

## HOUSE PROPOSED AMENDMENTS TO SUBTITLE C OF TITLE IX

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Page 1145, after line 11, insert the following (and redesignate succeeding paragraphs accordingly):

- 1           (1) in subsection (b)—
- 2                   (A) in paragraph (1)(A), by striking “fur-
- 3                   nished” and inserting “filed” and by striking
- 4                   “furnishing” and inserting “filing”;
- 5                   (B) in paragraph (1)(B), by striking “fur-
- 6                   nishing” and inserting “filing”; and
- 7                   (C) in the first sentence of paragraph (2),
- 8                   by striking “furnish to” and inserting “file
- 9                   with”;

Page 1147, after line 23, insert the following new subparagraph (and redesignate succeeding subparagraphs accordingly);

- 10                   (C) in paragraph (2), by striking “fur-
- 11                   nished to” and inserting “filed with”;

Page 1148, beginning on line 11, strike “redesignated,” and all that follows through line 12, and insert “redesignated—

- 1 (i) by striking “furnish” and inserting  
2 “file”; and  
3 (ii) by striking “or” at the end.

Page 1151, line 3, strike the closed quotation mark and following period and after such line insert the following:

4 “(4) LOOK-BACK REQUIREMENT.—

5 “(A) REVIEW BY THE NATIONALLY RECOG-  
6 NIZED STATISTICAL RATING ORGANIZATION.—

7 Each nationally recognized statistical rating or-  
8 ganization shall establish, maintain, and enforce  
9 policies and procedures reasonably designed to  
10 ensure that, in any case in which an employee  
11 of a person subject to a credit rating of the na-  
12 tionally recognized statistical rating organiza-  
13 tion or the issuer, underwriter, or sponsor of a  
14 security or money market instrument subject to  
15 a credit rating of the nationally recognized sta-  
16 tistical rating organization was employed by the  
17 nationally recognized statistical rating organiza-  
18 tion and participated in any capacity in deter-  
19 mining credit ratings for the person or the se-  
20 curities or money market instruments during  
21 the 1-year period preceding the date an action  
22 was taken with respect to the credit rating, the

1 nationally recognized statistical rating organiza-  
2 tion shall—

3 “(i) conduct a review to determine  
4 whether any conflicts of interest of the em-  
5 ployee influenced the credit rating; and

6 “(ii) take action to revise the rating if  
7 appropriate, in accordance with such rules  
8 as the Commission shall prescribe.

9 “(B) REVIEW BY COMMISSION.—

10 “(i) IN GENERAL.—The Commission  
11 shall conduct periodic reviews of the poli-  
12 cies described in subparagraph (A) and the  
13 implementation of the policies at each na-  
14 tionally recognized statistical rating orga-  
15 nization to ensure they are reasonably de-  
16 signed and implemented to most effectively  
17 eliminate conflicts of interest.

18 “(ii) TIMING OF REVIEWS.—The Com-  
19 mission shall review the code of ethics and  
20 conflict of interest policy of each nationally  
21 recognized statistical rating organization—

22 “(I) not less frequently than an-  
23 nually; and

24 “(II) whenever such policies are  
25 materially modified or amended.

1           “(5) REPORT TO COMMISSION ON CERTAIN EM-  
2           PLOYMENT TRANSITIONS.—

3           “(A) REPORT REQUIRED.—Each nationally  
4           recognized statistical rating organization shall  
5           report to the Commission any case such organi-  
6           zation knows or can reasonably be expected to  
7           know where a person associated with such orga-  
8           nization within the previous 5 years obtains em-  
9           ployment with any obligor, issuer, underwriter,  
10          or sponsor of a security or money market in-  
11          strument for which the organization issued a  
12          credit rating during the 12-month period prior  
13          to such employment, if such employee—

14                 “(i) was a senior officer of such orga-  
15                 nization;

16                 “(ii) participated in any capacity in  
17                 determining credit ratings for such obligor,  
18                 issuer, underwriter, or sponsor; or

19                 “(iii) supervised an employee de-  
20                 scribed in clause (ii).

21           “(B) PUBLIC DISCLOSURE.—Upon receiv-  
22           ing such a report, the Commission shall make  
23           such information publicly available.”.

Page 1153, line 11, strike “and” and insert the fol-  
lowing:

1           (5) in subsection (k), by striking “furnish to”  
2           and inserting “file with”;

3           (6) in subsection (l)(2)(A)(i), by striking “fur-  
4           nished” and inserting “filed”; and

Page 1153, line 12, strike “(5)” and insert “(7)”.

Page 1171, line 9, strike the closed quotation mark  
and following period and insert after such line the fol-  
lowing:

5           “(u) PROHIBITED ACTIVITIES.—Beginning 180 days  
6 from the date of enactment of the Investor Protection and  
7 Securities Reform Act of 2010, it shall be unlawful for  
8 a nationally recognized statistical rating organization, or  
9 an affiliate of a nationally recognized statistical rating or-  
10 ganization, or any person associated with a nationally rec-  
11 ognized statistical rating organization, that provides a  
12 credit rating for an issuer, underwriter, or placement  
13 agent of a security to provide any non-rating service to  
14 that issuer, underwriter, or placement agent in deter-  
15 mining a credit rating, including—

16           “(1) risk management advisory services;

17           “(2) advice or consultation relating to any  
18           merger, sales, or disposition of assets of the issuer;

1           “(3) ancillary assistance, advice, or consulting  
2 services unrelated to any specific credit rating  
3 issuance; and

4           “(4) such further activities or services as the  
5 Commission may determine as necessary or appro-  
6 priate in the public interest or for the protection of  
7 investors.”.

Page 1171, strike line 10 through page 1173, line  
4, and insert the following:

8 **SEC. 933. STANDARDS FOR PRIVATE ACTIONS.**

9           (a) IN GENERAL.—Section 21D(b)(2) of the Securi-  
10 ties Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2)) is  
11 amended by inserting before the period at the end of the  
12 following: “, and in the case of an action brought under  
13 this title for money damages against a credit rating agen-  
14 cy, it shall be sufficient for purposes of pleading any re-  
15 quired state of mind for purposes of such action that the  
16 complaint shall state with particularity facts giving rise  
17 to a strong inference that the credit rating agency was  
18 grossly negligent in violating the securities laws”.

19           (b) PLEADING STANDARD.—Section 15E(m) of the  
20 Securities Exchange Act of 1934 (15 U.S.C. 78o-7(m))  
21 amended to read as follows:

22           “(m) APPLICATION OF ENFORCEMENT PROVISIONS;  
23 PLEADING STANDARD IN PRIVATE RIGHTS OF ACTION.—

1 Statements made by credit rating agencies shall not be  
2 deemed forward looking statements for purposes of section  
3 21E. In any private right of action commenced against  
4 a credit rating agency under the securities laws, the same  
5 pleading standards with respect to gross negligence shall  
6 apply to the credit rating agency as would apply to any  
7 other person in the same private right of action against  
8 such person.”.

9 (c) REQUIREMENTS FOR LIABILITY.—Section 21D of  
10 the Securities Exchange Act of 1934 (15 U.S.C. 78u-4)  
11 is amended—

12 (1) by redesignating subsections (e) through (f)  
13 as subsections (d) through (g), respectively; and

14 (2) by inserting after subsection (b) the fol-  
15 lowing:

16 “(c) REQUIREMENTS FOR LIABILITY.—A purchaser  
17 of a security given a rating by a credit rating agency shall  
18 have the right to recover for damages if the process of  
19 determining the credit rating was—

20 “(1) grossly negligent, based on the facts and  
21 circumstances at the time the rating was issued; and

22 “(2) a substantial factor in the economic loss  
23 suffered by the investor.

24 No action shall be maintained to enforce any liability cre-  
25 ated under this subsection unless brought within 2 years

1 after the discovery of the facts constituting the violation  
2 and within 3 years after the initial issuance of the rat-  
3 ing.”.

Page 1181, after line 17, insert the following new sections (and redesignate succeeding sections and conform the table of contents accordingly):

4 **SEC. 939A. REVIEW OF RELIANCE ON RATINGS.**

5 (a) AGENCY REVIEW.—

6 (1) REVIEW.—Not later than 1 year after the  
7 date of the enactment of this subtitle, each Federal  
8 agency listed in paragraph (4) shall, to the extent  
9 applicable, review—

10 (A) any regulation issued by such agency  
11 that requires the use of an assessment of the  
12 credit-worthiness of a security or money market  
13 instrument; and

14 (B) any references to or requirements in  
15 such regulations regarding credit ratings.

16 (2) MODIFICATIONS REQUIRED.—Each such  
17 agency shall modify any such regulations identified  
18 by the review conducted under paragraph (1) to re-  
19 move any reference to or requirement of reliance on  
20 credit ratings and to substitute in such regulations  
21 such standard of credit-worthiness as each respective  
22 agency shall determine as appropriate for such regu-



1       lations. In making such determination, such agencies  
2       shall seek to establish, to the extent feasible, uni-  
3       form standards of credit-worthiness for use by each  
4       such agency, taking into account the entities regu-  
5       lated by each such agency and the purposes for  
6       which such entities would rely on such standards of  
7       credit-worthiness.

8           (3) REPORT.—Upon conclusion of the review  
9       required under paragraph (1), each Federal agency  
10      listed in paragraph (4) shall transmit a report to  
11      Congress containing a description of any modifica-  
12      tion of any regulation such agency made pursuant to  
13      paragraph (2).

14           (4) APPLICABLE AGENCIES.—The agencies re-  
15      quired to conduct the review and report required by  
16      this subsection are—

17           (A) the Securities and Exchange Commis-  
18      sion;

19           (B) the Federal Deposit Insurance Cor-  
20      poration;

21           (C) the Office of Thrift Supervision;

22           (D) the Office of the Comptroller of the  
23      Currency;

24           (E) the Board of Governors of the Federal  
25      Reserve;

1 (F) the National Credit Union Administra-  
2 tion; and

3 (G) the Federal Housing Finance Agency.

4 (b) GAO REVIEW OF OTHER AGENCIES.—

5 (1) REVIEW.—The Comptroller General shall  
6 conduct a comprehensive review of the use of credit  
7 ratings by Federal agencies other than those listed  
8 in subsection (a)(3), including an analysis of the  
9 provisions of law or regulation applicable to each  
10 such agency that refer to and require the use of  
11 credit ratings by the agency, and the policies and  
12 practices of each agency with respect to credit rat-  
13 ings.

14 (2) REPORT.—Not later than 18 months after  
15 the date of the enactment of this subtitle, the Comp-  
16 troller General shall transmit to Congress a report  
17 on the findings of the study conducted pursuant to  
18 paragraph (1), including recommendations for any  
19 legislation or rulemaking necessary or appropriate in  
20 order for such agencies to reduce their reliance on  
21 credit ratings.

22 **SEC. 939B. ELIMINATION OF EXEMPTION FROM FAIR DIS-**  
23 **CLOSURE RULE.**

24 Not later than 90 days after the date of enactment  
25 of this subtitle, the Securities Exchange Commission shall

1 revise Regulation FD (17 C.F.R. 243.100) to remove from  
2 such regulation the exemption for entities whose primary  
3 business is the issuance of credit ratings (17 C.F.R.  
4 243.100(b)(2)(iii)).

Page 1184, strike line 20 through page 1203, line  
17, and insert the following (and conform the table of  
contents accordingly):

5 **SEC. 939D. STUDY ON ASSIGNED CREDIT RATINGS.**

6 (a) **STUDY.**—The Securities and Exchange Commis-  
7 sion shall undertake a study of the—

8 (1) ratings process for structured products and  
9 the associated conflicts of interest in both the issuer-  
10 pay and subscriber-pay models;

11 (2) feasibility of establishing a public or private  
12 utility or self-regulatory agency that assigns nation-  
13 ally recognized statistical ratings organizations to  
14 determine the ratings of issuers and obligors of  
15 structured products including—

16 (A) an assessment of potential mechanisms  
17 for determining fees for the nationally recog-  
18 nized statistical ratings organizations, if so as-  
19 signed;

20 (B) appropriate methods for paying fees to  
21 the assigned rating agencies;

1 (C) the extent to which the creation of  
2 such a system would be viewed as creating  
3 moral hazard on the part of the government;  
4 and

5 (D) any constitutional and other issues  
6 concerning the establishment of such a system;

7 (3) range of metrics by which to determine the  
8 accuracy of ratings; and

9 (4) alternative means for compensating credit  
10 rating agencies that would create incentives for ac-  
11 curate credit ratings.

12 (b) REPORT AND RECOMMENDATION.—Not later  
13 than 12 months after the date of enactment of this title,  
14 the Securities and Exchange Commission shall submit to  
15 Committee on Financial Services of the House of Rep-  
16 resentatives and Committee on Banking, Housing and  
17 Urban Development of the Senate, a report containing the  
18 findings under the study required by subsection (a) and  
19 any recommendations for either regulatory or statutory  
20 changes that the Commission believes should be made to  
21 implement the findings.

Page 1203, after line 17, insert the following new  
section (and conform the table of contents accordingly):

1 **SEC. 6012. EFFECT OF RULE 436(G).**

2 Rule 436(g), promulgated by the Securities and Ex-  
3 change Commission under the Securities Act of 1933,  
4 shall have no force or effect.

