HOUSE PROPOSED AMENDMENT TO TITLE X

[Page and line numbers refer to page and line numbers of the base text of the Conference Report]

Page 1380, line 4, after the period insert “The Bureau shall be considered an Executive agency as defined in section 105 of title 5, United States Code. Except as otherwise provided expressly by law, all Federal laws dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Bureau.”.

Page 1385, line 10, insert “in accordance with the applicable provisions of title 5, United States Code” before the period.

Page 1385, beginning on line 16, strike “Notwithstanding any other” and all that follows through line 22 and insert “Unless otherwise provided expressly by law, any individual appointed under this section shall be an employee as defined in section 2105 of title 5, United States Code, and subject to the provisions of such title and other laws generally applicable to the employees of an Executive agency.”
Page 1385 strike line 23 and all that follows through page 1386, line 15 and insert the following new paragraphs:

(2) COMPENSATION.—Notwithstanding any otherwise applicable provision of title 5, United States Code, concerning compensation, including the provisions of chapter 51 or subchapter III of chapter 53, the following provisions shall apply with respect to employees of the Bureau:

(A) The rates of basic pay for all employees of the Bureau may be set and adjusted by the Director.

(B) The Director shall at all times provide compensation (including benefits) to each class of employees that, at a minimum, are equivalent to the compensation and benefits then being provided by the Board of Governors for the corresponding class of employees.

(C) All such employees shall be compensated (including benefits) on terms and conditions that are consistent with the terms and conditions set forth in section 11(l) of the Federal Reserve Act (12 U.S.C. 248(l)).
(3) Labor-management relations.—Chapter 71 of title 5, United States Code, shall apply to the Bureau and the employees of the Bureau.

(4) Consultation.—The Bureau shall consult with the Office of Personnel Management in the implementation of the compensation authorities provided under paragraph (2).

(5) Ombudsman.—The Director shall appoint 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 Director may delegate to the Ombudsperson.
Page 1396, line 14, insert “and civil rights,” after “lending.”

Page 1398, line 1, insert “and the Committee on Energy and Commerce” after “Services”.

Page 1398, line 8, insert “and the Committee on Energy and Commerce” after “Services”.

Page 1401, strike line 1 and all that follows through line 8, and insert the following new subparagraphs:

(B) ADJUSTMENT OF AMOUNT.—The dollar amount referred to in subparagraph (A)(iii) shall be adjusted annually, using the average of the percentages by which the operating expenses of each comparative financial regulatory agency, as reported in their annual financial statements, differ from the operating expenses of that agency from the prior year.

(C) DEFINITION.—For the purposes of this section the term “comparative financial regulatory agency” means—

(i) the Board of Governors;

(ii) the Commission;

(iii) the Federal Deposit Insurance Corporation; and

(iv) the Comptroller of the Currency.
(D) **Reviewability.**—Notwithstanding any other provision in this title, the funds derived from the Federal System pursuant to this subsection shall not be subject to review by the Committees on Appropriations of the House of Representatives and the Senate.

Page 1408, after line 24, insert the following new subsection:

(e) **Authorization of Appropriations.**—For the purposes of carrying out the authorities granted in this title, under the enumerated consumer laws, and the laws and authorities 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, 2012, 2013, and 2014.

Page 1424, strike line 9 and all that follows through line 25 (and redesignate subsequent subsections accordingly).

Page 1425, line 23, strike “or” after the semicolon.

Page 1426, line 8, strike the period at the end and insert “; or”.

Page 1426, after line 8, insert the following new subparagraph:
(D) offers or provides to a consumer—

(i) any payday loan;

(ii) any payment instrument, foreign exchange service, or any service for transmitting monetary value;

(iii) any private education loan, as defined in section 140 of the Truth in Lending Act (15 U.S.C. 1650); or

(iv) any check cashing service.

Page 1445, strike line 22 and all that follows through page 1447, line 12, and insert the following new subsections:

(c) 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.

(d) **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.

Page 1459, strike line 22 and all that follows through page 1460, line 10, and insert the following new subsection:

(e) 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 so as to limit the exercise by the
Director and the Agency of any rulemaking, su-
pervisory, enforcement, or other authority, in-
cluding authority to order assessments, regard-
ing any activity that is a financial activity de-
scribed 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 ex-
clusively within the scope of the attorney-client
relationship and is not otherwise provided by or
under the direction of the attorney to any con-
sumer who is not receiving legal advice or serv-
ices from the attorney in connection with such
activity.

(B) EXISTING AUTHORITY.—Paragraph
(1) shall not be construed so as to limit the au-
thority of the Director and the Agency with re-
spect to any activity to the extent that such ac-
tivity is otherwise subject to any of the enumer-
ated consumer laws or the authorities trans-
ferred under subtitle F or H.

(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.

Page 1462, strike line 9 and all that follows through
page 1463, line 8, and insert the following new subpara-
graph (and redesignate the subsequent paragraph accord-
ingly):

(A) REGULATORY COORDINATION.—In the
implementation of appropriate consumer protec-
tion standards for consumer financial products
and services under this title that address the
 provision of services specifically pertaining to
the administration and maintenance of any
specified plan or arrangement, the Director
shall coordinate with the Secretary of Labor
and the Secretary of the Treasury, as appro-
priate.
Page 1469, after line 24, insert the following new subsection:

(t) EXCLUSION FOR PAWNBroKERS.—

(1) IN GENERAL.—The Director and the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority, including authority to order assessments, under this title with respect to any pawnbroker licensed by a State or political subdivision 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 either—

(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 prod-
uct 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 rule-making 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.

Page 1471, after line 4, insert the following new section (and redesignate the subsequent section accordingly):

SEC. 1029. EXCLUSION FOR AUTO DEALERS.

(a) IN GENERAL.—The Director and the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority, including authority to order assessments over a motor vehicle dealer that is predominantly
engaged in the sale and servicing of motor vehicles, the
leasing and servicing of motor vehicles, or both.

(b) CERTAIN FUNCTIONS EXCEPTED.—The provi-
sions of subsection (a) shall not apply to any person, to
the extent that such person—

(1) provides consumers with any services re-
lated to residential or commercial mortgages and
self-financing transactions involving real property;

(2) operates a line of business that involves the
extension of retail credit or retail leases involving
motor vehicles, and in which—

(A) the extension of retail credit or retail
leases are provided directly to consumers; and

(B) the contract governing such extension
of retail credit or retail leases is not predomi-
nantly assigned to a third-party finance or leasing
source; or

(3) offers or provides a consumer financial
product or service not involving or related to the
sale, financing, leasing, rental, repair, refurbish-
ment, maintenance, or other servicing of motor vehi-
cles, motor vehicle parts, or any related or ancillary
product or service.

(c) NO IMPACT ON PRIOR AUTHORITY.—Nothing in
this section shall be construed to modify, limit, or super-
sed the rulemaking or enforcement authority over motor vehicle dealers that could be exercised by any Federal department or agency on the day before the date of enactment of this Act.

(d) No Transfer of Certain Authority.—Notwithstanding any other provision of this Act, the consumer financial protection functions of the Board of Governors and the Federal Trade Commission shall not be transferred to the Director or the Bureau to the extent such functions are with respect to a person described under subsection (a).

(e) Coordination With Office of Service Member Affairs.—The Board of Governors and the Federal Trade Commission shall coordinate with the Office of Service Member Affairs, to ensure that—

(1) service members and their families are educated and empowered to make better informed decisions regarding consumer financial products and services offered by motor vehicle dealers, with a focus on motor vehicle dealers in the proximity of military installations; and

(2) complaints by service members and their families concerning such motor vehicle dealers are effectively monitored and responded to, and where
appropriate, enforcement action is pursued by the authorized agencies.

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

(1) MOTOR VEHICLE.—The term “motor vehicle” means—

(A) any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;

(B) recreational boats and marine equipment;

(C) motorcycles;

(D) motor homes, recreational vehicle trailers, and slide-in campers, as those terms are defined in sections 571.3 and 575.103 (d) of title 49, Code of Federal Regulations, or any successor thereto; and

(E) other vehicles that are titled and sold through dealers.

(2) MOTOR VEHICLE DEALER.—The term “motor vehicle dealer” means any person or resident in the United States, or any territory of the United States, who is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles.
Page 1485, after line 16, insert the following new section (and redesignate the subsequent section accordingly and strike section 989F in title IX):

SEC. 1037. REGULATION OF PERSON-TO-PERSON LENDING.

(a) Scope of Exemption From Federal Securities Regulation.—Section 3(a) of the Securities Act of 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 platform on which multiple loans may be funded or sold in a single transaction, or on which a note representing an interest 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-person lending and person-to-person lending platforms is hereby vested in the Bureau.
(2) INTERIM REQUIREMENTS.—Until the Director issues and adopts disclosure requirements with respect to the sale of consumer loans, or notes representing whole or fractional interests therein, on person-to-person lending platforms, a person-to-person 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 any other provision of this Act, this section shall take effect on the date of the enactment of this Act.

Page 1496, strike line 14 and all that follows through line 24, and insert the following new subparagraph:

“(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”.

Page 1499, after line 18, insert the following new subsection (and redesignate subsequent subsections accordingly):
“(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 Bureau, 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.”.

Page 1506, strike line 10 and all that follows through line 12 (and redesignate subsequent paragraphs accordingly).

Page 1511, line 5, insert “issued,” after “demand.”

Page 1511, line 6, insert a comma after “filed”.

Page 1514, strike line 24 and all that follows through page 1515, line 6, and insert the following new clause:

(i) **OATH AND RECORDEATION.**—The examination of any person pursuant to a demand for oral testimony served under this subsection shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United
States or of the place where the examination is held. The officer before whom oral testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by any individual acting under the direction of and in the presence of the officer, record the testimony of the witness.

Page 1515, lin 12, strike “Bureau investigator” and insert “officer”.

Page 1515, line 21, strike “of” and insert “for”.

Page 1517, line 20, insert “if the refusal is” before “on grounds”.

Page 1539, line 2, strike “have the power to”.

Page 1553, after line 6, insert the following new subparagraph:

(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.

Page 1598, after line 10, insert the following new section (and redesignate subsequent sections accordingly):

6 SEC. 1071. 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 vio-
lating 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 (e);

(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 (c)(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 (e)(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”.

Page 1611, beginning on line 7, strike “describing the amount” and all that follows through line 10 and insert

“(i) the amount of currency that will be received by the designated recipient, using the values of the currency into which the funds will be exchanged;

“(ii) the total amount of fees charged by the remittance transfer provider for the remittance transfer;

“(iii) any exchange rate to be used by the remittance transfer provider for the re-
mittance transfer to the nearest 1/100th of a point; and”.

Page 1611, line 21, insert “if either the telephone number or the address of the designated recipient are provided by the sender” before the semicolon.

Page 1616, line 16, strike “may” and insert “shall”.

Page 1618, strike line 3 and all that follows through line 7, and insert the following:

(c) REGULATIONS REGARDING NOT-FIXED-ON-SEND TRANSFERS.—For a remittance transfer where, for any reason, the exchange rate for the transaction is not fixed on send and the sender does not know the amount of currency that will be received by the designated recipient, the Board shall prescribe regulations

Page 1618, beginning on line 9, strike “to address” and insert “addressing”.

Page 1622, line 10, strike “shall” and insert “may”.

Page 1622, line 16, strike “may” and insert “shall”.

Page 1631, line 16, strike “The Electronic Fund Transfer Act” and insert “(a) IN GENERAL.—The Electronic Fund Transfer Act”.
Page1632, strike line 1 and all that follows through page 1637, line 19, and insert the following:

“(1) **Regulatory authority over interchange transaction fees.**—The Board may prescribe regulations, pursuant to section 553 of title 5, United States Code, regarding any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction, to implement this subsection (including related definitions), and to prevent circumvention or evasion of this subsection.

“(2) **Reasonable interchange transaction fees.**—The amount of any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction shall be reasonable and proportional to the cost incurred by the issuer with respect to the transaction.

“(3) **Rulemaking required.**—

“(A) **In general.**—The Board shall prescribe regulations in final form not later than 9 months after the date of enactment of the Consumer Financial Protection Act of 2010, to establish standards for assessing whether the amount of any interchange transaction fee described in paragraph (2) is reasonable and pro-
portional to the cost incurred by the issuer with respect to the transaction.

“(B) INFORMATION COLLECTION.—The Board may require any issuer (or agent of an issuer) or payment card network to provide the Board with such information as may be necessary to carry out the provisions of this subsection and the Board, in issuing rules under subparagraph (A) and on at least a bi-annual basis thereafter, shall disclose such aggregate or summary information concerning the costs incurred, and interchange transaction fees charged or received, by issuers or payment card networks in connection with the authorization, clearance or settlement of electronic debit transactions as the Board considers appropriate and in the public interest.

“(4) CONSIDERATIONS.—In prescribing regulations under paragraph (3)(A), the Board shall—

“(A) consider the functional similarity between—

“(i) electronic debit transactions; and

“(ii) checking transactions that are required within the Federal Reserve bank system to clear at par;
“(B) distinguish between—

“(i) the incremental cost incurred by an issuer for the role of the issuer in the authorization, clearance, or settlement of a particular electronic debit transaction, which cost shall be considered under paragraph (2); and

“(ii) other costs incurred by an issuer which are not specific to a particular electronic debit transaction, which costs shall not be considered under paragraph (2); and

“(C) consult, as appropriate, with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Administrator of the Small Business Administration, and the Director of the Bureau of Consumer Financial Protection.

“(5) ADJUSTMENTS TO INTERCHANGE TRANSACTION FEES FOR FRAUD PREVENTION COSTS.—

“(A) ADJUSTMENTS.—The Board may allow for an adjustment to the fee amount re-
ceived or charged by an issuer under paragraph

(2) if—

“(i) such adjustment is reasonably
necessary to make allowance for costs in-
curred by the issuer in preventing fraud in
relation to electronic debit transactions in-
volving that issuer; and

“(ii) the issuer complies with the
fraud-related standards established by the
Board under subparagraph (B), which
standards shall—

“(I) be designed to ensure that
any fraud-related adjustment of the
issuer is limited to the amount de-
scribed in clause (i) and takes into ac-
count any fraud-related reimburse-
ments (including amounts from
charge-backs) received from con-
sumers, merchants, or payment card
networks in relation to electronic debit
transactions involving the issuer; and

“(II) require issuers to take ef-
fective steps to reduce the occurrence
of, and costs from, fraud in relation
to electronic debit transactions, in-
excluding through the development and implementation of cost-effective fraud prevention technology.

“(B) RULEMAKING REQUIRED.—

“(i) IN GENERAL.—The Board shall prescribe regulations in final form not later than 9 months after the date of enactment of the Consumer Financial Protection Act of 2010, to establish standards for making adjustments under this paragraph.

“(ii) FACTORS FOR CONSIDERATION.—In issuing the standards and prescribing regulations under this paragraph, the Board shall consider the following factors:

“(I) The nature, type, and occurrence of fraud in electronic debit transactions.

“(II) The extent to which the occurrence of fraud depends on whether authorization in an electronic debit transaction is based on signature, PIN, or other means.

“(III) The available and economical means by which fraud on ele-
Electronic debit transactions may be reduced.

“(IV) The fraud prevention and data security costs expended by each party involved in electronic debit transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers and payment card networks).

“(V) The costs of fraudulent transactions absorbed by each party involved in such transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers and payment card networks).

“(VI) The extent to which interchange transaction fees have in the past reduced or increased incentives for parties involved in electronic debit transactions to reduce fraud on such transactions.

“(VII) Such other factors as the Board considers appropriate.
“(6) EXEMPTION FOR SMALL ISSUERS.—

“(A) IN GENERAL.—This subsection shall not apply to any issuer that, together with its affiliates, has assets of less than $10,000,000,000, and the Board shall exempt such issuers from regulations prescribed under paragraph (3)(A).

“(B) DEFINITION.—For purposes of this paragraph, the term “issuer” shall be limited to the person holding the asset account that is debited through an electronic debit transaction.

“(7) EXEMPTION FOR GOVERNMENT-ADMINISTERED PAYMENT PROGRAMS AND RELOADABLE PREPAID CARDS.—

“(A) IN GENERAL.—This subsection shall not apply to an interchange transaction fee charged or received with respect to an electronic debit transaction in which a person uses—

“(i) a debit card or general-use prepaid card that has been provided to a person pursuant to a Federal, State or local government-administered payment program, in which the person may only use the debit card or general-use prepaid card to transfer or debit funds, monetary value,
or other assets that have been provided pursuant to such program; or

“(ii) a plastic card, payment code, or device that is—

“(I) linked to such funds, monetary value, or assets which are purchased or loaded on a prepaid basis;

“(II) not issued or approved for use to access or debit any account held by or for the benefit of the card holder (other than a subaccount or other method of recording or tracking funds purchased or loaded on the card on a prepaid basis);

“(III) redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines;

“(IV) used to transfer or debit funds, monetary value, or other assets; and

“(V) reloadable and not marketed or labeled as a gift card or gift certificate.

“(B) Exception.—Notwithstanding subparagraph (A), after the end of the 1-year pe-
period beginning on the effective date provided in paragraph (9), this subsection shall apply to an interchange transaction fee charged or received with respect to an electronic debit transaction described in subparagraph (A)(i) in which a person uses a general-use prepaid card, or an electronic debit transaction described in subparagraph (A)(ii), if any of the following fees may be charged to a person with respect to the card:

“(i) A fee for an overdraft, including a shortage of funds or a transaction processed for an amount exceeding the account balance.

“(ii) A fee imposed by the issuer for the first withdrawal per month from an automated teller machine that is part of the issuer’s designated automated teller machine network.

“(C) DEFINITION.—For purposes of subparagraph (B), the term ‘designated automated teller machine network’ means either—

“(i) all automated teller machines identified in the name of the issuer; or
“(ii) any network of automated teller machines identified by the issuer that provides reasonable and convenient access to the issuer’s customers.

“(D) REPORTING.—Beginning 12 months after the date of enactment of the Consumer Financial Protection Act of 2010, the Board shall annually provide a report to the Congress regarding —

“(i) the prevalence of the use of general-use prepaid cards in Federal, State or local government-administered payment programs; and

“(ii) the interchange transaction fees and cardholder fees charged with respect to the use of such general-use prepaid cards.

“(8) REGULATORY AUTHORITY OVER NETWORK FEES.—

“(A) IN GENERAL.—The Board may prescribe regulations, pursuant to section 553 of title 5, United States Code, regarding any network fee.
“(B) LIMITATION.—The authority under subparagraph (A) to prescribe regulations shall be limited to regulations to ensure that—

“(i) a network fee is not used to directly or indirectly compensate an issuer with respect to an electronic debit transaction; and

“(ii) a network fee is not used to circumvent or evade the restrictions of this subsection and regulations prescribed under such subsection.

“(C) RULEMAKING REQUIRED.—The Board shall prescribe regulations in final form before the end of the 9-month period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010, to carry out the authorities provided under subparagraph (A).

“(D) EFFECTIVE DATE.—Paragraph (2) shall take effect at the end of the 12-month period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010.

“(b) LIMITATION ON PAYMENT CARD NETWORK RESTRICTIONS.—
“(1) Prohibitions against exclusivity arrangements.—

“(A) No exclusive network.—The Board shall, before the end of the 1-year period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010, prescribe regulations providing that an issuer or payment card network shall not directly or through any agent, processor, or licensed member of a payment card network, by contract, requirement, condition, penalty, or otherwise, restrict the number of payment card networks on which an electronic debit transaction may be processed to—

“(i) 1 such network; or

“(ii) 2 or more such networks which are owned, controlled, or otherwise operated by —

“(I) affiliated persons; or

“(II) networks affiliated with such issuer.

“(B) No routing restrictions.—The Board shall, before the end of the 1-year period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010,
prescribe regulations providing that an issuer or payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person who accepts debit cards for payments to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions.

“(2) LIMITATION ON RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A FORM OF PAYMENT.—

“(A) IN GENERAL.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of cash, checks, debit cards, or credit cards to the extent that—

“(i) in the case of a discount or in-kind incentive for payment by the use of debit cards, the discount or in-kind incen-
(ii) in the case of a discount or in-kind incentive for payment by the use of credit cards, the discount or in-kind incentive does not differentiate on the basis of the issuer or the payment card network; and

(iii) to the extent required by Federal law and applicable State law, such discount or in-kind incentive is offered to all prospective buyers and disclosed clearly and conspicuously.

(B) LAWFUL DISCOUNTS.—For purposes of this paragraph, the network may not penalize any person for the providing of a discount that is in compliance with Federal law and applicable State law.

(3) LIMITATION ON RESTRICTIONS ON SETTING TRANSACTION MINIMUMS OR MAXIMUMS.—

(A) IN GENERAL.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability—
“(i) of any person to set a minimum dollar value for the acceptance by that person of credit cards, to the extent that —

“(I) such minimum dollar value does not differentiate between issuers or between payment card networks;

and

“(II) such minimum dollar value does not exceed $10.00; or

“(ii) of any Federal agency or institution of higher education to set a maximum dollar value for the acceptance by that Federal agency or institution of higher education of credit cards, to the extent that such maximum dollar value does not differentiate between issuers or between payment card networks.

“(B) INCREASE IN MINIMUM DOLLAR AMOUNT.—The Board may, by regulation prescribed pursuant to section 553 of title 5, United States Code, increase the amount of the dollar value listed in subparagraph (A)(i)(II).

“(4) RULE OF CONSTRUCTION:.—No provision of this subsection shall be construed to authorize any person—
“(A) to discriminate between debit cards within a payment card network on the basis of the issuer that issued the debit card; or

“(B) to discriminate between credit cards within a payment card network on the basis of the issuer that issued the credit card.

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

“(1) AFFILIATE.—The term ‘affiliate’ means any company that controls, is controlled by, or is under common control with another company.

“(2) DEBIT CARD.—The term ‘debit card’—

“(A) means any card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account (regardless of the purpose for which the account is established), whether authorization is based on signature, PIN, or other means;

“(B) includes a general-use prepaid card, as that term is defined in section 915(a)(2)(A); and

“(C) does not include paper checks.

“(3) CREDIT CARD.—The term ‘credit card’ has the same meaning as in section 103.
(4) DISCOUNT.—The term ‘discount’—

“(A) means a reduction made from the price that customers are informed is the regular price; and

“(B) does not include any means of increasing the price that customers are informed is the regular price.

(5) ELECTRONIC DEBIT TRANSACTION.—The term ‘electronic debit transaction’ means a transaction in which a person uses a debit card.

(6) FEDERAL AGENCY.—The term ‘Federal agency’ means—

“(A) an agency (as defined in section 101 of title 31, United States Code); and

“(B) a Government corporation (as defined in section 103 of title 5, United States Code).

(7) INSTITUTION OF HIGHER EDUCATION.—The term ‘institution of higher education’ has the same meaning as in 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001, 1002).

(8) INTERCHANGE TRANSACTION FEE.—The term ‘interchange transaction fee’ means any fee established, charged or received by a payment card network for the purpose of compensating an issuer for its involvement in an electronic debit transaction.
“(9) Issuer.—The term ‘issuer’ means any person who issues a debit card, or credit card, or the agent of such person with respect to such card.

“(10) Network Fee.—The term ‘network fee’ means any fee charged and received by a payment card network with respect to an electronic debit transaction, other than an interchange transaction fee.

“(11) Payment Card Network.—The term ‘payment card network’ means an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct debit card or credit card transaction authorization, clearance, and settlement, and that a person uses in order to accept as a form of payment a brand of debit card, credit card or other device that may be used to carry out debit or credit transactions.

“(d) Enforcement.—

“(1) In General.—Compliance with the requirements imposed under this section shall be enforced under section 918.
“(2) Exception.—Sections 916 and 917 shall not apply with respect to this section or the requirements imposed pursuant to this section.”.

(b) Amendment to the Food and Nutrition Act of 2008.—Section 7(h)(10) of the Food and Nutrition Act of 2008 (7 U.S.C. 2016(h)(10)) is amended to read as follows:

“10 Federal law not applicable.—Section 920 of the Electronic Fund Transfer Act shall not apply to electronic benefit transfer or reimbursement systems under this Act.”.

(c) Amendment to the Farm Security and Rural Investment Act of 2002.—Section 4402 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3007) is amended by adding at the end the following new subsection:

“(f) Federal law not applicable.—Section 920 of the Electronic Fund Transfer Act shall not apply to electronic benefit transfer systems established under this section.”.

(d) Amendment to the Child Nutrition Act of 1966.—Section 11 of the Child Nutrition Act of 1966 (42 U.S.C. 1780) is amended by adding at the end the following:
“(c) Federal Law Not Applicable.—Section 920 of the Electronic Fund Transfer Act shall not apply to electronic benefit transfer systems established under this Act or the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).”.

Page 1639, after line 7, insert the following new section (and redesignate subsequent sections accordingly):

SEC. 1078. REVERSE MORTGAGE STUDY AND REGULATIONS.

(a) Study.—Not later than 1 year after the designated transfer date, the Bureau shall conduct a study on reverse mortgage transactions.

(b) Regulations.—

(1) In general.—If the Bureau determines through the study required under subsection (a) that conditions or limitations on the reverse mortgage transactions are necessary or appropriate for accomplishing the purposes and objectives of this title, including protecting borrowers with respect to the obtaining of reverse mortgage loans for the purpose of funding investments, annuities, and other investment products and the suitability of a borrower in obtaining a reverse mortgage for such purpose.

(2) Identified practices and integrated disclosures.—The regulations prescribed under
paragraph (1) may, as the Bureau may so deter-
mine—

(A) identify any practice as unfair, decept-
tive, or abusive in connection with a reverse
mortgage transaction; and

(B) 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 Set-
tlement Procedures Act, with the disclosures re-
quired to be provided to consumers for Home
Equity Conversion Mortgages under section 255
of the National Housing Act.

(e) Rule of Construction.—This section shall not
be construed as limiting the authority of the Bureau to
issue regulations, orders, or guidance that apply to reverse
mortgages prior to the completion of the study required
under subsection (a).

Page 1642, after line 21, insert the following new
section:
SEC. 1079A 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 consumers who use exchange facilitators for transactions primarily for personal, family, or household purposes.

(b) Report.—Not later than 1 year after the designated transfer date of this subtitle, the Director shall submit to Congress a report describing—

(1) recommendations for legislation to ensure the appropriate protection of consumers who use exchange facilitators for transactions primarily for personal, family, or household purposes;

(2) recommendations for updating the regulations of Federal departments and agencies to ensure the appropriate protection of such consumers; and

(3) recommendations for regulations to ensure the appropriate protection of such consumers.

(c) Program.—Not later than 2 years after the date of the submission of the report under subsection (b), the Bureau shall, consistent with subtitle B, propose regulations or otherwise establish a program to protect consumers who use 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 replacement property to the taxpayer as a qualified intermediary (within the meaning of Treasury Regulations section 1.1031(k)–1(g)(4)) or enters into an agreement with the taxpayer to take title to a property 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 soliciting business to perform the services described in paragraph (1); or

(3) advertises any of the services described in paragraph (1) or solicits 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.
Page 1647, line 22, insert “and section 920 (as added by section 1076)”.

Page 1648, strike line 8 and all that follows through line 15 and insert the following:

(3) in section 904 (15 U.S.C. 1693b)—

(A) in subsection (a), by striking “(a)

PRESCRIPTION BY BOARD.—The Board shall prescribe regulations to carry out the purposes of this title.” and inserting the following:

“(a) PRESCRIPTION BY THE BUREAU AND THE BOARD.—The Bureau and the Board shall prescribe regulations to carry out the purposes of this title, except that the Board shall have sole authority to prescribe regulations to carry out the purposes of section 920.”; and

(B) by adding at the end the following new subsection:

“(e) DEFERENCE.—No provision of this title may be construed as altering, limiting, or otherwise affecting the deference that a court affords to—

“(1) the Bureau in making determinations regarding the meaning or interpretation of any provision of this title for which the Bureau has authority to prescribe regulations; or
“(2) the Board in making determinations regard-
ing the meaning or interpretation of section 920.”

Page 1650, line 24, strike “subtitle E.” and insert “subtitle E, except that the Bureau shall not have au-
thority to enforce the requirements of section 920 or any regulations prescribed by the Board under section 920.”

Page 1701, line 2, strike “The Truth in Lending Act” and insert “(a) IN GENERAL.—The Truth in Lend-
ing Act”.

Page 1715, after line 14, insert the following new subsections:

(b) INSTITUTIONAL CERTIFICATION REQUIRED.—

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 RE-
QUIRED.—

“(A) IN GENERAL.—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) FAILURE TO PROVIDE TIMELY CERTIFICATION.—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.”.

(c) 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 (b). 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).

Page 1721, strike line 3 and all that follows through page 1722, line 25.