL.**—The term
“documentary material” includes the original or any
copy of any book, document, record, report, memo-
randum, paper, communication, tabulation, chart,
log, electronic file, or other data or data compila-
tions stored in any medium.

(6) **VIOLATION.**—The term “violation” means
any act or omission that, if proved, would constitute
a violation of any provision of this title, any enumer-
ated consumer law, any law for which authorities
were transferred under subchapters F and H, or of any
regulation prescribed or order issued by the Director
under this title or pursuant to any such authority.

**SEC. 4502. INVESTIGATIONS AND ADMINISTRATIVE DIS-
COVERY.**

(a) **JOINT INVESTIGATIONS.**—

(1) **IN GENERAL.**—The Agency or, where ap-
propriate, an Agency representative may engage in
joint investigations and requests for information.
(2) Fair Lending.—The authority under paragraph (1) includes matters relating to fair lending, and where appropriate, joint investigations and requests for information with the Secretary of Housing and Urban Development, the Attorney General, or both.

(b) Subpoenas.—

(1) **In general.**—The Agency or an Agency investigator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, documents, or other material in connection with hearings under this title.

(2) **Failure to obey.**—In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, an appropriate United States district court may, upon application by the Agency or an Agency investigator and after notice to such person, issue an order requiring such person to appear and give testimony or to appear and produce documents or other material, or both.

(c) Demands.—

(1) **In general.**—Whenever the Agency has reason to believe that any person may be in possession, custody, or control of any documentary mate-
rial or tangible things, or may have any information, relevant to a violation, the Agency may, before the institution of any proceedings under this title or under any enumerated consumer law or pursuant to the authorities transferred under subtitles F and H, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to—

(A) produce such documentary material for inspection and copying or reproduction in the form or medium requested by the Agency;

(B) submit such tangible things;

(C) file written reports or answers to questions;

(D) give oral testimony concerning documentary material or other information; or

(E) furnish any combination of such material, answers, or testimony.

(2) REQUIREMENTS.—Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.
(3) **Production of Documents.**—Each civil investigative demand for the production of documentary material shall—

(A) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available.

(4) **Production of Things.**—Each civil investigative demand for the submission of tangible things shall—

(A) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and
(C) identify the custodian to whom such
things shall be submitted.

(5) **Demand for written reports or answers.**—Each civil investigative demand for written
reports or answers to questions shall—

(A) propound with definiteness and cer-
tainty the reports to be produced or the ques-
tions to be answered;

(B) prescribe a date or dates at which time
written reports or answers to questions shall be
submitted; and

(C) identify the custodian to whom such
reports or answers shall be submitted.

(6) **Oral testimony.**—Each civil investigative
demand for the giving of oral testimony shall—

(A) prescribe a date, time, and place at
which oral testimony shall be commenced; and

(B) identify a Agency investigator who
shall conduct the investigation and the custo-
dian to whom the transcript of such investiga-
tion shall be submitted.

(7) **Service.**—

(A) Any civil investigative demand may be
served by any Agency investigator at any place
within the territorial jurisdiction of any court of
the United States.

(B) Any such demand or any enforcement
petition filed under this section may be served
upon any person who is not found within the
territorial jurisdiction of any court of the
United States, in such manner as the Federal
Rules of Civil Procedure prescribe for service in
a foreign nation.

(8) Method of service.—Service of any civil
investigative demand or any enforcement petition
filed under this section may be made upon a person,
including any legal entity, by—

(A) delivering a duly executed copy of such
demand or petition to the individual or to any
partner, executive officer, managing agent, or
general agent of such person, or to any agent
of such person authorized by appointment or by
law to receive service of process on behalf of
such person;

(B) delivering a duly executed copy of such
demand or petition to the principal office or
place of business of the person to be served; or

(C) depositing a duly executed copy in the
United States mails, by registered or certified
mail, return receipt requested, duly addressed
to such person at its principal office or place of
business.

(9) PROOF OF SERVICE.—

(A) A verified return by the individual
serving any civil investigative demand or any
enforcement petition filed under this section
setting forth the manner of such service shall
be proof of such service.

(B) In the case of service by registered or
certified mail, such return shall be accompanied
by the return post office receipt of delivery of
such demand or enforcement petition.

(10) PRODUCTION OF DOCUMENTARY MATE-
RIAL.—The production of documentary material in
response to a civil investigative demand shall be
made under a sworn certificate, in such form as the
demand designates, by the person, if a natural per-
son, to whom the demand is directed or, if not a
natural person, by any person having knowledge of
the facts and circumstances relating to such produc-
tion, to the effect that all of the documentary mate-
rial required by the demand and in the possession,
custody, or control of the person to whom the de-
mand is directed has been produced and made available to the custodian.

(11) SUBMISSION OF TANGIBLE THINGS.—The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

(12) SEPARATE ANSWERS.—Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all in-
formation required by the demand and in the posses-
sion, custody, control, or knowledge of the person to
whom the demand is directed has been submitted.

(13) Testimony.—

(A) Procedure.—

(i) Oath and Recordation.—The
examination of any person pursuant to a
demand for oral testimony served under
this subsection shall be taken before an off-
cer authorized to administer oaths and
affirmations by the laws of the United
States or of the place where the examina-
tion is held. The officer before whom oral
testimony is to be taken shall put the wit-
ness on oath or affirmation and shall per-
sonally, or by any individual acting under
the direction of and in the presence of the
officer, record the testimony of the witness.

(ii) Transcriptions.—The testimony
shall be taken stenographically and tran-
scribed.

(iii) Copy to Custodian.—After the
testimony is fully transcribed, the officer
before whom the testimony is taken shall
promptly transmit a copy of the transcript
of the testimony to the custodian.

(B) Parties present.—Any Agency in-
vestigator before whom oral testimony is to be
taken shall exclude from the place where the
testimony is to be taken all other persons ex-
cept the person giving the testimony, the attor-
ney for such person, the officer before whom
the testimony is to be taken, an investigator or
representative of an agency with which the
Agency is engaged in a joint investigation, and
any stenographer taking such testimony.

(C) Location.—The oral testimony of any
person taken pursuant to a civil investigative
demand shall be taken in the judicial district of
the United States in which such person resides,
is found, or transacts business, or in such other
place as may be agreed upon by the Agency in-
vestigator before whom the oral testimony of
such person is to be taken and such person.

(D) Attorney representation.—

(i) In general.—Any person com-
pelled to appear under a civil investigative
demand for oral testimony pursuant to this
section may be accompanied, represented, and advised by an attorney.

(ii) CONFIDENTIAL ADVICE.—The attorney may advise the person summoned, in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

(iii) OBJECTIONS.—The person summoned or the attorney may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection.

(iv) REFUSAL TO ANSWER.—An objection may properly be made, received, and entered upon the record when it is claimed that the person summoned is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination, but such person shall not otherwise object to or refuse to answer any question, and shall not otherwise interrupt the oral examination, directly or through such person’s attorney.
(v) Petition for order.—If such person refuses to answer any question, the Agency may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question.

(vi) Basis for compelling testimony.—If such person refuses to answer any question on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18, United States Code.

(E) Transcripts.—

(i) Right to examine.—After the testimony of any witness is fully transcribed, the Agency investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript.

(ii) Reading the transcript.—The transcript shall be read to or by the witness, unless such examination and reading are waived by the witness.
(iii) Request for Changes.—Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the Agency investigator with a statement of the reasons given by the witness for making such changes.

(iv) Signature.—The transcript shall be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign.

(v) Agency Action in Lieu of Signature.—If the transcript is not signed by the witness during the 30-day period following the date upon which the witness is first afforded a reasonable opportunity to examine it, the officer or the Agency investigator shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(F) Certification by Investigator.—The officer shall certify on the transcript that the witness was duly sworn by the investigator.
and that the transcript is a true record of the testimony given by the witness, and the officer or the Agency investigator shall promptly deliver the transcript or send it by registered or certified mail to the custodian.

(G) COPY OF TRANSCRIPT.—The Agency investigator shall furnish a copy of the transcript (upon payment of reasonable charges for the transcript) to the witness only, except that the Agency may for good cause limit such witness to inspection of the official transcript of the testimony of such witness.

(H) WITNESS FEES.—Any witness appearing for the taking of oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(d) CONFIDENTIAL TREATMENT OF DEMAND MATERIAL.—

(1) IN GENERAL.—Materials received as a result of a civil investigative demand shall be subject to requirements and procedures regarding confidentiality, in accordance with regulations established by the Director.
(2) Disclosure to Congress.—No regulation established by the Director regarding the confidentiality of materials submitted to, or otherwise obtained by, the Agency shall be intended to prevent disclosure to either House of the Congress or to an appropriate committee of the Congress, except that the Director may prescribe regulations allowing prior notice to any party that owns or otherwise provided the material to the Agency and has designated such material as confidential.

(e) Petition for Enforcement.—

(1) In General.—Whenever any person fails to comply with any civil investigative demand duly served upon such person under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Agency, through such officers or attorneys as the Director may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.
(2) Service of process.—All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

(f) Petition for Order Modifying or Setting Aside Demand.—

(1) In general.—Not later than 20 days after the service of any civil investigative demand upon any person under subsection (b), or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any Agency investigator named in the demand, such person may file with the Agency a petition for an order by the Agency modifying or setting aside the demand.

(2) Compliance during pendency.—The time permitted for compliance with the demand in whole or in part, as deemed proper and ordered by the Agency, shall not run during the pendency of such petition at the Agency, except that such person shall comply with any portions of the demand not sought to be modified or set aside.
(3) SPECIFIC GROUNDS.—Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(g) CUSTODIAL CONTROL.—At any time during which any custodian is in custody or control of any documentary material, tangible things, reports, answers to questions, or transcripts of oral testimony given by any person in compliance with any civil investigative demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the performance by such custodian of any duty imposed upon such custodian by this section or regulation prescribed by the Director.

(h) JURISDICTION OF COURT.—

(1) IN GENERAL.—Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.
(2) APPEAL.—Any final order so entered shall be subject to appeal pursuant to section 1291 of title 28, United States Code.

SEC. 4503. HEARINGS AND ADJUDICATION PROCEEDINGS.

(a) IN GENERAL.—The Agency may conduct hearings and adjudication proceedings with respect to any person in the manner prescribed by chapter 5 of title 5, United States Code in order to ensure or enforce compliance with—

(1) the provisions of this title, including any regulations prescribed by the Director under this title; and

(2) any other Federal law that the Agency is authorized to enforce, including an enumerated consumer law, and any regulations or order prescribed thereunder, unless such Federal law specifically limits the Agency from conducting a hearing or adjudication proceeding and only to the extent of such limitation.

(b) SPECIAL RULES FOR CEASE-AND-DESIST PROCEEDINGS.—

(1) ISSUANCE.—

(A) NOTICE OF CHARGES.—If, in the opinion of the Agency, any covered person or service provider is engaging or has engaged in an activ-
ity that violates a law, regulation, or any condition imposed in writing on the person by the Agency, the Agency may issue and serve upon the person a notice of charges with respect to such violation.

(B) CONTENTS OF NOTICE.—The notice shall contain a statement of the facts constituting any alleged violation and shall fix a time and place at which a hearing will be held to determine whether an order to cease-and-desist there from should issue against the person.

(C) TIME OF HEARING.—A hearing under this subsection shall be fixed for a date not earlier than 30 days nor later than 60 days after service of such notice unless an earlier or a later date is set by the Agency at the request of any party so served.

(D) NONAPPEARANCE DEEMED TO BE CONSENT TO ORDER.—Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order.

(E) ISSUANCE OF ORDER.—In the event of such consent, or if upon the record made at any
such hearing, the Agency shall find that any violation specified in the notice of charges has been established, the Agency may issue and serve upon the person an order to cease-and-desist from any such violation or practice.

(F) INCLUDES REQUIREMENT FOR CORRECTIVE ACTION.—Such order may, by provisions which may be mandatory or otherwise, require the person to cease-and-desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation.

(2) EFFECTIVENESS OF ORDER.—A cease-and-desist order shall take effect at the end of the 30-day period beginning on the date of the service of such order upon the covered person or service provider concerned (except in the case of a cease-and-desist order issued upon consent, which shall take effect at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Agency or a reviewing court.

(3) DECISION AND APPEAL.—
(A) **Place of and procedures for hearing.**—Any hearing provided for in this subsection shall be held in the Federal judicial district or in the territory in which the residence or home office of the person is located unless the person consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code.

(B) **Time limit for decision.**—After such hearing, and within 90 days after the Agency has notified the parties that the case has been submitted to it for final decision, the Agency shall—

(i) render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue; and

(ii) serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection.

(C) **Modification of order generally.**—Unless a petition for review is timely filed in a court of appeals of the United States,
as hereinafter provided in paragraph (4), and thereafter until the record in the proceeding has been filed as so provided, the Agency may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order.

(D) Modification of order after filing record on appeal.—Upon such filing of the record, the Agency may modify, terminate, or set aside any such order with permission of the court.

(4) Appeal to court of appeals.—

(A) In general.—Any party to any proceeding under this subsection may obtain a review of any order served pursuant to this subsection (other than an order issued with the consent of the person concerned) by the filing in the court of appeals of the United States for the circuit in which the principal office of the covered person is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Agency be modified, terminated, or set aside.
(B) TRANSMITTAL OF COPY TO THE AGENCY.—A copy of such petition shall be forthwith transmitted by the clerk of the court to the Agency, and thereupon the Agency shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code.

(C) JURISDICTION OF COURT.—Upon the filing of a petition under subparagraph (A), such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of paragraph (3) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Agency.

(D) SCOPE OF REVIEW.—Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code.

(E) FINALITY.—The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28 of the United States Code.

(5) NO STAY.—The commencement of proceedings for judicial review under paragraph (4)
shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Agency.

(c) SPECIAL RULES FOR TEMPORARY CEASE-AND-DESIST PROCEEDINGS.—

(1) ISSUANCE.—

(A) IN GENERAL.—Whenever the Agency determines that the violation specified in the notice of charges served upon a person, including a service provider, pursuant to subsection (b), or the continuation of such violation, is likely to cause the person to be insolvent or otherwise prejudice the interests of consumers before the completion of the proceedings conducted pursuant to subsection (b), the Agency may issue a temporary order requiring the person to cease-and-desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency or other condition pending completion of such proceedings.

(B) OTHER REQUIREMENTS.—Any temporary order issued under this paragraph may include any requirement authorized under this subtitle.

(C) EFFECT DATE OF ORDER.—Any temporary order issued under this paragraph shall
take effect upon service upon the person and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Agency shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the person, until the effective date of such order.

(2) APPEAL.—Within 10 days after the person concerned has been served with a temporary cease-and-desist order, the person may apply to the United States district court for the judicial district in which the home office of the person is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the person under subsection (b), and such court shall have jurisdiction to issue such injunction.

(3) INCOMPLETE OR INACCURATE RECORDS.—
(A) TEMPORARY ORDER.—If a notice of charges served under subsection (b) specifies, on the basis of particular facts and circumstances, that a person’s books and records are so incomplete or inaccurate that the Agency is unable to determine the financial condition of that person or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that person, the Agency may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (b)(1).

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

(i) shall take effect upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under
paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (b) in connection with the notice of charges; or

(II) the date the Agency determines, by examination or otherwise, that the person’s books and records are accurate and reflect the financial condition of the person.

(d) **Special Rules for Enforcement of Orders.**—

(1) **In General.**—The Agency may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the person is located, for the enforcement of any effective and outstanding notice or order issued under this section, and such court shall have jurisdiction and power to order and require compliance herewith.

(2) **Exception.**—Except as otherwise provided in this subsection, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order or to review, mod-
ify, suspend, terminate, or set aside any such notice
or order.

(c) REGULATIONS.—The Director shall prescribe reg-
ulations establishing such procedures as may be necessary
to carry out this section.

SEC. 4504. LITIGATION AUTHORITY.

(a) In General.—If any person violates a provision
of this title, any enumerated consumer law, any law for
which authorities were transferred under subtitles F and
H, or any regulation prescribed or order issued by the Di-
rector under this title or pursuant to any such authority,
the Agency may commence a civil action against such per-
son to impose a civil penalty and to seek all appropriate
legal and equitable relief including a permanent or tem-
porary injunction as permitted by law.

(b) Representation.—The Agency may act in its
own name and through its own attorneys in enforcing any
provision of this title, regulations under this title, or any
other law or regulation, or in any action, suit, or pro-
ceeding to which the Agency is a party.

(c) Compromise of Actions.—The Agency may
compromise or settle any action if such compromise is ap-
proved by the court.

(d) Notice to the Attorney General.—When
commencing a civil action under this title, any enumerated
consumer law, any law for which authorities were transferred under subtitles F and H, or any regulation thereunder, the Agency shall notify the Attorney General.

(e) Appearance Before the Supreme Court.—
The Agency may represent itself in its own name before the Supreme Court of the United States, if—

(1) the Agency makes a written request to the Attorney General within the 10-day period which begins on the date of entry of the judgment which would permit any party to file a petition for writ of certiorari; and

(2) the Attorney General concurs with such request or fails to take action within 60 days of the Agency’s request.

(f) Forum.—Any civil action brought under this title may be brought in a United States district court or in any court of competent jurisdiction of a state in a district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to enjoin such person and to require compliance with this title, any enumerated consumer law, any law for which authorities were transferred under subtitles F and H, or any regulation prescribed or order issued by the Director under this title or pursuant to any such authority.

(g) Time for Bringing Action.—
(1) IN GENERAL.—Except as otherwise permitted by law or equity, no action may be brought under this title more than 3 years after the date of the discovery of the violation to which an action relates.

(2) LIMITATIONS UNDER OTHER FEDERAL LAWS.—

(A) For purposes of this section, an action arising under this title shall not include claims arising solely under enumerated consumer laws.

(B) In any action arising solely under an enumerated consumer law, the Agency may commence, defend, or intervene in the action in accordance with the requirements of that law, as applicable.

(C) In any action arising solely under the laws for which authorities were transferred by subtitles F and H, the Agency may commence, defend, or intervene in the action in accordance with the requirements of that law, as applicable.

SEC. 4505. RELIEF AVAILABLE.

(a) ADMINISTRATIVE PROCEEDINGS OR COURT ACTIONS.—

(1) JURISDICTION.—The court (or Agency, as the case may be) in an action or adjudication pro-
ceeding brought under this title, any enumerated consumer law, or any law for which authorities were transferred by sub-
titles F and H, shall have jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of this title, any enumerated consumer law, and any law for which authorities were transferred by sub-
titles F and H, including a violation of a regulation prescribed or order issued under this title, any enumerated consumer law and any law for which authorities were transferred by subtitles F and H.

(2) RELIEF.—Such relief may include—

(A) rescission or reformation of contracts;

(B) refund of moneys or return of real property;

(C) restitution;

(D) disgorgement or compensation for un-
just enrichment;

(E) payment of damages;

(F) public notification regarding the viola-
tion, including the costs of notification;

(G) limits on the activities or functions of the person; and

(H) civil money penalties under subsection (c).
(3) NO EXEMPLARY OR PUNITIVE DAMAGES.— Nothing in this subsection shall be construed as authorizing the imposition of exemplary or punitive damages.

(b) RECOVERY OF COSTS.—In any action brought by the Agency, a State attorney general, or a State bank supervisor to enforce any provision of this title, any enumerated consumer law, any law for which authorities were transferred by subtitles F and H, or any regulation prescribed or order issued by the Director under this title or pursuant to any such authority, the Agency, State attorney general, or State bank supervisor may recover the costs incurred by such Agency, attorney general, or supervisor in connection with prosecuting such action if the Agency, State attorney general, or State bank supervisors (as the case may be) is the prevailing party in the action.

(c) CIVIL MONEY PENALTY IN COURT AND ADMINISTRATIVE ACTIONS.—

(1) Any person that violates, through any act or omission, any provision of this title, any enumerated consumer law, or any regulation prescribed or order issued by the Director under this title shall forfeit and pay a civil penalty pursuant to this subsection determined as follows:
(A) First Tier.—For any violation of any law, regulation, final order or condition imposed in writing by the Agency, or for any failure to pay any fee or assessment imposed by the Agency (including any fee or assessment for which a related person may be liable), a civil penalty shall not exceed $5,000 for each day during which such violation continues.

(B) Second Tier.—Notwithstanding paragraph (A), for any person that recklessly engages in a violation of this title, any enumerated consumer law, or any regulation prescribed or order issued by the Director under this title, relating to the provision of an alternative consumer financial product or service, a civil penalty shall not exceed $25,000 for each day during which such violation continues.

(C) Third Tier.—Notwithstanding subparagraphs (A) and (B), for any person that knowingly violates this title, any enumerated consumer law, or any regulation prescribed or order issued by the Director under this title, a civil penalty shall not exceed $1,000,000 for each day during which such violation continues.
(2) Mitigating Factors.—In determining the amount of any penalty assessed under paragraph (1), the Agency or the court shall take into account the appropriateness of the penalty with respect to—

(A) the size of financial resources and good faith of the person charged;

(B) the gravity of the violation or failure to pay;

(C) the severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided;

(D) the history of previous violations; and

(E) such other matters as justice may require.

(3) Authority to Modify or Remit Penalty.—The Agency may compromise, modify, or remit any penalty which may be assessed or had already been assessed under paragraph (1). The amount of such penalty, when finally determined, shall be exclusive of any sums owed by the person to the United States in connection with the costs of the proceeding, and may be deducted from any sums owing by the United States to the person charged.

(4) Notice and Hearing.—No civil penalty may be assessed with respect to a violation of this
title, any enumerated consumer law, or any regula-
tion prescribed or order issued by the Director, un-
less—

(A) the Agency gives notice and an oppor-
tunity for a hearing to the person accused of
the violation; or

(B) the appropriate court has ordered such
assessment and entered judgment in favor of
the Agency.

SEC. 4506. REFERRALS FOR CRIMINAL PROCEEDINGS.

Whenever the Agency obtains evidence that any per-
son, either domestic or foreign, has engaged in conduct
that may constitute a violation of Federal criminal law,
the Agency shall transmit such evidence to the Attorney
General, who may institute criminal proceedings under ap-
propriate law. No provision of this section shall be con-
strued as affecting any other authority of the Agency to
disclose information.

SEC. 4507. EMPLOYEE PROTECTION.

(a) No covered person shall terminate or in any other
way discriminate against, or cause to be terminated or dis-
criminated against, any covered employee or any author-
ized representative of covered employees by reason of the
fact that such employee or representative whether at the
employee’s initiative or in the ordinary course of the em-
ployee’s duties (or any person acting pursuant to a request of the employee) has—

(1) provided information to the Agency or to any other state, local, Federal, or tribal government entity, filed, instituted or caused to be filed or instituted any proceeding under this title, any enumerated consumer law, any law for which authorities were transferred by subtitles F and H, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this title; or

(2) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any law, rule, or regulation, or to be unfair, deceptive, or abusive and likely to cause specific and substantial injury to one or more consumers.

(b)(1) A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for
such act. Upon receipt of such a complaint, the Secretary shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2)(A) Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the complainant and the person named in the complaint an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary’s findings. If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary’s findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or
preliminary order, or both, and request a hearing on the
record. The filing of such objections shall not operate to
stay any reinstatement remedy contained in the prelimi-
nary order. Any such hearing shall be conducted expedi-
tiously. If a hearing is not requested in such 30-day pe-
riod, the preliminary order shall be deemed a final order
that is not subject to judicial review.

(B)(i) The Secretary shall dismiss a complaint filed
under this subsection and shall not conduct an investiga-
tion otherwise required under subparagraph (A) unless the
complainant makes a prima facie showing that any behav-
ior described in paragraphs (1) through (4) of subsection
(a) was a contributing factor in the unfavorable personnel
action alleged in the complaint.

(ii) Notwithstanding a finding by the Secretary that
the complainant has made the showing required under
clause (i), no investigation otherwise required under sub-
paragraph (A) shall be conducted if the employer dem-
onstrates, by clear and convincing evidence, that the em-
ployer would have taken the same unfavorable personnel
action in the absence of that behavior.

(iii) The Secretary may determine that a violation of
subsection (a) has occurred only if the complainant dem-
onstrates that any behavior described in paragraphs (1)
through (4) of subsection (a) was a contributing factor
in the unfavorable personnel action alleged in the com-
plaint.

(iv) Relief may not be ordered under subparagraph
(A) if the employer demonstrates by clear and convincing
evidence that the employer would have taken the same un-
favorable personnel action in the absence of that behavior.

(3)(A) Not later than 120 days after the date of con-
clusion of any hearing under paragraph (2), the Secretary
shall issue a final order providing the relief prescribed by
this paragraph or denying the complaint. At any time be-
fore issuance of a final order, a proceeding under this sub-
section may be terminated on the basis of a settlement
agreement entered into by the Secretary, the complainant,
and the person alleged to have committed the violation.

(B) If, in response to a complaint filed under para-
graph (1), the Secretary determines that a violation of
subsection (a) has occurred, the Secretary shall order the
person who committed such violation—

(i) to take affirmative action to abate the viola-
tion;

(ii) to reinstate the complainant to his or her
former position together with compensation (includ-
ing back pay) and restore the terms, conditions, and
privileges associated with his or her employment;

and
(iii) to provide compensatory damages to the complainant. If such an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys’ and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(C) If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorneys’ fee, not exceeding $1,000, to be paid by the complainant.

(4) If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States with jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. The proceedings shall be governed by the same legal bur-
dens of proof specified in paragraph (2)(B). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

(A) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

(B) the amount of back pay, with interest; and

(C) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney’s fees.

(5)(A) Unless the complainant brings an action under paragraph (4), any person adversely affected or aggrieved by a final order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.
(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(6) Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

(7)(A) A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(B) The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys’ and expert witness fees) to any party whenever the court determines such award is appropriate.
(c) Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(d)(1) Except as provided under paragraph (3), the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

(2) Except as provided under paragraph (3), no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising under this section.

(e) Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under paragraph (a)(2) of this section unless the Agency determines by rule that such provision is inconsistent with the purposes of this Act.

(f) Any employer receiving covered funds shall post notice of the rights and remedies provided under this section.

SEC. 4508. NO PRIVATE RIGHT OF ACTION.

Nothing in this title shall be construed to create a private right of action, but this section shall not be construed or interpreted to deny any private right of action
arising under the enumerated consumer laws or the au-
thorities transferred under subtitle F or H.

**SEC. 4509. EFFECTIVE DATE.**

This subtitle shall take effect on the designated transfer date.

**Subtitle F—Transfer of Functions and Personnel; Transitional Provisions**

**SEC. 4601. TRANSFER OF CERTAIN FUNCTIONS.**

(a) In General.—Except as provided in subsection (b), consumer financial protection functions are transferred as follows:

(1) **BOARD OF GOVERNORS.—**

(A) **TRANSFER OF FUNCTIONS.—** All consumer financial protection functions of the Board of Governors are transferred to the Director.

(B) **BOARD OF GOVERNORS’ AUTHORITY.—** The Director shall have all powers and duties that were vested in the Board of Governors, relating to consumer financial protection functions, on the day before the designated transfer date.

(C) **RETENTION OF CONSUMER ADVISORY COUNCIL.—**
(i) Retention and Continuation.—Notwithstanding the transfer of functions under subparagraph (A), the Consumer Advisory Council established by the Board of Governors pursuant to section 703(b) of Public Law 90–321 (15 U.S.C. 1691b(b)) shall continue as an entity within the Federal Reserve System.

(ii) Additional Functions.—In addition to the functions performed by the Consumer Advisory Council as of the designated transfer date, the Consumer Advisory Council shall—

(I) submit to the Director (and make available to the public) an annual set of recommendations for consumer protection regulations and meet with the Director to discuss the annual recommendations;

(II) meet with the Board of Governors of the Federal Reserve System at least once a year and provide oral or written representations concerning matters within the jurisdiction of the Board; and
(III) call for information and make recommendations in regard to consumer protection regulations.

(iii) RESPONSE TO RECOMMENDATIONS.—When the Chair of the Federal Reserve testifies before Congress, the Chair shall also testify about the recommendations of the Consumer Advisory Council under clause (ii)(II) and its recommendations for consumer protection regulations.

(2) COMPTROLLER OF THE CURRENCY.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Comptroller of the Currency are transferred to the Director.

(B) COMPTROLLER’S AUTHORITY.—The Director shall have all powers and duties that were vested in the Comptroller of the Currency, relating to consumer financial protection functions, on the day before the designated transfer date.

(3) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—
(A) Transfer of Functions.—All consumer financial protection functions of the Director of the Office of Thrift Supervision are transferred to the Director.

(B) Director’s Authority.—The Director shall have all powers and duties that were vested in the Director of the Office of Thrift Supervision, relating to consumer financial protection functions, on the day before the designated transfer date.

(4) Federal Deposit Insurance Corporation.—

(A) Transfer of Functions.—All consumer financial protection functions of the Federal Deposit Insurance Corporation are transferred to the Director.

(B) Corporation’s Authority.—The Director shall have all powers and duties that were vested in the Federal Deposit Insurance Corporation, relating to consumer financial protection functions, on the day before the designated transfer date.

(5) Federal Trade Commission.—

(A) Transfer of Functions.—Except as provided in subparagraph (C), the consumer fi-
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financial protection functions of the Federal
Trade Commission that are contained within
the enumerated consumer laws are transferred
to the Agency, except as provided in section
4202(e). This transfer shall not be subject to
the provisions of section 3503 of title 5, United
States Code.

(B) Federal trade commission author-
ity.—The Agency shall have all powers
and duties that were vested in the Federal
Trade Commission that were contained within
the enumerated statutes, except as provided in
section 4202(e), on the day before the des-
ignated transfer date.

(6) National credit union administra-
tion.—

(A) Transfer of functions.—All con-
sumer financial protection functions of the Na-
tional Credit Union Administration are trans-
ferred to the Director.

(B) National credit union adminis-
tration’s authority.—The Director shall
have all powers and duties that were vested in
the National Credit Union Administration, re-
lating to consumer financial protection func-
tions, on the day before the designated transfer date.

(7) SECRETARY OF HOUSING AND URBAN DEVELOPMENT.—

(A) TRANSFER OF FUNCTIONS.—All consumer protection functions of the Secretary of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 are transferred to the Director.

(B) SECRETARY OF HUD’S AUTHORITY.—

The Director shall have all powers and duties that were vested in the Secretary of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, on the day before the designated transfer date.

(b) TRANSFERS OF FUNCTIONS SUBJECT TO ENFORCEMENT AUTHORITY REMAINING WITH TRANSFEROR AGENCIES.—The transfers of functions in subsection (a) shall not affect the authority of the agencies identified in subsection (a) from initiating enforcement proceedings
under the circumstances described in paragraph (2) or (3) of section 4202(e).

(c) **Termination of Authority of Transferor Agencies To Collect Fees for Consumer Financial Protection Purposes.**—Authorities of the agencies identified in subsection (a) to assess and collect fees to cover the cost of conducting consumer financial protection functions transferred under subsection (a) shall terminate on the day before the designated transfer date.

(d) **Consumer Financial Protection Functions Defined.**—For purposes of this subtitle, the term “consumer financial protection functions” means research, rulemaking, issuance of orders or guidance, supervision, examination, and enforcement activities, powers, and duties relating to the provision of consumer financial products or services, including the authority to assess and collect fees for those purposes, except that such term shall not include any such function relating to an agency’s responsibilities under the Community Reinvestment Act of 1977.

(e) **Effective Date.**—Subsections (a) and (b) shall take effect on the designated transfer date.

**SEC. 4602. DESIGNATED TRANSFER DATE.**

The designated transfer date shall be 180 days after the date of enactment of this title.
SEC. 4603. SAVINGS PROVISIONS.

(a) BOARD OF GOVERNORS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 4601(a)(1) shall not affect the validity of any right, duty, or obligation of the United States, the Board of Governors (or any Federal reserve bank), or any other person that—

(A) arises under any provision of law relating to any consumer financial protection function of the Board of Governors transferred to the Director by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—this title shall not abate any proceeding commenced by or against the Board of Governors (or any Federal reserve bank) before the designated transfer date with respect to any consumer financial protection function of the Board of Governors (or any Federal reserve bank) transferred to the Director by this title, except that the Director shall be substituted for the Board of Governors (or Federal reserve bank) as a party to any such proceeding as of the designated transfer date.

(b) FEDERAL DEPOSIT INSURANCE CORPORATION.—
(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 4601(a)(4) shall not affect the validity of any right, duty, or obligation of the United States, the Federal Deposit Insurance Corporation, the Board of Directors of that Corporation, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Director by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—this title shall not abate any proceeding commenced by or against the Federal Deposit Insurance Corporation (or the Board of Directors of that Corporation) before the designated transfer date with respect to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Director by this title, except that the Director shall be substituted for the Federal Deposit Insurance Corporation (or Board of Directors) as a party to any such proceeding as of the designated transfer date.
(c) Federal Trade Commission.—Section 4601(a)(5) shall not affect the validity of any right, duty, or obligation of the United States, the Federal Trade Commission, or any other person, that—

(1) arises under any provision of law relating to any consumer financial protection function of the Federal Trade Commission transferred to the Director by this title; and

(2) existed on the day before the designated transfer date.

(d) National Credit Union Administration.—

(1) Existing rights, duties, and obligations not affected.—Section 4601(a)(6) shall not affect the validity of any right, duty, or obligation of the United States, the National Credit Union Administration, the National Credit Union Administration Board, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the National Credit Union Administration transferred to the Director by this title; and

(B) existed on the day before the designated transfer date.
(2) CONTINUATION OF SUITS.—this title shall not abate any proceeding commenced by or against the National Credit Union Administration (or the National Credit Union Administration Board) before the designated transfer date with respect to any consumer financial protection function of the National Credit Union Administration transferred to the Director by this title, except that the Director shall be substituted for the National Credit Union Administration (or National Credit Union Administration Board) as a party to any such proceeding as of the designated transfer date.

(e) COMPTROLLER OF THE CURRENCY.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 4601(a)(2) shall not affect the validity of any right, duty, or obligation of the United States, the Comptroller of the Currency, the Office of the Comptroller of the Currency, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Comptroller of the Currency transferred to the Director by this title; and

(B) existed on the day before the designated transfer date.
(2) CONTINUATION OF SUITS.—this title shall not abate any proceeding commenced by or against the Comptroller of the Currency (or the Office of the Comptroller of the Currency) with respect to any consumer financial protection function of the Comptroller of the Currency transferred to the Director by this title before the designated transfer date, except that the Director shall be substituted for the Comptroller of the Currency (or the Office of the Comptroller of the Currency) as a party to any such proceeding as of the designated transfer date.

(f) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 4601(a)(3) shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Director by this title; and
(B) that existed on the day before the designated transfer date.

(2) Continuation of suits.—This title shall not abate any proceeding commenced by or against the Director of the Office of Thrift Supervision (or the Office of Thrift Supervision) with respect to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Director by this title before the designated transfer date, except that the Director shall be substituted for the Director (or the Office of Thrift Supervision) as a party to any such proceeding as of the designated transfer date.

(g) Secretary of Housing and Urban Development.—

(1) Existing rights, duties, and obligations not affected.—Section 4601(a)(7) shall not affect the validity of any right, duty, or obligation of the United States, the Secretary of Housing and Urban Development, the Department of Housing and Urban Development, or any other person, that—

(A) arises under any provision of law relating to any function of the Secretary of Housing and Urban Development under the Real Estate

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Settlement Procedures Act of 1974 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 transferred to the Director by this title; and

(B) that existed on the day before the designated transfer date.

(2) Continuation of suits.—This title shall not abate any proceeding commenced by or against the Secretary of Housing and Urban Development (or the Department of Housing and Urban Development) with respect to any consumer financial protection function of the Secretary of Housing and Urban Development transferred to the Director by this title before the designated transfer date, except that the Director shall be substituted for the Secretary of Housing and Urban Development (or such Department) as a party to any such proceeding as of the designated transfer date.

(h) Continuation of existing orders, regulations, determinations, agreements, and resolutions.—All orders, resolutions, determinations, agreements, and regulations that have been issued, made, prescribed, or allowed to become effective by the Board of Governors (or any Federal reserve bank), the Federal Deposit Insurance Corporation, the Federal Trade Commis-
sion, the National Credit Union Administration, the
Comptroller of the Currency, the Director of the Office
of Thrift Supervision, the Secretary of Housing and
Urban Development, or by a court of competent jurisdi-
cion, in the performance of consumer financial protection
functions that are transferred by this title and that are
in effect on the day before the designated transfer date,
shall continue in effect according to the terms of those
orders, resolutions, determinations, agreements, and regu-
lations, and shall be enforceable by or against the Director
until modified, terminated, set aside, or superseded in ac-
cordance with applicable law by the Director, by any court
of competent jurisdiction, or by operation of law.

(i) IDENTIFICATION OF REGULATIONS CONTIN-
UED.—Not later than the designated transfer date, the
Director—

(1) shall, after consultation with the Chairman
of the Board of Governors, the Chairperson of the
Federal Deposit Insurance Corporation, the Chair-
man of the Federal Trade Commission, the Chair-
man of the National Credit Union Administration
Board, the Comptroller of the Currency, the Direc-
tor of the Office of Thrift Supervision, and the Sec-
retary of Housing and Urban Development identify
the regulations continued under subsection (g) that
will be enforced by the Director; and

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

(j) STATUS OF REGULATIONS PROPOSED OR NOT
YET EFFECTIVE.—

(1) PROPOSED REGULATIONS.—Any proposed
regulation of the Board of Governors, the Federal
Deposit Insurance Corporation, the Federal Trade
Commission, the National Credit Union Administra-
tion, the Comptroller of the Currency, the Director
of the Office of Thrift Supervision, or the Secretary
of Housing and Urban Development which that
agency, in performing consumer financial protection
functions transferred by this title, has proposed be-
fore the designated transfer date but has not pub-
lished as a final regulation before that date, shall be
deemed to be a proposed regulation of the Director.

(2) REGULATIONS NOT YET EFFECTIVE.—Any
interim or final regulation of Board of Governors,
the Federal Deposit Insurance Corporation, the Fed-
eral Trade Commission, the National Credit Union
Administration, the Comptroller of the Currency, the
Director of the Office of Thrift Supervision, or the
Secretary of Housing and Urban Development which
that agency, in performing consumer financial pro-
tection functions transferred by this title, has pub-
lished before the designated transfer date but which
has not become effective before that date, shall take
effect as a regulation of the Director according to its
terms.

SEC. 4604. TRANSFER OF CERTAIN PERSONNEL.

(a) In General.—

(1) Certain Federal Reserve System Em-
ployees transferred.—

(A) Identifying employees for transfer.—The Director and the Board of Gov-
ernors shall—

(i) jointly determine the number of
employees of the Board necessary to per-
form or support the consumer financial
protection functions of the Board of Gov-
ernors that are transferred to the Director
by this title; and

(ii) consistent with the number deter-
mined under clause (i), jointly identify em-
ployees of the Board of Governors for
transfer to the Agency in a manner that
the Director and the Board of Governors,
in their sole discretion, deem equitable.
(B) Identified Employees Transferred.—All employees of the Board of Governors identified under subparagraph (A)(ii) shall be transferred to the Agency for employment.

(C) Federal Reserve Bank Employees.—Employees of any Federal reserve bank who, on the day before the designated transfer date, are performing consumer financial protection functions on behalf of the Board of Governors shall be treated as employees of the Board of Governors for purposes of subparagraphs (A) and (B).

(2) Certain FDIC Employees Transferred.—

(A) Identifying Employees for Transfer.—The Director and the Board of Directors of the Federal Deposit Insurance Corporation shall—

(i) jointly determine the number of employees of that Corporation necessary to perform or support the consumer financial protection functions of the Corporation that are transferred to the Director by this title; and
(ii) consistent with the number determined under clause (i), jointly identify employees of the Corporation for transfer to the Agency in a manner that the Director and the Board of Directors of the Corporation, in their discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Corporation identified under subparagraph (A)(ii) shall be transferred to the Agency for employment.

(3) CERTAIN NCUA EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Director and the National Credit Union Administration Board shall—

(i) jointly determine the number of employees of the National Credit Union Administration necessary to perform or support the consumer financial protection functions of the National Credit Union Administration that are transferred to the Director by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the National Credit Union Ad-
administration for transfer to the Agency in a manner that the Director and the National Credit Union Administration Board, in their discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the National Credit Union Administration identified under subparagraph (A)(ii) shall be transferred to the Agency for employment.

(4) CERTAIN HUD EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Director and the Secretary of Housing and Urban Development shall—

(i) jointly determine the number of employees of the Department of Housing and Urban Development necessary to perform or support the consumer financial protection functions of the Secretary of Housing and Urban Development that are transferred to the Director by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Department of Housing and
Urban Development for transfer to the Agency in a manner that the Director and the Secretary of Housing and Urban Development, in their discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Department of Housing and Urban Development identified under subparagraph (A)(ii) shall be transferred to the Agency for employment.

(5) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE AND SENIOR EXECUTIVE SERVICE TRANSFERRED.—

(A) IN GENERAL.—In the case of employees occupying positions in the excepted service or the Senior Executive Service, any appointment authority established pursuant to law or regulations of the Director of the Office of Personnel Management for filling such positions shall be transferred, subject to subparagraph (B).

(B) DECLINING TRANSFERS ALLOWED.— An agency or entity may decline to make a transfer of authority under subparagraph (A) (and the employees appointed pursuant to such
subparagraph) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character, and non-career positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under this section shall—

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

(2) receive notice of such employee’s position assignment not later than 120 days after the effective date of the employee’s transfer.

(c) TRANSFER OF FUNCTION.—

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

(2) PRIORITY OF THIS TITLE.—If any provisions of this title conflict with any protection provided to transferred employees under section 3503 of
title 5, United States Code, the provisions of this title shall control.

(d) Equal Status and Tenure Positions.—

(1) Employees transferred from FDIC, FTC, HUD, NCUA, OCC, and OTS.—Each employee transferred from the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Department of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision shall be placed in a position at the Agency with the same status and tenure as he or she held on the day before the designated transfer date.

(2) Employees transferred from the Federal Reserve System.—

(A) Comparability.—Each employee transferred from the Board of Governors or from a Federal reserve bank shall be placed in a position with the same status and tenure as that of employees transferring to the Agency from the Office of the Comptroller of the Currency who perform similar functions and have similar periods of service.
(B) Service periods credited.—For purposes of this paragraph, periods of service with the Board of Governors or a Federal reserve bank shall be credited as periods of service with a Federal agency.

(e) Additional Certification Requirements Limited.—Examiners transferred to the Agency shall not be subject to any additional certification requirements before being placed in a comparable examiner’s position at the Agency examining the same types of institutions as the transferred examiners examined before such examiners were transferred.

(f) Personnel Actions Limited.—

(1) 5-year protection.—Except as provided in paragraph (2), each transferred employee holding a permanent position on the day before the designated transfer date shall not, during the 5-year period beginning on the designated transfer date, be involuntarily separated, or involuntarily reassigned outside such transferred employee’s local locality pay area as defined by the Director of the Office of Personnel Management.

(2) Exceptions.—Paragraph (1) shall not be construed as limiting the right of the Director to—
(A) separate an employee for cause or for unacceptable performance;

(B) terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character; or

(C) reassign a supervisory employee outside such employee's locality pay area as defined by the Director of the Office of Personnel Management when the Director determines that the reassignment is necessary for the efficient operation of the Agency.

(g) PAY.—

(1) 1-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee shall, during the 1-year period beginning on the designated transfer date, receive pay at a rate not less than the basic rate of pay (including any geographic differential) that the employee received during the 1-year period immediately before the transfer.

(2) EXCEPTIONS.—Paragraph (1) shall not be construed as limiting the right of the Agency to reduce the rate of basic pay of a transferred employee—

(A) for cause;
(B) for unacceptable performance; or

(C) with the employee’s consent.

(3) Protection only while employed.—Paragraph (1) applies to a transferred employee only while that employee remains employed by the Agency.

(4) Pay increases permitted.—Paragraph (1) shall not be construed as limiting the authority of the Agency to increase a transferred employee’s pay.

(h) Reorganization.—

(1) Between 1st and 3rd year.—

(A) In general.—If the Agency determines, during the period beginning 1 year after the designated transfer date and ending 3 years after the designated transfer date, that a reorganization of the staff of the Agency is required—

(i) that reorganization shall be deemed a “major reorganization” for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code;
(ii) before the reorganization occurs, all employees in the same locality pay area as defined by the Director of the Office of Personnel Management shall be placed in a uniform position classification system; and

(iii) any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Agency shall—

(I) establish competitive areas (as that term is defined in regulations issued by the Director of the Office of Personnel Management) to include at a minimum all employees in the same locality pay area as defined by the Office of Personnel Management;

(II) establish competitive levels (as that term is defined in regulations issued by the Director of the Office of Personnel Management) without regard to whether the particular employees have been appointed to positions in the competitive service or the excepted service; and
(III) afford employees appointed to positions in the excepted service (other than to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character) the same assignment rights to positions within the Agency as employees appointed to positions in the competitive service.

(B) Service credit for reductions in force.—For purposes of this paragraph, periods of service with the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, the National Credit Union Administration, or the Federal Home Loan Bank Board or any successor to such Board shall be credited as periods of service with a Federal agency.

(2) After 3rd year.—

(A) In general.—If the Agency determines, at any time after the 3-year period beginning on the designated transfer date, that a reorganization of the staff of the Agency is required, any resulting reduction in force shall be
governed by the provisions of chapter 35 of title 5, United States Code, except that the Agency shall establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to types of appointment held by particular employees transferred under this section.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, the National Credit Union Administration, or the Federal Home Loan Bank Board or any successor to such Board shall be credited as periods of service with a Federal agency.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Except as provided in subparagraph (B), each transferred employee shall remain enrolled in such employee’s existing retirement plan as long as
the employee remains employed by the
Agency.

(ii) **EMPLOYER’S CONTRIBUTION.**—
The Director shall pay any employer con-
tributions to the existing retirement plan
of each transferred employee as required
under that plan.

(B) **OPTION FOR EMPLOYEES TRANS-
FERRED FROM FEDERAL RESERVE SYSTEM TO
BE SUBJECT TO FEDERAL EMPLOYEE RETIRE-
MENT PROGRAM.**—

(i) **ELECTION.**—Any transferred em-
ployee who was enrolled in a Federal Re-
serve System retirement plan on the day
before the date of the employee’s transfer
to the Agency may, during the period be-
ginning 6 months after the designated
transfer date and ending 1 year after the
designated transfer date, elect to be sub-
ject to the Federal employee retirement
program.

(ii) **EFFECTIVE DATE OF COV-
ERAGE.**—For any employee making an
election under clause (i), coverage by the
Federal employee retirement program shall
begin 1 year after the designated transfer date.

(C) Agency participation in Federal Reserve System retirement plan.—

(i) Separate account in Federal Reserve System retirement plan established.—A separate account in the Federal Reserve System retirement plan shall be established for Agency employees who do not make the election under subparagraph (B).

(ii) Funds attributable to transferred employees remaining in Federal Reserve System retirement plan transferred.—The proportionate share of funds in the Federal Reserve System retirement plan, including the proportionate share of any funding surplus in that plan, attributable to a transferred employee who does not make the election under subparagraph (B), shall be transferred to the account established under clause (i).

(iii) Employer contributions deposited.—The Director shall deposit into
the account established under clause (i) the employer contributions that the Agency makes on behalf of employees who do not make the election under subparagraph (B).

(iv) Account Administration.—The Director shall administer the account established under clause (i) as a participating employer in the Federal Reserve System retirement plan.

(D) Definitions.—For purposes of this paragraph, the following definitions shall apply:

(i) Existing Retirement Plan.—The term “existing retirement plan” means, with respect to any employee transferred under this section, the particular retirement plan (including the Financial Institutions Retirement Fund) and any associated thrift savings plan of the agency or Federal reserve bank from which the employee was transferred, which the employee was enrolled in on the day before the designated transfer date.

(ii) Federal Employee Retirement Plan.—The term “Federal employee retirement program” means the retirement
program for Federal employees established by chapters 83 and 84 of title 5, United States Code.

(2) Benefits other than retirement benefits for transferred employees.—

(A) During 1st year.—

(i) Existing plans continue.—

Each transferred employee may, for 1 year after the designated transfer date, retain membership in any other employee benefit program of the agency or bank from which the employee transferred, including a dental, vision, long-term care, or life insurance program, to which the employee belonged on the day before the designated transfer date.

(ii) Employer’s contribution.—

The Director shall reimburse the agency or bank from which an employee was transferred for any cost incurred by that agency or bank in continuing to extend coverage in the benefit program to the employee as required under that program or negotiated agreements.
(B) Dental, vision, or life insurance

after 1st year.—If, after the 1-year period beginning on the designated transfer date, the Director decides not to continue participation in any dental, vision, or life insurance program of an agency or bank from which employees transferred, a transferred employee who is a member of such a program may, before the Director’s decision takes effect, elect to enroll, without regard to any regularly scheduled open season, in—

(i) the enhanced dental benefits established by chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established by chapter 89B of title 5, United States Code; and

(iii) the Federal Employees Group Life Insurance Program established by chapter 87 of title 5, United States Code, without regard to any requirement of insurability.

(C) Long-term care insurance after 1st year.—If, after the 1-year period beginning on the designated transfer date, the Direc-
tor decides not to continue participation in any
long-term care insurance program of an agency
or bank from which employees transferred, a
transferred employee who is a member of such
a program may, before the Director’s decision
takes effect, elect to apply for coverage under
the Federal Long Term Care Insurance Pro-
gram established by chapter 90 of title 5,
United States Code, under the underwriting re-
quirements applicable to a new active workforce
member (as defined in Part 875, title 5, Code
of Federal Regulations).

(D) Employee’s contribution.—An in-
dividual enrolled in the Federal Employees
Health Benefits program shall pay any em-
ployee contribution required by the plan.

(E) Additional funding.—The Director
shall transfer to the Federal Employees Health
Benefits Fund established under section 8909
of title 5, United States Code, an amount deter-
mined by the Director of the Office of Per-
sonnel Management, after consultation with the
Director and the Director of the Office of Man-
agement and Budget, to be necessary to reim-
burse the Fund for the cost to the Fund of providing benefits under this subparagraph.

(F) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this section, enrollment in a health benefits plan administered by the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Board of Governors, the Secretary of Housing and Urban Development, or a Federal reserve bank, immediately before enrollment in a health benefits plan under chapter 89 of title 5, United States Code, shall be considered as enrollment in a health benefits plan under that chapter for purposes of section 8905(b)(1)(A) of title 5, United States Code.

(G) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant (as defined in section 8901(3) of title 5, United States Code) who is enrolled in a life insurance plan administered by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance
Corporation, the Federal Trade Commission, the Secretary of Housing and Urban Development, the National Credit Union Administration, the Comptroller of the Currency, or the Director of the Office of Thrift Supervision on the day before the designated transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, and 8714c of title 5, United States Code, or in a life insurance plan established by the Agency, without regard to any regularly scheduled open season and requirement of insurability.

(ii) Employee’s contribution.—An individual enrolled in a life insurance plan under this clause shall pay any employee contribution required by the plan.

(iii) Additional funding.—The Director shall transfer to the Employees’ Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Director and the Di-
rector of the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under clause (ii).

(iv) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this section, enrollment in a life insurance plan administered by the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Secretary of Housing and Urban Development, the National Credit Union Administration, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, or a Federal reserve bank immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.
(j) Implementation of Uniform Pay and Classification System.—Not later than 2 years after the designated transfer date, the Director shall implement a uniform pay and classification system for all transferred employees.

(k) Equitable Treatment.—In administering the provisions of this section, the Director—

(1) shall take no action that would unfairly disadvantage transferred employees relative to each other based on their prior employment by the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Secretary of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, the Federal Home Loan Bank Board or any successor to such Board, a Federal home loan bank, or a joint office of the Federal home loan banks; and

(2) may take such action as is appropriate in individual cases so that employees transferred under this section receive equitable treatment, with respect to those employees’ status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued
leave or vacation time, for prior periods of service with any Federal agency, including the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Department of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, the Federal Home Loan Bank Board or any successor to such Board, a Federal home loan bank, or a joint office of the Federal home loan banks.

(l) IMPLEMENTATION.—In implementing the provisions of this section, the Director shall work with the Director of the Office of Personnel Management and other entities with expertise in matters related to employment to ensure a fair and orderly transition for affected employees.

SEC. 4605. INCIDENTAL TRANSFERS.

(a) INCIDENTAL TRANSFERS AUTHORIZED.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall make such additional incidental transfers and dispositions of assets and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by
this title, as the Director may determine necessary to ac-
complish the purposes of this title.

(b) SUNSET.—The authority provided in this section
shall terminate 5 years after the date of the enactment
of this title.

SEC. 4606. INTERIM AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—The Secretary is authorized to
perform the functions of the Director under this subtitle
until the appointment of the Director in accordance with
section 4102.

(b) INTERIM ADMINISTRATIVE SERVICES BY THE
DEPARTMENT OF THE TREASURY.—The Secretary of the
Treasury may provide administrative services necessary to
support the Agency during the 24-month period beginning
on the date of the enactment of this title.

(c) INTERIM FUNDING FOR THE DEPARTMENT OF
THE TREASURY.—For the purposes of carrying out the
authorities granted in this section, there are appropriated
to the Secretary of the Treasury such sums as are nec-
essary. Notwithstanding any other provision of law, such
amounts shall be subject to apportionment under section
1517 of title 31, United States Code, and restrictions that
generally apply to the use of appropriated funds in title
31, United States Code, and other laws.
Subtitle G—Regulatory Improvements

SEC. 4701. COLLECTION OF DEPOSIT ACCOUNT DATA.

(a) PURPOSE.—The purpose of this section is to promote awareness and understanding of the access of individuals and communities to financial services, and to identify business and community development needs and opportunities.

(b) IN GENERAL.—

(1) RECORDS REQUIRED.—For each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to any financial institution, the financial institution shall maintain records of the number and dollar amounts of deposit accounts of customers.

(2) GEO-CODED ADDRESSES OF DEPOSITORS.—The customers’ addresses maintained pursuant to paragraph (1) shall be geo-coded so that data shall be collected regarding the census tracts of the residence or business location of the customers.

(3) IDENTIFICATION OF DEPOSITOR TYPE.—In maintaining records on any deposit account under this section, the financial institution shall also record whether the deposit account is for a residential or commercial customer.
(4) Public availability.—

(A) In general.—The following information shall be publicly available on an annual basis—

(i) the address and census tracts of each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to any financial institution;

(ii) the type of deposit account including whether the account was a checking or savings account;

(iii) data on the number and dollar amounts of the accounts, presented by census tract location of the residential and commercial customers; and

(iv) any other data deemed appropriate by the Director.

(B) Protection of identity.—In the publicly available data, any personally identifiable data element shall be removed so as to protect the identities of the commercial and residential customers.

(c) Availability of information.—
(1) Submission to agencies.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the Agency, or to a Federal banking agency, in accordance with regulations prescribed by the Director.

(2) Availability of information.—Information compiled and maintained under this section shall be retained for not less than 3 years after the date of preparation and shall be made available to the public, upon request, in the form required under regulations prescribed by the Director.

(d) Agency use.—The Director—

(1) shall assess the distribution of residential and commercial accounts at such financial institution across income and minority level of census tracts; and

(2) may use the data for any other purpose as permitted by law.

(e) Regulations and guidance.—

(1) In general.—The Director shall prescribe such regulations and issue guidance as may be necessary to carry out, enforce, and compile data pursuant to this section.
(2) **DATA COMPILATION REGULATIONS.**—The Director shall prescribe regulations regarding the provision of data compiled under this section to the Federal banking agencies to carry out the purposes of this section and shall issue guidance to financial institutions regarding measures to facilitate compliance with the this section and the requirements of regulations prescribed under this section.

(f) **DEFINITIONS.**—For purposes of this section, the following definitions shall apply:

(1) **AGENCY.**—The term “Agency” means the Consumer Financial Protection Agency.

(2) **CREDIT UNION.**—The term “credit union” means a Federal credit union or a State-chartered credit union (as such terms are defined in section 101 of the Federal Credit Union Act).

(3) **DEPOSIT ACCOUNT.**—The term “deposit account” includes any checking account, savings account, credit union share account, and other type of account as defined by the Director.

(4) **DIRECTOR.**—The term “Director” means the Director of the Agency.

(5) **FEDERAL BANKING AGENCY.**—The term “Federal banking agency” means the Board of Governors of the Federal Reserve System, the head of
the agency responsible for chartering and regulating national banks, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration; and the term “Federal banking agencies” means all of those agencies.

(6) **Financial Institution.**—The term “financial institution”—

(A) has the meaning given to the term “insured depository institution” in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes any credit union.

(g) **Effective Date.**—This section shall take effect on the designated transfer date.

**SEC. 4702. SMALL BUSINESS DATA COLLECTION.**

(a) **In General.**—The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended by inserting after section 704A the following new section:

“§ 704B. Small business loan data collection

“(a) **Purpose.**—The purpose of this section is to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women- and minority-owned small businesses.
“(b) IN GENERAL.—Subject to the requirements of this section, in the case of any application to a financial institution for credit for a small business, the financial institution shall—

“(1) inquire whether the business is a women- or minority-owned business, without regard to whether such application is received in person, by mail, by telephone, by electronic mail or other form of electronic transmission, or by any other means and whether or not such application is in response to a solicitation by the financial institution; and

“(2) maintain a record of the responses to such inquiry separate from the application and accompanying information.

“(c) RIGHT TO REFUSE.—Any applicant for credit may refuse to provide any information requested pursuant to subsection (b) in connection with any application for credit.

“(d) NO ACCESS BY UNDERWRITERS.—

“(1) IN GENERAL.—Where feasible, no loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit shall have access to any information provided by the applicant pursuant to a re-
quest under subsection (b) in connection with such application.

“(2) Exception.—If a financial institution determines that loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit should have access to any information provided by the applicant pursuant to a request under subsection (b), the financial institution will provide notice to the applicant of the access of the underwriter to this information, along with notice that the financial institution may not discriminate on this basis of this information.

“(e) Form and Manner of Information.—

“(1) In general.—Each financial institution shall compile and maintain, in accordance with regulations of the Agency, a record of the information provided by any loan applicant pursuant to a request under subsection (b).

“(2) Itemization.—Information compiled and maintained under paragraph (1) shall also be itemized in order to clearly and conspicuously disclose the following:
“(A) The number of the application and the date the application was received.

“(B) The type and purpose of the loan or other credit being applied for.

“(C) The amount of the credit or credit limit applied for and the amount of the credit transaction or the credit limit approved for such applicant.

“(D) The type of action taken with respect to such application and the date of such action.

“(E) The census tract in which is located the principal place of business of the small business loan applicant.

“(F) The gross annual revenue of the business in the last fiscal year of the small business loan applicant preceding the date of the application.

“(G) The race, sex, and ethnicity of the principal owners of the business.

“(H) Any additional data the Agency determines would aid in fulfilling the purposes of this section.

“(3) INCLUSION OF PERSONALLY IDENTIFIABLE INFORMATION PROHIBITED.—In compiling and maintaining any record of information under this
section, a financial institution may not include in such record the name, specific address (other than the census tract required under paragraph (1)(E)), telephone number, electronic mail address, and any other personally identifiable information concerning any individual who is, or is connected with, the small business loan applicant.

“(4) Discretion to delete or modify publicly available data.—The Agency may, in the discretion of the Agency, delete or modify data collected under this section which is or will be available to the public if the Agency determines that the deletion or modification of the data would advance a compelling privacy interest.

“(f) Availability of Information.—

“(1) Submission to agency.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the Agency.

“(2) Availability of information.—

“(A) In general.—Information compiled and maintained under this section shall be retained for not less than 3 years after the date of preparation and shall be made available to
the public, upon request, in the form required under regulations prescribed by the Agency.

“(B) Annual disclosure to the public.—In addition to the availability by request under subparagraph (A) of data compiled and maintained under this section, the Agency shall annually provide such data to the public.

“(C) Procedures.—The procedures for disclosing data compiled and maintained under this section to the public shall be determined by the Agency by regulation.

“(3) Compilation of aggregate data.—

“(A) In general.—The Agency may, in the discretion of the Agency, compile for the Agency’s own use compilations of aggregate data.

“(B) Public availability of aggregate data.—The Agency may, in the discretion of the Agency, make public compilations of aggregate data in such manner as the Agency may determine to be appropriate.

“(g) Definitions.—For purposes of this section, the following definitions shall apply:

“(1) Financial institution.—The term ‘financial institution’ means any partnership, com-
pany, corporation, association (incorporated or unin-
corporated), trust, estate, cooperative organization,
or other entity that engages in any financial activity.

“(2) MINORITY-OWNED BUSINESS.—The term
‘minority-owned business’ means a business—

“(A) more than 50 percent of the owner-
ship or control of which is held by 1 or more
minority individuals; and

“(B) more than 50 percent of the net prof-
it or loss of which accrues to 1 or more minor-
ity individuals.

“(3) WOMEN-OWNED BUSINESS.—The term
‘women-owned business’ means a business—

“(A) more than 50 percent of the owner-
ship or control of which is held by 1 or more
women; and

“(B) more than 50 percent of the net prof-
it or loss of which accrues to 1 or more women.

“(4) MINORITY.—The term ‘minority’ has the
meaning given to such term by section 1204(c)(3) of
the Financial Institutions Reform, Recovery, and

“(5) SMALL BUSINESS LOAN.—The term ‘small
business loan’ shall be defined by the Agency, which
may take into account—
“(A) the gross revenues of the borrower;

“(B) the total number of employees of the borrower;

“(C) the industry in which the borrower has its primary operations; and

“(D) the size of the loan.

“(h) AGENCY ACTION.—

“(1) IN GENERAL.—The Agency shall prescribe such regulations and issue such guidance as may be necessary to carry out, enforce, and compile data pursuant to this section.

“(2) EXCEPTIONS.—The Agency, by regulation or order, may adopt exceptions to any requirement of this section and may, conditionally or unconditionally, exempt any financial institution or class of institutions from the requirements of this section as the Agency determines to be necessary or appropriate to carry out the purposes and objectives of this section.

“(3) GUIDANCE.—The Agency shall issue guidance designed to facilitate compliance with the requirements of this section, including assisting financial institutions in working with applicants to determine whether the applicants are women- or minority-owned for the purposes of this section.”
(b) Technical and Conforming Amendment.—Section 701(b) of the Equal Credit Opportunity Act (15 U.S.C. 1691(b)) is amended—

(1) by striking “or” after the semicolon at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting “; or”; and

(3) by inserting after paragraph (4), the following new paragraph:

“(5) to make an inquiry under section 704B in accordance with the requirements of such section.”.

(c) Clerical Amendment.—The table of sections for the Equal Credit Opportunity Act is amended by inserting after the item relating to section 704A the following new item:

“704B. Small business loan data collection.”.

(d) Effective Date.—This section shall take effect on the designated transfer date.

SEC. 4703. ANNUAL FINANCIAL AUTOPSY.

(a) Study Required.—Not later than March 31 of each calendar year, the Director shall—

(1) conduct a scientific sampling of foreclosures and bankruptcies during the previous calendar year in each State or territory of the United States; and

(2) identify any underlying causes of such bankruptcies or foreclosures, including any specific...
financial products or services that have been the
cause of substantial numbers of such bankruptcies
or foreclosures.

(b) REPORT.—After the completion of each study re-
quired under subsection (a), the Director shall submit a
report to the Congress containing—

(1) any conclusions made by the Director in
carrying out such study;

(2) any specific financial products or services
that the Director has identified to have caused a
substantial number of bankruptcies or foreclosures,
as well as which companies or individuals provided
such financial products or services; and

(3) any recommendations the Director has for
legislation that would reduce the underlying causes
of bankruptcies and foreclosures identified in such
study.

SEC. 4704. REPORTING OF MORTGAGE DATA BY STATE.

(a) In General.—Section 104(a) of the Helping
Families Save Their Homes Act of 2009 (division A of
Public Law 111–22) is amended—

(1) in paragraph (2), by striking “resulting”
and inserting “in each State that result”;

(2) in paragraph (3), by inserting “each State
for” after “modifications in”; and
(3) in paragraph (4), by inserting “in each State” after “total number of loans”.

(b) CONFORMING AMENDMENT.—Section 104(b)(1)(A) of such Act is amended by adding at the end the following sentence: “Not later than 60 days after the date of the enactment of the Wall Street Reform and Consumer Protection Act of 2009, the Comptroller of the Currency and the Director of the Office of Thrift Supervision shall update such requirements to reflect amendments made to this section by such Act.”.

Subtitle H—Conforming Amendments

SEC. 4801. AMENDMENTS TO THE INSPECTOR GENERAL ACT OF 1978.


(b) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this title.

SEC. 4802. AMENDMENTS TO THE PRIVACY ACT OF 1974.

(a) APPLICABILITY.—Section 552a of title 5, United States Code, is amended by adding at the end the following new subsection:
“(w) APPLICABILITY TO CONSUMER FINANCIAL PROTECTION AGENCY.—Except as provided in the Consumer Financial Protection Agency Act of 2009, this section shall apply with respect to the Consumer Financial Protection Agency.”.

(b) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this title.

SEC. 4803. AMENDMENTS TO THE ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.

(a) SECTION 803(1).—Section 803(1) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3802(1)) is amended by striking paragraphs (B) and (C).

(b) SECTION 804(a).—Section 804(a) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3803(a)) is amended—

(1) in paragraphs (1), (2), and (3), by inserting “on or before the designated transfer date, as determined in section 4602 of the Consumer Financial Protection Agency Act of 2009” after “transactions made” each place such term appears;

(2) in paragraph (2), by striking “and” at the end;

(3) in paragraph (3), by striking the period at the end and inserting “; and”; and
(4) by adding at the end the following new paragraph:

“(4) with respect to transactions made after the designated transfer date, as determined in section 4602 of the Consumer Financial Protection Agency Act of 2009, only in accordance with regulations governing alternative mortgage transactions as issued by the Consumer Financial Protection Agency for federally chartered housing creditors, in accordance with the rulemaking authority granted to the Consumer Financial Protection Agency with regard to federally chartered housing creditors under laws other than this section.”.

(c) SECTION 804.—Section 804 of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3803) is amended—

(1) by striking subsection (c) and inserting the following new subsection:

“(c) EFFECT OF STATE LAW.—

“(1) IN GENERAL.—An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State Constitution, law, or regulation that prohibits an alternative mortgage transaction.
“(2) Rule of Construction.—For purposes of this subsection, a State Constitution, law, or regulation that prohibits an alternative mortgage transaction does not include any State Constitution, law, or regulation that regulates mortgage transactions generally, including any restriction on prepayment penalties or late charges.”; and

(2) by adding at the end the following new subsection:

“(d) Duties of Consumer Financial Protection Agency.—The Consumer Financial Protection Agency shall—

“(1) review the regulations identified by the Comptroller of the Currency, the National Credit Union Administration, and the Director of the Office of Thrift Supervision (as those regulations exist on the designated transfer date, as determined in section 4602 of the Consumer Financial Protection Agency Act of 2009) as applicable under paragraphs (1), (2), and (3) of subsection (a);

“(2) determine whether such regulations are fair and not deceptive and otherwise meet the objectives of section 4201 of the Consumer Financial Protection Agency Act of 2009; and
“(3) prescribe regulations under subsection (a)(4) after the designated transfer date, as determined under such Act.”.

(d) Effective Date and Scope of Application.—

(1) Effective Date.—This section shall take effect on the designated transfer date.

(2) Scope of Application.—The amendments made by subsection (a) shall not affect any transaction covered by the Alternative Mortgage Transaction Parity Act of 1982 which is entered into on or before the designated transfer date.

SEC. 4804. AMENDMENTS TO THE CONSUMER CREDIT PROTECTION ACT.

(a) Truth in Lending Act.—

(1) Section 103.—Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by striking subsection (b) and inserting the following new subsection:

“(b) Agency Definitions.—

“(1) Board.—The term ‘Board’ means the ‘Board of Governors of the Federal Reserve System’.

“(2) Agency.—The term ‘Agency’ means the Consumer Financial Protection Agency.”.
(2) Universal Amendment relating to Board of Governors of the Federal Reserve System.—

(A) In general.—Except as provided in subparagraph (B), the Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by striking “Board” each place such term appears, including in chapters 4 and 5 relating to credit billing and consumer leases, and inserting “Agency”.

(B) Exceptions.—The amendment described in subparagraph (A) shall not apply to sections 108(a) (as amended by paragraph (4)) and 140(d) and shall not apply to the term “Board” when used in reference to the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(3) Section 105.—Section 105(b) of the Truth in Lending Act (15 U.S.C. 1604(b)) is amended by striking the first sentence and inserting the following: “The Agency shall publish a single, integrated disclosure for mortgage loan transactions, including real estate settlement cost statements, which include the disclosure requirements of this title, in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act that, taken
together, may apply to transactions subject to both or either law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of those titles, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.’’.

(4) SECTION 108.—Section 108 of the Truth in Lending Act (15 U.S.C. 1607) is amended—

(A) by striking subsection (a) and inserting the following new subsection:

‘‘(a) ENFORCING AGENCIES.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance with the requirements imposed under this title shall be enforced as follows:

‘‘(1) Under section 8 of the Federal Deposit Insurance Act, in the case of—

‘‘(A) national banks, and Federal branches and Federal agencies of foreign banks, by the head of the agency responsible for chartering and regulating national banks;

‘‘(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured
State branches of foreign banks), commercial
lending companies owned or controlled by for-
eign banks, and organizations operating under
section 25 or 25A of the Federal Reserve Act,
by the Board;

“(C) depository institution insured by the
Federal Deposit Insurance Corporation (other
than members of the Federal Reserve System,
Federal savings associations, and savings and
loan holding companies) and insured State
branches of foreign banks, by the Board of Di-
rectors of the Federal Deposit Insurance Cor-
poration; and

“(D) Federal savings associations and sav-
ings and loan holding companies, by the Direc-
tor of the Office of Thrift Supervision.

“(2) Under subtitle E of the Consumer Finan-
cial Protection Agency Act of 2009, by the Agency.

“(3) Under the Federal Credit Union Act, by
the head of the agency responsible for chartering
and regulating Federal credit unions.

“(4) Under the Federal Aviation Act of 1958,
by the Secretary of Transportation with respect to
any air carrier or foreign air carrier subject to that
Act.
“(5) Under the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

“(6) Under the Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.”; and

(B) by striking subsection (c) and inserting the following new subsection:

“(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency (other than the Consumer Financial Protection Agency) under subsection (a) and subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under
the Federal Trade Commission Act are available to the 
Commission to enforce compliance by any person with the 
requirements under this title, irrespective of whether that 
person is engaged in commerce or meets any other jurisdic-
tional tests in the Federal Trade Commission Act.”

(5) Universal amendment relating to the 
Federal Trade Commission.—

(A) In general.—Except as provided in 
subparagraph (B) (and except for any insertion 
of “Federal Trade Commission” made by this 
subtitle), the Truth in Lending Act (15 U.S.C. 
1601 et seq.) is amended by striking “Federal 
Trade Commission” each place such term ap-
pears and inserting “Agency”.

(B) Exceptions.—The amendment de-
scribed in subparagraph (A) shall not apply to 
sections 108(c) (as amended by paragraph (4)) 
129(m) (as amended by paragraph (7)), 140A, 
or 149 (as amended by paragraph (8)).

(6) Section 127.—Subparagraph (C) of section 
127(b)(11) of the Truth in Lending Act (15 U.S.C. 
1637(b)(11)) is amended to read as follows:

“(C) Notwithstanding subparagraphs (A) 
and (B), in the case of a creditor with respect 
to which compliance with this title is enforced
by the Agency, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously:

‘Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 5 percent minimum monthly payment on a balance of $300 at an interest rate of 17 percent would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call the Consumer Financial Protection Agency at this toll-free number: ____________ [the blank space to be filled in by the creditor].’ A creditor who is subject to this subparagraph shall not be subject to subparagraph (A) or (B).’.

(7) SECTION 129.—Section 129(m) of the Truth in Lending Act (15 U.S.C. 1639(m)) is amended to read as follows:

“(m) CIVIL PENALTIES IN FEDERAL TRADE COMMISSION ENFORCEMENT ACTIONS.—For purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued by the Agency pursuant to sub-
section (l)(2) of this section shall be treated as a violation of a regulation promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.”.

(8) SECTION 149.—Section 149(b) of the Truth in Lending Act (15 U.S.C. 1665d(b)) is amended by inserting “the Federal Trade Commission,” after “in consultation with”.

(b) FAIR CREDIT REPORTING ACT.—

(1) SECTION 603.—Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended—

(A) by redesignating subsections (w) and (x) as subsections (x) and (y), respectively; and

(B) by inserting after subsection (v) the following new subsection:

“(w) AGENCY.—The term ‘Agency’ means the Consumer Financial Protection Agency.”.

(2) UNIVERSAL AMENDMENTS RELATING TO THE FEDERAL TRADE COMMISSION.—Other than in connection with the amendment made by paragraphs (7)(B), (8)(A), (8)(C), and (8)(D) of this subsection (and except for any insertion of “Federal Trade Commission” made by this subtitle), the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended—
(A) by striking “Federal Trade Commission” each place such term appears and inserting “Agency”; 

(B) by striking “Commission” each place such term appears (other than in connection with the term amended in subparagraph (A)) and inserting “Agency”; and 

(C) by striking “Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly” each place such term appears in sections 605(h)(2) and 623(a)(8)(A) and inserting “Agency shall”. 

(3) SECTION 603.—Section 603(k)(2) of the Fair Credit Reporting Act (15 U.S.C. 1681a(k)(2)) is amended by striking “Board of Governors of the Federal Reserve System” and inserting “Agency”. 

(4) SECTION 604.—Subsection 604(g) of the Fair Credit Reporting Act (15 U.S.C. 1681b(g)) is amended— 

(A) by striking subparagraph (C) of paragraph (3) and inserting the following new subparagraph: 

“(C) as otherwise determined to be necessary and appropriate, by regulation or order and subject to paragraph (6), by the Agency
(with respect to any covered person subject to
the jurisdiction of such agency under paragraph
(2) of section 621(b)), or the applicable State
insurance authority (with respect to any person
engaged in providing insurance or annuities).”;
and

(B) by striking paragraph (5) and insert-
ing the following new paragraph:

“(5) REGULATIONS REQUIRED.—The Agency
may, after notice and opportunity for comment, pre-
scribe regulations that permit transactions under
paragraph (2) that are determined to be necessary
and appropriate to protect legitimate operational,
transactional, risk, consumer, and other needs (and
which shall include permitting actions necessary for
administrative verification purposes), consistent with
the intent of paragraph (2) to restrict the use of
medical information for inappropriate purposes.”.

(5) SECTION 609.—Section 609(d)(1) of the
Fair Credit Reporting Act (15 U.S.C. 1681g(d)(1))
is amended by inserting “the Federal Trade Com-
mission,” after “in consultation with”.

(6) SECTION 611.—Section 611(e) of the Fair
Credit Reporting Act (15 U.S.C. 1681i(e)) is
amended—
(A) by amending paragraph (2) to read as follows:

“(2) EXCLUSION.—Complaints received or obtained by the Agency pursuant to its investigative authority under the Consumer Financial Protection Agency Act of 2009 shall not be subject to paragraph (1).”; and

(B) in the heading of paragraph (3) by inserting “CONSUMER REPORTING” before “AGENCY”.

(7) SECTION 615.—Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended—

(A) in subsection (d)(2)(B), by inserting “the Federal Trade Commission,” after “in consultation with”;

(B) in subsection (e)(1), by striking “and the Commission” and inserting “the Federal Trade Commission, the Securities and Exchange Commission, and the Commodities Futures Trading Commission”; and

(C) by striking subparagraph (A) of subsection (h)(6) and inserting the following:

“(A) RULES REQUIRED.—The Agency shall prescribe rules.”.
(8) SECTION 621.—Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amend-
ed—

(A) by striking subsection (a) and insert-
ing the following new subsection:

“(a) Enforcement by Federal Trade Commis-
sion.—

“(1) In general.—Subject to section 4202 of
the Consumer Financial Protection Agency Act of
2009, compliance with the requirements imposed
under this title shall be enforced under the Federal
Trade Commission Act by the Federal Trade Com-
mission with respect to consumer reporting agencies
and all other persons subject thereto, except to the
extent that enforcement of the requirements imposed
under this title is specifically committed to some
other government agency (other than the Consumer
Financial Protection Agency) under subsection (b)
hereof. For the purpose of the exercise by the Fed-
eral Trade Commission of its functions and powers
under the Federal Trade Commission Act, a viola-
tion of any requirement or prohibition imposed
under this title shall constitute an unfair or decep-
tive act or practice in commerce in violation of sec-
tion 5(a) of the Federal Trade Commission Act and
shall be subject to enforcement by the Federal Trade Commission under section 5(b) of such Act with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers (subject to section 4202 of the Consumer Financial Protection Agency Act of 2009), including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title and to require the filing of reports, the production of documents, and the appearance of witnesses as though the applicable terms and conditions of the Federal Trade Commission Act were part of this title. Any person violating any of the provisions of this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions thereof were part of this title.

“(2) CIVIL MONEY PENALTIES.—
“(A) IN GENERAL.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, in the event of a knowing violation, which constitutes a pattern or practice of violations of this title, the Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this title. In such action, such person shall be liable for a civil penalty of not more than $2,500 per violation.

“(B) FACTORS IN DETERMINING AMOUNT.—In determining the amount of a civil penalty under subparagraph (A), the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

“(3) EXCEPTION.—Notwithstanding paragraph (2), a court may not impose any civil penalty on a person for a violation of section 623(a)(1) unless the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission or the Agency, as the
case may be, and has violated the injunction or
order, and the court may not impose any civil pen-
alty for any violation occurring before the date of
the violation of the injunction or order.”;

(B) by striking subsection (b) and insert-
ing the following new subsection:

“(b) ENFORCEMENT BY OTHER AGENCIES.—Subject
to section 4202 of the Consumer Financial Protection
Agency Act of 2009, compliance with the requirements im-
posed under this title with respect to consumer reporting
agencies, persons who use consumer reports from such
agencies, persons who furnish information to such agen-
cies, and users of information that are subject to sub-
section (d) of section 615 shall be enforced as follows:

“(1) Under section 8 of the Federal Deposit In-
urance Act, in the case of—

“(A) national banks, and Federal branches

and Federal agencies of foreign banks, by the
head of the agency responsible for chartering
and regulating national banks;

“(B) member banks of the Federal Reserve
System (other than national banks), branches
and agencies of foreign banks (other than Fed-
eral branches, Federal agencies, and insured
State branches of foreign banks), commercial
lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, by the Board of Governors of the Federal Reserve System;

“(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System, Federal savings associations, and savings and loan holding companies) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

“(D) Federal savings associations and savings and loan holding companies, by the Director of the Office of Thrift Supervision.


“(3) Under the Federal Credit Union Act, by the National Credit Union Administration Board with respect to any Federal credit union.

“(4) Under subtitle IV of title 49, United States Code, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board.
“(5) Under the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that Act.

“(6) Under the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

“(7) Under the Commodity Exchange Act, with respect to a person subject to the jurisdiction of the Commodity Futures Trading Commission.

“(8) Under the Federal securities law and any other laws subject to the jurisdiction of the Securities and Exchange Commission, with respect to a person subject to the jurisdiction of the Securities and Exchange Commission.

Any term used in paragraph (1) that is not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act shall have the meaning given to such term in section 1(b) of the International Banking Act of 1978.”;

(C) in paragraph (2) of subsection (c)—

(i) by inserting “the Agency and” before “the Federal Trade Commission” in the first sentence;
(ii) by inserting “Agency and the Federal Trade” after “provide the”; and

(iii) by inserting “Agency,” before “Federal Trade Commission” in the second sentence;

(D) in paragraph (4) of subsection (c)—

(i) by inserting “Agency”, before “the Federal Trade Commission”; and

(ii) inserting “Agency, the Federal Trade” after “complaint of the”;

(E) in paragraph (2) of subsection (f), by inserting “the Federal Trade Commission” after “in consultation with”;

(F) by striking subsection (e) and inserting the following new subsection:

“(e) REGULATORY AUTHORITY.—The Agency shall prescribe such regulations as necessary to carry out the purposes of this Act, except that, with respect to sections 615(e) and 628 of this title, the agencies identified in subsections (a) and (b) of this section shall prescribe such regulations as necessary to carry out the purposes of such sections with respect to entities within their enforcement authority under such subsections.”; and

(G) in the heading of subsection (g) by striking “FTC”.

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(8) **SECTION 623.**—Section 623 of the Fair Credit Reporting Act (15 U.S.C. 1681s–2) is amended—

(A) by amending subparagraph (a)(7)(D) to read as follows:

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“(D) MODEL DISCLOSURE.—

“(i) DUTY OF AGENCY TO PREPARE.—The Agency shall prescribe a brief model disclosure a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.

“(ii) USE OF MODEL NOT REQUIRED.—No provision of this paragraph shall be construed as requiring a financial institution to use any such model form prescribed by the Agency.

“(iii) COMPLIANCE USING MODEL.—A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any such model form prescribed by the Agency, or the financial institution uses any such model form and rearranges its format.”.
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(B) by amending subsection (e) to read as follows:
“(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED.—

“(1) GUIDELINES.—The Agency shall, with respect to the entities that are subject to its enforcement authority under section 621—

“(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

“(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures or implementing the guidelines established pursuant to subparagraph (A).

“(2) CRITERIA.—In developing the guidelines required by paragraph (1)(A), the Agency shall—

“(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;
“(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

“(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to ensure the accuracy and integrity of information furnished to consumer reporting agencies; and

“(D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct re-investigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies.”.

(e) EQUAL CREDIT OPPORTUNITY ACT.—

(1) SECTION 701.—Section 701 of the Equal Credit Opportunity Act (15 U.S.C. 1691) is amended by striking “Board” each place such term appears and inserting “Agency”.

(2) SECTION 702.—Section 702(c) of the Equal Credit Opportunity Act (15 U.S.C. 1691a) is amended to read as follows:

“(c) The term ‘Agency’ means the Consumer Financial Protection Agency.”.
(3) **SECTION 703.**—Section 703 of the Equal Credit Opportunity Act (15 U.S.C. 1691b) is amended—

(A) by striking subsection (b);

(B) in subsection (a)—

(i) by striking “(1)”; and

(ii) by redesignating paragraphs (2), (3), (4), and (5) as subsections (b), (c), (d), and (e), respectively;

(C) in subsection (e) (as so redesignated)—

(i) by striking “paragraph (2)” and inserting “subsection (b)”; and

(ii) by striking “such paragraph” and inserting “such subsection”;

(D) in subsection (d) (as so redesignated)—

(i) by striking “subsection” and inserting “section”;

(ii) by striking “Act” and inserting “title”; and

(iii) by striking “this paragraph” and inserting “this subsection”; and
(E) by striking “Board” each place such term appears in such section and inserting “Agency”.

(4) Section 704.—Section 704 of the Equal Credit Opportunity Act (15 U.S.C. 1691c) is amended—

(A) in subsection (a)—

(i) in the matter preceding paragraph (1), by striking “Compliance” and inserting “Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance”;

(ii) in paragraph (1)(A), by striking “Office of the Comptroller of the Currency” and inserting “head of the agency responsible for chartering and regulating national banks”;

(iii) in paragraph (1)(B)—

(I) by inserting “of Governors of the Federal Reserve System” after “Board”; and

(II) by striking “and” after the semicolon;

(iv) in paragraph (1)(C), by inserting “and” after the semicolon;
(v) by inserting after subparagraph
(C) of paragraph (1) the following new
subparagraph:
“(D) savings associations and savings and
loan holding companies by the Director of the
Office of Thrift Supervision;”; and

(vi) by amending paragraph (2) to
read as follows:
“(2) Subtitle E of the Consumer Financial Pro-
tection Agency Act of 2009, by the Agency.”;

(B) by striking subsection (c) and insert-
ing the following new subsection:
“(c) OVERALL ENFORCEMENT AUTHORITY OF FED-
ERAL TRADE COMMISSION.—Except to the extent that en-
forcement of the requirements imposed under this title is
specifically committed to some other Government agency
(other than the Consumer Financial Protection Agency)
under subsection (a) and subject to section 4202 of the
Consumer Financial Protection Agency Act of 2009, the
Federal Trade Commission shall enforce such require-
ments. For the purpose of the exercise by the Federal
Trade Commission of its functions and powers under the
Federal Trade Commission Act, a violation of any require-
ment imposed under this title shall be deemed a violation
of a requirement imposed under that Act. All of the func-
tions and powers of the Federal Trade Commission under
the Federal Trade Commission Act are available to the
Commission to enforce compliance by any person with the
requirements imposed under this title, irrespective of
whether that person is engaged in commerce or meets any
other jurisdictional tests in the Federal Trade Commission
Act, including the power to enforce any regulation pre-
scribed by the Director under this title in the same man-
ner as if the violation had been a violation of a Federal
Trade Commission trade regulation rule.”; and

(C) in subsection (d), by striking “Board”
and inserting “Agency”.

(5) Section 704a.—Section 704A(a)(1) of the
1(a)(1)) is amended in by striking “Board” and in-
serting “Agency”.

(6) Section 705.—Section 705 of the Equal
Credit Opportunity Act (15 U.S.C. 1691d) is
amended—

(A) in subsection (f), by striking “Board”
each place such term appears and inserting
“Agency”; and

(B) in subsection (g), by striking “Board”
and inserting “Agency”.

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(7) SECTION 706.—Section 706 of the Equal Credit Opportunity Act (15 U.S.C. 1691e) is amended—

(A) in subsection (e)—

(i) by striking “Board” each place such term appears and inserting “Agency”;

and

(ii) by striking “Federal Reserve System” and inserting “Consumer Financial Protection Agency”;

(B) in subsection (f), by striking “two years” each place such term appears and inserting “5 years”;

(C) in subsection (g)—

(i) by striking “The agencies having”, in the 1st sentence, and inserting “The Agency and the agencies having”;

(ii) by striking “Each agency referred”, in the 2nd sentence, and inserting “The Agency and each agency referred”;

(iii) by striking “Each such agency”, in the 3rd sentence, and inserting “The Agency and each such agency”; and

(iv) by striking “whenever the agency” in the 3rd sentence, and inserting
“whenever the Agency or an agency having
responsibility for administrative enforce-
ment under section 704”; and
(D) in subsection (k)—

(i) by striking “Whenever an agency”
and inserting “Whenever the Agency or an
agency”; and

(ii) by striking “the agency shall no-
tify” and inserting “the Agency, or an
agency referred to in any such paragraph,
as the case may be, shall notify”.

(8) SECTION 707.—Section 707 of the Equal
Credit Opportunity Act (15 U.S.C. 1691f) is amend-
ed by striking “Board” each place such term ap-
ppears and inserting “Agency”.

(d) FAIR DEBT COLLECTION PRACTICES ACT.—

(1) SECTION 803.—Section 803 of the Fair
Debt Collection Practices Act (15 U.S.C. 1692a) is
amended—

(A) by redesignating paragraphs (1), (2),
(3), (4), (5), (6), (7), and (8) as paragraphs
(2), (3), (4), (5), (6), (7), (8), and (9), respec-
tively; and

(B) by inserting before paragraph (2) (as
so redesignated) the following new paragraph:
“(1) The term ‘Agency’ means the Consumer Financial Protection Agency.”.

(2) SECTION 813.—Section 813(e) of the Fair Debt Collection Practices Act (15 U.S.C. 1692k(e)) is amended by striking “Commission” and inserting “Agency”.

(3) SECTION 814.—Section 814 of the Fair Debt Collection Practices Act (15 U.S.C. 1692l) is amended—

(A) by striking subsection (a) and inserting the following new subsection:

“(a) FEDERAL TRADE COMMISSION.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance with this title shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another agency (other than the Consumer Financial Protection Agency) under subsection (b). For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this title, irre-
pective of whether that person is engaged in commerce
or meets any other jurisdictional tests in the Federal
Trade Commission Act, including the power to enforce the
provisions of this title in the same manner as if the viola-
tion had been a violation of a Federal Trade Commission
trade regulation rule.”;

(B) in subsection (b)—

(i) in the matter preceding paragraph
    (1), by striking “Compliance” and insert-
ing “ENFORCEMENT BY OTHER AGEN-
CY.—Subject to section 4202 of the Con-
sumer Financial Protection Agency Act of
2009, compliance”;

(ii) in paragraph (1)(A), by striking
    “Office of the Comptroller of the Curr-
ency;” and inserting “head of the agency
    responsible for chartering and regulating
    national banks;”;

(iii) in paragraph (1)(B), by striking
    “and” after the semicolon;

(iv) in paragraph (1)(C), by inserting
    “and” after the semicolon;

(v) by inserting after subparagraph
    (C) of paragraph (1) the following new
    subparagraph:
“(D) savings associations and savings and loan holding companies by the Director of the Office of Thrift Supervision;”; and

(vi) by striking paragraph (2) and inserting the following new paragraph:

“(2) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency;”; and

(C) by striking subsection (d) and inserting the following new subsection:

“(d) REGULATIONS.—The Agency may prescribe regulations with respect to the collection of debts by any debt collector.”.

(4) Section 815.—Section 815 (15 U.S.C. 1692m) is amended—

(A) in the section heading, by striking “Commission” and inserting “Agency”; and

(B) by striking “Commission” each place such term appears and inserting “Agency”.

(5) Section 817.—Section 817 (15 U.S.C. 1692o) is amended by striking “Commission” each place such term appears and inserting “Agency”.

(e) ELECTRONIC FUND TRANSFER ACT.—
(1) **SECTION 903.**—Section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a) is amended—

   (A) by striking paragraph (3) and inserting the following new paragraph:

   “(3) the term ‘Agency’ means the Consumer Financial Protection Agency;”; and

   (B) in paragraph (6), by striking “Board” and inserting “Agency”.

(2) **SECTION 904.**—Section 904 of the Electronic Fund Transfer Act (15 U.S.C. 1693b) is amended by striking “Board” each place such term appears and inserting “Agency”.

(3) **SECTION 905.**—Section 905 of the Electronic Fund Transfer Act (15 U.S.C. 1693c) is amended by striking “Board” each place such term appears and inserting “Agency”.

(4) **SECTION 906.**—Section 906(b) of the Electronic Fund Transfer Act (15 U.S.C. 1693d(b)) is amended by striking “Board” and inserting “Agency”.

(5) **SECTION 907.**—Section 907(b) of the Electronic Fund Transfer Act (15 U.S.C. 1693e(b)) is amended by striking “Board” and inserting “Agency”.
(6) SECTION 908.—Section 908(f)(7) of the Electronic Fund Transfer Act (15 U.S.C. 1693f(f)(7)) is amended by striking “Board” and inserting “Agency”.


(8) SECTION 911.—Section 911(b)(3) of the Electronic Fund Transfer Act (15 U.S.C. 1693i(b)(3)) is amended by striking “Board” and inserting “Agency”.

(9) SECTION 915.—Section 915(d) of the Electronic Fund Transfer Act (15 U.S.C. 1693m(d)) is amended—

(A) by striking “Board” each place such term appears and inserting “Agency”; and

(B) by striking “Federal Reserve System” and inserting “Consumer Financial Protection Agency”.

(10) SECTION 917.—Section 917 of the Electronic Fund Transfer Act (15 U.S.C. 1693o) is amended—

(A) in subsection (a)—
(i) by striking “Compliance” and inserting “Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance”;

(ii) in paragraph (1)(A), by striking “Office of the Comptroller of the Currency” and inserting “head of the agency responsible for chartering and regulating national banks”;

(iii) in paragraph (1)(B), by inserting “of Governors of the Federal Reserve System” after “Board”; and

(iv) by striking paragraph (2) and inserting:

“(2) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency”; and

(B) by striking subsection (c) and inserting the following new subsection:

“(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency (other than the Consumer Financial Protection Agency) under subsection (a) and subject to section 4202 of the Consumer Financial Protection Agency Act of 2009,
the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person subject to the jurisdiction of the Commission with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.”.

(11) Section 918.—Section 918 of the Electronic Fund Transfer Act (15 U.S.C. 1693p) is amended by striking “Board” each place such term appears and inserting “Agency”.

(12) Section 919.—Section 919 of the Electronic Fund Transfer Act (15 U.S.C. 1693q) is amended by striking “Board” each place such term appears and inserting “Agency”.

(13) Section 920.—Section 920 of the Electronic Fund Transfer Act (15 U.S.C. 1693r) is
amended by striking “Board” each place such term appears and inserting “Agency”.

(f) Amendments to HOEPA Relating to the Truth in Lending Act.—Section 158 of the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note) (relating to hearings on home equity lending) is amended—

(1) in subsection (a), by striking “Board of Governors of the Federal Reserve System, in consultation with the Consumer Advisory Council of the Board,” and inserting “Consumer Financial Protection Agency, in consultation with the Advisory Board to the Agency”; and

(2) in subsection (b), by striking “Board of Governors of the Federal Reserve System” and inserting “Consumer Financial Protection Agency”.

(g) Amendment to the Fair and Accurate Credit Transactions Act of 2003 Relating to the Fair Credit Reporting Act.—Section 214(b)(1) of the Fair and Accurate Credit Transactions Act of 2003 (15 U.S.C. 1681s–3 note) is amended by striking “The Federal banking agencies, the National Credit Union Administration, and the Commission, with respect to the entities that are subject to their respective enforcement authority under section 621 of the Fair Credit Reporting Act and”
and inserting “The Consumer Financial Protection Agency, with respect to a person subject to the enforcement authority of the Agency, the Commodity Futures Trading Commission, and”.

SEC. 4805. AMENDMENTS TO THE EXPEDITED FUNDS AVAILABILITY ACT.

(a) Section 605.—Section 605(f)(1) of the Expedited Funds Availability Act (12 U.S.C. 4004(f)(1)) is amended by inserting “, in consultation with the Director of the Consumer Financial Protection Agency,” after “Board”.

(b) Section 609.—Section 609(a) of the Expedited Funds Availability Act (12 U.S.C. 4008(a)) is amended by inserting “, in consultation with the Director of the Consumer Financial Protection Agency,” after “Board”.

SEC. 4806. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.

(a) Section 8.—Section 8(t) the Federal Deposit Insurance Act (12 U.S.C. 1818(t)), as amended by section 1111(b)(2), is further amended by adding at the end the following new paragraph:

“(7) Referral to Consumer Financial Protection Commission.—Each appropriate Federal banking agency shall make a referral to the Consumer Financial Protection Agency when the Fed-
eral banking agency has a reasonable belief that a
violation of an enumerated consumer law, as defined
in section 4202(c)(2) of the Consumer Financial
Protection Agency Act of 2009, by any insured de-
pository institution or institution-affiliated party
within the jurisdiction of that appropriate Federal
banking agency.”.
(b) SECTION 43.—Section 43 of the Federal Deposit
Insurance Act (12 U.S.C. 1831t) is amended—
(1) in subsection (c), by striking “Federal
Trade Commission” and inserting “Agency”;
(2) in subsection (d), by striking “Federal
Trade Commission” and inserting “Agency”;
(3) in subsection (e)—
(A) in paragraph (2)(B), by striking “Fed-
eral Trade Commission” and inserting “Agen-
cy”; and
(B) by adding at the end the following new
paragraph:
“(5) Agency.—The term ‘Agency’ means the
Consumer Financial Protection Agency.”.
(c) SECTION 43(f).—Section 43(f) of the Federal De-
posit Insurance Act (12 U.S.C. 1831t(f)) is amended—
(1) by striking paragraph (1) and inserting the
following new paragraph:
“(1) LIMITED ENFORCEMENT AUTHORITY.—Compliance with the requirements of subsections (b), (c), and (e), and any regulation prescribed or order issued under such subsection, shall be enforced under the Consumer Financial Protection Agency Act of 2009 by the Agency with respect to any person (and without regard to the provision of a consumer financial product or service).”; and

(2) in paragraph (2), by striking subparagraph (C) and inserting the following new subparagraph:

“(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Agency has instituted an enforcement action for a violation of this section, no appropriate State supervisory may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Agency for any violation of this section that is alleged in that complaint.”.

SEC. 4807. AMENDMENTS TO THE GRAMM-LEACH-BLILEY ACT.

(a) SECTION 501.—Section 501(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801(b)) is amended by inserting “(other than the Consumer Financial Protection Agency)” after “title”.

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(b) SECTION 502.—Section 502(e)(5) of the Gramm-Leach-Bliley Act (15 U.S.C. 6802(e)(5)) is amended by inserting “the Consumer Financial Protection Agency,” after “(including”.

(c) SECTION 503.—Section 503(e)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6803(e)(1)) is amended—

(1) by inserting “Consumer Financial Protection Agency in consultation with the other” before “agencies”; and

(2) by striking “jointly”.

(d) SECTION 504.—Section 504(a)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6804(a)(1)) is amended—

(1) by striking “The Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury,” and inserting “The Consumer Financial Protection Agency and”;

(2) by striking “, and the Federal Trade Commission”; and

(3) by inserting “the Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury, the Federal Trade Commission, and” before “representatives of State insurance authorities”.

(e) SECTION 505.—
(1) Section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)) is amended—

(A) in the matter preceding paragraph (1), by striking “This subtitle and the regulations prescribed thereunder shall be enforced by” and inserting “Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, this subtitle and the regulations prescribed under this title shall be enforced by the Consumer Financial Protection Agency,”; and

(B) by inserting after paragraph (7) the following new paragraph:

“(8) Under the Consumer Financial Protection Agency Act of 2009, by the Consumer Financial Protection Agency in the case of financial institutions and other covered persons and service providers subject to the jurisdiction of the Agency under that Act, but not with respect to the standards under section 501.”.

(2) Section 505(b)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(b)(1)) is amended by inserting “, other than the Consumer Financial Protection Agency,” after “described in subsection (a)”.

(f) SECTION 507.—Subsection 507(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6807(b)) is amended by strik-
ing “Federal Trade Commission” and inserting “Consumer Financial Protection Agency, or in the case of a rule under section 501(b), the Federal Trade Commission or the Securities and Exchange Commission”.

**SEC. 4808. AMENDMENTS TO THE HOME MORTGAGE DISCLOSURE ACT OF 1975.**

(a) **Section 303.**—Section 303 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2802) is amended—

(1) by redesignating paragraphs (1), (2), (3), (4), (5), and (6) as paragraphs (2), (3), (4), (5), (6), and (7), respectively; and

(2) by inserting before paragraph (2) (as so redesignated) the following new paragraph:

“(1) The term ‘Agency’ means the Consumer Financial Protection Agency.”.

(b) **Universal Amendment Relating to Agency.**—Except as provided in subsections (c), (d), (e), and (f), the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801–11) is amended by striking “Board” each place such term appears and inserting “Agency”.

(c) **Section 304.**—Section 304 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(h)) is amended—

(1) in subsection (b)—
(A) by striking “and” after the semicolon at the end of paragraph (3);

(B) by striking “and gender” in paragraph (4), and inserting “age, and gender”;

(C) by striking the period at the end of paragraph (4) and inserting a semicolon; and

(D) by inserting after paragraph (4) the following new paragraphs:

“(5) the number and dollar amount of mortgage loans grouped according to the following measurements:

“(A) the total points and fees payable at origination in connection with the mortgage as determined by the Agency, taking into account section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4));

“(B) the difference between the annual percentage rate associated with the loan and a benchmark rate or rates for all loans;

“(C) the term in months of any prepayment penalty or other fee or charge payable on repayment of some portion of principal or the entire principal in advance of scheduled payments; and
“(D) such other information as the Agency may require; and

“(6) the number and dollar amount of mortgage loans and completed applications grouped according to the following measurements:

“(A) the value of the real property pledged or proposed to be pledged as collateral;

“(B) the actual or proposed term in months of any introductory period after which the rate of interest may change;

“(C) the presence of contractual terms or proposed contractual terms that would allow the mortgagor or applicant to make payments other than fully-amortizing payments during any portion of the loan term;

“(D) the actual or proposed term in months of the mortgage loan;

“(E) the channel through which application was made, including retail, broker, and other relevant categories;

“(F) as the Agency may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in section 1503 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008;
“(G) as the Agency may determine to be appropriate, a universal loan identifier;

“(H) as the Agency may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral;

“(I) the credit score of mortgage applicants and mortgagors in such form as the Agency may prescribe, except that the Agency shall modify or require modification of credit score data that is or will be available to the public to protect the compelling privacy interest of the mortgage applicant or mortgagors; and

“(J) such other information as the Agency may require.”;

(2) by striking subsection (h) and inserting the following new subsection:

“(h) Submission to Agencies.—

“(1) In general.—The data required to be disclosed under subsection (b) shall be submitted to the Agency or to the appropriate agency for any institution reporting under this title, in accordance with regulations prescribed by the Agency. Institutions will not be required to report new data required under section 4808(c) before the first Janu-
ary 1 that occurs after the end of the 9-month pe-
period beginning on the date that regulations pre-
scribed by the Agency are prescribed in final form.

“(2) REGULATIONS.—Notwithstanding the re-
quirement of section 304(a)(2)(A) for disclosure by
census tract, the Agency, in cooperation with other
appropriate regulators, including—

“(A) the head of the agency responsible for
chartering and regulating national banks for
national banks and Federal branches, Federal
agencies of foreign banks, and savings associa-
tions;

“(B) the Federal Deposit Insurance Cor-
poration for depository institutions insured by
the Federal Deposit Insurance Corporation
(other than members of the Federal Reserve
System, Federal savings associations, and sav-
ings and loan holding companies) and insured
State branches of foreign banks;

“(C) the Director of the Office of Thrift
Supervision for Federal savings associations
and savings and loan holding companies;

“(D) the National Credit Union Adminis-
tration Board for credit unions; and
“(E) the Secretary of Housing and Urban Development for other lending institutions not regulated by an agency referred to in subparagraph (A), (B), (C), or (D), shall develop regulations prescribing the format for such disclosures, the method for submission of the data to the appropriate regulatory agency, and the procedures for disclosing the information to the public.

“(3) REQUIRED DISCLOSURES.—The regulations prescribed under paragraph (2) shall require the collection of data required to be disclosed under subsection (b) with respect to loans sold by each institution reporting under this title, and, in addition, shall require disclosure of the class of the purchaser of such loans.

“(4) ADDITIONAL DATA OR EXPLANATIONS.—Any reporting institution may submit in writing to the Agency or to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans.”;

(3) in subsection (i), by striking “subsection (b)(4)” and inserting “paragraphs (4), (5), and (6) of subsection (b)”;}
(4) in subsection (j)—

(A) by striking “‘(as” where such term appears in paragraph (1) and inserting “‘(containing loan-level and application-level information relating to disclosures required under subsections (a) and (b) and as otherwise’”;

(B) by striking “in the format in which such information is maintained by the institution” where such term appears in paragraph (2)(A), and inserting “in such formats as the Agency may require”; and

(C) by striking paragraph (3) and inserting the following new paragraph:

“(3) CHANGE OF FORM NOT REQUIRED.—A depository institution meets the disclosure requirement of paragraph (1) if the institution provides the information required under such paragraph in such formats as the Agency may require.”; and

(5) by striking paragraph (2) of subsection (m) and inserting the following new paragraph:

“(2) FORM OF INFORMATION.—In complying with paragraph (1), a depository institution shall provide the person requesting the information with a copy of the information requested in such formats as the Agency may require.”.
(d) Section 305.—Section 305 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2804) is amended—

(1) by striking subsection (b) and inserting the following new subsection:

“(b) Powers of Certain Other Agencies.—Compliance with the requirements imposed under this title shall be enforced under—

“(1) section 8 of the Federal Deposit Insurance Act, in the case of—

“(A) national banks, and Federal branches and Federal agencies of foreign banks, by the head of the agency responsible for chartering and regulating national banks;

“(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, by the Board;

“(C) depository institutions insured by the Federal Deposit Insurance Corporation (other
than members of the Federal Reserve System, Federal savings associations, and savings and loan holding companies) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

“(D) Federal savings associations, and savings and loan holding companies, by the Director of the Office of Thrift Supervision;

“(2) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency;

“(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any credit union; and

“(4) other lending institutions, by the Secretary of Housing and Urban Development. The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the
meaning given to them in section 1(b) of the International
Banking Act of 1978.”; and

(2) by inserting at the end of section 305 the
following new subsection:

“(d) Overall Enforcement Authority of the
Consumer Financial Protection Agency.—Subject
to section 4202 of the Consumer Financial Protection
Agency Act of 2009, enforcement of the requirements im-
posed under this title is committed to each of the agencies
under subsection (b). The Agency may exercise its authori-
ties under the Consumer Financial Protection Agency Act
of 2009 to exercise principal authority to examine and en-
force compliance by any person with the requirements
under this title.”.

(e) Section 306.—Subsection 306(b) of the Home
Mortgage Disclosure Act of 1975 (12 U.S.C. 2805(b)) is
amended to read as follows:

“(b) The Agency may, by regulation, exempt from the
requirements of this title any State chartered depository
institution within any State or subdivision of any state if
the Agency determines that, under the law of such State
or subdivision, that institution is subject to requirements
substantially similar to those imposed under this title, and
that such law contains adequate provisions for enforce-
ment. Notwithstanding any other provision of this sub-
section, compliance with the requirements imposed under
this subsection shall be enforced by the head of the agency
responsible for chartering and regulating national banks
under section 8 of the Federal Deposit Insurance Act in
the case of national banks and savings association the de-
posits of which are insured by the Federal Deposit Insur-
ance Corporation.”.

(f) SECTION 307.—Section 307 of the Home Mort-
gage Disclosure Act of 1975 (12 U.S.C. 2806) is amended
to read as follows:

“SEC. 307. RESEARCH AND IMPROVED METHODS.

“(a) ENHANCED COMPLIANCE IN ECONOMICAL MAN-
NER.—

“(1) IN GENERAL.—The Director of the Con-
sumer Financial Protection Agency, with the assist-
ance of the Secretary, the Director of the Bureau of
the Census, the Board of Governors of the Federal
 Reserve System, the Federal Deposit Insurance Cor-
poration, and such other persons as the Consumer
 Financial Protection Agency deems appropriate,
shall develop or assist in the improvement of, meth-
ods of matching addresses and census tracts to fa-
cilitate compliance by depository institutions in as
economical a manner as possible with the require-
ments of this title.
“(2) Authorization of Appropriation.—

There is authorized to be appropriated such sums as may be necessary to carry out this subsection.

“(3) Authority of Agency.—The Director of the Consumer Financial Protection Agency is authorized to utilize, contract with, act through, or compensate any person or agency in order to carry out this subsection.

“(b) Recommendations to the Congress.—The Director of the Consumer Financial Protection Agency shall recommend to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate such additional legislation as the Director of the Consumer Financial Protection Agency deems appropriate to carry out the purpose of this title.”.

SEC. 4809. AMENDMENTS TO DIVISION D OF THE OMNIBUS APPROPRIATIONS ACT, 2009.

(a) Section 626(a) of title VI of division D of the Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 note) (as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009) is amended—

(1) by striking by paragraph (1) and inserting the following new paragraph: “(1) The Director of the Consumer Financial Protection Agency shall
have authority to prescribe regulations with respect
to mortgage loans in accordance with section 553 of
title 5, United States Code. Such rulemaking shall
relate to unfair or deceptive acts or practices regard-
ing mortgage loans, which may include unfair or de-
ceptive acts or practices involving loan modification
and foreclosure rescue services. Any violation of a
regulation prescribed under this subsection shall be
treated as a violation of a regulation prohibiting un-
fair, deceptive, or abusive acts or practices under the
Consumer Financial Protection Agency Act of
2009.”;

(2) by striking paragraph (2);

(3) by striking paragraph (3); and

(4) by striking paragraph (4) and inserting the
following new paragraph:

“(2) The Director of the Consumer Financial Protec-
tion Agency shall enforce the regulations issued under
paragraph (1) in the same manner, by the same means,
and with the same jurisdiction, powers, and duties as
though all applicable terms and provisions of the Con-
sumer Financial Protection Agency Act of 2009 were in-
corporated into and made part of this section.”.

(b) Section 626(b) of title VI of division D of the
(as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009) is amended by striking “primary Federal regulator” each place it appears and inserting “Consumer Financial Protection Agency”.

SEC. 4810. AMENDMENTS TO THE HOMEOWNERS PROTECTION ACT OF 1998.

Section 10 of the Homeowners Protection Act of 1998 (12 U.S.C. 4909) is amended—

(1) in the matter preceding paragraph (1) of subsection (a), by striking “Compliance” and inserting “Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance”;

(2) in subsection (a)(2), by striking “and” after the semicolon at the end;

(3) in subsection (a)(3), by striking the period at the end and inserting “; and”;

(4) by inserting after subsection (a)(3), the following new paragraph:

“(4) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Consumer Financial Protection Agency.”; and

(5) in subsection (b)(2), by inserting “, subject to section 4202 of the Consumer Financial Protection Agency Act of 2009” before the period at the end.
SEC. 4811. AMENDMENTS TO THE REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974.

(a) Section 3.—Section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602) is amended—

(1) in paragraph (7), by striking “and” after the semicolon at the end;

(2) in paragraph (8), by striking the period at the end and inserting “; and”;

(3) by adding at the end the following new paragraph:

“(9) the term ‘Agency’ means the Consumer Financial Protection Agency.”.

(b) Section 4.—Section 4 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2603) is amended—

(1) in subsection (a), by striking the first sentence and inserting the following: “The Agency shall publish a single, integrated disclosure for mortgage loan transactions, including real estate settlement cost statements, which include the disclosure requirements of this title, in conjunction with the disclosure requirements of the Truth in Lending Act (15 U.S.C. 1601 note et seq.) that, taken together, may apply to transactions subject to both or either law. The purpose of such model disclosure shall be
to facilitate compliance with the disclosure require-
ments of those titles, and to aid the borrower or les-
see in understanding the transaction by utilizing
readily understandable language to simplify the tech-
nical nature of the disclosures.”;

(2) by striking “Secretary” each place such
term appears and inserting “Agency”; and

(3) by striking “form” each place such term ap-
ppears and inserting “forms”.

(c) SECTION 5.—Section 5 of the Real Estate Settle-
ment Procedures Act of 1974 (12 U.S.C. 2604) is amend-
ed—

(1) by striking “Secretary” each place such
term appears, and inserting “Agency”; and

(2) by striking the first sentence of subsection
(a), and inserting “The Agency shall prepare and
distribute booklets jointly complying with the re-
quirements of the Truth in Lending Act (15 U.S.C.
1601 note et seq.) and the provisions of this title,
in order to help persons borrowing money to finance
the purchase of residential real estate better to un-
derstand the nature and costs of real estate settle-
ment services.”.
(d) SECTION 6.—Section 6(j)(3) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(j)(3)) is amended—

(1) by striking “Secretary” and inserting “Director of the Agency”; and

(2) by striking “by regulations that shall take effect not later than April 20, 1991,” and inserting “by regulation,”.

(e) SECTION 7.—Section 7 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2606) is amended by striking “Secretary” and inserting “the Director of the Agency”.

(f) SECTION 8.—Section 8 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2607) is amended—

(1) in subsection (c)(5), by striking “prescribed by the Secretary” and inserting “prescribed by the Director of the Agency”; and

(2) in subsection (d)(4)—

(A) by striking “The Secretary,” and inserting “The Agency, the Secretary,”; and

(B) by adding at the end the following new sentence: “However, to the extent that a Federal law authorizes the Agency and other Federal and State agencies to enforce or administer
the law, the Agency shall have primary author-
ity to enforce or administer that Federal law in
accordance with section 4202 of the Consumer
Financial Protection Agency Act of 2009.”.

(g) SECTION 10.—Section 10(d) of the Real Estate
is amended by striking “Secretary” and inserting “Agen-
cy”.

(h) SECTION 16.—Section 16 of the Real Estate Set-
tlement Procedures Act of 1974 (12 U.S.C. 2614) is
amended by inserting “the Agency,” before “the Sec-
retary”.

(i) SECTION 18.—Section 18 of the Real Estate Set-
tlement Procedures Act of 1974 (12 U.S.C. 2616) is
amended by striking “Secretary” each place such term ap-
pears and inserting “Agency”.

(j) SECTION 19.—Section 19 of the Real Estate Set-
tlement Procedures Act of 1974 (12 U.S.C. 2617) is
amended—

(1) in the section heading, by striking “SEC-
RETARY” and inserting “AGENCY”; and

(2) by striking “Secretary” each place such
term appears and inserting “Agency”.

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SEC. 4812. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

(a) Amendments to Section 1101.—Section 1101 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401) is amended—

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

“(1) ‘financial institution’ means any bank, savings association, card issuer as defined in section 103(n) of the Truth in Lending Act, credit union, or consumer finance institution located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;”; and

(2) in paragraph (7), by inserting after subparagraph (A) the following new subparagraph:

“(B) the Consumer Financial Protection Agency;”.

(b) Amendments to Section 1112.—Section 1112(e) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412) is amended by striking “and the Commodity Futures Trading Commission is permitted” and inserting “the Commodity Futures Trading Commission, and the Consumer Financial Protection Agency is permitted”.

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(c) Amendments to Section 1113.—Section 1113 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413) is amended by adding at the end the following new subsection—

“(r) Disclosure to the Consumer Financial Protection Agency.—Nothing in this chapter shall apply to the examination by or disclosure to the Consumer Financial Protection Agency of financial records or information in the exercise of its authority with respect to a financial institution.”.

SEC. 4813. AMENDMENTS TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008.

(a) Section 1503.—Section 1503 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5102) is amended—

(1) by striking paragraph (9);

(2) by redesignating paragraph (1) as paragraph (4), and transferring paragraph (4) (as so redesignated) and inserting such paragraph after paragraph (3) (as added by paragraph (5));

(3) by redesignating paragraphs (3), (4), (5), (6), (7), (8), (10), (11), and (12) as paragraphs (5), (6), (7), (8), (9), (10), (11), (12), and (13), respectively;
(4) by inserting before paragraph (2) the following new paragraph:

“(1) AGENCY.—The term ‘Agency’ means the Consumer Financial Protection Agency.”; and

(5) by inserting after paragraph (2) the following new paragraph:

“(3) DIRECTOR.—The term ‘Director’ means the Director of the Agency.”.

(b) UNIVERSAL AMENDMENTS RELATING TO AGENCY.—The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) is amended—

(1) by striking “Federal banking agencies” each place such term appears (other than in subsection (a)(4) (as so redesignated by subsection (a), relating to the definition of Federal banking agencies) or in connection with a reference that is specifically amended by another provision of this section) and inserting “Agency”; and

(2) by striking “Secretary” each place such term appears (other than in connection with a reference that is specifically amended by another provision of this section) and inserting “Director”.
(c) Section 1507.—Section 1507 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5106) is amended—

(1) in subsection (a)—

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

“(1) IN GENERAL.—The Agency shall develop and maintain a system for registering employees of any depository institution, employees of a subsidiary that is owned and controlled by a depository institution and regulated by a Federal banking agency, or employees of an institution regulated by the Farm Credit Administration, as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before July 30, 2010.”; and

(B) by striking “appropriate Federal banking agency and the Farm Credit Administration” in paragraph (2) and inserting “Agency”; and

(2) in subsection (b), by striking “Federal banking agencies, through the Financial Institutions Examination Council, and the Farm Credit Administration” each place such term appears and inserting “Agency”.

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(d) **Section 1508.**—

(1) **IN GENERAL.**—Section 1508 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5107) is amended by adding at the end the following new subsection:

“(f) **REGULATIONS.**—

“(1) **IN GENERAL.**—The Agency may prescribe regulations setting minimum net worth or surety bond requirements for residential mortgage loan originators and minimum requirements for recovery funds paid into by loan originators.

“(2) **FACTORS TAKEN INTO ACCOUNT.**—Such regulations shall take into account the need to provide originators adequate incentives to originate affordable and sustainable mortgage loans as well as the need to ensure a competitive origination market that maximizes consumers’ access to affordable and sustainable mortgage loans.”.

(2) **CLERICAL AMENDMENT.**—The heading for section 1508 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 is amended by striking “SECRETARY OF HOUSING AND URBAN DEVELOPMENT” and inserting “CONSUMER FINANCIAL PROTECTION AGENCY”.
(e) SECTION 1510.—Section 1510 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5109) is amended to read as follows:

“SEC. 1510. FEES.

“The Agency and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.”.

(f) SECTION 1513.—Section 1513 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5112) is amended to read as follows:

“SEC. 1513. LIABILITY PROVISIONS.

“The Agency, any State official or agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Director under section 1509, or any officer or employee of any such entity, shall not by subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information con-
(g) **SECTION 1514.**—The heading for section 1514 of the Secure and Fair Enforcement for Mortgage Licens-
ing Act of 2008 (12 U.S.C. 5113) is amended by striking “UNDERS BACKUP LICENSING SYSTEM” and in-
serting “BY THE AGENCY”.

**SEC. 4814. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.**

(a) **SECTION 263.**—Section 263 of the Truth in Sav-
ings Act (12 U.S.C. 4302) is amended in subsection (b) by striking “Board” each place such term appears and inserting “Agency”.

(b) **SECTION 265.**—Section 265 of the Truth in Sav-
ings Act (12 U.S.C. 4304) is amended by striking “Board” each place such term appears and inserting “Agency”.

(c) **SECTION 266.**—Section 266(e) of the Truth in Sav-
ings Act is amended (12 U.S.C. 4305) by striking “Board” and inserting “Agency”.

(d) **SECTION 269.**—Section 269 of the Truth in Sav-
ings Act (12 U.S.C. 4308) is amended by striking “Board” each place such term appears and inserting “Agency”.

(e) **SECTION 270.**—Section 270 of the Truth in Sav-
ings Act (12 U.S.C. 4309) is amended—
(1) in subsection (a)—

(A) by striking “Compliance” and inserting “Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance”;

(B) by striking subparagraph (A) of paragraph (1) and inserting the following new subparagraph:

“(A) by the head of the agency responsible for chartering and regulating national banks for national banks, and Federal branches and Federal agencies of foreign banks;”; and

(C) by adding at the end, the following new paragraph:

“(3) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency.”; and

(2) in subsection (c)—

(A) in the subsection heading, by striking “BOARD” and inserting “AGENCY”; and

(B) by striking “Board” and inserting “Agency”.

(f) SECTION 272.—Section 272 of the Truth in Savings Act (12 U.S.C. 4311) is amended—

(1) in subsection (a), by striking “Board” and inserting “Agency”; and
(2) in subsection (b), by striking “regulation prescribed by the Board” each place such term appears and inserting “regulation prescribed by the Agency”.

(g) SECTION 273.—Section 273 of the Truth in Savings Act (12 U.S.C. 4312) is amended in the last sentence by striking “Board” and inserting “Agency”.

(h) SECTION 274.—Section 274 of the Truth in Savings Act (12 U.S.C. 4313) is amended—

(1) in paragraph (2) by striking “Board” and inserting “Agency”; and

(2) by striking paragraph (4) and inserting the following new paragraph:

“(4) AGENCY.—The term ‘Agency’ means the Consumer Financial Protection Agency.”.

SEC. 4815. AMENDMENTS TO THE TELEMARKETING AND CONSUMER FRAUD ABUSE AND PREVENTION ACT.

(a) Section 4 of the Telemarketing and Consumer Fraud Abuse and Prevention Act (15 U.S.C. 6102) is amended—

(1) in subsection (b)—

(A) by inserting “and the Consumer Financial Protection Agency with respect to a person subject to the authority of that Agency
under the Consumer Financial Protection Agen-
cy Act” after “Commission” each of the first 2
places it appears; and

(B) by inserting “or the Consumer Finan-
cial Protection Agency” after “Commission” the
last place it appears; and

(2) in subsection (d), by inserting “or the Con-
sumer Financial Protection Agency” after “Commis-
sion” each place such term appears.

(b) Section 5 of the Telemarketing and Consumer
Fraud Abuse and Prevention Act (15 U.S.C. 6102) is
amended—

(1) in subsection (b)—

(A) by inserting “and the Consumer Fi-
nancial Protection Agency with respect to a
person subject to the authority of that Agency
under the Consumer Financial Protection Agen-
cy Act” after “Commission” each of the first 2
places it appears; and

(B) by inserting “or the Consumer Finan-
cial Protection Agency” after “Commission” the
last place it appears; and

(2) in subsection (c), by inserting “or the Con-
sumer Financial Protection Agency” after “Commis-
sion” each place such term appears.
(c) Section 6 of the Telemarketing and Consumer Fraud Abuse and Prevention Act (15 U.S.C. 6102) is amended by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following:

“(c) ENFORCEMENT BY THE CONSUMER FINANCIAL PROTECTION AGENCY.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, this Act shall be enforced by the Consumer Financial Protection Agency, under subtitle E of that Act, with respect to a person subject to the authority of that Agency under that Act. For the purpose of the exercise by the Consumer Financial Protection Agency of its powers under subtitle E, a violation of any requirement imposed under this Act shall be deemed to be a violation of a requirement imposed under the Consumer Financial Protection Agency Act. In addition to its powers under subtitle E of that Act, the Agency may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.”.

SEC. 4816. MEMBERSHIP IN FINANCIAL LITERACY AND EDUCATION COMMISSION.

Section 513(c)(1) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(c)(1)) is amended—
(1) in subparagraph (B), by striking “and” at the end;

(2) by redesignating subparagraph (C) as subparagraph (D); and

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

“(C) the Director of the Consumer Financial Protection Agency; and”.

SEC. 4817. EFFECTIVE DATE.

The amendments made by sections 4803 through 4815 shall take effect on the designated transfer date.

SEC. 4818. AMENDMENTS TO TRUTH IN LENDING ACT.

(a) IN GENERAL.—Section 128(e) of the Truth in Lending Act is amended—

(1) by striking paragraph (3) and inserting the following new paragraph (3):

“(3) INSTITUTIONAL CERTIFICATION REQUIRED.—(A) Except as provided in subparagraph (B), before a creditor may issue any funds with respect to an extension of credit described in paragraph (1), the creditor shall obtain from the relevant institution of higher education such institution’s certification—

“(i) of the enrollment status of the borrower;
“(ii) of the borrower’s cost of attendance at the institution as determined by the institution under part F of title IV of the Higher Education Act of 1965;

“(iii) of the difference between the borrower’s cost of attendance and the borrower’s estimated financial assistance received under title IV of the Higher Education Act of 1965 and other assistance known to the institution, as applicable; and

“(iv) that the institution has—

“(I) informed the borrower—

“(aa) about the availability of, and the borrower’s potential eligibility for, Federal financial assistance under this title, including disclosing the terms, conditions, and interest rates of Federal student loans;

“(bb) of the borrower’s ability to select a private educational lender of the borrower’s choice;

“(cc) about the impact of a proposed private education loan on the borrowers’ potential eligibility for other financial assistance, including
Federal financial assistance under the Higher Education Act of 1965; and

“(dd) about a borrower’s right to accept or reject a private education loan within the 30-day period following a private educational lender’s approval of a borrower’s application and about a borrower’s 3-day right to cancel altogether;

“(II) determined whether the borrower has applied for and exhausted the Federal financial assistance available to the borrower under the Higher Education Act of 1965 and informed the borrower accordingly; and

“(III) counseled the borrower on the borrower’s financial aid options.

“(B) A creditor may issue funds with respect to an extension of credit described in paragraph (1) without obtaining from the relevant institution of higher education such institution’s certification if such institution fails to provide such certification within 21 calendar days or 15 business days, whichever comes first, of the creditor’s request for such certification.”;
(2) by redesignating paragraphs (9), (10), and (11) as paragraphs (10), (11), and (12), respectively; and

(3) by inserting after paragraph (8) the following new paragraph (9):

“(9) Provision of Information.—On or before the date a creditor issues any funds with respect to an extension of credit described in paragraph (1), the creditor shall notify the relevant institution of higher education, in writing, of the amount of the extension of credit and the student on whose behalf credit is extended. The form of such written notification shall be subject to the regulations of the Agency.”.

(b) Regulations.—

(1) Deadline for Regulations.—Not later than 365 days after the date of enactment of this Act, the Agency shall issue regulations in final form to implement paragraphs (3) and (9) of section 128(e) of the Truth in Lending Act, as amended by subsection (a). Such regulations shall become effective not later than 6 months after their date of issuance.

(2) Effective Date.—The regulations in effect pursuant to section 128(e) of the Truth in
Lending Act as of the date of the enactment of this Act shall remain in effect until the effective date of the regulations issued under paragraph (1).

(c) Study and Report on Private Education Loans and Private Educational Lenders.—

(1) Report.—Not later than 2 years after the date of enactment of this Act, the Director and the Secretary of Education, in consultation with the Commissioners of the Federal Trade Commission, and the Attorney General, shall submit a report to the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Health Education, Labor, and Pensions of the Senate on private education loans (as that term is defined in section 140 of the Truth in Lending Act (15 U.S.C. 1650)) and private educational lenders (as that term is defined in such section).

(2) Content.—The report required by this subsection shall examine, at a minimum, the following:

(A) the growth and changes of the private education loan market in the United States;
(B) factors influencing such growth and changes;

(C) the extent to which students and parents of students rely on private education loans to finance postsecondary education and the private education loan indebtedness of borrowers;

(D) the characteristics of private education loan borrowers, including the types of institutions of higher education they attend, socioeconomic characteristics (including income and education levels, racial characteristics, geographical background, age, and gender), what other forms of financing borrowers use to pay for education, whether they exhaust their Federal loan options before taking out a private loan, whether such borrowers are dependent or independent students (as determined under part F of title IV of the Higher Education Act of 1965) or parents of such students, whether such borrowers are students enrolled in a program leading to a certificate, license or credential other than a degree, an associates degree, a baccalaureate degree, or a graduate or professional degree and, if practicable, employment and repayment behaviors;
(E) the characteristics of private educational lenders, including whether such creditors are for-profit, non-profit, or institutions of higher education;

(F) the underwriting criteria used by private educational lenders, including the use of cohort default rate (as such term is defined in section 435(m) of the Higher Education Act of 1965);

(G) the terms, conditions, and pricing of private education loans;

(H) the consumer protections available to private education loan borrowers, including the effectiveness of existing disclosures and requirements and borrowers’ awareness and understanding about terms and conditions of various financial products;

(I) whether Federal regulators and the public have access to information sufficient to provide them with assurances that private education loans are provided in accord with the Nation’s fair lending laws and that allows public officials to determine lenders’ compliance with fair lending laws; and
(J) any statutory or legislative recommendations necessary to improve consumer protections for private education loan borrowers and to better enable Federal regulators and the public to ascertain private educational lender compliance with fair lending laws.

(d) REPORT.—Not later than 18 months after the issuance of regulations under subsection (b)(1), the Consumer Financial Protection Agency and the Secretary of Education shall jointly submit to Congress a report on the compliance of institutions and private educational lenders with the amendments made by this section. The report shall include the degree to which specific institutions utilize certifications in effectively encouraging the exhaustion of Federal student loan eligibility and lowering student debt.

Subtitle I—Improvements to the Federal Trade Commission Act

SEC. 4901. AMENDMENTS TO THE FEDERAL TRADE COMMISSION ACT.

(a) Section 5(m)(1)(A) of the Federal Trade Commission Act (15 U.S.C. 45(m)(1)(A)) is amended—

(1) by inserting “this Act or” after “violates” the first place such term appears;
(2) by inserting a comma after “under this Act”; 
(3) by inserting a comma after “subsection (a)(1))”; and 
(4) by inserting “a violation of this Act or is” before “prohibited”.

(b) Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is amended by adding at the end thereof the following new subsection: 

“(o) UNLAWFUL ASSISTANCE.—It is unlawful for any person, partnership, or corporation, knowingly or recklessly, to provide substantial assistance to another in violating any provision of this Act or of any other Act enforceable by the Commission that relates to unfair or deceptive acts or practices. Any such violation shall constitute an unfair or deceptive act or practice described in section 5(a)(1) of this Act. Nothing in this section shall be construed as limiting or superseding the protection provided to any provider or user qualifying for protection under section 230(c)(1) of the Communications Act of 1934 (47 U.S.C. 230(c)(1)).”.

(c) Section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) is amended—

(1) in subsection (a)(1), by striking “(h)” and inserting “(f)”;
(2) by amending subsection (b) to read as follows:

“(b) PROCEDURE APPLICABLE.—When prescribing a rule under subsection (a)(1)(B) of this section, the Commission shall proceed in accordance with section 553 of title 5.”;

(3) by striking subsection (c);

(4) in subsection (d), by striking “(d)(1) The Commission’s” and all that follows through the end of paragraph (2) and by redesignating paragraph (3) of such subsection as subsection (c);

(5) In such subsection (c) (as so redesignated), by inserting “prescribed” after “any rule”;

(6) by striking subsections (f), (i), and (j) and redesignating subsections (e), (g), and (h) as subsections (d), (e), and (f), respectively;

(7) in subsection (c) (as redesignated), by inserting “prescribed” after “rule”; and

(8) in subsection (d) (as redesignated)—

(A) in paragraph (1)(A) by striking “promulgated” and inserting “prescribed”;

(B) in paragraph (1)(B), by striking “the transcript required by subsection (e)(5),”;}
(C) in paragraph (3), by striking “The court shall hold unlawful” and all that follows through the end of the paragraph; and

(D) by striking paragraphs (4) and (5) and inserting the following:

“(4) The procedure set forth in this subsection for judicial review of a rule prescribed under subsection (a)(1)(B) is the exclusive means for such review, other than in an enforcement proceeding.”; and

(9) in subsection (c)(2) (as so redesignated), by striking “class or persons” and inserting “class of persons”.

(d) Section 16(a)(2) of the Federal Trade Commission Act (15 U.S.C. 56(a)(2)) is amended—

(1) in subparagraph (D), by striking “; or” and inserting a semicolon; and

(2) by inserting after subparagraph (E) the following:

“(F) to obtain a civil penalty authorized under any provision of law enforced by the Commission.”.

(e) Section 5(l) of the Federal Trade Commission Act (15 U.S.C. 45(l)) is amended in the first sentence by inserting “the Commission or” after “brought by”.
Subtitle J—Miscellaneous

SEC. 4951. REQUIREMENTS FOR STATE-LICENSED LOAN ORIGINATORS.

Paragraph (2) of section 1505 (b) of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5104(b)(2)) is amended by inserting after and below subparagraph (B), the following:

“Notwithstanding the preceding sentence, a State loan originator supervisory authority may provide for review of applicants and for granting exceptions, on a case-by-case basis, to the minimum standard under subparagraph (B), but only to the extent that any such exception otherwise complies with the purposes of this title.”.

TITLE V—CAPITAL MARKETS

Subtitle A—Private Fund Investment Advisers Registration Act

SEC. 5001. SHORT TITLE.

This subtitle may be cited as the “Private Fund Investment Advisers Registration Act of 2009”.

SEC. 5002. DEFINITIONS.

Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the end the following new paragraphs:
“(29) PRIVATE FUND.—The term ‘private fund’ means an issuer that would be an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)) but for the exception provided from that definition by either section 3(c)(1) or section 3(c)(7) of such Act.

“(30) FOREIGN PRIVATE FUND ADVISER.—The term ‘foreign private fund adviser’ means an investment adviser who—

“(A) has no place of business in the United States;

“(B) during the preceding 12 months has had—

“(i) in total, fewer than 15 clients and investors in the United States in private funds advised by the investment adviser; and

“(ii) aggregate assets under management attributable to clients and investors in the United States in private funds advised by the investment adviser of less than $25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in the public interest or for the protection of investors; and
“(C) neither holds itself out generally to
the public in the United States as an invest-
ment adviser, nor acts as an investment adviser
to any investment company registered under the
Investment Company Act of 1940, or a com-
pany which has elected to be a business devel-
opment company pursuant to section 54 of the
Investment Company Act of 1940 (15 U.S.C.
80a–53) and has not withdrawn such election.”.

SEC. 5003. ELIMINATION OF PRIVATE ADVISER EXEMPTION;
LIMITED EXEMPTION FOR FOREIGN PRIVATE
FUND ADVISERS; LIMITED INTRASTATE EX-
EMPTION.

(a) Exemption.—Section 203(b) of the Investment
Advisers Act of 1940 (15 U.S.C. 80b–3(b)) is amended—

(1) in paragraph (1), by inserting “, except an
investment adviser who acts as an investment ad-
viser to any private fund,” after “any investment ad-
viser”; 

(2) by amending paragraph (3) to read as fol-

“(3) any investment adviser that is a foreign
private fund adviser;”; 

(3) in paragraph (5), by striking “or” at the
end;
(4) in paragraph (6)—
    (A) in subparagraph (A), by striking “or”;
    (B) in subparagraph (B), by striking the period at the end and adding “; or”; and
    (C) by adding at the end the following new subparagraph:
        “(C) a private fund; or”; and
(5) by adding at the end the following:
    “(7) any investment adviser who solely advises—
        “(A) small business investment companies licensed under the Small Business Investment Act of 1958;
        “(B) entities that have received from the Small Business Administration notice to proceed to qualify for a license, which notice or license has not been revoked; or
        “(C) applicants, related to one or more licensed small business investment companies covered in subparagraph (A), that have applied for another license, which application remains pending.”.

(b) CONSIDERATION OF RISK.—Section 203(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)) is amended by adding at the end the following:
“(3) The Commission shall take into account the relative risk profile of different classes of private funds as it establishes, by rule or regulation, the registration requirements for private funds.”

SEC. 5004. COLLECTION OF DATA.

Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following new subsection:

“(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

“(1) IN GENERAL.—The Commission is authorized to require any investment adviser registered under this Act to maintain such records of and file with the Commission such reports regarding private funds advised by the investment adviser as are necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk as the Commission determines in consultation with the Board of Governors of the Federal Reserve System. The Commission is authorized to provide or make available to the Board of Governors of the Federal Reserve System and to the Financial Services Oversight Council, those reports or records
or the information contained therein. The records and reports of any private fund, to which any such investment adviser provides investment advice, maintained or filed by an investment adviser registered under this Act, shall be deemed to be the records and reports of the investment adviser.

“(2) REQUIRED INFORMATION.—The records and reports required to be maintained or filed with the Commission under this subsection shall include, for each private fund advised by the investment adviser—

“(A) the amount of assets under management;

“(B) the use of leverage (including off-balance sheet leverage);

“(C) counterparty credit risk exposures;

“(D) trading and investment positions;

“(E) trading practices; and

“(F) such other information as the Commission, in consultation with the Board of Governors of the Federal Reserve System, determines necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.
“(3) Optional Information.—The Commission may require the reporting of such additional information from private fund advisers as the Commission determines necessary. In making such determination, the Commission, taking into account the public interest and potential to contribute to systemic risk, may set different reporting requirements for different classes of private fund advisers, based on the particular types or sizes of private funds advised by such advisers.

“(4) Maintenance of Records.—An investment adviser registered under this Act is required to maintain and keep such records of private funds advised by the investment adviser for such period or periods as the Commission, by rule or regulation, may prescribe as necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

“(5) Examination of Records.—

“(A) Periodic and Special Examinations.—All records of a private fund maintained by an investment adviser registered under this Act shall be subject at any time and from time to time to such periodic, special, and other examinations by the Commission, or any
member or representative thereof, as the Commission may prescribe.

“(B) Availability of Records.—An investment adviser registered under this Act shall make available to the Commission or its representatives any copies or extracts from such records as may be prepared without undue effort, expense, or delay as the Commission or its representatives may reasonably request.

“(6) Information Sharing.—The Commission shall make available to the Board of Governors of the Federal Reserve System and to the Financial Services Oversight Council, copies of all reports, documents, records, and information filed with or provided to the Commission by an investment adviser under this subsection as the Board, or the Financial Services Oversight Council, may consider necessary for the purpose of assessing the systemic risk of a private fund. All such reports, documents, records, and information obtained by the Board, or such other entity, from the Commission under this subsection shall be kept confidential in a manner consistent with confidentiality established by the Commission pursuant to paragraph (8).
“(7) Disclosures of Certain Private Fund Information.—An investment adviser registered under this Act shall provide such reports, records, and other documents to investors, prospective investors, counterparties, and creditors, of any private fund advised by the investment adviser as the Commission, by rule or regulation, may prescribe as necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

“(8) Applicable Privileges Not Waived.—An investment advisor, and investment advisor to a private fund, a private fund, foreign private fund advisor, a foreign private fund, an advisor to a venture capital fund, a venture capital fund, or other person shall not be compelled to waive and shall not be deemed to have waived any privilege otherwise applicable to any data or information by transferring the data or information to, or permitting that data or information to be used by—

“(A) the Financial Services Oversight Council;

“(B) the Commission;

“(C) any Federal financial regulator or State financial regulator, in any capacity; or
“(D) any other agency of the Federal Government (as defined in section 6 of title 18, United States Code).

“(9) NON-DISCLOSURE OF CERTAIN PROPRIETARY INFORMATION AND CONFIDENTIALITY OF REPORTS.—Any proprietary information of an investment adviser ascertained by the Commission from any report required to be filed with the Commission pursuant to this section 204(b) shall be subject to the same limitations on public disclosure as any facts ascertained during an examination as provided by section 210(b) of this title. The Commission may not compel the private fund to disclose such proprietary information to counterparties and creditors. For purposes of this section, proprietary information shall include sensitive, non-public information regarding the investment adviser’s investment or trading strategies, analytical or research methodologies, trading data, computer hardware or software containing intellectual property, and any additional information that the Commission determines to be proprietary. Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any report or information contained therein required to be filed with the Commission under this
subsection. Nothing in this paragraph shall authorize the Commission to withhold information from the Congress or to prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the report or information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section.”.

SEC. 5005. ELIMINATION OF DISCLOSURE PROVISION.

Section 210 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–10) is amended by striking subsection (c).

SEC. 5006. EXEMPTION OF AND REPORTING BY VENTURE CAPITAL FUND ADVISERS.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) is amended by adding at the end the following new subsection:

“(l) EXEMPTION OF AND REPORTING BY VENTURE CAPITAL FUND ADVISERS.—The Commission shall identify and define the term ‘venture capital fund’ and shall provide an adviser to such a fund an exemption from the
registration requirements under this section (excluding any such fund whose adviser is exempt from registration pursuant to paragraph (7) of subsection (b)). The Commission shall require such advisers to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.”

SEC. 5007. EXEMPTION OF AND REPORTING BY CERTAIN PRIVATE FUND ADVISERS.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3), as amended by section 5006, is further amended by adding at the end the following new subsections:

“(m) Exemption of and Reporting by Certain Private Fund Advisers.—

“(1) In general.—The Commission shall provide an exemption from the registration requirements under this section to any investment adviser of private funds, if each of such investment adviser acts solely as an adviser to private funds and has assets under management in the United States of less than $150,000,000.

“(2) Reporting.—The Commission shall require investment advisers exempted by reason of this
subsection to maintain such records and provide to
the Commission such annual or other reports as the
Commission determines necessary or appropriate in
the public interest or for the protection of investors.

“(n) REGISTRATION AND EXAMINATION OF MID-
sIZED PRIVATE FUND ADVISERS.—In prescribing regula-
tions to carry out the requirements of this section with
respect to investment advisers acting as investment advis-
ers to mid-sized private funds, the Commission shall take
into account the size, governance, and investment strategy
of such funds to determine whether they pose systemic
risk, and shall provide for registration and examination
procedures with respect to the investment advisers of such
funds which reflect the level of systemic risk posed by such
funds.”.

SEC. 5008. CLARIFICATION OF RULEMAKING AUTHORITY.

Section 211 of the Investment Advisers Act of 1940
(15 U.S.C. 80b–11) is amended—

(1) by amending subsection (a) to read as fol-

lows:

“(a) The Commission shall have authority from time
to time to make, issue, amend, and rescind such rules and
regulations and such orders as are necessary or appropri-
ate to the exercise of the functions and powers con-
ferred upon the Commission elsewhere in this title, includ-
ing rules and regulations defining technical, trade, and
other terms used in this title. For the purposes of its rules
and regulations, the Commission may—

“(1) classify persons and matters within its ju-
risdiction based upon, but not limited to—

“(A) size;

“(B) scope;

“(C) business model;

“(D) compensation scheme; or

“(E) potential to create or increase sys-
temic risk;

“(2) prescribe different requirements for dif-
ferent classes of persons or matters; and

“(3) ascribe different meanings to terms (in-
cluding the term ‘client’, except the Commission
shall not ascribe a meaning to the term ‘client’ that
would include an investor in a private fund managed
by an investment adviser, where such private fund
has entered into an advisory contract with such ad-
viser) used in different sections of this title as the
Commission determines necessary to effect the pur-
poses of this title.”; and

(2) by adding at the end the following new sub-
section:
“(e) The Commission and the Commodity Futures Trading Commission shall, after consultation with the Board of Governors of the Federal Reserve System, within 12 months after the date of enactment of the Private Fund Investment Advisers Registration Act of 2009, jointly promulgate rules to establish the form and content of the reports required to be filed with the Commission under sections 203(l), 203(m), and 204(b) and with the Commodity Futures Trading Commission by investment advisers that are registered both under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) and the Commodity Exchange Act (7 U.S.C. 1 et seq.).”.

SEC. 5009. GAO STUDY.

(a) Study Required.—The Comptroller General of the United States shall carry out a study to assess the annual costs on industry members and their investors due to the registration requirements and ongoing reporting requirements under this subtitle and the amendments made by this subtitle.

(b) Report to the Congress.—Not later than the end of the 2-year period beginning on the date of the enactment of this title, the Comptroller General of the United States shall submit a report to the Congress containing the findings and determinations made by the
Comptroller General in carrying out the study required under subsection (a).

SEC. 5010. EFFECTIVE DATE; TRANSITION PERIOD.

(a) EFFECTIVE DATE.—This subtitle, and the amendments made by this subtitle, shall take effect with respect to investment advisers after the end of the 1-year period beginning on the date of the enactment of this title.

(b) TRANSITION PERIOD.—The Securities and Exchange Commission shall prescribe rules and regulations to the extent necessary to permit an investment adviser who will be required to register with the Securities and Exchange Commission by reason of this subtitle with the option of registering with the Securities and Exchange Commission before the date described under subsection (a).

SEC. 5011. QUALIFIED CLIENT STANDARD.

Section 205(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5(e)) is amended by adding at the end the following: “With respect to any factor used in any rule or regulation by the Commission in making a determination under this subsection, if the Commission uses a dollar amount test in connection with such factor, such as a net asset threshold, the Commission shall, by order, not later than 1 year after the date of the enactment of the Private Fund Investment Advisers Registration Act of
2009, and every 5 years thereafter, adjust for the effects
of inflation on such test. Any such adjustment that is not
a multiple of $100,000 shall be rounded to the nearest
multiple of $100,000.”.

Subtitle B—Accountability and
Transparency in Rating Agen-
cies Act

SEC. 6001. SHORT TITLE.

This subtitle may be cited as the “Accountability and
Transparency in Rating Agencies Act of 2009”.

SEC. 6002. ENHANCED REGULATION OF NATIONALLY REC-
OGNIZED STATISTICAL RATING ORGANIZA-
TIONS.

(a) IN GENERAL.—Section 15E of the Securities Ex-
change Act of 1934 (15 U.S.C. 78o–7) is amended—

(1) in subsection (a)—

(A) by amending paragraph (1)(A) to read
as follows:

“(A) IN GENERAL.—Each credit rating
agency shall register as a nationally recognized
statistical rating organization for the purposes
of this title (in this section referred to as the
‘applicant’), and shall file with the Commission
an application for registration, in such form as
the Commission shall require, by rule or regula-
tion issued in accordance with subsection (n), and containing the information described in subparagraph (B).”.

(B) in paragraph (2)(A), by striking “furnished to” and inserting “filed with”; (C) in paragraph (2)(B)(i)(II), by striking “furnished to” and inserting “filed with”; and (D) by adding at the end of paragraph (1) the following:

“(F) EXEMPTIONS.—The registration requirement in subparagraph (A) shall not apply to—

“(i) a credit rating agency if the credit rating agency—

“(I) does not engage in the provision of credit ratings to issuers of securities for a fee; and

“(II) issues credit ratings only in any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation; or

“(ii) such other persons as the Commission may designate by rules and regula-
tions or order when in the public interest
and for the protection of investors.

(2) in subsection (b)—

(A) in paragraph (1)(A), by striking “fur-
nished” and inserting “filed” and by striking “furnishing” and inserting “filing”; 

(B) in paragraph (1)(B), by striking “fur-
nishing” and inserting “filing”; and

(C) in the first sentence of paragraph (2),
by striking “furnish to” and inserting “file with”; 

(3) in subsection (c)—

(A) paragraph (2)—

(i) in the second sentence by inserting “including the requirements of this sec-
tion,” after “Notwithstanding any other provision of law,”; and

(ii) by inserting before the period at the end of the last sentence “, provided that this paragraph does not afford a de-
fense against any action or proceeding brought by the Commission to enforce the antifraud provision of the securities laws”; 

(B) by adding at the end the following new paragraph:
“(3) Review of internal processes for determining credit ratings.—

“(A) In general.—The Commission shall examine credit ratings issued by, and the policies, procedures, and methodologies employed by, each nationally recognized statistical rating organization to review whether—

“(i) the nationally recognized statistical rating organization has established and documented a system of internal controls, due diligence and implementation of methodologies for determining credit ratings, taking into consideration such factors as the Commission may prescribe by rule;

“(ii) the nationally recognized statistical rating organization adheres to such system; and

“(iii) the public disclosures of the nationally recognized statistical rating organization required under this section about its credit ratings, methodologies, and procedures are consistent with such system.

“(B) Manner and frequency.—The Commission shall conduct reviews required by this paragraph no less frequently than annually
in a manner to be determined by the Commission.

“(4) Provision of information to the Commission.—Each nationally recognized statistical rating organization shall make available and maintain such records and information, for such a period of time, as the Commission may prescribe, by rule, as necessary for the Commission to conduct the reviews under paragraph (3).

“(5) Disclosures with respect to structured securities.—

“(A) Regulations required.—The rules and regulations prescribed by the Commission pursuant to this section with respect to nationally recognized statistical rating organizations shall, with respect to disclosure of the procedures and methodologies by which any nationally recognized statistical rating organization determines credit ratings for structured securities—

“(i) specify the information required to be disclosed to such rating organizations by the sponsor, issuers, and underwriters of such structured securities on the collat-
eral underlying such structured securities;
and

“(ii) establish and implement procedures to collect and disclose information about the processes used by such sponsor, issuers, and underwriters to assess the accuracy and integrity of their data and fraud detection.

“(B) DEFINITION.—For purposes of this paragraph, the Commission shall, by rule or regulation, define the term ‘structured securities’ as appropriate in the public interest and for the protection of investors.

“(6) HISTORICAL DEFAULT RATE DISCLOSURES.—The rules and regulations prescribed by the Commission pursuant to this section with respect to nationally recognized statistical rating organizations shall require each nationally recognized statistical rating organization to establish and maintain, on a publicly accessible Internet site, a facility to disclose, in a central database, the historical default rates of all classes of financial products rated by such organization.”;

(4) in subsection (d)—
(A) in the heading, by inserting “FINE,” after “CENSURE,”;

(B) by striking “shall censure” and all that follows through “revocation” and inserting the following: “shall censure, fine in accordance with section 21B(a), place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any nationally recognized statistical rating organization (or with respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a nationally recognized statistical rating organization, the Commission, by order, shall censure, fine in accordance with section 21B(a), place limitations on the activities or functions of such person, suspend for a period not exceeding 12 months, or bar such person from being associated with a nationally recognized statistical rating organization), if the Commission finds, on the record after notice and opportunity for hearing, that such censure, fine, placing of limitations, bar, suspension, or revocation”;
(C) in paragraph (2), by striking “furnished to” and inserting “filed with”;

(D) in paragraph (4)—

(i) by striking “furnish” and inserting “file”; and

(ii) by striking “or” at the end;

(E) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(F) by adding at the end the following:

“(6) has failed reasonably to supervise another person who commits a violation of the securities laws, the rules or regulations thereunder, or any rules of the Municipal Securities Rulemaking Board if such other person is subject to his or her supervision, except that no person shall be deemed to have failed reasonably to supervise any other person under this paragraph, if—

“(A) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person; and

“(B) such person has reasonably discharged the duties and obligations incumbent upon him or her by reason of such procedures
and system without reasonable cause to believe
that such procedures and system were not being
complied with; or
“(7) fails to conduct sufficient surveillance to
ensure that credit ratings remain current, as appli-
cable.”;
(5) in subsection (e), by striking paragraph (1)
and inserting the following new paragraph (1):
“(1) VOLUNTARY WITHDRAWAL.—A nationally
recognized statistical rating organization may, upon
such terms and conditions as the Commission may
establish as necessary in the public interest or for
the protection of investors, withdraw from registra-
tion by furnishing a written notice of withdrawal to
the Commission, provided that such nationally recog-
nized statistical rating organization certifies that it
received less than $250,000,000 during its last full
fiscal year in net revenue for providing credit ratings
on securities and money market instruments issued
in the United States.”;
(6) by amending subsection (h) to read as fol-
lows:
“(h) CORPORATE GOVERNANCE, ORGANIZATION, AND
MANAGEMENT OF CONFLICTS OF INTEREST.—
“(1) BOARD OF DIRECTORS.—
“(A) IN GENERAL.—Each nationally recognized statistical rating organization shall have a board of directors.

“(B) INDEPENDENT DIRECTORS.—At least \( \frac{1}{3} \) of such board, but no less than 2 of the members of the board of directors, shall be independent directors. In order to be considered independent for purposes of this subsection, a director of a nationally recognized statistical rating organization may not, other than in his or her capacity as a member of the board of directors or any committee thereof—

“(i) accept any consulting, advisory, or other compensatory fee from the nationally recognized statistical rating organization; or

“(ii) be a person associated with the nationally recognized statistical rating organization or with any affiliated company thereof.

“(C) COMPENSATION AND TERM.—The compensation of the independent directors shall not be linked to the business performance of the nationally recognized statistical rating organization and shall be arranged so as to ensure the
independence of their judgment. The term of office of the independent directors shall be for a pre-agreed fixed period not exceeding 5 years and shall not be renewable.

“(D) DUTIES.—In addition to the overall responsibility of the board of directors, the board shall oversee—

“(i) the establishment, maintenance, and enforcement of policies and procedures for determining credit ratings;

“(ii) the establishment, maintenance, and enforcement of policies and procedures to address, manage, and disclose any conflicts of interest;

“(iii) the effectiveness of the internal control system with respect to policies and procedures for determining credit ratings; and

“(iv) the compensation and promotion policies and practices of the nationally recognized statistical rating organization.

“(2) ORGANIZATION POLICIES AND PROCEDURES.—Each nationally recognized statistical rating organization shall establish, maintain, and enforce written policies and procedures reasonably de-
signed, taking into consideration the nature of the
business of the nationally recognized statistical rat-
ing organization and affiliated persons and affiliated
companies thereof, to address, manage, and disclose
any conflicts of interest that can arise from such
business.

“(3) COMMISSION RULES.—The Commission
shall issue rules to prohibit, or require the manage-
ment and disclosure of, any conflicts of interest re-
lating to the issuance of credit ratings by a nation-
ally recognized statistical rating organization, includ-
ing rules regarding—

“(A) conflicts of interest relating to the
manner in which a nationally recognized statis-
tical rating organization is compensated by the
obligor, or any affiliate of the obligor, for
issuing credit ratings or providing related serv-
ices;

“(B) conflicts of interest relating to busi-
ness relationships, ownership interests, and af-
filiations of nationally recognized statistical rat-
ing organization board members with obligors,
or any other financial or personal interests be-
tween a nationally recognized statistical rating
organization, or any person associated with
such nationally recognized statistical rating organization, and the obligor, or any affiliate of the obligor;

“(C) conflicts of interest relating to any affiliation of a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, with any person who underwrites securities, money market instruments, or other instruments that are the subject of a credit rating;

“(D) a requirement that each nationally recognized statistical rating organization disclose on such organization’s website a consolidated report at the end of each fiscal year that shows—

“(i) the percent of net revenue earned by the nationally recognized statistical rating organization or an affiliate of a nationally recognized statistical rating organization, or any person associated with a nationally recognized statistical rating organization, to the extent determined appropriate by the Commission, for that fiscal year for providing services and products
other than credit rating services to each person who paid for a credit rating; and

“(ii) the relative standing of each person who paid for a credit rating that was outstanding as of the end of the fiscal year in terms of the amount of net revenue earned by the nationally recognized statistical rating organization attributable to each such person and classified by the highest 5, 10, 25, and 50 percentiles and lowest 50 and 25 percentiles;

“(E) the establishment of a system of payment for credit ratings issued by each nationally recognized statistical rating organization that requires that payments are structured in a manner designed to ensure that the nationally recognized statistical rating organization conducts accurate and reliable surveillance of credit ratings over time, as applicable, and that incentives for reliable credit ratings are in place;

“(F) a requirement that a nationally recognized statistical rating organization disclose with the publication of a credit rating the type and number of credit ratings it has provided to the person being rated or affiliates of such per-
son, the fees it has billed for the credit rating, and the aggregate amount of net revenue earned by the nationally recognized statistical rating organization in the preceding 2 fiscal years attributable to the person being rated and its affiliates; and

“(G) any other potential conflict of interest, as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

“(4) LOOK-BACK REQUIREMENT.—

“(A) REVIEW BY THE NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—

Each nationally recognized statistical rating organization shall establish, maintain, and enforce policies and procedures reasonably designed to ensure that, in any case in which an employee of a person subject to a credit rating of the nationally recognized statistical rating organization or the issuer, underwriter, or sponsor of a security or money market instrument subject to a credit rating of the nationally recognized statistical rating organization was employed by the nationally recognized statistical rating organization and participated in any capacity in deter-
mining credit ratings for the person or the securities or money market instruments during the 1-year period preceding the date an action was taken with respect to the credit rating, the nationally recognized statistical rating organization shall—

“(i) conduct a review to determine whether any conflicts of interest of the employee influenced the credit rating; and

“(ii) take action to revise the rating if appropriate, in accordance with such rules as the Commission shall prescribe.

“(B) REVIEW BY COMMISSION.—

“(i) IN GENERAL.—The Commission shall conduct periodic reviews of the policies described in subparagraph (A) and the implementation of the policies at each nationally recognized statistical rating organization to ensure they are reasonably designed and implemented to most effectively eliminate conflicts of interest.

“(ii) TIMING OF REVIEWS.—The Commission shall review the code of ethics and conflict of interest policy of each nationally recognized statistical rating organization—
“(I) not less frequently than annually; and
“(II) whenever such policies are materially modified or amended.
“(5) REPORT TO COMMISSION ON CERTAIN EMPLOYMENT TRANSITIONS.—
“(A) REPORT REQUIRED.—Each nationally recognized statistical rating organization shall report to the Commission any case such organization knows or can reasonably be expected to know where a person associated with such organization within the previous 5 years obtains employment with any obligor, issuer, underwriter, or sponsor of a security or money market instrument for which the organization issued a credit rating during the 12-month period prior to such employment, if such employee—
“(i) was a senior officer of such organization;
“(ii) participated in any capacity in determining credit ratings for such obligor, issuer, underwriter, or sponsor; or
“(iii) supervised an employee described in clause (ii).
“(B) Public disclosure.—Upon receiving such a report, the Commission shall make such information publicly available.”;

(7) by amending subsection (j) to read as follows:

“(j) Designation of Compliance Officer.—

“(1) In general.—Each nationally recognized statistical rating organization shall designate an individual to serve as a compliance officer.

“(2) Duties.—The compliance officer shall—

“(A) report directly to the board of the nationally recognized statistical rating organization;

“(B) review compliance with policies and procedures to manage conflicts of interest and assess the risk that the compliance (or lack of such compliance) may compromise the integrity of the credit rating process;

“(C) review compliance with the internal control system with respect to the procedures and methodologies for determining credit ratings, including qualitative methodologies and quantitative inputs used in the rating process, and assess the risk that such internal control
system is reasonably designed to ensure the integ-
retnity and quality of the credit rating process;

“(D) in consultation with the board of the na-
tionally recognized statistical rating organiza-
tion, resolve any conflicts of interest that may 
arise;

“(E) be responsible for administering the poli-
cies and procedures required to be estab-
lished pursuant to this section;

“(F) ensure compliance with securities laws and the rules and regulations issued there-
der, including rules prescribed by the Com-
mission pursuant to this section; and

“(G) establish procedures—

“(i) for the receipt, retention, and treat-
mint of complaints regarding credit ratings, models, methodologies, and com-
pliance with the securities laws and the policies and procedures required under this 
section;

“(ii) for the receipt, retention, and treat-
mint of confidential, anonymous com-
plaints by employees, obligors, issuers, and investors;
“(iii) for the remediation of non-compliance issues found during compliance office reviews, the reviews required under paragraph (7), internal or external audit findings, self-reported errors, or through validated complaints; and

“(iv) designed so that ratings that the nationally recognized statistical rating organization disseminates reflect consideration of all information in a manner generally consistent with the nationally recognized statistical rating organization’s published rating methodology, including information which is provided, received, or otherwise obtained from obligor, issuer and non-issuer sources, such as investors, the media, and other interested or informed parties.

“(3) LIMITATIONS.—The compliance officer shall not, while serving in that capacity—

“(A) determine credit ratings;

“(B) participate in the establishment of the procedures and methodologies or the qualitative methodologies and quantitative inputs used to determine credit ratings;
“(C) perform marketing or sales functions;

or

“(D) participate in establishing compensa-
tion levels, other than for employees working
for the compliance officer.

“(4) ANNUAL REPORTS REQUIRED.—The com-
pliance officer shall annually prepare and sign a re-
port on the compliance of the nationally recognized
statistical rating organization with the securities
laws and such organization’s internal policies and
procedures, including its code of ethics and conflict
of interest policies, in accordance with rules pre-
scribed by the Commission. Such compliance report
shall accompany the financial reports of the nation-
ally recognized statistical rating organization that
are required to be filed with the Commission pursu-
ant to this section and shall include a certification
that, under penalty of law, the report is accurate
and complete.

“(5) COMPENSATION.—The compensation of
the compliance officer shall not be linked to the
business performance of the nationally recognized
statistical rating organization and shall be arranged
so as to ensure the independence of the officer’s
judgment.”;
(8) in subsection (k)—

(A) by striking “, on a confidential basis,”;

(B) by striking “furnish to” and inserting “file with”;

(C) by striking “Each nationally” and inserting the following:

“(1) IN GENERAL.—Each nationally”; and

(D) by adding at the end the following new paragraph:

“(2) EXCEPTION.—The Commission may treat as confidential any information provided by a nationally recognized statistical rating organization under this section consistent with applicable Federal laws or Commission rules.”;

(9) in subsection (l)(2)(A)(i), by striking “furnished” and inserting “filed”;

(10) by amending subsection (p) to read as follows:

“(p) ESTABLISHMENT OF SEC OFFICE.—

“(1) IN GENERAL.—The Commission shall establish an office that administers the rules of the Commission with respect to the practices of nationally recognized statistical rating organizations.

“(2) STAFFING.—The office of the Commission established under this subsection shall be staffed
sufficiently to carry out fully the requirements of this section.

“(3) Rulemaking authority.—The Commission shall—

“(A) establish, by rule, fines and other penalties for any nationally recognized statistical rating organization that violates the applicable requirements of this title; and

“(B) issue such rules as may be necessary to carry out this section with respect to nationally recognized statistical rating organizations.”; and

(11) by adding after subsection (p) the following new subsections:

“(q) Transparency of Ratings Performance.—

“(1) Rulemaking required.—The Commission shall, by rule, require each nationally recognized statistical rating organization to publicly disclose information on initial ratings and subsequent changes to such ratings for the purpose of providing a gauge of the performance of ratings and allowing investors to compare performance of ratings by different nationally recognized statistical rating organizations.
“(2) CONTENT.—The rules of the Commission under this subsection shall require, at a minimum, disclosures that—

“(A) are comparable among nationally recognized statistical rating organizations, so that investors can compare rating performance across rating organizations;

“(B) are clear and informative for a wide range of investor sophistication;

“(C) include performance information over a range of years and for a variety of classes of credit ratings, as determined by the Commission;

“(D) are published and made freely available by the nationally recognized statistical rating organization, on an easily accessible portion of its website and in written form when requested by investors; and

“(E) each nationally recognized statistical rating organization include an attestation with any credit rating it issues affirming that no part of the rating was influenced by any other business activities, that the rating was based solely on the merits of the instruments being rated, and that such rating was an independent
evaluation of the risks and merits of the instrument.

“(r) **Credit Ratings Methodologies.**—

“(1) **In general.**—The Commission shall prescribe rules, in the public interest and for the protection of investors, that require each nationally recognized statistical rating organization to establish, maintain, and enforce written procedures and methodologies and an internal control system with respect to such procedures and methodologies that are reasonably designed to—

“(A) ensure that credit ratings are determined using procedures and methodologies, including qualitative methodologies and quantitative inputs that are determined in accordance with the policies and procedures of the nationally recognized statistical rating organization for developing and modifying credit rating procedures and methodologies;

“(B) ensure that when major changes to credit rating procedures and methodologies, including to qualitative methodologies and quantitative inputs, are made, that the changes are applied consistently to all credit ratings to which the changed procedures and methodolo-
gies apply and, to the extent the changes are made to credit rating surveillance procedures and methodologies, they are applied to current credit ratings within a time period to be determined by the Commission by rule, and that the reason for the change is publicly disclosed;

“(C) notify persons who have access to the credit ratings of the nationally recognized statistical rating organization, regardless of whether they are made readily accessible for free or a reasonable fee, of the procedure or methodology, including qualitative methodologies and quantitative inputs, used with respect to a particular credit rating; and

“(D) notify persons who have access to the credit ratings of the nationally recognized statistical rating organization, regardless of whether they are made readily accessible for free or a reasonable fee, when a change is made to a procedure or methodology, including to qualitative methodologies and quantitative inputs, or an error is identified in a procedure or methodology that may result in credit rating actions, and the likelihood of the change resulting in
current credit ratings being subject to rating actions.

“(2) SYMBOLS.—The Commission may prescribe rules that require nationally recognized statistical rating organizations to establish credit rating symbols that distinguish credit ratings for structured products from credit ratings for other products that the Commission determines appropriate or necessary in the public interest and for the protection of investors, provided such rules do not prevent public pension funds or other State regulated entities from investing in rated products.

“(3) RATING CLARITY AND CONSISTENCY.—

“(A) COMMISSION OBLIGATION.—Subject to subparagraphs (B) and (C), the Commission shall require, by rule, each nationally recognized statistical rating organization to establish, maintain, and enforce written policies and procedures reasonably designed—

“(i) with respect to credit ratings of securities and money market instruments, to assess the risk that investors in securities and money market instruments may not receive payment in accordance with the terms of such securities and instruments;
“(ii) to define clearly any credit rating symbol used by that organization; and

“(iii) to apply such credit rating symbol in a consistent manner for all types of securities and money market instruments.

“(B) ADDITIONAL CREDIT FACTORS.—Nothing in subparagraph (A)—

“(i) prohibits a nationally recognized statistical rating organization from using additional credit factors that are documented and disclosed by the organization and that have a demonstrated impact on the risk an investor in a security or money market instrument will not receive repayment in accordance with the terms of issuance;

“(ii) prohibits a nationally recognized statistical rating organization from considering credit factors that are unique to municipal securities; or

“(iii) prohibits a nationally recognized statistical rating organization from using an additional symbol with respect to the ratings described in subparagraph (A)(i) for the purpose of distinguishing the rat-
ings of a certain type of security or money market instrument from ratings of any other types of securities or money market instruments.

“(C) Complementary ratings.—The Commission shall not impose any requirement under subparagraph (A) that prevents nationally recognized statistical rating organizations from establishing ratings that are complementary to the ratings described in subparagraph (A)(i) and that are created to measure a discrete aspect of the security’s or instrument’s risk.

“(s) Transparency of Credit Rating Methodologies and Information Reviewed.—

“(1) In general.—The Commission shall require, by rule, a nationally recognized statistical rating organization to include with the publication of each credit rating regardless of whether the credit rating is made readily accessible for free or a reasonable fee a form that discloses information about the assumptions underlying the procedures and methodologies used, and the data relied on, to determine the credit rating in the format prescribed in
paragraph (2) and containing the information described in paragraph (3).

“(2) FORMAT.—The Commission shall prescribe a form for use under paragraph (1) that—

“(A) is designed in a user-friendly and helpful manner for investors to understand the information contained in the report;

“(B) requires the nationally recognized statistical rating organization to provide the content, as required by paragraph (3), in a manner that is directly comparable across securities; and

“(C) the nationally recognized statistical rating organization certifies the information on the form as true and accurate.

“(3) CONTENT.—The Commission shall prescribe a form that requires a nationally recognized statistical rating organization to disclose—

“(A) the main assumptions included in constructing procedures and methodologies, including qualitative methodologies and quantitative inputs and assumptions about the correlation of defaults across underlying assets used in rating certain structured products;
“(B) the potential shortcomings of the credit ratings, and the types of risks not measured in the credit ratings that the nationally recognized statistical rating organization is not commenting on, such as liquidity, market, and other risks;

“(C) information on the certainty of the rating, including information on the reliability, accuracy, and quality of the data relied on in determining the ultimate credit rating and a statement on the extent to which key data inputs for the credit rating were reliable or limited, including any limits on the reach of historical data, limits in accessibility to certain documents or other forms of information that would have better informed the credit rating, and the completeness of certain information considered;

“(D) whether and to what extent third party due diligence services have been utilized, and a description of the information that such third party reviewed in conducting due diligence services;

“(E) a description of relevant data about any obligor, issuer, security, or money market
instrument that was used and relied on for the
purpose of determining the credit rating;

“(F) a statement containing an overall as-
essment of the quality of information available
and considered in producing a credit rating for
a security in relation to the quality of informa-
tion available to the nationally recognized sta-
tistical rating organization in rating similar ob-
ligors, securities, or money market instruments;

“(G) an explanation or measure of the po-
tential volatility for the credit rating, including
any factors that might lead to a change in the
credit rating, and the extent of the change that
might be anticipated under different conditions;

“(H) information on the content of the
credit rating, including—

“(i) the expected default probability;

and

“(ii) the loss given default;

“(I) information on the sensitivity of the
rating to assumptions made by the nationally
recognized statistical rating organization, in-
cluding—

“(i) 5 assumptions made in the rat-
ings process that, without accounting for
any other factor, would have the greatest
impact on a rating if such assumptions
were proven false or inaccurate; and

“(ii) an analysis, using concrete exam-
ples, on how each of the 5 assumptions
identified under clause (i) impacts a rat-
ing;

“(J) where applicable, how the nationally
recognized statistical rating organization used
servicer or remittance reports, and with what
frequency, to conduct surveillance of the credit
rating; and

“(K) such additional information as may
be required by the Commission.

“(4) DUE DILIGENCE SERVICES.—

“(A) Certification required.—In any
case in which third-party due diligence services
are employed by a nationally recognized statis-
tical rating organization or an issuer, under-
writer, or sponsor in connection with the
issuance of a credit rating, the firm providing
the due diligence services shall provide to the
nationally recognized statistical rating organiza-
tion written certification of such due diligence,
which shall be subject to review by the Commis-
sion, and the issuer, underwriter, or sponsor shall provide any reports issued by the provider of such due diligence services to the nationally recognized statistical rating organization.

“(B) FORMAT AND CONTENT.—The Commission shall establish the appropriate format and content for written certifications required under subparagraph (A) to ensure that providers of due diligence services certify that they have conducted a thorough review of data, documentation, and other relevant information necessary for the nationally recognized statistical rating organization to provide a reliable rating.

“(C) DISCLOSURE OF CERTIFICATION.—The Commission shall adopt rules requiring a nationally recognized statistical rating organization to disclose to persons who have access to the credit ratings of the nationally recognized statistical rating organization regardless of whether they are made readily accessible for free or a reasonable fee the certification described in subparagraph (A) with the publication of the applicable credit rating in a manner that may permit the persons to determine the
adequacy and level of due diligence services provided by the third party.

“(t) PROHIBITED ACTIVITIES.—Beginning 180 days from the date of enactment of the Accountability, Reliability, and Transparency in Rating Agencies Act, it shall be unlawful for a nationally recognized statistical rating organization, or an affiliate of a nationally recognized statistical rating organization, or any person associated with a nationally recognized statistical rating organization, that provides a credit rating for an issuer, underwriter, or placement agent of a security to provide any non-rating service to that issuer, underwriter, or placement agent in determining a credit rating, including—

“(1) risk management advisory services;

“(2) advice or consultation relating to any merger, sales, or disposition of assets of the issuer;

“(3) ancillary assistance, advice, or consulting services unrelated to any specific credit rating issuance; and

“(4) such further activities or services as the Commission may determine as necessary or appropriate in the public interest or for the protection of investors.”.

(b) CONFORMING AMENDMENT.—Section 3(a)(62) of the Securities Exchange Act of 1934 is amended by strik-
ing subparagraph (A) and redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

SEC. 6003. STANDARDS FOR PRIVATE ACTIONS.

(a) In General.—Section 21D(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–4(b)(2)) is amended by inserting before the period at the end of the following: “, and in the case of an action brought under this title for money damages against a nationally recognized statistical rating organization, it shall be sufficient for purposes of pleading any required state of mind for purposes of such action that the complaint shall state with particularity facts giving rise to a strong inference that the nationally recognized statistical rating organization was grossly negligent in violating the securities laws”.

(b) Pleading Standard.—Section 15E(m) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7(m)) amended to read as follows:

“(m) Application of Enforcement Provisions; Pleading Standard in Private Rights of Action.—Statements made by nationally recognized statistical rating organizations shall not be deemed forward looking statements for purposes of section 21E. In any private right of action commenced against a nationally recognized statistical rating organization under the securities laws, the same pleading standards with respect to gross neg-
ligence shall apply to the nationally recognized statistical rating organization as would apply to any other person in the same private right of action against such person.”.

(c) REQUIREMENTS FOR LIABILITY.—Section 21D of the Securities Exchange Act of 1934 (15 U.S.C. 78u–4) is amended—

(1) by redesignating subsections (e) through (f) as subsections (d) through (g), respectively; and

(2) by inserting after subsection (b) the following:

“(c) REQUIREMENTS FOR LIABILITY.—A purchaser of a security given a rating by a nationally recognized statistical rating organization shall have the right to recover for damages if the process of determining the credit rating was—

“(1) grossly negligent, based on the facts and circumstances at the time the rating was issued; and

“(2) a substantial factor in the economic loss suffered by the investor.

No action shall be maintained to enforce any liability created under this subsection unless brought within 2 years after the discovery of the facts constituting the violation and within 3 years after the initial issuance of the rating.”.
SEC. 6004. ISSUER DISCLOSURE OF PRELIMINARY RATINGS.

The Securities and Exchange Commission shall adopt rules under authority of the Securities Act of 1933 (15 U.S.C. 77a et seq.) to require issuers to disclose preliminary credit ratings received from nationally recognized statistical rating agencies on structured products and all forms of corporate debt.

SEC. 6005. CHANGE TO DESIGNATION.

The Securities Act of 1933 and the Securities Exchange Act of 1934 are each amended by striking “nationally recognized statistical rating” each place it appears and inserting “nationally registered statistical rating”.

SEC. 6006. TIMELINE FOR REGULATIONS.

Unless otherwise specified in this subtitle, the Securities and Exchange Commission shall adopt rules and regulations, as required by the amendments made by this subtitle, not later than 365 days after the date of enactment.

SEC. 6007. ELIMINATION OF EXEMPTION FROM FAIR DISCLOSURE RULE.

Not later than 90 days after the date of enactment of this subtitle, the Securities Exchange Commission shall revise Regulation FD (17 CFR 243.100) to remove from such regulation the exemption for entities whose primary business is the issuance of credit ratings (17 CFR 243.100(b)(2)(iii)).
SEC. 6008. ADVISORY BOARD.

(a) Establishment.—Not later than 90 days after the date of the enactment of this subtitle, the Securities and Exchange Commission shall establish an advisory board to be known as the Credit Ratings Agency Advisory Board (in this section referred to as “the Board”).

(b) Appointment and Terms of Service.—The Board shall consist of 7 members appointed by the Commission, no more than 2 of whom may be former employees of a credit rating agency. Members of the Board shall be prominent individuals of integrity and reputation who have a demonstrated commitment to the interests of investors and the public, and an understanding of the role that credit ratings play to a broad range of investors. Terms of service shall be staggered as determined by the Commission.

(c) Duties.—The Board shall—

(1) advise the Commission concerning the rules and regulations required by the amendments made by this subtitle;

(2) ensure that the Commission properly and fully executes its oversight functions and responsibilities with the respect to nationally recognized statistical rating organizations and individual participants; and
(3) issue an annual report to Congress detailing its work and recommending any additional Congressional actions necessary to aid the Commission and such additional reports from time to time as appropriate when it feels that the Commission is not properly executing its oversight functions.

SEC. 6009. REMOVAL OF STATUTORY REFERENCES TO CREDIT RATINGS.

(a) FEDERAL DEPOSIT INSURANCE ACT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 28(d)—

(A) in the subsection heading, by striking “NOT OF INVESTMENT GRADE”;

(B) in paragraph (1), by striking “not of investment grade” and inserting “that does not meet standards of credit-worthiness as established by the Corporation”;

(C) in paragraph (2), by striking “not of investment grade”;

(D) by striking paragraph (3) and redesignating paragraph (4) as paragraph (3); and

(E) in paragraph (3) (as so redesignated)—
(i) by striking subparagraph (A) and redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and

(ii) in subparagraph (B) (as so redesignated), by striking “not of investment grade” and inserting “that does not meet standards of credit-worthiness as established by the Corporation”;

(2) in section 28(e)—

(A) in the subsection heading, by striking “NOT OF INVESTMENT GRADE”;

(B) in paragraph (1), by striking “not of investment grade” and inserting “that does not meet standards of credit-worthiness as established by the Corporation”; and

(C) in paragraphs (2) and (3), by striking “not of investment grade” each place that it appears and inserting “that does not meet standards of credit-worthiness established by the Corporation”; and

(3) in section 7(b)(1)(E)(i), by striking “credit rating entities, and other private economic” and insert “private economic, credit,”.

(1) in the section heading, by striking “by

rating organization’’; and

(2) by striking “that is a nationally recognized statistical rating organization, as such term is defined in section 3(a) of the Securities Exchange Act of 1934,”.

(c) Investment Company Act of 1940.—Section 6(a)(5)(A)(iv)(I) Investment Company Act of 1940 (15 U.S.C. 80a–6(a)(5)(A)(iv)(I)) is amended by striking “is rated investment grade by not less than 1 nationally recognized statistical rating organization” and inserting “meets such standards of credit-worthiness that the Commission shall adopt”.

(d) Revised Statutes.—Section 5136A of title LXII of the Revised Statutes of the United States (12 U.S.C. 24a) is amended—

(1) in subsection (a)(2)(E), by striking “any applicable rating” and inserting “standards of credit-worthiness established by the Comptroller of the Currency’’;
(2) in the heading for subsection (a)(3) by striking “RATING OR COMPARABLE REQUIREMENT” and inserting “REQUIREMENT”; (3) subsection (a)(3), by amending subparagraph (A) to read as follows:

“(A) IN GENERAL.—A national bank meets the requirements of this paragraph if the bank is one of the 100 largest insured banks and has not fewer than 1 issue of outstanding debt that meets standards of credit-worthiness or other criteria as the Secretary of the Treasury and the Board of Governors of the Federal Reserve System may jointly establish.”. (4) in the heading for subsection (f), by striking “MAINTAIN PUBLIC RATING OR” and inserting “MEET STANDARDS OF CREDIT-WORTHINESS”; and (5) in subsection (f)(1), by striking “any applicable rating” and inserting “standards of credit-worthiness established by the Comptroller of the Currency”. (e) SEcurities EXchange ACT OF 1934.—Section 3(a) Securities Exchange Act of 1934 (15 U.S.C. 78a(3)(a)) is amended— (1) in paragraph (41), by striking “is rated in one of the two highest rating categories by at least
one nationally recognized statistical rating organization” and inserting “meets standards of credit-worthiness as defined by the Commission”; and

(2) in paragraph (53)(A), by striking “is rated in 1 of the 4 highest rating categories by at least 1 nationally recognized statistical rating organization” and inserting “meets standards of credit-worthiness as defined by the Commission”.

(f) World Bank Discussions.—Section 3(a)(6) of the amendment in the nature of a substitute to the text of H.R. 4645, as ordered reported from the Committee on Banking, Finance and Urban Affairs on September 22, 1988, as enacted into law by section 555 of Public Law 100–461, (22 U.S.C. 286hh(a)(6)), is amended by striking “rating” and inserting “worthiness”.

(g) Effective Date.—The amendments made by this section shall take effect after the end of the 6-month period beginning on the date of the enactment of this subtitle.

SEC. 6010. REVIEW OF RELIANCE ON RATINGS.

(a) Agency Review.—

(1) Review.—Not later than 1 year after the date of the enactment of this subtitle, each Federal agency listed in paragraph (4) shall, to the extent applicable, review—
(A) any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument; and

(B) any references to or requirements in such regulations regarding credit ratings.

(2) Modifications Required.—Each such agency shall modify any such regulations identified by the review conducted under paragraph (1) to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations. In making such determination, such agencies shall seek to establish, to the extent feasible, uniform standards of credit-worthiness for use by each such agency, taking into account the entities regulated by each such agency and the purposes for which such entities would rely on such standards of credit-worthiness.

(3) Report.—Upon conclusion of the review required under paragraph (1), each Federal agency listed in paragraph (4) shall transmit a report to Congress containing a description of any modifica-
tion of any regulation such agency made pursuant to paragraph (2).

(4) APPLICABLE AGENCIES.—The agencies required to conduct the review and report required by this subsection are—

(A) the Securities and Exchange Commission;

(B) the Federal Deposit Insurance Corporation;

(C) the Office of Thrift Supervision;

(D) the Office of the Comptroller of the Currency;

(E) the Board of Governors of the Federal Reserve;

(F) the National Credit Union Administration; and

(G) the Federal Housing Finance Agency.

(b) GAO REVIEW OF OTHER AGENCIES.—

(1) REVIEW.—The Comptroller General shall conduct a comprehensive review of the use of credit ratings by Federal agencies other than those listed in subsection (a)(3), including an analysis of the provisions of law or regulation applicable to each such agency that refer to and require the use of credit ratings by the agency, and the policies and
practices of each agency with respect to credit ratings.

(2) REPORT.—Not later than 18 months after the date of the enactment of this subtitle, the Comptroller General shall transmit to Congress a report on the findings of the study conducted pursuant to paragraph (1), including recommendations for any legislation or rulemaking necessary or appropriate in order for such agencies to reduce their reliance on credit ratings.

SEC. 6011. PUBLICATION OF RATING HISTORIES ON THE EDGAR SYSTEM.

Not later than 180 days after the date of the enactment of this subtitle, the Securities and Exchange Commission shall revise its rules in section 240.17g–2(a) and (d) of title 17, Code of Federal Regulations, to require that the random sample of ratings histories of credit ratings required under such rules to be disclosed on the website of a nationally recognized statistical rating organization also be provided to the Commission in a format consistent with publication by the Commission on the EDGAR system.
SEC. 6012. EFFECT OF RULE 436(G).

Rule 436(g), promulgated by the Securities and Exchange Commission under the Securities Act of 1933, shall have no force or effect.

SEC. 6013. STUDIES.

(a) GAO STUDY.—

(1) IN GENERAL.—The Comptroller General shall conduct a study of—

(A) the implementation of this subtitle and the amendments made by this subtitle by the Securities and Exchange Commission;

(B) the appropriateness of relying on ratings for use in Federal, State, and local securities and banking regulations, including for determining capital requirements;

(C) the effect of liability in private actions arising under the Securities Exchange Act of 1934;

(D) alternative means for compensating credit rating agencies that would create incentives for accurate credit ratings and what, if any, statutory changes would be required to permit or facilitate the use of such alternative means of compensation; and

(E) alternative methodologies to assess credit risk, including market-based measures.
(2) Report.—Not later than 30 months after the date of enactment of this subtitle, the Comptroller General shall submit to Congress and the Securities Exchange Commission, a report containing the findings under the study required by subsection (a).

(3) Access.—

(A) In general.—For purposes of conducting the study described in paragraph (1), the Comptroller General shall have access, upon request and with the consent of the Securities and Exchange Commission, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by each nationally recognized statistical rating organization, and to the officers, directors, employees, independent public accountants, financial advisors, staff and agents and representatives of the organization (as related to the agent’s or representative’s activities on behalf of the organization) at such reasonable times as the Comptroller General may request. The Comptroller General may make and retain copies of books, records, ac-
counts, and other records as the Comptroller
General deems appropriate.

(B) CONFIDENTIALITY.—The Comptroller
General may not disclose reasonably designated
proprietary, trade secret or business confiden-
tial information obtained from the organization
except that such information shall be disclosed
by the Comptroller General—

(i) to other Federal Government de-
partments, agencies, and officials for offi-
cial use upon request;

(ii) to committees of Congress upon
request; and

(iii) to a court in any judicial pro-
ceeding under court order.

Nothing in this provision shall be construed to
limit the requirements imposed by section 1905
of title 18, United States Code.

(b) SEC STUDY ON ASSIGNING CREDIT RATING
AGENCIES ON A ROTATING BASIS.—The Securities and
Exchange Commission shall undertake a study on creating
a system whereby nationally recognized statistical rating
organizations are assigned on a rotating basis to issuers
and obligors seeking a credit rating. Not later than 1 year
after the date of enactment of this subtitle, the Securities
and Exchange Commission shall transmit to Congress a report containing the findings of the study.

(c) SEC Study on Effect of New Requirements on NRSRO Registration.—The Securities and Exchange Commission shall conduct a study on the effect of the amendments made by section 2 on credit rating agencies seeking to register as nationally recognized statistical rating organizations, including whether the new requirements in such amendments deter credit rating agencies from registering as nationally recognized statistical rating organizations. Not later than 1 year after the date of enactment of this subtitle, the Commission shall transmit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the findings of such study.

(d) Study of Credit Ratings of Different Classes of Bonds.—

(1) Study.—The Securities and Exchange Commission shall conduct a study of the treatment of different classes of bonds (municipal versus corporate) by the nationally recognized statistical rating organizations. Such study shall examine—

(A) whether there are fundamental differences in the treatment of different classes of
bonds by such rating organizations that cause
some classes of bonds to suffer from undue dis-
crimination;

(B) if there are such differences, what are
the causes of such differences and how can they
be alleviated;

(C) whether there are factors other than
risk of loss that are appropriate for the credit
ratings agencies to consider when rating bonds,
and do those factors vary across different sec-
tors;

(D) the types of financing arrangement
used by municipal issuers;

(E) the differing legal and regulatory re-
gimes governing disclosures for corporate bonds
and municipal bonds;

(F) the extent to which retail investors
could be disadvantaged by a single ratings
scale; and

(G) practices, policies, and methodologies
by the nationally recognized statistical rating
organizations with respect to rating municipal
bonds.

(2) REPORT.—Within 6 months after the date
of enactment of this subtitle, the Securities and Ex-
change Commission shall submit a report on the re-
sults of the study required by paragraph (1) to the
Committee on Financial Services of the House of
Representatives and the Committee on Banking,
Housing, and Urban Development of the Senate.
Such report shall include as assessment of each of
the issues and subjects described in subparagraphs
(A) through (G) of paragraph (1).
(e) SEC STUDY ON MEANINGFUL MULTI-DIGIT RAT-
ing SYMBOLS.—

(1) STUDY.—The Securities and Exchange
Commission shall conduct a study on the feasibility
and desirability of implementing a standardized rat-
ing system whereby ratings symbols contain multiple
characters, each representing a range of default
probabilities and loss expectations under standard-
ized and increasingly severe levels of market stress.
The study shall optimize the definitions of the sym-
bols to maximize their overall usefulness for users of
credit ratings.

(2) INITIAL EXAMPLE FOR GUIDANCE.—An ex-
ample to provide initial guidance for the study is a
ratings symbol consisting of three digits, each of
which corresponds to default probabilities under dif-
ferent levels of market stress as follows:
(A) The first digit represents the default probability under “normal” market stress, characterized by normal economic fluctuations in addition to a 5 percent decline in asset value and 2 percent increase in unemployment.

(B) The second digit represents the default probability under more severe market stress, characterized a 20 percent decline in asset value and 5 percent increase in unemployment.

(C) The third digit represents the default probability under extreme market stress, characterized by a 50 percent decline in asset value and 10 percent increase in unemployment.

(3) REPORT.—Not later than 1 year after the date of the enactment of this subtitle, the Commission shall transmit to Congress a report of the study conducted pursuant to paragraph (1), including recommendations on whether the system similar to that described in paragraph (2) should be implemented and, if so, any necessary legislation required to implement such a system.

(f) SEC STUDY ON RATINGS STANDARDIZATION.—

(1) IN GENERAL.—The Securities and Exchange Commission shall undertake a study on the feasibility and desirability of—
(A) standardizing credit ratings terminology, so that all credit rating agencies issue credit ratings using identical terms;

(B) standardizing the market stress conditions under which ratings are evaluated;

(C) requiring a quantitative correspondence between credit ratings and a range of default probabilities and loss expectations under standardized conditions of economic stress; and

(D) standardizing credit rating terminology across asset classes, so that named ratings shall correspond to a standard range of default probabilities and expected losses independent of asset class and issuing entity.

(2) REPORT.—Not later than 1 year after the date of enactment of this subtitle, the Securities and Exchange Commission shall transmit to Congress a report containing the findings of the study and the recommendations of the Commission.

Subtitle C—Investor Protection Act

SEC. 7001. SHORT TITLE.

This subtitle may be cited as the “Investor Protection Act of 2009”.
PART 1—DISCLOSURE

SEC. 7101. INVESTOR ADVISORY COMMITTEE ESTABLISHED.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding after section 4C the following new section:

"SEC. 4D. INVESTOR ADVISORY COMMITTEE.

“(a) Establishment and Purpose.—There is established an Investor Advisory Committee (in this section referred to as the ‘Committee’) to advise and consult with the Commission on—

“(1) regulatory priorities and issues regarding new products, trading strategies, fee structures and the effectiveness of disclosures;

“(2) initiatives to protect investor interest; and

“(3) initiatives to promote investor confidence in the integrity of the marketplace.

“(b) Membership.—

“(1) Appointment.—The Chairman of the Commission shall appoint the members of the Committee, which members shall—

“(A) represent the interests of individual investors;

“(B) represent the interests of institutional investors; and
“(C) use a wide range of investment approaches.

“(2) Members not Commission employees.—Members shall not be considered employees or agents of the Commission solely because of membership on the Committee.

“(c) Meetings.—The Committee shall meet from time to time at the call of the Commission, but, at a minimum, shall meet at least twice each year.

“(d) Compensation and travel expenses.—Members of the Committee who are not full-time employees of the United States shall—

“(1) be entitled to receive compensation at a rate fixed by the Commission while attending meetings of the Committee, including travel time; and

“(2) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

“(e) Committee findings.—Nothing in this section requires the Commission to accept, agree, or act upon the findings or recommendations of the Committee.

“(f) Authorization of Appropriations.—There is authorized to be appropriated to the Commission such sums as are necessary for the activities of the Committee.”.
SEC. 7102. CLARIFICATION OF THE COMMISSION'S AUTHORITY TO ENGAGE IN CONSUMER TESTING.

(a) Amendment to Securities Act of 1933.—

Section 19 of the Securities Act of 1933 (15 U.S.C. 77s) is amended by adding at the end the following new subsection:

“(e) For the purposes of evaluating its rules and programs and for considering, proposing, adopting, or engaging in rules or programs, the Commission is authorized to gather information, communicate with investors or other members of the public, and engage in such temporary or experimental programs as the Commission in its discretion determines is in the public interest or for the protection of investors. The Commission may delegate to its staff some or all of the authority conferred by this subsection.”.

(b) Amendment to Securities Exchange Act of 1934.—Section 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78w) is amended by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively, and inserting after subsection (a) the following:

“(b) For the purposes of evaluating its rules and programs and for considering proposing, adopting, or engaging in rules or programs, the Commission is authorized to gather information, communicate with investors or other members of the public, and engage in such tem-
porary or experimental programs as the Commission in its
discretion determines is in the public interest or for the
protection of investors. The Commission may delegate to
its staff some or all of the authority conferred by this sub-
section.”.

(c) Amendment to Investment Company Act of
1940.—Section 38 of the Investment Company Act of
1940 (15 U.S.C. 80a–38) is amended by adding at the
end the following new subsection:

“(d) Gathering Information.—For the purposes
of evaluating its rules and programs and for considering
proposing, adopting, or engaging in rules or programs, the
Commission is authorized to gather information, commu-
nicate with investors or other members of the public, and
engage in such temporary or experimental programs as
the Commission in its discretion determines is in the pub-
ic interest or for the protection of investors. The Commis-
sion may delegate to its staff some or all of the authority
conferred by this subsection.”.

(d) Amendment to the Investment Advisers
Act of 1940.—Section 211 of the Investment Advisers
Act of 1940 (15 U.S.C. 80b–11) (as amended by section
5008(2)) is further amended by adding at the end the fol-
lowing new subsection:
“(f) For the purposes of evaluating its rules and programs and for considering proposing, adopting, or engaging in rules or programs, the Commission is authorized to gather information, communicate with investors or other members of the public, and engage in such temporary or experimental programs as the Commission in its discretion determines is in the public interest or for the protection of investors. The Commission may delegate to its staff some or all of the authority conferred by this subsection.”.

SEC. 7103. ESTABLISHMENT OF A FIDUCIARY DUTY FOR BROKERS, DEALERS, AND INVESTMENT ADVISERS, AND HARMONIZATION OF REGULATION.

(a) IN GENERAL.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) (as amended by section 1951(c)) is further amended by adding at the end the following new subsections:

“(m) STANDARD OF CONDUCT.—

“(1) IN GENERAL.—Notwithstanding any other provision of this Act or the Investment Advisers Act of 1940, the Commission shall promulgate rules to provide that, with respect to a broker or dealer,
when providing personalized investment advice about securities to a retail customer (and such other customers as the Commission may by rule provide), the standard of conduct for such broker or dealer with respect to such customer shall be the same as the standard of conduct applicable to an investment adviser under section 211 of the Investment Advisers Act of 1940. The receipt of compensation based on commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of such standard applied to a broker or dealer. Nothing in this section shall require a broker or dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities.

“(2) Disclosure of range of products offered.—Where a broker or dealer sells only proprietary or other limited range of products, as determined by the Commission, the Commission shall by rule require that such broker or dealer provide notice to each retail customer and obtain the consent or acknowledgment of the customer. The sale of only proprietary or other limited range of products by a broker or dealer shall not, in and of itself, be consid-
ered a violation of the standard set forth in para-
graph (1).

“(3) Retail customer defined.—For pur-
poses of this subsection, the term ‘retail customer’
means a natural person, or the legal representative
of such natural person, who—

“(A) receives personalized investment ad-
vice about securities from a broker or dealer;

and

“(B) uses such advice primarily for per-
sonal, family, or household purposes.

“(n) Other Matters.—The Commission shall—

“(1) facilitate the provision of simple and clear
disclosures to investors regarding the terms of their
relationships with brokers, dealers, and investment
advisers, including any material conflicts of interest;

and

“(2) examine and, where appropriate, promul-
gate rules prohibiting or restricting certain sales
practices, conflicts of interest, and compensation
schemes for brokers, dealers, and investment advis-
ers that the Commission deems contrary to the pub-
lic interest and the protection of investors.”.

(2) Investment Advisers Act of 1940.—Sec-
tion 211 of the Investment Advisers Act of 1940, as
amended by section 7102(d), is further amended by
adding at the end the following new subsections:

“(g) Standard of Conduct.—

“(1) In general.—The Commission shall pro-
mulgate rules to provide that the standard of con-
duct for all brokers, dealers, and investment advis-
ers, when providing personalized investment advice
about securities to retail customers (and such other
customers as the Commission may by rule provide),
shall be to act in the best interest of the customer
without regard to the financial or other interest of
the broker, dealer, or investment adviser providing
the advice. In accordance with such rules, any mate-
rial conflicts of interest shall be disclosed and may
be consented to by the customer. Such rules shall
provide that such standard of conduct shall be no
less stringent than the standard applicable to invest-
ment advisers under section 206(1) and (2) of this
Act when providing personalized investment advice
about securities, except the Commission shall not as-
cribe a meaning to the term ‘customer’ that would
include an investor in a private fund managed by an
investment adviser, where such private fund has en-
tered into an advisory contract with such adviser.
The receipt of compensation based on commission or
fees shall not, in and of itself, be considered a violation of such standard applied to a broker, dealer, or investment adviser.

“(2) RETAIL CUSTOMER DEFINED.—For purposes of this subsection, the term ‘retail customer’ means a natural person, or the legal representative of such natural person, who—

“(A) receives personalized investment advice about securities from a broker, dealer, or investment adviser; and

“(B) uses such advice primarily for personal, family, or household purposes.

“(h) OTHER MATTERS.—The Commission shall—

“(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and

“(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.”.

(b) HARMONIZATION OF ENFORCEMENT.—
(1) Securities Exchange Act of 1934.—Section 15 of the Securities Exchange Act of 1934, as amended by subsection (a)(1), is further amended by adding at the end the following new subsection:

“(o) Harmonization of Enforcement.—The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer shall include—

“(1) the enforcement authority of the Commission with respect to such violations provided under this Act; and

“(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment advisor under the Investment Advisers Act of 1940, including the authority to impose sanctions for such violations, and the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under this Act to same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to an investment advisor under the Investment Advisers Act of 1940.”.
(2) INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940, as amended by subsection (a)(2), is further amended by adding at the end the following new subsection:

“(i) HARMONIZATION OF ENFORCEMENT.—The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment adviser shall include—

“(1) the enforcement authority of the Commission with respect to such violations provided under this Act; and

“(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934, including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to an investment advisor under this Act to same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934.”.
SEC. 7104. COMMISSION STUDY AND RULEMAKING ON DIS-
CLOSURE TO RETAIL CUSTOMERS BEFORE
PURCHASE OF PRODUCTS OR SERVICES.

(a) Study Required.—Prior to proposing any rules or regulations pursuant to subsection (b)(1) regarding the provision of documents or information to retail customers prior to the purchase of investment products or services, and within 180 days after the date of the enactment of this subtitle, the Securities and Exchange Commission shall publish a study that examines—

(1) the nature of a “retail customer”, taking into consideration the definition in section 15(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78o), as amended by section 7103 of this subtitle;

(2) the range of products and services sold or provided to retail customers, and the sellers or providers of such products and services, that are within the Commission’s jurisdiction;

(3) how such products and services are sold or provided to retail customers, the fees charged for such products and services, and the conflicts of interest that may arise during the sales process or provision of services;

(4) information that retail customers should receive prior to purchasing each product or service,
and the appropriate person or entity to provide such
information; and

(5) ways to ensure that, where possible, reason-
ably similar products and services are subject to
similar regulatory treatment, including with respect
to information that must be provided to retail cus-
tomers prior to the purchase of such products or
services and how such information is provided.

(b) RULEMAKING.—

(1) Notwithstanding any other provision of the
Securities Act of 1933 (15 U.S.C. 77a et seq.) or
the Investment Company Act of 1940 (15 U.S.C.
80a–1 et seq.), following completion of the study re-
quired by subsection (a), the Commission is author-
ized to promulgate rules to require that the appro-
riate persons or entities provide designated docu-
ments or information to retail customers prior to the
purchase of identified investment products or serv-
ices. Any such rules shall—

(A) take into account the findings of the
study conducted pursuant to subsection (a);

(B) take into consideration, to the extent
possible, the need for such documents and in-
formation to be consistent and comparable
across investment products or services sold or provided to retail customers; and

(C) reduce, to the extent possible, disruptions to the purchase process for investment products and services sold or provided to retail customers, by means such as permitting required disclosures to be made via the Internet.

(2) Notwithstanding paragraph (1), the Commission is authorized to promulgate rules in connection with—

(A) the implementation of section 7103;

and

(B) disclosure to retail customers other than rules that require the provision of documents or information to retail customers prior to the purchase of investment products or services.

SEC. 7105. BENEFICIAL OWNERSHIP AND SHORT-SWING PROFIT REPORTING.

(a) Beneficial Ownership Reporting.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

(1) in subsection (d)(1)—

(A) by inserting after “within ten days after such acquisition” the following: “or within
such shorter time as the Commission may establish by rule’’; and

(B) by striking ‘‘send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and’’;

(2) in subsection (d)(2)—

(A) by striking ‘‘in the statements to the issuer and the exchange, and’’; and

(B) by striking ‘‘shall be transmitted to the issuer and the exchange and’’;

(3) in subsection (g)(1), by striking ‘‘shall send to the issuer of the security and’’; and

(4) in subsection (g)(2)—

(A) by striking ‘‘sent to the issuer and’’;

and

(B) by striking ‘‘shall be transmitted to the issuer and’’.

(b) Short-Swing Profit Reporting.—Section 16(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(a)) is amended—

(1) in paragraph (1), by striking ‘‘(and, if such security is registered on a national securities exchange, also with the exchange)’’; and
(2) in paragraph (2)(B), by inserting after “officer” the following: “, or within such shorter time as the Commission may establish by rule”.

SEC. 7106. REVISION TO RECORDKEEPING RULES.

(a) INVESTMENT COMPANY ACT OF 1940 AMENDMENTS.—Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a–30) is amended—

(1) in subsection (a)(1), by adding at the end the following: “Each person with custody or use of a registered investment company’s securities, deposits, or credits shall maintain and preserve all records that relate to the person’s custody or use of the registered investment company’s securities, deposits, or credits for such period or periods as the Commission, by rules and regulations, may prescribe as necessary or appropriate in the public interest or for the protection of investors.”; and

(2) in subsection (b), by adding at the end the following new paragraph:

“(4) RECORDS OF PERSONS WITH CUSTODY OR USE.—

“(A) IN GENERAL.—Notwithstanding paragraph (1), records of persons with custody or use of a registered investment company’s securities, deposits, or credits, that relate to such
custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

“(B) CERTAIN PERSONS SUBJECT TO OTHER REGULATION.—Persons subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under subparagraph (A), by providing the Commission with a detailed listing, in writing, of the registered investment company’s securities, deposits, or credits within such person’s custody or use.”.

(b) INVESTMENT ADVISERS ACT OF 1940 AMENDMENT.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4) is amended by adding at the end the following new subsection:

“(d) RECORDS OF PERSONS WITH CUSTODY OR USE.—
“(1) In general.—Records of persons with custody or use of a client’s securities, deposits, or credits, that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

“(2) Certain persons subject to other regulation.—Persons subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(e)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under paragraph (1), by providing the Commission with a detailed listing, in writing, of the client’s securities, deposits, or credits within such person’s custody or use.”.

SEC. 7107. STUDY ON ENHANCING INVESTMENT ADVISER EXAMINATIONS.

(a) Study Required.—

(1) In general.—The Commission shall review and analyze the need for enhanced examination and enforcement resources for investment advisers.
(2) AREAS OF CONSIDERATION.—The study required by this subsection shall examine—

(A) the number and frequency of examinations of investment advisers by the Commission over the 5 years preceding the date of the enactment of this subtitle;

(B) the extent to which having Congress authorize the Commission to designate one or more self-regulatory organizations to augment the Commission’s efforts in overseeing investment advisers would improve the frequency of examinations of investment advisers; and

(C) current and potential approaches to examining the investment advisory activities of dually registered broker-dealers and investment advisers or affiliated broker-dealers and investment advisers.

(b) REPORT REQUIRED.—The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than 180 days after the date of enactment of this subtitle, and shall use such findings to revise its rules and regulations, as necessary. The report shall include a discussion of regulatory or legislative steps that are rec-
ommended or that may be necessary to address concerns
identified in the study.

SEC. 7108. GAO STUDY OF FINANCIAL PLANNING.

(a) Study Required.—The Comptroller General of
the United States shall conduct a study on the regulation
and oversight of financial planning. The study shall con-
sider—

(1) the unique role of financial planners in pro-
viding comprehensive advice in investment planning,
income tax planning, education planning, retirement
planning, estate planning, risk management, and
other areas with respect to the management of fi-
nancial resources; and

(2) any gaps in the regulation of financial plan-
ners given existing State and Federal regulation of
financial planning activities and the need to provide
related consumer protections for such financial plan-
ing activities.

(b) Report.—Not later than the end of the 180-day
period beginning on the date of the enactment of this sub-
title, the Comptroller General of the United States shall
submit to the Congress a report containing the findings
and determinations made by the Comptroller General in
carrying out the study required under subsection (a), in-
cluding recommendations for the appropriate regulation
of, or standards for, financial planners as a profession and how such regulations or standards should be established.

PART 2—ENFORCEMENT AND REMEDIES

SEC. 7201. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.

(a) Amendment to Securities Exchange Act of 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o), as amended by section 7103, is further amended by adding at the end the following new subsection:

“(p) AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.”.

(b) Amendment to Investment Advisers Act of 1940.—Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5) is amended by adding at the end the following new subsection:
“(f) Authority to Restrict Mandatory Pre-Dispute Arbitration.—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any investment adviser to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.”.

SEC. 7202. COMPTROLLER GENERAL STUDY TO REVIEW SECURITIES ARBITRATION SYSTEM.

(a) Study.—The Comptroller General of the United States shall conduct a study to review—

(1) the costs to parties of an arbitration proceeding using the arbitration system operated by the Financial Industry Regulatory Authority and overseen by the Securities and Exchange Commission as compared to litigation;

(2) the percentage of recovery of the total amount of a claim in an arbitration proceeding using the arbitration system operated by the Financial Industry Regulatory Authority and overseen by the Securities and Exchange Commission; and
(3) other additional issues as may be raised during the course of the study conducted under this subsection.

(b) REPORT.—Not later than 1 year after the date of enactment of this subtitle, the Comptroller General of the United States shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the results of the study required by subsection (a), including in such report recommendations for improvements to the arbitration system referenced in such subsection.

SEC. 7203. WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding after section 21E the following new section:

“SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND PROTECTION.

“(a) IN GENERAL.—In any judicial or administrative action brought by the Commission under the securities laws that results in monetary sanctions exceeding $1,000,000, the Commission, under regulations prescribed by the Commission and subject to subsection (b), may pay an award or awards not exceeding an amount equal to 30 percent, in total, of the monetary sanctions imposed in the
action or related actions to one or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the action. Any amount payable under the preceding sentence shall be paid from the fund described in subsection (f).

“(b) Determination of Amount of Award; Denial of Award.—

“(1) Determination of Amount of Award.—The determination of the amount of an award, within the limit specified in subsection (a), shall be in the sole discretion of the Commission. The Commission may take into account the significance of the whistleblower’s information to the success of the judicial or administrative action described in subsection (a), the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in such action, the Commission’s programmatic interest in deterring violations of the securities laws by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws, and such additional factors as the Commission may establish by rules or regulations.

“(2) Denial of Award.—No award under subsection (a) shall be made—
“(A) to any whistleblower who is, or was at the time he or she acquired the original information submitted to the Commission, a member, officer, or employee of any appropriate regulatory agency, the Department of Justice, the Public Company Accounting Oversight Board, law enforcement agency, or a self-regulatory organization;

“(B) to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section;

“(C) to any whistleblower who gains the information through the performance of an audit of financial statements required under the securities laws; or

“(D) to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule, require.

“(c) Representation.—

“(1) Permitted representation.—Any whistleblower who makes a claim for an award under subsection (a) may be represented by counsel.
“(2) Required representation.—Any whistleblower who makes a claim for an award under subsection (a) must be represented by counsel if the whistleblower submits the information upon which the claim is based anonymously. Prior to the payment of an award, the whistleblower must disclose his or her identity and provide such other information as the Commission may require.

“(d) No contract necessary.—No contract with the Commission is necessary for any whistleblower to receive an award under subsection (a), unless the Commission, by rule or regulation, so requires.

“(e) Appeals.—Any determinations under this section, including whether, to whom, or in what amounts to make awards, shall be in the sole discretion of the Commission, and any such determinations shall be final and not subject to judicial review.

“(f) Investor Protection Fund.—

“(1) Fund established.—There is established in the Treasury of the United States a fund to be known as the ‘Securities and Exchange Commission Investor Protection Fund’ (referred to in this section as the ‘Fund’).

“(2) Use of fund.—The Fund shall be available to the Commission, without further appropria-
tion or fiscal year limitation, for the following pur-
poses:

“(A) Paying awards to whistleblowers as
provided in subsection (a).

“(B) Funding investor education initiatives
designed to help investors protect themselves
against securities fraud or other violations of
the securities laws, or the rules and regulations
thereunder.

“(3) DEPOSITS AND CREDITS.—There shall be
deposited into or credited to the Fund—

“(A) any monetary sanction collected by
the Commission in any judicial or administra-
tive action brought by the Commission under
the securities laws that is not added to a
disgorgement fund or other fund pursuant to
section 308 of the Sarbanes-Oxley Act of 2002
or otherwise distributed to victims of a violation
of the securities laws, or the rules and regula-
tions thereunder, underlying such action, unless
the balance of the Fund at the time the mone-
tary sanction is collected exceeds $100,000,000;

“(B) any monetary sanction added to a
disgorgement fund or other fund pursuant to
section 308 of the Sarbanes-Oxley Act of 2002
that is not distributed to the victims for whom
the disgorgement fund or other fund was estab-
lished, unless the balance of the Fund at the
time the determination is made not to dis-
distribute the monetary sanction to such victims
exceeds $100,000,000; and

“(C) all income from investments made
under paragraph (4).

“(4) INVESTMENTS.—

“(A) AMOUNTS IN FUND MAY BE IN-
VESTED.—The Commission may request the
Secretary of the Treasury to invest the portion
of the Fund that is not, in the Commission’s
judgment, required to meet the current needs of
the Fund.

“(B) ELIGIBLE INVESTMENTS.—Invest-
ments shall be made by the Secretary of the
Treasury in obligations of the United States or
obligations that are guaranteed as to principal
and interest by the United States, with matur-
rities suitable to the needs of the Fund as de-
termined by the Commission.

“(C) INTEREST AND PROCEEDS CRED-
ITED.—The interest on, and the proceeds from
the sale or redemption of, any obligations held
in the Fund shall be credited to, and form a part of, the Fund.

“(5) REPORTS TO CONGRESS.—Not later than October 30 of each year, the Commission shall transmit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representa-
tives a report on—

“(A) the Commission’s whistleblower award program under this section, including a description of the number of awards that were granted and the types of cases in which awards were granted during the preceding fiscal year;

“(B) investor education initiatives de-
scribed in paragraph (2)(B) that were funded by the Fund during the preceding fiscal year;

“(C) the balance of the Fund at the begin-
ning of the preceding fiscal year;

“(D) the amounts deposited into or cred-
ited to the Fund during the preceding fiscal
year;

“(E) the amount of earnings on invest-
ments of amounts in the Fund during the pre-
ceding fiscal year;
“(F) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (a);

“(G) the amount paid from the Fund during the preceding fiscal year for investor education initiatives described in paragraph (1)(B);

“(H) the balance of the Fund at the end of the preceding fiscal year; and

“(I) a complete set of audited financial statements, including a balance sheet, income statement, and cash flow analysis.

“(g) PROTECTION OF WHISTLEBLOWERS.—

“(1) PROHIBITION AGAINST RETALIATION.—

“(A) IN GENERAL.—No employer may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee, contractor, or agent in the terms and conditions of employment because of any lawful act done by the employee, contractor, or agent in providing information to the Commission in accordance with subsection (a), or in assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.

“(B) ENFORCEMENT.—
“(i) Cause of Action.—An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C).

“(ii) Subpoenas.—A subpoena requiring the attendance of a witness at a trial or hearing conducted under this section may be served at any place in the United States.

“(iii) Statute of Limitations.—An action under this subsection may not be brought more than 6 years after the date on which the violation of subparagraph (A) occurred, or more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the employee alleging a violation of subparagraph (A), but in no event after 10 years after the date on which the violation occurs.

“(C) Relief.—An employee, contractor, or agent prevailing in any action brought under
subparagraph (B) shall be entitled to all relief necessary to make that employee, contractor, or agent whole, including reinstatement with the same seniority status that the employee, contractor, or agent would have had, but for the discrimination, 2 times the amount of back pay, with interest, and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorneys' fees.

“(2) CONFIDENTIALITY.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the Commission and any officer or employee of the Commission shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (B). For purposes of section 552 of title 5, United States Code, this
paragraph shall be considered a statute de-
scribed in subsection (b)(3)(B) of such section
552.

“(B) **Availability to government agencies.**—Without the loss of its status as
confidential and privileged in the hands of the
Commission, all information referred to in sub-
paragraph (A) may, in the discretion of the
Commission, when determined by the Commis-
sion to be necessary to accomplish the purposes
of this Act and protect investors, be made avail-
able to—

“(i) the Attorney General of the
United States,

“(ii) an appropriate regulatory au-
thority,

“(iii) a self-regulatory organization,

“(iv) State attorneys general in con-
nection with any criminal investigation,
and

“(v) any appropriate State regulatory
authority,
each of which shall not disclose such informa-
tion in accordance with subparagraph (A).
“(h) Provision of False Information.—Any whistleblower who knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award under this section.

“(i) Rulemaking Authority.—The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section.

“(j) Definitions.—For purposes of this section, the following terms have the following meanings:

“(1) Original Information.—The term ‘original information’ means information that—

“(A) is based on the direct and independent knowledge or analysis of a whistleblower;

“(B) is not known to the Commission from any other source, unless the whistleblower is the initial source of the information; and

“(C) is not based on allegations in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistle-
blower is the initial source of the information
that resulted in the judicial or administrative
hearing, governmental report, hearing, audit, or
investigation, or the news media’s report on the
allegations.

“(2) MONETARY SANCTIONS.—The term ‘monetary
sanctions’, when used with respect to any judi-
cial or administrative action, means any monies, in-
cluding but not limited to penalties, disgorgement,
and interest, ordered to be paid, and any monies de-
posited into a disgorgement fund or other fund pur-
suant to section 308(b) of the Sarbanes-Oxley Act of
2002 (15 U.S.C. 7246(b)), as a result of such action
or any settlement of such action.

“(3) RELATED ACTION.—The term ‘related ac-
tion’, when used with respect to any judicial or ad-
ministrative action brought by the Commission
under the securities laws, means any judicial or ad-
ministrative action brought by an entity described in
subsection (g)(2)(B) that is based upon the same
original information provided by a whistleblower
pursuant to subsection (a) that led to the successful
enforcement of the Commission action.

“(4) WHISTLEBLOWER.—The term ‘whistle-
blower’ means an individual, or two or more individ-
uals acting jointly, who submit information to the Commission as provided in this section.”.

(b) ADMINISTRATION AND ENFORCEMENT.—The Securities and Exchange Commission shall establish a separate office within the Commission to administer and enforce the provisions of section 21F of the Securities Exchange Act of 1934, as added by subsection (a). Such office shall report annually to Congress on its activities, whistleblower complaints, and the response of the Commission to such complaints.

SEC. 7204. CONFORMING AMENDMENTS FOR WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—Each of the following provisions is amended by inserting “and section 21F of the Securities Exchange Act of 1934” after “the Sarbanes-Oxley Act of 2002”:


(b) SECURITIES EXCHANGE ACT.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(2) in section 21A(d)(1) (15 U.S.C. 78u–1(d)(1))—

(A) by striking “(subject to subsection (e))”; and

(B) by inserting “and section 21F of this title” after “the Sarbanes-Oxley Act of 2002”;

and

(3) in section 21A, by striking subsection (e) and redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

SEC. 7205. IMPLEMENTATION AND TRANSITION PROVISIONS FOR WHISTLEBLOWER PROTECTIONS.

(a) IMPLEMENTING RULES.—The Securities and Exchange Commission shall issue final regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934, as added by this part, no later than 270 days after the date of enactment of this subtitle.

(b) ORIGINAL INFORMATION.—Information submitted to the Commission by a whistleblower in accordance with regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934, as added by this part, shall not lose its status as original information.
tion, as defined in subsection (i)(1) of such section, solely because the whistleblower submitted such information prior to the effective date of such regulations, provided such information was submitted after the date of enactment of this subtitle, or related to insider trading violations for which a bounty could have been paid at the time such information was submitted.

(c) AWARDS.—A whistleblower may receive an award pursuant to section 21F of the Securities Exchange Act of 1934, as added by this part, regardless of whether any violation of a provision of the securities laws, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based occurred prior to the date of enactment of this subtitle.

SEC. 7206. COLLATERAL BARS.

(a) Section 15 of the Securities Exchange Act of 1934.—Section 15(b)(6)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is amended by striking “‘12 months, or bar such person from being associated with a broker or dealer,’” and inserting “‘12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, transfer agent, municipal financial adviser, or nationally recognized statistical rating organization,’”.
(b) Section 15B of the Securities Exchange Act of 1934.—Section 15B(c)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(4)) is amended by striking “twelve months or bar any such person from being associated with a municipal securities dealer,” and inserting “12 months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, transfer agent, municipal financial adviser, or nationally recognized statistical rating organization.”

(c) Section 17A of the Securities Exchange Act of 1934.—Section 17A(c)(4)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(c)(4)(C)) is amended by striking “twelve months or bar any such person from being associated with the transfer agent,” and inserting “12 months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, municipal financial adviser, or nationally recognized statistical rating organization.”

(d) Section 203 of the Investment Advisers Act of 1940.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(f)) is amended by striking “twelve months or bar any such person from being associated with an investment adviser,” and inserting “12
months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, transfer agent, municipal financial adviser, or nationally recognized statistical rating organization.”.

SEC. 7207. AIDING AND ABETTING AUTHORITY UNDER THE SECURITIES ACT AND THE INVESTMENT COMPANY ACT.

(a) Under the Securities Act of 1933.—Section 15 of the Securities Act of 1933 (15 U.S.C. 77o) is amended—

(1) by striking “Every person who” and inserting “(a) CONTROLLING PERSONS.—Every person who”; and

(2) by adding at the end the following:

“(b) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.—For purposes of any action brought by the Commission under subparagraph (b) or (d) of section 20, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.”.

(b) Under the Investment Company Act of 1940.—Section 48 of the Investment Company Act of
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1940 (15 U.S.C. 80a–48) is amended by redesignating subsection (b) as subsection (c) and inserting after subsection (a) the following:

“(b) For purposes of any action brought by the Commission under subsection (d) or (e) of section 42, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.”.

SEC. 7208. AUTHORITY TO IMPOSE PENALTIES FOR AIDING AND ABETTING VIOLATIONS OF THE INVESTMENT ADVISERS ACT.

Section 209 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9) is amended by inserting at the end the following new subsection:

“(f) AIDING AND ABETTING.—For purposes of any action brought by the Commission under subsection (e), any person that knowingly or recklessly has aided, abetted, counseled, commanded, induced, or procured a violation of any provision of this Act, or of any rule, regulation, or order hereunder, shall be deemed to be in violation of such provision, rule, regulation, or order to the same extent as the person that committed such violation.”.
1  SEC. 7209. DEADLINE FOR COMPLETING EXAMINATIONS,
2  INSPECTIONS AND ENFORCEMENT ACTIONS.
4  et seq.) is amended by inserting after section 4D (as added
5  by section 7101) the following new section:
6  "SEC. 4E. DEADLINE FOR COMPLETING ENFORCEMENT IN-
7  VESTIGATIONS AND COMPLIANCE EXAMINA-
8  TIONS AND INSPECTIONS.
9  "(a) ENFORCEMENT INVESTIGATIONS.—
10  "(1) IN GENERAL.—Not later than 180 days
11  after the date on which Commission staff provide a
12  written Wells notification to any person, the Com-
13  mission staff shall either file an action against such
14  person or provide notice to the Director of the Divi-
15  sion of Enforcement of its intent to not file an ac-
16  tion.
17  "(2) EXCEPTIONS FOR CERTAIN COMPLEX AC-
18  TIONS.—Notwithstanding paragraph (1), if the Di-
19  rector of the Division of Enforcement of the Com-
20  mission or the Director's designee determines that a
21  particular enforcement investigation is sufficiently
22  complex such that a determination regarding the fil-
23  ing of an action against a person cannot be com-
24  pleted within the deadline specified in paragraph (1),
25  the Director of the Division of Enforcement of the
26  Commission or the Director's designee may, after
providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period. If after the additional 180-day period the Director of the Division of Enforcement of the Commission or the Director’s designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the additional 180-day period, the Director of the Division of Enforcement of the Commission or the Director’s designee may, after providing notice to and receiving approval of the Commission, extend such deadline as needed for one or more additional successive 180-day periods.

“(b) COMPLIANCE EXAMINATIONS AND INSPECTIONS.—

“(1) IN GENERAL.—Not later than 180 days after the date on which Commission staff completes the on-site portion of its compliance examination or inspection or receives all records requested from the entity being examined or inspected, whichever is later, Commission staff shall provide the entity being examined or inspected with written notification indicating either that the examination or inspection has concluded, has concluded without findings, or that
the staff requests the entity undertake corrective action.

“(2) EXCEPTION FOR CERTAIN COMPLEX ACTIONS.—Notwithstanding paragraph (1), if the head of any division or office within the Commission responsible for compliance examinations and inspections or his designee determines that a particular compliance examination or inspection is sufficiently complex such that a determination regarding concluding the examination or inspection, or regarding the staff requests the entity undertake corrective action, cannot be completed within the deadline specified in paragraph (1), the head of any division or office within the Commission responsible for compliance examinations and inspections or his designee may, after providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period.”.

SEC. 7210. NATIONWIDE SERVICE OF SUBPOENAS.

(a) SECURITIES ACT OF 1933.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by inserting after the second sentence the following: “In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses
or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.”.

(b) Securities Exchange Act of 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended by inserting after the third sentence the following: “In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.”.

(c) Investment Company Act of 1940.—Section 44 of the Investment Company Act of 1940 (15 U.S.C. 80a–43) is amended by inserting after the fourth sentence the following: “In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.”.

45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.”.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–14) is amended by inserting after the third sentence the following: “In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.”.

SEC. 7211. AUTHORITY TO IMPOSE CIVIL PENALTIES IN CEASE AND DESIST PROCEEDINGS.

(a) UNDER THE SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end the following new subsection:

“(g) AUTHORITY TO IMPOSE MONETARY PENALTIES.—

“(1) GROUNDS FOR IMPOSING.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person
if it finds, on the record after notice and opportunity for hearing, that—

“(A) such person—

“(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

“(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder; and

“(B) such penalty is in the public interest.

“(2) MAXIMUM AMOUNT OF PENALTY.—

“(A) FIRST TIER.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be $7,500 for a natural person or $75,000 for any other person.

“(B) SECOND TIER.—Notwithstanding paragraph (A), the maximum amount of penalty for each such act or omission shall be $75,000 for a natural person or $375,000 for any other person if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

“(C) THIRD TIER.—Notwithstanding paragraphs (A) and (B), the maximum amount of
penalty for each such act or omission shall be $150,000 for a natural person or $725,000 for any other person if—

“(i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

“(3) EVIDENCE CONCERNING ABILITY TO PAY.—In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the respondent’s ability to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such person’s ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such per-
son’s assets and the amount of such person’s as-
sets.”.

(b) UNDER THE SECURITIES EXCHANGE ACT OF
1934.—Subsection (a) of section 21B of the Securities
Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amend-
ed—

(1) by striking “(a) COMMISSION AUTHORITY
To Assess Money Penalties.—In any pro-
ceeding” and inserting the following:

“(a) COMMISSION AUTHORITY TO ASSESS MONE-
TARY PENALTIES.—

“(1) IN GENERAL.—In any proceeding”;

(2) by redesignating paragraphs (1) through
(4) of such subsection as subparagraphs (A) through
(D), respectively, and moving such redesignated sub-
paragraphs and the matter following such subpara-
graphs 2 ems to the right; and

(3) by adding at the end of such subsection the
following new paragraph:

“(2) CEASE-AND-DESIST PROCEEDINGS.—In
any proceeding instituted pursuant to section 21C of
this title against any person, the Commission may
impose a civil penalty if it finds, on the record after
notice and opportunity for hearing, that such per-
son—
“(A) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

“(B) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.”.

(c) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Paragraph (1) of section 9(d) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

(1) by striking “(1) AUTHORITY OF COMMISSION.—In any proceeding” and inserting the following:

“(1) AUTHORITY OF COMMISSION.—

“(A) IN GENERAL.—In any proceeding”;

(2) by redesignating subparagraphs (A) through (C) of such paragraph as clauses (i) through (iii), respectively, and by moving such redesignated clauses and the matter following such subparagraphs 2 ems to the right; and

(3) by adding at the end of such paragraph the following new subparagraph:

“(B) CEASE-AND-DESIST PROCEEDINGS.—

In any proceeding instituted pursuant to subsection (f) against any person, the Commission
may impose a civil penalty if it finds, on the
record after notice and opportunity for hearing,
that such person—

“(i) is violating or has violated any
provision of this title, or any rule or regu-
lation thereunder; or

“(ii) is or was a cause of the violation
of any provision of this title, or any rule or
regulation thereunder.”.

(d) UNDER THE INVESTMENT ADVISERS ACT OF
1940.—Paragraph (1) of section 203(i) of the Investment
Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amend-
ed—

(1) by striking “(1) AUTHORITY OF COMMISS-
ION.—In any proceeding” and inserting the fol-
lowing:

“(1) AUTHORITY OF COMMISSION.—

“(A) IN GENERAL.—In any proceeding”;

(2) by redesignating subparagraphs (A) through
(D) of such paragraph as clauses (i) through (iv),
respectively, and moving such redesignated clauses
and the matter following such subparagraphs 2 ems
to the right; and

(3) by adding at the end of such paragraph the
following new subparagraph:
“(B) CEASE-AND-DESIST PROCEEDINGS.—

In any proceeding instituted pursuant to subsection (k) against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

“(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

“(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.”.

SEC. 7212. FORMERLY ASSOCIATED PERSONS.

(a) MEMBER OR EMPLOYEE OF THE MUNICIPAL SECURITIES RULEMAKING BOARD.—Section 15B(c)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(8)) is amended by striking “any member or employee” and inserting “any person who is, or at the time of the alleged misconduct was, a member or employee”.

(b) PERSON ASSOCIATED WITH A GOVERNMENT SECURITIES BROKER OR DEALER.—Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5) is amended—

(1) in subsection (c)(1)(C), by striking “or seeking to become associated,” and inserting “seek-
ing to become associated, or, at the time of the al-
leged misconduct, associated or seeking to become
associated’’;

(2) in subsection (c)(2)(A), by inserting ‘‘, seek-
ing to become associated, or, at the time of the al-
leged misconduct, associated or seeking to become
associated’’ after ‘‘any person associated’’; and

(3) in subsection (c)(2)(B), by inserting ‘‘, seek-
ing to become associated, or, at the time of the
alleged misconduct, associated or seeking to become
associated’’ after ‘‘any person associated’’.

(c) Person Associated With a Member of a Na-
tional Securities Exchange or Registered Securi-
ties Association.—Section 21(a)(1) of the Securities
by inserting ‘‘, or, as to any act or practice, or omission
to act, while associated with a member, formerly associ-
ated’’ after ‘‘member or a person associated’’.

(d) Participant of a Registered Clearing
Agency.—Section 21(a)(1) of the Securities Exchange
Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by insert-
ing ‘‘or, as to any act or practice, or omission to act, while
a participant, was a participant,’’ after ‘‘in which such
person is a participant,’’.
(c) Officer or Director of a Self-Regulatory Organization.—Section 19(h)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

(1) by striking “any officer or director” and inserting “any person who is, or at the time of the alleged misconduct was, an officer or director”; and

(2) by striking “such officer or director” and inserting “such person”.

(f) Officer or Director of an Investment Company.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–35(a)) is amended—

(1) by striking “a person serving or acting” and inserting “a person who is, or at the time of the alleged misconduct was, serving or acting”; and

(2) by striking “such person so serves or acts” and inserting “such person so serves or acts, or at the time of the alleged misconduct, so served or acted”.

(g) Person Associated With a Public Accounting Firm.—

(1) Sarbanes-Oxley Act of 2002 Amendment.—Section 2(a)(9) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(9)) is amended by adding at the end the following new subparagraph:
“(C) Investigative and Enforcement Authority.—For purposes of the provisions of sections 3(c), 101(c), 105, and 107(c) and Board or Commission rules thereunder, except to the extent specifically excepted by such rules, the terms defined in subparagraph (A) shall include any person associated, seeking to become associated, or formerly associated with a public accounting firm, except—

“(i) the authority to conduct an investigation of such person under section 105(b) shall apply only with respect to any act or practice, or omission to act, while such person was associated or seeking to become associated with a registered public accounting firm; and

“(ii) the authority to commence a proceeding under section 105(c)(1), or impose disciplinary sanctions under section 105(c)(4), against such person shall apply only on—

“(I) the basis of conduct occurring while such person was associated or seeking to become associated with a registered public accounting firm; or
“(II) non-cooperation as described in section 105(b)(3) with respect to a demand in a Board investigation for testimony, documents, or other information relating to a period when such person was associated or seeking to become associated with a registered public accounting firm.”.

(2) Securities Exchange Act of 1934 Amendment.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by striking “or a person associated with such a firm” and inserting “, a person associated with such a firm, or, as to any act, practice, or omission to act while associated with such firm, a person formerly associated with such a firm”.

(h) Supervisory Personnel of an Audit Firm.—Section 105(c)(6) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(6)) is amended—

(1) in subparagraph (A), by striking “the supervisory personnel” and inserting “any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person”; and

(2) in subparagraph (B)—
(A) by striking “No associated person” and inserting “No current or former supervisory person”; and

(B) by striking “any other person” and inserting “any associated person”.

(i) Member of the Public Company Accounting Oversight Board.—Section 107(d)(3) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by striking “any member” and inserting “any person who is, or at the time of the alleged misconduct was, a member”.

SEC. 7213. SHARING PRIVILEGED INFORMATION WITH OTHER AUTHORITIES.


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

(2) in subsection (e), as redesignated, by striking “as provided in subsection (e)” and inserting “as provided in subsection (f)”; and

(3) by inserting after subsection (c) the following new subsection:

“(d) Sharing Privileged Information With Other Authorities.—

“(1) Privileged information provided by the Commission.—The Commission shall not be
deemed to have waived any privilege applicable to
any information by transferring that information to
or permitting that information to be used by—

“(A) any agency (as defined in section 6 of
title 18, United States Code);
“(B) any foreign securities authority;
“(C) the Public Company Accounting
Oversight Board;
“(D) any self-regulatory organization;
“(E) any foreign law enforcement author-
ity; or
“(F) any State securities or law enforce-
ment authority.

“(2) NON-DISCLOSURE OF PRIVILEGED INFOR-
MATION PROVIDED TO THE COMMISSION.—The Com-
mission shall not be compelled to disclose privileged
information obtained from any foreign securities au-
thority, or foreign law enforcement authority, if the
authority has in good faith determined and rep-
resented to the Commission that the information is
privileged.

“(3) NON-WAIVER OF PRIVILEGED INFOR-
MATION PROVIDED TO THE COMMISSION.—

“(A) IN GENERAL.—Federal agencies,
ties, self-regulatory organizations, and the Public Company Accounting Oversight Board shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by the Commission.

“(B) Exception with respect to certain actions.—The provisions of subparagraph (A) shall not apply to a self-regulatory organization or the Public Company Accounting Oversight Board with respect to information used by the Commission in an action against such organization.

“(4) Definitions.—For purposes of this subsection:

“(A) The term ‘privilege’ includes any work-product privilege, attorney-client privilege, governmental privilege, or other privilege recognized under Federal, foreign, or State law.

“(B) The term ‘foreign law enforcement authority’ means any foreign authority that is empowered under foreign law to detect, investigate or prosecute potential violations of law.

“(C) The term ‘State securities or law enforcement authority’ means the authority of any
State or territory that is empowered under State or territory law to detect, investigate or prosecute potential violations of law.”.

SEC. 7214. EXPANDED ACCESS TO GRAND JURY INFORMATION.

Subsection (b) of section 3322 of title 18, United States Code, is amended—

(1) in paragraph (1), by striking “matters occurring before a grand jury” and inserting “grand jury information obtained”;

(2) by redesignating paragraph (2) as paragraph (3);

(3) in paragraph (3) (as so redesignated), by inserting “or (2)” after “(1)”; and

(4) by inserting after paragraph (1), the following new paragraph:

“(2) Upon motion of an attorney for the government, a court may direct disclosure of grand jury information obtained during an investigation of a securities law violation to identified personnel of the Securities and Exchange Commission—

“(A) for use in relation to any matter within the jurisdiction of the Commission; or
“(B) to assist an attorney for the government to whom matters have been disclosed under subsection (a).”.

SEC. 7215. AIDING AND ABETTING STANDARD OF KNOWLEDGE SATISFIED BY RECKLESSNESS.

Section 20(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(e)) is amended by inserting “or recklessly” after “knowingly”.

SEC. 7216. EXTRATERRITORIAL JURISDICTION OF THE ANTIFRAUD PROVISIONS OF THE FEDERAL SECURITIES LAWS.

(a) Under the Securities Act of 1933.—Section 22 of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by adding at the end the following new subsection:

“(c) Extraterritorial Jurisdiction.—With respect to any actions or proceedings brought or instituted by the Commission or the United States, this jurisdiction includes violations of section 17(a) of this title, and all suits in equity and actions at law under that section, involving—

“(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside
the United States and involves only foreign investors; or

“(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.”.


(1) by striking “The district” and inserting the following:

“(a) In General.—The district”; and

(2) by inserting at the end the following new subsection:

“(b) Extraterritorial Jurisdiction.—With respect to any actions or proceedings brought or instituted by the Commission or the United States, this jurisdiction includes violations of the antifraud provisions of this title, and all suits in equity and actions at law under those provisions, involving—

“(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or
“(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.”.

(c) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–14) is amended—

(1) by striking “The district” and inserting the following:

“(a) IN GENERAL.—The district”; and

(2) by inserting at the end the following new subsection:

“(b) EXTRATERRITORIAL JURISDICTION.—With respect to any actions or proceedings brought or instituted by the Commission or the United States, this jurisdiction includes violations of section 206, and all suits in equity and actions at law under that section, involving—

“(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the violation is committed by a foreign adviser and involves only foreign investors; or

“(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.”.
SEC. 7217. FIDELITY BONDING.

Section 17(g) of the Investment Company Act of 1940 (15 U.S.C. 80a–17(g)) is amended to read as follows:

“(g) FIDELITY BONDING.—

“(1) IN GENERAL.—The Commission is authorized to require that a registered management company provide and maintain a fidelity bond against loss as to any officer or employee who has access to securities or funds of the company, either directly or through authority to draw upon such funds or to direct generally the disposition of such securities (unless the officer or employee has such access solely through his position as an officer or employee of a bank), in such form and amount as the Commission may prescribe by rule, regulation, or order for the protection of investors.

“(2) DEFINITIONS.—For purposes of this subsection:

“(A) MANAGEMENT COMPANY.—The term ‘management company’ has the meaning given such term under section 4 of the Investment Company Act of 1940.

“(B) OFFICER OR EMPLOYEE.—The term ‘officer or employee’ means—
“(i) any officer or employee of the management company; and

“(ii) any officer or employee of any investment adviser to the management company, or of any affiliated company of any such investment adviser, as the Commission may prescribe by rule, regulation, or order for the protection of investors.

“(C) Other definitions.—The terms ‘affiliated company’ and ‘investment adviser’ shall have the meaning given such terms under section 2 of the Investment Company Act of 1940.”.

SEC. 7218. ENHANCED SEC AUTHORITY TO CONDUCT SURVEILLANCE AND RISK ASSESSMENT.

(a) Securities Exchange Act of 1934 Amendments.—Section 17(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(b)) is amended by adding at the end the following new paragraph:

“(5) Surveillance and risk assessment.—All persons described in subsection (a) of this section are subject at any time, or from time to time, to such reasonable periodic, special, or other information and document requests by representatives of the Commission as the Commission by rule or order
deems necessary or appropriate to conduct surveil-

lance or risk assessments of the securities markets,

persons registered with the Commission under this
title, or otherwise in furtherance of the purposes of
this title.”.

(b) INVESTMENT COMPANY ACT OF 1940 AMEND-
MENTS.—Section 31(b) of the Investment Company Act
of 1940 (15 U.S.C. 80a–30(b)), as amended by section
7106(a)(2), is further amended by adding at the end the
following new paragraph:

“(5) SURVEILLANCE AND RISK ASSESSMENT.—

All persons described in paragraph (1) are subject at
any time, or from time to time, to such reasonable
periodic, special, or other information and document
requests by representatives of the Commission as the
Commission by rule or order deems necessary or ap-
propriate to conduct surveillance or risk assessments
of the securities markets, persons registered with the
Commission under this title, or otherwise in further-
ance of the purposes of this title.”.

(c) INVESTMENT ADVISERS ACT OF 1940 AMEND-
MENTS.—Section 204 of the Investment Advisers Act of
1940 (15 U.S.C. 80b–4), as amended by section 7106(b),
is further amended by adding at the end the following new
subsection:
“(e) Surveillance and Risk Assessment.—All persons described in subsection (a) are subject at any time, or from time to time, to such reasonable periodic, special, or other information and document requests by representatives of the Commission as the Commission by rule or order deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets, persons registered with the Commission under this title, or otherwise in furtherance of the purposes of this title.”.

SEC. 7219. INVESTMENT COMPANY EXAMINATIONS.

Section 31(b)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–30) is amended to read as follows:

“(1) In General.—All records of each registered investment company, and each underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of such a company, shall be subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors.”.

SEC. 7220. CONTROL PERSON LIABILITY UNDER THE SECURITIES EXCHANGE ACT.

Section 20(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(a)) is amended by inserting after “con-
trolled person is liable,” the following: “including to the
Commission in any action brought under paragraph (1)
or (3) of section 21(d),”.

SEC. 7221. ENHANCED APPLICATION OF ANTI-FRAUD PRO-
VISIONS.

et seq.) is amended—

(1) in section 9—

(A) by striking “registered on a national
securities exchange” each place it appears and
inserting “other than a government security”;

(B) in subsection (b), by striking “by use
of any facility of a national securities ex-
change,”; and

(C) in subsection (c), by inserting after
“unlawful for any” the following: “broker, deal-
er, or”;

(2) in section 10(a)(1), by striking “registered
on a national securities exchange” and inserting
“other than a government security”; and

(3) in section 15(c)(1)(A), by striking “other-
wise than on a national securities exchange of which
it is a member”.

SEC. 7222. SEC AUTHORITY TO ISSUE RULES ON PROXY ACCESS.

Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

(1) by inserting “(1)” after “(a)”; and

(2) by adding at the end the following:

“(2) The authority of the Commission to prescribe rules and regulations under paragraph (1) includes rules and regulations that require the inclusion and set procedures relating to the inclusion, in a solicitation of a proxy or consent or authorization by or on behalf of an issuer, of a nominee or nominees submitted by shareholders to serve on the issuer’s board of directors.”.

PART 3—COMMISSION FUNDING AND ORGANIZATION

SEC. 7301. AUTHORIZATION OF APPROPRIATIONS.

Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:

“SEC. 35. AUTHORIZATION OF APPROPRIATIONS.

“In addition to any other funds authorized to be appropriated to the Commission, there are authorized to be appropriated to carry out the functions, powers, and duties of the Commission—

“(1) for fiscal year 2010, $1,115,000,000;

“(2) for fiscal year 2011, $1,300,000,000;

“(3) for fiscal year 2012, $1,500,000,000;
“(4) for fiscal year 2013, $1,750,000,000; “(5) for fiscal year 2014, $2,000,000,000; and “(6) for fiscal year 2015, $2,250,000,000.”.

SEC. 7302. INVESTMENT ADVISER REGULATION FUNDING.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) (as amended by sections 5006 and 5007) is further amended by adding at the end the following new subsection:

“(o) ANNUAL ASSESSMENT.—

“(1) IN GENERAL.—The Commission shall, in accordance with this subsection, promulgate rules pursuant to which it may collect from investment advisers required to register with the Commission under this title, fees designed to help recover the cost of inspections and examinations of registered investment advisers conducted by the Commission pursuant to this title.

“(2) FEE PAYMENT REQUIRED.—An investment adviser shall, at the time of registration with the Commission, and each fiscal year thereafter during which such adviser is so registered, pay to the Commission a fair and reasonable fee determined by the Commission. In determining such fee, the Commission shall consider objective factors such as—

“(A) the investment adviser’s size;
“(B) the number of clients of the investment adviser;

“(C) the types of clients of the investment adviser; and

“(D) such other relevant factors as the Commission determines to be appropriate.

“(3) AMOUNT AND USE OF FEES.—

“(A) MINIMUM AGGREGATE AMOUNT.—

The aggregate amount of fees determined by the Commission under this subsection for any fiscal year shall be greater than the amount the Commission spent on inspections and examinations of registered investment advisers during the 2009 fiscal year.

“(B) EXCESS FEES.—The Commission may retain any excess fees collected under this subsection during a fiscal year for application towards the costs of inspections and examinations of investment advisers in future fiscal years.

“(4) REVIEW AND ADJUSTMENT OF FEES.—

The Commission may review fee rates established pursuant to this section before the end of any fiscal year and make any appropriate adjustments prior to collecting any such fee in the following fiscal year.
“(5) Penalty fee.—The Commission shall prescribe by rule or regulation an additional fee to be assessed as a penalty for late payment of fees required by this subsection.

“(6) Judicial review.—Increases or decreases in fees made pursuant to this section shall not be subject to judicial review.”.

SEC. 7303. AMENDMENTS TO SECTION 31 OF THE SECURITIES EXCHANGE ACT OF 1934.


(1) in subsection (e)(2), by striking “September 30” and inserting “September 25”;

(2) in subsection (g), by striking “April 30” and inserting “August 31”; and

(3) in subsection (j)(2)—

(A) by striking “5 months” and inserting “4 months”; and

(B) by striking “(including fees collected during such 5-month period and assessments collected under subsection (d))” and inserting “(including fees estimated to be collected under subsections (b) and (c) prior to the effective date of the uniform adjusted rate and assess-
ments estimated to be collected under subsection (d))

SEC. 7304. COMMISSION ORGANIZATIONAL STUDY AND REFORM.

(a) Study Required.—

(1) In general.—Not later than the end of the 90-day period beginning on the date of the enactment of this subtitle, the Securities and Exchange Commission (hereinafter in this section referred to as the “SEC”) shall hire an independent consultant of high caliber and with expertise in organizational restructuring and the operations of capital markets to examine the internal operations, structure, funding, and the need for comprehensive reform of the SEC, as well as the SEC’s relationship with and the reliance on self-regulatory organizations and other entities relevant to the regulation of securities and the protection of securities investors that are under the SEC’s oversight.

(2) Specific areas for study.—The study required under paragraph (1) shall, at a minimum, include the study of—

(A) the possible elimination of unnecessary or redundant units at the SEC;
(B) improving communications between SEC offices and divisions;

(C) the need to put in place a clear chain-of-command structure, particularly for enforcement examinations and compliance inspections;

(D) the effect of high-frequency trading and other technological advances on the market and what the SEC requires to monitor the effect of such trading and advances on the market;

(E) the SEC’s hiring authorities, workplace policies, and personal practices, including—

(i) whether there is a need to further streamline hiring authorities for those who are not lawyers, accountants, compliance examiners, or economists;

(ii) whether there is a need for further pay reforms;

(iii) the diversity of skill sets of SEC employees and whether the present skill set diversity efficiently and effectively fosters the SEC’s mission of investor protection; and
(iv) the application of civil service laws by the SEC;

(F) whether the SEC’s oversight and reliance on self-regulatory organizations promotes efficient and effective governance for the securities markets; and

(G) whether adjusting the SEC’s reliance on self-regulatory organizations is necessary to promote more efficient and effective governance for the securities markets.

(b) CONSULTANT REPORT.—Not later than the end of the 150-day period after being retained, the independent consultant hired pursuant to subsection (a)(1) shall issue a report to the SEC and the Congress containing—

(1) a detailed description of any findings and conclusions made while carrying out the study required under subsection (a)(1); and

(2) recommendations for legislative, regulatory, or administrative action that the consultant determines appropriate to enable the SEC and other entities on which it reports to perform their statutorily or otherwise mandated missions.

(c) SEC REPORT.—Not later than the end of the 6-month period beginning on the date the consultant issues
the report under subsection (b), and every 6-months there-
after during the 2-year period following the date on which
the consultant issues such report, the SEC shall issue a
report to the Committee on Financial Services of the
House of Representatives and the Committee on Banking,
Housing, and Urban Affairs of the Senate describing the
SEC’s implementation of the regulatory and administra-
tive recommendations contained in the consultant’s report.

SEC. 7305. CAPITAL MARKETS SAFETY BOARD.

There is established within the Securities and Ex-
change Commission an office to be known as the Capital
Markets Safety Board whose purpose shall be to conduct
investigations, at the direction of the Commission, of
failed institutions registered with the Commission, to de-
terminate what caused such institutions to fail. Upon the
conclusion of an investigation, the Board shall make avail-
able on the Commission’s website a report of its findings,
including recommendations regarding how others can
avoid similar mistakes. No information that may com-
promise an ongoing Federal investigation shall be made
available in any such report.

SEC. 7306. REPORT ON IMPLEMENTATION OF “POST-
MADOFF REFORMS”.

(a) IN GENERAL.—Not later than 6 months after the
date of the enactment of this subtitle, the Securities and
Exchange Commission shall provide to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the implementation of reforms outlined by the Commission in the wake of the discovery of fraud by Bernie Madoff.

(b) CONTENTS OF REPORT.—The report required by subsection (a) shall include an analysis of—

(1) how many of the post-Madoff reforms have been implemented and to what extent; and

(2) whether there is overlap between any of the Commission’s reform proposals and those recommended by the Inspector General of the Commission.

(c) PUBLICATION OF REPORT.—The Commission and the Committees referred to in subsection (a) shall publish the report required by such subsection on their Web sites.

SEC. 7307. JOINT ADVISORY COMMITTEE.

The Securities and Exchange Commission and the Commodities Futures Trading Commission may jointly form and operate a joint advisory committee composed of members of each Commission and industry experts and participants. The purposes of such an advisory committee include—
(1) considering and developing solutions to emerging and ongoing issues of common interest in the futures and securities markets;

(2) identifying emerging regulatory risks and assess and quantify their implications for investors and other market participants, and provide recommendations for solutions;

(3) serving as a vehicle for discussion and communication on regulatory issues of mutual concerns affecting each Commission, the regulated markets, and the industry generally; and

(4) reporting regularly to each Commission and to Congress on its activities.

PART 4—ADDITIONAL COMMISSION REFORMS

SEC. 7401. REGULATION OF SECURITIES LENDING.

Section 10 of the Securities Exchange Act of 1934 (15 U.S.C. 78j) is amended by adding at the end the following new subsection:

“(c)(1) To effect, accept, or facilitate a transaction involving the loan or borrowing of securities in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

“(2) Nothing in paragraph (1) shall be construed to limit the authority of an appropriate Federal banking
agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), the National Credit Union Administration, or any other Federal department or agency identified under law as having a systemic risk responsibility from prescribing rules or regulations to impose restrictions on transactions involving the loan or borrowing of securities in order to protect the safety and soundness of a financial institution or to protect the financial system from systemic risk.”

SEC. 7402. LOST AND STOLEN SECURITIES.


(1) in subparagraph (A), by striking “missing, lost, counterfeit, or stolen securities” and inserting “securities that are missing, lost, counterfeit, stolen, cancelled, or any other category of securities as the Commission, by rule, may prescribe”; and

(2) in subparagraph (B), by striking “or stolen” and inserting “stolen, cancelled, or reported in such other manner as the Commission, by rule, may prescribe”.

SEC. 7403. FINGERPRINTING.

(1) by striking “and registered clearing agency,” and inserting “registered clearing agency, registered securities information processor, national securities exchange, and national securities association”; and

(2) by striking “or clearing agency,” and inserting “clearing agency, securities information processor, national securities exchange, or national securities association,”.

SEC. 7404. EQUAL TREATMENT OF SELF-REGULATORY ORGANIZATION RULES.

Section 29(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78cc(a)) is amended by striking “an exchange required thereby” and inserting “a self-regulatory organization,”.

SEC. 7405. CLARIFICATION THAT SECTION 205 OF THE INVESTMENT ADVISERS ACT OF 1940 DOES NOT APPLY TO STATE-REGISTERED ADVISERS.

Section 205(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5(a)) is amended—

(1) by striking “, unless exempt from registration pursuant to section 203(b),” and inserting “registered or required to be registered with the Commission”;
(2) by striking “make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to”; and

(3) by striking “to” after “in any way”.


(2) in section 12(k) (15 U.S.C. 78l(k)), by amending paragraph (7) to read as follows:

“(7) Definition.—For purposes of this subsection, the term ‘emergency’ means—

“(A) a major market disturbance characterized by or constituting—

“(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

“(ii) a substantial disruption of the safe or efficient operation of the national
system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

“(B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

“(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or

“(ii) the transmission or processing of securities transactions.”.

(3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)), by striking “section 18(c) of the Public Utility Holding Company Act of 1935,”.

(b) TRUST INDENTURE ACT OF 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—

(1) in section 303 (15 U.S.C. 77ccc), by amending paragraph (17) to read as follows:

“(17) The terms ‘Securities Act of 1933’ and ‘Securities Exchange Act of 1934’ shall be deemed to refer, respectively, to such Acts, as amended, whether amended prior to or after the enactment of this title.”;

(3) in section 310 (15 U.S.C. 77jjj), by striking subsection (c); 

(4) in section 311 (15 U.S.C. 77kkk) by striking subsection (c); 

(5) in section 323(b) (15 U.S.C. 77www(b)), by striking “Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935” and inserting “Securities Act of 1933 or the Securities Exchange Act of 1934”; and 


(c) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—

(2) in section 3(c) (15 U.S.C. 80a–3(c)), by amending paragraph (8) to read as follows:

“(8) [Repealed]”;

(3) in section 38(b) (15 U.S.C. 80a–37(b)), by striking “the Public Utility Holding Company Act of 1935,”; and

(4) in section 50 (15 U.S.C. 80a–49), by striking “the Public Utility Holding Company Act of 1935,”.


SEC. 7407. PROMOTING TRANSPARENCY IN FINANCIAL REPORTING.

(a) FINDINGS.—Congress finds the following:

(1) Transparent and clear financial reporting is integral to the continued growth and strength of our capital markets and the confidence of investors.

(2) The increasing detail and volume of accounting, auditing, and reporting guidance pose a major challenge.
(3) The complexity of accounting and auditing standards in the United States has added to the costs and effort involved in financial reporting.

(b) **Testimony Required on Reducing Complexity in Financial Reporting.—** The Securities and Exchange Commission, the Public Company Accounting Oversight Board, and the standard setting body designated pursuant to section 19(b) of the Securities Act of 1933 shall annually provide oral testimony by their respective Chairpersons or a designee of the Chairperson, beginning in 2010, and for 5 years thereafter, to the Committee on Financial Services of the House of Representatives on their efforts to reduce the complexity in financial reporting to provide more accurate and clear financial information to investors, including—

(1) reassessing complex and outdated accounting standards;

(2) improving the understandability, consistency, and overall usability of the existing accounting and auditing literature;

(3) developing principles-based accounting standards;

(4) encouraging the use and acceptance of interactive data; and

(5) promoting disclosures in “plain English”.
SEC. 7408. UNLAWFUL MARGIN LENDING.

Section 7(c)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking “; and” and inserting “; or”.

SEC. 7409. PROTECTING CONFIDENTIALITY OF MATERIALS SUBMITTED TO THE COMMISSION.

(a) Securities Exchange Act of 1934.—Section 17(i) of the Securities Exchange Act of 1934 (as amended by section 1314(2)) is amended to read as follows:

“(i) Authority To Limit Disclosure of Information.—

“(1) In general.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information, documents, records, or reports that relate to an examination, surveillance, or risk assessment of a person subject to or described in this section, or the financial or operational condition of such persons, or any information supplied to the Commission by any domestic or foreign regulatory agency or self-regulatory organization that relates to the financial or operational condition of such persons, of any associated person of such persons, or any affiliate of an investment bank holding company.

“(2) Certain exceptions.—Nothing in this subsection shall authorize the Commission to with-
hold information from the Congress, prevent the Commission from complying with a request for information from any other Federal department or agency, the Public Company Accounting Oversight Board, or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or prevent the Commission from complying with an order of a court of the United States in an action brought by the United States or the Commission against a person subject to or described in this section to produce information, documents, records, or reports relating directly to the examination, surveillance, or risk assessment of that person or the financial or operational condition of that person or an associated or affiliated person of that person.

“(3) Treatment under section 552 of title 5, United States Code.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of that section.

“(4) Certain information to be confidential.—In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained
pursuant to subparagraphs (A), (B), and (C) of sub-
section (i)(3) as confidential information for pur-
poses of section 24(b)(2) of this title.”.

(b) INVESTMENT COMPANY ACT OF 1940.—Section
31(b) of the Investment Company Act of 1940 (15 U.S.C.
80a–30(b)), as amended by sections 7106(a)(2) and
7218(b)(4), is further amended by adding at the end the
following new paragraph:

“(6) CONFIDENTIALITY.—

“(A) IN GENERAL.—Notwithstanding any
other provision of law, the Commission shall not
be compelled to disclose any information, docu-
ments, records, or reports that relate to an ex-
amination, surveillance, or risk assessment of a
person subject to or described in this section.

“(B) CERTAIN EXCEPTIONS.—Nothing in
this subsection shall authorize the Commission
to withhold information from the Congress, pre-
vent the Commission from complying with a re-
quest for information from any other Federal
department or agency, or the Public Company
Accounting Oversight Board requesting the in-
formation for purposes within the scope of its
jurisdiction, or prevent the Commission from
complying with an order of a court of the
United States in an action brought by the United States or the Commission against a person subject to or described in this section to produce information, documents, records, or reports relating directly to the examination of that person or the financial or operational condition of that person or an associated or affiliated person of that person.

“(C) Treatment under section 552 of title 5, United States Code.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of that section.”

(c) Investment Advisers Act of 1940.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4), as amended by sections 7106(b) and 7218(c), is further amended by adding at the end the following new subsection:

“(f) Confidentiality.—

“(1) In general.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information, documents, records, or reports that relate to an examination of a person subject to or described in this section.
“(2) CERTAIN EXCEPTIONS.—Nothing in this subsection shall authorize the Commission to withhold information from Congress, prevent the Commission from complying with a request for information from any other Federal department or agency, the Public Company Accounting Oversight Board, or a self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or prevent the Commission from complying with an order of a court of the United States in an action brought by the United States or the Commission against a person subject to or described in this section to produce information, documents, records, or reports relating directly to the examination of that person or the financial or operational condition of that person or an associated or affiliated person of that person.

“(3) TREATMENT UNDER SECTION 552 OF TITLE 5, UNITED STATES CODE.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of that section.”.

SEC. 7410. TECHNICAL CORRECTIONS.

(a) SECURITIES ACT OF 1933.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended—
(1) in section 3(a)(4) (15 U.S.C. 77e(a)(4)), by striking “individual;” and inserting “individual,”;

(2) in the matter following paragraph (5) of section 11(a), by striking “earning statement” and inserting “earnings statement”;

(3) in section 18(b)(1)(C) (15 U.S.C. 77r(b)(1)(C)), by striking “is a security” and inserting “a security”;

(4) in section 18(c)(2)(B)(i) (15 U.S.C. 77r(c)(2)(B)(i)), by striking “State, or” and inserting “State or”;

(5) in section 19(d)(6)(A) (15 U.S.C. 77s(d)(6)(A)), by striking “in paragraph (1) of (3)” and inserting “in paragraph (1) or (3)”;


(1) in section 2(1)(a) (15 U.S.C. 78b(1)(a)), by striking “affected” and inserting “effected”;

Securities Exchange Act of 1934” and inserting “section 3(a)(12) of this Act”; (3) in section 3(g) (15 U.S.C. 78c(g)), by striking “company, account person, or entity” and inserting “company, account, person, or entity”; (4) in section 10A(i)(1)(B)(i) (15 U.S.C. 78j–1(i)(1)(B)(i)), by striking “nonaudit” and inserting “non-audit”; (5) in section 13(b)(1) (15 U.S.C. 78m(b)(1)), by striking “earning statement” and inserting “earnings statement”; (6) in section 15(b)(1) (15 U.S.C. 78o(b)(1))—— (A) by striking the sentence beginning “The order granting” and ending “from such membership.” in subparagraph (B); and (B) by inserting such sentence in the matter following such subparagraph after “are satisfied.”; (7) in section 15C(a)(2) (15 U.S.C. 78o–5(a)(2))—— (A) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively; (B) by striking the sentence beginning “The order granting” and ending “from such
membership.” in such subparagraph (B), as redesignated; and

(C) by inserting such sentence in the matter following such redesignated subparagraph after “are satisfied.”;

(8) in section 17(b)(1)(B) (15 U.S.C. 78q(b)(1)(B)), by striking “15A(k) gives” and inserting “15A(k), give”; and

(9) in section 21C(c)(2) (15 U.S.C. 78u–3(c)(2)), by striking “paragraph (1) subsection” and inserting “Paragraph (1)”.

c) Trust Indenture Act of 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—

(1) in section 304(b) (15 U.S.C. 77ddd(b)), by striking “section 2 of such Act” and inserting “section 2(a) of such Act”;

(2) in section 313(a)(4) (15 U.S.C. 77mmm(a)(4)) by striking “subsection (b) of section 311” and inserting “section 311(b)”; and

(3) in section 317(a)(1) (15 U.S.C. 77qqq(a)(1)), by striking “(1),” and inserting “(1)”.

d) Investment Company Act of 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—
(1) in section 2(a)(19)(B) (15 U.S.C. 80a–2(a)(19)(B)) by striking “clause (vi)” both places it appears in the last two sentences and inserting “clause (vii)”;

(2) in section 9(b)(4)(B) (15 U.S.C. 80a–9(b)(4)(B)), by inserting “or” after the semicolon at the end;

(3) in section 12(d)(1)(J) (15 U.S.C. 80a–12(d)(1)(J)), by striking “any provision of this sub-section” and inserting “any provision of this paragraph”;

(4) in section 13(a)(3) (15 U.S.C. 80a–13(a)(3)), by inserting “or” after the semicolon at the end;

(5) in section 17(f)(4) (15 U.S.C. 80a–17(f)(4)), by striking “No such member” and inserting “No member of a national securities exchange”; and

(6) in section 17(f)(6) (15 U.S.C. 80a–17(f)(6)), by striking “company may serve” and inserting “company, may serve”; and


(A) by striking “paragraph (1) of section 205” and inserting “section 205(a)(1)”; and
(B) by striking “clause (A) or (B) of that section” and inserting “section 205(b)(1) or (2)”.

(e) INVESTMENT ADVISERS ACT OF 1940.—The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended—

(1) in each of the following sections, by striking “principal business office” or “principal place of business” (whichever and wherever it appears) and inserting “principal office and place of business”:
sections 203(c)(1)(A), 203(k)(4)(B), 213(a), 222(b), and 222(c) (15 U.S.C. 80b–3(c)(1)(A), 80b–3(k)(4)(B), 80b–13(a), 80b–18a(b), and 80b–18a(c)); and

(2) in section 206(3) (15 U.S.C. 80b–6(3)), by inserting “or” after the semicolon at the end.

SEC. 7411. MUNICIPAL SECURITIES.

Section 15B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(b)) is amended—

(1) by amending paragraph (1) to read as follows:

“(1) COMPOSITION OF THE MUNICIPAL SECURITIES RULEMAKING BOARD.—Not later than October 1, 2010, the Municipal Securities Rulemaking Board (hereinafter in this section referred to as the
‘Board’), shall be composed of members which shall perform the duties set forth in this section and shall consist of—

“(A) a majority of independent public representatives, at least one of whom shall be representative of investors in municipal securities and at least one of whom shall be representative of issuers of municipal securities (which members are hereinafter referred to as ‘public representatives’);

“(B) at least one individual who is representative of municipal securities brokers and municipal securities dealers which are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as ‘broker-dealer representatives’); and

“(C) at least one individual who is representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as ‘bank representatives’).”; and

(2) by amending paragraph (2)(B) to read as follows:
“(B) Establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of municipal securities brokers and municipal securities dealers. Such rules—

“(i) shall establish requirements regarding the independence of public representatives;

“(ii) shall provide that the number of public representatives of the Board shall at all times exceed the total number of broker-dealer representatives and bank representatives;

“(iii) shall establish minimum knowledge, experience, and other appropriate qualifications for individuals to serve as public representatives, which may include, among other things, prior work experience in the securities, municipal finance, or municipal securities industries;

“(iv) shall specify the term members shall serve; and

“(v) may increase or decrease the number of members which shall constitute the whole Board, but in no case may such number be an even number.”.
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1 SEC. 7412. INTERESTED PERSON DEFINITION.
2 Section 2(a)(19)(A) of the Investment Company Act
3 of 1940 (15 U.S.C. 80a–2(a)(19)(A)) is amended—
4 (1) by striking clauses (v) and (vi);
5 (2) by inserting after clause (iv) the following
6 new clause:
7 “(v) any natural person who is a
8 member of a class of persons who the
9 Commission, by rule or regulation, deter-
10 mines are unlikely to exercise an appro-
11 priate degree of independence as a result
12 of—
13 “(I) a material business or pro-
14 fessional relationship with such com-
15 pany or any affiliated person of such
16 company; or
17 “(II) a close familial relationship
18 with any natural person who is an af-
19 filiated person of such company;”; 
20 (3) by redesignating clause (vii) as clause (vi);
21 and
22 (4) in clause (vi), as redesignated, by striking
23 “two completed fiscal years” and inserting “five
24 completed fiscal years”.

SEC. 7413. RULEMAKING AUTHORITY TO PROTECT REDEEMING INVESTORS.

Section 22(e) of the Investment Company Act of 1940 (15 U.S.C. 80a–22(e)) is amended by adding at the end the following: “The Commission may, by rules and regulations, limit the extent to which a registered open-end investment company may own, hold, or invest in illiquid securities or other illiquid property.”.

SEC. 7414. STUDY ON SEC REVOLVING DOOR.

(a) GOVERNMENT ACCOUNTABILITY OFFICE STUDY.—The Comptroller General of the United States shall conduct a study that will—

(1) review the number of employees who leave the Securities and Exchange Commission to work for financial institutions regulated by such Commission;

(2) determine how many employees who leave the Securities and Exchange Commission worked on cases that involved financial institutions regulated by such Commission;

(3) review the length of time employees work for the Securities and Exchange Commission before leaving to be employed by financial institutions regulated by such Commission;

(4) review existing internal controls and make recommendations on strengthening such controls to
ensure that employees of the Securities and Exchange Commission who are later employed by financial institutions did not assist such institutions in violating any rules or regulations of the Commission during the course of their employment with such Commission;

(5) determine if greater post-employment restrictions are necessary to prevent employees of the Securities and Exchange Commission from being employed by financial institutions after employment with such Commission;

(6) determine if the volume of employees of the Securities and Exchange Commission who are later employed by financial institutions has led to inefficiencies in enforcement;

(7) determine if employees of the Securities and Exchange Commission who are later employed by financial institutions assisted such institutions in circumventing Federal rules and regulations while employed by such Commission;

(8) review any information that may address the volume of employees of the Securities and Exchange Commission who are later employed by financial institutions, and make recommendations to Congress; and
(9) review other additional issues as may be raised during the course of the study conducted under this subsection.

(b) REPORT.—Not later than 1 year after the date of the enactment of this subtitle, the Comptroller General of the United States shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the results of the study required by subsection (a).

SEC. 7415. STUDY ON INTERNAL CONTROL EVALUATION AND REPORTING COST BURDENS ON SMALL-ER ISSUERS.

(a) STUDY REQUIRED.—The Government Accountability Office shall conduct a study evaluating the costs and benefits of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262(b)) on issuers who are not accelerated or large accelerated filers as defined by Commission Rule 12b–2. The study shall—

(1) include recommendations, administrative reforms, and legislative proposals on implementation steps that could be taken to reduce compliance burdens on these issuers;
(2) determine the efficacy of the Securities and Exchange Commission’s measures to limit the cost of compliance on smaller issuers;

(3) determine how to reduce the burden of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 for companies whose market capitalization is less than $250,000,000 for the relevant reporting period while maintaining investor protections for such companies; and

(4) determine whether various methods of reducing the compliance burden or a complete exemption for such companies (whose market capitalization is less than $250,000,000 for the relevant reporting period) from such compliance would encourage companies to list on exchanges in the United States in their initial public offerings.

(b) Reports Required.—Not later than 9 months after the date of the enactment of this subtitle, the Government Accountability Office shall submit a report to Congress containing the findings and conclusions of the studies required under subsection (a), together with such recommendations for regulatory, legislative, or administrative action as may be appropriate.

(c) Effective Date Contingent on Reports.—Requirements under section 404(b) of the Sarbanes-Oxley Act of 2002 for companies whose market capitalization is less than $250,000,000 for the relevant reporting period would not apply until 9 months after the date of the enactment of this subtitle, unless Congress finds that compliance with such requirements is not necessary to protect investors.
Act of 2002 on issuers described under subsection (a) shall not become effective until the results of the report are delivered, but in no case before June 1, 2011.

SEC. 7416. ANALYSIS OF RULE REGARDING SMALLER REPORTING COMPANIES.

(a) FINDINGS.—Congress finds the following:

(1) Many small businesses in cutting-edge technology sectors require significant capital investment to develop new technologies related to clean energy, drug treatments for terminal diseases and food production in hunger-stricken areas of the World.

(2) Many technology companies conducting research do not meet the definition of "smaller reporting company" under the Securities and Exchange Commission’s Rule 12b–2 due to unusually high public floats despite low or zero revenue.

(3) The Final Report of the Advisory Committee on Smaller Public Companies to the Securities and Exchange Commission recommended that a company with a market capitalization of less than about $787,000,000 be considered a smallcap company and that the Commission provide exemptions from section 404(b) of the Sarbanes-Oxley Act to companies with less than $250,000,000 in annual revenues.
(b) Study of Using Revenue as Criteria to Define Smaller Reporting Company.—The Securities and Exchange Commission shall conduct a study of the inclusion of revenue as a criteria used in defining smaller reporting company as defined under the Commission’s Rule 12b–2 to account for smaller public companies with public floats less than $700,000,000 and revenues less than $250,000,000. Not later than 180 days after the date of enactment of this subtitle, the Commission shall provide the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate a report of the findings of the study.

SEC. 7417. FINANCIAL REPORTING FORUM.

(a) Establishment.—There is hereby established a Financial Reporting Forum (hereinafter referred to as the “Forum”), which shall consist of—

(1) the Chairman of the Securities Exchange Commission (hereinafter referred to as the “SEC”);

(2) the head of the Financial Accounting Standards Board;

(3) the Chairman of the Public Company Accounting Oversight Board;

(4) the head of each appropriate Federal banking agency, as such term is defined under section
3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q));

(5) the Administrator of the National Credit Union Administration;

(6) the Secretary of the Treasury;

(7) a representative of a non-financial institution, appointed by the SEC;

(8) a representative of a financial institution, appointed by the SEC;

(9) a representative of auditors, appointed by the SEC; and

(10) a representative of investors, appointed by the SEC.

(b) MEETINGS.—The Forum shall meet no less often than quarterly.

(e) DUTIES.—The Forum shall meet to discuss immediate and long-term issues critical to financial reporting.

(d) REPORTING.—The Forum shall issue an annual report to the Congress detailing any determinations or findings made by the Forum during the previous year, including any legislative recommendations the Forum may have related to financial reporting matters.
SEC. 7418. INVESTMENT ADVISERS SUBJECT TO STATE AUTHORITIES.

Section 203A(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a(a)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph:

“(2) TREATMENT OF CERTAIN MID-SIZED INVESTMENT ADVISERS.—Notwithstanding paragraph (1), an investment adviser that is not exempt from registration under section 203 and—

“(A) is regulated and examined, or required to be regulated and examined, in the State where it maintains its principal office and place of business; and

“(B) has assets under management between—

“(i) the amount specified under subparagraph (A) of paragraph (1), as such amount may have been adjusted by the Commission pursuant to that subparagraph; and

“(ii) $100,000,000, or such higher amount as the Commission may, by rule,
deem appropriate in accordance with the purposes of this title,

shall register with, and be subject to examination by, such State. The Commission shall publish a list of the States that regulate and examine, or require regulation and examination of, investment advisers to which the requirements of this paragraph apply. If no State in which an investment adviser described in subparagraph (B) is registered conducts such an examination, the investment adviser must register with the Commission. If, pursuant to this paragraph, an investment adviser would be required to register with 5 or more States, then the adviser may maintain its registration with the Commission.”.

SEC. 7419. CUSTODIAL REQUIREMENTS.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this title, the Securities and Exchange Commission shall adopt a rule pursuant to its authority under section 211(a) of the Investment Advisers Act of 1940 making it unlawful under section 206(4) of that Act for an investment adviser registered under such Act to have custody of funds or securities of a client the value of which exceeds $10,000,000, unless—
(1) the funds and securities are maintained with a qualified custodian either in a separate account for each client under the client’s name, or in accounts that contain only client funds and securities under the name of the investment adviser as agent or trustee for the client; and

(2) the qualified custodian does not directly or indirectly provide investment advice with respect to such funds or securities.

(b) EXCEPTIONS.—The rule adopted under subsection (a) shall include such exceptions as the Commission determines in the public interest and consistent with the protection of investors. Any exemption granted under this subsection shall ensure that at least once per year, a client described in subsection (a) shall receive a report from an independent entity with a fiduciary responsibility to the client to verify that the assets in the client’s account are in accord with those stated on the client’s account statement.

(c) NO LIMITS ON OTHER ACTIONS.—Nothing in this section shall be construed to limit other actions the Securities and Exchange Commission may take under this Act to require the protection of client assets.
SEC. 7420. OMBUDSMAN.
(a) APPOINTMENT.—Not later than 180 days after the date of the enactment of this subtitle, the Chairman of the Securities and Exchange Commission shall appoint an Ombudsman who shall report directly to the Chairman.
(b) DUTIES.—The Ombudsman appointed under subsection (a) shall—
(1) act as a liaison between the Commission and any affected person with respect to any problem such person may have in dealing with the Commission resulting from the regulatory activities of the Commission;
(2) review and make recommendations regarding Commission policies and procedures to encourage persons to present questions to the Commission regarding compliance with Federal securities laws; and
(3) assure that safeguards exist to maintain confidentiality of communications between such persons and the Ombudsman.
(c) LIMITATION.—In carrying out the duties under subsection (b), the Ombudsman shall utilize personnel of the Commission to the extent practicable. Nothing in this section shall be construed as replacing, altering, or diminishing the activities of any ombudsman or similar office in any other agency.
(d) REPORT.—Each year, the Ombudsman shall submit a report to the Commission for inclusion in the annual report that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year. In that report, the Ombudsman shall include solicited comments and evaluations from registrants in regard to the effectiveness of the Ombudsman.

SEC. 7421. NOTICE TO MISSING SECURITY HOLDERS.

Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1) is amended by adding at the end the following new subsection:

“(g) DUE DILIGENCE FOR THE DELIVERY OF DIVIDENDS, INTEREST, AND OTHER VALUABLE PROPERTY RIGHTS.—

“(1) REVISION OF RULES REQUIRED.—The Commission shall revise its regulations in section 240.17Ad–17 of title 17, Code of Federal Regulations, as in effect on December 8, 1997, to extend the application of such section to brokers and dealers and to provide for the following:

“(A) A requirement that the paying agent provide a single written notification to each missing security holder that the missing security holder has been sent a check that has not yet been negotiated. The written notification
may be sent along with a check or other mailing subsequently sent to the missing security holder but must be provided no later than 7 months after the sending of the not yet negotiated check.

“(B) An exclusion for paying agents from the notification requirements when the value of the not yet negotiated check is less than $25.

“(C) A provision clarifying that the requirements described in subparagraph (A) shall have no effect on State escheatment laws.

“(D) For purposes of such revised regulations—

“(i) a security holder shall be considered a ‘missing security holder’ if a check is sent to the security holder and the check is not negotiated before the earlier of the paying agent sending the next regularly scheduled check or the elapsing of 6 months after the sending of the not yet negotiated check; and

“(ii) the term ‘paying agent’ includes any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts
payments from the issuer of a security and
distributes the payments to the holders of
the security.

“(2) RULEMAKING.—The Commission shall
adopt such rules, regulations, and orders necessary
to implement this subsection no later than 1 year
after the date of enactment of this subsection. In
proposing such rules, the Commission shall seek to
minimize disruptions to current systems used by or
on behalf of paying agents to process payment to ac-
count holders and avoid requiring multiple paying
agents to send written notification to a missing secu-
ritv holder regarding the same not yet negotiated
check.”.

SEC. 7422. SHORT SALE REFORMS.

(a) SHORT SALE DISCLOSURE.—Section 13(f) of the
Securities Exchange Act of 1934 (15 U.S.C. 78m(f)) is
amended by redesignating paragraphs (2), (3), (4), and
(5) as paragraphs (3), (4), (5), and (6), respectively, and
inserting after paragraph (1) the following:

“(2)(A) Every institutional investment manager
that effects a short sale of an equity security shall
also file a report on a daily basis with the Commiss-
ion in such form as the Commission, by rule, may
prescribe. Such report shall include, as applicable,
the name of the institution, the name of the institutional investment manager and the title, class, CUSIP number, number of shares or principal amount, aggregate fair market value of each security, and any additional information requested by the Commission. For purposes of section 552 of title 5, United States Code, this subparagraph shall be considered a statute described in subsection (b)(3)(B) of such section. The information contained in reports of an institutional investment manager filed with the Commission pursuant to this section, shall be subject to the same non-disclosure and confidentiality protection provided under section 204(b)(8) of the Investment Advisers Act of 1940.

“(B) The Commission shall prescribe rules providing for the public disclosure of the name of the issuer and the title, class, CUSIP number, aggregate amount of the number of short sales of each security, and any additional information determined by the Commission following the end of the reporting period. At a minimum, such public disclosure shall occur every month.”.

(b) SHORT SELLING ENFORCEMENT.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended—
(1) by redesignating subsections (d), (e), (f), (g), (h), and (i) as subsections (e), (f), (g), (h), (i), and (j), respectively; and

(2) inserting after subsection (c), the following new subsection:

“(d) TRANSACTIONS RELATING TO SHORT SALES OF SECURITIES.—It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange to effect, alone or with one or more other persons, a manipulative short sale of any security. The Commission shall issue such other rules as are necessary or appropriate to ensure that the appropriate enforcement options and remedies are available for violations of this subsection in the public interest or for the protection of investors.”.

(c) INVESTOR NOTIFICATION.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended—

(1) by redesignating subsections (e), (f), (g), (h), and (i) as subsections (f), (g), (h), (i), and (j), respectively; and

(2) inserting after subsection (d) the following new subsection:
“(e) Notices to Customers Regarding Securities Lending.—Every registered broker or dealer shall provide notice to its customers that they may elect not to allow their fully paid securities to be used in connection with short sales. If a broker or dealer uses a customer’s securities in connection with short sales, the broker or dealer shall provide notice to its customer that the broker or dealer may receive compensation in connection with lending the customer’s securities. The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors, may prescribe the form, content, time, and manner of delivery of any notice required under this paragraph.”.

SEC. 7423. STREAMLINING OF SEC FILING PROCEDURES.

(a) Approval Process.—Section 19(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(2)) is amended to read as follows:

“(2) Filing Procedures.—

“(A) In General.—Within thirty-five days of the date of publication of notice of the filing of a proposed rule change in accordance with paragraph (1) of this subsection, or within such longer period as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and pub-
lishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall—

“(i) by order approve such proposed rule change; or

“(ii) institute proceedings under subparagraph (B) to determine whether the proposed rule change should be disapproved.

“(B) PROCEEDINGS.—Proceedings to determine whether the proposed rule change should be disapproved shall include notice of the grounds for disapproval under consideration and opportunity for hearing and be concluded within 200 days from the date of receipt of a proper filing. At the conclusion of such proceedings the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to 60 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the self-regulatory organization consents. The Commission shall approve a proposed rule change of a self-regu-
latory organization if it finds that such pro-
posed rule change is consistent with the re-
quirements of this title and the rules and regu-
lations thereunder applicable to such organiza-
tion. The Commission shall disapprove a pro-
posed rule change of a self-regulatory organiza-
tion if it does not make such finding. The Com-
mision shall not approve any proposed rule
change prior to the thirtieth day after the date
of publication of notice of the filing thereof, un-
less the Commission finds good cause for so
doing and publishes its reasons for so finding.”.

(b) RULES.—Not later than 12 months after the date
of enactment of this Act, the Commission shall issue rules
implementing a disapproval process for filings submitted
on or after the effective date of such rules.

PART 5—SECURITIES INVESTOR PROTECTION

ACT AMENDMENTS

SEC. 7501. INCREASING THE MINIMUM ASSESSMENT PAID
BY SIPC MEMBERS.

Section 4(d)(1)(C) of the Securities Investor Protec-
by striking “$150 per annum” and inserting the following:
“0.02 percent of the gross revenues from the securities
business of such member of SIPC”.

SEC. 7502. INCREASING THE BORROWING LIMIT ON TREASURY LOANS.

Section 4(h) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd(h)) is amended by striking “of not to exceed $1,000,000,000” and inserting “the lesser of $2,500,000,000 or the target amount of the SIPC Fund specified in the bylaws of SIPC”.

SEC. 7503. INCREASING THE CASH LIMIT OF PROTECTION.


(1) in subsection (a)(1), by striking “$100,000 for each such customer” and inserting “the standard maximum cash advance amount for each such customer, as determined in accordance with subsection (d)”;

(2) by adding the following new subsections:

“(d) STANDARD MAXIMUM CASH ADVANCE AMOUNT DEFINED.—For purposes of this section, the term ‘standard maximum cash advance amount’ means $250,000, as such amount may be adjusted after March 31, 2010, as provided under subsection (e).

“(e) INFLATION ADJUSTMENT.—

“(1) IN GENERAL.—No later than April 1, 2010, and every 5 years thereafter, and subject to the approval of the Commission as provided under section 3(e)(2), the Board of Directors of SIPC shall
determine whether an inflation adjustment to the standard maximum cash advance amount is appropriate. If the Board of Directors of SIPC determines such an adjustment is appropriate, then the standard maximum cash advance amount shall be an amount equal to—

“(A) $250,000 multiplied by

“(B) the ratio of the annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index there-to), published by the Department of Commerce, for the calendar year preceding the year in which such determination is made, to the published annual value of such index for the calendar year preceding the year in which this subsection was enacted.

The index values used in calculations under this paragraph shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

“(2) Rounding.—If the standard maximum cash advance amount determined under paragraph (1) for any period is not a multiple of $10,000, the amount so determined shall be rounded down to the nearest $10,000.
“(3) Publication and report to the Congress.—Not later than April 5 of any calendar year in which a determination is required to be made under paragraph (1)—

“(A) the Commission shall publish in the Federal Register the standard maximum cash advance amount; and

“(B) the Board of Directors of SIPC shall submit a report to the Congress stating the standard maximum cash advance amount.

“(4) Implementation period.—Any adjustment to the standard maximum cash advance amount shall take effect on January 1 of the year immediately succeeding the calendar year in which such adjustment is made.

“(5) Inflation adjustment considerations.—In making any determination under paragraph (1) to increase the standard maximum cash advance amount, the Board of Directors of SIPC shall consider—

“(A) the overall state of the fund and the economic conditions affecting members of SIPC;

“(B) the potential problems affecting members of SIPC; and
“(C) such other factors as the Board of Directors of SIPC may determine appropriate.”.

SEC. 7504. SIPC AS TRUSTEE IN SIPA LIQUIDATION PROCEEDINGS.


(1) by striking “SIPC has determined that the liabilities of the debtor to unsecured general creditors and to subordinated lenders appear to aggregate less than $750,000 and that”; and

(2) by striking “five hundred” and inserting “five thousand”.

SEC. 7505. INSIDERS INELIGIBLE FOR SIPC ADVANCES.


SEC. 7506. ELIGIBILITY FOR DIRECT PAYMENT PROCEDURE.

SEC. 7507. INCREASING THE FINE FOR PROHIBITED ACTS UNDER SIPA.

Section 14(c) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78jjj(c)) is amended—

(1) in paragraph (1), by striking “$50,000” and inserting “$250,000”; and

(2) in paragraph (2), by striking “$50,000” and inserting “$250,000”.

SEC. 7508. PENALTY FOR MISREPRESENTATION OF SIPC MEMBERSHIP OR PROTECTION.

Section 14 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78jjj) is amended by adding at the end the following new subsection:

“(d) MISREPRESENTATION OF SIPC MEMBERSHIP OR PROTECTION.—

“(1) IN GENERAL.—Any person who falsely represents by any means (including, without limitation, through the Internet or any other medium of mass communication), with actual knowledge of the falsity of the representation and with an intent to deceive or cause injury to another, that such person, or another person, is a member of SIPC or that any person or account is protected or is eligible for protection under this Act or by SIPC, shall be liable for any damages caused thereby and shall be fined not
more than $250,000 or imprisoned for not more
than 5 years.

“(2) INJUNCTIONS.—Any court having jurisdic-
tion of a civil action arising under this Act may
grant temporary injunctions and final injunctions on
such terms as the court deems reasonable to prevent
or restrain any violation of paragraph (1). Any such
injunction may be served anywhere in the United
States on the person enjoined, shall be operative
throughout the United States, and shall be enforce-
able, by proceedings in contempt or otherwise, by
any United States court having jurisdiction over that
person. The clerk of the court granting the injunc-
tion shall, when requested by any other court in
which enforcement of the injunction is sought, trans-
mit promptly to the other court a certified copy of
all papers in the case on file in such clerk’s office.”.

SEC. 7509. FUTURES HELD IN A PORTFOLIO MARGIN SECU-
RITIES ACCOUNT PROTECTION.

(a) SIPC ADVANCES.—Section 9(a)(1) of the Securi-
3(a)(1)) is amended by inserting “or options on futures
contracts” after “claim for securities”.

(b) DEFINITIONS.—Section 16 of such Act (15
U.S.C. 78lll) is amended—
(1) by amending paragraph (2) to read as fol-
 lows:

“(2) CUSTOMER.—

“(A) IN GENERAL.—The term ‘customer’
of a debtor means any person (including any
person with whom the debtor deals as principal
or agent) who has a claim on account of securi-
ties received, acquired, or held by the debtor in
the ordinary course of its business as a broker
or dealer from or for the securities accounts of
such person for safekeeping, with a view to sale,
to cover consummated sales, pursuant to pur-
chases, as collateral, security, or for purposes of
effecting transfer. The term ‘customer’ includes
any person who has a claim against the debtor
arising out of sales or conversions of such secu-
rities.

“(B) INCLUDED PERSONS.—The term
‘customer’ includes—

“(i) any person who has deposited
cash with the debtor for the purpose of
purchasing securities; and

“(ii) any person who has a claim
against the debtor for, or a claim against
the debtor arising out of sales or conver-
sions of, cash, securities, futures contracts, or options on futures contracts received, acquired, or held in a portfolio marginging account carried as a securities account pursuant to a portfolio marginging program approved by the Commission.

“(C) EXCLUDED PERSONS.—The term ‘customer’ does not include—

“(i) any person to the extent that the claim of such person arises out of transactions with a foreign subsidiary of a member of SIPC;

“(ii) any person to the extent that such person has a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor, or is subordinated to the claims of any or all creditors of the debtor, notwithstanding that some ground exists for declaring such contract, agreement, or understanding void or voidable in a suit between the claimant and the debtor; or

“(iii) any person to the extent such person has a claim relating to any open re-
purchase or open reverse repurchase agreement.

For purposes of this paragraph, the term ‘reverse repurchase agreement’ means the sale of a security at a specified price with a simultaneous agreement or obligation to repurchase the security at a specified price on a specified future date.”;

(2) in paragraph (4), by inserting after the first sentence the following new sentence: “In the case of portfolio margining accounts of customers that are carried as securities accounts pursuant to a portfolio margining program approved by the Commission, such term shall also include futures contracts and options on futures contracts received, acquired, or held by or for the account of a debtor from or for such accounts, and the proceeds thereof.”;

(3) in paragraph (9), by inserting before “Such term” in the matter following subparagraph (L) the following: “The term includes revenues earned by a broker or dealer in connection with transactions in customers’ portfolio margining accounts carried as securities accounts pursuant to a portfolio margining program approved by the Commission.”; and

(4) in paragraph (11)—
(A) by amending subparagraph (A) to read as follows:

“(A) calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or purchase on the filing date—

“(i) all securities positions of such customer (other than customer name securities reclaimed by such customer); and

“(ii) all positions in futures contracts and options on futures contracts held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission; minus”; and

(B) by inserting before “In determining” in the matter following subparagraph (C) the following: “A claim for a commodity futures contract received, acquired, or held in a portfolio margining account pursuant to a portfolio margining program approved by the Commission, or a claim for a security futures contract, shall be deemed to be a claim for the mark-to-market (variation) payments due with respect
to such contract as of the filing date, and such
claim shall be treated as a claim for cash.”.

SEC. 7510. STUDY AND REPORT ON THE FEASIBILITY OF
RISK-BASED ASSESSMENTS FOR SIPC MEM-
BERS.

(a) Study Required.—The Comptroller General of
the United States shall conduct a study on whether the
Securities Investor Protection Corporation (hereafter in
this section referred to as “SIPC”) should be required to
impose assessments, on its member brokers and dealers,
based on risk for the purpose of adequately maintaining
the SIPC Fund and to provide additional levels of cov-
erage on an optional basis.

(b) Content.—The Comptroller General in con-
ducting this study shall—

(1) identify and examine available approaches,
including modeling, to measure broker and dealer
operational risk;

(2) analyze whether the available approaches to
measure broker and dealer operational risk can be
used in managing the aggregate risk to the SIPC
Fund;

(3) explore whether objective measures like the
volume of assets of the SIPC member, previous en-
forcement and compliance actions taken by regu-
latory bodies against the SIPC member, or the num-
ber of years the SIPC member has been in opera-
tion, among other factors, can be used to assess the
probability the fund will incur a loss with respect to
the SIPC member;

(4) examine the impact that risk-based assess-
ments could have on large and small brokers and
dealers;

(5) examine the impact that risk-based assess-
ments could have on institutional and retail brokers
and dealers; and

(6) examine the feasibility of SIPC providing
additional levels of coverage on an optional basis,
what those additional levels of coverage should be,
and the appropriate risked-based premium for pro-
viding additional coverage.

(c) CONSULTATION.—The Comptroller General in
planning and conducting this study shall consult with the
Securities and Exchange Commission, the Federal Deposit
Insurance Corporation, SIPC, the Financial Industry Reg-
ulatory Authority, and any other public or private sector
organization that the Comptroller General considers ap-
propriate.

(d) REPORT REQUIRED.—Not later than 1 year after
the date of enactment of this subtitle, the Comptroller
general shall submit a report of the results of the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

PART 6—SARBANES-OXLEY ACT AMENDMENTS

SEC. 7601. PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD OVERSIGHT OF AUDITORS OF BROKERS AND DEALERS.

(a) DEFINITIONS.—(1) Title I of the Sarbanes-Oxley Act of 2002 is amended by adding at the end the following new section:

"SEC. 110. DEFINITIONS."

"For the purposes of this title, and notwithstanding section 2:

“(1) AUDIT.—The term ‘audit’ means an examination of the financial statements, reports, documents, procedures or controls, or notices, of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission (or, for the period preceding the adoption of applicable rules of the Board under section 103, in accordance with then-applicable generally accepted auditing and related standards for such purposes), for the purpose of express-
ing an opinion on such financial statements, reports, documents, procedures or controls, or notices.

“(2) Audit Report.—The term ‘audit report’ means a document, report, notice, or other record—

“(A) prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws; and

“(B) in which a public accounting firm either—

“(i) sets forth the opinion of that firm regarding a financial statement, report, notice, other document, procedures, or controls; or

“(ii) asserts that no such opinion can be expressed.

“(3) Professional Standards.—The term ‘professional standards’ means—

“(A) accounting principles that are—

“(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933, as amended by this Act, or prescribed by the Commission under section 19(a) of that Act (15 U.S.C. 17a(s)) or section 13(b) of the Securities
Exchange Act of 1934 (15 U.S.C. 78a(m));

and

“(ii) relevant to audit reports for particular issuers, brokers, or dealers, or dealt with in the quality control system of a particular registered public accounting firm;

and

“(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

“(i) relate to the preparation or issuance of audit reports for issuers, brokers, or dealers; and

“(ii) are established or adopted by the Board under section 103(a), or are promulgated as rules of the Commission.

“(4) BROKER.—The term ‘broker’ means a broker (as such term is defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78e(a)(4))) that is required to file a balance sheet, income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C.
78q(e)(1)(A)), where such balance sheet, income
statement, or financial statement is required to be
certified by a registered public accounting firm.

“(5) DEALER.—The term ‘dealer’ means a
dealer (as such term is defined in section 3(a)(5) of
78e(a)(5))) that is required to file a balance sheet,
income statement, or other financial statement
under section 17(e)(1)(A) of such Act (15 U.S.C.
78q(e)(1)(A)), where such balance sheet, income
statement, or financial statement is required to be
certified by a registered public accounting firm.

“(6) SELF-REGULATORY ORGANIZATION.—The
term ‘self-regulatory organization’ has the same
meaning as in section 3(a)(26) of the Securities Ex-
change Act of 1934 (15 U.S.C. 78e(a)(26)).”.

(2) The table of sections in section 1(b) of such Act
is amended, by inserting after the item relating to section
109 the following new item:

“Sec. 110. Definitions.”.

(b) ESTABLISHMENT AND ADMINISTRATION OF THE
PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—
Section 101 of such Act is amended—

(1) by striking “issuers” each place it appears
and inserting “issuers, brokers, and dealers”;

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(2) in subsection (a), by striking “public companies” and inserting “companies”; and

(3) in subsection (a), by striking “for companies the securities of which are sold to, and held by and for, public investors”.

(c) Registration With the Board.—Section 102 of such Act is amended—

(1) in subsection (a), by striking “Beginning 180 days after the date of the determination of the Commission under section 101(d), it” and inserting “It”;

(2) in subsections (a) and (b)(2)(G), by striking “issuer” each place it appears and inserting “issuer, broker, or dealer”; and

(3) in subsection (b)(2)(A), by striking “issuers” and inserting “issuers, brokers, and dealers”.

(d) Auditing and Independence.—Section 103(a) of such Act is amended—

(1) in paragraph (1), by striking “and such ethics standards” and inserting “such ethics standards, and such independence standards”;

(2) in paragraph (2)(A)(iii), by striking “describe in each audit report” and inserting “in each audit report for an issuer, describe”; and
(3) in paragraph (2)(B)(i), by striking “issuers” and inserting “issuers, brokers, and dealers”.

(e) INSPECTIONS BY REGISTERED ACCOUNTING FIRMS.—Subsection (a) of Section 104 of such Act is amended—

(1) by striking “(a) IN GENERAL.—The Board shall” and inserting the following:

“(a) IN GENERAL.—

“(1) The Board shall”; and

(2) by adding at the end of such subsection the following:

“(2) INSPECTIONS OF AUDIT REPORT FOR BROKERS AND DEALERS.—

“(A) The Board may, by rule, conduct and require a program of inspection in accordance with paragraph (a)(1), on a basis to be determined by the Board, of registered public accounting firms that provide one or more audit reports for a broker or dealer. The Board, in establishing such a program, may allow for differentiation among classes of brokers and dealers, as appropriate.

“(B) If the Board determines to establish a program of inspection pursuant to subpara-
graph (A), the Board shall consider in establishing any inspection schedules whether differing schedules would be appropriate with respect to registered public accounting firms that issue audit reports only for one or more brokers or dealers that do not receive, handle, or hold customer securities or cash or are not a member of the Securities Investor Protection Corporation.

“(C) Any rules of the Board pursuant to this paragraph shall be subject to prior approval by the Commission pursuant to section 107(b) before the rules become effective, including an opportunity for public notice and comment.

“(D) Notwithstanding anything to the contrary in section 102 of this Act, a public accounting firm shall not be required to register with the Board if the public accounting firm is exempt from the inspection program which may be established by the Board under subparagraph (a)(2)(A) of this section.

‘registered public accounting firm’ and inserting
‘independent public accounting firm or by a reg-
istered public accounting firm if registration is re-
quired under the Sarbanes-Oxley Act of 2002 as
amended.’.”.

(f) **INVESTIGATIONS AND DISCIPLINARY PRO-
CEEDINGS.**—Section 105(c)(7)(B) of such Act is amend-
ed—

(1) in the subparagraph heading, by inserting
“, BROKER, OR DEALER” after “ISSUER”;

(2) by striking “any issuer” each place it ap-
pears and inserting “any issuer, broker, or dealer”;

and

(3) by striking “an issuer under this sub-
section” and inserting “a registered public account-
ing firm under this subsection”.

(g) **FOREIGN PUBLIC ACCOUNTING FIRMS.**—Section

106 of such Act is amended—

(1) in subsection (a)(1), by striking “issuer”

and inserting “issuer, broker, or dealer”; and

(2) in subsection (a)(2), by striking “issuers”

and inserting “issuers, brokers, or dealers”.

(h) **FUNDING.**—Section 109 of such Act is amend-
ed—
(1) in subsection (c)(2), by striking “subsection (i)” and inserting “subsection (j)”;

(2) in subsection (d)(2), by striking “allowing for differentiation among classes of issuers, as appropriate” and inserting “and among brokers and dealers in accordance with subsection (h), and allowing for differentiation among classes of issuers and brokers and dealers, as appropriate”;

(3) in subsection (d), by inserting at the end the following in new paragraph:

“(3) BROKERS AND DEALERS.—The rules of the Board under paragraph (1) shall provide that the allocation, assessment, and collection by the Board (or an agent appointed by the Board) of the fee established under paragraph (1) with respect to brokers and dealers shall not begin until the first day of the first full fiscal year beginning after the date of the enactment of this paragraph.”;

(4) by redesignating subsections (h), (i), and (j) as subsections (i), (j), and (k), respectively; and

(5) by inserting after subsection (g) the following new subsection:

“(h) ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG BROKERS AND DEALERS.—
“(1) IN GENERAL.—Any amount due from brokers and dealers (or a particular class of such brokers and dealers) under this section to fund the budget of the Board shall be allocated among and payable by such brokers and dealers (or such brokers and dealers in a particular class, as applicable). A broker or dealer’s allocation shall be in proportion to the broker or dealer’s net capital compared to the total net capital of all brokers and dealers, in accordance with the rules of the Board.

“(2) OBLIGATION TO PAY.—Every broker or dealer shall pay the share of a reasonable annual accounting support fee or fees allocated to such broker or dealer under this section.”.

(i) REFERRAL OF INVESTIGATIONS TO A SELF-REGULATORY ORGANIZATION.—Section 105(b)(4)(B) of the Sarbanes-Oxley Act of 2002 is amended—

(1) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively; and

(2) by inserting after clause (i) the following new clause:

“(ii) to a self-regulatory organization, in the case of an investigation that concerns an audit report for a broker or deal-
er that is subject to the jurisdiction of such self-regulatory organization;”.

(j) Use of Documents Related to an Inspection or Investigation.—Section 105(b)(5)(B)(ii) of such Act is amended—

(1) in subclause (III), by striking “and”; 
(2) in subclause (IV), by striking the comma and inserting “; and”; and
(3) by inserting after subclause (IV) the following new subclause:

“(V) a self-regulatory organization, with respect to an audit report for a broker or dealer that is subject to the jurisdiction of such self-regulatory organization,”.

SEC. 7602. FOREIGN REGULATORY INFORMATION SHARING.

(a) Definition.—Section 2(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended by inserting after paragraph (16) the following:

“(17) Foreign Auditor Oversight Authority.—The term ‘foreign auditor oversight authority’ means any governmental body or other entity empowered by a foreign government to conduct inspections of public accounting firms or otherwise to ad-
minister or enforce laws related to the regulation of
public accounting firms.”.

(b) Availability To Share Information.—Section 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)) is amended by adding at the end the following:

“(C) Availability to Foreign Oversight Authorities.—When in the Board’s discretion it is necessary to accomplish the purposes of this Act or to protect investors, and without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) that relates to a public accounting firm within the inspection authority, or other regulatory or law enforcement jurisdiction, of a foreign auditor oversight authority may be made available to the foreign auditor oversight authority if the foreign auditor oversight authority provides such assurances of confidentiality as the Board determines appropriate.”.

(c) Conforming Amendment.—Section 105(b)(5)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(A)) is amended by striking “subparagraph (B)” and inserting “subparagraphs (B) and (C)”.
SEC. 7603. EXPANSION OF AUDIT INFORMATION TO BE PRODUCED AND EXCHANGED WITH FOREIGN COUNTERPARTS.

Section 106 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7216) is amended—

(1) by amending subsection (b) to read as follows:

“(b) PRODUCTION OF DOCUMENTS.—

“(1) PRODUCTION BY FOREIGN FIRMS.—If a foreign public accounting firm issues an audit report, performs audit work, conducts interim reviews, or performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, the foreign public accounting firm shall produce its audit work papers and all other documents related to any such audit work or interim review to the Commission or the Board when requested by the Commission or the Board and the foreign public accounting firm shall be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request of such documents.

“(2) OTHER PRODUCTION.—Any registered public accounting firm that relies, in whole or in part, on the work of a foreign public accounting firm
in issuing an audit report, performing audit work, or conducting an interim review, shall—

“(A) produce the foreign public accounting firm’s audit work papers and all other documents related to any such work in response to a request for production by the Commission or the Board; and

“(B) secure the agreement of any foreign public accounting firm to such production, as a condition of its reliance on the work of that foreign public accounting firm.”;

(2) by redesignating subsection (d) as subsection (g); and

(3) by inserting after subsection (e) the following new subsections:

“(d) SERVICE OF REQUESTS OR PROCESS.—Any foreign public accounting firm that performs work for a domestically registered public accounting firm shall furnish to the domestically firm a written irrevocable consent and power of attorney that designates the domestic firm as an agent upon whom may be served any process, pleadings, or other papers in any action brought to enforce this section. Any foreign public accounting firm that issues an audit report, performs audit work, performs interim reviews, or performs other material services upon which a
registered public accounting firm relies in the conduct of
an audit or interim review, shall designate to the Commiss-
on the Board an agent in the United States upon
whom may be served any process, pleading, or other pa-
pers in any action brought to enforce this section or any
request by the Commission or the Board under this sec-
tion.

“(e) SANCTIONS.—A willful refusal to comply, in
whole in or in part, with any request by the Commission
or the Board under this section, shall be a violation of
this Act.

“(f) OTHER MEANS OF SATISFYING PRODUCTION
OBLIGATIONS.—Notwithstanding any other provision of
this section, the staff of the Commission or Board may
allow foreign public accounting firms subject to this sec-
tion to meet production obligations under this section
though alternate means, such as through foreign counter-
parts of the Commission or Board.”.

SEC. 7604. CONFORMING AMENDMENT RELATED TO REG-
ISTRATION.

Section 102(b)(3)(A) of the Sarbanes-Oxley Act of
“by the Board” and inserting “by the Commission or the
Board”.

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SEC. 7605. FAIR FUND AMENDMENTS.

Section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(a)) is amended—

(1) by amending subsection (a) to read as follows:

“(a) CIVIL PENALTIES TO BE USED FOR THE RELIEF OF VICTIMS.—If in any judicial or administrative action brought by the Commission under the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the Commission obtains a civil penalty against any person for a violation of such laws or the rules and regulations thereunder, or such person agrees in settlement of any such action to such civil penalty, the amount of such civil penalty or settlement shall, on the motion or at the direction of the Commission, be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation.”;

(2) in subsection (b), by—

(A) striking “for a disgorgement fund described in subsection (a)” and inserting “for a disgorgement fund or other fund described in subsection (a)”;

(B) striking “in the disgorgement fund” and inserting “in such fund”; and

(3) by striking subsection (e).
SEC. 7606. EXEMPTION FOR NONACCELERATED FILERS.

(a) Exemption.—Section 404 of the Sarbanes-Oxley Act of 2002 is amended by adding at the end the following:

“(c) Exemption for Smaller Issuers.—Subsection (b) shall not apply with respect to any audit report prepared for an issuer that is not an accelerated filer within the meaning Rule 12b–2 of the Commission (17 CFR 240.12b–2).”.

(b) Study.—The Securities and Exchange Commission shall conduct a study to determine how the Commission could reduce the burden of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 for companies whose market capitalization is between $75,000,000 and $250,000,000 for the relevant reporting period while maintaining investor protections for such companies. The study shall also consider whether any such methods of reducing the compliance burden or a complete exemption for such companies from compliance with such section would encourage companies to list on exchanges in the United States in their initial public offerings. Not later than 9 months after the date of the enactment of this subtitle, the Commission shall transmit a report of such study to Congress.
SEC. 7607. WHISTLEBLOWER PROTECTION AGAINST RETALIATION BY A SUBSIDIARY OF AN ISSUER.

Section 1514A(a) of title 18, United States Code, is amended by inserting “including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company,” after “(15 U.S.C. 78o(d)),”.

SEC. 7608. CONGRESSIONAL ACCESS TO INFORMATION.

Section 101 of the Sarbanes-Oxley Act of 2002 is amended by adding at the end the following:

“(i) Congressional Access to Information.—Nothing in this section shall prevent the Board from responding to requests for reports from the Committee’s specified under subsection (h) about the activities or programs of the Board, provided that any confidential information contained therein shall be subject to the provisions of section 105(b)(5).”.

SEC. 7609. CREATION OF OMBUDSMAN FOR THE PCAOB.

(a) Ombudsman.—Title I of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7211 et seq.), as amended by section 7601(a)(1), is further amended by adding at the end the following new section:

“SEC. 111. OMBUDSMAN.

“(a) Establishment Required.—Not later than 180 days after the date of enactment of the Investor Protection Act, the Board shall appoint an ombudsman for
the Board. The Ombudsman shall report directly to the
Chairman.

“(b) DUTIES OF OMBUDSMAN.—The ombudsman ap-
pointed in accordance with subsection (a) for the Board
shall—

“(1) act as a liaison between the Board and—

“(A) any registered public accounting firm
or issuer with respect to issues or disputes con-
cerning the preparation or issuance of any audit
report with respect to that issuer; and

“(B) any affected registered public ac-
counting firm or issuer with respect to—

“(i) any problem such firm or issuer
may have in dealing with the Board result-
ing from the regulatory activities of the
Board, particularly with regard to the im-
plementation of section 404; and

“(ii) issues caused by the relationships
of registered public accounting firms and
issuers generally;

“(2) assure that safeguards exist to encourage
complainants to come forward and to preserve con-
fidentiality; and
“(3) carry out such activities, and any other activities assigned by the Board, in accordance with guidelines prescribed by the Board.”.

(b) CONFORMING AMENDMENT.—The table of sections in section 1(b) of such Act is amended, by inserting after the item relating to section 110 (as added by section 601(a)(2)) the following new item:

“Sec. 111. Ombudsman.”.

SEC. 7610. AUDITING OVERSIGHT BOARD.

The Sarbanes-Oxley Act of 2002 is amended—

(1) in section 2(a)(5), by striking “Public Company Accounting Oversight Board” and inserting “Auditing Oversight Board”;

(2) in section 101(a), by striking “Public Company Accounting Oversight Board” and inserting “Auditing Oversight Board”; and

(3) in the heading of title I, by striking “PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD” and inserting “AUDITING OVERSIGHT BOARD”.

PART 7—SENIOR INVESTMENT PROTECTION

SEC. 7701. FINDINGS.

Congress finds that—

(1) many seniors are targeted by salespersons and advisers using misleading certifications and professional designations;
(2) many certifications and professional designations used by salespersons and advisers represent limited training or expertise, and may in fact be of no value with respect to advising seniors on financial and estate planning matters, and far too often, such designations are obtained simply by attending a weekend seminar and passing an open book, multiple choice test;

(3) many seniors have lost their life savings because salespersons and advisers holding a misleading designation have steered them toward products that were unsuitable for them, given their retirement needs and life expectancies;

(4) seniors have a right to clearly know whether they are working with a qualified adviser who understands the products and is working in their best interest or a self-interested salesperson or adviser advocating particular products; and

(5) many existing State laws and enforcement measures addressing the use of certifications, professional designations, and suitability standards in selling financial products to seniors are inadequate to protect senior investors from salespersons and advisers using such designations.
SEC. 7702. DEFINITIONS.

For purposes of this part:

(1) MISLEADING DESIGNATION.—The term “misleading designation”—

(A) means the use of a purported certification, professional designation, or other credential, that indicates or implies that a salesperson or adviser has special certification or training in advising or servicing seniors; and

(B) does not include any legitimate certification, professional designation, license, or other credential, if—

(i) it has been offered by an academic institution having regional accreditation; or

(ii) it meets the standards for certifications, licenses, and professional designations outlined by the North American Securities Administrators Association (in this part referred to as the “NASAA”) Model Rule on the Use of Senior-Specific Certifications and Professional Designations, as in effect on the date of the enactment of this subtitle, or any successor thereto, or it was issued by or obtained from any State.

(2) FINANCIAL PRODUCT.—The term “financial product” means securities, insurance products (in-
including insurance products which pay a return, whether fixed or variable), and bank and loan products.

(3) Misleading or fraudulent marketing.—The term “misleading or fraudulent marketing” means the use of a misleading designation when selling to or advising a senior about the sale of a financial product.

(4) Senior.—The term “senior” means any individual who has attained the age of 62 years or more.

(5) State.—The term “State” means each of the 50 States, the District of Columbia, and the unincorporated territories of Puerto Rico and the U.S. Virgin Islands.

SEC. 7703. GRANTS TO STATES FOR ENHANCED PROTECTION OF SENIORS FROM BEING MISLED BY FALSE DESIGNATIONS.

(a) Grant Program.—The Securities and Exchange Commission (in this part referred to as the “Commission”)—

(1) shall establish a program in accordance with this part to provide grants to States—

(A) to investigate and prosecute misleading and fraudulent marketing practices; or
(B) to develop educational materials and training aimed at reducing misleading and fraudulent marketing of financial products toward seniors; and

(2) may establish such performance objectives, reporting requirements, and application procedures for States and State agencies receiving grants under this part as the Commission determines are necessary to carry out and assess the effectiveness of the program under this part.

(b) USE OF GRANT AMOUNTS.—A grant under this part may be used (including through subgrants) by the State or the appropriate State agency designated by the State—

(1) to fund additional staff to identify, investigate, and prosecute (through civil, administrative, or criminal enforcement actions) cases involving misleading or fraudulent marketing of financial products to seniors;

(2) to fund technology, equipment, and training for regulators, prosecutors, and law enforcement in order to identify salespersons and advisers who target seniors through the use of misleading designations;
(3) to fund technology, equipment, and training for prosecutors to increase the successful prosecution of those targeting seniors with the use of misleading designations;

(4) to provide educational materials and training to regulators on the appropriateness of the use of designations by salespersons and advisers of financial products;

(5) to provide educational materials and training to seniors to increase their awareness and understanding of designations; and

(6) to develop comprehensive plans to combat misleading or fraudulent marketing of financial products to seniors.

(c) GRANT REQUIREMENTS.—

(1) MAXIMUM.—The amount of a grant under this part may not exceed $1,000,000 per fiscal year per State, if all requirements of paragraphs (2), (3), (4), and (5) are met. Such amount shall be limited to $250,000 per fiscal year per State in any case in which the State meets the requirements of—

(A) paragraphs (2) and (3), but not each of paragraphs (4) and (5); or

(B) paragraphs (4) and (5), but not each of paragraphs (2) and (3).
(2) **Standard designation rules for securities.**—A State shall have adopted rules on the appropriate use of designations in the offer or sale of securities or investment advice, which shall meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations, as in effect on the date of the enactment of this subtitle, or any successor thereto.

(3) **Suitability rules for securities.**—A State shall have adopted standard rules on the suitability requirements in the sale of securities, which shall, to the extent practicable, conform to the minimum requirements on suitability imposed by self-regulatory organization rules under the securities laws (as defined in section 3 of the Securities Exchange Act of 1934).

(4) **Application of fiduciary duty for personalized investment advice about securities.**—Nothing in this section shall diminish in any manner nor supersede the standard of conduct applicable to all brokers, dealers and investment advisers providing personalized investment advice about securities as set forth in section 7103 of this Act.
(5) **Standard designation rules for insurance products.**—A State shall have adopted standard rules on the appropriate use of designations in the sale of insurance products, which shall meet or exceed minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, as in effect on the date of the enactment of this subtitle, or any successor thereto.

(6) **Suitability and supervision rules for annuity products.**—A State shall have adopted rules that govern suitability requirements in the sale of annuities which shall meet or exceed the minimum requirements established by the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation in effect on the date of the enactment of this Act, or any successor thereto.

**SEC. 7704. APPLICATIONS.**

To be eligible for a grant under this part, the State or appropriate State agency shall submit to the Commission a proposal to use the grant money to protect seniors from misleading or fraudulent marketing techniques in the
offer and sale of financial products, which application shall—

(1) identify the scope of the problem;

(2) describe how the proposed program will help to protect seniors from misleading or fraudulent marketing in the sale of financial products, including, at a minimum—

(A) by proactively identifying seniors who are victims of misleading and fraudulent marketing in the offer and sale of financial products;

(B) how the proposed program can assist in the investigation and prosecution of those using misleading or fraudulent marketing in the offer and sale of financial products to seniors; and

(C) how the proposed program can help discourage and reduce future cases of misleading or fraudulent marketing in the offer and sale of financial products to seniors; and

(3) describe how the proposed program is to be integrated with other existing State efforts.
SEC. 7705. LENGTH OF PARTICIPATION.

A State receiving a grant under this part shall be provided assistance funds for a period of 3 years, after which the State may reapply for additional funding.

SEC. 7706. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this part, $16,000,000 for each of the fiscal years 2011 through 2015.

PART 8—REGISTRATION OF MUNICIPAL FINANCIAL ADVISORS

SEC. 7801. MUNICIPAL FINANCIAL ADVISER REGISTRATION REQUIREMENT.

(a) In General.—The Securities Exchange Act of 1934 (as amended by section 3204) is amended by inserting after section 15F (15 U.S.C. 78o-7) the following new section:

“SEC. 15G. MUNICIPAL FINANCIAL ADVISER REGISTRATION REQUIREMENT.

“(a)(1)(A) It shall be unlawful for any person to make use of the mails or any means or instrumentality of interstate commerce to act as a municipal financial adviser unless such person is registered as a municipal financial adviser in accordance with subsection (b).

“(B) Subparagraph (A) shall not apply to a natural person associated with a municipal financial adviser, as
long as such adviser is registered in accordance with sub-
section (b) and is not a natural person.

“(2) The Commission, by rule or order, as it deems
consistent with the public interest and the protection of
investors, may conditionally or unconditionally exempt
from paragraph (1) of this section any municipal financial
adviser or class of municipal financial advisers specified
in such rule or order.

“(b)(1) A municipal financial adviser may be reg-
istered by filing with the Commission an application for
registration in such form and containing such information
and documents concerning such municipal financial ad-
viser and any persons associated with such municipal fi-
nancial adviser as the Commission, by rule, may prescribe
as necessary or appropriate in the public interest or for
the protection of investors. Within 45 days of the date of
the filing of such application (or within such longer period
as to which the applicant consents), the Commission
shall—

“(A) by order grant registration; or

“(B) institute proceedings to determine whether reg-
istration should be denied. Such proceedings shall include
notice of the grounds for denial under consideration and
opportunity for hearing and shall be concluded within 120
days of the date of the filing of the application for reg-
istration. At the conclusion of such proceedings, the Com-
mission, by order, shall grant or deny such registration.
The Commission may extend the time for conclusion of
such proceedings for up to 90 days if it finds good cause
for such extension and publishes its reasons for so finding,
or for such longer period as to which the applicant con-
sents.

The Commission shall grant such registration if
the Commission finds that the requirements of
this section are satisfied. The Commission shall
deny such registration if it does not make such
a finding or if it finds that if the applicant were
so registered, its registration would be subject
to suspension or revocation under paragraph
(4).

“(2) An application for registration of a municipal
financial adviser to be formed or organized may be made
by a municipal financial adviser to which the municipal
financial adviser to be formed or organized is to be the
successor. Such application, in such form as the Commis-
sion, by rule, may prescribe, shall contain such informa-
tion and documents concerning the applicant, the suc-
cessor, and any persons associated with the applicant or
the successor, as the Commission, by rule, may prescribe
as necessary or appropriate in the public interest or for
the protection of investors. The grant or denial of registration to such an applicant shall be in accordance with the procedures set forth in paragraph (1) of this subsection. If the Commission grants such registration, the registration shall terminate on the 45th day after the effective date thereof, unless prior thereto the successor shall, in accordance with such rules and regulations as the Commission may prescribe, adopt the application for registration as its own.

“(3) Any provision of this title (other than section 5 and subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered municipal financial adviser or any person acting on behalf of such a municipal financial adviser, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

“(4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any municipal financial adviser if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension,
or revocation is in the public interest and that such munici-
pal financial adviser, whether prior or subsequent to be-
coming such, or any person associated with such municipal
financial adviser, whether prior or subsequent to becoming
so associated—

“(A) has willfully made or caused to be made
in any application for registration or report required
to be filed with the Commission or with any other
appropriate regulatory agency under this title, or in
any proceeding before the Commission with respect
to registration, any statement which was at the time
and in the light of the circumstances under which it
was made false or misleading with respect to any
material fact, or has omitted to state in any such
application or report any material fact which is re-
quired to be stated therein;

“(B) has been convicted within 10 years pre-
ceding the filing of any application for registration
or at any time thereafter of any felony or mis-
demeanor or of a substantially equivalent crime by
a foreign court of competent jurisdiction which the
Commission finds—

“(i) involves the purchase or sale of any
security, the taking of a false oath, the making
of a false report, bribery, perjury, burglary, any
substantially equivalent activity however de-
nominated by the laws of the relevant foreign
government, or conspiracy to commit any such
offense;

“(ii) arises out of the conduct of the busi-
ness of a municipal financial adviser, broker,
dealer, municipal securities dealer, government
securities broker, government securities dealer,
investment adviser, bank, insurance company,
fiduciary, transfer agent, nationally recognized
statistical rating organization, foreign person
performing a function substantially equivalent
to any of the above, or entity or person required
to be registered under the Commodity Ex-
change Act (7 U.S.C. 1 et seq.) or any substan-
tially equivalent foreign statute or regulation;

“(iii) involves the larceny, theft, robbery,
extortion, forgery, counterfeiting, fraudulent
concealment, embezzlement, fraudulent conver-
sion, or misappropriation of funds, or securities,
or substantially equivalent activity however de-
nominated by the laws of the relevant foreign
government; or

“(iv) involves the violation of section 152,
1341, 1342, or 1343 or chapter 25 or 47 of
title 18, United States Code, or a violation of
a substantially equivalent foreign statute;

“(C) is permanently or temporarily enjoined by
order, judgment, or decree of any court of competent
jurisdiction from acting as a municipal financial ad-
viser, investment adviser, underwriter, broker, dealer-
er, municipal securities dealer, government securities broker, government securities dealer, transfer agent,
nationally recognized statistical rating organization,
foreign person performing a function substantially
equivalent to any of the above, or entity or person
required to be registered under the Commodity Ex-
change Act or any substantially equivalent foreign
statute or regulation, or as an affiliated person or
employee of any investment company, bank, insur-
ance company, foreign entity substantially equivalent
to any of the above, or entity or person required to
be registered under the Commodity Exchange Act or
any substantially equivalent foreign statute or regu-
lation or from engaging in or continuing any con-
duct or practice in connection with any such activity,
or in connection with the purchase or sale of any se-
curity;

“(D) has willfully violated any provision of the
Securities Act of 1933, the Investment Advisers Act
of 1940, the Investment Company Act of 1940, the
Commodity Exchange Act, this title, the rules or
regulations under any of such statutes, or the rules
of the Municipal Securities Rulemaking Board, or is
unable to comply with any such provision;

“(E) has willfully aided, abetted, counseled,
commanded, induced, or procured the violation by
any other person of any provision of the Securities
Act of 1933, the Investment Advisers Act of 1940,
the Investment Company Act of 1940, the Com-
modity Exchange Act, this title, the rules or regula-
tions under any of such statutes, or the rules of the
Municipal Securities Rulemaking Board, or has
failed reasonably to supervise, with a view to pre-
venting violations of the provisions of such statutes,
rules, and regulations, another person who commits
such a violation, if such other person is subject to
his supervision. For the purposes of this subpara-
graph, no person shall be deemed to have failed rea-
sonably to supervise any other person, if—

“(i) there have been established proce-
dures, and a system for applying such proce-
dures, which would reasonably be expected to
prevent and detect, insofar as practicable, any
such violation by such other person; and
“(ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with;

“(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a municipal financial adviser;

“(G) has been found by a foreign financial regulatory authority to have—

“(i) made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to the foreign financial regulatory authority any material fact that is required to be stated therein;

“(ii) violated any foreign statute or regulation regarding transactions in securities, or con-
tracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade; or

“(iii) aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision; or

“(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an ap-
propriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

“(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

“(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

“(5) Pending final determination whether any registration under this subsection shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any registered municipal financial adviser may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered municipal financial adviser
is no longer in existence or has ceased to do business as a municipal financial adviser, the Commission, by order, shall cancel the registration of such municipal financial adviser.

“(6)(A) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a municipal financial adviser, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, transfer agent, nationally recognized statistical rating organization, or municipal financial adviser, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

“(i) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (G), or (H) of paragraph (4) of this subsection;

“(ii) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within
10 years of the commencement of the proceedings under this paragraph; or

“(iii) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

“(B) It shall be unlawful—

“(i) for any person as to whom an order under subparagraph (A) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a municipal financial adviser in contravention of such order; or

“(ii) for any municipal financial adviser to permit such a person, without the consent of the Commission, to become or remain, a person associated with the municipal financial adviser in contravention of such order, if such municipal financial adviser knew, or in the exercise of reasonable care should have known, of such order.

“(7) No registered municipal financial adviser shall act as such unless it meets such standards of operational capability and such municipal financial adviser and all natural persons associated with such municipal financial adviser meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for
the protection of investors. The Commission shall establish such standards by rules and regulations, which may—

“(A) specify that all or any portion of such standards shall be applicable to any class of municipal financial advisers and persons associated with municipal financial advisers;

“(B) require persons in any such class to pass tests prescribed in accordance with such rules and regulations, which tests shall, with respect to any class of partners, officers, or supervisory employees (which latter term may be defined by the Commission’s rules and regulations) engaged in the management of the municipal financial adviser, include questions relating to bookkeeping, accounting, supervision of employees, maintenance of records, and other appropriate matters; and

“(C) provide that persons in any such class other than municipal financial advisers and partners, officers, and supervisory employees of municipal financial advisers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Commission finds appropriate.

The Commission, by rule, may prescribe reasonable fees and charges to defray its costs in carrying out this para-
graph, including, but not limited to, fees for any test administered by it or under its direction.

“(c)(1)(A) No municipal financial adviser shall make use of the mails or any means or instrumentality of interstate commerce in connection with which such municipal financial adviser engages in any fraudulent, deceptive, or manipulative act or practice or violates such rules and regulations regarding conflicts of interest or fair practices, including but not limited to rules and regulations related to political contributions, as the Commission shall prescribe in the public interest or for the protection of investors or to maintain fair and orderly markets.

“(B) The Commission shall, for the purposes of this paragraph as the Commission finds necessary or appropriate in the public interest or for the protection of investors, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.

“(2) If the Commission finds, after notice and opportunity for a hearing, that any person subject to the provisions of this section or any rule or regulation thereunder has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person, and any person who was a cause of the failure to comply
due to an act or omission the person knew or should have
known would contribute to the failure to comply, to com-
ply, or to take steps to effect compliance, with such provi-
sion or such rule or regulation thereunder upon such
terms and conditions and within such time as the Commis-
sion may specify in such order.

“(d) Every registered municipal financial adviser
shall establish, maintain, and enforce written policies and
procedures reasonably designed, taking into consideration
the nature of such municipal financial adviser’s business,
to prevent the misuse in violation of this title, or the rules
or regulations thereunder, of material, nonpublic informa-
tion by such municipal financial adviser or any person as-
associated with such municipal financial adviser. The Com-
mission, as it deems necessary or appropriate in the public
interest or for the protection of investors, shall adopt rules
or regulations to require specific policies or procedures
reasonably designed to prevent misuse in violation of this
title (or the rules or regulations thereunder) of material,
nonpublic information.

“(e) A municipal financial adviser and any person as-
associated with such municipal financial adviser shall be
deemed to have a fiduciary duty to any municipal securi-
ties issuer for whom such municipal financial adviser acts
as a municipal financial adviser. A municipal financial ad-
visor may not engage in any act, practice, or course of business which is not consistent with a municipal financial adviser’s fiduciary duty. The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are not consistent with a municipal financial adviser’s fiduciary duty to its clients.”.

(b) DEFINITION.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) (as amended by section 3201(6)) is amended by adding at the end the following new paragraphs:

“(78) MUNICIPAL FINANCIAL ADVISER.—

“(A) The term ‘municipal financial adviser’ means a person who, for compensation, engages in the business of—

“(i) providing advice to a municipal securities issuer with respect to—

“(I) the issuance or proposed issuance of securities, including any remarketing of municipal securities directly or indirectly by or on behalf of a municipal securities issuer;
“(II) the investment of proceeds from securities issued by such municipal securities issuer;

“(III) the hedging of any risks associated with subclause (I) or (II), including advice as to swap agreements (as defined in section 206A of the Gramm-Leach-Bliley Act regardless of whether the counterparties constitute eligible contract participants); or

“(IV) preparation of disclosure documents in connection with the issuance, proposed issuance, or previous issuance of securities issued by a municipal securities issuer, including, without limitation, official statements and documents prepared in connection with a written agreement or contract for the benefit of holders of such securities described in section 240.15c2–12 of title 17, Code of Federal Regulations;

“(ii) assisting a municipal securities issuer in selecting or negotiating guaran-
teed investment contracts or other investment products; or

“(iii) assisting any municipal securities issuer in the primary offering of securities not involving a public offering.

“(B) Such term does not include—

“(i) an attorney, if the attorney is offering advice or providing services that are of a traditional legal nature;

“(ii) a nationally recognized statistical rating organization to the extent it is involved in the process of developing credit ratings;

“(iii) a registered broker-dealer when acting as an underwriter, as such term is defined in section 2(a)(11) of the Securities Act of 1933 (15 U.S.C. 77b(a)(11));

“(iv) a State or any political subdivision thereof; or

“(v) the independent accountant that audits the financial statements of the municipal securities issuer.

“(79) MUNICIPAL SECURITIES ISSUER.—The term ‘municipal securities issuer’ means—
“(A) any entity that has the ability to issue a security the interest on which is excludable from gross income under section 103 of the Internal Revenue Code of 1986 and the regulations thereunder; or

“(B) any person who receives the proceeds generated from the issuance of municipal securities.

“(80) PERSON ASSOCIATED WITH A MUNICIPAL FINANCIAL ADVISER; ASSOCIATED PERSON OF A MUNICIPAL FINANCIAL ADVISER.—The term ‘person associated with a municipal financial adviser’ or ‘associated person of a municipal financial adviser’ means any partner, officer, director, or branch manager of such municipal financial adviser (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such municipal financial adviser, or any employee of such municipal financial adviser, except that any person associated with a municipal financial adviser whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 15G(b) (other than paragraph (6) thereof).”
SEC. 7802. CONFORMING AMENDMENTS.


(2) in section 15(b)(4)(C) (15 U.S.C. 78o(b)(4)(C)), by inserting “municipal finance adviser,” after “nationally recognized statistical rating organization,”; and

(3) in section 17(a)(1) (15 U.S.C. 78q(a)(1)), by inserting “registered municipal financial adviser,” after “nationally recognized statistical rating organization,”.

(b) Investment Company Act of 1940.—The Investment Company Act of 1940 is amended—

(1) in section 2(a) (15 U.S.C. 80a–2(a)), by inserting at the end the following new paragraph:

“(54) The term ‘municipal finance adviser’ has the same meaning as in section 3 of the Securities Exchange Act of 1934.”;

(2) in section 9(a)(1) (15 U.S.C. 80a–9(a)(1)), by inserting “municipal finance adviser,” after “credit rating agency,”; and
(3) in section 9(a)(2) (15 U.S.C. 80a–9(a)(2)), by inserting “municipal finance adviser,” after “credit rating agency,”.

(c) INVESTMENT ADVISERS ACT OF 1940.—The Investment Advisers Act of 1940 is amended—

(1) in section 202(a) (15 U.S.C. 80b–2(a)), by inserting at the end the following new paragraph:

“(31) The term ‘municipal finance adviser’ has the same meaning as in section 3 of the Securities Exchange Act of 1934.”;

(2) in section 203(e)(2)(B) (15 U.S.C. 80b–3(e)(2)(B)), by inserting “municipal finance adviser,” after “credit rating agency,”; and

(3) in section 203(e)(4) (15 U.S.C. 80b–3(e)(4)) is amended by inserting “municipal finance adviser,” after “credit rating agency,”.

SEC. 7803. EFFECTIVE DATES.

(a) IN GENERAL.—The amendments made by this part shall take effect 30 days after the date of the enactment of this subtitle.

(b) EFFECTIVE DATE AND REQUIREMENTS FOR REGULATIONS.—Notwithstanding subsection (a), the Securities and Exchange Commission shall, within 120 days after the date of the enactment of this subtitle, publish for notice and public comment such regulations as are ini-
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partly required to implement this part, and shall take final
action with respect to such regulations not later than 270
days after the date of enactment of this subtitle.

(c) Registration Date.—No person may continue
to act as a municipal financial adviser, as such term is
defined in section 3(a)(65) of the Securities Exchange Act
of 1934 (as added by this part), after 30 days after the
date the regulations described in subsection (b) become
effective unless such person has been registered as re-
quired by the amendment made by section 7701 of this
part.

TITLE VI—FEDERAL INSURANCE
OFFICE

SEC. 8001. SHORT TITLE.

This title may be cited as the “Federal Insurance Of-

office Act of 2009”.

SEC. 8002. FEDERAL INSURANCE OFFICE ESTABLISHED.

(a) Establishment of Office.—Subchapter I of
chapter 3 of title 31, United States Code, is amended—

(1) by transferring and inserting section 312
after section 313;

(2) by redesignating sections 313 and 312 (as
so transferred) as sections 312 and 315, respec-
tively; and
(3) by inserting after section 312 (as so redesignated) the following new sections:

“SEC. 313. FEDERAL INSURANCE OFFICE.

“(a) Establishment of Office.—There is established the Federal Insurance Office as an office in the Department of the Treasury.

“(b) Leadership.—The Office shall be headed by a Director, who shall be appointed by the Secretary of the Treasury. The position of such Director shall be a career reserved position in the Senior Executive Service.

“(c) Functions.—

“(1) Authority pursuant to direction of Secretary.—The Office shall have the authority, pursuant to the direction of the Secretary, as follows:

“(A) To monitor the insurance industry to gain expertise.

“(B) To identify issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the United States financial system.

“(C) To monitor the extent to which traditionally underserved communities and consumers, minorities (as such term is defined in 24 section 1204(e) of the Financial Institutions
Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note), and low- and moderate-income persons have access to affordable insurance products regarding all lines of insurance, except health insurance.

“(D) To recommend to the Financial Services Oversight Council that it designate an insurer, including its affiliates, as an entity subject to stricter standards.

“(E) To assist the Secretary in administering the Terrorism Insurance Program established in the Department of the Treasury under the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note).

“(F) To coordinate Federal efforts and develop Federal policy on prudential aspects of international insurance matters, including representing the United States as appropriate in the International Association of Insurance Supervisors or any successor organization and assisting the Secretary in negotiating covered agreements.

“(G) To determine, in accordance with subsection (f), whether State insurance measures are preempted by covered agreements.
“(H) To consult with the States regarding insurance matters of national importance and prudential insurance matters of international importance.

“(I) To perform such other related duties and authorities as may be assigned to it by the Secretary.

“(2) ADVISORY FUNCTIONS.—The Office shall advise the Secretary on major domestic and prudential international insurance policy issues.

“(3) ADVISORY CAPACITY ON COUNCIL.—The Director shall serve in an advisory capacity on the Financial Services Oversight Council established under the Financial Stability Improvement Act of 2009.

“(d) SCOPE.—The authority of the Office shall extend to all lines of insurance except health insurance, as determined by the Secretary in coordination with the Secretary of the Department of Health and Human Services based on section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91).

“(e) GATHERING OF INFORMATION.—

“(1) GENERAL.—In carrying out its functions under subsection (c), the Office may request, receive, and collect data, including financial data, and infor-
information on and from the insurance industry and insurers, enter into information-sharing agreements, analyze and disseminate data and information, and issue reports regarding all lines of insurance except health insurance.

“(2) Collection of information from insurers and affiliates.—Except as provided in paragraph (3) and subject to paragraph (4), the Office may require an insurer, or affiliate of an insurer, to submit such data or information that the Office may reasonably require in carrying out its functions under subsection (c). Notwithstanding subsection (p) and for the purposes of this paragraph only, the term ‘insurer’ means any entity that writes insurance or reinsures risks and issues contracts or policies in one or more States.

“(3) Exception for small insurers.—Paragraph (2) shall not apply with respect to any insurer or affiliate thereof that meets a minimum size threshold that may be established by the Office by order or rule. Such threshold shall be appropriate to the particular request and need for the data or information.

“(4) Advance coordination.—Before collecting any data or information under paragraph (2)
from an insurer, or affiliate of an insurer, the Office shall coordinate with each relevant Federal agency and State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) and any publicly available sources to determine if the information to be collected is available from, or may be obtained in a timely manner by, such Federal agency or State insurance regulator, individually or collectively, other regulatory agency, or publicly available sources. If the Director determines that such data or information is available, or may be obtained in a timely manner, from such an agency, regulator, regulatory agency, or source, the Director shall obtain the data or information from such agency, regulator, regulatory agency, or source. If the Director determines that such data or information is not so available, the Director may collect such data or information from an insurer (or affiliate) only if the Director complies with the requirements of subchapter I of chapter 35 of title 44, United States Code (relating to Federal information policy; commonly known as the Paperwork Reduction Act) in collecting such data or information. Notwithstanding any other provision of law, each such relevant Federal agency and State insur-
ance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.

“(5) CONFIDENTIALITY.—

“(A) The submission of any non-publicly available data and information to the Office under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State Court) to which the data or information is otherwise subject.

“(B) Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any non-publicly available data or information and the source of such data or information to the Office, regarding the privacy or confidentiality of any data or information in the possession of the source to the Office, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection to the Office.

“(C) Any data or information obtained by the Office may be made available to State in-
insurance regulators individually or collectively through an information sharing agreement that shall comply with applicable Federal law and that shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including the rules of any Federal or State Court) to which the data or information is otherwise subject.

“(D) Section 552 of title 5, United States Code, shall apply to any data or information submitted by an insurer or affiliate of an insurer.

“(f) Preemption of State Insurance Measures.—

“(1) Standard.—A State insurance measure shall be preempted pursuant to this section or section 314 if, and only to the extent that the Director determines, in accordance with this subsection, that the measure—

“(A) directly results in less favorable treatment of a non-United States insurer domiciled in a foreign jurisdiction that is subject to a covered agreement than a United States insurer domiciled, licensed, admitted, or otherwise authorized in that State; and
“(B) is inconsistent with a covered agreement that is entered into on a date after the date of the enactment of this Act.

“(2) DETERMINATION.—

“(A) NOTICE OF POTENTIAL INCONSISTENCY.—Before making any determination of inconsistency, the Director shall—

“(i) notify and consult with the appropriate State regarding any potential inconsistency or preemption;

“(ii) notify and consult with the United States Trade Representative regarding any potential inconsistency or preemption;

“(iii) cause to be published in the Federal Register notice of the issue regarding the potential inconsistency or preemption, including a description of each State insurance measure at issue and any applicable covered agreement;

“(iv) provide interested parties a reasonable opportunity to submit written comments to the Office;

“(v) consider the effect of preemption on—
“(I) the protection of policy-holders and policy claimants;

“(II) the maintenance of the safety, soundness, integrity, and financial responsibility of any entity involved in the business of insurance or insurance operations;

“(III) ensuring the integrity and stability of the United States financial system; and

“(IV) the creation of a gap or void in financial or market conduct regulation of any entity involved in the business of insurance or insurance operations in the United States; and

“(vi) consider any comments received.

The Director shall provide the notifications required under clauses (i), (ii), and (iii) contemporaneously.

“(B) SCOPE OF REVIEW.—For purposes of this section, the Director’s determination of State insurance measures shall be limited to the subject matter of the prudential measures applicable to the business of insurance contained within the covered agreement involved.
“(C) Notice of determination of inconsistency.—Upon making any determination of inconsistency, the Director shall—

“(i) notify the appropriate State of the determination and the extent of the inconsistency;

“(ii) establish a reasonable period of time, which shall not be shorter than 90 days, before the determination shall become effective; and

“(iii) notify the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of the inconsistency.

“(3) Notice of effectiveness.—Upon the conclusion of the period referred to in paragraph (2)(C)(ii), if the basis for the determination of inconsistency still exists, the determination shall become effective and the Director shall—

“(A) cause to be published notice in the Federal Register that the preemption has become effective, as well as the effective date; and

“(B) notify the appropriate State.
“(4) LIMITATION.—No State may enforce a State insurance measure to the extent that it has been preempted under this subsection.

“(g) APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT.—Determinations of inconsistency pursuant to subsection (f)(2) shall be subject to the applicable provisions of subchapter II of chapter 5 of title 5, United States Code (relating to administrative procedure), and chapter 7 of such title (relating to judicial review), except that in any action for judicial review of a determination of inconsistency, the court shall determine the matter de novo.

“(h) REGULATIONS, POLICIES, AND PROCEDURES.—The Secretary may issue orders, regulations, policies and procedures to implement this section.

“(i) CONSULTATION.—The Director shall consult with State insurance regulators, individually and collectively, to the extent the Director determines appropriate, in carrying out the functions of the Office.

“(j) SAVINGS PROVISIONS.—Nothing in this section shall—

“(1) preempt any State insurance measure that governs any insurer’s rates, premiums, underwriting or sales practices, or State coverage requirements
for insurance, or to the application of the antitrust laws of any State to the business of insurance;

“(2) preempt any State insurance measure governing the capital or solvency of an insurer, except to the extent that such State insurance measure directly results in less favorable treatment of a non-United States insurer than a United States insurer;

“(3) be construed to alter, amend, or limit the responsibility of the Consumer Financial Protection Agency;

“(4) preempt any State insurance measure because of inconsistency with any agreement that is not a covered agreement (as such term in defined in subsection (p)); or

“(5) affect the preemption of any State insurance measure otherwise inconsistent with and preempted by Federal law.

“(k) RETENTION OF EXISTING STATE REGULATORY AUTHORITY.—Nothing in this section or section 314 shall be construed to establish a general supervisory or regulatory authority of the Office or the Department of the Treasury over the business of insurance.

“(l) RETENTION OF AUTHORITY OF FEDERAL FINANCIAL REGULATORY AGENCIES.—Nothing in this section or section 314 shall be construed to limit the author-
ity of any Federal financial regulatory agency, including
the authority to develop and coordinate policy, negotiate,
and enter into agreements with foreign governments, au-
thorities, regulators, and multi-national regulatory com-
mittees and to preempt State measures to affect uni-
formity with international regulatory agreements.

“(m) RETENTION OF AUTHORITY OF UNITED
STATES TRADE REPRESENTATIVE.—Nothing in this sec-
tion or section 314 shall be construed to affect the author-
ity of the Office of the United States Trade Representative
pursuant to section 141 of the Trade Act of 1974 (19
U.S.C. 2171) or any other provision of law, including au-
thority over the development and coordination of United
States international trade policy and the administration
of the United States trade agreements program.

“(n) REPORTS TO CONGRESS.—
“(1) ANNUAL REPORT.—Beginning September
30, 2011, the Director shall submit a report on or
before September 30 of each calendar year to the
President and to the Committees on Financial Serv-
ices and Ways and Means of the House of Rep-
resentatives and the Committees on Banking, Hous-
ing, and Urban Affairs and Finance of the Senate
on the insurance industry, any actions taken by the
office pursuant to subsection (f) (regarding preemp-
tion of inconsistent State insurance measures).

“(2) OTHER REPORTS.—The Director shall sub-
mit to the President and the Committees referred to in paragraph (1) any other information or reports as deemed relevant by the Director or as requested by the Chairman or Ranking Member of any of such Committees.

“(o) USE OF EXISTING RESOURCES.—To carry out this section, the Office may employ personnel, facilities, and other Department of the Treasury resources available to the Secretary and the Secretary shall dedicate specific personnel to the Office.

“(p) DEFINITIONS.—For purposes of this section and section 314, the following definitions shall apply:

“(1) AFFILIATE.—The term ‘affiliate’ means, with respect to an insurer, any person that controls, is controlled by, or is under common control with the insurer.

“(2) COVERED AGREEMENT.—The term ‘cov-
ered agreement’ means a written bilateral or multi-
lateral recognition agreement that—

“(A) is entered into between the United States and one or more foreign governments, authorities, or regulatory entities; and
“(B) provides for recognition of prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.

“(3) **DETERMINATION OF INCONSISTENCY.**—

The term ‘determination of inconsistency’ means a determination that a State insurance measure is preempted under subsection (f).

“(4) **FEDERAL FINANCIAL REGULATORY AGENCY.**—The term ‘Federal financial regulatory agency’ means the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, or the National Credit Union Administration.

“(5) **INSURER.**—The term ‘insurer’ means any person engaged in the business of insurance, including reinsurance.
“(6) Non-United States insurer.—The term ‘non-United States insurer’ means an insurer that is organized under the laws of a jurisdiction other than a State, but does not include any United States branch of such an insurer.

“(7) Office.—The term ‘Office’ means the Federal Insurance Office established by this section.

“(8) Secretary.—The term ‘Secretary’ means the Secretary of the Treasury.

“(9) State.—The term ‘State’ means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

“(10) State insurance measure.—The term ‘State insurance measure’ means any State law, regulation, administrative ruling, bulletin, guideline, or practice relating to or affecting prudential measures applicable to insurance or reinsurance.

“(11) State insurance regulator.—The term ‘State insurance regulator’ means any State regulatory authority responsible for the supervision of insurers.
“(12) United States insurer.—The term ‘United States insurer’ means—

“(A) an insurer that is organized under the laws of a State; or

“(B) a United States branch of a non-United States insurer.

“(q) Authorization of Appropriations.—There are authorized to be appropriated for the Office such sums as may be necessary for each fiscal year.

“SEC. 314. COVERED AGREEMENTS.

“(a) Authority.—The Secretary and the United States Trade Representative are authorized, jointly, to negotiate and enter into covered agreements on behalf of the United States.

“(b) Requirements for Consultation with Congress.—

“(1) In general.—Before initiating negotiations to enter into a covered agreement under subsection (a), during such negotiations, and before entering into any such agreement, the Secretary and the United States Trade Representative shall jointly consult with the Committee on Financial Services and the Committee on Ways and Means of the House of Representatives and the Committee on
Banking, Housing, and Urban Affairs and the Committee on Finance of the Senate.

“(2) Scope.—The consultation described in paragraph (1) shall include consultation with respect to—

“(A) the nature of the agreement;

“(B) how and to what extent the agreement will achieve the applicable purposes, policies, priorities, and objectives of section 313 and this section; and

“(C) the implementation of the agreement, including the general effect of the agreement on existing State laws.

“(c) Submission and Layover Provisions.—A covered agreement under subsection (a) may enter into force with respect to the United States only if—

“(1) the Secretary and the United States Trade Representative jointly submit to the congressional committees specified in subsection (b)(1), on a day on which both Houses of Congress are in session, a copy of the final legal text of the agreement; and

“(2) a period of 90 calendar days beginning on the date on which the copy of the final legal text of the agreement is submitted to the congressional committees under paragraph (1) has expired.”.
(b) Duties of Secretary.—Section 321(a) of title 31, United States Code, is amended—

(1) in paragraph (7), by striking "and" at the end;

(2) in paragraph (8)(C), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(9) advise the President on major domestic and international prudential policy issues in connection with all lines of insurance except health insurance."

(c) Clerical Amendment.—The table of sections for subchapter I of chapter 3 of title 31, United States Code, is amended by striking the item relating to section 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."

SEC. 8003. REPORT ON GLOBAL REINSURANCE MARKET.

Not later than September 30, 2011, the Director of the Federal Insurance Office appointed under section 313(b) of title 31, United States Code (as amended by section 8002(a)(3) of this title) shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban
Affairs of the Senate a report describing the breadth and scope of the global reinsurance market and the critical role such market plays in supporting insurance in the United States.

SEC. 8004. STUDY ON MODERNIZATION AND IMPROVEMENT OF INSURANCE REGULATION IN THE UNITED STATES.

(a) STUDY.—The Director of the Federal Insurance Office appointed under section 313(b) of title 31, United States Code (as amended by section 8002(a)(3) of this title) shall conduct a study on how to modernize and improve the system of insurance regulation in the United States. Such study shall include consideration of the following:

(1) Effective systemic risk regulation with respect to insurance.

(2) Strong capital standards and an appropriate match between capital allocation and liabilities for all risk.

(3) Meaningful and consistent consumer protection for insurance products and practices.

(4) Increased national uniformity through either a Federal charter or effective action by the States.
(5) Improved regulation of insurance companies and affiliates on a consolidated basis, including affiliates outside of the traditional insurance business.

(6) International coordination.

(7) Geographic disparities in access to and cost of insurance products.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing—

(1) the results of the study conducted under subsection (a); and

(2) any Federal or State legislative, administrative, or regulatory recommendations that the Director considers appropriate with respect to such study to modernize and improve the system of insurance regulation in the United States.

(c) CONSULTATION.—In carrying out subsections (a) and (b), the Director shall consult with State insurance commissioners, consumer organizations, representatives of the insurance industry, policyholders, and other persons, as the Director considers appropriate.
SEC. 8005. SENSE OF CONGRESS REGARDING SIMPLIFIED MORTGAGE CONTRACT SUMMARIES.

It is the sense of Congress that mortgage lenders should provide loan applicants with a simplified summary of their loan contracts, including an easy-to-read list of the basic loan terms, payment information, the existence of prepayment penalties or balloon payments, and escrow information.

TITLE VII—MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT

SEC. 9000. SHORT TITLE; DESIGNATION AS ENUMERATED CONSUMER LAW.

(a) Short Title.—This title may be cited as the “Mortgage Reform and Anti-Predatory Lending Act”.

(b) Designation as Enumerated Consumer Law Under the Purview of the Consumer Financial Protection Agency.—Subtitles A, B, C, and E and sections 9501, 9502, and 9506, and the amendments made by such subtitles and sections, shall be enumerated consumer laws, as defined in section 4002(16), and come under the purview of the Consumer Financial Protection Agency for purposes of title IV, including the transfer of functions and personnel under subtitle F of title IV and the savings provisions of such subtitle.
Subtitle A—Residential Mortgage
Loan Origination Standards

SEC. 9001. DEFINITIONS.

Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by adding at the end the following new subsection:

“(cc) Definitions relating to mortgage origination and residential mortgage loans.—

“(1) Commission.—Unless otherwise specified, the term ‘Commission’ means the Federal Trade Commission.

“(2) Federal banking agencies.—The term ‘Federal banking agencies’ means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board. All rule writing by the ‘Federal banking agencies’ as designated by the Mortgage Reform and Anti-Predatory Lending Act will be coordinated through the Financial Institutions Examination Council in consultation with the Chairman of the State Liaison Committee.

“(3) Mortgage originator.—The term ‘mortgage originator’—
“(A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain—

“(i) takes a residential mortgage loan application;

“(ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or

“(iii) offers or negotiates terms of a residential mortgage loan;

“(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A);

“(C) does not include any person who is (i) not otherwise described in subparagraph (A) or (B) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph, or (ii) an employee of a retailer of manufactured homes.
who is not described in clause (i) or (iii) of sub-
paragraph (A) and who does not advise a con-
sumer on loan terms (including rates, fees, and
other costs);

“(D) does not include a person or entity
that only performs real estate brokerage activi-
ties and is licensed or registered in accordance
with applicable State law, unless such person or
entity is compensated for performing such bro-
kerage activities by a lender, a mortgage
broker, or other mortgage originator or by any
agent of such lender, mortgage broker, or other
mortgage originator;

“(E) does not include, with respect to a
residential mortgage loan, a person, estate, or
trust that provides mortgage financing for the
sale of 1 property in any 36-month period, pro-
vided that such loan—

“(i) is fully amortizing;

“(ii) is with respect to a sale for
which the seller determines in good faith
and documents that the buyer has a rea-
sonable ability to repay the loan;

“(iii) has a fixed rate or an adjustable
rate that is adjustable after 5 or more
years, subject to reasonable annual and
lifetime limitations on interest rate in-
creases; and

“(iv) meets any other criteria the
Federal banking agencies may prescribe;

and

“(F) does not include a servicer or servicer
employees, agents and contractors, including
but not limited to those who offer or negotiate
terms of a residential mortgage loan for pur-
poses of renegotiating, modifying, replacing and
subordinating principal of existing mortgages
where borrowers are behind in their payments,
in default or have a reasonable likelihood of
being in default or falling behind.

“(4) NATIONWIDE MORTGAGE LICENSING SYS-
TEM AND REGISTRY.—The term ‘Nationwide Mort-
gage Licensing System and Registry’ has the same
meaning as in the Secure and Fair Enforcement for

“(5) OTHER DEFINITIONS RELATING TO MORT-
GAGE ORIGINATOR.—For purposes of this sub-
section, a person ‘assists a consumer in obtaining or
applying to obtain a residential mortgage loan’ by,
among other things, advising on residential mort-
gage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

"(6) RESIDENTIAL MORTGAGE LOAN.—The term ‘residential mortgage loan’ means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan or, for purposes of sections 129B and 129C and section 128(a) (16), (17), and (18), and 128(f) and any regulations promulgated thereunder, an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.

"(7) SECRETARY.—The term ‘Secretary’, when used in connection with any transaction or person involved with a residential mortgage loan, means the Secretary of Housing and Urban Development.

"(8) SECURITIZATION VEHICLE.—The term ‘securitization vehicle’ means a trust, corporation, partnership, limited liability entity, special purpose entity, or other structure that—
“(A) is the issuer, or is created by the issuer, of mortgage pass-through certificates, participation certificates, mortgage-backed securities, or other similar securities backed by a pool of assets that includes residential mortgage loans; and

“(B) holds such loans.

“(9) Securitizer.—The term ‘securitizer’ means the person that transfers, conveys, or assigns, or causes the transfer, conveyance, or assignment of, residential mortgage loans, including through a special purpose vehicle, to any securitization vehicle, excluding any trustee that holds such loans solely for the benefit of the securitization vehicle.

“(10) Servicer.—The term ‘servicer’ has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974.”.

SEC. 9002. RESIDENTIAL MORTGAGE LOAN ORIGINATION.

(a) In General.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129A the following new section:

“§129B. Residential mortgage loan origination

“(a) Finding and Purpose.—

“(1) Finding.—The Congress finds that economic stabilization would be enhanced by the protec-
tion, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible, affordable mortgage credit remains available to consumers.

“(2) PURPOSE.—It is the purpose of this section and section 129C to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive.

“(b) DUTY OF CARE.—

“(1) STANDARD.—Subject to regulations prescribed under this subsection, each mortgage originator shall, in addition to the duties imposed by otherwise applicable provisions of State or Federal law—

“(A) be qualified and, when required, registered and licensed as a mortgage originator in accordance with applicable State or Federal law, including the Secure and Fair Enforcement for Mortgage Licensing Act of 2008;

“(B) with respect to each consumer seeking or inquiring about a residential mortgage loan, diligently work to present the consumer with a range of residential mortgage loan prod-
ucts for which the consumer likely qualifies and which are appropriate to the consumer’s existing circumstances, based on information known by, or obtained in good faith by, the originator;

“(C) make full, complete, and timely disclosure to each such consumer in writing, the receipt and understanding of which shall be acknowledged by the signature of the mortgage originator and the consumer, of—

“(i) the comparative costs and benefits of each residential mortgage loan product offered, discussed, or referred to by the originator (and such comparative costs and benefits for each such product shall be presented side by side and the disclosures for each such product shall have equal prominence);

“(ii) the nature of the originator’s relationship to the consumer (including the cost of the services to be provided by the originator and a statement that the mortgage originator is or is not acting as an agent for the consumer, as the case may be); and
“(iii) any relevant conflicts of interest between the originator and the consumer;

“(D) certify to the creditor, with respect to any transaction involving a residential mortgage loan, that the mortgage originator has fulfilled all requirements applicable to the originator under this section with respect to the transaction; and

“(E) include on all loan documents any unique identifier of the mortgage originator provided by the Nationwide Mortgage Licensing System and Registry.

“(2) Clarification of extent of duty to present range of products and appropriate products.—

“(A) No duty to offer products for which originator is not authorized to take an application.—Paragraph (1)(B) shall not be construed as requiring—

“(i) a mortgage originator to present to any consumer any specific residential mortgage loan product that is offered by a creditor which does not accept consumer referrals from, or consumer applications
submitted by or through, such originator; or

“(ii) a creditor to offer products that the creditor does not offer to the general public.

“(B) APPROPRIATE LOAN PRODUCT.—For purposes of paragraph (1)(B), a residential mortgage loan shall be presumed to be appropriate for a consumer if—

“(i) the mortgage originator determines in good faith, based on then existing information and without undergoing a full underwriting process, that the consumer has a reasonable ability to repay and, in the case of a refinancing of an existing residential mortgage loan, receives a net tangible benefit, as determined in accordance with regulations prescribed under subsections (a) and (b) of section 129C; and

“(ii) the loan does not have predatory characteristics or effects (such as equity stripping and excessive fees and abusive terms) as determined in accordance with regulations prescribed under paragraph (4).
“(3) Rules of Construction.—No provision of this subsection shall be construed as—

“(A) creating an agency or fiduciary relationship between a mortgage originator and a consumer if the originator does not hold himself or herself out as such an agent or fiduciary; or

“(B) restricting a mortgage originator from holding himself or herself out as an agent or fiduciary of a consumer subject to any additional duty, requirement, or limitation applicable to agents or fiduciaries under any Federal or State law.

“(4) Regulations.—

“(A) In general.—The Federal banking agencies, in consultation with the Secretary, and the Commission, shall jointly prescribe regulations to—

“(i) further define the duty established under paragraph (1);

“(ii) implement the requirements of this subsection;

“(iii) establish the time period within which any disclosure required under paragraph (1) shall be made to the consumer; and
“(iv) establish such other requirements for any mortgage originator as such regulatory agencies may determine to be appropriate to meet the purposes of this subsection.

“(B) COMPLEMENTARY AND NONDUPLICATIVE DISCLOSURES.—The agencies referred to in subparagraph (A) shall endeavor to make the required disclosures to consumers under this subsection complementary and nonduplicative with other disclosures for mortgage consumers to the extent such efforts—

“(i) are practicable; and

“(ii) do not reduce the value of any such disclosure to recipients of such disclosures.

“(5) COMPLIANCE PROCEDURES REQUIRED.—The Federal banking agencies shall prescribe regulations requiring depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions, the subsidiaries of such institutions, and the employees of such institutions or subsidiaries with the requirements of this section and the registration procedures established under section
1507 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129 the following new items:

“129A. Fiduciary duty of servicers of pooled residential mortgages.
“129B. Residential mortgage loan origination.”.

SEC. 9003. PROHIBITION ON STEERING INCENTIVES.

Section 129B of the Truth in Lending Act (as added by section 102(a)) is amended by inserting after subsection (b) the following new subsection:

“(c) PROHIBITION ON STEERING INCENTIVES.—

“(1) IN GENERAL.—For any mortgage loan, the total amount of direct and indirect compensation from all sources permitted to a mortgage originator may not vary based on the terms of the loan (other than the amount of the principal).

“(2) RESTRUCTURING OF FINANCING ORIGINATION FEE.—

“(A) IN GENERAL.—For any mortgage loan, a mortgage originator may not arrange for a consumer to finance through rate any origination fee or cost except bona fide third party settlement charges not retained by the creditor or mortgage originator.
“(B) Exception. — Notwithstanding paragraph subparagraph (A), a mortgage originator may arrange for a consumer to finance through rate an origination fee or cost if—

“(i) the mortgage originator does not receive any other compensation from the consumer except the compensation that is financed through rate; and

“(ii) the mortgage is a qualified mortgage.

“(3) Regulations. — The Federal banking agencies, in consultation with the Secretary and the Commission, shall jointly prescribe regulations to prohibit—

“(A) mortgage originators from steering any consumer to a residential mortgage loan that—

“(i) the consumer lacks a reasonable ability to repay (in accordance with regulations prescribed under section 129C(a));

“(ii) in the case of a refinancing of a residential mortgage loan, does not provide the consumer with a net tangible benefit (in accordance with regulations prescribed under section 129C(b)); or
“(iii) has predatory characteristics or effects (such as equity stripping, excessive fees, or abusive terms);

“(B) mortgage originators from steering any consumer from a residential mortgage loan for which the consumer is qualified that is a qualified mortgage (as defined in section 129C(c)(3)) to a residential mortgage loan that is not a qualified mortgage;

“(C) abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender, or age;

“(D) mortgage originators from assessing excessive points and fees (as such term is described under section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4))) to a consumer for the origination of a residential mortgage loan based on such consumer’s decision to finance all or part of the payment through the rate for such points and fees; and

“(E) mortgage originators from—

“(i) mischaracterizing the credit history of a consumer or the residential mortgage loans available to a consumer;
“(ii) mischaracterizing or suborning the mischaracterization of the appraised value of the property securing the extension of credit; or

“(iii) if unable to suggest, offer, or recommend to a consumer a loan that is not more expensive than a loan for which the consumer qualifies, discouraging a consumer from seeking a home mortgage loan secured by a consumer’s principal dwelling from another mortgage originator.

“(4) Rules of Construction.—No provision of this subsection shall be construed as—

“(A) permitting any yield spread premium or other similar compensation that would, for any mortgage loan, permit the total amount of direct and indirect compensation from all sources permitted to a mortgage originator to vary based on the terms of the loan (other than the amount of the principal);

“(B) affecting the mechanism for providing the total amount of direct and indirect compensation permitted to a mortgage originator;
“(C) limiting or affecting the amount of compensation received by a creditor upon the sale of a consummated loan to a subsequent purchaser;

“(D) restricting a consumer’s ability to finance, at the option of the consumer, including through principal or rate, any origination fees or costs permitted under this subsection, or the mortgage originator’s ability to receive such fees or costs (including compensation) from any person, so long as such fees or costs were limited by agreement with the consumer and were fully and clearly disclosed to the consumer earlier in the application process as required by 129B(b)(1)(C)(i) and do not vary based on the terms of the loan (other than the amount of the principal) or the consumer’s decision about whether to finance such fees or costs; or

“(E) prohibiting incentive payments to a mortgage originator based on the number of residential mortgage loans originated within a specified period of time.”.
SEC. 9004. LIABILITY.

Section 129B of the Truth in Lending Act is amended by inserting after subsection (e) (as added by section 103) the following new subsection:

“(d) LIABILITY FOR VIOLATIONS.—

“(1) IN GENERAL.—For purposes of providing a cause of action for any failure by a mortgage originator to comply with any requirement imposed under this section and any regulation prescribed under this section, subsections (a) and (b) of section 130 shall be applied with respect to any such failure by substituting ‘mortgage originator’ for ‘creditor’ each place such term appears in each such subsection.

“(2) MAXIMUM.—The maximum amount of any liability of a mortgage originator under paragraph (1) to a consumer for any violation of this section shall not exceed the greater of actual damages or an amount equal to 3 times the total amount of direct and indirect compensation or gain accruing to the mortgage originator in connection with the residential mortgage loan involved in the violation, plus the costs to the consumer of the action, including a reasonable attorney’s fee.”.
SEC. 9005. REGULATIONS.

(a) DISCRETIONARY REGULATORY AUTHORITY.—

Section 129B of the Truth in Lending Act is amended by inserting after subsection (d) (as added by section 104) the following new subsection:

“(e) DISCRETIONARY REGULATORY AUTHORITY.—

“(1) IN GENERAL.—The Federal banking agencies shall, by regulations issued jointly, prohibit or condition terms, acts or practices relating to residential mortgage loans that the agencies find to be abusive, unfair, deceptive, predatory, inconsistent with reasonable underwriting standards, necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section and section 129B, necessary or proper to effectuate the purposes of this section and section 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections, or are not in the interest of the borrower.

“(2) APPLICATION.—The regulations prescribed under paragraph (1) shall be applicable to all residential mortgage loans and shall be applied in the same manner as regulations prescribed under section 105.
“(f) Section 129B and any regulations promulgated thereunder do not apply to an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.”.

(b) EFFECTIVE DATE.—The regulations required or authorized to be prescribed under this subtitle or the amendments made by this subtitle—

(1) shall be prescribed in final form before the end of the 12-month period beginning on the date of the enactment of this Act; and

(2) shall take effect not later than 18 months after the date of the enactment of this Act.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

Section 129(l)(2) of the Truth in Lending Act (15 U.S.C. 1639(l)(2)) is amended by inserting “referred to in section 103(aa)” after “loans” each place such term appears.

SEC. 9006. STUDY OF SHARED APPRECIATION MORTGAGES.

(a) Study.—The Secretary of Housing and Urban Development, in consultation with the Secretary of the Treasury and other relevant agencies, shall conduct a comprehensive study to determine prudent statutory and regulatory requirements sufficient to provide for the widespread use of shared appreciation mortgages to strengthen local housing markets, provide new opportunities for af-
fordable homeownership, and enable homeowners at risk of foreclosure to refinance or modify their mortgages.

(b) REPORT.—Not later than the expiration of the 6-month period beginning on the date of the enactment of this Act, the Secretary of Housing and Urban Development shall submit a report to the Congress on the results of the study, which shall include recommendations for the regulatory and legislative requirements referred to in subsection (a).

Subtitle B—Minimum Standards For Mortgages

SEC. 9101. ABILITY TO REPAY.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129B (as added by section 102(a)) the following new section:

“§ 129C. Minimum standards for residential mortgage loans

“(a) ABILITY TO REPAY.—

“(1) IN GENERAL.—In accordance with regulations prescribed jointly by the Federal banking agencies, in consultation with the Commission, no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented infor-
mation that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance, and assessments.

“(2) MULTIPLE LOANS.—If the creditor knows, or has reason to know, that 1 or more residential mortgage loans secured by the same dwelling will be made to the same consumer, the creditor shall make a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the combined payments of all loans on the same dwelling according to the terms of those loans and all applicable taxes, insurance, and assessments.

“(3) BASIS FOR DETERMINATION.—A determination under this subsection of a consumer’s ability to repay a residential mortgage loan shall include consideration of the consumer’s credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio, employment status, and other financial resources other than the consumer’s equity in the dwelling or real property that secures repayment of the loan.
“(4) INCOME VERIFICATION.—In order to safeguard against fraudulent reporting, any consideration of a consumer’s income history in making a determination under this subsection shall include the verification of such income by the use of—

“(A) Internal Revenue Service transcripts of tax returns provided by a third party; or

“(B) such other similar method that quickly and effectively verifies income documentation by a third party as the Federal banking agencies may jointly prescribe.

“(5) NONSTANDARD LOANS.—

“(A) VARIABLE RATE LOANS THAT DEFER REPAYMENT OF ANY PRINCIPAL OR INTEREST.—For purposes of determining, under this subsection, a consumer’s ability to repay a variable rate residential mortgage loan that allows or requires the consumer to defer the repayment of any principal or interest, the creditor shall use a fully amortizing repayment schedule.

“(B) INTEREST-ONLY LOANS.—For purposes of determining, under this subsection, a consumer’s ability to repay a residential mortgage loan that permits or requires the payment of interest only, the creditor shall use the pay-
ment amount required to amortize the loan by
its final maturity.

“(C) Calculation for negative amortization.—In making any determination under
this subsection, a creditor shall also take into
consideration any balance increase that may ac-
crue from any negative amortization provision.

“(D) Calculation process.—For pur-
poses of making any determination under this
subsection, a creditor shall calculate the month-
ly payment amount for principal and interest on
any residential mortgage loan by assuming—

“(i) the loan proceeds are fully dis-
bursed on the date of the consummation of
the loan;

“(ii) the loan is to be repaid in sub-
stantially equal monthly amortizing pay-
ments for principal and interest over the
entire term of the loan with no balloon
payment, unless the loan contract requires
more rapid repayment (including balloon
payment), in which case the calculation
shall be made (I) in accordance with regu-
lations prescribed by the Federal banking
agencies, with respect to any loan which
has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set, by 1.5 or more percentage points for a first lien residential mortgage loan; and by 3.5 or more percentage points for a subordinate lien residential mortgage loan; or (II) using the contract’s repayment schedule, with respect to a loan which has an annual percentage rate, as of the date the interest rate is set, that is at least 1.5 percentage points above the average prime offer rate for a first lien residential mortgage loan; and 3.5 percentage points above the average prime offer rate for a subordinate lien residential mortgage loan; and

“(iii) the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed rate at the time of the loan closing, without considering the introductory rate.

“(E) REFINANCE OF HYBRID LOANS WITH CURRENT LENDER.—In considering any application for refinancing an existing hybrid loan

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by the creditor into a standard loan to be made
by the same creditor in any case in which the
sole net-tangible benefit to the mortgagor would
be a reduction in monthly payment and the
mortgagor has not been delinquent on any pay-
ment on the existing hybrid loan, the creditor
may—

“(i) consider the mortgagor’s good
standing on the existing mortgage;

“(ii) consider if the extension of new
credit would prevent a likely default should
the original mortgage reset and give such
concerns a higher priority as an acceptable
underwriting practice; and

“(iii) offer rate discounts and other
favorable terms to such mortgagor that
would be available to new customers with
high credit ratings based on such under-
writing practice.

“(6) FULLY-INDEXED RATE DEFINED.—For
purposes of this subsection, the term ‘fully indexed
rate’ means the index rate prevailing on a residential
mortgage loan at the time the loan is made plus the
margin that will apply after the expiration of any in-
troductory interest rates.
“(7) Reverse Mortgages.—This subsection shall not apply with respect to any reverse mortgage”.

(b) Clerical Amendment.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129B (as added by section 102(b)) the following new item:

“129C. Minimum standards for residential mortgage loans.”.


Section 129C of the Truth in Lending Act (as added by section 9101(a)) is amended by inserting after subsection (a) the following new subsection:

“(b) Net Tangible Benefit for Refinancing of Residential Mortgage Loans.—

“(1) In General.—In accordance with regulations prescribed under paragraph (3), no creditor may extend credit in connection with any residential mortgage loan that involves a refinancing of a prior existing residential mortgage loan unless the creditor reasonably and in good faith determines, at the time the loan is consummated and on the basis of information known by or obtained in good faith by the creditor, that the refinanced loan will provide a net tangible benefit to the consumer.
“(2) Certain loans providing no net tangible benefit.—A residential mortgage loan that involves a refinancing of a prior existing residential mortgage loan shall not be considered to provide a net tangible benefit to the consumer if the costs of the refinanced loan, including points, fees and other charges, exceed the amount of any newly advanced principal without any corresponding changes in the terms of the refinanced loan that are advantageous to the consumer.

“(3) Net tangible benefit.—The Federal banking agencies shall jointly prescribe regulations defining the term ‘net tangible benefit’ for purposes of this subsection.”.

SEC. 9103. SAFE HARBOR AND REBUTTABLE PRESUMPTION.

Section 129C of the Truth in Lending Act is amended by inserting after subsection (b) (as added by section 9102) the following new subsection:

“(c) Presumption of ability to repay and net tangible benefit.—

“(1) In general.—Any creditor with respect to any residential mortgage loan, and any assignee or securitizer of such loan, may presume that the loan has met the requirements of subsections (a) and (b), if the loan is a qualified mortgage.
“(2) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

“(A) QUALIFIED MORTGAGE.—The term ‘qualified mortgage’ means any residential mortgage loan—

“(i) that does not allow a consumer to defer repayment of principal or interest, or is not otherwise deemed a ‘non-traditional mortgage’ under guidance, advisories, or regulations prescribed by the Federal Banking Agencies;

“(ii) that does not provide for a repayment schedule that results in negative amortization at any time;

“(iii) for which the terms are fully amortizing and which does not result in a balloon payment, where a ‘balloon payment’ is a scheduled payment that is more than twice as large as the average of earlier scheduled payments;

“(iv) which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set—
“(I) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is equal to or less than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

“(II) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is more than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home
Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); and

“(III) by 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan;

“(v) for which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented;

“(vi) in the case of a fixed rate loan, for which the underwriting process is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

“(vii) in the case of an adjustable rate loan, for which the underwriting is based on the maximum rate permitted under the loan during the first seven years, and a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

“(viii) that does not cause the consumer’s total monthly debts, including
amounts under the loan, to exceed a percentage established by regulation of the consumer’s monthly gross income or such other maximum percentage of such income as may be prescribed by regulation under paragraph (4), and such rules shall also take into consideration the consumer’s income available to pay regular expenses after payment of all installment and revolving debt;

“(ix) for which the total points and fees payable in connection with the loan do not exceed 2 percent of the total loan amount, where ‘points and fees’ means points and fees as defined by Section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4)); and

“(x) for which the term of the loan does not exceed 30 years, except as such term may be extended under paragraph (4).

“(B) AVERAGE PRIME OFFER RATE.—The term ‘average prime offer rate’ means an annual percentage rate that is derived from average interest rates, points, and other loan price-
ing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low risk pricing characteristics.

“(C) REVERSE MORTGAGES.—For purposes of this subsection, the term ‘qualified mortgage’ includes any reverse mortgage that is insured by the Federal Housing Administration or complies with the condition established in subparagraph (A)(iv).

“(3) PUBLICATION OF AVERAGE PRIME OFFER RATE AND APR THRESHOLDS.—The Board—

“(A) shall publish, and update at least weekly, average prime offer rates; 

“(B) may publish multiple rates based on varying types of mortgage transactions; and

“(C) shall adjust the thresholds of 1.50 percentage points in paragraph (2)(A)(iv)(I), 2.50 percentage points in paragraph (2)(A)(iv)(II), and 3.50 percentage points in paragraph (2)(A)(v)(III), as necessary to reflect significant changes in market conditions and to effectuate the purposes of the Mortgage Reform and Anti-Predatory Lending Act.

“(4) REGULATIONS.—
“(A) IN GENERAL.—The Federal banking agencies shall jointly prescribe regulations to carry out the purposes of this subsection.

“(B) REVISION OF SAFE HARBOR CRITERIA.—

“(i) IN GENERAL.—The Federal banking agencies may jointly prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section, necessary and appropriate to effectuate the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.

“(ii) LOAN DEFINITION.—The following agencies shall, in consultation with the Federal banking agencies, prescribe rules defining the types of loans they insure, guarantee or administer, as the case may be, that are Qualified Mortgages for
purposes of subsection (c)(1)(A) upon a
finding that such rules are consistent with
the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections—

“(I) The Department of Housing and Urban Development, with regard to mortgages insured under title II of the National Housing Act (12 U.S.C. 1707 et seq.);

“(II) The Secretary of Veterans Affairs, with regard to a loan made or guaranteed by the Secretary of Veterans Affairs;

“(III) The Secretary of Agriculture, with regard loans guaranteed by the Secretary of Agriculture pursuant to 42 U.S.C. 1472(h);

“(IV) The Federal Housing Finance Agency, with regard to loans meeting the conforming loan standards of the Federal National Mortgage Corporation or the Federal
Home Loan Mortgage Corporation;

and

“(V) The Rural Housing Service, with regard to loans insured by the Rural Housing Service.”.

SEC. 9104. LIABILITY.

Section 129C of the Truth in Lending Act is amend-
ed by inserting after subsection (c) (as added by section 9103) the following new subsection:

“(d) LIABILITY FOR VIOLATIONS.—

“(1) IN GENERAL.—

“(A) RESCISSION.—In addition to any other liability under this title for a violation by a creditor of subsection (a) or (b) (for example under section 130) and subject to the statute of limitations in paragraph (9), a civil action may be maintained against a creditor for a violation of subsection (a) or (b) with respect to a resi-
dential mortgage loan for the rescission of the loan, and such additional costs as the obligor may have incurred as a result of the violation and in connection with obtaining a rescission of the loan, including a reasonable attorney’s fee.

“(B) CURE.—A creditor shall not be liable for rescission under subparagraph (A) with re-

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spect to a residential mortgage loan if, no later than 90 days after the receipt of notification from the consumer that the loan violates subsection (a) or (b), the creditor, acting in good faith, a cure.

“(2) **LIMITED ASSIGNEE AND SECURITIZER LIABILITY.**—Notwithstanding sections 125(e) and 131 and except as provided in paragraph (3), a civil action which may be maintained against a creditor with respect to a residential mortgage loan for a violation of subsection (a) or (b) may be maintained against any assignee or securitizer of such residential mortgage loan, who has acted in good faith, for the following liabilities only:

“(A) Rescission of the loan.

“(B) Such additional costs as the obligor may have incurred as a result of the violation and in connection with obtaining a rescission of the loan, including a reasonable attorney’s fee.

“(3) **ASSIGNEE AND SECURITIZER EXEMPTION.**—No assignee or securitizer of a residential mortgage loan that has exercised reasonable due diligence in complying with the requirements of subsections (a) and (b), consistent with reasonable due diligence practices prescribed by the Federal banking
agencies, shall be liable under paragraph (2) with re-
spect to such loan if, no later than 90 days after the
receipt of notification from the consumer that the
loan violates subsection (a) or (b), the assignee or
securitizer provides a cure so that the loan satisfies
the requirements of subsections (a) and (b).

“(4) ABSENT PARTIES.—

“(A) ABSENT CREDITOR.—Notwith-
standing the exemption provided in paragraph
(3), if the creditor with respect to a residential
mortgage loan made in violation of subsection
(a) or (b) has ceased to exist as a matter of law
or has filed for bankruptcy protection under
title 11, United States Code, or has had a re-
ceiver, conservator, or liquidating agent ap-
pointed, a consumer may maintain a civil action
against an assignee to cure the residential
mortgage loan, plus the costs and reasonable
attorney’s fees incurred in obtaining such rem-
edy.

“(B) ABSENT CREDITOR AND ASSIGNEE.—
Notwithstanding the exemption provided in
paragraph (3), if the creditor with respect to a
residential mortgage loan made in violation of
subsection (a) or (b) and each assignee of such
loan have ceased to exist as a matter of law or
have filed for bankruptcy protection under title
11, United States Code, or have had receivers,
conservators, or liquidating agents appointed,
the consumer may maintain the civil action re-
ferred to in subparagraph (A) against the
securitizer.

“(5) Cure defined.—For purposes of this
subsection, the term ‘cure’ means, with respect to a
residential mortgage loan that violates subsection (a)
or (b), the modification or refinancing, at no cost to
the consumer, of the loan to provide terms that sat-
isfy the requirements of subsections (a) and (b) and
the payment of such additional costs as the obligor
may have incurred in connection with obtaining a
cure of the loan, including a reasonable attorney’s
fee.

“(6) Disagreement over cure.—If any cred-
itor, assignee, or securitizer and a consumer fail to
reach agreement on a cure with respect to a residen-
tial mortgage loan that violates subsection (a) or (b),
or the consumer fails to accept a cure proffered by
a creditor, assignee, or securitizer—

“(A) the creditor, assignee, or securitizer
may provide the cure; and
“(B) the consumer may challenge the adequacy of the cure during the 6-month period beginning when the cure is provided.

If the consumer’s challenge, under this paragraph, of a cure is successful, the creditor, assignee, or securitizer shall be liable to the consumer for rescission of the loan and such additional costs under paragraph (2).

“(7) INABILITY TO PROVIDE OR OBTAIN RESCISSION.—If a creditor, assignee, or securitizer cannot provide, or a consumer cannot obtain, rescission under paragraph (1) or (2), the liability of such creditor, assignee, or securitizer shall be met by providing the financial equivalent of a rescission, together with such additional costs as the obligor may have incurred as a result of the violation and in connection with obtaining a rescission of the loan, including a reasonable attorney’s fee.

“(8) NO CLASS ACTIONS AGAINST ASSIGNEE OR SECURITIZER UNDER PARAGRAPH (2).—Only individual actions may be brought against an assignee or securitizer of a residential mortgage loan for a violation of subsection (a) or (b).

“(9) STATUTE OF LIMITATIONS.—The liability of a creditor, assignee, or securitizer under this sub-
section shall apply in any original action against a
creditor under paragraph (1) or an assignee or
securitizer under paragraph (2) which is brought be-
fore—

“(A) in the case of any residential mort-
gage loan other than a loan to which subpara-
graph (B) applies, the end of the 3-year period
beginning on the date the loan is consummated;
or

“(B) in the case of a residential mortgage
loan that provides for a fixed interest rate for
an introductory period and then resets or ad-
justs to a variable rate or that provides for a
nonamortizing payment schedule and then con-
verts to an amortizing payment schedule, the
earlier of—

“(i) the end of the 1-year period be-
ginning on the date of such reset, adjust-
ment, or conversion; or

“(ii) the end of the 6-year period be-
ginning on the date the loan is con-
summated.

“(10) TRUSTEES, POOLS, AND INVESTORS IN
POOLS EXCLUDED.—In the case of residential mort-
gage loans acquired or aggregated for the purpose of
including such loans in a pool of assets held for the purpose of issuing or selling instruments representing interests in such pools including through a securitization vehicle, the terms ‘assignee’ and ‘securitizer’, as used in this section, do not include the securitization vehicle, any trustee that holds such loans solely for the benefit of the securitization vehicle, the pools of such loans or any original or subsequent purchaser of any interest in the securitization vehicle or any instrument representing a direct or indirect interest in such pool.

“(e) Obligation of Securitizers, and Preservation of Borrower Remedies.—

“(1) Obligation to Retain Access.—Any securitizer of a residential mortgage loan sold or to be sold as part of a securitization vehicle shall, in any document or contract providing for the transfer, conveyance, or the establishment of such securitization vehicle, reserve the right and preserve the ability—

“(A) to identify and obtain access to any such loan;

“(B) to acquire any such loan in the event of a violation of subsection (a) or (b) of this section; and
“(C) to provide to the consumer any and all remedies provided for under this title for any violation of this title.

“(2) ADDITIONAL DAMAGES.—Any creditor, assignee, or securitizer of a residential mortgage loan that is subject to a remedy under subsection (d) and has failed to comply with paragraph (1) shall be subject to additional exemplary or punitive damages not to exceed the original principal balance of such loan.

“(3) CONTACT INFORMATION NOTICE.—The servicer with respect to a residential mortgage loan shall provide a written notice to a consumer identifying the name and contact information of the creditor or any assignee or securitizer who should be contacted by the consumer for any reason concerning the consumer’s rights with respect to the loan. Such notice shall be provided—

“(A) upon request of the consumer;

“(B) whenever there is a change in ownership of a residential mortgage loan; or

“(C) on a regular basis, not less than annually.

“(f) RULES TO ESTABLISH PROCESS.—The Board shall promulgate rules to govern the rescission process es-
established for violations of subsections (a) and (b) of this section. Such rules shall provide that notice given to a servicer or holder is sufficient notice regardless of the identity of the party or the parties liable under this title.”.

SEC. 9105. DEFENSE TO FORECLOSURE.

Section 129C of the Truth in Lending Act is amended by inserting after subsection (f) (as added by section 9104) the following new subsections:

“(g) DEFENSE TO FORECLOSURE.—Notwithstanding any other provision of law—

“(1) when the holder of a residential mortgage loan or anyone acting for such holder initiates a judicial or nonjudicial foreclosure—

“(A) a consumer who has the right to rescind under this section with respect to such loan against the creditor or any assignee or securitizer may assert such right as a defense to foreclosure or counterclaim to such foreclosure against the holder, or

“(B) if the foreclosure proceeding begins after the end of the period during which a consumer may bring an action for rescission under subsection (d) and the consumer would have had a valid basis for such an action if it had been brought before the end of such period, the
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consumer may seek actual damages incurred by
reason of the violation which gave rise to the
right of rescission, together with costs of the
action, including a reasonable attorney’s fee
against the creditor or any assignee or
securitizer; and

“(2) such holder or anyone acting for such
holder or any other applicable third party may sell,
transfer, convey, or assign a residential mortgage
loan to a creditor, any assignee, or any securitizer,
or their designees, subject to the rights of the con-
sumer described in this subsection, to effect a rescis-

SEC. 9106. ADDITIONAL STANDARDS AND REQUIREMENTS.

(a) IN GENERAL.—Section 129C of the Truth in
Lending Act is amended by inserting after subsection (g)
(as added by section 9105) the following new subsections:

“(h) PROHIBITION ON CERTAIN PREPAYMENT PEN-
ALTIES.—

“(1) Prohibited on certain loans.—A resi-
dential mortgage loan that is not a ‘qualified mort-
gage’ may not contain terms under which a con-
sumer must pay a prepayment penalty for paying all
or part of the principal after the loan is con-
summated. For purposes of this subsection, a ‘quali-
fied mortgage’ may not include a residential mort-
gage loan that has an adjustable rate.

“(2) Phased-out Penalties on Qualified
Mortgages.—A qualified mortgage (as defined in
subsection (c)) may not contain terms under which
a consumer must pay a prepayment penalty for pay-
ing all or part of the principal after the loan is con-
summated in excess of the following limitations:

“(A) During the 1-year period beginning
on the date the loan is consummated, the pre-
payment penalty shall not exceed an amount
equal to 3 percent of the outstanding balance
on the loan.

“(B) During the 1-year period beginning
after the period described in subparagraph (A),
the prepayment penalty shall not exceed an
amount equal to 2 percent of the outstanding
balance on the loan.

“(C) During the 1-year period beginning
after the 1-year period described in subpara-
graph (B), the prepayment penalty shall not ex-
ceed an amount equal to 1 percent of the out-
standing balance on the loan.

“(D) After the end of the 3-year period be-
inning on the date the loan is consummated,
no prepayment penalty may be imposed on a qualified mortgage.

“(3) Option for no prepayment penalty required.—A creditor may not offer a consumer a residential mortgage loan product that has a prepayment penalty for paying all or part of the principal after the loan is consummated as a term of the loan without offering the consumer a residential mortgage loan product that does not have a prepayment penalty as a term of the loan.

“(i) Single premium credit insurance prohibited.—No creditor may finance, directly or indirectly, in connection with any residential mortgage loan or with any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer (other than a reverse mortgage), any credit life, credit disability, credit unemployment or credit property insurance, or any other accident, loss-of-income, life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that—

“(1) insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor; and
“(2) this subsection shall not apply to credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to another insurance contract and not paid to an affiliate of the creditor.

“(j) Arbitration.—

“(1) In general.—No residential mortgage loan and no extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, other than a reverse mortgage, may include terms which require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction.

“(2) Post-controversy agreements.—Subject to paragraph (3), paragraph (1) shall not be construed as limiting the right of the consumer and the creditor, any assignee, or any securitizer to agree to arbitration or any other nonjudicial procedure as the method for resolving any controversy at any time after a dispute or claim under the transaction arises.
“(3) No waiver of statutory cause of action.—No provision of any residential mortgage loan or of any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer (other than a reverse mortgage), and no other agreement between the consumer and the creditor relating to the residential mortgage loan or extension of credit referred to in paragraph (1), shall be applied or interpreted so as to bar a consumer from bringing an action in an appropriate district court of the United States, or any other court of competent jurisdiction, pursuant to section 130 or any other provision of law, for damages or other relief in connection with any alleged violation of this section, any other provision of this title, or any other Federal law.

“(k) Mortgages with negative amortization.—No creditor may extend credit to a borrower in connection with a consumer credit transaction under an open or closed end consumer credit plan secured by a dwelling or residential real property that includes a dwelling, other than a reverse mortgage, that provides or permits a payment plan that may, at any time over the term of the extension of credit, result in negative amortization unless, before such transaction is consummated—
“(1) the creditor provides the consumer with a statement that—

“(A) the pending transaction will or may, as the case may be, result in negative amortization;

“(B) describes negative amortization in such manner as the Federal banking agencies shall prescribe;

“(C) negative amortization increases the outstanding principal balance of the account; and

“(D) negative amortization reduces the consumer’s equity in the dwelling or real property; and

“(2) in the case of a first-time borrower with respect to a residential mortgage loan that is not a qualified mortgage, the first-time borrower provides the creditor with sufficient documentation to demonstrate that the consumer received homeownership counseling from organizations or counselors certified by the Secretary of Housing and Urban Development as competent to provide such counseling.”.

(b) CONFORMING AMENDMENT RELATING TO ENFORCEMENT.—Section 108(a) of the Truth in Lending
Act (15 U.S.C. 1607(a)) is amended by inserting after paragraph (6) the following new paragraph:

“(7) sections 21B and 21C of the Securities Exchange Act of 1934, in the case of a broker or dealer, other than a depository institution, by the Securities and Exchange Commission.”.

(c) PROTECTION AGAINST LOSS OF ANTI-DEFICIENCY PROTECTION.—Section 129C of the Truth in Lending Act is amended by inserting after subsection (k) (as added by subsection (a) of this section) the following new subsection (and designated succeeding subsections accordingly):

“(l) PROTECTION AGAINST LOSS OF ANTI-DEFICIENCY PROTECTION.—

“(1) DEFINITION.—For purposes of this subsection, the term ‘anti-deficiency law’ means the law of any State which provides that, in the event of foreclosure on the residential property of a consumer securing a mortgage, the consumer is not liable, in accordance with the terms and limitations of such State law, for any deficiency between the sale price obtained on such property through foreclosure and the outstanding balance of the mortgage.

“(2) NOTICE AT TIME OF CONSUMMATION.—In the case of any residential mortgage loan that is, or
upon consummation will be, subject to protection under an anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before such loan is consummated.

“(3) Notice before refinancing that would cause loss of protection.—In the case of any residential mortgage loan that is subject to protection under an anti-deficiency law, if a creditor or mortgage originator provides an application to a consumer, or receives an application from a consumer, for any type of refinancing for such loan that would cause the loan to lose the protection of such anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before any agreement for any such refinancing is consummated.”.

(d) Policy Regarding Acceptance of Partial Payment.—Section 129C of the Truth in Lending Act is amended by inserting after subsection (l) (as added by subsection (e)) the following new subsection:
“(m) POLICY REGARDING ACCEPTANCE OF PARTIAL PAYMENT.—In the case of any residential mortgage loan, a creditor shall disclose prior to settlement or, in the case of a person becoming a creditor with respect to an existing residential mortgage loan, at the time such person becomes a creditor—

“(1) the creditor’s policy regarding the acceptance of partial payments; and

“(2) if partial payments are accepted, how such payments will be applied to such mortgage and if such payments will be placed in escrow.”.

SEC. 9107. RULE OF CONSTRUCTION.

Except as otherwise expressly provided in section 129B or 129C of the Truth in Lending Act (as added by this subtitle), no provision of such section 129B or 129C shall be construed as superseding, repealing, or affecting any duty, right, obligation, privilege, or remedy of any person under any other provision of the Truth in Lending Act or any other provision of Federal or State law.

SEC. 9108. EFFECT ON STATE LAWS.

(a) IN GENERAL.—Except as provided in subsection (b), section 129C(d) of the Truth in Lending Act (as added by section 9104) shall supersede any State law to the extent that it provides additional remedies against any assignee, securitizer, or securitization vehicle for a viola-
tion of subsection (a) or (b) of section 129C of such Act or any other State law the terms of which address the specific subject matter of subsection (a) (determination of ability to repay) or (b) (requirement of a net tangible benefit) of section 129C of such Act, and the remedies described in section 129C(d) shall constitute the sole remedies against any assignee, securitizer, or securitization vehicle for such violations.

(b) RULES OF CONSTRUCTION.—No provision of this section shall be construed as limiting—

(1) the application of any State law, or the availability of remedies under such law, against a creditor for a particular residential mortgage loan regardless of whether such creditor also acts as an assignee, securitizer, or securitization vehicle for such loan;

(2) the application of any State law, or the availability of remedies under such law, against an assignee, securitizer, or securitization vehicle under State law, other than a provision of such law the terms of which address the specific subject matter of subsection (a) (determination of ability to repay) or (b) (requirement of a net tangible benefit) of section 129C of such Act;
(3)(A) the application of any State law, or the
availability of remedies under such law, against an
assignee, securitizer or securitization vehicle for its
participation in or direction of the credit or under-
writing decisions of a creditor relating to the making
of a residential mortgage loan; or

(B) the ability of a consumer to assert any
rights against or obtain any remedies from an as-
signee, securitizer or securitization vehicle with re-
spect to a residential mortgage loan as a defense to
foreclosure under section 129C(g);

(4) the availability of any equitable remedies,
including injunctive relief, under State law; or

(5) notwithstanding paragraph (2), the avail-
ability of any remedies under State law against any
assignee, securitizer or securitization vehicle that—

(A) are in addition to those remedies pro-
vided for in section 129C; and

(B) were in effect on the date of enactment
of this Act.

SEC. 9109. REGULATIONS.

Regulations required or authorized to be prescribed
under this subtitle or the amendments made by this sub-
title—
(1) shall be prescribed in final form before the end of the 12-month period beginning on the date of the enactment of this Act; and

(2) shall take effect not later than 18 months after the date of the enactment of this Act.

SEC. 9110. AMENDMENTS TO CIVIL LIABILITY PROVISIONS.

(a) INCREASE IN AMOUNT OF CIVIL MONEY PENALTIES FOR CERTAIN VIOLATIONS.—Section 130(a)(2) of the Truth in Lending Act (15 U.S.C. 1640(a)(2)) is amended—

(1) by striking “$100” and inserting “$200”; 

(2) by striking “$1,000” and inserting “$2,000”; and

(3) by striking “$500,000” and inserting “$1,000,000”.

(b) STATUTE OF LIMITATIONS EXTENDED FOR SECTION 129 VIOLATIONS.—Section 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e)) is amended—

(1) in the first sentence, by striking “Any action” and inserting “Except as provided in the subsequent sentence, any action”; and

(2) by inserting after the first sentence the following new sentence: “Any action under this section with respect to any violation of section 129 may be brought in any United States district court, or in
any other court of competent jurisdiction, before the
end of the 3-year period beginning on the date of the
occurrence of the violation.”.

SEC. 9111. LENDER RIGHTS IN THE CONTEXT OF BOR-
ROWER DECEPTION.

Section 130 of the Truth in Lending Act is amended
by adding at the end the following new subsection:

“(k) EXEMPTION FROM LIABILITY AND RESCISSION
IN CASE OF BORROWER FRAUD OR DECEPTION.—In ad-
dition to any other remedy available by law or contract,
no creditor, assignee, or securitizer shall be liable to an
obligor under this section, nor shall it be subject to the
right of rescission of any obligor under 129B, if such obli-
gor, or co-obligor, knowingly, or willfully and with actual
knowledge furnished material information known to be
false for the purpose of obtaining such residential mort-
gage loan.”.

SEC. 9112. SIX-MONTH NOTICE REQUIRED BEFORE RESET
OF HYBRID ADJUSTABLE RATE MORTGAGES.

(a) IN GENERAL.—Chapter 2 of the Truth in Lend-
ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
after section 128 the following new section:

“§ 128A. Reset of hybrid adjustable rate mortgages
“(a) HYBRID ADJUSTABLE RATE MORTGAGES DE-
FINED.—For purposes of this section, the term ‘hybrid ad-
justable rate mortgage’ means a consumer credit trans-
action secured by the consumer’s principal residence with
a fixed interest rate for an introductory period that ad-
justs or resets to a variable interest rate after such period.

“(b) NOTICE OF RESET AND ALTERNATIVES.—Dur-
ing the 1-month period that ends 6 months before the date
on which the interest rate in effect during the introductory
period of a hybrid adjustable rate mortgage adjusts or
resets to a variable interest rate or, in the case of such
an adjustment or resetting that occurs within the first 6
months after consummation of such loan, at consumma-
tion, the creditor or servicer of such loan shall provide a
written notice, separate and distinct from all other cor-
respondence to the consumer, that includes the following:

“(1) Any index or formula used in making ad-
justments to or resetting the interest rate and a
source of information about the index or formula.

“(2) An explanation of how the new interest
rate and payment would be determined, including an
explanation of how the index was adjusted, such as
by the addition of a margin.

“(3) A good faith estimate, based on accepted
industry standards, of the creditor or servicer of the
amount of the monthly payment that will apply after
the date of the adjustment or reset, and the assumptions on which this estimate is based.

“(4) A list of alternatives consumers may pursue before the date of adjustment or reset, and descriptions of the actions consumers must take to pursue these alternatives, including—

“(A) refinancing;

“(B) renegotiation of loan terms;

“(C) payment forbearances; and

“(D) pre-foreclosure sales.

“(5) The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the Secretary of Housing and Urban Development or a State housing finance authority (as defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

“(6) The address, telephone number, and Internet address for the State housing finance authority (as so defined) for the State in which the consumer resides.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended
by inserting after the item relating to section 128 the fol-
lowing new item:

“128A. Reset of hybrid adjustable rate mortgages.”.

SEC. 9113. REQUIRED DISCLOSURES.

Section 128(a) of Truth in Lending Act (15 U.S.C.
1638(a)) is amended by adding at the end the following
new paragraphs:

“(16) In the case of a variable rate residential
mortgage loan for which an escrow or impound ac-
count will be established for the payment of all ap-
licable taxes, insurance, and assessments—

“(A) the amount of initial monthly pay-
ment due under the loan for the payment of
principal and interest, and the amount of such
initial monthly payment including the monthly
payment deposited in the account for the pay-
ment of all applicable taxes, insurance, and as-
sessments; and

“(B) the amount of the fully indexed
monthly payment due under the loan for the
payment of principal and interest, and the
amount of such fully indexed monthly payment
including the monthly payment deposited in the
account for the payment of all applicable taxes,
insurance, and assessments.
“(17) In the case of a residential mortgage loan, the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds in connection with the loan, and the aggregate amount of other fees or required payments in connection with the loan.

“(18) In the case of a residential mortgage loan, the aggregate amount of fees paid to the mortgage originator in connection with the loan, the amount of such fees paid directly by the consumer, and any additional amount received by the originator from the creditor.

“(19) In the case of a residential mortgage loan, the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan. Such amount shall be computed assuming the consumer makes each monthly payment in full and on-time, and does not make any over-payments.”.
SEC. 9114. DISCLOSURES REQUIRED IN MONTHLY STATEMENTS FOR RESIDENTIAL MORTGAGE LOANS.

Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended by adding at the end the following new subsection:

“(f) Periodic Statements for Residential Mortgage Loans.—

“(1) In General.—The creditor, assignee, or servicer with respect to any residential mortgage loan shall transmit to the obligor, for each billing cycle, a statement setting forth each of the following items, to the extent applicable, in a conspicuous and prominent manner:

“(A) The amount of the principal obligation under the mortgage.

“(B) The current interest rate in effect for the loan.

“(C) The date on which the interest rate may next reset or adjust.

“(D) The amount of any prepayment fee to be charged, if any.

“(E) A description of any late payment fees.
“(F) A telephone number and electronic mail address that may be used by the obligor to obtain information regarding the mortgage.

“(G) The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the Secretary of Housing and Urban Development or a State housing finance authority (as defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

“(H) Such other information as the Board may prescribe in regulations.

“(2) DEVELOPMENT AND USE OF STANDARD FORM.—The Federal banking agencies shall jointly develop and prescribe a standard form for the disclosure required under this subsection, taking into account that the statements required may be transmitted in writing or electronically.”.

SEC. 9115. LEGAL ASSISTANCE FOR FORECLOSURE-RELATED ISSUES.

(a) ESTABLISHMENT.—The Secretary of Housing and Urban Development (hereafter in this section referred to as the “Secretary”) shall establish a program for making
grants for providing a full range of foreclosure legal assistance to low- and moderate-income homeowners and tenants related to home ownership preservation, home foreclosure prevention, and tenancy associated with home foreclosure.

(b) COMPETITIVE ALLOCATION.—The Secretary shall allocate amounts made available for grants under this section to State and local legal organizations on the basis of a competitive process. For purposes of this subsection "State and local legal organizations" are those State and local organizations whose primary business or mission is to provide legal assistance.

(c) PRIORITY TO CERTAIN AREAS.—In allocating amounts in accordance with subsection (b), the Secretary shall give priority consideration to State and local legal organizations that are operating in the 100 metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest home foreclosure rates.

(d) LEGAL ASSISTANCE.—

(1) IN GENERAL.—Any State or local legal organization that receives financial assistance pursuant to this section may use such amounts only to assist—
(A) homeowners of owner-occupied homes with mortgages in default, in danger of default, or subject to or at risk of foreclosure; and

(B) tenants at risk of or subject to eviction as a result of foreclosure of the property in which such tenant resides.

(2) Commence use within 90 days.—Any State or local legal organization that receives financial assistance pursuant to this section shall begin using any financial assistance received under this section within 90 days after receipt of the assistance.

(3) Prohibition on class actions.—No funds provided to a State or local legal organization under this section may be used to support any class action litigation.

(4) Limitation on legal assistance.—Legal assistance funded with amounts provided under this section shall be limited to mortgage-related default, eviction, or foreclosure proceedings, without regard to whether such foreclosure is judicial or nonjudicial.

(5) Effective date.—Notwithstanding section 9116, this subsection shall take effect on the date of the enactment of this Act.
(c) Limitation on Distribution of Assistance.—

(1) In general.—None of the amounts made available under this section shall be distributed to—

(A) any organization which has been convicted for a violation under Federal law relating to an election for Federal office; or

(B) any organization which employs applicable individuals.

(2) Definition of applicable individuals.—In this subsection, the term “applicable individual” means an individual who—

(A) is—

(i) employed by the organization in a permanent or temporary capacity;

(ii) contracted or retained by the organization; or

(iii) acting on behalf of, or with the express or apparent authority of, the organization; and

(B) has been convicted for a violation under Federal law relating to an election for Federal office.

(f) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary
$35,000,000 for each of fiscal years 2009 through 2012 for grants under this section.

SEC. 9116. EFFECTIVE DATE.

The amendments made by this subtitle shall apply to transactions consummated on or after the effective date of the regulations specified in section 9109.

SEC. 9117. REPORT BY THE GAO.

(a) REPORT REQUIRED.—The Comptroller General shall conduct a study to determine the effects the enactment of this Act will have on the availability and affordability of credit for consumers, small businesses, homebuyers, and mortgage lending, including the effect—

(1) on the mortgage market for mortgages that are not within the safe harbor provided in the amendments made by this subtitle;

(2) on the ability of prospective homebuyers to obtain financing;

(3) on the ability of homeowners facing resets or adjustments to refinance—for example, do they have fewer refinancing options due to the unavailability of certain loan products that were available before the enactment of this Act;

(4) on minorities’ ability to access affordable credit compared with other prospective borrowers;

(5) on home sales and construction;
(6) of extending the rescission right, if any, on adjustable rate loans and its impact on litigation;

(7) of State foreclosure laws and, if any, an investor’s ability to transfer a property after foreclosure;

(8) of expanding the existing provisions of the Home Ownership and Equity Protection Act of 1994;

(9) of prohibiting prepayment penalties on high-cost mortgages; and

(10) of establishing counseling services under the Department of Housing and Urban Development and offered through the Office of Housing Counseling.

(b) REPORT.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress containing the findings and conclusions of the Comptroller General with respect to the study conducted pursuant to subsection (a).

(c) EXAMINATION RELATED TO CERTAIN CREDIT RISK RETENTION PROVISIONS.—The report required by subsection (b) shall also include an analysis by the Comptroller General of the effect on the capital reserves and funding of lenders of credit risk retention provisions for
non-qualified mortgages, including an analysis of the exceptions and adjustments authorized in section 129C(l)(3)(A) of the Truth in Lending Act and a recommendation on whether a uniform standard is needed.

(d) **Analysis of Credit Risk Retention Provisions.**—The report required by subsection (b) shall also include—

(1) an analysis by the Comptroller General of whether the credit risk retention provisions have significantly reduced risks to the larger credit market of the repackaging and selling of securitized loans on a secondary market; and

(2) recommendations to the Congress on adjustments that should be made, or additional measures that should be undertaken.

**SEC. 9118. STATE ATTORNEY GENERAL ENFORCEMENT AUTHORITY.**

Section 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e)) is amended by striking “section 129 may also” and inserting “section 129, 129B, or 129C of this Act may also”.

Subtitle C—High-Cost Mortgages

SEC. 9201. DEFINITIONS RELATING TO HIGH-COST MORTGAGES.

(a) HIGH-COST MORTGAGE DEFINED.—Section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)) is amended by striking all that precedes paragraph (2) and inserting the following:

“(aa) HIGH-COST MORTGAGE.—

“(1) Definition.—

“(A) In general.—The term ‘high-cost mortgage’, and a mortgage referred to in this subsection, means a consumer credit transaction that is secured by the consumer’s principal dwelling, other than a reverse mortgage transaction, if—

“(i) in the case of a credit transaction secured—

“(I) by a first mortgage on the consumer’s principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 6.5 percentage points (8.5 percentage points, if the dwelling is personal property and the transaction is for less than $50,000) the average
prime offer rate, as defined in section 129C(c)(2)(B), for a comparable transaction; or

“(II) by a subordinate or junior mortgage on the consumer’s principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 8.5 percentage points the average prime offer rate, as defined in section 129C(c)(2)(B), for a comparable transaction;

“(ii) the total points and fees payable in connection with the transaction exceed—

“(I) in the case of a transaction for $20,000 or more, 5 percent of the total transaction amount; or

“(II) in the case of a transaction for less than $20,000, the lesser of 8 percent of the total transaction amount or $1,000 (or such other dollar amount as the Board shall prescribe by regulation); or
“(iii) the credit transaction documents permit the creditor to charge or collect pre-
pre-payment fees or penalties more than 36 months after the transaction closing or such fees or penalties exceed, in the aggregate, more than 2 percent of the amount prepaid.

“(B) Introductory Rates Taken into Account.—For purposes of subparagraph (A)(i), the annual percentage rate of interest shall be determined based on the following interest rate:

“(i) In the case of a fixed-rate transaction in which the annual percentage rate will not vary during the term of the loan, the interest rate in effect on the date of consummation of the transaction.

“(ii) In the case of a transaction in which the rate of interest varies solely in accordance with an index, the interest rate determined by adding the index rate in effect on the date of consummation of the transaction to the maximum margin permitted at any time during the transaction agreement.
“(iii) In the case of any other transaction in which the rate may vary at any time during the term of the loan for any reason, the interest charged on the transaction at the maximum rate that may be charged during the term of the transaction.”.

(b) ADJUSTMENT OF PERCENTAGE POINTS.—Section 103(aa)(2) of the Truth in Lending Act (15 U.S.C. 1602(aa)(2)) is amended by striking subparagraph (B) and inserting the following new subparagraph:

“(B) An increase or decrease under subparagraph (A)—

“(i) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(I) being less than 6 percentage points or greater than 10 percentage points; and

“(ii) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(II) being less than 8 percentage points or greater than 12 percentage points.”.

(c) POINTS AND FEES DEFINED.—
(1) IN GENERAL.—Section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4)) is amended—

(A) by striking subparagraph (B) and inserting the following:

“(B) all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that originates a loan in the name of the creditor in a table-funded transaction;”;

(B) in subparagraph (C)(ii), by inserting “except where applied to the charges set forth in section 106(e)(1) where a creditor may receive indirect compensation solely as a result of obtaining distributions of profits from an affiliated entity based on its ownership interest in compliance with section 8(e)(4) of the Real Estate Settlement Procedures Act of 1974” before the semicolon at the end;

(C) in subparagraph (C)(iii), by striking “; and” and inserting “, except as provided for in clause (ii);”;

(D) by redesignating subparagraph (D) as subparagraph (G); and
(E) by inserting after subparagraph (C) the following new subparagraphs:

“(D) premiums or other charges payable at or before closing for any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor;

“(E) except as provided in subsection (cc), the maximum prepayment fees and penalties which may be charged or collected under the terms of the credit transaction;

“(F) all prepayment fees or penalties that are incurred by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and”.

(2) Calculation of Points and Fees for Open-End Consumer Credit Plans.—Section
103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)) is amended—

(A) by redesignating paragraph (5) as paragraph (6); and

(B) by inserting after paragraph (4) the following new paragraph:

“(5) Calculation of Points and Fees for Open-End Consumer Credit Plans.—In the case of open-end consumer credit plans, points and fees shall be calculated, for purposes of this section and section 129, by adding the total points and fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the credit transaction, plus the minimum additional fees the consumer would be required to pay to draw down an amount equal to the total credit line.”.

(d) Bona Fide Discount Loan Discount Points.—Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by inserting after subsection (cc) (as added by section 101) the following new subsection:

“(dd) Bona Fide Discount Points and Prepayment Penalties.—For the purposes of determining the amount of points and fees for purposes of subsection (aa),
either the amounts described in paragraph (1) or (2) of
the following paragraphs, but not both, shall be excluded:

“(1) Up to and including 2 bona fide discount
points payable by the consumer in connection with
the mortgage, but only if the interest rate from
which the mortgage’s interest rate will be discounted
does not exceed by more than 1 percentage point—

“(A) the required net yield for a 90-day
standard mandatory delivery commitment for a
reasonably comparable loan from either the
Federal National Mortgage Association or the
Federal Home Loan Mortgage Corporation,
whichever is greater; or

“(B) if secured by a personal property
loan, the average rate on a loan in connection
with which insurance is provided under title I
of the National Housing Act (12 U.S.C. 1702
et seq.).

“(2) Unless 2 bona fide discount points have
been excluded under paragraph (1), up to and in-
cluding 1 bona fide discount point payable by the
consumer in connection with the mortgage, but only
if the interest rate from which the mortgage’s inter-
est rate will be discounted does not exceed by more
than 2 percentage points—
“(A) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater; or

“(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

“(3) For purposes of paragraph (1), the term ‘bona fide discount points’ means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

“(4) Paragraphs (1) and (2) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.”.
SEC. 9202. AMENDMENTS TO EXISTING REQUIREMENTS FOR CERTAIN MORTGAGES.

(a) Prepayment Penalty Provisions.—Section 129(c)(2) of the Truth in Lending Act (15 U.S.C. 1639(c)(2)) is hereby repealed.

(b) No Balloon Payments.—Section 129(e) of the Truth in Lending Act (15 U.S.C. 1639(e)) is amended to read as follows:

“(e) No Balloon Payments.—No high-cost mortgage may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection shall not apply when the payment schedule is adjusted to the seasonal or irregular income of the consumer or in the case of a balance due under the customary terms of a reverse mortgage.”.

SEC. 9203. ADDITIONAL REQUIREMENTS FOR CERTAIN MORTGAGES.

(a) Additional Requirements for Certain Mortgages.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended—

(1) by redesignating subsections (j), (k) and (l) as subsections (n), (o) and (p) respectively; and

(2) by inserting after subsection (i) the following new subsections:

“(j) Recommended Default.—No creditor shall recommend or encourage default on an existing loan or
other debt prior to and in connection with the closing or planned closing of a high-cost mortgage that refinances all or any portion of such existing loan or debt.

“(k) Late Fees.—

“(1) In general.—No creditor may impose a late payment charge or fee in connection with a high-cost mortgage—

“(A) in an amount in excess of 4 percent of the amount of the payment past due;

“(B) unless the loan documents specifically authorize the charge or fee;

“(C) before the end of the 15-day period beginning on the date the payment is due, or in the case of a loan on which interest on each installment is paid in advance, before the end of the 30-day period beginning on the date the payment is due; or

“(D) more than once with respect to a single late payment.

“(2) Coordination with subsequent late fees.—If a payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, and the only delinquency or insufficiency of payment is attributable to any late fee or delinquency charge assessed on any
earlier payment, no late fee or delinquency charge may be imposed on such payment.

“(3) Failure to make installment payment.—If, in the case of a loan agreement the terms of which provide that any payment shall first be applied to any past due principal balance, the consumer fails to make an installment payment and the consumer subsequently resumes making installment payments but has not paid all past due installments, the creditor may impose a separate late payment charge or fee for any principal due (without deduction due to late fees or related fees) until the default is cured.

“(l) Acceleration of Debt.—No high-cost mortgage may contain a provision which permits the creditor to accelerate the indebtedness, except when repayment of the loan has been accelerated by default in payment, or pursuant to a due-on-sale provision, or pursuant to a material violation of some other provision of the loan document unrelated to payment schedule.

“(m) Restriction on Financing Points and Fees.—No creditor may directly or indirectly finance, in connection with any high-cost mortgage, any of the following:
“(1) Any prepayment fee or penalty payable by
the consumer in a refinancing transaction if the
creditor or an affiliate of the creditor is the
noteholder of the note being refinanced.

“(2) Any points or fees.”.

(b) Prohibitions on Evasions.—Section 129 of
the Truth in Lending Act (15 U.S.C. 1639) is amended
by inserting after subsection (p) (as so redesignated by
subsection (a)(1)) the following new subsection:

“(q) Prohibitions on Evasions, Structuring of
Transactions, and Reciprocal Arrangements.—A
creditor may not take any action in connection with a
high-cost mortgage—

“(1) to structure a loan transaction as an open-
end credit plan or another form of loan for the pur-
pose and with the intent of evading the provisions of
this title; or

“(2) to divide any loan transaction into sepa-
rate parts for the purpose and with the intent of
evading provisions of this title.”.

(c) Modification or Deferral Fees.—Section
129 of the Truth in Lending Act (15 U.S.C. 1639) is
amended by inserting after subsection (q) (as added by
subsection (b) of this section) the following new sub-
section:
“(r) Modification and Deferral Fees Prohibited.—

“(1) Creditors.—A creditor may not charge a consumer any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of such mortgage, unless the modification, renewal, extension or amendment results in a lower annual percentage rate on the mortgage for the consumer and then only if the amount of the fee is comparable to fees imposed for similar transactions in connection with consumer credit transactions that are secured by a consumer’s principal dwelling and are not high-cost mortgages.

“(2) Third Parties.—A third-party may not charge a consumer any fee to—

“(A) modify, renew, extend, or amend a high-cost mortgage, or defer any payment due under the terms of such mortgage;

“(B) negotiate with a creditor on behalf of a consumer, the modification, renewal, extension, or amendment of a high-cost mortgage; or

“(C) negotiate with a creditor on behalf of a consumer, the deferral of any payment due under the terms of such mortgage,
unless the modification renewal, extension or amend-
ment results in a significantly lower annual percent-
age rate on the mortgage, or a significant reduction
in the amount of the outstanding principal on the
mortgage, for the consumer and then only if the
amount of the fee is comparable to fees imposed for
similar transactions in connection with consumer
credit transactions that are secured by a consumer’s
principal dwelling and are not high-cost mortgages.

“(3) ENFORCEMENT.—Section 130 shall be ap-
plied for purposes of paragraph (2) by—

“(A) substituting ‘third party’ for
‘creditor’ each place such term appears; and

“(B) substituting ‘any fee charged by a
third party’ for ‘finance charge’ each place such
term appears.”.

(d) PAYOFF STATEMENT.—Section 129 of the Truth
in Lending Act (15 U.S.C. 1639) is amended by inserting
after subsection (r) (as added by subsection (c) of this
section) the following new subsection:

“(s) PAYOFF STATEMENT.—

“(1) FEES.—

“(A) IN GENERAL.—Except as provided in
subparagraph (B), no creditor or servicer may
charge a fee for informing or transmitting to
any person the balance due to pay off the outstanding balance on a high-cost mortgage.

“(B) TRANSACTION FEE.—When payoff information referred to in subparagraph (A) is provided by facsimile transmission or by a courier service, a creditor or servicer may charge a processing fee to cover the cost of such transmission or service in an amount not to exceed an amount that is comparable to fees imposed for similar services provided in connection with consumer credit transactions that are secured by the consumer’s principal dwelling and are not high-cost mortgages.

“(C) FEE DISCLOSURE.—Prior to charging a transaction fee as provided in subparagraph (B), a creditor or servicer shall disclose that payoff balances are available for free pursuant to subparagraph (A).

“(D) MULTIPLE REQUESTS.—If a creditor or servicer has provided payoff information referred to in subparagraph (A) without charge, other than the transaction fee allowed by subparagraph (B), on 4 occasions during a calendar year, the creditor or servicer may thereafter charge a reasonable fee for providing such
information during the remainder of the calendar year.

“(2) PROMPT DELIVERY.—Payoff balances shall be provided within 5 business days after receiving a request by a consumer or a person authorized by the consumer to obtain such information.

“(3) SERVICES CONSIDERED ASSIGNEE.—For the purposes of this subsection, a servicer shall be considered an assignee under the Truth in Lending Act.”.

(e) PRE-LOAN COUNSELING REQUIRED.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (s) (as added by subsection (d) of this section) the following new subsection:

“(t) PRE-LOAN COUNSELING.—

“(1) IN GENERAL.—A creditor may not extend credit to a consumer under a high-cost mortgage without first receiving certification from a counselor that is approved by the Secretary of Housing and Urban Development, or at the discretion of the Secretary, a State housing finance authority, that the consumer has received counseling on the advisability of the mortgage. Such counselor shall not be em-
ployed by the creditor or an affiliate of the creditor or be affiliated with the creditor.

“(2) Disclosures required prior to counseling.—No counselor may certify that a consumer has received counseling on the advisability of the high-cost mortgage unless the counselor can verify that the consumer has received each statement required (in connection with such loan) by this section or the Real Estate Settlement Procedures Act of 1974 with respect to the transaction.

“(3) Regulations.—The Board may prescribe such regulations as the Board determines to be appropriate to carry out the requirements of paragraph (1).”.

(f) Flipping prohibited.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (t) (as added by subsection (e)) the following new subsection:

“(u) Flipping.—

“(1) In general.—No creditor may knowingly or intentionally engage in the unfair act or practice of flipping in connection with a high-cost mortgage.

“(2) Flipping defined.—For purposes of this subsection, the term ‘flipping’ means the making of a loan or extension of credit in the form a high-cost
mortgage to a consumer which refinances an existing mortgage when the new loan or extension of credit does not have reasonable, net tangible benefit (as determined in accordance with regulations prescribed under section 129C(b)) to the consumer considering all of the circumstances, including the terms of both the new and the refinanced loans or credit, the cost of the new loan or credit, and the consumer’s circumstances.

“(v) Corrections and Unintentional Violations.—A creditor or assignee in a high cost loan who, when acting in good faith, fails to comply with any requirement under this section will not be deemed to have violated such requirement if the creditor or assignee establishes that either—

“(1) within 30 days of the loan closing and prior to the institution of any action, the consumer is notified of or discovers the violation, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—

“(A) make the loan satisfy the requirements of this chapter; or

“(B) in the case of a high-cost mortgage, change the terms of the loan in a manner bene-
ficial to the consumer so that the loan will no longer be a high-cost mortgage; or

“(2) within 60 days of the creditor’s discovery or receipt of notification of an unintentional violation or bona fide error as described in subsection (c) and prior to the institution of any action, the consumer is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—

“(A) make the loan satisfy the requirements of this chapter; or

“(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial so that the loan will no longer be a high-cost mortgage.”.

SEC. 9204. REGULATIONS.

(a) In General.—The Board of Governors of the Federal Reserve System shall publish regulations implementing this subtitle and the amendments made by this subtitle in final form before the end of the 6-month period beginning on the date of the enactment of this Act.

(b) Consumer Mortgage Education.—

(1) Regulations.—The Board of Governors of the Federal Reserve System may prescribe regula-
tions requiring or encouraging creditors to provide consumer mortgage education to prospective cus-
tomers or direct such customers to qualified con-
sumer mortgage education or counseling programs in the vicinity of the residence of the consumer.

(2) **COORDINATION WITH STATE LAW.**—No re-

quirement established by the Board of Governors of the Federal Reserve System pursuant to paragraph (1) shall be construed as affecting or superseding any requirement under the law of any State with re-
spect to consumer mortgage counseling or education.

**SEC. 9205. EFFECTIVE DATE.**

The amendments made by this subtitle shall take ef-

fect at the end of the 6-month period beginning on the date of the enactment of this Act and shall apply to mort-
gages referred to in section 103(aa) of the Truth in Lend-
ing Act (15 U.S.C. 1602(aa)) for which an application is received by the creditor after the end of such period.

**Subtitle D—Office of Housing Counseling**

**SEC. 9301. SHORT TITLE.**

This subtitle may be cited as the “Expand and Pre-
serve Home Ownership Through Counseling Act”.

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SEC. 9302. ESTABLISHMENT OF OFFICE OF HOUSING COUNSELING.

Section 4 of the Department of Housing and Urban Development Act (42 U.S.C. 3533) is amended by adding at the end the following new subsection:

“(g) OFFICE OF HOUSING COUNSELING.—

“(1) Establishment.—There is established, in the Department, the Office of Housing Counseling.

“(2) Director.—There is established the position of Director of Housing Counseling. The Director shall be the head of the Office of Housing Counseling and shall be appointed by, and shall report to, the Secretary. Such position shall be a career-reserved position in the Senior Executive Service.

“(3) Functions.—

“(A) In general.—The Director shall have primary responsibility within the Department for all activities and matters relating to homeownership counseling and rental housing counseling, including—

“(i) research, grant administration, public outreach, and policy development relating to such counseling; and

“(ii) establishment, coordination, and administration of all regulations, require-
ments, standards, and performance measures under programs and laws administered by the Department that relate to housing counseling, homeownership counseling (including maintenance of homes), mortgage-related counseling (including home equity conversion mortgages and credit protection options to avoid foreclosure), and rental housing counseling, including the requirements, standards, and performance measures relating to housing counseling.

“(B) SPECIFIC FUNCTIONS.—The Director shall carry out the functions assigned to the Director and the Office under this section and any other provisions of law. Such functions shall include establishing rules necessary for—

“(i) the counseling procedures under section 106(g)(1) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(h)(1));

“(ii) carrying out all other functions of the Secretary under section 106(g) of the Housing and Urban Development Act of 1968, including the establishment, oper-
ation, and publication of the availability of
the toll-free telephone number under para-
graph (2) of such section;

“(iii) contributing to the preparation
and distribution of home buying informa-
tion booklets pursuant to section 5 of the
Real Estate Settlement Procedures Act of
1974 (12 U.S.C. 2604);

“(iv) carrying out the certification
program under section 106(e) of the Hous-
ing and Urban Development Act of 1968
(12 U.S.C. 1701x(e));

“(v) carrying out the assistance pro-
gram under section 106(a)(4) of the Hous-
ing and Urban Development Act of 1968,
including criteria for selection of applica-
tions to receive assistance;

“(vi) carrying out any functions re-
garding abusive, deceptive, or unscrupulous
lending practices relating to residential
mortgage loans that the Secretary con-
siders appropriate, which shall include con-
ducting the study under section 6 of the
Expand and Preserve Home Ownership
Through Counseling Act;
“(vii) providing for operation of the advisory committee established under paragraph (4) of this subsection;

“(viii) collaborating with community-based organizations with expertise in the field of housing counseling; and

“(ix) providing for the building of capacity to provide housing counseling services in areas that lack sufficient services, including underdeveloped areas that lack basic water and sewer systems, electricity services, and safe, sanitary housing.

“(4) ADVISORY COMMITTEE.—

“(A) IN GENERAL.—The Secretary shall appoint an advisory committee to provide advice regarding the carrying out of the functions of the Director.

“(B) MEMBERS.—Such advisory committee shall consist of not more than 12 individuals, and the membership of the committee shall equally represent the mortgage and real estate industry, including consumers and housing counseling agencies certified by the Secretary.

“(C) TERMS.—Except as provided in subparagraph (D), each member of the advisory
committee shall be appointed for a term of 3 years. Members may be reappointed at the discretion of the Secretary.

“(D) TERMS OF INITIAL APPOINTEES.—As designated by the Secretary at the time of appointment, of the members first appointed to the advisory committee, 4 shall be appointed for a term of 1 year and 4 shall be appointed for a term of 2 years.

“(E) PROHIBITION OF PAY; TRAVEL EXPENSES.—Members of the advisory committee shall serve without pay, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

“(F) ADVISORY ROLE ONLY.—The advisory committee shall have no role in reviewing or awarding housing counseling grants.

“(5) SCOPE OF HOMEOWNERSHIP COUNSELING.—In carrying out the responsibilities of the Director, the Director shall ensure that homeownership counseling provided by, in connection with, or pursuant to any function, activity, or program of the Department addresses the entire process of home-
ownership, including the decision to purchase a
home, the selection and purchase of a home, issues
arising during or affecting the period of ownership
of a home (including refinancing, default and fore-
closure, and other financial decisions), and the sale
or other disposition of a home.”.

SEC. 9303. COUNSELING PROCEDURES.

(a) IN GENERAL.—Section 106 of the Housing and
Urban Development Act of 1968 (12 U.S.C. 1701x) is
amended by adding at the end the following new sub-
section:

“(g) PROCEDURES AND ACTIVITIES.—

“(1) COUNSELING PROCEDURES.—

“(A) IN GENERAL.—The Secretary shall
establish, coordinate, and monitor the adminis-
tration by the Department of Housing and
Urban Development of the counseling proce-
dures for homeownership counseling and rental
housing counseling provided in connection with
any program of the Department, including all
requirements, standards, and performance
measures that relate to homeownership and
rental housing counseling.

“(B) HOMEOWNERSHIP COUNSELING.—

For purposes of this subsection and as used in
the provisions referred to in this subparagraph, the term ‘homeownership counseling’ means counseling related to homeownership and residential mortgage loans. Such term includes counseling related to homeownership and residential mortgage loans that is provided pursuant to—

“(i) section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(20));

“(ii) in the United States Housing Act of 1937—

“(I) section 9(e) (42 U.S.C. 1437g(e));

“(II) section 8(y)(1)(D) (42 U.S.C. 1437f(y)(1)(D));


“(IV) section 23(c)(4) (42 U.S.C. 1437u(c)(4));

“(V) section 32(e)(4) (42 U.S.C. 1437z–4(e)(4));

“(VII) sections 302(b)(6) and 303(b)(7) (42 U.S.C. 1437aaa–1(b)(6), 1437aaa–2(b)(7)); and
“(VIII) section 304(c)(4) (42 U.S.C. 1437aaa–3(c)(4));
“(iii) section 302(a)(4) of the American Homeownership and Economic Opportunity Act of 2000 (42 U.S.C. 1437f note);
“(iv) sections 233(b)(2) and 258(b) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12773(b)(2), 12808(b));
“(v) this section and section 101(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x, 1701w(e));
“(vii) sections 422(b)(6), 423(b)(7), 424(c)(4), 442(b)(6), and 443(b)(6) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12872(b)(6), 12873(b)(7), 12874(c)(4), 12892(b)(6), and 12893(b)(6));
“(ix) sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));
“(x) in the National Housing Act—
“(I) in section 203 (12 U.S.C. 1709), the penultimate undesignated paragraph of paragraph (2) of subsection (b), subsection (c)(2)(A), and subsection (r)(4);
“(II) subsections (a) and (c)(3) of section 237 (12 U.S.C. 1715z–2); and
“(III) subsections (d)(2)(B) and (m)(1) of section 255 (12 U.S.C. 1715z–20);
“(xii) section 508 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–7); and

“(C) RENTAL HOUSING COUNSELING.—

For purposes of this subsection, the term ‘rental housing counseling’ means counseling related to rental of residential property, which may include counseling regarding future homeownership opportunities and providing referrals for renters and prospective renters to entities providing counseling and shall include counseling related to such topics that is provided pursuant to—

“(i) section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(20));

“(ii) in the United States Housing Act of 1937—

“(I) section 9(e) (42 U.S.C. 1437g(e));


“(III) section 23(c)(4) (42 U.S.C. 1437u(c)(4));

“(IV) section 32(e)(4) (42 U.S.C. 1437z–4(e)(4));
“(V) section 33(d)(2)(B) (42 U.S.C. 1437z–5(d)(2)(B)); and

“(VI) section 302(b)(6) (42 U.S.C. 1437aaa–1(b)(6));

“(iii) section 233(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12773(b)(2));

“(iv) section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x);

“(v) section 422(b)(6) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12872(b)(6));


“(vii) sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A)); and

“(viii) the rental assistance program under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).
“(2) Standards for materials.—The Secretary, in consultation with the advisory committee established under subsection (g)(4) of the Department of Housing and Urban Development Act, shall establish standards for materials and forms to be used, as appropriate, by organizations providing homeownership counseling services, including any recipients of assistance pursuant to subsection (a)(4).

“(3) Mortgage software systems.—

“(A) Certification.—The Secretary shall provide for the certification of various computer software programs for consumers to use in evaluating different residential mortgage loan proposals. The Secretary shall require, for such certification, that the mortgage software systems take into account—

“(i) the consumer’s financial situation and the cost of maintaining a home, including insurance, taxes, and utilities;

“(ii) the amount of time the consumer expects to remain in the home or expected time to maturity of the loan; and

“(iii) such other factors as the Secretary considers appropriate to assist the consumer in evaluating whether to pay
points, to lock in an interest rate, to select
an adjustable or fixed rate loan, to select
a conventional or government-insured or
guaranteed loan and to make other choices
during the loan application process.

If the Secretary determines that available exist-
ing software is inadequate to assist consumers
during the residential mortgage loan application
process, the Secretary shall arrange for the de-
velopment by private sector software companies
of new mortgage software systems that meet
the Secretary’s specifications.

“(B) USE AND INITIAL AVAILABILITY.—
Such certified computer software programs
shall be used to supplement, not replace, hous-
ing counseling. The Secretary shall provide that
such programs are initially used only in connec-
tion with the assistance of housing counselors
certified pursuant to subsection (e).

“(C) AVAILABILITY.—After a period of ini-
tial availability under subparagraph (B) as the
Secretary considers appropriate, the Secretary
shall take reasonable steps to make mortgage
software systems certified pursuant to this
paragraph widely available through the Internet
and at public locations, including public libraries, senior-citizen centers, public housing sites, offices of public housing agencies that administer rental housing assistance vouchers, and housing counseling centers.

“(D) Budget Compliance.—This paragraph shall be effective only to the extent that amounts to carry out this paragraph are made available in advance in appropriations Acts.

“(4) National Public Service Multimedia Campaigns to Promote Housing Counseling.—

“(A) In General.—The Director of Housing Counseling shall develop, implement, and conduct national public service multimedia campaigns designed to make persons facing mortgage foreclosure, persons considering a subprime mortgage loan to purchase a home, elderly persons, persons who face language barriers, low-income persons, minorities, and other potentially vulnerable consumers aware that it is advisable, before seeking or maintaining a residential mortgage loan, to obtain homeownership counseling from an unbiased and reliable sources and that such homeownership counseling is available, including through programs
sponsored by the Secretary of Housing and Urban Development.

“(B) CONTACT INFORMATION.—Each segment of the multimedia campaign under subparagraph (A) shall publicize the toll-free telephone number and website of the Department of Housing and Urban Development through which persons seeking housing counseling can locate a housing counseling agency in their State that is certified by the Secretary of Housing and Urban Development and can provide advice on buying a home, renting, defaults, foreclosures, credit issues, and reverse mortgages.

“(C) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, not to exceed $3,000,000 for fiscal years 2009, 2010, and 2011, for the development, implementation, and conduct of national public service multimedia campaigns under this paragraph.

“(D) FORECLOSURE RESCUE EDUCATION PROGRAMS.—

“(i) IN GENERAL.—Ten percent of any funds appropriated pursuant to the
authorization under subparagraph (C) shall be used by the Director of Housing Counseling to conduct an education program in areas that have a high density of foreclosure. Such program shall involve direct mailings to persons living in such areas describing—

“(I) tips on avoiding foreclosure rescue scams;

“(II) tips on avoiding predatory lending mortgage agreements;

“(III) tips on avoiding for-profit foreclosure counseling services; and

“(IV) local counseling resources that are approved by the Department of Housing and Urban Development.

“(ii) PROGRAM EMPHASIS.—In conducting the education program described under clause (i), the Director of Housing Counseling shall also place an emphasis on serving communities that have a high percentage of retirement communities or a high percentage of low-income minority communities.
“(iii) TERMS DEFINED.—For purposes of this subparagraph:

“(I) HIGH DENSITY OF FORECLOSURES.—An area has a ‘high density of foreclosures’ if such area is one of the metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest home foreclosure rates.

“(II) HIGH PERCENTAGE OF RETIREMENT COMMUNITIES.—An area has a ‘high percentage of retirement communities’ if such area is one of the metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest percentage of residents aged 65 or older.

“(III) HIGH PERCENTAGE OF LOW-INCOME MINORITY COMMUNITIES.—An area has a ‘high percentage of low-income minority communities’ if such area contains a higher-than-normal percentage of residents
who are both minorities and low-income, as defined by the Director of Housing Counseling.

“(5) Education programs.—The Secretary shall provide advice and technical assistance to States, units of general local government, and nonprofit organizations regarding the establishment and operation of, including assistance with the development of content and materials for, educational programs to inform and educate consumers, particularly those most vulnerable with respect to residential mortgage loans (such as elderly persons, persons facing language barriers, low-income persons, minorities, and other potentially vulnerable consumers), regarding home mortgages, mortgage refinancing, home equity loans, home repair loans, and where appropriate by region, any requirements and costs associated with obtaining flood or other disaster-specific insurance coverage.”.

(b) Conforming amendments to grant program for homeownership counseling organizations.—Section 106(c)(5)(A)(ii) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(c)(5)(A)(ii)) is amended—
(1) in subclause (III), by striking “and” at the end;

(2) in subclause (IV) by striking the period at the end and inserting “; and”; and

(3) by inserting after subclause (IV) the following new subclause:

“(V) notify the housing or mortgage applicant of the availability of mortgage software systems provided pursuant to subsection (g)(3).”.

SEC. 9304. GRANTS FOR HOUSING COUNSELING ASSISTANCE.

Section 106(a) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(3)) is amended by adding at the end the following new paragraph:

“(4) Homeownership and Rental Counseling Assistance.—

“(A) In general.—The Secretary shall make financial assistance available under this paragraph to HUD-approved housing counseling agencies and State housing finance agencies.

“(B) Qualified entities.—The Secretary shall establish standards and guidelines for eligibility of organizations (including governmental and non-
profit organizations) to receive assistance under this paragraph, in accordance with subparagraph (D).

“(C) DISTRIBUTION.—Assistance made available under this paragraph shall be distributed in a manner that encourages efficient and successful counseling programs and that ensures adequate distribution of amounts for rural areas having traditionally low levels of access to such counseling services, including areas with insufficient access to the Internet. In distributing such assistance, the Secretary may give priority consideration to entities serving areas with the highest home foreclosure rates.

“(D) LIMITATION ON DISTRIBUTION OF ASSISTANCE.—

“(i) IN GENERAL.—None of the amounts made available under this paragraph shall be distributed to—

“(I) any organization which has been convicted for a violation under Federal law relating to an election for Federal office; or

“(II) any organization which employs applicable individuals.
“(ii) Definition of Applicable Individuals.—In this subparagraph, the term ‘applicable individual’ means an individual who—

“(I) is—

“(aa) employed by the organization in a permanent or temporary capacity;

“(bb) contracted or retained by the organization; or

“(cc) acting on behalf of, or with the express or apparent authority of, the organization; and

“(II) has been convicted for a violation under Federal law relating to an election for Federal office.

“(E) Grantmaking Process.—In making assistance available under this paragraph, the Secretary shall consider appropriate ways of streamlining and improving the processes for grant application, review, approval, and award.

“(F) Authorization of Appropriations.—There are authorized to be appropriated $45,000,000 for each of fiscal years 2009 through 2012 for—
“(i) the operations of the Office of Housing Counseling of the Department of Housing and Urban Development;
“(ii) the responsibilities of the Director of Housing Counseling under paragraphs (2) through (5) of subsection (g); and
“(iii) assistance pursuant to this paragraph for entities providing homeownership and rental counseling.”.

SEC. 9305. REQUIREMENTS TO USE HUD-CERTIFIED COUNSELORS UNDER HUD PROGRAMS.

Section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) is amended—

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

“(1) REQUIREMENT FOR ASSISTANCE.—An organization may not receive assistance for counseling activities under subsection (a)(1)(iii), (a)(2), (a)(4), (e), or (d) of this section, or under section 101(e), unless the organization, or the individuals through which the organization provides such counseling, has been certified by the Secretary under this subsection as competent to provide such counseling.”;

(2) in paragraph (2)—
(A) by inserting “and for certifying organizations” before the period at the end of the first sentence; and

(B) in the second sentence by striking “for certification” and inserting “, for certification of an organization, that each individual through which the organization provides counseling shall demonstrate, and, for certification of an individual,”;  

(3) in paragraph (3), by inserting “organizations and” before “individuals”;

(4) by redesignating paragraph (3) as paragraph (5); and

(5) by inserting after paragraph (2) the following new paragraphs:

“(3) REQUIREMENT UNDER HUD PROGRAMS.—Any homeownership counseling or rental housing counseling (as such terms are defined in subsection (g)(1)) required under, or provided in connection with, any program administered by the Department of Housing and Urban Development shall be provided only by organizations or counselors certified by the Secretary under this subsection as competent to provide such counseling.
“(4) OUTREACH.—The Secretary shall take such actions as the Secretary considers appropriate to ensure that individuals and organizations providing homeownership or rental housing counseling are aware of the certification requirements and standards of this subsection and of the training and certification programs under subsection (f).”.

SEC. 9306. STUDY OF DEFAULTS AND FORECLOSURES.

The Secretary of Housing and Urban Development shall conduct an extensive study of the root causes of default and foreclosure of home loans, using as much empirical data as are available. The study shall also examine the role of escrow accounts in helping prime and nonprime borrowers to avoid defaults and foreclosures, and the role of computer registries of mortgages, including those used for trading mortgage loans. Not later than 12 months after the date of the enactment of this Act, the Secretary shall submit to the Congress a preliminary report regarding the study. Not later than 24 months after such date of enactment, the Secretary shall submit a final report regarding the results of the study, which shall include any recommended legislation relating to the study, and recommendations for best practices and for a process to identify populations that need counseling the most.
SEC. 9307. DEFAULT AND FORECLOSURE DATABASE.

(a) Establishment.—The Secretary of Housing and Urban Development, in consultation with the Federal agencies responsible for regulation of banking and financial institutions involved in residential mortgage lending and servicing, shall establish and maintain a database of information on foreclosures and defaults on mortgage loans for one- to four-unit residential properties and shall make such information publicly available.

(b) Census Tract Data.—Information in the database shall be collected, aggregated, and made available on a census tract basis.

(c) Requirements.—Information collected and made available through the database shall include—

(1) the number and percentage of such mortgage loans that are delinquent by more than 30 days;

(2) the number and percentage of such mortgage loans that are delinquent by more than 90 days;

(3) the number and percentage of such properties that are real estate-owned;

(4) number and percentage of such mortgage loans that are in the foreclosure process;

(5) the number and percentage of such mortgage loans that have an outstanding principal obli-
gation amount that is greater than the value of the property for which the loan was made; and

(6) such other information as the Secretary considers appropriate.

SEC. 9308. DEFINITIONS FOR COUNSELING-RELATED PROGRAMS.

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), as amended by the preceding provisions of this subtitle, is further amended by adding at the end the following new subsection:

“(h) DEFINITIONS.—For purposes of this section:

“(1) NONPROFIT ORGANIZATION.—The term ‘nonprofit organization’ has the meaning given such term in section 104(5) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704(5)), except that subparagraph (D) of such section shall not apply for purposes of this section.

“(2) STATE.—The term ‘State’ means each of the several States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territories of the Pacific, or any other possession of the United States.
“(3) Unit of general local government.—The term ‘unit of general local government’ means any city, county, parish, town, township, borough, village, or other general purpose political subdivision of a State.

“(4) HUD-approved counseling agency.—The term ‘HUD-approved counseling agency’ means a private or public nonprofit organization that is—

“(A) exempt from taxation under section 501(c) of the Internal Revenue Code of 1986; and

“(B) certified by the Secretary to provide housing counseling services.

“(5) State housing finance agency.—The term ‘State housing finance agency’ means any public body, agency, or instrumentality specifically created under State statute that is authorised to finance activities designed to provide housing and related facilities throughout an entire State through land acquisition, construction, or rehabilitation.”.

SEC. 9309. ACCOUNTABILITY AND TRANSPARENCY FOR GRANT RECIPIENTS.

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), as amended by the pre-
ceding provisions of this subtitle, is further amended by adding at the end the following:

“(i) ACCOUNTABILITY FOR RECIPIENTS OF COVERED ASSISTANCE.—

“(1) TRACKING OF FUNDS.—The Secretary shall—

“(A) develop and maintain a system to ensure that any organization or entity that receives any covered assistance uses all amounts of covered assistance in accordance with this section or section 9115 of the Mortgage Reform and Anti-Predatory Lending Act, as applicable, the regulations issued under this section or such section 9115, as applicable, and any requirements or conditions under which such amounts were provided; and

“(B) require any organization or entity, as a condition of receipt of any covered assistance, to agree to comply with such requirements regarding covered assistance as the Secretary shall establish, which shall include—

“(i) appropriate periodic financial and grant activity reporting, record retention, and audit requirements for the duration of the covered assistance to the organization
or entity to ensure compliance with the limitations and requirements of this section or section 9115 of the Mortgage Reform and Anti-Predatory Lending Act, as applicable, the regulations under this section or such section 9115, as applicable, and any requirements or conditions under which such amounts were provided; and

“(ii) any other requirements that the Secretary determines are necessary to ensure appropriate administration and compliance.

“(2) MISUSE OF FUNDS.—If any organization or entity that receives any covered assistance is determined by the Secretary to have used any covered assistance in a manner that is materially in violation of this section or section 9115 of the Mortgage Reform and Anti-Predatory Lending Act, as applicable, the regulations issued under this section or such section 9115, as applicable, or any requirements or conditions under which such assistance was provided—

“(A) the Secretary shall require that, within 12 months after the determination of such misuse, the organization or entity shall reimburse the Secretary for such misused amounts
and return to the Secretary any such amounts
that remain unused or uncommitted for use;
and
“(B) such organization or entity shall be
ineligible, at any time after such determination,
to apply for or receive any further covered as-
sistance.

The remedies under this paragraph are in addition
to any other remedies that may be available under
law.
“(3) COVERED ASSISTANCE.—For purposes of
this subsection, the term ‘covered assistance’ means
any grant or other financial assistance provided
under—
“(A) this section; or
“(B) section 9115 of the Mortgage Reform
and Anti-Predatory Lending Act.”.

SEC. 9310. UPDATING AND SIMPLIFICATION OF MORTGAGE
INFORMATION BOOKLET.

Section 5 of the Real Estate Settlement Procedures
Act of 1974 (12 U.S.C. 2604) is amended—
(1) in the section heading, by striking “SPE-
CIAL” and inserting “HOME BUYING”;
(2) by striking subsections (a) and (b) and in-
serting the following new subsections:
“(a) PREPARATION AND DISTRIBUTION.—The Director of the Consumer Financial Protection Agency (hereafter in this section referred to as the ‘Director’) shall prepare, at least once every 5 years, a booklet to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services. The Director shall prepare the booklet in various languages and cultural styles, as the Director determines to be appropriate, so that the booklet is understandable and accessible to homebuyers of different ethnic and cultural backgrounds. The Director shall distribute such booklets to all lenders that make federally related mortgage loans. The Director shall also distribute to such lenders lists, organized by location, of homeownership counselors certified under section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) for use in complying with the requirement under subsection (c) of this section.

“(b) CONTENTS.—Each booklet shall be in such form and detail as the Director shall prescribe and, in addition to such other information as the Director may provide, shall include in plain and understandable language the following information:

“(1) A description and explanation of the nature and purpose of the costs incident to a real es-
tate settlement or a federally related mortgage loan. The description and explanation shall provide general information about the mortgage process as well as specific information concerning, at a minimum—

“(A) balloon payments;
“(B) prepayment penalties;
“(C) the advantages of prepayment; and
“(D) the trade-off between closing costs and the interest rate over the life of the loan.

“(2) An explanation and sample of the uniform settlement statement required by section 4.

“(3) A list and explanation of lending practices, including those prohibited by the Truth in Lending Act or other applicable Federal law, and of other unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

“(4) A list and explanation of questions a consumer obtaining a federally related mortgage loan should ask regarding the loan, including whether the consumer will have the ability to repay the loan, whether the consumer sufficiently shopped for the loan, whether the loan terms include prepayment penalties or balloon payments, and whether the loan will benefit the borrower.
“(5) An explanation of the right of rescission as to certain transactions provided by sections 125 and 129 of the Truth in Lending Act.

“(6) A brief explanation of the nature of a variable rate mortgage and a reference to the booklet entitled ‘Consumer Handbook on Adjustable Rate Mortgages’, published by the Director, or to any suitable substitute of such booklet that the Director may subsequently adopt pursuant to such section.

“(7) A brief explanation of the nature of a home equity line of credit and a reference to the pamphlet required to be provided under section 127A of the Truth in Lending Act.

“(8) Information about homeownership counseling services made available pursuant to section 106(a)(4) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(4)), a recommendation that the consumer use such services, and notification that a list of certified providers of homeownership counseling in the area, and their contact information, is available.

“(9) An explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate and the re-
quirements under section 10 of this Act regarding such accounts.

“(10) An explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incidental to a real estate settlement.

“(11) An explanation of a consumer’s responsibilities, liabilities, and obligations in a mortgage transaction.

“(12) An explanation of the nature and purpose of real estate appraisals, including the difference between an appraisal and a home inspection.

“(13) Notice that the Office of Housing of the Department of Housing and Urban Development has made publicly available a brochure regarding loan fraud and a World Wide Web address and toll-free telephone number for obtaining the brochure.

The booklet prepared pursuant to this section shall take into consideration differences in real estate settlement procedures that may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.”;

(3) in subsection (e), by inserting at the end the following new sentence: “Each lender shall also include with the booklet a reasonably complete or
updated list of homeownership counselors who are certified pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) and located in the area of the lender.”;

and

(4) in subsection (d), by inserting after the period at the end of the first sentence the following: “The lender shall provide the HUD-issued booklet in the version that is most appropriate for the person receiving it.”.

SEC. 9311. HOME INSPECTION COUNSELING.

(a) Public Outreach.—

(1) In general.—The Secretary of Housing and Urban Development (in this section referred to as the “Secretary”) shall take such actions as may be necessary to inform potential homebuyers of the availability and importance of obtaining an independent home inspection. Such actions shall include—

(A) publication of the HUD/FHA form HUD 92564–CN entitled “For Your Protection: Get a Home Inspection”, in both English and Spanish languages;

(B) publication of the HUD/FHA booklet entitled “For Your Protection: Get a Home In-
(C) development and publication of a HUD booklet entitled “For Your Protection—Get a Home Inspection” that does not reference FHA-insured homes, in both English and Spanish languages; and

(D) publication of the HUD document entitled “Ten Important Questions To Ask Your Home Inspector”, in both English and Spanish languages.

(2) AVAILABILITY.—The Secretary shall make the materials specified in paragraph (1) available for electronic access and, where appropriate, inform potential homebuyers of such availability through home purchase counseling public service announcements and toll-free telephone hotlines of the Department of Housing and Urban Development. The Secretary shall give special emphasis to reaching first-time and low-income homebuyers with these materials and efforts.

(3) UPDATING.—The Secretary may periodically update and revise such materials, as the Secretary determines to be appropriate.
(b) Requirement for FHA-approved Lenders.—Each mortgagee approved for participation in the mortgage insurance programs under title II of the National Housing Act shall provide prospective homebuyers, at first contact, whether upon pre-qualification, pre-approval, or initial application, the materials specified in subparagraphs (A), (B), and (D) of subsection (a)(1).

(c) Requirements for HUD-approved Counseling Agencies.—Each counseling agency certified pursuant by the Secretary to provide housing counseling services shall provide each of their clients, as part of the home purchase counseling process, the materials specified in subparagraphs (C) and (D) of subsection (a)(1).

(d) Training.—Training provided the Department of Housing and Urban Development for housing counseling agencies, whether such training is provided directly by the Department or otherwise, shall include—

(1) providing information on counseling potential homebuyers of the availability and importance of getting an independent home inspection;

(2) providing information about the home inspection process, including the reasons for specific inspections such as radon and lead-based paint testing;
(3) providing information about advising potential homebuyers on how to locate and select a qualified home inspector; and

(4) review of home inspection public outreach materials of the Department.

SEC. 9312. WARNINGS TO HOMEOWNERS OF FORECLOSURE RESCUE SCAMS.

(a) Assistance to NRC.—Notwithstanding any other provision of law, of any amounts made available for any fiscal year pursuant to section 106(a)(4)(F) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(4)(F)) (as added by section 9304 of this title), 10 percent shall be used only for assistance to the Neighborhood Reinvestment Corporation for activities, in consultation with servicers of residential mortgage loans, to provide notice to borrowers under such loans who are delinquent with respect to payments due under such loans that makes such borrowers aware of the dangers of fraudulent activities associated with foreclosure.

(b) Notice.—The Neighborhood Reinvestment Corporation, in consultation with servicers of residential mortgage loans, shall use the amounts provided pursuant to subsection (a) to carry out activities to inform borrowers under residential mortgage loans—
(1) that the foreclosure process is complex and can be confusing;

(2) that the borrower may be approached during the foreclosure process by persons regarding saving their home and they should use caution in any such dealings;

(3) that there are Federal Government and nonprofit agencies that may provide information about the foreclosure process, including the Department of Housing and Urban Development;

(4) that they should contact their lender immediately, contact the Department of Housing and Urban Development to find a housing counseling agency certified by the Department to assist in avoiding foreclosure, or visit the Department’s website regarding tips for avoiding foreclosure; and

(5) of the telephone number of the loan servicer or successor, the telephone number of the Department of Housing and Urban Development housing counseling line, and the Uniform Resource Locators (URLs) for the Department of Housing and Urban Development Web sites for housing counseling and for tips for avoiding foreclosure.
Subtitle E—Mortgage Servicing

SEC. 9401. ESCROW AND IMPOUND ACCOUNTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

(a) In General.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129C (as added by section 9101) the following new section:

“SEC. 129D. ESCROW OR IMPOUND ACCOUNTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

“(a) In General.—Except as provided in subsection (b), (c), or (d), a creditor, in connection with the formation or consummation of a consumer credit transaction secured by a first lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, shall establish, before the consummation of such transaction, an escrow or impound account for the payment of taxes and hazard insurance, and, if applicable, flood insurance, mortgage insurance, ground rents, and any other required periodic payments or premiums with respect to the property or the loan terms, as provided in, and in accordance with, this section.
“(b) WHEN REQUIRED.—No impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property may be required as a condition of a real property sale contract or a loan secured by a first deed of trust or mortgage on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, except when—

“(1) any such impound, trust, or other type of escrow or impound account for such purposes is required by Federal or State law;

“(2) a loan is made, guaranteed, or insured by a State or Federal governmental lending or insuring agency;

“(3) the transaction is secured by a first mortgage or lien on the consumer’s principal dwelling having an original principal obligation amount that—

“(A) does not exceed the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C.
1605
1454(a)(2)), and the annual percentage rate will exceed the average prime offer rate for a comparable transaction by 1.5 or more percentage points; or

“(B) exceeds the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)), and the annual percentage rate will exceed the average prime offer rate for a comparable transaction by 2.5 or more percentage points; or

“(4) so required pursuant to regulation.

“(c) DURATION OF MANDATORY ESCROW OR IMPOUND ACCOUNT.—An escrow or impound account established pursuant to subsection (b), shall remain in existence for a minimum period of 5 years, beginning with the date of the consummation of the loan, and until such borrower has sufficient equity in the dwelling securing the consumer credit transaction so as to no longer be required to maintain private mortgage insurance, or such other period as may be provided in regulations to address situations such
as borrower delinquency, unless the underlying mortgage
establishing the account is terminated.

“(d) **Limited Exemptions for Loans Secured by**
Shares in a Cooperative and for Certain Condo-
minium Units.—Eserow accounts need not be established
for loans secured by shares in a cooperative. Insurance
premiums need not be included in eserow accounts for
loans secured by condominium units, where the condo-
minium association has an obligation to the condominium
unit owners to maintain a master policy insuring condo-
minium units.

“(e) **Clarification on Eserow Accounts for**
Loans Not Meeting Statutory Test.—For mort-
gages not covered by the requirements of subsection (b),
no provision of this section shall be construed as pre-
cluding the establishment of an impound, trust, or other
type of account for the payment of property taxes, insur-
ance premiums, or other purposes relating to the prop-
erty—

“(1) on terms mutually agreeable to the parties
to the loan;

“(2) at the discretion of the lender or servicer,
as provided by the contract between the lender or
servicer and the borrower; or
“(3) pursuant to the requirements for the escrow of flood insurance payments for regulated lending institutions in section 102(d) of the Flood Disaster Protection Act of 1973.

“(f) Administration of Mandatory Escrow or Impound Accounts.—

“(1) In general.—Except as may otherwise be provided for in this title or in regulations prescribed by the Board, escrow or impound accounts established pursuant to subsection (b) shall be established in a federally insured depository institution.

“(2) Administration.—Except as provided in this section or regulations prescribed under this section, an escrow or impound account subject to this section shall be administered in accordance with—

“(A) the Real Estate Settlement Procedures Act of 1974 and regulations prescribed under such Act;

“(B) the Flood Disaster Protection Act of 1973 and regulations prescribed under such Act; and

“(C) the law of the State, if applicable, where the real property securing the consumer credit transaction is located.
“(3) Applicability of payment of interest.—If prescribed by applicable State or Federal law, each creditor shall pay interest to the consumer on the amount held in any impound, trust, or escrow account that is subject to this section in the manner as prescribed by that applicable State or Federal law.

“(4) Penalty coordination with RESPA.—Any action or omission on the part of any person which constitutes a violation of the Real Estate Settlement Procedures Act of 1974 or any regulation prescribed under such Act for which the person has paid any fine, civil money penalty, or other damages shall not give rise to any additional fine, civil money penalty, or other damages under this section, unless the action or omission also constitutes a direct violation of this section.

“(g) Disclosures relating to mandatory escrow or impound account.—In the case of any impound, trust, or escrow account that is subject to this section, the creditor shall disclose by written notice to the consumer at least 3 business days before the consummation of the consumer credit transaction giving rise to such account or in accordance with timeframes established in prescribed regulations the following information:
“(1) The fact that an escrow or impound account will be established at consummation of the transaction.

“(2) The amount required at closing to initially fund the escrow or impound account.

“(3) The amount, in the initial year after the consummation of the transaction, of the estimated taxes and hazard insurance, including flood insurance, if applicable, and any other required periodic payments or premiums that reflects, as appropriate, either the taxable assessed value of the real property securing the transaction, including the value of any improvements on the property or to be constructed on the property (whether or not such construction will be financed from the proceeds of the transaction) or the replacement costs of the property.

“(4) The estimated monthly amount payable to be escrowed for taxes, hazard insurance (including flood insurance, if applicable) and any other required periodic payments or premiums.

“(5) The fact that, if the consumer chooses to terminate the account at the appropriate time in the future, the consumer will become responsible for the payment of all taxes, hazard insurance, and flood insurance, if applicable, as well as any other required
periodic payments or premiums on the property unless a new escrow or impound account is established.

“(6) Such other information as the Federal banking agencies jointly determine necessary for the protection of the consumer.

“(h) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) Flood insurance.—The term ‘flood insurance’ means flood insurance coverage provided under the national flood insurance program pursuant to the National Flood Insurance Act of 1968.

“(2) Hazard insurance.—The term ‘hazard insurance’ shall have the same meaning as provided for ‘hazard insurance’, ‘casualty insurance’, ‘homeowner’s insurance’, or other similar term under the law of the State where the real property securing the consumer credit transaction is located.”.

(b) IMPLEMENTATION.—

(1) REGULATIONS.—The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, (hereafter in this title referred to as the “Federal banking agencies”) and the Federal Trade Commis-
sion shall prescribe, in final form, such regulations
as determined to be necessary to implement the
amendments made by subsection (a) before the end
of the 180-day period beginning on the date of the
enactment of this Act.

(2) EFFECTIVE DATE.—The amendments made
by subsection (a) shall only apply to covered mort-
gage loans consummated after the end of the 1-year
period beginning on the date of the publication of
final regulations in the Federal Register.

(c) CLERICAL AMENDMENT.—The table of sections
for chapter 2 of the Truth in Lending Act is amended
by inserting after the item relating to section 129C (as
added by section 9101) the following new item:

“129D. Escrow or impound accounts relating to certain consumer credit trans-
actions.”.

SEC. 9402. DISCLOSURE NOTICE REQUIRED FOR CON-
SUMERS WHO WAIVE ESCROW SERVICES.

(a) IN GENERAL.—Section 129D of the Truth in
Lending Act (as added by section 9401) is amended by
adding at the end the following new subsection:

“(i) DISCLOSURE NOTICE REQUIRED FOR CON-
SUMERS WHO WAIVE ESCROW SERVICES.—

“(1) IN GENERAL.—If—

“(A) an impound, trust, or other type of
account for the payment of property taxes, in-
surance premiums, or other purposes relating to real property securing a consumer credit trans-
action is not established in connection with the transaction; or

“(B) a consumer chooses, and provides written notice to the creditor or servicer of such choice, at any time after such an account is es-
established in connection with any such trans-
action and in accordance with any statute, reg-
ulation, or contractual agreement, to close such account,
the creditor or servicer shall provide a timely and clearly written disclosure to the consumer that ad-
vises the consumer of the responsibilities of the con-
sumer and implications for the consumer in the ab-
sence of any such account.

“(2) Disclosure requirements.—Any dis-
closure provided to a consumer under paragraph (1) shall include the following:

“(A) Information concerning any applicable fees or costs associated with either the non-
establishment of any such account at the time of the transaction, or any subsequent closure of any such account.
“(B) A clear and prominent notice that the consumer is responsible for personally and directly paying the non-escrowed items, in addition to paying the mortgage loan payment, in the absence of any such account, and the fact that the costs for taxes, insurance, and related fees can be substantial.

“(C) A clear explanation of the consequences of any failure to pay non-escrowed items, including the possible requirement for the forced placement of insurance by the creditor or servicer and the potentially higher cost (including any potential commission payments to the servicer) or reduced coverage for the consumer in the event of any such creditor-placed insurance.

“(D) Such other information as the Federal banking agencies jointly determine necessary for the protection of the consumer.”.

(b) IMPLEMENTATION.—

(1) REGULATIONS.—The Federal banking agencies and the Federal Trade Commission shall prescribe, in final form, such regulations as such agencies determine to be necessary to implement the amendments made by subsection (a) before the end
of the 180-day period beginning on the date of the enactment of this Act.

(2) Effective date.—The amendments made by subsection (a) shall only apply in accordance with the regulations established in paragraph (1) and beginning on the date occurring 180-days after the date of the publication of final regulations in the Federal Register.

SEC. 9403. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974 AMENDMENTS.

(a) Servicer prohibitions.—Section 6 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605) is amended by adding at the end the following new subsections:

“(k) Servicer prohibitions.—

“(1) In general.—A servicer of a federally related mortgage shall not—

“(A) obtain force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract’s requirements to maintain property insurance;

“(B) charge fees for responding to valid qualified written requests (as defined in regula-
tions which the Secretary shall prescribe) under this section;

“(C) fail to take timely action to respond to a borrower’s requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer’s duties;

“(D) fail to respond within 10 business days to a request from a borrower to provide the identity, address, and other relevant contact information about the owner assignee of the loan; or

“(E) fail to comply with any other obligation found by the Secretary, by regulation, to be appropriate to carry out the consumer protection purposes of this Act.

“(2) **Force-Placed Insurance Defined.**—

For purposes of this subsection and subsections (l) and (m), the term ‘force-placed insurance’ means hazard insurance coverage obtained by a servicer of a federally related mortgage when the borrower has failed to maintain or renew hazard insurance on such property as required of the borrower under the terms of the mortgage.
“(l) Requirements for Force-Placed Insurance.—A servicer of a federally related mortgage shall not be construed as having a reasonable basis for obtaining force-placed insurance unless the requirements of this subsection have been met.

“(1) Written Notices to Borrower.—A servicer may not impose any charge on any borrower for force-placed insurance with respect to any property securing a federally related mortgage unless—

“(A) the servicer has sent, by first-class mail, a written notice to the borrower containing—

“(i) a reminder of the borrower’s obligation to maintain hazard insurance on the property securing the federally related mortgage;

“(ii) a statement that the servicer does not have evidence of insurance coverage of such property;

“(iii) a clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower already has insurance coverage; and

“(iv) a statement that the servicer may obtain such coverage at the borrower’s
expense if the borrower does not provide
such demonstration of the borrower’s exist-
ing coverage in a timely manner;

“(B) the servicer has sent, by first-class
mail, a second written notice, at least 30 days
after the mailing of the notice under subpar-
agraph (A) that contains all the information de-
scribed in each clause of such subparagraph;
and

“(C) the servicer has not received from the
borrower any demonstration of hazard insur-
ce coverage for the property securing the
mortgage by the end of the 15-day period be-
inning on the date the notice under subpara-
graph (B) was sent by the servicer.

“(2) Sufficiency of demonstration.—A
servicer of a federally related mortgage shall accept
any reasonable form of written confirmation from a
borrower of existing insurance coverage, which shall
include the existing insurance policy number along
with the identity of, and contact information for, the
insurance company or agent.

“(3) Termination of force-placed insur-
ance.—Within 15 days of the receipt by a servicer
of confirmation of a borrower’s existing insurance
coverage, the servicer shall—

“(A) terminate the force-placed insurance;

and

“(B) refund to the consumer all force-placed insurance premiums paid by the bor-
rower during any period during which the bor-
rower’s insurance coverage and the force-placed
insurance coverage were each in effect, and any
related fees charged to the consumer’s account
with respect to the force-placed insurance dur-
ing such period.

“(4) Clarification with respect to flood
disaster protection act.—No provision of this
section shall be construed as prohibiting a servicer
from providing simultaneous or concurrent notice of
a lack of flood insurance pursuant to section 102(e)

“(m) Limitations on force-placed insurance
charges.—All charges for force-placed insurance pre-
miums shall be bona fide and reasonable in amount.”.

(b) Increase in penalty amounts.—Section 6(f)
of the Real Estate Settlement Procedures Act of 1974 (12
U.S.C. 2605(f)) is amended—
(1) in paragraphs (1)(B) and (2)(B), by striking “$1,000” each place such term appears and inserting “$2,000”; and

(2) in paragraph (2)(B)(i), by striking “$500,000” and inserting “$1,000,000”.

(c) DECREASE IN RESPONSE TIMES.—Section 6(e) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(e)) is amended—

(1) in paragraph (1)(A), by striking “20 days” and inserting “5 days”;

(2) in paragraph (2), by striking “60 days” and inserting “30 days”; and

(3) by adding at the end the following new paragraph:

“(4) LIMITED EXTENSION OF RESPONSE TIME.—The 30-day period described in paragraph (2) may be extended for not more than 15 days if, before the end of such 30-day period, the servicer notifies the borrower of the extension and the reasons for the delay in responding.”.

(d) PROMPT REFUND OF ESCROW ACCOUNTS UPON PAYOFF.—Section 6(g) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(g)) is amended by adding at the end the following new sentence: “Any balance in any such account that is within the servicer’s
control at the time the loan is paid off shall be promptly
returned to the borrower within 20 business days or cred-
ited to a similar account for a new mortgage loan to the
borrower with the same lender.”.

SEC. 9404. TRUTH IN LENDING ACT AMENDMENTS.

(a) Requirements for Prompt Crediting of
Home Loan Payments.—Chapter 2 of the Truth in
Lending Act (15 U.S.C. 1631 et seq.) is amended by in-
serting after section 129E (as added by section 9502) the
following new section (and by amending the table of con-
tents accordingly):

“SEC. 129F. REQUIREMENTS FOR PROMPT CREDITING OF
HOME LOAN PAYMENTS.

“(a) In General.—In connection with a consumer
credit transaction secured by a consumer’s principal dwell-
ing, no servicer shall fail to credit a payment to the con-
sumer’s loan account as of the date of receipt, except when
a delay in crediting does not result in any charge to the
consumer or in the reporting of negative information to
a consumer reporting agency, except as required in sub-
section (b).

“(b) Exception.—If a servicer specifies in writing
requirements for the consumer to follow in making pay-
ments, but accepts a payment that does not conform to
the requirements, the servicer shall credit the payment as of 5 days after receipt.”.

(b) Requests for Payoff Amounts.—Chapter 2 of such Act is further amended by inserting after section 129F (as added by subsection (a)) the following new section (and by amending the table of contents accordingly):

“SEC. 129G. REQUESTS FOR PAYOFF AMOUNTS OF HOME LOAN.

“A creditor or servicer of a home loan shall send an accurate payoff balance within a reasonable time, but in no case more than 7 business days, after the receipt of a written request for such balance from or on behalf of the borrower.”.

SEC. 9405. ESCRROWS INCLUDED IN REPAYMENT ANALYSIS.

Section 128(b) of the Truth in Lending Act (15 U.S.C. 1638(b)) is amended by adding at the end the following new paragraph:

“(4) Repayment analysis required to include escrow payments.—

“(A) In general.—In the case of any consumer credit transaction secured by a first mortgage or lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, for which an impound, trust,
or other type of account has been or will be es-
established in connection with the transaction for
the payment of property taxes, hazard and flood
(if any) insurance premiums, or other periodic
payments or premiums with respect to the
property, the information required to be pro-
vided under subsection (a) with respect to the
number, amount, and due dates or period of
payments scheduled to repay the total of pay-
ments shall take into account the amount of
any monthly payment to such account for each
such repayment in accordance with section
10(a)(2) of the Real Estate Settlement Proce-

“(B) ASSESSMENT VALUE.—The amount
taken into account under subparagraph (A) for
the payment of property taxes, hazard and flood
(if any) insurance premiums, or other periodic
payments or premiums with respect to the
property shall reflect the taxable assessed value
of the real property securing the transaction
after the consummation of the transaction, in-
cluding the value of any improvements on the
property or to be constructed on the property
(whether or not such construction will be fi-
nanced from the proceeds of the transaction), if
known, and the replacement costs of the prop-
erty for hazard insurance, in the initial year
after the transaction.”.

Subtitle F—Appraisal Activities

SEC. 9501. PROPERTY APPRAISAL REQUIREMENTS.

Chapter 2 of the Truth in Lending Act (15 U.S.C.
1631 et seq.) is amended by inserting after 129G (as
added by section 9404(b)) the following new section:

“SEC. 129H PROPERTY APPRAISAL REQUIREMENTS.

“(a) In General.—A creditor may not extend credit
in the form of a subprime mortgage to any consumer with-
out first obtaining a written appraisal of the property to
be mortgaged prepared in accordance with the require-
ments of this section.

“(b) Appraisal Requirements.—

“(1) Physical property visit.—An appraisal
of property to be secured by a subprime mortgage
does not meet the requirement of this section unless
it is performed by a qualified appraiser who con-
ducts a physical property visit of the interior of the
mortgaged property.

“(2) Second appraisal under certain cir-
cumstances.—
“(A) IN GENERAL.—If the purpose of a subprime mortgage is to finance the purchase or acquisition of the mortgaged property from a person within 180 days of the purchase or acquisition of such property by that person at a price that was lower than the current sale price of the property, the creditor shall obtain a second appraisal from a different qualified appraiser. The second appraisal shall include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

“(B) NO COST TO APPLICANT.—The cost of any second appraisal required under subparagraph (A) may not be charged to the applicant.

“(3) QUALIFIED APPRAISER DEFINED.—For purposes of this section, the term ‘qualified appraiser’ means a person who—

“(A) is, at a minimum, certified or licensed by the State in which the property to be appraised is located; and

“(B) performs each appraisal in conformity with the Uniform Standards of Profes-
sional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and the regulations prescribed under such title, as in effect on the date of the appraisal.

“(c) Free Copy of Appraisal.—A creditor shall provide 1 copy of each appraisal conducted in accordance with this section in connection with a subprime mortgage to the applicant without charge, and at least 3 days prior to the transaction closing date.

“(d) Consumer Notification.—At the time of the initial mortgage application, the applicant shall be provided with a statement by the creditor that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at their own expense.

“(e) Violations.—In addition to any other liability to any person under this title, a creditor found to have willfully failed to obtain an appraisal as required in this section shall be liable to the applicant or borrower for the sum of $2,000.

“(f) Subprime Mortgage Defined.—For purposes of this section, the term ‘subprime mortgage’ means a residential mortgage loan, other than a reverse mortgage loan insured by the Federal Housing Administration, secured
by a principal dwelling with an annual percentage rate
that exceeds the average prime offer rate for a comparable
transaction, as of the date the interest rate is set—

“(1) by 1.5 or more percentage points, in the
case of a first lien residential mortgage loan having
an original principal obligation amount that does not
exceed the amount of the maximum limitation on the
original principal obligation of mortgage in effect for
a residence of the applicable size, as of the date of
such interest rate set, pursuant to the sixth sentence
of section 305(a)(2) the Federal Home Loan Mort-
gage Corporation Act (12 U.S.C. 1454(a)(2));

“(2) by 2.5 or more percentage points, in the
case of a first lien residential mortgage loan having
an original principal obligation amount that exceeds
the amount of the maximum limitation on the origi-

nal principal obligation of mortgage in effect for a
residence of the applicable size, as of the date of
such interest rate set, pursuant to the sixth sentence
of section 305(a)(2) the Federal Home Loan Mort-
gage Corporation Act (12 U.S.C. 1454(a)(2)); and

“(3) by 3.5 or more percentage points for a
subordinate lien residential mortgage loan.”.
SEC. 9502. UNFAIR AND DECEPTIVE PRACTICES AND ACTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129D (as added by section 9401(a)) the following new section:

“SEC. 129E. UNFAIR AND DECEPTIVE PRACTICES AND ACTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

“(a) IN GENERAL.—It shall be unlawful, in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer, to engage in any unfair or deceptive act or practice as described in or pursuant to regulations prescribed under this section.

“(b) APPRAISAL INDEPENDENCE.—For purposes of subsection (a), unfair and deceptive practices shall include—

“(1) any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person conducting or involved in an appraisal, or at-
tempts, to compensate, coerce, extort, collude, in-
struct, induce, bribe, or intimidate such a person,
for the purpose of causing the appraised value as-
signed, under the appraisal, to the property to be
based on any factor other than the independent
judgment of the appraiser;

“(2) mischaracterizing, or suborning any
mischaracterization of, the appraised value of the
property securing the extension of the credit;

“(3) seeking to influence an appraiser or other-
wise to encourage a targeted value in order to facili-
tate the making or pricing of the transaction; and

“(4) withholding or threatening to withhold
timely payment for an appraisal report or for ap-
praisal services rendered.

“(c) EXCEPTIONS.—The requirements of subsection
(b) shall not be construed as prohibiting a mortgage lend-
er, mortgage broker, mortgage banker, real estate broker,
appraisal management company, employee of an appraisal
management company, consumer, or any other person
with an interest in a real estate transaction from asking
an appraiser to provide 1 or more of the following services:

“(1) Consider additional, appropriate property
information, including the consideration of addi-
tional comparable properties to make or support an appraisal.

“(2) Provide further detail, substantiation, or explanation for the appraiser’s value conclusion.

“(3) Correct errors in the appraisal report.

“(d) PROHIBITIONS ON CONFLICTS OF INTEREST.—

No certified or licensed appraiser conducting, and no appraisal management company procuring or facilitating, an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer may have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.

“(e) MANDATORY REPORTING.—Any mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, or any other person involved in a real estate transaction involving an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer who has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, shall refer the matter to the applicable State appraiser certifying and licensing agency.
“(f) NO EXTENSION OF CREDIT.—In connection with a consumer credit transaction secured by a consumer’s principal dwelling, a creditor who knows, at or before loan consummation, of a violation of the appraisal independence standards established in subsections (b) or (d) shall not extend credit based on such appraisal unless the creditor documents that the creditor has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

“(g) RULEMAKING PROCEEDINGS.—The Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Federal Trade Commission—

“(1) shall, for purposes of this section, jointly prescribe regulations no later than 180 days after the date of the enactment of this section, and where such regulations have an effective date of no later than 1 year after the date of the enactment of this section, defining with specificity acts or practices which are unfair or deceptive in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a
transaction and defining any terms in this section or such regulations; and

“(2) may jointly issue interpretive guidelines and general statements of policy with respect to unfair or deceptive acts or practices in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer and mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), (c), (d), (e), and (f).

“(h) Penalties.—

“(1) First Violation.—In addition to the enforcement provisions referred to in section 130, each person who violates this section shall forfeit and pay a civil penalty of not more than $10,000 for each day any such violation continues.

“(2) Subsequent Violations.—In the case of any person on whom a civil penalty has been imposed under paragraph (1), paragraph (1) shall be applied by substituting ‘$20,000’ for ‘$10,000’ with respect to all subsequent violations.

“(3) Assessment.—The agency referred to in subsection (a) or (e) of section 108 with respect to any person described in paragraph (1) shall assess
any penalty under this subsection to which such person is subject.”.

(b) Clerical Amendment.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129D (as added by section 9401(c)) the following new item:

“129E. Unfair and deceptive practices and acts relating to certain consumer credit transactions.”.

SEC. 9503. AMENDMENTS RELATING TO APPRAISAL SUB-COMMITTEE OF FIEC, APPRAISER INDEPENDENCE MONITORING, APPROVED APPRAISER EDUCATION, APPRAISAL MANAGEMENT COMPANIES, APPRAISER COMPLAINT HOTLINE, AUTOMATED VALUATION MODELS, AND BROKER PRICE OPINIONS.

(a) Consumer Protection Mission.—

(1) Purposes.—Section 1101 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331) is amended by inserting “and to provide the Appraisal Subcommittee with a consumer protection mandate” before the period at the end.

(2) Functions of Appraisal Subcommittee.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) is amended—
(A) by striking “and” at the end of paragraph (3); and

(B) by amending paragraph (4) to read as follows:

“(4) monitor the efforts of, and requirements established by, States and the Federal financial institutions regulatory agencies to protect consumers from improper appraisal practices and the predations of unlicensed appraisers in consumer credit transactions that are secured by a consumer’s principal dwelling; and”.

(3) Threshold Levels.—Section 1112(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3341(b)) is amended by inserting before the period the following: “, and that such threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences. In determining whether a threshold level provides reasonable protection for consumers, each Federal financial institutions regulatory agency shall consult with consumer groups and convene a public hearing”.

(b) Annual Report of Appraisal Subcommittee.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12
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1 1 U.S.C. 3332(a)) is amended at the end by inserting the
2 following new paragraph:
3 “(5) transmit an annual report to the Congress
4 not later than January 31 of each year that de-
5 scribes the manner in which each function assigned
6 to the Appraisal Subcommittee has been carried out
7 during the preceding year. The report shall also de-
8 tail the activities of the Appraisal Subcommittee, in-
9 cluding the results of all audits of State appraiser
10 regulatory agencies, and provide an accounting of
11 disapproved actions and warnings taken in the pre-
12 vious year, including a description of the conditions
13 causing the disapproval and actions taken to achieve
14 compliance.”.
15 (c) OPEN MEETINGS.—Section 1104(b) of the Finan-
16 cial Institutions Reform, Recovery, and Enforcement Act
17 of 1989 (12 U.S.C. 3333(b)) is amended by inserting “in
18 public session after notice in the Federal Register” after
19 “shall meet”.
20 (d) REGULATIONS.—Section 1106 of the Financial
21 Institutions Reform, Recovery, and Enforcement Act of
22 1989 (12 U.S.C. 3335) is amended—
23 (1) by inserting “prescribe regulations after no-
24 tice and opportunity for comment,” after “hold
25 hearings”; and
(2) at the end by inserting “Any regulations prescribed by the Appraisal Subcommittee shall (unless otherwise provided in this title) be limited to the following functions: temporary practice, national registry, information sharing, and enforcement. For purposes of prescribing regulations, the Appraisal Subcommittee shall establish an advisory committee of industry participants, including appraisers, lenders, consumer advocates, and government agencies, and hold meetings as necessary to support the development of regulations.”.

(e) APPRAISALS AND APPRAISAL REVIEWS.—Section 1113 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3342) is amended—

(1) by striking “In determining” and inserting “(a) IN GENERAL.—In determining”;

(2) in subsection (a) (as designated by paragraph (1)), by inserting before the period the following: “, where a complex 1-to-4 unit single family residential appraisal means an appraisal for which the property to be appraised, the form of ownership, the property characteristics, or the market conditions are atypical”; and

(3) by adding at the end the following new subsection:
“(b) Appraisals and Appraisal Reviews.—All appraisals performed at a property within a State shall be prepared by appraisers licensed or certified in the State where the property is located. All appraisal reviews, including appraisal reviews by a lender, appraisal management company, or other third party organization, shall be performed by an appraiser who is duly licensed or certified by a State appraisal board.”.

(f) Appraisal Management Services.—

(1) Supervision of Third Party Providers of Appraisal Management Services.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) (as previously amended by this section) is further amended—

(A) by amending paragraph (1) to read as follows:

“(1) monitor the requirements established by States—

“(A) for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility; and
“(B) for the registration and supervision of the operations and activities of an appraisal management company;”; and

(B) by adding at the end the following new paragraph:

“(7) maintain a national registry of appraisal management companies that either are registered with and subject to supervision of a State appraiser certifying and licensing agency or are operating subsidiaries of a Federally regulated financial institution.”.

(2) APPRAISAL MANAGEMENT COMPANY MINIMUM QUALIFICATIONS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.) is amended by adding at the end the following new section (and amending the table of contents accordingly):

“SEC. 1124. APPRAISAL MANAGEMENT COMPANY MINIMUM QUALIFICATIONS.

“(a) IN GENERAL.—The Appraiser Qualifications Board of the Appraisal Foundation shall establish minimum qualifications to be applied by a State in the registration of appraisal management companies. Such qualifications shall include a requirement that such companies—
“(1) register with and be subject to supervision by a State appraiser certifying and licensing agency in each State in which such company operates;

“(2) verify that only licensed or certified appraisers are used for federally related transactions;

“(3) require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice; and

“(4) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129E of the Truth in Lending Act.

“(b) EXCEPTION FOR FEDERALLY REGULATED FINANCIAL INSTITUTIONS.—The requirements of subsection (a) shall not apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution and regulated by a federal financial institution regulatory agency. In such case, the appropriate federal financial institutions regulatory agency shall, at a minimum, develop regulations affecting the operations of the appraisal management company to—

“(1) verify that only licensed or certified appraisers are used for federally related transactions;
“(2) require that appraisals coordinated by an institution or subsidiary providing appraisal management services comply with the Uniform Standards of Professional Appraisal Practice; and

“(3) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129E of the Truth in Lending Act.

“(c) Registration Limitations.—An appraisal management company shall not be registered by a State if such company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. Additionally, each person that owns more than 10 percent of an appraisal management company shall be of good moral character, as determined by the State appraiser certifying and licensing agency, and shall submit to a background investigation carried out by the State appraiser certifying and licensing agency.

“(d) Regulations.—The Appraisal Subcommittee shall promulgate regulations to implement the minimum qualifications developed by the Appraiser Qualifications Board under this section, as such qualifications relate to
the State appraiser certifying and licensing agencies. The Appraisal Subcommittee shall also promulgate regulations for the reporting of the activities of appraisal management companies in determining the payment of the annual registry fee.

“(e) Effective Date.—

“(1) In General.—No appraisal management company may perform services related to a federally related transaction in a State after the date that is 36 months after the date of the enactment of this section unless such company is registered with such State or subject to oversight by a federal financial institutions regulatory agency.

“(2) Extension of Effective Date.—Subject to the approval of the Council, the Appraisal Subcommittee may extend by an additional 12 months the requirements for the registration and supervision of appraisal management companies if it makes a written finding that a State has made substantial progress in establishing a State appraisal management company registration and supervision system that appears to conform with the provisions of this title.”.

(3) State Appraiser Certifying and Licensing Agency Authority.—Section 1117 of the
Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3346) is amended by adding at the end the following: “The duties of such agency may additionally include the registration and supervision of appraisal management companies.”.

(4) Appraisal Management Company Definition.—Section 1121 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350) is amended by adding at the end the following:

“(11) Appraisal Management Company.—The term ‘appraisal management company’ means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer’s principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25 or more nationally within a given year—

“(A) to recruit, select, and retain appraisers;
“(B) to contract with licensed and certified appraisers to perform appraisal assignments;

“(C) to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

“(D) to review and verify the work of appraisers.”.

(g) STATE AGENCY REPORTING REQUIREMENT.—
Section 1109(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(a)) is amended—

(1) by striking “and” after the semicolon in paragraph (1);

(2) by redesignating paragraph (2) as paragraph (4); and

(3) by inserting after paragraph (1) the following new paragraphs:

“(2) transmit reports on sanctions, disciplinary actions, license and certification revocations, and license and certification suspensions on a timely basis
to the national registry of the Appraisal Subcommittee;

“(3) transmit reports on a timely basis of supervisory activities involving appraisal management companies or other third-party providers of appraisals and appraisal management services, including investigations initiated and disciplinary actions taken; and”.

(h) Registry Fees Modified.—

(1) In general.—Section 1109(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(a)) is amended—

(A) by amending paragraph (4) (as modified by section 9503(g)) to read as follows:

“(4) collect—

“(A) from such individuals who perform or seek to perform appraisals in federally related transactions, an annual registry fee of not more than $40, such fees to be transmitted by the State agencies to the Council on an annual basis; and

“(B) from an appraisal management company that either has registered with a State appraiser certifying and licensing agency in ac-
cordance with this title or operates as a sub-
sidiary of a federally regulated financial institu-
tion, an annual registry fee of—

“(i) in the case of such a company

that has been in existence for more than a
year, $25 multiplied by the number of ap-
praisers working for or contracting with
such company in such State during the
previous year, but where such $25 amount
may be adjusted, up to a maximum of $50,
at the discretion of the Appraisal Sub-
committee, if necessary to carry out the
Subcommittee’s functions under this title;
and

“(ii) in the case of such a company

that has not been in existence for more
than a year, $25 multiplied by an appro-
priate number to be determined by the Ap-
praisal Subcommittee, and where such
number will be used for determining the
fee of all such companies that were not in
existence for more than a year, but where
such $25 amount may be adjusted, up to
a maximum of $50, at the discretion of the
Appraisal Subcommittee, if necessary to
carry out the Subcommittee’s functions under this title.”; and

(B) by amending the matter following paragraph (4), as redesignated, to read as follows:

“Subject to the approval of the Council, the Appraisal Subcommittee may adjust the dollar amount of registry fees under paragraph (4)(A), up to a maximum of $80 per annum, as necessary to carry out its functions under this title. The Appraisal Subcommittee shall consider at least once every 5 years whether to adjust the dollar amount of the registry fees to account for inflation. In implementing any change in registry fees, the Appraisal Subcommittee shall provide flexibility to the States for multi-year certifications and licenses already in place, as well as a transition period to implement the changes in registry fees. In establishing the amount of the annual registry fee for an appraisal management company, the Appraisal Subcommittee shall have the discretion to impose a minimum annual registry fee for an appraisal management company to protect against the under reporting of the number of appraisers working for or contracted by the appraisal management company.”.

(2) Incremental revenues.—Incremental revenues collected pursuant to the increases required
by this subsection shall be placed in a separate account at the United States Treasury, entitled the “Appraisal Subcommittee Account”.

(i) GRANTS AND REPORTS.—Section 1109(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(b)) is amended—

(1) by striking “and” after the semicolon in paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting a semicolon;

(3) by adding at the end the following new paragraphs:

“(5) to make grants to State appraiser certifying and licensing agencies to support the efforts of such agencies to comply with this title, including—

“(A) the complaint process, complaint investigations, and appraiser enforcement activities of such agencies; and

“(B) the submission of data on State licensed and certified appraisers and appraisal management companies to the National appraisal registry, including information affirming that the appraiser or appraisal management company meets the required qualification cri-
teria and formal and informal disciplinary ac-
tions; and

“(6) to report to all State appraiser certifying
and licensing agencies when a license or certification
is surrendered, revoked, or suspended.”.

Obligations authorized under this subsection may not ex-
ceed 75 percent of the fiscal year total of incremental in-
crease in fees collected and deposited in the “Appraisal
Subcommittee Account” pursuant to subsection (h).

(j) CRITERIA.—Section 1116 of the Financial Institu-
tions Reform, Recovery, and Enforcement Act of 1989 (12
U.S.C. 3345) is amended—

(1) in subsection (c), by inserting “whose cri-
teria for the licensing of a real estate appraiser cur-
rently meet or exceed the minimum criteria issued
by the Appraisal Qualifications Board of The Ap-
praisal Foundation for the licensing of real estate
appraisers” before the period at the end; and

(2) by striking subsection (e) and inserting the
following new subsection:

“(e) MINIMUM QUALIFICATION REQUIREMENTS.—
Any requirements established for individuals in the posi-
tion of ‘Trainee Appraiser’ and ‘Supervisory Appraiser’
shall meet or exceed the minimum qualification require-
ments of the Appraiser Qualifications Board of The Ap-
praisal Foundation. The Appraisal Subcommittee shall have the authority to enforce these requirements.”.

(k) MONITORING OF STATE APPRAISER CERTIFYING AND LICENSING AGENCIES.—Section 1118 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347) is amended—

(1) by amending subsection (a) to read as follows:

“(a) IN GENERAL.—The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purposes of determining whether such agency—

“(1) has policies, practices, funding, staffing, and procedures that are consistent with this title;

“(2) processes complaints and completes investigations in a reasonable time period;

“(3) appropriately disciplines sanctioned appraisers and appraisal management companies;

“(4) maintains an effective regulatory program; and

“(5) reports complaints and disciplinary actions on a timely basis to the national registries on appraisers and appraisal management companies maintained by the Appraisal Subcommittee.
The Appraisal Subcommittee shall have the authority to remove a State licensed or certified appraiser or a registered appraisal management company from a national registry on an interim basis pending State agency action on licensing, certification, registration, and disciplinary proceedings. The Appraisal Subcommittee and all agencies, instrumentalities, and Federally recognized entities under this title shall not recognize appraiser certifications and licenses from States whose appraisal policies, practices, funding, staffing, or procedures are found to be inconsistent with this title. The Appraisal Subcommittee shall have the authority to impose sanctions, as described in this section, against a State agency that fails to have an effective appraiser regulatory program. In determining whether such a program is effective, the Appraisal Subcommittee shall include an analyses of the licensing and certification of appraisers, the registration of appraisal management companies, the issuance of temporary licenses and certifications for appraisers, the receiving and tracking of submitted complaints against appraisers and appraisal management companies, the investigation of complaints, and enforcement actions against appraisers and appraisal management companies. The Appraisal Subcommittee shall have the authority to impose interim actions and suspensions against a State agency as an al-
ternative to, or in advance of, the derecognition of a State agency.”.

(2) in subsection (b)(2), by inserting after “authority” the following: “or sufficient funding”.

(l) RECIPROCITY.—Subsection (b) of section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351(b)) is amended to read as follows:

“(b) RECIPROCITY.—A State appraiser certifying or licensing agency shall issue a reciprocal certification or license for an individual from another State when—

“(1) the appraiser licensing and certification program of such other State is in compliance with the provisions of this title; and

“(2) the appraiser holds a valid certification from a State whose requirements for certification or licensing meet or exceed the licensure standards established by the State where an individual seeks appraisal licensure.”.

(m) CONSIDERATION OF PROFESSIONAL APPRAISAL DESIGNATIONS.—Section 1122(d) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351(d)) is amended by striking “shall not exclude” and all that follows through the end of the subsection and inserting the following: “may include edu-
cation achieved, experience, sample appraisals, and refer-
erences from prior clients. Membership in a nationally rec-
ognized professional appraisal organization may be a cri-
teria considered, though lack of membership therein shall
not be the sole bar against consideration for an assign-
ment under these criteria.”.

(n) APPRAISER INDEPENDENCE.—Section 1122 of
the Financial Institutions Reform, Recovery, and Enforce-
ment Act of 1989 (12 U.S.C. 3351) is amended by adding
at the end the following new subsection:

“(g) APPRAISER INDEPENDENCE MONITORING.—
The Appraisal Subcommittee shall monitor each State ap-
praiser certifying and licensing agency for the purpose of
determining whether such agency’s policies, practices, and
procedures are consistent with the purposes of maintain-
ing appraiser independence and whether such State has
adopted and maintains effective laws, regulations, and
policies aimed at maintaining appraiser independence.”.

(o) APPRAISER EDUCATION.—Section 1122 of the
Financial Institutions Reform, Recovery, and Enforce-
ment Act of 1989 (12 U.S.C. 3351) is amended by insert-
ing after subsection (g) (as added by subsection (l) of this
section) the following new subsection:

“(h) APPROVED EDUCATION.—The Appraisal Sub-
committee shall encourage the States to accept courses ap-
proved by the Appraiser Qualification Board’s Course Approval Program.”.

(p) APPRAISAL COMPLAINT HOTLINE.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351), as amended by this section, is further amended by adding at the end the following new subsection:

“(i) APPRAISAL COMPLAINT NATIONAL HOTLINE.—If, 1 year after the date of the enactment of this subsection, the Appraisal Subcommittee determines that no national hotline exists to receive complaints of non-compliance with appraisal independence standards and Uniform Standards of Professional Appraisal Practice, including complaints from appraisers, individuals, or other entities concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process, the Appraisal Subcommittee shall establish and operate such a national hotline, which shall include a toll-free telephone number and an email address. If the Appraisal Subcommittee operates such a national hotline, the Appraisal Subcommittee shall refer complaints for further action to appropriate governmental bodies, including a State appraiser certifying and licensing agency, a financial institution regulator, or other appropriate legal authorities. For complaints referred to State appraiser certifying and li-
1 censing agencies or to Federal regulators, the Appraisal
2 Subcommittee shall have the authority to follow up such
3 complaint referrals in order to determine the status of the
4 resolution of the complaint.”.
5 (q) AUTOMATED VALUATION MODELS.—Title XI of
6 the Financial Institutions Reform, Recovery, and Enforce-
8 by this section, is further amended by adding at the end
9 the following new section (and amending the table of con-
10 tents accordingly):
11 “SEC. 1125. AUTOMATED VALUATION MODELS USED TO
12 VALUE CERTAIN MORTGAGES.
13 “(a) IN GENERAL.—Automated valuation models
14 shall adhere to quality control standards designed to—
15 “(1) ensure a high level of confidence in the es-
16 timates produced by automated valuation models;
17 “(2) protect against the manipulation of data;
18 “(3) seek to avoid conflicts of interest; and
19 “(4) require random sample testing and re-
20 views, where such testing and reviews are performed
21 by an appraiser who is licensed or certified in the
22 State where the testing and reviews take place.
23 “(b) ADOPTION OF REGULATIONS.—The Appraisal
24 Subcommittee and its member agencies, in consultation
25 with the Appraisal Standards Board of the Appraisal
Foundation and other interested parties, shall promulgate regulations to implement the quality control standards required under this section.

“(c) ENFORCEMENT.—Compliance with regulations issued under this subsection shall be enforced by—

“(1) with respect to a financial institution, or subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency, the Federal financial institution regulatory agency that acts as the primary Federal supervisor of such financial institution or subsidiary; and

“(2) with respect to other persons, the Appraisal Subcommittee.

“(d) AUTOMATED VALUATION MODEL DEFINED.—For purposes of this section, the term ‘automated valuation model’ means any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer’s principal dwelling.”.

(r) BROKER PRICE OPINIONS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this section, is further amended by adding at the end the fol-
following new section (and amending the table of contents accordingly):

"SEC. 1126. BROKER PRICE OPINIONS.

"(a) GENERAL PROHIBITION.—In conjunction with the purchase of a consumer’s principal dwelling, broker price opinions may not be used as the primary basis to determine the value of a piece of property for the purpose of a loan origination of a residential mortgage loan secured by such piece of property.

"(b) BROKER PRICE OPINION DEFINED.—For purposes of this section, the term ‘broker price opinion’ means an estimate prepared by a real estate broker, agent, or sales person that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property’s condition, market, and neighborhood, and information on comparable sales, but does not include an automated valuation model, as defined in section 1125(c).”.

(s) AMENDMENTS TO APPRAISAL SUBCOMMITTEE.—Section 1011 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3310) is amended—

(1) in the first sentence, by adding before the period the following: “and the Federal Housing Finance Agency”; and
(2) by inserting at the end the following: “At all times at least one member of the Appraisal Subcommittee shall have demonstrated knowledge and competence through licensure, certification, or professional designation within the appraisal profession.”.

(t) TECHNICAL CORRECTIONS.—


(3) Section 1121(8) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(8)) is amended by striking “council” and inserting “Council”.

(4) Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended—

(A) in subsection (a)(1) by moving the left margin of subparagraphs (A), (B), and (C) 2 ems to the right; and
(B) in subsection (c)—

(i) by striking “Federal Financial Institutions Examination Council” and inserting “Financial Institutions Examination Council”; and

(ii) by striking “the council’s functions” and inserting “the Council’s functions”.

SEC. 9504. STUDY REQUIRED ON IMPROVEMENTS IN APPRAISAL PROCESS AND COMPLIANCE PROGRAMS.

(a) Study.—The Comptroller General shall conduct a comprehensive study on possible improvements in the appraisal process generally, and specifically on the consistency in and the effectiveness of, and possible improvements in, State compliance efforts and programs in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. In addition, this study shall examine the existing exemptions to the use of certified appraisers issued by Federal financial institutions regulatory agencies. The study shall also review the threshold level established by Federal regulators for compliance under title XI and whether there is a need to revise them to reflect the addition of consumer protection to the purposes and functions of the Appraisal Sub-
committee. The study shall additionally examine the quality of different types of mortgage collateral valuations produced by broker price opinions, automated valuation models, licensed appraisals, and certified appraisals, among others, and the quality of appraisals provided through different distribution channels, including appraisal management companies, independent appraisal operations within a mortgage originator, and fee-for-service appraisals. The study shall also include an analysis and statistical breakdown of enforcement actions taken during the last 10 years against different types of appraisers, including certified, licensed, supervisory, and trainee appraisers. Furthermore, the study shall examine the benefits and costs, as well as the advantages and disadvantages, of establishing a national repository to collect data related to real estate property collateral valuations performed in the United States.

(b) REPORT.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report on the study under subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, together with such recommendations for administrative or
legislative action, at the Federal or State level, as the Comptroller General may determine to be appropriate.

(c) ADDITIONAL STUDY REQUIRED.—The Comptroller General shall conduct an additional study to determine the effects that the changes to the seller-guide appraisal requirements of Fannie Mae and Freddie Mac contained in the Home Valuation Code of Conduct have on small business, like mortgage brokers and independent appraisers, and consumers, including the effect on the—

(1) quality and costs of appraisals;

(2) length of time for obtaining appraisals;

(3) impact on consumer protection, especially regarding maintaining appraisal independence, abating appraisal inflation, and mitigating acts of appraisal fraud;

(4) structure of the appraisal industry, especially regarding appraisal management companies, fee-for-service appraisers, and the regulation of appraisal management companies by the states; and

(5) impact on mortgage brokers and other small business professionals in the financial services industry.

(d) ADDITIONAL REPORT.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit an addi-
tional report to the Committee on Financial Services of
the House of Representatives and the Committee on
Banking, Housing, and Urban Affairs of the Senate con-
taining the findings and conclusions of the Comptroller
General with respect to the study conducted pursuant to
subsection (c). Such additional report shall take into con-
sideration the Small Business Administration’s views on
how small businesses are affected by the Home Valuation
Code of Conduct.

SEC. 9505. EQUAL CREDIT OPPORTUNITY ACT AMENDMENT.

Subsection (e) of section 701 of the Equal Credit Op-
portunity Act (15 U.S.C. 1691) is amended to read as
follows:

“(e) COPIES FURNISHED TO APPLICANTS.—

“(1) IN GENERAL.—Each creditor shall furnish
to an applicant a copy of any and all written ap-
praisals and valuations developed in connection with
the applicant’s application for a loan that is secured
or would have been secured by a first lien on a
dwelling promptly upon completion, but in no case
later than 3 days prior to the closing of the loan,
whether the creditor grants or denies the applicant’s
request for credit or the application is incomplete or
withdrawn.
“(2) Waiver.—The applicant may waive the 3
day requirement provided for in paragraph (1), ex-
cept where otherwise required in law.

“(3) Reimbursement.—The applicant may be
required to pay a reasonable fee to reimburse the
creditor for the cost of the appraisal, except where
otherwise required in law.

“(4) Free copy.—Notwithstanding paragraph
(3), the creditor shall provide a copy of each written
appraisal or valuation at no additional cost to the
applicant.

“(5) Notification to applicants.—At the
time of application, the creditor shall notify an ap-
plicant in writing of the right to receive a copy of
each written appraisal and valuation under this sub-
section.

“(6) Regulations.—The Board shall prescribe
regulations to implement this subsection within 1
year of the date of the enactment of this subsection.

“(7) Valuation defined.—For purposes of
this subsection, the term ‘valuation’ shall include
any estimate of the value of a dwelling developed in
connection with a creditor’s decision to provide cred-
it, including those values developed pursuant to a
policy of a government sponsored enterprise or by an
automated valuation model, a broker price opinion, or other methodology or mechanism.”.

SEC. 9506. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974 AMENDMENT RELATING TO CERTAIN APPRAISAL FEES.

Section 4 of the Real Estate Settlement Procedures Act of 1974 is amended by adding at the end the following new subsection:

“(c) The standard form described in subsection (a) shall include, in the case of an appraisal coordinated by an appraisal management company (as such term is defined in section 1121(11) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(11))), a clear disclosure of—

“(1) the fee paid directly to the appraiser by such company; and

“(2) the administration fee charged by such company.”.
Subtitle G—Sense of Congress Regarding the Importance of Government Sponsored Enterprises Reform

SEC. 9601. 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.

(a) FINDINGS.—The Congress finds as follows:

(1) The Government-sponsored enterprises, Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), were chartered by Congress to ensure a reliable and affordable supply of mortgage funding, but enjoy a dual legal status as privately owned corporations with Government mandated affordable housing goals.

(2) In 1996, the Department of Housing and Urban Development required that 42 percent of Fannie Mae’s and Freddie Mac’s mortgage financing should go to borrowers with income levels below the median for a given area.
(3) In 2004, the Department of Housing and Urban Development revised those goals, increasing them to 56 percent of their overall mortgage purchases by 2008, and additionally mandated that 12 percent of all mortgage purchases by Fannie Mae and Freddie Mac be “special affordable” loans made to borrowers with incomes less than 60 percent of an area’s median income, a target that ultimately increased to 28 percent for 2008.

(4) To help fulfill those mandated affordable housing goals, in 1995 the Department of Housing and Urban Development authorized Fannie Mae and Freddie Mac to purchase subprime securities that included loans made to low-income borrowers.

(5) After this authorization to purchase subprime securities, subprime and near-prime loans increased from 9 percent of securitized mortgages in 2001 to 40 percent in 2006, while the market share of conventional mortgages dropped from 78.8 percent in 2003 to 50.1 percent by 2007 with a corresponding increase in subprime and Alt-A loans from 10.1 percent to 32.7 percent over the same period.

(6) In 2004 alone, Fannie Mae and Freddie Mac purchased $175,000,000,000 in subprime mort-
gage securities, which accounted for 44 percent of the market that year, and from 2005 through 2007, Fannie Mae and Freddie Mac purchased approximately $1,000,000,000,000 in subprime and Alt-A loans, while Fannie Mae’s acquisitions of mortgages with less than 10 percent down payments almost tripled.

(7) According to data from the Federal Housing Finance Agency (FHFA) for the fourth quarter of 2008, Fannie Mae and Freddie Mac own or guarantee 75 percent of all newly originated mortgages, and Fannie Mae and Freddie Mac currently own 13.3 percent of outstanding mortgage debt in the United States and have issued mortgage-backed securities for 31.0 percent of the residential debt market, a combined total of 44.3 percent of outstanding mortgage debt in the United States.

(8) On September 7, 2008, the FHFA placed Fannie Mae and Freddie Mac into conservatorship, with the Treasury Department subsequently agreeing to purchase at least $200,000,000,000 of preferred stock from each enterprise in exchange for warrants for the purchase of 79.9 percent of each enterprise’s common stock.
(9) The conservatorship for Fannie Mae and Freddie Mac has potentially exposed taxpayers to upwards of $5,300,000,000,000 worth of risk.

(10) The hybrid public-private status of Fannie Mae and Freddie Mac is untenable and must be resolved to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.

(b) Sense of the Congress.—It is the sense of the Congress that efforts to enhance by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit would be incomplete without enactment of meaningful structural reforms of Fannie Mae and Freddie Mac.

Subtitle H—Reports and Data Collection

SEC. 9701. GAO STUDY REPORT ON GOVERNMENT EFFORTS TO COMBAT MORTGAGE FORECLOSURE RESCUE SCAMS AND LOAN MODIFICATION FRAUD.

(a) Study.—The Comptroller General of the United States shall conduct a study of the current inter-agency efforts of the Secretary of the Treasury, the Secretary of
Housing and Urban Development, the Attorney General, and the Federal Trade Commission to crackdown on mortgage foreclosure rescue scams and loan modification fraud in order to advise the Congress to the risks and vulnerabilities of emerging schemes in the loan modification arena.

(b) Report.—

(1) In general.—The Comptroller General shall submit a report to the Congress on the study conducted under subsection (a) containing such recommendations for legislative and administrative actions as the Comptroller General may determine to be appropriate in addition to the recommendations required under paragraph (2).

(2) Specific topics.—The report made under paragraph (1) shall include—

(A) an evaluation of the effectiveness of the inter-agency task force current efforts to combat mortgage foreclosure rescue scams and loan modification fraud scams;

(B) specific recommendations on agency or legislative action that are essential to properly protect homeowners from mortgage foreclosure rescue scams and loan modification fraud scams; and
(C) the adequacy of financial resources
that the Federal Government is allocating to—

(i) crackdown on loan modification
and foreclosure rescue scams; and

(ii) the education of homeowners
about fraudulent scams relating to loan
modification and foreclosure rescues.

SEC. 9702. REPORTING OF MORTGAGE DATA BY STATE.

(a) In General.—Section 104(a) of the Helping
Families Save Their Homes Act of 2009 (division A of
Public Law 111–22) is amended—

(1) in paragraph (2), by striking “resulting”
and inserting “in each State that result”;

(2) in paragraph (3), by inserting “each State
for” after “modifications in”; and

(3) in paragraph (4), by inserting “in each
State” after “total number of loans”.

(b) Conforming Amendment.—Section
104(b)(1)(A) of such Act is amended by adding at the end
the following sentence: “Not later than 60 days after the
date of the enactment of the Wall Street Reform and Con-
sumer Protection Act of 2009, the Comptroller of the Cur-
rency and the Director of the Office of Thrift Supervision
shall update such requirements to reflect amendments
made to this section by such Act.”.
Subtitle I—Multifamily Mortgage Resolution

SEC. 9801. MULTIFAMILY MORTGAGE RESOLUTION PROGRAM.

(a) Establishment.—The Secretary of Housing and Urban Development shall develop a program under this subsection to ensure the protection of current and future tenants and at-risk multifamily properties, where feasible, based on criteria that may include—

(1) creating sustainable financing of such properties, that may take into consideration such factors as—

(A) the rental income generated by such properties; and

(B) the preservation of adequate operating reserves;

(2) maintaining the level of Federal, State, and city subsidies in effect as of the date of the enactment of this Act;

(3) providing funds for rehabilitation; and

(4) facilitating the transfer of such properties, when appropriate and with the agreement of owners, to responsible new owners and ensuring affordability of such properties.
(b) COORDINATION.—The Secretary of Housing and Urban Development may, in carrying out the program developed under this section, coordinate with the Secretary of the Treasury, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Agency, and any other Federal Government agency that the Secretary considers appropriate.

(e) DEFINITION.—For purposes of this section, the term “multifamily properties” means a residential structure that consists of 5 or more dwelling units.

Subtitle J—Study of Effect of Drywall Presence on Foreclosures

SEC. 9901. STUDY OF EFFECT OF DRYWALL PRESENCE ON FORECLOSURES.

(a) STUDY.—The Secretary of Housing and Urban Development, in consultation with the Secretary of the Treasury, shall conduct a study of the effect on residential mortgage loan foreclosures of—

(1) the presence in residential structures subject to such mortgage loans of drywall that was imported from China during the period beginning with 2004 and ending at the end of 2007; and
(2) the availability of property insurance for residential structures in which such drywall is present.

(b) REPORT.—Not later than the expiration of the 120-day period beginning on the date of the enactment of this Act, the Secretary of Housing and Urban Development shall submit to the Congress a report on the study conducted under subsection (a) containing its findings, conclusions, and recommendations.

Subtitle K—Home Affordable Modification Program

SEC. 9911. HOME AFFORDABLE MODIFICATION PROGRAM GUIDELINES.

(a) NET PRESENT VALUE INPUT DATA.—The Secretary of the Treasury (in this section referred to as the “Secretary”) shall revise the supplemental directives and other guidelines for the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary of the Treasury, authorized under the Emergency Economic Stabilization Act of 2008 (Public Law 110–343), to require each mortgage servicer participating in such program to provide each borrower under a mortgage whose request for a mortgage modification under the Program is denied with all borrower-related and mortgage-related input data used in any net present value
(NPV) analyses performed in connection with the subject mortgage. Such input data shall be provided to the borrower at the time of such denial.

(b) Web-based Site for NPV Calculator and Application.—

(1) NPV Calculator.—In carrying out the Home Affordable Modification Program, the Secretary shall establish and maintain a site on the World Wide Web that provides a calculator for net present value analyses of a mortgage, based on the Secretary’s methodology for calculating such value, that mortgagors can use to enter information regarding their own mortgages and that provides a determination after entering such information regarding a mortgage of whether such mortgage would be accepted or rejected for modification under the Program, using such methodology.

(2) Disclosure.—Such Web site shall also prominently disclose that each mortgage servicer participating in such Program may use a method for calculating net present value of a mortgage that is different than the method used by such calculator.

(3) Application.—The Secretary shall make a reasonable effort to include on such World Wide Web site a method for homeowners to apply for a
mortgage modification under the Home Affordable Modification Program.

(c) **Public Availability of NPV Methodology, Computer Model, and Variables.**—The Secretary shall make publicly available, including by posting on a World Wide Web site of the Secretary—

(1) the Secretary’s methodology and computer model, including all formulae used in such computer model, used for calculating net present value of a mortgage that is used by the calculator established pursuant to subsection (b); and

(2) all variables used in such net present value analysis.

**Subtitle L—Making Home Affordable Program**

**SEC. 9921. Public Availability of Information.**

(a) **Revisions to Program Guidelines.**—The Secretary of the Treasury (in this section referred to as the “Secretary”) shall revise the guidelines for the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary of the Treasury, authorized under the Emergency Economic Stabilization Act of 2008 (Public Law 110–343), to provide that the data being collected by the Secretary from each mortgage
servicer and lender participating in the Program is made public in accordance with subsection (b).

(b) PUBLIC AVAILABILITY.—Data shall be made available according to the following guidelines:

(1) Not more than 14 days after each monthly deadline for submission of data by mortgage servicers and lenders participating in the Program, reports shall be made publicly available by means of a World Wide Web site of the Secretary, and by submitting a report to the Congress, that shall include the following information:

(A) The number of requests for mortgage modifications under the Program that the servicer or lender has received.

(B) The number of requests for mortgage modifications under the Program that the servicer or lender has processed.

(C) The number of requests for mortgage modifications under the Program that the servicer or lender has approved.

(D) The number of requests for mortgage modifications under the Program that the servicer or lender has denied.

(2) Not more than 60 days after each monthly deadline for submission of data by mortgage
servicers and lenders participating in the Program, the Secretary shall make data tables available to the public at the individual record level. The Secretary shall issue regulations prescribing—

(A) the procedures for disclosing such data to the public; and

(B) such deletions as the Secretary may determine to be appropriate to protect any privacy interest of any mortgage modification applicant, including the deletion or alteration of the applicant’s name and identification number.

TITLE VIII—FORECLOSURE AVOIDANCE AND AFFORDABLE HOUSING

SEC. 10001. EMERGENCY MORTGAGE RELIEF.

(a) USE OF TARP FUNDS.—Using the authority available under sections 101(a) and 115(a) of division A of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a), 5225(a)), the Secretary of the Treasury shall transfer to the Secretary of Housing and Urban Development $3,000,000,000, and the Secretary of Housing and Urban Development shall credit such amount to the Emergency Homeowners’ Relief Fund, which such Secretary shall establish pursuant to section 107 of the Emergency Housing Act of 1975 (12 U.S.C. 2706), as such
Act is amended by this section, for use for emergency mortgage assistance in accordance with title I of such Act. 

(b) Reauthorization of Emergency Mortgage Relief Program.—Title I of the Emergency Housing Act of 1975 is amended—

(1) in section 103 (12 U.S.C. 2702)—

(A) in paragraph (2)—

(i) by striking “have indicated” and all that follows through “regulation of the holder” and insert “have certified”;

(ii) by striking “(such as the volume of delinquent loans in its portfolio)”;

(iii) by striking “, except that such statement” and all that follows through “purposes of this title”; and

(B) in paragraph (4), by inserting “or medical conditions” after “adverse economic conditions”;

(2) in section 104 (12 U.S.C. 2703)—

(A) in subsection (b), by striking “, but such assistance” and all that follows through the period at the end and inserting the following: “. The amount of assistance provided to a homeowner under this title shall be an amount that the Secretary determines is rea-
reasonably necessary to supplement such amount
as the homeowner is capable of contributing to-
ward such mortgage payment, except that the
aggregate amount of such assistance provided
for any homeowner shall not exceed $50,000.”;

(B) in subsection (d), by striking “interest
on a loan or advance” and all that follows
through the end of the subsection and inserting
the following: “(1) the rate of interest on any
loan or advance of credit insured under this
title shall be fixed for the life of the loan or ad-
vance of credit and shall not exceed the rate of
interest that is generally charged for mortgages
on single-family housing insured by the Sec-
retary of Housing and Urban Development
under title II of the National Housing Act at
the time such loan or advance of credit is made,
and (2) no interest shall be charged on interest
which is deferred on a loan or advance of credit
made under this title. In establishing rates,
terms and conditions for loans or advances of
credit made under this title, the Secretary shall
take into account a homeowner’s ability to
repay such loan or advance of credit.”; and
(C) in subsection (e), by inserting after the period at the end of the first sentence the following: “Any eligible homeowner who receives a grant or an advance of credit under this title may repay the loan in full, without penalty, by lump sum or by installment payments at any time before the loan becomes due and payable.”;

(3) in section 105 (12 U.S.C. 2704)—

(A) by striking subsection (b);

(B) in subsection (e)—

(i) by inserting “and emergency mortgage relief payments made under section 106” after “insured under this section”; and

(ii) by striking “$1,500,000,000 at any one time” and inserting “$3,000,000,000”;

(C) by redesignating subsections (e), (d), and (e) as subsections (b), (c), and (d), respectively; and

(D) by adding at the end the following new subsection:

“(e) The Secretary shall establish underwriting guidelines or procedures to allocate amounts made avail-
able for loans and advances insured under this section and for emergency relief payments made under section 106 based on the likelihood that a mortgagor will be able to resume mortgage payments, pursuant to the requirement under section 103(5).”;

(4) in section 107—

(A) by striking “(a)”;

(B) by striking subsection (b);

(5) in section 108 (12 U.S.C. 2707), by adding at the end the following new subsection:

“(d) COVERAGE OF EXISTING PROGRAMS.—The Secretary shall allow funds to be administered by a State that has an existing program that is determined by the Secretary to provide substantially similar assistance to homeowners. After such determination is made such State shall not be required to modify such program to comply with the provisions of this title.”;

(6) in section 109 (12 U.S.C. 2708)—

(A) in the section heading, by striking “AUTHORIZATION AND”;

(B) by striking subsection (a);

(C) by striking “(b)”;

(D) by striking “1977” and inserting “2011”;

“2011”;}
(7) by striking sections 110, 111, and 113 (12 U.S.C. 2709, 2710, 2712); and

(8) by redesignating section 112 (12 U.S.C. 2711) as section 110.

SEC. 10002. ADDITIONAL ASSISTANCE FOR NEIGHBORHOOD STABILIZATION PROGRAM.

Using the authority made available under sections 101(a) and 115(a) of division A of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a), 5225(a)), the Secretary of the Treasury shall transfer to the Secretary of Housing and Urban Development $1,000,000,000, and the Secretary of Housing and Urban Development shall use such amounts for assistance to States and units of general local government for the redevelopment of abandoned and foreclosed homes, in accordance with the same provisions applicable under the second undesignated paragraph under the heading “Community Planning and Development—Community Development Fund” in title XII of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 217) to amounts made available under such second undesignated paragraph, except as follows:

(1) Notwithstanding the matter of such second undesignated paragraph that precedes the first pro-
viso, amounts made available by this section shall re-
main available until expended.

(2) The 3rd, 4th, 5th, 6th, 7th, and 15th prov-
visos of such second undesignated paragraph shall
not apply to amounts made available by this section.

(3) Amounts made available by this section
shall be allocated based on a funding formula for
such amounts established by the Secretary in ac-
cordance with section 2301(b) of the Housing and
Economic Recovery Act of 2008 (42 U.S.C. 5301
note), except that—

(A) notwithstanding paragraph (2) of such
section 2301(b), the formula shall be estab-
lished not later than 30 days after the date of
the enactment of this Act;

(B) the Secretary may not establish any
minimum grant amount or size for grants to
States;

(C) the Secretary may establish a min-
imum grant amount for direct allocations to
units of general local government located within
a State, which shall not exceed $1,000,000; and

(D) each State and local government re-
ceiving grant amounts shall establish proce-
dures to create preferences for the development
of affordable rental housing for properties assisted with amounts made available by this section.

(4) Paragraph (1) of section 2301(c) of the Housing and Economic Recovery Act of 2008 shall not apply to amounts made available by this section.

(5) Section 2302 of the Housing and Economic Recovery Act of 2008 shall not apply to amounts made available by this section.

(6) The fourth proviso from the end of such second undesignated paragraph shall be applied to amounts made available by this section by substituting “2013” for “2012”.

(7) Notwithstanding section 2301(a) of the Housing and Economic Recovery Act of 2008, the term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and other territory or possession of the United States for purposes of this section and title III of division B of such Act, as applied to amounts made available by this section.

(8)(A) None of the amounts made available by this section shall be distributed to—
(i) any organization which has been convicted for a violation under Federal law relating to an election for Federal office; or

(ii) any organization which employs applicable individuals.

(B) In this paragraph, the term “applicable individual” means an individual who—

(i) is—

(I) employed by the organization in a permanent or temporary capacity;

(II) contracted or retained by the organization; or

(III) acting on behalf of, or with the express or apparent authority of, the organization; and

(ii) has been convicted for a violation under Federal law relating to an election for Federal office.

TITLE IX—NONADMITTED AND REINSURANCE REFORM ACT

SEC. 10051. SHORT TITLE.

This title may be cited as the “Nonadmitted and Reinsurance Reform Act of 2009”.
SEC. 10052. EFFECTIVE DATE.

Except as otherwise specifically provided in this title, this title shall take effect upon the expiration of the 12-month period beginning on the date of the enactment of this Act.

Subtitle A—Nonadmitted Insurance

SEC. 10101. REPORTING, PAYMENT, AND ALLOCATION OF PREMIUM TAXES.

(a) Home State’s Exclusive Authority.—No State other than the home State of an insured may require any premium tax payment for nonadmitted insurance.

(b) Allocation of Nonadmitted Premium Taxes.—

(1) In general.—The States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured’s home State described in subsection (a).

(2) Effective date.—Except as expressly otherwise provided in such compact or other procedures, any such compact or other procedures—

(A) if adopted on or before the expiration of the 330-day period that begins on the date of the enactment of this Act, shall apply to any premium taxes that, on or after such date of enactment, are required to be paid to any State
that is subject to such compact or procedures;

and

(B) if adopted after the expiration of such
330-day period, shall apply to any premium
taxes that, on or after January 1 of the first
calendar year that begins after the expiration of
such 330-day period, are required to be paid to
any State that is subject to such compact or
procedures.

(3) REPORT.—Upon the expiration of the 330-
day period referred to in paragraph (2), the NAIC
may submit a report to the Committee on Financial
Services and Committee on the Judiciary of the
House of Representatives and the Committee on
Banking, Housing, and Urban Affairs of the Senate
identifying and describing any compact or other pro-
cedures for allocation among the States of premium
taxes that have been adopted during such period by
any States.

(4) NATIONWIDE SYSTEM.—The Congress in-
tends that each State adopt nationwide uniform re-
quirements, forms, and procedures, such as an inter-
state compact, that provides for the reporting, pay-
ment, collection, and allocation of premium taxes for
nonadmitted insurance consistent with this section.
(c) ALLOCATION BASED ON TAX ALLOCATION REPORT.—To facilitate the payment of premium taxes among the States, an insured’s home State may require surplus lines brokers and insureds who have independently procured insurance to annually file tax allocation reports with the insured’s home State detailing the portion of the nonadmitted insurance policy premium or premiums attributable to properties, risks or exposures located in each State. The filing of a nonadmitted insurance tax allocation report and the payment of tax may be made by a person authorized by the insured to act as its agent.

SEC. 10102. REGULATION OF NONADMITTED INSURANCE BY INSURED’S HOME STATE.

(a) HOME STATE AUTHORITY.—Except as otherwise provided in this section, the placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured’s home State.

(b) BROKER LICENSING.—No State other than an insured’s home State may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate nonadmitted insurance with respect to such insured.

(c) ENFORCEMENT PROVISION.—With respect to section 10101 and subsections (a) and (b) of this section, any law, regulation, provision, or action of any State that applies or purports to apply to nonadmitted insurance sold
to, solicited by, or negotiated with an insured whose home State is another State shall be preempted with respect to such application.

(d) **Workers’ Compensation Exception.**—This section may not be construed to preempt any State law, rule, or regulation that restricts the placement of workers’ compensation insurance or excess insurance for self-funded workers’ compensation plans with a nonadmitted insurer.

**SEC. 10103. PARTICIPATION IN NATIONAL PRODUCER DATABASE.**

After the expiration of the 2-year period beginning on the date of the enactment of this Act, a State may not collect any fees relating to licensing of an individual or entity as a surplus lines broker in the State unless the State has in effect at such time laws or regulations that provide for participation by the State in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

**SEC. 10104. UNIFORM STANDARDS FOR SURPLUS LINES ELIGIBILITY.**

A State may not—

(1) impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted in-
surfers domiciled in a United States jurisdiction, except in conformance with such requirements and criteria in sections 5A(2) and 5C(2)(a) of the Non-Admitted Insurance Model Act, unless the State has adopted nationwide uniform requirements, forms, and procedures developed in accordance with section 10101(b) of this title that include alternative nationwide uniform eligibility requirements; and

(2) prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

SEC. 10105. STREAMLINED APPLICATION FOR COMMERCIAL PURCHASERS.

A surplus lines broker seeking to procure or place nonadmitted insurance in a State for an exempt commercial purchaser shall not be required to satisfy any State requirement to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if—
(1) the broker procuring or placing the surplus
lines insurance has disclosed to the exempt commer-
cial purchaser that such insurance may or may not
be available from the admitted market that may pro-
vide greater protection with more regulatory over-
sight; and

(2) the exempt commercial purchaser has sub-
sequently requested in writing the broker to procure
or place such insurance from a nonadmitted insurer.

SEC. 10106. GAO STUDY OF NONADMITTED INSURANCE
MARKET.

(a) IN GENERAL.—The Comptroller General of the
United States shall conduct a study of the nonadmitted
insurance market to determine the effect of the enactment
of this subtitle on the size and market share of the non-
admitted insurance market for providing coverage typi-
cally provided by the admitted insurance market.

(b) CONTENTS.—The study shall determine and ana-
lyze—

(1) the change in the size and market share of
the nonadmitted insurance market and in the num-
ber of insurance companies and insurance holding
companies providing such business in the 18-month
period that begins upon the effective date of this
Act;
(2) the extent to which insurance coverage typically provided by the admitted insurance market has shifted to the nonadmitted insurance market;

(3) the consequences of any change in the size and market share of the nonadmitted insurance market, including differences in the price and availability of coverage available in both the admitted and nonadmitted insurance markets;

(4) the extent to which insurance companies and insurance holding companies that provide both admitted and nonadmitted insurance have experienced shifts in the volume of business between admitted and nonadmitted insurance; and

(5) the extent to which there has been a change in the number of individuals who have nonadmitted insurance policies, the type of coverage provided under such policies, and whether such coverage is available in the admitted insurance market.

(c) Consultation with NAIC.—In conducting the study under this section, the Comptroller General shall consult with the NAIC.

(d) Report.—The Comptroller General shall complete the study under this section and submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and
Urban Affairs of the Senate regarding the findings of the study not later than 30 months after the effective date of this Act.

SEC. 10107. DEFINITIONS.

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

(1) **Admitted Insurer.**—The term “admitted insurer” means, with respect to a State, an insurer licensed to engage in the business of insurance in such State.

(2) **Affiliate.**—The term “affiliate” means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(3) **Affiliated Group.**—The term “affiliated group” means any group of entities that are all affiliated.

(4) **Control.**—An entity has “control” over another entity if—

(A) the entity directly or indirectly or acting through one or more other persons owns, controls or has the power to vote 25 percent or more of any class of voting securities of the other entity; or
(B) the entity controls in any manner the
election of a majority of the directors or trust-
ees of the other entity.

(5) EXEMPT COMMERCIAL PURCHASER.—The
term “exempt commercial purchaser” means any
person purchasing commercial insurance that, at the
time of placement, meets the following requirements:

(A) The person employs or retains a quali-
ified risk manager to negotiate insurance cov-
erage.

(B) The person has paid aggregate nation-
wide commercial property and casualty insur-
ance premiums in excess of $100,000 in the im-
mediately preceding 12 months.

(C)(i) The person meets at least one of the
following criteria:

(I) The person possesses a net
worth in excess of $20,000,000, as
such amount is adjusted pursuant to
clause (ii).

(II) The person generates annual
revenues in excess of $50,000,000, as
such amount is adjusted pursuant to
clause (ii).
(III) The person employs more than 500 full time or full time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

(IV) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least $30,000,000, as such amount is adjusted pursuant to clause (ii).

(V) The person is a municipality with a population in excess of 50,000 persons.

(ii) Effective on the fifth January 1 occurring after the date of the enactment of this Act and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II), and (IV) of clause (i) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(6) HOME STATE.—
(A) IN GENERAL.—Except as provided in subparagraph (B), the term “home State” means, with respect to an insured—

(i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or

(ii) if 100 percent of the insured risk is located out of the State referred to in subparagraph (A), the State to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

(B) AFFILIATED GROUPS.—If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term “home State” means the home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(7) INDEPENDENTLY PROCURED INSURANCE.—The term “independently procured insurance” means insurance procured directly by an insured from a nonadmitted insurer.
(8) NAIC.—The term “NAIC” means the National Association of Insurance Commissioners or any successor entity.

(9) Nonadmitted insurance.—The term “nonadmitted insurance” means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.


(11) Nonadmitted insurer.—The term “nonadmitted insurer” means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State.

(12) Qualified risk manager.—The term “qualified risk manager” means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:
(A) The person is an employee of, or third party consultant retained by, the commercial policyholder.

(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(C) The person—

(i)(I) has a bachelor’s degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management; and

(ii)(aa) has three years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(bb) has one of the following designations:

(AA) a designation as a Chartered Property and
Casualty Underwriter (in this subparagraph referred to as “CPCU”) issued by the American Institute for CPCU/Insurance Institute of America;

(BB) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(CC) a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;

(DD) a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or

(EE) any other designation, certification, or license determined by a State insurance commissioner or
other State insurance regulatory official or entity to demonstrate minimum competency in risk management;

(ii)(I) has at least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(ii)(II) has any one of the designations specified in subitems (AA) through (EE) of clause (i)(II)(bb);

(iii) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management.
(13) PREMIUM TAX.—The term “premium tax” means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(14) SURPLUS LINES BROKER.—The term “surplus lines broker” means an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State with nonadmitted insurers.

(15) STATE.—The term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

Subtitle B—Reinsurance

SEC. 10201. REGULATION OF CREDIT FOR REINSURANCE AND REINSURANCE AGREEMENTS.

(a) CREDIT FOR REINSURANCE.—If the State of domicile of a ceding insurer is an NAIC-accredited State,
or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the insurer’s ceded risk, then no other State may deny such credit for reinsurance.

(b) ADDITIONAL PREEMPTION OF EXTRATERRITORIAL APPLICATION OF STATE LAW.—In addition to the application of subsection (a), all laws, regulations, provisions, or other actions of a State that is not the domiciliary State of the ceding insurer, except those with respect to taxes and assessments on insurance companies or insurance income, are preempted to the extent that they—

(1) restrict or eliminate the rights of the ceding insurer or the assuming insurer to resolve disputes pursuant to contractual arbitration to the extent such contractual provision is not inconsistent with the provisions of title 9, United States Code;

(2) require that a certain State’s law shall govern the reinsurance contract, disputes arising from the reinsurance contract, or requirements of the reinsurance contract;

(3) attempt to enforce a reinsurance contract on terms different than those set forth in the rein-
insurance contract, to the extent that the terms are not inconsistent with this subtitle; or

(4) otherwise apply the laws of the State to re-
insurance agreements of ceding insurers not domic-
iced in that State.

SEC. 10202. REGULATION OF REINSURER SOLVENCY.

(a) DOMICILIARY STATE REGULATION.—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, such State shall be solely responsible for regulating the financial solvency of the reinsurer.

(b) NONDOMICILIARY STATES.—

(1) LIMITATION ON FINANCIAL INFORMATION REQUIREMENTS.—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, no other State may require the reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domiciliary State.

(2) RECEIPT OF INFORMATION.—No provision of this section shall be construed as preventing or prohibiting a State that is not the State of domicile
of a reinsurer from receiving a copy of any financial statement filed with its domiciliary State.

SEC. 10203. DEFINITIONS.

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

(1) CEDING INSURER.—The term “ceding insurer” means an insurer that purchases reinsurance.

(2) DOMICILIARY STATE.—The terms “State of domicile” and “domiciliary State” means, with respect to an insurer or reinsurer, the State in which the insurer or reinsurer is incorporated or entered through, and licensed.

(3) REINSURANCE.—The term “reinsurance” means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(4) REINSURER.—

(A) IN GENERAL.—The term “reinsurer” means an insurer to the extent that the insurer—

(i) is principally engaged in the business of reinsurance;

(ii) does not conduct significant amounts of direct insurance as a percentage of its net premiums; and
(iii) is not engaged in an ongoing basis in the business of soliciting direct insurance.

(B) DETERMINATION.—A determination of whether an insurer is a reinsurer shall be made under the laws of the State of domicile in accordance with this paragraph.

(5) STATE.—The term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

Subtitle C—Rule of Construction

SEC. 10301. RULE OF CONSTRUCTION.

Nothing in this title or amendments to this title shall be construed to modify, impair, or supersede the application of the antitrust laws. Any implied or actual conflict between this title and any amendments to this title and the antitrust laws shall be resolved in favor of the operation of the antitrust laws.

SEC. 10302. SEVERABILITY.

If any section or subsection of this title, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this title,
and the application of the provision to any other person or circumstance, shall not be affected.

**TITLE X—INTEREST-BEARING TRANSACTION ACCOUNTS AUTHORIZED**

**SEC. 11001. INTEREST-BEARING TRANSACTION ACCOUNTS AUTHORIZED.**

(a) Repeal of Prohibition on Payment of Interest on Demand Deposits.—

(1) **Federal reserve act.**—Section 19(i) of the Federal Reserve Act (12 U.S.C. 371a) is amended to read as follows:

“(i) [Repealed].”

(2) **Home owners’ loan act.**—The first sentence of section 5(b)(1)(B) of the Home Owners’ Loan Act (12 U.S.C. 1464(b)(1)(B)) is amended by striking “savings association may not—” and all that follows through “(ii) permit any” and inserting “savings association may not permit any”.

(3) **Federal deposit insurance act.**—Section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) is amended to read as follows:

“(g) [Repealed].”
(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect at the end of the 1-year period beginning on the date of the enactment of this Act.

Passed the House of Representatives December 11, 2009.

Attest: LORRAINE C. MILLER,

Clerk.