

## CONFERENCE BASE TEXT (HR 4173):

### 1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Restoring American Financial Stability Act of 2010”.

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

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## 14

## Subtitle F—Appraisal Activities

- Sec. 1471. Property appraisal requirements.
- Sec. 1472. Unfair and deceptive practices and acts relating to certain consumer credit transactions.
- Sec. 1473. Amendments relating to Appraisal Subcommittee of FFIEC, appraiser independence monitoring, approved appraiser education, appraisal management companies, appraiser complaint hotline, automated valuation models, and broker price opinions.
- Sec. 1474. Study required on improvements in appraisal process and compliance programs.
- Sec. 1475. Equal Credit Opportunity Act amendment.
- Sec. 1476. Real Estate Settlement Procedures Act of 1974 amendment relating to certain appraisal fees.

## Subtitle G—Mortgage Resolution and Modification

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

## Subtitle H—Miscellaneous Provisions

- Sec. 1491. Sense of Congress regarding the importance of Government-sponsored enterprises reform to enhance the protection, limitation, and regulation of the terms of residential mortgage credit.
- Sec. 1492. GAO study report on Government efforts to combat mortgage foreclosure rescue seams and loan modification fraud.
- Sec. 1493. Reporting of mortgage data by State.
- Sec. 1494. Study of effect of drywall presence on foreclosures.

## TITLE XV—MISCELLANEOUS PROVISIONS

- Sec. 1501. Restrictions on use of Federal funds to finance bailouts of foreign governments.
- Sec. 1502. Congo conflict minerals.

**1 SEC. 2. DEFINITIONS.**

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

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

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

7           (3) BOARD OF GOVERNORS.—The term “Board  
8           of Governors” means the Board of Governors of the  
9           Federal Reserve System.

10          (4) BUREAU.—The term “Bureau” means the  
11          Bureau of Consumer Financial Protection estab-  
12          lished under title X.

13          (5) COMMISSION.—The term “Commission”  
14          means the Securities and Exchange Commission, ex-  
15          cept in the context of the Commodity Futures Trad-  
16          ing Commission.

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

19          (7) COUNCIL.—The term “Council” means the  
20          Financial Stability Oversight Council established  
21          under title I.

22          (8) CREDIT UNION.—The term “credit union”  
23          means a Federal credit union, State credit union, or  
24          State-chartered credit union, as those terms are de-

1        fined in section 101 of the Federal Credit Union Act  
2        (12 U.S.C. 1752).

3           (9) FEDERAL BANKING AGENCY.—The term—

4                (A) “Federal banking agency” means, indi-  
5                vidually, the Board of Governors, the Office of  
6                the Comptroller of the Currency, and the Cor-  
7                poration; and

8                (B) “Federal banking agencies” means all  
9                of the agencies referred to in subparagraph (A),  
10              collectively.

11          (10) FUNCTIONALLY REGULATED SUB-  
12          SIDIARY.—The term “functionally regulated sub-  
13          sidiary” has the same meaning as in section 5(e)(5)  
14          of the Bank Holding Company Act of 1956 (12  
15          U.S.C. 1844(e)(5)).

16          (11) PRIMARY FINANCIAL REGULATORY AGEN-  
17          CY.—The term “primary financial regulatory agen-  
18          cy” means—

19                (A) the appropriate Federal banking agen-  
20                cy, with respect to institutions described in sec-  
21                tion 3(q) of the Federal Deposit Insurance Act,  
22                except to the extent that an institution is or the  
23                activities of an institution are otherwise de-  
24                scribed in subparagraph (B), (C), (D), or (E);



1 (B) the Securities and Exchange Commis-  
2 sion, with respect to—

3 (i) any broker or dealer that is reg-  
4 istered with the Commission under the Se-  
5 curities Exchange Act of 1934;

6 (ii) any investment company that is  
7 registered with the Commission under the  
8 Investment Company Act of 1940;

9 (iii) any investment adviser that is  
10 registered with the Commission under the  
11 Investment Advisers Act of 1940, with re-  
12 spect to the investment advisory activities  
13 of such company and activities that are in-  
14 cidental to such advisory activities;

15 (iv) any clearing agency registered  
16 with the Commission under the Securities  
17 Exchange Act of 1934, with respect to the  
18 activities of the clearing agency that re-  
19 quire the agency to be registered under  
20 such Act;

21 (v) any nationally recognized statis-  
22 tical rating organization registered with  
23 the Commission under the Securities Ex-  
24 change Act of 1934;

1 (vi) any transfer agent registered with  
2 the Commission under the Securities Ex-  
3 change Act of 1934;

4 (vii) any exchange registered as a na-  
5 tional securities exchange with the Com-  
6 mission under the Securities Exchange Act  
7 of 1934;

8 (viii) any national securities associa-  
9 tion registered with the Commission under  
10 the Securities Exchange Act of 1934;

11 (ix) any securities information proc-  
12 essor registered with the Commission  
13 under the Securities Exchange Act of  
14 1934;

15 (x) the Municipal Securities Rule-  
16 making Board established under the Secu-  
17 rities Exchange Act of 1934;

18 (xi) the Public Company Accounting  
19 Oversight Board established under the  
20 Sarbanes-Oxley Act of 2002 (15 U.S.C.  
21 7211 et seq.);

22 (xii) the Securities Investor Protection  
23 Corporation established under the Securi-  
24 ties Investor Protection Act of 1970 (15  
25 U.S.C. 78aaa et seq.); and

1 (xiii) any security-based swap execu-  
2 tion facility, security-based swap data re-  
3 pository, security-based swap dealer or  
4 major security-based swap participant reg-  
5 istered with the Commission under the Se-  
6 curities Exchange Act of 1934, with re-  
7 spect to the security-based swap activities  
8 of the person that require such person to  
9 be registered under such Act;

10 (C) the Commodity Futures Trading Com-  
11 mission, with respect to any futures commission  
12 merchant, any commodity trading adviser, and  
13 any commodity pool operator registered with  
14 the Commodity Futures Trading Commission  
15 under the Commodity Exchange Act, with re-  
16 spect to the commodities activities of such enti-  
17 ty and activities that are incidental to such  
18 commodities activities;

19 (D) the State insurance authority of the  
20 State in which an insurance company is domi-  
21 ciled, with respect to the insurance activities  
22 and activities that are incidental to such insur-  
23 ance activities of an insurance company that is  
24 subject to supervision by the State insurance  
25 authority under State insurance law; and

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

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

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

13          (14) SECURITIES TERMS.—The—

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

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

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

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

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

9           (17) OTHER INCORPORATED DEFINITIONS.—

10           (A) FEDERAL DEPOSIT INSURANCE ACT.—

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

25           (B) HOLDING COMPANIES.—The term—

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

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

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

13 **SEC. 3. SEVERABILITY.**

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

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

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

**1 SEC. 5. BUDGETARY EFFECTS.**

2 The budgetary effects of this Act, for the purpose of  
3 complying with the Statutory Pay-As-You-Go-Act of 2010,  
4 shall be determined by reference to the latest statement  
5 titled “Budgetary Effects of PAYGO Legislation” for this  
6 Act, submitted for printing in the Congressional Record  
7 by the Chairman of the Senate Budget Committee, pro-  
8 vided that such statement has been submitted prior to the  
9 vote on passage.

**10 SEC. 6. ANTITRUST SAVINGS CLAUSE.**

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

**20 TITLE I—FINANCIAL STABILITY****21 SEC. 101. SHORT TITLE.**

22 This title may be cited as the “Financial Stability Act  
23 of 2010”.

1 **SEC. 102. DEFINITIONS.**

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

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

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

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

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

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



1 as, a bank holding company or a subsidiary  
2 thereof) that is—

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

5 (ii) predominantly engaged in, includ-  
6 ing through a branch in the United States,  
7 financial activities, as defined in paragraph  
8 (6).

9 (B) U.S. NONBANK FINANCIAL COM-  
10 PANY.—The term “U.S. nonbank financial com-  
11 pany” means a company (other than a bank  
12 holding company or a subsidiary thereof, or a  
13 Farm Credit System institution chartered and  
14 subject to the provisions of the Farm Credit  
15 Act of 1971 (12 U.S.C. 2001 et seq.)) that is—

16 (i) incorporated or organized under  
17 the laws of the United States or any State;  
18 and

19 (ii) predominantly engaged in finan-  
20 cial activities as defined in paragraph (6).

21 (C) NONBANK FINANCIAL COMPANY.—The  
22 term “nonbank financial company” means a  
23 U.S. nonbank financial company and a foreign  
24 nonbank financial company.

1 (D) NONBANK FINANCIAL COMPANY SU-  
2 PERVISED BY THE BOARD OF GOVERNORS.—

3 The term “nonbank financial company super-  
4 vised by the Board of Governors” means a  
5 nonbank financial company that the Council  
6 has determined under section 113 shall be su-  
7 pervised by the Board of Governors.

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

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

13 (A) the annual gross revenues derived by  
14 the company and all of its subsidiaries from ac-  
15 tivities that are financial in nature (as defined  
16 in section 4(k) of the Bank Holding Company  
17 Act of 1956) and, if applicable, from the owner-  
18 ship or control of one or more insured deposi-  
19 tory institutions, represents 85 percent or more  
20 of the consolidated annual gross revenues of the  
21 company; or

22 (B) the consolidated assets of the company  
23 and all of its subsidiaries related to activities  
24 that are financial in nature (as defined in sec-  
25 tion 4(k) of the Bank Holding Company Act of

1           1956) and, if applicable, related to the owner-  
2           ship or control of one or more insured deposi-  
3           tory institutions, represents 85 percent or more  
4           of the consolidated assets of the company.

5           (7) SIGNIFICANT INSTITUTIONS.—The terms  
6           “significant nonbank financial company” and “sig-  
7           nificant bank holding company” have the meanings  
8           given those terms by rule of the Board of Governors.

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

13          (c) FOREIGN NONBANK FINANCIAL COMPANIES.—  
14          For purposes of the authority of the Board of Governors  
15          under this title with respect to foreign nonbank financial  
16          companies, references in this title to “company” or “sub-  
17          sidiary” include only the United States activities and sub-  
18          sidiaries of such foreign company.

## 19           **Subtitle A—Financial Stability**

### 20                   **Oversight Council**

#### 21   **SEC. 111. FINANCIAL STABILITY OVERSIGHT COUNCIL ES-**

#### 22                   **TABLISHED.**

23          (a) ESTABLISHMENT.—Effective on the date of en-  
24          actment of this Act, there is established the Financial Sta-  
25          bility Oversight Council.

1 (b) MEMBERSHIP.—The Council shall consist of the  
2 following members:

3 (1) VOTING MEMBERS.—The voting members,  
4 who shall each have 1 vote on the Council shall be—

5 (A) the Secretary of the Treasury, who  
6 shall serve as Chairperson of the Council;

7 (B) the Chairman of the Board of Gov-  
8 ernors;

9 (C) the Comptroller of the Currency;

10 (D) the Director of the Bureau;

11 (E) the Chairman of the Commission;

12 (F) the Chairperson of the Corporation;

13 (G) the Chairperson of the Commodity Fu-  
14 tures Trading Commission;

15 (H) the Director of the Federal Housing  
16 Finance Agency; and

17 (I) an independent member appointed by  
18 the President, by and with the advice and con-  
19 sent of the Senate, having insurance expertise.

20 (2) NONVOTING MEMBERS.—The Director of  
21 the Office of Financial Research—

22 (A) shall serve in an advisory capacity as  
23 a nonvoting member of the Council; and

1 (B) may not be excluded from any of the  
2 proceedings, meetings, discussions, or delibera-  
3 tions of the Council.

4 (c) TERMS; VACANCY.—

5 (1) TERMS.—The independent member of the  
6 Council shall serve for a term of 6 years.

7 (2) VACANCY.—Any vacancy on the Council  
8 shall be filled in the manner in which the original  
9 appointment was made.

10 (3) ACTING OFFICIALS MAY SERVE.—In the  
11 event of a vacancy in the office of the head of a  
12 member agency or department, and pending the ap-  
13 pointment of a successor, or during the absence or  
14 disability of the head of a member agency or depart-  
15 ment, the acting head of the member agency or de-  
16 partment shall serve as a member of the Council in  
17 the place of that agency or department head.

18 (d) TECHNICAL AND PROFESSIONAL ADVISORY COM-  
19 MITTEES.—The Council may appoint such special advi-  
20 sory, technical, or professional committees as may be use-  
21 ful in carrying out the functions of the Council, including  
22 an advisory committee consisting of State regulators, and  
23 the members of such committees may be members of the  
24 Council, or other persons, or both.

25 (e) MEETINGS.—

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

4           (2) RULES FOR CONDUCTING BUSINESS.—The  
5           Council shall adopt such rules as may be necessary  
6           for the conduct of the business of the Council. Such  
7           rules shall be rules of agency organization, proce-  
8           dure, or practice for purposes of section 553 of title  
9           5, United States Code.

10          (f) VOTING.—Unless otherwise specified, the Council  
11          shall make all decisions that it is authorized or required  
12          to make by a majority vote of the members then serving.

13          (g) NONAPPLICABILITY OF FACCA.—The Federal Ad-  
14          visory Committee Act (5 U.S.C. App.) shall not apply to  
15          the Council, or to any special advisory, technical, or pro-  
16          fessional committee appointed by the Council, except that,  
17          if an advisory, technical, or professional committee has  
18          one or more members who are not employees of or affili-  
19          ated with the United States Government, the Council shall  
20          publish a list of the names of the members of such com-  
21          mittee.

22          (h) ASSISTANCE FROM FEDERAL AGENCIES.—Any  
23          department or agency of the United States may provide  
24          to the Council and any special advisory, technical, or pro-  
25          fessional committee appointed by the Council, such serv-

1 ices, funds, facilities, staff, and other support services as  
2 the Council may determine advisable.

3 (i) COMPENSATION OF MEMBERS.—

4 (1) FEDERAL EMPLOYEE MEMBERS.—All mem-  
5 bers of the Council who are officers or employees of  
6 the United States shall serve without compensation  
7 in addition to that received for their services as offi-  
8 cers or employees of the United States.

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

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

14 (j) DETAIL OF GOVERNMENT EMPLOYEES.—Any em-  
15 ployee of the Federal Government may be detailed to the  
16 Council without reimbursement, and such detail shall be  
17 without interruption or loss of civil service status or privi-  
18 lege. An employee of the Federal Government detailed to  
19 the Council shall report to and be subject to oversight by  
20 the Council during the assignment to the Council, and  
21 shall be compensated by the department or agency from  
22 which the employee was detailed.

23 **SEC. 112. COUNCIL AUTHORITY.**

24 (a) PURPOSES AND DUTIES OF THE COUNCIL.—

1           (1) IN GENERAL.—The purposes of the Council  
2       are—

3                   (A) to identify risks to the financial sta-  
4       bility of the United States that could arise from  
5       the material financial distress or failure of  
6       large, interconnected bank holding companies or  
7       nonbank financial companies;

8                   (B) to promote market discipline, by elimi-  
9       nating expectations on the part of shareholders,  
10      creditors, and counterparties of such companies  
11      that the Government will shield them from  
12      losses in the event of failure; and

13                  (C) to respond to emerging threats to the  
14      stability of the United States financial markets.

15           (2) DUTIES.—The Council shall, in accordance  
16      with this title—

17                   (A) collect information from member agen-  
18      cies and other Federal and State financial regu-  
19      latory agencies and, if necessary to assess risks  
20      to the United States financial system, direct the  
21      Office of Financial Research to collect informa-  
22      tion from bank holding companies and nonbank  
23      financial companies;



1 (B) provide direction to, and request data  
2 and analyses from, the Office of Financial Re-  
3 search to support the work of the Council;

4 (C) monitor the financial services market-  
5 place in order to identify potential threats to  
6 the financial stability of the United States;

7 (D) facilitate information sharing and co-  
8 ordination among the member agencies and  
9 other Federal and State agencies regarding do-  
10 mestic financial services policy development,  
11 rulemaking, examinations, reporting require-  
12 ments, and enforcement actions;

13 (E) recommend to the member agencies  
14 general supervisory priorities and principles re-  
15 flecting the outcome of discussions among the  
16 member agencies;

17 (F) identify gaps in regulation that could  
18 pose risks to the financial stability of the  
19 United States;

20 (G) require supervision by the Board of  
21 Governors for nonbank financial companies that  
22 may pose risks to the financial stability of the  
23 United States in the event of their material fi-  
24 nancial distress or failure, pursuant to section  
25 113;

1           (H) make recommendations to the Board  
2 of Governors concerning the establishment of  
3 heightened prudential standards for risk-based  
4 capital, leverage, liquidity, contingent capital,  
5 resolution plans and credit exposure reports,  
6 concentration limits, enhanced public disclo-  
7 sures, and overall risk management for  
8 nonbank financial companies and large, inter-  
9 connected bank holding companies supervised  
10 by the Board of Governors;

11           (I) identify systemically important finan-  
12 cial market utilities and payment, clearing, and  
13 settlement activities (as that term is defined in  
14 title VIII), and require such utilities and activi-  
15 ties to be subject to standards established by  
16 the Board of Governors;

17           (J) make recommendations to primary fi-  
18 nancial regulatory agencies to apply new or  
19 heightened standards and safeguards for finan-  
20 cial activities or practices that could create or  
21 increase risks of significant liquidity, credit, or  
22 other problems spreading among bank holding  
23 companies, nonbank financial companies, and  
24 United States financial markets;

1 (K) make determinations regarding exemp-  
2 tions in title VII, where necessary;

3 (L) provide a forum for—

4 (i) discussion and analysis of emerg-  
5 ing market developments and financial reg-  
6 ulatory issues; and

7 (ii) resolution of jurisdictional dis-  
8 putes among the members of the Council;  
9 and

10 (M) annually report to and testify before  
11 Congress on—

12 (i) the activities of the Council;

13 (ii) significant financial market devel-  
14 opments and potential emerging threats to  
15 the financial stability of the United States;

16 (iii) all determinations made under  
17 section 113 or title VIII, and the basis for  
18 such determinations; and

19 (iv) recommendations—

20 (I) to enhance the integrity, effi-  
21 ciency, competitiveness, and stability  
22 of United States financial markets;

23 (II) to promote market discipline;  
24 and

1 (III) to maintain investor con-  
2 fidence.

3 (b) AUTHORITY TO OBTAIN INFORMATION.—

4 (1) IN GENERAL.—The Council may receive,  
5 and may request the submission of, any data or in-  
6 formation from the Office of Financial Research and  
7 member agencies, as necessary—

8 (A) to monitor the financial services mar-  
9 ketplace to identify potential risks to the finan-  
10 cial stability of the United States; or

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

13 (2) SUBMISSIONS BY THE OFFICE AND MEMBER  
14 AGENCIES.—Notwithstanding any other provision of  
15 law, the Office of Financial Research and any mem-  
16 ber agency are authorized to submit information to  
17 the Council.

18 (3) FINANCIAL DATA COLLECTION.—

19 (A) IN GENERAL.—The Council, acting  
20 through the Office of Financial Research, may  
21 require the submission of periodic and other re-  
22 ports from any nonbank financial company or  
23 bank holding company for the purpose of as-  
24 sessing the extent to which a financial activity  
25 or financial market in which the nonbank finan-

1           cial company or bank holding company partici-  
2           pates, or the nonbank financial company or  
3           bank holding company itself, poses a threat to  
4           the financial stability of the United States.

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

15          (C) MITIGATION IN CASE OF FOREIGN FI-  
16          NANCIAL COMPANIES.—Before requiring the  
17          submission of reports from a company that is  
18          a foreign nonbank financial company or foreign-  
19          based bank holding company, the Council shall,  
20          acting through the Office of Financial Re-  
21          search, to the extent appropriate, consult with  
22          the appropriate foreign regulator of such com-  
23          pany and, whenever possible, rely on informa-  
24          tion already being collected by such foreign reg-  
25          ulator, with English translation.

1           (4) BACK-UP EXAMINATION BY THE BOARD OF  
2 GOVERNORS.—If the Council is unable to determine  
3 whether the financial activities of a nonbank finan-  
4 cial company pose a threat to the financial stability  
5 of the United States, based on information or re-  
6 ports obtained under paragraph (3), discussions with  
7 management, and publicly available information, the  
8 Council may request the Board of Governors, and  
9 the Board of Governors is authorized, to conduct an  
10 examination of the nonbank financial company for  
11 the sole purpose of determining whether the  
12 nonbank financial company should be supervised by  
13 the Board of Governors for purposes of this title.

14           (5) CONFIDENTIALITY.—

15           (A) IN GENERAL.—The Council, the Office  
16 of Financial Research, and the other member  
17 agencies shall maintain the confidentiality of  
18 any data, information, and reports submitted  
19 under this subsection and subtitle B.

20           (B) RETENTION OF PRIVILEGE.—The sub-  
21 mission of any nonpublicly available data or in-  
22 formation under this subsection and subtitle B  
23 shall not constitute a waiver of, or otherwise af-  
24 fect, any privilege arising under Federal or  
25 State law (including the rules of any Federal or

1 State court) to which the data or information is  
2 otherwise subject.

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

8 **SEC. 113. AUTHORITY TO REQUIRE SUPERVISION AND REG-**  
9 **ULATION OF CERTAIN NONBANK FINANCIAL**  
10 **COMPANIES.**

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

13 (1) DETERMINATION.—The Council, on a non-  
14 delegable basis and by a vote of not fewer than  $\frac{2}{3}$   
15 of the members then serving, including an affirma-  
16 tive vote by the Chairperson, may determine that a  
17 U.S. nonbank financial company shall be supervised  
18 by the Board of Governors and shall be subject to  
19 prudential standards, in accordance with this title, if  
20 the Council determines that material financial dis-  
21 tress at the U.S. nonbank financial company would  
22 pose a threat to the financial stability of the United  
23 States.

1           (2) CONSIDERATIONS.—Each determination  
2           under paragraph (1) shall be based on a consider-  
3           ation by the Council of—

4                   (A) the degree of leverage of the company;

5                   (B) the amount and nature of the financial  
6           assets of the company;

7                   (C) the amount and types of the liabilities  
8           of the company, including the degree of reliance  
9           on short-term funding;

10                  (D) the extent and types of the off-bal-  
11           ance-sheet exposures of the company;

12                  (E) the extent and types of the trans-  
13           actions and relationships of the company with  
14           other significant nonbank financial companies  
15           and significant bank holding companies;

16                  (F) the importance of the company as a  
17           source of credit for households, businesses, and  
18           State and local governments and as a source of  
19           liquidity for the United States financial system;

20                  (G) the importance of the company as a  
21           source of credit for low income, minority, or un-  
22           derserved communities, and the impact that the  
23           failure of such company would have on the  
24           availability of credit in such communities;



1 (H) the recommendation, if any, of a mem-  
2 ber of the Council;

3 (I) the operation of, or ownership interest  
4 in, any clearing, settlement, or payment busi-  
5 ness of the company;

6 (J) the extent to which—

7 (i) assets are managed rather than  
8 owned by the company; and

9 (ii) ownership of assets under man-  
10 agement is diffuse; and

11 (K) any other risk-related factors that the  
12 Council deems appropriate.

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

15 (1) DETERMINATION.—The Council, on a non-  
16 delegable basis and by a vote of not fewer than  $\frac{2}{3}$   
17 of the members then serving, including an affirma-  
18 tive vote by the Chairperson, may determine that a  
19 foreign nonbank financial company that has sub-  
20 stantial assets or operations in the United States  
21 shall be supervised by the Board of Governors and  
22 shall be subject to prudential standards in accord-  
23 ance with this title, if the Council determines that  
24 material financial distress at the foreign nonbank fi-

1           nancial company would pose a threat to the financial  
2           stability of the United States.

3           (2)   CONSIDERATIONS.—Each   determination  
4           under paragraph (1) shall be based on a consider-  
5           ation by the Council of—

6                   (A) the degree of leverage of the company;

7                   (B) the amount and nature of the United  
8           States financial assets of the company;

9                   (C) the amount and types of the liabilities  
10          of the company used to fund activities and op-  
11          erations in the United States, including the de-  
12          gree of reliance on short-term funding;

13                  (D) the extent of the United States-related  
14          off-balance-sheet exposure of the company;

15                  (E) the extent and type of the transactions  
16          and relationships of the company with other  
17          significant nonbank financial companies and  
18          bank holding companies;

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

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

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

4           (H) the recommendation, if any, of a mem-  
5           ber of the Council;

6           (I) the extent to which—

7           (i) assets are managed rather than  
8           owned by the company; and

9           (ii) ownership of assets under man-  
10          agement is diffuse; and

11          (J) any other risk-related factors that the  
12          Council deems appropriate.

13       (c) ANTI-EVASION.—

14           (1) DETERMINATIONS.—In order to avoid eva-  
15          sion of this title, the Council, on its own initiative  
16          or at the request of the Board of Governors, may de-  
17          termine, on a nondelegable basis and by a vote of  
18          not fewer than  $\frac{2}{3}$  of the members then serving, in-  
19          cluding an affirmative vote by the Chairperson,  
20          that—

21           (A) material financial distress related to fi-  
22          nancial activities conducted directly or indi-  
23          rectly by a company incorporated or organized  
24          under the laws of the United States or any  
25          State or the financial activities in the United

1 States of a company incorporated or organized  
2 in a country other than the United States  
3 would pose a threat to the financial stability of  
4 the United States, based on consideration of the  
5 factors in subsection (b)(2);

6 (B) the company is organized or operates  
7 in such a manner as to evade the application of  
8 this title; and

9 (C) such financial activities of the company  
10 shall be supervised by the Board of Governors  
11 and subject to prudential standards in accord-  
12 ance with this title, consistent with paragraph  
13 (3).

14 (2) REPORT.—Upon making a determination  
15 under paragraph (1), the Council shall submit a re-  
16 port to the appropriate committees of Congress de-  
17 tailing the reasons for making such determination.

18 (3) CONSOLIDATED SUPERVISION OF ONLY FI-  
19 NANCIAL ACTIVITIES; ESTABLISHMENT OF AN IN-  
20 TERMEDIATE HOLDING COMPANY.—

21 (A) ESTABLISHMENT OF AN INTER-  
22 MEDIATE HOLDING COMPANY.—Upon a deter-  
23 mination under paragraph (1), the company  
24 that is the subject of the determination may es-  
25 tablish an intermediate holding company in

1           which the financial activities of such company  
2           and its subsidiaries shall be conducted (other  
3           than the activities described in section  
4           167(b)(2)) in compliance with any regulations  
5           or guidance provided by the Board of Gov-  
6           ernors. Such intermediate holding company  
7           shall be subject to the supervision of the Board  
8           of Governors and to prudential standards under  
9           this title as if the intermediate holding company  
10          were a nonbank financial company supervised  
11          by the Board of Governors.

12                   (B) ACTION OF THE BOARD OF GOV-  
13                   ERNORS.—To facilitate the supervision of the  
14                   financial activities subject to the determination  
15                   in paragraph (1), the Board of Governors may  
16                   require a company to establish an intermediate  
17                   holding company, as provided for in section  
18                   167, which would be subject to the supervision  
19                   of the Board of Governors and to prudential  
20                   standards under this title, as if the intermediate  
21                   holding company were a nonbank financial com-  
22                   pany supervised by the Board of Governors.

23                   (4) NOTICE AND OPPORTUNITY FOR HEARING  
24                   AND FINAL DETERMINATION; JUDICIAL REVIEW.—  
25                   Subsections (d), (f), and (g) shall apply to deter-

1       minations made by the Council pursuant to para-  
2       graph (1) in the same manner as such subsections  
3       apply to nonbank financial companies.

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

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

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

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

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

1       ards under this title to the financial activities that  
2       are subject to the determination in paragraph (1).

3       (d) REEVALUATION AND RESCISSION.—The Council  
4 shall—

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

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

15       (e) NOTICE AND OPPORTUNITY FOR HEARING AND  
16 FINAL DETERMINATION.—

17           (1) IN GENERAL.—The Council shall provide to  
18       a nonbank financial company written notice of a  
19       proposed determination of the Council, including an  
20       explanation of the basis of the proposed determina-  
21       tion of the Council, that such nonbank financial  
22       company shall be supervised by the Board of Gov-  
23       ernors and shall be subject to prudential standards  
24       in accordance with this title.

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

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

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



1       which the company may request a hearing under  
2       paragraph (2).

3       (f) EMERGENCY EXCEPTION.—

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

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

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

24          (4) OPPORTUNITY FOR HEARING.—The Council  
25      shall allow a nonbank financial company to request,

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

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

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

1 such nonbank financial company under subsection (a), (b),  
2 or (c).

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

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

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

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

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

17 (a) IN GENERAL.—

18 (1) PURPOSE.—In order to prevent or mitigate  
19 risks to the financial stability of the United States  
20 that could arise from the material financial distress  
21 or failure of large, interconnected financial institu-  
22 tions, the Council may make recommendations to  
23 the Board of Governors concerning the establish-  
24 ment and refinement of prudential standards and re-  
25 porting and disclosure requirements applicable to  
26 nonbank financial companies supervised by the

1 Board of Governors and large, interconnected bank  
2 holding companies, that—

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

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

10 (2) LIMITATION ON BANK HOLDING COMPA-  
11 NIES.—Any standards recommended under sub-  
12 sections (b) through (f) shall not apply to any bank  
13 holding company with total consolidated assets of  
14 less than \$50,000,000,000. The Council may rec-  
15 ommend an asset threshold greater than  
16 \$50,000,000,000 for the applicability of any par-  
17 ticular standard under those subsections.

18 (b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

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

21 (A) risk-based capital requirements;

22 (B) leverage limits;

23 (C) liquidity requirements;

24 (D) resolution plan and credit exposure re-  
25 port requirements;

- 1 (E) concentration limits;  
2 (F) a contingent capital requirement;  
3 (G) enhanced public disclosures; and  
4 (H) overall risk management requirements.

5 (2) PRUDENTIAL STANDARDS FOR FOREIGN FI-  
6 NANCIAL COMPANIES.—In making recommendations  
7 concerning the standards set forth in paragraph (1)  
8 that would apply to foreign nonbank financial com-  
9 panies supervised by the Board of Governors or for-  
10 eign-based bank holding companies, the Council  
11 shall—

12 (A) give due regard to the principle of na-  
13 tional treatment and equality of competitive op-  
14 portunity; and

15 (B) take into account the extent to which  
16 the foreign nonbank financial company or for-  
17 eign-based bank holding company is subject on  
18 a consolidated basis to home country standards  
19 that are comparable to those applied to finan-  
20 cial companies in the United States.

21 (3) CONSIDERATIONS.—In making rec-  
22 ommendations concerning prudential standards  
23 under paragraph (1), the Council shall—

24 (A) take into account differences among  
25 nonbank financial companies supervised by the

1 Board of Governors and bank holding compa-  
2 nies described in subsection (a), based on—

3 (i) the factors described in subsections  
4 (a) and (b) of section 113;

5 (ii) whether the company owns an in-  
6 sured depository institution;

7 (iii) nonfinancial activities and affili-  
8 ations of the company; and

9 (iv) any other factors that the Council  
10 determines appropriate; and

11 (B) to the extent possible, ensure that  
12 small changes in the factors listed in sub-  
13 sections (a) and (b) of section 113 would not  
14 result in sharp, discontinuous changes in the  
15 prudential standards established under para-  
16 graph (1).

17 (c) CONTINGENT CAPITAL.—

18 (1) STUDY REQUIRED.—The Council shall con-  
19 duct a study of the feasibility, benefits, costs, and  
20 structure of a contingent capital requirement for  
21 nonbank financial companies supervised by the  
22 Board of Governors and bank holding companies de-  
23 scribed in subsection (a), which study shall in-  
24 clude—

1 (A) an evaluation of the degree to which  
2 such requirement would enhance the safety and  
3 soundness of companies subject to the require-  
4 ment, promote the financial stability of the  
5 United States, and reduce risks to United  
6 States taxpayers;

7 (B) an evaluation of the characteristics  
8 and amounts of convertible debt that should be  
9 required;

10 (C) an analysis of potential prudential  
11 standards that should be used to determine  
12 whether the contingent capital of a company  
13 would be converted to equity in times of finan-  
14 cial stress;

15 (D) an evaluation of the costs to compa-  
16 nies, the effects on the structure and operation  
17 of credit and other financial markets, and other  
18 economic effects of requiring contingent capital;

19 (E) an evaluation of the effects of such re-  
20 quirement on the international competitiveness  
21 of companies subject to the requirement and  
22 the prospects for international coordination in  
23 establishing such requirement; and

24 (F) recommendations for implementing  
25 regulations.



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

5           (3) RECOMMENDATIONS.—

6           (A) IN GENERAL.—Subsequent to submit-  
7 ting a report to Congress under paragraph (2),  
8 the Council may make recommendations to the  
9 Board of Governors to require any nonbank fi-  
10 nancial company supervised by the Board of  
11 Governors and any bank holding company de-  
12 scribed in subsection (a) to maintain a min-  
13 imum amount of long-term hybrid debt that is  
14 convertible to equity in times of financial stress.

15           (B) FACTORS TO CONSIDER.—In making  
16 recommendations under this subsection, the  
17 Council shall consider—

18           (i) an appropriate transition period  
19 for implementation of a conversion under  
20 this subsection;

21           (ii) the factors described in subsection  
22 (b)(3);

23           (iii) capital requirements applicable to  
24 a nonbank financial company supervised by  
25 the Board of Governors or a bank holding

1                   company described in subsection (a), and  
2                   subsidiaries thereof;

3                   (iv) results of the study required by  
4                   paragraph (1); and

5                   (v) any other factor that the Council  
6                   deems appropriate.

7           (d) RESOLUTION PLAN AND CREDIT EXPOSURE RE-  
8 PORTS.—

9           (1) RESOLUTION PLAN.—The Council may  
10           make recommendations to the Board of Governors  
11           concerning the requirement that each nonbank fi-  
12           nancial company supervised by the Board of Gov-  
13           ernors and each bank holding company described in  
14           subsection (a) report periodically to the Council, the  
15           Board of Governors, and the Corporation, the plan  
16           of such company for rapid and orderly resolution in  
17           the event of material financial distress or failure.

18           (2) CREDIT EXPOSURE REPORT.—The Council  
19           may make recommendations to the Board of Gov-  
20           ernors concerning the advisability of requiring each  
21           nonbank financial company supervised by the Board  
22           of Governors and bank holding company described in  
23           subsection (a) to report periodically to the Council,  
24           the Board of Governors, and the Corporation on—

1 (A) the nature and extent to which the  
2 company has credit exposure to other signifi-  
3 cant nonbank financial companies and signifi-  
4 cant bank holding companies; and

5 (B) the nature and extent to which other  
6 such significant nonbank financial companies  
7 and significant bank holding companies have  
8 credit exposure to that company.

9 (e) CONCENTRATION LIMITS.—In order to limit the  
10 risks that the failure of any individual company could pose  
11 to nonbank financial companies supervised by the Board  
12 of Governors or bank holding companies described in sub-  
13 section (a), the Council may make recommendations to the  
14 Board of Governors to prescribe standards to limit such  
15 risks, as set forth in section 165.

16 (f) ENHANCED PUBLIC DISCLOSURES.—The Council  
17 may make recommendations to the Board of Governors  
18 to require periodic public disclosures by bank holding com-  
19 panies described in subsection (a) and by nonbank finan-  
20 cial companies supervised by the Board of Governors, in  
21 order to support market evaluation of the risk profile, cap-  
22 ital adequacy, and risk management capabilities thereof.

23 **SEC. 116. REPORTS.**

24 (a) IN GENERAL.—Subject to subsection (b), the  
25 Council, acting through the Office of Financial Research,

1 may require a bank holding company with total consoli-  
2 dated assets of \$50,000,000,000 or greater or a nonbank  
3 financial company supervised by the Board of Governors,  
4 and any subsidiary thereof, to submit certified reports to  
5 keep the Council informed as to—

6 (1) the financial condition of the company;

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

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

11 (4) the extent to which the activities and oper-  
12 ations of the company and any subsidiary thereof,  
13 could, under adverse circumstances, have the poten-  
14 tial to disrupt financial markets or affect the overall  
15 financial stability of the United States.

16 (b) USE OF EXISTING REPORTS.—

17 (1) IN GENERAL.—For purposes of compliance  
18 with subsection (a), the Council, acting through the  
19 Office of Financial Research, shall, to the fullest ex-  
20 tent possible, use—

21 (A) reports that a bank holding company,  
22 nonbank financial company supervised by the  
23 Board of Governors, or any functionally regu-  
24 lated subsidiary of such company has been re-

1           required to provide to other Federal or State reg-  
2           ulatory agencies;

3                   (B) information that is otherwise required  
4           to be reported publicly; and

5                   (C) externally audited financial statements.

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

12          (3) CONFIDENTIALITY.—The Council shall  
13          maintain the confidentiality of the reports obtained  
14          under subsection (a) and paragraph (1)(A) of this  
15          subsection.

16 **SEC. 117. TREATMENT OF CERTAIN COMPANIES THAT**  
17 **CEASE TO BE BANK HOLDING COMPANIES.**

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

19                  (1) any entity that—

20                          (A) was a bank holding company having  
21                          total consolidated assets equal to or greater  
22                          than \$50,000,000,000 as of January 1, 2010;  
23                          and

24                          (B) received financial assistance under or  
25                          participated in the Capital Purchase Program

1           established under the Troubled Asset Relief  
2           Program authorized by the Emergency Eco-  
3           nomic Stabilization Act of 2008; and

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

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

13          (c) APPEAL.—

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

25           (2) DECISION.—

1           (A) PROPOSED DECISION.—Not later than  
2           60 days after the date of a hearing under para-  
3           graph (1), the Council shall submit a report to,  
4           and may testify before, the Committee on  
5           Banking, Housing, and Urban Affairs of the  
6           Senate and the Committee on Financial Serv-  
7           ices of the House of Representatives on the pro-  
8           posed decision of the Council regarding an ap-  
9           peal under paragraph (1), which report shall in-  
10          clude a statement of the basis for the proposed  
11          decision of the Council.

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

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

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

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

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

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

17 **SEC. 118. COUNCIL FUNDING.**

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

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

22 (a) REQUEST FOR DISPUTE RESOLUTION.—The  
23 Council shall resolve a dispute among 2 or more member  
24 agencies, if—



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

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

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

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

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

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

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

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

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

6           (c) FORM OF DECISION.—Any Council decision under  
7 this section shall—

8           (1) be in writing;

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

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

13          (d) BINDING EFFECT.—Any decision made by the  
14 Council under subsection (c) shall be binding on all Fed-  
15 eral agencies that are parties to the dispute.

16 **SEC. 120. ADDITIONAL STANDARDS APPLICABLE TO ACTIVI-**  
17 **TIES OR PRACTICES FOR FINANCIAL STA-**  
18 **BILITY PURPOSES.**

19          (a) IN GENERAL.—The Council may issue rec-  
20 ommendations to the primary financial regulatory agen-  
21 cies to apply new or heightened standards and safeguards,  
22 including standards enumerated in section 115, for a fi-  
23 nancial activity or practice conducted by bank holding  
24 companies or nonbank financial companies under their re-  
25 spective jurisdictions, if the Council determines that the

1 conduct of such activity or practice could create or in-  
2 crease the risk of significant liquidity, credit, or other  
3 problems spreading among bank holding companies and  
4 nonbank financial companies, financial markets of the  
5 United States, or low-income, minority, or underserved  
6 communities.

7 (b) PROCEDURE FOR RECOMMENDATIONS TO REGU-  
8 LATORS.—

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

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

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

22 (B) may include prescribing the conduct of  
23 the activity or practice in specific ways (such as  
24 by limiting its scope, or applying particular cap-  
25 ital or risk management requirements to the

1           conduct of the activity) or prohibiting the activ-  
2           ity or practice.

3           (c) IMPLEMENTATION OF RECOMMENDED STAND-  
4           ARDS.—

5           (1) ROLE OF PRIMARY FINANCIAL REGULATORY  
6           AGENCY.—

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

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

24          (2) IMPOSITION OF STANDARDS.—The primary  
25          financial regulatory agency shall impose the stand-

1       ards recommended by the Council in accordance  
2       with subsection (a), or similar standards that the  
3       Council deems acceptable, or shall explain in writing  
4       to the Council, not later than 90 days after the date  
5       on which the Council issues the recommendation,  
6       why the agency has determined not to follow the rec-  
7       ommendation of the Council.

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

10           (1) any recommendations issued by the Council  
11           under this section;

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

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

22       (e) EFFECT OF RESCISSION OF IDENTIFICATION.—

23           (1) NOTICE.—The Council may recommend to  
24           the relevant primary financial regulatory agency that  
25           a financial activity or practice no longer requires any

1 standards or safeguards implemented under this sec-  
2 tion.

3 (2) DETERMINATION OF PRIMARY FINANCIAL  
4 REGULATORY AGENCY TO CONTINUE.—

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

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

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

19 (a) MITIGATORY ACTIONS.—If the Board of Gov-  
20 ernors determines that a bank holding company with total  
21 consolidated assets of \$50,000,000,000 or more, or a  
22 nonbank financial company supervised by the Board of  
23 Governors, poses a grave threat to the financial stability  
24 of the United States, the Board of Governors, upon an

1 affirmative vote of not fewer than  $\frac{2}{3}$  of the Council mem-  
2 bers then serving, shall require the subject company—

3 (1) to terminate one or more activities;

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

6 (3) if the Board of Governors determines that  
7 such action is inadequate to mitigate a threat to the  
8 financial stability of the United States in its rec-  
9 ommendation, to sell or otherwise transfer assets or  
10 off-balance-sheet items to unaffiliated entities.

11 (b) NOTICE AND HEARING.—

12 (1) IN GENERAL.—The Board of Governors, in  
13 consultation with the Council, shall provide to a  
14 company described in subsection (a) written notice  
15 that such company is being considered for mitiga-  
16 tory action pursuant to this section, including an ex-  
17 planation of the basis for, and description of, the  
18 proposed mitigatory action.

19 (2) HEARING.—Not later than 30 days after  
20 the date of receipt of notice under paragraph (1),  
21 the company may request, in writing, an opportunity  
22 for a written or oral hearing before the Board of  
23 Governors to contest the proposed mitigatory action.  
24 Upon receipt of a timely request, the Board of Gov-  
25 ernors shall fix a time (not later than 30 days after

1 the date of receipt of the request) and place at  
2 which such company may appear, personally or  
3 through counsel, to submit written materials (or, at  
4 the discretion of the Board of Governors, in con-  
5 sultation with the Council, oral testimony and oral  
6 argument).

7 (3) DECISION.—Not later than 60 days after  
8 the date of a hearing under paragraph (2), or not  
9 later than 60 days after the provision of a notice  
10 under paragraph (1) if no hearing was held, the  
11 Board of Governors shall notify the company of the  
12 final decision of the Board of Governors, including  
13 the results of the vote of the Council, as described  
14 in subsection (a).

15 (c) FACTORS FOR CONSIDERATION.—The Board of  
16 Governors and the Council shall take into consideration  
17 the factors set forth in subsection (a) or (b) of section  
18 113, as applicable, in making any determination under  
19 subsection (a).

20 (d) APPLICATION TO FOREIGN FINANCIAL COMPA-  
21 NIES.—The Board of Governors may prescribe regulations  
22 regarding the application of this section to foreign  
23 nonbank financial companies supervised by the Board of  
24 Governors and foreign-based bank holding companies—



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

4           (2) taking into account the extent to which the  
5           foreign nonbank financial company or foreign-based  
6           bank holding company is subject on a consolidated  
7           basis to home country standards that are com-  
8           parable to those applied to financial companies in  
9           the United States.

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

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

13           (1) the Council; and

14           (2) any person or entity acting on behalf of or  
15           under the authority of the Council, to the extent  
16           that such activities relate to work for the Council by  
17           such person or entity.

18           (b) **ACCESS TO INFORMATION.**—

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

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

1 (B) any records or other information under  
2 the control of a person or entity acting on be-  
3 half of or under the authority of the Council, to  
4 the extent that such records or other informa-  
5 tion is relevant to an audit under subsection  
6 (a); and

7 (C) the officers, directors, employees, fi-  
8 nancial advisors, staff, working groups, and  
9 agents and representatives of the Council (as  
10 related to the activities on behalf of the Council  
11 of such agent or representative), at such rea-  
12 sonable times as the Comptroller General may  
13 request.

14 (2) COPIES.—The Comptroller General may  
15 make and retain copies of such books, accounts, and  
16 other records, access to which is granted under this  
17 section, as the Comptroller General considers appro-  
18 priate.

## 19 **Subtitle B—Office of Financial** 20 **Research**

### 21 **SEC. 151. DEFINITIONS.**

22 For purposes of this subtitle—

23 (1) the terms “Office” and “Director” mean  
24 the Office of Financial Research established under  
25 this subtitle and the Director thereof, respectively;

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

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

6           (4) the term “Research and Analysis Center”  
7 means the research and analysis center established  
8 under section 154;

9           (5) the term “financial transaction data” means  
10 the structure and legal description of a financial  
11 contract, with sufficient detail to describe the rights  
12 and obligations between counterparties and make  
13 possible an independent valuation;

14           (6) the term “position data”—

15           (A) means data on financial assets or li-  
16 abilities held on the balance sheet of a financial  
17 company, where positions are created or  
18 changed by the execution of a financial trans-  
19 action; and

20           (B) includes information that identifies  
21 counterparties, the valuation by the financial  
22 company of the position, and information that  
23 makes possible an independent valuation of the  
24 position;

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

6           (8) the term “financial instrument” means a fi-  
7           nancial contract in which the terms and conditions  
8           are publicly available, and the roles of one or more  
9           of the counterparties are assignable without the con-  
10          sent of any of the other counterparties (including  
11          common stock of a publicly traded company, govern-  
12          ment bonds, or exchange traded futures and options  
13          contracts).

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

15          (a) **ESTABLISHMENT.**—There is established within  
16 the Department of the Treasury the Office of Financial  
17 Research.

18          (b) **DIRECTOR.**—

19               (1) **IN GENERAL.**—The Office shall be headed  
20 by a Director, who shall be appointed by the Presi-  
21 dent, by and with the advice and consent of the Sen-  
22 ate.

23               (2) **TERM OF SERVICE.**—The Director shall  
24 serve for a term of 6 years, except that, in the event  
25 that a successor is not nominated and confirmed by

1 the end of the term of service of a Director, the Di-  
2 rector may continue to serve until such time as the  
3 next Director is appointed and confirmed.

4 (3) EXECUTIVE LEVEL.—The Director shall be  
5 compensated at level III of the Executive Schedule.

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

10 (5) RESPONSIBILITIES, DUTIES, AND AUTHOR-  
11 ITY.—The Director shall have sole discretion in the  
12 manner in which the Director fulfills the responsibil-  
13 ities and duties and exercises the authorities de-  
14 scribed in this subtitle.

15 (c) BUDGET.—The Director, in consultation with the  
16 Chairperson, shall establish the annual budget of the Of-  
17 fice.

18 (d) OFFICE PERSONNEL.—

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

22 (2) COMPENSATION.—The Director, in con-  
23 sultation with the Chairperson, shall fix, adjust, and  
24 administer the pay for all employees of the Office,  
25 without regard to chapter 51 or subchapter III of

1 chapter 53 of title 5, United States Code, relating  
2 to classification of positions and General Schedule  
3 pay rates.

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

8 (A) by striking “Finance Board,” and in-  
9 serting “Finance Board, the Office of Financial  
10 Research, and the Bureau of Consumer Finan-  
11 cial Protection”; and

12 (B) by striking “and the Office of Thrift  
13 Supervision,”.

14 (e) ASSISTANCE FROM FEDERAL AGENCIES.—Any  
15 department or agency of the United States may provide  
16 to the Office and any special advisory, technical, or profes-  
17 sional committees appointed by the Office, such services,  
18 funds, facilities, staff, and other support services as the  
19 Office may determine advisable. Any Federal Government  
20 employee may be detailed to the Office without reimburse-  
21 ment, and such detail shall be without interruption or loss  
22 of civil service status or privilege.

23 (f) PROCUREMENT OF TEMPORARY AND INTERMIT-  
24 TENT SERVICES.—The Director may procure temporary  
25 and intermittent services under section 3109(b) of title 5,

1 United States Code, at rates for individuals which do not  
2 exceed the daily equivalent of the annual rate of basic pay  
3 prescribed for level V of the Executive Schedule under sec-  
4 tion 5316 of such title.

5 (g) CONTRACTING AND LEASING AUTHORITY.—Not-  
6 withstanding the Federal Property and Administrative  
7 Services Act of 1949 (41 U.S.C. 251 et seq.) or any other  
8 provision of law, the Director may—

9 (1) enter into and perform contracts, execute  
10 instruments, and acquire, in any lawful manner,  
11 such goods and services, or personal or real property  
12 (or property interest), as the Director deems nec-  
13 essary to carry out the duties and responsibilities of  
14 the Office; and

15 (2) hold, maintain, sell, lease, or otherwise dis-  
16 pose of the property (or property interest) acquired  
17 under paragraph (1).

18 (h) NON-COMPETE.—The Director and any staff of  
19 the Office who has had access to the transaction or posi-  
20 tion data maintained by the Data Center or other business  
21 confidential information about financial entities required  
22 to report to the Office, may not, for a period of 1 year  
23 after last having access to such transaction or position  
24 data or business confidential information, be employed by  
25 or provide advice or consulting services to a financial com-

1 pany, regardless of whether that entity is required to re-  
2 port to the Office. For staff whose access to business con-  
3 fidential information was limited, the Director may pro-  
4 vide, on a case-by-case basis, for a shorter period of post-  
5 employment prohibition, provided that the shorter period  
6 does not compromise business confidential information.

7 (i) TECHNICAL AND PROFESSIONAL ADVISORY COM-  
8 MITTEES.—The Office, in consultation with the Chair-  
9 person, may appoint such special advisory, technical, or  
10 professional committees as may be useful in carrying out  
11 the functions of the Office, and the members of such com-  
12 mittees may be staff of the Office, or other persons, or  
13 both.

14 (j) FELLOWSHIP PROGRAM.—The Office, in consulta-  
15 tion with the Chairperson, may establish and maintain an  
16 academic and professional fellowship program, under  
17 which qualified academics and professionals shall be in-  
18 vited to spend not longer than 2 years at the Office, to  
19 perform research and to provide advanced training for Of-  
20 fice personnel.

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

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



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

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

6 (1) collecting data on behalf of the Council, and  
7 providing such data to the Council and member  
8 agencies;

9 (2) standardizing the types and formats of data  
10 reported and collected;

11 (3) performing applied research and essential  
12 long-term research;

13 (4) developing tools for risk measurement and  
14 monitoring;

15 (5) performing other related services;

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

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

21 (b) ADMINISTRATIVE AUTHORITY.—The Office  
22 may—

23 (1) share data and information, including soft-  
24 ware developed by the Office, with the Council and  
25 member agencies, which shared data, information,  
26 and software—

1 (A) shall be maintained with at least the  
2 same level of security as is used by the Office;  
3 and

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

6 (2) sponsor and conduct research projects; and

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

10 (c) RULEMAKING AUTHORITY.—

11 (1) SCOPE.—The Office, in consultation with  
12 the Chairperson, shall issue rules, regulations, and  
13 orders only to the extent necessary to carry out the  
14 purposes and duties described in paragraphs (1),  
15 (2), and (7) of subsection (a).

16 (2) STANDARDIZATION.—Member agencies, in  
17 consultation with the Office, shall implement regula-  
18 tions promulgated by the Office under paragraph (1)  
19 to standardize the types and formats of data re-  
20 ported and collected on behalf of the Council, as de-  
21 scribed in subsection (a)(2). If a member agency  
22 fails to implement such regulations prior to the expi-  
23 ration of the 3-year period following the date of pub-  
24 lication of final regulations, the Office, in consulta-  
25 tion with the Chairperson, may implement such reg-

1           ulations with respect to the financial entities under  
2           the jurisdiction of the member agency.

3           (d) TESTIMONY.—

4                 (1) IN GENERAL.—The Director of the Office  
5           shall report to and testify before the Committee on  
6           Banking, Housing, and Urban Affairs of the Senate  
7           and the Committee on Financial Services of the  
8           House of Representatives annually on the activities  
9           of the Office, including the work of the Data Center  
10          and the Research and Analysis Center, and the as-  
11          sessment of the Office of significant financial market  
12          developments and potential emerging threats to the  
13          financial stability of the United States.

14                (2) NO PRIOR REVIEW.—No officer or agency of  
15          the United States shall have any authority to require  
16          the Director to submit the testimony required under  
17          paragraph (1) or other Congressional testimony to  
18          any officer or agency of the United States for ap-  
19          proval, comment, or review prior to the submission  
20          of such testimony. Any such testimony to Congress  
21          shall include a statement that the views expressed  
22          therein are those of the Director and do not nec-  
23          essarily represent the views of the President.

24                (e) ADDITIONAL REPORTS.—The Director may pro-  
25          vide additional reports to Congress concerning the finan-

1 cial stability of the United States. The Director shall no-  
2 tify the Council of any such additional reports provided  
3 to Congress.

4 (f) SUBPOENA.—

5 (1) IN GENERAL.—The Director may require  
6 from a financial company, by subpoena, the produc-  
7 tion of the data requested under subsection (a)(1)  
8 and section 154(b)(1), but only upon a written find-  
9 ing by the Director that—

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

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

15 (2) FORMAT.—Subpoenas under paragraph (1)  
16 shall bear the signature of the Director, and shall be  
17 served by any person or class of persons designated  
18 by the Director for that purpose.

19 (3) ENFORCEMENT.—In the case of contumacy  
20 or failure to obey a subpoena, the subpoena shall be  
21 enforceable by order of any appropriate district  
22 court of the United States. Any failure to obey the  
23 order of the court may be punished by the court as  
24 a contempt of court.

1 **SEC. 154. ORGANIZATIONAL STRUCTURE; RESPONSIBIL-**  
2 **ITIES OF PRIMARY PROGRAMMATIC UNITS.**

3 (a) IN GENERAL.—There are established within the  
4 Office, to carry out the programmatic responsibilities of  
5 the Office—

6 (1) the Data Center; and

7 (2) the Research and Analysis Center.

8 (b) DATA CENTER.—

9 (1) GENERAL DUTIES.—

10 (A) DATA COLLECTION.—The Data Cen-  
11 ter, on behalf of the Council, shall collect, vali-  
12 date, and maintain all data necessary to carry  
13 out the duties of the Data Center, as described  
14 in this subtitle. The data assembled shall be ob-  
15 tained from member agencies, commercial data  
16 providers, publicly available data sources, and  
17 financial entities under subparagraph (B).

18 (B) AUTHORITY.—

19 (i) IN GENERAL.—The Office may, as  
20 determined by the Council or by the Direc-  
21 tor in consultation with the Council, re-  
22 quire the submission of periodic and other  
23 reports from any financial company for the  
24 purpose of assessing the extent to which a  
25 financial activity or financial market in  
26 which the financial company participates,

1 or the financial company itself, poses a  
2 threat to the financial stability of the  
3 United States.

4 (ii) MITIGATION OF REPORT BUR-  
5 DEN.—Before requiring the submission of  
6 a report from any financial company that  
7 is regulated by a member agency or any  
8 primary financial regulatory agency, the  
9 Office shall coordinate with such agencies  
10 and shall, whenever possible, rely on infor-  
11 mation available from such agencies.

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

18 (2) RESPONSIBILITIES.—

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

22 (i) a financial company reference  
23 database;

24 (ii) a financial instrument reference  
25 database; and

1 (iii) formats and standards for Office  
2 data, including standards for reporting fi-  
3 nancial transaction and position data to  
4 the Office.

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

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

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

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

21 (6) OTHER AUTHORITY.—The Office shall,  
22 after consultation with the member agencies, provide  
23 certain data to financial industry participants and to  
24 the general public to increase market transparency  
25 and facilitate research on the financial system, to

1 the extent that intellectual property rights are not  
2 violated, business confidential information is prop-  
3 erly protected, and the sharing of such information  
4 poses no significant threats to the financial system  
5 of the United States.

6 (c) RESEARCH AND ANALYSIS CENTER.—

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

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

14 (B) to monitor, investigate, and report on  
15 changes in system-wide risk levels and patterns  
16 to the Council and Congress;

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

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

23 (E) to maintain expertise in such areas as  
24 may be necessary to support specific requests



1 for advice and assistance from financial regu-  
2 lators;

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

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

10 (H) to promote best practices for financial  
11 risk management.

12 (d) REPORTING RESPONSIBILITIES.—

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

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

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

23 (B) the status of the efforts of the Office  
24 in meeting the mission of the Office; and

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

3 **SEC. 155. FUNDING.**

4 (a) FINANCIAL RESEARCH FUND.—

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

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

12 (3) INVESTMENTS AUTHORIZED.—

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

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

1           (4) INTEREST AND PROCEEDS CREDITED.—The  
2 interest on, and the proceeds from the sale or re-  
3 demption of, any obligations held in the Financial  
4 Research Fund shall be credited to and form a part  
5 of the Financial Research Fund.

6           (b) USE OF FUNDS.—

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

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

18           (3) AMOUNTS NOT SUBJECT TO APPORTION-  
19 MENT.—Notwithstanding any other provision of law,  
20 amounts in the Financial Research Fund shall not  
21 be subject to apportionment for purposes of chapter  
22 15 of title 31, United States Code, or under any  
23 other authority, or for any other purpose.

24           (c) INTERIM FUNDING.—During the 2-year period  
25 following the date of enactment of this Act, the Board of

1 Governors shall provide to the Office an amount sufficient  
2 to cover the expenses of the Office.

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

14 **SEC. 156. TRANSITION OVERSIGHT.**

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

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

22 (b) REPORTING REQUIREMENT.—

23 (1) IN GENERAL.—The Office shall submit an  
24 annual report to the Committee on Banking, Hous-  
25 ing, and Urban Affairs of the Senate and the Com-

1        mittee on Financial Services of the House of Rep-  
2        resentatives that includes the plans described in  
3        paragraph (2).

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

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

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

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

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

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

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

22            (i) telework;

23            (ii) flexible work schedules;

24            (iii) phased retirement;

25            (iv) reemployed annuitants;

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

9 (C) RECRUITMENT AND RETENTION  
10 PLAN.—The Office shall submit a recruitment  
11 and retention plan that includes, to the extent  
12 practicable, provisions relating to—

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

23 (c) EXPIRATION.—The reporting requirement under  
24 subsection (b) shall terminate 5 years after the date of  
25 enactment of this Act.

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

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

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

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

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

16 (a) REPORTS.—

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

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

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

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

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

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

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

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

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

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

25          (b) EXAMINATIONS.—



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

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

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

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

16                  (D) compliance by the company with the  
17                  requirements of this subtitle.

18           (2) USE OF EXAMINATION REPORTS AND IN-  
19           FORMATION.—For purposes of this subsection, the  
20           Board of Governors shall, to the fullest extent pos-  
21           sible, rely on reports of examination of any deposi-  
22           tory institution subsidiary or functionally regulated  
23           subsidiary made by the primary financial regulatory  
24           agency for that subsidiary, and on information de-  
25           scribed in subsection (a)(2).

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

3 (1) provide to the primary financial regulatory  
4 agency for any company or subsidiary, reasonable  
5 notice before requiring a report, requesting informa-  
6 tion, or commencing an examination of such sub-  
7 sidiary under this section; and

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

11 **SEC. 162. ENFORCEMENT.**

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

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

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

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

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

1 **SEC. 163. ACQUISITIONS.**

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

8 (b) ACQUISITION OF NONBANK COMPANIES.—

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

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

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

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

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

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

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

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

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

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

6 (a) IN GENERAL.—

7 (1) PURPOSE.—In order to prevent or mitigate  
8 risks to the financial stability of the United States  
9 that could arise from the material financial distress  
10 or failure of large, interconnected financial institu-  
11 tions, the Board of Governors shall, on its own or  
12 pursuant to recommendations by the Council under  
13 section 115, establish prudential standards and re-  
14 porting and disclosure requirements applicable to  
15 nonbank financial companies supervised by the  
16 Board of Governors and large, interconnected bank  
17 holding companies that—

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

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

25 (2) LIMITATION ON BANK HOLDING COMPA-  
26 NIES.—Any standards established under subsections

1 (b) through (f) shall not apply to any bank holding  
2 company with total consolidated assets of less than  
3 \$50,000,000,000, but the Board of Governors may  
4 establish an asset threshold greater than  
5 \$50,000,000,000 for the applicability of any par-  
6 ticular standard under subsections (b) through (f).

7 (b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

8 (1) IN GENERAL.—

9 (A) REQUIRED STANDARDS.—The Board  
10 of Governors shall, by regulation or order, es-  
11 tablish prudential standards for nonbank finan-  
12 cial companies supervised by the Board of Gov-  
13 ernors and bank holding companies described in  
14 subsection (a), that shall include—

- 15 (i) risk-based capital requirements;  
16 (ii) leverage limits;  
17 (iii) liquidity requirements;  
18 (iv) resolution plan and credit expo-  
19 sure report requirements; and  
20 (v) concentration limits.

21 (B) ADDITIONAL STANDARDS AUTHOR-  
22 IZED.—The Board of Governors may, by regu-  
23 lation or order, establish prudential standards  
24 for nonbank financial companies supervised by  
25 the Board of Governors and bank holding com-



1           panies described in subsection (a), that in-  
2           clude—

- 3                       (i) a contingent capital requirement;  
4                       (ii) enhanced public disclosures; and  
5                       (iii) overall risk management require-  
6                       ments.

7           (2) STANDARDS FOR FOREIGN FINANCIAL COM-  
8           PANIES.—In applying the standards set forth in  
9           paragraph (1) to any foreign nonbank financial com-  
10          pany supervised by the Board of Governors or for-  
11          eign-based bank holding company, the Board of Gov-  
12          ernors shall—

13                    (A) give due regard to the principles of na-  
14                    tional treatment and equality of competitive op-  
15                    portunity; and

16                    (B) take into account the extent to which  
17                    the foreign financial company is subject on a  
18                    consolidated basis to home country standards  
19                    that are comparable to those applied to finan-  
20                    cial companies in the United States.

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

24                    (A) take into account differences among  
25                    nonbank financial companies supervised by the

1 Board of Governors and bank holding compa-  
2 nies described in subsection (a), based on—

3 (i) the factors described in subsections  
4 (a) and (b) of section 113;

5 (ii) whether the company owns an in-  
6 sured depository institution;

7 (iii) nonfinancial activities and affili-  
8 ations of the company; and

9 (iv) any other factors that the Board  
10 of Governors determines appropriate;

11 (B) to the extent possible, ensure that  
12 small changes in the factors listed in sub-  
13 sections (a) and (b) of section 113 would not  
14 result in sharp, discontinuous changes in the  
15 prudential standards established under para-  
16 graph (1) of this subsection; and

17 (C) take into account any recommenda-  
18 tions of the Council under section 115.

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

25 (c) CONTINGENT CAPITAL.—

1           (1) IN GENERAL.—Subsequent to submission by  
2           the Council of a report to Congress under section  
3           115(c), the Board of Governors may promulgate reg-  
4           ulations that require each nonbank financial com-  
5           pany supervised by the Board of Governors and  
6           bank holding companies described in subsection (a)  
7           to maintain a minimum amount of long-term hybrid  
8           debt that is convertible to equity in times of finan-  
9           cial stress.

10           (2) FACTORS TO CONSIDER.—In establishing  
11           regulations under this subsection, the Board of Gov-  
12           ernors shall consider—

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

16                   (B) an appropriate transition period for  
17                   implementation of a conversion under this sub-  
18                   section;

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

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

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

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

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

13           (2) CREDIT EXPOSURE REPORT.—The Board of  
14 Governors shall require each nonbank financial com-  
15 pany supervised by the Board of Governors and  
16 bank holding companies described in subsection (a)  
17 to report periodically to the Board of Governors, the  
18 Council, and the Corporation on—

19                   (A) the nature and extent to which the  
20 company has credit exposure to other signifi-  
21 cant nonbank financial companies and signifi-  
22 cant bank holding companies; and

23                   (B) the nature and extent to which other  
24 significant nonbank financial companies and

1           significant bank holding companies have credit  
2           exposure to that company.

3           (3) REVIEW.—The Board of Governors and the  
4           Corporation shall review the information provided in  
5           accordance with this subsection by each nonbank fi-  
6           nancial company supervised by the Board of Gov-  
7           ernors and bank holding company described in sub-  
8           section (a).

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

17                 (A) the Board of Governors and the Cor-  
18                 poration shall notify the company, as applica-  
19                 ble, of the deficiencies in the resolution plan;  
20                 and

21                 (B) the company shall resubmit the resolu-  
22                 tion plan within a time frame determined by the  
23                 Board of Governors and the Corporation, with  
24                 revisions demonstrating that the plan is credible  
25                 and would result in an orderly resolution under

1 title 11, United States Code, including any pro-  
2 posed changes in business operations and cor-  
3 porate structure to facilitate implementation of  
4 the plan.

5 (5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

6 (A) IN GENERAL.—If a nonbank financial  
7 company supervised by the Board of Governors  
8 or a bank holding company described in sub-  
9 section (a) fails to timely resubmit the resolu-  
10 tion plan as required under paragraph (4), with  
11 such revisions as are required under subpara-  
12 graph (B), the Board of Governors and the  
13 Corporation may jointly impose more stringent  
14 capital, leverage, or liquidity requirements, or  
15 restrictions on the growth, activities, or oper-  
16 ations of the company, or any subsidiary there-  
17 of, until such time as the company resubmits a  
18 plan that remedies the deficiencies.

19 (B) DIVESTITURE.—The Board of Gov-  
20 ernors and the Corporation, in consultation  
21 with the Council, may direct a nonbank finan-  
22 cial company supervised by the Board of Gov-  
23 ernors or a bank holding company described in  
24 subsection (a), by order, to divest certain assets  
25 or operations identified by the Board of Gov-

1           ernors and the Corporation, to facilitate an or-  
2           derly resolution of such company under title 11,  
3           United States Code, in the event of the failure  
4           of such company, in any case in which—

5                   (i) the Board of Governors and the  
6                   Corporation have jointly imposed more  
7                   stringent requirements on the company  
8                   pursuant to subparagraph (A); and

9                   (ii) the company has failed, within the  
10                  2-year period beginning on the date of the  
11                  imposition of such requirements under sub-  
12                  paragraph (A), to resubmit the resolution  
13                  plan with such revisions as were required  
14                  under paragraph (4)(B).

15           (6) RULES.—Not later than 18 months after  
16           the date of enactment of this Act, the Board of Gov-  
17           ernors and the Corporation shall jointly issue final  
18           rules implementing this subsection.

19           (e) CONCENTRATION LIMITS.—

20                   (1) STANDARDS.—In order to limit the risks  
21                   that the failure of any individual company could  
22                   pose to a nonbank financial company supervised by  
23                   the Board of Governors or a bank holding company  
24                   described in subsection (a), the Board of Governors,

1 by regulation, shall prescribe standards that limit  
2 such risks.

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

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

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

18 (B) all repurchase agreements and reverse  
19 repurchase agreements with the company, and  
20 all securities borrowing and lending trans-  
21 actions with the company, to the extent that  
22 such transactions create credit exposure for the  
23 nonbank financial company supervised by the  
24 Board of Governors or a bank holding company  
25 described in subsection (a);



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

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

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

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

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

24 (5) **RULEMAKING.**—The Board of Governors  
25 may issue such regulations and orders, including

1 definitions consistent with this section, as may be  
2 necessary to administer and carry out this sub-  
3 section.

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

12 (7) TRANSITION PERIOD.—

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

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

22 (f) ENHANCED PUBLIC DISCLOSURES.—The Board  
23 of Governors may prescribe, by regulation, periodic public  
24 disclosures by nonbank financial companies supervised by  
25 the Board of Governors and bank holding companies de-

1 scribed in subsection (a) in order to support market eval-  
2 uation of the risk profile, capital adequacy, and risk man-  
3 agement capabilities thereof.

4 (g) RISK COMMITTEE.—

5 (1) NONBANK FINANCIAL COMPANIES SUPER-  
6 VISED BY THE BOARD OF GOVERNORS.—The Board  
7 of Governors shall require each nonbank financial  
8 company supervised by the Board of Governors that  
9 is a publicly traded company to establish a risk com-  
10 mittee, as set forth in paragraph (3), not later than  
11 1 year after the date of receipt of a notice of final  
12 determination under section 113(d)(3) with respect  
13 to such nonbank financial company supervised by  
14 the Board of Governors.

15 (2) CERTAIN BANK HOLDING COMPANIES.—

16 (A) MANDATORY REGULATIONS.—The  
17 Board of Governors shall issue regulations re-  
18 quiring each bank holding company that is a  
19 publicly traded company and that has total con-  
20 solidated assets of not less than  
21 \$10,000,000,000 to establish a risk committee,  
22 as set forth in paragraph (3).

23 (B) PERMISSIVE REGULATIONS.—The  
24 Board of Governors may require each bank  
25 holding company that is a publicly traded com-

1           pany and that has total consolidated assets of  
2           less than \$10,000,000,000 to establish a risk  
3           committee, as set forth in paragraph (3), as de-  
4           termined necessary or appropriate by the Board  
5           of Governors to promote sound risk manage-  
6           ment practices.

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

9                   (A) be responsible for the oversight of the  
10                  enterprise-wide risk management practices of  
11                  the nonbank financial company supervised by  
12                  the Board of Governors or bank holding com-  
13                  pany described in subsection (a), as applicable;

14                   (B) include such number of independent  
15                  directors as the Board of Governors may deter-  
16                  mine appropriate, based on the nature of oper-  
17                  ations, size of assets, and other appropriate cri-  
18                  teria related to the nonbank financial company  
19                  supervised by the Board of Governors or a bank  
20                  holding company described in subsection (a), as  
21                  applicable; and

22                   (C) include at least 1 risk management ex-  
23                  pert having experience in identifying, assessing,  
24                  and managing risk exposures of large, complex  
25                  firms.

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

6           (h) STRESS TESTS.—The Board of Governors shall  
7           conduct analyses in which nonbank financial companies  
8           supervised by the Board of Governors and bank holding  
9           companies described in subsection (a) are subject to eval-  
10          uation of whether the companies have the capital, on a  
11          total consolidated basis, necessary to absorb losses as a  
12          result of adverse economic conditions, and shall require  
13          such companies to update their resolution plans required  
14          under subsection (d)(1), as the Board of Governors deter-  
15          mines appropriate, based on the results of the analyses.  
16          The Board of Governors may develop and apply such other  
17          analytic techniques as are necessary to identify, measure,  
18          and monitor risks to the financial stability of the United  
19          States.

20       **SEC. 166. EARLY REMEDIATION REQUIREMENTS.**

21          (a) IN GENERAL.—The Board of Governors, in con-  
22          sultation with the Council and the Corporation, shall pre-  
23          scribe regulations establishing requirements to provide for  
24          the early remediation of financial distress of a nonbank  
25          financial company supervised by the Board of Governors

1 or a bank holding company described in section 165(a),  
2 except that nothing in this subsection authorizes the provi-  
3 sion of financial assistance from the Federal Government.

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

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

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

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

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

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

6 **SEC. 167. AFFILIATIONS.**

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

14 (b) REQUIREMENT.—

15 (1) IN GENERAL.—If a nonbank financial com-  
16 pany supervised by the Board of Governors conducts  
17 activities other than those that are determined to be  
18 financial in nature or incidental thereto under sec-  
19 tion 4(k) of the Bank Holding Company Act of  
20 1956, the Board of Governors may require such  
21 company to establish and conduct all or a portion of  
22 such activities that are determined to be financial in  
23 nature or incidental thereto in or through an inter-  
24 mediate holding company established pursuant to  
25 regulation of the Board of Governors, not later than

1 90 days (or such longer period as the Board of Gov-  
2 ernors may deem appropriate) after the date on  
3 which the nonbank financial company supervised by  
4 the Board of Governors is notified of the determina-  
5 tion of the Board of Governors under this section.

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

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



1           (1) shall promulgate regulations to establish the  
2           criteria for determining whether to require a  
3           nonbank financial company supervised by the Board  
4           of Governors to establish an intermediate holding  
5           company under subsection (a); and

6           (2) may promulgate regulations to establish any  
7           restrictions or limitations on transactions between  
8           an intermediate holding company or a nonbank fi-  
9           nancial company supervised by the Board of Gov-  
10          ernors and its affiliates, as necessary to prevent un-  
11          safe and unsound practices in connection with trans-  
12          actions between such company, or any subsidiary  
13          thereof, and its parent company or affiliates that are  
14          not subsidiaries of such company, except that such  
15          regulations shall not restrict or limit any transaction  
16          in connection with the bona fide acquisition or lease  
17          by an unaffiliated person of assets, goods, or serv-  
18          ices.

19 **SEC. 168. REGULATIONS.**

20          Except as otherwise specified in this subtitle, not  
21          later than 18 months after the transfer date, the Board  
22          of Governors shall issue final regulations to implement  
23          this subtitle and the amendments made by this subtitle.

1 **SEC. 169. AVOIDING DUPLICATION.**

2 The Board of Governors shall take any action that  
3 the Board of Governors deems appropriate to avoid impos-  
4 ing requirements under this subtitle that are duplicative  
5 of requirements applicable to bank holding companies and  
6 nonbank financial companies under other provisions of  
7 law.

8 **SEC. 170. SAFE HARBOR.**

9 (a) REGULATIONS.—The Board of Governors shall  
10 promulgate regulations on behalf of, and in consultation  
11 with, the Council setting forth the criteria for exempting  
12 certain types or classes of U.S. nonbank financial compa-  
13 nies or foreign nonbank financial companies from super-  
14 vision by the Board of Governors.

15 (b) CONSIDERATIONS.—In developing the criteria  
16 under subsection (a), the Board of Governors shall take  
17 into account the factors for consideration described in sub-  
18 sections (a) and (b) of section 113 in determining whether  
19 a U.S. nonbank financial company or foreign nonbank fi-  
20 nancial company shall be supervised by the Board of Gov-  
21 ernors.

22 (c) RULE OF CONSTRUCTION.—Nothing in this sec-  
23 tion shall be construed to require supervision by the Board  
24 of Governors of a U.S. nonbank financial company or for-  
25 eign nonbank financial company, if such company does not

1 meet the criteria for exemption established under sub-  
2 section (a).

3 (d) REVISIONS.—

4 (1) IN GENERAL.—The Board of Governors  
5 shall, in consultation with the Council, review the  
6 regulations promulgated under subsection (a), not  
7 less frequently than every 5 years, and based upon  
8 the review, the Board of Governors may revise such  
9 regulations on behalf of, and in consultation with,  
10 the Council to update as necessary the criteria set  
11 forth in such regulations.

12 (2) TRANSITION PERIOD.—No revisions under  
13 paragraph (1) shall take effect before the end of the  
14 2-year period after the date of publication of such  
15 revisions in final form.

16 (e) REPORT.—The Chairperson of the Board of Gov-  
17 ernors and the Chairperson of the Council shall submit  
18 a joint report to the Committee on Banking, Housing, and  
19 Urban Affairs of the Senate and the Committee on Finan-  
20 cial Services of the House of Representatives not later  
21 than 30 days after the date of the issuance in final form  
22 of regulations under subsection (a), or any subsequent re-  
23 vision to such regulations under subsection (d), as applica-  
24 ble. Such report shall include, at a minimum, the rationale

1 for exemption and empirical evidence to support the cri-  
2 teria for exemption.

3 **SEC. 171. LEVERAGE AND RISK-BASED CAPITAL REQUIRE-**  
4 **MENTS.**

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

7 (1) GENERALLY APPLICABLE LEVERAGE CAP-  
8 ITAL REQUIREMENTS.—The term “generally applica-  
9 ble leverage capital requirements” means—

10 (A) the minimum ratios of tier 1 capital to  
11 average total assets, as established by the ap-  
12 propriate Federal banking agencies to apply to  
13 insured depository institutions under the  
14 prompt corrective action regulations imple-  
15 menting section 38 of the Federal Deposit In-  
16 surance Act, regardless of total consolidated  
17 asset size or foreign financial exposure; and

18 (B) includes the regulatory capital compo-  
19 nents in the numerator of that capital require-  
20 ment, average total assets in the denominator  
21 of that capital requirement, and the required  
22 ratio of the numerator to the denominator.

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

1 (A) the risk-based capital requirements, as  
2 established by the appropriate Federal banking  
3 agencies to apply to insured depository institu-  
4 tions under the prompt corrective action regula-  
5 tions implementing section 38 of the Federal  
6 Deposit Insurance Act, regardless of total con-  
7 solidated asset size or foreign financial expo-  
8 sure; and

9 (B) includes the regulatory capital compo-  
10 nents in the numerator of those capital require-  
11 ments, the risk-weighted assets in the denomi-  
12 nator of those capital requirements, and the re-  
13 quired ratio of the numerator to the denomi-  
14 nator.

15 (b) MINIMUM CAPITAL REQUIREMENTS.—

16 (1) MINIMUM LEVERAGE CAPITAL REQUIRE-  
17 MENTS.—The appropriate Federal banking agencies  
18 shall establish minimum leverage capital require-  
19 ments on a consolidated basis for insured depository  
20 institutions, depository institution holding compa-  
21 nies, and nonbank financial companies identified  
22 under section 113. The minimum leverage capital re-  
23 quirements established under this paragraph shall  
24 not be less than the generally applicable leverage  
25 capital requirements, which shall serve as a floor for

1 any capital requirements that the agency may re-  
2 quire, nor quantitatively lower than the generally ap-  
3 plicable leverage capital requirements that were in  
4 effect for insured depository institutions as of the  
5 date of enactment of this Act.

6 (2) MINIMUM RISK-BASED CAPITAL REQUIRE-  
7 MENTS.—The appropriate Federal banking agencies  
8 shall establish minimum risk-based capital require-  
9 ments on a consolidated basis for insured depository  
10 institutions, depository institution holding compa-  
11 nies, and nonbank financial companies identified  
12 under section 113. The minimum risk-based capital  
13 requirements established under this paragraph shall  
14 not be less than the generally applicable risk-based  
15 capital requirements, which shall serve as a floor for  
16 any capital requirements that the agency may re-  
17 quire, nor quantitatively lower than the generally ap-  
18 plicable risk-based capital requirements that were in  
19 effect for insured depository institutions as of the  
20 date of enactment of this Act.

21 (3) CAPITAL REQUIREMENTS TO ADDRESS AC-  
22 TIVITIES THAT POSE RISKS TO THE FINANCIAL SYS-  
23 TEM.—

24 (A) IN GENERAL.—Subject to the rec-  
25 ommendations of the Council, in accordance

1 with section 120, the Federal banking agencies  
2 shall develop capital requirements applicable to  
3 all institutions covered by this section that ad-  
4 dress the risks that the activities of such insti-  
5 tutions pose, not only to the institution engag-  
6 ing in the activity, but to other public and pri-  
7 vate stakeholders in the event of adverse per-  
8 formance, disruption, or failure of the institu-  
9 tion or the activity.

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

12 (i) significant volumes of activity in  
13 derivatives, securitized products purchased  
14 and sold, financial guarantees purchased  
15 and sold, securities borrowing and lending,  
16 and repurchase agreements and reverse re-  
17 purchase agreements;

18 (ii) concentrations in assets for which  
19 the values presented in financial reports  
20 are based on models rather than historical  
21 cost or prices deriving from deep and liq-  
22 uid 2-way markets; and

23 (iii) concentrations in market share  
24 for any activity that would substantially

1                   disrupt financial markets if the institution  
2                   is forced to unexpectedly cease the activity.

3                   **TITLE II—ORDERLY**  
4                   **LIQUIDATION AUTHORITY**

5 **SEC. 201. DEFINITIONS.**

6           (a) IN GENERAL.—In this title, the following defini-  
7 tions shall apply:

8                   (1) ADMINISTRATIVE EXPENSES OF THE RE-  
9           CEIVER.—The term “administrative expenses of the  
10           receiver” includes—

11                   (A) the actual, necessary costs and ex-  
12                   penses incurred by the Corporation as receiver  
13                   for a covered financial company in liquidating a  
14                   covered financial company; and

15                   (B) any obligations that the Corporation  
16                   as receiver for a covered financial company de-  
17                   termines are necessary and appropriate to fa-  
18                   cilitate the smooth and orderly liquidation of  
19                   the covered financial company.

20                   (2) BANKRUPTCY CODE.—The term “Bank-  
21                   ruptcy Code” means title 11, United States Code.

22                   (3) BRIDGE FINANCIAL COMPANY.—The term  
23                   “bridge financial company” means a new financial  
24                   company organized by the Corporation in accordance



1 with section 210(h) for the purpose of resolving a  
2 covered financial company.

3 (4) CLAIM.—The term “claim” means any right  
4 of payment, whether or not such right is reduced to  
5 judgment, liquidated, unliquidated, fixed, contingent,  
6 matured, unmatured, disputed, undisputed, legal, eq-  
7 uitable, secured, or unsecured.

8 (5) COMPANY.—The term “company” has the  
9 same meaning as in section 2(b) of the Bank Hold-  
10 ing Company Act of 1956 (12 U.S.C. 1841(b)), ex-  
11 cept that such term includes any company described  
12 in paragraph (11), the majority of the securities of  
13 which are owned by the United States or any State.

14 (6) COURT.—The term “Court” means the  
15 United States District Court for the District of Co-  
16 lumbia, unless the context otherwise requires.

17 (7) COVERED BROKER OR DEALER.—The term  
18 “covered broker or dealer” means a covered financial  
19 company that is a broker or dealer that—

20 (A) is registered with the Commission  
21 under section 15(b) of the Securities Exchange  
22 Act of 1934 (15 U.S.C. 78o(b)); and

23 (B) is a member of SIPC.

24 (8) COVERED FINANCIAL COMPANY.—The term  
25 “covered financial company”—

1 (A) means a financial company for which  
2 a determination has been made under section  
3 203(b); and

4 (B) does not include an insured depository  
5 institution.

6 (9) COVERED SUBSIDIARY.—The term “covered  
7 subsidiary” means a subsidiary of a covered finan-  
8 cial company, other than—

9 (A) an insured depository institution;

10 (B) an insurance company; or

11 (C) a covered broker or dealer.

12 (10) DEFINITIONS RELATING TO COVERED BRO-  
13 KERS AND DEALERS.—The terms “customer”, “cus-  
14 tomer name securities”, “customer property”, and  
15 “net equity” in the context of a covered broker or  
16 dealer, have the same meanings as in section 16 of  
17 the Securities Investor Protection Act of 1970 (15  
18 U.S.C. 78lll).

19 (11) FINANCIAL COMPANY.—The term “finan-  
20 cial company” means any company that—

21 (A) is incorporated or organized under any  
22 provision of Federal law or the laws of any  
23 State;

24 (B) is—

1 (i) a bank holding company, as de-  
2 fined in section 2(a) of the Bank Holding  
3 Company Act of 1956 (12 U.S.C.  
4 1841(a)), and including any company de-  
5 scribed in paragraph (5);

6 (ii) a nonbank financial company su-  
7 pervised by the Board of Governors;

8 (iii) any company that is predomi-  
9 nantly engaged in activities that the Board  
10 of Governors has determined are financial  
11 in nature or incidental thereto for purposes  
12 of section 4(k) of the Bank Holding Com-  
13 pany Act of 1956 (12 U.S.C. 1843(k))  
14 other than a company described in clause  
15 (i) or (ii); or

16 (iv) any subsidiary of any company  
17 described in any of clauses (i) through (iii)  
18 that is predominantly engaged in activities  
19 that the Board of Governors has deter-  
20 mined are financial in nature or incidental  
21 thereto for purposes of section 4(k) of the  
22 Bank Holding Company Act of 1956 (12  
23 U.S.C. 1843(k)) (other than a subsidiary  
24 that is an insured depository institution or  
25 an insurance company); and

1 (C) is not a Farm Credit System institu-  
2 tion chartered under and subject to the provi-  
3 sions of the Farm Credit Act of 1971, as  
4 amended (12 U.S.C. 2001 et seq.), a govern-  
5 mental entity, or a regulated entity, as defined  
6 under section 1303(20) of the Federal Housing  
7 Enterprises Financial Safety and Soundness  
8 Act of 1992 (12 U.S.C. 4502(20)).

9 (12) FUND.—The term “Fund” means the Or-  
10 derly Liquidation Fund established under section  
11 210(n).

12 (13) INSURANCE COMPANY.—The term “insur-  
13 ance company” means any entity that is—

14 (A) engaged in the business of insurance;

15 (B) subject to regulation by a State insur-  
16 ance regulator; and

17 (C) covered by a State law that is designed  
18 to specifically deal with the rehabilitation, liq-  
19 uidation, or insolvency of an insurance com-  
20 pany.

21 (14) NONBANK FINANCIAL COMPANY.—The  
22 term “nonbank financial company” has the same  
23 meaning as in section 102(a)(4)(C).

24 (15) NONBANK FINANCIAL COMPANY SUPER-  
25 VISED BY THE BOARD OF GOVERNORS.—The term

1 “nonbank financial company supervised by the  
2 Board of Governors” has the same meaning as in  
3 section 102(a)(3)(D).

4 (16) SIPC.—The term “SIPC” means the Se-  
5 curities Investor Protection Corporation.

6 (b) DEFINITIONAL CRITERIA.—For purpose of the  
7 definition of the term “financial company” under sub-  
8 section (a)(11), no company shall be deemed to be pre-  
9 dominantly engaged in activities that the Board of Gov-  
10 ernors has determined are financial in nature or incidental  
11 thereto for purposes of section 4(k) of the Bank Holding  
12 Company Act of 1956 (12 U.S.C. 1843(k)), if the consoli-  
13 dated revenues of such company from such activities con-  
14 stitute less than 85 percent of the total consolidated reve-  
15 nues of such company, as the Corporation, in consultation  
16 with the Secretary, shall establish by regulation. In deter-  
17 mining whether a company is a financial company under  
18 this title, the consolidated revenues derived from the own-  
19 ership or control of a depository institution shall be in-  
20 cluded.

21 **SEC. 202. JUDICIAL REVIEW.**

22 (a) COMMENCEMENT OF ORDERLY LIQUIDATION.—

23 (1) PETITION TO DISTRICT COURT.—

24 (A) DISTRICT COURT REVIEW.—

1 (i) PETITION TO DISTRICT COURT.—

2 Subsequent to a determination by the Sec-  
3 retary under section 203 that a financial  
4 company satisfies the criteria in section  
5 203(b), the Secretary shall notify the Cor-  
6 poration and the covered financial com-  
7 pany. If the board of directors (or body  
8 performing similar functions) of the cov-  
9 ered financial company acquiesces or con-  
10 sents to the appointment of the Corpora-  
11 tion as receiver, the Secretary shall ap-  
12 point the Corporation as receiver. If the  
13 board of directors (or body performing  
14 similar functions) of the covered financial  
15 company does not acquiesce or consent to  
16 the appointment of the Corporation as re-  
17 ceiver, the Secretary shall petition the  
18 United States District Court for the Dis-  
19 trict of Columbia for an order authorizing  
20 the Secretary to appoint the Corporation  
21 as receiver.

22 (ii) FORM AND CONTENT OF  
23 ORDER.—The Secretary shall present all  
24 relevant findings and the recommendation  
25 made pursuant to section 203(a) to the

1 Court. The petition shall be filed under  
2 seal.

3 (iii) DETERMINATION.—On a strictly  
4 confidential basis, and without any prior  
5 public disclosure, the Court, after notice to  
6 the covered financial company and a hear-  
7 ing in which the covered financial company  
8 may oppose the petition, shall determine  
9 whether the determination of the Secretary  
10 that the covered financial company is in  
11 default or in danger of default and satis-  
12 fies the definition of a financial company  
13 under section 201(a)(11) is arbitrary and  
14 capricious.

15 (iv) ISSUANCE OF ORDER.—If the  
16 Court determines that the determination of  
17 the Secretary that the covered financial  
18 company is in default or in danger of de-  
19 fault and satisfies the definition of a finan-  
20 cial company under section 201(a)(11)—

21 (I) is not arbitrary and capri-  
22 cious, the Court shall issue an order  
23 immediately authorizing the Secretary  
24 to appoint the Corporation as receiver  
25 of the covered financial company; or

1 (II) is arbitrary and capricious,  
2 the Court shall immediately provide to  
3 the Secretary a written statement of  
4 each reason supporting its determina-  
5 tion, and afford the Secretary an im-  
6 mediate opportunity to amend and  
7 refile the petition under clause (i).

8 (v) PETITION GRANTED BY OPER-  
9 ATION OF LAW.—If the Court does not  
10 make a determination within 24 hours of  
11 receipt of the petition—

12 (I) the petition shall be granted  
13 by operation of law;

14 (II) the Secretary shall appoint  
15 the Corporation as receiver; and

16 (III) liquidation under this title  
17 shall automatically and without fur-  
18 ther notice or action be commenced  
19 and the Corporation may immediately  
20 take all actions authorized under this  
21 title.

22 (B) EFFECT OF DETERMINATION.—The  
23 determination of the Court under subparagraph  
24 (A) shall be final, and shall be subject to appeal  
25 only in accordance with paragraph (2). The de-





1 board of directors, notwithstanding section  
2 210(a)(1)(A)(i), not later than 30 days  
3 after the date on which the decision of the  
4 Court is rendered or deemed rendered  
5 under this subsection.

6 (ii) CONDITION OF JURISDICTION.—  
7 The Court of Appeals shall have jurisdic-  
8 tion of an appeal by a covered financial  
9 company only if the covered financial com-  
10 pany did not acquiesce or consent to the  
11 appointment of a receiver by the Secretary  
12 under paragraph (1)(A).

13 (iii) EXPEDITION.—The Court of Ap-  
14 peals shall consider any appeal under this  
15 subparagraph on an expedited basis.

16 (iv) SCOPE OF REVIEW.—For an ap-  
17 peal taken under this subparagraph, review  
18 shall be limited to whether the determina-  
19 tion of the Secretary that a covered finan-  
20 cial company is in default or in danger of  
21 default and satisfies the definition of a fi-  
22 nancial company under section 201(a)(11)  
23 is arbitrary and capricious.

24 (B) APPEAL TO THE SUPREME COURT.—

1 (i) IN GENERAL.—A petition for a  
2 writ of certiorari to review a decision of  
3 the Court of Appeals under subparagraph  
4 (A) may be filed by the Secretary or the  
5 covered financial company, through its  
6 board of directors, notwithstanding section  
7 210(a)(1)(A)(i), with the Supreme Court  
8 of the United States, not later than 30  
9 days after the date of the final decision of  
10 the Court of Appeals, and the Supreme  
11 Court shall have discretionary jurisdiction  
12 to review such decision.

13 (ii) WRITTEN STATEMENT.—In the  
14 event of a petition under clause (i), the  
15 Court of Appeals shall immediately provide  
16 for the record a written statement of each  
17 reason for its decision.

18 (iii) EXPEDITION.—The Supreme  
19 Court shall consider any petition under  
20 this subparagraph on an expedited basis.

21 (iv) SCOPE OF REVIEW.—Review by  
22 the Supreme Court under this subpara-  
23 graph shall be limited to whether the de-  
24 termination of the Secretary that the cov-  
25 ered financial company is in default or in

1 danger of default and satisfies the defini-  
2 tion of a financial company under section  
3 201(a)(11) is arbitrary and capricious.

4 (b) ESTABLISHMENT AND TRANSMITTAL OF RULES  
5 AND PROCEDURES.—

6 (1) IN GENERAL.—Not later than 6 months  
7 after the date of enactment of this Act, the Court  
8 shall establish such rules and procedures as may be  
9 necessary to ensure the orderly conduct of pro-  
10 ceedings, including rules and procedures to ensure  
11 that the 24-hour deadline is met and that the Sec-  
12 retary shall have an ongoing opportunity to amend  
13 and refile petitions under subsection (a)(1).

14 (2) PUBLICATION OF RULES.—The rules and  
15 procedures established under paragraph (1), and any  
16 modifications of such rules and procedures, shall be  
17 recorded and shall be transmitted to—

18 (A) the Committee on the Judiciary of the  
19 Senate;

20 (B) the Committee on Banking, Housing,  
21 and Urban Affairs of the Senate;

22 (C) the Committee on the Judiciary of the  
23 House of Representatives; and

24 (D) the Committee on Financial Services  
25 of the House of Representatives.

1 (c) PROVISIONS APPLICABLE TO FINANCIAL COMPA-  
2 NIES.—

3 (1) BANKRUPTCY CODE.—Except as provided in  
4 this subsection, the provisions of the Bankruptcy  
5 Code and rules issued thereunder, and not the provi-  
6 sions of this title, shall apply to financial companies  
7 that are not covered financial companies for which  
8 the Corporation has been appointed as receiver.

9 (2) THIS TITLE.—The provisions of this title  
10 shall exclusively apply to and govern all matters re-  
11 lating to covered financial companies for which the  
12 Corporation is appointed as receiver, and no provi-  
13 sions of the Bankruptcy Code or the rules issued  
14 thereunder shall apply in such cases.

15 (d) TIME LIMIT ON RECEIVERSHIP AUTHORITY.—

16 (1) BASELINE PERIOD.—Any appointment of  
17 the Corporation as receiver under this section shall  
18 terminate at the end of the 3-year period beginning  
19 on the date on which such appointment is made.

20 (2) EXTENSION OF TIME LIMIT.—The time  
21 limit established in paragraph (1) may be extended  
22 by the Corporation for up to 1 additional year, if the  
23 Chairperson of the Corporation determines and cer-  
24 tifies in writing to the Committee on Banking,  
25 Housing, and Urban Affairs of the Senate and the

1 Committee on Financial Services of the House of  
2 Representatives that continuation of the receivership  
3 is necessary—

4 (A) to—

5 (i) maximize the net present value re-  
6 turn from the sale or other disposition of  
7 the assets of the covered financial com-  
8 pany; or

9 (ii) minimize the amount of loss real-  
10 ized upon the sale or other disposition of  
11 the assets of the covered financial com-  
12 pany; and

13 (B) to protect the stability of the financial  
14 system of the United States.

15 (3) SECOND EXTENSION OF TIME LIMIT.—

16 (A) IN GENERAL.—The time limit under  
17 this subsection, as extended under paragraph  
18 (2), may be extended for up to 1 additional  
19 year, if the Chairperson of the Corporation,  
20 with the concurrence of the Secretary, submits  
21 the certifications described in paragraph (2).

22 (B) ADDITIONAL REPORT REQUIRED.—Not  
23 later than 30 days after the date of commence-  
24 ment of the extension under subparagraph (A),  
25 the Corporation shall submit a report to the

1           Committee on Banking, Housing, and Urban  
2           Affairs of the Senate and the Committee on Fi-  
3           nancial Services of the House of Representa-  
4           tives describing the need for the extension and  
5           the specific plan of the Corporation to conclude  
6           the receivership before the end of the second ex-  
7           tension.

8           (4) ONGOING LITIGATION.—The time limit  
9           under this subsection, as extended under paragraph  
10          (3), may be further extended solely for the purpose  
11          of completing ongoing litigation in which the Cor-  
12          poration as receiver is a party, provided that the ap-  
13          pointment of the Corporation as receiver shall termi-  
14          nate not later than 90 days after the date of comple-  
15          tion of such litigation, if—

16                 (A) the Council determines that the Cor-  
17                 poration used its best efforts to conclude the re-  
18                 ceivership in accordance with its plan before the  
19                 end of the time limit described in paragraph  
20                 (3);

21                 (B) the Council determines that the com-  
22                 pletion of longer-term responsibilities in the  
23                 form of ongoing litigation justifies the need for  
24                 an extension; and

1 (C) the Corporation submits a report ap-  
2 proved by the Council not later than 30 days  
3 after the date of the determinations by the  
4 Council under subparagraphs (A) and (B) to  
5 the Committee on Banking, Housing, and  
6 Urban Affairs of the Senate and the Committee  
7 on Financial Services of the House of Rep-  
8 resentatives, describing—

9 (i) the ongoing litigation justifying the  
10 need for an extension; and

11 (ii) the specific plan of the Corpora-  
12 tion to complete the litigation and conclude  
13 the receivership.

14 (5) REGULATIONS.—The Corporation may issue  
15 regulations governing the termination of receiver-  
16 ships under this title.

17 (6) NO LIABILITY.—The Corporation and the  
18 Deposit Insurance Fund shall not be liable for unre-  
19 solved claims arising from the receivership after the  
20 termination of the receivership.

21 (e) STUDY OF BANKRUPTCY AND ORDERLY LIQUIDA-  
22 TION PROCESS FOR FINANCIAL COMPANIES.—

23 (1) STUDY.—

24 (A) IN GENERAL.—The Administrative Of-  
25 fice of the United States Courts and the Comp-



1           troller General of the United States shall each  
2           monitor the activities of the Court, and each  
3           such Office shall conduct separate studies re-  
4           garding the bankruptcy and orderly liquidation  
5           process for financial companies under the  
6           Bankruptcy Code.

7           (B) ISSUES TO BE STUDIED.—In con-  
8           ducting the study under subparagraph (A), the  
9           Administrative Office of the United States  
10          Courts and the Comptroller General of the  
11          United States each shall evaluate—

12                   (i) the effectiveness of chapter 7 or  
13                   chapter 11 of the Bankruptcy Code in fa-  
14                   cilitating the orderly liquidation or reorga-  
15                   nization of financial companies;

16                   (ii) ways to maximize the efficiency  
17                   and effectiveness of the Court; and

18                   (iii) ways to make the orderly liquida-  
19                   tion process under the Bankruptcy Code  
20                   for financial companies more effective.

21          (2) REPORTS.—Not later than 1 year after the  
22          date of enactment of this Act, in each successive  
23          year until the third year, and every fifth year after  
24          that date of enactment, the Administrative Office of  
25          the United States Courts and the Comptroller Gen-

1           eral of the United States shall submit to the Com-  
2           mittee on Banking, Housing, and Urban Affairs and  
3           the Committee on the Judiciary of the Senate and  
4           the Committee on Financial Services and the Com-  
5           mittee on the Judiciary of the House of Representa-  
6           tives separate reports summarizing the results of the  
7           studies conducted under paragraph (1).

8           (f) STUDY OF INTERNATIONAL COORDINATION RE-  
9           LATING TO BANKRUPTCY PROCESS FOR FINANCIAL COM-  
10          PANIES.—

11           (1) STUDY.—

12           (A) IN GENERAL.—The Comptroller Gen-  
13           eral of the United States shall conduct a study  
14           regarding international coordination relating to  
15           the orderly liquidation of financial companies  
16           under the Bankruptcy Code.

17           (B) ISSUES TO BE STUDIED.—In con-  
18           ducting the study under subparagraph (A), the  
19           Comptroller General of the United States shall  
20           evaluate, with respect to the bankruptcy process  
21           for financial companies—

22           (i) the extent to which international  
23           coordination currently exists;

1 (ii) current mechanisms and struc-  
2 tures for facilitating international coopera-  
3 tion;

4 (iii) barriers to effective international  
5 coordination; and

6 (iv) ways to increase and make more  
7 effective international coordination.

8 (2) REPORT.—Not later than 1 year after the  
9 date of enactment of this Act, the Comptroller Gen-  
10 eral of the United States shall submit to the Com-  
11 mittee on Banking, Housing, and Urban Affairs and  
12 the Committee on the Judiciary of the Senate and  
13 the Committee on Financial Services and the Com-  
14 mittee on the Judiciary of the House of Representa-  
15 tives and the Secretary a report summarizing the re-  
16 sults of the study conducted under paragraph (1).

17 (g) STUDY OF PROMPT CORRECTIVE ACTION IMPLE-  
18 MENTATION BY THE APPROPRIATE FEDERAL AGEN-  
19 CIES.—

20 (1) STUDY.—The Comptroller General of the  
21 United States shall conduct a study regarding the  
22 implementation of prompt corrective action by the  
23 appropriate Federal banking agencies.

1           (2) ISSUES TO BE STUDIED.—In conducting the  
2 study under paragraph (1), the Comptroller General  
3 shall evaluate—

4           (A) the effectiveness of implementation of  
5 prompt corrective action by the appropriate  
6 Federal banking agencies and the resolution of  
7 insured depository institutions by the Corpora-  
8 tion; and

9           (B) ways to make prompt corrective action  
10 a more effective tool to resolve the insured de-  
11 pository institutions at the least possible long-  
12 term cost to the Deposit Insurance Fund.

13          (3) REPORT TO COUNCIL.—Not later than 1  
14 years after the date of enactment of this Act, the  
15 Comptroller General shall submit a report to the  
16 Council on the results of the study conducted under  
17 this subsection.

18          (4) COUNCIL REPORT OF ACTION.—Not later  
19 than 6 months after the date of receipt of the report  
20 from the Comptroller General under paragraph (3),  
21 the Council shall submit a report to the Committee  
22 on Banking, Housing, and Urban Affairs of the Sen-  
23 ate and the Committee on Financial Services of the  
24 House of Representatives on actions taken in re-  
25 sponse to the report, including any recommendations

1       made to the Federal primary financial regulatory  
2       agencies under section 120.

3 **SEC. 203. SYSTEMIC RISK DETERMINATION.**

4       (a) WRITTEN RECOMMENDATION AND DETERMINA-  
5 TION.—

6           (1) VOTE REQUIRED.—

7               (A) IN GENERAL.—On their own initiative,  
8               or at the request of the Secretary, the Corpora-  
9               tion and the Board of Governors shall consider  
10              whether to make a written recommendation de-  
11              scribed in paragraph (2) with respect to wheth-  
12              er the Secretary should appoint the Corporation  
13              as receiver for a financial company. Such rec-  
14              ommendation shall be made upon a vote of not  
15              fewer than  $\frac{2}{3}$  of the members of the Board of  
16              Governors then serving and  $\frac{2}{3}$  of the members  
17              of the board of directors of the Corporation  
18              then serving.

19              (B) CASES INVOLVING COVERED BROKERS  
20              OR DEALERS.—In the case of a covered broker  
21              or dealer, or in which the largest United States  
22              subsidiary (as measured by total assets as of  
23              the end of the previous calendar quarter) of a  
24              financial company is a covered broker or dealer,  
25              the Commission and the Board of Governors, at

1           the request of the Secretary, or on their own  
2           initiative, shall consider whether to make the  
3           written recommendation described in paragraph  
4           (2) with respect to the financial company. Sub-  
5           ject to the requirements in paragraph (2), such  
6           recommendation shall be made upon a vote of  
7           not fewer than  $\frac{2}{3}$  of the members of the Board  
8           of Governors then serving and the members of  
9           the Commission then serving, and in consulta-  
10          tion with the Corporation.

11           (2) RECOMMENDATION REQUIRED.—Any writ-  
12          ten recommendation pursuant to paragraph (1) shall  
13          contain—

14                   (A) an evaluation of whether the financial  
15                   company is in default or in danger of default;

16                   (B) a description of the effect that the de-  
17                   fault of the financial company would have on fi-  
18                   nancial stability in the United States;

19                   (C) a description of the effect that the de-  
20                   fault of the financial company would have on  
21                   economic conditions or financial stability for  
22                   low income, minority, or underserved commu-  
23                   nities;

1 (D) a recommendation regarding the na-  
2 ture and the extent of actions to be taken under  
3 this title regarding the financial company;

4 (E) an evaluation of the likelihood of a pri-  
5 vate sector alternative to prevent the default of  
6 the financial company;

7 (F) an evaluation of why a case under the  
8 Bankruptcy Code is not appropriate for the fi-  
9 nancial company;

10 (G) an evaluation of the effects on credi-  
11 tors, counterparties, and shareholders of the fi-  
12 nancial company and other market participants;  
13 and

14 (H) an evaluation of whether the company  
15 satisfies the definition of a financial company  
16 under section 201.

17 (b) DETERMINATION BY THE SECRETARY.—Notwith-  
18 standing any other provision of Federal or State law, the  
19 Secretary shall take action in accordance with section  
20 202(a)(1)(A), if, upon the written recommendation under  
21 subsection (a), the Secretary (in consultation with the  
22 President) determines that—

23 (1) the financial company is in default or in  
24 danger of default;

1           (2) the failure of the financial company and its  
2 resolution under otherwise applicable Federal or  
3 State law would have serious adverse effects on fi-  
4 nancial stability in the United States;

5           (3) no viable private sector alternative is avail-  
6 able to prevent the default of the financial company;

7           (4) any effect on the claims or interests of  
8 creditors, counterparties, and shareholders of the fi-  
9 nancial company and other market participants as a  
10 result of actions to be taken under this title is ap-  
11 propriate, given the impact that any action taken  
12 under this title would have on financial stability in  
13 the United States;

14           (5) any action under section 204 would avoid or  
15 mitigate such adverse effects, taking into consider-  
16 ation the effectiveness of the action in mitigating po-  
17 tential adverse effects on the financial system, the  
18 cost to the general fund of the Treasury, and the po-  
19 tential to increase excessive risk taking on the part  
20 of creditors, counterparties, and shareholders in the  
21 financial company;

22           (6) a Federal regulatory agency has ordered the  
23 financial company to convert all of its convertible  
24 debt instruments that are subject to the regulatory  
25 order; and



1           (7) the company satisfies the definition of a fi-  
2 nancial company under section 201.

3           (c) DOCUMENTATION AND REVIEW.—

4           (1) IN GENERAL.—The Secretary shall—

5                 (A) document any determination under  
6 subsection (b);

7                 (B) retain the documentation for review  
8 under paragraph (2); and

9                 (C) notify the covered financial company  
10 and the Corporation of such determination.

11           (2) REPORT TO CONGRESS.—Not later than 24  
12 hours after the date of appointment of the Corpora-  
13 tion as receiver for a covered financial company, the  
14 Secretary shall provide written notice of the rec-  
15 ommendations and determinations reached in ac-  
16 cordance with subsections (a) and (b) to the Major-  
17 ity Leader and the Minority Leader of the Senate  
18 and the Speaker and the Minority Leader of the  
19 House of Representatives, the Committee on Bank-  
20 ing, Housing, and Urban Affairs of the Senate, and  
21 the Committee on Financial Services of the House of  
22 Representatives, which shall consist of a summary of  
23 the basis for the determination, including, to the ex-  
24 tent available at the time of the determination—

1 (A) the size and financial condition of the  
2 covered financial company;

3 (B) the sources of capital and credit sup-  
4 port that were available to the covered financial  
5 company;

6 (C) the operations of the covered financial  
7 company that could have had a significant im-  
8 pact on financial stability, markets, or both;

9 (D) identification of the banks and finan-  
10 cial companies which may be able to provide the  
11 services offered by the covered financial com-  
12 pany;

13 (E) any potential international ramifica-  
14 tions of resolution of the covered financial com-  
15 pany under other applicable insolvency law;

16 (F) an estimate of the potential effect of  
17 the resolution of the covered financial company  
18 under other applicable insolvency law on the fi-  
19 nancial stability of the United States;

20 (G) the potential effect of the appointment  
21 of a receiver by the Secretary on consumers;

22 (H) the potential effect of the appointment  
23 of a receiver by the Secretary on the financial  
24 system, financial markets, and banks and other  
25 financial companies; and

1 (I) whether resolution of the covered finan-  
2 cial company under other applicable insolvency  
3 law would cause banks or other financial com-  
4 panies to experience severe liquidity distress.

5 (3) REPORTS TO CONGRESS AND THE PUB-  
6 LIC.—

7 (A) IN GENERAL.—Not later than 60 days  
8 after the date of appointment of the Corpora-  
9 tion as receiver for a covered financial company,  
10 the Corporation shall file a report with the  
11 Committee on Banking, Housing, and Urban  
12 Affairs of the Senate and the Committee on Fi-  
13 nancial Services of the House of Representa-  
14 tives—

15 (i) setting forth information on the fi-  
16 nancial condition of the covered financial  
17 company as of the date of the appoint-  
18 ment, including a description of its assets  
19 and liabilities;

20 (ii) describing the plan of, and actions  
21 taken by, the Corporation to wind down  
22 the covered financial company;

23 (iii) explaining each instance in which  
24 the Corporation waived any applicable re-  
25 quirements of part 366 of title 12, Code of

1 Federal Regulations (or any successor  
2 thereto) with respect to conflicts of interest  
3 by any person in the private sector who  
4 was retained to provide services to the Cor-  
5 poration in connection with such receiver-  
6 ship;

7 (iv) describing the reasons for the  
8 provision of any funding to the receivership  
9 out of the Fund;

10 (v) setting forth the expected costs of  
11 the orderly liquidation of the covered fi-  
12 nancial company;

13 (vi) setting forth the identity of any  
14 claimant that is treated in a manner dif-  
15 ferent from other similarly situated claim-  
16 ants under subsection (b)(4), (d)(4), or  
17 (h)(5)(E), the amount of any additional  
18 payment to such claimant under subsection  
19 (d)(4), and the reason for any such action;  
20 and

21 (vii) which report the Corporation  
22 shall publish on an online website main-  
23 tained by the Corporation, subject to main-  
24 taining appropriate confidentiality.

1           (B) AMENDMENTS.—The Corporation  
2 shall, on a timely basis, not less frequently than  
3 quarterly, amend or revise and resubmit the re-  
4 ports prepared under this paragraph, as nec-  
5 essary.

6           (C) CONGRESSIONAL TESTIMONY.—The  
7 Corporation and the primary financial regu-  
8 latory agency, if any, of the financial company  
9 for which the Corporation was appointed re-  
10 ceiver under this title shall appear before Con-  
11 gress, if requested, not later than 30 days after  
12 the date on which the Corporation first files the  
13 reports required under subparagraph (A).

14       (4) DEFAULT OR IN DANGER OF DEFAULT.—  
15 For purposes of this title, a financial company shall  
16 be considered to be in default or in danger of default  
17 if, as determined in accordance with subsection  
18 (b)—

19           (A) a case has been, or likely will promptly  
20 be, commenced with respect to the financial  
21 company under the Bankruptcy Code;

22           (B) the financial company has incurred, or  
23 is likely to incur, losses that will deplete all or  
24 substantially all of its capital, and there is no

1 reasonable prospect for the company to avoid  
2 such depletion;

3 (C) the assets of the financial company  
4 are, or are likely to be, less than its obligations  
5 to creditors and others; or

6 (D) the financial company is, or is likely to  
7 be, unable to pay its obligations (other than  
8 those subject to a bona fide dispute) in the nor-  
9 mal course of business.

10 (5) GAO REVIEW.—The Comptroller General of  
11 the United States shall review and report to Con-  
12 gress on any determination under subsection (b),  
13 that results in the appointment of the Corporation  
14 as receiver, including—

15 (A) the basis for the determination;

16 (B) the purpose for which any action was  
17 taken pursuant thereto;

18 (C) the likely effect of the determination  
19 and such action on the incentives and conduct  
20 of financial companies and their creditors,  
21 counterparties, and shareholders; and

22 (D) the likely disruptive effect of the deter-  
23 mination and such action on the reasonable ex-  
24 pectations of creditors, counterparties, and  
25 shareholders, taking into account the impact

1           any action under this title would have on finan-  
2           cial stability in the United States, including  
3           whether the rights of such parties will be dis-  
4           rupted.

5           (d) CORPORATION POLICIES AND PROCEDURES.—As  
6           soon as is practicable after the date of enactment of this  
7           Act, the Corporation shall establish policies and proce-  
8           dures that are acceptable to the Secretary governing the  
9           use of funds available to the Corporation to carry out this  
10          title, including the terms and conditions for the provision  
11          and use of funds under sections 204(d), 210(h)(2)(G)(iv),  
12          and 210(h)(9).

13          (e) TREATMENT OF INSURANCE COMPANIES AND IN-  
14          SURANCE COMPANY SUBSIDIARIES.—

15           (1) IN GENERAL.—Notwithstanding subsection  
16          (b), if an insurance company is a covered financial  
17          company or a subsidiary or affiliate of a covered fi-  
18          nancial company, the liquidation or rehabilitation of  
19          such insurance company, and any subsidiary or affil-  
20          iate of such company that is not excepted under  
21          paragraph (2), shall be conducted as provided under  
22          such State law.

23           (2) EXCEPTION FOR SUBSIDIARIES AND AFFILI-  
24          ATES.—The requirement of paragraph (1) shall not  
25          apply with respect to any subsidiary or affiliate of

1 an insurance company that is not itself an insurance  
2 company.

3 (3) **BACKUP AUTHORITY.**—Notwithstanding  
4 paragraph (1), with respect to a covered financial  
5 company described in paragraph (1), if, after the  
6 end of the 60-day period beginning on the date on  
7 which a determination is made under section 202(a)  
8 with respect to such company, the appropriate regu-  
9 latory agency has not filed the appropriate judicial  
10 action in the appropriate State court to place such  
11 company into orderly liquidation under the laws and  
12 requirements of the State, the Corporation shall  
13 have the authority to stand in the place of the ap-  
14 propriate regulatory agency and file the appropriate  
15 judicial action in the appropriate State court to  
16 place such company into orderly liquidation under  
17 the laws and requirements of the State.

18 **SEC. 204. ORDERLY LIQUIDATION OF COVERED FINANCIAL**  
19 **COMPANIES.**

20 (a) **PURPOSE OF ORDERLY LIQUIDATION AUTHOR-**  
21 **ITY.**—It is the purpose of this title to provide the nec-  
22 essary authority to liquidate failing financial companies  
23 that pose a significant risk to the financial stability of the  
24 United States in a manner that mitigates such risk and  
25 minimizes moral hazard. The authority provided in this



1 title shall be exercised in the manner that best fulfills such  
2 purpose, so that—

3 (1) creditors and shareholders will bear the  
4 losses of the financial company;

5 (2) management responsible for the condition of  
6 the financial company will not be retained; and

7 (3) the Corporation and other appropriate  
8 agencies will take all steps necessary and appro-  
9 priate to assure that all parties, including manage-  
10 ment and third parties, having responsibility for the  
11 condition of the financial company bear losses con-  
12 sistent with their responsibility, including actions for  
13 damages, restitution, and recoupment of compensa-  
14 tion and other gains not compatible with such re-  
15 sponsibility.

16 (b) CORPORATION AS RECEIVER.—Upon the appoint-  
17 ment of the Corporation under section 202, the Corpora-  
18 tion shall act as the receiver for the covered financial com-  
19 pany, with all of the rights and obligations set forth in  
20 this title.

21 (c) CONSULTATION.—The Corporation, as receiver—

22 (1) shall consult with the primary financial reg-  
23 ulatory agency or agencies of the covered financial  
24 company and its covered subsidiaries for purposes of

1 ensuring an orderly liquidation of the covered finan-  
2 cial company;

3 (2) may consult with, or under subsection  
4 (a)(1)(B)(v) or (a)(1)(L) of section 210, acquire the  
5 services of, any outside experts, as appropriate to in-  
6 form and aid the Corporation in the orderly liquida-  
7 tion process;

8 (3) shall consult with the primary financial reg-  
9 ulatory agency or agencies of any subsidiaries of the  
10 covered financial company that are not covered sub-  
11 sidiaries, and coordinate with such regulators re-  
12 garding the treatment of such solvent subsidiaries  
13 and the separate resolution of any such insolvent  
14 subsidiaries under other governmental authority, as  
15 appropriate; and

16 (4) shall consult with the Commission and the  
17 Securities Investor Protection Corporation in the  
18 case of any covered financial company for which the  
19 Corporation has been appointed as receiver that is a  
20 broker or dealer registered with the Commission  
21 under section 15(b) of the Securities Exchange Act  
22 of 1934 (15 U.S.C. 78o(b)) and is a member of the  
23 Securities Investor Protection Corporation, for the  
24 purpose of determining whether to transfer to a  
25 bridge financial company organized by the Corpora-

1           tion as receiver, without consent of any customer,  
2           customer accounts of the covered financial company.

3           (d) FUNDING FOR ORDERLY LIQUIDATION.—Upon  
4 its appointment as receiver for a covered financial com-  
5 pany, and thereafter as the Corporation may, in its discre-  
6 tion, determine to be necessary or appropriate, the Cor-  
7 poration may make available to the receivership, subject  
8 to the conditions set forth in section 206 and subject to  
9 the plan described in section 210(n)(11), funds for the or-  
10 derly liquidation of the covered financial company. All  
11 funds provided by the Corporation under this subsection  
12 shall have a priority of claims under subparagraph (A) or  
13 (B) of section 210(b)(1), as applicable, including funds  
14 used for—

15           (1) making loans to, or purchasing any debt ob-  
16           ligation of, the covered financial company or any  
17           covered subsidiary;

18           (2) purchasing or guaranteeing against loss the  
19           assets of the covered financial company or any cov-  
20           ered subsidiary, directly or through an entity estab-  
21           lished by the Corporation for such purpose;

22           (3) assuming or guaranteeing the obligations of  
23           the covered financial company or any covered sub-  
24           sidiary to 1 or more third parties;

1           (4) taking a lien on any or all assets of the cov-  
2           ered financial company or any covered subsidiary,  
3           including a first priority lien on all unencumbered  
4           assets of the covered financial company or any cov-  
5           ered subsidiary to secure repayment of any trans-  
6           actions conducted under this subsection;

7           (5) selling or transferring all, or any part, of  
8           such acquired assets, liabilities, or obligations of the  
9           covered financial company or any covered subsidiary;  
10          and

11          (6) making payments pursuant to subsections  
12          (b)(4), (d)(4), and (h)(5)(E) of section 210.

13 **SEC. 205. ORDERLY LIQUIDATION OF COVERED BROKERS**  
14 **AND DEALERS.**

15          (a) APPOINTMENT OF SIPC AS TRUSTEE.—

16           (1) APPOINTMENT.—Upon the appointment of  
17           the Corporation as receiver for any covered broker  
18           or dealer, the Corporation shall appoint, without any  
19           need for court approval, the Securities Investor Pro-  
20           tection Corporation to act as trustee for the liquida-  
21           tion under the Securities Investor Protection Act of  
22           1970 (15 U.S.C. 78aaa et seq.) of the covered  
23           broker or dealer.

24           (2) ACTIONS BY SIPC.—

1 (A) FILING.—Upon appointment of SIPC  
2 under paragraph (1), SIPC shall promptly file  
3 with any Federal district court of competent ju-  
4 risdiction specified in section 21 or 27 of the  
5 Securities Exchange Act of 1934 (15 U.S.C.  
6 78u, 78aa), an application for a protective de-  
7 cree under the Securities Investor Protection  
8 Act of 1970 (15 U.S.C. 78aaa et seq.) as to the  
9 covered broker or dealer. The Federal district  
10 court shall accept and approve the filing, in-  
11 cluding outside of normal business hours, and  
12 shall immediately issue the protective decree as  
13 to the covered broker or dealer.

14 (B) ADMINISTRATION BY SIPC.—Following  
15 entry of the protective decree, and except as  
16 otherwise provided in this section, the deter-  
17 mination of claims and the liquidation of assets  
18 retained in the receivership of the covered  
19 broker or dealer and not transferred to the  
20 bridge financial company shall be administered  
21 under the Securities Investor Protection Act of  
22 1970 (15 U.S.C. 78aaa et seq.) by SIPC, as  
23 trustee for the covered broker or dealer.

24 (C) DEFINITION OF FILING DATE.—For  
25 purposes of the liquidation proceeding, the term

1           “filing date” means the date on which the Cor-  
2           poration is appointed as receiver of the covered  
3           broker or dealer.

4           (D) DETERMINATION OF CLAIMS.—As  
5           trustee for the covered broker or dealer, SIPC  
6           shall determine and satisfy, consistent with this  
7           title and with the Securities Investor Protection  
8           Act of 1970 (15 U.S.C. 78aaa et seq.), all  
9           claims against the covered broker or dealer aris-  
10          ing on or before the filing date.

11         (b) POWERS AND DUTIES OF SIPC.—

12           (1) IN GENERAL.—Except as provided in this  
13           section, upon its appointment as trustee for the liq-  
14           uidation of a covered broker or dealer, SIPC shall  
15           have all of the powers and duties provided by the Se-  
16           curities Investor Protection Act of 1970 (15 U.S.C.  
17           78aaa et seq.), including, without limitation, all  
18           rights of action against third parties, and shall con-  
19           duct such liquidation in accordance with the terms  
20           of the Securities Investor Protection Act of 1970 (15  
21           U.S.C. 78aaa et seq.), except that SIPC shall have  
22           no powers or duties with respect to assets and liabil-  
23           ities transferred by the Corporation from the covered  
24           broker or dealer to any bridge financial company es-  
25           tablished in accordance with this title.

1           (2) LIMITATION OF POWERS.—The exercise by  
2           SIPC of powers and functions as trustee under sub-  
3           section (a) shall not impair or impede the exercise  
4           of the powers and duties of the Corporation with re-  
5           gard to—

6                   (A) any action, except as otherwise pro-  
7                   vided in this title—

8                           (i) to make funds available under sec-  
9                           tion 204(d);

10                           (ii) to organize, establish, operate, or  
11                           terminate any bridge financial company;

12                           (iii) to transfer assets and liabilities;

13                           (iv) to enforce or repudiate contracts;

14                   or

15                           (v) to take any other action relating  
16                           to such bridge financial company under  
17                           section 210; or

18                   (B) determining claims under subsection

19                   (e).

20           (3) PROTECTIVE DECREE.—SIPC and the Cor-  
21           poration, in consultation with the Commission, shall  
22           jointly determine the terms of the protective decree  
23           to be filed by SIPC with any court of competent ju-  
24           risdiction under section 21 or 27 of the Securities

1 Exchange Act of 1934 (15 U.S.C. 78u, 78aa), as re-  
2 quired by subsection (a).

3 (4) QUALIFIED FINANCIAL CONTRACTS.—Not-  
4 withstanding any provision of the Securities Investor  
5 Protection Act of 1970 to the contrary (including  
6 section 5(b)(2)(C) of that Act (15 U.S.C.  
7 78eee(b)(2)(C))), the rights and obligations of any  
8 party to a qualified financial contract (as that term  
9 is defined in section 210(e)(8)) to which a covered  
10 broker or dealer for which the Corporation has been  
11 appointed receiver is a party shall be governed exclu-  
12 sively by section 210, including the limitations and  
13 restrictions contained in section 210(e)(10)(B).

14 (c) LIMITATION ON COURT ACTION.—Except as oth-  
15 erwise provided in this title, no court may take any action,  
16 including any action pursuant to the Securities Investor  
17 Protection Act of 1970 or the Bankruptcy Code, to re-  
18 strain or affect the exercise of powers or functions of the  
19 Corporation as receiver for a covered broker or dealer and  
20 any claims against the Corporation as such receiver shall  
21 be determined in accordance with subsection (e) and such  
22 claims shall be limited to money damages.

23 (d) ACTIONS BY CORPORATION AS RECEIVER.—

24 (1) IN GENERAL.—Notwithstanding any other  
25 provision of this title, no action taken by the Cor-



1           poration as receiver with respect to a covered broker  
2           or dealer shall—

3                   (A) adversely affect the rights of a cus-  
4                   tomer to customer property or customer name  
5                   securities;

6                   (B) diminish the amount or timely pay-  
7                   ment of net equity claims of customers; or

8                   (C) otherwise impair the recoveries pro-  
9                   vided to a customer under the Securities Inves-  
10                  tor Protection Act of 1970 (15 U.S.C. 78aaa et  
11                  seq.).

12               (2) NET PROCEEDS.—The net proceeds from  
13               any transfer, sale, or disposition of assets of the cov-  
14               ered broker or dealer, or proceeds thereof by the  
15               Corporation as receiver for the covered broker or  
16               dealer shall be for the benefit of the estate of the  
17               covered broker or dealer, as provided in this title.

18           (e) CLAIMS AGAINST THE CORPORATION AS RE-  
19           CEIVER.—Any claim against the Corporation as receiver  
20           for a covered broker or dealer for assets transferred to  
21           a bridge financial company established with respect to  
22           such covered broker or dealer—

23                   (1) shall be determined in accordance with sec-  
24                   tion 210(a)(2); and

1           (2) may be reviewed by the appropriate district  
2 or territorial court of the United States in accord-  
3 ance with section 210(a)(5).

4 (f) SATISFACTION OF CUSTOMER CLAIMS.—

5           (1) OBLIGATIONS TO CUSTOMERS.—Notwith-  
6 standing any other provision of this title, all obliga-  
7 tions of a covered broker or dealer or of any bridge  
8 financial company established with respect to such  
9 covered broker or dealer to a customer relating to,  
10 or net equity claims based upon, customer property  
11 or customer name securities shall be promptly dis-  
12 charged by SIPC, the Corporation, or the bridge fi-  
13 nancial company, as applicable, by the delivery of se-  
14 curities or the making of payments to or for the ac-  
15 count of such customer, in a manner and in an  
16 amount at least as beneficial to the customer as  
17 would have been the case had the actual proceeds re-  
18 alized from the liquidation of the covered broker or  
19 dealer under this title been distributed in a pro-  
20 ceeding under the Securities Investor Protection Act  
21 of 1970 (15 U.S.C. 78aaa et seq.) without the ap-  
22 pointment of the Corporation as receiver and with-  
23 out any transfer of assets or liabilities to a bridge  
24 financial company, and with a filing date as of the

1 date on which the Corporation is appointed as re-  
2 ceiver.

3 (2) SATISFACTION OF CLAIMS BY SIPC.—SIPC,  
4 as trustee for a covered broker or dealer, shall sat-  
5 isfy customer claims in the manner and amount pro-  
6 vided under the Securities Investor Protection Act of  
7 1970 (15 U.S.C. 78aaa et seq.), as if the appoint-  
8 ment of the Corporation as receiver had not oc-  
9 curred, and with a filing date as of the date on  
10 which the Corporation is appointed as receiver. The  
11 Corporation shall satisfy customer claims, to the ex-  
12 tent that a customer would have received more secu-  
13 rities or cash with respect to the allocation of cus-  
14 tomer property had the covered financial company  
15 been subject to a proceeding under the Securities In-  
16 vestor Protection Act (15 U.S.C. 78aaa et seq.)  
17 without the appointment of the Corporation as re-  
18 ceiver, and with a filing date as of the date on which  
19 the Corporation is appointed as receiver.

20 (g) PRIORITIES.—

21 (1) CUSTOMER PROPERTY.—As trustee for a  
22 covered broker or dealer, SIPC shall allocate cus-  
23 tomer property and deliver customer name securities  
24 in accordance with section 8(c) of the Securities In-

1 investor Protection Act of 1970 (15 U.S.C. 78fff–  
2 2(c)).

3 (2) OTHER CLAIMS.—All claims other than  
4 those described in paragraph (1) (including any un-  
5 paid claim by a customer for the allowed net equity  
6 claim of such customer from customer property)  
7 shall be paid in accordance with the priorities in sec-  
8 tion 210(b).

9 (h) RULEMAKING.—The Commission and the Cor-  
10 poration, after consultation with SIPC, shall jointly issue  
11 rules to implement this section.

12 **SEC. 206. MANDATORY TERMS AND CONDITIONS FOR ALL**  
13 **ORDERLY LIQUIDATION ACTIONS.**

14 In taking action under this title, the Corporation  
15 shall—

16 (1) determine that such action is necessary for  
17 purposes of the financial stability of the United  
18 States, and not for the purpose of preserving the  
19 covered financial company;

20 (2) ensure that the shareholders of a covered fi-  
21 nancial company do not receive payment until after  
22 all other claims and the Fund are fully paid;

23 (3) ensure that unsecured creditors bear losses  
24 in accordance with the priority of claim provisions in  
25 section 210;

1 (4) ensure that management responsible for the  
2 failed condition of the covered financial company is  
3 removed (if such management has not already been  
4 removed at the time at which the Corporation is ap-  
5 pointed receiver); and

6 (5) not take an equity interest in or become a  
7 shareholder of any covered financial company or any  
8 covered subsidiary.

9 **SEC. 207. DIRECTORS NOT LIABLE FOR ACQUIESCING IN**  
10 **APPOINTMENT OF RECEIVER.**

11 The members of the board of directors (or body per-  
12 forming similar functions) of a covered financial company  
13 shall not be liable to the shareholders or creditors thereof  
14 for acquiescing in or consenting in good faith to the ap-  
15 pointment of the Corporation as receiver for the covered  
16 financial company under section 203.

17 **SEC. 208. DISMISSAL AND EXCLUSION OF OTHER ACTIONS.**

18 (a) IN GENERAL.—Effective as of the date of the ap-  
19 pointment of the Corporation as receiver for the covered  
20 financial company under section 202 or the appointment  
21 of SIPC as trustee for a covered broker or dealer under  
22 section 205, as applicable, any case or proceeding com-  
23 menced with respect to the covered financial company  
24 under the Bankruptcy Code or the Securities Investor  
25 Protection Act of 1970 shall be dismissed, upon notice to

1 the Bankruptcy Court (with respect to a case commenced  
2 under the Bankruptcy Code), and upon notice to SIPC  
3 (with respect to a covered broker or dealer) and no such  
4 case or proceeding may be commenced with respect to a  
5 covered financial company at any time while the orderly  
6 liquidation is pending.

7 (b) REVESTING OF ASSETS.—Effective as of the date  
8 of appointment of the Corporation as receiver, the assets  
9 of a covered financial company shall, to the extent they  
10 have vested in any entity other than the covered financial  
11 company as a result of any case or proceeding commenced  
12 with respect to the covered financial company under the  
13 Bankruptcy Code, the Securities Investor Protection Act  
14 of 1970, or any similar provision of State liquidation or  
15 insolvency law applicable to the covered financial company,  
16 revert in the covered financial company.

17 (c) LIMITATION.—Notwithstanding subsections (a)  
18 and (b), any order entered or other relief granted by a  
19 bankruptcy court prior to the date of appointment of the  
20 Corporation as receiver shall continue with the same valid-  
21 ity as if an orderly liquidation had not been commenced.

22 **SEC. 209. RULEMAKING; NON-CONFLICTING LAW.**

23 The Corporation shall, in consultation with the Coun-  
24 cil, prescribe such rules or regulations as the Corporation  
25 considers necessary or appropriate to implement this title,

1 including rules and regulations with respect to the rights,  
2 interests, and priorities of creditors, counterparties, secu-  
3 rity entitlement holders, or other persons with respect to  
4 any covered financial company or any assets or other prop-  
5 erty of or held by such covered financial company, and  
6 address the potential for conflicts of interest between or  
7 among individual receiverships established under this title  
8 or under the Federal Deposit Insurance Act. To the extent  
9 possible, the Corporation shall seek to harmonize applica-  
10 ble rules and regulations promulgated under this section  
11 with the insolvency laws that would otherwise apply to a  
12 covered financial company.

13 **SEC. 210. POWERS AND DUTIES OF THE CORPORATION.**

14 (a) POWERS AND AUTHORITIES.—

15 (1) GENERAL POWERS.—

16 (A) SUCCESSOR TO COVERED FINANCIAL  
17 COMPANY.—The Corporation shall, upon ap-  
18 pointment as receiver for a covered financial  
19 company under this title, succeed to—

20 (i) all rights, titles, powers, and privi-  
21 leges of the covered financial company and  
22 its assets, and of any stockholder, member,  
23 officer, or director of such company; and

24 (ii) title to the books, records, and as-  
25 sets of any previous receiver or other legal

1                   custodian of such covered financial com-  
2                   pany.

3                   (B) OPERATION OF THE COVERED FINAN-  
4                   CIAL COMPANY DURING THE PERIOD OF OR-  
5                   DERLY LIQUIDATION.—The Corporation, as re-  
6                   ceiver for a covered financial company, may—

7                   (i) take over the assets of and operate  
8                   the covered financial company with all of  
9                   the powers of the members or share-  
10                  holders, the directors, and the officers of  
11                  the covered financial company, and con-  
12                  duct all business of the covered financial  
13                  company;

14                  (ii) collect all obligations and money  
15                  owed to the covered financial company;

16                  (iii) perform all functions of the cov-  
17                  ered financial company, in the name of the  
18                  covered financial company;

19                  (iv) manage the assets and property  
20                  of the covered financial company, con-  
21                  sistent with maximization of the value of  
22                  the assets in the context of the orderly liq-  
23                  uidation; and



1 (v) provide by contract for assistance  
2 in fulfilling any function, activity, action,  
3 or duty of the Corporation as receiver.

4 (C) FUNCTIONS OF COVERED FINANCIAL  
5 COMPANY OFFICERS, DIRECTORS, AND SHARE-  
6 HOLDERS.—

7 (i) IN GENERAL.—The Corporation  
8 may provide for the exercise of any func-  
9 tion by any member or stockholder, direc-  
10 tor, or officer of any covered financial com-  
11 pany for which the Corporation has been  
12 appointed as receiver under this title.

13 (ii) PRESUMPTION.—There shall be a  
14 strong presumption that the Corporation,  
15 as receiver for a covered financial com-  
16 pany, will remove management responsible  
17 for the failed condition of the covered fi-  
18 nancial company.

19 (D) ADDITIONAL POWERS AS RECEIVER.—  
20 The Corporation shall, as receiver for a covered  
21 financial company, and subject to all legally en-  
22 forceable and perfected security interests and  
23 all legally enforceable security entitlements in  
24 respect of assets held by the covered financial  
25 company, liquidate, and wind-up the affairs of

1 a covered financial company, including taking  
2 steps to realize upon the assets of the covered  
3 financial company, in such manner as the Cor-  
4 poration deems appropriate, including through  
5 the sale of assets, the transfer of assets to a  
6 bridge financial company established under sub-  
7 section (h), or the exercise of any other rights  
8 or privileges granted to the receiver under this  
9 section.

10 (E) ADDITIONAL POWERS WITH RESPECT  
11 TO FAILING SUBSIDIARIES OF A COVERED FI-  
12 NANCIAL COMPANY.—

13 (i) IN GENERAL.—In any case in  
14 which a receiver is appointed for a covered  
15 financial company under section 202, the  
16 Corporation may appoint itself as receiver  
17 of any covered subsidiary of the covered fi-  
18 nancial company that is organized under  
19 Federal law or the laws of any State, if the  
20 Corporation and the Secretary jointly de-  
21 termine that—

22 (I) the covered subsidiary is in  
23 default or in danger of default;

24 (II) such action would avoid or  
25 mitigate serious adverse effects on the

1 financial stability or economic condi-  
2 tions of the United States; and

3 (III) such action would facilitate  
4 the orderly liquidation of the covered  
5 financial company.

6 (ii) TREATMENT AS COVERED FINAN-  
7 CIAL COMPANY.—If the Corporation is ap-  
8 pointed as receiver of a covered subsidiary  
9 of a covered financial company under  
10 clause (i), the covered subsidiary shall  
11 thereafter be considered a covered financial  
12 company under this title, and the Corpora-  
13 tion shall thereafter have all the powers  
14 and rights with respect to that covered  
15 subsidiary as it has with respect to a cov-  
16 ered financial company under this title.

17 (F) ORGANIZATION OF BRIDGE COMPA-  
18 NIES.—The Corporation, as receiver for a cov-  
19 ered financial company, may organize a bridge  
20 financial company under subsection (h).

21 (G) MERGER; TRANSFER OF ASSETS AND  
22 LIABILITIES.—

23 (i) IN GENERAL.—Subject to clauses  
24 (ii) and (iii), the Corporation, as receiver  
25 for a covered financial company, may—

1 (I) merge the covered financial  
2 company with another company; or

3 (II) transfer any asset or liability  
4 of the covered financial company (in-  
5 cluding any assets and liabilities held  
6 by the covered financial company for  
7 security entitlement holders, any cus-  
8 tomer property, or any assets and li-  
9 abilities associated with any trust or  
10 custody business) without obtaining  
11 any approval, assignment, or consent  
12 with respect to such transfer.

13 (ii) FEDERAL AGENCY APPROVAL;  
14 ANTITRUST REVIEW.—With respect to a  
15 transaction described in clause (i)(I) that  
16 requires approval by a Federal agency—

17 (I) the transaction may not be  
18 consummated before the 5th calendar  
19 day after the date of approval by the  
20 Federal agency responsible for such  
21 approval;

22 (II) if, in connection with any  
23 such approval, a report on competitive  
24 factors is required, the Federal agency  
25 responsible for such approval shall

1 promptly notify the Attorney General  
2 of the United States of the proposed  
3 transaction, and the Attorney General  
4 shall provide the required report not  
5 later than 10 days after the date of  
6 the request; and

7 (III) if notification under section  
8 7A of the Clayton Act is required with  
9 respect to such transaction, then the  
10 required waiting period shall end on  
11 the 15th day after the date on which  
12 the Attorney General and the Federal  
13 Trade Commission receive such notifi-  
14 cation, unless the waiting period is  
15 terminated earlier under subsection  
16 (b)(2) of such section 7A, or is ex-  
17 tended pursuant to subsection (e)(2)  
18 of such section 7A.

19 (iii) SETOFF.—Subject to the other  
20 provisions of this title, any transferee of  
21 assets from a receiver, including a bridge  
22 financial company, shall be subject to such  
23 claims or rights as would prevail over the  
24 rights of such transferee in such assets  
25 under applicable noninsolvency law.

1 (H) PAYMENT OF VALID OBLIGATIONS.—

2 The Corporation, as receiver for a covered fi-  
3 nancial company, shall, to the extent that funds  
4 are available, pay all valid obligations of the  
5 covered financial company that are due and  
6 payable at the time of the appointment of the  
7 Corporation as receiver, in accordance with the  
8 prescriptions and limitations of this title.

9 (I) APPLICABLE NONINSOLVENCY LAW.—

10 Except as may otherwise be provided in this  
11 title, the applicable noninsolvency law shall be  
12 determined by the noninsolvency choice of law  
13 rules otherwise applicable to the claims, rights,  
14 titles, persons, or entities at issue.

15 (J) SUBPOENA AUTHORITY.—

16 (i) IN GENERAL.—The Corporation,  
17 as receiver for a covered financial com-  
18 pany, may, for purposes of carrying out  
19 any power, authority, or duty with respect  
20 to the covered financial company (includ-  
21 ing determining any claim against the cov-  
22 ered financial company and determining  
23 and realizing upon any asset of any person  
24 in the course of collecting money due the  
25 covered financial company), exercise any

1 power established under section 8(n) of the  
2 Federal Deposit Insurance Act, as if the  
3 Corporation were the appropriate Federal  
4 banking agency for the covered financial  
5 company, and the covered financial com-  
6 pany were an insured depository institu-  
7 tion.

8 (ii) RULE OF CONSTRUCTION.—This  
9 subparagraph may not be construed as  
10 limiting any rights that the Corporation, in  
11 any capacity, might otherwise have to exer-  
12 cise any powers described in clause (i) or  
13 under any other provision of law.

14 (K) INCIDENTAL POWERS.—The Corpora-  
15 tion, as receiver for a covered financial com-  
16 pany, may exercise all powers and authorities  
17 specifically granted to receivers under this title,  
18 and such incidental powers as shall be nec-  
19 essary to carry out such powers under this title.

20 (L) UTILIZATION OF PRIVATE SECTOR.—  
21 In carrying out its responsibilities in the man-  
22 agement and disposition of assets from the cov-  
23 ered financial company, the Corporation, as re-  
24 ceiver for a covered financial company, may uti-  
25 lize the services of private persons, including

1 real estate and loan portfolio asset manage-  
2 ment, property management, auction mar-  
3 keting, legal, and brokerage services, if such  
4 services are available in the private sector, and  
5 the Corporation determines that utilization of  
6 such services is practicable, efficient, and cost  
7 effective.

8 (M) SHAREHOLDERS AND CREDITORS OF  
9 COVERED FINANCIAL COMPANY.—Notwith-  
10 standing any other provision of law, the Cor-  
11 poration, as receiver for a covered financial  
12 company, shall succeed by operation of law to  
13 the rights, titles, powers, and privileges de-  
14 scribed in subparagraph (A), and shall termi-  
15 nate all rights and claims that the stockholders  
16 and creditors of the covered financial company  
17 may have against the assets of the covered fi-  
18 nancial company or the Corporation arising out  
19 of their status as stockholders or creditors, ex-  
20 cept for their right to payment, resolution, or  
21 other satisfaction of their claims, as permitted  
22 under this section. The Corporation shall en-  
23 sure that shareholders and unsecured creditors  
24 bear losses, consistent with the priority of  
25 claims provisions under this section.



1           (N) COORDINATION WITH FOREIGN FINAN-  
2           CIAL AUTHORITIES.—The Corporation, as re-  
3           ceiver for a covered financial company, shall co-  
4           ordinate, to the maximum extent possible, with  
5           the appropriate foreign financial authorities re-  
6           garding the orderly liquidation of any covered  
7           financial company that has assets or operations  
8           in a country other than the United States.

9           (O) RESTRICTION ON TRANSFERS.—

10           (i) SELECTION OF ACCOUNTS FOR  
11           TRANSFER.—If the Corporation establishes  
12           one or more bridge financial companies  
13           with respect to a covered broker or dealer,  
14           the Corporation shall transfer to one of  
15           such bridge financial companies, all cus-  
16           tomer accounts of the covered broker or  
17           dealer, and all associated customer name  
18           securities and customer property, unless  
19           the Corporation, after consulting with the  
20           Commission and SIPC, determines that—

21           (I) the customer accounts, cus-  
22           tomer name securities, and customer  
23           property are likely to be promptly  
24           transferred to another broker or deal-  
25           er that is registered with the Commis-



1 (iv) NOTIFICATION OF SIPC AND  
2 SHARING OF INFORMATION.—The Corpora-  
3 tion shall identify to SIPC the customer  
4 accounts and associated customer name se-  
5 curities and customer property transferred  
6 to the bridge financial company. The Cor-  
7 poration and SIPC shall cooperate in the  
8 sharing of any information necessary for  
9 each entity to discharge its obligations  
10 under this title and under the Securities  
11 Investor Protection Act of 1970 (15 U.S.C.  
12 78aaa et seq.) including by providing ac-  
13 cess to the books and records of the cov-  
14 ered financial company and any bridge fi-  
15 nancial company established in accordance  
16 with this title.

17 (2) DETERMINATION OF CLAIMS.—

18 (A) IN GENERAL.—The Corporation, as re-  
19 ceiver for a covered financial company, shall re-  
20 port on claims, as set forth in section 203(c)(3).  
21 Subject to paragraph (4) of this subsection, the  
22 Corporation, as receiver for a covered financial  
23 company, shall determine claims in accordance  
24 with the requirements of this subsection and  
25 regulations prescribed under section 209.

1 (B) NOTICE REQUIREMENTS.—The Cor-  
2 poration, as receiver for a covered financial  
3 company, in any case involving the liquidation  
4 or winding up of the affairs of a covered finan-  
5 cial company, shall—

6 (i) promptly publish a notice to the  
7 creditors of the covered financial company  
8 to present their claims, together with  
9 proof, to the receiver by a date specified in  
10 the notice, which shall be not earlier than  
11 90 days after the date of publication of  
12 such notice; and

13 (ii) republish such notice 1 month and  
14 2 months, respectively, after the date of  
15 publication under clause (i).

16 (C) MAILING REQUIRED.—The Corpora-  
17 tion as receiver shall mail a notice similar to  
18 the notice published under clause (i) or (ii) of  
19 subparagraph (B), at the time of such publica-  
20 tion, to any creditor shown on the books and  
21 records of the covered financial company—

22 (i) at the last address of the creditor  
23 appearing in such books;

24 (ii) in any claim filed by the claimant;

25 or

1 (iii) upon discovery of the name and  
2 address of a claimant not appearing on the  
3 books and records of the covered financial  
4 company, not later than 30 days after the  
5 date of the discovery of such name and ad-  
6 dress.

7 (3) PROCEDURES FOR RESOLUTION OF  
8 CLAIMS.—

9 (A) DECISION PERIOD.—

10 (i) IN GENERAL.—Prior to the 180th  
11 day after the date on which a claim  
12 against a covered financial company is  
13 filed with the Corporation as receiver, or  
14 such later date as may be agreed as pro-  
15 vided in clause (ii), the Corporation shall  
16 notify the claimant whether it accepts or  
17 objects to the claim, in accordance with  
18 subparagraphs (B), (C), and (D).

19 (ii) EXTENSION OF TIME.—By written  
20 agreement executed not later than 180  
21 days after the date on which a claim  
22 against a covered financial company is  
23 filed with the Corporation, the period de-  
24 scribed in clause (i) may be extended by  
25 written agreement between the claimant

1 and the Corporation. Failure to notify the  
2 claimant of any disallowance within the  
3 time period set forth in clause (i), as it  
4 may be extended by agreement under this  
5 clause, shall be deemed to be a disallow-  
6 ance of such claim, and the claimant may  
7 file or continue an action in court, as pro-  
8 vided in paragraph (4).

9 (iii) MAILING OF NOTICE SUFFI-  
10 CIENT.—The requirements of clause (i)  
11 shall be deemed to be satisfied if the notice  
12 of any decision with respect to any claim  
13 is mailed to the last address of the claim-  
14 ant which appears—

15 (I) on the books, records, or both  
16 of the covered financial company;

17 (II) in the claim filed by the  
18 claimant; or

19 (III) in documents submitted in  
20 proof of the claim.

21 (iv) CONTENTS OF NOTICE OF DIS-  
22 ALLOWANCE.—If the Corporation as re-  
23 ceiver objects to any claim filed under  
24 clause (i), the notice to the claimant shall  
25 contain—

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1 (I) a statement of each reason  
2 for the disallowance; and

3 (II) the procedures required to  
4 file or continue an action in court, as  
5 provided in paragraph (4).

6 (B) ALLOWANCE OF PROVEN CLAIM.—The  
7 receiver shall allow any claim received by the  
8 receiver on or before the date specified in the  
9 notice under paragraph (2)(B)(i), which is  
10 proved to the satisfaction of the receiver.

11 (C) DISALLOWANCE OF CLAIMS FILED  
12 AFTER END OF FILING PERIOD.—

13 (i) IN GENERAL.—Except as provided  
14 in clause (ii), claims filed after the date  
15 specified in the notice published under  
16 paragraph (2)(B)(i) shall be disallowed,  
17 and such disallowance shall be final.

18 (ii) CERTAIN EXCEPTIONS.—Clause  
19 (i) shall not apply with respect to any  
20 claim filed by a claimant after the date  
21 specified in the notice published under  
22 paragraph (2)(B)(i), and such claim may  
23 be considered by the receiver under sub-  
24 paragraph (B), if—

1 (I) the claimant did not receive  
2 notice of the appointment of the re-  
3 ceiver in time to file such claim before  
4 such date; and

5 (II) such claim is filed in time to  
6 permit payment of such claim.

7 (D) AUTHORITY TO DISALLOW CLAIMS.—

8 (i) IN GENERAL.—The Corporation  
9 may object to any portion of any claim by  
10 a creditor or claim of a security, pref-  
11 erence, setoff, or priority which is not  
12 proved to the satisfaction of the Corpora-  
13 tion.

14 (ii) PAYMENTS TO UNDERSECURED  
15 CREDITORS.—In the case of a claim  
16 against a covered financial company that is  
17 secured by any property or other asset of  
18 such covered financial company, the re-  
19 ceiver—

20 (I) may treat the portion of such  
21 claim which exceeds an amount equal  
22 to the fair market value of such prop-  
23 erty or other asset as an unsecured  
24 claim; and



1 (II) may not make any payment  
2 with respect to such unsecured por-  
3 tion of the claim, other than in con-  
4 nection with the disposition of all  
5 claims of unsecured creditors of the  
6 covered financial company.

7 (iii) EXCEPTIONS.—No provision of  
8 this paragraph shall apply with respect  
9 to—

10 (I) any extension of credit from  
11 any Federal reserve bank, or the Cor-  
12 poration, to any covered financial  
13 company; or

14 (II) subject to clause (ii), any le-  
15 gally enforceable and perfected secu-  
16 rity interest in the assets of the cov-  
17 ered financial company securing any  
18 such extension of credit.

19 (E) LEGAL EFFECT OF FILING.—

20 (i) STATUTE OF LIMITATIONS  
21 TOLLED.—For purposes of any applicable  
22 statute of limitations, the filing of a claim  
23 with the receiver shall constitute a com-  
24 mencement of an action.

1                   (ii) NO PREJUDICE TO OTHER AC-  
2                   TIONS.—Subject to paragraph (8), the fil-  
3                   ing of a claim with the receiver shall not  
4                   prejudice any right of the claimant to con-  
5                   tinue any action which was filed before the  
6                   date of appointment of the receiver for the  
7                   covered financial company.

8                   (4) JUDICIAL DETERMINATION OF CLAIMS.—

9                   (A) IN GENERAL.—Subject to subpara-  
10                  graph (B), a claimant may file suit on a claim  
11                  (or continue an action commenced before the  
12                  date of appointment of the Corporation as re-  
13                  ceiver) in the district or territorial court of the  
14                  United States for the district within which the  
15                  principal place of business of the covered finan-  
16                  cial company is located (and such court shall  
17                  have jurisdiction to hear such claim).

18                  (B) TIMING.—A claim under subparagraph  
19                  (A) may be filed before the end of the 60-day  
20                  period beginning on the earlier of—

21                         (i) the end of the period described in  
22                         paragraph (3)(A)(i) (or, if extended by  
23                         agreement of the Corporation and the  
24                         claimant, the period described in para-  
25                         graph (3)(A)(ii)) with respect to any claim

1           against a covered financial company for  
2           which the Corporation is receiver; or

3                   (ii) the date of any notice of disallow-  
4           ance of such claim pursuant to paragraph  
5           (3)(A)(i).

6           (C) STATUTE OF LIMITATIONS.—If any  
7           claimant fails to file suit on such claim (or to  
8           continue an action on such claim commenced  
9           before the date of appointment of the Corpora-  
10          tion as receiver) prior to the end of the 60-day  
11          period described in subparagraph (B), the claim  
12          shall be deemed to be disallowed (other than  
13          any portion of such claim which was allowed by  
14          the receiver) as of the end of such period, such  
15          disallowance shall be final, and the claimant  
16          shall have no further rights or remedies with re-  
17          spect to such claim.

18          (5) EXPEDITED DETERMINATION OF CLAIMS.—

19                  (A) PROCEDURE REQUIRED.—The Cor-  
20          poration shall establish a procedure for expe-  
21          dited relief outside of the claims process estab-  
22          lished under paragraph (3), for any claimant  
23          that alleges—

24                          (i) the existence of a legally valid and  
25                  enforceable or perfected security interest in

1 property of a covered financial company, or  
2 is an entitlement holder that has obtained  
3 control of any legally valid and enforceable  
4 security entitlement in respect of any asset  
5 held by the covered financial company for  
6 which the Corporation has been appointed  
7 receiver; and

8 (ii) that irreparable injury will occur  
9 if the claims procedure established under  
10 paragraph (3) is followed.

11 (B) DETERMINATION PERIOD.—Prior to  
12 the end of the 90-day period beginning on the  
13 date on which a claim is filed in accordance  
14 with the procedures established pursuant to  
15 subparagraph (A), the Corporation shall—

16 (i) determine—

17 (I) whether to allow or disallow  
18 such claim, or any portion thereof; or

19 (II) whether such claim should be  
20 determined pursuant to the proce-  
21 dures established pursuant to para-  
22 graph (3);

23 (ii) notify the claimant of the deter-  
24 mination; and

1 (iii) if the claim is disallowed, provide  
2 a statement of each reason for the dis-  
3 allowance and the procedure for obtaining  
4 a judicial determination.

5 (C) PERIOD FOR FILING OR RENEWING  
6 SUIT.—Any claimant who files a request for ex-  
7 pedited relief shall be permitted to file suit (or  
8 continue a suit filed before the date of appoint-  
9 ment of the Corporation as receiver seeking a  
10 determination of the rights of the claimant with  
11 respect to such security interest (or such secu-  
12 rity entitlement) after the earlier of—

13 (i) the end of the 90-day period begin-  
14 ning on the date of the filing of a request  
15 for expedited relief; or

16 (ii) the date on which the Corporation  
17 denies the claim or a portion thereof.

18 (D) STATUTE OF LIMITATIONS.—If an ac-  
19 tion described in subparagraph (C) is not filed,  
20 or the motion to renew a previously filed suit is  
21 not made, before the end of the 30-day period  
22 beginning on the date on which such action or  
23 motion may be filed in accordance with sub-  
24 paragraph (C), the claim shall be deemed to be  
25 disallowed as of the end of such period (other

1 than any portion of such claim which was al-  
2 lowed by the receiver), such disallowance shall  
3 be final, and the claimant shall have no further  
4 rights or remedies with respect to such claim.

5 (E) LEGAL EFFECT OF FILING.—

6 (i) STATUTE OF LIMITATIONS  
7 TOLLED.—For purposes of any applicable  
8 statute of limitations, the filing of a claim  
9 with the receiver shall constitute a com-  
10 mencement of an action.

11 (ii) NO PREJUDICE TO OTHER AC-  
12 TIONS.—Subject to paragraph (8), the fil-  
13 ing of a claim with the receiver shall not  
14 prejudice any right of the claimant to con-  
15 tinue any action which was filed before the  
16 appointment of the Corporation as receiver  
17 for the covered financial company.

18 (6) AGREEMENTS AGAINST INTEREST OF THE  
19 RECEIVER.—No agreement that tends to diminish or  
20 defeat the interest of the Corporation as receiver in  
21 any asset acquired by the receiver under this section  
22 shall be valid against the receiver, unless such agree-  
23 ment—

24 (A) is in writing;

1 (B) was executed by an authorized officer  
2 or representative of the covered financial com-  
3 pany, or confirmed in the ordinary course of  
4 business by the covered financial company; and

5 (C) has been, since the time of its execu-  
6 tion, an official record of the company or the  
7 party claiming under the agreement provides  
8 documentation, acceptable to the receiver, of  
9 such agreement and its authorized execution or  
10 confirmation by the covered financial company.

11 (7) PAYMENT OF CLAIMS.—

12 (A) IN GENERAL.—Subject to subpara-  
13 graph (B), the Corporation as receiver may, in  
14 its discretion and to the extent that funds are  
15 available, pay creditor claims, in such manner  
16 and amounts as are authorized under this sec-  
17 tion, which are—

18 (i) allowed by the receiver;

19 (ii) approved by the receiver pursuant  
20 to a final determination pursuant to para-  
21 graph (3) or (5), as applicable; or

22 (iii) determined by the final judgment  
23 of a court of competent jurisdiction.

24 (B) LIMITATION.—A creditor shall, in no  
25 event, receive less than the amount that the

1 creditor is entitled to receive under paragraphs  
2 (2) and (3) of subsection (d), as applicable.

3 (C) PAYMENT OF DIVIDENDS ON  
4 CLAIMS.—The Corporation as receiver may, in  
5 its sole discretion, and to the extent otherwise  
6 permitted by this section, pay dividends on  
7 proven claims at any time, and no liability shall  
8 attach to the Corporation as receiver, by reason  
9 of any such payment or for failure to pay divi-  
10 dends to a claimant whose claim is not proved  
11 at the time of any such payment.

12 (D) RULEMAKING BY THE CORPORA-  
13 TION.—The Corporation may prescribe such  
14 rules, including definitions of terms, as the Cor-  
15 poration deems appropriate to establish an in-  
16 terest rate for or to make payments of post-in-  
17 solvency interest to creditors holding proven  
18 claims against the receivership estate of a cov-  
19 ered financial company, except that no such in-  
20 terest shall be paid until the Corporation as re-  
21 ceiver has satisfied the principal amount of all  
22 creditor claims.

23 (8) SUSPENSION OF LEGAL ACTIONS.—

24 (A) IN GENERAL.—After the appointment  
25 of the Corporation as receiver for a covered fi-



1           nancial company, the Corporation may request  
2           a stay in any judicial action or proceeding in  
3           which such covered financial company is or be-  
4           comes a party, for a period of not to exceed 90  
5           days.

6                   (B) GRANT OF STAY BY ALL COURTS RE-  
7           QUIRED.—Upon receipt of a request by the Cor-  
8           poration pursuant to subparagraph (A), the  
9           court shall grant such stay as to all parties.

10           (9) ADDITIONAL RIGHTS AND DUTIES.—

11                   (A) PRIOR FINAL ADJUDICATION.—The  
12           Corporation shall abide by any final, non-ap-  
13           pealable judgment of any court of competent ju-  
14           risdiction that was rendered before the appoint-  
15           ment of the Corporation as receiver.

16                   (B) RIGHTS AND REMEDIES OF RE-  
17           CEIVER.—In the event of any appealable judg-  
18           ment, the Corporation as receiver shall—

19                           (i) have all the rights and remedies  
20                           available to the covered financial company  
21                           (before the date of appointment of the Cor-  
22                           poration as receiver under section 202)  
23                           and the Corporation, including removal to  
24                           Federal court and all appellate rights; and

1 (ii) not be required to post any bond  
2 in order to pursue such remedies.

3 (C) NO ATTACHMENT OR EXECUTION.—No  
4 attachment or execution may be issued by any  
5 court upon assets in the possession of the Cor-  
6 poration as receiver for a covered financial com-  
7 pany.

8 (D) LIMITATION ON JUDICIAL REVIEW.—  
9 Except as otherwise provided in this title, no  
10 court shall have jurisdiction over—

11 (i) any claim or action for payment  
12 from, or any action seeking a determina-  
13 tion of rights with respect to, the assets of  
14 any covered financial company for which  
15 the Corporation has been appointed re-  
16 ceiver, including any assets which the Cor-  
17 poration may acquire from itself as such  
18 receiver; or

19 (ii) any claim relating to any act or  
20 omission of such covered financial company  
21 or the Corporation as receiver.

22 (E) DISPOSITION OF ASSETS.—In exer-  
23 cising any right, power, privilege, or authority  
24 as receiver in connection with any covered fi-  
25 nancial company for which the Corporation is

1 acting as receiver under this section, the Cor-  
2 poration shall, to the greatest extent prac-  
3 ticable, conduct its operations in a manner  
4 that—

5 (i) maximizes the net present value  
6 return from the sale or disposition of such  
7 assets;

8 (ii) minimizes the amount of any loss  
9 realized in the resolution of cases;

10 (iii) mitigates the potential for serious  
11 adverse effects to the financial system;

12 (iv) ensures timely and adequate com-  
13 petition and fair and consistent treatment  
14 of offerors; and

15 (v) prohibits discrimination on the  
16 basis of race, sex, or ethnic group in the  
17 solicitation and consideration of offers.

18 (10) STATUTE OF LIMITATIONS FOR ACTIONS  
19 BROUGHT BY RECEIVER.—

20 (A) IN GENERAL.—Notwithstanding any  
21 provision of any contract, the applicable statute  
22 of limitations with regard to any action brought  
23 by the Corporation as receiver for a covered fi-  
24 nancial company shall be—

1 (i) in the case of any contract claim,  
2 the longer of—

3 (I) the 6-year period beginning  
4 on the date on which the claim ac-  
5 crues; or

6 (II) the period applicable under  
7 State law; and

8 (ii) in the case of any tort claim, the  
9 longer of—

10 (I) the 3-year period beginning  
11 on the date on which the claim ac-  
12 crues; or

13 (II) the period applicable under  
14 State law.

15 (B) DATE ON WHICH A CLAIM ACCRUES.—

16 For purposes of subparagraph (A), the date on  
17 which the statute of limitations begins to run  
18 on any claim described in subparagraph (A)  
19 shall be the later of—

20 (i) the date of the appointment of the  
21 Corporation as receiver under this title; or

22 (ii) the date on which the cause of ac-  
23 tion accrues.

24 (C) REVIVAL OF EXPIRED STATE CAUSES

25 OF ACTION.—

1 (i) IN GENERAL.—In the case of any  
2 tort claim described in clause (ii) for which  
3 the applicable statute of limitations under  
4 State law has expired not more than 5  
5 years before the date of appointment of the  
6 Corporation as receiver for a covered fi-  
7 nancial company, the Corporation may  
8 bring an action as receiver on such claim  
9 without regard to the expiration of the  
10 statute of limitations.

11 (ii) CLAIMS DESCRIBED.—A tort  
12 claim referred to in clause (i) is a claim  
13 arising from fraud, intentional misconduct  
14 resulting in unjust enrichment, or inten-  
15 tional misconduct resulting in substantial  
16 loss to the covered financial company.

17 (11) AVOIDABLE TRANSFERS.—

18 (A) FRAUDULENT TRANSFERS.—The Cor-  
19 poration, as receiver for any covered financial  
20 company, may avoid a transfer of any interest  
21 of the covered financial company in property, or  
22 any obligation incurred by the covered financial  
23 company, that was made or incurred at or with-  
24 in 2 years before the time of commencement,  
25 if—

1 (i) the covered financial company vol-  
2 untarily or involuntarily—

3 (I) made such transfer or in-  
4 curred such obligation with actual in-  
5 tent to hinder, delay, or defraud any  
6 entity to which the covered financial  
7 company was or became, on or after  
8 the date on which such transfer was  
9 made or such obligation was incurred,  
10 indebted; or

11 (II) received less than a reason-  
12 ably equivalent value in exchange for  
13 such transferor obligation; and

14 (ii) the covered financial company vol-  
15 untarily or involuntarily—

16 (I) was insolvent on the date that  
17 such transfer was made or such obli-  
18 gation was incurred, or became insol-  
19 vent as a result of such transfer or  
20 obligation;

21 (II) was engaged in business or a  
22 transaction, or was about to engage in  
23 business or a transaction, for which  
24 any property remaining with the cov-

1                   ered financial company was an unrea-  
2                   sonably small capital;

3                   (III) intended to incur, or be-  
4                   lieved that the covered financial com-  
5                   pany would incur, debts that would be  
6                   beyond the ability of the covered fi-  
7                   nancial company to pay as such debts  
8                   matured; or

9                   (IV) made such transfer to or for  
10                  the benefit of an insider, or incurred  
11                  such obligation to or for the benefit of  
12                  an insider, under an employment con-  
13                  tract and not in the ordinary course  
14                  of business.

15                  (B) PREFERENTIAL TRANSFERS.—The  
16                  Corporation as receiver for any covered finan-  
17                  cial company may avoid a transfer of an inter-  
18                  est of the covered financial company in prop-  
19                  erty—

20                         (i) to or for the benefit of a creditor;

21                         (ii) for or on account of an antecedent  
22                         debt that was owed by the covered finan-  
23                         cial company before the transfer was made;

24                         (iii) that was made while the covered  
25                         financial company was insolvent;

1 (iv) that was made—

2 (I) 90 days or less before the  
3 date on which the Corporation was  
4 appointed receiver; or

5 (II) more than 90 days, but less  
6 than 1 year before the date on which  
7 the Corporation was appointed re-  
8 ceiver, if such creditor at the time of  
9 the transfer was an insider; and

10 (v) that enables the creditor to receive  
11 more than the creditor would receive if—

12 (I) the covered financial company  
13 had been liquidated under chapter 7  
14 of the Bankruptcy Code;

15 (II) the transfer had not been  
16 made; and

17 (III) the creditor received pay-  
18 ment of such debt to the extent pro-  
19 vided by the provisions of chapter 7 of  
20 the Bankruptcy Code.

21 (C) POST-RECEIVERSHIP TRANSACTIONS.—

22 The Corporation as receiver for any covered fi-  
23 nancial company may avoid a transfer of prop-  
24 erty of the receivership that occurred after the  
25 Corporation was appointed receiver that was



1 not authorized under this title by the Corpora-  
2 tion as receiver.

3 (D) RIGHT OF RECOVERY.—To the extent  
4 that a transfer is avoided under subparagraph  
5 (A), (B), or (C), the Corporation may recover,  
6 for the benefit of the covered financial com-  
7 pany, the property transferred or, if a court so  
8 orders, the value of such property (at the time  
9 of such transfer) from—

10 (i) the initial transferee of such trans-  
11 fer or the person for whose benefit such  
12 transfer was made; or

13 (ii) any immediate or mediate trans-  
14 feree of any such initial transferee.

15 (E) RIGHTS OF TRANSFEREE OR OBLI-  
16 GEE.—The Corporation may not recover under  
17 subparagraph (D)(ii) from—

18 (i) any transferee that takes for value,  
19 including in satisfaction of or to secure a  
20 present or antecedent debt, in good faith,  
21 and without knowledge of the voidability of  
22 the transfer avoided; or

23 (ii) any immediate or mediate good  
24 faith transferee of such transferee.

1 (F) DEFENSES.—Subject to the other pro-  
2 visions of this title—

3 (i) a transferee or obligee from which  
4 the Corporation seeks to recover a transfer  
5 or to avoid an obligation under subpara-  
6 graph (A), (B), (C), or (D) shall have the  
7 same defenses available to a transferee or  
8 obligee from which a trustee seeks to re-  
9 cover a transfer or avoid an obligation  
10 under; and

11 (ii) the authority of the Corporation  
12 to recover a transfer or avoid an obligation  
13 shall be subject to subsections (b) and (c)  
14 of section 546, section 547(c), and section  
15 548(c) of the Bankruptcy Code.

16 (G) RIGHTS UNDER THIS SECTION.—The  
17 rights of the Corporation as receiver under this  
18 section shall be superior to any rights of a  
19 trustee or any other party (other than a Fed-  
20 eral agency) under the Bankruptcy Code.

21 (H) RULES OF CONSTRUCTION; DEFINI-  
22 TIONS.—For purposes of—

23 (i) subparagraphs (A) and (B)—

1 (I) the term “insider” has the  
2 same meaning as in section 101(31)  
3 of the Bankruptcy Code;

4 (II) a transfer is made when  
5 such transfer is so perfected that a  
6 bona fide purchaser from the covered  
7 financial company against whom ap-  
8 plicable law permits such transfer to  
9 be perfected cannot acquire an inter-  
10 est in the property transferred that is  
11 superior to the interest in such prop-  
12 erty of the transferee, but if such  
13 transfer is not so perfected before the  
14 date on which the Corporation is ap-  
15 pointed as receiver for the covered fi-  
16 nancial company, such transfer is  
17 made immediately before the date of  
18 such appointment; and

19 (III) the term “value” means  
20 property, or satisfaction or securing of  
21 a present or antecedent debt of the  
22 covered financial company, but does  
23 not include an unperformed promise  
24 to furnish support to the covered fi-  
25 nancial company; and

1 (ii) subparagraph (B)—

2 (I) the covered financial company  
3 is presumed to have been insolvent on  
4 and during the 90-day period imme-  
5 diately preceding the date of appoint-  
6 ment of the Corporation as receiver;  
7 and

8 (II) the term “insolvent” has the  
9 same meaning as in section 101(32)  
10 of the Bankruptcy Code.

11 (12) SETOFF.—

12 (A) GENERALLY.—Except as otherwise  
13 provided in this title, any right of a creditor to  
14 offset a mutual debt owed by the creditor to  
15 any covered financial company that arose before  
16 the Corporation was appointed as receiver for  
17 the covered financial company against a claim  
18 of such creditor may be asserted if enforceable  
19 under applicable noninsolvency law, except to  
20 the extent that—

21 (i) the claim of the creditor against  
22 the covered financial company is dis-  
23 allowed;

1 (ii) the claim was transferred, by an  
2 entity other than the covered financial  
3 company, to the creditor—

4 (I) after the Corporation was ap-  
5 pointed as receiver of the covered fi-  
6 nancial company; or

7 (II)(aa) after the 90-day period  
8 preceding the date on which the Cor-  
9 poration was appointed as receiver for  
10 the covered financial company; and

11 (bb) while the covered financial  
12 company was insolvent (except for a  
13 setoff in connection with a qualified  
14 financial contract); or

15 (iii) the debt owed to the covered fi-  
16 nancial company was incurred by the cov-  
17 ered financial company—

18 (I) after the 90-day period pre-  
19 ceding the date on which the Corpora-  
20 tion was appointed as receiver for the  
21 covered financial company;

22 (II) while the covered financial  
23 company was insolvent; and

24 (III) for the purpose of obtaining  
25 a right of setoff against the covered

1 financial company (except for a setoff  
2 in connection with a qualified finan-  
3 cial contract).

4 (B) INSUFFICIENCY.—

5 (i) IN GENERAL.—Except with respect  
6 to a setoff in connection with a qualified fi-  
7 nancial contract, if a creditor offsets a mu-  
8 tual debt owed to the covered financial  
9 company against a claim of the covered fi-  
10 nancial company on or within the 90-day  
11 period preceding the date on which the  
12 Corporation is appointed as receiver for  
13 the covered financial company, the Cor-  
14 poration may recover from the creditor the  
15 amount so offset, to the extent that any in-  
16 sufficiency on the date of such setoff is less  
17 than the insufficiency on the later of—

18 (I) the date that is 90 days be-  
19 fore the date on which the Corpora-  
20 tion is appointed as receiver for the  
21 covered financial company; or

22 (II) the first day on which there  
23 is an insufficiency during the 90-day  
24 period preceding the date on which  
25 the Corporation is appointed as re-

1                   ceiver for the covered financial com-  
2                   pany.

3                   (ii)    DEFINITION    OF    INSUFFI-  
4                   CIENCY.—In this subparagraph, the term  
5                   “insufficiency” means the amount, if any,  
6                   by which a claim against the covered finan-  
7                   cial company exceeds a mutual debt owed  
8                   to the covered financial company by the  
9                   holder of such claim.

10                  (C)   INSOLVENCY.—The term “insolvent”  
11                  has the same meaning as in section 101(32) of  
12                  the Bankruptcy Code.

13                  (D)   PRESUMPTION OF INSOLVENCY.—For  
14                  purposes of this paragraph, the covered finan-  
15                  cial company is presumed to have been insol-  
16                  vent on and during the 90-day period preceding  
17                  the date of appointment of the Corporation as  
18                  receiver.

19                  (E)   LIMITATION.—Nothing in this para-  
20                  graph (12) shall be the basis for any right of  
21                  setoff where no such right exists under applica-  
22                  ble noninsolvency law.

23                  (F)   PRIORITY CLAIM.—Except as other-  
24                  wise provided in this title, the Corporation as  
25                  receiver for the covered financial company may

1           sell or transfer any assets free and clear of the  
2           setoff rights of any party, except that such  
3           party shall be entitled to a claim, subordinate  
4           to the claims payable under subparagraphs (A),  
5           (B), (C), and (D) of subsection (b)(1), but sen-  
6           ior to all other unsecured liabilities defined in  
7           subsection (b)(1)(E), in an amount equal to the  
8           value of such setoff rights.

9           (13) ATTACHMENT OF ASSETS AND OTHER IN-  
10          JUNCTIVE RELIEF.—Subject to paragraph (14), any  
11          court of competent jurisdiction may, at the request  
12          of the Corporation as receiver for a covered financial  
13          company, issue an order in accordance with Rule 65  
14          of the Federal Rules of Civil Procedure, including an  
15          order placing the assets of any person designated by  
16          the Corporation under the control of the court and  
17          appointing a trustee to hold such assets.

18          (14) STANDARDS.—

19                 (A) SHOWING.—Rule 65 of the Federal  
20          Rules of Civil Procedure shall apply with re-  
21          spect to any proceeding under paragraph (13),  
22          without regard to the requirement that the ap-  
23          plicant show that the injury, loss, or damage is  
24          irreparable and immediate.



1           (B) STATE PROCEEDING.—If, in the case  
2           of any proceeding in a State court, the court  
3           determines that rules of civil procedure avail-  
4           able under the laws of the State provide sub-  
5           stantially similar protections of the right of the  
6           parties to due process as provided under Rule  
7           65 (as modified with respect to such proceeding  
8           by subparagraph (A)), the relief sought by the  
9           Corporation pursuant to paragraph (14) may be  
10          requested under the laws of such State.

11          (15) TREATMENT OF CLAIMS ARISING FROM  
12          BREACH OF CONTRACTS EXECUTED BY THE COR-  
13          PORATION AS RECEIVER.—Notwithstanding any  
14          other provision of this title, any final and non-ap-  
15          pealable judgment for monetary damages entered  
16          against the Corporation as receiver for a covered fi-  
17          nancial company for the breach of an agreement exe-  
18          cuted or approved by the Corporation after the date  
19          of its appointment shall be paid as an administrative  
20          expense of the receiver. Nothing in this paragraph  
21          shall be construed to limit the power of a receiver  
22          to exercise any rights under contract or law, includ-  
23          ing to terminate, breach, cancel, or otherwise dis-  
24          continue such agreement.

1           (16) ACCOUNTING AND RECORDKEEPING RE-  
2           QUIREMENTS.—

3           (A) IN GENERAL.—The Corporation as re-  
4           ceiver for a covered financial company shall,  
5           consistent with the accounting and reporting  
6           practices and procedures established by the  
7           Corporation, maintain a full accounting of each  
8           receivership or other disposition of any covered  
9           financial company.

10          (B) ANNUAL ACCOUNTING OR REPORT.—  
11          With respect to each receivership to which the  
12          Corporation is appointed, the Corporation shall  
13          make an annual accounting or report, as appro-  
14          priate, available to the Secretary and the Comp-  
15          troller General of the United States.

16          (C) AVAILABILITY OF REPORTS.—Any re-  
17          port prepared pursuant to subparagraph (B)  
18          and section 203(c)(3) shall be made available to  
19          the public by the Corporation.

20          (D) RECORDKEEPING REQUIREMENT.—

21           (i) IN GENERAL.—The Corporation  
22           shall prescribe such regulations and estab-  
23           lish such retention schedules as are nec-  
24           essary to maintain the documents and  
25           records of the Corporation generated in ex-

1           ercising the authorities of this title and the  
2           records of a covered financial company for  
3           which the Corporation is appointed re-  
4           ceiver, with due regard for—

5                   (I) the avoidance of duplicative  
6                   record retention; and

7                   (II) the expected evidentiary  
8                   needs of the Corporation as receiver  
9                   for a covered financial company and  
10                  the public regarding the records of  
11                  covered financial companies.

12               (ii) RETENTION OF RECORDS.—Un-  
13               less otherwise required by applicable Fed-  
14               eral law or court order, the Corporation  
15               may not, at any time, destroy any records  
16               that are subject to clause (i).

17               (iii) RECORDS DEFINED.—As used in  
18               this subparagraph, the terms “records”  
19               and “records of a covered financial com-  
20               pany” mean any document, book, paper,  
21               map, photograph, microfiche, microfilm,  
22               computer or electronically-created record  
23               generated or maintained by the covered fi-  
24               nancial company in the course of and nec-  
25               essary to its transaction of business.

1 (b) PRIORITY OF EXPENSES AND UNSECURED  
2 CLAIMS.—

3 (1) IN GENERAL.—Unsecured claims against a  
4 covered financial company, or the Corporation as re-  
5 ceiver for such covered financial company under this  
6 section, that are proven to the satisfaction of the re-  
7 ceiver shall have priority in the following order:

8 (A) Administrative expenses of the re-  
9 ceiver.

10 (B) Any amounts owed to the United  
11 States, unless the United States agrees or con-  
12 sents otherwise.

13 (C) Wages, salaries, or commissions, in-  
14 cluding vacation, severance, and sick leave pay  
15 earned by an individual (other than an indi-  
16 vidual described in subparagraph (G)), but only  
17 to the extent of \$11,725 for each individual (as  
18 indexed for inflation, by regulation of the Cor-  
19 poration) earned not later than 180 days before  
20 the date of appointment of the Corporation as  
21 receiver.

22 (D) Contributions owed to employee ben-  
23 efit plans arising from services rendered not  
24 later than 180 days before the date of appoint-  
25 ment of the Corporation as receiver, to the ex-

1           tent of the number of employees covered by  
2           each such plan, multiplied by \$11,725 (as in-  
3           dexed for inflation, by regulation of the Cor-  
4           poration), less the aggregate amount paid to  
5           such employees under subparagraph (C), plus  
6           the aggregate amount paid by the receivership  
7           on behalf of such employees to any other em-  
8           ployee benefit plan.

9           (E) Any other general or senior liability of  
10          the covered financial company (which is not a  
11          liability described under subparagraph (F), (G),  
12          or (H)).

13          (F) Any obligation subordinated to general  
14          creditors (which is not an obligation described  
15          under subparagraph (G) or (H)).

16          (G) Any wages, salaries, or commissions,  
17          including vacation, severance, and sick leave  
18          pay earned, owed to senior executives and direc-  
19          tors of the covered financial company.

20          (H) Any obligation to shareholders, mem-  
21          bers, general partners, limited partners, or  
22          other persons, with interests in the equity of  
23          the covered financial company arising as a re-  
24          sult of their status as shareholders, members,  
25          general partners, limited partners, or other per-

1           sons with interests in the equity of the covered  
2           financial company.

3           (2)   POST-RECEIVERSHIP   FINANCING   PRI-  
4           ORITY.—In the event that the Corporation, as re-  
5           ceiver for a covered financial company, is unable to  
6           obtain unsecured credit for the covered financial  
7           company from commercial sources, the Corporation  
8           as receiver may obtain credit or incur debt on the  
9           part of the covered financial company, which shall  
10          have priority over any or all administrative expenses  
11          of the receiver under paragraph (1)(A).

12          (3)   CLAIMS OF THE UNITED STATES.—Unse-  
13          cured claims of the United States shall, at a min-  
14          imum, have a higher priority than liabilities of the  
15          covered financial company that count as regulatory  
16          capital.

17          (4)   CREDITORS   SIMILARLY   SITUATED.—All  
18          claimants of a covered financial company that are  
19          similarly situated under paragraph (1) shall be  
20          treated in a similar manner, except that the Cor-  
21          poration may take any action (including making  
22          payments, subject to subsection (o)(1)(E)(ii)) that  
23          does not comply with this subsection, if—

24                  (A) the Corporation determines that such  
25                  action is necessary—

1 (i) to maximize the value of the assets  
2 of the covered financial company;

3 (ii) to initiate and continue operations  
4 essential to implementation of the receiver-  
5 ship or any bridge financial company;

6 (iii) to maximize the present value re-  
7 turn from the sale or other disposition of  
8 the assets of the covered financial com-  
9 pany; or

10 (iv) to minimize the amount of any  
11 loss realized upon the sale or other disposi-  
12 tion of the assets of the covered financial  
13 company; and

14 (B) all claimants that are similarly situ-  
15 ated under paragraph (1) receive not less than  
16 the amount provided in paragraphs (2) and (3)  
17 of subsection (d).

18 (5) SECURED CLAIMS UNAFFECTED.—This sec-  
19 tion shall not affect secured claims or security enti-  
20 tlements in respect of assets or property held by the  
21 covered financial company, except to the extent that  
22 the security is insufficient to satisfy the claim, and  
23 then only with regard to the difference between the  
24 claim and the amount realized from the security.

1           (6) PRIORITY OF EXPENSES AND UNSECURED  
2 CLAIMS IN THE ORDERLY LIQUIDATION OF SIPC  
3 MEMBER.—Where the Corporation is appointed as  
4 receiver for a covered broker or dealer, unsecured  
5 claims against such covered broker or dealer, or the  
6 Corporation as receiver for such covered broker or  
7 dealer under this section, that are proven to the sat-  
8 isfaction of the receiver under section 205(e), shall  
9 have the priority prescribed in paragraph (1), except  
10 that—

11           (A) SIPC shall be entitled to recover ad-  
12 ministrative expenses incurred in performing its  
13 responsibilities under section 205 on an equal  
14 basis with the Corporation, in accordance with  
15 paragraph (1)(A);

16           (B) the Corporation shall be entitled to re-  
17 cover any amounts paid to customers or to  
18 SIPC pursuant to section 205(f), in accordance  
19 with paragraph (1)(B);

20           (C) SIPC shall be entitled to recover any  
21 amounts paid out of the SIPC Fund to meet its  
22 obligations under section 205 and under the Se-  
23 curities Investor Protection Act of 1970 (15  
24 U.S.C. 78aaa et seq.), which claim shall be sub-  
25 ordinate to the claims payable under subpara-



1           graphs (A) and (B) of paragraph (1), but sen-  
2           ior to all other claims; and

3                   (D) the Corporation may, after paying any  
4           proven claims to customers under section 205  
5           and the Securities Investor Protection Act of  
6           1970 (15 U.S.C. 78aaa et seq.), and as pro-  
7           vided above, pay dividends on other proven  
8           claims, in its discretion, and to the extent that  
9           funds are available, in accordance with the pri-  
10          orities set forth in paragraph (1).

11          (c) PROVISIONS RELATING TO CONTRACTS ENTERED  
12 INTO BEFORE APPOINTMENT OF RECEIVER.—

13                   (1) AUTHORITY TO REPUDIATE CONTRACTS.—

14          In addition to any other rights that a receiver may  
15          have, the Corporation as receiver for any covered fi-  
16          nancial company may disaffirm or repudiate any  
17          contract or lease—

18                   (A) to which the covered financial company  
19           is a party;

20                   (B) the performance of which the Corpora-  
21           tion as receiver, in the discretion of the Cor-  
22           poration, determines to be burdensome; and

23                   (C) the disaffirmance or repudiation of  
24           which the Corporation as receiver determines,  
25           in the discretion of the Corporation, will pro-



1                   repudiation of such contract or agree-  
2                   ment.

3                   (B) NO LIABILITY FOR OTHER DAM-  
4                   AGES.—For purposes of subparagraph (A), the  
5                   term “actual direct compensatory damages”  
6                   does not include—

7                   (i) punitive or exemplary damages;

8                   (ii) damages for lost profits or oppor-  
9                   tunity; or

10                  (iii) damages for pain and suffering.

11                  (C) MEASURE OF DAMAGES FOR REPUDI-  
12                  ATION OF QUALIFIED FINANCIAL CONTRACTS.—  
13                  In the case of any qualified financial contract  
14                  or agreement to which paragraph (8) applies,  
15                  compensatory damages shall be—

16                  (i) deemed to include normal and rea-  
17                  sonable costs of cover or other reasonable  
18                  measures of damages utilized in the indus-  
19                  tries for such contract and agreement  
20                  claims; and

21                  (ii) paid in accordance with this para-  
22                  graph and subsection (d), except as other-  
23                  wise specifically provided in this sub-  
24                  section.

1                   (D) MEASURE OF DAMAGES FOR REPUDI-  
2                   ATION OR DISAFFIRMANCE OF DEBT OBLIGA-  
3                   TION.—In the case of any debt for borrowed  
4                   money or evidenced by a security, actual direct  
5                   compensatory damages shall be no less than the  
6                   amount lent plus accrued interest plus any  
7                   accreted original issue discount as of the date  
8                   the Corporation was appointed receiver of the  
9                   covered financial company and, to the extent  
10                  that an allowed secured claim is secured by  
11                  property the value of which is greater than the  
12                  amount of such claim and any accrued interest  
13                  through the date of repudiation or  
14                  disaffirmance, such accrued interest pursuant  
15                  to paragraph (1).

16                  (E) MEASURE OF DAMAGES FOR REPUDI-  
17                  ATION OR DISAFFIRMANCE OF CONTINGENT OB-  
18                  LIGATION.—In the case of any contingent obli-  
19                  gation of a covered financial company con-  
20                  sisting of any obligation under a guarantee, let-  
21                  ter of credit, loan commitment, or similar credit  
22                  obligation, the Corporation may, by rule or reg-  
23                  ulation, prescribe that actual direct compen-  
24                  satory damages shall be no less than the esti-  
25                  mated value of the claim as of the date the Cor-



1                   sor is in default or breach of the  
2                   terms of the lease;

3                   (ii) have no claim for damages under  
4                   any acceleration clause or other penalty  
5                   provision in the lease; and

6                   (iii) have a claim for any unpaid rent,  
7                   subject to all appropriate offsets and de-  
8                   fenses, due as of the date of the appoint-  
9                   ment which shall be paid in accordance  
10                  with this paragraph and subsection (d).

11                  (5) LEASES UNDER WHICH THE COVERED FI-  
12                  NANCIAL COMPANY IS THE LESSOR.—

13                  (A) IN GENERAL.—If the Corporation as  
14                  receiver for a covered financial company repudi-  
15                  ates an unexpired written lease of real property  
16                  of the covered financial company under which  
17                  the covered financial company is the lessor and  
18                  the lessee is not, as of the date of such repudi-  
19                  ation, in default, the lessee under such lease  
20                  may either—

21                         (i) treat the lease as terminated by  
22                         such repudiation; or

23                         (ii) remain in possession of the lease-  
24                         hold interest for the balance of the term of  
25                         the lease, unless the lessee defaults under



1           (6) CONTRACTS FOR THE SALE OF REAL PROP-  
2        ERTY.—

3           (A) IN GENERAL.—If the receiver repudi-  
4        ates any contract (which meets the require-  
5        ments of subsection (a)(6)) for the sale of real  
6        property, and the purchaser of such real prop-  
7        erty under such contract is in possession and is  
8        not, as of the date of such repudiation, in de-  
9        fault, such purchaser may either—

10                   (i) treat the contract as terminated by  
11        such repudiation; or

12                   (ii) remain in possession of such real  
13        property.

14           (B) PROVISIONS APPLICABLE TO PUR-  
15        CHASER REMAINING IN POSSESSION.—If any  
16        purchaser of real property under any contract  
17        described in subparagraph (A) remains in pos-  
18        session of such property pursuant to clause (ii)  
19        of subparagraph (A)—

20                   (i) the purchaser—

21                           (I) shall continue to make all  
22                           payments due under the contract after  
23                           the date of the repudiation of the con-  
24                           tract; and



1 (II) may offset against any such  
2 payments any damages which accrue  
3 after such date due to the non-  
4 performance (after such date) of any  
5 obligation of the covered financial  
6 company under the contract; and

7 (ii) the Corporation as receiver shall—

8 (I) not be liable to the purchaser  
9 for any damages arising after such  
10 date as a result of the repudiation,  
11 other than the amount of any offset  
12 allowed under clause (i)(II);

13 (II) deliver title to the purchaser  
14 in accordance with the provisions of  
15 the contract; and

16 (III) have no obligation under  
17 the contract other than the perform-  
18 ance required under subclause (II).

19 (C) ASSIGNMENT AND SALE ALLOWED.—

20 (i) IN GENERAL.—No provision of this  
21 paragraph shall be construed as limiting  
22 the right of the Corporation as receiver to  
23 assign the contract described in subpara-  
24 graph (A) and sell the property, subject to

1           the contract and the provisions of this  
2           paragraph.

3                   (ii) NO LIABILITY AFTER ASSIGNMENT  
4           AND SALE.—If an assignment and sale de-  
5           scribed in clause (i) is consummated, the  
6           Corporation as receiver shall have no fur-  
7           ther liability under the contract described  
8           in subparagraph (A) or with respect to the  
9           real property which was the subject of such  
10          contract.

11                   (7) PROVISIONS APPLICABLE TO SERVICE CON-  
12          TRACTS.—

13                   (A) SERVICES PERFORMED BEFORE AP-  
14          POINTMENT.—In the case of any contract for  
15          services between any person and any covered fi-  
16          nancial company for which the Corporation has  
17          been appointed receiver, any claim of such per-  
18          son for services performed before the date of  
19          appointment shall be—

20                           (i) a claim to be paid in accordance  
21                           with subsections (a), (b), and (d); and

22                           (ii) deemed to have arisen as of the  
23                           date on which the receiver was appointed.

24                   (B) SERVICES PERFORMED AFTER AP-  
25          POINTMENT AND PRIOR TO REPUDIATION.—If,

1 in the case of any contract for services de-  
2 scribed in subparagraph (A), the Corporation as  
3 receiver accepts performance by the other per-  
4 son before making any determination to exer-  
5 cise the right of repudiation of such contract  
6 under this section—

7 (i) the other party shall be paid under  
8 the terms of the contract for the services  
9 performed; and

10 (ii) the amount of such payment shall  
11 be treated as an administrative expense of  
12 the receivership.

13 (C) ACCEPTANCE OF PERFORMANCE NO  
14 BAR TO SUBSEQUENT REPUDIATION.—The ac-  
15 ceptance by the Corporation as receiver for  
16 services referred to in subparagraph (B) in con-  
17 nection with a contract described in subpara-  
18 graph (B) shall not affect the right of the Cor-  
19 poration as receiver to repudiate such contract  
20 under this section at any time after such per-  
21 formance.

22 (8) CERTAIN QUALIFIED FINANCIAL CON-  
23 TRACTS.—

24 (A) RIGHTS OF PARTIES TO CONTRACTS.—

25 Subject to subsection (a)(8) and paragraphs (9)

1           and (10) of this subsection, and notwith-  
2           standing any other provision of this section, any  
3           other provision of Federal law, or the law of  
4           any State, no person shall be stayed or prohib-  
5           ited from exercising—

6                   (i) any right that such person has to  
7                   cause the termination, liquidation, or accel-  
8                   eration of any qualified financial contract  
9                   with a covered financial company which  
10                  arises upon the date of appointment of the  
11                  Corporation as receiver for such covered fi-  
12                  nancial company at any time after such  
13                  appointment;

14                  (ii) any right under any security  
15                  agreement or arrangement or other credit  
16                  enhancement related to one or more quali-  
17                  fied financial contracts described in clause  
18                  (i); or

19                  (iii) any right to offset or net out any  
20                  termination value, payment amount, or  
21                  other transfer obligation arising under or  
22                  in connection with 1 or more contracts or  
23                  agreements described in clause (i), includ-  
24                  ing any master agreement for such con-  
25                  tracts or agreements.

1 (B) APPLICABILITY OF OTHER PROVI-  
2 SIONS.—Subsection (a)(8) shall apply in the  
3 case of any judicial action or proceeding  
4 brought against the Corporation as receiver re-  
5 ferred to in subparagraph (A), or the subject  
6 covered financial company, by any party to a  
7 contract or agreement described in subpara-  
8 graph (A)(i) with such covered financial com-  
9 pany.

10 (C) CERTAIN TRANSFERS NOT AVOID-  
11 ABLE.—

12 (i) IN GENERAL.—Notwithstanding  
13 subsection (a)(11), (a)(12), or (c)(12), sec-  
14 tion 5242 of the Revised Statutes of the  
15 United States, or any other provision of  
16 Federal or State law relating to the avoid-  
17 ance of preferential or fraudulent trans-  
18 fers, the Corporation, whether acting as  
19 the Corporation or as receiver for a cov-  
20 ered financial company, may not avoid any  
21 transfer of money or other property in con-  
22 nection with any qualified financial con-  
23 tract with a covered financial company.

24 (ii) EXCEPTION FOR CERTAIN TRANS-  
25 FERS.—Clause (i) shall not apply to any

1 transfer of money or other property in con-  
2 nection with any qualified financial con-  
3 tract with a covered financial company if  
4 the transferee had actual intent to hinder,  
5 delay, or defraud such company, the credi-  
6 tors of such company, or the Corporation  
7 as receiver appointed for such company.

8 (D) CERTAIN CONTRACTS AND AGREE-  
9 MENTS DEFINED.—For purposes of this sub-  
10 section, the following definitions shall apply:

11 (i) QUALIFIED FINANCIAL CON-  
12 TRACT.—The term “qualified financial  
13 contract” means any securities contract,  
14 commodity contract, forward contract, re-  
15 purchase agreement, swap agreement, and  
16 any similar agreement that the Corpora-  
17 tion determines by regulation, resolution,  
18 or order to be a qualified financial contract  
19 for purposes of this paragraph.

20 (ii) SECURITIES CONTRACT.—The  
21 term “securities contract”—

22 (I) means a contract for the pur-  
23 chase, sale, or loan of a security, a  
24 certificate of deposit, a mortgage loan,  
25 any interest in a mortgage loan, a

1 group or index of securities, certifi-  
2 cates of deposit, or mortgage loans or  
3 interests therein (including any inter-  
4 est therein or based on the value  
5 thereof), or any option on any of the  
6 foregoing, including any option to  
7 purchase or sell any such security,  
8 certificate of deposit, mortgage loan,  
9 interest, group or index, or option,  
10 and including any repurchase or re-  
11 verse repurchase transaction on any  
12 such security, certificate of deposit,  
13 mortgage loan, interest, group or  
14 index, or option (whether or not such  
15 repurchase or reverse repurchase  
16 transaction is a “repurchase agree-  
17 ment”, as defined in clause (v));

18 (II) does not include any pur-  
19 chase, sale, or repurchase obligation  
20 under a participation in a commercial  
21 mortgage loan unless the Corporation  
22 determines by regulation, resolution,  
23 or order to include any such agree-  
24 ment within the meaning of such  
25 term;

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1 (III) means any option entered  
2 into on a national securities exchange  
3 relating to foreign currencies;

4 (IV) means the guarantee (in-  
5 cluding by novation) by or to any se-  
6 curities clearing agency of any settle-  
7 ment of cash, securities, certificates of  
8 deposit, mortgage loans or interests  
9 therein, group or index of securities,  
10 certificates of deposit or mortgage  
11 loans or interests therein (including  
12 any interest therein or based on the  
13 value thereof) or an option on any of  
14 the foregoing, including any option to  
15 purchase or sell any such security,  
16 certificate of deposit, mortgage loan,  
17 interest, group or index, or option  
18 (whether or not such settlement is in  
19 connection with any agreement or  
20 transaction referred to in subclauses  
21 (I) through (XII) (other than sub-  
22 clause (II)));

23 (V) means any margin loan;



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1 (VI) means any extension of  
2 credit for the clearance or settlement  
3 of securities transactions;

4 (VII) means any loan transaction  
5 coupled with a securities collar trans-  
6 action, any prepaid securities forward  
7 transaction, or any total return swap  
8 transaction coupled with a securities  
9 sale transaction;

10 (VIII) means any other agree-  
11 ment or transaction that is similar to  
12 any agreement or transaction referred  
13 to in this clause;

14 (IX) means any combination of  
15 the agreements or transactions re-  
16 ferred to in this clause;

17 (X) means any option to enter  
18 into any agreement or transaction re-  
19 ferred to in this clause;

20 (XI) means a master agreement  
21 that provides for an agreement or  
22 transaction referred to in any of sub-  
23 clauses (I) through (X), other than  
24 subclause (II), together with all sup-  
25 plements to any such master agree-

1                   ment, without regard to whether the  
2                   master agreement provides for an  
3                   agreement or transaction that is not a  
4                   securities contract under this clause,  
5                   except that the master agreement  
6                   shall be considered to be a securities  
7                   contract under this clause only with  
8                   respect to each agreement or trans-  
9                   action under the master agreement  
10                  that is referred to in any of sub-  
11                  clauses (I) through (X), other than  
12                  subclause (II); and

13                   (XII) means any security agree-  
14                   ment or arrangement or other credit  
15                   enhancement related to any agree-  
16                   ment or transaction referred to in this  
17                   clause, including any guarantee or re-  
18                   imbursement obligation in connection  
19                   with any agreement or transaction re-  
20                   ferred to in this clause.

21                   (iii) COMMODITY CONTRACT.—The  
22                   term “commodity contract” means—

23                   (I) with respect to a futures com-  
24                   mission merchant, a contract for the  
25                   purchase or sale of a commodity for

1 future delivery on, or subject to the  
2 rules of, a contract market or board  
3 of trade;

4 (II) with respect to a foreign fu-  
5 tures commission merchant, a foreign  
6 future;

7 (III) with respect to a leverage  
8 transaction merchant, a leverage  
9 transaction;

10 (IV) with respect to a clearing  
11 organization, a contract for the pur-  
12 chase or sale of a commodity for fu-  
13 ture delivery on, or subject to the  
14 rules of, a contract market or board  
15 of trade that is cleared by such clear-  
16 ing organization, or commodity option  
17 traded on, or subject to the rules of,  
18 a contract market or board of trade  
19 that is cleared by such clearing orga-  
20 nization;

21 (V) with respect to a commodity  
22 options dealer, a commodity option;

23 (VI) any other agreement or  
24 transaction that is similar to any

1 agreement or transaction referred to  
2 in this clause;

3 (VII) any combination of the  
4 agreements or transactions referred to  
5 in this clause;

6 (VIII) any option to enter into  
7 any agreement or transaction referred  
8 to in this clause;

9 (IX) a master agreement that  
10 provides for an agreement or trans-  
11 action referred to in any of subclauses  
12 (I) through (VIII), together with all  
13 supplements to any such master  
14 agreement, without regard to whether  
15 the master agreement provides for an  
16 agreement or transaction that is not a  
17 commodity contract under this clause,  
18 except that the master agreement  
19 shall be considered to be a commodity  
20 contract under this clause only with  
21 respect to each agreement or trans-  
22 action under the master agreement  
23 that is referred to in any of sub-  
24 clauses (I) through (VIII); or

1 (X) any security agreement or  
2 arrangement or other credit enhance-  
3 ment related to any agreement or  
4 transaction referred to in this clause,  
5 including any guarantee or reimburse-  
6 ment obligation in connection with  
7 any agreement or transaction referred  
8 to in this clause.

9 (iv) FORWARD CONTRACT.—The term  
10 “forward contract” means—

11 (I) a contract (other than a com-  
12 modity contract) for the purchase,  
13 sale, or transfer of a commodity or  
14 any similar good, article, service,  
15 right, or interest which is presently or  
16 in the future becomes the subject of  
17 dealing in the forward contract trade,  
18 or product or byproduct thereof, with  
19 a maturity date that is more than 10  
20 days after the date on which the con-  
21 tract is entered into, including a re-  
22 purchase or reverse repurchase trans-  
23 action (whether or not such repur-  
24 chase or reverse repurchase trans-  
25 action is a “repurchase agreement”,

1 as defined in clause (v)), consignment,  
2 lease, swap, hedge transaction, de-  
3 posit, loan, option, allocated trans-  
4 action, unallocated transaction, or any  
5 other similar agreement;

6 (II) any combination of agree-  
7 ments or transactions referred to in  
8 subclauses (I) and (III);

9 (III) any option to enter into any  
10 agreement or transaction referred to  
11 in subclause (I) or (II);

12 (IV) a master agreement that  
13 provides for an agreement or trans-  
14 action referred to in subclause (I),  
15 (II), or (III), together with all supple-  
16 ments to any such master agreement,  
17 without regard to whether the master  
18 agreement provides for an agreement  
19 or transaction that is not a forward  
20 contract under this clause, except that  
21 the master agreement shall be consid-  
22 ered to be a forward contract under  
23 this clause only with respect to each  
24 agreement or transaction under the

1 master agreement that is referred to  
2 in subclause (I), (II), or (III); or

3 (V) any security agreement or ar-  
4 rangement or other credit enhance-  
5 ment related to any agreement or  
6 transaction referred to in subclause  
7 (I), (II), (III), or (IV), including any  
8 guarantee or reimbursement obliga-  
9 tion in connection with any agreement  
10 or transaction referred to in any such  
11 subclause.

12 (v) REPURCHASE AGREEMENT.—The  
13 term “repurchase agreement” (which defi-  
14 nition also applies to a reverse repurchase  
15 agreement)—

16 (I) means an agreement, includ-  
17 ing related terms, which provides for  
18 the transfer of one or more certifi-  
19 cates of deposit, mortgage related se-  
20 curities (as such term is defined in  
21 section 3 of the Securities Exchange  
22 Act of 1934), mortgage loans, inter-  
23 ests in mortgage-related securities or  
24 mortgage loans, eligible bankers’ ac-  
25 ceptances, qualified foreign govern-

1                   ment securities (which, for purposes  
2                   of this clause, means a security that is  
3                   a direct obligation of, or that is fully  
4                   guaranteed by, the central government  
5                   of a member of the Organization for  
6                   Economic Cooperation and Develop-  
7                   ment, as determined by regulation or  
8                   order adopted by the Board of Gov-  
9                   ernors), or securities that are direct  
10                  obligations of, or that are fully guar-  
11                  anteed by, the United States or any  
12                  agency of the United States against  
13                  the transfer of funds by the transferee  
14                  of such certificates of deposit, eligible  
15                  bankers' acceptances, securities, mort-  
16                  gage loans, or interests with a simul-  
17                  taneous agreement by such transferee  
18                  to transfer to the transferor thereof  
19                  certificates of deposit, eligible bank-  
20                  ers' acceptances, securities, mortgage  
21                  loans, or interests as described above,  
22                  at a date certain not later than 1 year  
23                  after such transfers or on demand,  
24                  against the transfer of funds, or any  
25                  other similar agreement;



1                   (II) does not include any repur-  
2                   chase obligation under a participation  
3                   in a commercial mortgage loan, unless  
4                   the Corporation determines, by regu-  
5                   lation, resolution, or order to include  
6                   any such participation within the  
7                   meaning of such term;

8                   (III) means any combination of  
9                   agreements or transactions referred to  
10                  in subclauses (I) and (IV);

11                  (IV) means any option to enter  
12                  into any agreement or transaction re-  
13                  ferred to in subclause (I) or (III);

14                  (V) means a master agreement  
15                  that provides for an agreement or  
16                  transaction referred to in subclause  
17                  (I), (III), or (IV), together with all  
18                  supplements to any such master  
19                  agreement, without regard to whether  
20                  the master agreement provides for an  
21                  agreement or transaction that is not a  
22                  repurchase agreement under this  
23                  clause, except that the master agree-  
24                  ment shall be considered to be a re-  
25                  purchase agreement under this sub-

1 clause only with respect to each agree-  
2 ment or transaction under the master  
3 agreement that is referred to in sub-  
4 clause (I), (III), or (IV); and

5 (VI) means any security agree-  
6 ment or arrangement or other credit  
7 enhancement related to any agree-  
8 ment or transaction referred to in  
9 subclause (I), (III), (IV), or (V), in-  
10 cluding any guarantee or reimburse-  
11 ment obligation in connection with  
12 any agreement or transaction referred  
13 to in any such subclause.

14 (vi) SWAP AGREEMENT.—The term  
15 “swap agreement” means—

16 (I) any agreement, including the  
17 terms and conditions incorporated by  
18 reference in any such agreement,  
19 which is an interest rate swap, option,  
20 future, or forward agreement, includ-  
21 ing a rate floor, rate cap, rate collar,  
22 cross-currency rate swap, and basis  
23 swap; a spot, same day-tomorrow, to-  
24 morrow-next, forward, or other for-  
25 eign exchange, precious metals, or

1 other commodity agreement; a cur-  
2 rency swap, option, future, or forward  
3 agreement; an equity index or equity  
4 swap, option, future, or forward  
5 agreement; a debt index or debt swap,  
6 option, future, or forward agreement;  
7 a total return, credit spread or credit  
8 swap, option, future, or forward  
9 agreement; a commodity index or  
10 commodity swap, option, future, or  
11 forward agreement; weather swap, op-  
12 tion, future, or forward agreement; an  
13 emissions swap, option, future, or for-  
14 ward agreement; or an inflation swap,  
15 option, future, or forward agreement;

16 (II) any agreement or transaction  
17 that is similar to any other agreement  
18 or transaction referred to in this  
19 clause and that is of a type that has  
20 been, is presently, or in the future be-  
21 comes, the subject of recurrent deal-  
22 ings in the swap or other derivatives  
23 markets (including terms and condi-  
24 tions incorporated by reference in  
25 such agreement) and that is a for-

1           ward, swap, future, option, or spot  
2           transaction on one or more rates, cur-  
3           rencies, commodities, equity securities  
4           or other equity instruments, debt se-  
5           curities or other debt instruments,  
6           quantitative measures associated with  
7           an occurrence, extent of an occur-  
8           rence, or contingency associated with  
9           a financial, commercial, or economic  
10          consequence, or economic or financial  
11          indices or measures of economic or fi-  
12          nancial risk or value;

13                   (III) any combination of agree-  
14                   ments or transactions referred to in  
15                   this clause;

16                   (IV) any option to enter into any  
17                   agreement or transaction referred to  
18                   in this clause;

19                   (V) a master agreement that pro-  
20                   vides for an agreement or transaction  
21                   referred to in subclause (I), (II), (III),  
22                   or (IV), together with all supplements  
23                   to any such master agreement, with-  
24                   out regard to whether the master  
25                   agreement contains an agreement or

1 transaction that is not a swap agree-  
2 ment under this clause, except that  
3 the master agreement shall be consid-  
4 ered to be a swap agreement under  
5 this clause only with respect to each  
6 agreement or transaction under the  
7 master agreement that is referred to  
8 in subclause (I), (II), (III), or (IV);  
9 and

10 (VI) any security agreement or  
11 arrangement or other credit enhance-  
12 ment related to any agreement or  
13 transaction referred to in any of  
14 clauses (I) through (V), including any  
15 guarantee or reimbursement obliga-  
16 tion in connection with any agreement  
17 or transaction referred to in any such  
18 clause.

19 (vii) DEFINITIONS RELATING TO DE-  
20 FAULT.—When used in this paragraph and  
21 paragraph (10)—

22 (I) the term “default” means,  
23 with respect to a covered financial  
24 company, any adjudication or other  
25 official decision by any court of com-

1                   petent jurisdiction, or other public au-  
2                   thority pursuant to which the Cor-  
3                   poration has been appointed receiver;  
4                   and

5                   (II) the term “in danger of de-  
6                   fault” means a covered financial com-  
7                   pany with respect to which the Cor-  
8                   poration or appropriate State author-  
9                   ity has determined that—

10                   (aa) in the opinion of the  
11                   Corporation or such authority—

12                   (AA) the covered finan-  
13                   cial company is not likely to  
14                   be able to pay its obligations  
15                   in the normal course of busi-  
16                   ness; and

17                   (BB) there is no rea-  
18                   sonable prospect that the  
19                   covered financial company  
20                   will be able to pay such obli-  
21                   gations without Federal as-  
22                   sistance; or

23                   (bb) in the opinion of the  
24                   Corporation or such authority—

1 (AA) the covered finan-  
2 cial company has incurred or  
3 is likely to incur losses that  
4 will deplete all or substan-  
5 tially all of its capital; and

6 (BB) there is no rea-  
7 sonable prospect that the  
8 capital will be replenished  
9 without Federal assistance.

10 (viii) TREATMENT OF MASTER AGREE-  
11 MENT AS ONE AGREEMENT.—Any master  
12 agreement for any contract or agreement  
13 described in any of clauses (i) through (vi)  
14 (or any master agreement for such master  
15 agreement or agreements), together with  
16 all supplements to such master agreement,  
17 shall be treated as a single agreement and  
18 a single qualified financial contract. If a  
19 master agreement contains provisions re-  
20 lating to agreements or transactions that  
21 are not themselves qualified financial con-  
22 tracts, the master agreement shall be  
23 deemed to be a qualified financial contract  
24 only with respect to those transactions that

1           are themselves qualified financial con-  
2           tracts.

3                   (ix) TRANSFER.—The term “transfer”  
4           means every mode, direct or indirect, abso-  
5           lute or conditional, voluntary or involun-  
6           tary, of disposing of or parting with prop-  
7           erty or with an interest in property, includ-  
8           ing retention of title as a security interest  
9           and foreclosure of the equity of redemption  
10          of the covered financial company.

11                   (x) PERSON.—The term “person” in-  
12          cludes any governmental entity in addition  
13          to any entity included in the definition of  
14          such term in section 1, title 1, United  
15          States Code.

16                   (E) CLARIFICATION.—No provision of law  
17          shall be construed as limiting the right or  
18          power of the Corporation, or authorizing any  
19          court or agency to limit or delay, in any man-  
20          ner, the right or power of the Corporation to  
21          transfer any qualified financial contract or to  
22          disaffirm or repudiate any such contract in ac-  
23          cordance with this subsection.

24                   (F) WALKAWAY CLAUSES NOT EFFEC-  
25          TIVE.—



1 (i) IN GENERAL.—Notwithstanding  
2 the provisions of subparagraph (A) of this  
3 paragraph and sections 403 and 404 of the  
4 Federal Deposit Insurance Corporation  
5 Improvement Act of 1991, no walkaway  
6 clause shall be enforceable in a qualified fi-  
7 nancial contract of a covered financial  
8 company in default.

9 (ii) LIMITED SUSPENSION OF CERTAIN  
10 OBLIGATIONS.—In the case of a qualified  
11 financial contract referred to in clause (i),  
12 any payment or delivery obligations other-  
13 wise due from a party pursuant to the  
14 qualified financial contract shall be sus-  
15 pended from the time at which the Cor-  
16 poration is appointed as receiver until the  
17 earlier of—

18 (I) the time at which such party  
19 receives notice that such contract has  
20 been transferred pursuant to para-  
21 graph (10)(A); or

22 (II) 5:00 p.m. (eastern time) on  
23 the 3rd business day following the  
24 date of the appointment of the Cor-  
25 poration as receiver.

1 (iii) WALKAWAY CLAUSE DEFINED.—

2 For purposes of this subparagraph, the  
3 term “walkaway clause” means any provi-  
4 sion in a qualified financial contract that  
5 suspends, conditions, or extinguishes a  
6 payment obligation of a party, in whole or  
7 in part, or does not create a payment obli-  
8 gation of a party that would otherwise  
9 exist, solely because of the status of such  
10 party as a nondefaulting party in connec-  
11 tion with the insolvency of a covered finan-  
12 cial company that is a party to the con-  
13 tract or the appointment of or the exercise  
14 of rights or powers by the Corporation as  
15 receiver for such covered financial com-  
16 pany, and not as a result of the exercise by  
17 a party of any right to offset, setoff, or net  
18 obligations that exist under the contract,  
19 any other contract between those parties,  
20 or applicable law.

21 (G) CERTAIN OBLIGATIONS TO CLEARING  
22 ORGANIZATIONS.—In the event that the Cor-  
23 poration has been appointed as receiver for a  
24 covered financial company which is a party to  
25 any qualified financial contract cleared by or

1 subject to the rules of a clearing organization  
2 (as defined in paragraph (9)(D)), the receiver  
3 shall use its best efforts to meet all margin, col-  
4 lateral, and settlement obligations of the cov-  
5 ered financial company that arise under quali-  
6 fied financial contracts (other than any margin,  
7 collateral, or settlement obligation that is not  
8 enforceable against the receiver under para-  
9 graph (8)(F)(i) or paragraph (10)(B)), as re-  
10 quired by the rules of the clearing organization  
11 when due. Notwithstanding any other provision  
12 of this title, if the receiver fails to satisfy any  
13 such margin, collateral, or settlement obliga-  
14 tions under the rules of the clearing organiza-  
15 tion, the clearing organization shall have the  
16 immediate right to exercise, and shall not be  
17 stayed from exercising, all of its rights and  
18 remedies under its rules and applicable law with  
19 respect to any qualified financial contract of the  
20 covered financial company, including, without  
21 limitation, the right to liquidate all positions  
22 and collateral of such covered financial com-  
23 pany under the company's qualified financial  
24 contracts, and suspend or cease to act for such

1 covered financial company, all in accordance  
2 with the rules of the clearing organization.

3 (H) RECORDKEEPING.—

4 (i) JOINT RULEMAKING.—The Federal  
5 primary financial regulatory agencies shall  
6 jointly prescribe regulations requiring that  
7 financial companies maintain such records  
8 with respect to qualified financial contracts  
9 (including market valuations) that the  
10 Federal primary financial regulatory agen-  
11 cies determine to be necessary or appro-  
12 priate in order to assist the Corporation as  
13 receiver for a covered financial company in  
14 being able to exercise its rights and fulfill  
15 its obligations under this paragraph or  
16 paragraph (9) or (10).

17 (ii) TIME FRAME.—The Federal pri-  
18 mary financial regulatory agencies shall  
19 prescribe joint final or interim final regula-  
20 tions not later than 24 months after the  
21 date of enactment of this Act.

22 (iii) BACK-UP RULEMAKING AUTHOR-  
23 ITY.—If the Federal primary financial reg-  
24 ulatory agencies do not prescribe joint final  
25 or interim final regulations within the time

1 frame in clause (ii), the Chairperson of the  
2 Council shall prescribe, in consultation  
3 with the Corporation, the regulations re-  
4 quired by clause (i).

5 (iv) CATEGORIZATION AND  
6 TIERING.—The joint regulations prescribed  
7 under clause (i) shall, as appropriate, dif-  
8 ferentiate among financial companies by  
9 taking into consideration their size, risk,  
10 complexity, leverage, frequency and dollar  
11 amount of qualified financial contracts,  
12 interconnectedness to the financial system,  
13 and any other factors deemed appropriate.

14 (9) TRANSFER OF QUALIFIED FINANCIAL CON-  
15 TRACTS.—

16 (A) IN GENERAL.—In making any transfer  
17 of assets or liabilities of a covered financial  
18 company in default, which includes any quali-  
19 fied financial contract, the Corporation as re-  
20 ceiver for such covered financial company shall  
21 either—

22 (i) transfer to one financial institu-  
23 tion, other than a financial institution for  
24 which a conservator, receiver, trustee in  
25 bankruptcy, or other legal custodian has

1           been appointed or which is otherwise the  
2           subject of a bankruptcy or insolvency pro-  
3           ceeding—

4                   (I) all qualified financial con-  
5                   tracts between any person or any af-  
6                   filiate of such person and the covered  
7                   financial company in default;

8                   (II) all claims of such person or  
9                   any affiliate of such person against  
10                  such covered financial company under  
11                  any such contract (other than any  
12                  claim which, under the terms of any  
13                  such contract, is subordinated to the  
14                  claims of general unsecured creditors  
15                  of such company);

16                  (III) all claims of such covered fi-  
17                  nancial company against such person  
18                  or any affiliate of such person under  
19                  any such contract; and

20                  (IV) all property securing or any  
21                  other credit enhancement for any con-  
22                  tract described in subclause (I) or any  
23                  claim described in subclause (II) or  
24                  (III) under any such contract; or

1                   (ii) transfer none of the qualified fi-  
2                   nancial contracts, claims, property or other  
3                   credit enhancement referred to in clause (i)  
4                   (with respect to such person and any affil-  
5                   iate of such person).

6                   (B) TRANSFER TO FOREIGN BANK, FINAN-  
7                   CIAL INSTITUTION, OR BRANCH OR AGENCY  
8                   THEREOF.—In transferring any qualified finan-  
9                   cial contracts and related claims and property  
10                  under subparagraph (A)(i), the Corporation as  
11                  receiver for the covered financial company shall  
12                  not make such transfer to a foreign bank, fi-  
13                  nancial institution organized under the laws of  
14                  a foreign country, or a branch or agency of a  
15                  foreign bank or financial institution unless,  
16                  under the law applicable to such bank, financial  
17                  institution, branch or agency, to the qualified  
18                  financial contracts, and to any netting contract,  
19                  any security agreement or arrangement or other  
20                  credit enhancement related to one or more  
21                  qualified financial contracts, the contractual  
22                  rights of the parties to such qualified financial  
23                  contracts, netting contracts, security agree-  
24                  ments or arrangements, or other credit en-

1           hancements are enforceable substantially to the  
2           same extent as permitted under this section.

3           (C) TRANSFER OF CONTRACTS SUBJECT  
4           TO THE RULES OF A CLEARING ORGANIZA-  
5           TION.—In the event that the Corporation as re-  
6           ceiver for a financial institution transfers any  
7           qualified financial contract and related claims,  
8           property, or credit enhancement pursuant to  
9           subparagraph (A)(i) and such contract is  
10          cleared by or subject to the rules of a clearing  
11          organization, the clearing organization shall not  
12          be required to accept the transferee as a mem-  
13          ber by virtue of the transfer.

14          (D) DEFINITIONS.—For purposes of this  
15          paragraph—

16               (i) the term “financial institution”  
17               means a broker or dealer, a depository in-  
18               stitution, a futures commission merchant,  
19               a bridge financial company, or any other  
20               institution determined by the Corporation,  
21               by regulation, to be a financial institution;  
22               and

23               (ii) the term “clearing organization”  
24               has the same meaning as in section 402 of



1 the Federal Deposit Insurance Corporation  
2 Improvement Act of 1991.

3 (10) NOTIFICATION OF TRANSFER.—

4 (A) IN GENERAL.—

5 (i) NOTICE.—The Corporation shall  
6 provide notice in accordance with clause

7 (ii), if—

8 (I) the Corporation as receiver  
9 for a covered financial company in de-  
10 fault or in danger of default transfers  
11 any assets or liabilities of the covered  
12 financial company; and

13 (II) the transfer includes any  
14 qualified financial contract.

15 (ii) TIMING.—The Corporation as re-  
16 ceiver for a covered financial company  
17 shall notify any person who is a party to  
18 any contract described in clause (i) of such  
19 transfer not later than 5:00 p.m. (eastern  
20 time) on the 3rd business day following the  
21 date of the appointment of the Corporation  
22 as receiver.

23 (B) CERTAIN RIGHTS NOT ENFORCE-  
24 ABLE.—

1 (i) RECEIVERSHIP.—A person who is  
2 a party to a qualified financial contract  
3 with a covered financial company may not  
4 exercise any right that such person has to  
5 terminate, liquidate, or net such contract  
6 under paragraph (8)(A) solely by reason of  
7 or incidental to the appointment under this  
8 section of the Corporation as receiver for  
9 the covered financial company (or the in-  
10 solvency or financial condition of the cov-  
11 ered financial company for which the Cor-  
12 poration has been appointed as receiver)—

13 (I) until 5:00 p.m. (eastern time)  
14 on the 3rd business day following the  
15 date of the appointment; or

16 (II) after the person has received  
17 notice that the contract has been  
18 transferred pursuant to paragraph  
19 (9)(A).

20 (ii) NOTICE.—For purposes of this  
21 paragraph, the Corporation as receiver for  
22 a covered financial company shall be  
23 deemed to have notified a person who is a  
24 party to a qualified financial contract with  
25 such covered financial company, if the Cor-

1           poration has taken steps reasonably cal-  
2           culated to provide notice to such person by  
3           the time specified in subparagraph (A).

4           (C) TREATMENT OF BRIDGE FINANCIAL  
5           COMPANY.—For purposes of paragraph (9), a  
6           bridge financial company shall not be consid-  
7           ered to be a covered financial company for  
8           which a conservator, receiver, trustee in bank-  
9           ruptcy, or other legal custodian has been ap-  
10          pointed, or which is otherwise the subject of a  
11          bankruptcy or insolvency proceeding.

12          (D) BUSINESS DAY DEFINED.—For pur-  
13          poses of this paragraph, the term “business  
14          day” means any day other than any Saturday,  
15          Sunday, or any day on which either the New  
16          York Stock Exchange or the Federal Reserve  
17          Bank of New York is closed.

18          (11) DISAFFIRMANCE OR REPUDIATION OF  
19          QUALIFIED FINANCIAL CONTRACTS.—In exercising  
20          the rights of disaffirmance or repudiation of the  
21          Corporation as receiver with respect to any qualified  
22          financial contract to which a covered financial com-  
23          pany is a party, the Corporation shall either—

24                  (A) disaffirm or repudiate all qualified fi-  
25                  nancial contracts between—

1 (i) any person or any affiliate of such  
2 person; and

3 (ii) the covered financial company in  
4 default; or

5 (B) disaffirm or repudiate none of the  
6 qualified financial contracts referred to in sub-  
7 paragraph (A) (with respect to such person or  
8 any affiliate of such person).

9 (12) CERTAIN SECURITY AND CUSTOMER IN-  
10 TERESTS NOT AVOIDABLE.—No provision of this  
11 subsection shall be construed as permitting the  
12 avoidance of any—

13 (A) legally enforceable or perfected secu-  
14 rity interest in any of the assets of any covered  
15 financial company, except in accordance with  
16 subsection (a)(11); or

17 (B) legally enforceable interest in customer  
18 property, security entitlements in respect of as-  
19 sets or property held by the covered financial  
20 company for any security entitlement holder.

21 (13) AUTHORITY TO ENFORCE CONTRACTS.—

22 (A) IN GENERAL.—The Corporation, as re-  
23 ceiver for a covered financial company, may en-  
24 force any contract, other than a liability insur-  
25 ance contract of a director or officer, a financial

1 institution bond entered into by the covered fi-  
2 nancial company, notwithstanding any provision  
3 of the contract providing for termination, de-  
4 fault, acceleration, or exercise of rights upon, or  
5 solely by reason of, insolvency, the appointment  
6 of or the exercise of rights or powers by the  
7 Corporation as receiver, the filing of the peti-  
8 tion pursuant to section 202(a)(1), or the  
9 issuance of the recommendations or determina-  
10 tion, or any actions or events occurring in con-  
11 nection therewith or as a result thereof, pursu-  
12 ant to section 203.

13 (B) CERTAIN RIGHTS NOT AFFECTED.—  
14 No provision of this paragraph may be con-  
15 strued as impairing or affecting any right of the  
16 Corporation as receiver to enforce or recover  
17 under a liability insurance contract of a director  
18 or officer or financial institution bond under  
19 other applicable law.

20 (C) CONSENT REQUIREMENT AND IPSO  
21 FACTO CLAUSES.—

22 (i) IN GENERAL.—Except as otherwise  
23 provided by this section, no person may ex-  
24 ercise any right or power to terminate, ac-  
25 celerate, or declare a default under any

1 contract to which the covered financial  
2 company is a party (and no provision in  
3 any such contract providing for such de-  
4 fault, termination, or acceleration shall be  
5 enforceable), or to obtain possession of or  
6 exercise control over any property of the  
7 covered financial company or affect any  
8 contractual rights of the covered financial  
9 company, without the consent of the Cor-  
10 poration as receiver for the covered finan-  
11 cial company during the 90 day period be-  
12 ginning from the appointment of the Cor-  
13 poration as receiver.

14 (ii) EXCEPTIONS.—No provision of  
15 this subparagraph shall apply to a director  
16 or officer liability insurance contract or a  
17 financial institution bond, to the rights of  
18 parties to certain qualified financial con-  
19 tracts pursuant to paragraph (8), or to the  
20 rights of parties to netting contracts pur-  
21 suant to subtitle A of title IV of the Fed-  
22 eral Deposit Insurance Corporation Im-  
23 provement Act of 1991 (12 U.S.C. 4401 et  
24 seq.), or shall be construed as permitting  
25 the Corporation as receiver to fail to com-

1                   ply with otherwise enforceable provisions of  
2                   such contract.

3                   (D) CONTRACTS TO EXTEND CREDIT.—

4                   Notwithstanding any other provision in this  
5                   title, if the Corporation as receiver enforces any  
6                   contract to extend credit to the covered finan-  
7                   cial company or bridge financial company, any  
8                   valid and enforceable obligation to repay such  
9                   debt shall be paid by the Corporation as re-  
10                  ceiver, as an administrative expense of the re-  
11                  ceivership.

12                  (14) EXCEPTION FOR FEDERAL RESERVE  
13                  BANKS AND CORPORATION SECURITY INTEREST.—

14                  No provision of this subsection shall apply with re-  
15                  spect to—

16                         (A) any extension of credit from any Fed-  
17                         eral reserve bank or the Corporation to any cov-  
18                         ered financial company; or

19                         (B) any security interest in the assets of  
20                         the covered financial company securing any  
21                         such extension of credit.

22                  (15) SAVINGS CLAUSE.—The meanings of terms  
23                  used in this subsection are applicable for purposes of  
24                  this subsection only, and shall not be construed or  
25                  applied so as to challenge or affect the characteriza-

1       tion, definition, or treatment of any similar terms  
2       under any other statute, regulation, or rule, includ-  
3       ing the Gramm-Leach-Bliley Act, the Legal Cer-  
4       tainty for Bank Products Act of 2000, the securities  
5       laws (as that term is defined in section 3(a)(47) of  
6       the Securities Exchange Act of 1934), and the Com-  
7       modity Exchange Act.

8               (16) ENFORCEMENT OF CONTRACTS GUARAN-  
9       TEED BY THE COVERED FINANCIAL COMPANY.—

10               (A) IN GENERAL.—The Corporation, as re-  
11       ceiver for a covered financial company or as re-  
12       ceiver for a subsidiary of a covered financial  
13       company (including an insured depository insti-  
14       tution) shall have the power to enforce con-  
15       tracts of subsidiaries or affiliates of the covered  
16       financial company, the obligations under which  
17       are guaranteed or otherwise supported by or  
18       linked to the covered financial company, not-  
19       withstanding any contractual right to cause the  
20       termination, liquidation, or acceleration of such  
21       contracts based solely on the insolvency, finan-  
22       cial condition, or receivership of the covered fi-  
23       nancial company, if—

24               (i) such guaranty or other support  
25       and all related assets and liabilities are



1 transferred to and assumed by a bridge fi-  
2 nancial company or a third party (other  
3 than a third party for which a conservator,  
4 receiver, trustee in bankruptcy, or other  
5 legal custodian has been appointed, or  
6 which is otherwise the subject of a bank-  
7 ruptcy or insolvency proceeding) within the  
8 same period of time as the Corporation is  
9 entitled to transfer the qualified financial  
10 contracts of such covered financial com-  
11 pany; or

12 (ii) the Corporation, as receiver, oth-  
13 erwise provides adequate protection with  
14 respect to such obligations.

15 (B) RULE OF CONSTRUCTION.—For pur-  
16 poses of this paragraph, a bridge financial com-  
17 pany shall not be considered to be a third party  
18 for which a conservator, receiver, trustee in  
19 bankruptcy, or other legal custodian has been  
20 appointed, or which is otherwise the subject of  
21 a bankruptcy or insolvency proceeding.

22 (d) VALUATION OF CLAIMS IN DEFAULT.—

23 (1) IN GENERAL.—Notwithstanding any other  
24 provision of Federal law or the law of any State, and  
25 regardless of the method utilized by the Corporation

1 for a covered financial company, including trans-  
2 actions authorized under subsection (h), this sub-  
3 section shall govern the rights of the creditors of any  
4 such covered financial company.

5 (2) MAXIMUM LIABILITY.—The maximum li-  
6 ability of the Corporation, acting as receiver for a  
7 covered financial company or in any other capacity,  
8 to any person having a claim against the Corpora-  
9 tion as receiver or the covered financial company for  
10 which the Corporation is appointed shall equal the  
11 amount that such claimant would have received if—

12 (A) the Corporation had not been ap-  
13 pointed receiver with respect to the covered fi-  
14 nancial company; and

15 (B) the covered financial company had  
16 been liquidated under chapter 7 of the Bank-  
17 ruptcy Code, or any similar provision of State  
18 insolvency law applicable to the covered finan-  
19 cial company.

20 (3) SPECIAL PROVISION FOR ORDERLY LIQ-  
21 UIDATION BY SIPC.—The maximum liability of the  
22 Corporation, acting as receiver or in its corporate  
23 capacity for any covered broker or dealer to any cus-  
24 tomer of such covered broker or dealer, with respect  
25 to customer property of such customer, shall be—

1 (A) equal to the amount that such cus-  
2 tomer would have received with respect to such  
3 customer property in a case initiated by SIPC  
4 under the Securities Investor Protection Act of  
5 1970 (15 U.S.C. 78aaa et seq.); and

6 (B) determined as of the close of business  
7 on the date on which the Corporation is ap-  
8 pointed as receiver.

9 (4) ADDITIONAL PAYMENTS AUTHORIZED.—

10 (A) IN GENERAL.—Subject to subsection  
11 (o)(1)(E)(ii), the Corporation, with the approval  
12 of the Secretary, may make additional pay-  
13 ments or credit additional amounts to or with  
14 respect to or for the account of any claimant or  
15 category of claimants of the covered financial  
16 company, if the Corporation determines that  
17 such payments or credits are necessary or ap-  
18 propriate to minimize losses to the Corporation  
19 as receiver from the orderly liquidation of the  
20 covered financial company under this section.

21 (B) LIMITATIONS.—

22 (i) PROHIBITION.—The Corporation  
23 shall not make any payments or credit  
24 amounts to any claimant or category of  
25 claimants that would result in any claim-

1           ant receiving more than the face value  
2           amount of any claim that is proven to the  
3           satisfaction of the Corporation.

4           (ii) NO OBLIGATION.—Notwith-  
5           standing any other provision of Federal or  
6           State law, or the Constitution of any State,  
7           the Corporation shall not be obligated, as  
8           a result of having made any payment  
9           under subparagraph (A) or credited any  
10          amount described in subparagraph (A) to  
11          or with respect to, or for the account, of  
12          any claimant or category of claimants, to  
13          make payments to any other claimant or  
14          category of claimants.

15          (C) MANNER OF PAYMENT.—The Corpora-  
16          tion may make payments or credit amounts  
17          under subparagraph (A) directly to the claim-  
18          ants or may make such payments or credit such  
19          amounts to a company other than a covered fi-  
20          nancial company or a bridge financial company  
21          established with respect thereto in order to in-  
22          duce such other company to accept liability for  
23          such claims.

24          (e) LIMITATION ON COURT ACTION.—Except as pro-  
25          vided in this title, no court may take any action to restrain

1 or affect the exercise of powers or functions of the receiver  
2 hereunder, and any remedy against the Corporation or re-  
3 ceiver shall be limited to money damages determined in  
4 accordance with this title.

5 (f) LIABILITY OF DIRECTORS AND OFFICERS.—

6 (1) IN GENERAL.—A director or officer of a  
7 covered financial company may be held personally  
8 liable for monetary damages in any civil action de-  
9 scribed in paragraph (2) by, on behalf of, or at the  
10 request or direction of the Corporation, which action  
11 is prosecuted wholly or partially for the benefit of  
12 the Corporation—

13 (A) acting as receiver for such covered fi-  
14 nancial company;

15 (B) acting based upon a suit, claim, or  
16 cause of action purchased from, assigned by, or  
17 otherwise conveyed by the Corporation as re-  
18 ceiver; or

19 (C) acting based upon a suit, claim, or  
20 cause of action purchased from, assigned by, or  
21 otherwise conveyed in whole or in part by a cov-  
22 ered financial company or its affiliate in con-  
23 nection with assistance provided under this  
24 title.

1           (2) ACTIONS COVERED.—Paragraph (1) shall  
2           apply with respect to actions for gross negligence,  
3           including any similar conduct or conduct that dem-  
4           onstrates a greater disregard of a duty of care (than  
5           gross negligence) including intentional tortious con-  
6           duct, as such terms are defined and determined  
7           under applicable State law.

8           (3) SAVINGS CLAUSE.—Nothing in this sub-  
9           section shall impair or affect any right of the Cor-  
10          poration under other applicable law.

11          (g) DAMAGES.—In any proceeding related to any  
12          claim against a director, officer, employee, agent, attorney,  
13          accountant, or appraiser of a covered financial company,  
14          or any other party employed by or providing services to  
15          a covered financial company, recoverable damages deter-  
16          mined to result from the improvident or otherwise im-  
17          proper use or investment of any assets of the covered fi-  
18          nancial company shall include principal losses and appro-  
19          priate interest.

20          (h) BRIDGE FINANCIAL COMPANIES.—

21                  (1) ORGANIZATION.—

22                          (A) PURPOSE.—The Corporation, as re-  
23                          ceiver for one or more covered financial compa-  
24                          nies or in anticipation of being appointed re-  
25                          ceiver for one or more covered financial compa-

1           nies, may organize one or more bridge financial  
2           companies in accordance with this subsection.

3           (B) AUTHORITIES.—Upon the creation of  
4           a bridge financial company under subparagraph  
5           (A) with respect to a covered financial com-  
6           pany, such bridge financial company may—

7                   (i) assume such liabilities (including  
8                   liabilities associated with any trust or cus-  
9                   tody business, but excluding any liabilities  
10                  that count as regulatory capital) of such  
11                  covered financial company as the Corpora-  
12                  tion may, in its discretion, determine to be  
13                  appropriate;

14                  (ii) purchase such assets (including  
15                  assets associated with any trust or custody  
16                  business) of such covered financial com-  
17                  pany as the Corporation may, in its discre-  
18                  tion, determine to be appropriate; and

19                  (iii) perform any other temporary  
20                  function which the Corporation may, in its  
21                  discretion, prescribe in accordance with  
22                  this section.

23           (2) CHARTER AND ESTABLISHMENT.—

24           (A) ESTABLISHMENT.—Except as provided  
25           in subparagraph (H), where the covered finan-

1           cial company is a covered broker or dealer, the  
2           Corporation, as receiver for a covered financial  
3           company, may grant a Federal charter to and  
4           approve articles of association for one or more  
5           bridge financial company or companies, with re-  
6           spect to such covered financial company which  
7           shall, by operation of law and immediately upon  
8           issuance of its charter and approval of its arti-  
9           cles of association, be established and operate  
10          in accordance with, and subject to, such char-  
11          ter, articles, and this section.

12                   (B) MANAGEMENT.—Upon its establish-  
13                   ment, a bridge financial company shall be under  
14                   the management of a board of directors ap-  
15                   pointed by the Corporation.

16                   (C) ARTICLES OF ASSOCIATION.—The arti-  
17                   cles of association and organization certificate  
18                   of a bridge financial company shall have such  
19                   terms as the Corporation may provide, and  
20                   shall be executed by such representatives as the  
21                   Corporation may designate.

22                   (D) TERMS OF CHARTER; RIGHTS AND  
23                   PRIVILEGES.—Subject to and in accordance  
24                   with the provisions of this subsection, the Cor-  
25                   poration shall—



1 (i) establish the terms of the charter  
2 of a bridge financial company and the  
3 rights, powers, authorities, and privileges  
4 of a bridge financial company granted by  
5 the charter or as an incident thereto; and  
6 (ii) provide for, and establish the  
7 terms and conditions governing, the man-  
8 agement (including the bylaws and the  
9 number of directors of the board of direc-  
10 tors) and operations of the bridge financial  
11 company.

12 (E) TRANSFER OF RIGHTS AND PRIVI-  
13 LEGES OF COVERED FINANCIAL COMPANY.—

14 (i) IN GENERAL.—Notwithstanding  
15 any other provision of Federal or State  
16 law, the Corporation may provide for a  
17 bridge financial company to succeed to and  
18 assume any rights, powers, authorities, or  
19 privileges of the covered financial company  
20 with respect to which the bridge financial  
21 company was established and, upon such  
22 determination by the Corporation, the  
23 bridge financial company shall immediately  
24 and by operation of law succeed to and as-

1           sume such rights, powers, authorities, and  
2           privileges.

3                   (ii)   EFFECTIVE   WITHOUT   AP-  
4           PROVAL.—Any succession to or assumption  
5           by a bridge financial company of rights,  
6           powers, authorities, or privileges of a cov-  
7           ered financial company under clause (i) or  
8           otherwise shall be effective without any  
9           further approval under Federal or State  
10          law, assignment, or consent with respect  
11          thereto.

12                   (F) CORPORATE GOVERNANCE AND ELEC-  
13          TION AND DESIGNATION OF BODY OF LAW.—To  
14          the extent permitted by the Corporation and  
15          consistent with this section and any rules, regu-  
16          lations, or directives issued by the Corporation  
17          under this section, a bridge financial company  
18          may elect to follow the corporate governance  
19          practices and procedures that are applicable to  
20          a corporation incorporated under the general  
21          corporation law of the State of Delaware, or the  
22          State of incorporation or organization of the  
23          covered financial company with respect to which  
24          the bridge financial company was established,  
25          as such law may be amended from time to time.

1 (G) CAPITAL.—

2 (i) CAPITAL NOT REQUIRED.—Not-  
3 withstanding any other provision of Fed-  
4 eral or State law, a bridge financial com-  
5 pany may, if permitted by the Corporation,  
6 operate without any capital or surplus, or  
7 with such capital or surplus as the Cor-  
8 poration may in its discretion determine to  
9 be appropriate.

10 (ii) NO CONTRIBUTION BY THE COR-  
11 PORATION REQUIRED.—The Corporation is  
12 not required to pay capital into a bridge fi-  
13 nancial company or to issue any capital  
14 stock on behalf of a bridge financial com-  
15 pany established under this subsection.

16 (iii) AUTHORITY.—If the Corporation  
17 determines that such action is advisable,  
18 the Corporation may cause capital stock or  
19 other securities of a bridge financial com-  
20 pany established with respect to a covered  
21 financial company to be issued and offered  
22 for sale in such amounts and on such  
23 terms and conditions as the Corporation  
24 may, in its discretion, determine.

1                   (iv) OPERATING FUNDS IN LIEU OF  
2                   CAPITAL AND IMPLEMENTATION PLAN.—  
3                   Upon the organization of a bridge financial  
4                   company, and thereafter as the Corpora-  
5                   tion may, in its discretion, determine to be  
6                   necessary or advisable, the Corporation  
7                   may make available to the bridge financial  
8                   company, subject to the plan described in  
9                   subsection (n)(11), funds for the operation  
10                  of the bridge financial company in lieu of  
11                  capital.

12                 (H) BRIDGE BROKERS OR DEALERS.—

13                   (i) IN GENERAL.—The Corporation,  
14                   as receiver for a covered broker or dealer,  
15                   may approve articles of association for one  
16                   or more bridge financial companies with  
17                   respect to such covered broker or dealer,  
18                   which bridge financial company or compa-  
19                   nies shall, by operation of law and imme-  
20                   diately upon approval of its articles of as-  
21                   sociation—

22                                 (I) be established and deemed  
23                                 registered with the Commission under  
24                                 the Securities Exchange Act of 1934  
25                                 and a member of SIPC;

1 (II) operate in accordance with  
2 such articles and this section; and

3 (III) succeed to any and all reg-  
4 istrations and memberships of the  
5 covered financial company with or in  
6 any self-regulatory organizations.

7 (ii) OTHER REQUIREMENTS.—Except  
8 as provided in clause (i), and notwith-  
9 standing any other provision of this sec-  
10 tion, the bridge financial company shall be  
11 subject to the Federal securities laws and  
12 all requirements with respect to being a  
13 member of a self-regulatory organization,  
14 unless exempted from any such require-  
15 ments by the Commission, as is necessary  
16 or appropriate in the public interest or for  
17 the protection of investors.

18 (iii) TREATMENT OF CUSTOMERS.—  
19 Except as otherwise provided by this title,  
20 any customer of the covered broker or  
21 dealer whose account is transferred to a  
22 bridge financial company shall have all the  
23 rights, privileges, and protections under  
24 section 205(f) and under the Securities In-  
25 vestor Protection Act of 1970 (15 U.S.C.

1           78aaa et seq.), that such customer would  
2           have had if the account were not trans-  
3           ferred from the covered financial company  
4           under this subparagraph.

5                   (iv) OPERATION OF BRIDGE BROKERS  
6           OR DEALERS.—Notwithstanding any other  
7           provision of this title, the Corporation shall  
8           not operate any bridge financial company  
9           created by the Corporation under this title  
10          with respect to a covered broker or dealer  
11          in such a manner as to adversely affect the  
12          ability of customers to promptly access  
13          their customer property in accordance with  
14          applicable law.

15                   (3) INTERESTS IN AND ASSETS AND OBLIGA-  
16          TIONS OF COVERED FINANCIAL COMPANY.—Notwith-  
17          standing paragraph (1) or (2) or any other provision  
18          of law—

19                   (A) a bridge financial company shall as-  
20          sume, acquire, or succeed to the assets or liabil-  
21          ities of a covered financial company (including  
22          the assets or liabilities associated with any trust  
23          or custody business) only to the extent that  
24          such assets or liabilities are transferred by the  
25          Corporation to the bridge financial company in

1           accordance with, and subject to the restrictions  
2           set forth in, paragraph (1)(B); and

3                   (B) a bridge financial company shall not  
4           assume, acquire, or succeed to any obligation  
5           that a covered financial company for which the  
6           Corporation has been appointed receiver may  
7           have to any shareholder, member, general part-  
8           ner, limited partner, or other person with an in-  
9           terest in the equity of the covered financial  
10          company that arises as a result of the status of  
11          that person having an equity claim in the cov-  
12          ered financial company.

13                   (4) BRIDGE FINANCIAL COMPANY TREATED AS  
14          BEING IN DEFAULT FOR CERTAIN PURPOSES.—A  
15          bridge financial company shall be treated as a cov-  
16          ered financial company in default at such times and  
17          for such purposes as the Corporation may, in its dis-  
18          cretion, determine.

19                   (5) TRANSFER OF ASSETS AND LIABILITIES.—

20                           (A) AUTHORITY OF CORPORATION.—The  
21          Corporation, as receiver for a covered financial  
22          company, may transfer any assets and liabilities  
23          of a covered financial company (including any  
24          assets or liabilities associated with any trust or  
25          custody business) to one or more bridge finan-

1           cial companies, in accordance with and subject  
2           to the restrictions of paragraph (1).

3           (B) SUBSEQUENT TRANSFERS.—At any  
4           time after the establishment of a bridge finan-  
5           cial company with respect to a covered financial  
6           company, the Corporation, as receiver, may  
7           transfer any assets and liabilities of such cov-  
8           ered financial company as the Corporation may,  
9           in its discretion, determine to be appropriate in  
10          accordance with and subject to the restrictions  
11          of paragraph (1).

12          (C) TREATMENT OF TRUST OR CUSTODY  
13          BUSINESS.—For purposes of this paragraph,  
14          the trust or custody business, including fidu-  
15          ciary appointments, held by any covered finan-  
16          cial company is included among its assets and  
17          liabilities.

18          (D) EFFECTIVE WITHOUT APPROVAL.—  
19          The transfer of any assets or liabilities, includ-  
20          ing those associated with any trust or custody  
21          business of a covered financial company, to a  
22          bridge financial company shall be effective with-  
23          out any further approval under Federal or  
24          State law, assignment, or consent with respect  
25          thereto.





1 other disposition of the assets of the  
2 covered financial company; and

3 (ii) all creditors that are similarly sit-  
4 uated under subsection (b)(1) receive not  
5 less than the amount provided under para-  
6 graphs (2) and (3) of subsection (d).

7 (F) LIMITATION ON TRANSFER OF LIABIL-  
8 ITIES.—Notwithstanding any other provision of  
9 law, the aggregate amount of liabilities of a cov-  
10 ered financial company that are transferred to,  
11 or assumed by, a bridge financial company from  
12 a covered financial company may not exceed the  
13 aggregate amount of the assets of the covered  
14 financial company that are transferred to, or  
15 purchased by, the bridge financial company  
16 from the covered financial company.

17 (6) STAY OF JUDICIAL ACTION.—Any judicial  
18 action to which a bridge financial company becomes  
19 a party by virtue of its acquisition of any assets or  
20 assumption of any liabilities of a covered financial  
21 company shall be stayed from further proceedings  
22 for a period of not longer than 45 days (or such  
23 longer period as may be agreed to upon the consent  
24 of all parties) at the request of the bridge financial  
25 company.

1           (7) AGREEMENTS AGAINST INTEREST OF THE  
2 BRIDGE FINANCIAL COMPANY.—No agreement that  
3 tends to diminish or defeat the interest of the bridge  
4 financial company in any asset of a covered financial  
5 company acquired by the bridge financial company  
6 shall be valid against the bridge financial company,  
7 unless such agreement—

8           (A) is in writing;

9           (B) was executed by an authorized officer  
10 or representative of the covered financial com-  
11 pany or confirmed in the ordinary course of  
12 business by the covered financial company; and

13           (C) has been on the official record of the  
14 company, since the time of its execution, or  
15 with which, the party claiming under the agree-  
16 ment provides documentation of such agreement  
17 and its authorized execution or confirmation by  
18 the covered financial company that is acceptable  
19 to the receiver.

20           (8) NO FEDERAL STATUS.—

21           (A) AGENCY STATUS.—A bridge financial  
22 company is not an agency, establishment, or in-  
23 strumentality of the United States.

24           (B) EMPLOYEE STATUS.—Representatives  
25 for purposes of paragraph (1)(B), directors, of-

1           ficers, employees, or agents of a bridge financial  
2           company are not, solely by virtue of service in  
3           any such capacity, officers or employees of the  
4           United States. Any employee of the Corporation  
5           or of any Federal instrumentality who serves at  
6           the request of the Corporation as a representa-  
7           tive for purposes of paragraph (1)(B), director,  
8           officer, employee, or agent of a bridge financial  
9           company shall not—

10                   (i) solely by virtue of service in any  
11                   such capacity lose any existing status as  
12                   an officer or employee of the United States  
13                   for purposes of title 5, United States Code,  
14                   or any other provision of law; or

15                   (ii) receive any salary or benefits for  
16                   service in any such capacity with respect to  
17                   a bridge financial company in addition to  
18                   such salary or benefits as are obtained  
19                   through employment with the Corporation  
20                   or such Federal instrumentality.

21           (9) FUNDING AUTHORIZED.—The Corporation  
22           may, subject to the plan described in subsection  
23           (n)(11), provide funding to facilitate any transaction  
24           described in subparagraph (A), (B), (C), or (D) of  
25           paragraph (13) with respect to any bridge financial

1        company, or facilitate the acquisition by a bridge fi-  
2        nancial company of any assets, or the assumption of  
3        any liabilities, of a covered financial company for  
4        which the Corporation has been appointed receiver.

5            (10) EXEMPT TAX STATUS.—Notwithstanding  
6        any other provision of Federal or State law, a bridge  
7        financial company, its franchise, property, and in-  
8        come shall be exempt from all taxation now or here-  
9        after imposed by the United States, by any territory,  
10       dependency, or possession thereof, or by any State,  
11       county, municipality, or local taxing authority.

12           (11) FEDERAL AGENCY APPROVAL; ANTITRUST  
13        REVIEW.—If a transaction involving the merger or  
14        sale of a bridge financial company requires approval  
15        by a Federal agency, the transaction may not be  
16        consummated before the 5th calendar day after the  
17        date of approval by the Federal agency responsible  
18        for such approval with respect thereto. If, in connec-  
19        tion with any such approval a report on competitive  
20        factors from the Attorney General is required, the  
21        Federal agency responsible for such approval shall  
22        promptly notify the Attorney General of the pro-  
23        posed transaction and the Attorney General shall  
24        provide the required report within 10 days of the re-  
25        quest. If a notification is required under section 7A

1 of the Clayton Act with respect to such transaction,  
2 the required waiting period shall end on the 15th  
3 day after the date on which the Attorney General  
4 and the Federal Trade Commission receive such no-  
5 tification, unless the waiting period is terminated  
6 earlier under section 7A(b)(2) of the Clayton Act, or  
7 extended under section 7A(e)(2) of that Act.

8 (12) DURATION OF BRIDGE FINANCIAL COM-  
9 PANY.—Subject to paragraphs (13) and (14), the  
10 status of a bridge financial company as such shall  
11 terminate at the end of the 2-year period following  
12 the date on which it was granted a charter. The  
13 Corporation may, in its discretion, extend the status  
14 of the bridge financial company as such for no more  
15 than 3 additional 1-year periods.

16 (13) TERMINATION OF BRIDGE FINANCIAL COM-  
17 PANY STATUS.—The status of any bridge financial  
18 company as such shall terminate upon the earliest  
19 of—

20 (A) the date of the merger or consolidation  
21 of the bridge financial company with a company  
22 that is not a bridge financial company;

23 (B) at the election of the Corporation, the  
24 sale of a majority of the capital stock of the  
25 bridge financial company to a company other

1 than the Corporation and other than another  
2 bridge financial company;

3 (C) the sale of 80 percent, or more, of the  
4 capital stock of the bridge financial company to  
5 a person other than the Corporation and other  
6 than another bridge financial company;

7 (D) at the election of the Corporation, ei-  
8 ther the assumption of all or substantially all of  
9 the liabilities of the bridge financial company by  
10 a company that is not a bridge financial com-  
11 pany, or the acquisition of all or substantially  
12 all of the assets of the bridge financial company  
13 by a company that is not a bridge financial  
14 company, or other entity as permitted under  
15 applicable law; and

16 (E) the expiration of the period provided in  
17 paragraph (12), or the earlier dissolution of the  
18 bridge financial company, as provided in para-  
19 graph (15).

20 (14) EFFECT OF TERMINATION EVENTS.—

21 (A) MERGER OR CONSOLIDATION.—A  
22 merger or consolidation, described in paragraph  
23 (12)(A) shall be conducted in accordance with,  
24 and shall have the effect provided in, the provi-  
25 sions of applicable law. For the purpose of ef-

1           fecting such a merger or consolidation, the  
2           bridge financial company shall be treated as a  
3           corporation organized under the laws of the  
4           State of Delaware (unless the law of another  
5           State has been selected by the bridge financial  
6           company in accordance with paragraph (2)(F)),  
7           and the Corporation shall be treated as the sole  
8           shareholder thereof, notwithstanding any other  
9           provision of State or Federal law.

10           (B) CHARTER CONVERSION.—Following  
11           the sale of a majority of the capital stock of the  
12           bridge financial company, as provided in para-  
13           graph (13)(B), the Corporation may amend the  
14           charter of the bridge financial company to re-  
15           flect the termination of the status of the bridge  
16           financial company as such, whereupon the com-  
17           pany shall have all of the rights, powers, and  
18           privileges under its constituent documents and  
19           applicable Federal or State law. In connection  
20           therewith, the Corporation may take such steps  
21           as may be necessary or convenient to reincor-  
22           porate the bridge financial company under the  
23           laws of a State and, notwithstanding any provi-  
24           sions of Federal or State law, such State-char-  
25           tered corporation shall be deemed to succeed by



1 operation of law to such rights, titles, powers,  
2 and interests of the bridge financial company as  
3 the Corporation may provide, with the same ef-  
4 fect as if the bridge financial company had  
5 merged with the State-chartered corporation  
6 under provisions of the corporate laws of such  
7 State.

8 (C) SALE OF STOCK.—Following the sale  
9 of 80 percent or more of the capital stock of a  
10 bridge financial company, as provided in para-  
11 graph (13)(C), the company shall have all of  
12 the rights, powers, and privileges under its con-  
13 stituent documents and applicable Federal or  
14 State law. In connection therewith, the Cor-  
15 poration may take such steps as may be nec-  
16 essary or convenient to reincorporate the bridge  
17 financial company under the laws of a State  
18 and, notwithstanding any provisions of Federal  
19 or State law, the State-chartered corporation  
20 shall be deemed to succeed by operation of law  
21 to such rights, titles, powers and interests of  
22 the bridge financial company as the Corpora-  
23 tion may provide, with the same effect as if the  
24 bridge financial company had merged with the

1 State-chartered corporation under provisions of  
2 the corporate laws of such State.

3 (D) ASSUMPTION OF LIABILITIES AND  
4 SALE OF ASSETS.—Following the assumption of  
5 all or substantially all of the liabilities of the  
6 bridge financial company, or the sale of all or  
7 substantially all of the assets of the bridge fi-  
8 nancial company, as provided in paragraph  
9 (13)(D), at the election of the Corporation, the  
10 bridge financial company may retain its status  
11 as such for the period provided in paragraph  
12 (12) or may be dissolved at the election of the  
13 Corporation.

14 (E) AMENDMENTS TO CHARTER.—Fol-  
15 lowing the consummation of a transaction de-  
16 scribed in subparagraph (A), (B), (C), or (D)  
17 of paragraph (13), the charter of the resulting  
18 company shall be amended to reflect the termi-  
19 nation of bridge financial company status, if ap-  
20 propriate.

21 (15) DISSOLUTION OF BRIDGE FINANCIAL COM-  
22 PANY.—

23 (A) IN GENERAL.—Notwithstanding any  
24 other provision of Federal or State law, if the  
25 status of a bridge financial company as such

1 has not previously been terminated by the oc-  
2 currence of an event specified in subparagraph  
3 (A), (B), (C), or (D) of paragraph (13)—

4 (i) the Corporation may, in its discre-  
5 tion, dissolve the bridge financial company  
6 in accordance with this paragraph at any  
7 time; and

8 (ii) the Corporation shall promptly  
9 commence dissolution proceedings in ac-  
10 cordance with this paragraph upon the ex-  
11 piration of the 2-year period following the  
12 date on which the bridge financial com-  
13 pany was chartered, or any extension  
14 thereof, as provided in paragraph (12).

15 (B) PROCEDURES.—The Corporation shall  
16 remain the receiver for a bridge financial com-  
17 pany for the purpose of dissolving the bridge fi-  
18 nancial company. The Corporation as receiver  
19 for a bridge financial company shall wind up  
20 the affairs of the bridge financial company in  
21 conformity with the provisions of law relating to  
22 the liquidation of covered financial companies  
23 under this title. With respect to any such bridge  
24 financial company, the Corporation as receiver  
25 shall have all the rights, powers, and privileges

1 and shall perform the duties related to the exer-  
2 cise of such rights, powers, or privileges granted  
3 by law to the Corporation as receiver for a cov-  
4 ered financial company under this title and,  
5 notwithstanding any other provision of law, in  
6 the exercise of such rights, powers, and privi-  
7 leges, the Corporation shall not be subject to  
8 the direction or supervision of any State agency  
9 or other Federal agency.

10 (16) AUTHORITY TO OBTAIN CREDIT.—

11 (A) IN GENERAL.—A bridge financial com-  
12 pany may obtain unsecured credit and issue un-  
13 secured debt.

14 (B) INABILITY TO OBTAIN CREDIT.—If a  
15 bridge financial company is unable to obtain  
16 unsecured credit or issue unsecured debt, the  
17 Corporation may authorize the obtaining of  
18 credit or the issuance of debt by the bridge fi-  
19 nancial company—

20 (i) with priority over any or all of the  
21 obligations of the bridge financial com-  
22 pany;

23 (ii) secured by a lien on property of  
24 the bridge financial company that is not  
25 otherwise subject to a lien; or

1 (iii) secured by a junior lien on prop-  
2 erty of the bridge financial company that  
3 is subject to a lien.

4 (C) LIMITATIONS.—

5 (i) IN GENERAL.—The Corporation,  
6 after notice and a hearing, may authorize  
7 the obtaining of credit or the issuance of  
8 debt by a bridge financial company that is  
9 secured by a senior or equal lien on prop-  
10 erty of the bridge financial company that  
11 is subject to a lien, only if—

12 (I) the bridge financial company  
13 is unable to otherwise obtain such  
14 credit or issue such debt; and

15 (II) there is adequate protection  
16 of the interest of the holder of the lien  
17 on the property with respect to which  
18 such senior or equal lien is proposed  
19 to be granted.

20 (ii) HEARING.—The hearing required  
21 pursuant to this subparagraph shall be be-  
22 fore a court of the United States, which  
23 shall have jurisdiction to conduct such  
24 hearing and to authorize a bridge financial

1           company to obtain secured credit under  
2           clause (i).

3           (D) BURDEN OF PROOF.—In any hearing  
4           under this paragraph, the Corporation has the  
5           burden of proof on the issue of adequate protec-  
6           tion.

7           (E) QUALIFIED FINANCIAL CONTRACTS.—  
8           No credit or debt obtained or issued by a bridge  
9           financial company may contain terms that im-  
10          pair the rights of a counterparty to a qualified  
11          financial contract upon a default by the bridge  
12          financial company, other than the priority of  
13          such counterparty's unsecured claim (after the  
14          exercise of rights) relative to the priority of the  
15          bridge financial company's obligations in re-  
16          spect of such credit or debt, unless such  
17          counterparty consents in writing to any such  
18          impairment.

19          (17) EFFECT ON DEBTS AND LIENS.—The re-  
20          versal or modification on appeal of an authorization  
21          under this subsection to obtain credit or issue debt,  
22          or of a grant under this section of a priority or a  
23          lien, does not affect the validity of any debt so  
24          issued, or any priority or lien so granted, to an enti-  
25          ty that extended such credit in good faith, whether

1 or not such entity knew of the pendency of the ap-  
2 peal, unless such authorization and the issuance of  
3 such debt, or the granting of such priority or lien,  
4 were stayed pending appeal.

5 (i) SHARING RECORDS.—If the Corporation has been  
6 appointed as receiver for a covered financial company,  
7 other Federal regulators shall make all records relating  
8 to the covered financial company available to the Corpora-  
9 tion, which may be used by the Corporation in any manner  
10 that the Corporation determines to be appropriate.

11 (j) EXPEDITED PROCEDURES FOR CERTAIN  
12 CLAIMS.—

13 (1) TIME FOR FILING NOTICE OF APPEAL.—

14 The notice of appeal of any order, whether interlocu-  
15 tory or final, entered in any case brought by the  
16 Corporation against a director, officer, employee,  
17 agent, attorney, accountant, or appraiser of the cov-  
18 ered financial company, or any other person em-  
19 ployed by or providing services to a covered financial  
20 company, shall be filed not later than 30 days after  
21 the date of entry of the order. The hearing of the  
22 appeal shall be held not later than 120 days after  
23 the date of the notice of appeal. The appeal shall be  
24 decided not later than 180 days after the date of the  
25 notice of appeal.

1           (2) SCHEDULING.—The court shall expedite the  
2           consideration of any case brought by the Corpora-  
3           tion against a director, officer, employee, agent, at-  
4           torney, accountant, or appraiser of a covered finan-  
5           cial company or any other person employed by or  
6           providing services to a covered financial company.  
7           As far as practicable, the court shall give such case  
8           priority on its docket.

9           (3) JUDICIAL DISCRETION.—The court may  
10          modify the schedule and limitations stated in para-  
11          graphs (1) and (2) in a particular case, based on a  
12          specific finding that the ends of justice that would  
13          be served by making such a modification would out-  
14          weigh the best interest of the public in having the  
15          case resolved expeditiously.

16          (k) FOREIGN INVESTIGATIONS.—The Corporation, as  
17          receiver for any covered financial company, and for pur-  
18          poses of carrying out any power, authority, or duty with  
19          respect to a covered financial company—

20                 (1) may request the assistance of any foreign fi-  
21                 nancial authority and provide assistance to any for-  
22                 eign financial authority in accordance with section  
23                 8(v) of the Federal Deposit Insurance Act, as if the  
24                 covered financial company were an insured deposi-  
25                 tory institution, the Corporation were the appro-



1        appropriate Federal banking agency for the company, and  
2        any foreign financial authority were the foreign  
3        banking authority; and

4            (2) may maintain an office to coordinate for-  
5        eign investigations or investigations on behalf of for-  
6        eign financial authorities.

7        (l) PROHIBITION ON ENTERING SECRECY AGREE-  
8        MENTS AND PROTECTIVE ORDERS.—The Corporation  
9        may not enter into any agreement or approve any protec-  
10       tive order which prohibits the Corporation from disclosing  
11       the terms of any settlement of an administrative or other  
12       action for damages or restitution brought by the Corpora-  
13       tion in its capacity as receiver for a covered financial com-  
14       pany.

15       (m) LIQUIDATION OF CERTAIN COVERED FINANCIAL  
16       COMPANIES OR BRIDGE FINANCIAL COMPANIES.—

17            (1) IN GENERAL.—Except as specifically pro-  
18       vided in this section, and notwithstanding any other  
19       provision of law, the Corporation, in connection with  
20       the liquidation of any covered financial company or  
21       bridge financial company with respect to which the  
22       Corporation has been appointed as receiver, shall—

23            (A) in the case of any covered financial  
24       company or bridge financial company that is or  
25       has a subsidiary that is a stockbroker, but is

1 not a member of the Securities Investor Protec-  
2 tion Corporation, apply the provisions of sub-  
3 chapter III of chapter 7 of the Bankruptcy  
4 Code, in respect of the distribution to any cus-  
5 tomer of all customer name securities and cus-  
6 tomer property, as if such covered financial  
7 company or bridge financial company were a  
8 debtor for purposes of such subchapter; or

9 (B) in the case of any covered financial  
10 company or bridge financial company that is a  
11 commodity broker, apply the provisions of sub-  
12 chapter IV of chapter 7 the Bankruptcy Code,  
13 in respect of the distribution to any customer of  
14 all customer property, as if such covered finan-  
15 cial company or bridge financial company were  
16 a debtor for purposes of such subchapter.

17 (2) DEFINITIONS.—For purposes of this sub-  
18 section—

19 (A) the terms “customer”, “customer  
20 name securities”, and “customer property”  
21 have the same meanings as in section 741 of  
22 title 11, United States Code; and

23 (B) the terms “commodity broker” and  
24 “stockbroker” have the same meanings as in  
25 section 101 of the Bankruptcy Code.

1 (n) ORDERLY LIQUIDATION FUND.—

2 (1) ESTABLISHMENT.—There is established in  
3 the Treasury of the United States a separate fund  
4 to be known as the “Orderly Liquidation Fund”,  
5 which shall be available to the Corporation to carry  
6 out the authorities contained in this title, for the  
7 cost of actions authorized by this title, including the  
8 orderly liquidation of covered financial companies,  
9 payment of administrative expenses, the payment of  
10 principal and interest by the Corporation on obliga-  
11 tions issued under paragraph (6), and the exercise  
12 of the authorities of the Corporation under this title.

13 (2) PROCEEDS.—Amounts received by the Cor-  
14 poration, including assessments received under sub-  
15 section (o), proceeds of obligations issued under  
16 paragraph (6), interest and other earnings from in-  
17 vestments, and repayments to the Corporation by  
18 covered financial companies, shall be deposited into  
19 the Fund.

20 (3) MANAGEMENT.—The Corporation shall  
21 manage the Fund in accordance with this subsection  
22 and the policies and procedures established under  
23 section 203(d).

24 (4) INVESTMENTS.—At the request of the Cor-  
25 poration, the Secretary may invest such portion of

1 amounts held in the Fund that are not, in the judg-  
2 ment of the Corporation, required to meet the cur-  
3 rent needs of the Corporation, in obligations of the  
4 United States having suitable maturities, as deter-  
5 mined by the Corporation. The interest on and the  
6 proceeds from the sale or redemption of such obliga-  
7 tions shall be credited to the Fund.

8 (5) AUTHORITY TO ISSUE OBLIGATIONS.—

9 (A) CORPORATION AUTHORIZED TO ISSUE  
10 OBLIGATIONS.—Upon appointment by the Sec-  
11 retary of the Corporation as receiver for a cov-  
12 ered financial company, the Corporation is au-  
13 thorized to issue obligations to the Secretary.

14 (B) SECRETARY AUTHORIZED TO PUR-  
15 CHASE OBLIGATIONS.—The Secretary may,  
16 under such terms and conditions as the Sec-  
17 retary may require, purchase or agree to pur-  
18 chase any obligations issued under subpara-  
19 graph (A), and for such purpose, the Secretary  
20 is authorized to use as a public debt transaction  
21 the proceeds of the sale of any securities issued  
22 under chapter 31 of title 31, United States  
23 Code, and the purposes for which securities  
24 may be issued under chapter 31 of title 31,

1 United States Code, are extended to include  
2 such purchases.

3 (C) INTEREST RATE.—Each purchase of  
4 obligations by the Secretary under this para-  
5 graph shall be upon such terms and conditions  
6 as to yield a return at a rate determined by the  
7 Secretary, taking into consideration the current  
8 average yield on outstanding marketable obliga-  
9 tions of the United States of comparable matu-  
10 rity, plus an interest rate surcharge to be deter-  
11 mined by the Secretary, which shall be greater  
12 than the difference between—

13 (i) the current average rate on an  
14 index of corporate obligations of com-  
15 parable maturity; and

16 (ii) the current average rate on out-  
17 standing marketable obligations of the  
18 United States of comparable maturity.

19 (D) SECRETARY AUTHORIZED TO SELL OB-  
20 LIGATIONS.—The Secretary may sell, upon such  
21 terms and conditions as the Secretary shall de-  
22 termine, any of the obligations acquired under  
23 this paragraph.

24 (E) PUBLIC DEBT TRANSACTIONS.—All  
25 purchases and sales by the Secretary of such

1 obligations under this paragraph shall be treat-  
2 ed as public debt transactions of the United  
3 States, and the proceeds from the sale of any  
4 obligations acquired by the Secretary under this  
5 paragraph shall be deposited into the Treasury  
6 of the United States as miscellaneous receipts.

7 (6) MAXIMUM OBLIGATION LIMITATION.—The  
8 Corporation may not, in connection with the orderly  
9 liquidation of a covered financial company, issue or  
10 incur any obligation, if, after issuing or incurring  
11 the obligation, the aggregate amount of such obliga-  
12 tions outstanding under this subsection for each cov-  
13 ered financial company would exceed—

14 (A) an amount that is equal to 10 percent  
15 of the total consolidated assets of the covered  
16 financial company, based on the most recent fi-  
17 nancial statement available, during the 30-day  
18 period immediately following the date of ap-  
19 pointment of the Corporation as receiver (or a  
20 shorter time period if the Corporation has cal-  
21 culated the amount described under subpara-  
22 graph (B)); and

23 (B) the amount that is equal to 90 percent  
24 of the fair value of the total consolidated assets  
25 of each covered financial company that are

1 available for repayment, after the time period  
2 described in subparagraph (A).

3 (7) RULEMAKING.—The Corporation and the  
4 Secretary shall jointly, in consultation with the  
5 Council, prescribe regulations governing the calcula-  
6 tion of the maximum obligation limitation defined in  
7 this paragraph.

8 (8) RULE OF CONSTRUCTION.—

9 (A) IN GENERAL.—Nothing in this section  
10 shall be construed to affect the authority of the  
11 Corporation under subsection (a) or (b) of sec-  
12 tion 14 or section 15(c)(5) of the Federal De-  
13 posit Insurance Act (12 U.S.C. 1824,  
14 1825(c)(5)), the management of the Deposit In-  
15 surance Fund by the Corporation, or the resolu-  
16 tion of insured depository institutions, provided  
17 that—

18 (i) the authorities of the Corporation  
19 contained in this title shall not be used to  
20 assist the Deposit Insurance Fund or to  
21 assist any financial company under appli-  
22 cable law other than this Act;

23 (ii) the authorities of the Corporation  
24 relating to the Deposit Insurance Fund, or  
25 any other responsibilities of the Corpora-





1 (h)(2)(G)(iv) and (h)(9) of this section, and pay-  
2 ments to third parties. The orderly liquidation plan  
3 shall take into account actions to avoid or mitigate  
4 potential adverse effects on low income, minority, or  
5 underserved communities affected by the failure of  
6 the covered financial company, and shall provide for  
7 coordination with the primary financial regulatory  
8 agencies, as appropriate, to ensure that such actions  
9 are taken. The Corporation may, at any time, amend  
10 any orderly liquidation plan approved by the Sec-  
11 retary with the concurrence of the Secretary.

12 (10) IMPLEMENTATION EXPENSES.—

13 (A) IN GENERAL.—Reasonable implemen-  
14 tation expenses of the Corporation incurred  
15 after the date of enactment of this Act shall be  
16 treated as expenses of the Council.

17 (B) REQUESTS FOR REIMBURSEMENT.—  
18 The Corporation shall periodically submit a re-  
19 quest for reimbursement for implementation ex-  
20 penses to the Chairperson of the Council, who  
21 shall arrange for prompt reimbursement to the  
22 Corporation of reasonable implementation ex-  
23 penses.

24 (C) DEFINITION.—As used in this para-  
25 graph, the term “implementation expenses”—

1 (i) means costs incurred by the Cor-  
2 poration beginning on the date of enact-  
3 ment of this Act, as part of its efforts to  
4 implement this title that do not relate to a  
5 particular covered financial company; and

6 (ii) includes the costs incurred in con-  
7 nection with the development of policies,  
8 procedures, rules, and regulations and  
9 other planning activities of the Corporation  
10 consistent with carrying out this title.

11 (o) ASSESSMENTS.—

12 (1) RISK-BASED ASSESSMENTS.—

13 (A) ELIGIBLE FINANCIAL COMPANIES DE-  
14 FINED.—For purposes of this subsection, the  
15 term “eligible financial company” means any  
16 bank holding company with total consolidated  
17 assets equal to or greater than  
18 \$50,000,000,000 and any nonbank financial  
19 company supervised by the Board of Governors.

20 (B) ASSESSMENTS.—The Corporation shall  
21 charge one or more risk-based assessments in  
22 accordance with the provisions of subparagraph  
23 (D), if such assessments are necessary to pay  
24 in full the obligations issued by the Corporation

1 to the Secretary within 60 months of the date  
2 of issuance of such obligations.

3 (C) EXTENSIONS AUTHORIZED.—The Cor-  
4 poration may, with the approval of the Sec-  
5 retary, extend the time period under subpara-  
6 graph (C)(iii), if the Corporation determines  
7 that an extension is necessary to avoid a serious  
8 adverse effect on the financial system of the  
9 United States.

10 (D) APPLICATION OF ASSESSMENTS.—To  
11 meet the requirements of subparagraph (C), the  
12 Corporation shall—

13 (i) impose assessments, as soon as  
14 practicable, on any claimant that received  
15 additional payments or amounts from the  
16 Corporation pursuant to subsection (b)(4),  
17 (d)(4), or (h)(5)(E), except for payments  
18 or amounts necessary to initiate and con-  
19 tinue operations essential to implementa-  
20 tion of the receivership or any bridge fi-  
21 nancial company, to recover on a cumu-  
22 lative basis, the entire difference be-  
23 tween—

24 (I) the aggregate value the claim-  
25 ant received from the Corporation on

1 a claim pursuant to this title (includ-  
2 ing pursuant to subsection (b)(4),  
3 (d)(4), and (h)(5)(E)), as of the date  
4 on which such value was received; and

5 (II) the value the claimant was  
6 entitled to receive from the Corpora-  
7 tion on such claim solely from the  
8 proceeds of the liquidation of the cov-  
9 ered financial company under this  
10 title; and

11 (ii) if the amounts to be recovered on  
12 a cumulative basis under clause (i) are in-  
13 sufficient to meet the requirements of sub-  
14 paragraph (C), after taking into account  
15 the considerations set forth in paragraph  
16 (4), impose assessments on—

17 (I) eligible financial companies;  
18 and

19 (II) financial companies with  
20 total consolidated assets equal to or  
21 greater than \$50,000,000,000 that  
22 are not eligible financial companies.

23 (E) PROVISION OF FINANCING.—Payments  
24 or amounts necessary to initiate and continue  
25 operations essential to implementation of the

1            receivership or any bridge financial company  
2            described in subparagraph (E)(i) shall not in-  
3            clude the provision of financing, as defined by  
4            rule of the Corporation, to third parties.

5            (2) GRADUATED ASSESSMENT RATE.—The Cor-  
6            poration shall impose assessments on a graduated  
7            basis, with financial companies having greater assets  
8            and risk being assessed at a higher rate.

9            (3) NOTIFICATION AND PAYMENT.—The Cor-  
10          poration shall notify each financial company of that  
11          company's assessment under this subsection. Any fi-  
12          nancial company subject to assessment under this  
13          subsection shall pay such assessment in accordance  
14          with the regulations prescribed pursuant to para-  
15          graph (6).

16          (4) RISK-BASED ASSESSMENT CONSIDER-  
17          ATIONS.—In imposing assessments under this sub-  
18          section, the Corporation shall—

19                (A) take into account economic conditions  
20                generally affecting financial companies, so as to  
21                allow assessments to be lower during less favor-  
22                able economic conditions;

23                (B) take into account any assessments im-  
24                posed on—

1 (i) an insured depository institution  
2 subsidiary of a financial company pursuant  
3 to section 7 or section 13(c)(4)(G) of the  
4 Federal Deposit Insurance Act (12 U.S.C.  
5 1817, 1823(c)(4)(G));

6 (ii) a financial company or subsidiary  
7 of such company that is a member of SIPC  
8 pursuant to section 4 of the Securities In-  
9 vestor Protection Act of 1970 (15 U.S.C.  
10 78ddd); and

11 (iii) a financial company or subsidiary  
12 of such company that is an insurance com-  
13 pany pursuant to applicable State law to  
14 cover (or reimburse payments made to  
15 cover) the costs of rehabilitation, liquida-  
16 tion, or other State insolvency proceeding  
17 with respect to one or more insurance com-  
18 panies;

19 (C) take into account the financial condi-  
20 tion of the financial company, including the ex-  
21 tent and type of off-balance-sheet exposures of  
22 the financial company;

23 (D) take into account the risks presented  
24 by the financial company to the financial sta-  
25 bility of the United States economy;

1           (E) take into account the extent to which  
2           the financial company or group of financial  
3           companies has benefitted, or likely would ben-  
4           efit, from the orderly liquidation of a covered fi-  
5           nancial company and the use of the Fund under  
6           this title;

7           (F) distinguish among different classes of  
8           assets or different types of financial companies  
9           (including distinguishing among different types  
10          of financial companies, based on their levels of  
11          capital and leverage) in order to establish com-  
12          parable assessment bases among financial com-  
13          panies subject to this subsection;

14          (G) take into account the extent to which  
15          assets are managed rather than owned by the  
16          financial company and the extent to which own-  
17          ership of assets under management is diffuse;

18          (H) establish the parameters for the grad-  
19          uated assessment requirement in paragraph (2);  
20          and

21          (I) take into account such other risk-re-  
22          lated factors as the Corporation, in consultation  
23          with the Secretary, deems appropriate.

24          (5) COLLECTION OF INFORMATION.—The Cor-  
25          poration may impose on covered financial companies

1 such collection of information requirements as the  
2 Corporation deems necessary to carry out this sub-  
3 section after the appointment of the Corporation as  
4 receiver under this title.

5 (6) RULEMAKING.—

6 (A) IN GENERAL.—The Corporation shall  
7 prescribe regulations to carry out this sub-  
8 section. The Corporation shall consult with the  
9 Secretary in the development and finalization of  
10 such regulations.

11 (B) EQUITABLE TREATMENT.—The regu-  
12 lations prescribed under subparagraph (A) shall  
13 take into account the differences in risks posed  
14 to the financial stability of the United States by  
15 financial companies, the differences in the li-  
16 ability structures of financial companies, and  
17 the different bases for other assessments that  
18 such financial companies may be required to  
19 pay, to ensure that assessed financial compa-  
20 nies are treated equitably and that assessments  
21 under this subsection reflect such differences.

22 (p) UNENFORCEABILITY OF CERTAIN AGREE-  
23 MENTS.—

24 (1) IN GENERAL.—No provision described in  
25 paragraph (2) shall be enforceable against or impose



1 any liability on any person, as such enforcement or  
2 liability shall be contrary to public policy.

3 (2) PROHIBITED PROVISIONS.—A provision de-  
4 scribed in this paragraph is any term contained in  
5 any existing or future standstill, confidentiality, or  
6 other agreement that, directly or indirectly—

7 (A) affects, restricts, or limits the ability  
8 of any person to offer to acquire or acquire;

9 (B) prohibits any person from offering to  
10 acquire or acquiring; or

11 (C) prohibits any person from using any  
12 previously disclosed information in connection  
13 with any such offer to acquire or acquisition of,  
14 all or part of any covered financial company, includ-  
15 ing any liabilities, assets, or interest therein, in con-  
16 nection with any transaction in which the Corpora-  
17 tion exercises its authority under this title.

18 (q) OTHER EXEMPTIONS.—

19 (1) IN GENERAL.—When acting as a receiver  
20 under this title—

21 (A) the Corporation, including its fran-  
22 chise, its capital, reserves and surplus, and its  
23 income, shall be exempt from all taxation im-  
24 posed by any State, county, municipality, or  
25 local taxing authority, except that any real

1 property of the Corporation shall be subject to  
2 State, territorial, county, municipal, or local  
3 taxation to the same extent according to its  
4 value as other real property is taxed, except  
5 that, notwithstanding the failure of any person  
6 to challenge an assessment under State law of  
7 the value of such property, such value, and the  
8 tax thereon, shall be determined as of the pe-  
9 riod for which such tax is imposed;

10 (B) no property of the Corporation shall be  
11 subject to levy, attachment, garnishment, fore-  
12 closure, or sale without the consent of the Cor-  
13 poration, nor shall any involuntary lien attach  
14 to the property of the Corporation; and

15 (C) the Corporation shall not be liable for  
16 any amounts in the nature of penalties or fines,  
17 including those arising from the failure of any  
18 person to pay any real property, personal prop-  
19 erty, probate, or recording tax or any recording  
20 or filing fees when due; and

21 (D) the Corporation shall be exempt from  
22 all prosecution by the United States or any  
23 State, county, municipality, or local authority  
24 for any criminal offense arising under Federal,  
25 State, county, municipal, or local law, which

1           was allegedly committed by the covered finan-  
2           cial company, or persons acting on behalf of the  
3           covered financial company, prior to the appoint-  
4           ment of the Corporation as receiver.

5           (2) LIMITATION.—Paragraph (1) shall not  
6           apply with respect to any tax imposed (or other  
7           amount arising) under the Internal Revenue Code of  
8           1986.

9           (f) CERTAIN SALES OF ASSETS PROHIBITED.—

10           (1) PERSONS WHO ENGAGED IN IMPROPER CON-  
11           DUCT WITH, OR CAUSED LOSSES TO, COVERED FI-  
12           NANCIAL COMPANIES.—The Corporation shall pre-  
13           scribe regulations which, at a minimum, shall pro-  
14           hibit the sale of assets of a covered financial com-  
15           pany by the Corporation to—

16           (A) any person who—

17           (i) has defaulted, or was a member of  
18           a partnership or an officer or director of a  
19           corporation that has defaulted, on 1 or  
20           more obligations, the aggregate amount of  
21           which exceeds \$1,000,000, to such covered  
22           financial company;

23           (ii) has been found to have engaged in  
24           fraudulent activity in connection with any  
25           obligation referred to in clause (i); and

1 (iii) proposes to purchase any such  
2 asset in whole or in part through the use  
3 of the proceeds of a loan or advance of  
4 credit from the Corporation or from any  
5 covered financial company;

6 (B) any person who participated, as an of-  
7 ficer or director of such covered financial com-  
8 pany or of any affiliate of such company, in a  
9 material way in any transaction that resulted in  
10 a substantial loss to such covered financial com-  
11 pany; or

12 (C) any person who has demonstrated a  
13 pattern or practice of defalcation regarding ob-  
14 ligations to such covered financial company.

15 (2) CONVICTED DEBTORS.—Except as provided  
16 in paragraph (3), a person may not purchase any  
17 asset of such institution from the receiver, if that  
18 person—

19 (A) has been convicted of an offense under  
20 section 215, 656, 657, 1005, 1006, 1007, 1008,  
21 1014, 1032, 1341, 1343, or 1344 of title 18,  
22 United States Code, or of conspiring to commit  
23 such an offense, affecting any covered financial  
24 company; and

1 (B) is in default on any loan or other ex-  
2 tension of credit from such covered financial  
3 company which, if not paid, will cause substan-  
4 tial loss to the Fund or the Corporation.

5 (3) SETTLEMENT OF CLAIMS.—Paragraphs (1)  
6 and (2) shall not apply to the sale or transfer by the  
7 Corporation of any asset of any covered financial  
8 company to any person, if the sale or transfer of the  
9 asset resolves or settles, or is part of the resolution  
10 or settlement, of 1 or more claims that have been,  
11 or could have been, asserted by the Corporation  
12 against the person.

13 (4) DEFINITION OF DEFAULT.—For purposes  
14 of this subsection, the term “default” means a fail-  
15 ure to comply with the terms of a loan or other obli-  
16 gation to such an extent that the property securing  
17 the obligation is foreclosed upon.

18 (s) RECOUPMENT OF COMPENSATION FROM SENIOR  
19 EXECUTIVES AND DIRECTORS.—

20 (1) IN GENERAL.—The Corporation, as receiver  
21 of a covered financial company, may recover from  
22 any current or former senior executive or director  
23 substantially responsible for the failed condition of  
24 the covered financial company any compensation re-  
25 ceived during the 2-year period preceding the date

1 on which the Corporation was appointed as the re-  
2 ceiver of the covered financial company, except that,  
3 in the case of fraud, no time limit shall apply.

4 (2) COST CONSIDERATIONS.—In seeking to re-  
5 cover any such compensation, the Corporation shall  
6 weigh the financial and deterrent benefits of such re-  
7 covery against the cost of executing the recovery.

8 (3) RULEMAKING.—The Corporation shall pro-  
9 mulgate regulations to implement the requirements  
10 of this subsection, including defining the term “com-  
11 pensation” to mean any financial remuneration, in-  
12 cluding salary, bonuses, incentives, benefits, sever-  
13 ance, deferred compensation, or golden parachute  
14 benefits, and any profits realized from the sale of  
15 the securities of the covered financial company.

16 **SEC. 211. MISCELLANEOUS PROVISIONS.**

17 (a) CLARIFICATION OF PROHIBITION REGARDING  
18 CONCEALMENT OF ASSETS FROM RECEIVER OR LIQUI-  
19 DATING AGENT.—Section 1032(1) of title 18, United  
20 States Code, is amended by inserting “the Federal Deposit  
21 Insurance Corporation acting as receiver for a covered fi-  
22 nancial company, in accordance with title II of the Restor-  
23 ing American Financial Stability Act of 2010,” before “or  
24 the National Credit”.

1 (b) CONFORMING AMENDMENT.—Section 1032 of  
2 title 18, United States Code, is amended in the section  
3 heading, by striking “**of financial institution**”.

4 (c) FEDERAL DEPOSIT INSURANCE CORPORATION  
5 IMPROVEMENT ACT OF 1991.—Section 403(a) of the Fed-  
6 eral Deposit Insurance Corporation Improvement Act of  
7 1991 (12 U.S.C. 4403(a)) is amended by inserting “sec-  
8 tion 210(c) of the Restoring American Financial Stability  
9 Act of 2010, section 1367 of the Federal Housing Enter-  
10 prises Financial Safety and Soundness Act of 1992 (12  
11 U.S.C. 4617(d)),” after “section 11(e) of the Federal De-  
12 posit Insurance Act,”.

13 (d) FDIC INSPECTOR GENERAL REVIEWS.—

14 (1) SCOPE.—The Inspector General of the Cor-  
15 poration shall conduct, supervise, and coordinate au-  
16 dits and investigations of the liquidation of any cov-  
17 ered financial company by the Corporation as re-  
18 ceiver under this title, including collecting and sum-  
19 marizing—

20 (A) a description of actions taken by the  
21 Corporation as receiver;

22 (B) a description of any material sales,  
23 transfers, mergers, obligations, purchases, and  
24 other material transactions entered into by the  
25 Corporation;

1 (C) an evaluation of the adequacy of the  
2 policies and procedures of the Corporation  
3 under section 203(d) and orderly liquidation  
4 plan under section 210(n)(14);

5 (D) an evaluation of the utilization by the  
6 Corporation of the private sector in carrying  
7 out its functions, including the adequacy of any  
8 conflict-of-interest reviews; and

9 (E) an evaluation of the overall perform-  
10 ance of the Corporation in liquidating the cov-  
11 ered financial company, including administra-  
12 tive costs, timeliness of liquidation process, and  
13 impact on the financial system.

14 (2) FREQUENCY.—Not later than 6 months  
15 after the date of appointment of the Corporation as  
16 receiver under this title and every 6 months there-  
17 after, the Inspector General of the Corporation shall  
18 conduct the audit and investigation described in  
19 paragraph (1).

20 (3) REPORTS AND TESTIMONY.—The Inspector  
21 General of the Corporation shall include in the semi-  
22 annual reports required by section 5(a) of the In-  
23 spector General Act of 1978 (5 U.S.C. App.), a sum-  
24 mary of the findings and evaluations under para-  
25 graph (1), and shall appear before the appropriate



1 committees of Congress, if requested, to present  
2 each such report.

3 (4) FUNDING.—

4 (A) INITIAL FUNDING.—The expenses of  
5 the Inspector General of the Corporation in car-  
6 rying out this subsection shall be considered ad-  
7 ministrative expenses of the receivership.

8 (B) ADDITIONAL FUNDING.—If the max-  
9 imum amount available to the Corporation as  
10 receiver under this title is insufficient to enable  
11 the Inspector General of the Corporation to  
12 carry out the duties under this subsection, the  
13 Corporation shall pay such additional amounts  
14 from assessments imposed under section 210.

15 (5) TERMINATION OF RESPONSIBILITIES.—The  
16 duties and responsibilities of the Inspector General  
17 of the Corporation under this subsection shall termi-  
18 nate 1 year after the date of termination of the re-  
19 ceivership under this title.

20 (e) TREASURY INSPECTOR GENERAL REVIEWS.—

21 (1) SCOPE.—The Inspector General of the De-  
22 partment of the Treasury shall conduct, supervise,  
23 and coordinate audits and investigations of actions  
24 taken by the Secretary related to the liquidation of

1 any covered financial company under this title, in-  
2 cluding collecting and summarizing—

3 (A) a description of actions taken by the  
4 Secretary under this title;

5 (B) an analysis of the approval by the Sec-  
6 retary of the policies and procedures of the Cor-  
7 poration under section 203 and acceptance of  
8 the orderly liquidation plan of the Corporation  
9 under section 210; and

10 (C) an assessment of the terms and condi-  
11 tions underlying the purchase by the Secretary  
12 of obligations of the Corporation under section  
13 210.

14 (2) FREQUENCY.—Not later than 6 months  
15 after the date of appointment of the Corporation as  
16 receiver under this title and every 6 months there-  
17 after, the Inspector General of the Department of  
18 the Treasury shall conduct the audit and investiga-  
19 tion described in paragraph (1).

20 (3) REPORTS AND TESTIMONY.—The Inspector  
21 General of the Department of the Treasury shall in-  
22 clude in the semiannual reports required by section  
23 5(a) of the Inspector General Act of 1978 (5 U.S.C.  
24 App.), a summary of the findings and assessments  
25 under paragraph (1), and shall appear before the

1 appropriate committees of Congress, if requested, to  
2 present each such report.

3 (4) TERMINATION OF RESPONSIBILITIES.—The  
4 duties and responsibilities of the Inspector General  
5 of the Department of the Treasury under this sub-  
6 section shall terminate 1 year after the date on  
7 which the obligations purchased by the Secretary  
8 from the Corporation under section 210 are fully re-  
9 deemed.

10 (f) PRIMARY FINANCIAL REGULATORY AGENCY IN-  
11 SPECTOR GENERAL REVIEWS.—

12 (1) SCOPE.—Upon the appointment of the Cor-  
13 poration as receiver for a covered financial company  
14 supervised by a Federal primary financial regulatory  
15 agency or the Board of Governors under section  
16 165, the Inspector General of the agency or the  
17 Board of Governors shall make a written report re-  
18 viewing the supervision by the agency or the Board  
19 of Governors of the covered financial company,  
20 which shall—

21 (A) evaluate the effectiveness of the agency  
22 or the Board of Governors in carrying out its  
23 supervisory responsibilities with respect to the  
24 covered financial company;

1 (B) identify any acts or omissions on the  
2 part of agency or Board of Governors officials  
3 that contributed to the covered financial com-  
4 pany being in default or in danger of default;

5 (C) identify any actions that could have  
6 been taken by the agency or the Board of Gov-  
7 ernors that would have prevented the company  
8 from being in default or in danger of default;  
9 and

10 (D) recommend appropriate administrative  
11 or legislative action.

12 (2) REPORTS AND TESTIMONY.—Not later than  
13 1 year after the date of appointment of the Corpora-  
14 tion as receiver under this title, the Inspector Gen-  
15 eral of the Federal primary financial regulatory  
16 agency or the Board of Governors shall provide the  
17 report required by paragraph (1) to such agency or  
18 the Board of Governors, and along with such agency  
19 or the Board of Governors, as applicable, shall ap-  
20 pear before the appropriate committees of Congress,  
21 if requested, to present the report required by para-  
22 graph (1). Not later than 90 days after the date of  
23 receipt of the report required by paragraph (1), such  
24 agency or the Board of Governors, as applicable,  
25 shall provide a written report to Congress describing

1 any actions taken in response to the recommenda-  
2 tions in the report, and if no such actions were  
3 taken, describing the reasons why no actions were  
4 taken.

5 **SEC. 212. PROHIBITION OF CIRCUMVENTION AND PREVEN-**  
6 **TION OF CONFLICTS OF INTEREST.**

7 (a) **NO OTHER FUNDING.**—Funds for the orderly liq-  
8 uidation of any covered financial company under this title  
9 shall only be provided as specified under this title.

10 (b) **LIMIT ON GOVERNMENTAL ACTIONS.**—No gov-  
11 ernmental entity may take any action to circumvent the  
12 purposes of this title.

13 (c) **CONFLICT OF INTEREST.**—In the event that the  
14 Corporation is appointed receiver for more than 1 covered  
15 financial company or is appointed receiver for a covered  
16 financial company and receiver for any insured depository  
17 institution that is an affiliate of such covered financial  
18 company, the Corporation shall take appropriate action,  
19 as necessary to avoid any conflicts of interest that may  
20 arise in connection with multiple receiverships.

21 **SEC. 213. BAN ON CERTAIN ACTIVITIES BY SENIOR EXECU-**  
22 **TIVES AND DIRECTORS.**

23 (a) **PROHIBITION AUTHORITY.**—The Board of Gov-  
24 ernors or, if the covered financial company was not super-

1 vided by the Board of Governors, the Corporation, may  
2 exercise the authority provided by this section.

3 (b) AUTHORITY TO ISSUE ORDER.—The appropriate  
4 agency described in subsection (a) may take any action  
5 authorized by subsection (c), if the agency determines  
6 that—

7 (1) a senior executive or a director of the cov-  
8 ered financial company, prior to the appointment of  
9 the Corporation as receiver, has, directly or indi-  
10 rectly—

11 (A) violated—

12 (i) any law or regulation;

13 (ii) any cease-and-desist order which  
14 has become final;

15 (iii) any condition imposed in writing  
16 by a Federal agency in connection with  
17 any action on any application, notice, or  
18 request by such company or senior execu-  
19 tive; or

20 (iv) any written agreement between  
21 such company and such agency;

22 (B) engaged or participated in any unsafe  
23 or unsound practice in connection with any fi-  
24 nancial company; or

1           (C) committed or engaged in any act,  
2           omission, or practice which constitutes a breach  
3           of the fiduciary duty of such senior executive or  
4           director;

5           (2) by reason of the violation, practice, or  
6           breach described in any subparagraph of paragraph  
7           (1), such senior executive or director has received fi-  
8           nancial gain or other benefit by reason of such viola-  
9           tion, practice, or breach and such violation, practice,  
10          or breach contributed to the failure of the company;  
11          and

12          (3) such violation, practice, or breach—

13               (A) involves personal dishonesty on the  
14               part of such senior executive or director; or

15               (B) demonstrates willful or continuing dis-  
16               regard by such senior executive or director for  
17               the safety or soundness of such company.

18          (c) AUTHORIZED ACTIONS.—

19               (1) IN GENERAL.—The appropriate agency for  
20               a financial company, as described in subsection (a),  
21               may serve upon a senior executive or director de-  
22               scribed in subsection (b) a written notice of the in-  
23               tention of the agency to prohibit any further partici-  
24               pation by such person, in any manner, in the con-  
25               duct of the affairs of any financial company for a

1 period of time determined by the appropriate agency  
2 to be commensurate with such violation, practice, or  
3 breach, provided such period shall be not less than  
4 2 years.

5 (2) PROCEDURES.—The due process require-  
6 ments and other procedures under section 8(e) of  
7 the Federal Deposit Insurance Act (12 U.S.C.  
8 1818(e)) shall apply to actions under this section as  
9 if the covered financial company were an insured de-  
10 pository institution and the senior executive or direc-  
11 tor were an institution-affiliated party, as those  
12 terms are defined in that Act.

13 (d) REGULATIONS.—The Corporation and the Board  
14 of Governors, in consultation with the Council, shall joint-  
15 ly prescribe rules or regulations to administer and carry  
16 out this section, including rules, regulations, or guidelines  
17 to further define the term senior executive for the pur-  
18 poses of this section.

19 **SEC. 214. PROHIBITION ON TAXPAYER FUNDING.**

20 (a) LIQUIDATION REQUIRED.—All financial compa-  
21 nies put into receivership under this title shall be liq-  
22 uidated. No taxpayer funds shall be used to prevent the  
23 liquidation of any financial company under this title.

24 (b) RECOVERY OF FUNDS.—All funds expended in  
25 the liquidation of a financial company under this title shall



1 be recovered from the disposition of assets of such finan-  
2 cial company, or shall be the responsibility of the financial  
3 sector, through assessments.

4 (c) NO LOSSES TO TAXPAYERS.—Taxpayers shall  
5 bear no losses from the exercise of any authority under  
6 this title.

7 **TITLE III—TRANSFER OF POW-**  
8 **ERS TO THE COMPTROLLER**  
9 **OF THE CURRENCY, THE COR-**  
10 **PORATION, AND THE BOARD**  
11 **OF GOVERNORS**

12 **SEC. 300. SHORT TITLE.**

13 This title may be cited as the “Enhancing Financial  
14 Institution Safety and Soundness Act of 2010”.

15 **SEC. 301. PURPOSES.**

16 The purposes of this title are—

17 (1) to provide for the safe and sound operation  
18 of the banking system of the United States;

19 (2) to preserve and protect the dual system of  
20 Federal and State-chartered depository institutions;

21 (3) to ensure the fair and appropriate super-  
22 vision of each depository institution, regardless of  
23 the size or type of charter of the depository institu-  
24 tion; and

1           (4) to streamline and rationalize the supervision  
2           of depository institutions and the holding companies  
3           of depository institutions.

4 **SEC. 302. DEFINITION.**

5           In this title, the term “transferred employee” means,  
6 as the context requires, an employee transferred to the  
7 Office of the Comptroller of the Currency or the Corpora-  
8 tion under section 322.

9 **Subtitle A—Transfer of Powers and**  
10 **Duties**

11 **SEC. 311. TRANSFER DATE.**

12           (a) TRANSFER DATE.—Except as provided in sub-  
13 section (b), the term “transfer date” means the date that  
14 is 1 year after the date of enactment of this Act.

15           (b) EXTENSION PERMITTED.—

16           (1) NOTICE REQUIRED.—The Secretary, in con-  
17 sultation with the Comptroller of the Currency, the  
18 Director of the Office of Thrift Supervision, the  
19 Chairman of the Board of Governors, and the Chair-  
20 person of the Corporation, may extend the period  
21 under subsection (a) and designate a transfer date  
22 that is not later than 18 months after the date of  
23 enactment of this Act, if the Secretary transmits to  
24 the Committee on Banking, Housing, and Urban Af-

1       fairs of the Senate and the Committee on Financial  
2       Services of the House of Representatives—

3               (A) a written determination that com-  
4               mencement of the orderly process to implement  
5               this title is not feasible by the date that is 1  
6               year after the date of enactment of this Act;

7               (B) an explanation of why an extension is  
8               necessary to commence the process of orderly  
9               implementation of this title;

10              (C) the transfer date designated under this  
11              subsection; and

12              (D) a description of the steps that will be  
13              taken to initiate the process of an orderly and  
14              timely implementation of this title within the  
15              extended time period.

16              (2) PUBLICATION OF NOTICE.—Not later than  
17              270 days after the date of enactment of this Act, the  
18              Secretary shall publish in the Federal Register no-  
19              tice of any transfer date designated under paragraph  
20              (1).

21   **SEC. 312. POWERS AND DUTIES TRANSFERRED.**

22              (a) EFFECTIVE DATE.—This section, and the amend-  
23              ments made by this section, shall take effect on the trans-  
24              fer date.

1 (b) FUNCTIONS OF THE OFFICE OF THRIFT SUPER-  
2 VISION.—

3 (1) SAVINGS AND LOAN HOLDING COMPANY  
4 FUNCTIONS TRANSFERRED.—

5 (A) TRANSFER OF FUNCTIONS.—There are  
6 transferred to the Board of Governors all func-  
7 tions of the Office of Thrift Supervision and the  
8 Director of the Office of Thrift Supervision (in-  
9 cluding the authority to issue orders) relating  
10 to—

11 (i) the supervision of—

12 (I) any savings and loan holding  
13 company; and

14 (II) any subsidiary (other than a  
15 depository institution) of a savings  
16 and loan holding company; and

17 (ii) all rulemaking authority of the Of-  
18 fice of Thrift Supervision and the Director  
19 of the Office of Thrift Supervision relating  
20 to savings and loan holding companies.

21 (B) POWERS, AUTHORITIES, RIGHTS, AND  
22 DUTIES.—The Board of Governors shall suc-  
23 ceed to all powers, authorities, rights, and du-  
24 ties that were vested in the Office of Thrift Su-  
25 pervision and the Director of the Office of

1 Thrift Supervision on the day before the trans-  
2 fer date relating to the functions and authority  
3 transferred under subparagraph (A).

4 (2) ALL OTHER FUNCTIONS TRANSFERRED.—

5 (A) BOARD OF GOVERNORS.—All rule-  
6 making authority of the Office of Thrift Super-  
7 vision and the Director of the Office of Thrift  
8 Supervision under section 11 of the Home Own-  
9 ers' Loan Act (12 U.S.C. 1468) relating to  
10 transactions with affiliates and extensions of  
11 credit to executive officers, directors, and prin-  
12 cipal shareholders and under section 5(q) of  
13 such Act relating to tying arrangements is  
14 transferred to the Board of Governors.

15 (B) COMPTROLLER OF THE CURRENCY.—  
16 Except as provided in paragraph (1) and sub-  
17 paragraph (A)—

18 (i) there are transferred to the Office  
19 of the Comptroller of the Currency and the  
20 Comptroller of the Currency—

21 (I) all functions of the Office of  
22 Thrift Supervision and the Director of  
23 the Office of Thrift Supervision, re-  
24 spectively, relating to Federal savings  
25 associations; and

1 (II) all rulemaking authority of  
2 the Office of Thrift Supervision and  
3 the Director of the Office of Thrift  
4 Supervision, respectively, relating to  
5 savings associations; and

6 (ii) the Office of the Comptroller of  
7 the Currency and the Comptroller of the  
8 Currency shall succeed to all powers, au-  
9 thorities, rights, and duties that were vest-  
10 ed in the Office of Thrift Supervision and  
11 the Director of the Office of Thrift Super-  
12 vision, respectively, on the day before the  
13 transfer date relating to the functions and  
14 authority transferred under clause (i).

15 (C) CORPORATION.—Except as provided in  
16 paragraph (1) and subparagraphs (A) and  
17 (B)—

18 (i) all functions of the Office of Thrift  
19 Supervision and the Director of the Office  
20 of Thrift Supervision relating to State sav-  
21 ings associations are transferred to the  
22 Corporation; and

23 (ii) the Corporation shall succeed to  
24 all powers, authorities, rights, and duties  
25 that were vested in the Office of Thrift Su-

1                   pervision and the Director of the Office of  
2                   Thrift Supervision on the day before the  
3                   transfer date relating to the functions  
4                   transferred under clause (i).

5           (c) CONFORMING AMENDMENTS.—Section 3(q) of  
6 the Federal Deposit Insurance Act (12 U.S.C. 1813(q))  
7 is amended by striking paragraphs (1) through (4) and  
8 inserting the following:

9                   “(1) the Office of the Comptroller of the Cur-  
10                  rency, in the case of—

11                           “(A) any national banking association;

12                           “(B) any Federal branch or agency of a  
13                          foreign bank; and

14                           “(C) any Federal savings association;

15                   “(2) the Federal Deposit Insurance Corpora-  
16                  tion, in the case of—

17                           “(A) any State nonmember insured bank;

18                           “(B) any foreign bank having an insured  
19                          branch; and

20                           “(C) any State savings association;

21                   “(3) the Board of Governors of the Federal Re-  
22                  serve System, in the case of—

23                           “(A) any State member bank;

24                           “(B) any branch or agency of a foreign  
25                          bank with respect to any provision of the Fed-

1           eral Reserve Act which is made applicable  
2           under the International Banking Act of 1978;

3           “(C) any foreign bank which does not op-  
4           erate an insured branch;

5           “(D) any agency or commercial lending  
6           company other than a Federal agency;

7           “(E) supervisory or regulatory proceedings  
8           arising from the authority given to the Board  
9           of Governors under section 7(c)(1) of the Inter-  
10          national Banking Act of 1978, including such  
11          proceedings under the Financial Institutions  
12          Supervisory Act of 1966;

13          “(F) any bank holding company and any  
14          subsidiary (other than a depository institution)  
15          of a bank holding company; and

16          “(G) any savings and loan holding com-  
17          pany and any subsidiary (other than a deposi-  
18          tory institution) of a savings and loan holding  
19          company.”.

20          (d) CONSUMER PROTECTION.—Nothing in this sec-  
21          tion may be construed to limit or otherwise affect the  
22          transfer of powers under title X.



1 **SEC. 313. ABOLISHMENT.**

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

5 **SEC. 314. AMENDMENTS TO THE REVISED STATUTES.**

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

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

10 “(a) OFFICE OF THE COMPTROLLER OF THE CUR-  
11 RENCY ESTABLISHED.—There is established in the De-  
12 partment of the Treasury a bureau to be known as the  
13 ‘Office of the Comptroller of the Currency’ which is  
14 charged with assuring the safety and soundness of, and  
15 compliance with laws and regulations, fair access to finan-  
16 cial services, and fair treatment of customers by, the insti-  
17 tutions and other persons subject to its jurisdiction.

18 “(b) COMPTROLLER OF THE CURRENCY.—

19 “(1) IN GENERAL.—The chief officer of the Of-  
20 fice of the Comptroller of the Currency shall be  
21 known as the Comptroller of the Currency. The  
22 Comptroller of the Currency shall perform the duties  
23 of the Comptroller of the Currency under the gen-  
24 eral direction of the Secretary of the Treasury. The  
25 Secretary of the Treasury may not delay or prevent  
26 the issuance of any rule or the promulgation of any

1 regulation by the Comptroller of the Currency, and  
2 may not intervene in any matter or proceeding be-  
3 fore the Comptroller of the Currency (including  
4 agency enforcement actions), unless otherwise spe-  
5 cifically provided by law.

6 “(2) **ADDITIONAL AUTHORITY.**—The Comp-  
7 troller of the Currency shall have the same authority  
8 with respect to functions transferred to the Comp-  
9 troller of the Currency under the Enhancing Finan-  
10 cial Institution Safety and Soundness Act of 2010  
11 as was vested in the Director of the Office of Thrift  
12 Supervision on the transfer date, as defined in sec-  
13 tion 311 of that Act.”.

14 (b) **SUPERVISION OF FEDERAL SAVINGS ASSOCIA-**  
15 **TIONS.**—Chapter 9 of title VII of the Revised Statutes of  
16 the United States (12 U.S.C. 1 et seq.) is amended by  
17 inserting after section 327A (12 U.S.C. 4a) the following:  
18 **“SEC. 327B. DEPUTY COMPTROLLER FOR THE SUPER-**  
19 **VISION AND EXAMINATION OF FEDERAL SAV-**  
20 **INGS ASSOCIATIONS.**

21 “The Comptroller of the Currency shall designate a  
22 Deputy Comptroller, who shall be responsible for the su-  
23 pervision and examination of Federal savings associa-  
24 tions.”.

1 (c) AMENDMENT TO SECTION 329.—Section 329 of  
2 the Revised Statutes of the United States (12 U.S.C. 11)  
3 is amended by inserting before the period at the end the  
4 following: “or any Federal savings association”.

5 (d) EFFECTIVE DATE.—This section, and the amend-  
6 ments made by this section, shall take effect on the trans-  
7 fer date.

8 **SEC. 315. FEDERAL INFORMATION POLICY.**

9 Section 3502(5) of title 44, United States Code, is  
10 amended by inserting “Office of the Comptroller of the  
11 Currency,” after “the Securities and Exchange Commis-  
12 sion,”.

13 **SEC. 316. SAVINGS PROVISIONS.**

14 (a) OFFICE OF THRIFT SUPERVISION.—

15 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-  
16 TIONS NOT AFFECTED.—Sections 312(b) and 313  
17 shall not affect the validity of any right, duty, or ob-  
18 ligation of the United States, the Director of the Of-  
19 fice of Thrift Supervision, the Office of Thrift Su-  
20 pervision, or any other person, that existed on the  
21 day before the transfer date.

22 (2) CONTINUATION OF SUITS.—This title shall  
23 not abate any action or proceeding commenced by or  
24 against the Director of the Office of Thrift Super-

1 vision or the Office of Thrift Supervision before the  
2 transfer date, except that—

3 (A) for any action or proceeding arising  
4 out of a function of the Office of Thrift Super-  
5 vision or the Director of the Office of Thrift  
6 Supervision transferred to the Board of Gov-  
7 ernors by this title, the Board of Governors  
8 shall be substituted for the Office of Thrift Su-  
9 pervision or the Director of the Office of Thrift  
10 Supervision as a party to the action or pro-  
11 ceeding on and after the transfer date;

12 (B) for any action or proceeding arising  
13 out of a function of the Office of Thrift Super-  
14 vision or the Director of the Office of Thrift  
15 Supervision transferred to the Office of the  
16 Comptroller of the Currency or the Comptroller  
17 of the Currency by this title, the Office of the  
18 Comptroller of the Currency or the Comptroller  
19 of the Currency shall be substituted for the Of-  
20 fice of Thrift Supervision or the Director of the  
21 Office of Thrift Supervision, as the case may  
22 be, as a party to the action or proceeding on  
23 and after the transfer date; and

24 (C) for any action or proceeding arising  
25 out of a function of the Office of Thrift Super-

1 vision or the Director of the Office of Thrift  
2 Supervision transferred to the Corporation by  
3 this title, the Corporation shall be substituted  
4 for the Office of Thrift Supervision or the Di-  
5 rector of the Office of Thrift Supervision as a  
6 party to the action or proceeding on and after  
7 the transfer date.

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

24 (1) the Board of Governors, in the case of a  
25 function of the Office of Thrift Supervision or the

1 Director of the Office of Thrift Supervision trans-  
2 ferred to the Board of Governors, until modified,  
3 terminated, set aside, or superseded in accordance  
4 with applicable law by the Board of Governors, by  
5 any court of competent jurisdiction, or by operation  
6 of law;

7 (2) the Office of the Comptroller of the Cur-  
8 rency or the Comptroller of the Currency, in the  
9 case of a function of the Office of Thrift Supervision  
10 or the Director of the Office of Thrift Supervision  
11 transferred to the Office of the Comptroller of the  
12 Currency or the Comptroller of the Currency, re-  
13 spectively, until modified, terminated, set aside, or  
14 superseded in accordance with applicable law by the  
15 Office of the Comptroller of the Currency or the  
16 Comptroller of the Currency, by any court of com-  
17 petent jurisdiction, or by operation of law; and

18 (3) the Corporation, in the case of a function  
19 of the Office of Thrift Supervision or the Director  
20 of the Office of Thrift Supervision transferred to the  
21 Corporation, until modified, terminated, set aside, or  
22 superseded in accordance with applicable law by the  
23 Corporation, by any court of competent jurisdiction,  
24 or by operation of law.

1           (c) IDENTIFICATION OF REGULATIONS CONTIN-  
2 UED.—

3           (1) BY THE BOARD OF GOVERNORS.—Not later  
4 than the transfer date, the Board of Governors  
5 shall—

6           (A) identify the regulations continued  
7 under subsection (b) that will be enforced by  
8 the Board of Governors; and

9           (B) publish a list of the regulations identi-  
10 fied under subparagraph (A) in the Federal  
11 Register.

12           (2) BY OFFICE OF THE COMPTROLLER OF THE  
13 CURRENCY.—Not later than the transfer date, the  
14 Office of the Comptroller of the Currency shall—

15           (A) after consultation with the Corpora-  
16 tion, identify the regulations continued under  
17 subsection (b) that will be enforced by the Of-  
18 fice of the Comptroller of the Currency; and

19           (B) publish a list of the regulations identi-  
20 fied under subparagraph (A) in the Federal  
21 Register.

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

24           (A) after consultation with the Office of  
25 the Comptroller of the Currency, identify the

1 regulations continued under subsection (b) that  
2 will be enforced by the Corporation; and

3 (B) publish a list of the regulations identi-  
4 fied under subparagraph (A) in the Federal  
5 Register.

6 (d) STATUS OF REGULATIONS PROPOSED OR NOT  
7 YET EFFECTIVE.—

8 (1) PROPOSED REGULATIONS.—Any proposed  
9 regulation of the Office of Thrift Supervision, which  
10 the Office of Thrift Supervision in performing func-  
11 tions transferred by this title, has proposed before  
12 the transfer date but has not published as a final  
13 regulation before such date, shall be deemed to be  
14 a proposed regulation of the Office of the Comp-  
15 troller of the Currency or the Board of Governors,  
16 as appropriate, according to the terms of the pro-  
17 posed regulation.

18 (2) REGULATIONS NOT YET EFFECTIVE.—Any  
19 interim or final regulation of the Office of Thrift Su-  
20 pervision, which the Office of Thrift Supervision, in  
21 performing functions transferred by this title, has  
22 published before the transfer date but which has not  
23 become effective before that date, shall become effec-  
24 tive as a regulation of the Office of the Comptroller  
25 of the Currency or the Board of Governors, as ap-



1           appropriate, according to the terms of the interim or  
2           final regulation.

3   **SEC. 317. REFERENCES IN FEDERAL LAW TO FEDERAL**  
4                           **BANKING AGENCIES.**

5           On and after the transfer date, any reference in Fed-  
6   eral law to the Director of the Office of Thrift Supervision  
7   or the Office of Thrift Supervision, in connection with any  
8   function of the Director of the Office of Thrift Supervision  
9   or the Office of Thrift Supervision transferred under sec-  
10   tion 312(b) or any other provision of this subtitle, shall  
11   be deemed to be a reference to the Comptroller of the Cur-  
12   rency, the Office of the Comptroller of the Currency, the  
13   Chairperson of the Corporation, the Corporation, the  
14   Chairman of the Board of Governors, or the Board of Gov-  
15   ernors, as appropriate and consistent with the amend-  
16   ments made in subtitle E.

17   **SEC. 318. FUNDING.**

18           (a) COMPENSATION OF EXAMINERS.—Section 5240  
19   of the Revised Statutes of the United States (12 U.S.C.  
20   481 et seq.) is amended—

21                   (1) in the second undesignated paragraph (12  
22           U.S.C. 481), in the fourth sentence, by striking  
23           “without regard to the provisions of other laws ap-  
24           plicable to officers or employees of the United  
25           States” and inserting the following: “set and ad-

1       justed subject to chapter 71 of title 5, United States  
2       Code, and without regard to the provisions of other  
3       laws applicable to officers or employees of the  
4       United States”; and

5           (2) in the third undesignated paragraph (12  
6       U.S.C. 482), in the first sentence, by striking “shall  
7       fix” and inserting “shall, subject to chapter 71 of  
8       title 5, United States Code, fix”.

9       (b) FUNDING OF OFFICE OF THE COMPTROLLER OF  
10      THE CURRENCY.—Chapter 4 of title LXII of the Revised  
11      Statutes is amended by inserting after section 5240 (12  
12      U.S.C. 481, 482) the following:

13       “SEC. 5240A. The Comptroller of the Currency may  
14      collect an assessment, fee, or other charge from any entity  
15      described in section 3(q)(1) of the Federal Deposit Insur-  
16      ance Act (12 U.S.C. 1813(q)(1)), as the Comptroller de-  
17      termines is necessary or appropriate to carry out the re-  
18      sponsibilities of the Office of the Comptroller of the Cur-  
19      rency. In establishing the amount of an assessment, fee,  
20      or charge collected from an entity under this section, the  
21      Comptroller of the Currency may take into account the  
22      nature and scope of the activities of the entity, the amount  
23      and type of assets that the entity holds, the financial and  
24      managerial condition of the entity, and any other factor,  
25      as the Comptroller of the Currency determines is appro-

1 priate. Funds derived from any assessment, fee, or charge  
2 collected or payment made pursuant to this section may  
3 be deposited by the Comptroller of the Currency in accord-  
4 ance with the provisions of section 5234. Such funds shall  
5 not be construed to be Government funds or appropriated  
6 monies, and shall not be subject to apportionment for pur-  
7 poses of chapter 15 of title 31, United States Code, or  
8 any other provision of law. The authority of the Comp-  
9 troller of the Currency under this section shall be in addi-  
10 tion to the authority under section 5240.

11 “The Comptroller of the Currency shall have sole au-  
12 thority to determine the manner in which the obligations  
13 of the Office of the Comptroller of the Currency shall be  
14 incurred and its disbursements and expenses allowed and  
15 paid, in accordance with this section, except as provided  
16 in chapter 71 of title 5, United States Code (with respect  
17 to compensation).”.

18 (c) FUNDING OF BOARD OF GOVERNORS.—Section  
19 11 of the Federal Reserve Act (12 U.S.C. 248) is amended  
20 by adding at the end the following:

21 “(s) ASSESSMENTS, FEES, AND OTHER CHARGES  
22 FOR CERTAIN COMPANIES.—

23 “(1) IN GENERAL.—The Board shall collect a  
24 total amount of assessments, fees, or other charges  
25 from the companies described in paragraph (2) that

1 is equal to the total expenses the Board estimates  
2 are necessary or appropriate to carry out the respon-  
3 sibilities of the Board with respect to such compa-  
4 nies.

5 “(2) COMPANIES.—The companies described in  
6 this paragraph are—

7 “(A) all bank holding companies having  
8 total consolidated assets of \$50,000,000,000 or  
9 more;

10 “(B) all savings and loan holding compa-  
11 nies having total consolidated assets of  
12 \$50,000,000,000 or more; and

13 “(C) all nonbank financial companies su-  
14 pervised by the Board under section 113 of the  
15 Restoring American Financial Stability Act of  
16 2010.”.

17 (d) CORPORATION EXAMINATION FEES.—Section  
18 10(e) of the Federal Deposit Insurance Act (12 U.S.C.  
19 1820(e)) is amended by striking paragraph (1) and insert-  
20 ing the following:

21 “(1) REGULAR AND SPECIAL EXAMINATIONS OF  
22 DEPOSITORY INSTITUTIONS.—The cost of conducting  
23 any regular examination or special examination of  
24 any depository institution under subsection (b)(2),  
25 (b)(3), or (d) or of any entity described in section

1       3(q)(2) may be assessed by the Corporation against  
2       the institution or entity to meet the expenses of the  
3       Corporation in carrying out such examinations, or as  
4       the Corporation determines is necessary or appro-  
5       priate to carry out the responsibilities of the Cor-  
6       poration.”.

7       (e) **EFFECTIVE DATE.**—This section, and the amend-  
8       ments made by this section, shall take effect on the trans-  
9       fer date.

10 **SEC. 319. CONTRACTING AND LEASING AUTHORITY.**

11       Notwithstanding the Federal Property and Adminis-  
12       trative Services Act of 1949 (41 U.S.C. 251 et seq.) or  
13       any other provision of law, the Office of the Comptroller  
14       of the Currency may—

15             (1) enter into and perform contracts, execute  
16       instruments, and acquire, in any lawful manner,  
17       such goods and services, or personal or real property  
18       (or property interest) as the Comptroller deems nec-  
19       essary to carry out the duties and responsibilities of  
20       the Office of the Comptroller of the Currency; and

21             (2) hold, maintain, sell, lease, or otherwise dis-  
22       pose of the property (or property interest) acquired  
23       under paragraph (1).

## 1 **Subtitle B—Transitional Provisions**

### 2 **SEC. 321. INTERIM USE OF FUNDS, PERSONNEL, AND PROP-** 3 **ERTY OF THE OFFICE OF THRIFT SUPER-** 4 **VISION.**

5 (a) IN GENERAL.—Before the transfer date, the Of-  
6 fice of the Comptroller of the Currency, the Corporation,  
7 and the Board of Governors shall—

8 (1) consult and cooperate with the Office of  
9 Thrift Supervision to facilitate the orderly transfer  
10 of functions to the Office of the Comptroller of the  
11 Currency, the Corporation, and the Board of Gov-  
12 ernors in accordance with this title;

13 (2) determine jointly, from time to time—

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

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

23 (C) what property and administrative serv-  
24 ices are necessary to support the Office of the  
25 Comptroller of the Currency, the Corporation,

1           and the Board of Governors during the period  
2           beginning on the date of enactment of this Act  
3           and ending on the transfer date; and

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

6           (b) AGENCY CONSULTATION.—When requested joint-  
7           ly by the Office of the Comptroller of the Currency, the  
8           Corporation, and the Board of Governors to do so before  
9           the transfer date, the Office of Thrift Supervision shall—

10           (1) pay to the Office of the Comptroller of the  
11           Currency, the Corporation, or the Board of Gov-  
12           ernors, as applicable, from funds obtained by the Of-  
13           fice of Thrift Supervision through assessments, fees,  
14           or other charges that the Office of Thrift Super-  
15           vision is authorized by law to impose, such amounts  
16           as the Office of the Comptroller of the Currency, the  
17           Corporation, and the Board of Governors jointly de-  
18           termine to be necessary under subsection (a);

19           (2) detail to the Office of the Comptroller of the  
20           Currency, the Corporation, or the Board of Gov-  
21           ernors, as applicable, such personnel as the Office of  
22           the Comptroller of the Currency, the Corporation,  
23           and the Board of Governors jointly determine to be  
24           appropriate under subsection (a); and

1           (3) make available to the Office of the Comp-  
2           troller of the Currency, the Corporation, or the  
3           Board of Governors, as applicable, such property  
4           and provide to the Office of the Comptroller of the  
5           Currency, the Corporation, or the Board of Gov-  
6           ernors, as applicable, such administrative services as  
7           the Office of the Comptroller of the Currency, the  
8           Corporation, and the Board of Governors jointly de-  
9           termine to be necessary under subsection (a).

10          (c) NOTICE REQUIRED.—The Office of the Comp-  
11         troller of the Currency, the Corporation, and the Board  
12         of Governors shall jointly give the Office of Thrift Super-  
13         vision reasonable prior notice of any request that the Of-  
14         fice of the Comptroller of the Currency, the Corporation,  
15         and the Board of Governors jointly intend to make under  
16         subsection (b).

17         **SEC. 322. TRANSFER OF EMPLOYEES.**

18           (a) IN GENERAL.—

19                 (1) OFFICE OF THRIFT SUPERVISION EMPLOY-  
20                 EES.—

21                         (A) IN GENERAL.—All employees of the  
22                         Office of Thrift Supervision shall be transferred  
23                         to the Office of the Comptroller of the Currency  
24                         or the Corporation for employment in accord-  
25                         ance with this section.



1                   (B) ALLOCATING EMPLOYEES FOR TRANS-  
2                   FER TO RECEIVING AGENCIES.—The Director of  
3                   the Office of Thrift Supervision, the Comp-  
4                   troller of the Currency, and the Chairperson of  
5                   the Corporation shall—

6                   (i) jointly determine the number of  
7                   employees of the Office of Thrift Super-  
8                   vision necessary to perform or support the  
9                   functions that are transferred to the Office  
10                  of the Comptroller of the Currency or the  
11                  Corporation by this title; and

12                  (ii) consistent with the determination  
13                  under clause (i), jointly identify employees  
14                  of the Office of Thrift Supervision for  
15                  transfer to the Office of the Comptroller of  
16                  the Currency or the Corporation.

17                  (2) EMPLOYEES TRANSFERRED; SERVICE PERI-  
18                  ODS CREDITED.—For purposes of this section, peri-  
19                  ods of service with a Federal home loan bank, a  
20                  joint office of Federal home loan banks, or a Federal  
21                  reserve bank shall be credited as periods of service  
22                  with a Federal agency.

23                  (3) APPOINTMENT AUTHORITY FOR EXCEPTED  
24                  SERVICE TRANSFERRED.—

1           (A) IN GENERAL.—Except as provided in  
2           subparagraph (B), any appointment authority  
3           of the Office of Thrift Supervision under Fed-  
4           eral law that relates to the functions trans-  
5           ferred under section 312, including the regula-  
6           tions of the Office of Personnel Management,  
7           for filling the positions of employees in the ex-  
8           cepted service shall be transferred to the Comp-  
9           troller of the Currency or the Chairperson of  
10          the Corporation, as appropriate.

11          (B) DECLINING TRANSFERS ALLOWED.—  
12          The Comptroller of the Currency or the Chair-  
13          person of the Corporation may decline to accept  
14          a transfer of authority under subparagraph (A)  
15          (and the employees appointed under that au-  
16          thority) to the extent that such authority re-  
17          lates to positions excepted from the competitive  
18          service because of their confidential, policy-mak-  
19          ing, policy-determining, or policy-advocating  
20          character.

21          (4) ADDITIONAL APPOINTMENT AUTHORITY.—  
22          Notwithstanding any other provision of law, the Of-  
23          fice of the Comptroller of the Currency and the Cor-  
24          poration may appoint transferred employees to posi-

1 tions in the Office of the Comptroller of the Cur-  
2 rency or the Corporation, respectively.

3 (b) TIMING OF TRANSFERS AND POSITION ASSIGN-  
4 MENTS.—Each employee to be transferred under sub-  
5 section (a)(1) shall—

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

8 (2) receive notice of the position assignment of  
9 the employee not later than 120 days after the effec-  
10 tive date of the transfer of the employee.

11 (c) TRANSFER OF FUNCTIONS.—

12 (1) IN GENERAL.—Notwithstanding any other  
13 provision of law, the transfer of employees under  
14 this subtitle shall be deemed a transfer of functions  
15 for the purpose of section 3503 of title 5, United  
16 States Code.

17 (2) PRIORITY.—If any provision of this subtitle  
18 conflicts with any protection provided to a trans-  
19 ferred employee under section 3503 of title 5,  
20 United States Code, the provisions of this subtitle  
21 shall control.

22 (d) EMPLOYEE STATUS AND ELIGIBILITY.—The  
23 transfer of functions and employees under this subtitle,  
24 and the abolishment of the Office of Thrift Supervision  
25 under section 313, shall not affect the status of the trans-

1 ferred employees as employees of an agency of the United  
2 States under any provision of law.

3 (e) EQUAL STATUS AND TENURE POSITIONS.—

4 (1) STATUS AND TENURE.—Each transferred  
5 employee from the Office of Thrift Supervision shall  
6 be placed in a position at the Office of the Comp-  
7 troller of the Currency or the Corporation with the  
8 same status and tenure as the transferred employee  
9 held on the day before the date on which the em-  
10 ployee was transferred.

11 (2) FUNCTIONS.—To the extent practicable,  
12 each transferred employee shall be placed in a posi-  
13 tion at the Office of the Comptroller of the Currency  
14 or the Corporation, as applicable, responsible for the  
15 same functions and duties as the transferred em-  
16 ployee had on the day before the date on which the  
17 employee was transferred, in accordance with the ex-  
18 pertise and preferences of the transferred employee.

19 (f) NO ADDITIONAL CERTIFICATION REQUIRE-  
20 MENTS.—An examiner who is a transferred employee shall  
21 not be subject to any additional certification requirements  
22 before being placed in a comparable position at the Office  
23 of the Comptroller of the Currency or the Corporation,  
24 if the examiner carries out examinations of the same type  
25 of institutions as an employee of the Office of the Comp-

1 troller of the Currency or the Corporation as the employee  
2 was responsible for carrying out before the date on which  
3 the employee was transferred.

4 (g) PERSONNEL ACTIONS LIMITED.—

5 (1) 2-YEAR PROTECTION.—Except as provided  
6 in paragraph (2), during the 2-year period beginning  
7 on the transfer date, an employee holding a perma-  
8 nent position on the day before the date on which  
9 the employee was transferred shall not be involun-  
10 tarily separated or involuntarily reassigned outside  
11 the locality pay area (as defined by the Office of  
12 Personnel Management) of the employee.

13 (2) EXCEPTIONS.—The Comptroller of the Cur-  
14 rency and the Chairperson of the Corporation, as  
15 applicable, may—

16 (A) separate a transferred employee for  
17 cause, including for unacceptable performance;  
18 or

19 (B) terminate an appointment to a position  
20 excepted from the competitive service because of  
21 its confidential policy-making, policy-deter-  
22 mining, or policy-advocating character.

23 (h) PAY.—

24 (1) 2-YEAR PROTECTION.—Except as provided  
25 in paragraph (2), during the 2-year period beginning

1 on the date on which the employee was transferred  
2 under this subtitle, a transferred employee shall be  
3 paid at a rate that is not less than the basic rate  
4 of pay, including any geographic differential, that  
5 the transferred employee received during the pay pe-  
6 riod immediately preceding the date on which the  
7 employee was transferred.

8 (2) EXCEPTIONS.—The Comptroller of the Cur-  
9 rency or the Corporation may reduce the rate of  
10 basic pay of a transferred employee—

11 (A) for cause, including for unacceptable  
12 performance; or

13 (B) with the consent of the transferred  
14 employee.

15 (3) PROTECTION ONLY WHILE EMPLOYED.—  
16 This subsection shall apply to a transferred em-  
17 ployee only during the period that the transferred  
18 employee remains employed by Office of the Comp-  
19 troller of the Currency or the Corporation.

20 (4) PAY INCREASES PERMITTED.—Nothing in  
21 this subsection shall limit the authority of the Comp-  
22 troller of the Currency or the Chairperson of the  
23 Corporation to increase the pay of a transferred em-  
24 ployee.

25 (i) BENEFITS.—

1           (1) RETIREMENT BENEFITS FOR TRANSFERRED  
2 EMPLOYEES.—

3           (A) IN GENERAL.—

4           (i) CONTINUATION OF EXISTING RE-  
5 TIREMENT PLAN.—Each transferred em-  
6 ployee shall remain enrolled in the retire-  
7 ment plan of the transferred employee, for  
8 as long as the transferred employee is em-  
9 ployed by the Office of the Comptroller of  
10 the Currency or the Corporation.

11          (ii) EMPLOYER'S CONTRIBUTION.—  
12 The Comptroller of the Currency or the  
13 Chairperson of the Corporation, as appro-  
14 priate, shall pay any employer contribu-  
15 tions to the existing retirement plan of  
16 each transferred employee, as required  
17 under each such existing retirement plan.

18          (B) DEFINITION.—In this paragraph, the  
19 term “existing retirement plan” means, with re-  
20 spect to a transferred employee, the retirement  
21 plan (including the Financial Institutions Re-  
22 tirement Fund), and any associated thrift sav-  
23 ings plan, of the agency from which the em-  
24 ployee was transferred in which the employee

1           was enrolled on the day before the date on  
2           which the employee was transferred.

3           (2) BENEFITS OTHER THAN RETIREMENT BEN-  
4           EFITS.—

5           (A) DURING FIRST YEAR.—

6           (i) EXISTING PLANS CONTINUE.—

7           During the 1-year period following the  
8           transfer date, each transferred employee  
9           may retain membership in any employee  
10          benefit program (other than a retirement  
11          benefit program) of the agency from which  
12          the employee was transferred under this  
13          title, including any dental, vision, long  
14          term care, or life insurance program to  
15          which the employee belonged on the day  
16          before the transfer date.

17          (ii) EMPLOYER'S CONTRIBUTION.—

18          The Office of the Comptroller of the Cur-  
19          rency or the Corporation, as appropriate,  
20          shall pay any employer cost required to ex-  
21          tend coverage in the benefit program to  
22          the transferred employee as required under  
23          that program or negotiated agreements.

24          (B) DENTAL, VISION, OR LIFE INSURANCE  
25          AFTER FIRST YEAR.—If, after the 1-year period



1 beginning on the transfer date, the Office of the  
2 Comptroller of the Currency or the Corporation  
3 determines that the Office of the Comptroller of  
4 the Currency or the Corporation, as the case  
5 may be, will not continue to participate in any  
6 dental, vision, or life insurance program of an  
7 agency from which an employee was trans-  
8 ferred, a transferred employee who is a member  
9 of the program may, before the decision takes  
10 effect and without regard to any regularly  
11 scheduled open season, elect to enroll in—

12 (i) the enhanced dental benefits pro-  
13 gram established under chapter 89A of  
14 title 5, United States Code;

15 (ii) the enhanced vision benefits estab-  
16 lished under chapter 89B of title 5, United  
17 States Code; and

18 (iii) the Federal Employees' Group  
19 Life Insurance Program established under  
20 chapter 87 of title 5, United States Code,  
21 without regard to any requirement of in-  
22 surability.

23 (C) LONG TERM CARE INSURANCE AFTER  
24 1ST YEAR.—If, after the 1-year period begin-  
25 ning on the transfer date, the Office of the

1           Comptroller of the Currency or the Corporation  
2           determines that the Office of the Comptroller of  
3           the Currency or the Corporation, as appro-  
4           priate, will not continue to participate in any  
5           long term care insurance program of an agency  
6           from which an employee transferred, a trans-  
7           ferred employee who is a member of such a pro-  
8           gram may, before the decision takes effect, elect  
9           to apply for coverage under the Federal Long  
10          Term Care Insurance Program established  
11          under chapter 90 of title 5, United States Code,  
12          under the underwriting requirements applicable  
13          to a new active workforce member, as described  
14          in part 875 of title 5, Code of Federal Regula-  
15          tions (or any successor thereto).

16                   (D) CONTRIBUTION OF TRANSFERRED EM-  
17                   PLOYEE.—

18                           (i) IN GENERAL.—Subject to clause  
19                           (ii), a transferred employee who is enrolled  
20                           in a plan under the Federal Employees  
21                           Health Benefits Program shall pay any  
22                           employee contribution required under the  
23                           plan.

24                           (ii) COST DIFFERENTIAL.—The Office  
25                           of the Comptroller of the Currency or the

1 Corporation, as applicable, shall pay any  
2 difference in cost between the employee  
3 contribution required under the plan pro-  
4 vided to transferred employees by the  
5 agency from which the employee trans-  
6 ferred on the date of enactment of this Act  
7 and the plan provided by the Office of the  
8 Comptroller of the Currency or the Cor-  
9 poration, as the case may be, under this  
10 section.

11 (iii) FUNDS TRANSFER.—The Office  
12 of the Comptroller of the Currency or the  
13 Corporation, as the case may be, shall  
14 transfer to the Employees Health Benefits  
15 Fund established under section 8909 of  
16 title 5, United States Code, an amount de-  
17 termined by the Director of the Office of  
18 Personnel Management, after consultation  
19 with the Comptroller of the Currency or  
20 the Chairperson of the Corporation, as the  
21 case may be, and the Office of Manage-  
22 ment and Budget, to be necessary to reim-  
23 burse the Fund for the cost to the Fund  
24 of providing any benefits under this sub-

1 paragraph that are not otherwise paid for  
2 by a transferred employee under clause (i).

3 (E) SPECIAL PROVISIONS TO ENSURE CON-  
4 TINUATION OF LIFE INSURANCE BENEFITS.—

5 (i) IN GENERAL.—An annuitant, as  
6 defined in section 8901 of title 5, United  
7 States Code, who is enrolled in a life insur-  
8 ance plan administered by an agency from  
9 which employees are transferred under this  
10 title on the day before the transfer date  
11 shall be eligible for coverage by a life in-  
12 surance plan under sections 8706(b),  
13 8714a, 8714b, or 8714c of title 5, United  
14 States Code, or by a life insurance plan es-  
15 tablished by the Office of the Comptroller  
16 of the Currency or the Corporation, as ap-  
17 plicable, without regard to any regularly  
18 scheduled open season or any requirement  
19 of insurability.

20 (ii) CONTRIBUTION OF TRANSFERRED  
21 EMPLOYEE.—

22 (I) IN GENERAL.—Subject to  
23 subclause (II), a transferred employee  
24 enrolled in a life insurance plan under  
25 this subparagraph shall pay any em-

1           ployee contribution required by the  
2           plan.

3                   (II) COST DIFFERENTIAL.—The  
4           Office of the Comptroller of the Cur-  
5           rency or the Corporation, as the case  
6           may be, shall pay any difference in  
7           cost between the benefits provided by  
8           the agency from which the employee  
9           transferred on the date of enactment  
10          of this Act and the benefits provided  
11          under this section.

12                   (III) FUNDS TRANSFER.—The  
13          Office of the Comptroller of the Cur-  
14          rency or the Corporation, as the case  
15          may be, shall transfer to the Federal  
16          Employees' Group Life Insurance  
17          Fund established under section 8714  
18          of title 5, United States Code, an  
19          amount determined by the Director of  
20          the Office of Personnel Management,  
21          after consultation with the Comp-  
22          troller of the Currency or the Chair-  
23          person of the Corporation, as the case  
24          may be, and the Office of Manage-  
25          ment and Budget, to be necessary to

1 reimburse the Federal Employees'  
2 Group Life Insurance Fund for the  
3 cost to the Federal Employees' Group  
4 Life Insurance Fund of providing ben-  
5 efits under this subparagraph not oth-  
6 erwise paid for by a transferred em-  
7 ployee under subclause (I).

8 (IV) CREDIT FOR TIME EN-  
9 ROLLED IN OTHER PLANS.—For any  
10 transferred employee, enrollment in a  
11 life insurance plan administered by  
12 the agency from which the employee  
13 transferred, immediately before enroll-  
14 ment in a life insurance plan under  
15 chapter 87 of title 5, United States  
16 Code, shall be considered as enroll-  
17 ment in a life insurance plan under  
18 that chapter for purposes of section  
19 8706(b)(1)(A) of title 5, United  
20 States Code.

21 (j) INCORPORATION INTO AGENCY PAY SYSTEM.—  
22 Not later than 2 years after the transfer date, the Comp-  
23 troller of the Currency and the Chairperson of the Cor-  
24 poration shall place each transferred employee into the es-

1 established pay system and structure of the appropriate em-  
2 ploying agency.

3 (k) **EQUITABLE TREATMENT.**—In administering the  
4 provisions of this section, the Comptroller of the Currency  
5 and the Chairperson of the Corporation—

6 (1) may not take any action that would unfairly  
7 disadvantage a transferred employee relative to any  
8 other employee of the Office of the Comptroller of  
9 the Currency or the Corporation on the basis of  
10 prior employment by the Office of Thrift Super-  
11 vision; and

12 (2) may take such action as is appropriate in  
13 an individual case to ensure that a transferred em-  
14 ployee receives equitable treatment, with respect to  
15 the status, tenure, pay, benefits (other than benefits  
16 under programs administered by the Office of Per-  
17 sonnel Management), and accrued leave or vacation  
18 time for prior periods of service with any Federal  
19 agency of the transferred employee.

20 (l) **REORGANIZATION.**—

21 (1) **IN GENERAL.**—If the Comptroller of the  
22 Currency or the Chairperson of the Corporation de-  
23 termines, during the 2-year period beginning 1 year  
24 after the transfer date, that a reorganization of the  
25 staff of the Office of the Comptroller of the Cur-

1 rency or the Corporation, respectively, is required,  
2 the reorganization shall be deemed a “major reorga-  
3 nization” for purposes of affording affected employ-  
4 ees retirement under section 8336(d)(2) or  
5 8414(b)(1)(B) of title 5, United States Code.

6 (2) SERVICE CREDIT.—For purposes of this  
7 subsection, periods of service with a Federal home  
8 loan bank or a joint office of Federal home loan  
9 banks shall be credited as periods of service with a  
10 Federal agency.

11 **SEC. 323. PROPERTY TRANSFERRED.**

12 (a) PROPERTY DEFINED.—For purposes of this sec-  
13 tion, the term “property” includes all real property (in-  
14 cluding leaseholds) and all personal property, including  
15 computers, furniture, fixtures, equipment, books, ac-  
16 counts, records, reports, files, memoranda, paper, reports  
17 of examination, work papers, and correspondence related  
18 to such reports, and any other information or materials.

19 (b) PROPERTY OF THE OFFICE OF THRIFT SUPER-  
20 VISION.—Not later than 90 days after the transfer date,  
21 all property of the Office of Thrift Supervision that the  
22 Comptroller of the Currency and the Chairperson of the  
23 Corporation jointly determine is used, on the day before  
24 the transfer date, to perform or support the functions of  
25 the Office of Thrift Supervision transferred to the Office



1 of the Comptroller of the Currency or the Corporation  
2 under this title, shall be transferred to the Office of the  
3 Comptroller of the Currency or the Corporation in a man-  
4 ner consistent with the transfer of employees under this  
5 subtitle.

6 (c) **CONTRACTS RELATED TO PROPERTY TRANS-**  
7 **FERRED.**—Each contract, agreement, lease, license, per-  
8 mit, and similar arrangement relating to property trans-  
9 ferred to the Office of the Comptroller of the Currency  
10 or the Corporation by this section shall be transferred to  
11 the Office of the Comptroller of the Currency or the Cor-  
12 poration, as appropriate, together with the property to  
13 which it relates.

14 (d) **PRESERVATION OF PROPERTY.**—Property identi-  
15 fied for transfer under this section shall not be altered,  
16 destroyed, or deleted before transfer under this section.

17 **SEC. 324. FUNDS TRANSFERRED.**

18 The funds that, on the day before the transfer date,  
19 the Director of the Office of Thrift Supervision (in con-  
20 sultation with the Comptroller of the Currency, the Chair-  
21 person of the Corporation, and the Chairman of the Board  
22 of Governors) determines are not necessary to dispose of  
23 the affairs of the Office of Thrift Supervision under sec-  
24 tion 325 and are available to the Office of Thrift Super-

1 vision to pay the expenses of the Office of Thrift Super-  
2 vision—

3 (1) relating to the functions of the Office of  
4 Thrift Supervision transferred under section  
5 312(b)(2)(B), shall be transferred to the Office of  
6 the Comptroller of the Currency on the transfer  
7 date;

8 (2) relating to the functions of the Office of  
9 Thrift Supervision transferred under section  
10 312(b)(2)(C), shall be transferred to the Corporation  
11 on the transfer date; and

12 (3) relating to the functions of the Office of  
13 Thrift Supervision transferred under section  
14 312(b)(1)(A), shall be transferred to the Board of  
15 Governors on the transfer date.

16 **SEC. 325. DISPOSITION OF AFFAIRS.**

17 (a) **AUTHORITY OF DIRECTOR.**—During the 90-day  
18 period beginning on the transfer date, the Director of the  
19 Office of Thrift Supervision—

20 (1) shall, solely for the purpose of winding up  
21 the affairs of the Office of Thrift Supervision relat-  
22 ing to any function transferred to the Office of the  
23 Comptroller of the Currency, the Corporation, or the  
24 Board of Governors under this title—

1           (A) manage the employees of the Office of  
2 Thrift Supervision who have not yet been trans-  
3 ferred and provide for the payment of the com-  
4 pensation and benefits of the employees that ac-  
5 crue before the date on which the employees are  
6 transferred under this title; and

7           (B) manage any property of the Office of  
8 Thrift Supervision, until the date on which the  
9 property is transferred under section 323; and

10          (2) may take any other action necessary to  
11 wind up the affairs of the Office of Thrift Super-  
12 vision.

13          (b) STATUS OF DIRECTOR.—

14           (1) IN GENERAL.—Notwithstanding the trans-  
15 fer of functions under this subtitle, during the 90-  
16 day period beginning on the transfer date, the Direc-  
17 tor of the Office of Thrift Supervision shall retain  
18 and may exercise any authority vested in the Direc-  
19 tor of the Office of Thrift Supervision on the day be-  
20 fore the transfer date, only to the extent necessary—

21           (A) to wind up the Office of Thrift Super-  
22 vision; and

23           (B) to carry out the transfer under this  
24 subtitle during such 90-day period.

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

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

7           (B) entitled to receive compensation at the  
8 same annual rate of basic pay that the Director  
9 of the Office of Thrift Supervision received on  
10 the day before the transfer date.

11 **SEC. 326. CONTINUATION OF SERVICES.**

12       Any agency, department, or other instrumentality of  
13 the United States, and any successor to any such agency,  
14 department, or instrumentality, that was, before the trans-  
15 fer date, providing support services to the Office of Thrift  
16 Supervision in connection with functions transferred to  
17 the Office of the Comptroller of the Currency, the Cor-  
18 poration or the Board of Governors under this title,  
19 shall—

20           (1) continue to provide such services, subject to  
21 reimbursement by the Office of the Comptroller of  
22 the Currency, the Corporation, or the Board of Gov-  
23 ernors, until the transfer of functions under this  
24 title is complete; and

1           (2) consult with the Comptroller of the Cur-  
2           rency, the Chairperson of the Corporation, or the  
3           Chairman of the Board of Governors, as appro-  
4           priate, to coordinate and facilitate a prompt and or-  
5           derly transition.

6           **Subtitle C—Federal Deposit**  
7           **Insurance Corporation**

8           **SEC. 331. DEPOSIT INSURANCE REFORMS.**

9           (a) SIZE DISTINCTIONS.—Section 7(b)(2) of the Fed-  
10          eral Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is  
11          amended—

12                 (1) by striking subparagraph (D); and

13                 (2) by redesignating subparagraph (C) as sub-  
14          paragraph (D).

15          (b) ASSESSMENT BASE.—The Corporation shall  
16          amend the regulations issued by the Corporation under  
17          section 7(b)(2) of the Federal Deposit Insurance Act (12  
18          U.S.C. 1817(b)(2)) to define the term “assessment base”  
19          with respect to an insured depository institution for pur-  
20          poses of that section 7(b)(2), as an amount equal to—

21                 (1) the average consolidated total assets of the  
22          insured depository institution during the assessment  
23          period; minus

24                 (2) the sum of—

1 (A) the average tangible equity of the in-  
2 sured depository institution during the assess-  
3 ment period; and

4 (B) in the case of an insured depository in-  
5 stitution that is a custodial bank (as defined by  
6 the Corporation, based on factors including the  
7 percentage of total revenues generated by custo-  
8 dial businesses and the level of assets under  
9 custody) or a banker's bank (as that term is  
10 used in section 5136 of the Revised Statutes  
11 (12 U.S.C. 24)), an amount that the Corpora-  
12 tion determines is necessary to establish assess-  
13 ments consistent with the definition under sec-  
14 tion 7(b)(1) of the Federal Deposit Insurance  
15 Act (12 U.S.C. 1817(b)(1)) for a custodial  
16 bank or a banker's bank.

17 **SEC. 332. MANAGEMENT OF THE FEDERAL DEPOSIT INSUR-**  
18 **ANCE CORPORATION.**

19 (a) IN GENERAL.—Section 2 of the Federal Deposit  
20 Insurance Act (12 U.S.C. 1812) is amended—

21 (1) in subsection (a)(1)(B), by striking “Direc-  
22 tor of the Office of Thrift Supervision” and insert-  
23 ing “Director of the Consumer Financial Protection  
24 Bureau”;

1           (2) by amending subsection (d)(2) to read as  
2 follows:

3           “(2) ACTING OFFICIALS MAY SERVE.—In the  
4 event of a vacancy in the office of the Comptroller  
5 of the Currency and pending the appointment of a  
6 successor, or during the absence or disability of the  
7 Comptroller of the Currency, the acting Comptroller  
8 of the Currency shall be a member of the Board of  
9 Directors in the place of the Comptroller of the Cur-  
10 rency.”; and

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

13           (b) EFFECTIVE DATE.—This section, and the amend-  
14 ments made by this section, shall take effect on the trans-  
15 fer date.

## 16           **Subtitle D—Other Matters**

### 17           **SEC. 341. BRANCHING.**

18           Notwithstanding the Federal Deposit Insurance Act  
19 (12 U.S.C. 1811 et seq.), the Bank Holding Company Act  
20 of 1956 (12 U.S.C. 1841 et seq.), or any other provision  
21 of Federal or State law, a savings association that be-  
22 comes a bank may—

23           (1) continue to operate any branch or agency  
24 that the savings association operated immediately  
25 before the savings association became a bank; and





1           (2) TRANSFER OF RESPONSIBILITIES.—Each  
2           agency that, on the day before the date of enactment  
3           of this Act, assigned the responsibilities described in  
4           paragraph (1) (or comparable responsibilities) to an-  
5           other office of the agency shall ensure that such re-  
6           sponsibilities are transferred to the Office.

7           (b) DIRECTOR.—

8           (1) IN GENERAL.—The Director of each Office  
9           shall be appointed by, and shall report to, the agen-  
10          cy administrator.

11          (2) DUTIES.—Each Director shall develop  
12          standards for—

13                (A) equal employment opportunity and the  
14                racial, ethnic, and gender diversity of the work-  
15                force and senior management of the agency;

16                (B) increased participation of minority-  
17                owned and women-owned businesses in the pro-  
18                grams and contracts of the agency; and

19                (C) assessing the diversity policies and  
20                practices of entities regulated by the agency.

21          (c) INCLUSION IN ALL LEVELS OF BUSINESS ACTIVI-  
22          TIES.—

23                (1) IN GENERAL.—The Director of each Office  
24                shall develop and implement standards and proce-  
25                dures to ensure, to the maximum extent possible, the

1 inclusion and utilization of minorities, women, and  
2 minority-owned and women-owned businesses in all  
3 business and activities of the agency at all levels, in-  
4 cluding in procurement, insurance, and all types of  
5 contracts.

6 (2) CONTRACTS.—The processes established by  
7 each agency for review and evaluation for contract  
8 proposals and for hiring service providers shall in-  
9 clude a component that gives consideration to the di-  
10 versity of the applicant.

11 (3) TERMINATION.—

12 (A) DETERMINATION.—The standards and  
13 procedures developed and implemented under  
14 paragraph (1) shall include a procedure for the  
15 Director to make a determination that an agen-  
16 cy contractor has failed to make a good faith  
17 effort to include minorities and women in the  
18 workforce of the contractor. Such procedure  
19 shall include a written statement, in a form and  
20 with such content as the Director shall pre-  
21 scribe, that the contractor shall ensure, to the  
22 maximum extent possible, the inclusion of  
23 women and minorities in the workforce of the  
24 contractor and, as applicable, by subcontrac-  
25 tors.

1 (B) EFFECT OF DETERMINATION.—

2 (i) RECOMMENDATION TO AGENCY AD-  
3 MINISTRATOR.—Upon a determination de-  
4 scribed in subparagraph (A), the Director  
5 shall make a recommendation to the agen-  
6 cy administrator that the contract be ter-  
7 minated.

8 (ii) ACTION BY AGENCY ADMINIS-  
9 TRATOR.—Upon receipt of a recommenda-  
10 tion under clause (i), the agency adminis-  
11 trator may—

12 (I) terminate the contract;

13 (II) make a referral to the Office  
14 of Federal Contract Compliance Pro-  
15 grams of the Department of Labor; or

16 (III) take other appropriate ac-  
17 tion.

18 (d) APPLICABILITY.—This section shall apply to all  
19 contracts of an agency for services of any kind, including  
20 the services of financial institutions, investment banking  
21 firms, mortgage banking firms, asset management firms,  
22 brokers, dealers, financial services entities, underwriters,  
23 accountants, investment consultants, and providers of  
24 legal services. The contracts referred to in this subsection  
25 include all contracts for all business and activities of an

1 agency, at all levels, including contracts for the issuance  
2 or guarantee of any debt, equity, or security, the sale of  
3 assets, the management of the assets of the agency, the  
4 making of equity investments by the agency, and the im-  
5 plementation by the agency of programs to address eco-  
6 nomic recovery.

7 (e) REPORTS.—Each Office shall submit to Congress  
8 an annual report regarding the actions taken by the agen-  
9 cy and the Office pursuant to this section, which shall in-  
10 clude—

11 (1) a statement of the total amounts paid by  
12 the agency to contractors since the previous report;

13 (2) the percentage of the amounts described in  
14 paragraph (1) that were paid to contractors de-  
15 scribed in subsection (c)(1);

16 (3) the successes achieved and challenges faced  
17 by the agency in operating minority and women out-  
18 reach programs;

19 (4) the challenges the agency may face in hiring  
20 qualified minority and women employees and con-  
21 tracting with qualified minority-owned and women-  
22 owned businesses; and

23 (5) any other information, findings, conclusions,  
24 and recommendations for legislative or agency ac-  
25 tion, as the Director determines appropriate.

1           (f) DIVERSITY IN AGENCY WORKFORCE.—Each  
2 agency shall take affirmative steps to seek diversity in the  
3 workforce of the agency, at all levels of the agency, con-  
4 sistent with the demographic diversity of the United  
5 States and the Federal Government, which shall include—

6           (1) recruiting at historically black colleges and  
7 universities, Hispanic-serving institutions, women’s  
8 colleges, and colleges that typically serve majority  
9 minority populations;

10           (2) sponsoring and recruiting at job fairs in  
11 urban communities;

12           (3) placing employment advertisements in news-  
13 papers and magazines oriented toward minorities  
14 and women;

15           (4) partnering with organizations that are fo-  
16 cused on developing opportunities for minorities and  
17 women to place talented young minorities and  
18 women in industry internships, summer employment,  
19 and full-time positions;

20           (5) where feasible, partnering with inner-city  
21 high schools, girls’ high schools, and high schools  
22 with majority minority populations to establish or  
23 enhance financial literacy programs and provide  
24 mentoring; and

1           (6) any other mass media communications that  
2           the Office determines necessary.

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

5           (1) AGENCY.—The term “agency” means—

6                   (A) the Department of the Treasury;

7                   (B) the Corporation;

8                   (C) the Federal Housing Finance Agency;

9                   (D) each of the Federal reserve banks;

10                  (E) the Board;

11                  (F) the National Credit Union Administra-  
12                  tion;

13                  (G) the Office of the Comptroller of the  
14                  Currency;

15                  (H) the Commission; and

16                  (I) the Bureau.

17           (2) AGENCY ADMINISTRATOR.—The term  
18           “agency administrator” means the head of an agen-  
19           cy.

20           (3) MINORITY.—The term “minority” has the  
21           same meaning as in section 1204(c) of the Financial  
22           Institutions Reform, Recovery, and Enforcement Act  
23           of 1989 (12 U.S.C. 1811 note).

24           (4) MINORITY-OWNED BUSINESS.—The term  
25           “minority-owned business” has the same meaning as

1 in section 21A(r)(4)(A) of the Federal Home Loan  
2 Bank Act (12 U.S.C. 1441a(r)(4)(A)), as in effect  
3 on the day before the transfer date.

4 (5) OFFICE.—The term “Office” means the Of-  
5 fice of Minority and Women Inclusion established by  
6 an agency under subsection (a).

7 (6) WOMEN-OWNED BUSINESS.—The term  
8 “women-owned business” has the meaning given the  
9 term “women’s business” in section 21A(r)(4)(B) of  
10 the Federal Home Loan Bank Act (12 U.S.C.  
11 1441a(r)(4)(B)), as in effect on the day before the  
12 transfer date.

## 13 **Subtitle E—Technical and** 14 **Conforming Amendments**

### 15 **SEC. 351. EFFECTIVE DATE.**

16 Except as provided in section 365(a), the amend-  
17 ments made by this subtitle shall take effect on the trans-  
18 fer date.

### 19 **SEC. 352. ALTERNATIVE MORTGAGE TRANSACTION PARITY** 20 **ACT OF 1982.**

21 Section 804(a)(3) of the Alternative Mortgage Trans-  
22 action Parity Act of 1982 (12 U.S.C. 3803(a)(3)) is  
23 amended—

24 (1) by striking “savings and loan associations”  
25 and inserting “savings associations”; and

1           (2) by striking “Director of the Office of Thrift  
2           Supervision” each place that terms appears and in-  
3           serting “Board of Governors of the Federal Reserve  
4           System”.

5   **SEC. 353. BALANCED BUDGET AND EMERGENCY DEFICIT**  
6                           **CONTROL ACT OF 1985.**

7           Section 256(h) of the Balanced Budget and Emer-  
8           gency Deficit Control Act of 1985 (2 U.S.C. 906(h)) is  
9           amended—

10           (1) in paragraph (4), by striking subparagraphs  
11           (C) and (G); and

12           (2) by redesignating subparagraphs (D), (E),  
13           (F), and (H) as subparagraphs (C), (D), (E), and  
14           (F), respectively.

15   **SEC. 354. BANK ENTERPRISE ACT OF 1991.**

16           Section 232(a) of the Bank Enterprise Act of 1991  
17           (12 U.S.C. 1834(a)) is amended—

18           (1) in the subsection heading, by striking “BY  
19           FEDERAL RESERVE BOARD”;

20           (2) in paragraph (1)—

21                   (A) by striking “The Board of Governors  
22                   of the Federal Reserve System,” and inserting  
23                   “The Comptroller of the Currency”; and

24                   (B) by striking “section 7(b)(2)(H)” and  
25                   inserting “section 7(b)(2)(E)”;





1                   (bb) by striking “Board”  
2                   and all that follows through the  
3                   end of the subparagraph and in-  
4                   serting “Board shall solicit com-  
5                   ments and recommendations  
6                   from—

7                   “(i) the Comptroller of the Currency,  
8                   with respect to the acquisition of a Federal  
9                   savings association; and

10                  “(ii) the Federal Deposit Insurance  
11                  Corporation, with respect to the acquisition  
12                  of a State savings association.”.

13                  (II) in subparagraph (B), by  
14                  striking “Director” each place that  
15                  term appears and inserting “Comp-  
16                  troller of the Currency or the Federal  
17                  Deposit Insurance Corporation, as ap-  
18                  plicable,”;

19                  (ii) in paragraph (5)—

20                  (I) in subparagraph (B), by  
21                  striking “Director with” and inserting  
22                  “Comptroller of the Currency or the  
23                  Federal Deposit Insurance Corpora-  
24                  tion, as applicable, with”; and

1 (II) by striking “Director” each  
2 place that term appears and inserting  
3 “Comptroller of the Currency or the  
4 Federal Deposit Insurance Corpora-  
5 tion”;

6 (iii) in paragraph (6), by striking “Di-  
7 rector” and inserting “Comptroller of the  
8 Currency or the Federal Deposit Insurance  
9 Corporation, as applicable,”; and

10 (iv) by striking paragraph (7); and

11 (3) in section 5(f) (12 U.S.C. 1844(f))—

12 (A) by striking “subpena” each place that  
13 term appears and inserting “subpoena”;

14 (B) by striking “subpenas” each place that  
15 term appears and inserting “subpoenas”; and

16 (C) by striking “subpenaed” and inserting  
17 “subpoenaed”.

18 **SEC. 356. BANK HOLDING COMPANY ACT AMENDMENTS OF**

19 **1970.**

20 Section 106(b)(1) of the Bank Holding Company Act  
21 Amendments of 1970 (12 U.S.C. 1972(1)) is amended in  
22 the undesignated matter following subparagraph (E) by  
23 inserting “issue such regulations as are necessary to carry  
24 out this section, and, in consultation with the Comptroller

1 of the Currency and the Federal Deposit Insurance Com-  
2 pany, may” after “The Board may”.

3 **SEC. 357. BANK PROTECTION ACT OF 1968.**

4 The Bank Protection Act of 1968 (12 U.S.C. 1881  
5 et seq.) is amended—

6 (1) in section 2 (12 U.S.C. 1881), by striking  
7 “the term” and all that follows through the end of  
8 the section and inserting “the term ‘Federal super-  
9 visory agency’ means the appropriate Federal bank-  
10 ing agency, as defined in section 3(q) of the Federal  
11 Deposit Insurance Act (12 U.S.C. 1813(q)).”;

12 (2) in section 3 (12 U.S.C. 1882), by striking  
13 “and loan” each place that term appears; and

14 (3) in section 5 (12 U.S.C. 1884), by striking  
15 “and loan”.

16 **SEC. 358. BANK SERVICE COMPANY ACT.**

17 The Bank Service Company Act (12 U.S.C. 1861 et  
18 seq.) is amended—

19 (1) in section 1(b)(4) (12 U.S.C. 1861(b)(4))—

20 (A) by striking “Director of the Office of  
21 Thrift Supervision” and inserting “appropriate  
22 Federal banking agency”; and

23 (B) by striking “, the Federal Savings and  
24 Loan Insurance Corporation,”; and

1           (2) in section 7(c)(2) (12 U.S.C. 1867(c)(2)),  
2           by inserting “each” after “notify”.

3 **SEC. 359. COMMUNITY REINVESTMENT ACT OF 1977.**

4           The Community Reinvestment Act of 1977 (12  
5 U.S.C. 2901 et seq.) is amended—

6           (1) in section 803 (12 U.S.C. 2902)—

7           (A) in paragraph (1)—

8           (i) in subparagraph (A), by inserting  
9           “and Federal savings associations (the de-  
10           posits of which are insured by the Federal  
11           Deposit Insurance Corporation)” after  
12           “banks”;

13           (ii) in subparagraph (B), by striking  
14           “and bank holding companies” and insert-  
15           ing “, bank holding companies, and sav-  
16           ings and loan holding companies”; and

17           (iii) in subparagraph (C), by striking  
18           “; and” and inserting “, and State savings  
19           associations (the deposits of which are in-  
20           sured by the Federal Deposit Insurance  
21           Corporation).”; and

22           (B) by striking paragraph (2) (relating to  
23           the Office of Thrift Supervision), as added by  
24           section 744(q) of the Financial Institutions Re-

1 form, Recovery, and Enforcement Act of 1989  
2 (Public Law 101–73; 103 Stat. 440); and  
3 (2) in section 806 (12 U.S.C. 2905), by insert-  
4 ing “, except that the Comptroller of the Currency  
5 shall prescribe regulations applicable to savings asso-  
6 ciations and the Board of Governors shall prescribe  
7 regulations applicable to noninsured State member  
8 banks, bank holding companies and savings and loan  
9 holding companies,” after “supervisory agency”.

10 **SEC. 360. CRIME CONTROL ACT OF 1990.**

11 The Crime Control Act of 1990 is amended—

12 (1) in section 2539(c)(2) (28 U.S.C. 509  
13 note)—

14 (A) by striking subparagraphs (C) and  
15 (D); and

16 (B) by redesignating subparagraphs (E)  
17 through (H) as subparagraphs (C) through (G),  
18 respectively; and

19 (2) in section 2554(b)(2) (Public Law 101–647;  
20 104 Stat. 4890)—

21 (A) in subparagraph (A), by striking “, the  
22 Director of the Office of Thrift Supervision,”;  
23 and

24 (B) in subparagraph (B), by striking “,  
25 the Director” and all that follows through

1           “Trust Corporation” and inserting “or the Fed-  
2           eral Deposit Insurance Corporation”.

3 **SEC. 361. DEPOSITORY INSTITUTION MANAGEMENT INTER-**  
4           **LOCKS ACT.**

5           The Depository Institution Management Interlocks  
6 Act (12 U.S.C. 3201 et seq.) is amended—

7           (1) in section 207 (12 U.S.C. 3206)—

8                   (A) in paragraph (1), by inserting before  
9                   the comma at the end the following: “and Fed-  
10                   eral savings associations (the deposits of which  
11                   are insured by the Federal Deposit Insurance  
12                   Corporation)”;

13                   (B) in paragraph (2), by striking “, and  
14                   bank holding companies” and inserting “, bank  
15                   holding companies, and savings and loan hold-  
16                   ing companies”;

17                   (C) in paragraph (3), by striking “Cor-  
18                   poration,” and inserting “Corporation and  
19                   State savings associations (the deposits of  
20                   which are insured by the Federal Deposit In-  
21                   surance Corporation),”;

22                   (D) by striking paragraph (4);

23                   (E) by redesignating paragraphs (5) and  
24                   (6) as paragraphs (4) and (5), respectively; and

1 (F) in paragraph (5), as so redesignated,  
2 by striking “through (5)” and inserting  
3 “through (4)”;

4 (2) in section 209 (12 U.S.C. 3207)—

5 (A) in paragraph (1), by inserting before  
6 the comma at the end the following: “and Fed-  
7 eral savings associations (the deposits of which  
8 are insured by the Federal Deposit Insurance  
9 Corporation)”;

10 (B) in paragraph (2), by striking “, and  
11 bank holding companies” and inserting “, bank  
12 holding companies, and savings and loan hold-  
13 ing companies”;

14 (C) in paragraph (3), by striking “Cor-  
15 poration,” and inserting “Corporation and  
16 State savings associations (the deposits of  
17 which are insured by the Federal Deposit In-  
18 surance Corporation),”;

19 (D) by striking paragraph (4); and

20 (E) by redesignating paragraph (5) as  
21 paragraph (4); and

22 (3) in section 210(a) (12 U.S.C. 3208(a))—

23 (A) by striking “his” and inserting “the”;  
24 and



1 (B) by inserting “of the Attorney General”  
2 after “enforcement functions”.

3 **SEC. 362. EMERGENCY HOMEOWNERS’ RELIEF ACT.**

4 Section 110 of the Emergency Homeowners’ Relief  
5 Act (12 U.S.C. 2709) is amended in the second sentence,  
6 by striking “Home Loan Bank Board, the Federal Savings  
7 and Loan Insurance Corporation” and inserting “Housing  
8 Finance Agency”.

9 **SEC. 363. FEDERAL CREDIT UNION ACT.**

10 The Federal Credit Union Act (12 U.S.C. 1781 et  
11 seq.) is amended—

12 (1) in section 107(8) (12 U.S.C. 1757(8)), by  
13 striking “or the Federal Savings and Loan Insur-  
14 ance Corporation”;

15 (2) in section 205 (12 U.S.C. 1785)—

16 (A) in subsection (b)(2)(G)(i), by striking  
17 “the Office of Thrift Supervision and”;

18 (B) in subsection (i)(1), by striking “or the  
19 Federal Savings and Loan Insurance Corpora-  
20 tion”;

21 (3) in section 206(g)(7) (12 U.S.C.  
22 1786(g)(7))—

23 (A) in subparagraph (A)—

24 (i) in clause (ii), by striking “(b)(8)”  
25 and inserting “(b)(9)”;

- 1 (ii) in clause (v)—
- 2 (I) by striking “depository” and
- 3 inserting “financial”; and
- 4 (II) by adding “and” at the end;
- 5 (iii) in clause (vi)—
- 6 (I) by striking “Board” and in-
- 7 serting “Agency”; and
- 8 (II) by striking “; and” and in-
- 9 serting a period; and
- 10 (iv) by striking clause (vii); and
- 11 (B) in subparagraph (D)—
- 12 (i) in clause (iii), by adding “and” at
- 13 the end;
- 14 (ii) in clause (iv)—
- 15 (I) by striking “Board” and in-
- 16 serting “Agency”; and
- 17 (II) by striking “and” at the end;
- 18 and
- 19 (iii) by striking clause (v).

20 **SEC. 364. FEDERAL DEPOSIT INSURANCE ACT.**

21 The Federal Deposit Insurance Act (12 U.S.C. 1811

22 et seq.) is amended—

- 23 (1) in section 3 (12 U.S.C. 1813)—

1 (A) in subsection (b)(1)(C), by striking  
2 “Director of the Office of Thrift Supervision”  
3 and inserting “Comptroller of the Currency”;

4 (B) in subsection (l)(5), in the matter pre-  
5 ceding subparagraph (A), by striking “Director  
6 of the Office of Thrift Supervision,”; and

7 (C) in subsection (z), by striking “the Di-  
8 rector of the Office of Thrift Supervision,”;  
9 (2) in section 7 (12 U.S.C. 1817)—

10 (A) in subsection (a)—

11 (i) in paragraph (2)—

12 (I) in subparagraph (A)—

13 (aa) in the first sentence, by  
14 striking “the Director of the Of-  
15 fice of Thrift Supervision,”;

16 (bb) in the second sen-  
17 tence—

18 (AA) by striking “the  
19 Director of the Office of  
20 Thrift Supervision,” and in-  
21 serting “to”; and

22 (BB) by inserting “to”  
23 before “any Federal home”;  
24 and

1                   (cc) by striking “Finance  
2                   Board” each place that term ap-  
3                   pears and inserting “Finance  
4                   Agency”; and

5                   (II) in subparagraph (B), by  
6                   striking “the Comptroller of the Cur-  
7                   rency, the Board of Governors of the  
8                   Federal Reserve System, and the Di-  
9                   rector of the Office of Thrift Super-  
10                  vision,” and inserting “the Comp-  
11                  troller of the Currency and the Board  
12                  of Governors of the Federal Reserve  
13                  System,”;

14                  (ii) in paragraph (3), in the first sen-  
15                  tence, by striking “Comptroller of the Cur-  
16                  rency, the Chairman of the Board of Gov-  
17                  ernors of the Federal Reserve System, and  
18                  the Director of the Office of Thrift Super-  
19                  vision.” and inserting “Comptroller of the  
20                  Currency, and the Chairman of the Board  
21                  of Governors of the Federal Reserve Sys-  
22                  tem.”;

23                  (iii) in paragraph (6), by striking  
24                  “section 232(a)(3)(C)” and inserting “sec-  
25                  tion 232(a)(3)(D)”;

1 (iv) in paragraph (7), by striking “,  
2 the Director of the Office of Thrift Super-  
3 vision,”; and

4 (B) in subsection (n)—

5 (i) in the heading, by striking “DI-  
6 RECTOR OF THE OFFICE OF THRIFT SU-  
7 PERVISION” and inserting “COMPTROLLER  
8 OF THE CURRENCY”;

9 (ii) in the first sentence—

10 (I) by striking “the Director of  
11 the Office of Thrift Supervision” and  
12 inserting “the Comptroller of the Cur-  
13 rency”; and

14 (II) by inserting “Federal” be-  
15 fore “savings associations”;

16 (iii) in the third sentence, by striking  
17 “, the Financing Corporation, and the Res-  
18 olution Funding Corporation”; and

19 (iv) by striking “the Director” each  
20 place that term appears and inserting “the  
21 Comptroller”;

22 (3) in section 8 (12 U.S.C. 1818)—

23 (A) in subsection (a)(8)(B)(ii), in the last  
24 sentence, by striking “Director of the Office of  
25 Thrift Supervision” each place that term ap-

1           pears and inserting “Comptroller of the Cur-  
2           rency”;

3           (B) in subsection (e)(7)—

4           (i) in subparagraph (A)—

5           (I) in clause (v), by inserting  
6           “and” after the semicolon;

7           (II) in clause (vi)—

8           (aa) by striking “Board”  
9           and inserting “Agency”; and

10          (bb) by striking “; and” and  
11          inserting a period; and

12          (III) by striking clause (vii); and

13          (ii) in subparagraph (D)—

14          (I) in clause (iii), by inserting  
15          “and” after the semicolon;

16          (II) in clause (iv)—

17          (aa) by striking “Board”  
18          and inserting “Agency”; and

19          (bb) by striking “; and” and  
20          inserting a period; and

21          (III) by striking clause (v);

22          (C) in subsection (j)—

23          (i) in paragraph (3), by inserting “or”  
24          after the semicolon;

1 (ii) in paragraph (4), by striking “;  
2 or” and inserting a period; and

3 (iii) by striking paragraph (5);

4 (D) in subsection (o), by striking “Director  
5 of the Office of Thrift Supervision” and insert-  
6 ing “Comptroller of the Currency”; and

7 (E) in subsection (w)(3)(A), by striking  
8 “Office of Thrift Supervision”;

9 (4) in section 10 (12 U.S.C. 1820)—

10 (A) in subsection (d)(5), by striking “or  
11 the Resolution Trust Corporation” each place  
12 that term appears; and

13 (B) in subsection (k)(5)(B)—

14 (i) in clause (ii), by inserting “and”  
15 after the semicolon;

16 (ii) in clause (iii), by striking “; and”  
17 and inserting a period; and

18 (iii) by striking clause (iv);

19 (5) in section 11 (12 U.S.C. 1821)—

20 (A) in subsection (c)—

21 (i) in paragraph (2)(A)(ii), by striking  
22 “(other than section 21A of the Federal  
23 Home Loan Bank Act)”;

24 (ii) in paragraph (4), by striking “Ex-  
25 cept as otherwise provided in section 21A

1 of the Federal Home Loan Bank Act and  
2 notwithstanding” and inserting “Notwith-  
3 standing”;

4 (iii) in paragraph (6)—

5 (I) in the heading, by striking  
6 “DIRECTOR OF THE OFFICE OF  
7 THRIFT SUPERVISION” and inserting  
8 “COMPTROLLER OF THE CURRENCY”;

9 (II) in subparagraph (A)—

10 (aa) by striking “or the Res-  
11 olution Trust Corporation”; and

12 (bb) by striking “Director of  
13 the Office of Thrift Supervision”  
14 and inserting “Comptroller of the  
15 Currency”; and

16 (III) in subparagraph (B)—

17 (aa) by striking “Director of  
18 the Office of Thrift Supervision”  
19 and inserting “Comptroller of the  
20 Currency”; and

21 (bb) by striking “affairs—”  
22 and all that follows through the  
23 period at the end and inserting  
24 “affairs.”; and



1 (iv) in paragraph (12)(A), by striking  
2 “or the Resolution Trust Corporation”;

3 (B) in subsection (d)—

4 (i) in paragraph (17)(A), by striking  
5 “, or the Director of the Office of Thrift  
6 Supervision”; and

7 (ii) in paragraph (18)(B), by striking  
8 “or the Director of the Office of Thrift Su-  
9 pervision”;

10 (C) in subsection (m)—

11 (i) in paragraph (9), by striking “or  
12 the Director of the Office of Thrift Super-  
13 vision, as appropriate”;

14 (ii) in paragraph (16), by striking “or  
15 the Director of the Office of Thrift Super-  
16 vision, as appropriate” each place that  
17 term appears; and

18 (iii) in paragraph (18), by striking  
19 “or the Director of the Office of Thrift Su-  
20 pervision, as appropriate” each place that  
21 term appears;

22 (D) in subsection (n)—

23 (i) in paragraph (1)(A)—

24 (I) by striking “, or the Director  
25 of the Office of Thrift Supervision,

1 with respect to” and inserting “or”;

2 and

3 (II) by striking “applicable,,”

4 and inserting “applicable,”;

5 (ii) in paragraph (2)(A), by striking

6 “or the Director of the Office of Thrift Su-

7 pervision”;

8 (iii) in paragraph (4)(D), by striking

9 “and the Director of the Office of Thrift

10 Supervision, as appropriate,”;

11 (iv) in paragraph (4)(G), by striking

12 “and the Director of the Office of Thrift

13 Supervision, as appropriate,”; and

14 (v) in paragraph (12)(B), by striking

15 “or the Director of the Office of Thrift Su-

16 pervision, as appropriate,” each place that

17 term appears;

18 (E) in subsection (p)—

19 (i) in paragraph (2)(B), by striking

20 “the Corporation, the FSLIC Resolution

21 Fund, or the Resolution Trust Corpora-

22 tion,” and inserting “or the Corporation,”;

23 and

- 1 (ii) in paragraph (3)(B), by striking  
2 “, the FSLIC Resolution Fund, the Reso-  
3 lution Trust Corporation,”; and  
4 (F) in subsection (r), by striking “and the  
5 Resolution Trust Corporation”;
- 6 (6) in section 13(k)(1)(A)(iv) (12 U.S.C.  
7 1823(k)(1)(A)(iv)), by striking “Director of the Of-  
8 fice of Thrift Supervision” and inserting “Comp-  
9 troller of the Currency”;
- 10 (7) in section 18 (12 U.S.C. 1828)—
- 11 (A) in subsection (c)(2)—
- 12 (i) in subparagraph (A), by inserting  
13 “or a Federal savings association” before  
14 the semicolon;
- 15 (ii) in subparagraph (B), by adding  
16 “and” at the end;
- 17 (iii) in subparagraph (C), by striking  
18 “(except” and all that follows through “;  
19 and” and inserting “or a State savings as-  
20 sociation.”; and
- 21 (iv) by striking subparagraph (D);
- 22 (B) in subsection (g), by striking “and the  
23 Director of the Office of Thrift Supervision” and  
24 inserting “the Comptroller of the Currency”;

1                   (C) in subsection (i)(2)(C), by striking  
2                   “Director of the Office of Thrift Supervision”  
3                   and inserting “Corporation”; and

4                   (D) in subsection (m)—

5                   (i) in paragraph (1)—

6                   (I) in subparagraph (A), by strik-  
7                   ing “and the Director of the Office of  
8                   Thrift Supervision” and inserting “or  
9                   the Comptroller of the Currency, as  
10                  appropriate,”; and

11                  (II) in subparagraph (B), by  
12                  striking “and orders of the Director  
13                  of the Office of Thrift Supervision”  
14                  and inserting “of the Comptroller of  
15                  the Currency and orders of the Cor-  
16                  poration and the Comptroller of the  
17                  Currency”;

18                  (ii) in paragraph (2)—

19                  (I) in subparagraph (A), by strik-  
20                  ing “Director of the Office of Thrift  
21                  Supervision” and inserting “Comp-  
22                  troller of the Currency, as appro-  
23                  priate,”; and

24                  (II) in subparagraph (B)—

1 (aa) in the matter before  
2 clause (i), by striking “Director  
3 of the Office of Thrift Super-  
4 vision” and inserting “Corpora-  
5 tion or the Comptroller of the  
6 Currency, as appropriate,”; and

7 (bb) in the matter following  
8 clause (ii)—

9 (AA) in the first sen-  
10 tence, by striking “Director  
11 of the Office of Thrift Su-  
12 pervision” and inserting  
13 “Office of the Comptroller of  
14 the Currency, as appro-  
15 priate,”; and

16 (BB) by striking the  
17 second sentence and insert-  
18 ing the following: “The Cor-  
19 poration or the Comptroller  
20 of the Currency, as appro-  
21 priate, may take any other  
22 corrective measures with re-  
23 spect to the subsidiary, in-  
24 cluding the authority to re-  
25 quire the subsidiary to ter-

1                   minate the activities or oper-  
2                   ations posing such risks, as  
3                   the Corporation or the  
4                   Comptroller of the Currency,  
5                   respectively, may deem ap-  
6                   propriate.”; and

7                   (iii) in paragraph (3)—

8                   (I) in subparagraph (A), in the  
9                   second sentence—

10                   (aa) by inserting “, in the  
11                   case of a Federal savings associa-  
12                   tion,” before “consult with”; and

13                   (bb) by striking “Director of  
14                   the Office of Thrift Supervision”  
15                   and inserting “Comptroller of the  
16                   Currency”; and

17                   (II) in subparagraph (B)—

18                   (aa) in the subparagraph  
19                   heading, by striking “DIRECTOR”  
20                   and inserting “COMPTROLLER OF  
21                   THE CURRENCY”;

22                   (bb) by striking “Office of  
23                   Thrift Supervision” and inserting  
24                   “Comptroller of the Currency”;  
25                   and

1 (cc) by inserting “as to Fed-  
2 eral savings associations” after  
3 “compliance”;

4 (8) in section 19(e) (12 U.S.C. 1829(e))—

5 (A) in paragraph (1), by striking “Director  
6 of the Office of Thrift Supervision” and insert-  
7 ing “Board of Governors of the Federal Reserve  
8 System”; and

9 (B) in paragraph (2), by striking “Director  
10 of the Office of Thrift Supervision” and insert-  
11 ing “Board of Governors of the Federal Reserve  
12 System”; and

13 (9) in section 28 (12 U.S.C. 1831e)—

14 (A) in subsection (e)—

15 (i) in paragraph (2)—

16 (I) in subparagraph (A)(ii), by  
17 striking “Director of the Office of  
18 Thrift Supervision” and inserting  
19 “Comptroller of the Currency or the  
20 Corporation, as appropriate”;

21 (II) in subparagraph (C), by  
22 striking “Director of the Office of  
23 Thrift Supervision” and inserting  
24 “Comptroller of the Currency or the  
25 Corporation, as appropriate,”; and

1 (III) in subparagraph (F), by  
2 striking “Director of the Office of  
3 Thrift Supervision” and inserting  
4 “Comptroller of the Currency or the  
5 Corporation, as appropriate”; and  
6 (ii) in paragraph (3)—

7 (I) in subparagraph (A), by strik-  
8 ing “Director of the Office of Thrift  
9 Supervision” and inserting “Comp-  
10 troller of the Currency or the Cor-  
11 poration, as appropriate”; and

12 (II) in subparagraph (B), by  
13 striking “Director of the Office of  
14 Thrift Supervision” and inserting  
15 “Comptroller of the Currency or the  
16 Corporation, as appropriate,”; and

17 (B) in subsection (h)(2), by striking “Di-  
18 rector of the Office of Thrift Supervision” and  
19 inserting “Comptroller of the Currency, of the  
20 Corporation,”.

21 **SEC. 365. FEDERAL HOME LOAN BANK ACT.**

22 (a) REPEAL OF SECTION 18(c).—Effective 90 days  
23 after the transfer date, section 18(c) of the Federal Home  
24 Loan Bank Act (12 U.S.C. 1438(c)) is repealed.



1 (b) REPEAL OF SECTION 21A.—Section 21A of the  
2 Federal Home Loan Bank Act (12 U.S.C. 1441a) is re-  
3 pealed.

4 **SEC. 366. FEDERAL HOUSING ENTERPRISES FINANCIAL**  
5 **SAFETY AND SOUNDNESS ACT OF 1992.**

6 The Federal Housing Enterprises Financial Safety  
7 and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is  
8 amended—

9 (1) in section 1315(b) (12 U.S.C. 4515(b)), by  
10 striking “the Federal Deposit Insurance Corpora-  
11 tion, and the Office of Thrift Supervision.” and in-  
12 serting “and the Federal Deposit Insurance Cor-  
13 poration.”; and

14 (2) in section 1317(e) (12 U.S.C. 4517(e)), by  
15 striking “the Federal Deposit Insurance Corpora-  
16 tion, or the Director of the Office of Thrift Super-  
17 vision” and inserting “or the Federal Deposit Insur-  
18 ance Corporation”.

19 **SEC. 367. FEDERAL RESERVE ACT.**

20 The Federal Reserve Act (12 U.S.C. 221 et seq.) is  
21 amended—

22 (1) in section 11(a)(2) (12 U.S.C. 248(a)(2))—  
23 (A) by inserting “State savings associa-  
24 tions that are insured depository institutions

1 (as defined in section 3 of the Federal Deposit  
2 Insurance Act),” after “case of insured”;

3 (B) by striking “Director of the Office of  
4 Thrift Supervision” and inserting “Comptroller  
5 of the Currency”;

6 (C) by inserting “Federal” before “savings  
7 association which”; and

8 (D) by striking “savings and loan associa-  
9 tion” and inserting “savings association”; and  
10 (2) in section 19(b) (12 U.S.C. 461(b))—

11 (A) in paragraph (1)(F), by striking “Di-  
12 rector of the Office of Thrift Supervision” and  
13 inserting “Comptroller of the Currency”; and

14 (B) in paragraph (4)(B), by striking “Di-  
15 rector of the Office of Thrift Supervision” and  
16 inserting “Comptroller of the Currency”.

17 **SEC. 368. FINANCIAL INSTITUTIONS REFORM, RECOVERY,**  
18 **AND ENFORCEMENT ACT OF 1989.**

19 The Financial Institutions Reform, Recovery, and  
20 Enforcement Act of 1989 is amended—

21 (1) in section 203 (12 U.S.C. 1812 note), by  
22 striking subsection (b);

23 (2) in section 302(1) (12 U.S.C. 1467a note),  
24 by striking “Director of the Office of Thrift Super-  
25 vision” and inserting “Comptroller of the Currency”;

1           (3) in section 305(12 U.S.C. 1464 note), by  
2 striking subsection (b);

3           (4) in section 308(a) (12 U.S.C. 1463 note), by  
4 striking “Director of the Office of Thrift Super-  
5 vision” and inserting “Comptroller of the Currency”;

6           (5) in section 402 (12 U.S.C. 1437 note)—

7           (A) in subsection (a), by striking “Director  
8 of the Office of Thrift Supervision” and insert-  
9 ing “Comptroller of the Currency”;

10           (B) by striking subsection (b);

11           (C) in subsection (e)—

12           (i) in paragraph (1), by striking “Of-  
13 fice of Thrift Supervision” and inserting  
14 “Comptroller of the Currency”; and

15           (ii) in each of paragraphs (2), (3),  
16 and (4), by striking “Director of the Office  
17 of Thrift Supervision” each place that  
18 term appears and inserting “Comptroller  
19 of the Currency”; and

20           (D) by striking “Federal Housing Finance  
21 Board” each place that term appears and in-  
22 serting “Federal Housing Finance Agency”;

23           (6) in section 1103(a) (12 U.S.C. 3332(a)), by  
24 striking “and the Resolution Trust Corporation”;

25           (7) in section 1205(b) (12 U.S.C. 1818 note)—

- 1 (A) in paragraph (1)—
- 2 (i) by striking subparagraph (B); and
- 3 (ii) by redesignating subparagraphs
- 4 (C) through (F) as subparagraphs (B)
- 5 through (E), respectively; and
- 6 (B) in paragraph (2), by striking “para-
- 7 graph (1)(F)” and inserting “paragraph
- 8 (1)(E)”;
- 9 (8) in section 1206 (12 U.S.C. 1833b)—
- 10 (A) by striking “Board, the Oversight
- 11 Board of the Resolution Trust Corporation”
- 12 and inserting “Agency, and”; and
- 13 (B) by striking “, and the Office of Thrift
- 14 Supervision”;
- 15 (9) in section 1216 (12 U.S.C. 1833e)—
- 16 (A) in subsection (a)—
- 17 (i) in paragraph (3), by adding “and”
- 18 at the end;
- 19 (ii) in paragraph (4), by striking the
- 20 semicolon at the end and inserting a pe-
- 21 riod;
- 22 (iii) by striking paragraphs (2), (5),
- 23 and (6); and

1 (iv) by redesignating paragraphs (3)  
2 and (4), as paragraphs (2) and (3), respec-  
3 tively;

4 (B) in subsection (c)—

5 (i) by striking “the Director of the  
6 Office of Thrift Supervision,” and insert-  
7 ing “and”; and

8 (ii) by striking “the Thrift Depositor  
9 Protection Oversight Board of the Resolu-  
10 tion Trust Corporation, and the Resolution  
11 Trust Corporation”; and

12 (C) in subsection (d)—

13 (i) by striking paragraphs (3), (5),  
14 and (6); and

15 (ii) by redesignating paragraphs (4),  
16 (7), and (8) as paragraphs (3), (4), and  
17 (5), respectively.

18 **SEC. 369. FLOOD DISASTER PROTECTION ACT OF 1973.**

19 Section 3(a)(5) of the Flood Disaster Protection Act  
20 of 1973 (42 U.S.C. 4003(a)(5)) is amended by striking  
21 “, the Office of Thrift Supervision”.

22 **SEC. 370. HOME OWNERS’ LOAN ACT.**

23 The Home Owners’ Loan Act (12 U.S.C. 1461 et  
24 seq.) is amended—

1           (1) in section 1 (12 U.S.C. 1461), by striking  
2           the table of contents;

3           (2) in section 2 (12 U.S.C. 1462), as amended  
4           by this Act—

5                   (A) by striking paragraphs (1) and (3);

6                   (B) by redesignating paragraph (2) as  
7                   paragraph (1);

8                   (C) by redesignating paragraphs (4)  
9                   through (9) as paragraphs (2) through (7), re-  
10                  spectively; and

11                  (D) by adding at the end the following:

12                  “(8) BOARD.—The term ‘Board’, other than in  
13                  the context of the Board of Directors of the Cor-  
14                  poration, means the Board of Governors of the Fed-  
15                  eral Reserve System.

16                  “(9) COMPTROLLER.—The term ‘Comptroller’  
17                  means the Comptroller of the Currency.”;

18           (3) in section 3 (12 U.S.C. 1462a)—

19                   (A) by striking the section heading and in-  
20                   serting the following:

21   **“SEC. 3. ADMINISTRATIVE PROVISIONS.”;**

22                   (B) by striking subsections (a), (b), (c),  
23                   (d), (h), (i), and (j);

1 (C) by redesignating subsections (e), (f),  
2 and (g), as subsections (a) through (c), respec-  
3 tively;

4 (D) in subsection (a), as so redesignated,  
5 in the matter preceding paragraph (1), by strik-  
6 ing “The Director” and inserting “In accord-  
7 ance with subtitle A of title III of the Restoring  
8 American Financial Stability Act of 2010, the  
9 appropriate Federal banking agency”;

10 (E) in subsection (b), as so redesignated,  
11 by striking “or any other provision of law ad-  
12 ministered by the Director”; and

13 (F) in subsection (c), as so redesignated—

14 (i) by striking “Director” and insert-  
15 ing “Comptroller and the Corporation”;

16 and

17 (ii) by striking “include—” and all  
18 that follows through “(2) a description”  
19 and inserting the following: “include a de-  
20 scription”;

21 (4) in section 4 (12 U.S.C. 1463)—

22 (A) in subsection (a)—

23 (i) in the subsection heading, by strik-  
24 ing “FEDERAL”;

1 (ii) by striking paragraphs (1) and (2)  
2 and inserting the following:

3 “(1) EXAMINATION AND SAFE AND SOUND OP-  
4 ERATION.—

5 “(A) FEDERAL SAVINGS ASSOCIATIONS.—  
6 The Comptroller shall provide for the examina-  
7 tion and safe and sound operation of Federal  
8 savings associations.

9 “(B) STATE SAVINGS ASSOCIATIONS.—The  
10 Corporation shall provide for the examination  
11 and safe and sound operation of State savings  
12 associations.

13 “(2) REGULATIONS FOR SAVINGS ASSOCIA-  
14 TIONS.—The Comptroller may prescribe regulations  
15 with respect to savings associations, as the Comp-  
16 troller determines to be appropriate to carry out the  
17 purposes of this Act.”; and

18 (iii) in paragraph (3), by striking “Di-  
19 rector” each place that term appears and  
20 inserting “Comptroller and the Corpora-  
21 tion”;

22 (B) in subsection (b)—

23 (i) in paragraph (2)—

24 (I) in subparagraph (A), by add-  
25 ing “and” at the end;



1 (II) in subparagraph (B), by  
2 striking “; and” and inserting a pe-  
3 riod; and

4 (III) by striking subparagraph  
5 (C); and

6 (ii) by striking “Director” each place  
7 that term appears and inserting “Comp-  
8 troller”;

9 (C) in subsection (c)—

10 (i) by striking “All regulations and  
11 policies of the Director” and inserting  
12 “The regulations of the Comptroller and  
13 the policies of the Comptroller and the  
14 Corporation”; and

15 (ii) by striking “of the Currency”;

16 (D) in subsection (e)(5), by striking “Di-  
17 rector” and inserting “Comptroller”;

18 (E) in subsection (f), by striking “Direc-  
19 tor” each place that term appears and inserting  
20 “appropriate Federal banking agency”; and

21 (F) in subsection (h), by striking “Direc-  
22 tor” each place that term appears and inserting  
23 “appropriate Federal banking agency”;

24 (5) in section 5 (12 U.S.C. 1464)—

25 (A) in subsection (c)—

1 (i) in paragraph (5)—

2 (I) in subparagraph (A), by strik-  
3 ing “Director” and inserting “appro-  
4 priate Federal banking agency”; and

5 (II) in subparagraph (B)—

6 (aa) by striking “The Direc-  
7 tor” and inserting “The appro-  
8 priate Federal banking agency”;  
9 and

10 (bb) by striking “the Direc-  
11 tor” and inserting “the appro-  
12 priate Federal banking agency”;  
13 and

14 (ii) except as provided in clause (i), by  
15 striking “Director” each place that term  
16 appears and inserting “Comptroller”;

17 (B) in subsection (d)—

18 (i) in paragraph (1)—

19 (I) in subparagraph (A), by strik-  
20 ing “Director’s own name and  
21 through the Director’s own attorneys”  
22 and inserting “the name of the appro-  
23 priate Federal banking agency and  
24 through the attorneys of the appro-  
25 priate Federal banking agency”; and

1 (II) in subparagraph (B)(v)—

2 (aa) by striking “subpenas”

3 and inserting “subpoenas”; and

4 (bb) by striking “subpena”

5 and inserting “subpoena”;

6 (ii) in paragraph (2)—

7 (I) in subparagraph (A)—

8 (aa) by striking “Director of

9 the Office of Thrift Supervision”

10 and inserting “appropriate Fed-

11 eral banking agency”; and

12 (bb) by striking “Director

13 determines, in the Director’s dis-

14 cretion” and inserting “appro-

15 priate Federal banking agency

16 determines, in the discretion of

17 the appropriate Federal banking

18 agency”;

19 (II) in subparagraph (E)(ii), in

20 the first sentence, by striking “Direc-

21 tor, at the Director’s discretion” and

22 inserting “Comptroller at the discre-

23 tion of the Comptroller”; and

24 (III) except as provided in sub-

25 clauses (I) and (II), in subparagraphs

1 (B), (C), (D), and (E), by striking  
2 “Director” each place that term ap-  
3 pears and inserting “Comptroller”;

4 (iii) in paragraph (3), in subpara-  
5 graph (B)—

6 (I) in the subparagraph heading,  
7 by striking “OR RTC”; and

8 (II) by striking “Corporation or  
9 the Resolution Trust”;

10 (iv) in paragraph (6)—

11 (I) in subparagraph (A), by strik-  
12 ing “Director” and inserting “Comp-  
13 troller”; and

14 (II) in subparagraphs (B)(i) and  
15 (C), by striking “Director” each place  
16 that term appears and inserting “ap-  
17 propriate Federal banking agency”;

18 (v) in paragraph (7)—

19 (I) in subparagraph (C), by strik-  
20 ing “Director” and inserting “the  
21 Comptroller or the Corporation, as ap-  
22 propriate,”; and

23 (II) by striking subparagraph (E)  
24 and inserting the following:

1           “(E) ADMINISTRATION BY THE COMP-  
2 TROLLER AND THE CORPORATION.—The Comp-  
3 troller may issue such regulations, and the ap-  
4 propriate Federal banking agency may issue  
5 such orders, including those issued pursuant to  
6 section 8 of the Federal Deposit Insurance Act,  
7 as may be necessary to administer and carry  
8 out this paragraph and to prevent evasion of  
9 this paragraph.”;

10           (vi) in each of paragraphs (1), (3),  
11 and (7), by striking “Director” each place  
12 that term appears and inserting “appro-  
13 priate Federal banking agency”; and

14           (vii) except as provided in clauses (i)  
15 through (vi), by striking “Director” each  
16 place that term appears and inserting  
17 “Comptroller”;

18           (C) in subsection (i)—

19           (i) in paragraph (2), in the heading,  
20 by striking “DIRECTOR” and inserting  
21 “COMPTROLLER”; and

22           (ii) in paragraph (5)(A), by striking  
23 “of the Currency”;

1 (D) in subsection (o)(2)(B), by striking  
2 “Director’s determination” and inserting “de-  
3 termination of the Comptroller”;

4 (E) in subsection (q)—

5 (i) in paragraph (6), by striking “of  
6 Governors of the Federal Reserve System”;

7 and

8 (ii) by striking “Director” each place  
9 that term appears and inserting “Board”;

10 (F) in subsection (s)—

11 (i) in paragraph (3), by striking “Di-  
12 rector’s discretion, the Director” and in-  
13 serting “discretion of the appropriate Fed-  
14 eral banking agency, the appropriate Fed-  
15 eral banking agency,”;

16 (ii) in paragraph (4), by striking “Di-  
17 rector” each place that term appears and  
18 inserting “appropriate Federal banking  
19 agency”; and

20 (iii) in paragraph (5), by striking “Di-  
21 rector’s approval” and inserting “approval  
22 of the appropriate Federal banking agen-  
23 cy”;

24 (G) in subparagraph (t)—

1 (i) in paragraph (1), by striking sub-  
2 paragraph (D);

3 (ii) by striking paragraph (3) and in-  
4 sserting the following:

5 “(3) [Repealed].”;

6 (iii) in paragraph (5)—

7 (I) in subparagraph (B), by  
8 striking “Corporation, in its sole dis-  
9 cretion” and inserting “appropriate  
10 Federal banking agency, in the sole  
11 discretion of the appropriate Federal  
12 banking agency”; and

13 (II) by striking subparagraph  
14 (D);

15 (iv) in paragraph (6)—

16 (I) by striking subparagraph (A)  
17 and inserting the following:

18 “(A) [Reserved].”;

19 (II) in subparagraph (B), by  
20 striking “Director” each place that  
21 term appears and inserting “appro-  
22 priate Federal banking agency”;

23 (III) in subparagraph (C)—

24 (aa) in clause (i), by striking  
25 “Director’s prior approval” and

1 inserting “prior approval of the  
2 appropriate Federal banking  
3 agency”;

4 (bb) in clause (ii), by strik-  
5 ing “Director’s discretion” and  
6 inserting “discretion of the ap-  
7 propriate Federal banking agen-  
8 cy”; and

9 (cc) by striking “Director”  
10 each place that term appears and  
11 inserting “appropriate Federal  
12 banking agency”;

13 (IV) in subparagraph (E), by  
14 striking “Director shall” and inserting  
15 “appropriate Federal banking agency  
16 may”; and

17 (V) in subparagraph (F), by  
18 striking “Director” and all that fol-  
19 lows through the end of the subpara-  
20 graph and inserting “appropriate Fed-  
21 eral banking agency under this Act or  
22 any other provision of law.”;

23 (v) in paragraph (7), by striking “Di-  
24 rector” each place that term appears and



1 inserting “appropriate Federal banking  
2 agency”;

3 (vi) by striking paragraph (8) and in-  
4 sserting the following:

5 “(8) [Repealed].”;

6 (vii) in paragraph (9)—

7 (I) in subparagraph (A), by strik-  
8 ing “Director” and inserting “Comp-  
9 troller”;

10 (II) in subparagraph (C), by  
11 striking “of the Currency”; and

12 (III) by striking subparagraph  
13 (B) and redesignating subparagraphs  
14 (C) and (D) as subparagraphs (B)  
15 and (C), respectively; and

16 (viii) except as provided in clauses (i)  
17 through (vii), by striking “Director” each  
18 place that term appears and inserting “ap-  
19 propriate Federal banking agency”;

20 (H) in subsection (u), by striking “Direc-  
21 tor” each place that term appears and inserting  
22 “appropriate Federal banking agency”;

23 (I) in subsection (v)—

24 (i) in paragraph (2), by striking “Di-  
25 rector’s determinations” and inserting “de-

1 terminations of the appropriate Federal  
2 banking agency”; and

3 (ii) by striking “Director” each place  
4 that term appears and inserting “appro-  
5 priate Federal banking agency”;

6 (J) in subsection (w)(1)—

7 (i) in subparagraph (A)(II), by strik-  
8 ing “Director’s intention” and inserting  
9 “intention of the Comptroller”; and

10 (ii) in subparagraph (B), by striking  
11 “Director’s intention” and inserting “in-  
12 tention of the Comptroller”; and

13 (K) except as provided in subparagraphs  
14 (A) through (J), by striking “Director” each  
15 place that term appears and inserting “Comp-  
16 troller”;

17 (6) in section 8 (12 U.S.C. 1466a), by striking  
18 “Director” each place that term appears and insert-  
19 ing “Comptroller”;

20 (7) in section 9 (12 U.S.C. 1467)—

21 (A) in subsection (a), by striking “assessed  
22 by the Director” and all that follows through  
23 the end of the subsection and inserting the fol-  
24 lowing: “assessed by—

1           “(1) the Comptroller, against each such Federal  
2 savings association, as the Comptroller deems nec-  
3 essary or appropriate; and

4           “(2) the Corporation, against each such State  
5 savings association, as the Corporation deems nec-  
6 essary or appropriate.”;

7           (B) in subsection (e)—

8                 (i) by striking “Only the Director”  
9 and inserting “The Comptroller”; and

10                (ii) by striking “Director’s designee”  
11 and inserting “designee of the Comp-  
12 troller”;

13           (C) by striking subsection (f) and inserting  
14 the following:

15           “(f) [Reserved].”;

16           (D) in subsection (g)—

17                 (i) in paragraph (1), by striking “Di-  
18 rector” and inserting “appropriate Federal  
19 banking agency”; and

20                 (ii) in paragraph (2), by striking “Di-  
21 rector, or the Corporation, as the case may  
22 be,” and inserting “appropriate Federal  
23 banking agency for the savings associa-  
24 tion”;

1           (E) in subsection (i), by striking “Direc-  
2           tor” each place that term appears and inserting  
3           “appropriate Federal banking agency”;

4           (F) in subsection (j), by striking “Direc-  
5           tor’s sole discretion” and inserting “sole discre-  
6           tion of the appropriate Federal banking agen-  
7           cy”;

8           (G) in subsection (k), by striking “Director  
9           may assess against institutions for which the  
10          Director is the appropriate Federal banking  
11          agency, as defined in section 3 of the Federal  
12          Deposit Insurance Act,” and inserting “appro-  
13          priate Federal banking agency may assess  
14          against an institution”; and

15          (H) except as provided in subparagraphs  
16          (A) through (G), by striking “Director” each  
17          place that term appears and inserting “appro-  
18          priate Federal banking agency”;

19          (8) in section 10 (12 U.S.C. 1467a)—

20               (A) in subsection (a)(1), by striking “Di-  
21               rector” each place that term appears and in-  
22               serting “appropriate Federal banking agency”;

23               (B) in subsection (b)—

24                       (i) in paragraph (2), by striking “and  
25                       the regional office of the Director of the

1 district in which its principal office is lo-  
2 cated,”; and

3 (ii) in paragraph (6), by striking “Di-  
4 rector’s own motion or application” and in-  
5 serting “motion or application of the  
6 Board”;

7 (C) in subsection (c)—

8 (i) in paragraph (2)(F), by striking  
9 “of Governors of the Federal Reserve Sys-  
10 tem”;

11 (ii) in paragraph (4)(B), in the sub-  
12 paragraph heading, by striking “BY DIREC-  
13 TOR”;

14 (iii) in paragraph (6)(D), in the sub-  
15 paragraph heading, by striking “BY DIREC-  
16 TOR”; and

17 (iv) in paragraph (9)(E), by inserting  
18 “(in consultation with the appropriate Fed-  
19 eral banking agency)” after “including a  
20 determination”;

21 (D) in subsection (g)(5)(B), by striking  
22 “the Director’s discretion” and inserting “the  
23 discretion of the Board”;

1           (E) in subsection (l), by striking “Direc-  
2           tor” each place that term appears and inserting  
3           “appropriate Federal banking agency”;

4           (F) in subsection (m), by striking “Direc-  
5           tor” and inserting “appropriate Federal bank-  
6           ing agency”;

7           (G) in subsection (s)—

8                 (i) in paragraph (2)—

9                     (I) in subparagraph (B)(ii), by  
10                     striking “Director’s judgment” and  
11                     inserting “judgment of the appro-  
12                     priate Federal banking agency for the  
13                     savings association”; and

14                     (II) by striking “Director” each  
15                     place that term appears and inserting  
16                     “appropriate Federal banking agency  
17                     for the savings association”; and

18                     (ii) in paragraph (4), by striking “Di-  
19                     rector” and inserting “Comptroller”; and

20           (H) except as provided in subparagraphs  
21           (A) through (G), by striking “Director” each  
22           place that term appears and inserting “Board”;

23           (9) in section 11 (12 U.S.C. 1468), by striking  
24           “Director” each place that term appears and insert-  
25           ing “appropriate Federal banking agency”; and

1           (10) in section 12 (12 U.S.C. 1468a), by strik-  
2           ing “the Director” and inserting “a Federal banking  
3           agency”.

4   **SEC. 371. HOUSING ACT OF 1948.**

5           Section 502(c) of the Housing Act of 1948 (12  
6   U.S.C. 1701c(c)) is amended—

7           (1) in the matter preceding paragraph (1), by  
8           striking “and the Director of the Office of Thrift  
9           Supervision” and inserting “, the Comptroller of the  
10          Currency, and the Federal Deposit Insurance Cor-  
11          poration”; and

12          (2) in paragraph (3), by striking “Board” and  
13          inserting “Agency”.

14   **SEC. 372. HOUSING AND COMMUNITY DEVELOPMENT ACT**  
15                 **OF 1992.**

16          Section 543 of the Housing and Community Develop-  
17          ment Act of 1992 (Public Law 102–550; 106 Stat. 3798)  
18          is amended—

19           (1) in subsection (c)(1)—

20                 (A) by striking subparagraphs (D) through  
21                 (F); and

22                 (B) by redesignating subparagraphs (G)  
23                 and (H) as subparagraphs (D) and (E), respec-  
24                 tively; and

25           (2) in subsection (f)—

1 (A) in paragraph (2), by striking “the Of-  
2 fice of Thrift Supervision,” each place that  
3 term appears; and

4 (B) in paragraph (3)—

5 (i) in the matter preceding subpara-  
6 graph (A), by striking “the Office of Thrift  
7 Supervision,”; and

8 (ii) in subparagraph (D), by striking  
9 “Office of Thrift Supervision,” and insert-  
10 ing “Comptroller of the Currency,”.

11 **SEC. 373. HOUSING AND URBAN-RURAL RECOVERY ACT OF**  
12 **1983.**

13 Section 469 of the Housing and Urban-Rural Recov-  
14 ery Act of 1983 (12 U.S.C. 1701p–1) is amended in the  
15 first sentence, by striking “Federal Home Loan Bank  
16 Board” and inserting “Federal Housing Finance Agency”.

17 **SEC. 374. NATIONAL HOUSING ACT.**

18 Section 202(f) of the National Housing Act (12  
19 U.S.C. 1708(f)) is amended—

20 (1) by striking paragraph (5) and inserting the  
21 following:

22 “(5) if the mortgagee is a national bank, a sub-  
23 sidiary or affiliate of such bank, a Federal savings  
24 association or a subsidiary or affiliate of a savings  
25 association, the Comptroller of the Currency;”;



1           (2) in paragraph (6), by adding “and” at the  
2           end;

3           (3) in paragraph (7)—

4                 (A) by inserting “or State savings associa-  
5                 tion” after “State bank”; and

6                 (B) by striking “; and” and inserting a pe-  
7                 riod; and

8           (4) by striking paragraph (8).

9   **SEC. 375. NEIGHBORHOOD REINVESTMENT CORPORATION**

10                   **ACT.**

11           Section 606(c)(3) of the Neighborhood Reinvestment  
12   Corporation Act (42 U.S.C. 8105(c)(3)) is amended by  
13   striking “Federal Home Loan Bank Board” and inserting  
14   “Federal Housing Finance Agency”.

15   **SEC. 376. PUBLIC LAW 93-100.**

16           Section 5(d) of Public Law 93-100 (12 U.S.C.  
17   1470(a)) is amended—

18                 (1) in paragraph (1), by striking “Federal Sav-  
19                 ings and Loan Insurance Corporation with respect  
20                 to insured institutions, the Board of Governors of  
21                 the Federal Reserve System with respect to State  
22                 member insured banks, and the Federal Deposit In-  
23                 surance Corporation with respect to State non-  
24                 member insured banks” and inserting “appropriate  
25                 Federal banking agency, with respect to the institu-

1 tions subject to the jurisdiction of each such agen-  
2 cy,”; and

3 (2) in paragraph (2), by striking “supervisory”  
4 and inserting “banking”.

5 **SEC. 377. SECURITIES EXCHANGE ACT OF 1934.**

6 The Securities Exchange Act of 1934 (15 U.S.C. 78a  
7 et seq.) is amended—

8 (1) in section 3(a)(34) (15 U.S.C.  
9 78c(a)(34))—

10 (A) in subparagraph (A)—

11 (i) in clause (i), by striking “or a sub-  
12 sidiary or a department or division of any  
13 such bank” and inserting “a subsidiary or  
14 a department or division of any such bank,  
15 a Federal savings association (as defined  
16 in section 3(b)(2) of the Federal Deposit  
17 Insurance Act (12 U.S.C. 1813(b)(2))),  
18 the deposits of which are insured by the  
19 Federal Deposit Insurance Corporation, or  
20 a subsidiary or department or division of  
21 any such Federal savings association”;

22 (ii) in clause (ii), by striking “or a  
23 subsidiary or a department or division of  
24 such subsidiary” and inserting “a sub-  
25 sidiary or a department or division of such

1 subsidiary, or a savings and loan holding  
2 company”;

3 (iii) in clause (iii), by striking “or a  
4 subsidiary or department or division there-  
5 of;” and inserting “a subsidiary or depart-  
6 ment or division of any such bank, a State  
7 savings association (as defined in section  
8 3(b)(3) of the Federal Deposit Insurance  
9 Act (12 U.S.C. 1813(b)(3))), the deposits  
10 of which are insured by the Federal De-  
11 posit Insurance Corporation, or a sub-  
12 sidiary or a department or division of any  
13 such State savings association; and”;

14 (iv) by striking clause (iv); and

15 (v) by redesignating clause (v) as  
16 clause (iv);

17 (B) in subparagraph (B)—

18 (i) in clause (i), by striking “or a sub-  
19 sidiary of any such bank” and inserting “a  
20 subsidiary of any such bank, a Federal  
21 savings association (as defined in section  
22 3(b)(2) of the Federal Deposit Insurance  
23 Act (12 U.S.C. 1813(b)(2))), the deposits  
24 of which are insured by the Federal De-  
25 posit Insurance Corporation, or a sub-

1 subsidiary of any such Federal savings asso-  
2 ciation”;

3 (ii) in clause (ii), by striking “or a  
4 subsidiary of a bank holding company  
5 which is a bank other than a bank speci-  
6 fied in clause (i), (iii), or (iv) of this sub-  
7 paragraph” and inserting “a subsidiary of  
8 a bank holding company that is a bank  
9 other than a bank specified in clause (i) or  
10 (iii) of this subparagraph, or a savings and  
11 loan holding company”;

12 (iii) in clause (iii), by striking “or a  
13 subsidiary thereof;” and inserting “a sub-  
14 subsidiary of any such bank, a State savings  
15 association (as defined in section 3(b)(3) of  
16 the Federal Deposit Insurance Act (12  
17 U.S.C. 1813(b)(3))), the deposits of which  
18 are insured by the Federal Deposit Insur-  
19 ance Corporation, or a subsidiary of any  
20 such State savings association; and”;

21 (iv) by striking clause (iv); and

22 (v) by redesignating clause (v) as  
23 clause (iv);

24 (C) in subparagraph (C)—

1 (i) in clause (i), by striking “bank”  
2 and inserting “bank or a Federal savings  
3 association (as defined in section 3(b)(2) of  
4 the Federal Deposit Insurance Act (12  
5 U.S.C. 1813(b)(2))), the deposits of which  
6 are insured by the Federal Deposit Insur-  
7 ance Corporation”;

8 (ii) in clause (ii), by striking “or a  
9 subsidiary of a bank holding company  
10 which is a bank other than a bank speci-  
11 fied in clause (i), (iii), or (iv) of this sub-  
12 paragraph” and inserting “a subsidiary of  
13 a bank holding company that is a bank  
14 other than a bank specified in clause (i) or  
15 (iii) of this subparagraph, or a savings and  
16 loan holding company”;

17 (iii) in clause (iii), by striking “Sys-  
18 tem)” and inserting, “System) or a State  
19 savings association (as defined in section  
20 3(b)(3) of the Federal Deposit Insurance  
21 Act (12 U.S.C. 1813(b)(3))), the deposits  
22 of which are insured by the Federal De-  
23 posit Insurance Corporation; and”;

24 (iv) by striking clause (iv); and

1 (v) by redesignating clause (v) as  
2 clause (iv);

3 (D) in subparagraph (D)—

4 (i) in clause (i), by inserting after  
5 “bank” the following: “or a Federal sav-  
6 ings association (as defined in section  
7 3(b)(2) of the Federal Deposit Insurance  
8 Act (12 U.S.C. 1813(b)(2))), the deposits  
9 of which are insured by the Federal De-  
10 posit Insurance Corporation”;

11 (ii) in clause (ii), by adding “and” at  
12 the end;

13 (iii) by striking clause (iii);

14 (iv) by redesignating clause (iv) as  
15 clause (iii); and

16 (v) in clause (iii), as so redesignated,  
17 by inserting after “bank” the following:  
18 “or a State savings association (as defined  
19 in section 3(b)(3) of the Federal Deposit  
20 Insurance Act (12 U.S.C. 1813(b)(3))),  
21 the deposits of which are insured by the  
22 Federal Deposit Insurance Corporation”;

23 (E) in subparagraph (F)—

24 (i) in clause (i), by inserting after  
25 “bank” the following: “or a Federal sav-

1           ings association (as defined in section  
2           3(b)(2) of the Federal Deposit Insurance  
3           Act (12 U.S.C. 1813(b)(2))), the deposits  
4           of which are insured by the Federal De-  
5           posit Insurance Corporation”;

6                 (ii) by striking clause (ii);

7                 (iii) by redesignating clauses (iii), (iv),  
8           and (v) as clauses (ii), (iii), and (iv), re-  
9           spectively; and

10                (iv) in clause (iii), as so redesignated,  
11           by inserting before the semicolon the fol-  
12           lowing: “or a State savings association (as  
13           defined in section 3(b)(3) of the Federal  
14           Deposit Insurance Act (12 U.S.C.  
15           1813(b)(3))), the deposits of which are in-  
16           sured by the Federal Deposit Insurance  
17           Corporation”;

18           (F) in subparagraph (G)—

19                 (i) in clause (i), by inserting after  
20           “national bank” the following: “, a Federal  
21           savings association (as defined in section  
22           3(b)(2) of the Federal Deposit Insurance  
23           Act), the deposits of which are insured by  
24           the Federal Deposit Insurance Corpora-  
25           tion,”;

1 (ii) in clause (iii)—

2 (I) by inserting after “bank)” the  
3 following: “, a State savings associa-  
4 tion (as defined in section 3(b)(3) of  
5 the Federal Deposit Insurance Act),  
6 the deposits of which are insured by  
7 the Federal Deposit Insurance Cor-  
8 poration,”; and

9 (II) by adding “and” at the end;

10 (iii) by striking clause (iv); and

11 (iv) by redesignating clause (v) as  
12 clause (iv); and

13 (G) in the undesignated matter following  
14 subparagraph (H), by striking “, and the term  
15 ‘District of Columbia savings and loan associa-  
16 tion’ means any association subject to examina-  
17 tion and supervision by the Office of Thrift Su-  
18 pervision under section 8 of the Home Owners’  
19 Loan Act of 1933”;

20 (2) in section 12(i) (15 U.S.C. 78l(i))—

21 (A) in paragraph (1), by inserting after  
22 “national banks” the following: “and Federal  
23 savings associations, the accounts of which are  
24 insured by the Federal Deposit Insurance Cor-  
25 poration”;



1 (B) by striking “(3)” and all that follows  
2 through “vested in the Office of Thrift Super-  
3 vision” and inserting “and (3) with respect to  
4 all other insured banks and State savings asso-  
5 ciations, the accounts of which are insured by  
6 the Federal Deposit Insurance Corporation, are  
7 vested in the Federal Deposit Insurance Cor-  
8 poration”; and

9 (C) in the second sentence, by striking  
10 “the Federal Deposit Insurance Corporation,  
11 and the Office of Thrift Supervision” and in-  
12 serting “and the Federal Deposit Insurance  
13 Corporation”;

14 (3) in section 15C(g)(1) (15 U.S.C. 78o-  
15 5(g)(1)), by striking “the Director of the Office of  
16 Thrift Supervision, the Federal Savings and Loan  
17 Insurance Corporation,”; and

18 (4) in section 23(b)(1) (15 U.S.C. 78w(b)(1)),  
19 by striking “, other than the Office of Thrift Super-  
20 vision,”.

21 **SEC. 378. TITLE 18, UNITED STATES CODE.**

22 Title 18, United States Code, is amended—

23 (1) in section 212(e)(2)—

24 (A) by striking subparagraph (C); and

1 (B) by redesignating subparagraphs (D)  
2 through (H) as subparagraphs (C) through (G),  
3 respectively;

4 (2) in section 657, by striking “Office of Thrift  
5 Supervision, the Resolution Trust Corporation,”;

6 (3) in section 981(a)(1)(D)—

7 (A) by striking “Resolution Trust Corpora-  
8 tion,”; and

9 (B) by striking “or the Office of Thrift Su-  
10 pervision”;

11 (4) in section 982(a)(3)—

12 (A) by striking “Resolution Trust Corpora-  
13 tion,”; and

14 (B) by striking “or the Office of Thrift Su-  
15 pervision”;

16 (5) in section 1006—

17 (A) by striking “Office of Thrift Super-  
18 vision,”; and

19 (B) by striking “the Resolution Trust Cor-  
20 poration,”;

21 (6) in section 1014—

22 (A) by striking “the Office of Thrift Su-  
23 pervision”; and

24 (B) by striking “the Resolution Trust Cor-  
25 poration,”; and

1 (7) in section 1032(1)—

2 (A) by striking “the Resolution Trust Cor-  
3 poration,”; and

4 (B) by striking “or the Director of the Of-  
5 fice of Thrift Supervision”.

6 **SEC. 379. TITLE 31, UNITED STATES CODE.**

7 Title 31, United States Code, is amended—

8 (1) in section 321—

9 (A) in subsection (c)—

10 (i) in paragraph (1), by adding “and”  
11 at the end;

12 (ii) in paragraph (2), by striking “;  
13 and” and inserting a period; and

14 (iii) by striking paragraph (3); and

15 (B) by striking subsection (e); and

16 (2) in section 714(a), by striking “the Office of  
17 the Comptroller of the Currency, and the Office of  
18 Thrift Supervision.” and inserting “and the Office of  
19 the Comptroller of the Currency.”.

20 **TITLE IV—REGULATION OF AD-**  
21 **VISERS TO HEDGE FUNDS**  
22 **AND OTHERS**

23 **SEC. 401. SHORT TITLE.**

24 This title may be cited as the “Private Fund Invest-  
25 ment Advisers Registration Act of 2010”.

1 **SEC. 402. DEFINITIONS.**

2 (a) INVESTMENT ADVISERS ACT OF 1940 DEFINI-  
3 TIONS.—Section 202(a) of the Investment Advisers Act of  
4 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the  
5 end the following:

6 “(29) The term ‘private fund’ means an issuer  
7 that would be an investment company, as defined in  
8 section 3 of the Investment Company Act of 1940  
9 (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7)  
10 of that Act.

11 “(30) The term ‘foreign private adviser’ means  
12 any investment adviser who—

13 “(A) has no place of business in the  
14 United States;

15 “(B) has, in total, fewer than 15 clients  
16 and investors in the United States in private  
17 funds advised by the investment adviser;

18 “(C) has aggregate assets under manage-  
19 ment attributable to clients in the United  
20 States and investors in the United States in  
21 private funds advised by the investment adviser  
22 of less than \$25,000,000, or such higher  
23 amount as the Commission may, by rule, deem  
24 appropriate in accordance with the purposes of  
25 this title; and

26 “(D) neither—

1 “(i) holds itself out generally to the  
2 public in the United States as an invest-  
3 ment adviser; nor

4 “(ii) acts as—

5 “(I) an investment adviser to any  
6 investment company registered under  
7 the Investment Company Act of 1940;  
8 or

9 “(II) a company that has elected  
10 to be a business development company  
11 pursuant to section 54 of the Invest-  
12 ment Company Act of 1940 (15  
13 U.S.C. 80a–53), and has not with-  
14 drawn its election.”.

15 (b) OTHER DEFINITIONS.—As used in this title, the  
16 terms “investment adviser” and “private fund” have the  
17 same meanings as in section 202 of the Investment Advis-  
18 ers Act of 1940, as amended by this title.

19 **SEC. 403. ELIMINATION OF PRIVATE ADVISER EXEMPTION;  
20 LIMITED EXEMPTION FOR FOREIGN PRIVATE  
21 ADVISERS; LIMITED INTRASTATE EXEMP-  
22 TION.**

23 Section 203(b) of the Investment Advisers Act of  
24 1940 (15 U.S.C. 80b–3(b)) is amended—

1           (1) in paragraph (1), by inserting “, other than  
2           an investment adviser who acts as an investment ad-  
3           viser to any private fund,” before “all of whose”;

4           (2) by striking paragraph (3) and inserting the  
5           following:

6           “(3) any investment adviser that is a foreign  
7           private adviser;” and

8           (3) in paragraph (5), by striking “or” at the  
9           end;

10          (4) in paragraph (6), by striking the period at  
11          the end and inserting “; or”; and

12          (5) by adding at the end the following:

13          “(7) any investment adviser, other than any en-  
14          tity that has elected to be regulated or is regulated  
15          as a business development company pursuant to sec-  
16          tion 54 of the Investment Company Act of 1940 (15  
17          U.S.C. 80a-54), who solely advises—

18                 “(A) small business investment companies  
19                 that are licensees under the Small Business In-  
20                 vestment Act of 1958;

21                 “(B) entities that have received from the  
22                 Small Business Administration notice to pro-  
23                 ceed to qualify for a license as a small business  
24                 investment company under the Small Business

1 Investment Act of 1958, which notice or license  
2 has not been revoked; or

3 “(C) applicants that are affiliated with 1  
4 or more licensed small business investment  
5 companies described in subparagraph (A) and  
6 that have applied for another license under the  
7 Small Business Investment Act of 1958, which  
8 application remains pending.”.

9 **SEC. 404. COLLECTION OF SYSTEMIC RISK DATA; REPORTS;**  
10 **EXAMINATIONS; DISCLOSURES.**

11 Section 204 of the Investment Advisers Act of 1940  
12 (15 U.S.C. 80b–4) is amended—

13 (1) by redesignating subsections (b) and (c) as  
14 subsections (c) and (d), respectively; and

15 (2) by inserting after subsection (a) the fol-  
16 lowing:

17 “(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

18 “(1) IN GENERAL.—The Commission may re-  
19 quire any investment adviser registered under this  
20 title—

21 “(A) to maintain such records of, and file  
22 with the Commission such reports regarding,  
23 private funds advised by the investment adviser,  
24 as necessary and appropriate in the public in-  
25 terest and for the protection of investors, or for

1 the assessment of systemic risk by the Finan-  
2 cial Stability Oversight Council (in this sub-  
3 section referred to as the ‘Council’); and

4 “(B) to provide or make available to the  
5 Council those reports or records or the informa-  
6 tion contained therein.

7 “(2) TREATMENT OF RECORDS.—The records  
8 and reports of any private fund to which an invest-  
9 ment adviser registered under this title provides in-  
10 vestment advice shall be deemed to be the records  
11 and reports of the investment adviser.

12 “(3) REQUIRED INFORMATION.—The records  
13 and reports required to be maintained by a private  
14 fund and subject to inspection by the Commission  
15 under this subsection shall include, for each private  
16 fund advised by the investment adviser, a description  
17 of—

18 “(A) the amount of assets under manage-  
19 ment and use of leverage, including off-balance-  
20 sheet leverage;

21 “(B) counterparty credit risk exposure;

22 “(C) trading and investment positions;

23 “(D) valuation policies and practices of the  
24 fund;

25 “(E) types of assets held;



1           “(F) side arrangements or side letters,  
2           whereby certain investors in a fund obtain more  
3           favorable rights or entitlements than other in-  
4           vestors;

5           “(G) trading practices; and

6           “(H) such other information as the Com-  
7           mission, in consultation with the Council, deter-  
8           mines is necessary and appropriate in the pub-  
9           lic interest and for the protection of investors  
10          or for the assessment of systemic risk, which  
11          may include the establishment of different re-  
12          porting requirements for different classes of  
13          fund advisers, based on the type or size of pri-  
14          vate fund being advised.

15          “(4) MAINTENANCE OF RECORDS.—An invest-  
16          ment adviser registered under this title shall main-  
17          tain such records of private funds advised by the in-  
18          vestment adviser for such period or periods as the  
19          Commission, by rule, may prescribe as necessary and  
20          appropriate in the public interest and for the protec-  
21          tion of investors, or for the assessment of systemic  
22          risk.

23          “(5) FILING OF RECORDS.—The Commission  
24          shall issue rules requiring each investment adviser to  
25          a private fund to file reports containing such infor-

1           mation as the Commission deems necessary and ap-  
2           propriate in the public interest and for the protec-  
3           tion of investors or for the assessment of systemic  
4           risk.

5           “(6) EXAMINATION OF RECORDS.—

6                   “(A) PERIODIC AND SPECIAL EXAMINA-  
7           TIONS.—The Commission—

8                           “(i) shall conduct periodic inspections  
9                           of the records of private funds maintained  
10                          by an investment adviser registered under  
11                          this title in accordance with a schedule es-  
12                          tablished by the Commission; and

13                           “(ii) may conduct at any time and  
14                           from time to time such additional, special,  
15                           and other examinations as the Commission  
16                           may prescribe as necessary and appro-  
17                           priate in the public interest and for the  
18                           protection of investors, or for the assess-  
19                           ment of systemic risk.

20                          “(B) AVAILABILITY OF RECORDS.—An in-  
21           vestment adviser registered under this title shall  
22           make available to the Commission any copies or  
23           extracts from such records as may be prepared  
24           without undue effort, expense, or delay, as the

1 Commission or its representatives may reason-  
2 ably request.

3 “(7) INFORMATION SHARING.—

4 “(A) IN GENERAL.—The Commission shall  
5 make available to the Council copies of all re-  
6 ports, documents, records, and information filed  
7 with or provided to the Commission by an in-  
8 vestment adviser under this subsection as the  
9 Council may consider necessary for the purpose  
10 of assessing the systemic risk posed by a pri-  
11 vate fund.

12 “(B) CONFIDENTIALITY.—The Council  
13 shall maintain the confidentiality of information  
14 received under this paragraph in all such re-  
15 ports, documents, records, and information, in  
16 a manner consistent with the level of confiden-  
17 tiality established for the Commission pursuant  
18 to paragraph (8). The Council shall be exempt  
19 from section 552 of title 5, United States Code,  
20 with respect to any information in any report,  
21 document, record, or information made avail-  
22 able, to the Council under this subsection.”.

23 “(8) COMMISSION CONFIDENTIALITY OF RE-  
24 PORTS.—Notwithstanding any other provision of  
25 law, the Commission may not be compelled to dis-

1 close any report or information contained therein re-  
2 quired to be filed with the Commission under this  
3 subsection, except that nothing in this subsection  
4 authorizes the Commission—

5 “(A) to withhold information from Con-  
6 gress, upon an agreement of confidentiality; or

7 “(B) prevent the Commission from com-  
8 plying with—

9 “(i) a request for information from  
10 any other Federal department or agency or  
11 any self-regulatory organization requesting  
12 the report or information for purposes  
13 within the scope of its jurisdiction; or

14 “(ii) an order of a court of the United  
15 States in an action brought by the United  
16 States or the Commission.

17 “(9) OTHER RECIPIENTS CONFIDENTIALITY.—  
18 Any department, agency, or self-regulatory organiza-  
19 tion that receives reports or information from the  
20 Commission under this subsection shall maintain the  
21 confidentiality of such reports, documents, records,  
22 and information in a manner consistent with the  
23 level of confidentiality established for the Commis-  
24 sion under paragraph (8).

25 “(10) PUBLIC INFORMATION EXCEPTION.—

1           “(A) IN GENERAL.—The Commission, the  
2           Council, and any other department, agency, or  
3           self-regulatory organization that receives infor-  
4           mation, reports, documents, records, or infor-  
5           mation from the Commission under this sub-  
6           section, shall be exempt from the provisions of  
7           section 552 of title 5, United States Code, with  
8           respect to any such report, document, record, or  
9           information. Any proprietary information of an  
10          investment adviser ascertained by the Commis-  
11          sion from any report required to be filed with  
12          the Commission pursuant to this subsection  
13          shall be subject to the same limitations on pub-  
14          lic disclosure as any facts ascertained during an  
15          examination, as provided by section 210(b) of  
16          this title.

17          “(B) PROPRIETARY INFORMATION.—For  
18          purposes of this paragraph, proprietary infor-  
19          mation includes—

20                  “(i) sensitive, non-public information  
21                  regarding the investment or trading strate-  
22                  gies of the investment adviser;

23                  “(ii) analytical or research methodolo-  
24                  gies;

25                  “(iii) trading data;

1                   “(iv) computer hardware or software  
2                   containing intellectual property; and

3                   “(v) any additional information that  
4                   the Commission determines to be propri-  
5                   etary.

6                   “(11) ANNUAL REPORT TO CONGRESS.—The  
7                   Commission shall report annually to Congress on  
8                   how the Commission has used the data collected  
9                   pursuant to this subsection to monitor the markets  
10                  for the protection of investors and the integrity of  
11                  the markets.”.

12 **SEC. 405. DISCLOSURE PROVISION AMENDMENT.**

13                  Section 210(c) of the Investment Advisers Act of  
14                  1940 (15 U.S.C. 80b–10(c)) is amended by inserting be-  
15                  fore the period at the end the following: “or for purposes  
16                  of assessment of potential systemic risk”.

17 **SEC. 406. CLARIFICATION OF RULEMAKING AUTHORITY.**

18                  Section 211 of the Investment Advisers Act of 1940  
19                  (15 U.S.C. 80b–11) is amended—

20                   (1) in subsection (a), by inserting before the pe-  
21                   riod at the end of the first sentence the following:  
22                   “, including rules and regulations defining technical,  
23                   trade, and other terms used in this title, except that  
24                   the Commission may not define the term ‘client’ for  
25                   purposes of paragraphs (1) and (2) of section 206

1 to include an investor in a private fund managed by  
2 an investment adviser, if such private fund has en-  
3 tered into an advisory contract with such adviser”;  
4 and

5 (2) by adding at the end the following:

6 “(e) DISCLOSURE RULES ON PRIVATE FUNDS.—The  
7 Commission and the Commodity Futures Trading Com-  
8 mission shall, after consultation with the Council but not  
9 later than 12 months after the date of enactment of the  
10 Private Fund Investment Advisers Registration Act of  
11 2010, jointly promulgate rules to establish the form and  
12 content of the reports required to be filed with the Com-  
13 mission under subsection 204(b) and with the Commodity  
14 Futures Trading Commission by investment advisers that  
15 are registered both under this title and the Commodity  
16 Exchange Act (7 U.S.C. 1a et seq.).”.

17 **SEC. 407. EXEMPTION OF VENTURE CAPITAL FUND ADVIS-**  
18 **ERS.**

19 Section 203 of the Investment Advisers Act of 1940  
20 (15 U.S.C. 80b–3) is amended by adding at the end the  
21 following:

22 “(l) EXEMPTION OF VENTURE CAPITAL FUND AD-  
23 VISERS.—No investment adviser shall be subject to the  
24 registration requirements of this title with respect to the  
25 provision of investment advice relating to a venture capital

1 fund. Not later than 1 year after the date of enactment  
2 of this subsection, the Commission shall issue final rules  
3 to define the term ‘venture capital fund’ for purposes of  
4 this subsection.”.

5 **SEC. 408. EXEMPTION OF AND RECORD KEEPING BY PRI-**  
6 **VATE EQUITY FUND ADVISERS.**

7 Section 203 of the Investment Advisers Act of 1940  
8 (15 U.S.C. 80b–3) is amended by adding at the end the  
9 following:

10 “(m) EXEMPTION OF AND REPORTING BY PRIVATE  
11 EQUITY FUND ADVISERS.—

12 “(1) IN GENERAL.—Except as provided in this  
13 subsection, no investment adviser shall be subject to  
14 the registration or reporting requirements of this  
15 title with respect to the provision of investment ad-  
16 vice relating to a private equity fund or funds.

17 “(2) MAINTENANCE OF RECORDS AND ACCESS  
18 BY COMMISSION.—Not later than 1 year after the  
19 date of enactment of this subsection, the Commis-  
20 sion shall issue final rules—

21 “(A) to require investment advisers de-  
22 scribed in paragraph (1) to maintain such  
23 records and provide to the Commission such an-  
24 nual or other reports as the Commission taking  
25 into account fund size, governance, investment



1 strategy, risk, and other factors, as the Com-  
2 mission determines necessary and appropriate  
3 in the public interest and for the protection of  
4 investors; and

5 “(B) to define the term ‘private equity  
6 fund’ for purposes of this subsection.”.

7 **SEC. 409. FAMILY OFFICES.**

8 (a) IN GENERAL.—Section 202(a)(11) of the Invest-  
9 ment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is  
10 amended by striking “or (G)” and inserting the following:  
11 “; (G) any family office, as defined by rule, regulation,  
12 or order of the Commission, in accordance with the pur-  
13 poses of this title; or (H)”.

14 (b) RULEMAKING.—The rules, regulations, or orders  
15 issued by the Commission pursuant to section  
16 202(a)(11)(G) of the Investment Advisers Act of 1940, as  
17 added by this section, regarding the definition of the term  
18 “family office” shall provide for an exemption that—

19 (1) is consistent with the previous exemptive  
20 policy of the Commission, as reflected in exemptive  
21 orders for family offices in effect on the date of en-  
22 actment of this Act; and

23 (2) recognizes the range of organizational, man-  
24 agement, and employment structures and arrange-  
25 ments employed by family offices.

1 **SEC. 410. STATE AND FEDERAL RESPONSIBILITIES; ASSET**  
2 **THRESHOLD FOR FEDERAL REGISTRATION**  
3 **OF INVESTMENT ADVISERS.**

4 Section 203A(a)(1) of the Investment Advisers Act  
5 of 1940 (15 U.S.C. 80b-3a(a)(1)) is amended—

6 (1) in subparagraph (A)—

7 (A) by striking “\$25,000,000” and insert-  
8 ing “\$100,000,000”; and

9 (B) by striking “or” at the end;

10 (2) in subparagraph (B), by striking the period  
11 at the end and inserting “; or”; and

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

13 “(C) is an adviser to a company that has  
14 elected to be a business development company  
15 pursuant to section 54 of the Investment Com-  
16 pany Act of 1940, and has not withdrawn its  
17 election.”.

18 **SEC. 411. CUSTODY OF CLIENT ASSETS.**

19 The Investment Advisers Act of 1940 (15 U.S.C.  
20 80b-1 et seq.) is amended by adding at the end the fol-  
21 lowing new section:

22 **“SEC. 223. CUSTODY OF CLIENT ACCOUNTS.**

23 “An investment adviser registered under this title  
24 shall take such steps to safeguard client assets over which  
25 such adviser has custody, including, without limitation,

1 verification of such assets by an independent public ac-  
2 countant, as the Commission may, by rule, prescribe.”.

3 **SEC. 412. ADJUSTING THE ACCREDITED INVESTOR STAND-**  
4 **ARD.**

5 (a) IN GENERAL.—The Commission shall adjust any  
6 net worth standard for an accredited investor, as set forth  
7 in the rules of the Commission under the Securities Act  
8 of 1933, so that the individual net worth of any natural  
9 person, or joint net worth with the spouse of that person,  
10 at the time of purchase, is more than \$1,000,000 (as such  
11 amount is adjusted periodically by rule of the Commis-  
12 sion), excluding the value of the primary residence of such  
13 natural person, except that during the 4-year period that  
14 begins on the date of enactment of this Act, any net worth  
15 standard shall be \$1,000,000, excluding the value of the  
16 primary residence of such natural person.

17 (b) REVIEW AND ADJUSTMENT.—

18 (1) INITIAL REVIEW AND ADJUSTMENT.—

19 (A) INITIAL REVIEW.—The Commission  
20 may undertake a review of the definition of the  
21 term “accredited investor”, as such term ap-  
22 plies to natural persons, to determine whether  
23 the requirements of the definition, excluding the  
24 requirement relating to the net worth standard  
25 described in subsection (a), should be adjusted

1 or modified for the protection of investors, in  
2 the public interest, and in light of the economy.

3 (B) ADJUSTMENT OR MODIFICATION.—

4 Upon completion of a review under subpara-  
5 graph (A), the Commission may, by notice and  
6 comment rulemaking, make such adjustments  
7 to the definition of the term “accredited inves-  
8 tor”, excluding adjusting or modifying the re-  
9 quirement relating to the net worth standard  
10 described in subsection (a), as such term ap-  
11 plies to natural persons, as the Commission  
12 may deem appropriate for the protection of in-  
13 vestors, in the public interest, and in light of  
14 the economy.

15 (2) SUBSEQUENT REVIEWS AND ADJUST-  
16 MENT.—

17 (A) SUBSEQUENT REVIEWS.—Not earlier  
18 than 4 years after the date of enactment of this  
19 Act, and not less frequently than once every 4  
20 years thereafter, the Commission shall under-  
21 take a review of the definition, in its entirety,  
22 of the term “accredited investor”, as defined in  
23 section 230.215 of title 17, Code of Federal  
24 Regulations, or any successor thereto, as such  
25 term applies to natural persons, to determine

1           whether the requirements of the definition  
2           should be adjusted or modified for the protec-  
3           tion of investors, in the public interest, and in  
4           light of the economy.

5                   (B) ADJUSTMENT OR MODIFICATION.—

6           Upon completion of a review under subpara-  
7           graph (A), the Commission may, by notice and  
8           comment rulemaking, make such adjustments  
9           to the definition of the term “accredited inves-  
10          tor”, as defined in section 230.215 of title 17,  
11          Code of Federal Regulations, or any successor  
12          thereto, as such term applies to natural per-  
13          sons, as the Commission may deem appropriate  
14          for the protection of investors, in the public in-  
15          terest, and in light of the economy.

16 **SEC. 413. GAO STUDY AND REPORT ON ACCREDITED INVES-**  
17 **TORS.**

18          The Comptroller General of the United States shall  
19          conduct a study on the appropriate criteria for deter-  
20          mining the financial thresholds or other criteria needed  
21          to qualify for accredited investor status and eligibility to  
22          invest in private funds, and shall submit a report to the  
23          Committee on Banking, Housing, and Urban Affairs of  
24          the Senate and the Committee on Financial Services of  
25          the House of Representatives on the results of such study

1 not later than 3 years after the date of enactment of this  
2 Act.

3 **SEC. 414. GAO STUDY ON SELF-REGULATORY ORGANIZA-**  
4 **TION FOR PRIVATE FUNDS.**

5 The Comptroller General of the United States shall—

6 (1) conduct a study of the feasibility of forming  
7 a self-regulatory organization to oversee private  
8 funds; and

9 (2) submit a report to the Committee on Bank-  
10 ing, Housing, and Urban Affairs of the Senate and  
11 the Committee on Financial Services of the House of  
12 Representatives on the results of such study, not  
13 later than 1 year after the date of enactment of this  
14 Act.

15 **SEC. 415. COMMISSION STUDY AND REPORT ON SHORT**  
16 **SELLING.**

17 (a) STUDIES.—The Division of Risk, Strategy, and  
18 Financial Innovation of the Commission shall conduct—

19 (1) a study, taking into account current schol-  
20 arship, on the state of short selling on national secu-  
21 rities exchanges and in the over-the-counter markets,  
22 with particular attention to the impact of recent rule  
23 changes and the incidence of—

24 (A) the failure to deliver shares sold short;

25 or

1 (B) delivery of shares on the fourth day  
2 following the short sale transaction; and

3 (2) a study of—

4 (A) the feasibility, benefits, and costs of  
5 requiring reporting publicly, in real time short  
6 sale positions of publicly listed securities, or, in  
7 the alternative, reporting such short positions  
8 in real time only to the Commission and the Fi-  
9 nancial Industry Regulatory Authority; and

10 (B) the feasibility, benefits, and costs of  
11 conducting a voluntary pilot program in which  
12 public companies will agree to have all trades of  
13 their shares marked “short”, “market maker  
14 short”, “buy”, “buy-to-cover”, or “long”, and  
15 reported in real time through the Consolidated  
16 Tape.

17 (b) REPORTS.—The Commission shall submit a re-  
18 port to the Committee on Banking, Housing, and Urban  
19 Affairs of the Senate and the Committee on Financial  
20 Services of the House of Representatives—

21 (1) on the results of the study required under  
22 subsection (a)(1), including recommendations for  
23 market improvements, not later than 2 years after  
24 the date of enactment of this Act; and

1           (2) on the results of the study required under  
2           subsection (a)(2), not later than 1 year after the  
3           date of enactment of this Act.

4 **SEC. 416. TRANSITION PERIOD.**

5           Except as otherwise provided in this title, this title  
6           and the amendments made by this title shall become effec-  
7           tive 1 year after the date of enactment of this Act, except  
8           that any investment adviser may, at the discretion of the  
9           investment adviser, register with the Commission under  
10          the Investment Advisers Act of 1940 during that 1-year  
11          period, subject to the rules of the Commission.

12                           **TITLE V—INSURANCE**

13                   **Subtitle A—Office of National**  
14                           **Insurance**

15 **SEC. 501. SHORT TITLE.**

16           This subtitle may be cited as the “Office of National  
17          Insurance Act of 2010”.

18 **SEC. 502. ESTABLISHMENT OF OFFICE OF NATIONAL IN-**  
19                           **SURANCE.**

20           (a) ESTABLISHMENT OF OFFICE.—Subchapter I of  
21          chapter 3 of subtitle I of title 31, United States Code,  
22          is amended—

23                   (1) by redesignating section 312 as section 315;

24                   (2) by redesignating section 313 as section 312;

25           and



1           (3) by inserting after section 312 (as so redес-  
2           ignated) the following new sections:

3   **“SEC. 313. OFFICE OF NATIONAL INSURANCE.**

4           “(a) ESTABLISHMENT.—There is established within  
5 the Department of the Treasury the Office of National  
6 Insurance.

7           “(b) LEADERSHIP.—The Office shall be headed by a  
8 Director, who shall be appointed by the Secretary of the  
9 Treasury. The position of Director shall be a career re-  
10 served position in the Senior Executive Service, as that  
11 position is defined under section 3132 of title 5, United  
12 States Code.

13          “(c) FUNCTIONS.—

14               “(1) AUTHORITY PURSUANT TO DIRECTION OF  
15 SECRETARY.—The Office, pursuant to the direction  
16 of the Secretary, shall have the authority—

17                       “(A) to monitor all aspects of the insur-  
18                       ance industry, including identifying issues or  
19                       gaps in the regulation of insurers that could  
20                       contribute to a systemic crisis in the insurance  
21                       industry or the United States financial system;

22                       “(B) to monitor the extent to which tradi-  
23                       tionally underserved communities and con-  
24                       sumers, minorities (as such term is defined in  
25                       section 1204(c) of the Financial Institutions

1 Reform, Recovery, and Enforcement Act of  
2 1989 (12 U.S.C. 1811 note)), and low- and  
3 moderate-income persons have access to afford-  
4 able insurance products regarding all lines of  
5 insurance, except health insurance;

6 “(C) to recommend to the Financial Sta-  
7 bility Oversight Council that it designate an in-  
8 surer, including the affiliates of such insurer, as  
9 an entity subject to regulation as a nonbank fi-  
10 nancial company supervised by the Board of  
11 Governors pursuant to title I of the Restoring  
12 American Financial Stability Act of 2010;

13 “(D) to assist the Secretary in admin-  
14 istering the Terrorism Insurance Program es-  
15 tablished in the Department of the Treasury  
16 under the Terrorism Risk Insurance Act of  
17 2002 (15 U.S.C. 6701 note);

18 “(E) to coordinate Federal efforts and de-  
19 velop Federal policy on prudential aspects of  
20 international insurance matters, including rep-  
21 resenting the United States, as appropriate, in  
22 the International Association of Insurance Su-  
23 pervisors (or a successor entity) and assisting  
24 the Secretary in negotiating International In-  
25 surance Agreements on Prudential Measures;

1           “(F) to determine, in accordance with sub-  
2           section (f), whether State insurance measures  
3           are preempted by International Insurance  
4           Agreements on Prudential Measures;

5           “(G) to consult with the States (including  
6           State insurance regulators) regarding insurance  
7           matters of national importance and prudential  
8           insurance matters of international importance;  
9           and

10           “(H) to perform such other related duties  
11           and authorities as may be assigned to the Of-  
12           fice by the Secretary.

13           “(2) ADVISORY FUNCTIONS.—The Office shall  
14           advise the Secretary on major domestic and pruden-  
15           tial international insurance policy issues.

16           “(d) SCOPE.—The authority of the Office shall ex-  
17           tend to all lines of insurance except health insurance, as  
18           such insurance is determined by the Secretary based on  
19           section 2791 of the Public Health Service Act (42 U.S.C.  
20           300gg–91), and crop insurance, as established by the Fed-  
21           eral Crop Insurance Act (7 U.S.C. 1501 et seq.).

22           “(e) GATHERING OF INFORMATION.—

23           “(1) IN GENERAL.—In carrying out the func-  
24           tions required under subsection (c), the Office  
25           may—

1           “(A) receive and collect data and informa-  
2           tion on and from the insurance industry and in-  
3           surers;

4           “(B) enter into information-sharing agree-  
5           ments;

6           “(C) analyze and disseminate data and in-  
7           formation; and

8           “(D) issue reports regarding all lines of in-  
9           surance except health insurance.

10          “(2) COLLECTION OF INFORMATION FROM IN-  
11          SURERS AND AFFILIATES.—

12           “(A) IN GENERAL.—Except as provided in  
13           paragraph (3), the Office may require an in-  
14           surer, or any affiliate of an insurer, to submit  
15           such data or information as the Office may rea-  
16           sonably require in carrying out the functions  
17           described under subsection (c).

18           “(B) RULE OF CONSTRUCTION.—Notwith-  
19           standing any other provision of this section, for  
20           purposes of subparagraph (A), the term ‘in-  
21           surer’ means any entity that writes insurance  
22           or reinsures risks and issues contracts or poli-  
23           cies in 1 or more States.

24          “(3) EXCEPTION FOR SMALL INSURERS.—Para-  
25          graph (2) shall not apply with respect to any insurer

1 or affiliate thereof that meets a minimum size  
2 threshold that the Office may establish, whether by  
3 order or rule.

4 “(4) ADVANCE COORDINATION.—Before col-  
5 lecting any data or information under paragraph (2)  
6 from an insurer, or any affiliate of an insurer, the  
7 Office shall coordinate with each relevant State in-  
8 surance regulator (or other relevant Federal or State  
9 regulatory agency, if any, in the case of an affiliate  
10 of an insurer) to determine if the information to be  
11 collected is available from, or may be obtained in a  
12 timely manner by, such State insurance regulator,  
13 individually or collectively, another regulatory agen-  
14 cy, or publicly available sources. Notwithstanding  
15 any other provision of law, each such relevant State  
16 insurance regulator or other Federal or State regu-  
17 latory agency is authorized to provide to the Office  
18 such data or information.

19 “(5) CONFIDENTIALITY.—

20 “(A) RETENTION OF PRIVILEGE.—The  
21 submission of any nonpublicly available data  
22 and information to the Office under this sub-  
23 section shall not constitute a waiver of, or oth-  
24 erwise affect, any privilege arising under Fed-  
25 eral or State law (including the rules of any

1 Federal or State court) to which the data or in-  
2 formation is otherwise subject.

3 “(B) CONTINUED APPLICATION OF PRIOR  
4 CONFIDENTIALITY AGREEMENTS.—Any require-  
5 ment under Federal or State law to the extent  
6 otherwise applicable, or any requirement pursu-  
7 ant to a written agreement in effect between  
8 the original source of any nonpublicly available  
9 data or information and the source of such data  
10 or information to the Office, regarding the pri-  
11 vacy or confidentiality of any data or informa-  
12 tion in the possession of the source to the Of-  
13 fice, shall continue to apply to such data or in-  
14 formation after the data or information has  
15 been provided pursuant to this subsection to the  
16 Office.

17 “(C) INFORMATION SHARING AGREE-  
18 MENT.—Any data or information obtained by  
19 the Office may be made available to State in-  
20 surance regulators, individually or collectively,  
21 through an information sharing agreement  
22 that—

23 “(i) shall comply with applicable Fed-  
24 eral law; and

1                   “(ii) shall not constitute a waiver of,  
2                   or otherwise affect, any privilege under  
3                   Federal or State law (including the rules  
4                   of any Federal or State Court) to which  
5                   the data or information is otherwise sub-  
6                   ject.

7                   “(D) AGENCY DISCLOSURE REQUIRE-  
8                   MENTS.—Section 552 of title 5, United States  
9                   Code, shall apply to any data or information  
10                  submitted to the Office by an insurer or an af-  
11                  filiate of an insurer.

12                  “(6) SUBPOENAS AND ENFORCEMENT.—The  
13                  Director shall have the power to require by subpoena  
14                  the production of the data or information requested  
15                  under paragraph (2), but only upon a written find-  
16                  ing by the Director that such data or information is  
17                  required to carry out the functions described under  
18                  subsection (c) and that the Office has coordinated  
19                  with such regulator or agency as required under  
20                  paragraph (4). Subpoenas shall bear the signature of  
21                  the Director and shall be served by any person or  
22                  class of persons designated by the Director for that  
23                  purpose. In the case of contumacy or failure to obey  
24                  a subpoena, the subpoena shall be enforceable by  
25                  order of any appropriate district court of the United

1 States. Any failure to obey the order of the court  
2 may be punished by the court as a contempt of  
3 court.

4 “(f) PREEMPTION OF STATE INSURANCE MEAS-  
5 URES.—

6 “(1) STANDARD.—A State insurance measure  
7 shall be preempted if, and only to the extent that the  
8 Director determines, in accordance with this sub-  
9 section, that the measure—

10 “(A) results in less favorable treatment of  
11 a non-United States insurer domiciled in a for-  
12 eign jurisdiction that is subject to an inter-  
13 national insurance agreement on prudential  
14 measures than a United States insurer domi-  
15 ciled, licensed, or otherwise admitted in that  
16 State; and

17 “(B) is inconsistent with an International  
18 Insurance Agreement on Prudential Measures.

19 “(2) DETERMINATION.—

20 “(A) NOTICE OF POTENTIAL INCONSIST-  
21 ENCY.—Before making any determination  
22 under paragraph (1), the Director shall—

23 “(i) notify and consult with the appro-  
24 priate State regarding any potential incon-  
25 sistency or preemption;



1           “(ii) cause to be published in the Fed-  
2           eral Register notice of the issue regarding  
3           the potential inconsistency or preemption,  
4           including a description of each State insur-  
5           ance measure at issue and any applicable  
6           International Insurance Agreement on  
7           Prudential Measures;

8           “(iii) provide interested parties a rea-  
9           sonable opportunity to submit written com-  
10          ments to the Office; and

11          “(iv) consider any comments received.

12          “(B) SCOPE OF REVIEW.—For purposes of  
13          this subsection, the determination of the Direc-  
14          tor regarding State insurance measures shall be  
15          limited to the subject matter contained within  
16          the international insurance agreement on pru-  
17          dential measure involved.

18          “(C) NOTICE OF DETERMINATION OF IN-  
19          CONSISTENCY.—Upon making any determina-  
20          tion under paragraph (1), the Director shall—

21               “(i) notify the appropriate State of  
22               the determination and the extent of the in-  
23               consistency;

24               “(ii) establish a reasonable period of  
25               time, which shall not be less than 30 days,

1 before the determination shall become ef-  
2 fective; and

3 “(iii) notify the Committee on Bank-  
4 ing, Housing, and Urban Affairs of the  
5 Senate and the Committee on Financial  
6 Services of the House of Representatives of  
7 the inconsistency.

8 “(3) NOTICE OF EFFECTIVENESS.—Upon the  
9 conclusion of the period referred to in paragraph  
10 (2)(C)(ii), if the basis for such determination still  
11 exists, the determination shall become effective and  
12 the Director shall—

13 “(A) cause to be published a notice in the  
14 Federal Register that the preemption has be-  
15 come effective, as well as the effective date; and

16 “(B) notify the appropriate State.

17 “(4) LIMITATION.—No State may enforce a  
18 State insurance measure to the extent that such  
19 measure has been preempted under this subsection.

20 “(g) APPLICABILITY OF ADMINISTRATIVE PROCE-  
21 DURES ACT.—Determinations of inconsistency made pur-  
22 suant to subsection (f)(2) shall be subject to the applicable  
23 provisions of subchapter II of chapter 5 of title 5, United  
24 States Code (relating to administrative procedure), and  
25 chapter 7 of such title (relating to judicial review).

1           “(h) REGULATIONS, POLICIES, AND PROCEDURES.—  
2 The Secretary may issue orders, regulations, policies, and  
3 procedures to implement this section.

4           “(i) CONSULTATION.—The Director shall consult  
5 with State insurance regulators, individually or collec-  
6 tively, to the extent the Director determines appropriate,  
7 in carrying out the functions of the Office.

8           “(j) SAVINGS PROVISIONS.—Nothing in this section  
9 shall—

10           “(1) preempt—

11                   “(A) any State insurance measure that  
12 governs any insurer’s rates, premiums, under-  
13 writing, or sales practices;

14                   “(B) any State coverage requirements for  
15 insurance;

16                   “(C) the application of the antitrust laws  
17 of any State to the business of insurance; or

18                   “(D) any State insurance measure gov-  
19 erning the capital or solvency of an insurer, ex-  
20 cept to the extent that such State insurance  
21 measure results in less favorable treatment of a  
22 non-United State insurer than a United States  
23 insurer;

1           “(2) be construed to alter, amend, or limit any  
2           provision of the Consumer Financial Protection  
3           Agency Act of 2010; or

4           “(3) affect the preemption of any State insur-  
5           ance measure otherwise inconsistent with and pre-  
6           empted by Federal law.

7           “(k) RETENTION OF EXISTING STATE REGULATORY  
8           AUTHORITY.—Nothing in this section or section 314 shall  
9           be construed to establish or provide the Office or the De-  
10          partment of the Treasury with general supervisory or reg-  
11          ulatory authority over the business of insurance.

12          “(l) ANNUAL REPORT TO CONGRESS.—Beginning  
13          September 30, 2011, the Director shall submit a report  
14          on or before September 30 of each calendar year to the  
15          President and to the Committee on Banking, Housing,  
16          and Urban Affairs of the Senate and the Committee on  
17          Financial Services of the House of Representatives on the  
18          insurance industry, any actions taken by the Office pursu-  
19          ant to subsection (f) (regarding preemption of inconsistent  
20          State insurance measures), and any other information as  
21          deemed relevant by the Director or as requested by such  
22          Committees.

23          “(m) STUDY AND REPORT ON REGULATION OF IN-  
24          SURANCE.—

1           “(1) IN GENERAL.—Not later than 18 months  
2 after the date of enactment of this section, the Di-  
3 rector shall conduct a study and submit a report to  
4 Congress on how to modernize and improve the sys-  
5 tem of insurance regulation in the United States.

6           “(2) CONSIDERATIONS.—The study and report  
7 required under paragraph (1) shall be based on and  
8 guided by the following considerations:

9           “(A) Systemic risk regulation with respect  
10 to insurance.

11           “(B) Capital standards and the relation-  
12 ship between capital allocation and liabilities,  
13 including standards relating to liquidity and du-  
14 ration risk.

15           “(C) Consumer protection for insurance  
16 products and practices, including gaps in state  
17 regulation.

18           “(D) The degree of national uniformity of  
19 state insurance regulation.

20           “(E) The regulation of insurance compa-  
21 nies and affiliates on a consolidated basis.

22           “(F) International coordination of insur-  
23 ance regulation.

1           “(3) ADDITIONAL FACTORS.—The study and  
2 report required under paragraph (1) shall also exam-  
3 ine the following factors:

4           “(A) The costs and benefits of potential  
5 Federal regulation of insurance across various  
6 lines of insurance (except health insurance).

7           “(B) The feasibility of regulating only cer-  
8 tain lines of insurance at the Federal level,  
9 while leaving other lines of insurance to be reg-  
10 ulated at the State level.

11           “(C) The ability of any potential Federal  
12 regulation or Federal regulators to eliminate or  
13 minimize regulatory arbitrage.

14           “(D) The impact that developments in the  
15 regulation of insurance in foreign jurisdictions  
16 might have on the potential Federal regulation  
17 of insurance.

18           “(E) The ability of any potential Federal  
19 regulation or Federal regulator to provide ro-  
20 bust consumer protection for policyholders.

21           “(F) The potential consequences of sub-  
22 jecting insurance companies to a Federal reso-  
23 lution authority, including the effects of any  
24 Federal resolution authority—

1                   “(i) on the operation of State insur-  
2                   ance guaranty fund systems, including the  
3                   loss of guaranty fund coverage if an insur-  
4                   ance company is subject to a Federal reso-  
5                   lution authority;

6                   “(ii) on policyholder protection, in-  
7                   cluding the loss of the priority status of  
8                   policyholder claims over other unsecured  
9                   general creditor claims;

10                   “(iii) in the case of life insurance  
11                   companies, the loss of the special status of  
12                   separate account assets and separate ac-  
13                   count liabilities; and

14                   “(iv) on the international competitive-  
15                   ness of insurance companies.

16                   “(G) Such other factors as the Director  
17                   determines necessary or appropriate, consistent  
18                   with the principles set forth in paragraph (2).

19                   “(4) REQUIRED RECOMMENDATIONS.—The  
20                   study and report required under paragraph (1) shall  
21                   also contain any legislative, administrative, or regu-  
22                   latory recommendations, as the Director determines  
23                   appropriate, to carry out or effectuate the findings  
24                   set forth in such report.

1           “(5) CONSULTATION.—With respect to the  
2 study and report required under paragraph (1), the  
3 Director shall consult with the National Association  
4 of Insurance Commissioners, consumer organiza-  
5 tions, representatives of the insurance industry and  
6 policyholders, and other organizations and experts,  
7 as appropriate.

8           “(n) USE OF EXISTING RESOURCES.—To carry out  
9 this section, the Office may employ personnel, facilities,  
10 and any other resource of the Department of the Treasury  
11 available to the Secretary.

12           “(o) DEFINITIONS.—In this section and section 314,  
13 the following definitions shall apply:

14           “(1) AFFILIATE.—The term ‘affiliate’ means,  
15 with respect to an insurer, any person who controls,  
16 is controlled by, or is under common control with the  
17 insurer.

18           “(2) INSURER.—The term ‘insurer’ means any  
19 person engaged in the business of insurance, includ-  
20 ing reinsurance.

21           “(3) INTERNATIONAL INSURANCE AGREEMENT  
22 ON PRUDENTIAL MEASURES.—The term ‘Inter-  
23 national Insurance Agreement on Prudential Meas-  
24 ures’ means a written bilateral or multilateral agree-  
25 ment entered into between the United States and a



1 foreign government, authority, or regulatory entity  
2 regarding prudential measures applicable to the  
3 business of insurance or reinsurance.

4 “(4) NON-UNITED STATES INSURER.—The term  
5 ‘non-United States insurer’ means an insurer that is  
6 organized under the laws of a jurisdiction other than  
7 a State, but does not include any United States  
8 branch of such an insurer.

9 “(5) OFFICE.—The term ‘Office’ means the Of-  
10 fice of National Insurance established by this sec-  
11 tion.

12 “(6) STATE INSURANCE MEASURE.—The term  
13 ‘State insurance measure’ means any State law, reg-  
14 ulation, administrative ruling, bulletin, guideline, or  
15 practice relating to or affecting prudential measures  
16 applicable to insurance or reinsurance.

17 “(7) STATE INSURANCE REGULATOR.—The  
18 term ‘State insurance regulator’ means any State  
19 regulatory authority responsible for the supervision  
20 of insurers.

21 “(8) UNITED STATES INSURER.—The term  
22 ‘United States insurer’ means—

23 “(A) an insurer that is organized under  
24 the laws of a State; or

1                   “(B) a United States branch of a non-  
2                   United States insurer.

3           “(p) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated for the Office for each  
5 fiscal year such sums as may be necessary.

6   **“SEC. 314. INTERNATIONAL INSURANCE AGREEMENTS ON**  
7                   **PRUDENTIAL MEASURES.**

8           “(a) IN GENERAL.—The Secretary of the Treasury  
9 is authorized to negotiate and enter into International In-  
10 surance Agreements on Prudential Measures on behalf of  
11 the United States.

12           “(b) SAVINGS PROVISION.—Nothing in this section or  
13 section 313 shall be construed to affect the development  
14 and coordination of United States international trade pol-  
15 icy or the administration of the United States trade agree-  
16 ments program. It is to be understood that the negotiation  
17 of International Insurance Agreements on Prudential  
18 Measures under such sections is consistent with the re-  
19 quirement of this subsection.

20           “(c) CONSULTATION.—The Secretary shall consult  
21 with the United States Trade Representative on the nego-  
22 tiation of International Insurance Agreements on Pruden-  
23 tial Measures, including prior to initiating and concluding  
24 any such agreements.”.

1 (b) DUTIES OF SECRETARY.—Section 321(a) of title  
2 31, United States Code, is amended—

3 (1) in paragraph (7), by striking “; and” and  
4 inserting a semicolon;

5 (2) in paragraph (8)(C), by striking the period  
6 at the end and inserting “; and”; and

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

9 “(9) advise the President on major domestic  
10 and international prudential policy issues in connec-  
11 tion with all lines of insurance except health insur-  
12 ance.”.

13 (c) CLERICAL AMENDMENT.—The table of sections  
14 for subchapter I of chapter 3 of title 31, United States  
15 Code, is amended by striking the item relating to section  
16 312 and inserting the following new items:

“Sec. 312. Terrorism and financial intelligence.

“Sec. 313. Office of National Insurance.

“Sec. 314. International insurance agreements on prudential measures.

“Sec. 315. Continuing in office.”.

17 **Subtitle B—State-based Insurance**  
18 **Reform**

19 **SEC. 511. SHORT TITLE.**

20 This subtitle may be cited as the “Nonadmitted and  
21 Reinsurance Reform Act of 2010”.

1 **SEC. 512. EFFECTIVE DATE.**

2 Except as otherwise specifically provided in this sub-  
3 title, this subtitle shall take effect upon the expiration of  
4 the 12-month period beginning on the date of the enact-  
5 ment of this subtitle.

6 **PART I—NONADMITTED INSURANCE**

7 **SEC. 521. REPORTING, PAYMENT, AND ALLOCATION OF**  
8 **PREMIUM TAXES.**

9 (a) HOME STATE'S EXCLUSIVE AUTHORITY.—No  
10 State other than the home State of an insured may require  
11 any premium tax payment for nonadmitted insurance.

12 (b) ALLOCATION OF NONADMITTED PREMIUM  
13 TAXES.—

14 (1) IN GENERAL.—The States may enter into a  
15 compact or otherwise establish procedures to allocate  
16 among the States the premium taxes paid to an in-  
17 sured's home State described in subsection (a).

18 (2) EFFECTIVE DATE.—Except as expressly  
19 otherwise provided in such compact or other proce-  
20 dures, any such compact or other procedures—

21 (A) if adopted on or before the expiration  
22 of the 330-day period that begins on the date  
23 of the enactment of this subtitle, shall apply to  
24 any premium taxes that, on or after such date  
25 of enactment, are required to be paid to any

1 State that is subject to such compact or proce-  
2 dures; and

3 (B) if adopted after the expiration of such  
4 330-day period, shall apply to any premium  
5 taxes that, on or after January 1 of the first  
6 calendar year that begins after the expiration of  
7 such 330-day period, are required to be paid to  
8 any State that is subject to such compact or  
9 procedures.

10 (3) REPORT.—Upon the expiration of the 330-  
11 day period referred to in paragraph (2), the NAIC  
12 may submit a report to the Committee on Financial  
13 Services and Committee on the Judiciary of the  
14 House of Representatives and the Committee on  
15 Banking, Housing, and Urban Affairs of the Senate  
16 identifying and describing any compact or other pro-  
17 cedures for allocation among the States of premium  
18 taxes that have been adopted during such period by  
19 any States.

20 (4) NATIONWIDE SYSTEM.—The Congress in-  
21 tends that each State adopt nationwide uniform re-  
22 quirements, forms, and procedures, such as an inter-  
23 state compact, that provides for the reporting, pay-  
24 ment, collection, and allocation of premium taxes for  
25 nonadmitted insurance consistent with this section.

1           (c) ALLOCATION BASED ON TAX ALLOCATION RE-  
2 PORT.—To facilitate the payment of premium taxes  
3 among the States, an insured’s home State may require  
4 surplus lines brokers and insureds who have independently  
5 procured insurance to annually file tax allocation reports  
6 with the insured’s home State detailing the portion of the  
7 nonadmitted insurance policy premium or premiums at-  
8 tributable to properties, risks, or exposures located in each  
9 State. The filing of a nonadmitted insurance tax allocation  
10 report and the payment of tax may be made by a person  
11 authorized by the insured to act as its agent.

12 **SEC. 522. REGULATION OF NONADMITTED INSURANCE BY**  
13 **INSURED’S HOME STATE.**

14           (a) HOME STATE AUTHORITY.—Except as otherwise  
15 provided in this section, the placement of nonadmitted in-  
16 surance shall be subject to the statutory and regulatory  
17 requirements solely of the insured’s home State.

18           (b) BROKER LICENSING.—No State other than an in-  
19 sured’s home State may require a surplus lines broker to  
20 be licensed in order to sell, solicit, or negotiate non-  
21 admitted insurance with respect to such insured.

22           (c) ENFORCEMENT PROVISION.—With respect to sec-  
23 tion 521 and subsections (a) and (b) of this section, any  
24 law, regulation, provision, or action of any State that ap-  
25 plies or purports to apply to nonadmitted insurance sold

1 to, solicited by, or negotiated with an insured whose home  
2 State is another State shall be preempted with respect to  
3 such application.

4 (d) WORKERS' COMPENSATION EXCEPTION.—This  
5 section may not be construed to preempt any State law,  
6 rule, or regulation that restricts the placement of workers'  
7 compensation insurance or excess insurance for self-fund-  
8 ed workers' compensation plans with a nonadmitted in-  
9 surer.

10 **SEC. 523. PARTICIPATION IN NATIONAL PRODUCER DATA-**  
11 **BASE.**

12 After the expiration of the 2-year period beginning  
13 on the date of the enactment of this subtitle, a State may  
14 not collect any fees relating to licensing of an individual  
15 or entity as a surplus lines broker in the State unless the  
16 State has in effect at such time laws or regulations that  
17 provide for participation by the State in the national in-  
18 surance producer database of the NAIC, or any other  
19 equivalent uniform national database, for the licensure of  
20 surplus lines brokers and the renewal of such licenses.

21 **SEC. 524. UNIFORM STANDARDS FOR SURPLUS LINES ELI-**  
22 **GIBILITY.**

23 A State may not—

24 (1) impose eligibility requirements on, or other-  
25 wise establish eligibility criteria for, nonadmitted in-

1       surers domiciled in a United States jurisdiction, ex-  
2       cept in conformance with such requirements and cri-  
3       teria in sections 5A(2) and 5C(2)(a) of the Non-Ad-  
4       mitted Insurance Model Act, unless the State has  
5       adopted nationwide uniform requirements, forms,  
6       and procedures developed in accordance with section  
7       521(b) of this subtitle that include alternative na-  
8       tionwide uniform eligibility requirements; or

9               (2) prohibit a surplus lines broker from placing  
10       nonadmitted insurance with, or procuring non-  
11       admitted insurance from, a nonadmitted insurer  
12       domiciled outside the United States that is listed on  
13       the Quarterly Listing of Alien Insurers maintained  
14       by the International Insurers Department of the  
15       NAIC.

16 **SEC. 525. STREAMLINED APPLICATION FOR COMMERCIAL**  
17 **PURCHASERS.**

18       A surplus lines broker seeking to procure or place  
19       nonadmitted insurance in a State for an exempt commer-  
20       cial purchaser shall not be required to satisfy any State  
21       requirement to make a due diligence search to determine  
22       whether the full amount or type of insurance sought by  
23       such exempt commercial purchaser can be obtained from  
24       admitted insurers if—



1           (1) the broker procuring or placing the surplus  
2 lines insurance has disclosed to the exempt commer-  
3 cial purchaser that such insurance may or may not  
4 be available from the admitted market that may pro-  
5 vide greater protection with more regulatory over-  
6 sight; and

7           (2) the exempt commercial purchaser has sub-  
8 sequently requested in writing the broker to procure  
9 or place such insurance from a nonadmitted insurer.

10 **SEC. 526. GAO STUDY OF NONADMITTED INSURANCE MAR-**  
11 **KET.**

12       (a) IN GENERAL.—The Comptroller General of the  
13 United States shall conduct a study of the nonadmitted  
14 insurance market to determine the effect of the enactment  
15 of this part on the size and market share of the non-  
16 admitted insurance market for providing coverage typi-  
17 cally provided by the admitted insurance market.

18       (b) CONTENTS.—The study shall determine and ana-  
19 lyze—

20           (1) the change in the size and market share of  
21 the nonadmitted insurance market and in the num-  
22 ber of insurance companies and insurance holding  
23 companies providing such business in the 18-month  
24 period that begins upon the effective date of this  
25 subtitle;

1           (2) the extent to which insurance coverage typi-  
2 cally provided by the admitted insurance market has  
3 shifted to the nonadmitted insurance market;

4           (3) the consequences of any change in the size  
5 and market share of the nonadmitted insurance  
6 market, including differences in the price and avail-  
7 ability of coverage available in both the admitted  
8 and nonadmitted insurance markets;

9           (4) the extent to which insurance companies  
10 and insurance holding companies that provide both  
11 admitted and nonadmitted insurance have experi-  
12 enced shifts in the volume of business between ad-  
13 mitted and nonadmitted insurance; and

14           (5) the extent to which there has been a change  
15 in the number of individuals who have nonadmitted  
16 insurance policies, the type of coverage provided  
17 under such policies, and whether such coverage is  
18 available in the admitted insurance market.

19       (c) CONSULTATION WITH NAIC.—In conducting the  
20 study under this section, the Comptroller General shall  
21 consult with the NAIC.

22       (d) REPORT.—The Comptroller General shall com-  
23 plete the study under this section and submit a report to  
24 the Committee on Banking, Housing, and Urban Affairs  
25 of the Senate and the Committee on Financial Services

1 of the House of Representatives regarding the findings of  
2 the study not later than 30 months after the effective date  
3 of this subtitle.

4 **SEC. 527. DEFINITIONS.**

5 For purposes of this part, the following definitions  
6 shall apply:

7 (1) ADMITTED INSURER.—The term “admitted  
8 insurer” means, with respect to a State, an insurer  
9 licensed to engage in the business of insurance in  
10 such State.

11 (2) AFFILIATE.—The term “affiliate” means,  
12 with respect to an insured, any entity that controls,  
13 is controlled by, or is under common control with the  
14 insured.

15 (3) AFFILIATED GROUP.—The term “affiliated  
16 group” means any group of entities that are all af-  
17 filiated.

18 (4) CONTROL.—An entity has “control” over  
19 another entity if—

20 (A) the entity directly or indirectly or act-  
21 ing through 1 or more other persons owns, con-  
22 trols, or has the power to vote 25 percent or  
23 more of any class of voting securities of the  
24 other entity; or

1 (B) the entity controls in any manner the  
2 election of a majority of the directors or trust-  
3 ees of the other entity.

4 (5) EXEMPT COMMERCIAL PURCHASER.—The  
5 term “exempt commercial purchaser” means any  
6 person purchasing commercial insurance that, at the  
7 time of placement, meets the following requirements:

8 (A) The person employs or retains a quali-  
9 fied risk manager to negotiate insurance cov-  
10 erage.

11 (B) The person has paid aggregate nation-  
12 wide commercial property and casualty insur-  
13 ance premiums in excess of \$100,000 in the im-  
14 mediately preceding 12 months.

15 (C)(i) The person meets at least 1 of the  
16 following criteria:

17 (I) The person possesses a net worth  
18 in excess of \$20,000,000, as such amount  
19 is adjusted pursuant to clause (ii).

20 (II) The person generates annual rev-  
21 enues in excess of \$50,000,000, as such  
22 amount is adjusted pursuant to clause (ii).

23 (III) The person employs more than  
24 500 full-time or full-time equivalent em-  
25 ployees per individual insured or is a mem-

1                   ber of an affiliated group employing more  
2                   than 1,000 employees in the aggregate.

3                   (IV) The person is a not-for-profit or-  
4                   ganization or public entity generating an-  
5                   nual budgeted expenditures of at least  
6                   \$30,000,000, as such amount is adjusted  
7                   pursuant to clause (ii).

8                   (V) The person is a municipality with  
9                   a population in excess of 50,000 persons.

10                  (ii) Effective on the fifth January 1 occur-  
11                  ring after the date of the enactment of this sub-  
12                  title and each fifth January 1 occurring there-  
13                  after, the amounts in subclauses (I), (II), and  
14                  (IV) of clause (i) shall be adjusted to reflect the  
15                  percentage change for such 5-year period in the  
16                  Consumer Price Index for All Urban Con-  
17                  sumers published by the Bureau of Labor Sta-  
18                  tistics of the Department of Labor.

19                  (6) HOME STATE.—

20                  (A) IN GENERAL.—Except as provided in  
21                  subparagraph (B), the term “home State”  
22                  means, with respect to an insured—

23                  (i) the State in which an insured  
24                  maintains its principal place of business or,

1 in the case of an individual, the individ-  
2 ual's principal residence; or

3 (ii) if 100 percent of the insured risk  
4 is located out of the State referred to in  
5 subparagraph (A), the State to which the  
6 greatest percentage of the insured's tax-  
7 able premium for that insurance contract  
8 is allocated.

9 (B) AFFILIATED GROUPS.—If more than 1  
10 insured from an affiliated group are named in-  
11 sureds on a single nonadmitted insurance con-  
12 tract, the term “home State” means the home  
13 State, as determined pursuant to subparagraph  
14 (A), of the member of the affiliated group that  
15 has the largest percentage of premium attrib-  
16 uted to it under such insurance contract.

17 (7) INDEPENDENTLY PROCURED INSURANCE.—  
18 The term “independently procured insurance”  
19 means insurance procured directly by an insured  
20 from a nonadmitted insurer.

21 (8) NAIC.—The term “NAIC” means the Na-  
22 tional Association of Insurance Commissioners or  
23 any successor entity.

24 (9) NONADMITTED INSURANCE.—The term  
25 “nonadmitted insurance” means any property and

1       casualty insurance permitted to be placed directly or  
2       through a surplus lines broker with a nonadmitted  
3       insurer eligible to accept such insurance.

4           (10)   NON-ADMITTED   INSURANCE   MODEL  
5       ACT.—The term “Non-Admitted Insurance Model  
6       Act” means the provisions of the Non-Admitted In-  
7       surance Model Act, as adopted by the NAIC on Au-  
8       gust 3, 1994, and amended on September 30, 1996,  
9       December 6, 1997, October 2, 1999, and June 8,  
10      2002.

11          (11)   NONADMITTED   INSURER.—The term  
12      “nonadmitted insurer”—

13           (A) means, with respect to a State, an in-  
14      surer not licensed to engage in the business of  
15      insurance in such State; but

16           (B) does not include a risk retention  
17      group, as that term is defined in section 2(a)(4)  
18      of the Liability Risk Retention Act of 1986 (15  
19      U.S.C. 3901(a)(4)).

20          (12)   QUALIFIED   RISK   MANAGER.—The term  
21      “qualified risk manager” means, with respect to a  
22      policyholder of commercial insurance, a person who  
23      meets all of the following requirements:

1 (A) The person is an employee of, or third  
2 party consultant retained by, the commercial  
3 policyholder.

4 (B) The person provides skilled services in  
5 loss prevention, loss reduction, or risk and in-  
6 surance coverage analysis, and purchase of in-  
7 surance.

8 (C) The person—

9 (i)(I) has a bachelor's degree or high-  
10 er from an accredited college or university  
11 in risk management, business administra-  
12 tion, finance, economics, or any other field  
13 determined by a State insurance commis-  
14 sioner or other State regulatory official or  
15 entity to demonstrate minimum com-  
16 petence in risk management; and

17 (II)(aa) has 3 years of experience in  
18 risk financing, claims administration, loss  
19 prevention, risk and insurance analysis, or  
20 purchasing commercial lines of insurance;  
21 or

22 (bb) has 1 of the following designa-  
23 tions:

24 (AA) a designation as a Char-  
25 tered Property and Casualty Under-



1 writer (in this subparagraph referred  
2 to as “CPCU”) issued by the Amer-  
3 ican Institute for CPCU/Insurance In-  
4 stitute of America;

5 (BB) a designation as an Asso-  
6 ciate in Risk Management (ARM)  
7 issued by the American Institute for  
8 CPCU/Insurance Institute of America;

9 (CC) a designation as Certified  
10 Risk Manager (CRM) issued by the  
11 National Alliance for Insurance Edu-  
12 cation & Research;

13 (DD) a designation as a RIMS  
14 Fellow (RF) issued by the Global Risk  
15 Management Institute; or

16 (EE) any other designation, cer-  
17 tification, or license determined by a  
18 State insurance commissioner or other  
19 State insurance regulatory official or  
20 entity to demonstrate minimum com-  
21 petency in risk management;

22 (ii)(I) has at least 7 years of experi-  
23 ence in risk financing, claims administra-  
24 tion, loss prevention, risk and insurance

1 coverage analysis, or purchasing commer-  
2 cial lines of insurance; and

3 (II) has any 1 of the designations  
4 specified in subitems (AA) through (EE)  
5 of clause (i)(II)(bb);

6 (iii) has at least 10 years of experi-  
7 ence in risk financing, claims administra-  
8 tion, loss prevention, risk and insurance  
9 coverage analysis, or purchasing commer-  
10 cial lines of insurance; or

11 (iv) has a graduate degree from an  
12 accredited college or university in risk  
13 management, business administration, fi-  
14 nance, economics, or any other field deter-  
15 mined by a State insurance commissioner  
16 or other State regulatory official or entity  
17 to demonstrate minimum competence in  
18 risk management.

19 (13) PREMIUM TAX.—The term “premium tax”  
20 means, with respect to surplus lines or independently  
21 procured insurance coverage, any tax, fee, assess-  
22 ment, or other charge imposed by a government en-  
23 tity directly or indirectly based on any payment  
24 made as consideration for an insurance contract for  
25 such insurance, including premium deposits, assess-

1       ments, registration fees, and any other compensation  
2       given in consideration for a contract of insurance.

3               (14) SURPLUS LINES BROKER.—The term “sur-  
4       plus lines broker” means an individual, firm, or cor-  
5       poration which is licensed in a State to sell, solicit,  
6       or negotiate insurance on properties, risks, or expo-  
7       sures located or to be performed in a State with  
8       nonadmitted insurers.

## 9                               **PART II—REINSURANCE**

### 10   **SEC. 531. REGULATION OF CREDIT FOR REINSURANCE AND** 11                               **REINSURANCE AGREEMENTS.**

12       (a) CREDIT FOR REINSURANCE.—If the State of  
13       domicile of a ceding insurer is an NAIC-accredited State,  
14       or has financial solvency requirements substantially simi-  
15       lar to the requirements necessary for NAIC accreditation,  
16       and recognizes credit for reinsurance for the insurer’s  
17       ceded risk, then no other State may deny such credit for  
18       reinsurance.

19       (b)               ADDITIONAL               PREEMPTION               OF  
20       EXTRATERRITORIAL APPLICATION OF STATE LAW.—In  
21       addition to the application of subsection (a), all laws, regu-  
22       lations, provisions, or other actions of a State that is not  
23       the domiciliary State of the ceding insurer, except those  
24       with respect to taxes and assessments on insurance com-

1 panies or insurance income, are preempted to the extent  
2 that they—

3 (1) restrict or eliminate the rights of the ceding  
4 insurer or the assuming insurer to resolve disputes  
5 pursuant to contractual arbitration to the extent  
6 such contractual provision is not inconsistent with  
7 the provisions of title 9, United States Code;

8 (2) require that a certain State's law shall gov-  
9 ern the reinsurance contract, disputes arising from  
10 the reinsurance contract, or requirements of the re-  
11 insurance contract;

12 (3) attempt to enforce a reinsurance contract  
13 on terms different than those set forth in the rein-  
14 surance contract, to the extent that the terms are  
15 not inconsistent with this part; or

16 (4) otherwise apply the laws of the State to re-  
17 insurance agreements of ceding insurers not domi-  
18 ciled in that State.

19 **SEC. 532. REGULATION OF REINSURER SOLVENCY.**

20 (a) DOMICILIARY STATE REGULATION.—If the State  
21 of domicile of a reinsurer is an NAIC-accredited State or  
22 has financial solvency requirements substantially similar  
23 to the requirements necessary for NAIC accreditation,  
24 such State shall be solely responsible for regulating the  
25 financial solvency of the reinsurer.

1 (b) NONDOMICILIARY STATES.—

2 (1) LIMITATION ON FINANCIAL INFORMATION  
3 REQUIREMENTS.—If the State of domicile of a rein-  
4 surer is an NAIC-accredited State or has financial  
5 solvency requirements substantially similar to the re-  
6 quirements necessary for NAIC accreditation, no  
7 other State may require the reinsurer to provide any  
8 additional financial information other than the infor-  
9 mation the reinsurer is required to file with its  
10 domiciliary State.

11 (2) RECEIPT OF INFORMATION.—No provision  
12 of this section shall be construed as preventing or  
13 prohibiting a State that is not the State of domicile  
14 of a reinsurer from receiving a copy of any financial  
15 statement filed with its domiciliary State.

16 **SEC. 533. DEFINITIONS.**

17 For purposes of this part, the following definitions  
18 shall apply:

19 (1) CEDING INSURER.—The term “ceding in-  
20 surer” means an insurer that purchases reinsurance.

21 (2) DOMICILIARY STATE.—The terms “State of  
22 domicile” and “domiciliary State” mean, with re-  
23 spect to an insurer or reinsurer, the State in which  
24 the insurer or reinsurer is incorporated or entered  
25 through, and licensed.

1           (3) REINSURANCE.—The term “reinsurance”  
2 means the assumption by an insurer of all or part  
3 of a risk undertaken originally by another insurer.

4           (4) REINSURER.—

5           (A) IN GENERAL.—The term “reinsurer”  
6 means an insurer to the extent that the in-  
7 surer—

8           (i) is principally engaged in the busi-  
9 ness of reinsurance;

10           (ii) does not conduct significant  
11 amounts of direct insurance as a percent-  
12 age of its net premiums; and

13           (iii) is not engaged in an ongoing  
14 basis in the business of soliciting direct in-  
15 surance.

16           (B) DETERMINATION.—A determination of  
17 whether an insurer is a reinsurer shall be made  
18 under the laws of the State of domicile in ac-  
19 cordance with this paragraph.

## 20           **PART III—RULE OF CONSTRUCTION**

### 21           **SEC. 541. RULE OF CONSTRUCTION.**

22           Nothing in this subtitle or the amendments made by  
23 this subtitle shall be construed to modify, impair, or super-  
24 sede the application of the antitrust laws. Any implied or  
25 actual conflict between this subtitle and any amendments

1 to this subtitle and the antitrust laws shall be resolved  
2 in favor of the operation of the antitrust laws.

3 **SEC. 542. SEVERABILITY.**

4 If any section or subsection of this subtitle, or any  
5 application of such provision to any person or cir-  
6 cumstance, is held to be unconstitutional, the remainder  
7 of this subtitle, and the application of the provision to any  
8 other person or circumstance, shall not be affected.

9 **TITLE VI—IMPROVEMENTS TO**  
10 **REGULATION OF BANK AND**  
11 **SAVINGS ASSOCIATION HOLD-**  
12 **ING COMPANIES AND DEPOSI-**  
13 **TORY INSTITUTIONS**

14 **SEC. 601. SHORT TITLE.**

15 This title may be cited as the “Bank and Savings  
16 Association Holding Company and Depository Institution  
17 Regulatory Improvements Act of 2010”.

18 **SEC. 602. DEFINITION.**

19 For purposes of this title, a company is a “commer-  
20 cial firm” if the annual gross revenues derived by the com-  
21 pany and all of its affiliates from activities that are finan-  
22 cial in nature (as defined in section 4(k) of the Bank  
23 Holding Company Act of 1956 (12 U.S.C. 1843(k))) and,  
24 if applicable, from the ownership or control of one or more  
25 insured depository institutions, represent less than 15 per-

1 cent of the consolidated annual gross revenues of the com-  
2 pany.

3 **SEC. 603. MORATORIUM AND STUDY ON TREATMENT OF**  
4 **CREDIT CARD BANKS, INDUSTRIAL LOAN**  
5 **COMPANIES, AND CERTAIN OTHER COMPA-**  
6 **NIES UNDER THE BANK HOLDING COMPANY**  
7 **ACT OF 1956.**

8 (a) MORATORIUM.—

9 (1) DEFINITIONS.—In this subsection—

10 (A) the term “credit card bank” means an  
11 institution described in section 2(c)(2)(F) of the  
12 Bank Holding Company Act of 1956 (12  
13 U.S.C. 1841(c)(2)(F));

14 (B) the term “industrial bank” means an  
15 institution described in section 2(c)(2)(H) of  
16 the Bank Holding Company Act of 1956 (12  
17 U.S.C. 1841(c)(2)(H)); and

18 (C) the term “trust bank” means an insti-  
19 tution described in section 2(c)(2)(D) of the  
20 Bank Holding Company Act of 1956 (12  
21 U.S.C. 1841(c)(2)(D)).

22 (2) MORATORIUM ON PROVISION OF DEPOSIT  
23 INSURANCE.—The Corporation may not approve an  
24 application for deposit insurance under section 5 of  
25 the Federal Deposit Insurance Act (12 U.S.C. 1815)



1 that is received after November 23, 2009, for an in-  
2 dustrial bank, a credit card bank, or a trust bank  
3 that is directly or indirectly owned or controlled by  
4 a commercial firm.

5 (3) CHANGE IN CONTROL.—

6 (A) IN GENERAL.—Except as provided in  
7 subparagraph (B), the appropriate Federal  
8 banking agency shall disapprove a change in  
9 control, as provided in section 7(j) of the Fed-  
10 eral Deposit Insurance Act (12 U.S.C. 1817(j)),  
11 of an industrial bank, a credit card bank, or a  
12 trust bank if the change in control would result  
13 in direct or indirect control of the industrial  
14 bank, credit card bank, or trust bank by a com-  
15 mercial firm.

16 (B) EXCEPTIONS.—Subparagraph (A)  
17 shall not apply to a change in control of an in-  
18 dustrial bank, credit card bank, or trust bank  
19 that—

20 (i) is in danger of default, as deter-  
21 mined by the appropriate Federal banking  
22 agency; or

23 (ii) results from the merger or whole  
24 acquisition of a commercial firm that di-  
25 rectly or indirectly controls the industrial

1 bank, credit card bank, or trust bank in a  
2 bona fide merger with or acquisition by an-  
3 other commercial firm, as determined by  
4 the appropriate Federal banking agency.

5 (4) SUNSET.—This subsection shall cease to  
6 have effect 3 years after the date of enactment of  
7 this Act.

8 (b) GOVERNMENT ACCOUNTABILITY OFFICE STUDY  
9 OF EXCEPTIONS UNDER THE BANK HOLDING COMPANY  
10 ACT OF 1956.—

11 (1) STUDY REQUIRED.—The Comptroller Gen-  
12 eral of the United States shall carry out a study to  
13 determine whether it is necessary, in order to  
14 strengthen the safety and soundness of institutions  
15 or the stability of the financial system, to eliminate  
16 the exceptions under section 2 of the Bank Holding  
17 Company Act of 1956 (12 U.S.C. 1841) for institu-  
18 tions described in—

19 (A) section 2(a)(5)(E) of the Bank Hold-  
20 ing Company Act of 1956 (12 U.S.C.  
21 1841(a)(5)(E));

22 (B) section 2(a)(5)(F) of the Bank Hold-  
23 ing Company Act of 1956 (12 U.S.C.  
24 1841(a)(5)(F));

1 (C) section 2(c)(2)(D) of the Bank Hold-  
2 ing Company Act of 1956 (12 U.S.C.  
3 1841(c)(2)(D));

4 (D) section 2(c)(2)(F) of the Bank Hold-  
5 ing Company Act of 1956 (12 U.S.C.  
6 1841(c)(2)(F));

7 (E) section 2(c)(2)(H) of the Bank Hold-  
8 ing Company Act of 1956 (12 U.S.C.  
9 1841(c)(2)(H)); and

10 (F) section 2(c)(2)(B) of the Bank Hold-  
11 ing Company Act of 1956 (12 U.S.C.  
12 1841(c)(2)(B)).

13 (2) CONTENT OF STUDY.—

14 (A) IN GENERAL.—The study required  
15 under paragraph (1), with respect to the insti-  
16 tutions referenced in each of subparagraphs (A)  
17 through (E) of paragraph (1), shall, to the ex-  
18 tent feasible be based on information provided  
19 to the Comptroller General by the appropriate  
20 Federal or State regulator, and shall—

21 (i) identify the types and number of  
22 institutions excepted from section 2 of the  
23 Bank Holding Company Act of 1956 (12  
24 U.S.C. 1841) under each of the subpara-

1 graphs described in subparagraphs (A)  
2 through (E) of paragraph (1);

3 (ii) generally describe the size and ge-  
4 ographic locations of the institutions de-  
5 scribed in clause (i);

6 (iii) determine the extent to which the  
7 institutions described in clause (i) are held  
8 by holding companies that are commercial  
9 firms;

10 (iv) determine whether the institutions  
11 described in clause (i) have any affiliates  
12 that are commercial firms;

13 (v) identify the Federal banking agen-  
14 cy responsible for the supervision of the in-  
15 stitutions described in clause (i) on and  
16 after the transfer date;

17 (vi) determine the adequacy of the  
18 Federal bank regulatory framework appli-  
19 cable to each category of institution de-  
20 scribed in clause (i), including any restric-  
21 tions (including limitations on affiliate  
22 transactions or cross-marketing) that apply  
23 to transactions between an institution, the  
24 holding company of the institution, and  
25 any other affiliate of the institution; and

1                   (vii) evaluate the potential con-  
2                   sequences of subjecting the institutions de-  
3                   scribed in clause (i) to the requirements of  
4                   the Bank Holding Company Act of 1956,  
5                   including with respect to the availability  
6                   and allocation of credit, the stability of the  
7                   financial system and the economy, the safe  
8                   and sound operation of each category of  
9                   institution, and the impact on the types of  
10                  activities in which such institutions, and  
11                  the holding companies of such institutions,  
12                  may engage.

13                  (B) SAVINGS ASSOCIATIONS.—With respect  
14                  to institutions described in paragraph (1)(F),  
15                  the study required under paragraph (1) shall—

16                   (i) determine the adequacy of the  
17                   Federal bank regulatory framework appli-  
18                   cable to such institutions, including any re-  
19                   strictions (including limitations on affiliate  
20                   transactions or cross-marketing) that apply  
21                   to transactions between an institution, the  
22                   holding company of the institution, and  
23                   any other affiliate of the institution; and

24                   (ii) evaluate the potential con-  
25                   sequences of subjecting the institutions de-

1           scribed in paragraph (1)(F) to the require-  
2           ments of the Bank Holding Company Act  
3           of 1956, including with respect to the  
4           availability and allocation of credit, the  
5           stability of the financial system and the  
6           economy, the safe and sound operation of  
7           such institutions, and the impact on the  
8           types of activities in which such institu-  
9           tions, and the holding companies of such  
10          institutions, may engage.

11           (3) REPORT.—Not later than 18 months after  
12          the date of enactment of this Act, the Comptroller  
13          General shall submit to the Committee on Banking,  
14          Housing, and Urban Affairs of the Senate and the  
15          Committee on Financial Services of the House of  
16          Representatives a report on the study required  
17          under paragraph (1).

18 **SEC. 604. REPORTS AND EXAMINATIONS OF HOLDING COM-**  
19 **PANIES; REGULATION OF FUNCTIONALLY**  
20 **REGULATED SUBSIDIARIES.**

21           (a) REPORTS BY BANK HOLDING COMPANIES.—Sec-  
22          tions 5(c)(1) of the Bank Holding Company Act of 1956  
23          (12 U.S.C. 1844(c)(1)) is amended—

24           (1) by striking subparagraph (B) and inserting  
25          the following:

1           “(B) USE OF EXISTING REPORTS AND  
2 OTHER SUPERVISORY INFORMATION.—The  
3 Board shall, to the fullest extent possible, use—

4           “(i) reports and other supervisory in-  
5 formation that the bank holding company  
6 or any subsidiary thereof has been required  
7 to provide to other Federal or State regu-  
8 latory agencies;

9           “(ii) externally audited financial state-  
10 ments of the bank holding company or  
11 subsidiary;

12           “(iii) information otherwise available  
13 from Federal or State regulatory agencies;  
14 and

15           “(iv) information that is otherwise re-  
16 quired to be reported publicly.”; and

17 (2) by adding at the end the following:

18           “(C) AVAILABILITY.—Upon the request of  
19 the Board, the bank holding company or a sub-  
20 sidiary of the bank holding company shall  
21 promptly provide to the Board any information  
22 described in clauses (i) through (iii) of subpara-  
23 graph (B).”.

24 (b) EXAMINATIONS OF BANK HOLDING COMPA-  
25 NIES.—Section 5(c)(2) of the Bank Holding Company Act

1 of 1956 (12 U.S.C. 1844(c)(2)) is amended to read as  
2 follows:

3 “(2) EXAMINATIONS.—

4 “(A) IN GENERAL.—The Board may make  
5 examinations of a bank holding company and  
6 each subsidiary of a bank holding company in  
7 order to—

8 “(i) inform the Board of—

9 “(I) the nature of the operations  
10 and financial condition of the bank  
11 holding company and the subsidiary;

12 “(II) the financial, operational,  
13 and other risks within the bank hold-  
14 ing company system that may pose a  
15 threat to—

16 “(aa) the safety and sound-  
17 ness of the bank holding com-  
18 pany or of any depository institu-  
19 tion subsidiary of the bank hold-  
20 ing company; or

21 “(bb) the stability of the fi-  
22 nancial system of the United  
23 States; and

24 “(III) the systems of the bank  
25 holding company for monitoring and



1 controlling the risks described in sub-  
2 clause (II); and

3 “(ii) monitor the compliance of the  
4 bank holding company and the subsidiary  
5 with this Act and any other applicable pro-  
6 visions of Federal law.

7 “(B) USE OF REPORTS TO REDUCE EXAMI-  
8 NATIONS.—For purposes of this paragraph, the  
9 Board shall, to the fullest extent possible, rely  
10 on—

11 “(i) examination reports made by  
12 other Federal or State regulatory agencies  
13 relating to a bank holding company and  
14 any subsidiary of a bank holding company;  
15 and

16 “(ii) the reports and other informa-  
17 tion required under paragraph (1).

18 “(C) COORDINATION WITH OTHER REGU-  
19 LATORS.—The Board shall—

20 “(i) provide reasonable notice to, and  
21 consult with, the appropriate Federal  
22 banking agency or State regulatory agency  
23 of a subsidiary that is a depository institu-  
24 tion or a functionally regulated subsidiary  
25 of a bank holding company before com-

1                   mencing an examination of the subsidiary  
2                   under this section; and

3                   “(ii) to the fullest extent possible,  
4                   avoid duplication of examination activities,  
5                   reporting requirements, and requests for  
6                   information.”.

7           (c) **AUTHORITY TO REGULATE FUNCTIONALLY REG-**  
8 **ULATED SUBSIDIARIES OF BANK HOLDING COMPA-**  
9 **NIES.**—The Bank Holding Company Act of 1956 (12  
10 U.S.C. 1841 et seq.) is amended—

11                   (1) in section 5(c) (12 U.S.C. 1844(c)), by  
12                   striking paragraph (3) and inserting the following:

13                   “(3) [Reserved]”; and

14                   (2) by striking section 10A (12 U.S.C. 1848a).

15           (d) **ACQUISITIONS OF BANKS.**—Section 3(c) of the  
16 Bank Holding Company Act of 1956 (12 U.S.C. 1842(c))  
17 is amended by adding at the end the following:

18                   “(7) **FINANCIAL STABILITY.**—In every case, the  
19                   Board shall take into consideration the extent to  
20                   which a proposed acquisition, merger, or consolida-  
21                   tion would result in greater or more concentrated  
22                   risks to the stability of the United States banking or  
23                   financial system.”.

24           (e) **ACQUISITIONS OF NONBANKS.**—

1           (1) NOTICE PROCEDURES.—Section 4(j)(2)(A)  
2 of the Bank Holding Company Act of 1956 (12  
3 U.S.C. 1843(j)(2)(A)) is amended by striking “or  
4 unsound banking practices” and inserting “unsound  
5 banking practices, or risk to the stability of the  
6 United States banking or financial system”.

7           (2) ACTIVITIES THAT ARE FINANCIAL IN NA-  
8 TURE.—Section 4(k)(6)(B) of the Bank Holding  
9 Company Act of 1956 (12 U.S.C. 1843(k)(6)(B)) is  
10 amended to read as follows:

11                   “(B) APPROVAL NOT REQUIRED FOR CER-  
12 TAIN FINANCIAL ACTIVITIES.—

13                           “(i) IN GENERAL.—Except as pro-  
14 vided in subsection (j) with regard to the  
15 acquisition of a savings association and  
16 clause (ii), a financial holding company  
17 may commence any activity, or acquire any  
18 company, pursuant to paragraph (4) or  
19 any regulation prescribed or order issued  
20 under paragraph (5), without prior ap-  
21 proval of the Board.

22                           “(ii) EXCEPTION.—A financial hold-  
23 ing company may not acquire a company,  
24 without the prior approval of the Board, in  
25 a transaction in which the total consoli-

1           dated assets to be acquired by the financial  
2           holding company exceed \$25,000,000,000.

3           “(iii) HART-SCOTT-RODINO FILING  
4           REQUIREMENT.—Solely for purposes of  
5           section 7A(c)(8) of the Clayton Act (15  
6           U.S.C. 18a(c)(8)), the transactions subject  
7           to the requirements of this paragraph shall  
8           be treated as if Board of Governors ap-  
9           proval is not required.”.

10          (f) BANK MERGER ACT TRANSACTIONS.—Section  
11          18(c)(5) of the Federal Deposit Insurance Act (12 U.S.C.  
12          1828(c)(5)) is amended, in the matter immediately fol-  
13          lowing subparagraph (B), by striking “and the conven-  
14          ience and needs of the community to be served” and in-  
15          serting “the convenience and needs of the community to  
16          be served, and the risk to the stability of the United States  
17          banking or financial system”.

18          (g) REPORTS BY SAVINGS AND LOAN HOLDING COM-  
19          PANIES.—Section 10(b)(2) of the Home Owners’ Loan Act  
20          (12 U.S.C. 1467a(b)(2) is amended—

21                  (1) by striking “Each savings” and inserting  
22          the following:

23                          “(A) IN GENERAL.—Each savings”; and

24                  (2) by adding at the end the following:

1           “(B) USE OF EXISTING REPORTS AND  
2 OTHER SUPERVISORY INFORMATION.—The  
3 Board shall, to the fullest extent possible, use—

4           “(i) reports and other supervisory in-  
5 formation that the savings and loan hold-  
6 ing company or any subsidiary thereof has  
7 been required to provide to other Federal  
8 or State regulatory agencies;

9           “(ii) externally audited financial state-  
10 ments of the savings and loan holding com-  
11 pany or subsidiary;

12           “(iii) information that is otherwise  
13 available from Federal or State regulatory  
14 agencies; and

15           “(iv) information that is otherwise re-  
16 quired to be reported publicly.

17           “(C) AVAILABILITY.—Upon the request of  
18 the Board, a savings and loan holding company  
19 or a subsidiary of a savings and loan holding  
20 company shall promptly provide to the Board  
21 any information described in clauses (i) through  
22 (iii) of subparagraph (B).”.

23           (h) EXAMINATION OF SAVINGS AND LOAN HOLDING  
24 COMPANIES.—

1           (1) DEFINITIONS.—Section 2 of the Home  
2 Owners’ Loan Act (12 U.S.C. 1462) is amended by  
3 adding at the end the following:

4           “(10) APPROPRIATE FEDERAL BANKING AGEN-  
5 CY.—The term ‘appropriate Federal banking agency’  
6 has the same meaning as in section 3(q) of the Fed-  
7 eral Deposit Insurance Act (12 U.S.C. 1813(q)).

8           “(11) FUNCTIONALLY REGULATED SUB-  
9 SIDIARY.—The term ‘functionally regulated sub-  
10 sidiary’ has the same meaning as in section 5(e)(5)  
11 of the Bank Holding Company Act of 1956 (12  
12 U.S.C. 1844(e)(5)).”.

13           (2) EXAMINATION.—Section 10(b) of the Home  
14 Owners’ Loan Act (12 U.S.C. 1467a(b)) is amended  
15 by striking paragraph (4) and inserting the fol-  
16 lowing:

17           “(4) EXAMINATIONS.—

18           “(A) IN GENERAL.—The Board may make  
19 examinations of a savings and loan holding  
20 company and each subsidiary of a savings and  
21 loan holding company system, in order to—

22           “(i) inform the Board of—

23           “(I) the nature of the operations  
24 and financial condition of the savings

1 and loan holding company and the  
2 subsidiary;

3 “(II) the financial, operational,  
4 and other risks within the savings and  
5 loan holding company system that  
6 may pose a threat to—

7 “(aa) the safety and sound-  
8 ness of the savings and loan  
9 holding company or of any depos-  
10 itory institution subsidiary of the  
11 savings and loan holding com-  
12 pany; or

13 “(bb) the stability of the fi-  
14 nancial system of the United  
15 States; and

16 “(III) the systems of the savings  
17 and loan holding company for moni-  
18 toring and controlling the risks de-  
19 scribed in subclause (II); and

20 “(ii) monitor the compliance of the  
21 savings and loan holding company and the  
22 subsidiary with this Act and any other ap-  
23 plicable provisions of Federal law.

24 “(B) USE OF REPORTS TO REDUCE EXAMI-  
25 NATIONS.—For purposes of this subsection, the

1 Board shall, to the fullest extent possible, rely  
2 on—

3 “(i) the examination reports made by  
4 other Federal or State regulatory agencies  
5 relating to a savings and loan holding com-  
6 pany and any subsidiary; and

7 “(ii) the reports and other informa-  
8 tion required under paragraph (2).

9 “(C) COORDINATION WITH OTHER REGU-  
10 LATORS.—The Board shall—

11 “(i) provide reasonable notice to, and  
12 consult with, the appropriate Federal  
13 banking agency or State regulatory agency  
14 of a subsidiary that is a depository institu-  
15 tion or a functionally regulated subsidiary  
16 of a savings and loan holding company be-  
17 fore commencing an examination of the  
18 subsidiary under this section; and

19 “(ii) to the fullest extent possible,  
20 avoid duplication of examination activities,  
21 reporting requirements, and requests for  
22 information.”.

23 (i) DEFINITION OF THE TERM “SAVINGS AND LOAN  
24 HOLDING COMPANY”.—Section 10(a)(1)(D)(ii) of the



1 Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(D)(ii))  
2 is amended to read as follows:

3                   “(ii) EXCLUSION.—The term ‘savings  
4                   and loan holding company’ does not in-  
5                   clude—

6                   “(I) a bank holding company  
7                   that is registered under, and subject  
8                   to, the Bank Holding Company Act of  
9                   1956 (12 U.S.C. 1841 et seq.), or to  
10                  any company directly or indirectly  
11                  controlled by such company (other  
12                  than a savings association); or

13                  “(II) a company that controls a  
14                  savings association that functions  
15                  solely in a trust or fiduciary capacity  
16                  as described in section 2(c)(2)(D) of  
17                  the Bank Holding Company Act of  
18                  1956 (12 U.S.C. 1841(c)(2)(D)).”.

19                  (j) EFFECTIVE DATE.—The amendments made by  
20 this section shall take effect on the transfer date.

1 **SEC. 605. ASSURING CONSISTENT OVERSIGHT OF PERMIS-**  
2 **SIBLE ACTIVITIES OF DEPOSITORY INSTITU-**  
3 **TION SUBSIDIARIES OF HOLDING COMPA-**  
4 **NIES.**

5 Section 6 of the Bank Holding Company Act of 1956  
6 (12 U.S.C. 1845) is amended to read as follows:

7 **“SEC. 6. ASSURING CONSISTENT OVERSIGHT OF PERMIS-**  
8 **SIBLE ACTIVITIES OF DEPOSITORY INSTITU-**  
9 **TION SUBSIDIARIES OF HOLDING COMPA-**  
10 **NIES.**

11 “(a) DEFINITIONS.—

12 “(1) DEFINITIONS.—In this section—

13 “(A) the terms ‘depository institution hold-  
14 ing company’, ‘Federal depository institution’,  
15 ‘State member bank’, ‘State nonmember bank’,  
16 and ‘State savings association’ have the same  
17 meanings as in section 3(w) of the Federal De-  
18 posit Insurance Act (12 U.S.C. 1813(w));

19 “(B) the term ‘functionally regulated sub-  
20 sidiary’ has the same meaning as in section  
21 5(e)(5); and

22 “(C) the term ‘lead Federal banking agen-  
23 cy’ means—

24 “(i) the Board, in the case of any de-  
25 pository institution holding company hav-  
26 ing—



1           solidated assets of all subsidiaries that  
2           are Federal depository institutions ex-  
3           ceed the total consolidated assets of  
4           all subsidiaries that are State banks  
5           or State depository institutions; and

6           “(iii) the Federal Deposit Insurance  
7           Corporation, in the case of any depository  
8           institution holding company having—

9                   “(I) a subsidiary that is an in-  
10                   sured depository institution, if all  
11                   such insured depository institutions  
12                   are State nonmember banks or State  
13                   savings associations; or

14                   “(II) a subsidiary that is a Fed-  
15                   eral depository institution or a State  
16                   member bank and a subsidiary that is  
17                   a State nonmember bank or a State  
18                   savings association, if the total con-  
19                   solidated assets of all subsidiaries that  
20                   are State nonmember banks or State  
21                   savings associations exceed the total  
22                   consolidated assets of all subsidiaries  
23                   that are Federal depository institu-  
24                   tions or State member banks.

25                   “(2) DETERMINATION OF TOTAL ASSETS.—

1           “(A) IN GENERAL.—Not later than 180  
2           days after the date of enactment of the Restor-  
3           ing American Financial Stability Act of 2010,  
4           the Board of Governors, the Office of the  
5           Comptroller of the Currency, and the Federal  
6           Deposit Insurance Corporation, in order to  
7           avoid disruptive transfers of regulatory respon-  
8           sibility, shall issue joint regulations that speci-  
9           fy—

10                   “(i) the source of data for deter-  
11                   mining the total assets of a depository in-  
12                   stitution for purposes of this section; and

13                   “(ii) the interval and frequency at  
14                   which the total assets of a depository insti-  
15                   tution will be determined, as provided in  
16                   subparagraph (B)(ii).

17           “(B) CONTENT.—The regulations issued  
18           under subparagraph (A)—

19                   “(i) shall use information contained in  
20                   the reports described in paragraph (3),  
21                   other regulatory reports, audited financial  
22                   statements, or other comparable sources;

23                   “(ii) shall establish the frequency with  
24                   which the total assets of depository institu-  
25                   tions are determined, at an interval that—

1                   “(I) avoids undue disruption in  
2                   regulatory oversight;

3                   “(II) facilitates nondisruptive  
4                   transfers of regulatory responsibility;  
5                   and

6                   “(III) is not shorter than 2  
7                   years; and

8                   “(iii) may provide for more frequent  
9                   determinations of the total assets of a de-  
10                  pository institution than are established  
11                  under clause (ii), to take into account a  
12                  transaction outside the ordinary course of  
13                  business, including a merger, acquisition,  
14                  or other circumstance, as determined joint-  
15                  ly by the Board of Governors, the Office of  
16                  the Comptroller of the Currency, and the  
17                  Federal Deposit Insurance Corporation.

18                  “(3) INTERIM PROVISIONS.—Until the date on  
19                  which final regulations issued under paragraph (2)  
20                  are effective, for purposes this section, the total as-  
21                  sets of a depository institution shall be determined  
22                  by reference to the total assets reported in the most  
23                  recent Consolidated Report of Income and Condition  
24                  or Thrift Financial Report (or any successor there-  
25                  to) filed by the depository institution with the Fed-

1       eral Deposit Insurance Corporation or the Office of  
2       Thrift Supervision, as applicable, before the transfer  
3       date established under section 311 of the Restoring  
4       American Financial Stability Act of 2010.

5       “(b) LEAD AGENCY SUPERVISION.—

6               “(1) IN GENERAL.—The lead Federal banking  
7       agency for each depository institution holding com-  
8       pany shall make examinations of the activities of  
9       each nondepository institution subsidiary (other than  
10      a functionally regulated subsidiary) of the depository  
11      institution holding company that are permissible for  
12      depository institution subsidiaries of the depository  
13      institution holding company, to determine whether  
14      the activities—

15               “(A) present safety and soundness risks to  
16      any depository institution subsidiary of the de-  
17      pository institution holding company;

18               “(B) are conducted in accordance with ap-  
19      plicable law; and

20               “(C) are subject to appropriate systems for  
21      monitoring and controlling the financial, oper-  
22      ating, and other risks of the activity and pro-  
23      tecting the depository institution subsidiaries of  
24      the holding company.

1           “(2) PROCESS FOR EXAMINATION.—An exam-  
2           ination under paragraph (1) shall be carried out  
3           under the authority of the lead Federal banking  
4           agency, as if the nondepository institution subsidiary  
5           were an insured depository institution for which the  
6           lead Federal banking agency is the appropriate Fed-  
7           eral banking agency.

8           “(c) COORDINATION.—The Office of the Comptroller  
9           of the Currency and the Federal Deposit Insurance Cor-  
10          poration shall each coordinate the supervision of subsidi-  
11          aries described in subsection (b) with the supervision by  
12          the Board of Governors of the holding companies of the  
13          subsidiaries described in subsection (b), in a manner  
14          that—

15                 “(1) avoids duplication;

16                 “(2) shares information relevant to the super-  
17          vision of the depository institution holding company  
18          by each agency;

19                 “(3) achieves the objectives of subsection (b);  
20          and

21                 “(4) ensures that the depository institution  
22          holding company and the subsidiaries of the depository  
23          institution holding company are not subject to  
24          conflicting supervisory demands by the 2 agencies.

25                 “(d) REFERRALS FOR ENFORCEMENT.—



1           “(1) RECOMMENDATION OF ACTION BY BOARD  
2           OF GOVERNORS.—The Office of the Comptroller of  
3           the Currency or the Federal Deposit Insurance Cor-  
4           poration, as lead Federal banking agency for a de-  
5           pository institution holding company, based on infor-  
6           mation obtained pursuant to the responsibilities of  
7           the Office of the Comptroller of the Currency or the  
8           Federal Deposit Insurance Corporation, respectively,  
9           under subsection (b), may submit to the Board of  
10          Governors, in writing, a recommendation that the  
11          Board of Governors take enforcement action against  
12          a nondepository institution subsidiary (other than a  
13          functionally regulated subsidiary) of the depository  
14          institution holding company, together with an expla-  
15          nation of the concerns giving rise to the rec-  
16          ommendation.

17          “(2) BACK-UP AUTHORITY OF THE LEAD FED-  
18          ERAL BANKING AGENCY.—If, within the 60-day pe-  
19          riod beginning on the date on which the Board of  
20          Governors receives a recommendation under para-  
21          graph (1), the Board of Governors does not take en-  
22          forcement action against a nondepository institution  
23          subsidiary or provide a plan for enforcement action  
24          that is acceptable to the lead Federal banking agen-  
25          cy, the lead Federal banking agency (upon the au-

1       thorization of the Comptroller, or the Federal De-  
2       posit Insurance Corporation, upon a vote of its  
3       members, as applicable) may take the recommended  
4       enforcement action, in the same manner as if the  
5       subsidiary were an insured depository institution for  
6       which the lead Federal banking agency is the appro-  
7       priate Federal banking agency.”.

8       **SEC. 606. REQUIREMENTS FOR FINANCIAL HOLDING COM-**  
9                                   **PANIES TO REMAIN WELL CAPITALIZED AND**  
10                                  **WELL MANAGED.**

11       (a) AMENDMENT.—Section 4(l)(1) of the Bank Hold-  
12       ing Company Act of 1956 (12 U.S.C. 1843(l)(1)) is  
13       amended—

14               (1) in subparagraph (B), by striking “and” at  
15       the end;

16               (2) by redesignating subparagraph (C) as sub-  
17       paragraph (D);

18               (3) by inserting after subparagraph (B) the fol-  
19       lowing:

20                       “(C) the bank holding company is well  
21       capitalized and well managed; and”;

22               (4) in subparagraph (D)(ii), as so redesignated,  
23       by striking “subparagraphs (A) and (B)” and insert-  
24       ing “subparagraphs (A), (B), and (C)”.

1 (b) EFFECTIVE DATE.—The amendments made by  
2 this section shall take effect on the transfer date.

3 **SEC. 607. STANDARDS FOR INTERSTATE ACQUISITIONS.**

4 (a) ACQUISITION OF BANKS.—Section 3(d)(1)(A) of  
5 the Bank Holding Company Act of 1956 (12 U.S.C.  
6 1842(d)(1)(A)) is amended by striking “adequately cap-  
7 italized and adequately managed” and inserting “well cap-  
8 italized and well managed”.

9 (b) INTERSTATE BANK MERGERS.—Section  
10 44(b)(4)(B) of the Federal Deposit Insurance Act (12  
11 U.S.C. 1831u(b)(4)(B)) is amended by striking “will con-  
12 tinue to be adequately capitalized and adequately man-  
13 aged” and inserting “will be well capitalized and well man-  
14 aged”.

15 (c) EFFECTIVE DATE.—The amendments made by  
16 this section shall take effect on the transfer date.

17 **SEC. 608. ENHANCING EXISTING RESTRICTIONS ON BANK**  
18 **TRANSACTIONS WITH AFFILIATES.**

19 (a) AFFILIATE TRANSACTIONS.—Section 23A of the  
20 Federal Reserve Act (12 U.S.C. 371e) is amended—

21 (1) in subsection (b)—

22 (A) in paragraph (1), by striking subpara-  
23 graph (D) and inserting the following:

1           “(D) any investment fund with respect to  
2           which a member bank or affiliate thereof is an  
3           investment adviser; and”;

4           (B) in paragraph (7)—

5           (i) in subparagraph (A), by inserting  
6           before the semicolon at the end the fol-  
7           lowing: “, including a purchase of assets  
8           subject to an agreement to repurchase”;

9           (ii) in subparagraph (C), by striking  
10          “, including assets subject to an agreement  
11          to repurchase,”;

12          (iii) in subparagraph (D)—

13          (I) by inserting “or other debt  
14          obligations” after “acceptance of secu-  
15          rities”; and

16          (II) by striking “or” at the end;  
17          and

18          (iv) by adding at the end the fol-  
19          lowing:

20          “(F) a transaction with an affiliate that  
21          involves the borrowing or lending of securities,  
22          to the extent that the transaction causes a  
23          member bank or a subsidiary to have credit ex-  
24          posure to the affiliate; or

1           “(G) a derivative transaction, as defined in  
2 paragraph (3) of section 5200(b) of the Revised  
3 Statutes of the United States (12 U.S.C.  
4 84(b)), with an affiliate, to the extent that the  
5 transaction causes a member bank or a sub-  
6 sidiary to have credit exposure to the affiliate;”;  
7 (2) in subsection (c)—

8           (A) in paragraph (1)—

9           (i) in the matter preceding subpara-  
10 graph (A), by striking “subsidiary” and all  
11 that follows through “time of the trans-  
12 action” and inserting “subsidiary, and any  
13 credit exposure of a member bank or a  
14 subsidiary to an affiliate resulting from a  
15 securities borrowing or lending transaction,  
16 or a derivative transaction, shall be se-  
17 cured at all times”; and

18           (ii) in each of subparagraphs (A)  
19 through (D), by striking “or letter of cred-  
20 it” and inserting “letter of credit, or credit  
21 exposure”;

22           (B) by striking paragraph (2);

23           (C) by redesignating paragraphs (3)  
24 through (5) as paragraphs (2) through (4), re-  
25 spectively;

1 (D) in paragraph (2), as so redesignated,  
2 by inserting before the period at the end “, or  
3 credit exposure to an affiliate resulting from a  
4 securities borrowing or lending transaction, or  
5 derivative transaction”; and

6 (E) in paragraph (3), as so redesignated—

7 (i) by inserting “or other debt obliga-  
8 tions” after “securities”; and

9 (ii) by striking “or guarantee” and all  
10 that follows through “behalf of,” and in-  
11 sserting “guarantee, acceptance, or letter of  
12 credit issued on behalf of, or credit expo-  
13 sure from a securities borrowing or lending  
14 transaction, or derivative transaction to,”;

15 (3) in subsection (d)(4), in the matter pre-  
16 ceding subparagraph (A), by striking “or issuing”  
17 and all that follows through “behalf of,” and insert-  
18 ing “issuing a guarantee, acceptance, or letter of  
19 credit on behalf of, or having credit exposure result-  
20 ing from a securities borrowing or lending trans-  
21 action, or derivative transaction to,”; and

22 (4) in subsection (f)—

23 (A) in paragraph (2)—

24 (i) by striking “or order”;

1 (ii) by striking “if it finds” and all  
2 that follows through the end of the para-  
3 graph and inserting the following: “if—

4 “(i) the Board finds the exemption to  
5 be in the public interest and consistent  
6 with the purposes of this section, and noti-  
7 fies the Federal Deposit Insurance Cor-  
8 poration of such finding; and

9 “(ii) before the end of the 60-day pe-  
10 riod beginning on the date on which the  
11 Federal Deposit Insurance Corporation re-  
12 ceives notice of the finding under clause  
13 (i), the Federal Deposit Insurance Cor-  
14 poration does not object, in writing, to the  
15 finding, based on a determination that the  
16 exemption presents an unacceptable risk to  
17 the Deposit Insurance Fund.”;

18 (iii) by striking the Board and insert-  
19 ing the following:

20 “(A) IN GENERAL.—The Board”; and

21 (iv) by adding at the end the fol-  
22 lowing:

23 “(B) ADDITIONAL EXEMPTIONS.—

24 “(i) NATIONAL BANKS.—The Comp-  
25 troller of the Currency may, by order, ex-

1                   empt a transaction of a national bank from  
2                   the requirements of this section if—

3                   “(I) the Board and the Office of  
4                   the Comptroller of the Currency joint-  
5                   ly find the exemption to be in the  
6                   public interest and consistent with the  
7                   purposes of this section and notify the  
8                   Federal Deposit Insurance Corpora-  
9                   tion of such finding; and

10                  “(II) before the end of the 60-  
11                  day period beginning on the date on  
12                  which the Federal Deposit Insurance  
13                  Corporation receives notice of the  
14                  finding under subclause (I), the Fed-  
15                  eral Deposit Insurance Corporation  
16                  does not object, in writing, to the  
17                  finding, based on a determination that  
18                  the exemption presents an unaccept-  
19                  able risk to the Deposit Insurance  
20                  Fund.

21                  “(ii) STATE BANKS.—The Federal  
22                  Deposit Insurance Corporation may, by  
23                  order, exempt a transaction of a State non-  
24                  member bank, and the Board may, by  
25                  order, exempt a transaction of a State



1 member bank, from the requirements of  
2 this section if—

3 “(I) the Board and the Federal  
4 Deposit Insurance Corporation jointly  
5 find that the exemption is in the pub-  
6 lic interest and consistent with the  
7 purposes of this section; and

8 “(II) the Federal Deposit Insur-  
9 ance Corporation finds that the ex-  
10 emption does not present an unaccept-  
11 able risk to the Deposit Insurance  
12 Fund.”; and

13 (B) by adding at the end the following:

14 “(4) AMOUNTS OF COVERED TRANSACTIONS.—

15 The Board may issue such regulations or interpreta-  
16 tions as the Board determines are necessary or ap-  
17 propriate with respect to the manner in which a net-  
18 ting agreement may be taken into account in deter-  
19 mining the amount of a covered transaction between  
20 a member bank or a subsidiary and an affiliate, in-  
21 cluding the extent to which netting agreements be-  
22 tween a member bank or a subsidiary and an affil-  
23 iate may be taken into account in determining  
24 whether a covered transaction is fully secured for  
25 purposes of subsection (d)(4). An interpretation

1 under this paragraph with respect to a specific mem-  
2 ber bank, subsidiary, or affiliate shall be issued  
3 jointly with the appropriate Federal banking agency  
4 for such member bank, subsidiary, or affiliate.”.

5 (b) TRANSACTIONS WITH AFFILIATES.—Section  
6 23B(e) of the Federal Reserve Act (12 U.S.C. 371c–1(e))  
7 is amended—

8 (1) by striking the undesignated matter fol-  
9 lowing subparagraph (B);

10 (2) by redesignating subparagraphs (A) and  
11 (B) as clauses (i) and (ii), respectively, and adjust-  
12 ing the clause margins accordingly;

13 (3) by redesignating paragraphs (1) and (2) as  
14 subparagraphs (A) and (B), respectively, and adjust-  
15 ing the subparagraph margins accordingly;

16 (4) by striking “The Board” and inserting the  
17 following:

18 “(1) IN GENERAL.—The Board”;

19 (5) in paragraph (1)(B), as so redesignated—

20 (A) in the matter preceding clause (i), by  
21 inserting before “regulations” the following:

22 “subject to paragraph (2), if the Board finds  
23 that an exemption or exclusion is in the public  
24 interest and is consistent with the purposes of

1           this section, and notifies the Federal Deposit  
2           Insurance Corporation of such finding,”; and

3                   (B) in clause (ii), by striking the comma at  
4           the end and inserting a period; and

5           (6) by adding at the end the following:

6                   “(2) EXCEPTION.—The Board may grant an  
7           exemption or exclusion under this subsection only if,  
8           during the 60-day period beginning on the date of  
9           receipt of notice of the finding from the Board  
10          under paragraph (1)(B), the Federal Deposit Insur-  
11          ance Corporation does not object, in writing, to such  
12          exemption or exclusion, based on a determination  
13          that the exemption presents an unacceptable risk to  
14          the Deposit Insurance Fund.”.

15          (c) HOME OWNERS’ LOAN ACT.—Section 11 of the  
16          Home Owners’ Loan Act (12 U.S.C. 1468) is amended  
17          by adding at the end the following:

18                   “(d) EXEMPTIONS.—

19                           “(1) FEDERAL SAVINGS ASSOCIATIONS.—The  
20           Comptroller of the Currency may, by order, exempt  
21           a transaction of a Federal savings association from  
22           the requirements of this section if—

23                                   “(A) the Board and the Office of the  
24           Comptroller of the Currency jointly find the ex-  
25           emption to be in the public interest and con-

1           sistent with the purposes of this section and no-  
2           tify the Federal Deposit Insurance Corporation  
3           of such finding; and

4                   “(B) before the end of the 60-day period  
5           beginning on the date on which the Federal De-  
6           posit Insurance Corporation receives notice of  
7           the finding under subparagraph (A), the Fed-  
8           eral Deposit Insurance Corporation does not ob-  
9           ject, in writing, to the finding, based on a de-  
10          termination that the exemption presents an un-  
11          acceptable risk to the Deposit Insurance Fund.

12                   “(2) STATE SAVINGS ASSOCIATION.—The Fed-  
13          eral Deposit Insurance Corporation may, by order,  
14          exempt a transaction of a State savings association  
15          from the requirements of this section if the Board  
16          and the Federal Deposit Insurance Corporation  
17          jointly find that—

18                   “(A) the exemption is in the public interest  
19                  and consistent with the purposes of this section;  
20                  and

21                   “(B) the exemption does not present an  
22                  unacceptable risk to the Deposit Insurance  
23                  Fund.”.

24                   “(d) EFFECTIVE DATE.—The amendments made by  
25          this section shall take effect 1 year after the transfer date.

1 **SEC. 609. ELIMINATING EXCEPTIONS FOR TRANSACTIONS**  
2 **WITH FINANCIAL SUBSIDIARIES.**

3 (a) AMENDMENT.—Section 23A(e) of the Federal Re-  
4 serve Act (12 U.S.C. 371c(e)) is amended—

5 (1) by striking paragraph (3); and

6 (2) by redesignating paragraph (4) as para-  
7 graph (3).

8 (b) PROSPECTIVE APPLICATION OF AMENDMENT.—

9 The amendments made by this section shall apply with  
10 respect to any covered transaction between a bank and  
11 a subsidiary of the bank, as those terms are defined in  
12 section 23A of the Federal Reserve Act (12 U.S.C. 371c),  
13 that is entered into on or after the date of enactment of  
14 this Act.

15 (c) EFFECTIVE DATE.—The amendments made by  
16 this section shall take effect 1 year after the transfer date.

17 **SEC. 610. LENDING LIMITS APPLICABLE TO CREDIT EXPO-**  
18 **SURE ON DERIVATIVE TRANSACTIONS, RE-**  
19 **PURCHASE AGREEMENTS, REVERSE REPUR-**  
20 **CHASE AGREEMENTS, AND SECURITIES**  
21 **LENDING AND BORROWING TRANSACTIONS.**

22 (a) NATIONAL BANKS.—Section 5200(b) of the Re-  
23 vised Statutes of the United States (12 U.S.C. 84(b)) is  
24 amended—

25 (1) in paragraph (1), by striking “shall in-  
26 clude” and all that follows through the end of the

1 paragraph and inserting the following: “shall in-  
2 clude—

3 “(A) all direct or indirect advances of  
4 funds to a person made on the basis of any ob-  
5 ligation of that person to repay the funds or re-  
6 payable from specific property pledged by or on  
7 behalf of the person;

8 “(B) to the extent specified by the Comp-  
9 troller of the Currency, any liability of a na-  
10 tional banking association to advance funds to  
11 or on behalf of a person pursuant to a contrac-  
12 tual commitment; and

13 “(C) any credit exposure to a person aris-  
14 ing from a derivative transaction, repurchase  
15 agreement, reverse repurchase agreement, secu-  
16 rities lending transaction, or securities bor-  
17 rowing transaction between the national bank-  
18 ing association and the person;”;

19 (2) in paragraph (2), by striking the period at  
20 the end and inserting “; and”; and

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

22 “(3) the term ‘derivative transaction’ includes  
23 any transaction that is a contract, agreement, swap,  
24 warrant, note, or option that is based, in whole or  
25 in part, on the value of, any interest in, or any

1 quantitative measure or the occurrence of any event  
2 relating to, one or more commodities, securities, cur-  
3 rencies, interest or other rates, indices, or other as-  
4 sets.”.

5 (b) SAVINGS ASSOCIATIONS.—Section 5(u)(3) of the  
6 Home Owners’ Loan Act (12 U.S.C. 1464(u)(3)) is  
7 amended by striking “Director” each place that term ap-  
8 pears and inserting “Comptroller of the Currency”.

9 (c) EFFECTIVE DATE.—The amendments made by  
10 this section shall take effect 1 year after the transfer date.

11 **SEC. 611. APPLICATION OF NATIONAL BANK LENDING LIM-**  
12 **ITS TO INSURED STATE BANKS.**

13 (a) AMENDMENT.—Section 18 of the Federal Deposit  
14 Insurance Act (12 U.S.C. 1828) is amended by adding at  
15 the end the following:

16 “(y) APPLICATION OF LENDING LIMITS TO INSURED  
17 STATE BANKS.—Section 5200 of the Revised Statutes of  
18 the United States (12 U.S.C. 84) shall apply to each in-  
19 sured State bank, in the same manner and to the same  
20 extent as if the insured State bank were a national bank-  
21 ing association.”.

22 (b) EFFECTIVE DATE.—The amendment made by  
23 this section shall take effect 1 year after the transfer date.

1 **SEC. 612. RESTRICTION ON CONVERSIONS OF TROUBLED**  
2 **BANKS.**

3 (a) CONVERSION OF A NATIONAL BANKING ASSOCIA-  
4 TION TO A STATE BANK.—The Act entitled “An Act to  
5 provide for the conversion of national banking associations  
6 into and their merger or consolidation with State banks,  
7 and for other purposes.” (12 U.S.C. 214 et seq.) is amend-  
8 ed by adding at the end the following:

9 **“SEC. 10. PROHIBITION ON CONVERSION.**

10 “A national banking association may not convert to  
11 a State bank or State savings association during any pe-  
12 riod in which the national banking association is subject  
13 to a cease and desist order (or other formal enforcement  
14 order) issued by, or a memorandum of understanding en-  
15 tered into with, the Comptroller of the Currency with re-  
16 spect to a significant supervisory matter.”.

17 (b) CONVERSION OF A STATE BANK TO A NATIONAL  
18 BANK.—Section 5154 of the Revised Statutes of the  
19 United States (12 U.S.C. 35) is amended by adding at  
20 the end the following: “The Comptroller of the Currency  
21 may not approve the conversion of a State bank or State  
22 savings association to a national banking association dur-  
23 ing any period in which the State bank or State savings  
24 association is subject to a cease and desist order (or other  
25 formal enforcement order) issued by, or a memorandum  
26 of understanding entered into with, a State bank super-



1 visor or the appropriate Federal banking agency with re-  
2 spect to a significant supervisory matter.”.

3 (c) CONVERSION OF A FEDERAL SAVINGS ASSOCIA-  
4 TION TO A NATIONAL OR STATE BANK OR STATE SAVINGS  
5 ASSOCIATION.—Section 5(i) of the Home Owners’ Loan  
6 Act (12 U.S.C. 1464(i)) is amended by adding at the end  
7 the following:

8 “(6) LIMITATION ON CERTAIN CONVERSIONS BY  
9 FEDERAL SAVINGS ASSOCIATIONS.—A Federal sav-  
10 ings association may not convert to a national bank  
11 or State bank or State savings association during  
12 any period in which the Federal savings association  
13 is subject to a cease and desist order (or other for-  
14 mal enforcement order) issued by, or a memorandum  
15 of understanding entered into with, the Office of  
16 Thrift Supervision or the Comptroller of the Cur-  
17 rency with respect to a significant supervisory mat-  
18 ter.”.

19 **SEC. 613. DE NOVO BRANCHING INTO STATES.**

20 (a) NATIONAL BANKS.—Section 5155(g)(1)(A) of the  
21 Revised Statutes of the United States (12 U.S.C.  
22 36(g)(1)(A)) is amended to read as follows:

23 “(A) the law of the State in which the  
24 branch is located, or is to be located, would per-  
25 mit establishment of the branch, if the national

1 bank were a State bank chartered by such  
2 State; and”.

3 (b) STATE INSURED BANKS.—Section 18(d)(4)(A)(i)  
4 of the Federal Deposit Insurance Act (12 U.S.C.  
5 1828(d)(4)(A)(i)) is amended to read as follows:

6 “(i) the law of the State in which the  
7 branch is located, or is to be located, would  
8 permit establishment of the branch, if the  
9 bank were a State bank chartered by such  
10 State; and”.

11 **SEC. 614. LENDING LIMITS TO INSIDERS.**

12 (a) EXTENSIONS OF CREDIT.—Section  
13 22(h)(9)(D)(i) of the Federal Reserve Act (12 U.S.C.  
14 375b(9)(D)(i)) is amended—

15 (1) by striking the period at the end and insert-  
16 ing “; or”;

17 (2) by striking “a person” and inserting “the  
18 person”;

19 (3) by striking “extends credit by making” and  
20 inserting the following: “extends credit to a person  
21 by—

22 “(I) making”; and

23 (4) by adding at the end the following:

24 “(II) having credit exposure to  
25 the person arising from a derivative

1 transaction (as defined in section  
2 5200(b) of the Revised Statutes of the  
3 United States (12 U.S.C. 84(b))), re-  
4 purchase agreement, reverse repur-  
5 chase agreement, securities lending  
6 transaction, or securities borrowing  
7 transaction between the member bank  
8 and the person.”.

9 (b) EFFECTIVE DATE.—The amendments made by  
10 this section shall take effect 1 year after the transfer date.

11 **SEC. 615. LIMITATIONS ON PURCHASES OF ASSETS FROM**  
12 **INSIDERS.**

13 (a) AMENDMENT TO THE FEDERAL DEPOSIT INSUR-  
14 ANCE ACT.—Section 18 of the Federal Deposit Insurance  
15 Act (12 U.S.C. 1828) is amended by adding at the end  
16 the following:

17 “(z) GENERAL PROHIBITION ON SALE OF ASSETS.—

18 “(1) IN GENERAL.—An insured depository in-  
19 stitution may not purchase an asset from, or sell an  
20 asset to, an executive officer, director, or principal  
21 shareholder of the insured depository institution, or  
22 any related interest of such person (as such terms  
23 are defined in section 22(h) of Federal Reserve Act),  
24 unless—

1           “(A) the transaction is on market terms;  
2           and

3           “(B) if the transaction represents more  
4           than 10 percent of the capital stock and surplus  
5           of the insured depository institution, the trans-  
6           action has been approved in advance by a ma-  
7           jority of the members of the board of directors  
8           of the insured depository institution who do not  
9           have an interest in the transaction.

10          “(2) RULEMAKING.—The Board of Governors  
11          of the Federal Reserve System may issue such rules  
12          as may be necessary to define terms and to carry  
13          out the purposes this subsection. Before proposing  
14          or adopting a rule under this paragraph, the Board  
15          of Governors of the Federal Reserve System shall  
16          consult with the Comptroller of the Currency and  
17          the Corporation as to the terms of the rule.”.

18          (b) AMENDMENTS TO THE FEDERAL RESERVE  
19          ACT.—Section 22(d) of the Federal Reserve Act (12  
20          U.S.C. 375) is amended to read as follows:

21          “(d) [Reserved]”.

22          (c) EFFECTIVE DATE.—The amendments made by  
23          this section shall take effect on the transfer date.

1 **SEC. 616. REGULATIONS REGARDING CAPITAL LEVELS OF**  
2 **HOLDING COMPANIES.**

3 (a) CAPITAL LEVELS OF BANK HOLDING COMPA-  
4 NIES.—Section 5(b) of the Bank Holding Company Act  
5 of 1956 (12 U.S.C. 1844(b)) is amended by inserting after  
6 “regulations” the following: “(including regulations relat-  
7 ing to the capital requirements of bank holding compa-  
8 nies)”.

9 (b) CAPITAL LEVELS OF SAVINGS AND LOAN HOLD-  
10 ING COMPANIES.—Section 10(g)(1) of the Home Owners’  
11 Loan Act (12 U.S.C. 1467a(g)(1)) is amended by insert-  
12 ing after “orders” the following: “(including regulations  
13 relating to capital requirements for savings and loan hold-  
14 ing companies)”.

15 (c) SOURCE OF STRENGTH.—The Federal Deposit  
16 Insurance Act (12 U.S.C. 1811 et seq.) is amended by  
17 inserting after section 38 (12 U.S.C. 1831o) the following:  
18 **“SEC. 38A. SOURCE OF STRENGTH.**

19 “(a) HOLDING COMPANIES.—The appropriate Fed-  
20 eral banking agency for a bank holding company or sav-  
21 ings and loan holding company shall require the bank  
22 holding company or savings and loan holding company to  
23 serve as a source of financial strength for any subsidiary  
24 of the bank holding company or savings and loan holding  
25 company that is a depository institution.

1           “(b) OTHER COMPANIES.—If an insured depository  
2 institution is not the subsidiary of a bank holding com-  
3 pany or savings and loan holding company, the appro-  
4 priate Federal banking agency for the insured depository  
5 institution shall require any company that directly or indi-  
6 rectly controls the insured depository institution to serve  
7 as a source of financial strength for such institution.

8           “(c) REPORTS.—The appropriate Federal banking  
9 agency for an insured depository institution described in  
10 subsection (b) may, from time to time, require the com-  
11 pany, or a company that directly or indirectly controls the  
12 insured depository institution to submit a report, under  
13 oath, for the purposes of—

14                 “(1) assessing the ability of such company to  
15                 comply with the requirement under subsection (b);  
16                 and

17                 “(2) enforcing the compliance of such company  
18                 with the requirement under subsection (b).

19           “(d) RULES.—Not later than 1 year after the trans-  
20 fer date, as defined in section 311 of the Enhancing Fi-  
21 nancial Institution Safety and Soundness Act of 2010, the  
22 appropriate Federal banking agencies shall jointly issue  
23 final rules to carry out this section.

24           “(e) DEFINITION.—In this section, the term ‘source  
25 of financial strength’ means the ability of a company that

1 directly or indirectly owns or controls an insured deposi-  
2 tory institution to provide financial assistance to such in-  
3 sured depository institution in the event of the financial  
4 distress of the insured depository institution.”.

5 (d) **EFFECTIVE DATE.**—The amendments made by  
6 this section shall take effect on the transfer date.

7 **SEC. 617. ELIMINATION OF ELECTIVE INVESTMENT BANK**  
8 **HOLDING COMPANY FRAMEWORK.**

9 (a) **AMENDMENT.**—Section 17 of the Securities Ex-  
10 change Act of 1934 (15 U.S.C. 78q) is amended—

11 (1) by striking subsection (i); and

12 (2) by redesignating subsections (j) and (k) as  
13 subsections (i) and (j), respectively.

14 (b) **EFFECTIVE DATE.**—The amendments made by  
15 this section shall take effect on the transfer date.

16 **SEC. 618. SECURITIES HOLDING COMPANIES.**

17 (a) **DEFINITIONS.**—In this section—

18 (1) the term “associated person of a securities  
19 holding company” means a person directly or indi-  
20 rectly controlling, controlled by, or under common  
21 control with, a securities holding company;

22 (2) the term “foreign bank” has the same  
23 meaning as in section 1(b)(7) of the International  
24 Banking Act of 1978 (12 U.S.C. 3101(b)(7));

1           (3) the term “insured bank” has the same  
2 meaning as in section 3 of the Federal Deposit In-  
3 surance Act (12 U.S.C. 1813);

4           (4) the term “securities holding company”—

5                 (A) means—

6                     (i) a person (other than a natural per-  
7 son) that owns or controls 1 or more bro-  
8 kers or dealers registered with the Com-  
9 mission; and

10                    (ii) the associated persons of a person  
11 described in clause (i); and

12                 (B) does not include a person that is—

13                     (i) a nonbank financial company su-  
14 pervised by the Board under title I;

15                     (ii) an insured bank (other than an  
16 institution described in subparagraphs (D),  
17 (F), or (H) of section 2(c)(2) of the Bank  
18 Holding Company Act of 1956 (12 U.S.C.  
19 1841(c)(2))) or a savings association;

20                     (iii) an affiliate of an insured bank  
21 (other than an institution described in sub-  
22 paragraphs (D), (F), or (H) of section  
23 2(c)(2) of the Bank Holding Company Act  
24 of 1956 (12 U.S.C. 1841(c)(2)) or an affil-  
25 iate of a savings association;



1 (iv) a foreign bank, foreign company,  
2 or company that is described in section  
3 8(a) of the International Banking Act of  
4 1978 (12 U.S.C. 3106(a));

5 (v) a foreign bank that controls, di-  
6 rectly or indirectly, a corporation chartered  
7 under section 25A of the Federal Reserve  
8 Act (12 U.S.C. 611 et seq.); or

9 (vi) subject to comprehensive consoli-  
10 dated supervision by a foreign regulator;

11 (5) the term “supervised securities holding com-  
12 pany” means a securities holding company that is  
13 supervised by the Board of Governors under this  
14 section; and

15 (6) the terms “affiliate”, “bank”, “bank hold-  
16 ing company”, “company”, “control”, “savings asso-  
17 ciation”, and “subsidiary” have the same meanings  
18 as in section 2 of the Bank Holding Company Act  
19 of 1956.

20 (b) SUPERVISION OF A SECURITIES HOLDING COM-  
21 PANY NOT HAVING A BANK OR SAVINGS ASSOCIATION  
22 AFFILIATE.—

23 (1) IN GENERAL.—A securities holding com-  
24 pany that is required by a foreign regulator or provi-  
25 sion of foreign law to be subject to comprehensive

1 consolidated supervision may register with the Board  
2 of Governors under paragraph (2) to become a su-  
3 pervised securities holding company. Any securities  
4 holding company filing such a registration shall be  
5 supervised in accordance with this section, and shall  
6 comply with the rules and orders prescribed by the  
7 Board of Governors applicable to supervised securi-  
8 ties holding companies.

9 (2) REGISTRATION AS A SUPERVISED SECURI-  
10 TIES HOLDING COMPANY.—

11 (A) REGISTRATION.—A securities holding  
12 company that elects to be subject to comprehen-  
13 sive consolidated supervision shall register by  
14 filing with the Board of Governors such infor-  
15 mation and documents as the Board of Gov-  
16 ernors, by regulation, may prescribe as nec-  
17 essary or appropriate in furtherance of the pur-  
18 poses of this section.

19 (B) EFFECTIVE DATE.—A securities hold-  
20 ing company that registers under subparagraph  
21 (A) shall be deemed to be a supervised securi-  
22 ties holding company, effective on the date that  
23 is 45 days after the date of receipt of the reg-  
24 istration information and documents under sub-  
25 paragraph (A) by the Board of Governors, or



1 public accounting firm), as the Board  
2 of Governors may require; and

3 (II) be provided promptly to the  
4 Board of Governors at any time, upon  
5 request by the Board of Governors.

6 (ii) CONTENTS.—Records and reports  
7 required to be made, furnished, or kept  
8 under this paragraph may include—

9 (I) a balance sheet or income  
10 statement of the supervised securities  
11 holding company or an affiliate of a  
12 supervised securities holding company;

13 (II) an assessment of the consoli-  
14 dated capital and liquidity of the su-  
15 pervised securities holding company;

16 (III) a report by an independent  
17 auditor attesting to the compliance of  
18 the supervised securities holding com-  
19 pany with the internal risk manage-  
20 ment and internal control objectives of  
21 the supervised securities holding com-  
22 pany; and

23 (IV) a report concerning the ex-  
24 tent to which the supervised securities  
25 holding company or affiliate has com-

1                   plied with the provisions of this sec-  
2                   tion and any regulations prescribed  
3                   and orders issued under this section.

4                   (2) USE OF EXISTING REPORTS.—

5                   (A) IN GENERAL.—The Board of Gov-  
6                   ernors shall, to the fullest extent possible, ac-  
7                   cept reports in fulfillment of the requirements  
8                   of this paragraph that a supervised securities  
9                   holding company or an affiliate of a supervised  
10                  securities holding company has been required to  
11                  provide to another regulatory agency or a self-  
12                  regulatory organization.

13                  (B) AVAILABILITY.—A supervised securi-  
14                  ties holding company or an affiliate of a super-  
15                  vised securities holding company shall promptly  
16                  provide to the Board of Governors, at the re-  
17                  quest of the Board of Governors, any report de-  
18                  scribed in subparagraph (A), as permitted by  
19                  law.

20                  (3) EXAMINATION AUTHORITY.—

21                  (A) FOCUS OF EXAMINATION AUTHOR-  
22                  ITY.—The Board of Governors may make ex-  
23                  aminations of any supervised securities holding  
24                  company and any affiliate of a supervised secu-  
25                  rities holding company to carry out this sub-

1 section, to prevent evasions thereof, and to  
2 monitor compliance by the supervised securities  
3 holding company or affiliate with applicable  
4 provisions of law.

5 (B) DEFERENCE TO OTHER EXAMINA-  
6 TIONS.—For purposes of this subparagraph, the  
7 Board of Governors shall, to the fullest extent  
8 possible, use the reports of examination made  
9 by other appropriate Federal or State regu-  
10 latory authorities with respect to any function-  
11 ally regulated subsidiary or any institution de-  
12 scribed in subparagraph (D), (F), or (H) of  
13 section 2(c)(2) of the Bank Holding Company  
14 Act of 1956 (12 U.S.C. 1841(c)(2)).

15 (d) CAPITAL AND RISK MANAGEMENT.—

16 (1) IN GENERAL.—The Board of Governors  
17 shall, by regulation or order, prescribe capital ade-  
18 quacy and other risk management standards for su-  
19 pervised securities holding companies that are ap-  
20 propriate to protect the safety and soundness of the  
21 supervised securities holding companies and address  
22 the risks posed to financial stability by supervised  
23 securities holding companies.

24 (2) DIFFERENTIATION.—In imposing standards  
25 under this subsection, the Board of Governors may

1 differentiate among supervised securities holding  
2 companies on an individual basis, or by category,  
3 taking into consideration the requirements under  
4 paragraph (3).

5 (3) CONTENT.—Any standards imposed on a  
6 supervised securities holding company under this  
7 subsection shall take into account—

8 (A) the differences among types of busi-  
9 ness activities carried out by the supervised se-  
10 curities holding company;

11 (B) the amount and nature of the financial  
12 assets of the supervised securities holding com-  
13 pany;

14 (C) the amount and nature of the liabilities  
15 of the supervised securities holding company,  
16 including the degree of reliance on short-term  
17 funding;

18 (D) the extent and nature of the off-bal-  
19 ance sheet exposures of the supervised securi-  
20 ties holding company;

21 (E) the extent and nature of the trans-  
22 actions and relationships of the supervised secu-  
23 rities holding company with other financial  
24 companies;

1 (F) the importance of the supervised secu-  
2 rities holding company as a source of credit for  
3 households, businesses, and State and local gov-  
4 ernments, and as a source of liquidity for the  
5 financial system; and

6 (G) the nature, scope, and mix of the ac-  
7 tivities of the supervised securities holding com-  
8 pany.

9 (4) NOTICE.—A capital requirement imposed  
10 under this subsection may not take effect earlier  
11 than 180 days after the date on which a supervised  
12 securities holding company is provided notice of the  
13 capital requirement.

14 (e) EXCEPTION FOR INSURED DEPOSITORY INSTITU-  
15 TIONS.—No insured depository institution shall be subject  
16 to any of the requirements set forth in subsections (c) and  
17 (d).

18 (f) OTHER PROVISIONS OF LAW APPLICABLE TO SU-  
19 PERVISED SECURITIES HOLDING COMPANIES.—

20 (1) FEDERAL DEPOSIT INSURANCE ACT.—Sub-  
21 sections (b), (c) through (s), and (u) of section 8 of  
22 the Federal Deposit Insurance Act (12 U.S.C. 1818)  
23 shall apply to any supervised securities holding com-  
24 pany, and to any subsidiary (other than a bank or  
25 an institution described in subparagraph (D), (F),



1 or (H) of section 2(c)(2) of the Bank Holding Com-  
2 pany Act of 1956 (12 U.S.C. 1841(c)(2))) of a su-  
3 pervised securities holding company, in the same  
4 manner as such subsections apply to a bank holding  
5 company for which the Board of Governors is the  
6 appropriate Federal banking agency. For purposes  
7 of applying such subsections to a supervised securi-  
8 ties holding company or a subsidiary (other than a  
9 bank or an institution described in subparagraph  
10 (D), (F), or (H) of section 2(c)(2) of the Bank  
11 Holding Company Act of 1956 (12 U.S.C.  
12 1841(c)(2))) of a supervised securities holding com-  
13 pany, the Board of Governors shall be deemed the  
14 appropriate Federal banking agency for the super-  
15 vised securities holding company or subsidiary.

16 (2) BANK HOLDING COMPANY ACT OF 1956.—  
17 Except as the Board of Governors may otherwise  
18 provide by regulation or order, a supervised securi-  
19 ties holding company shall be subject to the provi-  
20 sions of the Bank Holding Company Act of 1956  
21 (12 U.S.C. 1841 et seq.) in the same manner and  
22 to the same extent a bank holding company is sub-  
23 ject to such provisions, except that a supervised se-  
24 curities holding company may not, by reason of this  
25 paragraph, be deemed to be a bank holding company

1 for purposes of section 4 of the Bank Holding Com-  
2 pany Act of 1956 (12 U.S.C. 1843).

3 **SEC. 619. RESTRICTIONS ON CAPITAL MARKET ACTIVITY BY**  
4 **BANKS AND BANK HOLDING COMPANIES.**

5 (a) DEFINITIONS.—In this section—

6 (1) the terms “hedge fund” and “private equity  
7 fund” mean a company or other entity that is ex-  
8 empt from registration as an investment company  
9 pursuant to section 3(c)(1) or 3(c)(7) of the Invest-  
10 ment Company Act of 1940 (15 U.S.C. 80a–3(c)(1)  
11 or 80a–3(c)(7)), or a similar fund, as jointly deter-  
12 mined by the appropriate Federal banking agencies;

13 (2) the term “proprietary trading”—

14 (A) means purchasing or selling, or other-  
15 wise acquiring or disposing of, stocks, bonds,  
16 options, commodities, derivatives, or other fi-  
17 nancial instruments by an insured depository  
18 institution, a company that controls, directly or  
19 indirectly, an insured depository institution or  
20 is treated as a bank holding company for pur-  
21 poses of the Bank Holding Company Act of  
22 1956 (12 U.S.C. 1841 et seq.), and any sub-  
23 sidiary of such institution or company, for the  
24 trading book (or such other portfolio as the

1 Federal banking agencies may determine) of  
2 such institution, company, or subsidiary; and

3 (B) subject to such restrictions as the Fed-  
4 eral banking agencies may determine, does not  
5 include purchasing or selling, or otherwise ac-  
6 quiring or disposing of, stocks, bonds, options,  
7 commodities, derivatives, or other financial in-  
8 struments on behalf of a customer, as part of  
9 market making activities, or otherwise in con-  
10 nection with or in facilitation of customer rela-  
11 tionships, including risk-mitigating hedging ac-  
12 tivities related to such a purchase, sale, acquisi-  
13 tion, or disposal; and

14 (3) the term “sponsoring”, when used with re-  
15 spect to a hedge fund or private equity fund,  
16 means—

17 (A) serving as a general partner, managing  
18 member, or trustee of the fund;

19 (B) in any manner selecting or controlling  
20 (or having employees, officers, directors, or  
21 agents who constitute) a majority of the direc-  
22 tors, trustees, or management of the fund; or

23 (C) sharing with the fund, for corporate,  
24 marketing, promotional, or other purposes, the  
25 same name or a variation of the same name.

1 (b) PROHIBITION ON PROPRIETARY TRADING.—

2 (1) IN GENERAL.—Subject to the recommenda-  
3 tions and modifications of the Council under sub-  
4 section (g), and except as provided in paragraph (2)  
5 or (3), the appropriate Federal banking agencies  
6 shall, through a rulemaking under subsection (g),  
7 jointly prohibit proprietary trading by an insured de-  
8 pository institution, a company that controls, di-  
9 rectly or indirectly, an insured depository institution  
10 or is treated as a bank holding company for pur-  
11 poses of the Bank Holding Company Act of 1956  
12 (12 U.S.C. 1841 et seq.), and any subsidiary of such  
13 institution or company.

14 (2) EXCEPTED OBLIGATIONS.—

15 (A) IN GENERAL.—The prohibition under  
16 this subsection shall not apply with respect to  
17 an investment that is otherwise authorized by  
18 Federal law in—

19 (i) obligations of the United States or  
20 any agency of the United States, including  
21 obligations fully guaranteed as to principal  
22 and interest by the United States or an  
23 agency of the United States;

24 (ii) obligations, participations, or  
25 other instruments of, or issued by, the

1 Government National Mortgage Associa-  
2 tion, the Federal National Mortgage Asso-  
3 ciation, or the Federal Home Loan Mort-  
4 gage Corporation, including obligations  
5 fully guaranteed as to principal and inter-  
6 est by such entities; and

7 (iii) obligations of any State or any  
8 political subdivision of a State.

9 (B) CONDITIONS.—The appropriate Fed-  
10 eral banking agencies may impose conditions on  
11 the conduct of investments described in sub-  
12 paragraph (A).

13 (C) RULE OF CONSTRUCTION.—Nothing in  
14 subparagraph (A) may be construed to grant  
15 any authority to any person that is not other-  
16 wise provided in Federal law.

17 (3) FOREIGN ACTIVITIES.—An investment or  
18 activity conducted by a company pursuant to para-  
19 graph (9) or (13) of section 4(c) of the Bank Hold-  
20 ing Company Act of 1956 (12 U.S.C. 1843(e)) solely  
21 outside of the United States shall not be subject to  
22 the prohibition under paragraph (1), provided that  
23 the company is not directly or indirectly controlled  
24 by a company that is organized under the laws of  
25 the United States or of a State.

1           (c) PROHIBITION ON SPONSORING AND INVESTING IN  
2 HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

3           (1) IN GENERAL.—Except as provided in para-  
4 graph (2), and subject to the recommendations and  
5 modifications of the Council under subsection (g),  
6 the appropriate Federal banking agencies shall,  
7 through a rulemaking under subsection (g), jointly  
8 prohibit an insured depository institution, a com-  
9 pany that controls, directly or indirectly, an insured  
10 depository institution or is treated as a bank holding  
11 company for purposes of the Bank Holding Com-  
12 pany Act of 1956 (12 U.S.C. 1841 et seq.), or any  
13 subsidiary of such institution or company, from  
14 sponsoring or investing in a hedge fund or a private  
15 equity fund.

16           (2) APPLICATION TO FOREIGN ACTIVITIES OF  
17 FOREIGN FIRMS.—An investment or activity con-  
18 ducted by a company pursuant to paragraph (9) or  
19 (13) of section 4(e) of the Bank Holding Company  
20 Act of 1956 (12 U.S.C. 1843(c)) solely outside of  
21 the United States shall not be subject to the prohibi-  
22 tions and restrictions under paragraph (1), provided  
23 that the company is not directly or indirectly con-  
24 trolled by a company that is organized under the  
25 laws of the United States or of a State.

1 (d) INVESTMENTS IN SMALL BUSINESS INVESTMENT  
2 COMPANIES AND INVESTMENTS DESIGNED TO PROMOTE  
3 THE PUBLIC WELFARE.—

4 (1) IN GENERAL.—A prohibition imposed by  
5 the appropriate Federal banking agencies under sub-  
6 section (c) shall not apply with respect an invest-  
7 ment otherwise authorized under Federal law that  
8 is—

9 (A) an investment in a small business in-  
10 vestment company, as that term is defined in  
11 section 103 of the Small Business Investment  
12 Act of 1958 (15 U.S.C. 662); or

13 (B) designed primarily to promote the pub-  
14 lic welfare, as provided in the 11th paragraph  
15 of section 5136 of the Revised Statutes (12  
16 U.S.C. 24).

17 (2) RULE OF CONSTRUCTION.—Nothing in  
18 paragraph (1) may be construed to grant any au-  
19 thority to any person that is not otherwise provided  
20 in Federal law.

21 (e) LIMITATIONS ON RELATIONSHIPS WITH HEDGE  
22 FUNDS AND PRIVATE EQUITY FUNDS.—

23 (1) COVERED TRANSACTIONS.—An insured de-  
24 pository institution, a company that controls, di-  
25 rectly or indirectly, an insured depository institution

1 or is treated as a bank holding company for pur-  
2 poses of the Bank Holding Company Act of 1956  
3 (12 U.S.C. 1841 et seq.), and any subsidiary of such  
4 institution or company that serves, directly or indi-  
5 rectly, as the investment manager or investment ad-  
6 viser to a hedge fund or private equity fund may not  
7 enter into a covered transaction, as defined in sec-  
8 tion 23A of the Federal Reserve Act (12 U.S.C.  
9 371c) with such hedge fund or private equity fund.

10 (2) AFFILIATION.—An insured depository insti-  
11 tution, a company that controls, directly or indi-  
12 rectly, an insured depository institution or is treated  
13 as a bank holding company for purposes of the Bank  
14 Holding Company Act of 1956 (12 U.S.C. 1841 et  
15 seq.), and any subsidiary of such institution or com-  
16 pany that serves, directly or indirectly, as the invest-  
17 ment manager or investment adviser to a hedge fund  
18 or private equity fund shall be subject to section  
19 23B of the Federal Reserve Act (12 U.S.C. 371c–  
20 1) as if such institution, company, or subsidiary  
21 were a member bank and such hedge fund or private  
22 equity fund were an affiliate.

23 (f) CAPITAL AND QUANTITATIVE LIMITATIONS FOR  
24 CERTAIN NONBANK FINANCIAL COMPANIES.—



1           (1) IN GENERAL.—Except as provided in para-  
2           graph (2), and subject to the recommendations and  
3           modifications of the Council under subsection (g),  
4           the Board of Governors shall adopt rules imposing  
5           additional capital requirements and specifying addi-  
6           tional quantitative limits for nonbank financial com-  
7           panies supervised by the Board of Governors under  
8           section 113 that engage in proprietary trading or  
9           sponsoring and investing in hedge funds and private  
10          equity funds.

11          (2) EXCEPTIONS.—The rules under this sub-  
12          section shall not apply with respect to the trading of  
13          an investment that is otherwise authorized by Fed-  
14          eral law—

15                (A) in obligations of the United States or  
16                any agency of the United States, including obli-  
17                gations fully guaranteed as to principal and in-  
18                terest by the United States or an agency of the  
19                United States;

20                (B) in obligations, participations, or other  
21                instruments of, or issued by, the Government  
22                National Mortgage Association, the Federal Na-  
23                tional Mortgage Association, or the Federal  
24                Home Loan Mortgage Corporation, including

1 obligations fully guaranteed as to principal and  
2 interest by such entities;

3 (C) in obligations of any State or any po-  
4 litical subdivision of a State;

5 (D) in a small business investment com-  
6 pany, as that term is defined in section 103 of  
7 the Small Business Investment Act of 1958 (15  
8 U.S.C. 662); or

9 (E) that is designed primarily to promote  
10 the public welfare, as provided in the 11th  
11 paragraph of section 5136 of the Revised Stat-  
12 utes (12 U.S.C. 24).

13 (g) COUNCIL STUDY AND RULEMAKING.—

14 (1) STUDY AND RECOMMENDATIONS.—Not  
15 later than 6 months after the date of enactment of  
16 this Act, the Council—

17 (A) shall complete a study of the defini-  
18 tions under subsection (a) and the other provi-  
19 sions under subsections (b) through (f), to as-  
20 sess the extent to which the definitions under  
21 subsection (a) and the implementation of sub-  
22 sections (a) through (f) would—

23 (i) promote and enhance the safety  
24 and soundness of depository institutions  
25 and the affiliates of depository institutions;

1           (ii) protect taxpayers and enhance fi-  
2           nancial stability by minimizing the risk  
3           that depository institutions and the affili-  
4           ates of depository institutions will engage  
5           in unsafe and unsound activities;

6           (iii) limit the inappropriate transfer of  
7           Federal subsidies from institutions that  
8           benefit from deposit insurance and liquid-  
9           ity facilities of the Federal Government to  
10          unregulated entities;

11          (iv) reduce inappropriate conflicts of  
12          interest between the self-interest of deposi-  
13          tory institutions, affiliates of depository in-  
14          stitutions, and financial companies super-  
15          vised by the Board, and the interests of  
16          the customers of such institutions and  
17          companies;

18          (v) raise the cost of credit or other fi-  
19          nancial services, reduce the availability of  
20          credit or other financial services, or impose  
21          other costs on households and businesses  
22          in the United States;

23          (vi) limit activities that have caused  
24          undue risk or loss in depository institu-  
25          tions, affiliates of depository institutions,

1                   and financial companies supervised by the  
2                   Board of Governors, or that might reason-  
3                   ably be expected to create undue risk or  
4                   loss in such institutions, affiliates, and  
5                   companies; and

6                   (vii) appropriately accommodates the  
7                   business of insurance within an insurance  
8                   company subject to regulation in accord-  
9                   ance with State insurance company invest-  
10                  ment laws;

11                  (B) shall make recommendations regarding  
12                  the definitions under subsection (a) and the im-  
13                  plementation of other provisions under sub-  
14                  sections (b) through (f), including any modifica-  
15                  tions to the definitions, prohibitions, require-  
16                  ments, and limitations contained therein that  
17                  the Council determines would more effectively  
18                  implement the purposes of this section; and

19                  (C) may make recommendations for pro-  
20                  hibiting the conduct of the activities described  
21                  in subsections (b) and (c) above a specific  
22                  threshold amount and imposing additional cap-  
23                  ital requirements on activities conducted below  
24                  such threshold amount.

1           (2) RULEMAKING.—Not earlier than the date of  
2 completion of the study required under paragraph  
3 (1), and not later than 9 months after the date of  
4 completion of such study—

5           (A) the appropriate Federal banking agen-  
6 cies shall jointly issue final regulations imple-  
7 menting subsections (b) through (e), which  
8 shall reflect any recommendations or modifica-  
9 tions made by the Council pursuant to para-  
10 graph (1)(B); and

11           (B) the Board of Governors shall issue  
12 final regulations implementing subsection (f),  
13 which shall reflect any recommendations or  
14 modifications made by the Council pursuant to  
15 paragraph (1)(B).

16 (h) TRANSITION.—

17           (1) IN GENERAL.—The final regulations issued  
18 by the appropriate Federal banking agencies and the  
19 Board of Governors under subsection (g)(2) shall  
20 provide that, effective 2 years after the date on  
21 which such final regulations are issued, no insured  
22 depository institution, company that controls, di-  
23 rectly or indirectly, an insured depository institution,  
24 company that is treated as a bank holding company  
25 for purposes of the Bank Holding Company Act of

1       1956 (12 U.S.C. 1841 et seq.), or subsidiary of such  
2       institution or company, may retain any investment  
3       or relationship prohibited under such regulations.

4           (2) EXTENSION.—

5               (A) IN GENERAL.—The appropriate Fed-  
6       eral banking agency for an insured depository  
7       institution or a company described in paragraph  
8       (1) may, upon the application of any such com-  
9       pany, extend the 2-year period under paragraph  
10      (1) with respect to such company, if the appro-  
11     priate Federal banking agency determines that  
12     an extension would not be detrimental to the  
13     public interest.

14           (B) TIME PERIOD FOR EXTENSION.—An  
15     extension granted under subparagraph (A) may  
16     not exceed—

17               (i) 1 year for each determination  
18              made by the appropriate Federal banking  
19              agency under subparagraph (A); and

20               (ii) a total of 3 years with respect to  
21              any 1 company.

1 **SEC. 620. CONCENTRATION LIMITS ON LARGE FINANCIAL**  
2 **FIRMS.**

3 The Bank Holding Company Act of 1956 (12 U.S.C.  
4 1841 et seq.) is amended by adding at the end the fol-  
5 lowing:

6 **“SEC. 13. CONCENTRATION LIMITS ON LARGE FINANCIAL**  
7 **FIRMS.**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘Council’ means the Financial  
10 Stability Oversight Council;

11 “(2) the term ‘financial company’ means—

12 “(A) an insured depository institution;

13 “(B) a bank holding company;

14 “(C) a savings and loan holding company;

15 “(D) a company that controls an insured  
16 depository institution;

17 “(E) a nonbank financial company super-  
18 vised by the Board under title I of the Restor-  
19 ing American Financial Stability Act of 2010;  
20 and

21 “(F) a foreign bank or company that is  
22 treated as a bank holding company for purposes  
23 of this Act; and

24 “(3) the term ‘liabilities’ means—

25 “(A) with respect to a United States finan-  
26 cial company—

1           “(i) the total risk-weighted assets of  
2           the financial company, as determined  
3           under the risk-based capital rules applica-  
4           ble to bank holding companies, as adjusted  
5           to reflect exposures that are deducted from  
6           regulatory capital; less

7           “(ii) the total regulatory capital of the  
8           financial company under the risk-based  
9           capital rules applicable to bank holding  
10          companies;

11          “(B) with respect to a foreign-based finan-  
12          cial company—

13               “(i) the total risk-weighted assets of  
14               the United States operations of the finan-  
15               cial company, as determined under the ap-  
16               plicable risk-based capital rules, as ad-  
17               justed to reflect exposures that are de-  
18               ducted from regulatory capital; less

19               “(ii) the total regulatory capital of the  
20               United States operations of the financial  
21               company, as determined under the applica-  
22               ble risk-based capital rules; and

23          “(C) with respect to an insurance company  
24          or other nonbank financial company supervised  
25          by the Board, such assets of the company as



1           the Board shall specify by rule, in order to pro-  
2           vide for consistent and equitable treatment of  
3           such companies.

4           “(b) CONCENTRATION LIMIT.—Subject to the rec-  
5           ommendations by the Council under subsection (e), a fi-  
6           nancial company may not merge or consolidate with, ac-  
7           quire all or substantially all of the assets of, or otherwise  
8           acquire control of, another company, if the total consoli-  
9           dated liabilities of the acquiring financial company upon  
10          consummation of the transaction would exceed 10 percent  
11          of the aggregate consolidated liabilities of all financial  
12          companies at the end of the calendar year preceding the  
13          transaction.

14          “(c) EXCEPTION TO CONCENTRATION LIMIT.—With  
15          the prior written consent of the Board, the concentration  
16          limit under subsection (b) shall not apply to an acquisi-  
17          tion—

18                 “(1) of a bank in default or in danger of de-  
19                 fault;

20                 “(2) with respect to which assistance is pro-  
21                 vided by the Federal Deposit Insurance Corporation  
22                 under section 13(c) of the Federal Deposit Insur-  
23                 ance Act (12 U.S.C. 1823(c)); or

24                 “(3) that would result only in a de minimis in-  
25                 crease in the liabilities of the financial company.

1       “(d) RULEMAKING AND GUIDANCE.—The Board  
2 shall issue regulations implementing this section in accord-  
3 ance with the recommendations of the Council under sub-  
4 section (e), including the definition of terms, as necessary.  
5 The Board may issue interpretations or guidance regard-  
6 ing the application of this section to an individual financial  
7 company or to financial companies in general.

8       “(e) COUNCIL STUDY AND RULEMAKING.—

9           “(1) STUDY AND RECOMMENDATIONS.—Not  
10 later than 6 months after the date of enactment of  
11 this section, the Council shall—

12           “(A) complete a study of the extent to  
13 which the concentration limit under this section  
14 would affect financial stability, moral hazard in  
15 the financial system, the efficiency and competi-  
16 tiveness of United States financial firms and fi-  
17 nancial markets, and the cost and availability of  
18 credit and other financial services to households  
19 and businesses in the United States; and

20           “(B) make recommendations regarding any  
21 modifications to the concentration limit that the  
22 Council determines would more effectively im-  
23 plement this section.

24           “(2) RULEMAKING.—Not later than 9 months  
25 after the date of completion of the study under para-

1 graph (1), and notwithstanding subsections (b) and  
2 (d), the Board shall issue final regulations imple-  
3 menting this section, which shall reflect any rec-  
4 ommendations by the Council under paragraph  
5 (1)(B).”.

6 **SEC. 621. INTERSTATE MERGER TRANSACTIONS.**

7 (a) INTERSTATE MERGER TRANSACTIONS.—Section  
8 18(c) of the Federal Deposit Insurance Act (12 U.S.C.  
9 1828(c)) is amended by adding at the end the following:

10 “(13)(A) Except as provided in subparagraph (B),  
11 the responsible agency may not approve an application for  
12 an interstate merger transaction if the resulting insured  
13 depository institution (including all insured depository in-  
14 stitutions which are affiliates of the resulting insured de-  
15 pository institution), upon consummation of the trans-  
16 action, would control more than 10 percent of the total  
17 amount of deposits of insured depository institutions in  
18 the United States.

19 “(B) Subparagraph (A) shall not apply to an inter-  
20 state merger transaction that involves 1 or more insured  
21 depository institutions in default or in danger of default,  
22 or with respect to which the Corporation provides assist-  
23 ance under section 13.

24 “(C) In this paragraph—

1           “(i) the term ‘interstate merger transaction’  
2 means a merger transaction involving 2 or more in-  
3 sured depository institutions that have different  
4 home States and that are not affiliates; and

5           “(ii) the term ‘home State’ means—

6           “(I) with respect to a national bank, the  
7 State in which the main office of the bank is lo-  
8 cated;

9           “(II) with respect to a State bank or State  
10 savings association, the State by which the  
11 State bank or State savings association is char-  
12 tered; and

13           “(III) with respect to a Federal savings as-  
14 sociation, the State in which the home office (as  
15 defined by the regulations of the Director of the  
16 Office of Thrift Supervision, or, on and after  
17 the transfer date, the Comptroller of the Cur-  
18 rency) of the Federal savings association is lo-  
19 cated.”.

20 (b) ACQUISITIONS BY BANK HOLDING COMPANIES.—

21           (1) IN GENERAL.—Section 4 of the Bank Hold-  
22 ing Company Act of 1956 (12 U.S.C. 1843) is  
23 amended—

24           (A) in subsection (i), by adding at the end  
25 the following:

1           “(8) INTERSTATE ACQUISITIONS.—

2                   “(A) IN GENERAL.—The Board may not  
3 approve an application by a bank holding com-  
4 pany to acquire an insured depository institu-  
5 tion under subsection (c)(8) or any other provi-  
6 sion of this Act if—

7                           “(i) the home State of such insured  
8 depository institution is a State other than  
9 the home State of the bank holding com-  
10 pany; and

11                           “(ii) the applicant (including all in-  
12 sured depository institutions which are af-  
13 filiates of the applicant) controls, or upon  
14 consummation of the transaction would  
15 control, more than 10 percent of the total  
16 amount of deposits of insured depository  
17 institutions in the United States.

18                   “(B) EXCEPTION.—Subparagraph (A)  
19 shall not apply to an acquisition that involves  
20 an insured depository institution in default or  
21 in danger of default, or with respect to which  
22 the Federal Deposit Insurance Corporation pro-  
23 vides assistance under section 13 of the Federal  
24 Deposit Insurance Act (12 U.S.C. 1823).”; and

1 (B) in subsection (k)(6)(B), by striking  
2 “savings association” and inserting “insured  
3 depository institution”.

4 (2) DEFINITIONS.—Section 2(o)(4) of the Bank  
5 Holding Company Act of 1956 (12 U.S.C.  
6 1841(o)(4)) is amended—

7 (A) in subparagraph (B), by striking  
8 “and” at the end;

9 (B) in subparagraph (C)(ii), by striking  
10 the period at the end and inserting a semicolon;  
11 and

12 (C) by adding at the end the following:

13 “(D) with respect to a State savings asso-  
14 ciation, the State by which the savings associa-  
15 tion is chartered; and

16 “(E) with respect to a Federal savings as-  
17 sociation, the State in which the home office (as  
18 defined by the regulations of the Director of the  
19 Office of Thrift Supervision, or, on and after  
20 the transfer date, the Comptroller of the Cur-  
21 rency) of the Federal savings association is lo-  
22 cated.”.

23 (c) ACQUISITIONS BY SAVINGS AND LOAN HOLDING  
24 COMPANIES.—Section 10(e)(2) of the Home Owners’  
25 Loan Act (12 U.S.C. 1467a(e)(2)) is amended—

1 (1) in paragraph (2)—

2 (A) in subparagraph (C), by striking “or”  
3 at the end;

4 (B) in subparagraph (D), by striking the  
5 period at the end and inserting “, or”; and

6 (C) by adding at the end the following:

7 “(E) in the case of an application by a sav-  
8 ings and loan holding company to acquire an  
9 insured depository institution, if—

10 “(i) the home State of the insured de-  
11 pository institution is a State other than  
12 the home State of the savings and loan  
13 holding company;

14 “(ii) the applicant (including all in-  
15 sured depository institutions which are af-  
16 filiates of the applicant) controls, or upon  
17 consummation of the transaction would  
18 control, more than 10 percent of the total  
19 amount of deposits of insured depository  
20 institutions in the United States; and

21 “(iii) the acquisition does not involve  
22 an insured depository institution in default  
23 or in danger of default, or with respect to  
24 which the Federal Deposit Insurance Cor-  
25 poration provides assistance under section

1                   13 of the Federal Deposit Insurance Act  
2                   (12 U.S.C. 1823).”; and

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

4                   “(7) DEFINITIONS.—For purposes of paragraph  
5                   (2)(E)—

6                   “(A) the terms ‘default’, ‘in danger of de-  
7                   fault’, and ‘insured depository institution’ have  
8                   the same meanings as in section 3 of the Fed-  
9                   eral Deposit Insurance Act (12 U.S.C. 1813);  
10                  and

11                  “(B) the term ‘home State’ means—

12                   “(i) with respect to a national bank,  
13                   the State in which the main office of the  
14                   bank is located;

15                   “(ii) with respect to a State bank or  
16                   State savings association, the State by  
17                   which the savings association is chartered;

18                   “(iii) with respect to a Federal sav-  
19                   ings association, the State in which the  
20                   home office (as defined by the regulations  
21                   of the Director of the Office of Thrift Su-  
22                   pervision, or, on and after the transfer  
23                   date, the Comptroller of the Currency) of  
24                   the Federal savings association is located;  
25                   and



1                   “(iv) with respect to a savings and  
2                   loan holding company, the State in which  
3                   the amount of total deposits of all insured  
4                   depository institution subsidiaries of such  
5                   company was the greatest on the date on  
6                   which the company became a savings and  
7                   loan holding company.”.

8 **SEC. 622. QUALIFIED THRIFT LENDERS.**

9           Section 10(m)(3) of the Home Owners’ Loan Act (12  
10 U.S.C. 1467a(m)(3)) is amended—

11           (1) by striking subparagraph (A) and inserting  
12           the following:

13                   “(A) IN GENERAL.—A savings association  
14                   that fails to become or remain a qualified thrift  
15                   lender shall immediately be subject to the re-  
16                   strictions under subparagraph (B).”; and

17           (2) in subparagraph (B)(i), by striking sub-  
18           clause (III) and inserting the following:

19                   “(III) DIVIDENDS.—The savings  
20                   association may not pay dividends, ex-  
21                   cept for dividends that—

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

24                           “(bb) are necessary to meet  
25                           obligations of a company that

1 controls such savings association;  
2 and

3 “(cc) are specifically ap-  
4 proved by the Comptroller of the  
5 Currency and the Board after a  
6 written request submitted to the  
7 Comptroller of the Currency and  
8 the Board by the savings associa-  
9 tion not later than 30 days be-  
10 fore the date of the proposed  
11 payment.

12 “(IV) REGULATORY AUTHOR-  
13 ITY.—A savings association that fails  
14 to become or remain a qualified thrift  
15 lender shall be deemed to have vio-  
16 lated section 5 of the Home Owners’  
17 Loan Act (12 U.S.C. 1464) and sub-  
18 ject to actions authorized by section  
19 5(d) of the Home Owners’ Loan Act  
20 (12 U.S.C. 1464(d)).”.

21 **SEC. 623. TREATMENT OF DIVIDENDS BY CERTAIN MUTUAL**  
22 **HOLDING COMPANIES.**

23 Section 10(o) of the Home Owners’ Loan Act (12  
24 U.S.C. 1467a(o) is amended by adding at the end the fol-  
25 lowing:

1           “(11) DIVIDENDS.—

2                   “(A) DECLARATION OF DIVIDENDS.—

3                           “(i) ADVANCE NOTICE REQUIRED.—

4                           Each subsidiary of a mutual holding com-  
5                           pany that is a savings association shall  
6                           give the appropriate Federal banking agen-  
7                           cy notice not later than 30 days before the  
8                           date of a proposed declaration by the  
9                           board of directors of the savings associa-  
10                          tion of any dividend on the guaranty, per-  
11                          manent, or other nonwithdrawable stock of  
12                          the savings association.

13                          “(ii) INVALID DIVIDENDS.—Any divi-  
14                          dend described in clause (i) that is de-  
15                          clared without giving notice to the appro-  
16                          priate Federal banking agency under  
17                          clause (i), or that is declared during the  
18                          30-day period preceding the date of a pro-  
19                          posed declaration for which notice is given  
20                          to the appropriate Federal banking agency  
21                          under clause (i), shall be invalid and shall  
22                          confer no rights or benefits upon the hold-  
23                          er of any such stock.

24                          “(B) WAIVER OF DIVIDENDS.—A mutual  
25                          holding company may waive the right to receive

1 any dividend declared by a subsidiary of the  
2 mutual holding company, if—

3 “(i) no insider of the mutual holding  
4 company, associate of an insider, or tax-  
5 qualified or non-tax-qualified employee  
6 stock benefit plan of the mutual holding  
7 company holds any share of the stock in  
8 the class of stock to which the waiver  
9 would apply; or

10 “(ii) the mutual holding company  
11 gives written notice to the Board of the in-  
12 tent of the mutual holding company to  
13 waive the right to receive dividends, not  
14 later than 30 days before the date of the  
15 proposed date of payment of the dividend,  
16 and the Board does not object to the waiv-  
17 er.

18 “(C) RESOLUTION INCLUDED IN WAIVER  
19 NOTICE.—A notice of a waiver under subpara-  
20 graph (B) shall include a copy of the resolution  
21 of the board of directors of the mutual holding  
22 company, in such form and substance as the  
23 Board may determine, together with any sup-  
24 porting materials relied upon by the board of  
25 directors of the mutual holding company, con-

1 including that the proposed dividend waiver is  
2 consistent with the fiduciary duties of the board  
3 of directors to the mutual members of the mu-  
4 tual holding company.

5 “(D) STANDARDS FOR WAIVER OF DIVI-  
6 DEND.—The Board may not object to a waiver  
7 of dividends under subparagraph (B) if—

8 “(i) the waiver would not be detri-  
9 mental to the safe and sound operation of  
10 the savings association; and

11 “(ii) the board of directors of the mu-  
12 tual holding company expressly determines  
13 that a waiver of the dividend by the mu-  
14 tual holding company is consistent with the  
15 fiduciary duties of the board of directors to  
16 the mutual members of the mutual holding  
17 company.

18 “(E) VALUATION.—

19 “(i) IN GENERAL.—The Board shall  
20 consider waived dividends in determining  
21 an appropriate exchange ratio in the event  
22 of a full conversion to stock form.

23 “(ii) EXCEPTION.—In the case of a  
24 savings association that has reorganized  
25 into a mutual holding company and has

1 issued minority stock from a mid-tier stock  
2 holding company or a subsidiary stock sav-  
3 ings association of the mutual holding  
4 company before December 1, 2009, the ap-  
5 propriate Federal banking agency shall not  
6 consider waived dividends in determining  
7 an appropriate exchange ratio in the event  
8 of a full conversion to stock form.”.

9 **TITLE VII—WALL STREET**  
10 **TRANSPARENCY AND AC-**  
11 **COUNTABILITY**

12 **SEC. 701. SHORT TITLE.**

13 This title may be cited as the “Wall Street Trans-  
14 parency and Accountability Act of 2010”.

15 **Subtitle A—Regulation of Over-the-**  
16 **Counter Swaps Markets**

17 **PART I—REGULATORY AUTHORITY**

18 **SEC. 711. DEFINITIONS.**

19 In this subtitle, the terms “prudential regulator”,  
20 “swap”, “swap dealer”, “major swap participant”, “swap  
21 data repository”, “associated person of a swap dealer or  
22 major swap participant”, “eligible contract participant”,  
23 “swap execution facility”, “security-based swap”, “secu-  
24 rity-based swap dealer”, “major security-based swap par-  
25 ticipant”, and “associated person of a security-based swap

1 dealer or major security-based swap participant” have the  
2 meanings given the terms in section 1a of the Commodity  
3 Exchange Act (7 U.S.C. 1a).

4 **SEC. 712. REVIEW OF REGULATORY AUTHORITY.**

5 (a) REGULATORY AUTHORITY.—

6 (1) IN GENERAL.—Except as provided in para-  
7 graphs (4) and (8), the Commodity Futures Trading  
8 Commission and the Securities and Exchange Com-  
9 mission shall each prescribe such regulations as may  
10 be necessary to carry out the purposes of this title.

11 (2) COORDINATION, CONSISTENCY, AND COM-  
12 PARABILITY.—Both Commissions required under  
13 paragraph (1) to prescribe regulations shall consult  
14 and coordinate with each other for the purposes of  
15 assuring, to the extent possible, that the regulations  
16 prescribed by each such Commission are consistent  
17 and comparable with the regulations prescribed by  
18 the other.

19 (3) PROCEDURES AND DEADLINE.—Such regu-  
20 lations shall be prescribed in accordance with appli-  
21 cable requirements of title 5, United States Code,  
22 and, shall be issued in final form not later than 180  
23 days after the date of enactment of this Act.

24 (4) APPLICABILITY.—The requirements of  
25 paragraph (1) shall not apply to an order issued—

1 (A) in connection with or arising from a  
2 violation or potential violation of any provision  
3 of the Commodity Exchange Act (7 U.S.C. 1 et  
4 seq.);

5 (B) in connection with or arising from a  
6 violation or potential violation of any provision  
7 of the securities laws; or

8 (C) in any proceeding that is conducted on  
9 the record in accordance with sections 556 and  
10 557 of title 5, United States Code.

11 (5) EFFECT.—Nothing in this subsection au-  
12 thorizes any consultation or procedure for consulta-  
13 tion that is not consistent with the requirements of  
14 subchapter II of chapter 5, and chapter 7, of title  
15 5, United States Code (commonly known as the  
16 “Administrative Procedure Act”).

17 (6) RULES; ORDERS.—In developing and pro-  
18 mulgating rules or orders pursuant to this sub-  
19 section, each Commission shall consider the views of  
20 the prudential regulators.

21 (7) TREATMENT OF SIMILAR PRODUCTS AND  
22 ENTITIES.—

23 (A) IN GENERAL.—In adopting rules and  
24 orders under this subsection, the Commodity  
25 Futures Trading Commission and the Securities



1           and Exchange Commission shall treat function-  
2           ally or economically similar products or entities  
3           described in paragraphs (1) and (2) in a similar  
4           manner.

5           (B) EFFECT.—Nothing in this subtitle re-  
6           quires the Commodity Futures Trading Com-  
7           mission or the Securities and Exchange Com-  
8           mission to adopt joint rules or orders that treat  
9           functionally or economically similar products or  
10          entities described in paragraphs (1) and (2) in  
11          an identical manner.

12          (8) MIXED SWAPS.—The Commodity Futures  
13          Trading Commission and the Securities and Ex-  
14          change Commission shall jointly prescribe such regu-  
15          lations regarding mixed swaps, as described in sec-  
16          tion 1a(47)(D) of the Commodity Exchange Act (7  
17          U.S.C. 1a(47)(D)) and in section 3(a)(68)(D) of the  
18          Securities Exchange Act of 1934 (15 U.S.C.  
19          78c(a)(68)(D)), as may be necessary to carry out  
20          the purposes of this title.

21          (b) LIMITATION.—

22          (1) COMMODITY FUTURES TRADING COMMIS-  
23          SION.—Nothing in this title, unless specifically pro-  
24          vided, confers jurisdiction on the Commodity Fu-  
25          tures Trading Commission to issue a rule, regula-

1       tion, or order providing for oversight or regulation  
2       of—

3               (A) security-based swaps; or

4               (B) with regard to its activities or func-  
5       tions concerning security-based swaps—

6                   (i) security-based swap dealers;

7                   (ii) major security-based swap partici-  
8       pants;

9                   (iii) security-based swap data reposi-  
10      tories;

11                  (iv) associated persons of a security-  
12      based swap dealer or major security-based  
13      swap participant;

14                  (v) eligible contract participants with  
15      respect to security-based swaps; or

16                  (vi) swap execution facilities with re-  
17      spect to security-based swaps.

18               (2) SECURITIES AND EXCHANGE COMMIS-  
19      SION.—Nothing in this title, unless specifically pro-  
20      vided, confers jurisdiction on the Securities and Ex-  
21      change Commission or State securities regulators to  
22      issue a rule, regulation, or order providing for over-  
23      sight or regulation of—

24                   (A) swaps; or

- 1 (B) with regard to its activities or func-  
2 tions concerning swaps—
- 3 (i) swap dealers;
  - 4 (ii) major swap participants;
  - 5 (iii) swap data repositories;
  - 6 (iv) persons associated with a swap  
7 dealer or major swap participant;
  - 8 (v) eligible contract participants with  
9 respect to swaps; or
  - 10 (vi) swap execution facilities with re-  
11 spect to swaps.

12 (3) PROHIBITION ON CERTAIN FUTURES ASSO-  
13 CIATIONS AND NATIONAL SECURITIES ASSO-  
14 CIATIONS.—

15 (A) FUTURES ASSOCIATIONS.—Notwith-  
16 standing any other provision of law (including  
17 regulations), unless otherwise authorized by this  
18 title, no futures association registered under  
19 section 17 of the Commodity Exchange Act (7  
20 U.S.C. 21) may issue a rule, regulation, or  
21 order for the oversight or regulation of, or oth-  
22 erwise assert jurisdiction over, for any purpose,  
23 any security-based swap, except that this shall  
24 not limit the authority of a registered futures  
25 association to examine for compliance with and

1 enforce its rules on advertising and capital ade-  
2 quacy.

3 (B) NATIONAL SECURITIES ASSOCIA-  
4 TIONS.—Notwithstanding any other provision of  
5 law (including regulations), unless otherwise au-  
6 thorized by this title, no national securities as-  
7 sociation registered under section 15A of the  
8 Securities Exchange Act of 1934 (15 U.S.C.  
9 78o–3) may issue a rule, regulation, or order  
10 for the oversight or regulation of, or otherwise  
11 assert jurisdiction over, for any purpose, any  
12 swap, except that this shall not limit the au-  
13 thority of a national securities association to ex-  
14 amine for compliance with and enforce its rules  
15 on advertising and capital adequacy.

16 (c) OBJECTION TO COMMISSION REGULATION.—

17 (1) FILING OF PETITION FOR REVIEW.—

18 (A) IN GENERAL.—If either Commission  
19 referred to in this section determines that a  
20 final rule, regulation, or order of the other  
21 Commission conflicts with subsection (a)(7) or  
22 (b), then the complaining Commission may ob-  
23 tain review of the final rule, regulation, or order  
24 in the United States Court of Appeals for the  
25 District of Columbia Circuit by filing in the

1 court, not later than 60 days after the date of  
2 publication of the final rule, regulation, or  
3 order, a written petition requesting that the  
4 rule, regulation, or order be set aside.

5 (B) EXPEDITED PROCEEDING.—A pro-  
6 ceeding described in subparagraph (A) shall be  
7 expedited by the United States Court of Ap-  
8 peals for the District of Columbia Circuit.

9 (2) TRANSMITTAL OF PETITION AND  
10 RECORD.—

11 (A) IN GENERAL.—A copy of a petition de-  
12 scribed in paragraph (1) shall be transmitted  
13 not later than 1 business day after the date of  
14 filing by the complaining Commission to the  
15 Secretary of the responding Commission.

16 (B) DUTY OF RESPONDING COMMISSION.—  
17 On receipt of the copy of a petition described  
18 in paragraph (1), the responding Commission  
19 shall file with the United States Court of Ap-  
20 peals for the District of Columbia Circuit—

21 (i) a copy of the rule, regulation, or  
22 order under review (including any docu-  
23 ments referred to therein); and

1 (ii) any other materials prescribed by  
2 the United States Court of Appeals for the  
3 District of Columbia Circuit.

4 (3) STANDARD OF REVIEW.—The United States  
5 Court of Appeals for the District of Columbia Cir-  
6 cuit shall—

7 (A) give deference to the views of neither  
8 Commission; and

9 (B) determine to affirm or set aside a rule,  
10 regulation, or order of the responding Commis-  
11 sion under this subsection, based on the deter-  
12 mination of the court as to whether the rule,  
13 regulation, or order is in conflict with sub-  
14 section (a)(7) or (b), as applicable.

15 (4) JUDICIAL STAY.—The filing of a petition by  
16 the complaining Commission pursuant to paragraph  
17 (1) shall operate as a stay of the rule, regulation, or  
18 order until the date on which the determination of  
19 the United States Court of Appeals for the District  
20 of Columbia Circuit is final (including any appeal of  
21 the determination).

22 (d) ADOPTION OF RULES ON UNCLEARED SWAPS.—  
23 Notwithstanding subsections (b) and (c), the Commodity  
24 Futures Trading Commission and the Securities and Ex-

1 change Commission shall, after consulting with each other  
2 Commission, adopt rules—

3 (1) to require the maintenance of records of all  
4 activities relating to transactions in swaps and secu-  
5 rity-based swaps under the respective jurisdictions of  
6 the Commodity Futures Trading Commission and  
7 the Securities and Exchange Commission that are  
8 uncleared;

9 (2) to make available, consistent with section 8  
10 of the Commodity Exchange Act (7 U.S.C. 12), to  
11 the Securities and Exchange Commission informa-  
12 tion relating to swaps transactions that are  
13 uncleared; and

14 (3) to make available to the Commodity Fu-  
15 tures Trading Commission information relating to  
16 security-based swaps transactions that are  
17 uncleared.

18 (e) DEFINITIONS.—Notwithstanding subsections (b)  
19 and (c), the Commodity Futures Trading Commission and  
20 the Securities and Exchange Commission shall jointly  
21 adopt rules to define the term “security-based swap agree-  
22 ment” in section 1a(47)(A)(v) of the Commodity Ex-  
23 change Act (7 U.S.C. 1a(47)(A)(v)) and section 3(a)(78)  
24 of the Securities Exchange Act of 1934 (15 U.S.C.  
25 78c(a)(78)).

1           (f) GLOBAL RULEMAKING TIMEFRAME.—Unless oth-  
2 erwise provided in a particular provision of this title, or  
3 an amendment made by this title, the Commodity Futures  
4 Trading Commission or the Securities and Exchange Com-  
5 mission, or both, shall individually, and not jointly, pro-  
6 mulgate rules and regulations required of each Commis-  
7 sion under this title or an amendment made by this title  
8 not later than 180 days after the date of enactment of  
9 this Act.

10           (g) EXPEDITED RULEMAKING PROCESS.—The Com-  
11 modity Futures Trading Commission or the Securities and  
12 Exchange Commission, or both, may use emergency and  
13 expedited procedures (including any administrative or  
14 other procedure as appropriate) to carry out this title and  
15 the amendments made by this title if, in either of the Com-  
16 missions' discretion, it considers it necessary to do so.

17 **SEC. 713. RECOMMENDATIONS FOR CHANGES TO PORT-**  
18 **FOLIO MARGINING LAWS.**

19           Not later than 180 days after the date of enactment  
20 of this Act, the Securities and Exchange Commission, the  
21 Commodity Futures Trading Commission, and the pru-  
22 dential regulators shall submit to the appropriate commit-  
23 tees of Congress recommendations for legislative changes  
24 to the Federal laws to facilitate the portfolio margining  
25 of securities and contracts of sale of commodities for fu-



1 ture delivery and options on such contracts , commodity  
2 options, swaps, and other financial instrument positions.

3 **SEC. 714. ABUSIVE SWAPS.**

4 The Commodity Futures Trading Commission or the  
5 Securities and Exchange Commission, or both, individually  
6 may, by rule or order—

7 (1) collect information as may be necessary con-  
8 cerning the markets for any types of—

9 (A) swap (as defined in section 1a of the  
10 Commodity Exchange Act (7 U.S.C. 1a)); or

11 (B) security-based swap (as defined in sec-  
12 tion 1a of the Commodity Exchange Act (7  
13 U.S.C. 1a)); and

14 (2) issue a report with respect to any types of  
15 swaps or security-based swaps that the Commodity  
16 Futures Trading Commission or the Securities and  
17 Exchange Commission determines to be detrimental  
18 to—

19 (A) the stability of a financial market; or

20 (B) participants in a financial market.

21 **SEC. 715. AUTHORITY TO PROHIBIT PARTICIPATION IN**  
22 **SWAP ACTIVITIES.**

23 Except as provided in section 4 of the Commodity Ex-  
24 change Act (7 U.S.C. 6) (as amended by section 738), if  
25 the Commodity Futures Trading Commission or the Secu-

1 rities and Exchange Commission determines that the regu-  
2 lation of swaps or security-based swaps markets in a for-  
3 eign country undermines the stability of the United States  
4 financial system, either Commission, in consultation with  
5 the Secretary of the Treasury, may prohibit an entity  
6 domiciled in the foreign country from participating in the  
7 United States in any swap or security-based swap activi-  
8 ties.

9 **SEC. 716. PROHIBITION AGAINST FEDERAL GOVERNMENT**

10 **BAILOUTS OF SWAPS ENTITIES.**

11 (a) PROHIBITION ON FEDERAL ASSISTANCE.—Not-  
12 withstanding any other provision of law (including regula-  
13 tions), no Federal assistance may be provided to any  
14 swaps entity with respect to any swap, security-based  
15 swap, or other activity of the swaps entity.

16 (b) DEFINITIONS.—In this section:

17 (1) FEDERAL ASSISTANCE.—The term “Federal  
18 assistance” means the use of any funds, including  
19 advances from any Federal Reserve credit facility,  
20 discount window, or pursuant to the third undesign-  
21 nated paragraph of section 13 of the Federal Re-  
22 serve Act (12 U.S.C. 343) (relating to emergency  
23 lending authority), Federal Deposit Insurance Cor-  
24 poration insurance, or guarantees for the purpose  
25 of—

1 (A) making any loan to, or purchasing any  
2 stock, equity interest, or debt obligation of, any  
3 swaps entity;

4 (B) purchasing the assets of any swaps en-  
5 tity;

6 (C) guaranteeing any loan or debt issuance  
7 of any swaps entity; or

8 (D) entering into any assistance arrange-  
9 ment (including tax breaks), loss sharing, or  
10 profit sharing with any swaps entity.

11 (2) SWAPS ENTITY.—The term “swaps entity”  
12 means any swap dealer, security-based swap dealer,  
13 major swap participant, major security-based swap  
14 participant, swap execution facility, designated con-  
15 tract market, national securities exchange, central  
16 counterparty, clearing house, clearing agency, or de-  
17 rivatives clearing organization that is registered  
18 under—

19 (A) the Commodity Exchange Act (7  
20 U.S.C. 1 et seq.);

21 (B) the Securities Exchange Act of 1934  
22 (15 U.S.C. 78a et seq.); or

23 (C) any other Federal or State law (includ-  
24 ing regulations).

1 **SEC. 717. NEW PRODUCT APPROVAL CFTC—SEC PROCESS.**

2 (a) AMENDMENTS TO THE COMMODITY EXCHANGE  
3 ACT.—Section 2(a)(1)(C) of the Commodity Exchange  
4 Act (7 U.S.C. 2(a)(1)(C)) is amended—

5 (1) in clause (i) by striking “This” and insert-  
6 ing “(I) Except as provided in subclause (II), this”;  
7 and

8 (2) by adding at the end of clause (i) the fol-  
9 lowing:

10 “(II) This Act shall apply to and  
11 the Commission shall have jurisdiction  
12 with respect to accounts, agreements,  
13 and transactions involving, and may  
14 permit the listing for trading pursu-  
15 ant to section 5c(c) of, a put, call, or  
16 other option on 1 or more securities  
17 (as defined in section 2(a)(1) of the  
18 Securities Act of 1933 or section  
19 3(a)(10) of the Securities Exchange  
20 Act of 1934 on the date of enactment  
21 of the Futures Trading Act of 1982),  
22 including any group or index of such  
23 securities, or any interest therein or  
24 based on the value thereof, that is ex-  
25 empted by the Securities and Ex-  
26 change Commission pursuant to sec-

1                   tion 36(a)(1) of the Securities Ex-  
2                   change Act of 1934 with the condition  
3                   that the Commission exercise concu-  
4                   rent jurisdiction over such put, call, or  
5                   other option; provided, however, that  
6                   nothing in this paragraph shall be  
7                   construed to affect the jurisdiction  
8                   and authority of the Securities and  
9                   Exchange Commission over such put,  
10                  call, or other option.”.

11           (b) AMENDMENT TO THE SECURITIES EXCHANGE  
12 ACT OF 1934.—The Securities Exchange Act of 1934 is  
13 amended by adding the following section after section 3A  
14 (15 U.S.C. 78c–1):

15 **“SEC. 3B. SECURITIES-RELATED DERIVATIVES.**

16           “(a) Any agreement, contract, or transaction (or  
17 class thereof) that is exempted by the Commodity Futures  
18 Trading Commission pursuant to section 4(c)(1) of the  
19 Commodity Exchange Act (7 U.S.C. 6(c)(1)) with the con-  
20 dition that the Commission exercise concurrent jurisdie-  
21 tion over such agreement, contract, or transaction (or  
22 class thereof) shall be deemed a security for purposes of  
23 the securities laws.

24           “(b) With respect to any agreement, contract, or  
25 transaction (or class thereof) that is exempted by the

1 Commodity Futures Trading Commission pursuant to sec-  
2 tion 4(c)(1) of the Commodity Exchange Act (7 U.S.C.  
3 6(c)(1)) with the condition that the Commission exercise  
4 concurrent jurisdiction over such agreement, contract, or  
5 transaction (or class thereof), references in the securities  
6 laws to the ‘purchase’ or ‘sale’ of a security shall be  
7 deemed to include the execution, termination (prior to its  
8 scheduled maturity date), assignment, exchange, or simi-  
9 lar transfer or conveyance of, or extinguishing of rights  
10 or obligations under such agreement, contract, or trans-  
11 action, as the context may require.”.

12 (c) AMENDMENT TO SECURITIES EXCHANGE ACT OF  
13 1934.—Section 19(b) of the Securities Exchange Act of  
14 1934 (15 U.S.C. 78s(b)) is amended by adding at the end  
15 the following:

16 “(10) Notwithstanding the provisions of para-  
17 graph (2), the time period within which the Commis-  
18 sion is required by order to approve a proposed rule  
19 change or institute proceedings to determine whether  
20 the proposed rule change should be disapproved is  
21 stayed pending a determination by the Commission  
22 upon the request of the Commodity Futures Trading  
23 Commission or its Chairman that the Commission  
24 issue a determination as to whether a product that  
25 is the subject of such proposed rule change is a se-



1 **SEC. 718. DETERMINING STATUS OF NOVEL DERIVATIVE**  
2 **PRODUCTS.**

3 (a) PROCESS FOR DETERMINING THE STATUS OF A  
4 NOVEL DERIVATIVE PRODUCT.—

5 (1) NOTICE.—

6 (A) IN GENERAL.—Any person filing a  
7 proposal to list or trade a novel derivative prod-  
8 uct that may have elements of both securities  
9 and contracts of sale of a commodity for future  
10 delivery (or options on such contracts or options  
11 on commodities) may concurrently provide no-  
12 tice and furnish a copy of such filing with both  
13 the Securities and Exchange Commission and  
14 the Commodity Futures Trading Commission.  
15 Any such notice shall state that notice has been  
16 made with both Commissions.

17 (B) NOTIFICATION.—If no concurrent no-  
18 tice is made pursuant to subparagraph (A),  
19 within 5 business days after determining that a  
20 proposal that seeks to list or trade a novel de-  
21 rivative product may have elements of both se-  
22 curities and contracts of sale of a commodity  
23 for future delivery (or options on such contracts  
24 or options on commodities), the Securities and  
25 Exchange Commission or the Commodity Fu-  
26 tures Trading Commission, as applicable, shall



1           notify the other Commission and provide a copy  
2           of such filing to the other Commission.

3           (2) REQUEST FOR DETERMINATION.—

4                   (A) IN GENERAL.—No later than 21 days  
5           after receipt of a notice under paragraph (1), or  
6           upon its own initiative if no such notice is re-  
7           ceived, the Commodity Futures Trading Com-  
8           mission may request that the Securities and  
9           Exchange Commission issue a determination as  
10          to whether a product is a security, as defined  
11          in section 3(a)(10) of the Securities Exchange  
12          Act of 1934 (15 U.S.C. 78c(a)(10)).

13                   (B) REQUEST.—No later than 21 days  
14          after receipt of a notice under paragraph (1), or  
15          upon its own initiative if no such notice is re-  
16          ceived, the Securities and Exchange Commis-  
17          sion may request that the Commodity Futures  
18          Trading Commission issue a determination as  
19          to whether a product is a contract of sale of a  
20          commodity for future delivery, an option on  
21          such a contract, or an option on a commodity  
22          subject to the Commodity Futures Trading  
23          Commission's exclusive jurisdiction under sec-  
24          tion 2(a)(1)(A) of the Commodity Exchange  
25          Act (7 U.S.C. 2(a)(1)(A)).

1           (C) REQUIREMENT RELATING TO RE-  
2           QUEST.—A request under subparagraph (A) or  
3           (B) shall be made by submitting such request,  
4           in writing, to the Securities and Exchange  
5           Commission or the Commodity Futures Trading  
6           Commission, as applicable.

7           (D) EFFECT.—Nothing in this paragraph  
8           shall be construed to prevent—

9                   (i) the Commodity Futures Trading  
10                  Commission from requesting that the Se-  
11                  curities and Exchange Commission grant  
12                  an exemption pursuant to section 36(a)(1)  
13                  of the Securities Exchange Act of 1934  
14                  (15 U.S.C. 78mm(a)(1)) with respect to a  
15                  product that is the subject of a filing  
16                  under paragraph (1); or

17                   (ii) the Securities and Exchange Com-  
18                  mission from requesting that the Com-  
19                  modity Futures Trading Commission grant  
20                  an exemption pursuant to section 4(c)(1)  
21                  of the Commodity Exchange Act (7 U.S.C.  
22                  6(c)(1)) with respect to a product that is  
23                  the subject of a filing under paragraph (1),  
24                  *Provided*, however, that nothing in this sub-  
25                  paragraph shall be construed to require the

1 Commodity Futures Trading Commission or the  
2 Securities and Exchange Commission to issue  
3 an exemption requested pursuant to this sub-  
4 paragraph; *provided further*, That an order  
5 granting or denying an exemption described in  
6 this subparagraph and issued under paragraph  
7 (3)(B) shall not be subject to judicial review  
8 pursuant to subsection (b).

9 (E) WITHDRAWAL OF REQUEST.—A re-  
10 quest under subparagraph (A) or (B) may be  
11 withdrawn by the Commission making the re-  
12 quest at any time prior to a determination  
13 being made pursuant to paragraph (3) for any  
14 reason by providing written notice to the head  
15 of the other Commission.

16 (3) DETERMINATION.—Notwithstanding any  
17 other provision of law, no later than 120 days after  
18 the date of receipt of a request—

19 (A) under subparagraph (A) or (B) of  
20 paragraph (2), unless such request has been  
21 withdrawn pursuant to paragraph (2)(E), the  
22 Securities and Exchange Commission or the  
23 Commodity Futures Trading Commission, as  
24 applicable, shall, by order, issue the determina-  
25 tion requested in subparagraph (A) or (B) of

1 paragraph (2), as applicable, and the reasons  
2 therefore; or

3 (B) under paragraph (2)(D), unless such  
4 request has been withdrawn, the Securities and  
5 Exchange Commission or the Commodity Fu-  
6 tures Trading Commission, as applicable, shall  
7 grant an exemption or provide reasons for not  
8 granting such exemption, provided that any de-  
9 cision by the Securities and Exchange Commis-  
10 sion not to grant such exemption shall not be  
11 reviewable under section 25 of the Securities  
12 Exchange Act of 1934 (15 U.S.C. 78y).

13 (b) JUDICIAL RESOLUTION.—

14 (1) IN GENERAL.—The Commodity Futures  
15 Trading Commission or the Securities and Exchange  
16 Commission may petition the United States Court of  
17 Appeals for the District of Columbia Circuit for re-  
18 view of a final order of the other Commission, with  
19 respect to a novel derivative product that may have  
20 elements of both securities and contracts of sale of  
21 a commodity for future delivery (or options on such  
22 contracts or options on commodities) that it believes  
23 affects its statutory jurisdiction, including an order  
24 or orders issued under subsection (a)(3)(A), by filing  
25 in such court, within 60 days after the date of entry

1 of such order, a written petition requesting a review  
2 of the order. Any such proceeding shall be expedited  
3 by the Court of Appeals.

4 (2) TRANSMITTAL OF PETITION AND  
5 RECORD.—A copy of a petition described in para-  
6 graph (1) shall be transmitted not later than 1 busi-  
7 ness day after filing by the complaining Commission  
8 to the responding Commission. On receipt of the pe-  
9 tition, the responding Commission shall file with the  
10 court a copy of the order under review and any doc-  
11 uments referred to therein, and any other materials  
12 prescribed by the court.

13 (3) STANDARD OF REVIEW.—The court, in con-  
14 sidering a petition filed pursuant to paragraph (1),  
15 shall give no deference to, or presumption in favor  
16 of, the views of either Commission.

17 (4) JUDICIAL STAY.—The filing of a petition by  
18 the complaining Commission pursuant to paragraph  
19 (1) shall operate as a stay of the order, until the  
20 date on which the determination of the court is final  
21 (including any appeal of the determination).

## 22 **PART II—REGULATION OF SWAP MARKETS**

### 23 **SEC. 721. DEFINITIONS.**

24 (a) IN GENERAL.—Section 1a of the Commodity Ex-  
25 change Act (7 U.S.C. 1a) is amended—

1           (1) by redesignating paragraphs (2), (3) and  
2           (4), (5) through (17), (18) through (23), (24)  
3           through (28), (29), (30), (31) through (33), and  
4           (34) as paragraphs (6), (8) and (9), (11) through  
5           (23), (26) through (31), (34) through (38), (40),  
6           (41), (44) through (46), and (51), respectively;

7           (2) by inserting after paragraph (1) the fol-  
8           lowing:

9           “(2) APPROPRIATE FEDERAL BANKING AGEN-  
10          CY.—The term ‘appropriate Federal banking agency’  
11          has the meaning given the term in section 3 of the  
12          Federal Deposit Insurance Act (12 U.S.C. 1813).

13          “(3) ASSOCIATED PERSON OF A SECURITY-  
14          BASED SWAP DEALER OR MAJOR SECURITY-BASED  
15          SWAP PARTICIPANT.—The term ‘associated person of  
16          a security-based swap dealer or major security-based  
17          swap participant’ has the meaning given the term in  
18          section 3(a) of the Securities Exchange Act of 1934  
19          (15 U.S.C. 78c(a)).

20          “(4) ASSOCIATED PERSON OF A SWAP DEALER  
21          OR MAJOR SWAP PARTICIPANT.—

22                 “(A) IN GENERAL.—The term ‘associated  
23                 person of a swap dealer or major swap partici-  
24                 pant’ means—

1                   “(i) any partner, officer, director, or  
2                   branch manager of a swap dealer or major  
3                   swap participant (including any individual  
4                   who holds a similar status or performs a  
5                   similar function with respect to any part-  
6                   ner, officer, director, or branch manager of  
7                   a swap dealer or major swap participant);

8                   “(ii) any person that directly or indi-  
9                   rectly controls, is controlled by, or is under  
10                  common control with, a swap dealer or  
11                  major swap participant; and

12                  “(iii) any employee of a swap dealer  
13                  or major swap participant.

14                  “(B) EXCLUSION.—Other than for pur-  
15                  poses of section 4s(b)(6), the term ‘associated  
16                  person of a swap dealer or major swap partici-  
17                  pant’ does not include any person associated  
18                  with a swap dealer or major swap participant  
19                  the functions of which are solely clerical or min-  
20                  isterial.

21                  “(5) BOARD.—The term ‘Board’ means the  
22                  Board of Governors of the Federal Reserve Sys-  
23                  tem.”;

24                  (3) by inserting after paragraph (6) (as redesign-  
25                  nated by paragraph (1)) the following:

1           “(7) CLEARED SWAP.—The term ‘cleared swap’  
2 means any swap that is, directly or indirectly, sub-  
3 mitted to and cleared by a derivatives clearing orga-  
4 nization registered with the Commission.”;

5           (4) in paragraph (9) (as redesignated by para-  
6 graph (1)), by striking “except onions” and all that  
7 follows through the period at the end and inserting  
8 the following: “except onions (as provided in section  
9 13–1) and motion picture box office receipts (or any  
10 index, measure, value, or data related to such re-  
11 cepts), and all services, rights, and interests (except  
12 motion picture box office receipts, or any index,  
13 measure, value or data related to such receipts) in  
14 which contracts for future delivery are presently or  
15 in the future dealt in.”;

16           (5) by inserting after paragraph (9) (as redesign-  
17 ated by paragraph (1)) the following:

18           “(10) COMMODITY POOL.—

19           “(A) IN GENERAL.—The term ‘commodity  
20 pool’ means any investment trust, syndicate, or  
21 similar form of enterprise operated for the pur-  
22 pose of trading in commodity interests, includ-  
23 ing any—

24           “(i) commodity for future delivery, se-  
25 curity futures product, or swap;



1                   “(ii) agreement, contract, or trans-  
2                   action described in section 2(c)(2)(C)(i) or  
3                   section 2(c)(2)(D)(i);

4                   “(iii) commodity option authorized  
5                   under section 4c; or

6                   “(iv) leverage transaction authorized  
7                   under section 19.

8                   “(B) FURTHER DEFINITION.—The Com-  
9                   mission, by rule or regulation, may include  
10                  within, or exclude from, the term ‘commodity  
11                  pool’ any investment trust, syndicate, or similar  
12                  form of enterprise if the Commission deter-  
13                  mines that the rule or regulation will effectuate  
14                  the purposes of this Act.”;

15                  (6) by striking paragraph (11) (as redesignated  
16                  by paragraph (1)) and inserting the following:

17                  “(11) COMMODITY POOL OPERATOR.—

18                         “(A) IN GENERAL.—The term ‘commodity  
19                         pool operator’ means any person—

20                                 “(i) engaged in a business that is of  
21                                 the nature of a commodity pool, invest-  
22                                 ment trust, syndicate, or similar form of  
23                                 enterprise, and who, in connection there-  
24                                 with, solicits, accepts, or receives from oth-  
25                                 ers, funds, securities, or property, either

1                   directly or through capital contributions,  
2                   the sale of stock or other forms of securi-  
3                   ties, or otherwise, for the purpose of trad-  
4                   ing in commodity interest, including any—  
5                   “**(I)** commodity for future deliv-  
6                   ery, security futures product, or swap;  
7                   “**(II)** agreement, contract, or  
8                   transaction described in section  
9                   2(c)(2)(C)(i) or section 2(c)(2)(D)(i);  
10                  “**(III)** commodity option author-  
11                  ized under section 4c; or  
12                  “**(IV)** leverage transaction au-  
13                  thorized under section 19; or  
14                  “(ii) who is registered with the Com-  
15                  mission as a commodity pool operator.  
16                  “**(B) FURTHER DEFINITION.**—The Com-  
17                  mission, by rule or regulation, may include  
18                  within, or exclude from, the term ‘commodity  
19                  pool operator’ any person engaged in a business  
20                  that is of the nature of a commodity pool, in-  
21                  vestment trust, syndicate, or similar form of en-  
22                  terprise if the Commission determines that the  
23                  rule or regulation will effectuate the purposes of  
24                  this Act.”;

1           (7) in paragraph (12) (as redesignated by para-  
2 graph (1)), in subparagraph (A)—

3           (A) in clause (i)—

4           (i) in subclause (I), by striking “made  
5 or to be made on or subject to the rules of  
6 a contract market or derivatives trans-  
7 action execution facility” and inserting “,  
8 security futures product, or swap”;

9           (ii) by redesignating subclauses (II)  
10 and (III) as subclauses (III) and (IV);

11           (iii) by inserting after subclause (I)  
12 the following:

13           “(II) any agreement, contract, or  
14 transaction described in section  
15 2(c)(2)(C)(i) or section 2(c)(2)(D)(i)”;

16           and

17           (iv) in subclause (IV) (as so redesign-  
18 ated), by striking “or”;

19           (B) in clause (ii), by striking the period at  
20 the end and inserting a semicolon; and

21           (C) by adding at the end the following:

22           “(iii) is registered with the Commis-  
23 sion as a commodity trading advisor; or

24           “(iv) the Commission, by rule or regu-  
25 lation, may include if the Commission de-

1                   termines that the rule or regulation will ef-  
2                   fectuate the purposes of this Act.”;

3                   (8) in paragraph (17) (as redesignated by para-  
4                   graph (1)), in subparagraph (A), in the matter pre-  
5                   ceding clause (i), by striking “paragraph (12)(A)”  
6                   and inserting “paragraph (18)(A)”;

7                   (9) in paragraph (18) (as redesignated by para-  
8                   graph (1))—

9                   (A) in subparagraph (A)—

10                   (i) in the matter following clause

11                   (vii)(III)—

12                   (I) by striking “section 1a  
13                   (11)(A)” and inserting “paragraph  
14                   (17)(A)”;

15                   (II) by striking “\$25,000,000”  
16                   and inserting “\$50,000,000”; and

17                   (ii) in clause (xi), in the matter pre-  
18                   ceding subclause (I), by striking “total as-  
19                   sets in an amount” and inserting  
20                   “amounts invested on a discretionary  
21                   basis, the aggregate of which is”;

22                   (10) by striking paragraph (22) (as redesign-  
23                   ated by paragraph (1)) and inserting the following:

24                   “(22) FLOOR BROKER.—

1                   “(A) IN GENERAL.—The term ‘floor  
2 broker’ means any person—

3                   “(i) who, in or surrounding any pit,  
4 ring, post, or other place provided by a  
5 contract market for the meeting of persons  
6 similarly engaged, shall purchase or sell for  
7 any other person—

8                   “(I) any commodity for future  
9 delivery, security futures product, or  
10 swap; or

11                   “(II) any commodity option au-  
12 thorized under section 4c; or

13                   “(ii) who is registered with the Com-  
14 mission as a floor broker.

15                   “(B) FURTHER DEFINITION.—The Com-  
16 mission, by rule or regulation, may include  
17 within, or exclude from, the term ‘floor broker’  
18 any person in or surrounding any pit, ring,  
19 post, or other place provided by a contract mar-  
20 ket for the meeting of persons similarly engaged  
21 who trades for any other person if the Commis-  
22 sion determines that the rule or regulation will  
23 effectuate the purposes of this Act.”;

24                   (11) by striking paragraph (23) (as redesign-  
25 nated by paragraph (1)) and inserting the following:

1           “(23) FLOOR TRADER.—

2                   “(A) IN GENERAL.—The term ‘floor trad-  
3 er’ means any person—

4                           “(i) who, in or surrounding any pit,  
5 ring, post, or other place provided by a  
6 contract market for the meeting of persons  
7 similarly engaged, purchases, or sells solely  
8 for such person’s own account—

9                                   “(I) any commodity for future  
10 delivery, security futures product, or  
11 swap; or

12   “(II) any commodity option au-  
13 thorized under section 4c; or

14   “(ii) who is registered with the Com-  
15 mission as a floor trader.

16                   “(B) FURTHER DEFINITION.—The Com-  
17 mission, by rule or regulation, may include  
18 within, or exclude from, the term ‘floor trader’  
19 any person in or surrounding any pit, ring,  
20 post, or other place provided by a contract mar-  
21 ket for the meeting of persons similarly engaged  
22 who trades solely for such person’s own account  
23 if the Commission determines that the rule or  
24 regulation will effectuate the purposes of this  
25 Act.”;

1           (12) by inserting after paragraph (23) (as re-  
2 designated by paragraph (1)) the following:

3           “(24) FOREIGN EXCHANGE FORWARD.—The  
4 term ‘foreign exchange forward’ means a transaction  
5 that solely involves the exchange of 2 different cur-  
6 rencies on a specific future date at a fixed rate  
7 agreed upon on the inception of the contract cov-  
8 ering the exchange.

9           “(25) FOREIGN EXCHANGE SWAP.—The term  
10 ‘foreign exchange swap’ means a transaction that  
11 solely involves—

12                   “(A) an exchange of 2 different currencies  
13 on a specific date at a fixed rate that is agreed  
14 upon on the inception of the contract covering  
15 the exchange; and

16                   “(B) a reverse exchange of the 2 cur-  
17 rencies described in subparagraph (A) at a later  
18 date and at a fixed rate that is agreed upon on  
19 the inception of the contract covering the ex-  
20 change.”;

21           (13) by striking paragraph (28) (as redesign-  
22 nated by paragraph (1)) and inserting the following:

23           “(28) FUTURES COMMISSION MERCHANT.—

1                   “(A) IN GENERAL.—The term ‘futures  
2 commission merchant’ means an individual, as-  
3 sociation, partnership, corporation, or trust—

4                   “(i) that—

5                   “(I) is engaged in soliciting or in  
6 accepting orders for—

7                   “(aa) the purchase or sale of  
8 a commodity for future delivery;

9                   “(bb) a security futures  
10 product;

11                   “(cc) a swap;

12                   “(dd) any agreement, con-  
13 tract, or transaction described in  
14 section 2(c)(2)(C)(i) or section  
15 2(c)(2)(D)(i);

16                   “(ee) any commodity option  
17 authorized under section 4e; or

18                   “(ff) any leverage trans-  
19 action authorized under section  
20 19; or

21                   “(II) is acting as a counterparty  
22 in any agreement, contract, or trans-  
23 action described in section  
24 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);  
25 and



1                   “(III) in or in connection with  
2                   the activities described in subclause  
3                   (I) or (II), accepts any money, securi-  
4                   ties, or property (or extends credit in  
5                   lieu thereof) to margin, guarantee, or  
6                   secure any trades or contracts that re-  
7                   sult or may result therefrom; or

8                   “(ii) that is registered with the Com-  
9                   mission as a futures commission merchant.

10                   “(B) FURTHER DEFINITION.—The Com-  
11                   mission, by rule or regulation, may include  
12                   within, or exclude from, the term ‘futures com-  
13                   mission merchant’ any person who engages in  
14                   soliciting or accepting orders for, or acting as  
15                   a counterparty in, any agreement, contract, or  
16                   transaction subject to this Act, and who accepts  
17                   any money, securities, or property (or extends  
18                   credit in lieu thereof) to margin, guarantee, or  
19                   secure any trades or contracts that result or  
20                   may result therefrom, if the Commission deter-  
21                   mines that the rule or regulation will effectuate  
22                   the purposes of this Act.”;

23                   (14) in paragraph (30) (as redesignated by  
24                   paragraph (1)), in subparagraph (B), by striking  
25                   “state” and inserting “State”;

1           (15) by striking paragraph (31) (as redesignated by paragraph (1)) and inserting the following:

2           “(31) INTRODUCING BROKER.—

3                   “(A) IN GENERAL.—The term ‘introducing broker’ means any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant)—

4                           “(i) who—

5                                   “(I) is engaged in soliciting or in accepting orders for—

6   “(aa) the purchase or sale of any commodity for future delivery, security futures product, or swap;

7   “(bb) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

8   “(cc) any commodity option authorized under section 4c; or

9   “(dd) any leverage transaction authorized under section 19; and

1                   “(II) does not accept any money,  
2                   securities, or property (or extend cred-  
3                   it in lieu thereof) to margin, guar-  
4                   antee, or secure any trades or con-  
5                   tracts that result or may result there-  
6                   from; or

7                   “(ii) who is registered with the Com-  
8                   mission as an introducing broker.

9                   “(B) FURTHER DEFINITION.—The Com-  
10                  mission, by rule or regulation, may include  
11                  within, or exclude from, the term ‘introducing  
12                  broker’ any person who engages in soliciting or  
13                  accepting orders for any agreement, contract,  
14                  or transaction subject to this Act, and who does  
15                  not accept any money, securities, or property  
16                  (or extend credit in lieu thereof) to margin,  
17                  guarantee, or secure any trades or contracts  
18                  that result or may result therefrom, if the Com-  
19                  mission determines that the rule or regulation  
20                  will effectuate the purposes of this Act.”;

21                  (16) by inserting after paragraph (31) (as re-  
22                  designated by paragraph (1)) the following:

23                  “(32) MAJOR SECURITY-BASED SWAP PARTICI-  
24                  PANT.—The term ‘major security-based swap partici-  
25                  ipant’ has the meaning given the term in section

1       3(a) of the Securities Exchange Act of 1934 (15  
2       U.S.C. 78c(a)).

3               “(33) MAJOR SWAP PARTICIPANT.—

4                       “(A) IN GENERAL.—The term ‘major swap  
5       participant’ means any person who is not a  
6       swap dealer, and—

7                       “(i) maintains a substantial position  
8       in swaps for any of the major swap cat-  
9       egories as determined by the Commission,  
10       excluding—

11                      “(I) positions held for hedging or  
12       mitigating commercial risk; and

13                      “(II) positions maintained by any  
14       employee benefit plan (or any contract  
15       held by such a plan) as defined in  
16       paragraphs (3) and (32) of section 3  
17       of the Employee Retirement Income  
18       Security Act of 1974 (29 U.S.C.  
19       1002) for the primary purpose of  
20       hedging or mitigating any risk directly  
21       associated with the operation of the  
22       plan; or

23                      “(ii) whose outstanding swaps create  
24       substantial counterparty exposure that  
25       could have serious adverse effects on the

1 financial stability of the United States  
2 banking system or financial markets; or

3 “(iii)(I) is a financial entity, other  
4 than an entity predominantly engaged in  
5 providing financing for the purchase of an  
6 affiliate’s merchandise or manufactured  
7 goods, that is highly leveraged relative to  
8 the amount of capital it holds; and

9 “(II) maintains a substantial position  
10 in outstanding swaps in any major swap  
11 category as determined by the Commission.

12 “(B) DEFINITION OF SUBSTANTIAL POSI-  
13 TION.—For purposes of subparagraph (A), the  
14 Commission shall define by rule or regulation  
15 the term ‘substantial position’ at the threshold  
16 that the Commission determines to be prudent  
17 for the effective monitoring, management, and  
18 oversight of entities that are systemically im-  
19 portant or can significantly impact the financial  
20 system of the United States.

21 “(C) SCOPE OF DESIGNATION.—For pur-  
22 poses of subparagraph (A), a person may be  
23 designated as a major swap participant for 1 or  
24 more categories of swaps without being classi-



1 International Banking Act of 1978 (12  
2 U.S.C. 3101 et seq.);

3 “(iii) any foreign bank which does not  
4 operate an insured branch;

5 “(iv) any agency or commercial lend-  
6 ing company other than a Federal agency;  
7 or

8 “(v) supervisory or regulatory pro-  
9 ceedings arising from the authority given  
10 to the Board of Governors under section  
11 7(c)(1) of the International Banking Act of  
12 1978 (12 U.S.C. 3105(c)(1)), including  
13 such proceedings under the Financial In-  
14 stitutions Supervisory Act of 1966 (12  
15 U.S.C. 1464 et seq.); and

16 “(D) the Farm Credit Administration, in  
17 the case of a swap dealer, major swap partici-  
18 pant, security-based swap dealer, or major secu-  
19 rity-based swap participant that is an institu-  
20 tion chartered under the Farm Credit Act of  
21 1971 (12 U.S.C. 2001 et seq.).”;

22 (18) in paragraph (40) (as redesignated by  
23 paragraph (1))—

24 (A) by striking subparagraph (B);

1 (B) by redesignating subparagraphs (C),  
2 (D), and (E) as subparagraphs (B), (C), and  
3 (F), respectively;

4 (C) in subparagraph (C) (as so redesign-  
5 nated), by striking “and”;

6 (D) by inserting after subparagraph (C)  
7 (as so redesignated) the following:

8 “(D) a swap execution facility registered  
9 under section 5h;

10 “(E) a swap data repository registered  
11 under section 21; and”;

12 (19) by inserting after paragraph (41) (as re-  
13 designated by paragraph (1)) the following:

14 “(42) SECURITY-BASED SWAP.—The term ‘se-  
15 curity-based swap’ has the meaning given the term  
16 in section 3(a) of the Securities Exchange Act of  
17 1934 (15 U.S.C. 78c(a)).

18 “(43) SECURITY-BASED SWAP DEALER.—The  
19 term ‘security-based swap dealer’ has the meaning  
20 given the term in section 3(a) of the Securities Ex-  
21 change Act of 1934 (15 U.S.C. 78c(a)).”;

22 (20) in paragraph (46) (as redesignated by  
23 paragraph (1)), by striking “subject to section  
24 2(h)(7)” and inserting “subject to section 2(h)(5)”;



1           (21) by inserting after paragraph (46) (as re-  
2           designated by paragraph (1)) the following:

3           “(47) SWAP.—

4                   “(A) IN GENERAL.—Except as provided in  
5           subparagraph (B), the term ‘swap’ means any  
6           agreement, contract, or transaction—

7                           “(i) that is a put, call, cap, floor, col-  
8                           lar, or similar option of any kind that is  
9                           for the purchase or sale, or based on the  
10                          value, of 1 or more interest or other rates,  
11                          currencies, commodities, securities, instru-  
12                          ments of indebtedness, indices, quantitative  
13                          measures, or other financial or economic  
14                          interests or property of any kind;

15                          “(ii) that provides for any purchase,  
16                          sale, payment, or delivery (other than a  
17                          dividend on an equity security) that is de-  
18                          pendent on the occurrence, nonoccurrence,  
19                          or the extent of the occurrence of an event  
20                          or contingency associated with a potential  
21                          financial, economic, or commercial con-  
22                          sequence;

23                          “(iii) that provides on an executory  
24                          basis for the exchange, on a fixed or con-  
25                          tingent basis, of 1 or more payments based

1 on the value or level of 1 or more interest  
2 or other rates, currencies, commodities, se-  
3 curities, instruments of indebtedness, indi-  
4 ces, quantitative measures, or other finan-  
5 cial or economic interests or property of  
6 any kind, or any interest therein or based  
7 on the value thereof, and that transfers, as  
8 between the parties to the transaction, in  
9 whole or in part, the financial risk associ-  
10 ated with a future change in any such  
11 value or level without also conveying a cur-  
12 rent or future direct or indirect ownership  
13 interest in an asset (including any enter-  
14 prise or investment pool) or liability that  
15 incorporates the financial risk so trans-  
16 ferred, including any agreement, contract,  
17 or transaction commonly known as—

18 “(I) an interest rate swap;

19 “(II) a rate floor;

20 “(III) a rate cap;

21 “(IV) a rate collar;

22 “(V) a cross-currency rate swap;

23 “(VI) a basis swap;

24 “(VII) a currency swap;

25 “(VIII) a foreign exchange swap;

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- 1 “(IX) a total return swap;
- 2 “(X) an equity index swap;
- 3 “(XI) an equity swap;
- 4 “(XII) a debt index swap;
- 5 “(XIII) a debt swap;
- 6 “(XIV) a credit spread;
- 7 “(XV) a credit default swap;
- 8 “(XVI) a credit swap;
- 9 “(XVII) a weather swap;
- 10 “(XVIII) an energy swap;
- 11 “(XIX) a metal swap;
- 12 “(XX) an agricultural swap;
- 13 “(XXI) an emissions swap; and
- 14 “(XXII) a commodity swap;
- 15 “(iv) that is an agreement, contract,
- 16 or transaction that is, or in the future be-
- 17 comes commonly known to the trade as a
- 18 swap;
- 19 “(v) including any security-based
- 20 swap agreement which meets the definition
- 21 of ‘swap agreement’ as defined in section
- 22 206A of the Gramm-Leach-Bliley Act (15
- 23 U.S.C. 78c note) of which a material term
- 24 is based on the price, yield, value, or vola-



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1                   “(I) the Securities Act of 1933  
2                   (15 U.S.C. 77a et seq.); and

3                   “(II) the Securities Exchange  
4                   Act of 1934 (15 U.S.C. 78a et seq.);

5                   “(iv) any put, call, straddle, option, or  
6                   privilege relating to a foreign currency en-  
7                   tered into on a national securities exchange  
8                   registered pursuant to section 6(a) of the  
9                   Securities Exchange Act of 1934 (15  
10                  U.S.C. 78f(a));

11                  “(v) any agreement, contract, or  
12                  transaction providing for the purchase or  
13                  sale of 1 or more securities on a fixed basis  
14                  that is subject to—

15                  “(I) the Securities Act of 1933  
16                  (15 U.S.C. 77a et seq.); and

17                  “(II) the Securities Exchange  
18                  Act of 1934 (15 U.S.C. 78a et seq.);

19                  “(vi) any agreement, contract, or  
20                  transaction providing for the purchase or  
21                  sale of 1 or more securities on a contingent  
22                  basis that is subject to the Securities Act  
23                  of 1933 (15 U.S.C. 77a et seq.) and the  
24                  Securities Exchange Act of 1934 (15  
25                  U.S.C. 78a et seq.), unless the agreement,

1 contract, or transaction predicates the pur-  
2 chase or sale on the occurrence of a bona  
3 fide contingency that might reasonably be  
4 expected to affect or be affected by the  
5 creditworthiness of a party other than a  
6 party to the agreement, contract, or trans-  
7 action;

8 “(vii) any note, bond, or evidence of  
9 indebtedness that is a security, as defined  
10 in section 2(a) of the Securities Act of  
11 1933 (15 U.S.C. 77b(a));

12 “(viii) any agreement, contract, or  
13 transaction that is—

14 “(I) based on a security; and

15 “(II) entered into directly or  
16 through an underwriter (as defined in  
17 section 2(a) of the Securities Act of  
18 1933 (15 U.S.C. 77b(a))) by the  
19 issuer of such security for the pur-  
20 poses of raising capital, unless the  
21 agreement, contract, or transaction is  
22 entered into to manage a risk associ-  
23 ated with capital raising;

24 “(ix) any agreement, contract, or  
25 transaction a counterparty of which is a

1 Federal Reserve bank, the Federal Govern-  
2 ment, or a Federal agency that is expressly  
3 backed by the full faith and credit of the  
4 United States; and

5 “(x) any security-based swap, other  
6 than a security-based swap as described in  
7 subparagraph (D).

8 “(C) RULE OF CONSTRUCTION REGARDING  
9 MASTER AGREEMENTS.—

10 “(i) IN GENERAL.—Except as pro-  
11 vided in clause (ii), the term ‘swap’ in-  
12 cludes a master agreement that provides  
13 for an agreement, contract, or transaction  
14 that is a swap under subparagraph (A), to-  
15 gether with each supplement to any master  
16 agreement, without regard to whether the  
17 master agreement contains an agreement,  
18 contract, or transaction that is not a swap  
19 pursuant to subparagraph (A).

20 “(ii) EXCEPTION.—For purposes of  
21 clause (i), the master agreement shall be  
22 considered to be a swap only with respect  
23 to each agreement, contract, or transaction  
24 covered by the master agreement that is a  
25 swap pursuant to subparagraph (A).

1           “(D) MIXED SWAP.—The term ‘security-  
2           based swap’ includes any agreement, contract,  
3           or transaction that is as described in section  
4           3(a)(68)(A) of the Securities Exchange Act of  
5           1934 (15 U.S.C. 78c(a)(68)(A)) and also is  
6           based on the value of 1 or more interest or  
7           other rates, currencies, commodities, instru-  
8           ments of indebtedness, indices, quantitative  
9           measures, other financial or economic interest  
10          or property of any kind (other than a single se-  
11          curity or a narrow-based security index), or the  
12          occurrence, non-occurrence, or the extent of the  
13          occurrence of an event or contingency associ-  
14          ated with a potential financial, economic, or  
15          commercial consequence (other than an event  
16          described in subparagraph (A)(iii)).

17           “(E) TREATMENT OF FOREIGN EXCHANGE  
18          SWAPS AND FORWARDS.—

19           “(i) IN GENERAL.—Foreign exchange  
20          swaps and foreign exchange forwards shall  
21          be considered swaps under this paragraph  
22          unless the Secretary makes a written de-  
23          termination that either foreign exchange  
24          swaps or foreign exchange forwards or  
25          both—



1                   “(I) should be not be regulated  
2                   as swaps under this Act; and

3                   “(II) are not structured to evade  
4                   the Wall Street Transparency and Ac-  
5                   countability Act of 2010 in violation  
6                   of any rule promulgated by the Com-  
7                   mission pursuant to section 111(e) of  
8                   that Act.

9                   “(ii) CONGRESSIONAL NOTICE; EFFEC-  
10                  TIVENESS.—The Secretary shall submit  
11                  any written determination under clause (i)  
12                  to the appropriate committees of Congress,  
13                  including the Committee on Agriculture,  
14                  Nutrition, and Forestry of the Senate and  
15                  the Committee on Agriculture of the House  
16                  of Representatives. Any such written deter-  
17                  mination by the Secretary shall not be ef-  
18                  fective until it is submitted to the appro-  
19                  priate committees of Congress.

20                  “(iii) REPORTING.—Notwithstanding  
21                  a written determination by the Secretary  
22                  under clause (i), all foreign exchange  
23                  swaps and foreign exchange forwards shall  
24                  be reported to either a swap data reposi-  
25                  tory, or, if there is no swap data repository

1 that would accept such swaps or forwards,  
2 to the Commission pursuant to section 4r  
3 within such time period as the Commission  
4 may by rule or regulation prescribe.

5 “(iv) BUSINESS STANDARDS.—Not-  
6 withstanding a written determination by  
7 the Secretary pursuant to clause (i), any  
8 party to a foreign exchange swap or for-  
9 ward that is a swap dealer or major swap  
10 participant shall conform to the business  
11 conduct standards contained in section  
12 4s(h).

13 “(v) SECRETARY.—For purposes of  
14 this subparagraph only, the term ‘Sec-  
15 retary’ means the Secretary of the Treas-  
16 ury.

17 “(F) EXCEPTION FOR CERTAIN FOREIGN  
18 EXCHANGE SWAPS AND FORWARDS.—

19 “(i) REGISTERED ENTITIES.—Any  
20 foreign exchange swap and any foreign ex-  
21 change forward that is listed and traded on  
22 or subject to the rules of a designated con-  
23 tract market or a swap execution facility,  
24 or that is cleared by a derivatives clearing  
25 organization shall not be exempt from any

1 provision of this Act or amendments made  
2 by the Wall Street Transparency and Ac-  
3 countability Act of 2010 prohibiting fraud  
4 or manipulation.

5 “(ii) RETAIL TRANSACTIONS.—Noth-  
6 ing in subparagraph (E) shall affect, or be  
7 construed to affect, the applicability of this  
8 Act or the jurisdiction of the Commission  
9 with respect to agreements, contracts, or  
10 transactions in foreign currency pursuant  
11 to section 2(c)(2).

12 “(48) SWAP DATA REPOSITORY.—The term  
13 ‘swap data repository’ means any person that col-  
14 lects, calculates, prepares, or maintains information  
15 or records with respect to transactions or positions  
16 in, or the terms and conditions of, swaps entered  
17 into by third parties.

18 “(49) SWAP DEALER.—

19 “(A) IN GENERAL.—The term ‘swap deal-  
20 er’ means any person who—

21 “(i) holds itself out as a dealer in  
22 swaps;

23 “(ii) makes a market in swaps;

1                   “(iii) regularly engages in the pur-  
2                   chase and sale of swaps in the ordinary  
3                   course of business; or

4                   “(iv) engages in any activity causing  
5                   the person to be commonly known in the  
6                   trade as a dealer or market maker in  
7                   swaps.

8                   “(B) INCLUSION.—A person may be des-  
9                   ignated as a swap dealer for a single type or  
10                  single class or category of swap or activities and  
11                  considered not to be a swap dealer for other  
12                  types, classes, or categories of swaps or activi-  
13                  ties.

14                  “(C) EXCEPTION.—The term ‘swap dealer’  
15                  does not include a person that buys or sells  
16                  swaps for such person’s own account, either in-  
17                  dividually or in a fiduciary capacity, but not as  
18                  a part of a regular business.

19                  “(50) SWAP EXECUTION FACILITY.—The term  
20                  ‘swap execution facility’ means a facility in which  
21                  multiple participants have the ability to execute or  
22                  trade swaps by accepting bids and offers made by  
23                  other participants that are open to multiple partici-  
24                  pants in the facility or system, through any means

1 of interstate commerce, including any trading facil-  
2 ity, that—

3 “(A) facilitates the execution of swaps be-  
4 tween persons; and

5 “(B) is not a designated contract mar-  
6 ket.”; and

7 (22) in paragraph (51) (as redesignated by  
8 paragraph (1)), in subparagraph (A)(i), by striking  
9 “partipants” and inserting “participants”.

10 (b) **AUTHORITY TO DEFINE TERMS.**—The Com-  
11 modity Futures Trading Commission may adopt a rule to  
12 define—

13 (1) the term “commercial risk”; and

14 (2) any other term included in an amendment  
15 to the Commodity Exchange Act (7 U.S.C. 1 et seq.)  
16 made by this subtitle.

17 (c) **MODIFICATION OF DEFINITIONS.**—To include  
18 transactions and entities that have been structured to  
19 evade this subtitle (or an amendment made by this sub-  
20 title), the Commodity Futures Trading Commission shall  
21 adopt a rule to further define the terms “swap”, “swap  
22 dealer”, “major swap participant”, and “eligible contract  
23 participant”.

24 (d) **EXEMPTIONS.**—Section 4(c)(1) of the Commodity  
25 Exchange Act (7 U.S.C. 6(c)(1)) is amended by striking

1 “except that” and all that follows through the period at  
2 the end and inserting the following: “except that—

3 “(A) unless the Commission is expressly  
4 authorized by any provision described in this  
5 subparagraph to grant exemptions, with respect  
6 to amendments made by subtitle A of the Wall  
7 Street Transparency and Accountability Act of  
8 2010—

9 “(i) with respect to—

10 “(I) paragraphs (2), (3), (4), (5),  
11 and (7), clause (vii)(III) of paragraph  
12 (17), paragraphs (23), (24), (31),  
13 (32), (38), (39), (41), (42), (46),  
14 (47), (48), and (49) of section 1a, and  
15 sections 2(a)(13), 2(c)(D), 4a(a),  
16 4a(b), 4d(c), 4d(d), 4r, 4s, 5b(a),  
17 5b(b), 5(d), 5(g), 5(h), 5b(c), 5b(i),  
18 8e, and 21; and

19 “(II) section 206(e) of the  
20 Gramm-Leach-Bliley Act (Public Law  
21 106–102; 15 U.S.C. 78c note); and

22 “(ii) in subsection (c) of section 111  
23 and section 132 of the Wall Street Trans-  
24 parency and Accountability Act of 2010;  
25 and

1           “(B) the Commission and the Securities  
2           and Exchange Commission may by rule, regula-  
3           tion, or order jointly exclude any agreement,  
4           contract, or transaction from section  
5           2(a)(1)(D)) if the Commissions determine that  
6           the exemption would be consistent with the  
7           public interest.”.

8           (e) CONFORMING AMENDMENTS.—

9           (1) Section 2(c)(2)(B)(i)(II) of the Commodity  
10          Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amend-  
11          ed—

12           (A) in item (cc)—

13           (i) in subitem (AA), by striking “sec-  
14           tion 1a(20)” and inserting “section 1a”;  
15           and

16           (ii) in subitem (BB), by striking “sec-  
17           tion 1a(20)” and inserting “section 1a”;  
18           and

19           (B) in item (dd), by striking “section  
20           1a(12)(A)(ii)” and inserting “section  
21           1a(18)(A)(ii)”.

22          (2) Section 4m(3) of the Commodity Exchange  
23          Act (7 U.S.C. 6m(3)) is amended by striking “sec-  
24          tion 1a(6)” and inserting “section 1a”.

1           (3) Section 4q(a)(1) of the Commodity Ex-  
2           change Act (7 U.S.C. 6o-1(a)(1)) is amended by  
3           striking “section 1a(4)” and inserting “section  
4           1a(9)”.

5           (4) Section 5(e)(1) of the Commodity Exchange  
6           Act (7 U.S.C. 7(e)(1)) is amended by striking “sec-  
7           tion 1a(4)” and inserting “section 1a(9)”.

8           (5) Section 5a(b)(2)(F) of the Commodity Ex-  
9           change Act (7 U.S.C. 7a(b)(2)(F)) is amended by  
10          striking “section 1a(4)” and inserting “section  
11          1a(9)”.

12          (6) Section 5b(a) of the Commodity Exchange  
13          Act (7 U.S.C. 7a-1(a)) is amended, in the matter  
14          preceding paragraph (1), by striking “section 1a(9)”  
15          and inserting “section 1a”.

16          (7) Section 5c(c)(2)(B) of the Commodity Ex-  
17          change Act (7 U.S.C. 7a-2(c)(2)(B)) is amended by  
18          striking “section 1a(4)” and inserting “section  
19          1a(9)”.

20          (8) Section 6(g)(5)(B)(i) of the Securities Ex-  
21          change Act of 1934 (15 U.S.C. 78f(g)(5)(B)(i)) is  
22          amended—

23                 (A) in subclause (I), by striking “section  
24                 1a(12)(B)(ii)” and inserting “section  
25                 1a(18)(B)(ii)”; and



1 (B) in subclause (II), by striking “section  
2 1a(12)” and inserting “section 1a(18)”.

3 (9) Section 402 of the Legal Certainty for  
4 Bank Products Act of 2000 (7 U.S.C. 27 et seq.) is  
5 amended—

6 (A) in subsection (a)(7), by striking “sec-  
7 tion 1a(20)” and inserting “section 1a”;

8 (B) in subsection (b)(2), by striking “sec-  
9 tion 1a(12)” and inserting “section 1a”; and

10 (C) in subsection (c), by striking “section  
11 1a(4)” and inserting “section 1a”.

12 **SEC. 722. JURISDICTION.**

13 (a) **EXCLUSIVE JURISDICTION.**—Section 2(a)(1)(A)  
14 of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)) is  
15 amended in the first sentence—

16 (1) by inserting “the Wall Street Transparency  
17 and Accountability Act of 2010 (including an  
18 amendment made by that Act) and” after “other-  
19 wise provided in”;

20 (2) by striking “(c) through (i) of this section”  
21 and inserting “(c) and (f)”;

22 (3) by striking “contracts of sale” and inserting  
23 “swaps or contracts of sale”; and

1           (4) by striking “or derivatives transaction exe-  
2           cution facility registered pursuant to section 5 or  
3           5a” and inserting “pursuant to section 5”.

4           (b) REGULATION OF SWAPS UNDER FEDERAL AND  
5 STATE LAW.—Section 12 of the Commodity Exchange Act  
6 (7 U.S.C. 16) is amended by adding at the end the fol-  
7 lowing:

8           “(h) REGULATION OF SWAPS AS INSURANCE UNDER  
9 STATE LAW.—A swap—

10           “(1) shall not be considered to be insurance;  
11           and

12           “(2) may not be regulated as an insurance con-  
13           tract under the law of any State.”.

14           (c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS  
15 TRADED ON AN ORGANIZED EXCHANGE.—Section  
16 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C.  
17 2(c)(2)(A)) is amended—

18           (1) in clause (i), by striking “or” at the end;

19           (2) by redesignating clause (ii) as clause (iii);

20           and

21           (3) by inserting after clause (i) the following:

22                           “(ii) a swap; or”.

23           (d) APPLICABILITY.—Section 2 of the Commodity  
24 Exchange Act (7 U.S.C. 2) (as amended by section  
25 723(a)(3)) is amended by adding at the end the following:

1           “(i) APPLICABILITY.—The provisions of this Act re-  
2 lating to swaps that were enacted by the Wall Street  
3 Transparency and Accountability Act of 2010 (including  
4 any rule prescribed or regulation promulgated under that  
5 Act), shall not apply to activities outside the United States  
6 unless those activities—

7                   “(1) have a direct and significant connection  
8 with activities in, or effect on, commerce of the  
9 United States; or

10                   “(2) contravene such rules or regulations as the  
11 Commission may prescribe or promulgate as are nec-  
12 essary or appropriate to prevent the evasion of any  
13 provision of this Act that was enacted by the Wall  
14 Street Transparency and Accountability Act of  
15 2010.”.

16           (e) JUST AND REASONABLE RATES.—Section  
17 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C.  
18 2(a)(1)(C)) (as amended by section 717(a)) is amended  
19 by adding at the end the following:

20                   “(vi) Notwithstanding the exclusive  
21 jurisdiction of the Commission with respect  
22 to accounts, agreements, and transactions  
23 involving swaps or contracts of sale of a  
24 commodity for future delivery under this

1 Act, no provision of this Act shall be con-  
2 strued—

3 “(I) to supersede or limit the au-  
4 thority of the Federal Energy Regu-  
5 latory Commission under the Federal  
6 Power Act (16 U.S.C. 791a et seq.) or  
7 the Natural Gas Act (15 U.S.C. 717  
8 et seq.);

9 “(II) to restrict the Federal En-  
10 ergy Regulatory Commission from  
11 carrying out the duties and respon-  
12 sibilities of the Federal Energy Regu-  
13 latory Commission to ensure just and  
14 reasonable rates and protect the pub-  
15 lic interest under the Acts described  
16 in subclause (I); or

17 “(III) to supersede or limit the  
18 authority of a State regulatory au-  
19 thority (as defined in section 3(21) of  
20 the Federal Power Act (16 U.S.C.  
21 796(21)) that has jurisdiction to regu-  
22 late rates and charges for the sale of  
23 electric energy within the State, or re-  
24 strict that State regulatory authority  
25 from carrying out the duties and re-

1                    responsibilities of the State regulatory  
2                    authority pursuant to the jurisdiction  
3                    of the State regulatory authority to  
4                    regulate rates and charges for the  
5                    transmission or sale of electric energy.

6                    “(vii) Nothing in clause (vi) shall af-  
7                    fect the Commission’s authority with re-  
8                    spect to the trading, execution, or clearing  
9                    of any agreement, contract, or transaction  
10                    on or subject to the rules of a registered  
11                    entity, including a designated contract  
12                    market, derivatives clearing organization,  
13                    or swaps execution facility.”.

14                    (f) PUBLIC INTEREST WAIVER.—Section 4(c) of the  
15                    Commodity Exchange Act (7 U.S.C. 6(c)) (as amended  
16                    by section 721(d)) is amended by adding at the end the  
17                    following:

18                    “(6) If the Commission determines that the ex-  
19                    emption would be consistent with the public interest  
20                    and the purposes of this Act, the Commission shall,  
21                    in accordance with paragraphs (1) and (2), exempt  
22                    from the requirements of this Act an agreement,  
23                    contract, or transaction that is entered into—

1           “(A) pursuant to a tariff or rate schedule  
2 approved or permitted to take effect by the  
3 Federal Energy Regulatory Commission;

4           “(B) pursuant to a tariff or rate schedule  
5 establishing rates or charges for, or protocols  
6 governing, the sale of electric energy approved  
7 or permitted to take effect by the regulatory au-  
8 thority of the State or municipality having ju-  
9 risdiction to regulate rates and charges for the  
10 sale of electric energy within the State or mu-  
11 nicipality; or

12           “(C) between entities described in section  
13 201(f) of the Federal Power Act (16 U.S.C.  
14 824(f)).”.

15 **SEC. 723. CLEARING.**

16       (a) CLEARING REQUIREMENT.—

17           (1) IN GENERAL.—Section 2 of the Commodity  
18 Exchange Act (7 U.S.C. 2) is amended—

19           (A) by striking subsections (d), (e), (g),  
20 and (h); and

21           (B) by redesignating subsection (i) as sub-  
22 section (g).

23       (2) SWAPS; LIMITATION ON PARTICIPATION.—

24       Section 2 of the Commodity Exchange Act (7 U.S.C.

1           2) (as amended by paragraph (1)) is amended by in-  
2           serting after subsection (c) the following:

3           “(d) SWAPS.—Nothing in this Act (other than sub-  
4 paragraphs (A), (B), (C), and (D) of subsection (a)(1),  
5 subsections (f) and (g), sections 1a, 2(c)(2)(A)(ii), 2(e),  
6 2(h), 4(c), 4a, 4b, and 4b–1, subsections (a), (b), and (g)  
7 of section 4c, sections 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l,  
8 4m, 4n, 4o, 4p, 4r, 4s, 4t, 5, 5b, 5c, 5e, and 5h, sub-  
9 sections (c) and (d) of section 6, sections 6c, 6d, 8, 8a,  
10 and 9, subsections (e)(2), (f), and (h) of section 12, sub-  
11 sections (a) and (b) of section 13, sections 17, 20, 21,  
12 and 22(a)(4), and any other provision of this Act that is  
13 applicable to registered entities or Commission reg-  
14 istrants) governs or applies to a swap.

15           “(e) LIMITATION ON PARTICIPATION.—It shall be  
16 unlawful for any person, other than an eligible contract  
17 participant, to enter into a swap unless the swap is en-  
18 tered into on, or subject to the rules of, a board of trade  
19 designated as a contract market under section 5.”.

20           (3) MANDATORY CLEARING OF SWAPS.—Section  
21           2 of the Commodity Exchange Act (7 U.S.C. 2) is  
22           amended by inserting after subsection (g) (as reded-  
23           signated by paragraph (1)(B)) the following:

24           “(h) CLEARING REQUIREMENT.—

25           “(1) SUBMISSION.—

1           “(A) IN GENERAL.—Except as provided in  
2 paragraphs (9) and (10), any person who is a  
3 party to a swap shall submit such swap for  
4 clearing to a derivatives clearing organization  
5 that is registered under this Act or a derivatives  
6 clearing organization that is exempt from reg-  
7 istration under section 5b(i) of this Act.

8           “(B) OPEN ACCESS.—The rules of a reg-  
9 istered derivatives clearing organization shall—

10           “(i) prescribe that all swaps with the  
11 same terms and conditions are economi-  
12 cally equivalent and may be offset with  
13 each other within the derivatives clearing  
14 organization; and

15           “(ii) provide for nondiscriminatory  
16 clearing of a swap executed bilaterally or  
17 on or through the rules of an unaffiliated  
18 designated contract market or swap execu-  
19 tion facility, subject to the requirements of  
20 section 5(b).

21           “(2) COMMISSION APPROVAL.—

22           “(A) IN GENERAL.—A derivatives clearing  
23 organization shall submit to the Commission for  
24 prior approval any group, category, type, or  
25 class of swaps that the derivatives clearing or-



1           ganization seeks to accept for clearing, which  
2           submission the Commission shall make available  
3           to the public.

4           “(B) DEADLINE.—The Commission shall  
5           take final action on a request submitted pursu-  
6           ant to subparagraph (A) not later than 90 days  
7           after submission of the request, unless the de-  
8           rivatives clearing organization submitting the  
9           request agrees to an extension of the time limi-  
10          tation established under this subparagraph.

11          “(C) APPROVAL.—The Commission shall  
12          approve, unconditionally or subject to such  
13          terms and conditions as the Commission deter-  
14          mines to be appropriate, any request submitted  
15          pursuant to subparagraph (A) if the Commis-  
16          sion finds that the request is consistent with  
17          section 5b(c)(2). The Commission shall not ap-  
18          prove any such request if the Commission does  
19          not make such finding.

20          “(D) RULES.—The Commission shall  
21          adopt rules for a derivatives clearing organiza-  
22          tion’s submission for approval, pursuant to this  
23          paragraph, of any group, category, type, or  
24          class of swaps that the derivative clearing orga-  
25          nization seeks to accept for clearing.

1           “(3) STAY OF CLEARING REQUIREMENT.—At  
2 any time after issuance of an approval pursuant to  
3 paragraph (2):

4           “(A) REVIEW PROCESS.—The Commission,  
5 on application of a counterparty to a swap or  
6 on its own initiative, may stay the clearing re-  
7 quirement of paragraph (1) until the Commis-  
8 sion completes a review of the terms of the  
9 swap, or the group, category, type, or class of  
10 swaps, and the clearing arrangement.

11           “(B) DEADLINE.—The Commission shall  
12 complete a review undertaken pursuant to sub-  
13 paragraph (A) not later than 90 days after  
14 issuance of the stay, unless the derivatives  
15 clearing organization that clears the swap, or  
16 the group, category, type, or class of swaps,  
17 agrees to an extension of the time limitation es-  
18 tablished under this subparagraph.

19           “(C) DETERMINATION.—Upon completion  
20 of the review undertaken pursuant to subpara-  
21 graph (A)—

22           “(i) the Commission may determine,  
23 unconditionally or subject to such terms  
24 and conditions as the Commission deter-  
25 mines to be appropriate, that the swap, or

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1 the group, category, type, or class of  
2 swaps, must be cleared pursuant to this  
3 subsection if the Commission finds that  
4 such clearing—

5 “(I) is consistent with section  
6 5b(c)(2); and

7 “(II) is otherwise in the public  
8 interest, for the protection of inves-  
9 tors, and consistent with the purposes  
10 of this Act;

11 “(ii) the Commission may determine  
12 that the clearing requirement of paragraph  
13 (1) shall not apply to the swap, or the  
14 group, category, type, or class of swaps; or

15 “(iii) if a determination is made that  
16 the clearing requirement of paragraph (1)  
17 shall no longer apply, then it shall still be  
18 permissible to clear such swap, or the  
19 group, category, type, or class of swaps.

20 “(D) RULES.—The Commission shall  
21 adopt rules for reviewing, pursuant to this  
22 paragraph, a derivatives clearing organization’s  
23 clearing of a swap, or a group, category, type,  
24 or class of swaps that the Commission has ac-  
25 cepted for clearing.

1           “(4) SWAPS REQUIRED TO BE ACCEPTED FOR  
2 CLEARING.—

3           “(A) RULEMAKING.—The Commission  
4 shall adopt rules to further identify any group,  
5 category, type, or class of swaps not submitted  
6 for approval under paragraph (2) that the Com-  
7 mission deems should be accepted for clearing.  
8 In adopting such rules, the Commission shall  
9 take into account the following factors:

10           “(i) The extent to which any of the  
11 terms of the group, category, type, or class  
12 of swaps, including price, are disseminated  
13 to third parties or are referenced in other  
14 agreements, contracts, or transactions.

15           “(ii) The volume of transactions in  
16 the group, category, type, or class of  
17 swaps.

18           “(iii) The extent to which the terms of  
19 the group, category, type, or class of swaps  
20 are similar to the terms of other agree-  
21 ments, contracts, or transactions that are  
22 cleared.

23           “(iv) Whether any differences in the  
24 terms of the group, category, type, or class  
25 of swaps, compared to other agreements,

1 contracts, or transactions that are cleared,  
2 are of economic significance.

3 “(v) Whether a derivatives clearing  
4 organization is prepared to clear the  
5 group, category, type, or class of swaps  
6 and such derivatives clearing organization  
7 has in place effective risk management sys-  
8 tems.

9 “(vi) Any other factors the Commis-  
10 sion determine to be appropriate.

11 “(B) OTHER DESIGNATIONS.—At any time  
12 after the adoption of the rules required under  
13 subparagraph (A), the Commission may sepa-  
14 rately designate a particular swap or class of  
15 swaps as subject to the clearing requirement in  
16 paragraph (1), taking into account the factors  
17 described in clauses (i) through (vi) of subpara-  
18 graph (A) and the rules adopted under such  
19 subparagraph.

20 “(C) IN GENERAL.—In accordance with  
21 subparagraph (A), the Commission shall, con-  
22 sistent with the public interest, adopt rules  
23 under the expedited process described in sub-  
24 paragraph (D) to establish criteria for deter-

1 mining that a swap, or any group, category,  
2 type, or class of swap is required to be cleared.

3 “(D) EXPEDITED RULEMAKING AUTHOR-  
4 ITY.—

5 “(i) PROCEDURE.—The promulgation  
6 of regulations under subparagraph (A)  
7 may be made without regard to—

8 “(I) the notice and comment pro-  
9 visions of section 553 of title 5,  
10 United States Code; and

11 “(II) chapter 35 of title 44,  
12 United States Code (commonly known  
13 as the ‘Paperwork Reduction Act’).

14 “(ii) AGENCY RULEMAKING.—In car-  
15 rying out subparagraph (A), the Commis-  
16 sion shall use the authority provided under  
17 section 808 of title 5, United States Code.

18 “(5) PREVENTION OF EVASION.—

19 “(A) IN GENERAL.—The Commission may  
20 prescribe rules under this subsection (and issue  
21 interpretations of rules prescribed under this  
22 subsection) as determined by the Commission to  
23 be necessary to prevent evasions of the manda-  
24 tory clearing requirements under this Act.

1           “(B) DUTY OF COMMISSION TO INVE-  
2           TIGATE AND TAKE CERTAIN ACTIONS.—To the  
3           extent the Commission finds that a particular  
4           swap, group, category, type, or class of swaps  
5           would otherwise be subject to mandatory clear-  
6           ing but no derivatives clearing organization has  
7           listed the swap, group, category, type, or class  
8           of swaps for clearing, the Commission shall—

9                   “(i) investigate the relevant facts and  
10                   circumstances;

11                   “(ii) within 30 days issue a public re-  
12                   port containing the results of the investiga-  
13                   tion; and

14                   “(iii) take such actions as the Com-  
15                   mission determines to be necessary and in  
16                   the public interest, which may include re-  
17                   quiring the retaining of adequate margin  
18                   or capital by parties to the swap, group,  
19                   category, type, or class of swaps.

20           “(C) EFFECT ON AUTHORITY.—Nothing in  
21           this paragraph shall—

22                   “(i) authorize the Commission to re-  
23                   quire a derivatives clearing organization to  
24                   list for clearing a swap, group, category,  
25                   type, or class of swaps if the clearing of

1 the swap, group, category, type, or class of  
2 swaps would adversely affect the business  
3 operations of the derivatives clearing orga-  
4 nization, threaten the financial integrity of  
5 the derivatives clearing organization, or  
6 pose a systemic risk to the derivatives  
7 clearing organization; and

8 “(ii) affect the authority of the Com-  
9 mission to enforce the open access provi-  
10 sions of paragraph (1) with respect to a  
11 swap, group, category, type, or class of  
12 swaps that is listed for clearing by a de-  
13 rivatives clearing organization.

14 “(6) REQUIRED REPORTING.—

15 “(A) BOTH COUNTERPARTIES.—Both  
16 counterparties to a swap that is not cleared by  
17 any derivatives clearing organization shall re-  
18 port such a swap either to a registered swap  
19 data repository described in section 21 or, if  
20 there is no repository that would accept the  
21 swap, to the Commission pursuant to section  
22 4r.

23 “(B) TIMING.—Counterparties to a swap  
24 shall submit the reports required under sub-  
25 paragraph (A) not later than such time period



1 as the Commission may by rule or regulation  
2 prescribe.

3 “(7) TRANSITION RULES.—

4 “(A) REPORTING TRANSITION RULES.—

5 Rules adopted by the Commission under this  
6 section shall provide for the reporting of data,  
7 as follows:

8 “(i) SWAPS ENTERED INTO BEFORE  
9 DATE OF ENACTMENT OF THIS SUB-  
10 SECTION.—Swaps entered into before the  
11 date of the enactment of this subsection  
12 shall be reported to a registered swap data  
13 repository or the Commission not later  
14 than 180 days after the effective date of  
15 this subsection.

16 “(ii) SWAPS ENTERED INTO ON OR  
17 AFTER DATE OF ENACTMENT OF THIS  
18 SUBSECTION.—Swaps entered into on or  
19 after such date of enactment shall be re-  
20 ported to a registered swap data repository  
21 or the Commission not later than the later  
22 of—

23 “(I) 90 days after such effective  
24 date; or

1                   “(II) such other time after enter-  
2                   ing into the swap as the Commission  
3                   may prescribe by rule or regulation.

4                   “(B) CLEARING TRANSITION RULES.—

5                   “(i) SWAPS ENTERED INTO BEFORE  
6                   THE DATE OF THE ENACTMENT OF THIS  
7                   SUBSECTION.—Swaps entered into before  
8                   the date of the enactment of this sub-  
9                   section are exempt from the clearing re-  
10                  quirements of this subsection if reported  
11                  pursuant to subparagraph (A)(i).

12                  “(ii) SWAPS ENTERED INTO BEFORE  
13                  APPLICATION OF CLEARING REQUIRE-  
14                  MENT.—Swaps entered into before applica-  
15                  tion of the clearing requirement pursuant  
16                  to this subsection are exempt from the  
17                  clearing requirements of this subsection if  
18                  reported pursuant to subparagraph (A)(ii).

19                  “(8) TRADE EXECUTION.—

20                  “(A) IN GENERAL.—With respect to trans-  
21                  actions involving swaps subject to the clearing  
22                  requirement of paragraph (1), counterparties  
23                  shall—

1                   “(i) execute the transaction on a  
2                   board of trade designated as a contract  
3                   market under section 5; or

4                   “(ii) execute the transaction on a  
5                   swap execution facility registered under  
6                   section 5h or a swap execution facility that  
7                   is exempt from registration under section  
8                   5h(e) of this Act.

9                   “(B) EXCEPTION.—The requirements of  
10                  clauses (i) and (ii) of subparagraph (A) shall  
11                  not apply if no board of trade or swap execution  
12                  facility makes the swap available to trade or to  
13                  swap transactions where a commercial end user  
14                  opts to use the clearing exemption under para-  
15                  graph (10).

16                  “(9) REQUIRED EXEMPTION.—Subject to para-  
17                  graph (4), the Commission shall exempt a swap from  
18                  the requirements of paragraphs (1) and (8) and any  
19                  rules issued under this subsection, if no derivatives  
20                  clearing organization registered under this Act or no  
21                  derivatives clearing organization that is exempt from  
22                  registration under section 5b(i) of this Act will ac-  
23                  cept the swap for clearing.

24                  “(10) END USER CLEARING EXEMPTION.—



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1           “(III) a person predominantly  
2 engaged in activities that are financial  
3 in nature;

4           “(IV) a commodity pool or a pri-  
5 vate fund as defined in section 202(a)  
6 of the Investment Advisers Act of  
7 1940 (15 U.S.C. 80b-2(a)); or

8           “(V) a person that is registered  
9 or required to be registered with the  
10 Commission.

11           “(B) END USER CLEARING EXEMPTION.—

12           “(i) IN GENERAL.—Subject to clause  
13 (ii), in the event that a swap is subject to  
14 the mandatory clearing requirement under  
15 paragraph (1), and 1 of the counterparties  
16 to the swap is a commercial end user, that  
17 counterparty—

18           “(I)(aa) may elect not to clear  
19 the swap, as required under para-  
20 graph (1); or

21           “(bb) may elect to require clear-  
22 ing of the swap; and

23           “(II) if the end user makes an  
24 election under subclause (I)(bb), shall  
25 have the sole right to select the de-

1                    derivatives clearing organization at  
2                    which the swap will be cleared.

3                    “(ii) LIMITATION.—A commercial end  
4                    user may only make an election under  
5                    clause (i) if the end user is using the swap  
6                    to hedge its own commercial risk.

7                    “(C) TREATMENT OF AFFILIATES.—

8                    “(i) IN GENERAL.—An affiliate of a  
9                    commercial end user (including affiliate en-  
10                    tities predominantly engaged in providing  
11                    financing for the purchase of the merchan-  
12                    dise or manufactured goods of the com-  
13                    mercial end user) may make an election  
14                    under subparagraph (B)(i) only if the affil-  
15                    iate, acting on behalf of the commercial  
16                    end user and as an agent, uses the swap  
17                    to hedge or mitigate the commercial risk of  
18                    the commercial end user parent or other  
19                    affiliate of the commercial end user that is  
20                    not a financial entity.

21                    “(ii) PROHIBITION RELATING TO CER-  
22                    TAIN AFFILIATES.—An affiliate of a com-  
23                    mercial end user shall not use the exemp-  
24                    tion under subparagraph (B) if the affil-  
25                    iate is—

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1 “(I) a swap dealer;

2 “(II) a security-based swap deal-

3 er;

4 “(III) a major swap participant;

5 “(IV) a major security-based  
6 swap participant;

7 “(V) an issuer that would be an  
8 investment company, as defined in  
9 section 3 of the Investment Company  
10 Act of 1940 (15 U.S.C. 80a–3), but  
11 for paragraph (1) or (7) of subsection  
12 (c) of that Act (15 U.S.C. 80a–3(c));

13 “(VI) a commodity pool;

14 “(VII) a bank holding company  
15 with over \$50,000,000,000 in consoli-  
16 dated assets; or

17 “(VIII) an affiliate of any entity  
18 described in subclauses (I) through  
19 (VII).

20 “(D) ABUSE OF EXEMPTION.—The Com-  
21 mission may prescribe such rules or issue inter-  
22 pretations of the rules as the Commission deter-  
23 mines to be necessary to prevent abuse of the  
24 exemption described in subparagraph (B). The  
25 Commission may also request information from

1 those entities claiming the clearing exemption  
2 as necessary to prevent abuse of the exemption  
3 described in subparagraph (B).

4 “(E) OPTION TO CLEAR.—

5 “(i) SWAPS REQUIRED TO BE  
6 CLEARED ENTERED INTO WITH A FINAN-  
7 CIAL ENTITY.—With respect to any swap  
8 that is subject to the mandatory clearing  
9 requirement under this subsection and en-  
10 tered into by a swap dealer or a major  
11 swap participant with a financial entity  
12 that is not a swap dealer, major swap par-  
13 ticipant, security-based swap dealer, or  
14 major security-based swap participant, the  
15 financial entity shall have the sole right to  
16 select the derivatives clearing organization  
17 at which the swap will be cleared.

18 “(ii) SWAPS NOT REQUIRED TO BE  
19 CLEARED ENTERED INTO WITH A FINAN-  
20 CIAL ENTITY OR COMMERCIAL END  
21 USER.—With respect to any swap that is  
22 not subject to the mandatory clearing re-  
23 quirement under this subsection and en-  
24 tered into by a swap dealer or a major  
25 swap participant with a financial entity or



1 commercial end user, the financial entity  
2 or commercial end user—

3 “(I) may elect to require clearing  
4 of the swap; and

5 “(II) shall have the sole right to  
6 select the derivatives clearing organi-  
7 zation at which the swap will be  
8 cleared.”.

9 (b) COMMODITY EXCHANGE ACT.—Section 2 of the  
10 Commodity Exchange Act (7 U.S.C. 2) is amended by  
11 adding at the end the following:

12 “(j) AUDIT COMMITTEE APPROVAL.—Exemptions  
13 from the requirements of subsection (h)(1) to clear a swap  
14 and subsection (h)(8) to trade a swap through a board  
15 of trade or swap execution facility shall be available to  
16 a counterparty that is an issuer of securities that are reg-  
17 istered under section 12 of the Securities Exchange Act  
18 of 1934 (15 U.S.C. 78l) or that is required to file reports  
19 pursuant to section 15(d) of the Securities Exchange Act  
20 of 1934 (15 U.S.C. 78o) only if the issuer’s audit com-  
21 mittee has reviewed and approved its decision to enter into  
22 swaps that are subject to such exemptions.”.

23 (c) GRANDFATHER PROVISIONS.—

24 (1) LEGAL CERTAINTY FOR CERTAIN TRANS-  
25 ACTIONS IN EXEMPT COMMODITIES.—Not later than

1       60 days after the date of enactment of this Act, a  
2       person may submit to the Commodity Futures Trad-  
3       ing Commission a petition to remain subject to sec-  
4       tion 2(h) of the Commodity Exchange Act (7 U.S.C.  
5       2(h)) (as in effect on the day before the date of en-  
6       actment of this Act).

7               (2) CONSIDERATION; AUTHORITY OF COM-  
8       MODITY FUTURES TRADING COMMISSION.—The  
9       Commodity Futures Trading Commission—

10               (A) shall consider any petition submitted  
11               under subparagraph (A) in a prompt manner;  
12               and

13               (B) may allow a person to continue oper-  
14               ating subject to section 2(h) of the Commodity  
15               Exchange Act (7 U.S.C. 2(h)) (as in effect on  
16               the day before the date of enactment of this  
17               Act) for not longer than a 1-year period.

18               (3) AGRICULTURAL SWAPS.—

19               (A) IN GENERAL.—Except as provided in  
20               subparagraph (B), no person shall offer to  
21               enter into, enter into, or confirm the execution  
22               of, any swap in an agricultural commodity (as  
23               defined by the Commodity Futures Trading  
24               Commission).

1           (B) EXCEPTION.—Notwithstanding sub-  
2 paragraph (A), a person may offer to enter  
3 into, enter into, or confirm the execution of,  
4 any swap in an agricultural commodity pursu-  
5 ant to section 4(c) of the Commodity Exchange  
6 Act (7 U.S.C. 6(c)) or any rule, regulation, or  
7 order issued thereunder (including any rule,  
8 regulation, or order in effect as of the date of  
9 enactment of this Act) by the Commodity Fu-  
10 tures Trading Commission to allow swaps under  
11 such terms and conditions as the Commission  
12 shall prescribe.

13           (4) REQUIRED REPORTING.—If the exception  
14 described in section 2(h)(8)(B) of the Commodity  
15 Exchange Act applies, the counterparties shall com-  
16 ply with any recordkeeping and transaction report-  
17 ing requirements that may be prescribed by the  
18 Commission with respect to swaps subject to section  
19 2(h)(8)(B) of the Commodity Exchange Act.

20 **SEC. 724. SWAPS; SEGREGATION AND BANKRUPTCY TREAT-**  
21 **MENT.**

22           (a) SEGREGATION REQUIREMENTS FOR CLEARED  
23 SWAPS.—Section 4d of the Commodity Exchange Act (7  
24 U.S.C. 6d) (as amended by section 732) is amended by  
25 adding at the end the following:

1 “(f) SWAPS.—

2 “(1) REGISTRATION REQUIREMENT.—It shall  
3 be unlawful for any person to accept any money, se-  
4 curities, or property (or to extend any credit in lieu  
5 of money, securities, or property) from, for, or on  
6 behalf of a swaps customer to margin, guarantee, or  
7 secure a swap cleared by or through a derivatives  
8 clearing organization (including money, securities, or  
9 property accruing to the customer as the result of  
10 such a swap), unless the person shall have registered  
11 under this Act with the Commission as a futures  
12 commission merchant, and the registration shall not  
13 have expired nor been suspended nor revoked.

14 “(2) CLEARED SWAPS.—

15 “(A) SEGREGATION REQUIRED.—A futures  
16 commission merchant shall treat and deal with  
17 all money, securities, and property of any swaps  
18 customer received to margin, guarantee, or se-  
19 cure a swap cleared by or through a derivatives  
20 clearing organization (including money, securi-  
21 ties, or property accruing to the swaps cus-  
22 tomer as the result of such a swap) as belong-  
23 ing to the swaps customer.

24 “(B) COMMINGLING PROHIBITED.—Money,  
25 securities, and property of a swaps customer

1 described in subparagraph (A) shall be sepa-  
2 rately accounted for and shall not be commin-  
3 gled with the funds of the futures commission  
4 merchant or be used to margin, secure, or guar-  
5 antee any trades or contracts of any swaps cus-  
6 tomer or person other than the person for  
7 whom the same are held.

8 “(3) EXCEPTIONS.—

9 “(A) USE OF FUNDS.—

10 “(i) IN GENERAL.—Notwithstanding  
11 paragraph (2), money, securities, and  
12 property of a swaps customer of a futures  
13 commission merchant described in para-  
14 graph (2) may, for convenience, be com-  
15 mingled and deposited in the same 1 or  
16 more accounts with any bank or trust com-  
17 pany or with a derivatives clearing organi-  
18 zation.

19 “(ii) WITHDRAWAL.—Notwithstanding  
20 paragraph (2), such share of the money,  
21 securities, and property described in clause  
22 (i) as in the normal course of business  
23 shall be necessary to margin, guarantee,  
24 secure, transfer, adjust, or settle a cleared  
25 swap with a derivatives clearing organiza-

1                   tion, or with any member of the derivatives  
2                   clearing organization, may be withdrawn  
3                   and applied to such purposes, including the  
4                   payment of commissions, brokerage, inter-  
5                   est, taxes, storage, and other charges, law-  
6                   fully accruing in connection with the  
7                   cleared swap.

8                   “(B) COMMISSION ACTION.—Notwith-  
9                   standing paragraph (2), in accordance with  
10                  such terms and conditions as the Commission  
11                  may prescribe by rule, regulation, or order, any  
12                  money, securities, or property of the swaps cus-  
13                  tomer of a futures commission merchant de-  
14                  scribed in paragraph (2) may be commingled  
15                  and deposited as provided in this section with  
16                  any other money, securities, or property re-  
17                  ceived by the futures commission merchant and  
18                  required by the Commission to be separately ac-  
19                  counted for and treated and dealt with as be-  
20                  longing to the swaps customer of the futures  
21                  commission merchant.

22                  “(4) PERMITTED INVESTMENTS.—Money de-  
23                  scribed in paragraph (2) may be invested in obliga-  
24                  tions of the United States, in general obligations of  
25                  any State or of any political subdivision of a State,

1 and in obligations fully guaranteed as to principal  
2 and interest by the United States, or in any other  
3 investment that the Commission may by rule or reg-  
4 ulation prescribe, and such investments shall be  
5 made in accordance with such rules and regulations  
6 and subject to such conditions as the Commission  
7 may prescribe.

8 “(5) COMMODITY CONTRACT.—A swap cleared  
9 by or through a derivatives clearing organization  
10 shall be considered to be a commodity contract as  
11 such term is defined in section 761 of title 11,  
12 United States Code, with regard to all money, secu-  
13 rities, and property of any swaps customer received  
14 by a futures commission merchant or a derivatives  
15 clearing organization to margin, guarantee, or se-  
16 cure the swap (including money, securities, or prop-  
17 erty accruing to the customer as the result of the  
18 swap).

19 “(6) PROHIBITION.—It shall be unlawful for  
20 any person, including any derivatives clearing orga-  
21 nization and any depository institution, that has re-  
22 ceived any money, securities, or property for deposit  
23 in a separate account or accounts as provided in  
24 paragraph (2) to hold, dispose of, or use any such  
25 money, securities, or property as belonging to the

1        depositing futures commission merchant or any per-  
2        son other than the swaps customer of the futures  
3        commission merchant.”.

4        (b) BANKRUPTCY TREATMENT OF CLEARED  
5 SWAPS.—Section 761 of title 11, United States Code, is  
6 amended—

7            (1) in paragraph (4), by striking subparagraph  
8        (F) and inserting the following:

9                    “(F)(i) any other contract, option, agree-  
10                    ment, or transaction that is similar to a con-  
11                    tract, option, agreement, or transaction referred  
12                    to in this paragraph; and

13                    “(ii) with respect to a futures commission  
14                    merchant or a clearing organization, any other  
15                    contract, option, agreement, or transaction, in  
16                    each case, that is cleared by a clearing organi-  
17                    zation;”; and

18            (2) in paragraph (9)(A)(i), by striking “the  
19        commodity futures account” and inserting “a com-  
20       modity contract account”.

21        (c) SEGREGATION REQUIREMENTS FOR UNCLEARED  
22 SWAPS.—Section 4s of the Commodity Exchange Act (as  
23 added by section 731) is amended by adding at the end  
24 the following:

25            “(l) SEGREGATION REQUIREMENTS.—



1           “(1) SEGREGATION OF ASSETS HELD AS COL-  
2           LATERAL IN UNCLEARED SWAP TRANSACTIONS.—

3           “(A) NOTIFICATION.—A swap dealer or  
4           major swap participant shall be required to no-  
5           tify the counterparty of the swap dealer or  
6           major swap participant at the beginning of a  
7           swap transaction that the counterparty has the  
8           right to require segregation of the funds or  
9           other property supplied to margin, guarantee,  
10          or secure the obligations of the counterparty.

11          “(B) SEGREGATION AND MAINTENANCE OF  
12          FUNDS.—At the request of a counterparty to a  
13          swap that provides funds or other property to  
14          a swap dealer or major swap participant to  
15          margin, guarantee, or secure the obligations of  
16          the counterparty, the swap dealer or major  
17          swap participant shall—

18                 “(i) segregate the funds or other  
19                 property for the benefit of the  
20                 counterparty; and

21                 “(ii) in accordance with such rules  
22                 and regulations as the Commission may  
23                 promulgate, maintain the funds or other  
24                 property in a segregated account separate

1 from the assets and other interests of the  
2 swap dealer or major swap participant.

3 “(2) APPLICABILITY.—The requirements de-  
4 scribed in paragraph (1) shall—

5 “(A) apply only to a swap between a  
6 counterparty and a swap dealer or major swap  
7 participant that is not submitted for clearing to  
8 a derivatives clearing organization; and

9 “(B)(i) not apply to variation margin pay-  
10 ments; or

11 “(ii) not preclude any commercial arrange-  
12 ment regarding—

13 “(I) the investment of segregated  
14 funds or other property that may only be  
15 invested in such investments as the Com-  
16 mission may permit by rule or regulation;  
17 and

18 “(II) the related allocation of gains  
19 and losses resulting from any investment  
20 of the segregated funds or other property.

21 “(3) USE OF INDEPENDENT THIRD-PARTY  
22 CUSTODIANS.—The segregated account described in  
23 paragraph (1) shall be—

24 “(A) carried by an independent third-party  
25 custodian; and

1           “(B) designated as a segregated account  
2           for and on behalf of the counterparty.

3           “(4) REPORTING REQUIREMENT.—If the  
4           counterparty does not choose to require segregation  
5           of the funds or other property supplied to margin,  
6           guarantee, or secure the obligations of the  
7           counterparty, the swap dealer or major swap partici-  
8           pant shall report to the counterparty of the swap  
9           dealer or major swap participant on a quarterly  
10          basis that the back office procedures of the swap  
11          dealer or major swap participant relating to margin  
12          and collateral requirements are in compliance with  
13          the agreement of the counterparties.”.

14 **SEC. 725. DERIVATIVES CLEARING ORGANIZATIONS.**

15          (a) REGISTRATION REQUIREMENT.—Section 5b of  
16 the Commodity Exchange Act (7 U.S.C. 7a–1) is amended  
17 by striking subsections (a) and (b) and inserting the fol-  
18 lowing:

19          “(a) REGISTRATION REQUIREMENT.—

20                 “(1) IN GENERAL.—Except as provided in para-  
21                 graph (2), it shall be unlawful for a derivatives  
22                 clearing organization, directly or indirectly, to make  
23                 use of the mails or any means or instrumentality of  
24                 interstate commerce to perform the functions of a  
25                 derivatives clearing organization with respect to—

1           “(A) a contract of sale of a commodity for  
2           future delivery (or an option on the contract of  
3           sale) or option on a commodity, in each case,  
4           unless the contract or option is—

5                   “(i) excluded from this Act by sub-  
6                   section (a)(1)(C)(i), (c), or (f) of section 2;  
7                   or

8                   “(ii) a security futures product  
9                   cleared by a clearing agency registered  
10                  with the Securities and Exchange Commis-  
11                  sion under the Securities Exchange Act of  
12                  1934 (15 U.S.C. 78a et seq.); or

13                  “(B) a swap.

14                  “(2) EXCEPTION.—Paragraph (1) shall not  
15                  apply to a derivatives clearing organization that is  
16                  registered with the Commission.

17                  “(b) VOLUNTARY REGISTRATION.—A person that  
18                  clears 1 or more agreements, contracts, or transactions  
19                  that are not required to be cleared under this Act may  
20                  register with the Commission as a derivatives clearing or-  
21                  ganization.”.

22                  (b) REGISTRATION FOR DEPOSITORY INSTITUTIONS  
23                  AND CLEARING AGENCIES; EXEMPTIONS; COMPLIANCE  
24                  OFFICER; ANNUAL REPORTS.—Section 5b of the Com-



1           “(2) CONVERSION OF DEPOSITORY INSTITU-  
2           TIONS.—A depository institution to which this sub-  
3           section applies may, by the vote of the shareholders  
4           owning not less than 51 percent of the voting inter-  
5           ests of the depository institution, be converted into  
6           a State corporation, partnership, limited liability  
7           company, or similar legal form pursuant to a plan  
8           of conversion, if the conversion is not in contraven-  
9           tion of applicable State law.

10          “(i) EXEMPTIONS.—The Commission may exempt,  
11          conditionally or unconditionally, a derivatives clearing or-  
12          ganization from registration under this section for the  
13          clearing of swaps if the Commission determines that the  
14          derivatives clearing organization is subject to comparable,  
15          comprehensive supervision and regulation by the Securi-  
16          ties and Exchange Commission or the appropriate govern-  
17          ment authorities in the home country of the organization.  
18          Such conditions may include, but are not limited to, re-  
19          quiring that the derivatives clearing organization be avail-  
20          able for inspection by the Commission and make available  
21          all information requested by the Commission.

22          “(j) DESIGNATION OF CHIEF COMPLIANCE OFFI-  
23          CER.—

1           “(1) IN GENERAL.—Each derivatives clearing  
2 organization shall designate an individual to serve as  
3 a chief compliance officer.

4           “(2) DUTIES.—The chief compliance officer  
5 shall—

6           “(A) report directly to the board or to the  
7 senior officer of the derivatives clearing organi-  
8 zation;

9           “(B) review the compliance of the deriva-  
10 tives clearing organization with respect to the  
11 core principles described in subsection (c)(2);

12           “(C) in consultation with the board of the  
13 derivatives clearing organization, a body per-  
14 forming a function similar to the board of the  
15 derivatives clearing organization, or the senior  
16 officer of the derivatives clearing organization,  
17 resolve any conflicts of interest that may arise;

18           “(D) be responsible for administering each  
19 policy and procedure that is required to be es-  
20 tablished pursuant to this section;

21           “(E) ensure compliance with this Act (in-  
22 cluding regulations) relating to agreements,  
23 contracts, or transactions, including each rule  
24 prescribed by the Commission under this sec-  
25 tion;

1           “(F) establish procedures for the remedi-  
2           ation of noncompliance issues identified by the  
3           compliance officer through any—

4                   “(i) compliance office review;

5                   “(ii) look-back;

6                   “(iii) internal or external audit find-  
7           ing;

8                   “(iv) self-reported error; or

9                   “(v) validated complaint; and

10           “(G) establish and follow appropriate pro-  
11           cedures for the handling, management response,  
12           remediation, retesting, and closing of non-  
13           compliance issues.

14           “(3) ANNUAL REPORTS.—

15                   “(A) IN GENERAL.—In accordance with  
16           rules prescribed by the Commission, the chief  
17           compliance officer shall annually prepare and  
18           sign a report that contains a description of—

19                   “(i) the compliance of the derivatives  
20           clearing organization of the compliance of-  
21           ficer with respect to this Act (including  
22           regulations); and

23                   “(ii) each policy and procedure of the  
24           derivatives clearing organization of the  
25           compliance officer (including the code of



1 ethics and conflict of interest policies of  
2 the derivatives clearing organization).

3 “(B) REQUIREMENTS.—A compliance re-  
4 port under subparagraph (A) shall—

5 “(i) accompany each appropriate fi-  
6 nancial report of the derivatives clearing  
7 organization that is required to be fur-  
8 nished to the Commission pursuant to this  
9 section; and

10 “(ii) include a certification that, under  
11 penalty of law, the compliance report is ac-  
12 curate and complete.”.

13 (c) CORE PRINCIPLES FOR DERIVATIVES CLEARING  
14 ORGANIZATIONS.—Section 5b(c) of the Commodity Ex-  
15 change Act (7 U.S.C. 7a-1(c)) is amended by striking  
16 paragraph (2) and inserting the following:

17 “(2) CORE PRINCIPLES FOR DERIVATIVES  
18 CLEARING ORGANIZATIONS.—

19 “(A) COMPLIANCE.—

20 “(i) IN GENERAL.—To be registered  
21 and to maintain registration as a deriva-  
22 tives clearing organization, a derivatives  
23 clearing organization shall comply with  
24 each core principle described in this para-  
25 graph and any requirement that the Com-

1 mission may impose by rule or regulation  
2 pursuant to section 8a(5).

3 “(ii) DISCRETION OF DERIVATIVES  
4 CLEARING ORGANIZATION.—Subject to any  
5 rule or regulation prescribed by the Com-  
6 mission, a derivatives clearing organization  
7 shall have reasonable discretion in estab-  
8 lishing the manner by which the derivatives  
9 clearing organization complies with each  
10 core principle described in this paragraph.

11 “(B) FINANCIAL RESOURCES.—

12 “(i) IN GENERAL.—Each derivatives  
13 clearing organization shall have adequate  
14 financial, operational, and managerial re-  
15 sources, as determined by the Commission,  
16 to discharge each responsibility of the de-  
17 rivatives clearing organization.

18 “(ii) MINIMUM AMOUNT OF FINAN-  
19 CIAL RESOURCES.—Each derivatives clear-  
20 ing organization shall possess financial re-  
21 sources that, at a minimum, exceed the  
22 total amount that would—

23 “(I) enable the organization to  
24 meet its financial obligations to its  
25 members and participants notwith-

1 standing a default by the member or  
2 participant creating the largest finan-  
3 cial exposure for that organization in  
4 extreme but plausible market condi-  
5 tions; and

6 “(II) enable the derivatives clear-  
7 ing organization to cover the oper-  
8 ating costs of the derivatives clearing  
9 organization for a period of 1 year (as  
10 calculated on a rolling basis).

11 “(C) PARTICIPANT AND PRODUCT ELIGI-  
12 BILITY.—

13 “(i) IN GENERAL.—Each derivatives  
14 clearing organization shall establish—

15 “(I) appropriate admission and  
16 continuing eligibility standards (in-  
17 cluding sufficient financial resources  
18 and operational capacity to meet obli-  
19 gations arising from participation in  
20 the derivatives clearing organization)  
21 for members of, and participants in,  
22 the derivatives clearing organization;  
23 and

24 “(II) appropriate standards for  
25 determining the eligibility of agree-

1                   ments, contracts, and transactions  
2                   submitted to the derivatives clearing  
3                   organization for clearing.

4                   “(ii) REQUIRED PROCEDURES.—Each  
5                   derivatives clearing organization shall es-  
6                   tablish and implement procedures to verify,  
7                   on an ongoing basis, the compliance of  
8                   each participation and membership re-  
9                   quirement of the derivatives clearing orga-  
10                  nization.

11                  “(iii) REQUIREMENTS.—The partici-  
12                  pation and membership requirements of  
13                  each derivatives clearing organization  
14                  shall—

15                               “(I) be objective;

16                               “(II) be publicly disclosed; and

17                               “(III) permit fair and open ac-  
18                               cess.

19                  “(D) RISK MANAGEMENT.—

20                               “(i) IN GENERAL.—Each derivatives  
21                               clearing organization shall ensure that the  
22                               derivatives clearing organization possesses  
23                               the ability to manage the risks associated  
24                               with discharging the responsibilities of the  
25                               derivatives clearing organization through

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1 the use of appropriate tools and proce-  
2 dures.

3 “(ii) MEASUREMENT OF CREDIT EX-  
4 POSURE.—Each derivatives clearing orga-  
5 nization shall—

6 “(I) not less than once during  
7 each business day of the derivatives  
8 clearing organization, measure the  
9 credit exposures of the derivatives  
10 clearing organization to each member  
11 and participant of the derivatives  
12 clearing organization; and

13 “(II) monitor each exposure de-  
14 scribed in subclause (I) periodically  
15 during the business day of the deriva-  
16 tives clearing organization.

17 “(iii) LIMITATION OF EXPOSURE TO  
18 POTENTIAL LOSSES FROM DEFAULTS.—  
19 Each derivatives clearing organization,  
20 through margin requirements and other  
21 risk control mechanisms, shall limit the ex-  
22 posure of the derivatives clearing organiza-  
23 tion to potential losses from defaults by  
24 members and participants of the deriva-  
25 tives clearing organization to ensure that—



1           “(ii) employ money settlement ar-  
2 rangements to eliminate or strictly limit  
3 the exposure of the derivatives clearing or-  
4 ganization to settlement bank risks (in-  
5 cluding credit and liquidity risks from the  
6 use of banks to effect money settlements);

7           “(iii) ensure that money settlements  
8 are final when effected;

9           “(iv) maintain an accurate record of  
10 the flow of funds associated with each  
11 money settlement;

12           “(v) possess the ability to comply with  
13 each term and condition of any permitted  
14 netting or offset arrangement with any  
15 other clearing organization;

16           “(vi) regarding physical settlements,  
17 establish rules that clearly state each obli-  
18 gation of the derivatives clearing organiza-  
19 tion with respect to physical deliveries; and

20           “(vii) ensure that each risk arising  
21 from an obligation described in clause (vi)  
22 is identified and managed.

23           “(F) TREATMENT OF FUNDS.—

24           “(i) REQUIRED STANDARDS AND PRO-  
25 CEDURES.—Each derivatives clearing orga-

1 nization shall establish standards and pro-  
2 cedures that are designed to protect and  
3 ensure the safety of member and partici-  
4 pant funds and assets.

5 “(ii) HOLDING OF FUNDS AND AS-  
6 SETS.—Each derivatives clearing organiza-  
7 tion shall hold member and participant  
8 funds and assets in a manner by which to  
9 minimize the risk of loss or of delay in the  
10 access by the derivatives clearing organiza-  
11 tion to the assets and funds.

12 “(iii) PERMISSIBLE INVESTMENTS.—  
13 Funds and assets invested by a derivatives  
14 clearing organization shall be held in in-  
15 struments with minimal credit, market,  
16 and liquidity risks.

17 “(G) DEFAULT RULES AND PROCE-  
18 DURES.—

19 “(i) IN GENERAL.—Each derivatives  
20 clearing organization shall have rules and  
21 procedures designed to allow for the effi-  
22 cient, fair, and safe management of events  
23 during which members or participants—

24 “(I) become insolvent; or



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1                   “(II) otherwise default on the ob-  
2                   ligations of the members or partici-  
3                   pants to the derivatives clearing orga-  
4                   nization.

5                   “(ii) DEFAULT PROCEDURES.—Each  
6                   derivatives clearing organization shall—

7                   “(I) clearly state the default pro-  
8                   cedures of the derivatives clearing or-  
9                   ganization;

10                  “(II) make publicly available the  
11                  default rules of the derivatives clear-  
12                  ing organization; and

13                  “(III) ensure that the derivatives  
14                  clearing organization may take timely  
15                  action—

16                  “(aa) to contain losses and  
17                  liquidity pressures; and

18                  “(bb) to continue meeting  
19                  each obligation of the derivatives  
20                  clearing organization.

21                  “(H) RULE ENFORCEMENT.—Each deriva-  
22                  tives clearing organization shall—

23                  “(i) maintain adequate arrangements  
24                  and resources for—

1                   “(I) the effective monitoring and  
2                   enforcement of compliance with the  
3                   rules of the derivatives clearing orga-  
4                   nization; and

5                   “(II) the resolution of disputes;

6                   “(ii) have the authority and ability to  
7                   discipline, limit, suspend, or terminate the  
8                   activities of a member or participant due  
9                   to a violation by the member or participant  
10                  of any rule of the derivatives clearing orga-  
11                  nization; and

12                  “(iii) report to the Commission re-  
13                  garding rule enforcement activities and  
14                  sanctions imposed against members and  
15                  participants as provided in clause (ii).

16                  “(I) SYSTEM SAFEGUARDS.—Each deriva-  
17                  tives clearing organization shall—

18                  “(i) establish and maintain a program  
19                  of risk analysis and oversight to identify  
20                  and minimize sources of operational risk  
21                  through the development of appropriate  
22                  controls and procedures, and automated  
23                  systems, that are reliable, secure, and have  
24                  adequate scalable capacity;

1                   “(ii) establish and maintain emer-  
2                   gency procedures, backup facilities, and a  
3                   plan for disaster recovery that allows for—

4                               “(I) the timely recovery and re-  
5                               sumption of operations of the deriva-  
6                               tives clearing organization; and

7                               “(II) the fulfillment of each obli-  
8                               gation and responsibility of the de-  
9                               rivatives clearing organization; and

10                   “(iii) periodically conduct tests to  
11                   verify that the backup resources of the de-  
12                   rivatives clearing organization are suffi-  
13                   cient to ensure daily processing, clearing,  
14                   and settlement.

15                   “(J) REPORTING.—Each derivatives clear-  
16                   ing organization shall provide to the Commis-  
17                   sion all information that the Commission deter-  
18                   mines to be necessary to conduct oversight of  
19                   the derivatives clearing organization.

20                   “(K) RECORDKEEPING.—Each derivatives  
21                   clearing organization shall maintain records of  
22                   all activities related to the business of the de-  
23                   rivatives clearing organization as a derivatives  
24                   clearing organization—

1 “(i) in a form and manner that is ac-  
2 ceptable to the Commission; and

3 “(ii) for a period of not less than 5  
4 years.

5 “(L) PUBLIC INFORMATION.—

6 “(i) IN GENERAL.—Each derivatives  
7 clearing organization shall provide to mar-  
8 ket participants sufficient information to  
9 enable the market participants to identify  
10 and evaluate accurately the risks and costs  
11 associated with using the services of the  
12 derivatives clearing organization.

13 “(ii) AVAILABILITY OF INFORMA-  
14 TION.—Each derivatives clearing organiza-  
15 tion shall make information concerning the  
16 rules and operating and default procedures  
17 governing the clearing and settlement sys-  
18 tems of the derivatives clearing organiza-  
19 tion available to market participants.

20 “(iii) PUBLIC DISCLOSURE.—Each de-  
21 rivatives clearing organization shall dis-  
22 close publicly and to the Commission infor-  
23 mation concerning—

24 “(I) the terms and conditions of  
25 each contract, agreement, and trans-

1 action cleared and settled by the de-  
2 rivatives clearing organization;

3 “(II) each clearing and other fee  
4 that the derivatives clearing organiza-  
5 tion charges the members and partici-  
6 pants of the derivatives clearing orga-  
7 nization;

8 “(III) the margin-setting method-  
9 ology, and the size and composition,  
10 of the financial resource package of  
11 the derivatives clearing organization;

12 “(IV) daily settlement prices, vol-  
13 ume, and open interest for each con-  
14 tract settled or cleared by the deriva-  
15 tives clearing organization; and

16 “(V) any other matter relevant to  
17 participation in the settlement and  
18 clearing activities of the derivatives  
19 clearing organization.

20 “(M) INFORMATION-SHARING.—Each de-  
21 rivatives clearing organization shall—

22 “(i) enter into, and abide by the terms  
23 of, each appropriate and applicable domes-  
24 tic and international information-sharing  
25 agreement; and

1                   “(ii) use relevant information obtained  
2                   from each agreement described in clause  
3                   (i) in carrying out the risk management  
4                   program of the derivatives clearing organi-  
5                   zation.

6                   “(N) ANTITRUST CONSIDERATIONS.—Un-  
7                   less necessary or appropriate to achieve the  
8                   purposes of this Act, a derivatives clearing or-  
9                   ganization shall not—

10                   “(i) adopt any rule or take any action  
11                   that results in any unreasonable restraint  
12                   of trade; or

13                   “(ii) impose any material anticompeti-  
14                   tive burden.

15                   “(O) GOVERNANCE FITNESS STAND-  
16                   ARDS.—

17                   “(i) GOVERNANCE ARRANGEMENTS.—  
18                   Each derivatives clearing organization shall  
19                   establish governance arrangements that  
20                   are transparent—

21                   “(I) to fulfill public interest re-  
22                   quirements; and

23                   “(II) to support the objectives of  
24                   owners and participants.

1                   “(ii) FITNESS STANDARDS.—Each de-  
2                   rivatives clearing organization shall estab-  
3                   lish and enforce appropriate fitness stand-  
4                   ards for—

5                               “(I) directors;

6                               “(II) members of any disciplinary  
7                   committee;

8                               “(III) members of the derivatives  
9                   clearing organization;

10                              “(IV) any other individual or en-  
11                   tity with direct access to the settle-  
12                   ment or clearing activities of the de-  
13                   rivatives clearing organization; and

14                              “(V) any party affiliated with  
15                   any individual or entity described in  
16                   this clause.

17                              “(P) CONFLICTS OF INTEREST.—Each de-  
18                   rivatives clearing organization shall—

19                              “(i) establish and enforce rules to  
20                   minimize conflicts of interest in the deci-  
21                   sion-making process of the derivatives  
22                   clearing organization; and

23                              “(ii) establish a process for resolving  
24                   conflicts of interest described in clause (i).

1           “(Q) COMPOSITION OF GOVERNING  
2           BOARDS.—Each derivatives clearing organiza-  
3           tion shall ensure that the composition of the  
4           governing board or committee of the derivatives  
5           clearing organization includes market partici-  
6           pants.

7           “(R) LEGAL RISK.—Each derivatives clear-  
8           ing organization shall have a well-founded,  
9           transparent, and enforceable legal framework  
10          for each aspect of the activities of the deriva-  
11          tives clearing organization.

12          “(S) MODIFICATION OF CORE PRIN-  
13          CIPLES.—The Commission may conform the  
14          core principles established in this paragraph to  
15          reflect evolving United States and international  
16          standards.”.

17          (d) CONFLICTS OF INTEREST.—The Commodity Fu-  
18          tures Trading Commission shall adopt rules mitigating  
19          conflicts of interest in connection with the conduct of busi-  
20          ness by a swap dealer or a major swap participant with  
21          a derivatives clearing organization, board of trade, or a  
22          swap execution facility that clears or trades swaps in  
23          which the swap dealer or major swap participant has a  
24          material debt or material equity investment.



1 (e) REPORTING REQUIREMENTS.—Section 5b of the  
2 Commodity Exchange Act (7 U.S.C. 7a–1) (as amended  
3 by subsection (b)) is amended by adding at the end the  
4 following:

5 “(k) REPORTING REQUIREMENTS.—

6 “(1) DUTY OF DERIVATIVES CLEARING ORGANI-  
7 ZATIONS.—Each derivatives clearing organization  
8 that clears swaps shall provide to the Commission all  
9 information that is determined by the Commission to  
10 be necessary to perform each responsibility of the  
11 Commission under this Act.

12 “(2) DATA COLLECTION AND MAINTENANCE  
13 REQUIREMENTS.—The Commission shall adopt data  
14 collection and maintenance requirements for swaps  
15 cleared by derivatives clearing organizations that are  
16 comparable to the corresponding requirements for—

17 “(A) swaps data reported to swap data re-  
18 positories; and

19 “(B) swaps traded on swap execution fa-  
20 cilities.

21 “(3) REPORTS ON SECURITY-BASED SWAP  
22 AGREEMENTS TO BE SHARED WITH THE SECURITIES  
23 AND EXCHANGE COMMISSION.—

24 “(A) IN GENERAL.—A derivatives clearing  
25 organization that clears security-based swap

1 agreements (as defined in section 3(a)(78) of  
2 the Securities Exchange Act) shall, upon re-  
3 quest, make available to the Securities and Ex-  
4 change Commission all books and records relat-  
5 ing to such security-based swap agreements,  
6 consistent with the confidentiality and dislo-  
7 sure requirements of section 8.

8 “(B) JURISDICTION.—Nothing in this  
9 paragraph shall affect the exclusive jurisdiction  
10 of the Commission to prescribe recordkeeping  
11 and reporting requirements for a derivatives  
12 clearing organization that is registered with the  
13 Commission.”

14 “(4) INFORMATION SHARING.—Subject to sec-  
15 tion 8, and upon request, the Commission shall  
16 share information collected under paragraph (2)  
17 with—

18 “(A) the Board;

19 “(B) the Securities and Exchange Commis-  
20 sion;

21 “(C) each appropriate prudential regulator;

22 “(D) the Financial Stability Oversight  
23 Council;

24 “(E) the Department of Justice; and

1           “(F) any other person that the Commis-  
2           sion determines to be appropriate, including—

3                   “(i) foreign financial supervisors (in-  
4                   cluding foreign futures authorities);

5                   “(ii) foreign central banks; and

6                   “(iii) foreign ministries.

7           “(5) CONFIDENTIALITY AND INDEMNIFICATION  
8           AGREEMENT.—Before the Commission may share in-  
9           formation with any entity described in paragraph  
10          (4)—

11                   “(A) the Commission shall receive a writ-  
12                   ten agreement from each entity stating that the  
13                   entity shall abide by the confidentiality require-  
14                   ments described in section 8 relating to the in-  
15                   formation on swap transactions that is pro-  
16                   vided; and

17                   “(B) each entity shall agree to indemnify  
18                   the Commission for any expenses arising from  
19                   litigation relating to the information provided  
20                   under section 8.

21           “(6) PUBLIC INFORMATION.—Each derivatives  
22           clearing organization that clears swaps shall provide  
23           to the Commission (including any designee of the  
24           Commission) information under paragraph (2) in  
25           such form and at such frequency as is required by

1 the Commission to comply with the public reporting  
2 requirements contained in section 2(a)(13).”.

3 (f) PUBLIC DISCLOSURE.—Section 8(e) of the Com-  
4 modity Exchange Act (7 U.S.C. 12(e)) is amended in the  
5 last sentence—

6 (1) by inserting “, central bank and min-  
7 istries,” after “department” each place it appears;  
8 and

9 (2) by striking “. is a party.” and inserting “,  
10 is a party.”.

11 (g) LEGAL CERTAINTY FOR IDENTIFIED BANKING  
12 PRODUCTS.—

13 (1) REPEALS.—The Legal Certainty for Bank  
14 Products Act of 2000 (7 U.S.C. 27 et seq.) is  
15 amended—

16 (A) by striking sections 404 and 407 (7  
17 U.S.C. 27b, 27e);

18 (B) in section 402 (7 U.S.C. 27), by strik-  
19 ing subsection (d); and

20 (C) in section 408 (7 U.S.C. 27f)—

21 (i) in subsection (c)—

22 (I) by striking “in the case” and  
23 all that follows through “a hybrid”  
24 and inserting “in the case of a hy-  
25 brid”;

1 (II) by striking “; or” and insert-  
2 ing a period; and  
3 (III) by striking paragraph (2);  
4 (ii) by striking subsection (b); and  
5 (iii) by redesignating subsection (c) as  
6 subsection (b).

7 (2) **LEGAL CERTAINTY FOR BANK PRODUCTS**  
8 **ACT OF 2000.**—Section 403 of the Legal Certainty  
9 for Bank Products Act of 2000 (7 U.S.C. 27a) is  
10 amended to read as follows:

11 **“SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.**

12 “(a) **EXCLUSION.**—Except as provided in subsection  
13 (b) or (c)—

14 “(1) the Commodity Exchange Act (7 U.S.C. 1  
15 et seq.) shall not apply to, and the Commodity Fu-  
16 tures Trading Commission shall not exercise regu-  
17 latory authority under the Commodity Exchange Act  
18 (7 U.S.C. 1 et seq.) with respect to, an identified  
19 banking product; and

20 “(2) the definitions of ‘security-based swap’ in  
21 section 3(a)(68) of the Securities Exchange Act of  
22 1934 and ‘security-based swap agreement’ in section  
23 3(a)(78) of the Securities Exchange Act of 1934 do  
24 not include any identified bank product.

1           “(b) EXCEPTION.—An appropriate Federal banking  
2 agency may except an identified banking product of a  
3 bank under its regulatory jurisdiction from the exclusion  
4 in subsection (a) if the agency determines, in consultation  
5 with the Commodity Futures Trading Commission and the  
6 Securities and Exchange Commission, that the product—

7           “(1) would meet the definition of a ‘swap’  
8 under section 1a(47) of the Commodity Exchange  
9 Act (7 U.S.C. 1a) or a ‘security-based swap’ under  
10 that section 3(a)(68) of the Securities Exchange Act  
11 of 1934; and

12           “(2) has become known to the trade as a swap  
13 or security-based swap, or otherwise has been struc-  
14 tured as an identified banking product for the pur-  
15 pose of evading the provisions of the Commodity Ex-  
16 change Act (7 U.S.C. 1 et seq.), the Securities Act  
17 of 1933 (15 U.S.C. 77a et seq.), or the Securities  
18 Exchange Act of 1934 (15 U.S.C. 78a et seq.).

19           “(c) EXCEPTION.—The exclusions in subsection (a)  
20 shall not apply to an identified bank product that—

21           “(1) is a product of a bank that is not under  
22 the regulatory jurisdiction of an appropriate Federal  
23 banking agency;

24           “(2) meets the definition of swap in section  
25 1a(47) of the Commodity Exchange Act or security-

1 based swap in section 3(a)(68) of the Securities Ex-  
2 change Act of 1934; and

3 “(3) has become known to the trade as a swap  
4 or security-based swap, or otherwise has been struc-  
5 tured as an identified banking product for the pur-  
6 pose of evading the provisions of the Commodity Ex-  
7 change Act (7 U.S.C. 1 et seq.), the Securities Act  
8 of 1933 (15 U.S.C. 77a et seq.), or the Securities  
9 Exchange Act of 1934 (15 U.S.C. 78a et seq.).”.

10 **SEC. 726. RULEMAKING ON CONFLICT OF INTEREST.**

11 (a) IN GENERAL.—Not later than 180 days after the  
12 date of enactment of the Wall Street Transparency and  
13 Accountability Act of 2010, the Commodity Futures Trad-  
14 ing Commission shall determine whether to adopt rules to  
15 establish limits on the control of any derivatives clearing  
16 organization that clears swaps, or swap execution facility  
17 or board of trade designated as a contract market that  
18 posts swaps or makes swaps available for trading, by a  
19 bank holding company (as defined in section 2 of the Bank  
20 Holding Company Act of 1956 (12 U.S.C. 1841)) with  
21 total consolidated assets of \$50,000,000,000 or more, a  
22 nonbank financial company (as defined in section 102) su-  
23 pervised by the Board, an affiliate of such a bank holding  
24 company or nonbank financial company, a swap dealer,

1 major swap participant, or associated person of a swap  
2 dealer or major swap participant.

3 (b) PURPOSES.—The Commission shall adopt rules if  
4 it determines, after the review described in subsection (a),  
5 that such rules are necessary or appropriate to improve  
6 the governance of, or to mitigate systemic risk, promote  
7 competition, or mitigate conflicts of interest in connection  
8 with a swap dealer or major swap participant’s conduct  
9 of business with, a derivatives clearing organization, con-  
10 tract market, or swap execution facility that clears or  
11 posts swaps or makes swaps available for trading and in  
12 which such swap dealer or major swap participant has a  
13 material debt or equity investment.

14 **SEC. 727. PUBLIC REPORTING OF SWAP TRANSACTION**  
15 **DATA.**

16 Section 2(a) of the Commodity Exchange Act (7  
17 U.S.C. 2(a)) is amended by adding at the end the fol-  
18 lowing:

19 “(13) PUBLIC AVAILABILITY OF SWAP TRANS-  
20 ACTION DATA.—

21 “(A) DEFINITION OF REAL-TIME PUBLIC  
22 REPORTING.—In this paragraph, the term ‘real-  
23 time public reporting’ means to report data re-  
24 lating to a swap transaction as soon as techno-



1           logically practicable after the time at which the  
2           swap transaction has been executed.

3           “(B) PURPOSE.—The purpose of this sec-  
4           tion is to authorize the Commission to make  
5           swap transaction and pricing data available to  
6           the public in such form and at such times as  
7           the Commission determines appropriate to en-  
8           hance price discovery.

9           “(C) GENERAL RULE.—The Commission is  
10          authorized and required to provide by rule for  
11          the public availability of swap transaction and  
12          pricing data as follows:

13                 “(i) With respect to those swaps that  
14                 are subject to the mandatory clearing re-  
15                 quirement described in subsection (h)(1)  
16                 (including those swaps that are exempted  
17                 from the requirement pursuant to sub-  
18                 section (h)(10)), the Commission shall re-  
19                 quire real-time public reporting for such  
20                 transactions.

21                 “(ii) With respect to those swaps that  
22                 are not subject to the mandatory clearing  
23                 requirement described in subsection (h)(1),  
24                 but are cleared at a registered derivatives  
25                 clearing organization, the Commission

1 shall require real-time public reporting for  
2 such transactions.

3 “(iii) With respect to swaps that are  
4 not cleared at a registered derivatives  
5 clearing organization and which are re-  
6 ported to a swap data repository or the  
7 Commission under subsection (h)(6), the  
8 Commission shall make available to the  
9 public, in a manner that does not disclose  
10 the business transactions and market posi-  
11 tions of any person, aggregate data on  
12 such swap trading volumes and positions.

13 “(iv) With respect to swaps that are  
14 exempt from the requirements of sub-  
15 section (h)(1), the Commission shall re-  
16 quire real-time public reporting for such  
17 transactions.

18 “(D) REGISTERED ENTITIES AND PUBLIC  
19 REPORTING.—The Commission may require  
20 registered entities to publicly disseminate the  
21 swap transaction and pricing data required to  
22 be reported under this paragraph.

23 “(E) RULEMAKING REQUIRED.—With re-  
24 spect to the rule providing for the public avail-  
25 ability of transaction and pricing data for

1 swaps described in clauses (i) and (ii) of sub-  
2 paragraph (C), the rule promulgated by the  
3 Commission shall contain provisions—

4 “(i) to ensure such information does  
5 not identify the participants;

6 “(ii) to specify the criteria for deter-  
7 mining what constitutes a large notional  
8 swap transaction (block trade) for par-  
9 ticular markets and contracts;

10 “(iii) to specify the appropriate time  
11 delay for reporting large notional swap  
12 transactions (block trades) to the public;  
13 and

14 “(iv) that take into account whether  
15 the public disclosure will materially reduce  
16 market liquidity.

17 “(F) TIMELINESS OF REPORTING.—Par-  
18 ties to a swap (including agents of the parties  
19 to a swap) shall be responsible for reporting  
20 swap transaction information to the appropriate  
21 registered entity in a timely manner as may be  
22 prescribed by the Commission.

23 “(14) SEMIANNUAL AND ANNUAL PUBLIC RE-  
24 PORTING OF AGGREGATE SWAP DATA.—

1           “(A) IN GENERAL.—In accordance with  
2           subparagraph (B), the Commission shall issue a  
3           written report on a semiannual and annual  
4           basis to make available to the public informa-  
5           tion relating to—

6                   “(i) the trading and clearing in the  
7                   major swap categories; and

8                   “(ii) the market participants and de-  
9                   velopments in new products.

10           “(B) USE; CONSULTATION.—In preparing  
11           a report under subparagraph (A), the Commis-  
12           sion shall—

13                   “(i) use information from swap data  
14                   repositories and derivatives clearing orga-  
15                   nizations; and

16                   “(ii) consult with the Office of the  
17                   Comptroller of the Currency, the Bank for  
18                   International Settlements, and such other  
19                   regulatory bodies as may be necessary.”.

20   **SEC. 728. SWAP DATA REPOSITORIES.**

21           The Commodity Exchange Act is amended by insert-  
22   ing after section 20 (7 U.S.C. 24) the following:

23   **“SEC. 21. SWAP DATA REPOSITORIES.**

24           “(a) REGISTRATION REQUIREMENT.—

1           “(1) IN GENERAL.—It shall be unlawful for any  
2 person, unless registered with the Commission, di-  
3 rectly or indirectly to make use of the mails or any  
4 means or instrumentality of interstate commerce to  
5 perform the functions of a swap data repository.

6           “(2) INSPECTION AND EXAMINATION.—Each  
7 registered swap data repository shall be subject to  
8 inspection and examination by any representative of  
9 the Commission.

10           “(3) COMPLIANCE WITH CORE PRINCIPLES.—

11           “(A) IN GENERAL.—To be registered, and  
12 maintain registration, as a swap data reposi-  
13 tory, the swap data repository shall comply  
14 with—

15           “(i) the core principles described in  
16 this subsection; and

17           “(ii) any requirement that the Com-  
18 mission may impose by rule or regulation  
19 pursuant to section 8a(5).

20           “(B) REASONABLE DISCRETION OF SWAP  
21 DATA REPOSITORY.—Unless otherwise deter-  
22 mined by the Commission by rule or regulation,  
23 a swap data repository described in subpara-  
24 graph (A) shall have reasonable discretion in  
25 establishing the manner in which the swap data

1            repository complies with the core principles de-  
2            scribed in this subsection.

3            “(b) STANDARD SETTING.—

4            “(1) DATA IDENTIFICATION.—The Commission  
5            shall prescribe standards that specify the data ele-  
6            ments for each swap that shall be collected and  
7            maintained by each registered swap data repository.

8            “(2) DATA COLLECTION AND MAINTENANCE.—  
9            The Commission shall prescribe data collection and  
10           data maintenance standards for swap data reposi-  
11           tories.

12           “(3) COMPARABILITY.—The standards pre-  
13           scribed by the Commission under this subsection  
14           shall be comparable to the data standards imposed  
15           by the Commission on derivatives clearing organiza-  
16           tions in connection with their clearing of swaps.

17           “(4) SHARING OF INFORMATION WITH SECURI-  
18           TIES AND EXCHANGE COMMISSION.—Registered  
19           swap data repositories shall make available to the  
20           Securities and Exchange Commission, upon request,  
21           all books and records relating to security-based swap  
22           agreements that are maintained by such swap data  
23           repository, consistent with the confidentiality and  
24           disclosure requirements of section 8. Nothing in this  
25           paragraph shall affect the exclusive jurisdiction of

1 the Commission to prescribe recordkeeping and re-  
2 porting requirements for a swap data repository that  
3 is registered with the Commission.

4 “(c) DUTIES.—A swap data repository shall—

5 “(1) accept data prescribed by the Commission  
6 for each swap under subsection (b);

7 “(2) confirm with both counterparties to the  
8 swap the accuracy of the data that was submitted;

9 “(3) maintain the data described in paragraph  
10 (1) in such form, in such manner, and for such pe-  
11 riod as may be required by the Commission;

12 “(4)(A) provide direct electronic access to the  
13 Commission (or any designee of the Commission, in-  
14 cluding another registered entity); and

15 “(B) provide the information described in para-  
16 graph (1) in such form and at such frequency as the  
17 Commission may require to comply with the public  
18 reporting requirements contained in section  
19 2(a)(13);

20 “(5) at the direction of the Commission, estab-  
21 lish automated systems for monitoring, screening,  
22 and analyzing swap data, including compliance and  
23 frequency of end user clearing exemption claims by  
24 individual and affiliated entities;

1           “(6) maintain the privacy of any and all swap  
2 transaction information that the swap data reposi-  
3 tory receives from a swap dealer, counterparty, or  
4 any other registered entity; and

5           “(7) on a confidential basis pursuant to section  
6 8, upon request, and after notifying the Commission  
7 of the request, make available all data obtained by  
8 the swap data repository, including individual  
9 counterparty trade and position data, to—

10                   “(A) each appropriate prudential regulator;

11                   “(B) the Financial Stability Oversight  
12 Council;

13                   “(C) the Securities and Exchange Commis-  
14 sion;

15                   “(D) the Department of Justice; and

16                   “(E) any other person that the Commis-  
17 sion determines to be appropriate, including—

18                           “(i) foreign financial supervisors (in-  
19 cluding foreign futures authorities);

20                           “(ii) foreign central banks;

21                           “(iii) foreign ministries; and

22           “(8) establish and maintain emergency proce-  
23 dures, backup facilities, and a plan for disaster re-  
24 covery that allows for the timely recovery and re-



1           sumption of operations and the fulfillment of the re-  
2           sponsibilities and obligations of the organization.

3           “(d) CONFIDENTIALITY AND INDEMNIFICATION  
4 AGREEMENT.—Before the swap data repository may share  
5 information with any entity described in subsection  
6 (c)(7)—

7                   “(1) the swap data repository shall receive a  
8           written agreement from each entity stating that the  
9           entity shall abide by the confidentiality requirements  
10          described in section 8 relating to the information on  
11          swap transactions that is provided; and

12                   “(2) each entity shall agree to indemnify the  
13          swap data repository and the Commission for any  
14          expenses arising from litigation relating to the infor-  
15          mation provided under section 8.

16          “(e) DESIGNATION OF CHIEF COMPLIANCE OFFI-  
17 CER.—

18                   “(1) IN GENERAL.—Each swap data repository  
19          shall designate an individual to serve as a chief com-  
20          pliance officer.

21                   “(2) DUTIES.—The chief compliance officer  
22          shall—

23                           “(A) report directly to the board or to the  
24          senior officer of the swap data repository;

1           “(B) review the compliance of the swap  
2 data repository with respect to the core prin-  
3 ciples described in subsection (f);

4           “(C) in consultation with the board of the  
5 swap data repository, a body performing a func-  
6 tion similar to the board of the swap data re-  
7 pository, or the senior officer of the swap data  
8 repository, resolve any conflicts of interest that  
9 may arise;

10           “(D) be responsible for administering each  
11 policy and procedure that is required to be es-  
12 tablished pursuant to this section;

13           “(E) ensure compliance with this Act (in-  
14 cluding regulations) relating to agreements,  
15 contracts, or transactions, including each rule  
16 prescribed by the Commission under this sec-  
17 tion;

18           “(F) establish procedures for the remedi-  
19 ation of noncompliance issues identified by the  
20 chief compliance officer through any—

21                   “(i) compliance office review;

22                   “(ii) look-back;

23                   “(iii) internal or external audit find-  
24 ing;

25                   “(iv) self-reported error; or

1 “(v) validated complaint; and

2 “(G) establish and follow appropriate pro-  
3 cedures for the handling, management response,  
4 remediation, retesting, and closing of non-  
5 compliance issues.

6 “(3) ANNUAL REPORTS.—

7 “(A) IN GENERAL.—In accordance with  
8 rules prescribed by the Commission, the chief  
9 compliance officer shall annually prepare and  
10 sign a report that contains a description of—

11 “(i) the compliance of the swap data  
12 repository of the chief compliance officer  
13 with respect to this Act (including regula-  
14 tions); and

15 “(ii) each policy and procedure of the  
16 swap data repository of the chief compli-  
17 ance officer (including the code of ethics  
18 and conflict of interest policies of the swap  
19 data repository).

20 “(B) REQUIREMENTS.—A compliance re-  
21 port under subparagraph (A) shall—

22 “(i) accompany each appropriate fi-  
23 nancial report of the swap data repository  
24 that is required to be furnished to the  
25 Commission pursuant to this section; and

1                   “(ii) include a certification that, under  
2                   penalty of law, the compliance report is ac-  
3                   curate and complete.

4           “(f) CORE PRINCIPLES APPLICABLE TO SWAP DATA  
5 REPOSITORIES.—

6           “(1) ANTITRUST CONSIDERATIONS.—Unless  
7           necessary or appropriate to achieve the purposes of  
8           this Act, a swap data repository shall not

9                   “(A) adopt any rule or take any action  
10                  that results in any unreasonable restraint of  
11                  trade; or

12                  “(B) impose any material anticompetitive  
13                  burden on the trading, clearing, or reporting of  
14                  transactions.

15           “(2) GOVERNANCE ARRANGEMENTS.—Each  
16           swap data repository shall establish governance ar-  
17           rangements that are transparent—

18                   “(A) to fulfill public interest requirements;  
19                  and

20                   “(B) to support the objectives of the Fed-  
21                  eral Government, owners, and participants.

22           “(3) CONFLICTS OF INTEREST.—Each swap  
23           data repository shall—

1           “(A) establish and enforce rules to mini-  
2           mize conflicts of interest in the decision-making  
3           process of the swap data repository; and

4           “(B) establish a process for resolving con-  
5           flicts of interest described in subparagraph (A).

6           “(g) **REQUIRED REGISTRATION FOR SWAP DATA RE-**  
7 **POSITORIES.**—Any person that is required to be registered  
8 as a swap data repository under this section shall register  
9 with the Commission regardless of whether that person is  
10 also licensed as a bank or registered with the Securities  
11 and Exchange Commission as a swap data repository.

12          “(h) **RULES.**—The Commission shall adopt rules gov-  
13 erning persons that are registered under this section.”.

14 **SEC. 729. REPORTING AND RECORDKEEPING.**

15          The Commodity Exchange Act is amended by insert-  
16 ing after section 4q (7 U.S.C. 6o–1) the following:

17 **“SEC. 4r. REPORTING AND RECORDKEEPING FOR**  
18 **UNCLEARED SWAPS.**

19          “(a) **REQUIRED REPORTING OF SWAPS NOT ACCEPT-**  
20 **ED BY ANY DERIVATIVES CLEARING ORGANIZATION.**—

21           “(1) **IN GENERAL.**—Each swap that is not ac-  
22 cepted for clearing by any derivatives clearing orga-  
23 nization shall be reported to—

24           “(A) a swap data repository described in  
25           section 21; or

1           “(B) in the case in which there is no swap  
2           data repository that would accept the swap, to  
3           the Commission pursuant to this section within  
4           such time period as the Commission may by  
5           rule or regulation prescribe.

6           “(2) TRANSITION RULE FOR PREENACTMENT  
7           SWAPS.—

8           “(A) SWAPS ENTERED INTO BEFORE THE  
9           DATE OF ENACTMENT OF THE WALL STREET  
10           TRANSPARENCY AND ACCOUNTABILITY ACT OF  
11           2010.—Each swap entered into before the date  
12           of enactment of the Wall Street Transparency  
13           and Accountability Act of 2010, the terms of  
14           which have not expired as of the date of enact-  
15           ment of that Act, shall be reported to a reg-  
16           istered swap data repository or the Commission  
17           by a date that is not later than—

18                   “(i) 30 days after issuance of the in-  
19                   terim final rule; or

20                   “(ii) such other period as the Com-  
21                   mission determines to be appropriate.

22           “(B) COMMISSION RULEMAKING.—The  
23           Commission shall promulgate an interim final  
24           rule within 90 days of the date of enactment of  
25           this section providing for the reporting of each

1 swap entered into before the date of enactment  
2 as referenced in subparagraph (A).

3 “(C) EFFECTIVE DATE.—The reporting  
4 provisions described in this section shall be ef-  
5 fective upon the enactment of this section.

6 “(3) REPORTING OBLIGATIONS.—

7 “(A) SWAPS IN WHICH ONLY 1  
8 COUNTERPARTY IS A SWAP DEALER OR MAJOR  
9 SWAP PARTICIPANT.—With respect to a swap in  
10 which only 1 counterparty is a swap dealer or  
11 major swap participant, the swap dealer or  
12 major swap participant shall report the swap as  
13 required under paragraphs (1) and (2).

14 “(B) SWAPS IN WHICH 1 COUNTERPARTY  
15 IS A SWAP DEALER AND THE OTHER A MAJOR  
16 SWAP PARTICIPANT.—With respect to a swap in  
17 which 1 counterparty is a swap dealer and the  
18 other a major swap participant, the swap dealer  
19 shall report the swap as required under para-  
20 graphs (1) and (2).

21 “(C) OTHER SWAPS.—With respect to any  
22 other swap not described in subparagraph (A)  
23 or (B), the counterparties to the swap shall se-  
24 lect a counterparty to report the swap as re-  
25 quired under paragraphs (1) and (2).

1           “(b) DUTIES OF CERTAIN INDIVIDUALS.—Any indi-  
2     vidual or entity that enters into a swap shall meet each  
3     requirement described in subsection (c) if the individual  
4     or entity did not—

5           “(1) clear the swap in accordance with section  
6     2(h)(1); or

7           “(2) have the data regarding the swap accepted  
8     by a swap data repository in accordance with rules  
9     (including timeframes) adopted by the Commission  
10    under section 21.

11          “(c) REQUIREMENTS.—An individual or entity de-  
12    scribed in subsection (b) shall—

13           “(1) upon written request from the Commis-  
14    sion, provide reports regarding the swaps held by the  
15    individual or entity to the Commission in such form  
16    and in such manner as the Commission may request;  
17    and

18           “(2) maintain books and records pertaining to  
19    the swaps held by the individual or entity in such  
20    form, in such manner, and for such period as the  
21    Commission may require, which shall be open to in-  
22    spection by—

23           “(A) any representative of the Commis-  
24    sion;

25           “(B) an appropriate prudential regulator;



1                   “(C) the Securities and Exchange Commis-  
2                   sion;

3                   “(D) the Financial Stability Oversight  
4                   Council; and

5                   “(E) the Department of Justice.

6           “(d) IDENTICAL DATA.—In prescribing rules under  
7 this section, the Commission shall require individuals and  
8 entities described in subsection (b) to submit to the Com-  
9 mission a report that contains data that is not less com-  
10 prehensive than the data required to be collected by swap  
11 data repositories under section 21.”.

12 **SEC. 730. LARGE SWAP TRADER REPORTING.**

13           The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
14 is amended by adding after section 4s (as added by section  
15 731) the following:

16 **“SEC. 4t. LARGE SWAP TRADER REPORTING.**

17           “(a) PROHIBITION.—

18                   “(1) IN GENERAL.—Except as provided in para-  
19 graph (2), it shall be unlawful for any person to  
20 enter into any swap that the Commission determines  
21 to perform a significant price discovery function with  
22 respect to registered entities if—

23                           “(A) the person directly or indirectly en-  
24 ters into the swap during any 1 day in an  
25 amount equal to or in excess of such amount as

1 shall be established periodically by the Commis-  
2 sion; and

3 “(B) the person directly or indirectly has  
4 or obtains a position in the swap equal to or in  
5 excess of such amount as shall be established  
6 periodically by the Commission.

7 “(2) EXCEPTION.—Paragraph (1) shall not  
8 apply if—

9 “(A) the person files or causes to be filed  
10 with the properly designated officer of the Com-  
11 mission such reports regarding any transactions  
12 or positions described in subparagraphs (A) and  
13 (B) of paragraph (1) as the Commission may  
14 require by rule or regulation; and

15 “(B) in accordance with the rules and reg-  
16 ulations of the Commission, the person keeps  
17 books and records of all such swaps and any  
18 transactions and positions in any related com-  
19 modity traded on or subject to the rules of any  
20 designated contract market or swap execution  
21 facility, and of cash or spot transactions in, in-  
22 ventories of, and purchase and sale commit-  
23 ments of, such a commodity.

24 “(b) REQUIREMENTS.—

1           “(1) IN GENERAL.—Books and records de-  
2           scribed in subsection (a)(2)(B) shall—

3                   “(A) show such complete details con-  
4                   cerning all transactions and positions as the  
5                   Commission may prescribe by rule or regula-  
6                   tion;

7                   “(B) be open at all times to inspection and  
8                   examination by any representative of the Com-  
9                   mission; and

10                   “(C) be open at all times to inspection and  
11                   examination by the Securities and Exchange  
12                   Commission, to the extent such books and  
13                   records relate to transactions in security-based  
14                   swap agreements (as that term is defined in  
15                   section 3(a)(78) of the Securities Exchange Act  
16                   of 1934), and consistent with the confidentiality  
17                   and disclosure requirements of section 8.

18           “(2) JURISDICTION.—Nothing in paragraph (1)  
19           shall affect the exclusive jurisdiction of the Commis-  
20           sion to prescribe recordkeeping and reporting re-  
21           quirements for large swap traders under this section.

22           “(c) APPLICABILITY.—For purposes of this section,  
23           the swaps, futures, and cash or spot transactions and posi-  
24           tions of any person shall include the swaps, futures, and

1 cash or spot transactions and positions of any persons di-  
2 rectly or indirectly controlled by the person.

3 “(d) SIGNIFICANT PRICE DISCOVERY FUNCTION.—  
4 In making a determination as to whether a swap performs  
5 or affects a significant price discovery function with re-  
6 spect to registered entities, the Commission shall consider  
7 the factors described in section 4a(a)(3).”.

8 **SEC. 731. REGISTRATION AND REGULATION OF SWAP DEAL-**  
9 **ERS AND MAJOR SWAP PARTICIPANTS.**

10 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
11 is amended by inserting after section 4r (as added by sec-  
12 tion 729) the following:

13 **“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEAL-**  
14 **ERS AND MAJOR SWAP PARTICIPANTS.**

15 “(a) REGISTRATION.—

16 “(1) SWAP DEALERS.—It shall be unlawful for  
17 any person to act as a swap dealer unless the person  
18 is registered as a swap dealer with the Commission.

19 “(2) MAJOR SWAP PARTICIPANTS.—It shall be  
20 unlawful for any person to act as a major swap par-  
21 ticipant unless the person is registered as a major  
22 swap participant with the Commission.

23 “(b) REQUIREMENTS.—

1           “(1) IN GENERAL.—A person shall register as  
2 a swap dealer or major swap participant by filing a  
3 registration application with the Commission.

4           “(2) CONTENTS.—

5           “(A) IN GENERAL.—The application shall  
6 be made in such form and manner as prescribed  
7 by the Commission, and shall contain such in-  
8 formation, as the Commission considers nec-  
9 essary concerning the business in which the ap-  
10 plicant is or will be engaged.

11           “(B) CONTINUAL REPORTING.—A person  
12 that is registered as a swap dealer or major  
13 swap participant shall continue to submit to the  
14 Commission reports that contain such informa-  
15 tion pertaining to the business of the person as  
16 the Commission may require.

17           “(3) EXPIRATION.—Each registration under  
18 this section shall expire at such time as the Commis-  
19 sion may prescribe by rule or regulation.

20           “(4) RULES.—Except as provided in sub-  
21 sections (c), (e), and (f), the Commission may pre-  
22 scribe rules applicable to non-bank swap dealers and  
23 non-bank major swap participants, including rules  
24 that limit the activities of swap dealers and major  
25 swap participants.

1           “(5) TRANSITION.—Rules under this section  
2 shall provide for the registration of swap dealers and  
3 major swap participants not later than 1 year after  
4 the date of enactment of the Wall Street Trans-  
5 parency and Accountability Act of 2010.

6           “(6) STATUTORY DISQUALIFICATION.—Except  
7 to the extent otherwise specifically provided by rule,  
8 regulation, or order, it shall be unlawful for a swap  
9 dealer or a major swap participant to permit any  
10 person associated with a swap dealer or a major  
11 swap participant who is subject to a statutory dis-  
12 qualification to effect or be involved in effecting  
13 swaps on behalf of the swap dealer or major swap  
14 participant, if the swap dealer or major swap partici-  
15 pant knew, or in the exercise of reasonable care  
16 should have known, of the statutory disqualification.

17           “(c) DUAL REGISTRATION.—

18           “(1) SWAP DEALER.—Any person that is re-  
19 quired to be registered as a swap dealer under this  
20 section shall register with the Commission regardless  
21 of whether the person also is a depository institution  
22 or is registered with the Securities and Exchange  
23 Commission as a security-based swap dealer.

24           “(2) MAJOR SWAP PARTICIPANT.—Any person  
25 that is required to be registered as a major swap

1 participant under this section shall register with the  
2 Commission regardless of whether the person also is  
3 a depository institution or is registered with the Se-  
4 curities and Exchange Commission as a major secu-  
5 rity-based swap participant.

6 “(d) RULEMAKINGS.—

7 “(1) IN GENERAL.—The Commission shall  
8 adopt rules for persons that are registered as swap  
9 dealers or major swap participants under this sec-  
10 tion.

11 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-  
12 MENTS.—

13 “(A) IN GENERAL.—The Commission may  
14 not prescribe rules imposing prudential require-  
15 ments on swap dealers or major swap partici-  
16 pants for which there is a prudential regulator.

17 “(B) APPLICABILITY.—Subparagraph (A)  
18 does not limit the authority of the Commission  
19 to prescribe appropriate business conduct, re-  
20 porting, and recordkeeping requirements to pro-  
21 tect investors.

22 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

23 “(1) IN GENERAL.—

24 “(A) SWAP DEALERS AND MAJOR SWAP  
25 PARTICIPANTS THAT ARE DEPOSITORY INSTITU-

1           TIONS.—Each registered swap dealer and major  
2           swap participant that is a depository institu-  
3           tion, as that term is defined in section 3 of the  
4           Federal Deposit Insurance Act (12 U.S.C.  
5           1813), shall meet such minimum capital re-  
6           quirements and minimum initial and variation  
7           margin requirements as the appropriate Federal  
8           banking agency shall by rule or regulation pre-  
9           scribe under paragraph (2)(A) to help ensure  
10          the safety and soundness of the swap dealer or  
11          major swap participant.

12           “(B) SWAP DEALERS AND MAJOR SWAP  
13          PARTICIPANTS THAT ARE NOT DEPOSITORY IN-  
14          STITUTIONS.—Each registered swap dealer and  
15          major swap participant that is not a depository  
16          institution, as that term is defined in section 3  
17          of the Federal Deposit Insurance Act (12  
18          U.S.C. 1813), shall meet such minimum capital  
19          requirements and minimum initial and variation  
20          margin requirements as the Commission and  
21          the Securities and Exchange Commission shall  
22          by rule or regulation prescribe under paragraph  
23          (2)(B) to help ensure the safety and soundness  
24          of the swap dealer or major swap participant.

25          “(2) RULES.—



1           “(A) SWAP DEALERS AND MAJOR SWAP  
2 PARTICIPANTS THAT ARE DEPOSITORY INSTITU-  
3 TIONS.—The appropriate Federal banking  
4 agencies, in consultation with the Commission  
5 and the Securities and Exchange Commission,  
6 shall adopt rules imposing capital and margin  
7 requirements under this subsection for swap  
8 dealers and major swap participants that are  
9 depository institutions, as that term is defined  
10 in section 3 of the Federal Deposit Insurance  
11 Act (12 U.S.C. 1813).

12           “(B) SWAP DEALERS AND MAJOR SWAP  
13 PARTICIPANTS THAT ARE NOT DEPOSITORY IN-  
14 STITUTIONS.—The Commission shall adopt  
15 rules imposing capital and margin requirements  
16 under this subsection for swap dealers and  
17 major swap participants that are not depository  
18 institutions, as that term is defined in section  
19 3 of the Federal Deposit Insurance Act (12  
20 U.S.C. 1813).

21           “(3) CAPITAL.—

22           “(A) SWAP DEALERS AND MAJOR SWAP  
23 PARTICIPANTS THAT ARE DEPOSITORY INSTITU-  
24 TIONS.—The capital requirements prescribed  
25 under paragraph (2)(A) for swap dealers and

1 major swap participants that are depository in-  
2 stitutions shall contain—

3 “(i) a capital requirement that is  
4 greater than zero for swaps that are  
5 cleared by a registered derivatives clearing  
6 organization or a derivatives clearing orga-  
7 nization that is exempt from registration  
8 under section 5b(i); and

9 “(ii) to offset the greater risk to the  
10 swap dealer or major swap participant and  
11 to the financial system arising from the  
12 use of swaps that are not cleared, substan-  
13 tially higher capital requirements for swaps  
14 that are not cleared by a registered deriva-  
15 tives clearing organization or a derivatives  
16 clearing organization that is exempt from  
17 registration under section 5b(i) than for  
18 swaps that are cleared.

19 “(B) SWAP DEALERS AND MAJOR SWAP  
20 PARTICIPANTS THAT ARE NOT DEPOSITORY IN-  
21 STITUTIONS.—The capital requirements pre-  
22 scribed under paragraph (2)(B) for swap deal-  
23 ers and major swap participants that are not  
24 depository institutions shall be as strict as or  
25 stricter than the capital requirements pre-



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1 4f(a)(3)) in accordance with section  
2 4f(b); or

3 “(II) of the Securities and Ex-  
4 change Commission to set financial  
5 responsibility rules for a broker or  
6 dealer registered pursuant to section  
7 15(b) of the Securities Exchange Act  
8 of 1934 (15 U.S.C. 78o(b)) (except  
9 for section 15(b)(11) of that Act (15  
10 U.S.C. 78o(b)(11)) in accordance with  
11 section 15(c)(3) of the Securities Ex-  
12 change Act of 1934 (15 U.S.C.  
13 78o(c)(3)).

14 “(ii) FUTURES COMMISSION MER-  
15 CHANTS AND OTHER DEALERS.—A futures  
16 commission merchant, introducing broker,  
17 broker, or dealer shall maintain sufficient  
18 capital to comply with the stricter of any  
19 applicable capital requirements to which  
20 such futures commission merchant, intro-  
21 ducing broker, broker, or dealer is subject  
22 to under this Act or the Securities Ex-  
23 change Act of 1934 (15 U.S.C. 78a et  
24 seq.).

25 “(4) MARGIN.—

1           “(A) SWAP DEALERS AND MAJOR SWAP  
2 PARTICIPANTS THAT ARE DEPOSITORY INSTITU-  
3 TIONS.—The appropriate Federal banking  
4 agency for swap dealers and major swap par-  
5 ticipants that are depository institutions shall  
6 impose both initial and variation margin re-  
7 quirements in accordance with paragraph  
8 (2)(A) on all swaps that are not cleared by a  
9 registered derivatives clearing organization or a  
10 derivatives clearing organization that is exempt  
11 from registration under section 5b(i).

12           “(B) SWAP DEALERS AND MAJOR SWAP  
13 PARTICIPANTS THAT ARE NOT DEPOSITORY IN-  
14 STITUTIONS.—The Commission and the Securi-  
15 ties and Exchange Commission shall impose  
16 both initial and variation margin requirements  
17 in accordance with paragraph (2)(B) for swap  
18 dealers and major swap participants that are  
19 not depository institutions on all swaps that are  
20 not cleared by a registered derivatives clearing  
21 organization or a derivatives clearing organiza-  
22 tion that is exempt from registration under sec-  
23 tion 5b(i). Any such initial and variation mar-  
24 gin requirements shall be as strict as or stricter

1           than the margin requirements prescribed under  
2           paragraph (4)(A).

3           “(5) MARGIN REQUIREMENTS.—In prescribing  
4           margin requirements under this subsection, the ap-  
5           propriate Federal banking agency with respect to  
6           swap dealers and major swap participants that are  
7           depository institutions and the Commission with re-  
8           spect to swap dealers and major swap participants  
9           that are not depository institutions may permit the  
10          use of noncash collateral, as the agency or the Com-  
11          mission determines to be consistent with—

12                   “(A) preserving the financial integrity of  
13                   markets trading swaps; and

14                   “(B) preserving the stability of the United  
15                   States financial system.

16          “(6) COMPARABILITY OF CAPITAL AND MARGIN  
17          REQUIREMENTS.—

18                   “(A) IN GENERAL.—The appropriate Fed-  
19                   eral banking agencies, the Commission, and the  
20                   Securities and Exchange Commission shall peri-  
21                   odically (but not less frequently than annually)  
22                   consult on minimum capital requirements and  
23                   minimum initial and variation margin require-  
24                   ments.

1           “(B) COMPARABILITY.—The entities de-  
2           scribed in subparagraph (A) shall, to the max-  
3           imum extent practicable, establish and maintain  
4           comparable minimum capital requirements and  
5           minimum initial and variation margin require-  
6           ments, including the use of non cash collateral,  
7           for—

8                     “(i) swap dealers; and

9                     “(ii) major swap participants.

10           “(7) REQUESTED MARGIN.—If any party to a  
11           swap that is exempt from the margin requirements  
12           of paragraph (4)(A)(i) pursuant to the provisions of  
13           paragraph (4)(A)(ii), or from the margin require-  
14           ments of paragraph (4)(B)(i) pursuant to the provi-  
15           sions of paragraph (4)(B)(ii), requests that such  
16           swap be margined, then—

17                     “(A) the exemption shall not apply; and

18                     “(B) the counterparty to such swap shall  
19           provide the requested margin.

20           “(8) APPLICABILITY WITH RESPECT TO  
21           COUNTERPARTIES.—Paragraph (4) shall not apply  
22           to initial and variation margin for swaps in which 1  
23           of the counterparties is not—

24                     “(A) a swap dealer;

25                     “(B) a major swap participant; or

1           “(C) a financial entity as described in sec-  
2           tion 2(h)(9)(A)(ii), and such counterparty is eli-  
3           gible for and utilizing the commercial end user  
4           clearing exemption under section 2(h)(9).

5           “(f) REPORTING AND RECORDKEEPING.—

6           “(1) IN GENERAL.—Each registered swap deal-  
7           er and major swap participant—

8           “(A) shall make such reports as are re-  
9           quired by the Commission by rule or regulation  
10          regarding the transactions and positions and fi-  
11          nancial condition of the registered swap dealer  
12          or major swap participant;

13          “(B)(i) for which there is a prudential reg-  
14          ulator, shall keep books and records of all ac-  
15          tivities related to the business as a swap dealer  
16          or major swap participant in such form and  
17          manner and for such period as may be pre-  
18          scribed by the Commission by rule or regula-  
19          tion; and

20          “(ii) for which there is no prudential regu-  
21          lator, shall keep books and records in such form  
22          and manner and for such period as may be pre-  
23          scribed by the Commission by rule or regula-  
24          tion; and



1           “(C) shall keep books and records de-  
2           scribed in subparagraph (B) open to inspection  
3           and examination by any representative of the  
4           Commission.

5           “(2) RULES.—The Commission shall adopt  
6           rules governing reporting and recordkeeping for  
7           swap dealers and major swap participants.

8           “(g) DAILY TRADING RECORDS.—

9           “(1) IN GENERAL.—Each registered swap deal-  
10          er and major swap participant shall maintain daily  
11          trading records of the swaps of the registered swap  
12          dealer and major swap participant and all related  
13          records (including related cash or forward trans-  
14          actions) and recorded communications, including  
15          electronic mail, instant messages, and recordings of  
16          telephone calls, for such period as may be required  
17          by the Commission by rule or regulation.

18          “(2) INFORMATION REQUIREMENTS.—The daily  
19          trading records shall include such information as the  
20          Commission shall require by rule or regulation.

21          “(3) COUNTERPARTY RECORDS.—Each reg-  
22          istered swap dealer and major swap participant shall  
23          maintain daily trading records for each counterparty  
24          in a manner and form that is identifiable with each  
25          swap transaction.

1           “(4) AUDIT TRAIL.—Each registered swap deal-  
2           er and major swap participant shall maintain a com-  
3           plete audit trail for conducting comprehensive and  
4           accurate trade reconstructions.

5           “(5) RULES.—The Commission shall adopt  
6           rules governing daily trading records for swap deal-  
7           ers and major swap participants.

8           “(h) BUSINESS CONDUCT STANDARDS.—

9           “(1) IN GENERAL.—Each registered swap deal-  
10          er and major swap participant shall conform with  
11          such business conduct standards as may be pre-  
12          scribed by the Commission by rule or regulation that  
13          relate to—

14                 “(A) fraud, manipulation, and other abu-  
15                 sive practices involving swaps (including swaps  
16                 that are offered but not entered into);

17                 “(B) diligent supervision of the business of  
18                 the registered swap dealer and major swap par-  
19                 ticipant;

20                 “(C) adherence to all applicable position  
21                 limits; and

22                 “(D) such other matters as the Commis-  
23                 sion determines to be appropriate.

24           “(2) SPECIAL RULE; FIDUCIARY DUTIES TO  
25          CERTAIN ENTITIES.—

1           “(A) GOVERNMENTAL ENTITIES.—A swap  
2 dealer that provides advice regarding, or offers  
3 to enter into, or enters into a swap with a  
4 State, State agency, city, county, municipality,  
5 or other political subdivision of a State or a  
6 Federal agency shall have a fiduciary duty to  
7 the State, State agency, city, county, munici-  
8 pality, or other political subdivision of a State,  
9 or the Federal agency, as appropriate.

10           “(B) PENSION PLANS; ENDOWMENTS; RE-  
11 TIREMENT PLANS.—A swap dealer that pro-  
12 vides advice regarding, or offers to enter into,  
13 or enters into a swap with a pension plan, en-  
14 dowment, or retirement plan shall have a fidu-  
15 ciary duty to the pension plan, endowment, or  
16 retirement plan, as appropriate.

17           “(3) BUSINESS CONDUCT REQUIREMENTS.—  
18 Business conduct requirements adopted by the Com-  
19 mission shall—

20           “(A) establish the standard of care for a  
21 swap dealer or major swap participant to verify  
22 that any counterparty meets the eligibility  
23 standards for an eligible contract participant;

24           “(B) require disclosure by the swap dealer  
25 or major swap participant to any counterparty

1 to the transaction (other than a swap dealer,  
2 major swap participant, security-based swap  
3 dealer, or major security-based swap partici-  
4 pant) of—

5 “(i) information about the material  
6 risks and characteristics of the swap;

7 “(ii) the source and amount of any  
8 fees or other material remuneration that  
9 the swap dealer or major swap participant  
10 would directly or indirectly expect to re-  
11 ceive in connection with the swap;

12 “(iii) any other material incentives or  
13 conflicts of interest that the swap dealer or  
14 major swap participant may have in con-  
15 nection with the swap; and

16 “(iv)(I) for cleared swaps, upon the  
17 request of the counterparty, the daily mark  
18 from the appropriate derivatives clearing  
19 organization; and

20 “(II) for uncleared swaps, the daily  
21 mark of the swap dealer or the major swap  
22 participant;

23 “(C) establish a standard of conduct for a  
24 swap dealer or major swap participant to com-

1           municate in a fair and balanced manner based  
2           on principles of fair dealing and good faith;

3           “(D) establish a standard of conduct for a  
4           swap dealer or major swap participant, with re-  
5           spect to a counterparty that is an eligible con-  
6           tract participant within the meaning of sub-  
7           clause (I) or (II) of clause (vii) of section  
8           1a(18) of this Act, to have a reasonable basis  
9           to believe that the counterparty has an inde-  
10          pendent representative that—

11                   “(i) has sufficient knowledge to evalu-  
12                   ate the transaction and risks;

13                   “(ii) is not subject to a statutory dis-  
14                   qualification;

15                   “(iii) is independent of the swap deal-  
16                   er or major swap participant;

17                   “(iv) undertakes a duty to act in the  
18                   best interests of the counterparty it rep-  
19                   resents;

20                   “(v) makes appropriate disclosures;  
21                   and

22                   “(vi) will provide written representa-  
23                   tions to the eligible contract participant re-  
24                   garding fair pricing and the appropriate-  
25                   ness of the transaction; and

1           “(E) establish such other standards and  
2 requirements as the Commission may determine  
3 are appropriate in the public interest, for the  
4 protection of investors, or otherwise in further-  
5 ance of the purposes of this Act.

6           “(4) RULES.—The Commission shall prescribe  
7 rules under this subsection governing business con-  
8 duct standards for swap dealers and major swap  
9 participants.

10          “(i) DOCUMENTATION AND BACK OFFICE STAND-  
11 ARDS.—

12           “(1) IN GENERAL.—Each registered swap deal-  
13 er and major swap participant shall conform with  
14 such standards as may be prescribed by the Com-  
15 mission by rule or regulation that relate to timely  
16 and accurate confirmation, processing, netting, docu-  
17 mentation, and valuation of all swaps.

18           “(2) RULES.—The Commission shall adopt  
19 rules governing documentation and back office  
20 standards for swap dealers and major swap partici-  
21 pants.

22          “(j) DUTIES.—Each registered swap dealer and  
23 major swap participant at all times shall comply with the  
24 following requirements:

1           “(1) MONITORING OF TRADING.—The swap  
2 dealer or major swap participant shall monitor its  
3 trading in swaps to prevent violations of applicable  
4 position limits.

5           “(2) RISK MANAGEMENT PROCEDURES.—The  
6 swap dealer or major swap participant shall estab-  
7 lish robust and professional risk management sys-  
8 tems adequate for managing the day-to-day business  
9 of the swap dealer or major swap participant.

10           “(3) DISCLOSURE OF GENERAL INFORMA-  
11 TION.—The swap dealer or major swap participant  
12 shall disclose to the Commission and to the pruden-  
13 tial regulator for the swap dealer or major swap par-  
14 ticipant, as applicable, information concerning—

15                   “(A) terms and conditions of its swaps;

16                   “(B) swap trading operations, mechanisms,  
17 and practices;

18                   “(C) financial integrity protections relating  
19 to swaps; and

20                   “(D) other information relevant to its trad-  
21 ing in swaps.

22           “(4) ABILITY TO OBTAIN INFORMATION.—The  
23 swap dealer or major swap participant shall—

24                   “(A) establish and enforce internal systems  
25 and procedures to obtain any necessary infor-

1           mation to perform any of the functions de-  
2           scribed in this section; and

3           “(B) provide the information to the Com-  
4           mission and to the prudential regulator for the  
5           swap dealer or major swap participant, as ap-  
6           plicable, on request.

7           “(5) CONFLICTS OF INTEREST.—The swap  
8           dealer and major swap participant shall implement  
9           conflict-of-interest systems and procedures that—

10           “(A) establish structural and institutional  
11           safeguards to ensure that the activities of any  
12           person within the firm relating to research or  
13           analysis of the price or market for any com-  
14           modity or swap or acting in a role of providing  
15           clearing activities or making determinations as  
16           to accepting clearing customers are separated  
17           by appropriate informational partitions within  
18           the firm from the review, pressure, or oversight  
19           of persons whose involvement in pricing, trad-  
20           ing, or clearing activities might potentially bias  
21           their judgment or supervision and contravene  
22           the core principles of open access and the busi-  
23           ness conduct standards described in this Act;  
24           and



1           “(B) address such other issues as the  
2           Commission determines to be appropriate.

3           “(6) ANTITRUST CONSIDERATIONS.—Unless  
4           necessary or appropriate to achieve the purposes of  
5           this Act, a swap dealer or major swap participant  
6           shall not—

7           “(A) adopt any process or take any action  
8           that results in any unreasonable restraint of  
9           trade; or

10           “(B) impose any material anticompetitive  
11           burden on trading or clearing.

12           “(k) DESIGNATION OF CHIEF COMPLIANCE OFFI-  
13 CER.—

14           “(1) IN GENERAL.—Each swap dealer and  
15           major swap participant shall designate an individual  
16           to serve as a chief compliance officer.

17           “(2) DUTIES.—The chief compliance officer  
18           shall—

19           “(A) report directly to the board or to the  
20           senior officer of the swap dealer or major swap  
21           participant;

22           “(B) review the compliance of the swap  
23           dealer or major swap participant with respect to  
24           the swap dealer and major swap participant re-  
25           quirements described in this section;

1           “(C) in consultation with the board of di-  
2           rectors, a body performing a function similar to  
3           the board, or the senior officer of the organiza-  
4           tion, resolve any conflicts of interest that may  
5           arise;

6           “(D) be responsible for administering each  
7           policy and procedure that is required to be es-  
8           tablished pursuant to this section;

9           “(E) ensure compliance with this Act (in-  
10          cluding regulations) relating to swaps, including  
11          each rule prescribed by the Commission under  
12          this section;

13          “(F) establish procedures for the remedi-  
14          ation of noncompliance issues identified by the  
15          chief compliance officer through any—

16                 “(i) compliance office review;

17                 “(ii) look-back;

18                 “(iii) internal or external audit find-  
19          ing;

20                 “(iv) self-reported error; or

21                 “(v) validated complaint; and

22          “(G) establish and follow appropriate pro-  
23          cedures for the handling, management response,  
24          remediation, retesting, and closing of non-  
25          compliance issues.

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1 “(3) ANNUAL REPORTS.—

2 “(A) IN GENERAL.—In accordance with  
3 rules prescribed by the Commission, the chief  
4 compliance officer shall annually prepare and  
5 sign a report that contains a description of—

6 “(i) the compliance of the swap dealer  
7 or major swap participant with respect to  
8 this Act (including regulations); and

9 “(ii) each policy and procedure of the  
10 swap dealer or major swap participant of  
11 the chief compliance officer (including the  
12 code of ethics and conflict of interest poli-  
13 cies).

14 “(B) REQUIREMENTS.—A compliance re-  
15 port under subparagraph (A) shall—

16 “(i) accompany each appropriate fi-  
17 nancial report of the swap dealer or major  
18 swap participant that is required to be fur-  
19 nished to the Commission pursuant to this  
20 section; and

21 “(ii) include a certification that, under  
22 penalty of law, the compliance report is ac-  
23 curate and complete.”.

1 **SEC. 732. CONFLICTS OF INTEREST.**

2 Section 4d of the Commodity Exchange Act (7 U.S.C.  
3 6d) is amended—

4 (1) by redesignating subsection (c) as sub-  
5 section (e); and

6 (2) by inserting after subsection (b) the fol-  
7 lowing:

8 “(c) CONFLICTS OF INTEREST.—The Commission  
9 shall require that futures commission merchants and in-  
10 troducing brokers implement conflict-of-interest systems  
11 and procedures that—

12 “(1) establish structural and institutional safe-  
13 guards to ensure that the activities of any person  
14 within the firm relating to research or analysis of  
15 the price or market for any commodity are separated  
16 by appropriate informational partitions within the  
17 firm from the review, pressure, or oversight of per-  
18 sons whose involvement in trading or clearing activi-  
19 ties might potentially bias the judgment or super-  
20 vision of the persons; and

21 “(2) address such other issues as the Commis-  
22 sion determines to be appropriate.

23 “(d) DESIGNATION OF CHIEF COMPLIANCE OFFI-  
24 CER.—

1           “(1) IN GENERAL.—Each futures commission  
2 merchant shall designate an individual to serve as a  
3 chief compliance officer.

4           “(2) DUTIES.—The chief compliance officer  
5 shall—

6           “(A) report directly to the board or to the  
7 senior officer of the futures commission mer-  
8 chant;

9           “(B) review the compliance of the futures  
10 commission merchant with respect to require-  
11 ments described in this section;

12           “(C) in consultation with the board of di-  
13 rectors, a body performing a function similar to  
14 the board, or the senior officer of the organiza-  
15 tion, resolve any conflicts of interest that may  
16 arise;

17           “(D) be responsible for administering each  
18 policy and procedure that is required to be es-  
19 tablished pursuant to this section;

20           “(E) ensure compliance with this Act (in-  
21 cluding regulations and each rule prescribed by  
22 the Commission under this section) relating,  
23 but not limited, to—

24           “(i) contracts of sale of a commodity  
25 for future delivery;

1 “(ii) options on the contracts de-  
2 scribed in clause (i);

3 “(iii) commodity options;

4 “(iv) retail foreign exchange and retail  
5 commodity transactions;

6 “(v) security futures products;

7 “(vi) leverage contracts; and

8 “(vii) swaps;

9 “(F) establish procedures for the remedi-  
10 ation of noncompliance issues identified by the  
11 chief compliance officer through any—

12 “(i) compliance office review;

13 “(ii) look-back;

14 “(iii) internal or external audit find-  
15 ing;

16 “(iv) self-reported error; or

17 “(v) validated complaint; and

18 “(G) establish and follow appropriate pro-  
19 cedures for the handling, management response,  
20 remediation, retesting, and closing of non-  
21 compliance issues.

22 “(3) ANNUAL REPORTS.—

23 “(A) IN GENERAL.—In accordance with  
24 rules prescribed by the Commission, the chief

1 compliance officer shall annually prepare and  
2 sign a report that contains a description of—

3 “(i) the compliance of the futures  
4 commission merchant with respect to this  
5 Act (including regulations); and

6 “(ii) each policy and procedure of the  
7 futures commission merchant of the chief  
8 compliance officer (including the code of  
9 ethics and conflict of interest policies).

10 “(B) REQUIREMENTS.—A compliance re-  
11 port under subparagraph (A) shall—

12 “(i) accompany each appropriate fi-  
13 nancial report of the futures commission  
14 merchant that is required to be furnished  
15 to the Commission pursuant to this sec-  
16 tion; and

17 “(ii) include a certification that, under  
18 penalty of law, the compliance report is ac-  
19 curate and complete.”.

20 **SEC. 733. SWAP EXECUTION FACILITIES.**

21 The Commodity Exchange Act is amended by insert-  
22 ing after section 5g (7 U.S.C. 7b–2) the following:

23 **“SEC. 5h. SWAP EXECUTION FACILITIES.**

24 “(a) REGISTRATION.—

1           “(1) IN GENERAL.—No person may operate a  
2           facility for the trading or processing of swaps unless  
3           the facility is registered as a swap execution facility  
4           or as a designated contract market under this sec-  
5           tion.

6           “(2) DUAL REGISTRATION.—Any person that is  
7           registered as a swap execution facility under this  
8           section shall register with the Commission regardless  
9           of whether the person also is registered with the Se-  
10          curities and Exchange Commission as a swap execu-  
11          tion facility.

12          “(b) TRADING AND TRADE PROCESSING.—A swap  
13          execution facility that is registered under subsection (a)  
14          may—

15                  “(1) make available for trading any swap; and

16                  “(2) facilitate trade processing of any swap.

17          “(c) IDENTIFICATION OF FACILITY USED TO TRADE  
18          SWAPS BY CONTRACT MARKETS.—A board of trade that  
19          operates a contract market shall, to the extent that the  
20          board of trade also operates a swap execution facility and  
21          uses the same electronic trade execution system for listing  
22          and executing trades of swaps on or through the contract  
23          market and the swap execution facility, identify whether  
24          the electronic trading of such swaps is taking place on or



1 through the contract market or the swap execution facil-  
2 ity.

3 “(d) CORE PRINCIPLES FOR SWAP EXECUTION FA-  
4 CILITIES.—

5 “(1) COMPLIANCE WITH CORE PRINCIPLES.—

6 “(A) IN GENERAL.—To be registered, and  
7 maintain registration, as a swap execution facil-  
8 ity, the swap execution facility shall comply  
9 with—

10 “(i) the core principles described in  
11 this subsection; and

12 “(ii) any requirement that the Com-  
13 mission may impose by rule or regulation  
14 pursuant to section 8a(5).

15 “(B) REASONABLE DISCRETION OF SWAP  
16 EXECUTION FACILITY.—Unless otherwise deter-  
17 mined by the Commission by rule or regulation,  
18 a swap execution facility described in subpara-  
19 graph (A) shall have reasonable discretion in  
20 establishing the manner in which the swap exe-  
21 cution facility complies with the core principles  
22 described in this subsection.

23 “(2) COMPLIANCE WITH RULES.—A swap exe-  
24 cution facility shall—

1           “(A) establish and enforce compliance with  
2 any rule of the swap execution facility, includ-  
3 ing—

4           “(i) the terms and conditions of the  
5 swaps traded or processed on or through  
6 the swap execution facility; and

7           “(ii) any limitation on access to the  
8 swap execution facility;

9           “(B) establish and enforce trading, trade  
10 processing, and participation rules that will  
11 deter abuses and have the capacity to detect,  
12 investigate, and enforce those rules, including  
13 means—

14           “(i) to provide market participants  
15 with impartial access to the market; and

16           “(ii) to capture information that may  
17 be used in establishing whether rule viola-  
18 tions have occurred;

19           “(C) establish rules governing the oper-  
20 ation of the facility, including rules specifying  
21 trading procedures to be used in entering and  
22 executing orders traded or posted on the facil-  
23 ity, including block trades; and

24           “(D) provide by its rules that when a swap  
25 dealer or major swap participant enters into or

1 facilitates a swap that is subject to the manda-  
2 tory clearing requirement of section 2(h), the  
3 swap dealer or major swap participant shall be  
4 responsible for compliance with the mandatory  
5 trading requirement under section 2(h)(8).

6 “(3) SWAPS NOT READILY SUSCEPTIBLE TO MA-  
7 NIPULATION.—The swap execution facility shall per-  
8 mit trading only in swaps that are not readily sus-  
9 ceptible to manipulation.

10 “(4) MONITORING OF TRADING AND TRADE  
11 PROCESSING.—The swap execution facility shall—

12 “(A) establish and enforce rules or terms  
13 and conditions defining, or specifications detail-  
14 ing—

15 “(i) trading procedures to be used in  
16 entering and executing orders traded on or  
17 through the facilities of the swap execution  
18 facility; and

19 “(ii) procedures for trade processing  
20 of swaps on or through the facilities of the  
21 swap execution facility; and

22 “(B) monitor trading in swaps to prevent  
23 manipulation, price distortion, and disruptions  
24 of the delivery or cash settlement process  
25 through surveillance, compliance, and discipli-

1           nary practices and procedures, including meth-  
2           ods for conducting real-time monitoring of trad-  
3           ing and comprehensive and accurate trade re-  
4           constructions.

5           “(5) ABILITY TO OBTAIN INFORMATION.—The  
6           swap execution facility shall—

7                   “(A) establish and enforce rules that will  
8                   allow the facility to obtain any necessary infor-  
9                   mation to perform any of the functions de-  
10                  scribed in this section;

11                  “(B) provide the information to the Com-  
12                  mission on request; and

13                  “(C) have the capacity to carry out such  
14                  international information-sharing agreements as  
15                  the Commission may require.

16           “(6) POSITION LIMITS OR ACCOUNTABILITY.—

17                   “(A) IN GENERAL.—To reduce the poten-  
18                   tial threat of market manipulation or conges-  
19                   tion, especially during trading in the delivery  
20                   month, a swap execution facility that is a trad-  
21                   ing facility shall adopt for each of the contracts  
22                   of the facility, as is necessary and appropriate,  
23                   position limitations or position accountability  
24                   for speculators.

1           “(B) POSITION LIMITS.—For any contract  
2           that is subject to a position limitation estab-  
3           lished by the Commission pursuant to section  
4           4a(a), the swap execution facility shall set its  
5           position limitation at a level no higher than the  
6           Commission limitation.

7           “(C) POSITION ENFORCEMENT.—For any  
8           contract that is subject to a position limitation  
9           established by the Commission pursuant to sec-  
10          tion 4a(a), a swap execution facility shall reject  
11          any proposed swap transaction if, based on in-  
12          formation readily available to a swap execution  
13          facility, any proposed swap transaction would  
14          cause a swap execution facility customer that  
15          would be a party to such swap transaction to  
16          exceed such position limitation.

17          “(7) FINANCIAL INTEGRITY OF TRANS-  
18          ACTIONS.—The swap execution facility shall estab-  
19          lish and enforce rules and procedures for ensuring  
20          the financial integrity of swaps entered on or  
21          through the facilities of the swap execution facility,  
22          including the clearance and settlement of the swaps  
23          pursuant to section 2(h)(1).

24          “(8) EMERGENCY AUTHORITY.—The swap exe-  
25          cution facility shall adopt rules to provide for the ex-

1        exercise of emergency authority, in consultation or co-  
2        operation with the Commission, as is necessary and  
3        appropriate, including the authority to liquidate or  
4        transfer open positions in any swap or to suspend or  
5        curtail trading in a swap.

6            “(9) TIMELY PUBLICATION OF TRADING INFOR-  
7        MATION.—

8            “(A) IN GENERAL.—The swap execution  
9        facility shall make public timely information on  
10       price, trading volume, and other trading data  
11       on swaps to the extent prescribed by the Com-  
12       mission.

13           “(B) CAPACITY OF SWAP EXECUTION FA-  
14       CILITY.—The swap execution facility shall be  
15       required to have the capacity to electronically  
16       capture trade information with respect to trans-  
17       actions executed on the facility.

18           “(10) RECORDKEEPING AND REPORTING.—

19           “(A) IN GENERAL.—A swap execution fa-  
20       cility shall—

21           “(i) maintain records of all activities  
22       relating to the business of the facility, in-  
23       cluding a complete audit trail, in a form  
24       and manner acceptable to the Commission  
25       for a period of 5 years; and

1                   “(ii) report to the Commission, in a  
2                   form and manner acceptable to the Com-  
3                   mission, such information as the Commis-  
4                   sion determines to be necessary or appro-  
5                   priate for the Commission to perform the  
6                   duties of the Commission under this Act.

7                   “(B) REQUIREMENTS.—The Commission  
8                   shall adopt data collection and reporting re-  
9                   quirements for swap execution facilities that are  
10                  comparable to corresponding requirements for  
11                  derivatives clearing organizations and swap  
12                  data repositories.

13                  “(11) ANTITRUST CONSIDERATIONS.—Unless  
14                  necessary or appropriate to achieve the purposes of  
15                  this Act, the swap execution facility shall not—

16                         “(A) adopt any rules or taking any actions  
17                         that result in any unreasonable restraint of  
18                         trade; or

19                         “(B) impose any material anticompetitive  
20                         burden on trading or clearing.

21                  “(12) CONFLICTS OF INTEREST.—The swap  
22                  execution facility shall—

23                         “(A) establish and enforce rules to mini-  
24                         mize conflicts of interest in its decision-making  
25                         process; and

1           “(B) establish a process for resolving the  
2 conflicts of interest.

3           “(13) FINANCIAL RESOURCES.—

4           “(A) IN GENERAL.—The swap execution  
5 facility shall have adequate financial, oper-  
6 ational, and managerial resources to discharge  
7 each responsibility of the swap execution facil-  
8 ity.

9           “(B) DETERMINATION OF RESOURCE ADE-  
10 QUACY.—The financial resources of a swap exe-  
11 cution facility shall be considered to be ade-  
12 quate if the value of the financial resources ex-  
13 ceeds the total amount that would enable the  
14 swap execution facility to cover the operating  
15 costs of the swap execution facility for a 1-year  
16 period, as calculated on a rolling basis.

17           “(14) SYSTEM SAFEGUARDS.—The swap execu-  
18 tion facility shall—

19           “(A) establish and maintain a program of  
20 risk analysis and oversight to identify and mini-  
21 mize sources of operational risk, through the  
22 development of appropriate controls and proce-  
23 dures, and automated systems, that—

24                   “(i) are reliable and secure; and

25                   “(ii) have adequate scalable capacity;



1           “(B) establish and maintain emergency  
2 procedures, backup facilities, and a plan for dis-  
3 aster recovery that allow for—

4                   “(i) the timely recovery and resump-  
5 tion of operations; and

6                   “(ii) the fulfillment of the responsibil-  
7 ities and obligations of the swap execution  
8 facility; and

9           “(C) periodically conduct tests to verify  
10 that the backup resources of the swap execution  
11 facility are sufficient to ensure continued—

12                   “(i) order processing and trade  
13 matching;

14                   “(ii) price reporting;

15                   “(iii) market surveillance and

16                   “(iv) maintenance of a comprehensive  
17 and accurate audit trail.

18           “(15) DESIGNATION OF CHIEF COMPLIANCE  
19 OFFICER.—

20                   “(A) IN GENERAL.—Each swap execution  
21 facility shall designate an individual to serve as  
22 a chief compliance officer.

23                   “(B) DUTIES.—The chief compliance offi-  
24 cer shall—

1                   “(i) report directly to the board or to  
2                   the senior officer of the facility;

3                   “(ii) review compliance with the core  
4                   principles in this subsection;

5                   “(iii) in consultation with the board of  
6                   the facility, a body performing a function  
7                   similar to that of a board, or the senior of-  
8                   ficer of the facility, resolve any conflicts of  
9                   interest that may arise;

10                  “(iv) be responsible for establishing  
11                  and administering the policies and proce-  
12                  dures required to be established pursuant  
13                  to this section;

14                  “(v) ensure compliance with this Act  
15                  and the rules and regulations issued under  
16                  this Act, including rules prescribed by the  
17                  Commission pursuant to this section; and

18                  “(vi) establish procedures for the re-  
19                  mediation of noncompliance issues found  
20                  during compliance office reviews, look  
21                  backs, internal or external audit findings,  
22                  self-reported errors, or through validated  
23                  complaints.

24                  “(C) REQUIREMENTS FOR PROCEDURES.—

25                  In establishing procedures under subparagraph

1 (B)(vi), the chief compliance officer shall design  
2 the procedures to establish the handling, man-  
3 agement response, remediation, retesting, and  
4 closing of noncompliance issues.

5 “(D) ANNUAL REPORTS.—

6 “(i) IN GENERAL.—In accordance  
7 with rules prescribed by the Commission,  
8 the chief compliance officer shall annually  
9 prepare and sign a report that contains a  
10 description of—

11 “(I) the compliance of the swap  
12 execution facility with this Act; and

13 “(II) the policies and procedures,  
14 including the code of ethics and con-  
15 flict of interest policies, of the swap  
16 execution facility.

17 “(ii) REQUIREMENTS.—The chief  
18 compliance officer shall—

19 “(I) submit each report described  
20 in clause (i) with the appropriate fi-  
21 nancial report of the swap execution  
22 facility that is required to be sub-  
23 mitted to the Commission pursuant to  
24 this section; and

1                                   “(II) include in the report a cer-  
2                                   tification that, under penalty of law,  
3                                   the report is accurate and complete.

4           “(e) EXEMPTIONS.—The Commission may exempt,  
5   conditionally or unconditionally, a swap execution facility  
6   from registration under this section if the Commission  
7   finds that the facility is subject to comparable, comprehen-  
8   sive supervision and regulation on a consolidated basis by  
9   the Securities and Exchange Commission, a prudential  
10  regulator, or the appropriate governmental authorities in  
11  the home country of the facility.

12           “(f) RULES.—The Commission shall prescribe rules  
13  governing the regulation of alternative swap execution fa-  
14  cilities under this section.”.

15 **SEC. 734. DERIVATIVES TRANSACTION EXECUTION FACILI-**  
16 **TIES AND EXEMPT BOARDS OF TRADE.**

17           (a) IN GENERAL.—Sections 5a and 5d of the Com-  
18  modity Exchange Act (7 U.S.C. 7a, 7a–3) are repealed.

19           (b) CONFORMING AMENDMENTS.—

20                   (1) Section 2 of the Commodity Exchange Act  
21                   (7 U.S.C. 2) is amended—

22                                   (A) in subsection (a)(1)(A), in the first  
23                                   sentence, by striking “or 5a”; and

24                                   (B) in paragraph (2) of subsection (g) (as  
25                                   redesignated by section 723(a)(1)(B)), by strik-





1           “(B) CAPACITY OF CONTRACT MARKET.—

2           The board of trade shall have the capacity to  
3           detect, investigate, and apply appropriate sanc-  
4           tions to any person that violates any rule of the  
5           contract market.

6           “(C) REQUIREMENT OF RULES.—The rules

7           of the contract market shall provide the board  
8           of trade with the ability and authority to obtain  
9           any necessary information to perform any func-  
10          tion described in this subsection, including the  
11          capacity to carry out such international infor-  
12          mation-sharing agreements as the Commission  
13          may require.

14          “(3) CONTRACTS NOT READILY SUBJECT TO

15          MANIPULATION.—The board of trade shall list on  
16          the contract market only contracts that are not  
17          readily susceptible to manipulation.

18          “(4) PREVENTION OF MARKET DISRUPTION.—

19          The board of trade shall have the capacity and re-  
20          sponsibility to prevent manipulation, price distortion,  
21          and disruptions of the delivery or cash-settlement  
22          process through market surveillance, compliance,  
23          and enforcement practices and procedures, includ-  
24          ing—

1           “(A) methods for conducting real-time  
2           monitoring of trading; and

3           “(B) comprehensive and accurate trade re-  
4           constructions.

5           “(5) POSITION LIMITATIONS OR ACCOUNT-  
6           ABILITY.—

7           “(A) IN GENERAL.—To reduce the poten-  
8           tial threat of market manipulation or conges-  
9           tion (especially during trading in the delivery  
10          month), the board of trade shall adopt for each  
11          contract of the board of trade, as is necessary  
12          and appropriate, position limitations or position  
13          accountability for speculators.

14          “(B) MAXIMUM ALLOWABLE POSITION  
15          LIMITATION.—For any contract that is subject  
16          to a position limitation established by the Com-  
17          mission pursuant to section 4a(a), the board of  
18          trade shall set the position limitation of the  
19          board of trade at a level not higher than the po-  
20          sition limitation established by the Commission.

21          “(6) EMERGENCY AUTHORITY.—The board of  
22          trade, in consultation or cooperation with the Com-  
23          mission, shall adopt rules to provide for the exercise  
24          of emergency authority, as is necessary and appro-  
25          priate, including the authority—



1           “(A) to liquidate or transfer open positions  
2           in any contract;

3           “(B) to suspend or curtail trading in any  
4           contract; and

5           “(C) to require market participants in any  
6           contract to meet special margin requirements.

7           “(7) AVAILABILITY OF GENERAL INFORMA-  
8           TION.—The board of trade shall make available to  
9           market authorities, market participants, and the  
10          public accurate information concerning—

11          “(A) the terms and conditions of the con-  
12          tracts of the contract market; and

13          “(B)(i) the rules, regulations, and mecha-  
14          nisms for executing transactions on or through  
15          the facilities of the contract market; and

16          “(ii) the rules and specifications describing  
17          the operation of the contract market’s—

18                  “(I) electronic matching platform; or

19                  “(II) trade execution facility.

20          “(8) DAILY PUBLICATION OF TRADING INFOR-  
21          MATION.—The board of trade shall make public  
22          daily information on settlement prices, volume, open  
23          interest, and opening and closing ranges for actively  
24          traded contracts on the contract market.

25          “(9) EXECUTION OF TRANSACTIONS.—

1           “(A) IN GENERAL.—The board of trade  
2 shall provide a competitive, open, and efficient  
3 market and mechanism for executing trans-  
4 actions that protects the price discovery process  
5 of trading in the centralized market of the  
6 board of trade.

7           “(B) RULES.—The rules of the board of  
8 trade may authorize, for bona fide business  
9 purposes—

10                   “(i) transfer trades or office trades;

11                   “(ii) an exchange of—

12                           “(I) futures in connection with a  
13 cash commodity transaction;

14                           “(II) futures for cash commod-  
15 ities; or

16                           “(III) futures for swaps; or

17                   “(iii) a futures commission merchant,  
18 acting as principal or agent, to enter into  
19 or confirm the execution of a contract for  
20 the purchase or sale of a commodity for fu-  
21 ture delivery if the contract is reported, re-  
22 corded, or cleared in accordance with the  
23 rules of the contract market or a deriva-  
24 tives clearing organization.



1           “(12) PROTECTION OF MARKETS AND MARKET  
2 PARTICIPANTS.—The board of trade shall establish  
3 and enforce rules—

4                   “(A) to protect markets and market par-  
5 ticipants from abusive practices committed by  
6 any party, including abusive practices com-  
7 mitted by a party acting as an agent for a par-  
8 ticipant; and

9                   “(B) to promote fair and equitable trading  
10 on the contract market.

11           “(13) DISCIPLINARY PROCEDURES.—The board  
12 of trade shall establish and enforce disciplinary pro-  
13 cedures that authorize the board of trade to dis-  
14 cipline, suspend, or expel members or market par-  
15 ticipants that violate the rules of the board of trade,  
16 or similar methods for performing the same func-  
17 tions, including delegation of the functions to third  
18 parties.

19           “(14) DISPUTE RESOLUTION.—The board of  
20 trade shall establish and enforce rules regarding,  
21 and provide facilities for alternative dispute resolu-  
22 tion as appropriate for, market participants and any  
23 market intermediaries.

24           “(15) GOVERNANCE FITNESS STANDARDS.—  
25 The board of trade shall establish and enforce ap-



1           “(19) ANTITRUST CONSIDERATIONS.—Unless  
2           necessary or appropriate to achieve the purposes of  
3           this Act, the board of trade shall not—

4                   “(A) adopt any rule or taking any action  
5                   that results in any unreasonable restraint of  
6                   trade; or

7                   “(B) impose any material anticompetitive  
8                   burden on trading on the contract market.

9           “(20) SYSTEM SAFEGUARDS.—The board of  
10          trade shall—

11                   “(A) establish and maintain a program of  
12                   risk analysis and oversight to identify and mini-  
13                   mize sources of operational risk, through the  
14                   development of appropriate controls and proce-  
15                   dures, and the development of automated sys-  
16                   tems, that are reliable, secure, and have ade-  
17                   quate scalable capacity;

18                   “(B) establish and maintain emergency  
19                   procedures, backup facilities, and a plan for dis-  
20                   aster recovery that allow for the timely recovery  
21                   and resumption of operations and the fulfill-  
22                   ment of the responsibilities and obligations of  
23                   the board of trade; and

24                   “(C) periodically conduct tests to verify  
25                   that backup resources are sufficient to ensure

1 continued order processing and trade matching,  
2 price reporting, market surveillance, and main-  
3 tenance of a comprehensive and accurate audit  
4 trail.

5 “(21) FINANCIAL RESOURCES.—

6 “(A) IN GENERAL.—The board of trade  
7 shall have adequate financial, operational, and  
8 managerial resources to discharge each respon-  
9 sibility of the board of trade.

10 “(B) DETERMINATION OF ADEQUACY.—

11 The financial resources of the board of trade  
12 shall be considered to be adequate if the value  
13 of the financial resources exceeds the total  
14 amount that would enable the contract market  
15 to cover the operating costs of the contract  
16 market for a 1-year period, as calculated on a  
17 rolling basis.”.

18 **SEC. 736. MARGIN.**

19 Section 8a(7) of the Commodity Exchange Act (7  
20 U.S.C. 12a(7)) is amended—

21 (1) in subparagraph (C), by striking “, except-  
22 ing the setting of levels of margin”;

23 (2) by redesignating subparagraphs (D)  
24 through (F) as subparagraphs (E) through (G), re-  
25 spectively; and

1           (3) by inserting after subparagraph (C) the fol-  
2           lowing:

3                   “(D) margin requirements, provided that  
4           the rules, regulations, or orders shall—

5                           “(i) be limited to protecting the finan-  
6                           cial integrity of the derivatives clearing or-  
7                           ganization;

8                           “(ii) be designed for risk management  
9                           purposes to protect the financial integrity  
10                          of transactions; and

11                          “(iii) not set specific margin  
12                          amounts;”.

13 **SEC. 737. POSITION LIMITS.**

14           (a) **AGGREGATE POSITION LIMITS.**—Section 4a(a) of  
15 the Commodity Exchange Act (7 U.S.C. 6a(a)) is amend-  
16 ed—

17                   (1) by inserting after “(a)” the following:

18                           “(1) **IN GENERAL.**—”;

19                   (2) in the first sentence, by striking “on elec-  
20           tronic trading facilities with respect to a significant  
21           price discovery contract” and inserting “swaps that  
22           perform or affect a significant price discovery func-  
23           tion with respect to registered entities”;

24                   (3) in the second sentence—



1 (A) by inserting “, including any group or  
2 class of traders,” after “held by any person”;  
3 and

4 (B) by striking “on an electronic trading  
5 facility with respect to a significant price dis-  
6 covery contract,” and inserting “swaps traded  
7 on or subject to the rules of a designated con-  
8 tract market or a swap execution facility, or  
9 swaps not traded on or subject to the rules of  
10 a designated contract market or a swap execu-  
11 tion facility that performs a significant price  
12 discovery function with respect to a registered  
13 entity,”; and

14 (4) by adding at the end the following:

15 “(2) AGGREGATE POSITION LIMITS.—The Com-  
16 mission shall, by rule or regulation, establish limits  
17 (including related hedge exemption provisions) on  
18 the aggregate number or amount of positions in con-  
19 tracts based on the same underlying commodity (as  
20 defined by the Commission) that may be held by any  
21 person, including any group or class of traders, for  
22 each month across—

23 “(A) contracts listed by designated con-  
24 tract markets;

1           “(B) with respect to an agreement, con-  
2           tract, or transaction that settles against, or in  
3           relation to, any price (including the daily or  
4           final settlement price) of 1 or more contracts  
5           listed for trading on a registered entity, con-  
6           tracts traded on a foreign board of trade that  
7           provides members or other participants located  
8           in the United States with direct access to the  
9           electronic trading and order matching system of  
10          the foreign board of trade;

11          “(C) swaps traded on or subject to the  
12          rules of a swap execution facility; and

13          “(D) swaps not traded on or subject to the  
14          rules of a swap execution facility that perform  
15          or affect a significant price discovery function  
16          with respect to a registered entity.

17          “(3) SIGNIFICANT PRICE DISCOVERY FUNC-  
18          TION.—In making a determination as to whether a  
19          swap performs or affects a significant price dis-  
20          covery function with respect to a registered entity,  
21          the Commission shall consider, as appropriate, the  
22          following factors:

23                 “(A) PRICE LINKAGE.—The extent to  
24                 which the swap uses or otherwise relies on a  
25                 daily or final settlement price, or other major

1 price parameter, of another contract traded on  
2 a registered entity based on the same under-  
3 lying commodity, to value a position, transfer or  
4 convert a position, financially settle a position,  
5 or close out a position.

6 “(B) ARBITRAGE.—The extent to which  
7 the price for the swap is sufficiently related to  
8 the price of another contract traded on a reg-  
9 istered entity based on the same underlying  
10 commodity so as to permit market participants  
11 to effectively arbitrage between the markets by  
12 simultaneously maintaining positions or exe-  
13 cuting trades in the swaps on a frequent and  
14 recurring basis.

15 “(C) MATERIAL PRICE REFERENCE.—The  
16 extent to which, on a frequent and recurring  
17 basis, bids, offers, or transactions in a contract  
18 traded on a registered entity are directly based  
19 on, or are determined by referencing, the price  
20 generated by the swap.

21 “(D) MATERIAL LIQUIDITY.—The extent  
22 to which the volume of swaps being traded in  
23 the commodity is sufficient to have a material  
24 effect on another contract traded on a reg-  
25 istered entity.

1           “(E) OTHER MATERIAL FACTORS.—Such  
2           other material factors as the Commission speci-  
3           fies by rule or regulation as relevant to deter-  
4           mine whether a swap serves a significant price  
5           discovery function with respect to a contract  
6           traded on a registered entity.

7           “(4) EXEMPTIONS.—The Commission, by rule,  
8           regulation, or order, may exempt, conditionally or  
9           unconditionally, any person or class of persons, any  
10          swap or class of swaps, or any transaction or class  
11          of transactions from any requirement that the Com-  
12          mission establishes under this section with respect to  
13          position limits.”.

14          (b) CONFORMING AMENDMENTS.—Section 4a(b) of  
15          the Commodity Exchange Act (7 U.S.C. 6a(b)) is amend-  
16          ed—

17                 (1) in paragraph (1), by striking “or derivatives  
18                 transaction execution facility or facilities or elec-  
19                 tronic trading facility” and inserting “or swap exe-  
20                 cution facility or facilities”; and

21                 (2) in paragraph (2), by striking “or derivatives  
22                 transaction execution facility or facilities or elec-  
23                 tronic trading facility” and inserting “or swap exe-  
24                 cution facility”.

1 **SEC. 738. FOREIGN BOARDS OF TRADE.**

2 (a) IN GENERAL.—Section 4(b) of the Commodity  
3 Exchange Act (7 U.S.C. 6(b)) is amended—

4 (1) in the first sentence, by striking “The Com-  
5 mission” and inserting the following:

6 “(2) PERSONS LOCATED IN THE UNITED  
7 STATES.—

8 “(A) IN GENERAL.—The Commission”;

9 (2) in the second sentence, by striking “Such  
10 rules and regulations” and inserting the following:

11 “(B) DIFFERENT REQUIREMENTS.—Rules  
12 and regulations described in subparagraph  
13 (A)”;

14 (3) in the third sentence—

15 (A) by striking “No rule or regulation”  
16 and inserting the following:

17 “(C) PROHIBITION.—Except as provided in  
18 paragraphs (1) and (2), no rule or regulation”;

19 (B) by striking “that (1) requires” and in-  
20 serting the following: “that—

21 “(i) requires”; and

22 (C) by striking “market, or (2) governs”  
23 and inserting the following: “market; or

24 “(ii) governs”; and

25 (4) by inserting before paragraph (2) (as des-  
26 ignated by paragraph (1)) the following:

1           “(1) FOREIGN BOARDS OF TRADE.—

2                   “(A) IN GENERAL.—It shall be unlawful  
3 for a foreign board of trade to provide to the  
4 members of the foreign board of trade or other  
5 participants located in the United States direct  
6 access to the electronic trading and order-  
7 matching system of the foreign board of trade  
8 with respect to an agreement, contract, or  
9 transaction that settles against any price (in-  
10 cluding the daily or final settlement price) of 1  
11 or more contracts listed for trading on a reg-  
12 istered entity, unless the Commission deter-  
13 mines that—

14                           “(i) the foreign board of trade makes  
15 public daily trading information regarding  
16 the agreement, contract, or transaction  
17 that is comparable to the daily trading in-  
18 formation published by the registered enti-  
19 ty for the 1 or more contracts against  
20 which the agreement, contract, or trans-  
21 action traded on the foreign board of trade  
22 settles; and

23                           “(ii) the foreign board of trade (or the  
24 foreign futures authority that oversees the  
25 foreign board of trade)—

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1           “(I) adopts position limits (in-  
2           cluding related hedge exemption provi-  
3           sions) for the agreement, contract, or  
4           transaction that are comparable to the  
5           position limits (including related  
6           hedge exemption provisions) adopted  
7           by the registered entity for the 1 or  
8           more contracts against which the  
9           agreement, contract, or transaction  
10          traded on the foreign board of trade  
11          settles;

12           “(II) has the authority to require  
13          or direct market participants to limit,  
14          reduce, or liquidate any position the  
15          foreign board of trade (or the foreign  
16          futures authority that oversees the  
17          foreign board of trade) determines to  
18          be necessary to prevent or reduce the  
19          threat of price manipulation, excessive  
20          speculation as described in section 4a,  
21          price distortion, or disruption of deliv-  
22          ery or the cash settlement process;

23           “(III) agrees to promptly notify  
24          the Commission, with regard to the  
25          agreement, contract, or transaction

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1 that settles against any price (includ-  
2 ing the daily or final settlement price)  
3 of 1 or more contracts listed for trad-  
4 ing on a registered entity, of any  
5 change regarding—

6 “(aa) the information that  
7 the foreign board of trade will  
8 make publicly available;

9 “(bb) the position limits  
10 that the foreign board of trade or  
11 foreign futures authority will  
12 adopt and enforce;

13 “(cc) the position reductions  
14 required to prevent manipulation,  
15 excessive speculation as described  
16 in section 4a, price distortion, or  
17 disruption of delivery or the cash  
18 settlement process; and

19 “(dd) any other area of in-  
20 terest expressed by the Commis-  
21 sion to the foreign board of trade  
22 or foreign futures authority;

23 “(IV) provides information to the  
24 Commission regarding large trader  
25 positions in the agreement, contract,



1 or transaction that is comparable to  
2 the large trader position information  
3 collected by the Commission for the 1  
4 or more contracts against which the  
5 agreement, contract, or transaction  
6 traded on the foreign board of trade  
7 settles; and

8 “(V) provides the Commission  
9 such information as is necessary to  
10 publish reports on aggregate trader  
11 positions for the agreement, contract,  
12 or transaction traded on the foreign  
13 board of trade that are comparable to  
14 such reports on aggregate trader posi-  
15 tions for the 1 or more contracts  
16 against which the agreement, con-  
17 tract, or transaction traded on the  
18 foreign board of trade settles.

19 “(B) EXISTING FOREIGN BOARDS OF  
20 TRADE.—Subparagraph (A) shall not be effec-  
21 tive with respect to any foreign board of trade  
22 to which, prior to the date of enactment of this  
23 paragraph, the Commission granted direct ac-  
24 cess permission until the date that is 180 days  
25 after that date of enactment.”.

1 (b) LIABILITY OF REGISTERED PERSONS TRADING  
2 ON A FOREIGN BOARD OF TRADE.—Section 4 of the Com-  
3 modity Exchange Act (7 U.S.C. 6) is amended—

4 (1) in subsection (a), in the matter preceding  
5 paragraph (1), by inserting “or by subsection (e)”  
6 after “Unless exempted by the Commission pursuant  
7 to subsection (c)”;

8 (2) by adding at the end the following:

9 “(e) LIABILITY OF REGISTERED PERSONS TRADING  
10 ON A FOREIGN BOARD OF TRADE.—A person registered  
11 with the Commission, or exempt from registration by the  
12 Commission, under this Act may not be found to have vio-  
13 lated subsection (a) with respect to a transaction in, or  
14 in connection with, a contract of sale of a commodity for  
15 future delivery if the person has reason to believe that the  
16 transaction and the contract is made on or subject to the  
17 rules of a foreign board of trade that has complied with  
18 paragraphs (1) and (2) of subsection (b).”.

19 (c) CONTRACT ENFORCEMENT FOR FOREIGN FU-  
20 TURES CONTRACTS.—Section 22(a) of the Commodity Ex-  
21 change Act (7 U.S.C. 25(a)) (as amended by section 739)  
22 is amended by adding at the end the following:

23 “(6) CONTRACT ENFORCEMENT FOR FOREIGN  
24 FUTURES CONTRACTS.—A contract of sale of a com-  
25 modity for future delivery traded or executed on or

1 through the facilities of a board of trade, exchange,  
2 or market located outside the United States for pur-  
3 poses of section 4(a) shall not be void, voidable, or  
4 unenforceable, and a party to such a contract shall  
5 not be entitled to rescind or recover any payment  
6 made with respect to the contract, based on the fail-  
7 ure of the foreign board of trade to comply with any  
8 provision of this Act.”.

9 **SEC. 739. LEGAL CERTAINTY FOR SWAPS.**

10 Section 22(a) of the Commodity Exchange Act (7  
11 U.S.C. 25(a)) is amended by striking paragraph (4) and  
12 inserting the following:

13 “(4) CONTRACT ENFORCEMENT BETWEEN ELI-  
14 GIBLE COUNTERPARTIES.—

15 “(A) IN GENERAL.—No hybrid instrument  
16 sold to any investor shall be void, voidable, or  
17 unenforceable, and no party to a hybrid instru-  
18 ment shall be entitled to rescind, or recover any  
19 payment made with respect to, the hybrid in-  
20 strument under this section or any other provi-  
21 sion of Federal or State law, based solely on the  
22 failure of the hybrid instrument to comply with  
23 the terms or conditions of section 2(f) or regu-  
24 lations of the Commission.

1           “(B) SWAPS.—No agreement, contract, or  
2           transaction between eligible contract partici-  
3           pants or persons reasonably believed to be eligi-  
4           ble contract participants shall be void, voidable,  
5           or unenforceable, and no party to an agree-  
6           ment, contract, or transaction shall be entitled  
7           to rescind, or recover any payment made with  
8           respect to, the agreement, contract, or trans-  
9           action under this section or any other provision  
10          of Federal or State law, based solely on the fail-  
11          ure of the agreement, contract, or transaction—

12                   “(i) to meet the definition of a swap  
13                   under section 1a; or

14                   “(ii) to be cleared in accordance with  
15                   section 2(h)(1).

16          “(5) LEGAL CERTAINTY FOR LONG-TERM  
17          SWAPS ENTERED INTO BEFORE THE DATE OF EN-  
18          ACTMENT OF THE WALL STREET TRANSPARENCY  
19          AND ACCOUNTABILITY ACT OF 2010.—

20                   “(A) IN GENERAL.—Any swap entered into  
21                   before the date of enactment of the Wall Street  
22                   Transparency and Accountability Act of 2010,  
23                   the terms of which have not expired as of the  
24                   date of enactment, shall not be subject to the

1           mandatory clearing requirements under this  
2           Act.

3           “(B) EFFECT ON SWAPS.—Unless specifi-  
4           cally reserved in the applicable bilateral trading  
5           agreement, neither the enactment of the Wall  
6           Street Transparency and Accountability Act of  
7           2010, nor any requirement under that Act or  
8           an amendment made by that Act, shall con-  
9           stitute a termination event, force majeure, ille-  
10          gality, increased costs, regulatory change, or  
11          similar event under a bilateral trading agree-  
12          ment (including any related credit support ar-  
13          rangement) that would permit a party to termi-  
14          nate, renegotiate, modify, amend, or supple-  
15          ment 1 or more transactions under the bilateral  
16          trading agreement.

17          “(C) POSITION LIMITS.—Any position limit  
18          established under the Wall Street Transparency  
19          and Accountability Act of 2010 shall not apply  
20          to a position acquired in good faith prior to the  
21          effective date of any rule, regulation, or order  
22          under the Act that establishes the position  
23          limit; provided, however, that such positions  
24          shall be attributed to the trader if the trader’s

1 position is increased after the effective date of  
2 such position limit rule, regulation, or order.”.

3 **SEC. 740. MULTILATERAL CLEARING ORGANIZATIONS.**

4 Sections 408 and 409 of the Federal Deposit Insur-  
5 ance Corporation Improvement Act of 1991 (12 U.S.C.  
6 4421, 4422) are repealed.

7 **SEC. 741. ENFORCEMENT.**

8 (a) ENFORCEMENT AUTHORITY.—The Commodity  
9 Exchange Act is amended by inserting after section 4b (7  
10 U.S.C. 6b) the following:

11 **“SEC. 4b-1. ENFORCEMENT AUTHORITY.**

12 “(a) COMMISSION.—Except as provided in sub-  
13 sections (b), (c), and (d), the Commission shall have pri-  
14 mary authority to enforce the amendments made by the  
15 Wall Street Transparency and Accountability Act of 2010  
16 with respect to any person.

17 “(b) APPROPRIATE FEDERAL BANKING AGENCIES.—

18 The appropriate Federal banking agency for swap dealers  
19 or major swap participants that are depository institu-  
20 tions, as that term is defined under section 3 of the Fed-  
21 eral Deposit Insurance Act (12 U.S.C. 1813), shall have  
22 exclusive authority to enforce the provisions of section  
23 4s(e) and other prudential requirements of this Act, with  
24 respect to depository institutions that are swap dealers or  
25 major swap participants.

1 “(c) REFERRALS.—

2 “(1) PRUDENTIAL REGULATORS.—If the pru-  
3 dential regulator for a swap dealer or major swap  
4 participant has cause to believe that the swap dealer  
5 or major swap participant, or any affiliate or divi-  
6 sion of the swap dealer or major swap participant,  
7 may have engaged in conduct that constitutes a vio-  
8 lation of the nonprudential requirements of this Act  
9 (including section 4s or rules adopted by the Com-  
10 mission under that section), the prudential regulator  
11 shall promptly notify the Commission in a written  
12 report that includes—

13 “(A) a request that the Commission ini-  
14 tiate an enforcement proceeding under this Act;  
15 and

16 “(B) an explanation of the facts and cir-  
17 cumstances that led to the preparation of the  
18 written report.

19 “(2) COMMISSION.—If the Commission has  
20 cause to believe that a swap dealer or major swap  
21 participant that has a prudential regulator may have  
22 engaged in conduct that constitutes a violation of  
23 any prudential requirement of section 4s or rules  
24 adopted by the Commission under that section, the

1 Commission may notify the prudential regulator of  
2 the conduct in a written report that includes—

3 “(A) a request that the prudential regu-  
4 lator initiate an enforcement proceeding under  
5 this Act or any other Federal law (including  
6 regulations); and

7 “(B) an explanation of the concerns of the  
8 Commission, and a description of the facts and  
9 circumstances, that led to the preparation of  
10 the written report.

11 “(d) BACKSTOP ENFORCEMENT AUTHORITY.—

12 “(1) INITIATION OF ENFORCEMENT PRO-  
13 CEEDING BY PRUDENTIAL REGULATOR.—If the  
14 Commission does not initiate an enforcement pro-  
15 ceeding before the end of the 90-day period begin-  
16 ning on the date on which the Commission receives  
17 a written report under subsection (c)(1), the pruden-  
18 tial regulator may initiate an enforcement pro-  
19 ceeding.

20 “(2) INITIATION OF ENFORCEMENT PRO-  
21 CEEDING BY COMMISSION.—If the prudential regu-  
22 lator does not initiate an enforcement proceeding be-  
23 fore the end of the 90-day period beginning on the  
24 date on which the prudential regulator receives a



1 written report under subsection (c)(2), the Commis-  
2 sion may initiate an enforcement proceeding.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 4b of the Commodity Exchange Act  
5 (7 U.S.C. 6b) is amended—

6 (A) in subsection (a)(2), by striking “or  
7 other agreement, contract, or transaction sub-  
8 ject to paragraphs (1) and (2) of section  
9 5a(g),” and inserting “or swap,”;

10 (B) in subsection (b), by striking “or other  
11 agreement, contract or transaction subject to  
12 paragraphs (1) and (2) of section 5a(g),” and  
13 inserting “or swap,”; and

14 (C) by adding at the end the following:

15 “(e) It shall be unlawful for any person, directly or  
16 indirectly, by the use of any means or instrumentality of  
17 interstate commerce, or of the mails, or of any facility of  
18 any registered entity, in or in connection with any order  
19 to make, or the making of, any contract of sale of any  
20 commodity for future delivery (or option on such a con-  
21 tract), or any swap, on a group or index of securities (or  
22 any interest therein or based on the value thereof)—

23 “(1) to employ any device, scheme, or artifice to  
24 defraud;

1           “(2) to make any untrue statement of a mate-  
2           rial fact or to omit to state a material fact necessary  
3           in order to make the statements made, in the light  
4           of the circumstances under which they were made,  
5           not misleading; or

6           “(3) to engage in any act, practice, or course of  
7           business which operates or would operate as a fraud  
8           or deceit upon any person.”.

9           (2) Section 4c(a)(1) of the Commodity Ex-  
10          change Act (7 U.S.C. 6c(a)(1)) is amended by in-  
11          serting “or swap” before “if the transaction is used  
12          or may be used”.

13          (3) Section 6(c) of the Commodity Exchange  
14          Act (7 U.S.C. 9) is amended in the first sentence by  
15          inserting “or of any swap,” before “or has willfully  
16          made”.

17          (4) Section 6(d) of the Commodity Exchange  
18          Act (7 U.S.C. 13b) is amended in the first sentence,  
19          in the matter preceding the proviso, by inserting “or  
20          of any swap,” before “or otherwise is violating”.

21          (5) Section 6c(a) of the Commodity Exchange  
22          Act (7 U.S.C. 13a-1(a)) is amended in the matter  
23          preceding the proviso by inserting “or any swap”  
24          after “commodity for future delivery”.

1           (6) Section 9 of the Commodity Exchange Act  
2           (7 U.S.C. 13) is amended—

3           (A) in subsection (a)—

4                 (i) in paragraph (2), by inserting “or  
5                 of any swap,” before “or to corner”; and

6                 (ii) in paragraph (4), by inserting  
7                 “swap data repository,” before “or futures  
8                 association” and

9           (B) in subsection (e)(1)—

10                 (i) by inserting “swap data reposi-  
11                 tory,” before “or registered futures asso-  
12                 ciation”; and

13                 (ii) by inserting “, or swaps,” before  
14                 “on the basis”.

15           (7) Section 9(a) of the Commodity Exchange  
16           Act (7 U.S.C. 13(a)) is amended by adding at the  
17           end the following:

18                 “(6) Any person to abuse the end user clearing  
19                 exemption under section 2(h)(4), as determined by  
20                 the Commission.”.

21           (8) Section 8(b) of the Federal Deposit Insur-  
22           ance Act (12 U.S.C. 1818(b)) is amended by adding  
23           at the end the following:

24                 “(11) SWAPS.—

1           “(A) IN GENERAL.—Subject to subpara-  
2 graph (B), this section shall apply to any swap  
3 dealer, major swap participant, security-based  
4 swap dealer, major security-based swap partici-  
5 pant, derivatives clearing organization, swap  
6 data repository, or swap execution facility, re-  
7 gardless of whether the dealer, participant, or-  
8 ganization, repository, or facility is an insured  
9 depository institution, for which the Board, the  
10 Corporation, or the Office of the Comptroller of  
11 the Currency is the appropriate Federal bank-  
12 ing agency or prudential regulator for purposes  
13 of the amendments made by the Wall Street  
14 Transparency and Accountability Act of 2010.

15           “(B) LIMITATION.—The authority de-  
16 scribed in subparagraph (A) shall be limited by,  
17 and exercised in accordance with, section 4b–1  
18 of the Commodity Exchange Act.”.

19           (9) Section 2(c)(2)(B) of the Commodity Ex-  
20 change Act (7 U.S.C. 2(c)(2)(B)) is amended—

21           (A) by striking “(dd),” each place it ap-  
22 pears;

23           (B) in clause (iii), by inserting “, and ac-  
24 counts or pooled investment vehicles described  
25 in clause (vi),” before “shall be subject to”; and

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

2 “(vi) This Act applies to, and the  
3 Commission shall have jurisdiction over, an  
4 account or pooled investment vehicle that  
5 is offered for the purpose of trading, or  
6 that trades, any agreement, contract, or  
7 transaction in foreign currency described  
8 in clause (i).”.

9 (10) Section 2(c)(2)(C) of the Commodity Ex-  
10 change Act (7 U.S.C. 2(c)(2)(C)) is amended—

11 (A) by striking “(dd),” each place it ap-  
12 pears;

13 (B) in clause (ii)(I), by inserting “, and ac-  
14 counts or pooled investment vehicles described  
15 in clause (vii),” before “shall be subject to”;  
16 and

17 (C) by adding at the end the following:

18 “(vii) This Act applies to, and the  
19 Commission shall have jurisdiction over, an  
20 account or pooled investment vehicle that  
21 is offered for the purpose of trading, or  
22 that trades, any agreement, contract, or  
23 transaction in foreign currency described  
24 in clause (i).”.



1 person that is not an eligible contract  
2 participant or eligible commercial en-  
3 tity; and

4 “(II) entered into, or offered  
5 (even if not entered into), on a lever-  
6 aged or margined basis, or financed  
7 by the offeror, the counterparty, or a  
8 person acting in concert with the of-  
9 feror or counterparty on a similar  
10 basis.

11 “(ii) EXCEPTIONS.—This subpara-  
12 graph shall not apply to—

13 “(I) an agreement, contract, or  
14 transaction described in paragraph (1)  
15 or subparagraphs (A), (B), or (C), in-  
16 cluding any agreement, contract, or  
17 transaction specifically excluded from  
18 subparagraph (A), (B), or (C);

19 “(II) any security;

20 “(III) a contract of sale that—

21 “(aa) results in actual deliv-  
22 ery within 28 days or such other  
23 period as the Commission may  
24 determine by rule or regulation  
25 based upon the typical commer-

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1           cial practice in cash or spot mar-  
2           kets for the commodity involved;  
3           or

4                   “(bb) creates an enforceable  
5           obligation to deliver between a  
6           seller and a buyer that have the  
7           ability to deliver and accept deliv-  
8           ery, respectively, in connection  
9           with the line of business of the  
10          seller and buyer; or

11                   “(IV) an agreement, contract, or  
12          transaction that is listed on a national  
13          securities exchange registered under  
14          section 6(a) of the Securities Ex-  
15          change Act of 1934 (15 U.S.C.  
16          78f(a)); or

17                   “(V) an identified banking prod-  
18          uct, as defined in section 402(b) of  
19          the Legal Certainty for Bank Prod-  
20          ucts Act of 2000 (7 U.S.C.27(b)).

21                   “(iii) ENFORCEMENT.—Sections 4(a),  
22          4(b), and 4b apply to any agreement, con-  
23          tract, or transaction described in clause (i),  
24          as if the agreement, contract, or trans-



1 action was a contract of sale of a com-  
2 modity for future delivery.

3 “(iv) ELIGIBLE COMMERCIAL ENTI-  
4 TY.—For purposes of this subparagraph,  
5 an agricultural producer, packer, or han-  
6 dler shall be considered to be an eligible  
7 commercial entity for any agreement, con-  
8 tract, or transaction for a commodity in  
9 connection with the line of business of the  
10 agricultural producer, packer, or handler.

11 “(v) ACTUAL DELIVERY.—For pur-  
12 poses of clause (ii)(III), the term ‘actual  
13 delivery’ does not include delivery to a  
14 third party in a financed transaction in  
15 which the commodity is held as collat-  
16 eral.”.

17 (b) GRAMM-LEACH-BLILEY ACT.—Section 206(a) of  
18 the Gramm-Leach-Bliley Act (Public Law 106–102; 15  
19 U.S.C. 78c note) is amended, in the matter preceding  
20 paragraph (1), by striking “For purposes of” and insert-  
21 ing “Except as provided in subsection (e), for purposes  
22 of”.

23 (c) CONFORMING AMENDMENTS RELATING TO RE-  
24 TAIL FOREIGN EXCHANGE TRANSACTIONS.—

1           (1) Section 2(c)(2)(B)(i)(II) of the Commodity  
2 Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amend-  
3 ed—

4           (A) in item (aa), by inserting “United  
5 States” before “financial institution”;

6           (B) by striking items (dd) and (ff);

7           (C) by redesignating items (ee) and (gg) as  
8 items (dd) and (ff), respectively; and

9           (D) in item (dd) (as so redesignated), by  
10 striking the semicolon and inserting “; or”.

11           (2) Section 2(c)(2) of the Commodity Exchange  
12 Act (7 U.S.C. 2(c)(2)) (as amended by subsection  
13 (a)(2)) is amended by adding at the end the fol-  
14 lowing:

15           “(E) PROHIBITION.—

16           “(i) DEFINITION OF FEDERAL REGU-  
17 LATORY AGENCY.—In this subparagraph,  
18 the term ‘Federal regulatory agency’  
19 means—

20           “(I) the Commission;

21           “(II) the Securities and Ex-  
22 change Commission;

23           “(III) an appropriate Federal  
24 banking agency;

1                   “(IV) the National Credit Union  
2                   Association; and

3                   “(V) the Farm Credit Adminis-  
4                   tration.

5                   “(ii) PROHIBITION.—A person de-  
6                   scribed in subparagraph (B)(i)(II) for  
7                   which there is a Federal regulatory agency  
8                   shall not offer to, or enter into with, a per-  
9                   son that is not an eligible contract partici-  
10                  pant, any agreement, contract, or trans-  
11                  action in foreign currency described in sub-  
12                  paragraph (B)(i)(I) except pursuant to a  
13                  rule or regulation of a Federal regulatory  
14                  agency allowing the agreement, contract,  
15                  or transaction under such terms and condi-  
16                  tions as the Federal regulatory agency  
17                  shall prescribe.

18                  “(iii) REQUIREMENTS OF RULES AND  
19                  REGULATIONS.—

20                  “(I) IN GENERAL.—The rules  
21                  and regulations described in clause  
22                  (ii) shall prescribe appropriate re-  
23                  quirements with respect to—

24                                 “(aa) disclosure;

25                                 “(bb) recordkeeping;

1 “(cc) capital and margin;  
2 “(dd) reporting;  
3 “(ee) business conduct;  
4 “(ff) documentation; and  
5 “(gg) such other standards  
6 or requirements as the Federal  
7 regulatory agency shall determine  
8 to be necessary.

9 “(II) TREATMENT.—The rules or  
10 regulations described in clause (ii)  
11 shall treat all agreements, contracts,  
12 and transactions in foreign currency  
13 described in subparagraph (B)(i)(I),  
14 and all agreements, contracts, and  
15 transactions in foreign currency that  
16 are functionally or economically simi-  
17 lar to agreements, contracts, or trans-  
18 actions described in subparagraph  
19 (B)(i)(I), similarly.”.

20 **SEC. 743. OTHER AUTHORITY.**

21 Unless otherwise provided by the amendments made  
22 by this subtitle, the amendments made by this subtitle do  
23 not divest any appropriate Federal banking agency, the  
24 Commodity Futures Trading Commission, the Securities  
25 and Exchange Commission, or other Federal or State

1 agency of any authority derived from any other applicable  
2 law.

3 **SEC. 744. RESTITUTION REMEDIES.**

4 Section 6c(d) of the Commodity Exchange Act (7  
5 U.S.C. 13a-1(d)) is amended by adding at the end the  
6 following:

7 “(3) **EQUITABLE REMEDIES.**—In any action  
8 brought under this section, the Commission may  
9 seek, and the court shall have jurisdiction to impose,  
10 on a proper showing, on any person found in the ac-  
11 tion to have committed any violation, equitable rem-  
12 edies including—

13 “(A) restitution to persons who have sus-  
14 tained losses proximately caused by such viola-  
15 tion (in the amount of such losses); and

16 “(B) disgorgement of gains received in  
17 connection with such violation.”.

18 **SEC. 745. ENHANCED COMPLIANCE BY REGISTERED ENTI-**  
19 **TIES.**

20 (a) **EFFECT OF INTERPRETATION.**—Section 5c(a) of  
21 the Commodity Exchange Act (7 U.S.C. 7a-2(a)) is  
22 amended by striking paragraph (2) and inserting the fol-  
23 lowing:

24 “(2) **EFFECT OF INTERPRETATION.**—An inter-  
25 pretation issued under paragraph (1) may provide

1 the exclusive means for complying with each section  
2 described in paragraph (1).”.

3 (b) NEW CONTRACTS, NEW RULES, AND RULE  
4 AMENDMENTS.—

5 (1) IN GENERAL.—A registered entity may elect  
6 to list for trading or accept for clearing any new  
7 contract, or other instrument, or may elect to ap-  
8 prove and implement any new rule or rule amend-  
9 ment, by providing to the Commission (and the Sec-  
10 retary of the Treasury, in the case of a contract of  
11 sale of a government security for future delivery (or  
12 option on such a contract) or a rule or rule amend-  
13 ment specifically related to such a contract) a writ-  
14 ten certification that the new contract or instrument  
15 or clearing of the new contract or instrument, new  
16 rule, or rule amendment complies with this Act (in-  
17 cluding regulations under this Act).

18 (2) RULE REVIEW.—The new rule or rule  
19 amendment described in paragraph (1) shall become  
20 effective, pursuant to the certification of the reg-  
21 istered entity, on the date that is 10 business days  
22 after the date on which the Commission receives the  
23 certification (or such shorter period as determined  
24 by the Commission by rule or regulation) unless the  
25 Commission notifies the registered entity within such

1 time that it is staying the certification because there  
2 exist novel or complex issues that require additional  
3 time to analyze, an inadequate explanation by the  
4 submitting registered entity, or a potential inconsis-  
5 tency with this Act (including regulations under this  
6 Act).

7 (3) STAY OF CERTIFICATION FOR RULES.—

8 (A) A notification by the Commission pur-  
9 suant to paragraph (2) shall stay the certifi-  
10 cation of the new rule or rule amendment for  
11 up to an additional 90 days from the date of  
12 the notification.

13 (B) A rule or rule amendment subject to  
14 a stay pursuant to subparagraph (A) shall be-  
15 come effective, pursuant to the certification of  
16 the registered entity, at the expiration of the  
17 period described in subparagraph (A) unless the  
18 Commission—

19 (i) withdraws the stay prior to that  
20 time; or

21 (ii) notifies the registered entity dur-  
22 ing such period that it objects to the pro-  
23 posed certification on the grounds that it is  
24 inconsistent with this Act (including regu-  
25 lations under this Act).

1 (4) PRIOR APPROVAL.—

2 (A) IN GENERAL.—A registered entity may  
3 request that the Commission grant prior ap-  
4 proval to any new contract or other instrument,  
5 new rule, or rule amendment.

6 (B) PRIOR APPROVAL REQUIRED.—Not-  
7 withstanding any other provision of this section,  
8 a designated contract market shall submit to  
9 the Commission for prior approval each rule  
10 amendment that materially changes the terms  
11 and conditions, as determined by the Commis-  
12 sion, in any contract of sale for future delivery  
13 of a commodity specifically enumerated in sec-  
14 tion 1a(10) (or any option thereon) traded  
15 through its facilities if the rule amendment ap-  
16 plies to contracts and delivery months which  
17 have already been listed for trading and have  
18 open interest.

19 (C) DEADLINE.—If prior approval is re-  
20 quested under subparagraph (A), the Commis-  
21 sion shall take final action on the request not  
22 later than 90 days after submission of the re-  
23 quest, unless the person submitting the request  
24 agrees to an extension of the time limitation es-  
25 tablished under this subparagraph.



1 (5) APPROVAL.—

2 (A) RULES.—The Commission shall ap-  
3 prove a new rule, or rule amendment, of a reg-  
4 istered entity unless the Commission finds that  
5 the new rule, or rule amendment, is incon-  
6 sistent with this subtitle (including regulations).

7 (B) CONTRACTS AND INSTRUMENTS.—The  
8 Commission shall approve a new contract or  
9 other instrument unless the Commission finds  
10 that the new contract or other instrument  
11 would violate this subtitle (including regula-  
12 tions).

13 (C) SPECIAL RULE FOR REVIEW AND AP-  
14 PROVAL OF EVENT CONTRACTS AND SWAPS  
15 CONTRACTS.—

16 (i) EVENT CONTRACTS.—In connec-  
17 tion with the listing of agreements, con-  
18 tracts, transactions, or swaps in excluded  
19 commodities that are based upon the oc-  
20 currence, extent of an occurrence, or con-  
21 tingency (other than a change in the price,  
22 rate, value, or levels of a commodity de-  
23 scribed in section 1a(2)(i)), by a des-  
24 ignated contract market or swap execution  
25 facility, the Commission may determine

1           that such agreements, contracts, or trans-  
2           actions are contrary to the public interest  
3           if the agreements, contracts, or trans-  
4           actions involve—

5                   (I) activity that is unlawful under  
6                   any Federal or State law;

7                   (II) terrorism;

8                   (III) assassination;

9                   (IV) war;

10                  (V) gaming; or

11                  (VI) other similar activity deter-  
12                  mined by the Commission, by rule or  
13                  regulation, to be contrary to the pub-  
14                  lic interest.

15                  (ii) PROHIBITION.—No agreement,  
16                  contract, or transaction determined by the  
17                  Commission to be contrary to the public  
18                  interest under clause (i) may be listed or  
19                  made available for clearing or trading on  
20                  or through a registered entity.

21                  (iii) SWAPS CONTRACTS.—

22                   (I) IN GENERAL.—In connection  
23                   with the listing of a swap for clearing  
24                   by a derivatives clearing organization,  
25                   the Commission shall determine, upon

1 request or on its own motion, the ini-  
2 tial eligibility, or the continuing quali-  
3 fication, of a derivatives clearing orga-  
4 nization to clear such a swap under  
5 those criteria, conditions, or rules that  
6 the Commission, in its discretion, de-  
7 termines.

8 (II) REQUIREMENTS.—Any such  
9 criteria, conditions, or rules shall con-  
10 sider—

11 (aa) the financial integrity  
12 of the derivatives clearing organi-  
13 zation; and

14 (bb) any other factors which  
15 the Commission determines may  
16 be appropriate.

17 (iv) DEADLINE.—The Commission  
18 shall take final action under clauses (i)  
19 and (ii) in not later than 90 days from the  
20 commencement of its review unless the  
21 party seeking to offer the contract or swap  
22 agrees to an extension of this time limita-  
23 tion.

1           (c) VIOLATION OF CORE PRINCIPLES.—Section 5c of  
2 the Commodity Exchange Act (7 U.S.C. 7a–2) is amended  
3 by striking subsection (d).

4 **SEC. 746. INSIDER TRADING.**

5           Section 4c(a) of the Commodity Exchange Act (7  
6 U.S.C. 6c(a)) is amended by adding at the end the fol-  
7 lowing:

8                   “(3) CONTRACT OF SALE.—It shall be unlawful  
9           for any employee or agent of any department or  
10           agency of the Federal Government who, by virtue of  
11           the employment or position of the employee or  
12           agent, acquires information that may affect or tend  
13           to affect the price of any commodity in interstate  
14           commerce, or for future delivery, or any swap, and  
15           which information has not been disseminated by the  
16           department or agency of the Federal Government  
17           holding or creating the information in a manner  
18           which makes it generally available to the trading  
19           public, or disclosed in a criminal, civil, or adminis-  
20           trative hearing, or in a congressional, administrative,  
21           or Government Accountability Office report, hearing,  
22           audit, or investigation, to use the information in his  
23           personal capacity and for personal gain to enter  
24           into, or offer to enter into—

1           “(A) a contract of sale of a commodity for  
2           future delivery (or option on such a contract);

3           “(B) an option (other than an option exe-  
4           cuted or traded on a national securities ex-  
5           change registered pursuant to section 6(a) of  
6           the Securities Exchange Act of 1934 (15  
7           U.S.C. 78f(a)); or

8           “(C) a swap.

9           “(4) NONPUBLIC INFORMATION.—

10           “(A) IMPARTING OF NONPUBLIC INFORMA-  
11           TION.—It shall be unlawful for any employee or  
12           agent of any department or agency of the Fed-  
13           eral Government who, by virtue of the employ-  
14           ment or position of the employee or agent, ac-  
15           quires information that may affect or tend to  
16           affect the price of any commodity in interstate  
17           commerce, or for future delivery, or any swap,  
18           and which information has not been dissemi-  
19           nated by the department or agency of the Fed-  
20           eral Government holding or creating the infor-  
21           mation in a manner which makes it generally  
22           available to the trading public, or disclosed in  
23           a criminal, civil, or administrative hearing, or in  
24           a congressional, administrative, or Government  
25           Accountability Office report, hearing, audit, or

1 investigation, to impart the information in his  
2 personal capacity and for personal gain with in-  
3 tent to assist another person, directly or indi-  
4 rectly, to use the information to enter into, or  
5 offer to enter into—

6 “(i) a contract of sale of a commodity  
7 for future delivery (or option on such a  
8 contract);

9 “(ii) an option (other than an option  
10 executed or traded on a national securities  
11 exchange registered pursuant to section  
12 6(a) of the Securities Exchange Act of  
13 1934 (15 U.S.C. 78f(a)); or

14 “(iii) a swap.

15 “(B) KNOWING USE.—It shall be unlawful  
16 for any person who receives information im-  
17 parted by any employee or agent of any depart-  
18 ment or agency of the Federal Government as  
19 described in subparagraph (A) to knowingly use  
20 such information to enter into, or offer to enter  
21 into—

22 “(i) a contract of sale of a commodity  
23 for future delivery (or option on such a  
24 contract);

1                   “(ii) an option (other than an option  
2                   executed or traded on a national securities  
3                   exchange registered pursuant to section  
4                   6(a) of the Securities Exchange Act of  
5                   1934 (15 U.S.C. 78f(a)); or

6                   “(iii) a swap.

7                   “(C) THEFT OF NONPUBLIC INFORMA-  
8                   TION.—It shall be unlawful for any person to  
9                   steal, convert, or misappropriate, by any means  
10                  whatsoever, information held or created by any  
11                  department or agency of the Federal Govern-  
12                  ment that may affect or tend to affect the price  
13                  of any commodity in interstate commerce, or  
14                  for future delivery, or any swap, where such  
15                  person knows, or acts in reckless disregard of  
16                  the fact, that such information has not been  
17                  disseminated by the department or agency of  
18                  the Federal Government holding or creating the  
19                  information in a manner which makes it gen-  
20                  erally available to the trading public, or dis-  
21                  closed in a criminal, civil, or administrative  
22                  hearing, or in a congressional, administrative,  
23                  or Government Accountability Office report,  
24                  hearing, audit, or investigation, and to use such  
25                  information, or to impart such information with

1           the intent to assist another person, directly or  
2           indirectly, to use such information to enter into,  
3           or offer to enter into—

4                   “(i) a contract of sale of a commodity  
5                   for future delivery (or option on such a  
6                   contract);

7                   “(ii) an option (other than an option  
8                   executed or traded on a national securities  
9                   exchange registered pursuant to section  
10                  6(a) of the Securities Exchange Act of  
11                  1934 (15 U.S.C. 78f(a)); or

12                  “(iii) a swap.

13                  *Provided*, however, that nothing in this  
14                  subparagraph shall preclude a person that  
15                  has provided information concerning, or  
16                  generated by, the person, its operations or  
17                  activities, to any employee or agent of any  
18                  department or agency of the Federal Gov-  
19                  ernment, voluntarily or as required by law,  
20                  from using such information to enter into,  
21                  or offer to enter into, a contract of sale,  
22                  option, or swap described in clauses (i),  
23                  (ii), or (iii).”.



1 **SEC. 747. ANTIDISRUPTIVE PRACTICES AUTHORITY.**

2 Section 4c(a) of the Commodity Exchange Act (7  
3 U.S.C. 6c(a)) (as amended by section 746) is amended  
4 by adding at the end the following:

5 “(5) DISRUPTIVE PRACTICES.—It shall be un-  
6 lawful for any person to engage in any trading, prac-  
7 tice, or conduct on or subject to the rules of a reg-  
8 istered entity that—

9 “(A) violates bids or offers;

10 “(B) demonstrates intentional or reckless  
11 disregard for the orderly execution of trans-  
12 actions during the closing period; or

13 “(C) is, is of the character of, or is com-  
14 monly known to the trade as, ‘spoofing’ (bid-  
15 ding or offering with the intent to cancel the  
16 bid or offer before execution).

17 “(6) RULEMAKING AUTHORITY.—The Commis-  
18 sion may make and promulgate such rules and regu-  
19 lations as, in the judgment of the Commission, are  
20 reasonably necessary to prohibit the trading prac-  
21 tices described in paragraph (5) and any other trad-  
22 ing practice that is disruptive of fair and equitable  
23 trading.

24 “(7) USE OF SWAPS TO DEFRAUD.—It shall be  
25 unlawful for any person to enter into a swap know-  
26 ing, or acting in reckless disregard of the fact, that

1 its counterparty will use the swap as part of a de-  
2 vice, scheme, or artifice to defraud any third  
3 party.”.

4 **SEC. 748. COMMODITY WHISTLEBLOWER INCENTIVES AND**  
5 **PROTECTION.**

6 The Commodity Exchange Act (7 U.S.C. 1 et seq.)  
7 is amended by adding at the end the following:

8 **“SEC. 23. COMMODITY WHISTLEBLOWER INCENTIVES AND**  
9 **PROTECTION.**

10 “(a) DEFINITIONS.—In this section:

11 “(1) COVERED JUDICIAL OR ADMINISTRATIVE  
12 ACTION.—The term ‘covered judicial or administra-  
13 tive action’ means any judicial or administrative ac-  
14 tion brought by the Commission under this Act that  
15 results in monetary sanctions exceeding \$1,000,000.

16 “(2) FUND.—The term ‘Fund’ means the Com-  
17 modity Futures Trading Commission Customer Pro-  
18 tection Fund established under subsection (g).

19 “(3) MONETARY SANCTIONS.—The term ‘mone-  
20 tary sanctions’, when used with respect to any judi-  
21 cial or administrative action means—

22 “(A) any monies, including penalties,  
23 disgorgement, restitution, and interest ordered  
24 to be paid; and

1           “(B) any monies deposited into a  
2           disgorgement fund or other fund pursuant to  
3           section 308(b) of the Sarbanes-Oxley Act of  
4           2002 (15 U.S.C. 7246(b)), as a result of such  
5           action or any settlement of such action.

6           “(4) ORIGINAL INFORMATION.—The term  
7           ‘original information’ means information that—

8                   “(A) is derived from the independent  
9                   knowledge or analysis of a whistleblower;

10                   “(B) is not known to the Commission from  
11                   any other source, unless the whistleblower is the  
12                   original source of the information; and

13                   “(C) is not exclusively derived from an al-  
14                   legation made in a judicial or administrative  
15                   hearing, in a governmental report, hearing,  
16                   audit, or investigation, or from the news media,  
17                   unless the whistleblower is a source of the infor-  
18                   mation.

19           “(5) RELATED ACTION.—The term ‘related ac-  
20           tion’, when used with respect to any judicial or ad-  
21           ministrative action brought by the Commission  
22           under this Act, means any judicial or administrative  
23           action brought by an entity described in subclauses  
24           (i) through (vi) of subsection (g)(2)(B) that is based  
25           upon the original information provided by a whistle-

1 blower pursuant to subsection (a) that led to the  
2 successful enforcement of the Commission action.

3 “(6) SUCCESSFUL RESOLUTION.—The term  
4 ‘successful resolution’, when used with respect to  
5 any judicial or administrative action brought by the  
6 Commission under this Act, includes any settlement  
7 of such action.

8 “(7) WHISTLEBLOWER.—The term ‘whistle-  
9 blower’ means any individual, or 2 or more individ-  
10 uals acting jointly, who provides information relating  
11 to a violation of this Act to the Commission, in a  
12 manner established by rule or regulation, by the  
13 Commission.

14 “(b) AWARDS.—

15 “(1) IN GENERAL.—In any covered judicial or  
16 administrative action, or related action, the Commis-  
17 sion, under regulations prescribed by the Commis-  
18 sion and subject to subsection (c), shall pay an  
19 award or awards to 1 or more whistleblowers who  
20 voluntarily provided original information to the  
21 Commission that led to the successful enforcement  
22 of the covered judicial or administrative action, or  
23 related action, in an aggregate amount equal to—

24 “(A) not less than 10 percent, in total, of  
25 what has been collected of the monetary sanc-



1                   “(iii) the programmatic interest of the  
2                   Commission in deterring violations of the  
3                   Act (including regulations under the Act)  
4                   by making awards to whistleblowers who  
5                   provide information that leads to the suc-  
6                   cessful enforcement of such laws; and

7                   “(iv) such additional relevant factors  
8                   as the Commission may establish by rule  
9                   or regulation.

10                  “(2) DENIAL OF AWARD.—No award under  
11                  subsection (b) shall be made—

12                   “(A) to any whistleblower who is, or was at  
13                   the time the whistleblower acquired the original  
14                   information submitted to the Commission, a  
15                   member, officer, or employee of—

16                   “(i) a appropriate regulatory agency;

17                   “(ii) the Department of Justice;

18                   “(iii) a registered entity;

19                   “(iv) a registered futures association;

20                   or

21                   “(v) a self-regulatory organization as  
22                   defined in section 3(a) of the Securities  
23                   Exchange Act of 1934 (15 U.S.C. 78c(a));

24                   or

25                   “(vi) a law enforcement organization;

1           “(B) to any whistleblower who is convicted  
2 of a criminal violation related to the judicial or  
3 administrative action for which the whistle-  
4 blower otherwise could receive an award under  
5 this section;

6           “(C) to any whistleblower who submits in-  
7 formation to the Commission that is based on  
8 the facts underlying the covered action sub-  
9 mitted previously by another whistleblower;

10           “(D) to any whistleblower who fails to sub-  
11 mit information to the Commission in such  
12 form as the Commission may, by rule or regula-  
13 tion, require.

14           “(d) REPRESENTATION.—

15           “(1) PERMITTED REPRESENTATION.—Any  
16 whistleblower who makes a claim for an award under  
17 subsection (b) may be represented by counsel.

18           “(2) REQUIRED REPRESENTATION.—

19           “(A) IN GENERAL.—Any whistleblower  
20 who anonymously makes a claim for an award  
21 under subsection (b) shall be represented by  
22 counsel if the whistleblower submits the infor-  
23 mation upon which the claim is based.

24           “(B) DISCLOSURE OF IDENTITY.—Prior to  
25 the payment of an award, a whistleblower shall

1 disclose the identity of the whistleblower and  
2 provide such other information as the Commis-  
3 sion may require, directly or through counsel  
4 for the whistleblower.

5 “(e) NO CONTRACT NECESSARY.—No contract with  
6 the Commission is necessary for any whistleblower to re-  
7 ceive an award under subsection (b), unless otherwise re-  
8 quired by the Commission, by rule or regulation.

9 “(f) APPEALS.—

10 “(1) IN GENERAL.—Any determination made  
11 under this section, including whether, to whom, or in  
12 what amount to make awards, shall be in the discre-  
13 tion of the Commission.

14 “(2) APPEALS.—Any determination described  
15 in paragraph (1) may be appealed to the appropriate  
16 court of appeals of the United States not more than  
17 30 days after the determination is issued by the  
18 Commission.

19 “(3) REVIEW.—The court shall review the de-  
20 termination made by the Commission in accordance  
21 with section 7064 of title 5, United States Code.

22 “(g) COMMODITY FUTURES TRADING COMMISSION  
23 CUSTOMER PROTECTION FUND.—

24 “(1) ESTABLISHMENT.—There is established in  
25 the Treasury of the United States a revolving fund



1 to be known as the ‘Commodity Futures Trading  
2 Commission Customer Protection Fund’.

3 “(2) USE OF FUND.—The Fund shall be avail-  
4 able to the Commission, without further appropria-  
5 tion or fiscal year limitation, for—

6 “(A) the payment of awards to whistle-  
7 blowers as provided in subsection (a); and

8 “(B) the funding of customer education  
9 initiatives designed to help customers protect  
10 themselves against fraud or other violations of  
11 this Act, or the rules and regulations there-  
12 under.

13 “(3) DEPOSITS AND CREDITS.—There shall be  
14 deposited into or credited to the Fund—

15 “(A) any monetary judgment collected by  
16 the Commission in any judicial or administra-  
17 tive action brought by the Commission under  
18 this Act, that is not otherwise distributed to  
19 victims of a violation of this Act or the rules  
20 and regulations thereunder underlying such ac-  
21 tion, unless the balance of the Fund at the time  
22 the monetary judgment is collected exceeds  
23 \$100,000,000; and

24 “(B) all income from investments made  
25 under paragraph (4).

1 “(4) INVESTMENTS.—

2 “(A) AMOUNTS IN FUND MAY BE IN-  
3 VESTED.—The Commission may request the  
4 Secretary of the Treasury to invest the portion  
5 of the Fund that is not, in the Commission’s  
6 judgment, required to meet the current needs of  
7 the Fund.

8 “(B) ELIGIBLE INVESTMENTS.—Invest-  
9 ments shall be made by the Secretary of the  
10 Treasury in obligations of the United States or  
11 obligations that are guaranteed as to principal  
12 and interest by the United States, with matu-  
13 rities suitable to the needs of the Fund as de-  
14 termined by the Commission.

15 “(C) INTEREST AND PROCEEDS CRED-  
16 ITED.—The interest on, and the proceeds from  
17 the sale or redemption of, any obligations held  
18 in the Fund shall be credited to, and form a  
19 part of, the Fund.

20 “(5) REPORTS TO CONGRESS.—Not later than  
21 October 30 of each year, the Commission shall  
22 transmit to the Committee on Agriculture, Nutri-  
23 tion, and Forestry of the Senate, and the Committee  
24 on Agriculture of the House of Representatives a re-  
25 port on—

1           “(A) the Commission’s whistleblower  
2           award program under this section, including a  
3           description of the number of awards granted  
4           and the types of cases in which awards were  
5           granted during the preceding fiscal year;

6           “(B) customer education initiatives de-  
7           scribed in paragraph (2)(B) that were funded  
8           by the Fund during the preceding fiscal year;

9           “(C) the balance of the Fund at the begin-  
10          ning of the preceding fiscal year;

11          “(D) the amounts deposited into or cred-  
12          ited to the Fund during the preceding fiscal  
13          year;

14          “(E) the amount of earnings on invest-  
15          ments of amounts in the Fund during the pre-  
16          ceding fiscal year;

17          “(F) the amount paid from the Fund dur-  
18          ing the preceding fiscal year to whistleblowers  
19          pursuant to subsection (b);

20          “(G) the amount paid from the Fund dur-  
21          ing the preceding fiscal year for customer edu-  
22          cation initiatives described in paragraph (2)(B);

23          “(H) the balance of the Fund at the end  
24          of the preceding fiscal year; and

1           “(I) a complete set of audited financial  
2           statements, including a balance sheet, income  
3           statement, and cash flow analysis.

4           “(h) PROTECTION OF WHISTLEBLOWERS.—

5           “(1) PROHIBITION AGAINST RETALIATION.—

6           “(A) IN GENERAL.—No employer may dis-  
7           charge, demote, suspend, threaten, harass, di-  
8           rectly or indirectly, or in any other manner dis-  
9           criminate against, a whistleblower in the terms  
10          and conditions of employment because of any  
11          lawful act done by the whistleblower—

12                   “(i) in providing information to the  
13                   Commission in accordance with subsection  
14                   (b); or

15                   “(ii) in assisting in any investigation  
16                   or judicial or administrative action of the  
17                   Commission based upon or related to such  
18                   information.

19          “(B) ENFORCEMENT.—

20                   “(i) CAUSE OF ACTION.—An indi-  
21                   vidual who alleges discharge or other dis-  
22                   crimination in violation of subparagraph  
23                   (A) may bring an action under this sub-  
24                   section in the appropriate district court of  
25                   the United States for the relief provided in

1           subparagraph (C), unless the individual  
2           who is alleging discharge or other discrimi-  
3           nation in violation of subparagraph (A) is  
4           an employee of the federal government, in  
5           which case the individual shall only bring  
6           an action under section 1221 of title 5,  
7           United States Code.

8           “(ii) SUBPOENAS.—A subpoena re-  
9           quiring the attendance of a witness at a  
10          trial or hearing conducted under this sub-  
11          section may be served at any place in the  
12          United States.

13          “(iii) STATUTE OF LIMITATIONS.—An  
14          action under this subsection may not be  
15          brought more than 2 years after the date  
16          on which the violation reported in subpara-  
17          graph (A) is committed.

18          “(C) RELIEF.—Relief for an individual  
19          prevailing in an action brought under subpara-  
20          graph (B) shall include—

21                 “(i) reinstatement with the same se-  
22                 niority status that the individual would  
23                 have had, but for the discrimination;

1           “(ii) the amount of back pay other-  
2           wise owed to the individual, with interest;  
3           and

4           “(iii) compensation for any special  
5           damages sustained as a result of the dis-  
6           charge or discrimination, including litiga-  
7           tion costs, expert witness fees, and reason-  
8           able attorney’s fees.

9           “(2) CONFIDENTIALITY.—

10           “(A) INFORMATION PROVIDED.—

11           “(i) IN GENERAL.—Except as pro-  
12           vided in subparagraph (B), all information  
13           provided to the Commission by a whistle-  
14           blower shall be confidential and privileged  
15           as an evidentiary matter (and shall not be  
16           subject to civil discovery or other legal  
17           process) in any proceeding in any Federal  
18           or State court or administrative agency,  
19           and shall be exempt from disclosure, in the  
20           hands of a department or agency of the  
21           Federal Government, under section 552 of  
22           title 5, United States Code (commonly  
23           known as the ‘Freedom of Information  
24           Act’) or otherwise, unless and until re-  
25           quired to be disclosed to a defendant or re-

1           spondent in connection with a public pro-  
2           ceeding instituted by the Commission or  
3           any entity described in subparagraph (B).

4           “(ii) CONSTRUCTION.—For purposes  
5           of section 552 of title 5, United States  
6           Code, this paragraph shall be considered to  
7           be a statute described in subsection  
8           (b)(3)(B) of that section.

9           “(iii) EFFECT.—Nothing in this para-  
10          graph is intended to limit the ability of the  
11          Attorney General to present such evidence  
12          to a grand jury or to share such evidence  
13          with potential witnesses or defendants in  
14          the course of an ongoing criminal inves-  
15          tigation.

16          “(B) AVAILABILITY TO GOVERNMENT  
17          AGENCIES.—

18          “(i) IN GENERAL.—Without the loss  
19          of its status as confidential and privileged  
20          in the hands of the Commission, all infor-  
21          mation referred to in subparagraph (A)  
22          may, in the discretion of the Commission,  
23          when determined by the Commission to be  
24          necessary or appropriate to accomplish the  
25          purposes of this Act and protect customers

1 and in accordance with clause (ii), be made  
2 available to—

3 “(I) the Department of Justice;

4 “(II) an appropriate department  
5 or agency of the Federal Government,  
6 acting within the scope of its jurisdic-  
7 tion;

8 “(III) a registered entity, reg-  
9 istered futures association, or self-reg-  
10 ulatory organization as defined in sec-  
11 tion 3(a) of the Securities Exchange  
12 Act of 1934 (15 U.S.C. 78e(a));

13 “(IV) a State attorney general in  
14 connection with any criminal inves-  
15 tigation;

16 “(V) an appropriate department  
17 or agency of any State, acting within  
18 the scope of its jurisdiction; and

19 “(VI) a foreign futures authority.

20 “(ii) MAINTENANCE OF INFORMA-  
21 TION.—Each of the entities, agencies, or  
22 persons described in clause (i) shall main-  
23 tain information described in that clause  
24 as confidential and privileged, in accord-



1                   ance with the requirements in subpara-  
2                   graph (A).

3                   “(3) RIGHTS RETAINED.—Nothing in this sec-  
4                   tion shall be deemed to diminish the rights, privi-  
5                   leges, or remedies of any whistleblower under any  
6                   Federal or State law, or under any collective bar-  
7                   gaining agreement.

8                   “(i) RULEMAKING AUTHORITY.—The Commission  
9                   shall have the authority to issue such rules and regulations  
10                  as may be necessary or appropriate to implement the pro-  
11                  visions of this section consistent with the purposes of this  
12                  section.

13                  “(j) IMPLEMENTING RULES.—The Commission shall  
14                  issue final rules or regulations implementing the provi-  
15                  sions of this section not later than 270 days after the date  
16                  of enactment of the Wall Street Transparency and Ac-  
17                  countability Act of 2010.

18                  “(k) ORIGINAL INFORMATION.—Information sub-  
19                  mitted to the Commission by a whistleblower in accord-  
20                  ance with rules or regulations implementing this section  
21                  shall not lose its status as original information solely be-  
22                  cause the whistleblower submitted such information prior  
23                  to the effective date of such rules or regulations, provided  
24                  such information was submitted after the date of enact-

1 ment of the Wall Street Transparency and Accountability  
2 Act of 2010.

3 “(l) AWARDS.—A whistleblower may receive an award  
4 pursuant to this section regardless of whether any viola-  
5 tion of a provision of this Act, or a rule or regulation  
6 thereunder, underlying the judicial or administrative ac-  
7 tion upon which the award is based occurred prior to the  
8 date of enactment of the Wall Street Transparency and  
9 Accountability Act of 2010.

10 “(m) PROVISION OF FALSE INFORMATION.—A whis-  
11 tleblower who knowingly and willfully makes any false, fic-  
12 titious, or fraudulent statement or representation, or who  
13 makes or uses any false writing or document knowing the  
14 same to contain any false, fictitious, or fraudulent state-  
15 ment or entry, shall not be entitled to an award under  
16 this section and shall be subject to prosecution under sec-  
17 tion 1001 of title 18, United States Code.”.

18 **SEC. 749. CONFORMING AMENDMENTS.**

19 (a) Section 2(c)(1) of the Commodity Exchange Act  
20 (7 U.S.C. 2(c)(1)) is amended, in the matter preceding  
21 subparagraph (A), by striking “5a (to the extent provided  
22 in section 5a(g)),”.

23 (b) Section 4d of the Commodity Exchange Act (7  
24 U.S.C. 6d) (as amended by section 724) is amended—

25 (1) in subsection (a)—

1 (A) in the matter preceding paragraph

2 (1)—

3 (i) by striking “engage as” and insert-  
4 ing “be a”; and

5 (ii) by striking “or introducing  
6 broker” and all that follows through “or  
7 derivatives transaction execution facility”;

8 (B) in paragraph (1), by striking “or in-  
9 troducing broker”; and

10 (C) in paragraph (2), by striking “if a fu-  
11 tures commission merchant,”; and

12 (2) by adding at the end the following:

13 “(g) It shall be unlawful for any person to be an in-  
14 troducing broker unless such person shall have registered  
15 under this Act with the Commission as an introducing  
16 broker and such registration shall not have expired nor  
17 been suspended nor revoked.”.

18 (c) Section 4m(3) of the Commodity Exchange Act  
19 (7 U.S.C. 6m(3)) is amended—

20 (1) by striking “(3) Subsection (1) of this sec-  
21 tion” and inserting the following:

22 “(3) EXCEPTION.—

23 “(A) IN GENERAL.—Paragraph (1)”;

24 (2) by striking “to any investment trust” and  
25 all that follows through the period at the end and

1 inserting the following: “to any commodity pool that  
2 is engaged primarily in trading commodity interests.

3 “(B) ENGAGED PRIMARILY.—For purposes  
4 of subparagraph (A), a commodity trading advi-  
5 sor or a commodity pool shall be considered to  
6 be ‘engaged primarily’ in the business of being  
7 a commodity trading advisor or commodity pool  
8 if it is or holds itself out to the public as being  
9 engaged primarily, or proposes to engage pri-  
10 marily, in the business of advising on com-  
11 modity interests or investing, reinvesting, own-  
12 ing, holding, or trading in commodity interests,  
13 respectively.

14 “(C) COMMODITY INTERESTS.—For pur-  
15 poses of this paragraph, commodity interests  
16 shall include contracts of sale of a commodity  
17 for future delivery, options on such contracts,  
18 security futures, swaps, leverage contracts, for-  
19 eign exchange, spot and forward contracts on  
20 physical commodities, and any monies held in  
21 an account used for trading commodity inter-  
22 ests.”.

23 (d) Section 5c of the Commodity Exchange Act (7  
24 U.S.C. 7a-2) is amended—

25 (1) in subsection (a)(1)—

1 (A) by striking “, 5a(d),”; and

2 (B) by striking “and section (2)(h)(7) with  
3 respect to significant price discovery con-  
4 tracts,”; and

5 (2) in subsection (f)(1), by striking “section  
6 4d(c) of this Act” and inserting “section 4d(e)”.

7 (e) Section 5e of the Commodity Exchange Act (7  
8 U.S.C. 7b) is amended by striking “or revocation of the  
9 right of an electronic trading facility to rely on the exemp-  
10 tion set forth in section 2(h)(3) with respect to a signifi-  
11 cant price discovery contract,”.

12 (f) Section 6(b) of the Commodity Exchange Act (7  
13 U.S.C. 8(b)) is amended in the first sentence by striking  
14 “, or to revoke the right of an electronic trading facility  
15 to rely on the exemption set forth in section 2(h)(3) with  
16 respect to a significant price discovery contract,”.

17 (g) Section 12(e)(2)(B) of the Commodity Exchange  
18 Act (7 U.S.C. 16(e)(2)(B)) is amended—

19 (1) by striking “section 2(c), 2(d), 2(f), or 2(g)  
20 of this Act” and inserting “section 2(e) or 2(f) of  
21 this Act”; and

22 (2) by striking “2(h) or”.

23 (h) Section 17(r)(1) of the Commodity Exchange Act  
24 (7 U.S.C. 21(r)(1)) is amended by striking “section 4d(c)  
25 of this Act” and inserting “section 4d(e)”.

1 (i) Section 22(b)(1)(A) of the Commodity Exchange  
2 Act (7 U.S.C. 25(b)(1)(A)) is amended by striking “sec-  
3 tion 2(h)(7) or”.

4 (j) Section 408(2)(C) of the Federal Deposit Insur-  
5 ance Corporation Improvement Act of 1991 (12 U.S.C.  
6 4421(2)(C)) is amended—

7 (1) by striking “section 2(c), 2(d), 2(f), or  
8 (2)(g) of such Act” and inserting “section 2(c), 2(f),  
9 or 2(i) of that Act”; and

10 (2) by striking “2(h) or”.

11 **SEC. 750. STUDY ON OVERSIGHT OF CARBON MARKETS.**

12 (a) INTERAGENCY WORKING GROUP.—There is es-  
13 tablished to carry out this section an interagency working  
14 group (referred to in this section as the “interagency  
15 group”) composed of the following members or designees:

16 (1) The Chairman of the Commodity Futures  
17 Trading Commission (referred to in this section as  
18 the “Commission”), who shall serve as Chairman of  
19 the interagency group.

20 (2) The Secretary of Agriculture.

21 (3) The Secretary of the Treasury.

22 (4) The Chairman of the Securities and Ex-  
23 change Commission.

24 (5) The Administrator of the Environmental  
25 Protection Agency.

1           (6) The Chairman of the Federal Energy Regu-  
2           latory Commission.

3           (7) The Commissioner of the Federal Trade  
4           Commission.

5           (8) The Administrator of the Energy Informa-  
6           tion Administration.

7           (b) ADMINISTRATIVE SUPPORT.—The Commission  
8           shall provide the interagency group such administrative  
9           support services as are necessary to enable the interagency  
10          group to carry out the functions of the interagency group  
11          under this section.

12          (c) CONSULTATION.—In carrying out this section, the  
13          interagency group shall consult with representatives of ex-  
14          changes, clearinghouses, self-regulatory bodies, major car-  
15          bon market participants, consumers, and the general pub-  
16          lic, as the interagency group determines to be appropriate.

17          (d) STUDY.—The interagency group shall conduct a  
18          study on the oversight of existing and prospective carbon  
19          markets to ensure an efficient, secure, and transparent  
20          carbon market, including oversight of spot markets and  
21          derivative markets.

22          (e) REPORT.—Not later than 180 days after the date  
23          of enactment of this Act, the interagency group shall sub-  
24          mit to Congress a report on the results of the study con-  
25          ducted under subsection (b), including recommendations

1 for the oversight of existing and prospective carbon mar-  
2 kets to ensure an efficient, secure, and transparent carbon  
3 market, including oversight of spot markets and derivative  
4 markets.

5 **SEC. 751. ENERGY AND ENVIRONMENTAL MARKETS ADVI-**  
6 **SORY COMMITTEE.**

7 Section 2(a) of the Commodity Exchange Act (7  
8 U.S.C. 2(a)) (as amended by section 727) is amended by  
9 adding at the end the following:

10 “(15) ENERGY AND ENVIRONMENTAL MARKETS  
11 ADVISORY COMMITTEE.—

12 “(A) ESTABLISHMENT.—

13 “(i) IN GENERAL.—An Energy and  
14 Environmental Markets Advisory Com-  
15 mittee is hereby established.

16 “(ii) MEMBERSHIP.—The Committee  
17 shall have 9 members.

18 “(iii) ACTIVITIES.—The Committee’s  
19 objectives and scope of activities shall be—

20 “(I) to conduct public meetings;

21 “(II) to submit reports and rec-  
22 ommendations to the Commission (in-  
23 cluding dissenting or minority views,  
24 if any); and



1                   “(III) otherwise to serve as a ve-  
2                   hicle for discussion and communica-  
3                   tion on matters of concern to ex-  
4                   changes, firms, end users, and regu-  
5                   lators regarding energy and environ-  
6                   mental markets and their regulation  
7                   by the Commission.

8                   “(B) REQUIREMENTS.—

9                   “(i) IN GENERAL.—The Committee  
10                  shall hold public meetings at such intervals  
11                  as are necessary to carry out the functions  
12                  of the Committee, but not less frequently  
13                  than 2 times per year.

14                  “(ii) MEMBERS.—Members shall be  
15                  appointed to 3-year terms, but may be re-  
16                  moved for cause by vote of the Commis-  
17                  sion.

18                  “(C) APPOINTMENT.—The Commission  
19                  shall appoint members with a wide diversity of  
20                  opinion and who represent a broad spectrum of  
21                  interests, including hedgers and consumers.

22                  “(D) REIMBURSEMENT.—Members shall  
23                  be entitled to per diem and travel expense reim-  
24                  bursement by the Commission.

1                   “(E) FACA.—The Committee shall not be  
2                   subject to the Federal Advisory Committee Act  
3                   (5 U.S.C. App.).”.

4 **SEC. 752. INTERNATIONAL HARMONIZATION.**

5           In order to promote effective and consistent global  
6 regulation of swaps and security-based swaps, the Securi-  
7 ties and Exchange Commission, the Commodity Futures  
8 Trading Commission, the Financial Stability Oversight  
9 Council, and the Treasury Department—

10           (1) shall, both individually and collectively, con-  
11 sult and coordinate with foreign regulatory authori-  
12 ties on the establishment of consistent international  
13 standards with respect to the regulation of such  
14 swaps; and

15           (2) may, both individually and collectively,  
16 agree to such information-sharing arrangements as  
17 may be deemed to be necessary or appropriate in the  
18 public interest or for the protection of investors and  
19 swap counterparties.

20 **SEC. 753. ANTIMARKET MANIPULATION AUTHORITY.**

21           (a) PROHIBITION REGARDING MANIPULATION AND  
22 FALSE INFORMATION.—Subsection (c) of section 6 of the  
23 Commodity Exchange Act (7 U.S.C. 9, 15) is amended  
24 to read as follows:

1           “(c) PROHIBITION REGARDING MANIPULATION AND  
2 FALSE INFORMATION.—

3                   “(1) PROHIBITION AGAINST MANIPULATION.—

4           It shall be unlawful for any person, directly or indi-  
5           rectly, to use or employ, or attempt to use or em-  
6           ploy, in connection with any swap, or a contract of  
7           sale of any commodity in interstate commerce, or for  
8           future delivery on or subject to the rules of any reg-  
9           istered entity, any manipulative or deceptive device  
10          or contrivance, in contravention of such rules and  
11          regulations as the Commission shall promulgate by  
12          not later than 1 year after the date of enactment of  
13          the Restoring American Financial Stability Act of  
14          2010.

15                   “(A) SPECIAL PROVISION FOR MANIPULA-  
16                   TION BY FALSE REPORTING.—Unlawful manip-  
17                   ulation for purposes of this paragraph shall in-  
18                   clude, but not be limited to, delivering, or caus-  
19                   ing to be delivered for transmission through the  
20                   mails or interstate commerce, by any means of  
21                   communication whatsoever, a false or mis-  
22                   leading or inaccurate report concerning crop or  
23                   market information or conditions that affect or  
24                   tend to affect the price of any commodity in  
25                   interstate commerce, knowing, or acting in

1           reckless disregard of the fact, that such report  
2           is false, misleading or inaccurate.

3           “(B) EFFECT ON OTHER LAW.—Nothing  
4           in this paragraph shall affect, or be construed  
5           to affect, the applicability of section 9(a)(2).

6           “(2) PROHIBITION REGARDING FALSE INFOR-  
7           MATION.—It shall be unlawful for any person to  
8           make any false or misleading statement of a mate-  
9           rial fact to the Commission, including in any reg-  
10          istration application or any report filed with the  
11          Commission under this Act, or any other informa-  
12          tion relating to a swap, or a contract of sale of a  
13          commodity, in interstate commerce, or for future de-  
14          livery on or subject to the rules of any registered en-  
15          tity, or to omit to state in any such statement any  
16          material fact that is necessary to make any state-  
17          ment of a material fact made not misleading in any  
18          material respect, if the person knew, or reasonably  
19          should have known, the statement to be false or mis-  
20          leading.

21          “(3) OTHER MANIPULATION.—In addition to  
22          the prohibition in paragraph (1), it shall be unlawful  
23          for any person, directly or indirectly, to manipulate  
24          or attempt to manipulate the price of any swap, or  
25          of any commodity in interstate commerce, or for fu-

1           ture delivery on or subject to the rules of any reg-  
2           istered entity.

3           “(4) ENFORCEMENT.—

4                   “(A) AUTHORITY OF COMMISSION.—If the  
5           Commission has reason to believe that any per-  
6           son (other than a registered entity) is violating  
7           or has violated this subsection, or any other  
8           provision of this Act (including any rule, regula-  
9           tion, or order of the Commission promulgated  
10          in accordance with this subsection or any other  
11          provision of this Act), the Commission may  
12          serve upon the person a complaint.

13                   “(B) CONTENTS OF COMPLAINT.—A com-  
14          plaint under subparagraph (A) shall—

15                           “(i) contain a description of the  
16                           charges against the person that is the sub-  
17                           ject of the complaint; and

18                           “(ii) have attached or contain a notice  
19                           of hearing that specifies the date and loca-  
20                           tion of the hearing regarding the com-  
21                           plaint.

22                   “(C) HEARING.—A hearing described in  
23          subparagraph (B)(ii)—



1 corded in written form and submitted  
2 to the Commission.

3 “(5) SUBPOENA.—For the purpose of securing  
4 effective enforcement of the provisions of this Act,  
5 for the purpose of any investigation or proceeding  
6 under this Act, and for the purpose of any action  
7 taken under section 12(f) of this Act, any member  
8 of the Commission or any Administrative Law Judge  
9 or other officer designated by the Commission (ex-  
10 cept as provided in paragraph (7)) may administer  
11 oaths and affirmations, subpoena witnesses, compel  
12 their attendance, take evidence, and require the pro-  
13 duction of any books, papers, correspondence, memo-  
14 randa, or other records that the Commission deems  
15 relevant or material to the inquiry.

16 “(6) WITNESSES.—The attendance of witnesses  
17 and the production of any such records may be re-  
18 quired from any place in the United States, any  
19 State, or any foreign country or jurisdiction at any  
20 designated place of hearing.

21 “(7) SERVICE.—A subpoena issued under this  
22 section may be served upon any person who is not  
23 to be found within the territorial jurisdiction of any  
24 court of the United States in such manner as the  
25 Federal Rules of Civil Procedure prescribe for serv-

1        ice of process in a foreign country, except that a  
2        subpoena to be served on a person who is not to be  
3        found within the territorial jurisdiction of any court  
4        of the United States may be issued only on the prior  
5        approval of the Commission.

6            “(8) REFUSAL TO OBEY.—In case of contumacy  
7        by, or refusal to obey a subpoena issued to, any per-  
8        son, the Commission may invoke the aid of any  
9        court of the United States within the jurisdiction in  
10       which the investigation or proceeding is conducted,  
11       or where such person resides or transacts business,  
12       in requiring the attendance and testimony of wit-  
13       nesses and the production of books, papers, cor-  
14       respondence, memoranda, and other records. Such  
15       court may issue an order requiring such person to  
16       appear before the Commission or member or Admin-  
17       istrative Law Judge or other officer designated by  
18       the Commission, there to produce records, if so or-  
19       dered, or to give testimony touching the matter  
20       under investigation or in question.

21            “(9) FAILURE TO OBEY.—Any failure to obey  
22        such order of the court may be punished by the  
23        court as a contempt thereof. All process in any such  
24        case may be served in the judicial district wherein



1 such person is an inhabitant or transacts business or  
2 wherever such person may be found.

3 “(10) EVIDENCE.—On the receipt of evidence  
4 under paragraph (4)(C)(iii), the Commission may—

5 “(A) prohibit the person that is the subject  
6 of the hearing from trading on, or subject to  
7 the rules of, any registered entity and require  
8 all registered entities to refuse the person all  
9 privileges on the registered entities for such pe-  
10 riod as the Commission may require in the  
11 order;

12 “(B) if the person is registered with the  
13 Commission in any capacity, suspend, for a pe-  
14 riod not to exceed 180 days, or revoke, the reg-  
15 istration of the person;

16 “(C) assess such person—

17 “(i) a civil penalty of not more than  
18 an amount equal to the greater of—

19 “(I) \$140,000; or

20 “(II) triple the monetary gain to  
21 such person for each such violation; or

22 “(ii) in any case of manipulation or  
23 attempted manipulation in violation of this  
24 subsection or section 9(a)(2), a civil pen-

1                   alty of not more than an amount equal to  
2                   the greater of—

3                               “(I) \$1,000,000; or

4                               “(II) triple the monetary gain to  
5                   the person for each such violation;  
6                   and

7                   “(D) require restitution to customers of  
8                   damages proximately caused by violations of the  
9                   person.

10                   “(11) ORDERS.—

11                               “(A) NOTICE.—The Commission shall pro-  
12                   vide to a person described in paragraph (10)  
13                   and the appropriate governing board of the reg-  
14                   istered entity notice of the order described in  
15                   paragraph (10) by—

16                               “(i) registered mail;

17                               “(ii) certified mail; or

18                               “(iii) personal delivery.

19                   “(B) REVIEW.—

20                               “(i) IN GENERAL.—A person de-  
21                   scribed in paragraph (10) may obtain a re-  
22                   view of the order or such other equitable  
23                   relief as determined to be appropriate by a  
24                   court described in clause (ii).

1           “(ii) PETITION.—To obtain a review  
2           or other relief under clause (i), a person  
3           may, not later than 15 days after notice is  
4           given to the person under clause (i), file a  
5           written petition to set aside the order with  
6           the United States Court of Appeals—

7                   “(I) for the circuit in which the  
8                   petitioner carries out the business of  
9                   the petitioner; or

10                   “(II) in the case of an order de-  
11                   nying registration, the circuit in which  
12                   the principal place of business of the  
13                   petitioner is located, as listed on the  
14                   application for registration of the peti-  
15                   tioner.

16           “(C) PROCEDURE.—

17                   “(i) DUTY OF CLERK OF APPRO-  
18                   PRIATE COURT.—The clerk of the appro-  
19                   priate court under subparagraph (B)(ii)  
20                   shall transmit to the Commission a copy of  
21                   a petition filed under subparagraph (B)(ii).

22                   “(ii) DUTY OF COMMISSION.—In ac-  
23                   cordance with section 2112 of title 28,  
24                   United States Code, the Commission shall  
25                   file in the appropriate court described in

1           subparagraph (B)(ii) the record theretofore  
2           made.

3                   “(iii) JURISDICTION OF APPROPRIATE  
4           COURT.—Upon the filing of a petition  
5           under subparagraph (B)(ii), the appro-  
6           priate court described in subparagraph  
7           (B)(ii) shall have jurisdiction to affirm, set  
8           aside, or modify the order of the Commis-  
9           sion, and the findings of the Commission  
10          as to the facts, if supported by the weight  
11          of evidence, shall in like manner be conclu-  
12          sive.”.

13          (b) CEASE AND DESIST ORDERS, FINES.—Section  
14          6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is  
15          amended to read as follows:

16          “(d) If any person (other than a registered entity),  
17          is violating or has violated subsection (c) or any other pro-  
18          visions of this Act or of the rules, regulations, or orders  
19          of the Commission thereunder, the Commission may, upon  
20          notice and hearing, and subject to appeal as in other cases  
21          provided for in subsection (c), make and enter an order  
22          directing that such person shall cease and desist therefrom  
23          and, if such person thereafter and after the lapse of the  
24          period allowed for appeal of such order or after the affirm-  
25          ance of such order, shall fail or refuse to obey or comply

1 with such order, such person shall be guilty of a mis-  
2 demeanor and, upon conviction thereof, shall be fined not  
3 more than the higher of \$140,000 or triple the monetary  
4 gain to such person, or imprisoned for not less than 6  
5 months nor more than 1 year, or both, except that if such  
6 failure or refusal to obey or comply with such order in-  
7 volves any offense within subsection (a) or (b) of section  
8 9 of this Act, such person shall be guilty of a felony and,  
9 upon conviction thereof, shall be subject to the penalties  
10 of said subsection (a) or (b): Provided, That any such  
11 cease and desist order under this subsection against any  
12 respondent in any case of manipulation shall be issued  
13 only in conjunction with an order issued against such re-  
14 spondent under subsection (c). Each day during which  
15 such failure or refusal to obey or comply with such order  
16 continues shall be deemed a separate offense.”.

17 (c) MANIPULATIONS; PRIVATE RIGHTS OF ACTION.—  
18 Section 22(a)(1) of the Commodity Exchange Act (7  
19 U.S.C. 25(a)(1)) is amended by striking subparagraph  
20 (D) and inserting the following:

21 “(D) who purchased or sold a contract re-  
22 ferred to in subparagraph (B) hereof or swap if  
23 the violation constitutes—

24 “(i) the use or employment of, or an  
25 attempt to use or employ, in connection

1 with a swap, or a contract of sale of a  
2 commodity, in interstate commerce, or for  
3 future delivery on or subject to the rules of  
4 any registered entity, any manipulative de-  
5 vice or contrivance in contravention of such  
6 rules and regulations as the Commission  
7 shall promulgate by not later than 1 year  
8 after the date of enactment of the Restor-  
9 ing American Financial Stability Act of  
10 2010; or

11 “(ii) a manipulation of the price of  
12 any such contract or swap or the price of  
13 the commodity underlying such contract or  
14 swap.”.

15 (d) EFFECTIVE DATE.—

16 (1) The amendments made by this section shall  
17 take effect on the date on which the final rule pro-  
18 mulgated by the Commodity Futures Trading Com-  
19 mission pursuant to this Act takes effect.

20 (2) Paragraph (1) shall not preclude the Com-  
21 mission from undertaking prior to the effective date  
22 any rulemaking necessary to implement the amend-  
23 ments contained in this section.

1 **SEC. 754. EFFECTIVE DATE.**

2 Unless otherwise provided in this title, this subtitle  
3 shall take effect on the date that is 180 days after the  
4 date of enactment of this Act.

5 **Subtitle B—Regulation of Security-**  
6 **Based Swap Markets**

7 **SEC. 761. DEFINITIONS UNDER THE SECURITIES EX-**  
8 **CHANGE ACT OF 1934.**

9 (a) DEFINITIONS.—Section 3(a) of the Securities Ex-  
10 change Act of 1934 (15 U.S.C. 78c(a)) is amended—

11 (1) in subparagraphs (A) and (B) of paragraph  
12 (5), by inserting “(not including security-based  
13 swaps, other than security-based swaps with or for  
14 persons that are not eligible contract participants)”  
15 after “securities” each place that term appears;

16 (2) in paragraph (10), by inserting “security-  
17 based swap,” after “security future,”;

18 (3) in paragraph (13), by adding at the end the  
19 following: “For security-based swaps, such terms in-  
20 clude the execution, termination (prior to its sched-  
21 uled maturity date), assignment, exchange, or simi-  
22 lar transfer or conveyance of, or extinguishing of  
23 rights or obligations under, a security-based swap,  
24 as the context may require.”;

25 (4) in paragraph (14), by adding at the end the  
26 following: “For security-based swaps, such terms in-

1       clude the execution, termination (prior to its sched-  
2       uled maturity date), assignment, exchange, or simi-  
3       lar transfer or conveyance of, or extinguishing of  
4       rights or obligations under, a security-based swap,  
5       as the context may require.”;

6               (5) in paragraph (39)—

7                       (A) in subparagraph (B)(i)—

8                               (i) in subclause (I), by striking “or  
9                               government securities dealer” and insert-  
10                              ing “government securities dealer, security-  
11                              based swap dealer, or major security-based  
12                              swap participant”; and

13                             (ii) in subclause (II), by inserting “se-  
14                             curity-based swap dealer, major security-  
15                             based swap participant,” after “govern-  
16                             ment securities dealer,”;

17                       (B) in subparagraph (C), by striking “or  
18                       government securities dealer” and inserting  
19                       “government securities dealer, security-based  
20                       swap dealer, or major security-based swap par-  
21                       ticipant”; and

22                       (C) in subparagraph (D), by inserting “se-  
23                       curity-based swap dealer, major security-based  
24                       swap participant,” after “government securities  
25                       dealer,”; and



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

2 “(65) ELIGIBLE CONTRACT PARTICIPANT.—The  
3 term ‘eligible contract participant’ has the same  
4 meaning as in section 1a of the Commodity Ex-  
5 change Act (7 U.S.C. 1a).

6 “(66) MAJOR SWAP PARTICIPANT.—The term  
7 ‘major swap participant’ has the same meaning as in  
8 section 1a of the Commodity Exchange Act (7  
9 U.S.C. 1a).

10 “(67) MAJOR SECURITY-BASED SWAP PARTICI-  
11 PANT.—

12 “(A) IN GENERAL.—The term ‘major secu-  
13 rity-based swap participant’ means any per-  
14 son—

15 “(i) who is not a security-based swap  
16 dealer; and

17 “(ii)(I) who maintains a substantial  
18 position in security-based swaps for any of  
19 the major security-based swap categories,  
20 as such categories are determined by the  
21 Commission, excluding—

22 “(aa) positions held for hedging  
23 or mitigating commercial risk; and

24 “(bb) positions maintained by  
25 any employee benefit plan (or any

1 contract held by such a plan), as that  
2 term is defined in paragraphs (3) and  
3 (32) of section 3 of the Employee Re-  
4 tirement Income Security Act of 1974  
5 (29 U.S.C. 1002), for the primary  
6 purpose of hedging or mitigating any  
7 risk directly associated with the oper-  
8 ation of the plan;

9 “(II) whose outstanding security-  
10 based swaps create substantial  
11 counterparty exposure that could have seri-  
12 ous adverse effects on the financial sta-  
13 bility of the United States banking system  
14 or financial markets; or

15 “(III) that is a financial entity that—

16 “(aa) is highly leveraged relative  
17 to the amount of capital such entity  
18 holds; and

19 “(bb) maintains a substantial po-  
20 sition in outstanding security-based  
21 swaps in any major security-based  
22 swap category, as such categories are  
23 determined by the Commission.

24 “(B) DEFINITION OF SUBSTANTIAL POSI-  
25 TION.—For purposes of subparagraph (A), the

1 Commission shall define, by rule or regulation,  
2 the term ‘substantial position’ at the threshold  
3 that the Commission determines to be prudent  
4 for the effective monitoring, management, and  
5 oversight of entities that are systemically im-  
6 portant or can significantly impact the financial  
7 system of the United States.

8 “(C) SCOPE OF DESIGNATION.—For pur-  
9 poses of subparagraph (A), a person may be  
10 designated as a major security-based swap par-  
11 ticipant for 1 or more categories of security-  
12 based swaps without being classified as a major  
13 security-based swap participant for all classes  
14 of security-based swaps.

15 “(68) SECURITY-BASED SWAP.—

16 “(A) IN GENERAL.—Except as provided in  
17 subparagraph (B), the term ‘security-based  
18 swap’ means any agreement, contract, or trans-  
19 action that—

20 “(i) is a swap, as that term is defined  
21 under section 1a of the Commodity Ex-  
22 change Act; and

23 “(ii) is based on—

1                   “(I) an index that is a narrow-  
2                   based security index, including any in-  
3                   terest therein or on the value thereof;

4                   “(II) a single security or loan, in-  
5                   cluding any interest therein or on the  
6                   value thereof; or

7                   “(III) the occurrence, nonoccur-  
8                   rence, or extent of the occurrence of  
9                   an event relating to a single issuer of  
10                  a security or the issuers of securities  
11                  in a narrow-based security index, pro-  
12                  vided that such event directly affects  
13                  the financial statements, financial  
14                  condition, or financial obligations of  
15                  the issuer.

16                  “(B) RULE OF CONSTRUCTION REGARDING  
17                  MASTER AGREEMENTS.—The term ‘security-  
18                  based swap’ shall be construed to include a  
19                  master agreement that provides for an agree-  
20                  ment, contract, or transaction that is a secu-  
21                  rity-based swap pursuant to subparagraph (A),  
22                  together with all supplements to any such mas-  
23                  ter agreement, without regard to whether the  
24                  master agreement contains an agreement, con-  
25                  tract, or transaction that is not a security-based

1 swap pursuant to subparagraph (A), except  
2 that the master agreement shall be considered  
3 to be a security-based swap only with respect to  
4 each agreement, contract, or transaction under  
5 the master agreement that is a security-based  
6 swap pursuant to subparagraph (A).

7 “(C) EXCLUSIONS.—The term ‘security-  
8 based swap’ does not include any agreement,  
9 contract, or transaction that meets the defini-  
10 tion of a security-based swap only because such  
11 agreement, contract, or transaction references,  
12 is based upon, or settles through the transfer,  
13 delivery, or receipt of an exempted security  
14 under paragraph (12), as in effect on the date  
15 of enactment of the Futures Trading Act of  
16 1982 (other than any municipal security as de-  
17 fined in paragraph (29) as in effect on the date  
18 of enactment of the Futures Trading Act of  
19 1982), unless such agreement, contract, or  
20 transaction is of the character of, or is com-  
21 monly known in the trade as, a put, call, or  
22 other option.

23 “(D) MIXED SWAP.—The term ‘security-  
24 based swap’ includes any agreement, contract,  
25 or transaction that is as described in subpara-

1 graph (A) and also is based on the value of 1  
2 or more interest or other rates, currencies, com-  
3 modities, instruments of indebtedness, indices,  
4 quantitative measures, other financial or eco-  
5 nomic interest or property of any kind (other  
6 than a single security or a narrow-based secu-  
7 rity index), or the occurrence, non-occurrence,  
8 or the extent of the occurrence of an event or  
9 contingency associated with a potential finan-  
10 cial, economic, or commercial consequence  
11 (other than an event described in subparagraph  
12 (A)(ii)(III)).

13 “(69) SWAP.—The term ‘swap’ has the same  
14 meaning as in section 1a of the Commodity Ex-  
15 change Act (7 U.S.C. 1a).

16 “(70) PERSON ASSOCIATED WITH A SECURITY-  
17 BASED SWAP DEALER OR MAJOR SECURITY-BASED  
18 SWAP PARTICIPANT.—

19 “(A) IN GENERAL.—The term ‘person as-  
20 sociated with a security-based swap dealer or  
21 major security-based swap participant’ or ‘asso-  
22 ciated person of a security-based swap dealer or  
23 major security-based swap participant’ means—

24 “(i) any partner, officer, director, or  
25 branch manager of such security-based

1 swap dealer or major security-based swap  
2 participant (or any person occupying a  
3 similar status or performing similar func-  
4 tions);

5 “(ii) any person directly or indirectly  
6 controlling, controlled by, or under com-  
7 mon control with such security-based swap  
8 dealer or major security-based swap partic-  
9 ipant; or

10 “(iii) any employee of such security-  
11 based swap dealer or major security-based  
12 swap participant.

13 “(B) EXCLUSION.—Other than for pur-  
14 poses of section 15F(1)(2), the term ‘person as-  
15 sociated with a security-based swap dealer or  
16 major security-based swap participant’ or ‘asso-  
17 ciated person of a security-based swap dealer or  
18 major security-based swap participant’ does not  
19 include any person associated with a security-  
20 based swap dealer or major security-based swap  
21 participant whose functions are solely clerical or  
22 ministerial.

23 “(71) SECURITY-BASED SWAP DEALER.—

24 “(A) IN GENERAL.—The term ‘security-  
25 based swap dealer’ means any person who—

1 “(i) holds themselves out as a dealer in  
2 security-based swaps;

3 “(ii) makes a market in security-based  
4 swaps;

5 “(iii) regularly engages in the pur-  
6 chase and sale of security-based swaps in  
7 the ordinary course of a business; or

8 “(iv) engages in any activity causing  
9 it to be commonly known in the trade as  
10 a dealer or market maker in security-based  
11 swaps.

12 “(B) DESIGNATION BY TYPE OR CLASS.—  
13 A person may be designated as a security-based  
14 swap dealer for a single type or single class or  
15 category of security-based swap or activities  
16 and considered not to be a security-based swap  
17 dealer for other types, classes, or categories of  
18 security-based swaps or activities.

19 “(C) CAPITAL.—In setting capital require-  
20 ments for a person that is designated as a secu-  
21 rity-based swap dealer for a single type or sin-  
22 gle class or category of security-based swap or  
23 activities, the prudential regulator and the  
24 Commission shall take into account the risks  
25 associated with other types of security-based



1 swaps or classes of security-based swaps or cat-  
2 egories of security-based swaps engaged in and  
3 the other activities conducted by that person  
4 that are not otherwise subject to regulation ap-  
5 plicable to that person by virtue of the status  
6 of the person as a security-based swap dealer.

7 “(72) APPROPRIATE FEDERAL BANKING AGEN-  
8 CY.—The term ‘appropriate Federal banking agency’  
9 has the same meaning as in section 3(q) of the Fed-  
10 eral Deposit Insurance Act (12 U.S.C. 1813(q)).

11 “(73) BOARD.—The term ‘Board’ means the  
12 Board of Governors of the Federal Reserve System.

13 “(74) PRUDENTIAL REGULATOR.—The term  
14 ‘prudential regulator’ has the same meaning as in  
15 section 1a of the Commodity Exchange Act (7  
16 U.S.C. 1a).

17 “(75) SECURITY-BASED SWAP DATA REPOSI-  
18 TORY.—The term ‘security-based swap data reposi-  
19 tory’ means any person that collects, calculates, pre-  
20 pares, or maintains information or records with re-  
21 spect to transactions or positions in, or the terms  
22 and conditions of, security-based swaps entered into  
23 by third parties.

1           “(76) SWAP DEALER.—The term ‘swap dealer’  
2           has the same meaning as in section 1a of the Com-  
3           modity Exchange Act (7 U.S.C. 1a).

4           “(77) SWAP EXECUTION FACILITY.—The term  
5           ‘swap execution facility’ means a facility in which  
6           multiple participants have the ability to execute or  
7           trade security-based swaps by accepting bids and of-  
8           fers made by other participants that are open to  
9           multiple participants in the facility or system, or  
10          confirmation facility, that—

11                  “(A) facilitates the execution of security-  
12                  based swaps between persons; and

13                  “(B) is not a designated contract market.

14          “(78) SECURITY-BASED SWAP AGREEMENT.—

15                  “(A) IN GENERAL.—For purposes of sec-  
16                  tions 9, 10, 16, 20, and 21A of this Act, and  
17                  section 17 of the Securities Act of 1933 (15  
18                  U.S.C. 77q), the term ‘security-based swap  
19                  agreement’ means a swap agreement as defined  
20                  in section 206A of the Gramm-Leach-Bliley Act  
21                  (15 U.S.C. 78c note) of which a material term  
22                  is based on the price, yield, value, or volatility  
23                  of any security or any group or index of securi-  
24                  ties, or any interest therein.

1                   “(B) EXCLUSIONS.—The term ‘security-  
2                   based swap agreement’ does not include any se-  
3                   curity-based swap.”.

4           (b) AUTHORITY TO FURTHER DEFINE TERMS.—The  
5 Securities and Exchange Commission may, by rule, fur-  
6 ther define the terms “security-based swap”, “security-  
7 based swap dealer”, “major security-based swap partici-  
8 pant”, and “eligible contract participant” with regard to  
9 security-based swaps (as such terms are defined in the  
10 amendments made by subsection (a)) for the purpose of  
11 including transactions and entities that have been struc-  
12 tured to evade this subtitle or the amendments made by  
13 this subtitle.

14           (c) OTHER INCORPORATED DEFINITIONS.—Except  
15 as the context otherwise requires, in this subtitle, the  
16 terms “prudential regulator”, “swap”, “swap dealer”,  
17 “major swap participant”, “swap data repository”, “asso-  
18 ciated person of a swap dealer or major swap participant”,  
19 “eligible contract participant”, “swap execution facility”,  
20 “security-based swap”, “security-based swap dealer”,  
21 “major security-based swap participant”, “security-based  
22 swap data repository”, and “associated person of a secu-  
23 rity-based swap dealer or major security-based swap par-  
24 ticipant” have the same meanings as in section 1a of the

1 Commodity Exchange Act (7 U.S.C. 1a), as amended by  
2 this Act.

3 **SEC. 762. REPEAL OF PROHIBITION ON REGULATION OF SE-**  
4 **CURITY-BASED SWAP AGREEMENTS.**

5 (a) REPEAL.—Sections 206B and 206C of the  
6 Gramm-Leach-Bliley Act (Public Law 106–102; 15 U.S.C.  
7 78c note) are repealed.

8 (b) CONFORMING AMENDMENTS TO THE SECURITIES  
9 ACT OF 1933.—

10 (1) Section 2A of the Securities Act of 1933  
11 (15 U.S.C. 77b–1) is amended—

12 (A) by striking subsection (a) and reserv-  
13 ing that subsection; and

14 (B) by striking “(as defined in section  
15 206B of the Gramm-Leach-Bliley Act)” each  
16 place that such term appears and inserting “(as  
17 defined in section 3(a)(78) of the Securities Ex-  
18 change Act of 1934)”.

19 (2) Section 17 of the Securities Act of 1933 (15  
20 U.S.C. 77q) is amended—

21 (A) in subsection (a)—

22 (i) by inserting “(including security-  
23 based swaps)” after “securities”; and

24 (ii) by striking “(as defined in section  
25 206B of the Gramm-Leach-Bliley Act)”

1                   and inserting “(as defined in section  
2                   3(a)(78) of the Securities Exchange Act”;  
3                   and  
4                   (B) in subsection (d), by striking “206B of  
5                   the Gramm-Leach-Bliley Act” and inserting  
6                   “3(a)(78) of the Securities Exchange Act of  
7                   1934”.

8                   (c) CONFORMING AMENDMENTS TO THE SECURITIES  
9 EXCHANGE ACT OF 1934.—The Securities Exchange Act  
10 of 1934 (15 U.S.C. 78a et seq.) is amended—

11                   (1) in section 3A (15 U.S.C. 78c–1)—

12                   (A) by striking subsection (a) and reserv-  
13                   ing that subsection; and

14                   (B) by striking “(as defined in section  
15                   206B of the Gramm-Leach-Bliley Act)” each  
16                   place that the term appears;

17                   (2) in section 9 (15 U.S.C. 78i)—

18                   (A) in subsection (a), by striking para-  
19                   graphs (2) through (5) and inserting the fol-  
20                   lowing:

21                   “(2) To effect, alone or with 1 or more other persons,  
22 a series of transactions in any security registered on a na-  
23 tional securities exchange, any security not so registered,  
24 or in connection with any security-based swap or security-  
25 based swap agreement with respect to such security cre-

1 ating actual or apparent active trading in such security,  
2 or raising or depressing the price of such security, for the  
3 purpose of inducing the purchase or sale of such security  
4 by others.

5 “(3) If a dealer, broker, security-based swap dealer,  
6 major security-based swap participant, or other person  
7 selling or offering for sale or purchasing or offering to  
8 purchase the security, a security-based swap, or a secu-  
9 rity-based swap agreement with respect to such security,  
10 to induce the purchase or sale of any security registered  
11 on a national securities exchange, any security not so reg-  
12 istered, any security-based swap, or any security-based  
13 swap agreement with respect to such security by the cir-  
14 culation or dissemination in the ordinary course of busi-  
15 ness of information to the effect that the price of any such  
16 security will or is likely to rise or fall because of market  
17 operations of any 1 or more persons conducted for the  
18 purpose of raising or depressing the price of such security.

19 “(4) If a dealer, broker, security-based swap dealer,  
20 major security-based swap participant, or other person  
21 selling or offering for sale or purchasing or offering to  
22 purchase the security, a security-based swap, or security-  
23 based swap agreement with respect to such security, to  
24 make, regarding any security registered on a national se-  
25 curities exchange, any security not so registered, any secu-

1 rity-based swap, or any security-based swap agreement  
2 with respect to such security, for the purpose of inducing  
3 the purchase or sale of such security, such security-based  
4 swap, or such security-based swap agreement any state-  
5 ment which was at the time and in the light of the cir-  
6 cumstances under which it was made, false or misleading  
7 with respect to any material fact, and which that person  
8 knew or had reasonable ground to believe was so false or  
9 misleading.

10       “(5) For a consideration, received directly or indi-  
11 rectly from a broker, dealer, security-based swap dealer,  
12 major security-based swap participant, or other person  
13 selling or offering for sale or purchasing or offering to  
14 purchase the security, a security-based swap, or security-  
15 based swap agreement with respect to such security, to  
16 induce the purchase of any security registered on a na-  
17 tional securities exchange, any security not so registered,  
18 any security-based swap, or any security-based swap  
19 agreement with respect to such security by the circulation  
20 or dissemination of information to the effect that the price  
21 of any such security will or is likely to rise or fall because  
22 of the market operations of any 1 or more persons con-  
23 ducted for the purpose of raising or depressing the price  
24 of such security.”; and

1 (B) in subsection (i), by striking “(as de-  
2 fined in section 206B of the Gramm-Leach-Bli-  
3 ley Act)”;

4 (3) in section 10 (15 U.S.C. 78j)—

5 (A) in subsection (b), by striking “(as de-  
6 fined in section 206B of the Gramm-Leach-Bli-  
7 ley Act),” each place that term appears; and

8 (B) in the matter following subsection (b),  
9 by striking “(as defined in section 206B of the  
10 Gramm-Leach-Bliley Act)”;

11 (4) in section 15 (15 U.S.C. 78o)—

12 (A) in subsection (c)(1)(A), by striking  
13 “(as defined in section 206B of the Gramm-  
14 Leach-Bliley Act),”;

15 (B) in subparagraphs (B) and (C) of sub-  
16 section (c)(1), by striking “(as defined in sec-  
17 tion 206B of the Gramm-Leach-Bliley Act)”  
18 each place that term appears;

19 (C) by redesignating subsection (i), as  
20 added by section 303(f) of the Commodity Fu-  
21 tures Modernization Act of 2000 (Public Law  
22 106–554; 114 Stat. 2763A–455)), as subsection  
23 (j); and



1 (D) in subsection (j), as redesignated by  
2 subparagraph (C), by striking “(as defined in  
3 section 206B of the Gramm-Leach-Bliley Act)”;  
4 (5) in section 16 (15 U.S.C. 78p)—

5 (A) in subsection (a)(2)(C), by striking  
6 “(as defined in section 206(b) of the Gramm-  
7 Leach-Bliley Act (15 U.S.C. 78c note))”;

8 (B) in subsection (a)(3)(B), by inserting  
9 “or security-based swaps” after “security-based  
10 swap agreement”;

11 (C) in the first sentence of subsection (b),  
12 by striking “(as defined in section 206B of the  
13 Gramm-Leach-Bliley Act)”;

14 (D) in the third sentence of subsection (b),  
15 by striking “(as defined in section 206B of the  
16 Gramm-Leach Bliley Act)” and inserting “or a  
17 security-based swap”; and

18 (E) in subsection (g), by striking “(as de-  
19 fined in section 206B of the Gramm-Leach-Bli-  
20 ley Act)”;

21 (6) in section 20 (15 U.S.C. 78t),

22 (A) in subsection (d), by striking “(as de-  
23 fined in section 206B of the Gramm-Leach-Bli-  
24 ley Act)”;

1 (B) in subsection (f), by striking “(as de-  
2 fined in section 206B of the Gramm-Leach-Bli-  
3 ley Act)”;

4 (7) in section 21A (15 U.S.C. 78u-1)—

5 (A) in subsection (a)(1), by striking “(as  
6 defined in section 206B of the Gramm-Leach-  
7 Bliley Act)”;

8 (B) in subsection (g), by striking “(as de-  
9 fined in section 206B of the Gramm-Leach-Bli-  
10 ley Act)”.

11 **SEC. 763. AMENDMENTS TO THE SECURITIES EXCHANGE**

12 **ACT OF 1934.**

13 (a) CLEARING FOR SECURITY-BASED SWAPS.—The  
14 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)  
15 is amended by inserting after section 3B (as added by sec-  
16 tion 717 of this Act):

17 **“SEC. 3C. CLEARING FOR SECURITY-BASED SWAPS.**

18 **“(a) CLEARING REQUIREMENT.—**

19 **“(1) SUBMISSION.—**

20 **“(A) IN GENERAL.—**Except as provided in  
21 paragraphs (9) and (10), any person who is a  
22 party to a security-based swap shall submit  
23 such security-based swap for clearing to a clear-  
24 ing agency registered under section 17A of this  
25 title.

1           “(B) OPEN ACCESS.—The rules of a reg-  
2           istered clearing agency shall—

3                   “(i) prescribe that all security-based  
4                   swaps with the same terms and conditions  
5                   are economically equivalent and may be  
6                   offset with each other within the clearing  
7                   agency; and

8                   “(ii) provide for nondiscriminatory  
9                   clearing of a security-based swap executed  
10                  bilaterally or on or through the rules of an  
11                  unaffiliated national securities exchange or  
12                  swap execution facility, subject to the re-  
13                  quirements of section 5(b).

14           “(2) COMMISSION APPROVAL.—

15                   “(A) IN GENERAL.—A clearing agency  
16                   shall submit to the Commission for prior ap-  
17                   proval any group, category, type, or class of se-  
18                   curity-based swaps that the clearing agency  
19                   seeks to accept for clearing, which submission  
20                   the Commission shall make available to the  
21                   public.

22                   “(B) DEADLINE.—The Commission shall  
23                   take final action on a request submitted pursu-  
24                   ant to subparagraph (A) not later than 90 days  
25                   after submission of the request, unless the

1 clearing agency submitting the request agrees  
2 to an extension of the time limitation estab-  
3 lished under this subparagraph.

4 “(C) APPROVAL.—The Commission shall  
5 approve, unconditionally or subject to such  
6 terms and conditions as the Commission deter-  
7 mines to be appropriate, any request submitted  
8 pursuant to subparagraph (A) if the Commis-  
9 sion finds that the request is consistent with  
10 the requirements of section 17A. The Commis-  
11 sion shall not approve any such request if the  
12 Commission does not make such finding.

13 “(D) RULES.—The Commission shall  
14 adopt rules for a clearing agency’s submission  
15 for approval, pursuant to this paragraph, of any  
16 group, category, type, or class of security-based  
17 swaps that the clearing agency seeks to accept  
18 for clearing.

19 “(3) STAY OF CLEARING REQUIREMENT.—At  
20 any time after issuance of an approval pursuant to  
21 paragraph (2):

22 “(A) REVIEW PROCESS.—The Commission,  
23 on application of a counterparty to a security-  
24 based swap or on its own initiative, may stay  
25 the clearing requirement of paragraph (1) until

1           the Commission completes a review of the terms  
2           of the security-based swap, or the group, cat-  
3           egory, type, or class of security-based swaps,  
4           and the clearing arrangement.

5           “(B) DEADLINE.—The Commission shall  
6           complete a review undertaken pursuant to sub-  
7           paragraph (A) not later than 90 days after  
8           issuance of the stay, unless the clearing agency  
9           that clears the security-based swap, or the  
10          group, category, type, or class of security-based  
11          swaps, agrees to an extension of the time limi-  
12          tation established under this subparagraph.

13          “(C) DETERMINATION.—Upon completion  
14          of the review undertaken pursuant to subpara-  
15          graph (A)—

16                 “(i) the Commission may determine,  
17                 unconditionally or subject to such terms  
18                 and conditions as the Commission deter-  
19                 mines to be appropriate, that the security-  
20                 based swap, or the group, category, type,  
21                 or class of security-based swaps, must be  
22                 cleared pursuant to this subsection if the  
23                 Commission finds that such clearing—

24                         “(I) is consistent with the re-  
25                         quirements of section 17A; and

1                   “(II) is otherwise in the public  
2                   interest, for the protection of inves-  
3                   tors, and consistent with the purposes  
4                   of this title;

5                   “(ii) the Commission may determine  
6                   that the clearing requirement of paragraph  
7                   (1) shall not apply to the security-based  
8                   swap, or the group, category, type, or class  
9                   of security-based swaps; or

10                   “(iii) if a determination is made that  
11                   the clearing requirement of paragraph (1)  
12                   shall no longer apply, then the Commission  
13                   may still permit such security-based swap,  
14                   or the group, category, type, or class of se-  
15                   curity-based swaps to be cleared.

16                   “(D) RULES.—The Commission shall  
17                   adopt rules for reviewing, pursuant to this  
18                   paragraph, a clearing agency’s clearing of a se-  
19                   curity-based swap, or a group, category, type,  
20                   or class of security-based swaps that the Com-  
21                   mission has accepted for clearing.

22                   “(4) SECURITY-BASED SWAPS REQUIRED TO BE  
23                   ACCEPTED FOR CLEARING.—

24                   “(A) RULEMAKING.—The Commission  
25                   shall adopt rules to further identify any group,

1 category, type, or class of security-based swaps  
2 not submitted for approval under paragraph (2)  
3 that the Commission deems should be accepted  
4 for clearing. In adopting such rules, the Com-  
5 mission shall take into account the following  
6 factors:

7 “(i) The extent to which any of the  
8 terms of the group, category, type, or class  
9 of security-based swaps, including price,  
10 are disseminated to third parties or are  
11 referenced in other agreements, contracts,  
12 or transactions.

13 “(ii) The volume of transactions in  
14 the group, category, type, or class of secu-  
15 rity-based swaps.

16 “(iii) The extent to which the terms of  
17 the group, category, type, or class of secu-  
18 rity-based swaps are similar to the terms  
19 of other agreements, contracts, or trans-  
20 actions that are cleared.

21 “(iv) Whether any differences in the  
22 terms of the group, category, type, or class  
23 of security-based swaps, compared to other  
24 agreements, contracts, or transactions that  
25 are cleared, are of economic significance.

1                   “(v) Whether a clearing agency is pre-  
2                   pared to clear the group, category, type, or  
3                   class of security-based swaps and such  
4                   clearing agency has in place effective risk  
5                   management systems.

6                   “(vi) Any other factor the Commission  
7                   determines to be appropriate.

8                   “(B) OTHER DESIGNATIONS.—At any time  
9                   after the adoption of the rules required under  
10                  subparagraph (A), the Commission may sepa-  
11                  rately designate a particular security-based  
12                  swap or class of security-based swaps as subject  
13                  to the clearing requirement of paragraph (1),  
14                  taking into account the factors established in  
15                  clauses (i) through (vi) of subparagraph (A)  
16                  and the rules adopted in such subparagraph.

17                  “(C) IN GENERAL.—In accordance with  
18                  subparagraph (A), the Commission shall, con-  
19                  sistent with the public interest, adopt rules  
20                  under the expedited process described in sub-  
21                  paragraph (D) to establish criteria for deter-  
22                  mining that a swap, or any group, category,  
23                  type, or class of swap is required to be cleared.

24                  “(D) EXPEDITED RULEMAKING AUTHOR-  
25                  ITY.—



1                   “(i) PROCEDURE.—The promulgation  
2                   of regulations under subparagraph (A)  
3                   may be made without regard to—

4                   “(I) the notice and comment pro-  
5                   visions of section 553 of title 5,  
6                   United States Code; and

7                   “(II) chapter 35 of title 44,  
8                   United States Code (commonly known  
9                   as the ‘Paperwork Reduction Act’).

10                   “(ii) AGENCY RULEMAKING.—In car-  
11                   rying out subparagraph (A), the Commis-  
12                   sion shall use the authority provided under  
13                   section 808 of title 5, United States Code.

14                   “(5) PREVENTION OF EVASION.—

15                   “(A) IN GENERAL.—The Commission shall  
16                   have authority to prescribe rules under this sec-  
17                   tion, or issue interpretations of such rules, as  
18                   necessary to prevent evasions of this section.

19                   “(B) DUTY OF COMMISSION TO INVES-  
20                   TIGATE AND TAKE CERTAIN ACTIONS.—To the  
21                   extent the Commission finds that a particular  
22                   security-based swap or any group, category,  
23                   type, or class of security-based swaps that  
24                   would otherwise be subject to mandatory clear-  
25                   ing but no clearing agency has listed the secu-

1           rity-based swap or the group, category, type, or  
2           class of security-based swaps for clearing, the  
3           Commission shall—

4                   “(i) investigate the relevant facts and  
5                   circumstances;

6                   “(ii) within 30 days issue a public re-  
7                   port containing the results of the investiga-  
8                   tion; and

9                   “(iii) take such actions as the Com-  
10                  mission determines to be necessary and in  
11                  the public interest, which may include re-  
12                  quiring the retaining of adequate margin  
13                  or capital by parties to the security-based  
14                  swap or the group, category, type, or class  
15                  of security-based swaps.

16                 “(C) EFFECT ON AUTHORITY.—Nothing in  
17                 this paragraph—

18                   “(i) authorize the Commission to re-  
19                   quire a clearing agency to list for clearing  
20                   a security-based swap or any group, cat-  
21                   egory, type, or class of security-based  
22                   swaps if the clearing of the security-based  
23                   swap or the group, category, type, or class  
24                   of security-based swaps would adversely af-  
25                   fect the business operations of the clearing

1           agency, threaten the financial integrity of  
2           the clearing agency, or pose a systemic risk  
3           to the clearing agency; and

4           “(ii) affect the authority of the Com-  
5           mission to enforce the open access provi-  
6           sions of paragraph (1) with respect to a se-  
7           curity-based swap or the group, category,  
8           type, or class of security-based swaps that  
9           is listed for clearing by a clearing agency.

10          “(6) REQUIRED REPORTING.—

11           “(A) BOTH COUNTERPARTIES.—Both  
12           counterparties to a security-based swap that is  
13           not cleared by any clearing agency shall report  
14           such a security-based swap either to a reg-  
15           istered security-based swap repository described  
16           in section 13(n) or, if there is no repository  
17           that would accept the security-based swap, to  
18           the Commission pursuant to section 13A.

19           “(B) TIMING.—Counterparties to a secu-  
20           rity-based swap shall submit the reports re-  
21           quired under subparagraph (A) not later than  
22           such time period as the Commission may by  
23           rule or regulation prescribe.

24          “(7) TRANSITION RULES.—

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1           “(A) REPORTING TRANSITION RULES.—  
2 Rules adopted by the Commission under this  
3 section shall provide for the reporting of data,  
4 as follows:

5           “(i) Security-based swaps entered into  
6 before the date of the enactment of this  
7 section shall be reported to a registered se-  
8 curity-based swap repository or the Com-  
9 mission not later than 180 days after the  
10 effective date of this section.

11           “(ii) Security-based swaps entered  
12 into on or after such date of enactment  
13 shall be reported to a registered security-  
14 based swap repository or the Commission  
15 not later than the later of—

16           “(I) 90 days after such effective  
17 date; or

18           “(II) such other time after enter-  
19 ing into the security-based swap as  
20 the Commission may prescribe by rule  
21 or regulation.

22           “(B) CLEARING TRANSITION RULES.—

23           “(i) Security-based swaps entered into  
24 before the date of the enactment of this  
25 section are exempt from the clearing re-

1 requirements of this subsection if reported  
2 pursuant to subparagraph (A)(i).

3 “(ii) Security-based swaps entered  
4 into before application of the clearing re-  
5 quirement pursuant to this section are ex-  
6 empt from the clearing requirements of  
7 this section if reported pursuant to sub-  
8 paragraph (A)(ii).

9 “(8) TRADE EXECUTION.—

10 “(A) IN GENERAL.—With respect to trans-  
11 actions involving security-based swaps subject  
12 to the clearing requirement of paragraph (1),  
13 counterparties shall—

14 “(i) execute the transaction on an ex-  
15 change; or

16 “(ii) execute the transaction on a  
17 swap execution facility registered under  
18 section 3D or a swap execution facility  
19 that is exempt from registration under sec-  
20 tion 3D(e).

21 “(B) EXCEPTION.—The requirements of  
22 clauses (i) and (ii) of subparagraph (A) shall  
23 not apply—

24 “(i) if no national securities exchange  
25 or security-based swap execution facility

1 makes the security-based swap available to  
2 trade; or

3 “(ii) to swap transactions where a  
4 commercial end user opts to use the clear-  
5 ing exemption under paragraph (10).

6 “(9) REQUIRED EXEMPTION.—Subject to para-  
7 graph (4), the Commission shall exempt a security-  
8 based swap from the requirements of paragraphs (1)  
9 and (8) and any rules issued under this subsection,  
10 if no clearing agency registered under this Act will  
11 accept the security-based swap from clearing.

12 “(10) END USER CLEARING EXEMPTION.—

13 “(A) DEFINITION OF COMMERCIAL END  
14 USER.—

15 “(i) IN GENERAL.—In this paragraph,  
16 the term ‘commercial end user’ means any  
17 person other than a financial entity de-  
18 scribed in clause (ii) who, as its primary  
19 business activity, owns, uses, produces,  
20 processes, manufactures, distributes, mer-  
21 chandises, or markets goods, services, or  
22 commodities (which shall include coal, nat-  
23 ural gas, electricity, ethanol, crude oil, dis-  
24 tillates, and other hydrocarbons) either in-  
25 dividually or in a fiduciary capacity.

1                   “(ii) FINANCIAL ENTITY.—The term  
2                   ‘financial entity’ means—

3                   “(I) a swap dealer, major swap  
4                   participant, security-based swap deal-  
5                   er, or major security-based swap par-  
6                   ticipant;

7                   “(II) a person predominantly en-  
8                   gaged in activities that are in the  
9                   business of banking or financial in na-  
10                  ture, as defined in section 4(k) of the  
11                  Bank Holding Company Act of 1956;

12                  “(III) a person predominantly  
13                  engaged in activities that are financial  
14                  in nature;

15                  “(IV) a private fund as defined  
16                  in section 202(a) of the Investment  
17                  Advisers Act of 1940 (15 U.S.C. 80b-  
18                  2(a)) or a commodity pool as defined  
19                  in section 1a of the Commodity Ex-  
20                  change Act (7 U.S.C. 1a); or

21                  “(V) a person that is registered  
22                  or required to be registered with the  
23                  Commission, but does not include a  
24                  public company solely because it reg-

1                   isters its securities with the Commis-  
2                   sion.

3                   “(B) END USER CLEARING EXEMPTION.—

4                    “(i) IN GENERAL.—Subject to clause  
5                   (ii), in the event that a security-based  
6                   swap is subject to the mandatory clearing  
7                   requirement under paragraph (1), and 1 of  
8                   the counterparties to the security-based  
9                   swap is a commercial end user that  
10                  counterparty—

11                    “(I)(aa) may elect not to clear  
12                   the security-based swap, as required  
13                   under paragraph (1); or

14                    “(bb) may elect to require clear-  
15                   ing of the security-based swap; and

16                    “(II) if the end user makes an  
17                   election under subclause (I)(bb), shall  
18                   have the sole right to select the clear-  
19                   ing agency at which the security-based  
20                   swap will be cleared.

21                    “(ii) LIMITATION.—A commercial end  
22                   user may only make an election under  
23                   clause (i) if the end user is using the secu-  
24                   rity-based swap to hedge its own commer-  
25                   cial risk.



1 “(C) TREATMENT OF AFFILIATES.—

2 “(i) IN GENERAL.—An affiliate of a  
3 commercial end user (including affiliate en-  
4 tities predominantly engaged in providing  
5 financing for the purchase of the merchan-  
6 dise or manufactured goods of the com-  
7 mercial end user) may make an election  
8 under subparagraph (B)(i) only if the affil-  
9 iate, acting on behalf of the commercial  
10 end user and as an agent, uses the secu-  
11 rity-based swap to hedge or mitigate the  
12 commercial risk of the commercial end  
13 user parent or other affiliates of the com-  
14 mercial end user that is not a financial en-  
15 tity.

16 “(ii) PROHIBITION RELATING TO CER-  
17 TAIN AFFILIATES.—An affiliate of a com-  
18 mercial end user shall not use the exemp-  
19 tion under subparagraph (B) if the affil-  
20 iate is—

21 “(I) a security-based swap dealer;

22 “(II) a security-based security-  
23 based swap dealer;

24 “(III) a major security-based  
25 swap participant;

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1 “(IV) a major security-based se-  
2 curity-based swap participant;

3 “(V) an issuer that would be an  
4 investment company, as defined in  
5 section 3 of the Investment Company  
6 Act of 1940 (15 U.S.C. 80a–3), but  
7 for paragraph (1) or (7) of subsection  
8 (c) of that section 3 (15 U.S.C. 80a–  
9 3(c));

10 “(VI) a commodity pool;

11 “(VII) a bank holding company  
12 with over \$50,000,000,000 in consoli-  
13 dated assets; or

14 “(VIII) an affiliate of any entity  
15 described in subclauses (I) through  
16 (VII).

17 “(iii) ABUSE OF EXEMPTION.—The  
18 Commission may prescribe such rules, or  
19 issue interpretations of the rules, as the  
20 Commission determines to be necessary to  
21 prevent abuse of the exemption described  
22 in subparagraph (B).

23 “(D) OPTION TO CLEAR.—

24 “(i) SECURITY-BASED SWAPS RE-  
25 QUIRED TO BE CLEARED ENTERED INTO

1 WITH A FINANCIAL ENTITY.—With respect  
2 to any security-based swap that is subject  
3 to the mandatory clearing requirement  
4 under this subsection and entered into by  
5 a security-based swap dealer or a major se-  
6 curity-based swap participant with a finan-  
7 cial entity, the financial entity shall have  
8 the sole right to select the clearing agency  
9 at which the security-based swap will be  
10 cleared.

11 “(ii) SECURITY-BASED SWAPS NOT  
12 REQUIRED TO BE CLEARED ENTERED INTO  
13 WITH A FINANCIAL ENTITY OR COMMER-  
14 CIAL END USER.—With respect to any se-  
15 curity-based swap that is not subject to the  
16 mandatory clearing requirement under this  
17 subsection and entered into by a security-  
18 based swap dealer or a major security-  
19 based swap participant with a financial en-  
20 tity or commercial end user, the financial  
21 entity or commercial end user—

22 “(I) may elect to require clearing  
23 of the security-based swap; and

1                                   “(II) shall have the sole right to  
2                                   select the clearing agency at which the  
3                                   security-based swap will be cleared.

4           “(b) AUDIT COMMITTEE APPROVAL.—Exemptions  
5 from the requirements of this section to clear or trade a  
6 security-based swap through a national securities ex-  
7 change or security-based swap execution facility shall be  
8 available to a counterparty that is an issuer of securities  
9 that are registered under section 12 or that is required  
10 to file reports pursuant to section 15(d), only if the  
11 issuer’s audit committee has reviewed and approved the  
12 issuer’s decision to enter into security-based swaps that  
13 are subject to such exemptions.

14           “(c) PUBLIC AVAILABILITY OF SECURITY-BASED  
15 SWAP TRANSACTION DATA.—

16                   “(1) IN GENERAL.—

17                                   “(A) DEFINITION OF REAL-TIME PUBLIC  
18                                   REPORTING.—In this paragraph, the term ‘real-  
19                                   time public reporting’ means to report data re-  
20                                   lating to a security-based swap transaction as  
21                                   soon as technologically practicable after the  
22                                   time at which the security-based swap trans-  
23                                   action has been executed.

24                                   “(B) PURPOSE.—The purpose of this sub-  
25                                   section is to authorize the Commission to make

1 security-based swap transaction and pricing  
2 data available to the public in such form and at  
3 such times as the Commission determines ap-  
4 propriate to enhance price discovery.

5 “(C) GENERAL RULE.—The Commission is  
6 authorized to provide by rule for the public  
7 availability of security-based swap transaction  
8 and pricing data as follows:

9 “(i) With respect to those security-  
10 based swaps that are subject to the man-  
11 datory clearing requirement described in  
12 subsection (a)(1) (including those security-  
13 based swaps that are exempted from those  
14 requirements), the Commission shall re-  
15 quire real-time public reporting for such  
16 transactions.

17 “(ii) With respect to those security-  
18 based swaps that are not subject to the  
19 mandatory clearing requirement described  
20 in subsection (a)(1), but are cleared at a  
21 registered clearing agency, the Commission  
22 shall require real-time public reporting for  
23 such transactions.

24 “(iii) With respect to security-based  
25 swaps that are not cleared at a registered

1 clearing agency and which are reported to  
2 a security-based swap data repository or  
3 the Commission under subsection (a), the  
4 Commission shall make available to the  
5 public, in a manner that does not disclose  
6 the business transactions and market posi-  
7 tions of any person, aggregate data on  
8 such security-based swap trading volumes  
9 and positions.

10 “(iv) With respect to security-based  
11 swaps that are exempt from the require-  
12 ments of subsection (a)(1), but are subject  
13 to the requirements of subsection (a)(8),  
14 the Commission shall require real-time  
15 public reporting for such transactions.

16 “(D) REGISTERED ENTITIES AND PUBLIC  
17 REPORTING.—The Commission may require  
18 registered entities to publicly disseminate the  
19 security-based swap transaction and pricing  
20 data required to be reported under this para-  
21 graph.

22 “(E) RULEMAKING REQUIRED.—With re-  
23 spect to the rule providing for the public avail-  
24 ability of transaction and pricing data for secu-  
25 rity-based swaps described in clauses (i) and (ii)

1 of subparagraph (C), the rule promulgated by  
2 the Commission shall contain provisions—

3 “(i) to ensure such information does  
4 not identify the participants;

5 “(ii) to specify the criteria for deter-  
6 mining what constitutes a large notional  
7 security-based swap transaction (block  
8 trade) for particular markets and con-  
9 tracts;

10 “(iii) to specify the appropriate time  
11 delay for reporting large notional security-  
12 based swap transactions (block trades) to  
13 the public; and

14 “(iv) that take into account whether  
15 the public disclosure will materially reduce  
16 market liquidity.

17 “(F) TIMELINESS OF REPORTING.—Par-  
18 ties to a security-based swap (including agents  
19 of the parties to a security-based swap) shall be  
20 responsible for reporting security-based swap  
21 transaction information to the appropriate reg-  
22 istered entity in a timely manner as may be  
23 prescribed by the Commission.

1           “(2) SEMIANNUAL AND ANNUAL PUBLIC RE-  
2           PORTING OF AGGREGATE SECURITY-BASED SWAP  
3           DATA.—

4           “(A) IN GENERAL.—In accordance with  
5           subparagraph (B), the Commission shall issue a  
6           written report on a semiannual and annual  
7           basis to make available to the public informa-  
8           tion relating to—

9                   “(i) the trading and clearing in the  
10                   major security-based swap categories; and

11                   “(ii) the market participants and de-  
12                   velopments in new products.

13           “(B) USE; CONSULTATION.—In preparing  
14           a report under subparagraph (A), the Commis-  
15           sion shall—

16                   “(i) use information from security-  
17                   based swap data repositories and clearing  
18                   agencies; and

19                   “(ii) consult with the Office of the  
20                   Comptroller of the Currency, the Bank for  
21                   International Settlements, and such other  
22                   regulatory bodies as may be necessary.

23           “(C)       TRANSITION       RULE       FOR  
24           PREENACTMENT SECURITY-BASED SWAPS.—



1                   “(i) SECURITY-BASED SWAPS EN-  
2                   TERED INTO BEFORE THE DATE OF EN-  
3                   ACTMENT OF THE WALL STREET TRANS-  
4                   PARENCY AND ACCOUNTABILITY ACT OF  
5                   2010.—Each security-based swap entered  
6                   into before the date of enactment of the  
7                   Wall Street Transparency and Account-  
8                   ability Act of 2010, the terms of which  
9                   have not expired as of the date of enact-  
10                  ment of that Act, shall be reported to a  
11                  registered security-based swap data reposi-  
12                  tory or the Commission by a date that is  
13                  not later than—

14                         “(I) 30 days after the date of  
15                         issuance of the interim final rule; or

16                         “(II) such other period as the  
17                         Commission determines to be appro-  
18                         priate.

19                   “(ii) COMMISSION RULEMAKING.—The  
20                   Commission shall promulgate an interim  
21                   final rule within 90 days of the date of en-  
22                   actment of this section providing for the  
23                   reporting of each security-based swap en-  
24                   tered into before the date of enactment as  
25                   referenced in clause (i).

1           “(D) EFFECTIVE DATE.—The reporting  
2           provisions described in this paragraph shall be  
3           effective upon the date of enactment of this sec-  
4           tion.

5           “(d) DESIGNATION OF CHIEF COMPLIANCE OFFI-  
6 CER.—

7           “(1) IN GENERAL.—Each registered clearing  
8           agency shall designate an individual to serve as a  
9           chief compliance officer.

10          “(2) DUTIES.—The chief compliance officer  
11          shall—

12                 “(A) report directly to the board or to the  
13                 senior officer of the clearing agency;

14                 “(B) in consultation with its board, a body  
15                 performing a function similar thereto, or the  
16                 senior officer of the registered clearing agency,  
17                 resolve any conflicts of interest that may arise;

18                 “(C) be responsible for administering each  
19                 policy and procedure that is required to be es-  
20                 tablished pursuant to this section;

21                 “(D) ensure compliance with this title (in-  
22                 cluding regulations issued under this title) re-  
23                 lating to agreements, contracts, or transactions,  
24                 including each rule prescribed by the Commis-  
25                 sion under this section;

1           “(E) establish procedures for the remedi-  
2           ation of noncompliance issues identified by the  
3           compliance officer through any—

4                   “(i) compliance office review;

5                   “(ii) look-back;

6                   “(iii) internal or external audit find-  
7           ing;

8                   “(iv) self-reported error; or

9                   “(v) validated complaint; and

10           “(F) establish and follow appropriate pro-  
11           cedures for the handling, management response,  
12           remediation, retesting, and closing of non-  
13           compliance issues.

14           “(3) ANNUAL REPORTS.—

15                   “(A) IN GENERAL.—In accordance with  
16           rules prescribed by the Commission, the chief  
17           compliance officer shall annually prepare and  
18           sign a report that contains a description of—

19                   “(i) the compliance of the registered  
20           clearing agency or security-based swap exe-  
21           cution facility of the compliance officer  
22           with respect to this title (including regula-  
23           tions under this title); and

24                   “(ii) each policy and procedure of the  
25           registered clearing agency of the compli-

1                   ance officer (including the code of ethics  
2                   and conflict of interest policies of the reg-  
3                   istered clearing agency).

4                   “(B) REQUIREMENTS.—A compliance re-  
5                   port under subparagraph (A) shall—

6                                 “(i) accompany each appropriate fi-  
7                                 nancial report of the registered clearing  
8                                 agency that is required to be furnished to  
9                                 the Commission pursuant to this section;  
10                                and

11                               “(ii) include a certification that, under  
12                                penalty of law, the compliance report is ac-  
13                                curate and complete.”.

14           (b) CLEARING AGENCY REQUIREMENTS.—Section  
15 17A of the Securities Exchange Act of 1934 (15 U.S.C.  
16 78q-1) is amended by adding at the end the following:

17           “(g) REGISTRATION REQUIREMENT.—It shall be un-  
18 lawful for a clearing agency, unless registered with the  
19 Commission, directly or indirectly to make use of the mails  
20 or any means or instrumentality of interstate commerce  
21 to perform the functions of a clearing agency with respect  
22 to a security-based swap.

23           “(h) VOLUNTARY REGISTRATION.—A person that  
24 clears agreements, contracts, or transactions that are not

1 required to be cleared under this title may register with  
2 the Commission as a clearing agency.

3       “(i) STANDARDS FOR CLEARING AGENCIES CLEAR-  
4 ING SECURITY-BASED SWAP TRANSACTIONS.—To be reg-  
5 istered and to maintain registration as a clearing agency  
6 that clears security-based swap transactions, a clearing  
7 agency shall comply with such standards as the Commis-  
8 sion may establish by rule. In establishing any such stand-  
9 ards, and in the exercise of its oversight of such a clearing  
10 agency pursuant to this title, the Commission may con-  
11 form such standards or oversight to reflect evolving  
12 United States and international standards. Except where  
13 the Commission determines otherwise by rule or regula-  
14 tion, a clearing agency shall have reasonable discretion in  
15 establishing the manner in which it complies with any such  
16 standards.

17       “(j) RULES.—The Commission shall adopt rules gov-  
18 erning persons that are registered as clearing agencies for  
19 security-based swaps under this title.

20       “(k) EXEMPTIONS.—

21               “(1) IN GENERAL.—The Commission may ex-  
22 empt, conditionally or unconditionally, a clearing  
23 agency from registration under this section for the  
24 clearing of security-based swaps if the Commission  
25 determines that the clearing agency is subject to

1 comparable, comprehensive supervision and regula-  
2 tion by the Commodity Futures Trading Commission  
3 or the appropriate government authorities in the  
4 home country of the agency. Such conditions may in-  
5 clude, but are not limited to, requiring that the  
6 clearing agency be available for inspection by the  
7 Commission and make available all information re-  
8 quested by the Commission.

9 “(2) DERIVATIVES CLEARING ORGANIZA-  
10 TIONS.—A person that is required to be registered  
11 as a derivatives clearing organization under the  
12 Commodity Exchange Act, whose principal business  
13 is clearing commodity futures and options on com-  
14modity futures transactions and swaps and which is  
15 a derivatives clearing organization registered with  
16 the Commodity Futures Trading Commission under  
17 the Commodity Exchange Act (7 U.S.C. 1 et seq.),  
18 shall be unconditionally exempt from registration  
19 under this section solely for the purpose of clearing  
20 security-based swaps, unless the Commission finds  
21 that such derivatives clearing organization is not  
22 subject to comparable, comprehensive supervision  
23 and regulation by the Commodity Futures Trading  
24 Commission.

1       “(1) MODIFICATION OF CORE PRINCIPLES.—The  
2 Commission may conform the core principles established  
3 in this section to reflect evolving United States and inter-  
4 national standards.”.

5       (c) SECURITY-BASED SWAP EXECUTION FACILI-  
6 TIES.—The Securities Exchange Act of 1934 (15 U.S.C.  
7 78a et seq.) is amended by inserting after section 3C (as  
8 added by subsection (a) of this section) the following:

9       **“SEC. 3D. SECURITY-BASED SWAP EXECUTION FACILITIES.**

10       “(a) REGISTRATION.—

11               “(1) IN GENERAL.—No person may operate a  
12 facility for the trading or processing of security-  
13 based swaps, unless the facility is registered as a se-  
14 curity-based swap execution facility or as a national  
15 securities exchange under this section.

16               “(2) DUAL REGISTRATION.—Any person that is  
17 registered as a security-based swap execution facility  
18 under this section shall register with the Commis-  
19 sion regardless of whether the person also is reg-  
20 istered with the Commodity Futures Trading Com-  
21 mission as a swap execution facility.

22       “(b) TRADING AND TRADE PROCESSING.—A secu-  
23 rity-based swap execution facility that is registered under  
24 subsection (a) may—

1           “(1) make available for trading any security-  
2           based swap; and

3           “(2) facilitate trade processing of any security-  
4           based swap.

5           “(c) IDENTIFICATION OF FACILITY USED TO TRADE  
6 SECURITY-BASED SWAPS BY NATIONAL SECURITIES EX-  
7 CHANGES.—A national securities exchange shall, to the ex-  
8 tent that the exchange also operates a security-based swap  
9 execution facility and uses the same electronic trade execu-  
10 tion system for listing and executing trades of security-  
11 based swaps on or through the exchange and the facility,  
12 identify whether electronic trading of such security-based  
13 swaps is taking place on or through the national securities  
14 exchange or the security-based swap execution facility.

15           “(d) CORE PRINCIPLES FOR SECURITY-BASED SWAP  
16 EXECUTION FACILITIES.—

17           “(1) COMPLIANCE WITH CORE PRINCIPLES.—

18           “(A) IN GENERAL.—To be registered, and  
19           maintain registration, as a security-based swap  
20           execution facility, the security-based swap exe-  
21           cution facility shall comply with—

22           “(i) the core principles described in  
23           this subsection; and

24           “(ii) any requirement that the Com-  
25           mission may impose by rule or regulation.



1           “(B) REASONABLE DISCRETION OF SECUR-  
2           RITY-BASED SWAP EXECUTION FACILITY.—Un-  
3           less otherwise determined by the Commission,  
4           by rule or regulation, a security-based swap  
5           execution facility described in subparagraph (A)  
6           shall have reasonable discretion in establishing  
7           the manner in which it complies with the core  
8           principles described in this subsection.

9           “(2) COMPLIANCE WITH RULES.—A security-  
10          based swap execution facility shall—

11           “(A) establish and enforce compliance with  
12           any rule established by such security-based  
13           swap execution facility, including—

14           “(i) the terms and conditions of the  
15           security-based swaps traded or processed  
16           on or through the facility; and

17           “(ii) any limitation on access to the  
18           facility;

19           “(B) establish and enforce trading, trade  
20           processing, and participation rules that will  
21           deter abuses and have the capacity to detect,  
22           investigate, and enforce those rules, including  
23           means—

24           “(i) to provide market participants  
25           with impartial access to the market; and

1                   “(ii) to capture information that may  
2                   be used in establishing whether rule viola-  
3                   tions have occurred; and

4                   “(C) establish rules governing the oper-  
5                   ation of the facility, including rules specifying  
6                   trading procedures to be used in entering and  
7                   executing orders traded or posted on the facil-  
8                   ity, including block trades.

9                   “(3) SECURITY-BASED SWAPS NOT READILY  
10                  SUSCEPTIBLE TO MANIPULATION.—The security-  
11                  based swap execution facility shall permit trading  
12                  only in security-based swaps that are not readily  
13                  susceptible to manipulation.

14                  “(4) MONITORING OF TRADING AND TRADE  
15                  PROCESSING.—The security-based swap execution  
16                  facility shall—

17                         “(A) establish and enforce rules or terms  
18                         and conditions defining, or specifications detail-  
19                         ing—

20                                 “(i) trading procedures to be used in  
21                                 entering and executing orders traded on or  
22                                 through the facilities of the security-based  
23                                 swap execution facility; and

24                                 “(ii) procedures for trade processing  
25                                 of security-based swaps on or through the

1 facilities of the security-based swap execu-  
2 tion facility; and

3 “(B) monitor trading in security-based  
4 swaps to prevent manipulation, price distortion,  
5 and disruptions of the delivery or cash settle-  
6 ment process through surveillance, compliance,  
7 and disciplinary practices and procedures, in-  
8 cluding methods for conducting real-time moni-  
9 toring of trading and comprehensive and accu-  
10 rate trade reconstructions.

11 “(5) ABILITY TO OBTAIN INFORMATION.—The  
12 security-based swap execution facility shall—

13 “(A) establish and enforce rules that will  
14 allow the facility to obtain any necessary infor-  
15 mation to perform any of the functions de-  
16 scribed in this subsection;

17 “(B) provide the information to the Com-  
18 mission on request; and

19 “(C) have the capacity to carry out such  
20 international information-sharing agreements as  
21 the Commission may require.

22 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

23 “(A) IN GENERAL.—To reduce the poten-  
24 tial threat of market manipulation or conges-  
25 tion, especially during trading in the delivery

1 month, a security-based swap execution facility  
2 that is a trading facility shall adopt for each of  
3 the contracts listed on or traded through the fa-  
4 cility, as is necessary and appropriate, position  
5 limitations or position accountability for specu-  
6 lators.

7 “(B) POSITION LIMITS.—For any contract  
8 or agreement that is subject to a position limi-  
9 tation established by the Commission pursuant  
10 to section 10B, the security-based swap execu-  
11 tion facility shall set its position limitation at a  
12 level no higher than the limitation established  
13 by the Commission.

14 “(C) POSITION ENFORCEMENT.—For any  
15 contract or agreement that is subject to a posi-  
16 tion limitation established by the Commission  
17 pursuant to section 10B, a security-based swap  
18 execution facility shall reject any proposed secu-  
19 rity-based swap transaction if, based on infor-  
20 mation readily available to a security-based  
21 swap execution facility, any proposed security-  
22 based swap transaction would cause a security-  
23 based swap execution facility customer that  
24 would be a party to such swap transaction to  
25 exceed such position limitation.

1           “(7) FINANCIAL INTEGRITY OF TRANS-  
2           ACTIONS.—The security-based swap execution facil-  
3           ity shall establish and enforce rules and procedures  
4           for ensuring the financial integrity of security-based  
5           swaps entered on or through the facilities of the se-  
6           curity-based swap execution facility, including the  
7           clearance and settlement of security-based swaps  
8           pursuant to section 3C(a)(1).

9           “(8) EMERGENCY AUTHORITY.—The security-  
10          based swap execution facility shall adopt rules to  
11          provide for the exercise of emergency authority, in  
12          consultation or cooperation with the Commission, as  
13          is necessary and appropriate, including the authority  
14          to liquidate or transfer open positions in any secu-  
15          rity-based swap or to suspend or curtail trading in  
16          a security-based swap.

17          “(9) TIMELY PUBLICATION OF TRADING INFOR-  
18          MATION.—

19                 “(A) IN GENERAL.—The security-based  
20                 swap execution facility shall make public timely  
21                 information on price, trading volume, and other  
22                 trading data on security-based swaps to the ex-  
23                 tent prescribed by the Commission.

24                 “(B) CAPACITY OF SECURITY-BASED SWAP  
25                 EXECUTION FACILITY.—The security-based

1 swap execution facility shall be required to have  
2 the capacity to electronically capture and dis-  
3 seminate trade information with respect to  
4 transactions executed on or through the facility.

5 “(10) RECORDKEEPING AND REPORTING.—

6 “(A) IN GENERAL.—A security-based swap  
7 execution facility shall—

8 “(i) maintain records of all activities  
9 relating to the business of the facility, in-  
10 cluding a complete audit trail, in a form  
11 and manner acceptable to the Commission  
12 for a period of 5 years; and

13 “(ii) report to the Commission, in a  
14 form and manner acceptable to the Com-  
15 mission, such information as the Commis-  
16 sion determines to be necessary or appro-  
17 priate for the Commission to perform the  
18 duties of the Commission under this title.

19 “(B) REQUIREMENTS.—The Commission  
20 shall adopt data collection and reporting re-  
21 quirements for security-based swap execution  
22 facilities that are comparable to corresponding  
23 requirements for clearing agencies and security-  
24 based swap data repositories.

1           “(11) ANTITRUST CONSIDERATIONS.—Unless  
2           necessary or appropriate to achieve the purposes of  
3           this title, the security-based swap execution facility  
4           shall not—

5                   “(A) adopt any rules or taking any actions  
6                   that result in any unreasonable restraint of  
7                   trade; or

8                   “(B) impose any material anticompetitive  
9                   burden on trading or clearing.

10           “(12) CONFLICTS OF INTEREST.—The security-  
11           based swap execution facility shall—

12                   “(A) establish and enforce rules to mini-  
13                   mize conflicts of interest in its decision-making  
14                   process; and

15                   “(B) establish a process for resolving the  
16                   conflicts of interest.

17           “(13) FINANCIAL RESOURCES.—

18                   “(A) IN GENERAL.—The security-based  
19                   swap execution facility shall have adequate fi-  
20                   nancial, operational, and managerial resources  
21                   to discharge each responsibility of the security-  
22                   based swap execution facility, as determined by  
23                   the Commission.

24                   “(B) DETERMINATION OF RESOURCE ADE-  
25                   QUACY.—The financial resources of a security-

1 based swap execution facility shall be consid-  
2 ered to be adequate if the value of the financial  
3 resources—

4 “(i) enables the organization to meet  
5 its financial obligations to its members and  
6 participants notwithstanding a default by  
7 the member or participant creating the  
8 largest financial exposure for that organi-  
9 zation in extreme but plausible market  
10 conditions; and

11 “(ii) exceeds the total amount that  
12 would enable the security-based swap exe-  
13 cution facility to cover the operating costs  
14 of the security-based swap execution facil-  
15 ity for a 1-year period, as calculated on a  
16 rolling basis.

17 “(14) SYSTEM SAFEGUARDS.—The security-  
18 based swap execution facility shall—

19 “(A) establish and maintain a program of  
20 risk analysis and oversight to identify and mini-  
21 mize sources of operational risk, through the  
22 development of appropriate controls and proce-  
23 dures, and automated systems, that—

24 “(i) are reliable and secure; and

25 “(ii) have adequate scalable capacity;



1           “(B) establish and maintain emergency  
2 procedures, backup facilities, and a plan for dis-  
3 aster recovery that allow for—

4                   “(i) the timely recovery and resump-  
5 tion of operations; and

6                   “(ii) the fulfillment of the responsibil-  
7 ities and obligations of the security-based  
8 swap execution facility; and

9           “(C) periodically conduct tests to verify  
10 that the backup resources of the security-based  
11 swap execution facility are sufficient to ensure  
12 continued—

13                   “(i) order processing and trade  
14 matching;

15                   “(ii) price reporting;

16                   “(iii) market surveillance; and

17                   “(iv) maintenance of a comprehensive  
18 and accurate audit trail.

19           “(15) DESIGNATION OF CHIEF COMPLIANCE  
20 OFFICER.—

21                   “(A) IN GENERAL.—Each security-based  
22 swap execution facility shall designate an indi-  
23 vidual to serve as a chief compliance officer.

24                   “(B) DUTIES.—The chief compliance offi-  
25 cer shall—



1 “(V) through validated com-  
2 plaints; and

3 “(vii) establish and follow appropriate  
4 procedures for the handling, management  
5 response, remediation, retesting, and clos-  
6 ing of noncompliance issues.

7 “(C) ANNUAL REPORTS.—

8 “(i) IN GENERAL.—In accordance  
9 with rules prescribed by the Commission,  
10 the chief compliance officer shall annually  
11 prepare and sign a report that contains a  
12 description of—

13 “(I) the compliance of the secu-  
14 rity-based swap execution facility with  
15 this title; and

16 “(II) the policies and procedures,  
17 including the code of ethics and con-  
18 flict of interest policies, of the secu-  
19 rity-based security-based swap execu-  
20 tion facility.

21 “(ii) REQUIREMENTS.—The chief  
22 compliance officer shall—

23 “(I) submit each report described  
24 in clause (i) with the appropriate fi-  
25 nancial report of the security-based

1 swap execution facility that is re-  
2 quired to be submitted to the Com-  
3 mission pursuant to this section; and

4 “(II) include in the report a cer-  
5 tification that, under penalty of law,  
6 the report is accurate and complete.

7 “(e) EXEMPTIONS.—The Commission may exempt,  
8 conditionally or unconditionally, a security-based swap  
9 execution facility from registration under this section if  
10 the Commission finds that the facility is subject to com-  
11 parable, comprehensive supervision and regulation on a  
12 consolidated basis by the Commodity Futures Trading  
13 Commission.

14 “(f) RULES.—The Commission shall prescribe rules  
15 governing the regulation of security-based swap execution  
16 facilities under this section.”.

17 (d) SEGREGATION OF ASSETS HELD AS COLLATERAL  
18 IN SECURITY-BASED SWAP TRANSACTIONS.—The Securi-  
19 ties Exchange Act of 1934 (15 U.S.C. 78a et seq.) is  
20 amended by inserting after section 3D (as added by sub-  
21 section (b)) the following:

22 **“SEC. 3E. SEGREGATION OF ASSETS HELD AS COLLATERAL**  
23 **IN SECURITY-BASED SWAP TRANSACTIONS.**

24 “(a) REGISTRATION REQUIREMENT.—It shall be un-  
25 lawful for any person to accept any money, securities, or

1 property (or to extend any credit in lieu of money, securi-  
2 ties, or property) from, for, or on behalf of a security-  
3 based swaps customer to margin, guarantee, or secure a  
4 security-based swap cleared by or through a clearing agen-  
5 cy (including money, securities, or property accruing to  
6 the customer as the result of such a security-based swap),  
7 unless the person shall have registered under this title  
8 with the Commission as a broker, dealer, or security-based  
9 swap dealer, and the registration shall not have expired  
10 nor been suspended nor revoked.

11 “(b) CLEARED SECURITY-BASED SWAPS.—

12 “(1) SEGREGATION REQUIRED.—A broker,  
13 dealer, or security-based swap dealer shall treat and  
14 deal with all money, securities, and property of any  
15 security-based swaps customer received to margin,  
16 guarantee, or secure a security-based swap cleared  
17 by or through a clearing agency (including money, se-  
18 curities, or property accruing to the security-based  
19 swaps customer as the result of such a security-  
20 based swap) as belonging to the security-based  
21 swaps customer.

22 “(2) COMMINGLING PROHIBITED.—Money, se-  
23 curities, and property of a security-based swaps cus-  
24 tomer described in paragraph (1) shall be separately  
25 accounted for and shall not be commingled with the

1 funds of the broker, dealer, or security-based swap  
2 dealer or be used to margin, secure, or guarantee  
3 any trades or contracts of any security-based swaps  
4 customer or person other than the person for whom  
5 the same are held.

6 “(c) EXCEPTIONS.—

7 “(1) USE OF FUNDS.—

8 “(A) IN GENERAL.—Notwithstanding sub-  
9 section (b), money, securities, and property of a  
10 security-based swaps customer of a broker,  
11 dealer, or security-based swap dealer described  
12 in subsection (b) may, for convenience, be com-  
13 mingled and deposited in the same 1 or more  
14 accounts with any bank or trust company or  
15 with a clearing agency.

16 “(B) WITHDRAWAL.—Notwithstanding  
17 subsection (b), such share of the money, securi-  
18 ties, and property described in subparagraph  
19 (A) as in the normal course of business shall be  
20 necessary to margin, guarantee, secure, trans-  
21 fer, adjust, or settle a cleared security-based  
22 swap with a clearing agency, or with any mem-  
23 ber of the clearing agency, may be withdrawn  
24 and applied to such purposes, including the  
25 payment of commissions, brokerage, interest,

1 taxes, storage, and other charges, lawfully ac-  
2 cruing in connection with the cleared security-  
3 based swap.

4 “(2) COMMISSION ACTION.—Notwithstanding  
5 subsection (b), in accordance with such terms and  
6 conditions as the Commission may prescribe by rule,  
7 regulation, or order, any money, securities, or prop-  
8 erty of the security-based swaps customer of a  
9 broker, dealer, or security-based swap dealer de-  
10 scribed in subsection (b) may be commingled and de-  
11 posited as provided in this section with any other  
12 money, securities, or property received by the  
13 broker, dealer, or security-based swap dealer and re-  
14 quired by the Commission to be separately ac-  
15 counted for and treated and dealt with as belonging  
16 to the security-based swaps customer of the broker,  
17 dealer, or security-based swap dealer.

18 “(d) PERMITTED INVESTMENTS.—Money described  
19 in subsection (b) may be invested in obligations of the  
20 United States, in general obligations of any State or of  
21 any political subdivision of a State, and in obligations fully  
22 guaranteed as to principal and interest by the United  
23 States, or in any other investment that the Commission  
24 may by rule or regulation prescribe, and such investments  
25 shall be made in accordance with such rules and regula-

1 tions and subject to such conditions as the Commission  
2 may prescribe.

3 “(e) PROHIBITION.—It shall be unlawful for any per-  
4 son, including any clearing agency and any depository in-  
5 stitution, that has received any money, securities, or prop-  
6 erty for deposit in a separate account or accounts as pro-  
7 vided in subsection (b) to hold, dispose of, or use any such  
8 money, securities, or property as belonging to the depos-  
9 iting broker, dealer, or security-based swap dealer or any  
10 person other than the swaps customer of the broker, deal-  
11 er, or security-based swap dealer.”.

12 (e) TRADING IN SECURITY-BASED SWAPS.—Section  
13 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)  
14 is amended by adding at the end the following:

15 “(l) SECURITY-BASED SWAPS.—It shall be unlawful  
16 for any person to effect a transaction in a security-based  
17 swap with or for a person that is not an eligible contract  
18 participant, unless such transaction is effected on a na-  
19 tional securities exchange registered pursuant to sub-  
20 section (b).”.

21 (f) ADDITIONS OF SECURITY-BASED SWAPS TO CER-  
22 TAIN ENFORCEMENT PROVISIONS.—Section 9(b) of the  
23 Securities Exchange Act of 1934 (15 U.S.C. 78i(b)) is  
24 amended by striking paragraphs (1) through (3) and in-  
25 serting the following:



1           “(1) any transaction in connection with any se-  
2           curity whereby any party to such transaction ac-  
3           quires—

4                   “(A) any put, call, straddle, or other op-  
5                   tion or privilege of buying the security from or  
6                   selling the security to another without being  
7                   bound to do so;

8                   “(B) any security futures product on the  
9                   security; or

10                   “(C) any security-based swap involving the  
11                   security or the issuer of the security;

12           “(2) any transaction in connection with any se-  
13           curity with relation to which such person has, di-  
14           rectly or indirectly, any interest in any—

15                   “(A) such put, call, straddle, option, or  
16                   privilege;

17                   “(B) such security futures product; or

18                   “(C) such security-based swap; or

19           “(3) any transaction in any security for the ac-  
20           count of any person who such person has reason to  
21           believe has, and who actually has, directly or indi-  
22           rectly, any interest in any—

23                   “(A) such put, call, straddle, option, or  
24                   privilege;

1                   “(B) such security futures product with re-  
2                   lation to such security; or

3                   “(C) any security-based swap involving  
4                   such security or the issuer of such security.”.

5           (g) RULEMAKING AUTHORITY TO PREVENT FRAUD,  
6   MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-  
7   BASED SWAPS.—Section 9 of the Securities Exchange Act  
8   of 1934 (15 U.S.C. 78i) is amended by adding at the end  
9   the following:

10           “(j) It shall be unlawful for any person, directly or  
11           indirectly, by the use of any means or instrumentality of  
12           interstate commerce or of the mails, or of any facility of  
13           any national securities exchange, to effect any transaction  
14           in, or to induce or attempt to induce the purchase or sale  
15           of, any security-based swap, in connection with which such  
16           person engages in any fraudulent, deceptive, or manipula-  
17           tive act or practice, makes any fictitious quotation, or en-  
18           gages in any transaction, practice, or course of business  
19           which operates as a fraud or deceit upon any person. The  
20           Commission shall, for the purposes of this subsection, by  
21           rules and regulations define, and prescribe means reason-  
22           ably designed to prevent, such transactions, acts, prac-  
23           tices, and courses of business as are fraudulent, deceptive,  
24           or manipulative, and such quotations as are fictitious.”.

1 (h) POSITION LIMITS AND POSITION ACCOUNT-  
2 ABILITY FOR SECURITY-BASED SWAPS.—The Securities  
3 Exchange Act of 1934 is amended by inserting after sec-  
4 tion 10A (15 U.S.C. 78j–1) the following:

5 **“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNT-**  
6 **ABILITY FOR SECURITY-BASED SWAPS AND**  
7 **LARGE TRADER REPORTING.**

8 “(a) POSITION LIMITS.—As a means reasonably de-  
9 signed to prevent fraud and manipulation, the Commission  
10 shall, by rule or regulation, as necessary or appropriate  
11 in the public interest or for the protection of investors,  
12 establish limits (including related hedge exemption provi-  
13 sions) on the size of positions in any security-based swap  
14 that may be held by any person. In establishing such lim-  
15 its, the Commission may require any person to aggregate  
16 positions in—

17 “(1) any security-based swap and any security  
18 or loan or group of securities or loans on which such  
19 security-based swap is based, which such security-  
20 based swap references, or to which such security-  
21 based swap is related as described in paragraph (68)  
22 of section 3(a), and any other instrument relating to  
23 such security or loan or group or index of securities  
24 or loans; or

25 “(2) any security-based swap and—

1           “(A) any security or group or index of se-  
2           curities, the price, yield, value, or volatility of  
3           which, or of which any interest therein, is the  
4           basis for a material term of such security-based  
5           swap as described in paragraph (68) of section  
6           3(a); and

7           “(B) any other instrument relating to the  
8           same security or group or index of securities de-  
9           scribed under subparagraph (A).

10          “(b) EXEMPTIONS.—The Commission, by rule, regu-  
11          lation, or order, may conditionally or unconditionally ex-  
12          empt any person or class of persons, any security-based  
13          swap or class of security-based swaps, or any transaction  
14          or class of transactions from any requirement the Com-  
15          mission may establish under this section with respect to  
16          position limits.

17          “(c) SRO RULES.—

18                 “(1) IN GENERAL.—As a means reasonably de-  
19                 signed to prevent fraud or manipulation, the Com-  
20                 mission, by rule, regulation, or order, as necessary  
21                 or appropriate in the public interest, for the protec-  
22                 tion of investors, or otherwise in furtherance of the  
23                 purposes of this title, may direct a self-regulatory  
24                 organization—

1           “(A) to adopt rules regarding the size of  
2 positions in any security-based swap that may  
3 be held by—

4           “(i) any member of such self-regu-  
5 latory organization; or

6           “(ii) any person for whom a member  
7 of such self-regulatory organization effects  
8 transactions in such security-based swap;  
9 and

10          “(B) to adopt rules reasonably designed to  
11 ensure compliance with requirements prescribed  
12 by the Commission under this subsection.

13          “(2) REQUIREMENT TO AGGREGATE POSI-  
14 TIONS.—In establishing the limits under paragraph  
15 (1), the self-regulatory organization may require  
16 such member or person to aggregate positions in—

17          “(A) any security-based swap and any se-  
18 curity or loan or group or narrow-based secu-  
19 rity narrow-based security index of securities or  
20 loans on which such security-based swap is  
21 based, which such security-based swap ref-  
22 erences, or to which such security-based swap is  
23 related as described in section 3(a)(68), and  
24 any other instrument relating to such security

1           or loan or group or narrow-based security index  
2           of securities or loans; or

3           “(B)(i) any security-based swap; and

4           “(ii) any security-based swap and any  
5           other instrument relating to the same security  
6           or group or narrow-based security index of se-  
7           curities.

8           “(d) LARGE TRADER REPORTING.—The Commis-  
9           sion, by rule or regulation, may require any person that  
10          effects transactions for such person’s own account or the  
11          account of others in any securities-based swap or  
12          uncleared security-based swap and any security or loan or  
13          group or narrow-based security index of securities or loans  
14          as set forth in paragraphs (1) and (2) of subsection (a)  
15          under this section to report such information as the Com-  
16          mission may prescribe regarding any position or positions  
17          in any security-based swap or uncleared security-based  
18          swap and any security or loan or group or narrow-based  
19          security index of securities or loans and any other instru-  
20          ment relating to such security or loan or group or narrow-  
21          based security index of securities or loans as set forth in  
22          paragraphs (1) and (2) of subsection (a) under this sec-  
23          tion.”.

24          (i) PUBLIC REPORTING AND REPOSITORIES FOR SE-  
25          CURITY-BASED SWAPS.—Section 13 of the Securities Ex-

1 change Act of 1934 (15 U.S.C. 78m) is amended by add-  
2 ing at the end the following:

3 “(m) PUBLIC AVAILABILITY OF SECURITY-BASED  
4 SWAP TRANSACTION DATA.—

5 “(1) IN GENERAL.—

6 “(A) DEFINITION OF REAL-TIME PUBLIC  
7 REPORTING.—In this paragraph, the term ‘real-  
8 time public reporting’ means to report data re-  
9 lating to a security-based swap transaction as  
10 soon as technologically practicable after the  
11 time at which the security-based swap trans-  
12 action has been executed.

13 “(B) PURPOSE.—The purpose of this sec-  
14 tion is to authorize the Commission to make se-  
15 curity-based swap transaction and pricing data  
16 available to the public in such form and at such  
17 times as the Commission determines appro-  
18 priate to enhance price discovery.

19 “(C) GENERAL RULE.—The Commission is  
20 authorized to provide by rule for the public  
21 availability of security-based swap transaction  
22 and pricing data as follows:

23 “(i) With respect to those security-  
24 based swaps that are subject to the man-  
25 datory clearing requirement described in

1 section 3C(a)(1) (including those security-  
2 based swaps that are exempted from the  
3 requirement pursuant to section  
4 3C(a)(10)), the Commission shall require  
5 real-time public reporting for such trans-  
6 actions.

7 “(ii) With respect to those security-  
8 based swaps that are not subject to the  
9 mandatory clearing requirement described  
10 in subsection section 3C(a)(1), but are  
11 cleared at a registered clearing agency, the  
12 Commission shall require real-time public  
13 reporting for such transactions.

14 “(iii) With respect to security-based  
15 swaps that are not cleared at a registered  
16 clearing agency and which are reported to  
17 a security-based swap data repository or  
18 the Commission under section 3C(a)(6),  
19 the Commission shall make available to the  
20 public, in a manner that does not disclose  
21 the business transactions and market posi-  
22 tions of any person, aggregate data on  
23 such security-based swap trading volumes  
24 and positions.



1                   “(iv) With respect to security-based  
2                   swaps that are exempt from the require-  
3                   ments of section 3C(a)(1), the Commission  
4                   shall require real-time public reporting for  
5                   such transactions.

6                   “(D) REGISTERED ENTITIES AND PUBLIC  
7                   REPORTING.—The Commission may require  
8                   registered entities to publicly disseminate the  
9                   security-based swap transaction and pricing  
10                  data required to be reported under this para-  
11                  graph.

12                  “(E) RULEMAKING REQUIRED.—With re-  
13                  spect to the rule providing for the public avail-  
14                  ability of transaction and pricing data for secu-  
15                  rity-based swaps described in clauses (i) and (ii)  
16                  of subparagraph (C), the rule promulgated by  
17                  the Commission shall contain provisions—

18                         “(i) to ensure such information does  
19                         not identify the participants;

20                         “(ii) to specify the criteria for deter-  
21                         mining what constitutes a large notional  
22                         security-based swap transaction (block  
23                         trade) for particular markets and con-  
24                         tracts;

1                   “(iii) to specify the appropriate time  
2                   delay for reporting large notional security-  
3                   based swap transactions (block trades) to  
4                   the public; and

5                   “(iv) that take into account whether  
6                   the public disclosure will materially reduce  
7                   market liquidity.

8                   “(F) TIMELINESS OF REPORTING.—Par-  
9                   ties to a security-based swap (including agents  
10                  of the parties to a security-based swap) shall be  
11                  responsible for reporting security-based swap  
12                  transaction information to the appropriate reg-  
13                  istered entity in a timely manner as may be  
14                  prescribed by the Commission.

15                  “(2) SEMIANNUAL AND ANNUAL PUBLIC RE-  
16                  PORTING OF AGGREGATE SECURITY-BASED SWAP  
17                  DATA.—

18                  “(A) IN GENERAL.—In accordance with  
19                  subparagraph (B), the Commission shall issue a  
20                  written report on a semiannual and annual  
21                  basis to make available to the public informa-  
22                  tion relating to—

23                  “(i) the trading and clearing in the  
24                  major security-based swap categories; and

1                   “(ii) the market participants and de-  
2                   velopments in new products.

3                   “(B) USE; CONSULTATION.—In preparing  
4                   a report under subparagraph (A), the Commis-  
5                   sion shall—

6                   “(i) use information from security-  
7                   based swap data repositories and deriva-  
8                   tives clearing organizations; and

9                   “(ii) consult with the Office of the  
10                  Comptroller of the Currency, the Bank for  
11                  International Settlements, and such other  
12                  regulatory bodies as may be necessary.

13                  “(n) SECURITY-BASED SWAP DATA REPOSITORIES.—

14                  “(1) REGISTRATION REQUIREMENT.—It shall  
15                  be unlawful for any person, unless registered with  
16                  the Commission, directly or indirectly, to make use  
17                  of the mails or any means or instrumentality of  
18                  interstate commerce to perform the functions of a  
19                  security-based swap data repository.

20                  “(2) INSPECTION AND EXAMINATION.—Each  
21                  registered security-based swap data repository shall  
22                  be subject to inspection and examination by any rep-  
23                  resentative of the Commission.

24                  “(3) COMPLIANCE WITH CORE PRINCIPLES.—

1           “(A) IN GENERAL.—To be registered, and  
2 maintain registration, as a security-based swap  
3 data repository, the security-based swap data  
4 repository shall comply with—

5           “(i) the core principles described in  
6 this subsection; and

7           “(ii) any requirement that the Com-  
8 mission may impose by rule or regulation.

9           “(B) REASONABLE DISCRETION OF SECU-  
10 RITY-BASED SWAP DATA REPOSITORY.—Unless  
11 otherwise determined by the Commission, by  
12 rule or regulation, a security-based swap data  
13 repository described in subparagraph (A) shall  
14 have reasonable discretion in establishing the  
15 manner in which the security-based swap data  
16 repository complies with the core principles de-  
17 scribed in this subsection.

18           “(4) STANDARD SETTING.—

19           “(A) DATA IDENTIFICATION.—The Com-  
20 mission shall prescribe standards that specify  
21 the data elements for each security-based swap  
22 that shall be collected and maintained by each  
23 registered security-based swap data repository.

24           “(B) DATA COLLECTION AND MAINTEN-  
25 NANCE.—The Commission shall prescribe data

1 collection and data maintenance standards for  
2 security-based swap data repositories.

3 “(C) COMPARABILITY.—The standards  
4 prescribed by the Commission under this sub-  
5 section shall be comparable to the data stand-  
6 ards imposed by the Commission on clearing  
7 agencies in connection with their clearing of se-  
8 curity-based swaps.

9 “(5) DUTIES.—A security-based swap data re-  
10 pository shall—

11 “(A) accept data prescribed by the Com-  
12 mission for each security-based swap under sub-  
13 section (b);

14 “(B) confirm with both counterparties to  
15 the security-based swap the accuracy of the  
16 data that was submitted;

17 “(C) maintain the data described in sub-  
18 paragraph (A) in such form, in such manner,  
19 and for such period as may be required by the  
20 Commission;

21 “(D)(i) provide direct electronic access to  
22 the Commission (or any designee of the Com-  
23 mission, including another registered entity);  
24 and

1           “(ii) provide the information described in  
2           subparagraph (A) in such form and at such fre-  
3           quency as the Commission may require to com-  
4           ply with the public reporting requirements set  
5           forth in subsection (m);

6           “(E) at the direction of the Commission,  
7           establish automated systems for monitoring,  
8           screening, and analyzing security-based swap  
9           data;

10           “(F) maintain the privacy of any and all  
11           security-based swap transaction information  
12           that the security-based swap data repository re-  
13           ceives from a security-based swap dealer,  
14           counterparty, or any other registered entity;  
15           and

16           “(G) on a confidential basis pursuant to  
17           section 24, upon request, and after notifying  
18           the Commission of the request, make available  
19           all data obtained by the security-based swap  
20           data repository, including individual  
21           counterparty trade and position data, to—

22                   “(i) each appropriate prudential regu-  
23                   lator;

24                   “(ii) the Financial Stability Oversight  
25                   Council;

1 “(iii) the Commodity Futures Trading  
2 Commission;

3 “(iv) the Department of Justice; and

4 “(v) any other person that the Com-  
5 mission determines to be appropriate, in-  
6 cluding—

7 “(I) foreign financial supervisors  
8 (including foreign futures authorities);

9 “(II) foreign central banks; and

10 “(III) foreign ministries.

11 “(H) CONFIDENTIALITY AND INDEM-  
12 NIFICATION AGREEMENT.—Before the security-  
13 based swap data repository may share informa-  
14 tion with any entity described in subparagraph  
15 (G)—

16 “(i) the security-based swap data re-  
17 pository shall receive a written agreement  
18 from each entity stating that the entity  
19 shall abide by the confidentiality require-  
20 ments described in section 24 relating to  
21 the information on security-based swap  
22 transactions that is provided; and

23 “(ii) each entity shall agree to indem-  
24 nify the security-based swap data reposi-  
25 tory and the Commission for any expenses

1                    arising from litigation relating to the infor-  
2                    mation provided under section 24.

3                    “(6) DESIGNATION OF CHIEF COMPLIANCE OF-  
4                    FICER.—

5                    “(A) IN GENERAL.—Each security-based  
6                    swap data repository shall designate an indi-  
7                    vidual to serve as a chief compliance officer.

8                    “(B) DUTIES.—The chief compliance offi-  
9                    cer shall—

10                    “(i) report directly to the board or to  
11                    the senior officer of the security-based  
12                    swap data repository;

13                    “(ii) review the compliance of the se-  
14                    curity-based swap data repository with re-  
15                    spect to the core principles described in  
16                    paragraph (7);

17                    “(iii) in consultation with the board of  
18                    the security-based swap data repository, a  
19                    body performing a function similar to the  
20                    board of the security-based swap data re-  
21                    pository, or the senior officer of the secu-  
22                    rity-based swap data repository, resolve  
23                    any conflicts of interest that may arise;



1           “(iv) be responsible for administering  
2           each policy and procedure that is required  
3           to be established pursuant to this section;

4           “(v) ensure compliance with this title  
5           (including regulations) relating to agree-  
6           ments, contracts, or transactions, including  
7           each rule prescribed by the Commission  
8           under this section;

9           “(vi) establish procedures for the re-  
10          mediation of noncompliance issues identi-  
11          fied by the chief compliance officer through  
12          any—

13                   “(I) compliance office review;

14                   “(II) look-back;

15                   “(III) internal or external audit  
16          finding;

17                   “(IV) self-reported error; or

18                   “(V) validated complaint; and

19          “(vii) establish and follow appropriate  
20          procedures for the handling, management  
21          response, remediation, retesting, and clos-  
22          ing of noncompliance issues.

23          “(C) ANNUAL REPORTS.—

24                   “(i) IN GENERAL.—In accordance  
25          with rules prescribed by the Commission,

1 the chief compliance officer shall annually  
2 prepare and sign a report that contains a  
3 description of—

4 “(I) the compliance of the secu-  
5 rity-based swap data repository of the  
6 chief compliance officer with respect  
7 to this title (including regulations);  
8 and

9 “(II) each policy and procedure  
10 of the security-based swap data repos-  
11 itory of the chief compliance officer  
12 (including the code of ethics and con-  
13 flict of interest policies of the secu-  
14 rity-based swap data repository).

15 “(ii) REQUIREMENTS.—A compliance  
16 report under clause (i) shall—

17 “(I) accompany each appropriate  
18 financial report of the security-based  
19 swap data repository that is required  
20 to be furnished to the Commission  
21 pursuant to this section; and

22 “(II) include a certification that,  
23 under penalty of law, the compliance  
24 report is accurate and complete.

1           “(7) CORE PRINCIPLES APPLICABLE TO SECUR-  
2           RITY-BASED SWAP DATA REPOSITORIES.—

3           “(A) ANTITRUST CONSIDERATIONS.—Un-  
4           less necessary or appropriate to achieve the  
5           purposes of this title, the swap data repository  
6           shall not—

7                   “(i) adopt any rule or take any action  
8                   that results in any unreasonable restraint  
9                   of trade; or

10                   “(ii) impose any material anticompeti-  
11                   tive burden on the trading, clearing, or re-  
12                   porting of transactions.

13           “(B) GOVERNANCE ARRANGEMENTS.—  
14           Each security-based swap data repository shall  
15           establish governance arrangements that are  
16           transparent—

17                   “(i) to fulfill public interest require-  
18                   ments; and

19                   “(ii) to support the objectives of the  
20                   Federal Government, owners, and partici-  
21                   pants.

22           “(C) CONFLICTS OF INTEREST.—Each se-  
23           curity-based swap data repository shall—

24                   “(i) establish and enforce rules to  
25                   minimize conflicts of interest in the deci-

1                   sion-making process of the security-based  
2                   swap data repository; and

3                   “(ii) establish a process for resolving  
4                   any conflicts of interest described in clause  
5                   (i).

6                   “(8) REQUIRED REGISTRATION FOR SECURITY-  
7                   BASED SWAP DATA REPOSITORIES.—Any person that  
8                   is required to be registered as a security-based swap  
9                   data repository under this subsection shall register  
10                  with the Commission, regardless of whether that  
11                  person is also licensed under the Commodity Ex-  
12                  change Act as a swap data repository.

13                  “(9) RULES.—The Commission shall adopt  
14                  rules governing persons that are registered under  
15                  this subsection.”.

16 **SEC. 764. REGISTRATION AND REGULATION OF SECURITY-**  
17                                   **BASED SWAP DEALERS AND MAJOR SECU-**  
18                                   **RITY-BASED SWAP PARTICIPANTS.**

19                  The Securities Exchange Act of 1934 (15 U.S.C. 78a  
20 et seq.) is amended by inserting after section 15E (15  
21 U.S.C. 78o–7) the following:

22 **“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-**  
23                                   **BASED SWAP DEALERS AND MAJOR SECU-**  
24                                   **RITY-BASED SWAP PARTICIPANTS.**

25                  “(a) REGISTRATION.—

1           “(1) SECURITY-BASED SWAP DEALERS.—It  
2 shall be unlawful for any person to act as a security-  
3 based swap dealer unless the person is registered as  
4 a security-based swap dealer with the Commission.

5           “(2) MAJOR SECURITY-BASED SWAP PARTICI-  
6 PANTS.—It shall be unlawful for any person to act  
7 as a major security-based swap participant unless  
8 the person is registered as a major security-based  
9 swap participant with the Commission.

10          “(b) REQUIREMENTS.—

11           “(1) IN GENERAL.—A person shall register as  
12 a security-based swap dealer or major security-based  
13 swap participant by filing a registration application  
14 with the Commission.

15           “(2) CONTENTS.—

16           “(A) IN GENERAL.—The application shall  
17 be made in such form and manner as prescribed  
18 by the Commission, and shall contain such in-  
19 formation, as the Commission considers nec-  
20 essary concerning the business in which the ap-  
21 plicant is or will be engaged.

22           “(B) CONTINUAL REPORTING.—A person  
23 that is registered as a security-based swap deal-  
24 er or major security-based swap participant  
25 shall continue to submit to the Commission re-

1           ports that contain such information pertaining  
2           to the business of the person as the Commission  
3           may require.

4           “(3) EXPIRATION.—Each registration under  
5           this section shall expire at such time as the Commis-  
6           sion may prescribe by rule or regulation.

7           “(4) RULES.—Except as provided in sub-  
8           sections (c), (e), and (f), the Commission may pre-  
9           scribe rules applicable to security-based swap dealers  
10          and major security-based swap participants, includ-  
11          ing rules that limit the activities of non-bank secu-  
12          rity-based swap dealers and non-bank major secu-  
13          rity-based swap participants.

14          “(5) TRANSITION.—Not later than 1 year after  
15          the date of enactment of the Wall Street Trans-  
16          parency and Accountability Act of 2010, the Com-  
17          mission shall issue rules under this section to pro-  
18          vide for the registration of security-based swap deal-  
19          ers and major security-based swap participants.

20          “(6) STATUTORY DISQUALIFICATION.—Except  
21          to the extent otherwise specifically provided by rule,  
22          regulation, or order of the Commission, it shall be  
23          unlawful for a security-based swap dealer or a major  
24          security-based swap participant to permit any person  
25          associated with a security-based swap dealer or a

1 major security-based swap participant who is subject  
2 to a statutory disqualification to effect or be involved  
3 in effecting security-based swaps on behalf of the se-  
4 curity-based swap dealer or major security-based  
5 swap participant, if the security-based swap dealer  
6 or major security-based swap participant knew, or in  
7 the exercise of reasonable care should have known,  
8 of the statutory disqualification.

9 “(c) DUAL REGISTRATION.—

10 “(1) SECURITY-BASED SWAP DEALER.—Any  
11 person that is required to be registered as a secu-  
12 rity-based swap dealer under this section shall reg-  
13 ister with the Commission, regardless of whether the  
14 person also is registered with the Commodity Fu-  
15 tures Trading Commission as a swap dealer.

16 “(2) MAJOR SECURITY-BASED SWAP PARTICI-  
17 PANT.—Any person that is required to be registered  
18 as a major security-based swap participant under  
19 this section shall register with the Commission, re-  
20 gardless of whether the person also is registered  
21 with the Commodity Futures Trading Commission  
22 as a major swap participant.

23 “(d) RULEMAKING.—

24 “(1) IN GENERAL.—The Commission shall  
25 adopt rules for persons that are registered as secu-

1           rity-based swap dealers or major security-based swap  
2           participants under this section.

3           “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-  
4           MENTS.—

5                   “(A) IN GENERAL.—The Commission may  
6           not prescribe rules imposing prudential require-  
7           ments on security-based swap dealers or major  
8           security-based swap participants that are depos-  
9           itory institutions, as that term is defined in sec-  
10          tion 3 of the Federal Deposit Insurance Act (12  
11          U.S.C. 1813).

12                   “(B) APPLICABILITY.—Subparagraph (A)  
13          does not limit the authority of the Commission  
14          to prescribe appropriate business conduct, re-  
15          porting, and recordkeeping requirements on se-  
16          curity-based swap dealers or major security-  
17          based swap participants that are depository in-  
18          stitutions to protect investors.

19          “(e) CAPITAL AND MARGIN REQUIREMENTS.—

20                   “(1) IN GENERAL.—

21                           “(A) SECURITY-BASED SWAP DEALERS  
22                   AND MAJOR SECURITY-BASED SWAP PARTICI-  
23                   PANTS THAT ARE DEPOSITORY INSTITU-  
24                   TIONS.—Each registered security-based swap  
25                   dealer and major security-based swap partici-



1           pant that is a depository institution, as that  
2           term is defined in section 3 of the Federal De-  
3           posit Insurance Act (12 U.S.C. 1813), shall  
4           meet such minimum capital requirements and  
5           minimum initial and variation margin require-  
6           ments as the appropriate Federal banking agen-  
7           cy shall by rule or regulation prescribe under  
8           paragraph (2)(A) to help ensure the safety and  
9           soundness of the security-based swap dealer or  
10          major security-based swap participant.

11           “(B) SECURITY-BASED SWAP DEALERS  
12          AND MAJOR SECURITY-BASED SWAP PARTICI-  
13          PANTS THAT ARE NOT DEPOSITORY INSTITU-  
14          TIONS.—Each registered security-based swap  
15          dealer and major security-based swap partici-  
16          pant that is not a depository institution, as that  
17          term is defined in section 3 of the Federal De-  
18          posit Insurance Act (12 U.S.C. 1813), shall  
19          meet such minimum capital requirements and  
20          minimum initial and variation margin require-  
21          ments as the Commission shall by rule or regu-  
22          lation prescribe under paragraph (2)(B) to help  
23          ensure the safety and soundness of the security-  
24          based swap dealer or major security-based swap  
25          participant.

1 “(2) RULES.—

2 “(A) SECURITY-BASED SWAP DEALERS  
3 AND MAJOR SECURITY-BASED SWAP PARTICI-  
4 PANTS THAT ARE DEPOSITORY INSTITU-  
5 TIONS.—The appropriate Federal banking  
6 agencies, in consultation with the Commission  
7 and the Commodity Futures Trading Commis-  
8 sion, shall adopt rules imposing capital and  
9 margin requirements under this subsection for  
10 security-based swap dealers and major security-  
11 based swap participants that are depository in-  
12 stitutions, as that term is defined in section 3  
13 of the Federal Deposit Insurance Act (12  
14 U.S.C. 1813).

15 “(B) SECURITY-BASED SWAP DEALERS  
16 AND MAJOR SECURITY-BASED SWAP PARTICI-  
17 PANTS THAT ARE NOT DEPOSITORY INSTITU-  
18 TIONS.—The Commission shall adopt rules im-  
19 posing capital and margin requirements under  
20 this subsection for security-based swap dealers  
21 and major security-based swap participants that  
22 are not depository institutions, as that term is  
23 defined in section 3 of the Federal Deposit In-  
24 surance Act (12 U.S.C. 1813).

25 “(3) CAPITAL.—

1           “(A) SECURITY-BASED SWAP DEALERS  
2           AND MAJOR SECURITY-BASED SWAP PARTICI-  
3           PANTS THAT ARE DEPOSITORY INSTITU-  
4           TIONS.—The capital requirements prescribed  
5           under paragraph (2)(A) for security-based swap  
6           dealers and major security-based swap partici-  
7           pants that are depository institutions shall con-  
8           tain—

9                   “(i) a capital requirement that is  
10                   greater than zero for security-based swaps  
11                   that are cleared by a clearing agency; and

12                   “(ii) to offset the greater risk to the  
13                   security-based swap dealer or major secu-  
14                   rity-based swap participant and to the fi-  
15                   nancial system arising from the use of se-  
16                   curity-based swaps that are not cleared,  
17                   substantially higher capital requirements  
18                   for security-based swaps that are not  
19                   cleared by a clearing agency than for secu-  
20                   rity-based swaps that are cleared.

21           “(B) SECURITY-BASED SWAP DEALERS  
22           AND MAJOR SECURITY-BASED SWAP PARTICI-  
23           PANTS THAT ARE NOT DEPOSITORY INSTITU-  
24           TIONS.—The capital requirements prescribed  
25           under paragraph (2)(B) for security-based swap

1 dealers and major security-based swap partici-  
2 pants that are not depository institutions shall  
3 be as strict as or stricter than the capital re-  
4 quirements prescribed for security-based swap  
5 dealers and major security-based swap partici-  
6 pants that are depository institutions under  
7 paragraph (2)(A).

8 “(C) CAPITAL.—In setting capital require-  
9 ments for a person that is designated as a secu-  
10 rity-based swap dealer or a major security-  
11 based swap participant for a single type or sin-  
12 gle class or category of security-based swap or  
13 activities, the prudential regulator and the  
14 Commission shall take into account the risks  
15 associated with other types of security-based  
16 swaps or classes of security-based swaps or cat-  
17 egories of security-based swaps engaged in and  
18 the other activities conducted by that person  
19 that are not otherwise subject to regulation ap-  
20 plicable to that person by virtue of the status  
21 of the person as a security-based swap dealer or  
22 major security-based swap participant.

23 “(D) RULE OF CONSTRUCTION.—

1                   “(i) IN GENERAL.—Nothing in this  
2 section shall limit, or be construed to limit,  
3 the authority—

4                   “(I) of the Commission to set fi-  
5 nancial responsibility rules for a  
6 broker or dealer registered pursuant  
7 to section 15(b) (except for section  
8 15(b)(11) thereof) in accordance with  
9 section 15(c)(3); or

10                   “(II) of the Commodity Futures  
11 Trading Commission to set financial  
12 responsibility rules for a futures com-  
13 mission merchant or introducing  
14 broker registered pursuant to section  
15 4f(a) of the Commodity Exchange Act  
16 (except for section 4f(a)(3) thereof) in  
17 accordance with section 4f(b) of the  
18 Commodity Exchange Act.

19                   “(ii) FUTURES COMMISSION MER-  
20 CHANTS AND OTHER DEALERS.—A futures  
21 commission merchant, introducing broker,  
22 broker, or dealer shall maintain sufficient  
23 capital to comply with the stricter of any  
24 applicable capital requirements to which  
25 such futures commission merchant, intro-

1           ducing broker, broker, or dealer is subject  
2           to under this title or the Commodity Ex-  
3           change Act.

4           “(4) MARGIN.—

5           “(A) SECURITY-BASED SWAP DEALERS  
6           AND MAJOR SECURITY-BASED SWAP PARTICI-  
7           PANTS THAT ARE DEPOSITORY INSTITU-  
8           TIONS.—The appropriate Federal banking  
9           agency for security-based swap dealers and  
10          major security-based swap participants that are  
11          depository institutions shall impose both initial  
12          and variation margin requirements in accord-  
13          ance with paragraph (2)(A) on all security-  
14          based swaps that are not cleared by a clearing  
15          agency.

16          “(B) SECURITY-BASED SWAP DEALERS  
17          AND MAJOR SECURITY-BASED SWAP PARTICI-  
18          PANTS THAT ARE NOT DEPOSITORY INSTITU-  
19          TIONS.—The Commission shall impose both ini-  
20          tial and variation margin requirements in ac-  
21          cordance with paragraph (2)(B) for security-  
22          based swap dealers and major security-based  
23          swap participants that are not depository insti-  
24          tutions on all security-based swaps that are not  
25          cleared by a clearing agency. Any such initial

1           and variation margin requirements shall be as  
2           strict as or stricter than the margin require-  
3           ments prescribed under paragraph (4)(A).

4           “(5) MARGIN REQUIREMENTS.—In prescribing  
5           margin requirements under this subsection, the ap-  
6           propriate Federal banking agency with respect to se-  
7           curity-based swap dealers and major security-based  
8           swap participants that are depository institutions,  
9           and the Commission with respect to security-based  
10          swap dealers and major security-based swap partici-  
11          pants that are not depository institutions may per-  
12          mit the use of noncash collateral, as the agency or  
13          the Commission determines to be consistent with—

14                 “(A) preserving the financial integrity of  
15                 markets trading security-based swaps; and

16                 “(B) preserving the stability of the United  
17                 States financial system.

18          “(6) COMPARABILITY OF CAPITAL AND MARGIN  
19          REQUIREMENTS.—

20                 “(A) IN GENERAL.—The appropriate Fed-  
21                 eral banking agencies, the Commission, and the  
22                 Securities and Exchange Commission shall peri-  
23                 odically (but not less frequently than annually)  
24                 consult on minimum capital requirements and

1           minimum initial and variation margin require-  
2           ments.

3           “(B) COMPARABILITY.—The entities de-  
4           scribed in subparagraph (A) shall, to the max-  
5           imum extent practicable, establish and maintain  
6           comparable minimum capital requirements and  
7           minimum initial and variation margin require-  
8           ments, including the use of noncash collateral,  
9           for—

10                   “(i) security-based swap dealers; and

11                   “(ii) major security-based swap par-  
12                   ticipants.

13           “(7) REQUESTED MARGIN.—If any party to a  
14           security-based swap that is exempt from the margin  
15           requirements of paragraph (4)(A) or paragraph  
16           (4)(B) requests that such security-based swap be  
17           marginied, then—

18                   “(A) the exemption shall not apply; and

19                   “(B) the counterparty to such security-  
20                   based swap shall provide the requested margin.

21           “(8) APPLICABILITY WITH RESPECT TO  
22           COUNTERPARTIES.—Paragraphs (4) and (5) shall  
23           not apply to initial and variation margin for secu-  
24           rity-based swaps in which 1 of the counterparties is  
25           not—



1 “(A) a security-based swap dealer;

2 “(B) a major security-based swap partici-  
3 pant; or

4 “(C) a financial entity as described in sec-  
5 tion 3C(a)(10)(A)(ii), and such counterparty is  
6 eligible for and utilizing the commercial end  
7 user clearing exemption under section  
8 3C(a)(10).

9 “(f) REPORTING AND RECORDKEEPING.—

10 “(1) IN GENERAL.—Each registered security-  
11 based swap dealer and major security-based swap  
12 participant—

13 “(A) shall make such reports as are re-  
14 quired by the Commission, by rule or regula-  
15 tion, regarding the transactions and positions  
16 and financial condition of the registered secu-  
17 rity-based swap dealer or major security-based  
18 swap participant;

19 “(B)(i) for which there is a prudential reg-  
20 ulator, shall keep books and records of all ac-  
21 tivities related to the business as a security-  
22 based swap dealer or major security-based swap  
23 participant in such form and manner and for  
24 such period as may be prescribed by the Com-  
25 mission by rule or regulation; and

1           “(ii) for which there is no prudential regu-  
2           lator, shall keep books and records in such form  
3           and manner and for such period as may be pre-  
4           scribed by the Commission by rule or regula-  
5           tion; and

6           “(C) shall keep books and records de-  
7           scribed in subparagraph (B) open to inspection  
8           and examination by any representative of the  
9           Commission.

10          “(2) RULES.—The Commission shall adopt  
11          rules governing reporting and recordkeeping for se-  
12          curity-based swap dealers and major security-based  
13          swap participants.

14          “(g) DAILY TRADING RECORDS.—

15          “(1) IN GENERAL.—Each registered security-  
16          based swap dealer and major security-based swap  
17          participant shall maintain daily trading records of  
18          the security-based swaps of the registered security-  
19          based swap dealer and major security-based swap  
20          participant and all related records (including related  
21          cash or forward transactions) and recorded commu-  
22          nications, including electronic mail, instant mes-  
23          sages, and recordings of telephone calls, for such pe-  
24          riod as may be required by the Commission by rule  
25          or regulation.

1           “(2) INFORMATION REQUIREMENTS.—The daily  
2 trading records shall include such information as the  
3 Commission shall require by rule or regulation.

4           “(3) COUNTERPARTY RECORDS.—Each reg-  
5 istered security-based swap dealer and major secu-  
6 rity-based swap participant shall maintain daily  
7 trading records for each counterparty in a manner  
8 and form that is identifiable with each security-  
9 based swap transaction.

10           “(4) AUDIT TRAIL.—Each registered security-  
11 based swap dealer and major security-based swap  
12 participant shall maintain a complete audit trail for  
13 conducting comprehensive and accurate trade recon-  
14 structions.

15           “(5) RULES.—The Commission shall adopt  
16 rules governing daily trading records for security-  
17 based swap dealers and major security-based swap  
18 participants.

19           “(h) BUSINESS CONDUCT STANDARDS.—

20           “(1) IN GENERAL.—Each registered security-  
21 based swap dealer and major security-based swap  
22 participant shall conform with such business conduct  
23 standards as may be prescribed by the Commission,  
24 by rule or regulation, that relate to—

1           “(A) fraud, manipulation, and other abu-  
2           sive practices involving security-based swaps  
3           (including security-based swaps that are offered  
4           but not entered into);

5           “(B) diligent supervision of the business of  
6           the registered security-based swap dealer and  
7           major security-based swap participant;

8           “(C) adherence to all applicable position  
9           limits; and

10           “(D) such other matters as the Commis-  
11           sion determines to be appropriate.

12           “(2) SPECIAL RULE; FIDUCIARY DUTIES TO  
13           CERTAIN ENTITIES.—

14           “(A) GOVERNMENTAL ENTITIES.—A secu-  
15           rity-based swap dealer that provides advice re-  
16           garding, or offers to enter into, or enters into  
17           a security-based swap with a State, State agen-  
18           cy, city, county, municipality, or other political  
19           subdivision of a State, or a Federal agency shall  
20           have a fiduciary duty to the State, State agen-  
21           cy, city, county, municipality, or other political  
22           subdivision of the State, or the Federal agency,  
23           as appropriate.

24           “(B) PENSION PLANS; ENDOWMENTS; RE-  
25           TIREMENT PLANS.—A security-based swap deal-

1 er that provides advice regarding, or offers to  
2 enter into, or enters into a security-based swap  
3 with a pension plan, endowment, or retirement  
4 plan shall have a fiduciary duty to the pension  
5 plan, endowment, or retirement plan, as appro-  
6 priate.

7 “(3) BUSINESS CONDUCT REQUIREMENTS.—  
8 Business conduct requirements adopted by the Com-  
9 mission under this subsection shall—

10 “(A) establish the standard of care for a  
11 security-based swap dealer or major security-  
12 based swap participant to verify that any  
13 counterparty meets the eligibility standards for  
14 an eligible contract participant;

15 “(B) require disclosure by the security-  
16 based swap dealer or major security-based swap  
17 participant to any counterparty to the trans-  
18 action (other than a security-based swap dealer  
19 or a major security-based swap participant)  
20 of—

21 “(i) information about the material  
22 risks and characteristics of the security-  
23 based swap;

24 “(ii) the source and amount of any  
25 fees or other material remuneration that

1 the security-based swap dealer or major se-  
2 curity-based swap participant would di-  
3 rectly or indirectly expect to receive in con-  
4 nection with the security-based swap;

5 “(iii) any other material incentives or  
6 conflicts of interest that the security-based  
7 swap dealer or major security-based swap  
8 participant may have in connection with  
9 the security-based swap; and

10 “(iv)(I) for cleared security-based  
11 swaps, upon the request of the  
12 counterparty, the daily mark from the ap-  
13 propriate clearing agency; and

14 “(II) for uncleared security-based  
15 swaps, the daily mark of the security-based  
16 swap dealer or the major security-based  
17 swap participant;

18 “(C) establish a standard of conduct for a  
19 security-based swap dealer or major security-  
20 based swap participant to communicate in a  
21 fair and balanced manner based on principles of  
22 fair dealing and good faith;

23 “(D) establish a standard of conduct for a  
24 security-based swap dealer or major security-  
25 based swap participant, with respect to a

1           counterparty that is an eligible contract partici-  
2           pant within the meaning of subclause (I) or (II)  
3           of clause (vii) of section 1a(18) of the Com-  
4           modity Exchange Act, to have a reasonable  
5           basis to believe that the counterparty has an  
6           independent representative that—

7                   “(i) has sufficient knowledge to evalu-  
8                   ate the transaction and risks;

9                   “(ii) is not subject to a statutory dis-  
10                  qualification;

11                  “(iii) is independent of the security-  
12                  based swap dealer or major security-based  
13                  swap participant;

14                  “(iv) undertakes a duty to act in the  
15                  best interests of the counterparty it rep-  
16                  resents;

17                  “(v) makes appropriate disclosures;  
18                  and

19                  “(vi) will provide written representa-  
20                  tions to the eligible contract participant re-  
21                  garding fair pricing and the appropriate-  
22                  ness of the transaction; and

23                  “(E) establish such other standards and  
24                  requirements as the Commission may determine  
25                  are appropriate in the public interest, for the

1 protection of investors, or otherwise in further-  
2 ance of the purposes of this title.

3 “(4) RULES.—The Commission shall prescribe  
4 rules under this subsection governing business con-  
5 duct standards for security-based swap dealers and  
6 major security-based swap participants.

7 “(i) DOCUMENTATION AND BACK OFFICE STAND-  
8 ARDS.—

9 “(1) IN GENERAL.—Each registered security-  
10 based swap dealer and major security-based swap  
11 participant shall conform with such standards as  
12 may be prescribed by the Commission, by rule or  
13 regulation, that relate to timely and accurate con-  
14 firmation, processing, netting, documentation, and  
15 valuation of all security-based swaps.

16 “(2) RULES.—The Commission shall adopt  
17 rules governing documentation and back office  
18 standards for security-based swap dealers and major  
19 security-based swap participants.

20 “(j) DUTIES.—Each registered security-based swap  
21 dealer and major security-based swap participant shall, at  
22 all times, comply with the following requirements:

23 “(1) MONITORING OF TRADING.—The security-  
24 based swap dealer or major security-based swap par-  
25 ticipant shall monitor its trading in security-based



1 swaps to prevent violations of applicable position  
2 limits.

3 “(2) RISK MANAGEMENT PROCEDURES.—The  
4 security-based swap dealer or major security-based  
5 swap participant shall establish robust and profes-  
6 sional risk management systems adequate for man-  
7 aging the day-to-day business of the security-based  
8 swap dealer or major security-based swap partici-  
9 pant.

10 “(3) DISCLOSURE OF GENERAL INFORMA-  
11 TION.—The security-based swap dealer or major se-  
12 curity-based swap participant shall disclose to the  
13 Commission and to the prudential regulator for the  
14 security-based swap dealer or major security-based  
15 swap participant, as applicable, information con-  
16 cerning—

17 “(A) terms and conditions of its security-  
18 based swaps;

19 “(B) security-based swap trading oper-  
20 ations, mechanisms, and practices;

21 “(C) financial integrity protections relating  
22 to security-based swaps; and

23 “(D) other information relevant to its trad-  
24 ing in security-based swaps.

1           “(4) ABILITY TO OBTAIN INFORMATION.—The  
2 security-based swap dealer or major security-based  
3 swap participant shall—

4           “(A) establish and enforce internal systems  
5 and procedures to obtain any necessary infor-  
6 mation to perform any of the functions de-  
7 scribed in this section; and

8           “(B) provide the information to the Com-  
9 mission and to the prudential regulator for the  
10 security-based swap dealer or major security-  
11 based swap participant, as applicable, on re-  
12 quest.

13           “(5) CONFLICTS OF INTEREST.—The security-  
14 based swap dealer and major security-based swap  
15 participant shall implement conflict-of-interest sys-  
16 tems and procedures that—

17           “(A) establish structural and institutional  
18 safeguards to ensure that the activities of any  
19 person within the firm relating to research or  
20 analysis of the price or market for any security-  
21 based swap or acting in a role of providing  
22 clearing activities or making determinations as  
23 to accepting clearing customers are separated  
24 by appropriate informational partitions within  
25 the firm from the review, pressure, or oversight

1 of persons whose involvement in pricing, trad-  
2 ing, or clearing activities might potentially bias  
3 their judgment or supervision and contravene  
4 the core principles of open access and the busi-  
5 ness conduct standards described in this title;  
6 and

7 “(B) address such other issues as the  
8 Commission determines to be appropriate.

9 “(6) ANTITRUST CONSIDERATIONS.—Unless  
10 necessary or appropriate to achieve the purposes of  
11 this title, the security-based swap dealer or major se-  
12 curity-based swap participant shall not—

13 “(A) adopt any process or take any action  
14 that results in any unreasonable restraint of  
15 trade; or

16 “(B) impose any material anticompetitive  
17 burden on trading or clearing.

18 “(k) DESIGNATION OF CHIEF COMPLIANCE OFFI-  
19 CER.—

20 “(1) IN GENERAL.—Each security-based swap  
21 dealer and major security-based swap participant  
22 shall designate an individual to serve as a chief com-  
23 pliance officer.

24 “(2) DUTIES.—The chief compliance officer  
25 shall—

1           “(A) report directly to the board or to the  
2 senior officer of the security-based swap dealer  
3 or major security-based swap participant;

4           “(B) review the compliance of the security-  
5 based swap dealer or major security-based swap  
6 participant with respect to the security-based  
7 swap dealer and major security-based swap par-  
8 ticipant requirements described in this section;

9           “(C) in consultation with the board of di-  
10 rectors, a body performing a function similar to  
11 the board, or the senior officer of the organiza-  
12 tion, resolve any conflicts of interest that may  
13 arise;

14           “(D) be responsible for administering each  
15 policy and procedure that is required to be es-  
16 tablished pursuant to this section;

17           “(E) ensure compliance with this title (in-  
18 cluding regulations) relating to security-based  
19 swaps, including each rule prescribed by the  
20 Commission under this section;

21           “(F) establish procedures for the remedi-  
22 ation of noncompliance issues identified by the  
23 chief compliance officer through any—

24                   “(i) compliance office review;

25                   “(ii) look-back;

1 “(iii) internal or external audit find-  
2 ing;

3 “(iv) self-reported error; or

4 “(v) validated complaint; and

5 “(G) establish and follow appropriate pro-  
6 cedures for the handling, management response,  
7 remediation, retesting, and closing of non-  
8 compliance issues.

9 “(3) ANNUAL REPORTS.—

10 “(A) IN GENERAL.—In accordance with  
11 rules prescribed by the Commission, the chief  
12 compliance officer shall annually prepare and  
13 sign a report that contains a description of—

14 “(i) the compliance of the security-  
15 based swap dealer or major swap partici-  
16 pant with respect to this title (including  
17 regulations); and

18 “(ii) each policy and procedure of the  
19 security-based swap dealer or major secu-  
20 rity-based swap participant of the chief  
21 compliance officer (including the code of  
22 ethics and conflict of interest policies).

23 “(B) REQUIREMENTS.—A compliance re-  
24 port under subparagraph (A) shall—

1           “(i) accompany each appropriate fi-  
2           nancial report of the security-based swap  
3           dealer or major security-based swap partic-  
4           ipant that is required to be furnished to  
5           the Commission pursuant to this section;  
6           and

7           “(ii) include a certification that, under  
8           penalty of law, the compliance report is ac-  
9           curate and complete.

10       “(1) ENFORCEMENT AND ADMINISTRATIVE PRO-  
11       CEEDING AUTHORITY.—

12       “(1) PRIMARY ENFORCEMENT AUTHORITY.—

13       “(A) SECURITIES AND EXCHANGE COMMIS-  
14       SION.—Except as provided in subparagraph  
15       (B), the Commission shall have primary author-  
16       ity to enforce subtitle B, and the amendments  
17       made by subtitle B of the Wall Street Trans-  
18       parency and Accountability Act of 2010, with  
19       respect to any person.

20       “(B) APPROPRIATE FEDERAL BANKING  
21       AGENCIES.—The appropriate Federal banking  
22       agency for security-based swap dealers or major  
23       security-based swap participants that are depos-  
24       itory institutions, as that term is defined under  
25       section 3 of the Federal Deposit Insurance Act

1 (12 U.S.C. 1813), shall have exclusive authority  
2 to enforce the provisions of subsection (e) and  
3 other prudential requirements of this title, with  
4 respect to depository institutions that are secu-  
5 rity-based swap dealers or major security-based  
6 swap participants.

7 “(C) REFERRAL.—

8 “(i) VIOLATIONS OF NONPRUDENTIAL  
9 REQUIREMENTS.—If the appropriate Fed-  
10 eral banking agency for security-based  
11 swap dealers or major security-based swap  
12 participants that are depository institu-  
13 tions has cause to believe that such secu-  
14 rity-based swap dealer or major security-  
15 based swap participant may have engaged  
16 in conduct that constitutes a violation of  
17 the nonprudential requirements of this sec-  
18 tion or rules adopted by the Commission  
19 thereunder, the agency may recommend in  
20 writing to the Commission that the Com-  
21 mission initiate an enforcement proceeding  
22 as authorized under this title. The rec-  
23 ommendation shall be accompanied by a  
24 written explanation of the concerns giving  
25 rise to the recommendation.

1                   “(ii) VIOLATIONS OF PRUDENTIAL RE-  
2                   QUIREMENTS.—If the Commission has  
3                   cause to believe that a securities-based  
4                   swap dealer or major securities-based swap  
5                   participant that has a prudential regulator  
6                   may have engaged in conduct that con-  
7                   stitute a violation of the prudential re-  
8                   quirements of subsection (e) or rules  
9                   adopted thereunder, the Commission may  
10                  recommend in writing to the prudential  
11                  regulator that the prudential regulator ini-  
12                  tiate an enforcement proceeding as author-  
13                  ized under this title. The recommendation  
14                  shall be accompanied by a written expla-  
15                  nation of the concerns giving rise to the  
16                  recommendation.

17                  “(2) CENSURE, DENIAL, SUSPENSION; NOTICE  
18                  AND HEARING.—The Commission, by order, shall  
19                  censure, place limitations on the activities, functions,  
20                  or operations of, or revoke the registration of any se-  
21                  curity-based swap dealer or major security-based  
22                  swap participant that has registered with the Com-  
23                  mission pursuant to subsection (b) if the Commis-  
24                  sion finds, on the record after notice and oppor-  
25                  tunity for hearing, that such censure, placing of lim-



1        itations, or revocation is in the public interest and  
2        that such security-based swap dealer or major secu-  
3        rity-based swap participant, or any person associated  
4        with such security-based swap dealer or major secu-  
5        rity-based swap participant effecting or involved in  
6        effecting transactions in security-based swaps on be-  
7        half of such security-based swap dealer or major se-  
8        curity-based swap participant, whether prior or sub-  
9        sequent to becoming so associated—

10                “(A) has committed or omitted any act, or  
11                is subject to an order or finding, enumerated in  
12                subparagraph (A), (D), or (E) of paragraph (4)  
13                of section 15(b);

14                “(B) has been convicted of any offense  
15                specified in subparagraph (B) of such para-  
16                graph (4) within 10 years of the commencement  
17                of the proceedings under this subsection;

18                “(C) is enjoined from any action, conduct,  
19                or practice specified in subparagraph (C) of  
20                such paragraph (4);

21                “(D) is subject to an order or a final order  
22                specified in subparagraph (F) or (H), respec-  
23                tively, of such paragraph (4); or

24                “(E) has been found by a foreign financial  
25                regulatory authority to have committed or omit-

1           ted any act, or violated any foreign statute or  
2           regulation, enumerated in subparagraph (G) of  
3           such paragraph (4).

4           “(3) ASSOCIATED PERSONS.—With respect to  
5           any person who is associated, who is seeking to be-  
6           come associated, or, at the time of the alleged mis-  
7           conduct, who was associated or was seeking to be-  
8           come associated with a security-based swap dealer or  
9           major security-based swap participant for the pur-  
10          pose of effecting or being involved in effecting secu-  
11          rity-based swaps on behalf of such security-based  
12          swap dealer or major security-based swap partici-  
13          pant, the Commission, by order, shall censure, place  
14          limitations on the activities or functions of such per-  
15          son, or suspend for a period not exceeding 12  
16          months, or bar such person from being associated  
17          with a security-based swap dealer or major security-  
18          based swap participant, if the Commission finds, on  
19          the record after notice and opportunity for a hear-  
20          ing, that such censure, placing of limitations, sus-  
21          pension, or bar is in the public interest and that  
22          such person—

23                       “(A) has committed or omitted any act, or  
24                       is subject to an order or finding, enumerated in

1           subparagraph (A), (D), or (E) of paragraph (4)  
2           of section 15(b);

3           “(B) has been convicted of any offense  
4           specified in subparagraph (B) of such para-  
5           graph (4) within 10 years of the commencement  
6           of the proceedings under this subsection;

7           “(C) is enjoined from any action, conduct,  
8           or practice specified in subparagraph (C) of  
9           such paragraph (4);

10          “(D) is subject to an order or a final order  
11          specified in subparagraph (F) or (H), respec-  
12          tively, of such paragraph (4); or

13          “(E) has been found by a foreign financial  
14          regulatory authority to have committed or omit-  
15          ted any act, or violated any foreign statute or  
16          regulation, enumerated in subparagraph (G) of  
17          such paragraph (4).

18          “(4) UNLAWFUL CONDUCT.—It shall be unlaw-  
19          ful—

20          “(A) for any person as to whom an order  
21          under paragraph (3) is in effect, without the  
22          consent of the Commission, willfully to become,  
23          or to be, associated with a security-based swap  
24          dealer or major security-based swap participant  
25          in contravention of such order; or

1           “(B) for any security-based swap dealer or  
2           major security-based swap participant to permit  
3           such a person, without the consent of the Com-  
4           mission, to become or remain a person associ-  
5           ated with the security-based swap dealer or  
6           major security-based swap participant in con-  
7           travention of such order, if such security-based  
8           swap dealer or major security-based swap par-  
9           ticipant knew, or in the exercise of reasonable  
10          care should have known, of such order.”.

11 **SEC. 765. RULEMAKING ON CONFLICT OF INTEREST.**

12          (a) IN GENERAL.—Not later than 180 days after the  
13 date of enactment of the Wall Street Transparency and  
14 Accountability Act of 2010, the Securities and Exchange  
15 Commission shall determine whether to adopt rules to es-  
16 tablish limits on the control of any clearing agency that  
17 clears security-based swaps, or on the control of any secu-  
18 rity-based swap execution facility or national securities ex-  
19 change that posts or makes available for trading security-  
20 based swaps, by a bank holding company (as defined in  
21 section 2 of the Bank Holding Company Act of 1956 (12  
22 U.S.C. 1841)) with total consolidated assets of  
23 \$50,000,000,000 or more, a nonbank financial company  
24 (as defined in section 102) supervised by the Board of  
25 Governors of the Federal Reserve System, affiliate of such

1 a bank holding company or nonbank financial company,  
2 a security-based swap dealer, major security-based swap  
3 participant, or person associated with a security-based  
4 swap dealer or major security-based swap participant.

5 (b) PURPOSES.—The Commission shall adopt rules if  
6 the Commission determines, after the review described in  
7 subsection (a), that such rules are necessary or appro-  
8 priate to improve the governance of, or to mitigate sys-  
9 temic risk, promote competition, or mitigate conflicts of  
10 interest in connection with a security-based swap dealer  
11 or major security-based swap participant's conduct of  
12 business with, a clearing agency, national securities ex-  
13 change, or security-based swap execution facility that  
14 clears, posts, or makes available for trading security-based  
15 swaps and in which such security-based swap dealer or  
16 major security-based swap participant has a material debt  
17 or equity investment.

18 **SEC. 766. REPORTING AND RECORDKEEPING.**

19 (a) IN GENERAL.—The Securities Exchange Act of  
20 1934 (15 U.S.C. 78a et seq.) is amended by inserting after  
21 section 13 the following:

1 **“SEC. 13A. REPORTING AND RECORDKEEPING FOR CER-**  
2 **TAIN SECURITY-BASED SWAPS.**

3 “(a) REQUIRED REPORTING OF SECURITY-BASED  
4 SWAPS NOT ACCEPTED BY ANY CLEARING AGENCY OR  
5 DERIVATIVES CLEARING ORGANIZATION.—

6 “(1) IN GENERAL.—Each security-based swap  
7 that is not accepted for clearing by any clearing  
8 agency or derivatives clearing organization shall be  
9 reported to—

10 “(A) a security-based swap data repository  
11 described in section 10B(n); or

12 “(B) in the case in which there is no secu-  
13 rity-based swap data repository that would ac-  
14 cept the security-based swap, to the Commis-  
15 sion pursuant to this section within such time  
16 period as the Commission may by rule or regu-  
17 lation prescribe.

18 “(2) TRANSITION RULE FOR PREENACTMENT  
19 SECURITY-BASED SWAPS.—

20 “(A) SECURITY-BASED SWAPS ENTERED  
21 INTO BEFORE THE DATE OF ENACTMENT OF  
22 THE WALL STREET TRANSPARENCY AND AC-  
23 COUNTABILITY ACT OF 2010.—Each security-  
24 based swap entered into before the date of en-  
25 actment of the Wall Street Transparency and  
26 Accountability Act of 2010, the terms of which

1           have not expired as of the date of enactment of  
2           that Act, shall be reported to a registered secu-  
3           rity-based swap data repository or the Commis-  
4           sion by a date that is not later than—

5                     “(i) 30 days after issuance of the in-  
6                     terim final rule; or

7                     “(ii) such other period as the Com-  
8                     mission determines to be appropriate.

9                     “(B) COMMISSION RULEMAKING.—The  
10           Commission shall promulgate an interim final  
11           rule within 90 days of the date of enactment of  
12           this section providing for the reporting of each  
13           security-based swap entered into before the date  
14           of enactment as referenced in subparagraph  
15           (A).

16                     “(C) EFFECTIVE DATE.—The reporting  
17           provisions described in this section shall be ef-  
18           fective upon the date of the enactment of this  
19           section.

20                     “(3) REPORTING OBLIGATIONS.—

21                     “(A) SECURITY-BASED SWAPS IN WHICH  
22           ONLY 1 COUNTERPARTY IS A SECURITY-BASED  
23           SWAP DEALER OR MAJOR SECURITY-BASED  
24           SWAP PARTICIPANT.—With respect to a secu-  
25           rity-based swap in which only 1 counterparty is

1 a security-based swap dealer or major security-  
2 based swap participant, the security-based swap  
3 dealer or major security-based swap participant  
4 shall report the security-based swap as required  
5 under paragraphs (1) and (2).

6 “(B) SECURITY-BASED SWAPS IN WHICH 1  
7 COUNTERPARTY IS A SECURITY-BASED SWAP  
8 DEALER AND THE OTHER A MAJOR SECURITY-  
9 BASED SWAP PARTICIPANT.—With respect to a  
10 security-based swap in which 1 counterparty is  
11 a security-based swap dealer and the other a  
12 major security-based swap participant, the secu-  
13 rity-based swap dealer shall report the security-  
14 based swap as required under paragraphs (1)  
15 and (2).

16 “(C) OTHER SECURITY-BASED SWAPS.—  
17 With respect to any other security-based swap  
18 not described in subparagraph (A) or (B), the  
19 counterparties to the security-based swap shall  
20 select a counterparty to report the security-  
21 based swap as required under paragraphs (1)  
22 and (2).

23 “(b) DUTIES OF CERTAIN INDIVIDUALS.—Any indi-  
24 vidual or entity that enters into a security-based swap



1 shall meet each requirement described in subsection (c)  
2 if the individual or entity did not—

3 “(1) clear the security-based swap in accord-  
4 ance with section 3C(a)(1); or

5 “(2) have the data regarding the security-based  
6 swap accepted by a security-based swap data reposi-  
7 tory in accordance with rules (including timeframes)  
8 adopted by the Commission under this title.

9 “(c) REQUIREMENTS.—An individual or entity de-  
10 scribed in subsection (b) shall—

11 “(1) upon written request from the Commis-  
12 sion, provide reports regarding the security-based  
13 swaps held by the individual or entity to the Com-  
14 mission in such form and in such manner as the  
15 Commission may request; and

16 “(2) maintain books and records pertaining to  
17 the security-based swaps held by the individual or  
18 entity in such form, in such manner, and for such  
19 period as the Commission may require, which shall  
20 be open to inspection by—

21 “(A) any representative of the Commis-  
22 sion;

23 “(B) an appropriate prudential regulator;

24 “(C) the Commodity Futures Trading  
25 Commission;

1                   “(D) the Financial Stability Oversight  
2                   Council; and

3                   “(E) the Department of Justice.

4           “(d) IDENTICAL DATA.—In prescribing rules under  
5 this section, the Commission shall require individuals and  
6 entities described in subsection (b) to submit to the Com-  
7 mission a report that contains data that is not less com-  
8 prehensive than the data required to be collected by secu-  
9 rity-based swap data repositories under this title.”.

10           (b) BENEFICIAL OWNERSHIP REPORTING.—Section  
11 13 of the Securities Exchange Act of 1934 (15 U.S.C.  
12 78m) is amended—

13           (1) in subsection (d)(1), by inserting “or other-  
14 wise becomes or is deemed to become a beneficial  
15 owner of any of the foregoing upon the purchase or  
16 sale of a security-based swap that the Commission  
17 may define by rule, and” after “Alaska Native  
18 Claims Settlement Act,”; and

19           (2) in subsection (g)(1), by inserting “or other-  
20 wise becomes or is deemed to become a beneficial  
21 owner of any security of a class described in sub-  
22 section (d)(1) upon the purchase or sale of a secu-  
23 rity-based swap that the Commission may define by  
24 rule” after “subsection (d)(1) of this section”.

1           (c) REPORTS BY INSTITUTIONAL INVESTMENT MAN-  
2 AGERS.—Section 13(f)(1) of the Securities Exchange Act  
3 of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting  
4 “or otherwise becomes or is deemed to become a beneficial  
5 owner of any security of a class described in subsection  
6 (d)(1) upon the purchase or sale of a security-based swap  
7 that the Commission may define by rule,” after “sub-  
8 section (d)(1) of this section”.

9           (d) ADMINISTRATIVE PROCEEDING AUTHORITY.—  
10 Section 15(b)(4) of the Securities Exchange Act of 1934  
11 (15 U.S.C. 78o(b)(4)) is amended—

12                 (1) in subparagraph (C), by inserting “security-  
13 based swap dealer, major security-based swap partic-  
14 ipant,” after “government securities dealer,”; and

15                 (2) in subparagraph (F), by striking “broker or  
16 dealer” and inserting “broker, dealer, security-based  
17 swap dealer, or a major security-based swap partici-  
18 pant”.

19           (e) SECURITY-BASED SWAP BENEFICIAL OWNER-  
20 SHIP.—Section 13 of the Securities Exchange Act of 1934  
21 (15 U.S.C. 78m) is amended by adding at the end the  
22 following:

23                 “(o) BENEFICIAL OWNERSHIP.—For purposes of this  
24 section and section 16, a person shall be deemed to acquire  
25 beneficial ownership of an equity security based on the

1 purchase or sale of a security-based swap, only to the ex-  
2 tent that the Commission, by rule, determines after con-  
3 sultation with the prudential regulators and the Secretary  
4 of the Treasury, that the purchase or sale of the security-  
5 based swap, or class of security-based swap, provides inci-  
6 dents of ownership comparable to direct ownership of the  
7 equity security, and that it is necessary to achieve the pur-  
8 poses of this section that the purchase or sale of the secu-  
9 rity-based swaps, or class of security-based swap, be  
10 deemed the acquisition of beneficial ownership of the eq-  
11 uity security.”.

12 **SEC. 767. STATE GAMING AND BUCKET SHOP LAWS.**

13 Section 28(a) of the Securities Exchange Act of 1934  
14 (15 U.S.C. 78bb(a)) is amended to read as follows:

15 “(a) **LIMITATION ON JUDGMENTS.**—

16 “(1) **IN GENERAL.**—No person permitted to  
17 maintain a suit for damages under the provisions of  
18 this title shall recover, through satisfaction of judg-  
19 ment in 1 or more actions, a total amount in excess  
20 of the actual damages to that person on account of  
21 the act complained of. Except as otherwise specifi-  
22 cally provided in this title, nothing in this title shall  
23 affect the jurisdiction of the securities commission  
24 (or any agency or officer performing like functions)  
25 of any State over any security or any person insofar

1 as it does not conflict with the provisions of this title  
2 or the rules and regulations under this title.

3 “(2) RULE OF CONSTRUCTION.—Except as pro-  
4 vided in subsection (f), the rights and remedies pro-  
5 vided by this title shall be in addition to any and all  
6 other rights and remedies that may exist at law or  
7 in equity.

8 “(3) STATE BUCKET SHOP LAWS.—No State  
9 law which prohibits or regulates the making or pro-  
10 moting of wagering or gaming contracts, or the op-  
11 eration of ‘bucket shops’ or other similar or related  
12 activities, shall invalidate—

13 “(A) any put, call, straddle, option, privi-  
14 lege, or other security subject to this title (ex-  
15 cept any security that has a pari-mutuel payout  
16 or otherwise is determined by the Commission,  
17 acting by rule, regulation, or order, to be appro-  
18 priately subject to such laws), or apply to any  
19 activity which is incidental or related to the  
20 offer, purchase, sale, exercise, settlement, or  
21 closeout of any such security;

22 “(B) any security-based swap between eli-  
23 gible contract participants; or

1           “(C) any security-based swap effected on a  
 2           national securities exchange registered pursuant  
 3           to section 6(b).

4           “(4) OTHER STATE PROVISIONS.—No provision  
 5           of State law regarding the offer, sale, or distribution  
 6           of securities shall apply to any transaction in a secu-  
 7           rity-based swap or a security futures product, except  
 8           that this paragraph may not be construed as lim-  
 9           iting any State antifraud law of general applica-  
 10          bility. A security-based swap may not be regulated  
 11          as an insurance contract under any provision of  
 12          State law.”.

13 **SEC. 768. AMENDMENTS TO THE SECURITIES ACT OF 1933;**

14                           **TREATMENT OF SECURITY-BASED SWAPS.**

15          (a) DEFINITIONS.—Section 2(a) of the Securities Act  
 16          of 1933 (15 U.S.C. 77b(a)) is amended—

17                  (1) in paragraph (1), by inserting “security-  
 18                  based swap,” after “security future,”;

19                  (2) in paragraph (3), by adding at the end the  
 20                  following: “Any offer or sale of a security-based  
 21                  swap by or on behalf of the issuer of the securities  
 22                  upon which such security-based swap is based or is  
 23                  referenced, an affiliate of the issuer, or an under-  
 24                  writer, shall constitute a contract for sale of, sale of,  
 25                  offer for sale, or offer to sell such securities.”; and

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

2 “(17) The terms ‘swap’ and ‘security-based  
3 swap’ have the same meanings as in section 1a of  
4 the Commodity Exchange Act (7 U.S.C. 1a).

5 “(18) The terms ‘purchase’ or ‘sale’ of a secu-  
6 rity-based swap shall be deemed to mean the execu-  
7 tion, termination (prior to its scheduled maturity  
8 date), assignment, exchange, or similar transfer or  
9 conveyance of, or extinguishing of rights or obliga-  
10 tions under, a security-based swap, as the context  
11 may require.”.

12 (b) REGISTRATION OF SECURITY-BASED SWAPS.—  
13 Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)  
14 is amended by adding at the end the following:

15 “(d) Notwithstanding the provisions of section 3 or  
16 4, unless a registration statement meeting the require-  
17 ments of section 10(a) is in effect as to a security-based  
18 swap, it shall be unlawful for any person, directly or indi-  
19 rectly, to make use of any means or instruments of trans-  
20 portation or communication in interstate commerce or of  
21 the mails to offer to sell, offer to buy or purchase or sell  
22 a security-based swap to any person who is not an eligible  
23 contract participant as defined in section 1a(18) of the  
24 Commodity Exchange Act (7 U.S.C. 1a(18)).”.

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**1 SEC. 769. DEFINITIONS UNDER THE INVESTMENT COMPANY****2 ACT OF 1940.**

3 Section 2(a) of the Investment Company Act of 1940  
4 (15 U.S.C. 80a-2) is amended by adding at the end the  
5 following:

6 “(54) The terms ‘commodity pool’, ‘commodity  
7 pool operator’, ‘commodity trading advisor’, ‘major  
8 swap participant’, ‘swap’, ‘swap dealer’, and ‘swap  
9 execution facility’ have the same meanings as in sec-  
10 tion 1a of the Commodity Exchange Act (7 U.S.C.  
11 1a).”.

**12 SEC. 770. DEFINITIONS UNDER THE INVESTMENT ADVI-****13 SORS ACT OF 1940.**

14 Section 202(a) of the Investment Advisers Act of  
15 1940 (15 U.S.C. 80b-2) is amended by adding at the end  
16 the following:

17 “(29) The terms ‘commodity pool’, ‘commodity  
18 pool operator’, ‘commodity trading advisor’, ‘major  
19 swap participant’, ‘swap’, ‘swap dealer’, and ‘swap  
20 execution facility’ have the same meanings as in sec-  
21 tion 1a of the Commodity Exchange Act (7 U.S.C.  
22 1a).”.

**23 SEC. 771. OTHER AUTHORITY.**

24 Unless otherwise provided by its terms, this subtitle  
25 does not divest any appropriate Federal banking agency,  
26 the Securities and Exchange Commission, the Commodity



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1 Futures Trading Commission, or any other Federal or  
2 State agency, of any authority derived from any other pro-  
3 vision of applicable law.

4 **SEC. 772. JURISDICTION.**

5 (a) IN GENERAL.—Section 36 of the Securities Ex-  
6 change Act of 1934 (15 U.S.C. 78mm) is amended by add-  
7 ing at the end the following:

8 “(c) DERIVATIVES.—The Commission shall not grant  
9 exemptions from the security-based swap provisions of the  
10 Wall Street Transparency and Accountability Act of 2010  
11 or the amendments made by that Act, except as expressly  
12 authorized under the provisions of that Act.”.

13 (b) RULE OF CONSTRUCTION.—Section 30 of the Se-  
14 curities Exchange Act of 1934 (15 U.S.C. 78dd) is amend-  
15 ed by adding at the end the following:

16 “(c) RULE OF CONSTRUCTION.—No provision of this  
17 title that was added by the Wall Street Transparency and  
18 Accountability Act of 2010, or any rule or regulation  
19 thereunder, shall apply to any person insofar as such per-  
20 son transacts a business in security-based swaps without  
21 the jurisdiction of the United States, unless such person  
22 transacts such business in contravention of such rules and  
23 regulations as the Commission may prescribe as necessary  
24 or appropriate to prevent the evasion of any provision of  
25 this title that was added by the Wall Street Transparency

1 and Accountability Act of 2010. This subsection shall not  
2 be construed to limit the jurisdiction of the Commission  
3 under any provision of this title, as in effect prior to the  
4 date of enactment of the Wall Street Transparency and  
5 Accountability Act of 2010.”.

6 **SEC. 773. EFFECTIVE DATE.**

7 Unless otherwise specifically provided in this subtitle,  
8 this subtitle, the provisions of this subtitle, and the  
9 amendments made by this subtitle shall become effective  
10 180 days after the date of enactment of this Act.

11 **TITLE VIII—PAYMENT, CLEAR-**  
12 **ING, AND SETTLEMENT SU-**  
13 **PERVISION**

14 **SEC. 801. SHORT TITLE.**

15 This title may be cited as the “Payment, Clearing,  
16 and Settlement Supervision Act of 2010”.

17 **SEC. 802. FINDINGS AND PURPOSES.**

18 (a) FINDINGS.—Congress finds the following:

19 (1) The proper functioning of the financial mar-  
20 kets is dependent upon safe and efficient arrange-  
21 ments for the clearing and settlement of payment,  
22 securities, and other financial transactions.

23 (2) Financial market utilities that conduct or  
24 support multilateral payment, clearing, or settlement  
25 activities may reduce risks for their participants and

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1 the broader financial system, but such utilities may  
2 also concentrate and create new risks and thus must  
3 be well designed and operated in a safe and sound  
4 manner.

5 (3) Payment, clearing, and settlement activities  
6 conducted by financial institutions also present im-  
7 portant risks to the participating financial institu-  
8 tions and to the financial system.

9 (4) Enhancements to the regulation and super-  
10 vision of systemically important financial market  
11 utilities and the conduct of systemically important  
12 payment, clearing, and settlement activities by finan-  
13 cial institutions are necessary—

14 (A) to provide consistency;

15 (B) to promote robust risk management  
16 and safety and soundness;

17 (C) to reduce systemic risks; and

18 (D) to support the stability of the broader  
19 financial system.

20 (b) PURPOSE.—The purpose of this title is to miti-  
21 gate systemic risk in the financial system and promote fi-  
22 nancial stability by—

23 (1) authorizing the Board of Governors to pre-  
24 scribe uniform standards for the—

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1 (A) management of risks by systemically  
2 important financial market utilities; and

3 (B) conduct of systemically important pay-  
4 ment, clearing, and settlement activities by fi-  
5 nancial institutions;

6 (2) providing the Board of Governors an en-  
7 hanced role in the supervision of risk management  
8 standards for systemically important financial mar-  
9 ket utilities;

10 (3) strengthening the liquidity of systemically  
11 important financial market utilities; and

12 (4) providing the Board of Governors an en-  
13 hanced role in the supervision of risk management  
14 standards for systemically important payment, clear-  
15 ing, and settlement activities by financial institu-  
16 tions.

17 **SEC. 803. DEFINITIONS.**

18 In this title, the following definitions shall apply:

19 (1) APPROPRIATE FINANCIAL REGULATOR.—

20 The term “appropriate financial regulator” means—

21 (A) the primary financial regulatory agen-  
22 cy, as defined in section 2 of this Act;

23 (B) the National Credit Union Administra-  
24 tion, with respect to any insured credit union

1 under the Federal Credit Union Act (12 U.S.C.  
2 1751 et seq.); and

3 (C) the Board of Governors, with respect  
4 to organizations operating under section 25A of  
5 the Federal Reserve Act (12 U.S.C. 611), and  
6 any other financial institution engaged in a des-  
7 ignated activity.

8 (2) DESIGNATED ACTIVITY.—The term “des-  
9 ignated activity” means a payment, clearing, or set-  
10 tlement activity that the Council has designated as  
11 systemically important under section 804.

12 (3) DESIGNATED FINANCIAL MARKET UTIL-  
13 ITY.—The term “designated financial market util-  
14 ity” means a financial market utility that the Coun-  
15 cil has designated as systemically important under  
16 section 804.

17 (4) FINANCIAL INSTITUTION.—The term “fi-  
18 nancial institution” means—

19 (A) a depository institution, as defined in  
20 section 3 of the Federal Deposit Insurance Act  
21 (12 U.S.C. 1813);

22 (B) a branch or agency of a foreign bank,  
23 as defined in section 1(b) of the International  
24 Banking Act of 1978 (12 U.S.C. 3101);

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1 (C) an organization operating under sec-  
2 tion 25 or 25A of the Federal Reserve Act (12  
3 U.S.C. 601–604a and 611 through 631);

4 (D) a credit union, as defined in section  
5 101 of the Federal Credit Union Act (12  
6 U.S.C. 1752);

7 (E) a broker or dealer, as defined in sec-  
8 tion 3 of the Securities Exchange Act of 1934  
9 (15 U.S.C. 78c);

10 (F) an investment company, as defined in  
11 section 3 of the Investment Company Act of  
12 1940 (15 U.S.C. 80a–3);

13 (G) an insurance company, as defined in  
14 section 2 of the Investment Company Act of  
15 1940 (15 U.S.C. 80a–2);

16 (H) an investment adviser, as defined in  
17 section 202 of the Investment Advisers Act of  
18 1940 (15 U.S.C. 80b–2);

19 (I) a futures commission merchant, com-  
20 modity trading advisor, or commodity pool oper-  
21 ator, as defined in section 1a of the Commodity  
22 Exchange Act (7 U.S.C. 1a); and

23 (J) any company engaged in activities that  
24 are financial in nature or incidental to a finan-  
25 cial activity, as described in section 4 of the

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1 Bank Holding Company Act of 1956 (12  
2 U.S.C. 1843(k)).

3 (5) FINANCIAL MARKET UTILITY.—The term  
4 “financial market utility” means any person that  
5 manages or operates a multilateral system for the  
6 purpose of transferring, clearing, or settling pay-  
7 ments, securities, or other financial transactions  
8 among financial institutions or between financial in-  
9 stitutions and the person.

10 (6) PAYMENT, CLEARING, OR SETTLEMENT AC-  
11 TIVITY.—

12 (A) IN GENERAL.—The term “payment,  
13 clearing, or settlement activity” means an activ-  
14 ity carried out by 1 or more financial institu-  
15 tions to facilitate the completion of financial  
16 transactions.

17 (B) FINANCIAL TRANSACTION.—For the  
18 purposes of subparagraph (A), the term “finan-  
19 cial transaction” includes—

- 20 (i) funds transfers;  
21 (ii) securities contracts;  
22 (iii) contracts of sale of a commodity  
23 for future delivery;  
24 (iv) forward contracts;  
25 (v) repurchase agreements;

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- 1 (vi) swaps;
- 2 (vii) security-based swaps;
- 3 (viii) swap agreements;
- 4 (ix) security-based swap agreements;
- 5 (x) foreign exchange contracts;
- 6 (xi) financial derivatives contracts;

7 and

- 8 (xii) any similar transaction that the
- 9 Council determines to be a financial trans-
- 10 action for purposes of this title.

11 (C) INCLUDED ACTIVITIES.—When con-

12 ducted with respect to a financial transaction,

13 payment, clearing, and settlement activities may

14 include—

- 15 (i) the calculation and communication
- 16 of unsettled financial transactions between
- 17 counterparties;

- 18 (ii) the netting of transactions;

- 19 (iii) provision and maintenance of
- 20 trade, contract, or instrument information;

- 21 (iv) the management of risks and ac-
- 22 tivities associated with continuing financial
- 23 transactions;

- 24 (v) transmittal and storage of pay-
- 25 ment instructions;



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- 1 (vi) the movement of funds;
- 2 (vii) the final settlement of financial
- 3 transactions; and
- 4 (viii) other similar functions that the
- 5 Council may determine.

6 (7) SUPERVISORY AGENCY.—

7 (A) IN GENERAL.—The term “Supervisory

8 Agency” means the Federal agency that has

9 primary jurisdiction over a designated financial

10 market utility under Federal banking, securi-

11 ties, or commodity futures laws, as follows:

12 (i) The Securities and Exchange Com-

13 mission, with respect to a designated fi-

14 nancial market utility that is a clearing

15 agency registered with the Securities and

16 Exchange Commission.

17 (ii) The Commodity Futures Trading

18 Commission, with respect to a designated

19 financial market utility that is a deriva-

20 tives clearing organization registered with

21 the Commodity Futures Trading Commis-

22 sion.

23 (iii) The appropriate Federal banking

24 agency, with respect to a designated finan-

25 cial market utility that is an institution de-

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1 scribed in section 3(q) of the Federal De-  
2 posit Insurance Act.

3 (iv) The Board of Governors, with re-  
4 spect to a designated financial market util-  
5 ity that is otherwise not subject to the ju-  
6 risdiction of any agency listed in clauses  
7 (i), (ii), and (iii).

8 (B) MULTIPLE AGENCY JURISDICTION.—If  
9 a designated financial market utility is subject  
10 to the jurisdictional supervision of more than 1  
11 agency listed in subparagraph (A), then such  
12 agencies should agree on 1 agency to act as the  
13 Supervisory Agency, and if such agencies can-  
14 not agree on which agency has primary jurisdic-  
15 tion, the Council shall decide which agency is  
16 the Supervisory Agency for purposes of this  
17 title.

18 (8) SYSTEMICALLY IMPORTANT AND SYSTEMIC  
19 IMPORTANCE.—The terms “systemically important”  
20 and “systemic importance” mean a situation where  
21 the failure of or a disruption to the functioning of  
22 a financial market utility or the conduct of a pay-  
23 ment, clearing, or settlement activity could create, or  
24 increase, the risk of significant liquidity or credit  
25 problems spreading among financial institutions or

1 markets and thereby threaten the stability of the fi-  
2 nancial system.

3 **SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.**

4 (a) DESIGNATION.—

5 (1) FINANCIAL STABILITY OVERSIGHT COUN-  
6 CIL.—The Council, on a nondelegable basis and by  
7 a vote of not fewer than  $\frac{2}{3}$  of members then serving,  
8 including an affirmative vote by the Chairperson of  
9 the Council, shall designate those financial market  
10 utilities or payment, clearing, or settlement activities  
11 that the Council determines are, or are likely to be-  
12 come, systemically important.

13 (2) CONSIDERATIONS.—In determining whether  
14 a financial market utility or payment, clearing, or  
15 settlement activity is, or is likely to become, system-  
16 ically important, the Council shall take into consid-  
17 eration the following:

18 (A) The aggregate monetary value of  
19 transactions processed by the financial market  
20 utility or carried out through the payment,  
21 clearing, or settlement activity.

22 (B) The aggregate exposure of the finan-  
23 cial market utility or a financial institution en-  
24 gaged in payment, clearing, or settlement activi-  
25 ties to its counterparties.

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1           (C) The relationship, interdependencies, or  
2           other interactions of the financial market utility  
3           or payment, clearing, or settlement activity with  
4           other financial market utilities or payment,  
5           clearing, or settlement activities.

6           (D) The effect that the failure of or a dis-  
7           ruption to the financial market utility or pay-  
8           ment, clearing, or settlement activity would  
9           have on critical markets, financial institutions,  
10          or the broader financial system.

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

13          (b) RESCISSION OF DESIGNATION.—

14           (1) IN GENERAL.—The Council, on a nondele-  
15           gable basis and by a vote of not fewer than  $\frac{2}{3}$  of  
16           members then serving, including an affirmative vote  
17           by the Chairperson of the Council, shall rescind a  
18           designation of systemic importance for a designated  
19           financial market utility or designated activity if the  
20           Council determines that the utility or activity no  
21           longer meets the standards for systemic importance.

22           (2) EFFECT OF RESCISSION.—Upon rescission,  
23           the financial market utility or financial institutions  
24           conducting the activity will no longer be subject to

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1 the provisions of this title or any rules or orders pre-  
2 scribed by the Council under this title.

3 (c) CONSULTATION AND NOTICE AND OPPORTUNITY  
4 FOR HEARING.—

5 (1) CONSULTATION.—Before making any deter-  
6 mination under subsection (a) or (b), the Council  
7 shall consult with the relevant Supervisory Agency  
8 and the Board of Governors.

9 (2) ADVANCE NOTICE AND OPPORTUNITY FOR  
10 HEARING.—

11 (A) IN GENERAL.—Before making any de-  
12 termination under subsection (a) or (b), the  
13 Council shall provide the financial market util-  
14 ity or, in the case of a payment, clearing, or  
15 settlement activity, financial institutions with  
16 advance notice of the proposed determination of  
17 the Council.

18 (B) NOTICE IN FEDERAL REGISTER.—The  
19 Council shall provide such advance notice to fi-  
20 nancial institutions by publishing a notice in  
21 the Federal Register.

22 (C) REQUESTS FOR HEARING.—Within 30  
23 days from the date of any notice of the pro-  
24 posed determination of the Council, the finan-  
25 cial market utility or, in the case of a payment,

1 clearing, or settlement activity, a financial insti-  
2 tution engaged in the designated activity may  
3 request, in writing, an opportunity for a written  
4 or oral hearing before the Council to dem-  
5 onstrate that the proposed designation or re-  
6 scission of designation is not supported by sub-  
7 stantial evidence.

8 (D) WRITTEN SUBMISSIONS.—Upon re-  
9 ceipt of a timely request, the Council shall fix  
10 a time, not more than 30 days after receipt of  
11 the request, unless extended at the request of  
12 the financial market utility or financial institu-  
13 tion, and place at which the financial market  
14 utility or financial institution may appear, per-  
15 sonally or through counsel, to submit written  
16 materials, or, at the sole discretion of the Coun-  
17 cil, oral testimony or oral argument.

18 (3) EMERGENCY EXCEPTION.—

19 (A) WAIVER OR MODIFICATION BY VOTE  
20 OF THE COUNCIL.—The Council may waive or  
21 modify the requirements of paragraph (2) if the  
22 Council determines, by an affirmative vote of  
23 not less than  $\frac{2}{3}$  of all members then serving,  
24 including an affirmative vote by the Chair-  
25 person of the Council, that the waiver or modi-

1           fication is necessary to prevent or mitigate an  
2           immediate threat to the financial system posed  
3           by the financial market utility or the payment,  
4           clearing, or settlement activity.

5           (B) NOTICE OF WAIVER OR MODIFICA-  
6           TION.—The Council shall provide notice of the  
7           waiver or modification to the financial market  
8           utility concerned or, in the case of a payment,  
9           clearing, or settlement activity, to financial in-  
10          stitutions, as soon as practicable, which shall be  
11          no later than 24 hours after the waiver or  
12          modification in the case of a financial market  
13          utility and 3 business days in the case of finan-  
14          cial institutions. The Council shall provide the  
15          notice to financial institutions by posting a no-  
16          tice on the website of the Council and by pub-  
17          lishing a notice in the Federal Register.

18          (d) NOTIFICATION OF FINAL DETERMINATION.—

19           (1) AFTER HEARING.—Within 60 days of any  
20          hearing under subsection (c)(3), the Council shall  
21          notify the financial market utility or financial insti-  
22          tutions of the final determination of the Council in  
23          writing, which shall include findings of fact upon  
24          which the determination of the Council is based.

1           (2) WHEN NO HEARING REQUESTED.—If the  
2 Council does not receive a timely request for a hear-  
3 ing under subsection (c)(3), the Council shall notify  
4 the financial market utility or financial institutions  
5 of the final determination of the Council in writing  
6 not later than 30 days after the expiration of the  
7 date by which a financial market utility or a finan-  
8 cial institution could have requested a hearing. All  
9 notices to financial institutions under this subsection  
10 shall be published in the Federal Register.

11         (e) EXTENSION OF TIME PERIODS.—The Council  
12 may extend the time periods established in subsections (c)  
13 and (d) as the Council determines to be necessary or ap-  
14 propriate.

15 **SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FI-**  
16 **NANCIAL MARKET UTILITIES AND PAYMENT,**  
17 **CLEARING, OR SETTLEMENT ACTIVITIES.**

18         (a) AUTHORITY TO PRESCRIBE STANDARDS.—The  
19 Board, by rule or order, and in consultation with the  
20 Council and the Supervisory Agencies, shall prescribe risk  
21 management standards, taking into consideration relevant  
22 international standards and existing prudential require-  
23 ments, governing—



1           (1) the operations related to the payment, clear-  
2           ing, and settlement activities of designated financial  
3           market utilities; and

4           (2) the conduct of designated activities by fi-  
5           nancial institutions.

6           (b) OBJECTIVES AND PRINCIPLES.—The objectives  
7           and principles for the risk management standards pre-  
8           scribed under subsection (a) shall be to—

9           (1) promote robust risk management;

10           (2) promote safety and soundness;

11           (3) reduce systemic risks; and

12           (4) support the stability of the broader financial  
13           system.

14           (c) SCOPE.—The standards prescribed under sub-  
15           section (a) may address areas such as—

16           (1) risk management policies and procedures;

17           (2) margin and collateral requirements;

18           (3) participant or counterparty default policies  
19           and procedures;

20           (4) the ability to complete timely clearing and  
21           settlement of financial transactions;

22           (5) capital and financial resource requirements  
23           for designated financial market utilities; and

1           (6) other areas that the Board determines are  
2           necessary to achieve the objectives and principles in  
3           subsection (b).

4           (d) **THRESHOLD LEVEL.**—The standards prescribed  
5           under subsection (a) governing the conduct of designated  
6           activities by financial institutions shall, where appropriate,  
7           establish a threshold as to the level or significance of en-  
8           gagement in the activity at which a financial institution  
9           will become subject to the standards with respect to that  
10          activity.

11          (e) **COMPLIANCE REQUIRED.**—Designated financial  
12          market utilities and financial institutions subject to the  
13          standards prescribed by the Board of Governors for a des-  
14          ignated activity shall conduct their operations in compli-  
15          ance with the applicable risk management standards pre-  
16          scribed by the Board of Governors.

17          **SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MAR-**  
18                               **KET UTILITIES.**

19          (a) **FEDERAL RESERVE ACCOUNT AND SERVICES.**—  
20          The Board of Governors may authorize a Federal Reserve  
21          Bank to establish and maintain an account for a des-  
22          ignated financial market utility and provide services to the  
23          designated financial market utility that the Federal Re-  
24          serve Bank is authorized under the Federal Reserve Act  
25          to provide to a depository institution, subject to any appli-

1 cable rules, orders, standards, or guidelines prescribed by  
2 the Board of Governors.

3 (b) ADVANCES.—The Board of Governors may au-  
4 thorize a Federal Reserve Bank to provide to a designated  
5 financial market utility the same discount and borrowing  
6 privileges as the Federal Reserve Bank may provide to a  
7 depository institution under the Federal Reserve Act, sub-  
8 ject to any applicable rules, orders, standards, or guide-  
9 lines prescribed by the Board of Governors.

10 (c) EARNINGS ON FEDERAL RESERVE BALANCES.—  
11 A Federal Reserve Bank may pay earnings on balances  
12 maintained by or on behalf of a designated financial mar-  
13 ket utility in the same manner and to the same extent  
14 as the Federal Reserve Bank may pay earnings to a depos-  
15 itory institution under the Federal Reserve Act, subject  
16 to any applicable rules, orders, standards, or guidelines  
17 prescribed by the Board of Governors.

18 (d) RESERVE REQUIREMENTS.—The Board of Gov-  
19 ernors may exempt a designated financial market utility  
20 from, or modify any, reserve requirements under section  
21 19 of the Federal Reserve Act (12 U.S.C. 461) applicable  
22 to a designated financial market utility.

23 (e) CHANGES TO RULES, PROCEDURES, OR OPER-  
24 ATIONS.—

25 (1) ADVANCE NOTICE.—

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1           (A) ADVANCE NOTICE OF PROPOSED  
2 CHANGES REQUIRED.—A designated financial  
3 market utility shall provide notice 60 days in  
4 advance notice to its Supervisory Agency and  
5 the Board of Governors of any proposed change  
6 to its rules, procedures, or operations that  
7 could, as defined in rules of the Board of Gov-  
8 ernors, materially affect, the nature or level of  
9 risks presented by the designated financial mar-  
10 ket utility.

11           (B) TERMS AND STANDARDS PRESCRIBED  
12 BY THE BOARD OF GOVERNORS.—The Board of  
13 Governors shall prescribe regulations that de-  
14 fine and describe the standards for determining  
15 when notice is required to be provided under  
16 subparagraph (A).

17           (C) CONTENTS OF NOTICE.—The notice of  
18 a proposed change shall describe—

19               (i) the nature of the change and ex-  
20 pected effects on risks to the designated fi-  
21 nancial market utility, its participants, or  
22 the market; and

23               (ii) how the designated financial mar-  
24 ket utility plans to manage any identified  
25 risks.

1 (D) ADDITIONAL INFORMATION.—The Su-  
2 pervisory Agency or the Board of Governors  
3 may require a designated financial market util-  
4 ity to provide any information necessary to as-  
5 sess the effect the proposed change would have  
6 on the nature or level of risks associated with  
7 the designated financial market utility’s pay-  
8 ment, clearing, or settlement activities and the  
9 sufficiency of any proposed risk management  
10 techniques.

11 (E) NOTICE OF OBJECTION.—The Super-  
12 visory Agency or the Board of Governors shall  
13 notify the designated financial market utility of  
14 any objection regarding the proposed change  
15 within 60 days from the later of—

16 (i) the date that the notice of the pro-  
17 posed change is received; or

18 (ii) the date any further information  
19 requested for consideration of the notice is  
20 received.

21 (F) CHANGE NOT ALLOWED IF OBJEC-  
22 TION.—A designated financial market utility  
23 shall not implement a change to which the  
24 Board of Governors or the Supervisory Agency  
25 has an objection.

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1 (G) CHANGE ALLOWED IF NO OBJECTION  
2 WITHIN 60 DAYS.—A designated financial mar-  
3 ket utility may implement a change if it has not  
4 received an objection to the proposed change  
5 within 60 days of the later of—

6 (i) the date that the Supervisory  
7 Agency or the Board of Governors receives  
8 the notice of proposed change; or

9 (ii) the date the Supervisory Agency  
10 or the Board of Governors receives any  
11 further information it requests for consid-  
12 eration of the notice.

13 (H) REVIEW EXTENSION FOR NOVEL OR  
14 COMPLEX ISSUES.—The Supervisory Agency or  
15 the Board of Governors may, during the 60-day  
16 review period, extend the review period for an  
17 additional 60 days for proposed changes that  
18 raise novel or complex issues, subject to the Su-  
19 pervisory Agency or the Board of Governors  
20 providing the designated financial market utility  
21 with prompt written notice of the extension.  
22 Any extension under this subparagraph will ex-  
23 tend the time periods under subparagraphs (D)  
24 and (F).

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1 (I) CHANGE ALLOWED EARLIER IF NOTI-  
2 FIED OF NO OBJECTION.—A designated finan-  
3 cial market utility may implement a change in  
4 less than 60 days from the date of receipt of  
5 the notice of proposed change by the Super-  
6 visory Agency or the Board of Governors, or the  
7 date the Supervisory Agency or the Board of  
8 Governors receives any further information it  
9 requested, if the Supervisory Agency or the  
10 Board of Governors notifies the designated fi-  
11 nancial market utility in writing that it does  
12 not object to the proposed change and author-  
13 izes the designated financial market utility to  
14 implement the change on an earlier date, sub-  
15 ject to any conditions imposed by the Super-  
16 visory Agency or the Board of Governors.

17 (2) EMERGENCY CHANGES.—

18 (A) IN GENERAL.—A designated financial  
19 market utility may implement a change that  
20 would otherwise require advance notice under  
21 this subsection if it determines that—

22 (i) an emergency exists; and

23 (ii) immediate implementation of the  
24 change is necessary for the designated fi-  
25 nancial market utility to continue to pro-

1           vide its services in a safe and sound man-  
2           ner.

3           (B) NOTICE REQUIRED WITHIN 24  
4           HOURS.—The designated financial market util-  
5           ity shall provide notice of any such emergency  
6           change to its Supervisory Agency and the  
7           Board of Governors, as soon as practicable,  
8           which shall be no later than 24 hours after im-  
9           plementation of the change.

10          (C) CONTENTS OF EMERGENCY NOTICE.—  
11          In addition to the information required for  
12          changes requiring advance notice, the notice of  
13          an emergency change shall describe—

14                 (i) the nature of the emergency; and  
15                 (ii) the reason the change was nec-  
16                 essary for the designated financial market  
17                 utility to continue to provide its services in  
18                 a safe and sound manner.

19          (D) MODIFICATION OR RESCISSION OF  
20          CHANGE MAY BE REQUIRED.—The Supervisory  
21          Agency or the Board of Governors may require  
22          modification or rescission of the change if it  
23          finds that the change is not consistent with the  
24          purposes of this Act or any rules, orders, or



1 standards prescribed by the Board of Governors  
2 hereunder.

3 (3) COPYING THE BOARD OF GOVERNORS.—The  
4 Supervisory Agency shall provide the Board of Gov-  
5 ernors concurrently with a complete copy of any no-  
6 tice, request, or other information it issues, submits,  
7 or receives under this subsection.

8 (4) CONSULTATION WITH BOARD OF GOV-  
9 ERNORS.—Before taking any action on, or com-  
10 pleting its review of, a change proposed by a des-  
11 ignated financial market utility, the Supervisory  
12 Agency shall consult with the Board of Governors.

13 **SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS**  
14 **AGAINST DESIGNATED FINANCIAL MARKET**  
15 **UTILITIES.**

16 (a) EXAMINATION.—Notwithstanding any other pro-  
17 vision of law and subject to subsection (d), the Supervisory  
18 Agency shall conduct examinations of a designated finan-  
19 cial market utility at least once annually in order to deter-  
20 mine the following:

21 (1) The nature of the operations of, and the  
22 risks borne by, the designated financial market util-  
23 ity.

24 (2) The financial and operational risks pre-  
25 sented by the designated financial market utility to

1 financial institutions, critical markets, or the broad-  
2 er financial system.

3 (3) The resources and capabilities of the des-  
4 igned financial market utility to monitor and con-  
5 trol such risks.

6 (4) The safety and soundness of the designated  
7 financial market utility.

8 (5) The designated financial market utility's  
9 compliance with—

10 (A) this title; and

11 (B) the rules and orders prescribed by the  
12 Board of Governors under this title.

13 (b) SERVICE PROVIDERS.—Whenever a service inte-  
14 gral to the operation of a designated financial market util-  
15 ity is performed for the designated financial market utility  
16 by another entity, whether an affiliate or non-affiliate and  
17 whether on or off the premises of the designated financial  
18 market utility, the Supervisory Agency may examine  
19 whether the provision of that service is in compliance with  
20 applicable law, rules, orders, and standards to the same  
21 extent as if the designated financial market utility were  
22 performing the service on its own premises.

23 (c) ENFORCEMENT.—For purposes of enforcing the  
24 provisions of this section, a designated financial market  
25 utility shall be subject to, and the appropriate Supervisory

1 Agency shall have authority under the provisions of sub-  
2 sections (b) through (n) of section 8 of the Federal De-  
3 posit Insurance Act (12 U.S.C. 1818) in the same manner  
4 and to the same extent as if the designated financial mar-  
5 ket utility was an insured depository institution and the  
6 Supervisory Agency was the appropriate Federal banking  
7 agency for such insured depository institution.

8 (d) BOARD OF GOVERNORS INVOLVEMENT IN EXAMI-  
9 NATIONS.—

10 (1) BOARD OF GOVERNORS CONSULTATION ON  
11 EXAMINATION PLANNING.—The Supervisory Agency  
12 shall consult with the Board of Governors regarding  
13 the scope and methodology of any examination con-  
14 ducted under subsections (a) and (b).

15 (2) BOARD OF GOVERNORS PARTICIPATION IN  
16 EXAMINATION.—The Board of Governors may, in its  
17 discretion, participate in any examination led by a  
18 Supervisory Agency and conducted under sub-  
19 sections (a) and (b).

20 (e) BOARD OF GOVERNORS ENFORCEMENT REC-  
21 OMMENDATIONS.—

22 (1) RECOMMENDATION.—The Board of Gov-  
23 ernors may at any time recommend to the Super-  
24 visory Agency that such agency take enforcement ac-  
25 tion against a designated financial market utility.

1 Any such recommendation for enforcement action  
2 shall provide a detailed analysis supporting the rec-  
3 ommendation of the Board of Governors.

4 (2) CONSIDERATION.—The Supervisory Agency  
5 shall consider the recommendation of the Board of  
6 Governors and submit a response to the Board of  
7 Governors within 60 days.

8 (3) MEDIATION.—If the Supervisory Agency re-  
9 jects, in whole or in part, the recommendation of the  
10 Board of Governors, the Board of Governors may  
11 dispute the matter by referring the recommendation  
12 to the Council, which shall attempt to resolve the  
13 dispute.

14 (4) ENFORCEMENT ACTION.—If the Council is  
15 unable to resolve the dispute under paragraph (3)  
16 within 30 days from the date of referral, the Board  
17 of Governors may, upon a vote of its members—

18 (A) exercise the enforcement authority ref-  
19 erenced in subsection (c) as if it were the Su-  
20 pervisory Agency; and

21 (B) take enforcement action against the  
22 designated financial market utility.

23 (f) EMERGENCY ENFORCEMENT ACTIONS BY THE  
24 BOARD OF GOVERNORS.—

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1 (1) IMMINENT RISK OF SUBSTANTIAL HARM.—

2 The Board of Governors may, after consulting with  
3 the Council and the Supervisory Agency, take en-  
4 forcement action against a designated financial mar-  
5 ket utility if the Board of Governors has reasonable  
6 cause to believe that—

7 (A) either—

8 (i) an action engaged in, or con-  
9 templated by, a designated financial mar-  
10 ket utility (including any change proposed  
11 by the designated financial market utility  
12 to its rules, procedures, or operations that  
13 would otherwise be subject to section  
14 806(e)) poses an imminent risk of substan-  
15 tial harm to financial institutions, critical  
16 markets, or the broader financial system;  
17 or

18 (ii) the condition of a designated fi-  
19 nancial market utility poses an imminent  
20 risk of substantial harm to financial insti-  
21 tutions, critical markets, or the broader fi-  
22 nancial system; and

23 (B) the imminent risk of substantial harm  
24 precludes the Board of Governors' use of the  
25 procedures in subsection (e).

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1           (2) ENFORCEMENT AUTHORITY.—For purposes  
2 of taking enforcement action under paragraph (1), a  
3 designated financial market utility shall be subject  
4 to, and the Board of Governors shall have authority  
5 under the provisions of subsections (b) through (n)  
6 of section 8 of the Federal Deposit Insurance Act  
7 (12 U.S.C. 1818) in the same manner and to the  
8 same extent as if the designated financial market  
9 utility was an insured depository institution and the  
10 Board of Governors was the appropriate Federal  
11 banking agency for such insured depository institu-  
12 tion.

13           (3) PROMPT NOTICE TO SUPERVISORY AGENCY  
14 OF ENFORCEMENT ACTION.—Within 24 hours of  
15 taking an enforcement action under this subsection,  
16 the Board of Governors shall provide written notice  
17 to the designated financial market utility’s Super-  
18 visory Agency containing a detailed analysis of the  
19 action of the Board of Governors, with supporting  
20 documentation included.

1 **SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS**  
2 **AGAINST FINANCIAL INSTITUTIONS SUBJECT**  
3 **TO STANDARDS FOR DESIGNATED ACTIVI-**  
4 **TIES.**

5 (a) EXAMINATION.—The appropriate financial regu-  
6 lator is authorized to examine a financial institution sub-  
7 ject to the standards prescribed by the Board of Governors  
8 for a designated activity in order to determine the fol-  
9 lowing:

10 (1) The nature and scope of the designated ac-  
11 tivities engaged in by the financial institution.

12 (2) The financial and operational risks the des-  
13 igned activities engaged in by the financial institu-  
14 tion may pose to the safety and soundness of the fi-  
15 nancial institution.

16 (3) The financial and operational risks the des-  
17 igned activities engaged in by the financial institu-  
18 tion may pose to other financial institutions, critical  
19 markets, or the broader financial system.

20 (4) The resources available to and the capabili-  
21 ties of the financial institution to monitor and con-  
22 trol the risks described in paragraphs (2) and (3).

23 (5) The financial institution's compliance with  
24 this title and the rules and orders prescribed by the  
25 Board of Governors under this title.

1           (b) ENFORCEMENT.—For purposes of enforcing the  
2 provisions of this section, and the rules and orders pre-  
3 scribed by the Board of Governors under this section, a  
4 financial institution subject to the standards prescribed by  
5 the Board of Governors for a designated activity shall be  
6 subject to, and the appropriate financial regulator shall  
7 have authority under the provisions of subsections (b)  
8 through (n) of section 8 of the Federal Deposit Insurance  
9 Act (12 U.S.C. 1818) in the same manner and to the same  
10 extent as if the financial institution was an insured deposi-  
11 tory institution and the appropriate financial regulator  
12 was the appropriate Federal banking agency for such in-  
13 sured depository institution.

14           (c) TECHNICAL ASSISTANCE.—The Board of Gov-  
15 ernors shall consult with and provide such technical assist-  
16 ance as may be required by the appropriate financial regu-  
17 lators to ensure that the rules and orders prescribed by  
18 the Board of Governors under this title are interpreted  
19 and applied in as consistent and uniform a manner as  
20 practicable.

21           (d) DELEGATION.—

22                   (1) EXAMINATION.—

23                           (A) REQUEST TO BOARD OF GOV-  
24                           ERNORS.—The appropriate financial regulator  
25                           may request the Board of Governors to conduct



1 or participate in an examination of a financial  
2 institution subject to the standards prescribed  
3 by the Board of Governors for a designated ac-  
4 tivity in order to assess the compliance of such  
5 financial institution with—

6 (i) this title; or

7 (ii) the rules or orders prescribed by  
8 the Board of Governors under this title.

9 (B) EXAMINATION BY BOARD OF GOV-  
10 ERNORS.—Upon receipt of an appropriate writ-  
11 ten request, the Board of Governors will con-  
12 duct the examination under such terms and  
13 conditions to which the Board of Governors and  
14 the appropriate financial regulator mutually  
15 agree.

16 (2) ENFORCEMENT.—

17 (A) REQUEST TO BOARD OF GOV-  
18 ERNORS.—The appropriate financial regulator  
19 may request the Board of Governors to enforce  
20 this title or the rules or orders prescribed by  
21 the Board of Governors under this title against  
22 a financial institution that is subject to the  
23 standards prescribed by the Board of Governors  
24 for a designated activity.

1                   (B) ENFORCEMENT BY BOARD OF GOV-  
2                   ERNORS.—Upon receipt of an appropriate writ-  
3                   ten request, the Board of Governors shall deter-  
4                   mine whether an enforcement action is war-  
5                   ranted, and, if so, it shall enforce compliance  
6                   with this title or the rules or orders prescribed  
7                   by the Board of Governors under this title and,  
8                   if so, the financial institution shall be subject  
9                   to, and the Board of Governors shall have au-  
10                  thority under the provisions of subsections (b)  
11                  through (n) of section 8 of the Federal Deposit  
12                  Insurance Act (12 U.S.C. 1818) in the same  
13                  manner and to the same extent as if the finan-  
14                  cial institution was an insured depository insti-  
15                  tution and the Board of Governors was the ap-  
16                  propriate Federal banking agency for such in-  
17                  sured depository institution.

18                  (e) BACK-UP AUTHORITY OF THE BOARD OF GOV-  
19                  ERNORS.—

20                   (1) EXAMINATION AND ENFORCEMENT.—Not-  
21                  withstanding any other provision of law, the Board  
22                  of Governors may—

23                   (A) conduct an examination of the type de-  
24                  scribed in subsection (a) of any financial insti-  
25                  tution that is subject to the standards pre-

1           scribed by the Board of Governors for a des-  
2           ignated activity; and

3           (B) enforce the provisions of this title or  
4           any rules or orders prescribed by the Board of  
5           Governors under this title against any financial  
6           institution that is subject to the standards pre-  
7           scribed by the Board of Governors for a des-  
8           ignated activity.

9           (2) LIMITATIONS.—

10           (A) EXAMINATION.—The Board of Gov-  
11           ernors may exercise the authority described in  
12           paragraph (1)(A) only if the Board of Gov-  
13           ernors has—

14           (i) reasonable cause to believe that a  
15           financial institution is not in compliance  
16           with this title or the rules or orders pre-  
17           scribed by the Board of Governors under  
18           this title with respect to a designated activ-  
19           ity;

20           (ii) notified, in writing, the appro-  
21           priate financial regulator and the Council  
22           of its belief under clause (i) with sup-  
23           porting documentation included;

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1 (iii) requested the appropriate finan-  
2 cial regulator to conduct a prompt exam-  
3 ination of the financial institution; and

4 (iv) either—

5 (I) not been afforded a reason-  
6 able opportunity to participate in an  
7 examination of the financial institu-  
8 tion by the appropriate financial regu-  
9 lator within 30 days after the date of  
10 the Board's notification under clause  
11 (ii); or

12 (II) reasonable cause to believe  
13 that the financial institution's non-  
14 compliance with this title or the rules  
15 or orders prescribed by the Board of  
16 Governors under this title poses a  
17 substantial risk to other financial in-  
18 stitutions, critical markets, or the  
19 broader financial system, subject to  
20 the Board of Governors affording the  
21 appropriate financial regulator a rea-  
22 sonable opportunity to participate in  
23 the examination.

24 (B) ENFORCEMENT.—The Board of Gov-  
25 ernors may exercise the authority described in

1 paragraph (1)(B) only if the Board of Gov-  
2 ernors has—

3 (i) reasonable cause to believe that a  
4 financial institution is not in compliance  
5 with this title or the rules or orders pre-  
6 scribed by the Board of Governors under  
7 this title with respect to a designated activ-  
8 ity;

9 (ii) notified, in writing, the appro-  
10 priate financial regulator and the Council  
11 of its belief under clause (i) with sup-  
12 porting documentation included and with a  
13 recommendation that the appropriate fi-  
14 nancial regulator take 1 or more specific  
15 enforcement actions against the financial  
16 institution; and

17 (iii) either—

18 (I) not been notified, in writing,  
19 by the appropriate financial regulator  
20 of the commencement of an enforce-  
21 ment action recommended by the  
22 Board of Governors against the finan-  
23 cial institution within 60 days from  
24 the date of the notification under  
25 clause (ii); or

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1 (II) reasonable cause to believe  
2 that the financial institution's non-  
3 compliance with this title or the rules  
4 or orders prescribed by the Board of  
5 Governors under this title poses a  
6 substantial risk to other financial in-  
7 stitutions, critical markets, or the  
8 broader financial system, subject to  
9 the Board of Governors notifying the  
10 appropriate financial regulator of the  
11 Board's enforcement action.

12 (3) ENFORCEMENT PROVISIONS.—For purposes  
13 of taking enforcement action under paragraph (1),  
14 the financial institution shall be subject to, and the  
15 Board of Governors shall have authority under the  
16 provisions of subsections (b) through (n) of section  
17 8 of the Federal Deposit Insurance Act (12 U.S.C.  
18 1818) in the same manner and to the same extent  
19 as if the financial institution was an insured deposi-  
20 tory institution and the Board of Governors was the  
21 appropriate Federal banking agency for such insured  
22 depository institution.

1 **SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR**  
2 **RECORDS.**

3 (a) INFORMATION TO ASSESS SYSTEMIC IMPOR-  
4 TANCE.—

5 (1) FINANCIAL MARKET UTILITIES.—The Coun-  
6 cil is authorized to require any financial market util-  
7 ity to submit such information as the Council may  
8 require for the sole purpose of assessing whether  
9 that financial market utility is systemically impor-  
10 tant, but only if the Council has reasonable cause to  
11 believe that the financial market utility meets the  
12 standards for systemic importance set forth in sec-  
13 tion 804.

14 (2) FINANCIAL INSTITUTIONS ENGAGED IN PAY-  
15 MENT, CLEARING, OR SETTLEMENT ACTIVITIES.—  
16 The Council is authorized to require any financial  
17 institution to submit such information as the Coun-  
18 cil may require for the sole purpose of assessing  
19 whether any payment, clearing, or settlement activ-  
20 ity engaged in or supported by a financial institution  
21 is systemically important, but only if the Council has  
22 reasonable cause to believe that the activity meets  
23 the standards for systemic importance set forth in  
24 section 804.

25 (b) REPORTING AFTER DESIGNATION.—

1           (1) DESIGNATED FINANCIAL MARKET UTILI-  
2 TIES.—The Board of Governors and the Council  
3 may require a designated financial market utility to  
4 submit reports or data to the Board of Governors  
5 and the Council in such frequency and form as  
6 deemed necessary by the Board of Governors and  
7 the Council in order to assess the safety and sound-  
8 ness of the utility and the systemic risk that the  
9 utility’s operations pose to the financial system.

10           (2) FINANCIAL INSTITUTIONS SUBJECT TO  
11 STANDARDS FOR DESIGNATED ACTIVITIES.—The  
12 Board of Governors and the Council may require 1  
13 or more financial institutions subject to the stand-  
14 ards prescribed by the Board of Governors for a des-  
15 ignated activity to submit, in such frequency and  
16 form as deemed necessary by the Board of Gov-  
17 ernors and the Council, reports and data to the  
18 Board of Governors and the Council solely with re-  
19 spect to the conduct of the designated activity and  
20 solely to assess whether—

21           (A) the rules, orders, or standards pre-  
22 scribed by the Board of Governors with respect  
23 to the designated activity appropriately address  
24 the risks to the financial system presented by  
25 such activity; and



1           (B) the financial institutions are in compli-  
2           ance with this title and the rules and orders  
3           prescribed by the Board of Governors under  
4           this title with respect to the designated activity.

5           (c) COORDINATION WITH APPROPRIATE FEDERAL  
6 SUPERVISORY AGENCY.—

7           (1) ADVANCE COORDINATION.—Before directly  
8           requesting any material information from, or impos-  
9           ing reporting or recordkeeping requirements on, any  
10          financial market utility or any financial institution  
11          engaged in a payment, clearing, or settlement activ-  
12          ity, the Board of Governors and the Council shall co-  
13          ordinate with the Supervisory Agency for a financial  
14          market utility or the appropriate financial regulator  
15          for a financial institution to determine if the infor-  
16          mation is available from or may be obtained by the  
17          agency in the form, format, or detail required by the  
18          Board of Governors and the Council.

19          (2) SUPERVISORY REPORTS.—Notwithstanding  
20          any other provision of law, the Supervisory Agency,  
21          the appropriate financial regulator, and the Board of  
22          Governors are authorized to disclose to each other  
23          and the Council copies of its examination reports or  
24          similar reports regarding any financial market utility

1 or any financial institution engaged in payment,  
2 clearing, or settlement activities.

3 (d) TIMING OF RESPONSE FROM APPROPRIATE FED-  
4 ERAL SUPERVISORY AGENCY.—If the information, report,  
5 records, or data requested by the Board of Governors or  
6 the Council under subsection (c)(1) are not provided in  
7 full by the Supervisory Agency or the appropriate financial  
8 regulator in less than 15 days after the date on which  
9 the material is requested, the Board of Governors or the  
10 Council may request the information or impose record-  
11 keeping or reporting requirements directly on such per-  
12 sons as provided in subsections (a) and (b) with notice  
13 to the agency.

14 (e) SHARING OF INFORMATION.—

15 (1) MATERIAL CONCERNS.—Notwithstanding  
16 any other provision of law, the Board of Governors,  
17 the Council, the appropriate financial regulator, and  
18 any Supervisory Agency are authorized to—

19 (A) promptly notify each other of material  
20 concerns about a designated financial market  
21 utility or any financial institution engaged in  
22 designated activities; and

23 (B) share appropriate reports, information,  
24 or data relating to such concerns.

1           (2) OTHER INFORMATION.—Notwithstanding  
2 any other provision of law, the Board of Governors,  
3 the Council, the appropriate financial regulator, or  
4 any Supervisory Agency may, under such terms and  
5 conditions as it deems appropriate, provide confiden-  
6 tial supervisory information and other information  
7 obtained under this title to other persons it deems  
8 appropriate, including the Secretary, State financial  
9 institution supervisory agencies, foreign financial su-  
10 pervisors, foreign central banks, and foreign finance  
11 ministries, subject to reasonable assurances of con-  
12 fidentiality.

13       (f) PRIVILEGE MAINTAINED.—The Board of Gov-  
14 ernors, the Council, the appropriate financial regulator,  
15 and any Supervisory Agency providing reports or data  
16 under this section shall not be deemed to have waived any  
17 privilege applicable to those reports or data, or any portion  
18 thereof, by providing the reports or data to the other party  
19 or by permitting the reports or data, or any copies thereof,  
20 to be used by the other party.

21       (g) DISCLOSURE EXEMPTION.—Information obtained  
22 by the Board of Governors or the Council under this sec-  
23 tion and any materials prepared by the Board of Gov-  
24 ernors or the Council regarding its assessment of the sys-  
25 temic importance of financial market utilities or any pay-

1 ment, clearing, or settlement activities engaged in by fi-  
2 nancial institutions, and in connection with its supervision  
3 of designated financial market utilities and designated ac-  
4 tivities, shall be confidential supervisory information ex-  
5 empt from disclosure under section 552 of title 5, United  
6 States Code. For purposes of such section 552, this sub-  
7 section shall be considered a statute described in sub-  
8 section (b)(3) of such section 552.

9 **SEC. 810. RULEMAKING.**

10 The Board of Governors and the Council are author-  
11 ized to prescribe such rules and issue such orders as may  
12 be necessary to administer and carry out the authorities  
13 and duties granted to the Board of Governors or the  
14 Council, respectively, and prevent evasions thereof.

15 **SEC. 811. OTHER AUTHORITY.**

16 Unless otherwise provided by its terms, this title does  
17 not divest any appropriate financial regulator, any Super-  
18 visory Agency, or any other Federal or State agency, of  
19 any authority derived from any other applicable law, ex-  
20 cept that any standards prescribed by the Board of Gov-  
21 ernors under section 805 shall supersede any less strin-  
22 gent requirements established under other authority to the  
23 extent of any conflict.

1 **SEC. 812. EFFECTIVE DATE.**

2 This title is effective as of the date of enactment of  
3 this Act.

4 **TITLE IX—INVESTOR PROTEC-**  
5 **TIONS AND IMPROVEMENTS**  
6 **TO THE REGULATION OF SE-**  
7 **CURITIES**

8 **SEC. 901. SHORT TITLE.**

9 This title may be cited as the “Investor Protection  
10 and Securities Reform Act of 2010”.

11 **Subtitle A—Increasing Investor**  
12 **Protection**

13 **SEC. 911. INVESTOR ADVISORY COMMITTEE ESTABLISHED.**

14 Title I of the Securities Exchange Act of 1934 (15  
15 U.S.C. 78a et seq.) is amended by adding at the end the  
16 following:

17 **“SEC. 39. INVESTOR ADVISORY COMMITTEE.**

18 **“(a) ESTABLISHMENT AND PURPOSE.—**

19 **“(1) ESTABLISHMENT.—**There is established  
20 within the Commission the Investor Advisory Com-  
21 mittee (referred to in this section as the ‘Com-  
22 mittee’).

23 **“(2) PURPOSE.—**The Committee shall—

24 **“(A) advise and consult with the Commis-**  
25 **sion on—**

1 “(i) regulatory priorities of the Com-  
2 mission;

3 “(ii) issues relating to the regulation  
4 of securities products, trading strategies,  
5 and fee structures, and the effectiveness of  
6 disclosure;

7 “(iii) initiatives to protect investor in-  
8 terest; and

9 “(iv) initiatives to promote investor  
10 confidence and the integrity of the securi-  
11 ties marketplace; and

12 “(B) submit to the Commission such find-  
13 ings and recommendations as the Committee  
14 determines are appropriate, including rec-  
15 ommendations for proposed legislative changes.

16 “(b) MEMBERSHIP.—

17 “(1) IN GENERAL.—The members of the Com-  
18 mittee shall be—

19 “(A) the Investor Advocate;

20 “(B) a representative of State securities  
21 commissions;

22 “(C) a representative of the interests of  
23 senior citizens; and

1           “(D) not fewer than 10, and not more  
2           than 20, members appointed by the Commis-  
3           sion, from among individuals who—

4                   “(i) represent the interests of indi-  
5                   vidual equity and debt investors, including  
6                   investors in mutual funds;

7                   “(ii) represent the interests of institu-  
8                   tional investors, including the interests of  
9                   pension funds and registered investment  
10                  companies;

11                  “(iii) are knowledgeable about invest-  
12                  ment issues and decisions; and

13                  “(iv) have reputations of integrity.

14           “(2) TERM.—Each member of the Committee  
15           appointed under paragraph (1)(B) shall serve for a  
16           term of 4 years.

17           “(3) MEMBERS NOT COMMISSION EMPLOY-  
18           EES.—Members appointed under paragraph (1)(B)  
19           shall not be deemed to be employees or agents of the  
20           Commission solely because of membership on the  
21           Committee.

22           “(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; AS-  
23           SISTANT SECRETARY.—

1           “(1) IN GENERAL.—The members of the Com-  
2           mittee shall elect, from among the members of the  
3           Committee—

4                   “(A) a chairman, who may not be em-  
5                   ployed by an issuer;

6                   “(B) a vice chairman, who may not be em-  
7                   ployed by an issuer;

8                   “(C) a secretary; and

9                   “(D) an assistant secretary.

10           “(2) TERM.—Each member elected under para-  
11           graph (1) shall serve for a term of 3 years in the  
12           capacity for which the member was elected under  
13           paragraph (1).

14           “(d) MEETINGS.—

15                   “(1) FREQUENCY OF MEETINGS.—The Com-  
16                   mittee shall meet—

17                           “(A) not less frequently than twice annu-  
18                           ally, at the call of the chairman of the Com-  
19                           mittee; and

20                           “(B) from time to time, at the call of the  
21                           Commission.

22           “(2) NOTICE.—The chairman of the Committee  
23           shall give the members of the Committee written no-  
24           tice of each meeting, not later than 2 weeks before  
25           the date of the meeting.



1           “(e) COMPENSATION AND TRAVEL EXPENSES.—

2 Each member of the Committee who is not a full-time em-  
3 ployee of the United States shall—

4           “(1) be entitled to receive compensation at a  
5 rate not to exceed the daily equivalent of the annual  
6 rate of basic pay in effect for a position at level V  
7 of the Executive Schedule under section 5316 of title  
8 5, United States Code, for each day during which  
9 the member is engaged in the actual performance of  
10 the duties of the Committee; and

11           “(2) while away from the home or regular place  
12 of business of the member in the performance of  
13 services for the Committee, be allowed travel ex-  
14 penses, including per diem in lieu of subsistence, in  
15 the same manner as persons employed intermittently  
16 in the Government service are allowed expenses  
17 under section 5703(b) of title 5, United States Code.

18           “(f) STAFF.—The Commission shall make available  
19 to the Committee such staff as the chairman of the Com-  
20 mittee determines are necessary to carry out this section.

21           “(g) REVIEW BY COMMISSION.—The Commission  
22 shall—

23           “(1) review the findings and recommendations  
24 of the Committee; and

1           “(2) each time the Committee submits a finding  
2           or recommendation to the Commission, promptly  
3           issue a public statement—

4                   “(A) assessing the finding or recommenda-  
5                   tion of the Committee; and

6                   “(B) disclosing the action, if any, the Com-  
7                   mission intends to take with respect to the find-  
8                   ing or recommendation.

9           “(h) COMMITTEE FINDINGS.—Nothing in this section  
10          shall require the Commission to agree to or act upon any  
11          finding or recommendation of the Committee.

12          “(i) FEDERAL ADVISORY COMMITTEE ACT.—The  
13          Federal Advisory Committee Act (5 U.S.C. App.) shall not  
14          apply with respect to the Committee and its activities.

15          “(j) AUTHORIZATION OF APPROPRIATIONS.—There  
16          is authorized to be appropriated to the Commission such  
17          sums as are necessary to carry out this section.”.

18          **SEC. 912. CLARIFICATION OF AUTHORITY OF THE COMMIS-**  
19                                   **SION TO ENGAGE IN INVESTOR TESTING.**

20          Section 19 of the Securities Act of 1933 (15 U.S.C.  
21          77s) is amended by adding at the end the following:

22                   “(e) EVALUATION OF RULES OR PROGRAMS.—For  
23          the purpose of evaluating any rule or program of the Com-  
24          mission issued or carried out under any provision of the  
25          securities laws, as defined in section 3 of the Securities

1 Exchange Act of 1934 (15 U.S.C. 78c), and the purposes  
2 of considering, proposing, adopting, or engaging in any  
3 such rule or program or developing new rules or programs,  
4 the Commission may—

5 “(1) gather information from and communicate  
6 with investors or other members of the public;

7 “(2) engage in such temporary investor testing  
8 programs as the Commission determines are in the  
9 public interest or would protect investors; and

10 “(3) consult with academics and consultants, as  
11 necessary to carry out this subsection.

12 “(f) RULE OF CONSTRUCTION.—For purposes of the  
13 Paperwork Reduction Act (44 U.S.C. 3501 et seq.), any  
14 action taken under subsection (e) shall not be construed  
15 to be a collection of information.”.

16 **SEC. 913. STUDY AND RULEMAKING REGARDING OBLIGA-**  
17 **TIONS OF BROKERS, DEALERS, AND INVEST-**  
18 **MENT ADVISERS.**

19 (a) DEFINITIONS.—In this section—

20 (1) the term “FINRA” means the Financial In-  
21 dustry Regulatory Authority; and

22 (2) the term “retail customer” means an indi-  
23 vidual customer of a broker, dealer, investment ad-  
24 viser, person associated with a broker or dealer, or  
25 a person associated with an investment adviser.

1 (b) IN GENERAL.—The Commission shall conduct a  
2 study to evaluate—

3 (1) the effectiveness of existing legal or regu-  
4 latory standards of care for brokers, dealers, invest-  
5 ment advisers, persons associated with brokers or  
6 dealers, and persons associated with investment ad-  
7 visers for providing personalized investment advice  
8 and recommendations about securities to retail cus-  
9 tomers imposed by the Commission and FINRA,  
10 and other Federal and State legal or regulatory  
11 standards; and

12 (2) whether there are legal or regulatory gaps  
13 or overlap in legal or regulatory standards in the  
14 protection of retail customers relating to the stand-  
15 ards of care for brokers, dealers, investment advis-  
16 ers, persons associated with brokers or dealers, and  
17 persons associated with investment advisers for pro-  
18 viding personalized investment advice about securi-  
19 ties to retail customers that should be addressed by  
20 rule or statute.

21 (c) CONSIDERATIONS.—In conducting the study re-  
22 quired under subsection (b), the Commission shall con-  
23 sider—

24 (1) the regulatory, examination, and enforce-  
25 ment resources devoted to, and activities of, the

1 Commission and FINRA to enforce the standards of  
2 care for brokers, dealers, investment advisers, per-  
3 sons associated with brokers or dealers, and persons  
4 associated with investment advisers when providing  
5 personalized investment advice and recommendations  
6 about securities to retail customers, including—

7 (A) the frequency of examinations of bro-  
8 kers, dealers, and investment advisers; and

9 (B) the length of time of the examinations;

10 (2) the substantive differences, compared and  
11 contrasted in detail, in the regulation of brokers,  
12 dealers, and investment advisers, when providing  
13 personalized investment advice and recommendations  
14 about securities to retail customers, including the  
15 differences in the amount of resources devoted to the  
16 regulation and examination of brokers, dealers, and  
17 investment advisers, by the Commission and  
18 FINRA;

19 (3) the specific instances in which—

20 (A) the regulation and oversight of invest-  
21 ment advisers provide greater protection to re-  
22 tail customers than the regulation and oversight  
23 of brokers and dealers; and

24 (B) the regulation and oversight of brokers  
25 and dealers provide greater protection to retail

1 customers than the regulation and oversight of  
2 investment advisers;

3 (4) the existing legal or regulatory standards of  
4 State securities regulators and other regulators in-  
5 tended to protect retail customers;

6 (5) the potential impact on retail customers, in-  
7 cluding the potential impact on access of retail cus-  
8 tomers to the range of products and services offered  
9 by brokers and dealers, of imposing upon brokers,  
10 dealers, and persons associated with brokers or deal-  
11 ers—

12 (A) the standard of care applied under the  
13 Investment Advisers Act of 1940 (15 U.S.C.  
14 80b–1 et seq.) for providing personalized invest-  
15 ment advice about securities to retail customers  
16 of investment advisers; and

17 (B) other requirements of the Investment  
18 Advisers Act of 1940 (15 U.S.C. 80b–1 et  
19 seq.);

20 (6) the potential impact of—

21 (A) imposing on investment advisers the  
22 standard of care applied by the Commission  
23 and FINRA under the Securities Exchange Act  
24 of 1934 (15 U.S.C. 78a et seq.) for providing  
25 recommendations about securities to retail cus-

1           tomers of brokers and dealers and other Com-  
2           mission and FINRA requirements applicable to  
3           brokers and dealers; and

4                   (B) authorizing the Commission to des-  
5           ignate 1 or more self-regulatory organizations  
6           to augment the efforts of the Commission to  
7           oversee investment advisers;

8           (7) the potential impact of eliminating the  
9           broker and dealer exclusion from the definition of  
10          “investment adviser” under section 202(a)(11)(C) of  
11          the Investment Advisers Act of 1940 (15 U.S.C.  
12          80b–2(a)(11)(C)), in terms of—

13                   (A) the potential benefits or harm to retail  
14          customers that could result from such a change,  
15          including any potential impact on access to per-  
16          sonalized investment advice and recommenda-  
17          tions about securities to retail customers or the  
18          availability of such advice and recommenda-  
19          tions;

20                   (B) the number of additional entities and  
21          individuals that would be required to register  
22          under, or become subject to, the Investment  
23          Advisers Act of 1940 (15 U.S.C. 80b–1 et  
24          seq.), and the additional requirements to which  
25          brokers, dealers, and persons associated with

1           brokers and dealers would become subject, in-  
2           cluding—

3                   (i) any potential additional associated  
4                   person licensing, registration, and exam-  
5                   ination requirements; and

6                   (ii) the additional costs, if any, to the  
7                   additional entities and individuals; and

8                   (C) the impact on Commission resources  
9           to—

10                   (i) conduct examinations of registered  
11                   investment advisers and the representatives  
12                   of registered investment advisers, including  
13                   the impact on the examination cycle; and

14                   (ii) enforce the standard of care and  
15                   other applicable requirements imposed  
16                   under the Investment Advisers Act of 1940  
17                   (15 U.S.C. 80b–1 et seq.);

18                   (8) the ability of investors to understand the  
19                   differences in terms of regulatory oversight and ex-  
20                   aminations between brokers, dealers, and investment  
21                   advisers;

22                   (9) the varying level of services provided by bro-  
23                   kers, dealers, investment advisers, persons associated  
24                   with brokers or dealers, and persons associated with  
25                   investment advisers to retail customers and the vary-



1 ing scope and terms of retail customer relationships  
2 of brokers, dealers, investment advisers, persons as-  
3 sociated with brokers or dealers, and persons associ-  
4 ated with investment advisers with such retail cus-  
5 tomers;

6 (10) any potential benefits or harm to retail  
7 customers that could result from any potential  
8 changes in the regulatory requirements or legal  
9 standards affecting brokers, dealers, investment ad-  
10 visers, persons associated with brokers or dealers,  
11 and persons associated with investment advisers re-  
12 lating to their obligations to retail customers, includ-  
13 ing any potential impact on—

14 (A) protection from fraud;

15 (B) access to personalized investment ad-  
16 vice, and recommendations about securities to  
17 retail customers; or

18 (C) the availability of such advice and rec-  
19 ommendations;

20 (11) the additional costs and expenses to retail  
21 customers and to brokers, dealers, and investment  
22 advisers resulting from potential changes in the reg-  
23 ulatory requirements or legal standards affecting  
24 brokers, dealers, investment advisers, persons associ-  
25 ated with brokers or dealers, and persons associated

1 with investment advisers relating to their obligations  
2 to retail customers; and

3 (12) any other consideration that the Commis-  
4 sion deems necessary and appropriate to effectively  
5 execute the study required under subsection (b).

6 (d) REPORT.—

7 (1) IN GENERAL.—Not later than 1 year after  
8 the date of enactment of this Act, the Commission  
9 shall submit a report on the study required under  
10 subsection (b) to—

11 (A) the Committee on Banking, Housing,  
12 and Urban Affairs of the Senate; and

13 (B) the Committee on Financial Services  
14 of the House of Representatives.

15 (2) CONTENT REQUIREMENTS.—The report re-  
16 quired under paragraph (1) shall describe the find-  
17 ings, conclusions, and recommendations of the Com-  
18 mission from the study required under subsection  
19 (b), including—

20 (A) a description of the considerations,  
21 analysis, and public and industry input that the  
22 Commission considered, as required under sub-  
23 section (e), to make such findings, conclusions,  
24 and policy recommendations; and

25 (B) an analysis of—

1 (i) whether any identified legal or reg-  
2 ulatory gaps or overlap in legal or regu-  
3 latory standards in the protection of retail  
4 customers relating to the standards of care  
5 for brokers, dealers, investment advisers,  
6 persons associated with brokers or dealers,  
7 and persons associated with investment ad-  
8 visers for providing personalized invest-  
9 ment advice about securities to retail cus-  
10 tomers can be addressed by rule; and

11 (ii) whether, and the extent to which,  
12 the Commission would require additional  
13 statutory authority to address such gaps or  
14 overlap.

15 (e) PUBLIC COMMENT.—The Commission shall seek  
16 and consider public input, comments, and data in order  
17 to prepare the report required under subsection (d).

18 (f) RULEMAKING.—

19 (1) IN GENERAL.—If the study required under  
20 subsection (b) identifies any gaps or overlap in the  
21 legal or regulatory standards in the protection of re-  
22 tail customers relating to the standards of care for  
23 brokers, dealers, investment advisers, persons associ-  
24 ated with brokers or dealers, and persons associated  
25 with investment advisers for providing personalized

1 investment advice about securities to such retail cus-  
2 tomers, the Commission, not later than 2 years after  
3 the date of enactment of this Act, shall—

4 (A) commence a rulemaking, as necessary  
5 or appropriate in the public interest and for the  
6 protection of retail customers, to address such  
7 regulatory gaps and overlap that can be ad-  
8 dressed by rule, using its authority under the  
9 Securities Exchange Act of 1934 (15 U.S.C.  
10 78a et seq.) and the Investment Advisers Act of  
11 1940 (15 U.S.C. 80b–1 et seq.); and

12 (B) consider and take into account the  
13 findings, conclusions, and recommendations of  
14 the study required under this section.

15 (2) **RULE OF CONSTRUCTION.**—Nothing in this  
16 section shall be construed to limit the rulemaking  
17 authority of the Commission under any other provi-  
18 sion of Federal law.

19 **SEC. 914. OFFICE OF THE INVESTOR ADVOCATE.**

20 Section 4 of the Securities Exchange Act of 1934 (15  
21 U.S.C. 78d) is amended by adding at the end the fol-  
22 lowing:

23 “(g) **OFFICE OF THE INVESTOR ADVOCATE.**—

24 “(1) **OFFICE ESTABLISHED.**—There is estab-  
25 lished within the Commission the Office of the In-

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1 investor Advocate (in this subsection referred to as the  
2 ‘Office’).

3 “(2) INVESTOR ADVOCATE.—

4 “(A) IN GENERAL.—The head of the Of-  
5 fice shall be the Investor Advocate, who shall—

6 “(i) report directly to the Chairman;

7 and

8 “(ii) be appointed by the Chairman, in  
9 consultation with the Commission, from  
10 among individuals having experience in ad-  
11 vocating for the interests of investors in se-  
12 curities and investor protection issues,  
13 from the perspective of investors.

14 “(B) COMPENSATION.—The annual rate of  
15 pay for the Investor Advocate shall be equal to  
16 the highest rate of annual pay for a Senior Ex-  
17 ecutive Service position within the Commission.

18 “(C) LIMITATION ON SERVICE.—An indi-  
19 vidual who serves as the Investor Advocate may  
20 not be employed by the Commission—

21 “(i) during the 2-year period ending  
22 on the date of appointment as Investor Ad-  
23 vocate; or

1                   “(ii) during the 5-year period begin-  
2                   ning on the date on which the person  
3                   ceases to serve as the Investor Advocate.

4                   “(3) STAFF OF OFFICE.—The Investor Advo-  
5                   cate, after consultation with the Chairman of the  
6                   Commission, may retain or employ independent  
7                   counsel, research staff, and service staff, as the In-  
8                   vestor Advocate deems necessary to carry out the  
9                   functions, powers, and duties of the Office.

10                   “(4) FUNCTIONS OF THE INVESTOR ADVO-  
11                   CATE.—The Investor Advocate shall—

12                   “(A) assist retail investors in resolving sig-  
13                   nificant problems such investors may have with  
14                   the Commission or with self-regulatory organi-  
15                   zations;

16                   “(B) identify areas in which investors  
17                   would benefit from changes in the regulations  
18                   of the Commission or the rules of self-regu-  
19                   latory organizations;

20                   “(C) identify problems that investors have  
21                   with financial service providers and investment  
22                   products;

23                   “(D) analyze the potential impact on inves-  
24                   tors of—

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1                   “(i) proposed regulations of the Com-  
2                   mission; and

3                   “(ii) proposed rules of self-regulatory  
4                   organizations registered under this title;  
5                   and

6                   “(E) to the extent practicable, propose to  
7                   the Commission changes in the regulations or  
8                   orders of the Commission and to Congress any  
9                   legislative, administrative, or personnel changes  
10                  that may be appropriate to mitigate problems  
11                  identified under this paragraph and to promote  
12                  the interests of investors.

13                  “(5) ACCESS TO DOCUMENTS.—The Commis-  
14                  sion shall ensure that the Investor Advocate has full  
15                  access to the documents of the Commission and any  
16                  self-regulatory organization, as necessary to carry  
17                  out the functions of the Office.

18                  “(6) ANNUAL REPORTS.—

19                         “(A) REPORT ON OBJECTIVES.—

20                                 “(i) IN GENERAL.—Not later than  
21                                 June 30 of each year after 2010, the In-  
22                                 vestor Advocate shall submit to the Com-  
23                                 mittee on Banking, Housing, and Urban  
24                                 Affairs of the Senate and the Committee  
25                                 on Financial Services of the House of Rep-

1           representatives a report on the objectives of  
2           the Investor Advocate for the following fis-  
3           cal year.

4           “(ii) CONTENTS.—Each report re-  
5           quired under clause (i) shall contain full  
6           and substantive analysis and explanation.

7           “(B) REPORT ON ACTIVITIES.—

8           “(i) IN GENERAL.—Not later than  
9           December 31 of each year after 2010, the  
10          Investor Advocate shall submit to the Com-  
11          mittee on Banking, Housing, and Urban  
12          Affairs of the Senate and the Committee  
13          on Financial Services of the House of Rep-  
14          resentatives a report on the activities of  
15          the Investor Advocate during the imme-  
16          diately preceding fiscal year.

17          “(ii) CONTENTS.—Each report re-  
18          quired under clause (i) shall include—

19                  “(I) appropriate statistical infor-  
20                  mation and full and substantive anal-  
21                  ysis;

22                  “(II) information on steps that  
23                  the Investor Advocate has taken dur-  
24                  ing the reporting period to improve in-  
25                  vestor services and the responsiveness



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1 of the Commission and self-regulatory  
2 organizations to investor concerns;

3 “(III) a summary of the most se-  
4 rious problems encountered by inves-  
5 tors during the reporting period;

6 “(IV) an inventory of the items  
7 described in subclauses (III) that in-  
8 cludes—

9 “(aa) identification of any  
10 action taken by the Commission  
11 or the self-regulatory organiza-  
12 tion and the result of such ac-  
13 tion;

14 “(bb) the length of time that  
15 each item has remained on such  
16 inventory; and

17 “(cc) for items on which no  
18 action has been taken, the rea-  
19 sons for inaction, and an identi-  
20 fication of any official who is re-  
21 sponsible for such action;

22 “(V) recommendations for such  
23 administrative and legislative actions  
24 as may be appropriate to resolve prob-  
25 lems encountered by investors; and

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1 “(VI) any other information, as  
2 determined appropriate by the Inves-  
3 tor Advocate.

4 “(iii) INDEPENDENCE.—Each report  
5 required under this paragraph shall be pro-  
6 vided directly to the Committees listed in  
7 clause (i) without any prior review or com-  
8 ment from the Commission, any commis-  
9 sioner, any other officer or employee of the  
10 Commission, or the Office of Management  
11 and Budget.

12 “(iv) CONFIDENTIALITY.—No report  
13 required under clause (i) may contain con-  
14 fidential information.

15 “(7) REGULATIONS.—The Commission shall, by  
16 regulation, establish procedures requiring a formal  
17 response to all recommendations submitted to the  
18 Commission by the Investor Advocate, not later than  
19 3 months after the date of such submission.”.

20 **SEC. 915. STREAMLINING OF FILING PROCEDURES FOR**  
21 **SELF-REGULATORY ORGANIZATIONS.**

22 (a) FILING PROCEDURES.—Section 19(b) of the Se-  
23 curities Exchange Act of 1934 (15 U.S.C. 78s(b)) is  
24 amended by striking paragraph (2) (including the undesig-

1 nated matter immediately following subparagraph (B))  
2 and inserting the following:

3 “(2) APPROVAL PROCESS.—

4 “(A) APPROVAL PROCESS ESTABLISHED.—

5 “(i) IN GENERAL.—Except as pro-  
6 vided in clause (ii), not later than 45 days  
7 after the date of publication of a proposed  
8 rule change under paragraph (1), the Com-  
9 mission shall—

10 “(I) by order, approve the pro-  
11 posed rule change; or

12 “(II) institute proceedings under  
13 subparagraph (B) to determine wheth-  
14 er the proposed rule change should be  
15 disapproved.

16 “(ii) EXTENSION OF TIME PERIOD.—

17 The Commission may extend the period es-  
18 tablished under clause (i) by not more than  
19 an additional 45 days, if—

20 “(I) the Commission determines  
21 that a longer period is appropriate  
22 and publishes the reasons for such de-  
23 termination; or

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1                   “(II) the self-regulatory organiza-  
2                   tion that filed the proposed rule  
3                   change consents to the longer period.

4                   “(B) PROCEEDINGS.—

5                   “(i) NOTICE AND HEARING.—If the  
6                   Commission does not approve a proposed  
7                   rule change under subparagraph (A), the  
8                   Commission shall provide to the self-regu-  
9                   latory organization that filed the proposed  
10                  rule change—

11                  “(I) notice of the grounds for  
12                  disapproval under consideration; and

13                  “(II) opportunity for hearing, to  
14                  be concluded not later than 180 days  
15                  after the date of publication of notice  
16                  of the filing of the proposed rule  
17                  change.

18                  “(ii) ORDER OF APPROVAL OR DIS-  
19                  APPROVAL.—

20                  “(I) IN GENERAL.—Except as  
21                  provided in subelause (II), not later  
22                  than 180 days after the date of publi-  
23                  cation under paragraph (1), the Com-  
24                  mission shall issue an order approving

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1 or disapproving the proposed rule  
2 change.

3 “(II) EXTENSION OF TIME PE-  
4 RIOD.—The Commission may extend  
5 the period for issuance under clause  
6 (I) by not more than 60 days, if—

7 “(aa) the Commission deter-  
8 mines that a longer period is ap-  
9 propriate and publishes the rea-  
10 sons for such determination; or

11 “(bb) the self-regulatory or-  
12 ganization that filed the proposed  
13 rule change consents to the  
14 longer period.

15 “(C) STANDARDS FOR APPROVAL AND DIS-  
16 APPROVAL.—

17 “(i) APPROVAL.—The Commission  
18 shall approve a proposed rule change of a  
19 self-regulatory organization if it finds that  
20 such proposed rule change is consistent  
21 with the requirements of this title and the  
22 rules and regulations issued under this  
23 title that are applicable to such organiza-  
24 tion.

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1                   “(ii) DISAPPROVAL.—The Commission  
2                   shall disapprove a proposed rule change of  
3                   a self-regulatory organization if it does not  
4                   make a finding described in clause (i).

5                   “(iii) TIME FOR APPROVAL.—The  
6                   Commission may not approve a proposed  
7                   rule change earlier than 30 days after the  
8                   date of publication under paragraph (1),  
9                   unless the Commission finds good cause  
10                  for so doing and publishes the reason for  
11                  the finding.

12                  “(D) RESULT OF FAILURE TO INSTITUTE  
13                  OR CONCLUDE PROCEEDINGS.—A proposed rule  
14                  change shall be deemed to have been approved  
15                  by the Commission, if—

16                         “(i) the Commission does not approve  
17                         the proposed rule change or begin pro-  
18                         ceedings under subparagraph (B) within  
19                         the period described in subparagraph (A);  
20                         or

21                         “(ii) the Commission does not issue  
22                         an order approving or disapproving the  
23                         proposed rule change under subparagraph  
24                         (B) within the period described in subpara-  
25                         graph (B)(ii).

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1           “(E) PUBLICATION DATE BASED ON FED-  
2           ERAL REGISTER PUBLISHING.—For purposes of  
3           this paragraph, if, after filing a proposed rule  
4           change with the Commission pursuant to para-  
5           graph (1), a self-regulatory organization pub-  
6           lishes a notice of the filing of such proposed  
7           rule change, together with the substantive  
8           terms of such proposed rule change, on a pub-  
9           licly accessible website, the Commission shall  
10          thereafter send the notice to the Federal Reg-  
11          ister for publication thereof under paragraph  
12          (1) within 15 days of the date on which such  
13          website publication is made. If the Commission  
14          fails to send the notice for publication thereof  
15          within such 15 day period, then the date of  
16          publication shall be deemed to be the date on  
17          which such website publication was made.

18           “(F) RULEMAKING.—

19           “(i) IN GENERAL.—Not later than  
20           180 days after the date of enactment of  
21           the Restoring American Financial Stability  
22           Act of 2010, after consultation with other  
23           regulatory agencies, the Commission shall  
24           promulgate rules setting forth the proce-

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1 dural requirements of the proceedings re-  
2 quired under this paragraph.

3 “(ii) NOTICE AND COMMENT NOT RE-  
4 QUIRED.—The rules promulgated by the  
5 Commission under clause (i) are not re-  
6 quired to include republication of proposed  
7 rule changes or solicitation of public com-  
8 ment.”.

9 (b) CLARIFICATION OF FILING DATE.—

10 (1) RULE OF CONSTRUCTION.—Section 19(b) of  
11 the Securities Exchange Act of 1934 (15 U.S.C.  
12 78s(b)) is amended by adding at the end the fol-  
13 lowing:

14 “(10) RULE OF CONSTRUCTION RELATING TO  
15 FILING DATE OF PROPOSED RULE CHANGES.—

16 “(A) IN GENERAL.—For purposes of this  
17 subsection, the date of filing of a proposed rule  
18 change shall be deemed to be the date on which  
19 the Commission receives the proposed rule  
20 change.

21 “(B) EXCEPTION.—A proposed rule  
22 change has not been received by the Commis-  
23 sion for purposes of subparagraph (A) if, not  
24 later than 7 business days after the date of re-  
25 ceipt by the Commission, the Commission noti-



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1           fies the self-regulatory organization that such  
2           proposed rule change does not comply with the  
3           rules of the Commission relating to the required  
4           form of a proposed rule change, except that if  
5           the Commission determines that the proposed  
6           rule change is unusually lengthy and is complex  
7           or raises novel regulatory issues, the Commis-  
8           sion shall inform the self-regulatory organiza-  
9           tion of such determination not later than 7  
10          business days after the date of receipt by the  
11          Commission and, for the purposes of subpara-  
12          graph (A), a proposed rule change has not been  
13          received by the Commission, if, not later than  
14          21 days after the date of receipt by the Com-  
15          mission, the Commission notifies the self-regu-  
16          latory organization that such proposed rule  
17          change does not comply with the rules of the  
18          Commission relating to the required form of a  
19          proposed rule change.”.

20          (2) PUBLICATION.—Section 19(b)(1) of the Se-  
21          curities Exchange Act of 1934 (15 U.S.C. 78s(b)(1))  
22          is amended by striking “upon” and inserting “as  
23          soon as practicable after the date of”.

1           (c) EFFECTIVE DATE OF PROPOSED RULES.—Sec-  
2 tion 19(b)(3) of the Securities Exchange Act of 1934 (15  
3 U.S.C. 78s(b)(3)) is amended—

4           (1) in subparagraph (A)—

5                 (A) by striking “may take effect” and in-  
6 sserting “shall take effect”; and

7                 (B) by inserting “on any person, whether  
8 or not the person is a member of the self-regu-  
9 latory organization” after “charge imposed by  
10 the self-regulatory organization”; and

11           (2) in subparagraph (C)—

12                 (A) by amending the second sentence to  
13 read as follows: “At any time within the 60-day  
14 period beginning on the date of filing of such  
15 a proposed rule change in accordance with the  
16 provisions of paragraph (1), the Commission  
17 summarily may temporarily suspend the change  
18 in the rules of the self-regulatory organization  
19 made thereby, if it appears to the Commission  
20 that such action is necessary or appropriate in  
21 the public interest, for the protection of inves-  
22 tors, or otherwise in furtherance of the pur-  
23 poses of this title.”;

24                 (B) by inserting after the second sentence  
25 the following: “If the Commission takes such

1           action, the Commission shall institute pro-  
2           ceedings under paragraph (2)(B) to determine  
3           whether the proposed rule should be approved  
4           or disapproved.”; and

5           (C) in the third sentence, by striking “the  
6           preceding sentence” and inserting “this sub-  
7           paragraph”.

8           (d) CONFORMING CHANGE.—Section 19(b)(4)(D) of  
9           the Securities Exchange Act of 1934 (15 U.S.C.  
10          78s(b)(4)(D)) is amended to read as follows:

11           “(D)(i) The Commission shall order the  
12           temporary suspension of any change in the  
13           rules of a clearing agency made by a proposed  
14           rule change that has taken effect under para-  
15           graph (3), if the appropriate regulatory agency  
16           for the clearing agency notifies the Commission  
17           not later than 30 days after the date on which  
18           the proposed rule change was filed of—

19           “(I) the determination by the appro-  
20           priate regulatory agency that the rules of  
21           such clearing agency, as so changed, may  
22           be inconsistent with the safeguarding of  
23           securities or funds in the custody or con-  
24           trol of such clearing agency or for which it  
25           is responsible; and

1 “(II) the reasons for the determina-  
2 tion described in subclause (I).

3 “(ii) If the Commission takes action under  
4 clause (i), the Commission shall institute pro-  
5 ceedings under paragraph (2)(B) to determine  
6 if the proposed rule change should be approved  
7 or disapproved.”.

8 **SEC. 916. STUDY REGARDING FINANCIAL LITERACY AMONG**  
9 **INVESTORS.**

10 (a) IN GENERAL.—The Commission shall conduct a  
11 study to identify—

12 (1) the existing level of financial literacy among  
13 retail investors, including subgroups of investors  
14 identified by the Commission;

15 (2) methods to improve the timing, content, and  
16 format of disclosures to investors with respect to fi-  
17 nancial intermediaries, investment products, and in-  
18 vestment services;

19 (3) the most useful and understandable relevant  
20 information that retail investors need to make in-  
21 formed financial decisions before engaging a finan-  
22 cial intermediary or purchasing an investment prod-  
23 uct or service that is typically sold to retail inves-  
24 tors, including shares of open-end companies, as  
25 that term is defined in section 5 of the Investment

1 Company Act of 1940 (15 U.S.C. 80a–5) that are  
2 registered under section 8 of that Act;

3 (4) methods to increase the transparency of ex-  
4 penses and conflicts of interests in transactions in-  
5 volving investment services and products, including  
6 shares of open-end companies described in para-  
7 graph (3);

8 (5) the most effective existing private and pub-  
9 lic efforts to educate investors; and

10 (6) in consultation with the Financial Literacy  
11 and Education Commission, a strategy (including, to  
12 the extent practicable, measurable goals and objec-  
13 tives) to increase the financial literacy of investors  
14 in order to bring about a positive change in investor  
15 behavior.

16 (b) REPORT.—Not later than 2 years after the date  
17 of enactment of this Act, the Commission shall submit a  
18 report on the study required under subsection (a) to—

19 (1) the Committee on Banking, Housing, and  
20 Urban Affairs of the Senate; and

21 (2) the Committee on Financial Services of the  
22 House of Representatives.

1 **SEC. 917. STUDY REGARDING MUTUAL FUND ADVERTISING.**

2 (a) IN GENERAL.—The Comptroller General of the  
3 United States shall conduct a study on mutual fund adver-  
4 tising to identify—

5 (1) existing and proposed regulatory require-  
6 ments for open-end investment company advertise-  
7 ments;

8 (2) current marketing practices for the sale of  
9 open-end investment company shares, including the  
10 use of past performance data, funds that have  
11 merged, and incubator funds;

12 (3) the impact of such advertising on con-  
13 sumers; and

14 (4) recommendations to improve investor pro-  
15 tections in mutual fund advertising and additional  
16 information necessary to ensure that investors can  
17 make informed financial decisions when purchasing  
18 shares.

19 (b) REPORT.—Not later than 18 months after the  
20 date of enactment of this Act, the Comptroller General  
21 of the United States shall submit a report on the results  
22 of the study conducted under subsection (a) to—

23 (1) the Committee on Banking, Housing, and  
24 Urban Affairs of the United States Senate; and

25 (2) the Committee on Financial Services of the  
26 House of Representatives.

1 **SEC. 918. CLARIFICATION OF COMMISSION AUTHORITY TO**  
2 **REQUIRE INVESTOR DISCLOSURES BEFORE**  
3 **PURCHASE OF INVESTMENT PRODUCTS AND**  
4 **SERVICES.**

5 Section 15 of the Securities Exchange Act of 1934  
6 (15 U.S.C. 78o) is amended by adding at the end the fol-  
7 lowing:

8 “(k) DISCLOSURES TO RETAIL INVESTORS.—

9 “(1) IN GENERAL.—Notwithstanding any other  
10 provision of the securities laws, the Commission may  
11 issue rules designating documents or information  
12 that shall be provided by a broker or dealer to a re-  
13 tail investor before the purchase of an investment  
14 product or service by the retail investor.

15 “(2) CONSIDERATIONS.—In developing any  
16 rules under paragraph (1), the Commission shall  
17 consider whether the rules will promote investor pro-  
18 tection, efficiency, competition, and capital forma-  
19 tion.

20 “(3) FORM AND CONTENTS OF DOCUMENTS  
21 AND INFORMATION.—Any documents or information  
22 designated under a rule promulgated under para-  
23 graph (1) shall—

24 “(A) be in a summary format; and

25 “(B) contain clear and concise information  
26 about—

1 “(i) investment objectives, strategies,  
2 costs, and risks; and

3 “(ii) any compensation or other finan-  
4 cial incentive received by a broker, dealer,  
5 or other intermediary in connection with  
6 the purchase of retail investment prod-  
7 ucts.”.

8 **SEC. 919. STUDY ON CONFLICTS OF INTEREST.**

9 (a) IN GENERAL.—The Comptroller General of the  
10 United States shall conduct a study—

11 (1) to identify and examine potential conflicts  
12 of interest that exist between the staffs of the invest-  
13 ment banking and equity and fixed income securities  
14 analyst functions within the same firm; and

15 (2) to make recommendations to Congress de-  
16 signed to protect investors in light of such conflicts.

17 (b) CONSIDERATIONS.—In conducting the study  
18 under subsection (a), the Comptroller General shall—

19 (1) consider—

20 (A) the potential for investor harm result-  
21 ing from conflicts, including consideration of  
22 the forms of misconduct engaged in by the sev-  
23 eral securities firms and individuals that en-  
24 tered into the Global Analyst Research Settle-



1           ments in 2003 (also known as the “Global Set-  
2           tlement”);

3                   (B) the nature and benefits of the under-  
4           takings to which those firms agreed in enforce-  
5           ment proceedings, including firewalls between  
6           research and investment banking, separate re-  
7           porting lines, dedicated legal and compliance  
8           staffs, allocation of budget, physical separation,  
9           compensation, employee performance evalua-  
10          tions, coverage decisions, limitations on solie-  
11          iting investment banking business, disclosures,  
12          transparency, and other measures;

13                   (C) whether any such undertakings should  
14          be codified and applied permanently to securi-  
15          ties firms, or whether the Commission should  
16          adopt rules applying any such undertakings to  
17          securities firms; and

18                   (D) whether to recommend regulatory or  
19          legislative measures designed to mitigate pos-  
20          sible adverse consequences to investors arising  
21          from the conflicts of interest or to enhance in-  
22          vestor protection or confidence in the integrity  
23          of the securities markets; and

24                   (2) consult with State attorneys general, State  
25          securities officials, the Commission, the Financial

1 Industry Regulatory Authority (“FINRA”), NYSE  
2 Regulation, investor advocates, brokers, dealers, re-  
3 tail investors, institutional investors, and academics.

4 (c) REPORT.—The Comptroller General shall submit  
5 a report on the results of the study required by this section  
6 to the Committee on Banking, Housing, and Urban Af-  
7 fairs of the Senate and the Committee on Financial Serv-  
8 ices of the House of Representatives, not later than 18  
9 months after the date of enactment of this Act.

10 **SEC. 919A. STUDY ON IMPROVED INVESTOR ACCESS TO IN-**  
11 **FORMATION ON INVESTMENT ADVISERS AND**  
12 **BROKER-DEALERS.**

13 (a) STUDY.—

14 (1) IN GENERAL.—Not later than 6 months  
15 after the date of enactment of this Act, the Commis-  
16 sion shall complete a study, including recommenda-  
17 tions, of ways to improve the access of investors to  
18 registration information (including disciplinary ac-  
19 tions, regulatory, judicial, and arbitration pro-  
20 ceedings, and other information) about registered  
21 and previously registered investment advisers, asso-  
22 ciated persons of investment advisers, brokers and  
23 dealers and their associated persons on the existing  
24 Central Registration Depository and Investment Ad-  
25 viser Registration Depository systems, as well as

1 identify additional information that should be made  
2 publicly available.

3 (2) CONTENTS.—The study required by sub-  
4 section (a) shall include an analysis of the advan-  
5 tages and disadvantages of further centralizing ac-  
6 cess to the information contained in the 2 systems,  
7 including—

8 (A) identification of those data pertinent  
9 to investors; and

10 (B) the identification of the method and  
11 format for displaying and publishing such data  
12 to enhance accessibility by and utility to inves-  
13 tors.

14 (b) IMPLEMENTATION.—Not later than 18 months  
15 after the date of completion of the study required by sub-  
16 section (a), the Commission shall implement any rec-  
17 ommendations of the study.

18 **SEC. 919B. STUDY ON FINANCIAL PLANNERS AND THE USE**  
19 **OF FINANCIAL DESIGNATIONS.**

20 (a) IN GENERAL.—The Comptroller General of the  
21 United States shall conduct a study to evaluate—

22 (1) the effectiveness of State and Federal regu-  
23 lations to protect consumers from individuals who  
24 hold themselves out as financial planners through  
25 the use of misleading designations;

1           (2) current State and Federal oversight struc-  
2           ture and regulations for financial planners; and

3           (3) legal or regulatory gaps in the regulation of  
4           financial planners and other individuals who provide  
5           or offer to provide financial planning services to con-  
6           sumers.

7           (b) CONSIDERATIONS.—In conducting the study re-  
8           quired under subsection (a), the Comptroller General shall  
9           consider—

10           (1) the role of financial planners in providing  
11           advice regarding the management of financial re-  
12           sources, including investment planning, income tax  
13           planning, education planning, retirement planning,  
14           estate planning, and risk management;

15           (2) whether current regulations at the State  
16           and Federal level provide adequate ethical and pro-  
17           fessional standards for financial planners;

18           (3) the use of the title “financial planner” and  
19           misleading designations in connection with sale of fi-  
20           nancial products, including insurance and securities;

21           (4) the possible risk posed to consumers by in-  
22           dividuals who hold themselves out as financial plan-  
23           ners through the use of misleading designations, in-  
24           cluding “financial advisor” and “financial consult-  
25           ant”;

1           (5) the ability of consumers to understand li-  
2           censing requirements and standards of care that  
3           apply to individuals who provide financial advice;

4           (6) the possible benefits to consumers of regula-  
5           tion and professional oversight of financial planners;  
6           and

7           (7) any other consideration that the Comp-  
8           troller General deems necessary or appropriate to ef-  
9           fectively execute the study required under subsection  
10          (a).

11          (c) RECOMMENDATIONS.—In providing recommenda-  
12          tions for the appropriate regulation of financial planners  
13          and other individuals who provide or offer to provide fi-  
14          nancial planning services, in order to protect consumers  
15          of financial planning services, the Comptroller General  
16          shall consider—

17               (1) the appropriate structure for regulation of  
18               financial planners and individuals providing financial  
19               planning services; and

20               (2) the appropriate scope of the regulations  
21               needed to protect consumers, including but not lim-  
22               ited to the need to establish competency standards,  
23               practice standards, ethical guidelines, disciplinary  
24               authority, and transparency to consumers.

25          (d) REPORT.—

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1           (1) IN GENERAL.—Not later than 180 days  
2 after the date of enactment of this Act, the Comp-  
3 troller General shall submit a report on the study re-  
4 quired under subsection (a) to—

5                   (A) the Committee on Banking, Housing,  
6 and Urban Affairs of the Senate;

7                   (B) the Special Committee on Aging of the  
8 Senate; and

9                   (C) the Committee on Financial Services of  
10 the House of Representatives.

11           (2) CONTENT REQUIREMENTS.—The report re-  
12 quired under paragraph (1) shall describe the find-  
13 ings and determinations made by the Comptroller  
14 General in carrying out the study required under  
15 subsection (a), including a description of the consid-  
16 erations, analysis, and government, public, industry,  
17 nonprofit and consumer input that the Comptroller  
18 General considered to make such findings, conclu-  
19 sions, and legislative, regulatory, or other rec-  
20 ommendations.

1     **Subtitle B—Increasing Regulatory**  
2             **Enforcement and Remedies**

3     **SEC. 921. AUTHORITY TO ISSUE RULES RELATED TO MAN-**  
4             **DATORY PREDISPUTE ARBITRATION.**

5             (a) AMENDMENT TO SECURITIES EXCHANGE ACT OF  
6     1934.—Section 15 of the Securities Exchange Act of 1934  
7     (15 U.S.C. 78o), as amended by section 918, is amended  
8     by adding at the end the following:

9             “(1) AUTHORITY TO RESTRICT MANDATORY  
10     PREDISPUTE ARBITRATION.—The Commission may reaffirm or  
11     prohibit, or impose or not impose conditions or  
12     limitations on the use of, agreements that require cus-  
13     tomers or clients of any broker, dealer, or municipal secu-  
14     rities dealer to arbitrate any dispute between them and  
15     such broker, dealer, or municipal securities dealer that  
16     arises under the securities laws or the rules of a self-regu-  
17     latory organization, if the Commission finds that such re-  
18     affirmation, prohibition, imposition of conditions or limita-  
19     tions, or other action is in the public interest and for the  
20     protection of investors pursuant to a public rulemaking.”.

21             (b) AMENDMENT TO INVESTMENT ADVISERS ACT OF  
22     1940.—Section 205 of the Investment Advisers Act of  
23     1940 (15 U.S.C. 80b–5) is amended by adding at the end  
24     the following:

1       “(f) AUTHORITY TO ISSUE RULES RELATED TO  
2 MANDATORY PREDISPUTE ARBITRATION.—The Commis-  
3 sion may reaffirm or prohibit, or impose or not impose  
4 conditions or limitations on the use of, agreements that  
5 require customers or clients of any investment adviser to  
6 arbitrate any dispute between them and such investment  
7 adviser that arises under the securities laws, as defined  
8 in section 3 of the Securities Exchange Act of 1934 (15  
9 U.S.C. 78e), or the rules of a self-regulatory organization,  
10 if the Commission finds that such reaffirmation, prohibi-  
11 tion, imposition of conditions or limitations, or other ac-  
12 tion is in the public interest and for the protection of in-  
13 vestors pursuant to a public rulemaking.”.

14 **SEC. 922. WHISTLEBLOWER PROTECTION.**

15       (a) IN GENERAL.—The Securities Exchange Act of  
16 1934 (15 U.S.C. 78a et seq.) is amended by inserting after  
17 section 21E the following:

18 **“SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND**  
19 **PROTECTION.**

20       “(a) DEFINITIONS.—In this section the following  
21 definitions shall apply:

22               “(1) COVERED JUDICIAL OR ADMINISTRATIVE  
23 ACTION.—The term ‘covered judicial or administra-  
24 tive action’ means any judicial or administrative ac-  
25 tion brought by the Commission under the securities



1 laws that results in monetary sanctions exceeding  
2 \$1,000,000.

3 “(2) FUND.—The term ‘Fund’ means the Secu-  
4 rities and Exchange Commission Investor Protection  
5 Fund.

6 “(3) ORIGINAL INFORMATION.—The term  
7 ‘original information’ means information that—

8 “(A) is derived from the independent  
9 knowledge or analysis of a whistleblower;

10 “(B) is not known to the Commission from  
11 any other source, unless the whistleblower is the  
12 original source of the information; and

13 “(C) is not exclusively derived from an al-  
14 legation made in a judicial or administrative  
15 hearing, in a governmental report, hearing,  
16 audit, or investigation, or from the news media,  
17 unless the whistleblower is a source of the infor-  
18 mation.

19 “(4) MONETARY SANCTIONS.—The term ‘mone-  
20 tary sanctions’, when used with respect to any judi-  
21 cial or administrative action, means—

22 “(A) any monies, including penalties,  
23 disgorgement, and interest, ordered to be paid;  
24 and

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1           “(B) any monies deposited into a  
2           disgorgement fund or other fund pursuant to  
3           section 308(b) of the Sarbanes-Oxley Act of  
4           2002 (15 U.S.C. 7246(b)), as a result of such  
5           action or any settlement of such action.

6           “(5) RELATED ACTION.—The term ‘related ac-  
7           tion’, when used with respect to any judicial or ad-  
8           ministrative action brought by the Commission  
9           under the securities laws, means any judicial or ad-  
10          ministrative action brought by an entity described in  
11          subclauses (I) through (IV) of subsection  
12          (h)(2)(D)(i) that is based upon the original informa-  
13          tion provided by a whistleblower pursuant to sub-  
14          section (a) that led to the successful enforcement of  
15          the Commission action.

16          “(6) WHISTLEBLOWER.—The term ‘whistle-  
17          blower’ means any individual, or 2 or more individ-  
18          uals acting jointly, who provides information relating  
19          to a violation of the securities laws to the Commis-  
20          sion, in a manner established, by rule or regulation,  
21          by the Commission.

22          “(b) AWARDS.—

23          “(1) IN GENERAL.—In any covered judicial or  
24          administrative action, or related action, the Commis-  
25          sion, under regulations prescribed by the Commis-

1 sion and subject to subsection (c), shall pay an  
2 award or awards to 1 or more whistleblowers who  
3 voluntarily provided original information to the  
4 Commission that led to the successful enforcement  
5 of the covered judicial or administrative action, or  
6 related action, in an aggregate amount equal to—

7 “(A) not less than 10 percent, in total, of  
8 what has been collected of the monetary sanc-  
9 tions imposed in the action or related actions;  
10 and

11 “(B) not more than 30 percent, in total, of  
12 what has been collected of the monetary sanc-  
13 tions imposed in the action or related actions.

14 “(2) PAYMENT OF AWARDS.—Any amount paid  
15 under paragraph (1) shall be paid from the Fund.

16 “(c) DETERMINATION OF AMOUNT OF AWARD; DE-  
17 NIAL OF AWARD.—

18 “(1) DETERMINATION OF AMOUNT OF  
19 AWARD.—

20 “(A) DISCRETION.—The determination of  
21 the amount of an award made under subsection  
22 (b) shall be in the discretion of the Commission.

23 “(B) CRITERIA.—In determining the  
24 amount of an award made under subsection (b),  
25 the Commission—

1 “(i) shall take into consideration—

2 “(I) the significance of the infor-  
3 mation provided by the whistleblower  
4 to the success of the covered judicial  
5 or administrative action;

6 “(II) the degree of assistance  
7 provided by the whistleblower and any  
8 legal representative of the whistle-  
9 blower in a covered judicial or admin-  
10 istrative action;

11 “(III) the programmatic interest  
12 of the Commission in deterring viola-  
13 tions of the securities laws by making  
14 awards to whistleblowers who provide  
15 information that lead to the successful  
16 enforcement of such laws; and

17 “(IV) such additional relevant  
18 factors as the Commission may estab-  
19 lish by rule or regulation; and

20 “(ii) shall not take into consideration  
21 the balance of the Fund.

22 “(2) DENIAL OF AWARD.—No award under  
23 subsection (b) shall be made—

24 “(A) to any whistleblower who is, or was at  
25 the time the whistleblower acquired the original

1 information submitted to the Commission, a  
2 member, officer, or employee of—

3 “(i) an appropriate regulatory agency;

4 “(ii) the Department of Justice;

5 “(iii) a self-regulatory organization;

6 “(iv) the Public Company Accounting  
7 Oversight Board; or

8 “(v) a law enforcement organization;

9 “(B) to any whistleblower who is convicted  
10 of a criminal violation related to the judicial or  
11 administrative action for which the whistle-  
12 blower otherwise could receive an award under  
13 this section;

14 “(C) to any whistleblower who gains the  
15 information through the performance of an  
16 audit of financial statements required under the  
17 securities laws and for whom such submission  
18 would be contrary to the requirements of sec-  
19 tion 101A of the Securities Exchange Act of  
20 1934 (15 U.S.C. 78j-1); or

21 “(D) to any whistleblower who fails to sub-  
22 mit information to the Commission in such  
23 form as the Commission may, by rule, require.

24 “(d) REPRESENTATION.—

1           “(1) PERMITTED REPRESENTATION.—Any  
2 whistleblower who makes a claim for an award under  
3 subsection (b) may be represented by counsel.

4           “(2) REQUIRED REPRESENTATION.—

5           “(A) IN GENERAL.—Any whistleblower  
6 who anonymously makes a claim for an award  
7 under subsection (b) shall be represented by  
8 counsel if the whistleblower anonymously sub-  
9 mits the information upon which the claim is  
10 based.

11           “(B) DISCLOSURE OF IDENTITY.—Prior to  
12 the payment of an award, a whistleblower shall  
13 disclose the identity of the whistleblower and  
14 provide such other information as the Commis-  
15 sion may require, directly or through counsel  
16 for the whistleblower.

17           “(e) NO CONTRACT NECESSARY.—No contract with  
18 the Commission is necessary for any whistleblower to re-  
19 ceive an award under subsection (b), unless otherwise re-  
20 quired by the Commission by rule or regulation.

21           “(f) APPEALS.—Any determination made under this  
22 section, including whether, to whom, or in what amount  
23 to make awards, shall be in the discretion of the Commis-  
24 sion. Any such determination may be appealed to the ap-  
25 propriate court of appeals of the United States not more

1 than 30 days after the determination is issued by the  
2 Commission. The court shall review the determination  
3 made by the Commission in accordance with section 706  
4 of title 5, United States Code.

5 “(g) INVESTOR PROTECTION FUND.—

6 “(1) FUND ESTABLISHED.—There is estab-  
7 lished in the Treasury of the United States a fund  
8 to be known as the ‘Securities and Exchange Com-  
9 mission Investor Protection Fund’.

10 “(2) USE OF FUND.—The Fund shall be avail-  
11 able to the Commission, without further appropria-  
12 tion or fiscal year limitation, for—

13 “(A) paying awards to whistleblowers as  
14 provided in subsection (b); and

15 “(B) funding the activities of the Inspector  
16 General of the Commission under section 4(i).

17 “(3) DEPOSITS AND CREDITS.—

18 “(A) IN GENERAL.—There shall be depos-  
19 ited into or credited to the Fund an amount  
20 equal to—

21 “(i) any monetary sanction collected  
22 by the Commission in any judicial or ad-  
23 ministrative action brought by the Com-  
24 mission under the securities laws that is  
25 not added to a disgorgement fund or other

1 fund under section 308 of the Sarbanes-  
2 Oxley Act of 2002 (15 U.S.C. 7246) or  
3 otherwise distributed to victims of a viola-  
4 tion of the securities laws, or the rules and  
5 regulations thereunder, underlying such ac-  
6 tion, unless the balance of the Fund at the  
7 time the monetary sanction is collected ex-  
8 ceeds \$300,000,000;

9 “(ii) any monetary sanction added to  
10 a disgorgement fund or other fund under  
11 section 308 of the Sarbanes-Oxley Act of  
12 2002 (15 U.S.C. 7246) that is not distrib-  
13 uted to the victims for whom the Fund was  
14 established, unless the balance of the  
15 disgorgement fund at the time the deter-  
16 mination is made not to distribute the  
17 monetary sanction to such victims exceeds  
18 \$200,000,000; and

19 “(iii) all income from investments  
20 made under paragraph (4).

21 “(B) ADDITIONAL AMOUNTS.—If the  
22 amounts deposited into or credited to the Fund  
23 under subparagraph (A) are not sufficient to  
24 satisfy an award made under subsection (b),  
25 there shall be deposited into or credited to the



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1 Fund an amount equal to the unsatisfied por-  
2 tion of the award from any monetary sanction  
3 collected by the Commission in the covered judi-  
4 cial or administrative action on which the  
5 award is based.

6 “(4) INVESTMENTS.—

7 “(A) AMOUNTS IN FUND MAY BE IN-  
8 VESTED.—The Commission may request the  
9 Secretary of the Treasury to invest the portion  
10 of the Fund that is not, in the discretion of the  
11 Commission, required to meet the current needs  
12 of the Fund.

13 “(B) ELIGIBLE INVESTMENTS.—Invest-  
14 ments shall be made by the Secretary of the  
15 Treasury in obligations of the United States or  
16 obligations that are guaranteed as to principal  
17 and interest by the United States, with matu-  
18 rities suitable to the needs of the Fund as de-  
19 termined by the Commission on the record.

20 “(C) INTEREST AND PROCEEDS CRED-  
21 ITED.—The interest on, and the proceeds from  
22 the sale or redemption of, any obligations held  
23 in the Fund shall be credited to the Fund.

24 “(5) REPORTS TO CONGRESS.—Not later than  
25 October 30 of each fiscal year beginning after the

1 date of enactment of this subsection, the Commis-  
2 sion shall submit to the Committee on Banking,  
3 Housing, and Urban Affairs of the Senate, and the  
4 Committee on Financial Services of the House of  
5 Representatives a report on—

6 “(A) the whistleblower award program, es-  
7 tablished under this section, including—

8 “(i) a description of the number of  
9 awards granted; and

10 “(ii) the types of cases in which  
11 awards were granted during the preceding  
12 fiscal year;

13 “(B) the balance of the Fund at the begin-  
14 ning of the preceding fiscal year;

15 “(C) the amounts deposited into or cred-  
16 ited to the Fund during the preceding fiscal  
17 year;

18 “(D) the amount of earnings on invest-  
19 ments made under paragraph (4) during the  
20 preceding fiscal year;

21 “(E) the amount paid from the Fund dur-  
22 ing the preceding fiscal year to whistleblowers  
23 pursuant to subsection (b);

24 “(F) the balance of the Fund at the end  
25 of the preceding fiscal year; and

1           “(G) a complete set of audited financial  
2 statements, including—

3                   “(i) a balance sheet;

4                   “(ii) income statement; and

5                   “(iii) cash flow analysis.

6           “(h) PROTECTION OF WHISTLEBLOWERS.—

7                   “(1) PROHIBITION AGAINST RETALIATION.—

8                           “(A) IN GENERAL.—No employer may dis-  
9 charge, demote, suspend, threaten, harass, di-  
10 rectly or indirectly, or in any other manner dis-  
11 criminate against, a whistleblower in the terms  
12 and conditions of employment because of any  
13 lawful act done by the whistleblower—

14                                   “(i) in providing information to the  
15 Commission in accordance with subsection  
16 (a);

17                                   “(ii) in initiating, testifying in, or as-  
18 sisting in any investigation or judicial or  
19 administrative action of the Commission  
20 based upon or related to such information;  
21 or

22                                   “(iii) in making disclosures that are  
23 required or protected under the Sarbanes-  
24 Oxley Act of 2002 (15 U.S.C. 7201 et  
25 seq.), the Securities Exchange Act of 1934

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1 (15 U.S.C. 78a et seq.), including section  
2 10A(m) of such Act (15 U.S.C. 78f(m)),  
3 section 1513(e) of title 18, United States  
4 Code, and any other law, rule, or regula-  
5 tion subject to the jurisdiction of the Com-  
6 mission.

7 “(B) ENFORCEMENT.—

8 “(i) CAUSE OF ACTION.—An indi-  
9 vidual who alleges discharge or other dis-  
10 crimination in violation of subparagraph  
11 (A) may bring an action under this sub-  
12 section in the appropriate district court of  
13 the United States for the relief provided in  
14 subparagraph (C).

15 “(ii) SUBPOENAS.—A subpoena re-  
16 quiring the attendance of a witness at a  
17 trial or hearing conducted under this sec-  
18 tion may be served at any place in the  
19 United States.

20 “(iii) STATUTE OF LIMITATIONS.—

21 “(I) IN GENERAL.—An action  
22 under this subsection may not be  
23 brought—

24 “(aa) more than 6 years  
25 after the date on which the viola-

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1 tion of subparagraph (A) oc-  
2 curred; or

3 “(bb) more than 3 years  
4 after the date when facts mate-  
5 rial to the right of action are  
6 known or reasonably should have  
7 been known by the employee al-  
8 leging a violation of subpara-  
9 graph (A).

10 “(II) REQUIRED ACTION WITHIN  
11 10 YEARS.—Notwithstanding sub-  
12 clause (I), an action under this sub-  
13 section may not in any circumstance  
14 be brought more than 10 years after  
15 the date on which the violation occurs.

16 “(C) RELIEF.—Relief for an individual  
17 prevailing in an action brought under subpara-  
18 graph (B) shall include—

19 “(i) reinstatement with the same se-  
20 niority status that the individual would  
21 have had, but for the discrimination;

22 “(ii) 2 times the amount of back pay  
23 otherwise owed to the individual, with in-  
24 terest; and

1                   “(iii) compensation for litigation  
2                   costs, expert witness fees, and reasonable  
3                   attorneys’ fees.

4                   “(2) CONFIDENTIALITY.—

5                   “(A) IN GENERAL.—Unless and until re-  
6                   quired to be disclosed to a defendant or re-  
7                   spondent in connection with a proceeding insti-  
8                   tuted by the Commission or any entity de-  
9                   scribed in subparagraph (D), all information  
10                  provided to the Commission by a whistle-  
11                  blower—

12                  “(i) in any proceeding in any Federal  
13                  or State court or administrative agency—

14                         “(I) shall be confidential and  
15                         privileged as an evidentiary matter;  
16                         and

17                         “(II) shall not be subject to civil  
18                         discovery or other legal process; and

19                         “(ii) shall not be subject to disclosure  
20                         under section 552 of title 5, United States  
21                         Code (commonly referred to as the Free-  
22                         dom of Information Act) or under any pro-  
23                         ceeding under that section.

24                   “(B) EXEMPTED STATUTE.—For purposes  
25                  of section 552 of title 5, United States Code,

1           this paragraph shall be considered a statute de-  
2           scribed in subsection (b)(3)(B) of such section  
3           552.

4                   “(C) RULE OF CONSTRUCTION.—Nothing  
5           in this section is intended to limit, or shall be  
6           construed to limit, the ability of the Attorney  
7           General to present such evidence to a grand  
8           jury or to share such evidence with potential  
9           witnesses or defendants in the course of an on-  
10          going criminal investigation.

11                   “(D) AVAILABILITY TO GOVERNMENT  
12          AGENCIES.—

13                   “(i) IN GENERAL.—Without the loss  
14          of its status as confidential and privileged  
15          in the hands of the Commission, all infor-  
16          mation referred to in subparagraph (A)  
17          may, in the discretion of the Commission,  
18          when determined by the Commission to be  
19          necessary to accomplish the purposes of  
20          this Act and to protect investors, be made  
21          available to—

22                   “(I) the Attorney General of the  
23          United States;

24                   “(II) an appropriate regulatory  
25          authority;

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1 “(III) a self-regulatory organiza-  
2 tion;

3 “(IV) a State attorney general in  
4 connection with any criminal inves-  
5 tigation;

6 “(V) any appropriate State regu-  
7 latory authority;

8 “(VI) the Public Company Ac-  
9 counting Oversight Board;

10 “(VII) a foreign securities au-  
11 thority; and

12 “(VIII) a foreign law enforce-  
13 ment authority.

14 “(ii) CONFIDENTIALITY.—

15 “(I) IN GENERAL.—Each of the  
16 entities described in subclauses (I)  
17 through (VI) of clause (i) shall main-  
18 tain such information as confidential  
19 and privileged, in accordance with the  
20 requirements established under sub-  
21 paragraph (A).

22 “(II) FOREIGN AUTHORITIES.—  
23 Each of the entities described in sub-  
24 clauses (VII) and (VIII) of clause (i)  
25 shall maintain such information in ac-



1 cordance with such assurances of con-  
2 fidentiality as the Commission deter-  
3 mines appropriate.

4 “(3) RIGHTS RETAINED.—Nothing in this sec-  
5 tion shall be deemed to diminish the rights, privi-  
6 leges, or remedies of any whistleblower under any  
7 Federal or State law, or under any collective bar-  
8 gaining agreement.

9 “(i) PROVISION OF FALSE INFORMATION.—A whis-  
10 tleblower shall not be entitled to an award under this sec-  
11 tion if the whistleblower—

12 “(1) knowingly and willfully makes any false,  
13 fictitious, or fraudulent statement or representation;  
14 or

15 “(2) uses any false writing or document know-  
16 ing the writing or document contains any false, ficti-  
17 tious, or fraudulent statement or entry.

18 “(j) RULEMAKING AUTHORITY.—The Commission  
19 shall have the authority to issue such rules and regulations  
20 as may be necessary or appropriate to implement the pro-  
21 visions of this section consistent with the purposes of this  
22 section.”.

23 (b) PROTECTION FOR EMPLOYEES OF NATIONALLY  
24 RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—

1 Section 1514A(a) of title 18, United States Code, is  
2 amended—

3 (1) by inserting “or nationally recognized sta-  
4 tistical rating organization (as defined in section  
5 3(a) of the Securities Exchange Act of 1934 (15  
6 U.S.C. 78c),” after “78o(d),”; and

7 (2) by inserting “or nationally recognized sta-  
8 tistical rating organization” after “such company”.

9 (c) SECTION 1514A OF TITLE 18, UNITED STATES  
10 CODE.—

11 (1) STATUTE OF LIMITATIONS; JURY TRIAL.—  
12 Section 1514A(b)(2) of title 18, United States Code,  
13 is amended—

14 (A) in subparagraph (D)—

15 (i) by striking “90” and inserting  
16 “180”; and

17 (ii) by striking the period at the end  
18 and inserting “, or after the date on which  
19 the employee became aware of the viola-  
20 tion.”; and

21 (B) by adding at the end the following:

22 “(E) JURY TRIAL.—A party to an action  
23 brought under paragraph (1)(B) shall be enti-  
24 tled to trial by jury.”.

1           (2) PRIVATE SECURITIES LITIGATION WIT-  
2           NESSES; NONENFORCEABILITY; INFORMATION.—Sec-  
3           tion 1514A of title 18, United States Code, is  
4           amended by adding at the end the following:

5           “(e) NONENFORCEABILITY OF CERTAIN PROVISIONS  
6           WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBI-  
7           TRATION OF DISPUTES.—

8           “(1) WAIVER OF RIGHTS AND REMEDIES.—The  
9           rights and remedies provided for in this section may  
10          not be waived by any agreement, policy form, or con-  
11          dition of employment, including by a predispute ar-  
12          bitration agreement.

13          “(2) PREDISPUTE ARBITRATION AGREE-  
14          MENTS.—No predispute arbitration agreement shall  
15          be valid or enforceable, if the agreement requires ar-  
16          bitration of a dispute arising under this section.”.

17          (d) STUDY OF WHISTLEBLOWER PROTECTION PRO-  
18          GRAM.—

19          (1) STUDY.—The Inspector General of the  
20          Commission shall conduct a study of the whistle-  
21          blower protections established under the amend-  
22          ments made by this section, including—

23                  (A) whether the final rules and regulation  
24                  issued under the amendments made by this sec-  
25                  tion have made the whistleblower protection

1 program (referred to in this subsection as the  
2 “program”) clearly defined and user-friendly;

3 (B) whether the program is promoted on  
4 the website of the Commission and has been  
5 widely publicized;

6 (C) whether the Commission is prompt  
7 in—

8 (i) its responses to—

9 (I) information provided by whis-  
10 tleblowers; and

11 (II) applications for awards filed  
12 by whistleblowers;

13 (ii) updating whistleblowers about the  
14 status of their applications; and

15 (iii) other communications with the  
16 interested parties;

17 (D) whether the minimum and maximum  
18 reward levels are adequate to entice whistle-  
19 blowers to come forward with information and  
20 whether the reward levels are so high as to en-  
21 courage illegitimate whistleblower claims;

22 (E) whether the appeals process has been  
23 unduly burdensome for the Commission;

24 (F) whether the funding mechanism for  
25 the Investor Protection Fund is adequate;

1           (G) whether, in the interest of protecting  
2 investors and identifying and preventing fraud,  
3 it would be useful for Congress to consider em-  
4 powering whistleblowers or other individuals,  
5 who have already attempted to pursue the case  
6 through the Commission, to have a private right  
7 of action to bring suit based on the facts of the  
8 same case, on behalf of the Government and  
9 themselves, against persons who have com-  
10 mittee securities fraud; and

11           (H) such other matters as the Inspector  
12 General deems appropriate.

13           (2) REPORT.—Not later than 30 months after  
14 the date of enactment of this Act, the Inspector  
15 General shall—

16           (A) submit a report on the findings of the  
17 study required under paragraph (1) to the  
18 Committee on Banking, Housing, and Urban  
19 Affairs of the Senate and the Committee on Fi-  
20 nancial Services of the House; and

21           (B) make the report described in subpara-  
22 graph (A) available to the public through publi-  
23 cation of the report on the website of the Com-  
24 mission.

1 **SEC. 923. CONFORMING AMENDMENTS FOR WHISTLE-**  
2 **BLOWER PROTECTION.**

3 (a) IN GENERAL.—

4 (1) SECURITIES ACT OF 1933.—Section  
5 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C.  
6 77t(d)(3)(A)) is amended by inserting “and section  
7 21F of the Securities Exchange Act of 1934” after  
8 “the Sarbanes-Oxley Act of 2002”.

9 (2) INVESTMENT COMPANY ACT OF 1940.—Sec-  
10 tion 42(e)(3)(A) of the Investment Company Act of  
11 1940 (15 U.S.C. 80a–41(e)(3)(A)) is amended by  
12 inserting “and section 21F of the Securities Ex-  
13 change Act of 1934” after “the Sarbanes-Oxley Act  
14 of 2002”.

15 (3) INVESTMENT ADVISERS ACT OF 1940.—Sec-  
16 tion 209(e)(3)(A) of the Investment Advisers Act of  
17 1940 (15 U.S.C. 80b–9(e)(3)(A)) is amended by in-  
18 serting “and section 21F of the Securities Exchange  
19 Act of 1934” after “the Sarbanes-Oxley Act of  
20 2002”.

21 (b) SECURITIES EXCHANGE ACT.—

22 (1) SECTION 21.—Section 21(d)(3)(C)(i) of the  
23 Securities Exchange Act of 1934 (15 U.S.C.  
24 78u(d)(3)(C)(i)) is amended by inserting “and sec-  
25 tion 21F of this title” after “the Sarbanes-Oxley Act  
26 of 2002”.

1           (2) SECTION 21A.—Section 21A of the Securi-  
2           ties Exchange Act of 1934 (15 U.S.C. 78u–1) is  
3           amended—

4                   (A) in subsection (d)(1) by—

5                           (i) striking “(subject to subsection  
6                           (e))”; and

7                           (ii) inserting “and section 21F of this  
8                           title” after “the Sarbanes-Oxley Act of  
9                           2002”;

10                   (B) by striking subsection (e); and

11                   (C) by redesignating subsections (f) and  
12                   (g) as subsections (e) and (f), respectively.

13   **SEC. 924. IMPLEMENTATION AND TRANSITION PROVISIONS**  
14                   **FOR WHISTLEBLOWER PROTECTION.**

15           (a) IMPLEMENTING RULES.—The Commission shall  
16           issue final regulations implementing the provisions of sec-  
17           tion 21F of the Securities Exchange Act of 1934, as added  
18           by this subtitle, not later than 270 days after the date  
19           of enactment of this Act.

20           (b) ORIGINAL INFORMATION.—Information provided  
21           to the Commission by a whistleblower in accordance with  
22           the regulations referenced in subsection (a) shall not lose  
23           the status of original information (as defined in section  
24           21F(i)(1) of the Securities Exchange Act of 1934, as  
25           added by this subtitle) solely because the whistleblower

1 provided the information prior to the effective date of the  
2 regulations, provided that the information is—

3 (1) provided by the whistleblower after the date  
4 of enactment of this subtitle, or monetary sanctions  
5 are collected after the date of enactment of this sub-  
6 title; or

7 (2) related to a violation for which an award  
8 under section 21F of the Securities Exchange Act of  
9 1934, as added by this subtitle, could have been paid  
10 at the time the information was provided by the  
11 whistleblower.

12 (c) AWARDS.—A whistleblower may receive an award  
13 pursuant to section 21F of the Securities Exchange Act  
14 of 1934, as added by this subtitle, regardless of whether  
15 any violation of a provision of the securities laws, or a  
16 rule or regulation thereunder, underlying the judicial or  
17 administrative action upon which the award is based, oc-  
18 curred prior to the date of enactment of this subtitle.

19 **SEC. 925. COLLATERAL BARS.**

20 (a) SECURITIES EXCHANGE ACT OF 1934.—

21 (1) SECTION 15.—Section 15(b)(6)(A) of the  
22 Securities Exchange Act of 1934 (15 U.S.C.  
23 78o(b)(6)(A)) is amended by striking “12 months,  
24 or bar such person from being associated with a  
25 broker or dealer,” and inserting “12 months, or bar



1 any such person from being associated with a  
2 broker, dealer, investment adviser, municipal securi-  
3 ties dealer, municipal advisor, transfer agent, or na-  
4 tionally recognized statistical rating organization,”.

5 (2) SECTION 15B.—Section 15B(c)(4) of the Se-  
6 curities Exchange Act of 1934 (15 U.S.C. 78o-  
7 4(c)(4)) is amended by striking “twelve months or  
8 bar any such person from being associated with a  
9 municipal securities dealer,” and inserting “12  
10 months or bar any such person from being associ-  
11 ated with a broker, dealer, investment adviser, mu-  
12 nicipal securities dealer, municipal advisor, transfer  
13 agent, or nationally recognized statistical rating or-  
14 ganization,”.

15 (3) SECTION 17A.—Section 17A(c)(4)(C) of the  
16 Securities Exchange Act of 1934 (15 U.S.C. 78q-  
17 1(c)(4)(C)) is amended by striking “twelve months  
18 or bar any such person from being associated with  
19 the transfer agent,” and inserting “12 months or  
20 bar any such person from being associated with any  
21 transfer agent, broker, dealer, investment adviser,  
22 municipal securities dealer, municipal advisor, or na-  
23 tionally recognized statistical rating organization,”.

24 (b) INVESTMENT ADVISERS ACT OF 1940.—Section  
25 203(f) of the Investment Advisers Act of 1940 (15 U.S.C.

1 80b–3(f)) is amended by striking “twelve months or bar  
2 any such person from being associated with an investment  
3 adviser,” and inserting “12 months or bar any such per-  
4 son from being associated with an investment adviser,  
5 broker, dealer, municipal securities dealer, municipal advi-  
6 sor, transfer agent, or nationally recognized statistical rat-  
7 ing organization,”.

8 **SEC. 926. DISQUALIFYING FELONS AND OTHER “BAD AC-**  
9 **TORS” FROM REGULATION D OFFERINGS.**

10 Not later than 1 year after the date of enactment  
11 of this Act, the Commission shall issue rules for the dis-  
12 qualification of offerings and sales of securities made  
13 under section 230.506 of title 17, Code of Federal Regula-  
14 tions, that—

15 (1) are substantially similar to the provisions of  
16 section 230.262 of title 17, Code of Federal Regula-  
17 tions, or any successor thereto; and

18 (2) disqualify any offering or sale of securities  
19 by a person that—

20 (A) is subject to a final order of a State  
21 securities commission (or an agency or officer  
22 of a State performing like functions), a State  
23 authority that supervises or examines banks,  
24 savings associations, or credit unions, a State  
25 insurance commission (or an agency or officer

1 of a State performing like functions), an appro-  
2 priate Federal banking agency, or the National  
3 Credit Union Administration, that—

4 (i) bars the person from—

5 (I) association with an entity reg-  
6 ulated by such commission, authority,  
7 agency, or officer;

8 (II) engaging in the business of  
9 securities, insurance, or banking; or

10 (III) engaging in savings associa-  
11 tion or credit union activities; or

12 (ii) constitutes a final order based on  
13 a violation of any law or regulation that  
14 prohibits fraudulent, manipulative, or de-  
15 ceptive conduct within the 10-year period  
16 ending on the date of the filing of the offer  
17 or sale; or

18 (B) has been convicted of any felony or  
19 misdemeanor in connection with the purchase  
20 or sale of any security or involving the making  
21 of any false filing with the Commission.

22 **SEC. 927. EQUAL TREATMENT OF SELF-REGULATORY ORGA-**  
23 **NIZATION RULES.**

24 Section 29(a) of the Securities Exchange Act of 1934  
25 (15 U.S.C. 78cc(a)) is amended by striking “an exchange

1 required thereby” and inserting “a self-regulatory organi-  
2 zation,”.

3 **SEC. 928. CLARIFICATION THAT SECTION 205 OF THE IN-**  
4 **VESTMENT ADVISERS ACT OF 1940 DOES NOT**  
5 **APPLY TO STATE-REGISTERED ADVISERS.**

6 Section 205(a) of the Investment Advisers Act of  
7 1940 (15 U.S.C. 80b–5(a)) is amended, in the matter pre-  
8 ceding paragraph (1)—

9 (1) by striking “, unless exempt from registra-  
10 tion pursuant to section 203(b),” and inserting  
11 “registered or required to be registered with the  
12 Commission”;

13 (2) by striking “make use of the mails or any  
14 means or instrumentality of interstate commerce, di-  
15 rectly or indirectly, to”; and

16 (3) by striking “to” after “in any way”.

17 **SEC. 929. UNLAWFUL MARGIN LENDING.**

18 Section 7(c)(1)(A) of the Securities Exchange Act of  
19 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking “;  
20 and” and inserting “; or”.

21 **SEC. 929A. PROTECTION FOR EMPLOYEES OF SUBSIDI-**  
22 **ARIES AND AFFILIATES OF PUBLICLY TRAD-**  
23 **ED COMPANIES.**

24 Section 1514A of title 18, United States Code, is  
25 amended by inserting “including any subsidiary or affil-

1 iate whose financial information is included in the consoli-  
2 dated financial statements of such company” after “the  
3 Securities Exchange Act of 1934 (15 U.S.C. 78o(d))”.

4 **SEC. 929B. FAIR FUND AMENDMENTS.**

5 Section 308 of the Sarbanes-Oxley Act of 2002 (15  
6 U.S.C. 7246(a)) is amended—

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

9 “(a) CIVIL PENALTIES TO BE USED FOR THE RE-  
10 LIEF OF VICTIMS.—If, in any judicial or administrative  
11 action brought by the Commission under the securities  
12 laws, the Commission obtains a civil penalty against any  
13 person for a violation of such laws, or such person agrees,  
14 in settlement of any such action, to such civil penalty, the  
15 amount of such civil penalty shall, on the motion or at  
16 the direction of the Commission, be added to and become  
17 part of a disgorgement fund or other fund established for  
18 the benefit of the victims of such violation.”;

19 (2) in subsection (b)—

20 (A) by striking “for a disgorgement fund  
21 described in subsection (a)” and inserting “for  
22 a disgorgement fund or other fund described in  
23 subsection (a)”;

24 (B) by striking “in the disgorgement fund”  
25 and inserting “in such fund”; and

1 (3) by striking subsection (e).

2 **SEC. 929C. INCREASING THE BORROWING LIMIT ON TREAS-**  
3 **URY LOANS.**

4 Section 4(h) of the Securities Investor Protection Act  
5 of 1970 (15 U.S.C. 78ddd(h)) is amended in the first sen-  
6 tence, by striking “\$1,000,000,000” and inserting  
7 “\$2,500,000,000”.

8 **SEC. 929D. LOST AND STOLEN SECURITIES.**

9 Section 17(f)(1) of the Securities Exchange Act of  
10 1934 (15 U.S.C. 78q(f)(1)) is amended—

11 (1) in subparagraph (A), by striking “missing,  
12 lost, counterfeit, or stolen securities” and inserting  
13 “securities that are missing, lost, counterfeit, stolen,  
14 or cancelled”; and

15 (2) in subparagraph (B), by striking “or sto-  
16 len” and inserting “stolen, cancelled, or reported in  
17 such other manner as the Commission, by rule, may  
18 prescribe”.

19 **SEC. 929E. NATIONWIDE SERVICE OF SUBPOENAS.**

20 (a) SECURITIES ACT OF 1933.—Section 22(a) of the  
21 Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by  
22 inserting after the second sentence the following: “In any  
23 action or proceeding instituted by the Commission under  
24 this title in a United States district court for any judicial  
25 district, a subpoena issued to compel the attendance of

1 a witness or the production of documents or tangible  
2 things (or both) at a hearing or trial may be served at  
3 any place within the United States. Rule 45(c)(3)(A)(ii)  
4 of the Federal Rules of Civil Procedure shall not apply  
5 to a subpoena issued under the preceding sentence.”.

6 (b) SECURITIES EXCHANGE ACT OF 1934.—Section  
7 27 of the Securities Exchange Act of 1934 (15 U.S.C.  
8 78aa) is amended by inserting after the third sentence the  
9 following: “In any action or proceeding instituted by the  
10 Commission under this title in a United States district  
11 court for any judicial district, a subpoena issued to compel  
12 the attendance of a witness or the production of docu-  
13 ments or tangible things (or both) at a hearing or trial  
14 may be served at any place within the United States. Rule  
15 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure  
16 shall not apply to a subpoena issued under the preceding  
17 sentence.”.

18 (c) INVESTMENT COMPANY ACT OF 1940.—Section  
19 44 of the Investment Company Act of 1940 (15 U.S.C.  
20 80a–43) is amended by inserting after the fourth sentence  
21 the following: “In any action or proceeding instituted by  
22 the Commission under this title in a United States district  
23 court for any judicial district, a subpoena issued to compel  
24 the attendance of a witness or the production of docu-  
25 ments or tangible things (or both) at a hearing or trial

1 may be served at any place within the United States. Rule  
2 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure  
3 shall not apply to a subpoena issued under the preceding  
4 sentence.”.

5 (d) INVESTMENT ADVISERS ACT OF 1940.—Section  
6 214 of the Investment Advisers Act of 1940 (15 U.S.C.  
7 80b–14) is amended by inserting after the third sentence  
8 the following: “In any action or proceeding instituted by  
9 the Commission under this title in a United States district  
10 court for any judicial district, a subpoena issued to compel  
11 the attendance of a witness or the production of docu-  
12 ments or tangible things (or both) at a hearing or trial  
13 may be served at any place within the United States. Rule  
14 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure  
15 shall not apply to a subpoena issued under the preceding  
16 sentence.”.

17 **SEC. 929F. FORMERLY ASSOCIATED PERSONS.**

18 (a) MEMBER OR EMPLOYEE OF THE MUNICIPAL SE-  
19 CURITIES RULEMAKING BOARD.—Section 15B(c)(8) of  
20 the Securities Exchange Act of 1934 (15 U.S.C. 78o–  
21 4(c)(8)) is amended by striking “any member or em-  
22 ployee” and inserting “any person who is, or at the time  
23 of the alleged violation or abuse was, a member or em-  
24 ployee”.



1 (b) PERSON ASSOCIATED WITH A GOVERNMENT SE-  
2 CURITIES BROKER OR DEALER.—Section 15C(c) of the  
3 Securities Exchange Act of 1934 (15 U.S.C. 78o–5(c)) is  
4 amended—

5 (1) in paragraph (1)(C), by striking “any per-  
6 son associated, or seeking to become associated,”  
7 and inserting “any person who is, or at the time of  
8 the alleged misconduct was, associated or seeking to  
9 become associated”; and

10 (2) in paragraph (2)—

11 (A) in subparagraph (A), by inserting “,  
12 seeking to become associated, or, at the time of  
13 the alleged misconduct, associated or seeking to  
14 become associated” after “any person associ-  
15 ated”; and

16 (B) in subparagraph (B), by inserting “,  
17 seeking to become associated, or, at the time of  
18 the alleged misconduct, associated or seeking to  
19 become associated” after “any person associ-  
20 ated”.

21 (c) PERSON ASSOCIATED WITH A MEMBER OF A NA-  
22 TIONAL SECURITIES EXCHANGE OR REGISTERED SECURI-  
23 TIES ASSOCIATION.—Section 21(a)(1) of the Securities  
24 Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended,  
25 in the first sentence, by inserting “, or, as to any act or

1 practice, or omission to act, while associated with a mem-  
2 ber, formerly associated” after “member or a person asso-  
3 ciated”.

4 (d) PARTICIPANT OF A REGISTERED CLEARING  
5 AGENCY.—Section 21(a)(1) of the Securities Exchange  
6 Act of 1934 (15 U.S.C. 78u(a)(1)) is amended, in the first  
7 sentence, by inserting “or, as to any act or practice, or  
8 omission to act, while a participant, was a participant,”  
9 after “in which such person is a participant,”.

10 (e) OFFICER OR DIRECTOR OF A SELF-REGULATORY  
11 ORGANIZATION.—Section 19(h)(4) of the Securities Ex-  
12 change Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

13 (1) by striking “any officer or director” and in-  
14 serting “any person who is, or at the time of the al-  
15 leged misconduct was, an officer or director”; and

16 (2) by striking “such officer or director” and  
17 inserting “such person”.

18 (f) OFFICER OR DIRECTOR OF AN INVESTMENT COM-  
19 PANY.—Section 36(a) of the Investment Company Act of  
20 1940 (15 U.S.C. 80a–35(a)) is amended—

21 (1) by striking “a person serving or acting” and  
22 inserting “a person who is, or at the time of the al-  
23 leged misconduct was, serving or acting”; and

24 (2) by striking “such person so serves or acts”  
25 and inserting “such person so serves or acts, or at

1 the time of the alleged misconduct, so served or  
2 acted”.

3 (g) PERSON ASSOCIATED WITH A PUBLIC ACCOUNT-  
4 ING FIRM.—

5 (1) SARBANES-OXLEY ACT OF 2002 AMEND-  
6 MENT.—Section 2(a)(9) of the Sarbanes-Oxley Act  
7 of 2002 (15 U.S.C. 7201(9)) is amended by adding  
8 at the end the following:

9 “(C) INVESTIGATIVE AND ENFORCEMENT  
10 AUTHORITY.—For purposes of sections 3(c),  
11 101(c), 105, and 107(c) and the rules of the  
12 Board and Commission issued thereunder, ex-  
13 cept to the extent specifically excepted by such  
14 rules, the terms defined in subparagraph (A)  
15 shall include any person associated, seeking to  
16 become associated, or formerly associated with  
17 a public accounting firm, except that—

18 “(i) the authority to conduct an inves-  
19 tigation of such person under section  
20 105(b) shall apply only with respect to any  
21 act or practice, or omission to act, by the  
22 person while such person was associated or  
23 seeking to become associated with a reg-  
24 istered public accounting firm; and

1           “(ii) the authority to commence a dis-  
2           ciplinary proceeding under section  
3           105(c)(1), or impose sanctions under sec-  
4           tion 105(c)(4), against such person shall  
5           apply only with respect to—

6                       “(I) conduct occurring while such  
7                       person was associated or seeking to  
8                       become associated with a registered  
9                       public accounting firm; or

10                      “(II) non-cooperation, as de-  
11                      scribed in section 105(b)(3), with re-  
12                      spect to a demand in a Board inves-  
13                      tigation for testimony, documents, or  
14                      other information relating to a period  
15                      when such person was associated or  
16                      seeking to become associated with a  
17                      registered public accounting firm.”.

18           (2) SECURITIES EXCHANGE ACT OF 1934  
19           AMENDMENT.—Section 21(a)(1) of the Securities  
20           Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is  
21           amended by striking “or a person associated with  
22           such a firm” and inserting “, a person associated  
23           with such a firm, or, as to any act, practice, or omis-  
24           sion to act, while associated with such firm, a person  
25           formerly associated with such a firm”.

1 (h) SUPERVISORY PERSONNEL OF AN AUDIT  
2 FIRM.—Section 105(c)(6) of the Sarbanes-Oxley Act of  
3 2002 (15 U.S.C. 7215(c)(6)) is amended—

4 (1) in subparagraph (A), by striking “the su-  
5 pervisory personnel” and inserting “any person who  
6 is, or at the time of the alleged failure reasonably to  
7 supervise was, a supervisory person”; and

8 (2) in subparagraph (B)—

9 (A) by striking “No associated person”  
10 and inserting “No current or former super-  
11 visory person”; and

12 (B) by striking “any other person” and in-  
13 serting “any associated person”.

14 (i) MEMBER OF THE PUBLIC COMPANY ACCOUNTING  
15 OVERSIGHT BOARD.—Section 107(d)(3) of the Sarbanes-  
16 Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by  
17 striking “any member” and inserting “any person who is,  
18 or at the time of the alleged misconduct was, a member”.

19 **SEC. 929G. STREAMLINED HIRING AUTHORITY FOR MAR-**  
20 **KET SPECIALISTS.**

21 (a) APPOINTMENT AUTHORITY.—Section 3114 of  
22 title 5, United States Code, is amended by striking the  
23 section heading and all that follows through the end of  
24 subsection (a) and inserting the following:

1 **“§ 3114. Appointment of candidates to certain posi-**  
2 **tions in the competitive service by the**  
3 **Securities and Exchange Commission**

4 “(a) **APPLICABILITY.**—This section applies with re-  
5 spect to any position of accountant, economist, and securi-  
6 ties compliance examiner at the Commission that is in the  
7 competitive service, and any position at the Commission  
8 in the competitive service that requires specialized knowl-  
9 edge of financial and capital market formation or regula-  
10 tion, financial market structures or surveillance, or infor-  
11 mation technology.”.

12 (b) **CLERICAL AMENDMENT.**—The table of sections  
13 for chapter 31 of title 5, United States Code, is amended  
14 by striking the item relating to section 3114 and inserting  
15 the following:

“3114. Appointment of candidates to positions in the competitive service by the  
Securities and Exchange Commission.”.

16 (c) **PAY AUTHORITY.**—The Commission may set the  
17 rate of pay for experts and consultants appointed under  
18 the authority of section 3109 of title 5, United States  
19 Code, in the same manner in which it sets the rate of pay  
20 for employees of the Commission.

21 **SEC. 929H. SIPC REFORMS.**

22 (a) **INCREASING THE CASH LIMIT OF PROTEC-**  
23 **TION.**—Section 9 of the Securities Investor Protection Act  
24 of 1970 (15 U.S.C. 78fff–3) is amended—

1           (1) in subsection (a)(1), by striking “\$100,000  
2           for each such customer” and inserting “the standard  
3           maximum cash advance amount for each such cus-  
4           tomer, as determined in accordance with subsection  
5           (d)”; and

6           (2) by adding the following new subsections:

7           “(d) STANDARD MAXIMUM CASH ADVANCE AMOUNT  
8           DEFINED.—For purposes of this section, the term ‘stand-  
9           ard maximum cash advance amount’ means \$250,000, as  
10          such amount may be adjusted after December 31, 2010,  
11          as provided under subsection (e).

12          “(e) INFLATION ADJUSTMENT.—

13                 “(1) IN GENERAL.—Not later than January 1,  
14                 2011, and every 5 years thereafter, and subject to  
15                 the approval of the Commission as provided under  
16                 section 3(e)(2), the Board of Directors of SIPC shall  
17                 determine whether an inflation adjustment to the  
18                 standard maximum cash advance amount is appro-  
19                 priate. If the Board of Directors of SIPC determines  
20                 such an adjustment is appropriate, then the stand-  
21                 ard maximum cash advance amount shall be an  
22                 amount equal to—

23                         “(A) \$250,000 multiplied by

24                         “(B) the ratio of the annual value of the  
25                 Personal Consumption Expenditures Chain-

1           Type Price Index (or any successor index there-  
2           to), published by the Department of Commerce,  
3           for the calendar year preceding the year in  
4           which such determination is made, to the pub-  
5           lished annual value of such index for the cal-  
6           endar year preceding the year in which this  
7           subsection was enacted.

8           The index values used in calculations under this  
9           paragraph shall be, as of the date of the calculation,  
10          the values most recently published by the Depart-  
11          ment of Commerce.

12           “(2) ROUNDING.—If the standard maximum  
13          cash advance amount determined under paragraph  
14          (1) for any period is not a multiple of \$10,000, the  
15          amount so determined shall be rounded down to the  
16          nearest \$10,000.

17           “(3) PUBLICATION AND REPORT TO THE CON-  
18          GRESS.—Not later than April 5 of any calendar year  
19          in which a determination is required to be made  
20          under paragraph (1)—

21                   “(A) the Commission shall publish in the  
22                   Federal Register the standard maximum cash  
23                   advance amount; and



1           “(B) the Board of Directors of SIPC shall  
2           submit a report to the Congress stating the  
3           standard maximum cash advance amount.

4           “(4) IMPLEMENTATION PERIOD.—Any adjust-  
5           ment to the standard maximum cash advance  
6           amount shall take effect on January 1 of the year  
7           immediately succeeding the calendar year in which  
8           such adjustment is made.

9           “(5) INFLATION ADJUSTMENT CONSIDER-  
10          ATIONS.—In making any determination under para-  
11          graph (1) to increase the standard maximum cash  
12          advance amount, the Board of Directors of SIPC  
13          shall consider—

14                 “(A) the overall state of the fund and the  
15                 economic conditions affecting members of  
16                 SIPC;

17                 “(B) the potential problems affecting mem-  
18                 bers of SIPC; and

19                 “(C) such other factors as the Board of  
20                 Directors of SIPC may determine appro-  
21                 priate.”.

22          (b) LIQUIDATION OF A CARRYING BROKER-DEAL-  
23          ER.—Section 5(a)(3) of the Securities Investor Protection  
24          Act of 1970 (15 U.S.C. 78eee(a)(3)) is amended—

1           (1) by striking the undesignated matter imme-  
2           diately following subparagraph (B);

3           (2) in subparagraph (A), by striking “any mem-  
4           ber of SIPC” and inserting “the member”;

5           (3) in subparagraph (B), by striking the comma  
6           at the end and inserting a period;

7           (4) by striking “If SIPC” and inserting the fol-  
8           lowing:

9                   “(A) IN GENERAL.—SIPC may, upon no-  
10                   tice to a member of SIPC, file an application  
11                   for a protective decree with any court of com-  
12                   petent jurisdiction specified in section 21(e) or  
13                   27 of the Securities Exchange Act of 1934, ex-  
14                   cept that no such application shall be filed with  
15                   respect to a member, the only customers of  
16                   which are persons whose claims could not be  
17                   satisfied by SIPC advances pursuant to section  
18                   9, if SIPC”; and

19           (5) by adding at the end the following:

20                   “(B) CONSENT REQUIRED.—No member of  
21                   SIPC that has a customer may enter into an in-  
22                   solvency, receivership, or bankruptcy pro-  
23                   ceeding, under Federal or State law, without  
24                   the specific consent of SIPC, except as provided

1 in title II of the Restoring American Financial  
2 Stability Act of 2010.”.

3 **SEC. 929I. PROTECTING CONFIDENTIALITY OF MATERIALS**  
4 **SUBMITTED TO THE COMMISSION.**

5 (a) SECURITIES EXCHANGE ACT OF 1934.—Section  
6 24 of the Securities Exchange Act of 1934 (15 U.S.C.  
7 78x) is amended—

8 (1) in subsection (d), by striking “subsection  
9 (e)” and inserting “subsection (f)”;

10 (2) by redesignating subsection (e) as sub-  
11 section (f); and

12 (3) by inserting after subsection (d) the fol-  
13 lowing:

14 “(e) RECORDS OBTAINED FROM REGISTERED PER-  
15 SONS.—

16 “(1) IN GENERAL.—Except as provided in sub-  
17 section (f), the Commission shall not be compelled to  
18 disclose records or information obtained pursuant to  
19 section 17(b), or records or information based upon  
20 or derived from such records or information, if such  
21 records or information have been obtained by the  
22 Commission for use in furtherance of the purposes  
23 of this title, including surveillance, risk assessments,  
24 or other regulatory and oversight activities.

1           “(2) TREATMENT OF INFORMATION.—For pur-  
2           poses of section 552 of title 5, United States Code,  
3           this subsection shall be considered a statute de-  
4           scribed in subsection (b)(3)(B) of such section 552.  
5           Collection of information pursuant to section 17  
6           shall be an administrative action involving an agency  
7           against specific individuals or agencies pursuant to  
8           section 3518(c)(1) of title 44, United States Code.”.

9           (b) INVESTMENT COMPANY ACT OF 1940.—Section  
10          31 of the Investment Company Act of 1940 (15 U.S.C.  
11          80a-30) is amended—

12           (1) by striking subsection (c) and inserting the  
13          following:

14          “(c) LIMITATIONS ON DISCLOSURE BY COMMIS-  
15          SION.—Notwithstanding any other provision of law, the  
16          Commission shall not be compelled to disclose any records  
17          or information provided to the Commission under this sec-  
18          tion, or records or information based upon or derived from  
19          such records or information, if such records or information  
20          have been obtained by the Commission for use in further-  
21          ance of the purposes of this title, including surveillance,  
22          risk assessments, or other regulatory and oversight activi-  
23          ties. Nothing in this subsection authorizes the Commission  
24          to withhold information from the Congress or prevent the  
25          Commission from complying with a request for informa-

1 tion from any other Federal department or agency re-  
2 questing the information for purposes within the scope of  
3 jurisdiction of that department or agency, or complying  
4 with an order of a court of the United States in an action  
5 brought by the United States or the Commission. For pur-  
6 poses of section 552 of title 5, United States Code, this  
7 section shall be considered a statute described in sub-  
8 section (b)(3)(B) of such section 552. Collection of infor-  
9 mation pursuant to section 31 shall be an administrative  
10 action involving an agency against specific individuals or  
11 agencies pursuant to section 3518(e)(1) of title 44, United  
12 States Code.”;

13 (2) by striking subsection (d); and

14 (3) by redesignating subsections (e) and (f) as  
15 subsections (d) and (e), respectively.

16 (c) INVESTMENT ADVISERS ACT OF 1940.—Section  
17 210 of the Investment Advisers Act of 1940 (15 U.S.C.  
18 80b-10) is amended by adding at the end the following:

19 “(d) LIMITATIONS ON DISCLOSURE BY THE COMMIS-  
20 SION.—Notwithstanding any other provision of law, the  
21 Commission shall not be compelled to disclose any records  
22 or information provided to the Commission under this sec-  
23 tion, or records or information based upon or derived from  
24 such records or information, if such records or information  
25 have been obtained by the Commission for use in further-

1 ance of the purposes of this title, including surveillance,  
2 risk assessments, or other regulatory and oversight activi-  
3 ties. Nothing in this subsection authorizes the Commission  
4 to withhold information from the Congress or prevent the  
5 Commission from complying with a request for informa-  
6 tion from any other Federal department or agency re-  
7 questing the information for purposes within the scope of  
8 jurisdiction of that department or agency, or complying  
9 with an order of a court of the United States in an action  
10 brought by the United States or the Commission. For pur-  
11 poses of section 552 of title 5, United States Code, this  
12 section shall be considered a statute described in sub-  
13 section (b)(3)(B) of such section 552. Collection of infor-  
14 mation pursuant to section 31 shall be an administrative  
15 action involving an agency against specific individuals or  
16 agencies pursuant to section 3518(c)(1) of title 44, United  
17 States Code.”.

18 **SEC. 929J. EXPANSION OF AUDIT INFORMATION TO BE PRO-**  
19 **DUCED AND EXCHANGED.**

20 Section 106 of the Sarbanes-Oxley Act of 2002 (15  
21 U.S.C. 7216) is amended—

22 (1) by striking subsection (b) and inserting the  
23 following:

24 “(b) PRODUCTION OF DOCUMENTS.—

1           “(1) PRODUCTION BY FOREIGN FIRMS.—If a  
2 foreign public accounting firm issues an audit re-  
3 port, performs audit work, conducts interim reviews,  
4 or performs material services upon which a reg-  
5 istered public accounting firm relies in the conduct  
6 of an audit or interim review, the foreign public ac-  
7 counting firm shall—

8           “(A) produce its audit work papers and all  
9 other documents related to any such audit work  
10 or interim review to the Commission or the  
11 Board; and

12           “(B) be subject to the jurisdiction of the  
13 courts of the United States for purposes of en-  
14 forcement of any request for such documents.

15           “(2) OTHER PRODUCTION.—Any registered  
16 public accounting firm that relies, in whole or in  
17 part, on the work of a foreign public accounting firm  
18 in issuing an audit report, performing audit work, or  
19 conducting an interim review, shall—

20           “(A) produce the audit work papers of the  
21 foreign public accounting firm and all other  
22 documents related to any such work in response  
23 to a request for production by the Commission  
24 or the Board; and

1           “(B) secure the agreement of any foreign  
2           public accounting firm to such production, as a  
3           condition of the reliance by the registered public  
4           accounting firm on the work of that foreign  
5           public accounting firm.”;

6           (2) by redesignating subsection (d) as sub-  
7           section (g); and

8           (3) by inserting after subsection (c) the fol-  
9           lowing:

10          “(d) SERVICE OF REQUESTS OR PROCESS.—

11           “(1) IN GENERAL.—Any foreign public account-  
12           ing firm that performs work for a domestic reg-  
13           istered public accounting firm shall furnish to the  
14           domestic registered public accounting firm a written  
15           irrevocable consent and power of attorney that des-  
16           ignates the domestic registered public accounting  
17           firm as an agent upon whom may be served any  
18           process, pleadings, or other papers in any action  
19           brought to enforce this section.

20           “(2) SPECIFIC AUDIT WORK.—Any foreign pub-  
21           lic accounting firm that issues an audit report, per-  
22           forms audit work, performs interim reviews, or per-  
23           forms material services upon which a registered pub-  
24           lic accounting firm relies in the conduct of an audit  
25           or interim review, shall designate to the Commission



1 or the Board an agent in the United States upon  
2 whom may be served any process, pleading, or other  
3 papers in any action brought to enforce this section  
4 or any request by the Commission or the Board  
5 under this section.

6 “(e) SANCTIONS.—A willful refusal to comply, in  
7 whole in or in part, with any request by the Commission  
8 or the Board under this section, shall be deemed a viola-  
9 tion of this Act.

10 “(f) OTHER MEANS OF SATISFYING PRODUCTION  
11 OBLIGATIONS.—Notwithstanding any other provisions of  
12 this section, the staff of the Commission or the Board may  
13 allow a foreign public accounting firm that is subject to  
14 this section to meet production obligations under this sec-  
15 tion through alternate means, such as through foreign  
16 counterparts of the Commission or the Board.”.

17 **SEC. 929K. SHARING PRIVILEGED INFORMATION WITH**  
18 **OTHER AUTHORITIES.**

19 Section 24 of the Securities Exchange Act of 1934  
20 (15 U.S.C. 78x) is amended—

21 (1) in subsection (d), as amended by subsection  
22 (d)(1)(A), by striking “subsection (f)” and inserting  
23 “subsection (g)”;

1           (2) in subsection (e), as added by subsection  
2           (d)(1)(C), by striking “subsection (f)” and inserting  
3           “subsection (g)”;

4           (3) by redesignating subsection (f) as sub-  
5           section (g); and

6           (4) by inserting after subsection (e) the fol-  
7           lowing:

8           “(f) SHARING PRIVILEGED INFORMATION WITH  
9           OTHER AUTHORITIES.—

10           “(1) PRIVILEGED INFORMATION PROVIDED BY  
11           THE COMMISSION.—The Commission shall not be  
12           deemed to have waived any privilege applicable to  
13           any information by transferring that information to  
14           or permitting that information to be used by—

15                   “(A) any agency (as defined in section 6 of  
16                   title 18, United States Code);

17                   “(B) the Public Company Accounting  
18                   Oversight Board;

19                   “(C) any self-regulatory organization;

20                   “(D) any foreign securities authority;

21                   “(E) any foreign law enforcement author-  
22                   ity; or

23                   “(F) any State securities or law enforce-  
24                   ment authority.

1           “(2) NONDISCLOSURE OF PRIVILEGED INFOR-  
2           MATION PROVIDED TO THE COMMISSION.—The Com-  
3           mission shall not be compelled to disclose privileged  
4           information obtained from any foreign securities au-  
5           thority, or foreign law enforcement authority, if the  
6           authority has in good faith determined and rep-  
7           resented to the Commission that the information is  
8           privileged.

9           “(3) NONWAIVER OF PRIVILEGED INFORMATION  
10          PROVIDED TO THE COMMISSION.—

11           “(A) IN GENERAL.—Federal agencies,  
12          State securities and law enforcement authori-  
13          ties, self-regulatory organizations, and the Pub-  
14          lic Company Accounting Oversight Board shall  
15          not be deemed to have waived any privilege ap-  
16          plicable to any information by transferring that  
17          information to or permitting that information  
18          to be used by the Commission.

19           “(B) EXCEPTION.—The provisions of sub-  
20          paragraph (A) shall not apply to a self-regu-  
21          latory organization or the Public Company Ac-  
22          counting Oversight Board with respect to infor-  
23          mation used by the Commission in an action  
24          against such organization.

1           “(4) DEFINITIONS.—For purposes of this sub-  
2 section—

3           “(A) the term ‘privilege’ includes any  
4 work-product privilege, attorney-client privilege,  
5 governmental privilege, or other privilege recog-  
6 nized under Federal, State, or foreign law;

7           “(B) the term ‘foreign law enforcement au-  
8 thority’ means any foreign authority that is em-  
9 powered under foreign law to detect, investigate  
10 or prosecute potential violations of law; and

11           “(C) the term ‘State securities or law en-  
12 forcement authority’ means the authority of any  
13 State or territory that is empowered under  
14 State or territory law to detect, investigate, or  
15 prosecute potential violations of law.”.

16 **SEC. 929L. ENHANCED APPLICATION OF ANTIFRAUD PRO-**  
17 **VISIONS.**

18           The Securities Exchange Act of 1934 (15 U.S.C. 78a  
19 et seq.) is amended—

20           (1) in section 9—

21           (A) by striking “registered on a national  
22 securities exchange” each place that term ap-  
23 pears and inserting “other than a government  
24 security”;

1 (B) in subsection (b), by striking “by use  
2 of any facility of a national securities ex-  
3 change,”; and

4 (C) in subsection (c), by inserting after  
5 “unlawful for any” the following: “broker, deal-  
6 er, or”;

7 (2) in section 10(a)(1), by striking “registered  
8 on a national securities exchange” and inserting  
9 “other than a government security”; and

10 (3) in section 15(c)(1)(A), by striking “other-  
11 wise than on a national securities exchange of which  
12 it is a member”.

13 **SEC. 929M. AIDING AND ABETTING AUTHORITY UNDER THE**  
14 **SECURITIES ACT AND THE INVESTMENT COM-**  
15 **PANY ACT.**

16 (a) UNDER THE SECURITIES ACT OF 1933.—Section  
17 15 of the Securities Act of 1933 (15 U.S.C. 77o) is  
18 amended—

19 (1) by striking “Every person who” and insert-  
20 ing “(a) CONTROLLING PERSONS.—Every person  
21 who”; and

22 (2) by adding at the end the following:

23 “(b) PROSECUTION OF PERSONS WHO AID AND  
24 ABET VIOLATIONS.—For purposes of any action brought  
25 by the Commission under subparagraph (b) or (d) of sec-

1 tion 20, any person that knowingly provides substantial  
2 assistance to another person in violation of a provision of  
3 this Act, or of any rule or regulation issued under this  
4 Act, shall be deemed to be in violation of such provision  
5 to the same extent as the person to whom such assistance  
6 is provided.”.

7 (b) UNDER THE INVESTMENT COMPANY ACT OF  
8 1940.—Section 48 of the Investment Company Act of  
9 1940 (15 U.S.C. 80a–48) is amended by redesignating  
10 subsection (b) as subsection (c) and inserting after sub-  
11 section (a) the following:

12 “(b) For purposes of any action brought by the Com-  
13 mission under subsection (d) or (e) of section 42, any per-  
14 son that knowingly provides substantial assistance to an-  
15 other person in violation of a provision of this Act, or of  
16 any rule or regulation issued under this Act, shall be  
17 deemed to be in violation of such provision to the same  
18 extent as the person to whom such assistance is pro-  
19 vided.”.

20 **SEC. 929N. AUTHORITY TO IMPOSE PENALTIES FOR AIDING**  
21 **AND ABETTING VIOLATIONS OF THE INVEST-**  
22 **MENT ADVISERS ACT.**

23 Section 209 of the Investment Advisers Act of 1940  
24 (15 U.S.C. 80b–9) is amended by inserting at the end the  
25 following new subsection:

1       “(f) AIDING AND ABETTING.—For purposes of any  
2 action brought by the Commission under subsection (e),  
3 any person that knowingly has aided, abetted, counseled,  
4 commanded, induced, or procured a violation of any provi-  
5 sion of this Act, or of any rule, regulation, or order here-  
6 under, shall be deemed to be in violation of such provision,  
7 rule, regulation, or order to the same extent as the person  
8 that committed such violation.”.

9       **Subtitle C—Improvements to the**  
10       **Regulation of Credit Rating**  
11       **Agencies**

12       **SEC. 931. FINDINGS.**

13       Congress finds the following:

14               (1) Because of the systemic importance of cred-  
15       it ratings and the reliance placed on credit ratings  
16       by individual and institutional investors and finan-  
17       cial regulators, the activities and performances of  
18       credit rating agencies, including nationally recog-  
19       nized statistical rating organizations, are matters of  
20       national public interest, as credit rating agencies are  
21       central to capital formation, investor confidence, and  
22       the efficient performance of the United States econ-  
23       omy.

24               (2) Credit rating agencies, including nationally  
25       recognized statistical rating organizations, play a

1 critical “gatekeeper” role in the debt market that is  
2 functionally similar to that of securities analysts,  
3 who evaluate the quality of securities in the equity  
4 market, and auditors, who review the financial state-  
5 ments of firms. Such role justifies a similar level of  
6 public oversight and accountability.

7 (3) Because credit rating agencies perform eval-  
8 uative and analytical services on behalf of clients,  
9 much as other financial “gatekeepers” do, the activi-  
10 ties of credit rating agencies are fundamentally com-  
11 mercial in character and should be subject to the  
12 same standards of liability and oversight as apply to  
13 auditors, securities analysts, and investment bank-  
14 ers.

15 (4) In certain activities, particularly in advising  
16 arrangers of structured financial products on poten-  
17 tial ratings of such products, credit rating agencies  
18 face conflicts of interest that need to be carefully  
19 monitored and that therefore should be addressed  
20 explicitly in legislation in order to give clearer au-  
21 thority to the Securities and Exchange Commission.

22 (5) In the recent financial crisis, the ratings on  
23 structured financial products have proven to be inac-  
24 curate. This inaccuracy contributed significantly to  
25 the mismanagement of risks by financial institutions



1 and investors, which in turn adversely impacted the  
2 health of the economy in the United States and  
3 around the world. Such inaccuracy necessitates in-  
4 creased accountability on the part of credit rating  
5 agencies.

6 **SEC. 932. ENHANCED REGULATION, ACCOUNTABILITY, AND**  
7 **TRANSPARENCY OF NATIONALLY RECOG-**  
8 **NIZED STATISTICAL RATING ORGANIZA-**  
9 **TIONS.**

10 Section 15E of the Securities Exchange Act of 1934  
11 (15 U.S.C. 78o-7) is amended—

12 (1) in subsection (c)—

13 (A) in paragraph (2)—

14 (i) in the second sentence, by insert-  
15 ing “any other provision of this section,  
16 or” after “Notwithstanding”; and

17 (ii) by inserting after the period at  
18 the end the following: “Nothing in this  
19 paragraph may be construed to afford a  
20 defense against any action or proceeding  
21 brought by the Commission to enforce the  
22 antifraud provisions of the securities  
23 laws.”; and

24 (B) by adding at the end the following:

1           “(3) INTERNAL CONTROLS OVER PROCESSES  
2           FOR DETERMINING CREDIT RATINGS.—

3           “(A) IN GENERAL.—Each nationally recog-  
4           nized statistical rating organization shall estab-  
5           lish, maintain, enforce, and document an effec-  
6           tive internal control structure governing the im-  
7           plementation of and adherence to policies, pro-  
8           cedures, and methodologies for determining  
9           credit ratings, taking into consideration such  
10          factors as the Commission may prescribe, by  
11          rule.

12          “(B) ATTESTATION REQUIREMENT.—The  
13          Commission shall prescribe rules requiring each  
14          nationally recognized statistical rating organiza-  
15          tion to submit to the Commission an annual in-  
16          ternal controls report, which shall contain—

17                 “(i) a description of the responsibility  
18                 of the management of the nationally recog-  
19                 nized statistical rating organization in es-  
20                 tablishing and maintaining an effective in-  
21                 ternal control structure under subpara-  
22                 graph (A);

23                 “(ii) an assessment of the effective-  
24                 ness of the internal control structure of the

1 nationally recognized statistical rating or-  
2 ganization; and

3 “(iii) the attestation of the chief execu-  
4 tive officer, or equivalent individual, of  
5 the nationally recognized statistical rating  
6 organization.”;

7 (2) in subsection (d)—

8 (A) by inserting after “or revoke the reg-  
9 istration of any nationally recognized statistical  
10 rating organization” the following: “, or with  
11 respect to any person who is associated with,  
12 who is seeking to become associated with, or, at  
13 the time of the alleged misconduct, who was as-  
14 sociated or was seeking to become associated  
15 with a nationally recognized statistical rating  
16 organization, the Commission, by order, shall  
17 censure, place limitations on the activities or  
18 functions of such person, suspend for a period  
19 not exceeding 1 year, or bar such person from  
20 being associated with a nationally recognized  
21 statistical rating organization,”;

22 (B) by inserting “bar” after “placing of  
23 limitations, suspension,”;

24 (C) in paragraph (2), by redesignating  
25 subparagraphs (A) and (B) as clauses (i) and

1 (ii), respectively, and adjusting the clause mar-  
2 gins accordingly;

3 (D) by redesignating paragraphs (1)  
4 through (5) as subparagraphs (A) through (E),  
5 respectively, and adjusting the subparagraph  
6 margins accordingly;

7 (E) in the matter preceding subparagraph  
8 (A), as so redesignated, by striking “The Com-  
9 mission” and inserting the following:

10 “(1) IN GENERAL.—The Commission”;

11 (F) in subparagraph (D), as so redesi-  
12 gnated, by striking “or” at the end;

13 (G) in subparagraph (E), as so redesi-  
14 gnated, by striking the period at the end and in-  
15 serting a semicolon; and

16 (H) by adding at the end the following:

17 “(F) has failed reasonably to supervise,  
18 with a view to preventing a violation of the se-  
19 curities laws, an individual who commits such a  
20 violation, if the individual is subject to the su-  
21 pervision of that person.

22 “(2) SUSPENSION OR REVOCATION FOR PAR-  
23 TICULAR CLASS OF SECURITIES.—

24 “(A) IN GENERAL.—The Commission may  
25 temporarily suspend or permanently revoke the

1 registration of a nationally recognized statistical  
2 rating organization with respect to a particular  
3 class or subclass of securities, if the Commis-  
4 sion finds, on the record after notice and oppor-  
5 tunity for hearing, that the nationally recog-  
6 nized statistical rating organization does not  
7 have adequate financial and managerial re-  
8 sources to consistently produce credit ratings  
9 with integrity.

10 “(B) CONSIDERATIONS.—In making any  
11 determination under subparagraph (A), the  
12 Commission shall consider—

13 “(i) whether the nationally recognized  
14 statistical rating organization has failed  
15 over a sustained period of time, as deter-  
16 mined by the Commission, to produce rat-  
17 ings that are accurate for that class or  
18 subclass of securities; and

19 “(ii) such other factors as the Com-  
20 mission may determine.”;

21 (3) in subsection (h), by adding at the end the  
22 following:

23 “(3) SEPARATION OF RATINGS FROM SALES  
24 AND MARKETING.—

1           “(A) RULES REQUIRED.—The Commission  
2 shall issue rules to prevent the sales and mar-  
3 keting considerations of a nationally recognized  
4 statistical rating organization from influencing  
5 the production of ratings by the nationally rec-  
6 ognized statistical rating organization.

7           “(B) CONTENTS OF RULES.—The rules  
8 issued under subparagraph (A) shall provide  
9 for—

10           “(i) exceptions for small nationally  
11 recognized statistical rating organizations  
12 with respect to which the Commission de-  
13 termines that the separation of the produc-  
14 tion of ratings and sales and marketing ac-  
15 tivities is not appropriate; and

16           “(ii) suspension or revocation of the  
17 registration of a nationally recognized sta-  
18 tistical rating organization, if the Commis-  
19 sion finds, on the record, after notice and  
20 opportunity for a hearing, that—

21           “(I) the nationally recognized  
22 statistical rating organization has  
23 committed a violation of a rule issued  
24 under this subsection; and

1                   “(II) the violation of a rule  
2                   issued under this subsection affected a  
3                   rating.”;

4                   (4) in subsection (j)—

5                   (A) by striking “Each” and inserting the  
6                   following:

7                   “(1) IN GENERAL.—Each”; and

8                   (B) by adding at the end the following:

9                   “(2) LIMITATIONS.—

10                   “(A) IN GENERAL.—Except as provided in  
11                   subparagraph (B), an individual designated  
12                   under paragraph (1) may not, while serving in  
13                   the designated capacity—

14                   “(i) perform credit ratings;

15                   “(ii) participate in the development of  
16                   ratings methodologies or models;

17                   “(iii) perform marketing or sales  
18                   functions; or

19                   “(iv) participate in establishing com-  
20                   pensation levels, other than for employees  
21                   working for that individual.

22                   “(B) EXCEPTION.—The Commission may  
23                   exempt a small nationally recognized statistical  
24                   rating organization from the limitations under  
25                   this paragraph, if the Commission finds that

1 compliance with such limitations would impose  
2 an unreasonable burden on the nationally recog-  
3 nized statistical rating organization.

4 “(3) OTHER DUTIES.—Each individual des-  
5 ignated under paragraph (1) shall establish proce-  
6 dures for the receipt, retention, and treatment of—

7 “(A) complaints regarding credit ratings,  
8 models, methodologies, and compliance with the  
9 securities laws and the policies and procedures  
10 developed under this section; and

11 “(B) confidential, anonymous complaints  
12 by employees or users of credit ratings.

13 “(4) ANNUAL REPORTS REQUIRED.—

14 “(A) ANNUAL REPORTS REQUIRED.—Each  
15 individual designated under paragraph (1) shall  
16 submit to the nationally recognized statistical  
17 rating organization an annual report on the  
18 compliance of the nationally recognized statis-  
19 tical rating organization with the securities laws  
20 and the policies and procedures of the nation-  
21 ally recognized statistical rating organization  
22 that includes—

23 “(i) a description of any material  
24 changes to the code of ethics and conflict



1 of interest policies of the nationally recog-  
2 nized statistical rating organization; and

3 “(ii) a certification that the report is  
4 accurate and complete.

5 “(B) SUBMISSION OF REPORTS TO THE  
6 COMMISSION.—Each nationally recognized sta-  
7 tistical rating organization shall file the reports  
8 required under subparagraph (A) together with  
9 the financial report that is required to be sub-  
10 mitted to the Commission under this section.”;  
11 and

12 (5) by striking subsection (p) and inserting the  
13 following:

14 “(p) REGULATION OF NATIONALLY RECOGNIZED  
15 STATISTICAL RATING ORGANIZATIONS.—

16 “(1) ESTABLISHMENT OF OFFICE OF CREDIT  
17 RATINGS.—

18 “(A) OFFICE ESTABLISHED.—The Com-  
19 mission shall establish within the Commission  
20 an Office of Credit Ratings (referred to in this  
21 subsection as the ‘Office’) to administer the  
22 rules of the Commission—

23 “(i) with respect to the practices of  
24 nationally recognized statistical rating or-  
25 ganizations in determining ratings, for the

1 protection of users of credit ratings and in  
2 the public interest;

3 “(ii) to promote accuracy in credit  
4 ratings issued by nationally recognized sta-  
5 tistical rating organizations; and

6 “(iii) to ensure that such ratings are  
7 not unduly influenced by conflicts of inter-  
8 est.

9 “(B) DIRECTOR OF THE OFFICE.—The  
10 head of the Office shall be the Director, who  
11 shall report to the Chairman.

12 “(2) STAFFING.—The Office established under  
13 this subsection shall be staffed sufficiently to carry  
14 out fully the requirements of this section. The staff  
15 shall include persons with knowledge of and exper-  
16 tise in corporate, municipal, and structured debt fi-  
17 nance.

18 “(3) COMMISSION EXAMINATIONS.—

19 “(A) ANNUAL EXAMINATIONS RE-  
20 QUIRED.—The Office shall conduct an examina-  
21 tion of each nationally recognized statistical  
22 rating organization at least annually.

23 “(B) CONDUCT OF EXAMINATIONS.—Each  
24 examination under subparagraph (A) shall in-  
25 clude a review of—

1                   “(i) whether the nationally recognized  
2                   statistical rating organization conducts  
3                   business in accordance with the policies,  
4                   procedures, and rating methodologies of  
5                   the nationally recognized statistical rating  
6                   organization;

7                   “(ii) the management of conflicts of  
8                   interest by the nationally recognized statis-  
9                   tical rating organization;

10                  “(iii) implementation of ethics policies  
11                  by the nationally recognized statistical rat-  
12                  ing organization;

13                  “(iv) the internal supervisory controls  
14                  of the nationally recognized statistical rat-  
15                  ing organization;

16                  “(v) the governance of the nationally  
17                  recognized statistical rating organization;

18                  “(vi) the activities of the individual  
19                  designated by the nationally recognized  
20                  statistical rating organization under sub-  
21                  section (j)(1);

22                  “(vii) the processing of complaints by  
23                  the nationally recognized statistical rating  
24                  organization; and

1           “(viii) the policies of the nationally  
2           recognized statistical rating organization  
3           governing the post-employment activities of  
4           former staff of the nationally recognized  
5           statistical rating organization.

6           “(C) INSPECTION REPORTS.—The Com-  
7           mission shall make available to the public, in an  
8           easily understandable format, an annual report  
9           summarizing—

10           “(i) the essential findings of all ex-  
11           aminations conducted under subparagraph  
12           (A), as deemed appropriate by the Com-  
13           mission;

14           “(ii) the responses by the nationally  
15           recognized statistical rating organizations  
16           to any material regulatory deficiencies  
17           identified by the Commission under clause  
18           (i); and

19           “(iii) whether the nationally recog-  
20           nized statistical rating organizations have  
21           appropriately addressed the recommenda-  
22           tions of the Commission contained in pre-  
23           vious reports under this subparagraph.

24           “(4) RULEMAKING AUTHORITY.—The Commis-  
25           sion shall—

1           “(A) establish, by rule, fines, and other  
2           penalties applicable to any nationally recognized  
3           statistical rating organization that violates the  
4           requirements of this subsection and the rules  
5           thereunder; and

6           “(B) issue such rules as may be necessary  
7           to carry out this subsection.

8           “(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

9           “(1) RULEMAKING REQUIRED.—The Commis-  
10          sion shall, by rule, require that each nationally rec-  
11          ognized statistical rating organization publicly dis-  
12          close information on the initial credit ratings deter-  
13          mined by the nationally recognized statistical rating  
14          organization for each type of obligor, security, and  
15          money market instrument, and any subsequent  
16          changes to such credit ratings, for the purpose of al-  
17          lowing users of credit ratings to evaluate the accu-  
18          racy of ratings and compare the performance of rat-  
19          ings by different nationally recognized statistical rat-  
20          ing organizations.

21          “(2) CONTENT.—The rules of the Commission  
22          under this subsection shall require, at a minimum,  
23          disclosures that—

24                 “(A) are comparable among nationally rec-  
25                 ognized statistical rating organizations, to allow

1 users of credit ratings to compare the perform-  
2 ance of credit ratings across nationally recog-  
3 nized statistical rating organizations;

4 “(B) are clear and informative for inves-  
5 tors having a wide range of sophistication who  
6 use or might use credit ratings;

7 “(C) include performance information over  
8 a range of years and for a variety of types of  
9 credit ratings, including for credit ratings with-  
10 drawn by the nationally recognized statistical  
11 rating organization;

12 “(D) are published and made freely avail-  
13 able by the nationally recognized statistical rat-  
14 ing organization, on an easily accessible portion  
15 of its website, and in writing, when requested;  
16 and

17 “(E) are appropriate to the business model  
18 of a nationally recognized statistical rating or-  
19 ganization.

20 “(r) CREDIT RATINGS METHODOLOGIES.—The Com-  
21 mission shall prescribe rules, for the protection of inves-  
22 tors and in the public interest, with respect to the proce-  
23 dures and methodologies, including qualitative and quan-  
24 titative data and models, used by nationally recognized

1 statistical rating organizations that require each nation-  
2 ally recognized statistical rating organization—

3 “(1) to ensure that credit ratings are deter-  
4 mined using procedures and methodologies, includ-  
5 ing qualitative and quantitative data and models,  
6 that are—

7 “(A) approved by the board of the nation-  
8 ally recognized statistical rating organization, a  
9 body performing a function similar to that of a  
10 board, or the senior credit officer of the nation-  
11 ally recognized statistical rating organization;  
12 and

13 “(B) in accordance with the policies and  
14 procedures of the nationally recognized statis-  
15 tical rating organization for the development  
16 and modification of credit rating procedures  
17 and methodologies;

18 “(2) to ensure that when material changes to  
19 credit rating procedures and methodologies (includ-  
20 ing changes to qualitative and quantitative data and  
21 models) are made, that—

22 “(A) the changes are applied consistently  
23 to all credit ratings to which the changed proce-  
24 dures and methodologies apply;

1           “(B) to the extent that changes are made  
2           to credit rating surveillance procedures and  
3           methodologies, the changes are applied to then-  
4           current credit ratings by the nationally recog-  
5           nized statistical rating organization within a  
6           reasonable time period determined by the Com-  
7           mission, by rule; and

8           “(C) the nationally recognized statistical  
9           rating organization publicly discloses the reason  
10          for the change; and

11          “(3) to notify users of credit ratings—

12           “(A) of the version of a procedure or meth-  
13           odology, including the qualitative methodology  
14           or quantitative inputs, used with respect to a  
15           particular credit rating;

16           “(B) when a material change is made to a  
17           procedure or methodology, including to a quali-  
18           tative model or quantitative inputs;

19           “(C) when a significant error is identified  
20           in a procedure or methodology, including a  
21           qualitative or quantitative model, that may re-  
22           sult in credit rating actions; and

23           “(D) of the likelihood of a material change  
24           described in subparagraph (B) resulting in a  
25           change in current credit ratings.



1       “(s) TRANSPARENCY OF CREDIT RATING METH-  
2       ODOLOGIES AND INFORMATION REVIEWED.—

3               “(1) FORM FOR DISCLOSURES.—The Commis-  
4       sion shall require, by rule, each nationally recognized  
5       statistical rating organization to prescribe a form to  
6       accompany the publication of each credit rating that  
7       discloses—

8               “(A) information relating to—

9                       “(i) the assumptions underlying the  
10       credit rating procedures and methodolo-  
11       gies;

12                      “(ii) the data that was relied on to de-  
13       termine the credit rating; and

14                      “(iii) if applicable, how the nationally  
15       recognized statistical rating organization  
16       used servicer or remittance reports, and  
17       with what frequency, to conduct surveil-  
18       lance of the credit rating; and

19               “(B) information that can be used by in-  
20       vestors and other users of credit ratings to bet-  
21       ter understand credit ratings in each class of  
22       credit rating issued by the nationally recognized  
23       statistical rating organization.

24               “(2) FORMAT.—The form developed under  
25       paragraph (1) shall—

1           “(A) be easy to use and helpful for users  
2 of credit ratings to understand the information  
3 contained in the report;

4           “(B) require the nationally recognized sta-  
5 tistical rating organization to provide the con-  
6 tent described in paragraph (3)(B) in a manner  
7 that is directly comparable across types of secu-  
8 rities; and

9           “(C) be made readily available to users of  
10 credit ratings, in electronic or paper form, as  
11 the Commission may, by rule, determine.

12           “(3) CONTENT OF FORM.—

13           “(A) QUALITATIVE CONTENT.—Each na-  
14 tionally recognized statistical rating organiza-  
15 tion shall disclose on the form developed under  
16 paragraph (1)—

17           “(i) the credit ratings produced by the  
18 nationally recognized statistical rating or-  
19 ganization;

20           “(ii) the main assumptions and prin-  
21 ciples used in constructing procedures and  
22 methodologies, including qualitative meth-  
23 odologies and quantitative inputs and as-  
24 sumptions about the correlation of defaults

1 across underlying assets used in rating  
2 structured products;

3 “(iii) the potential limitations of the  
4 credit ratings, and the types of risks ex-  
5 cluded from the credit ratings that the na-  
6 tionally recognized statistical rating orga-  
7 nization does not comment on, including li-  
8 quidity, market, and other risks;

9 “(iv) information on the uncertainty  
10 of the credit rating, including—

11 “(I) information on the reli-  
12 ability, accuracy, and quality of the  
13 data relied on in determining the  
14 credit rating; and

15 “(II) a statement relating to the  
16 extent to which data essential to the  
17 determination of the credit rating  
18 were reliable or limited, including—

19 “(aa) any limits on the  
20 scope of historical data; and

21 “(bb) any limits in accessi-  
22 bility to certain documents or  
23 other types of information that  
24 would have better informed the  
25 credit rating;

1           “(v) whether and to what extent third  
2 party due diligence services have been used  
3 by the nationally recognized statistical rat-  
4 ing organization, a description of the infor-  
5 mation that such third party reviewed in  
6 conducting due diligence services, and a  
7 description of the findings or conclusions  
8 of such third party;

9           “(vi) a description of the data about  
10 any obligor, issuer, security, or money  
11 market instrument that were relied upon  
12 for the purpose of determining the credit  
13 rating;

14           “(vii) a statement containing an over-  
15 all assessment of the quality of information  
16 available and considered in producing a  
17 rating for an obligor, security, or money  
18 market instrument, in relation to the qual-  
19 ity of information available to the nation-  
20 ally recognized statistical rating organiza-  
21 tion in rating similar issuances;

22           “(viii) information relating to conflicts  
23 of interest of the nationally recognized sta-  
24 tistical rating organization; and

1                   “(ix) such additional information as  
2                   the Commission may require.

3                   “(B) QUANTITATIVE CONTENT.—Each na-  
4                   tionally recognized statistical rating organiza-  
5                   tion shall disclose on the form developed under  
6                   this subsection—

7                   “(i) an explanation or measure of the  
8                   potential volatility of the credit rating, in-  
9                   cluding—

10                   “(I) any factors that might lead  
11                   to a change in the credit ratings; and

12                   “(II) the magnitude of the  
13                   change that a user can expect under  
14                   different market conditions;

15                   “(ii) information on the content of the  
16                   rating, including—

17                   “(I) the historical performance of  
18                   the rating; and

19                   “(II) the expected probability of  
20                   default and the expected loss in the  
21                   event of default;

22                   “(iii) information on the sensitivity of  
23                   the rating to assumptions made by the na-  
24                   tionally recognized statistical rating orga-  
25                   nization, including—

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1                   “(I) 5 assumptions made in the  
2 ratings process that, without account-  
3 ing for any other factor, would have  
4 the greatest impact on a rating if the  
5 assumptions were proven false or in-  
6 accurate; and

7                   “(II) an analysis, using specific  
8 examples, of how each of the 5 as-  
9 sumptions identified under subclause  
10 (I) impacts a rating;

11                   “(iv) such additional information as  
12 may be required by the Commission.

13                   “(4) DUE DILIGENCE SERVICES FOR ASSET-  
14 BACKED SECURITIES.—

15                   “(A) FINDINGS.—The issuer or under-  
16 writer of any asset-backed security shall make  
17 publicly available the findings and conclusions  
18 of any third-party due diligence report obtained  
19 by the issuer or underwriter.

20                   “(B) CERTIFICATION REQUIRED.—In any  
21 case in which third-party due diligence services  
22 are employed by a nationally recognized statis-  
23 tical rating organization, an issuer, or an un-  
24 derwriter, the person providing the due dili-  
25 gence services shall provide to any nationally

1 recognized statistical rating organization that  
2 produces a rating to which such services relate,  
3 written certification, as provided in subpara-  
4 graph (C).

5 “(C) FORMAT AND CONTENT.—The Com-  
6 mission shall establish the appropriate format  
7 and content for the written certifications re-  
8 quired under subparagraph (B), to ensure that  
9 providers of due diligence services have con-  
10 ducted a thorough review of data, documenta-  
11 tion, and other relevant information necessary  
12 for a nationally recognized statistical rating or-  
13 ganization to provide an accurate rating.

14 “(D) DISCLOSURE OF CERTIFICATION.—  
15 The Commission shall adopt rules requiring a  
16 nationally recognized statistical rating organiza-  
17 tion, at the time at which the nationally recog-  
18 nized statistical rating organization produces a  
19 rating, to disclose the certification described in  
20 subparagraph (B) to the public in a manner  
21 that allows the public to determine the ade-  
22 quacy and level of due diligence services pro-  
23 vided by a third party.

24 “(t) CORPORATE GOVERNANCE, ORGANIZATION, AND  
25 MANAGEMENT OF CONFLICTS OF INTEREST.—

1           “(1) BOARD OF DIRECTORS.—Each nationally  
2 recognized statistical rating organization shall have  
3 a board of directors.

4           “(2) INDEPENDENT DIRECTORS.—

5                 “(A) IN GENERAL.—At least  $\frac{1}{2}$  of the  
6 board of directors, but not fewer than 2 of the  
7 members thereof, shall be independent of the  
8 nationally recognized statistical rating agency.  
9 A portion of the independent directors shall in-  
10 clude users of ratings from a nationally recog-  
11 nized statistical rating organization.

12                 “(B) INDEPENDENCE DETERMINATION.—  
13 In order to be considered independent for pur-  
14 poses of this subsection, a member of the board  
15 of directors of a nationally recognized statistical  
16 rating organization—

17                         “(i) may not, other than in his or her  
18 capacity as a member of the board of di-  
19 rectors or any committee thereof—

20                                 “(I) accept any consulting, advi-  
21 sory, or other compensatory fee from  
22 the nationally recognized statistical  
23 rating organization; or

24                                 “(II) be a person associated with  
25 the nationally recognized statistical



1 rating organization or with any affili-  
2 ated company thereof; and

3 “(ii) shall be disqualified from any de-  
4 liberation involving a specific rating in  
5 which the independent board member has  
6 a financial interest in the outcome of the  
7 rating.

8 “(C) COMPENSATION AND TERM.—The  
9 compensation of the independent members of  
10 the board of directors of a nationally recognized  
11 statistical rating organization shall not be  
12 linked to the business performance of the na-  
13 tionally recognized statistical rating organiza-  
14 tion, and shall be arranged so as to ensure the  
15 independence of their judgment. The term of  
16 office of the independent directors shall be for  
17 a pre-agreed fixed period, not to exceed 5 years,  
18 and shall not be renewable.

19 “(3) DUTIES OF BOARD OF DIRECTORS.—In  
20 addition to the overall responsibilities of the board of  
21 directors, the board shall oversee—

22 “(A) the establishment, maintenance, and  
23 enforcement of policies and procedures for de-  
24 termining credit ratings;

1           “(B) the establishment, maintenance, and  
2           enforcement of policies and procedures to ad-  
3           dress, manage, and disclose any conflicts of in-  
4           terest;

5           “(C) the effectiveness of the internal con-  
6           trol system with respect to policies and proce-  
7           dures for determining credit ratings; and

8           “(D) the compensation and promotion poli-  
9           cies and practices of the nationally recognized  
10          statistical rating organization.

11          “(4) TREATMENT OF NRSRO SUBSIDIARIES.—If  
12          a nationally recognized statistical rating organiza-  
13          tion is a subsidiary of a parent entity, the board of  
14          the directors of the parent entity may satisfy the re-  
15          quirements of this subsection by assigning to a com-  
16          mittee of such board of directors the duties under  
17          paragraph (3), if—

18                 “(A) at least  $\frac{1}{2}$  of the members of the  
19                 committee (including the chairperson of the  
20                 committee) are independent, as defined in this  
21                 section; and

22                 “(B) at least 1 member of the committee  
23                 is a user of ratings from a nationally recognized  
24                 statistical rating organization.

1           “(5) EXCEPTION AUTHORITY.—If the Commis-  
2           sion finds that compliance with the provisions of this  
3           subsection present an unreasonable burden on a  
4           small nationally recognized statistical rating organi-  
5           zation, the Commission may permit the nationally  
6           recognized statistical rating organization to delegate  
7           such responsibilities to a committee that includes at  
8           least one individual who is a user of ratings of a na-  
9           tionally recognized statistical rating organization.”.

10 **SEC. 933. STATE OF MIND IN PRIVATE ACTIONS.**

11           (a) ACCOUNTABILITY.—Section 15E(m) of the Secu-  
12           rities Exchange Act of 1934 (15 U.S.C. 78o–7(m)) is  
13           amended to read as follows:

14           “(m) ACCOUNTABILITY.—

15           “(1) IN GENERAL.—The enforcement and pen-  
16           alty provisions of this title shall apply to statements  
17           made by a credit rating agency in the same manner  
18           and to the same extent as such provisions apply to  
19           statements made by a registered public accounting  
20           firm or a securities analyst under the securities laws,  
21           and such statements shall not be deemed forward-  
22           looking statements for the purposes of section 21E.

23           “(2) RULEMAKING.—The Commission shall  
24           issue such rules as may be necessary to carry out  
25           this subsection.”.

1           (b) STATE OF MIND.—Section 21D(b)(2) of the Se-  
2 curities Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2))  
3 is amended—

4           (1) by striking “In any” and inserting the fol-  
5 lowing:

6                   “(A) IN GENERAL.—Except as provided in  
7 subparagraph (B), in any”; and

8           (2) by adding at the end the following:

9                   “(B) EXCEPTION.—In the case of an ac-  
10 tion for money damages brought against a cred-  
11 it rating agency or a controlling person under  
12 this title, it shall be sufficient, for purposes of  
13 pleading any required state of mind in relation  
14 to such action, that the complaint state with  
15 particularity facts giving rise to a strong infer-  
16 ence that the credit rating agency knowingly or  
17 recklessly failed—

18                           “(i) to conduct a reasonable investiga-  
19 tion of the rated security with respect to  
20 the factual elements relied upon by its own  
21 methodology for evaluating credit risk; or

22                           “(ii) to obtain reasonable verification  
23 of such factual elements (which verification  
24 may be based on a sampling technique that  
25 does not amount to an audit) from other

1 sources that the credit rating agency con-  
2 sidered to be competent and that were  
3 independent of the issuer and under-  
4 writer.”.

5 **SEC. 934. REFERRING TIPS TO LAW ENFORCEMENT OR**  
6 **REGULATORY AUTHORITIES.**

7 Section 15E of the Securities Exchange Act of 1934  
8 (15 U.S.C. 78o–7), as amended by this subtitle, is amend-  
9 ed by adding at the end the following:

10 “(u) DUTY TO REPORT TIPS ALLEGING MATERIAL  
11 VIOLATIONS OF LAW.—

12 “(1) DUTY TO REPORT.—Each nationally rec-  
13 ognized statistical rating organization shall refer to  
14 the appropriate law enforcement or regulatory au-  
15 thorities any information that the nationally recog-  
16 nized statistical rating organization receives from a  
17 third party and finds credible that alleges that an  
18 issuer of securities rated by the nationally recog-  
19 nized statistical rating organization has committed  
20 or is committing a material violation of law that has  
21 not been adjudicated by a Federal or State court.

22 “(2) RULE OF CONSTRUCTION.—Nothing in  
23 paragraph (1) may be construed to require a nation-  
24 ally recognized statistical rating organization to

1       verify the accuracy of the information described in  
2       paragraph (1).”.

3       **SEC. 935. CONSIDERATION OF INFORMATION FROM**  
4                               **SOURCES OTHER THAN THE ISSUER IN RAT-**  
5                               **ING DECISIONS.**

6       Section 15E of the Securities Exchange Act of 1934  
7       (15 U.S.C. 78o-7), as amended by this subtitle, is amend-  
8       ed by adding at the end the following:

9       “(v) INFORMATION FROM SOURCES OTHER THAN  
10       THE ISSUER.—In producing a credit rating, a nationally  
11       recognized statistical rating organization shall consider in-  
12       formation about an issuer that the nationally recognized  
13       statistical rating organization has, or receives from a  
14       source other than the issuer or underwriter, that the na-  
15       tionally recognized statistical rating organization finds  
16       credible and potentially significant to a rating decision.”.

17       **SEC. 936. QUALIFICATION STANDARDS FOR CREDIT RAT-**  
18                               **ING ANALYSTS.**

19       Not later than 1 year after the date of enactment  
20       of this Act, the Commission shall issue rules that are rea-  
21       sonably designed to ensure that any person employed by  
22       a nationally recognized statistical rating organization to  
23       perform credit ratings—

24                       (1) meets standards of training, experience, and  
25       competence necessary to produce accurate ratings

1 for the categories of issuers whose securities the per-  
2 son rates; and

3 (2) is tested for knowledge of the credit rating  
4 process.

5 **SEC. 937. TIMING OF REGULATIONS.**

6 Unless otherwise specifically provided in this subtitle,  
7 the Commission shall issue final regulations, as required  
8 by this subtitle and the amendments made by this subtitle,  
9 not later than 1 year after the date of enactment of this  
10 Act.

11 **SEC. 938. UNIVERSAL RATINGS SYMBOLS.**

12 (a) RULEMAKING.—The Commission shall require, by  
13 rule, each nationally recognized statistical rating organiza-  
14 tion to establish, maintain, and enforce written policies  
15 and procedures that—

16 (1) assess the probability that an issuer of a se-  
17 curity or money market instrument will default, fail  
18 to make timely payments, or otherwise not make  
19 payments to investors in accordance with the terms  
20 of the security or money market instrument;

21 (2) clearly define and disclose the meaning of  
22 any symbol used by the nationally recognized statis-  
23 tical rating organization to denote a credit rating;  
24 and

1           (3) apply any symbol described in paragraph  
2           (2) in a manner that is consistent for all types of  
3           securities and money market instruments for which  
4           the symbol is used.

5           (b) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
6           tion shall prohibit a nationally recognized statistical rating  
7           organization from using distinct sets of symbols to denote  
8           credit ratings for different types of securities or money  
9           market instruments.

10 **SEC. 939. REMOVAL OF STATUTORY REFERENCES TO CRED-**  
11 **IT RATINGS.**

12           (a) **FEDERAL DEPOSIT INSURANCE ACT.**—The Fed-  
13           eral Deposit Insurance Act (12 U.S.C. 1811 et seq.) is  
14           amended—

15           (1) in section 7(b)(1)(E)(i), by striking “credit  
16           rating entities, and other private economic” and in-  
17           sert “private economic, credit,”;

18           (2) in section 28(d)—

19           (A) in the subsection heading, by striking  
20           “NOT OF INVESTMENT GRADE”;

21           (B) in paragraph (1), by striking “not of  
22           investment grade” and inserting “that does not  
23           meet standards of credit-worthiness as estab-  
24           lished by the Corporation”;



1 (C) in paragraph (2), by striking “not of  
2 investment grade”;

3 (D) by striking paragraph (3);

4 (E) by redesignating paragraph (4) as  
5 paragraph (3); and

6 (F) in paragraph (3), as so redesignated—

7 (i) by striking subparagraph (A);

8 (ii) by redesignating subparagraphs  
9 (B) and (C) as subparagraphs (A) and  
10 (B), respectively; and

11 (iii) in subparagraph (B), as so redesi-  
12 gnated, by striking “not of investment  
13 grade” and inserting “that does not meet  
14 standards of credit-worthiness as estab-  
15 lished by the Corporation”; and

16 (3) in section 28(e)—

17 (A) in the subsection heading, by striking  
18 “NOT OF INVESTMENT GRADE”;

19 (B) in paragraph (1), by striking “not of  
20 investment grade” and inserting “that does not  
21 meet standards of credit-worthiness as estab-  
22 lished by the Corporation”; and

23 (C) in paragraphs (2) and (3), by striking  
24 “not of investment grade” each place that it ap-  
25 pears and inserting “that does not meet stand-

1           ards of credit-worthiness established by the  
2           Corporation”.

3           (b) FEDERAL HOUSING ENTERPRISES FINANCIAL  
4 SAFETY AND SOUNDNESS ACT OF 1992.—Section 1319  
5 of the Federal Housing Enterprises Financial Safety and  
6 Soundness Act of 1992 (12 U.S.C. 4519) is amended by  
7 striking “that is a nationally recognized statistical rating  
8 organization, as such term is defined in section 3(a) of  
9 the Securities Exchange Act of 1934,”.

10          (c) INVESTMENT COMPANY ACT OF 1940.—Section  
11 6(a)(5)(A)(iv)(I) Investment Company Act of 1940 (15  
12 U.S.C. 80a-6(a)(5)(A)(iv)(I)) is amended by striking “is  
13 rated investment grade by not less than 1 nationally recog-  
14 nized statistical rating organization” and inserting “meets  
15 such standards of credit-worthiness as the Commission  
16 shall adopt”.

17          (d) REVISED STATUTES.—Section 5136A of title  
18 LXII of the Revised Statutes of the United States (12  
19 U.S.C. 24a) is amended—

20           (1) in subsection (a)(2)(E), by striking “any  
21           applicable rating” and inserting “standards of cred-  
22           it-worthiness established by the Comptroller of the  
23           Currency”;

1           (2) in the heading for subsection (a)(3) by  
2 striking “RATING OR COMPARABLE REQUIREMENT”  
3 and inserting “REQUIREMENT”;

4           (3) subsection (a)(3), by amending subpara-  
5 graph (A) to read as follows:

6                   “(A) IN GENERAL.—A national bank meets  
7 the requirements of this paragraph if the bank  
8 is one of the 100 largest insured banks and has  
9 not fewer than 1 issue of outstanding debt that  
10 meets standards of credit-worthiness or other  
11 criteria as the Secretary of the Treasury and  
12 the Board of Governors of the Federal Reserve  
13 System may jointly establish.”.

14           (4) in the heading for subsection (f), by striking  
15 “MAINTAIN PUBLIC RATING OR” and inserting  
16 “MEET STANDARDS OF CREDIT-WORTHINESS”; and

17           (5) in subsection (f)(1), by striking “any appli-  
18 cable rating” and inserting “standards of credit-wor-  
19 thiness established by the Comptroller of the Cur-  
20 rency”.

21           (e) SECURITIES EXCHANGE ACT OF 1934.—Section  
22 3(a) Securities Exchange Act of 1934 (15 U.S.C.  
23 78a(3)(a)) is amended—

24           (1) in paragraph (41), by striking “is rated in  
25 one of the two highest rating categories by at least

1 one nationally recognized statistical rating organiza-  
2 tion” and inserting “meets standards of credit-wor-  
3 thiness as established by the Commission”; and

4 (2) in paragraph (53)(A), by striking “is rated  
5 in 1 of the 4 highest rating categories by at least 1  
6 nationally recognized statistical rating organization”  
7 and inserting “meets standards of credit-worthiness  
8 as established by the Commission”.

9 (f) WORLD BANK DISCUSSIONS.—Section 3(a)(6) of  
10 the amendment in the nature of a substitute to the text  
11 of H.R. 4645, as ordered reported from the Committee  
12 on Banking, Finance and Urban Affairs on September 22,  
13 1988, as enacted into law by section 555 of Public Law  
14 100–461, (22 U.S.C. 286hh(a)(6)), is amended by striking  
15 “credit rating” and inserting “credit-worthiness”.

16 (g) EFFECTIVE DATE.—The amendments made by  
17 this section shall take effect 2 years after the date of en-  
18 actment of this Act.

19 (h) STUDY AND REPORT.—

20 (1) IN GENERAL.—Commission shall undertake  
21 a study on the feasibility and desirability of—

22 (A) standardizing credit ratings termi-  
23 nology, so that all credit rating agencies issue  
24 credit ratings using identical terms;

1 (B) standardizing the market stress condi-  
2 tions under which ratings are evaluated;

3 (C) requiring a quantitative correspond-  
4 ence between credit ratings and a range of de-  
5 fault probabilities and loss expectations under  
6 standardized conditions of economic stress; and

7 (D) standardizing credit rating termi-  
8 nology across asset classes, so that named rat-  
9 ings correspond to a standard range of default  
10 probabilities and expected losses independent of  
11 asset class and issuing entity.

12 (2) REPORT.—Not later than 1 year after the  
13 date of enactment of this Act, the Commission shall  
14 submit to Congress a report containing the findings  
15 of the study under paragraph (1) and the rec-  
16 ommendations, if any, of the Commission with re-  
17 spect to the study.

18 **SEC. 939A. SECURITIES AND EXCHANGE COMMISSION**  
19 **STUDY ON STRENGTHENING CREDIT RATING**  
20 **AGENCY INDEPENDENCE.**

21 (a) STUDY.—The Commission shall conduct a study  
22 of—

23 (1) the independence of nationally recognized  
24 statistical rating organizations; and

1           (2) how the independence of nationally recog-  
2           nized statistical rating organizations affects the rat-  
3           ings issued by the nationally recognized statistical  
4           rating organizations.

5           (b) SUBJECTS FOR EVALUATION.—In conducting the  
6           study under subsection (a), the Commission shall evalu-  
7           ate—

8           (1) the management of conflicts of interest  
9           raised by a nationally recognized statistical rating  
10          organization providing other services, including risk  
11          management advisory services, ancillary assistance,  
12          or consulting services;

13          (2) the potential impact of rules prohibiting a  
14          nationally recognized statistical rating organization  
15          that provides a rating to an issuer from providing  
16          other services to the issuer; and

17          (3) any other issue relating to nationally recog-  
18          nized statistical rating organizations, as the Chair-  
19          man of the Commission determines is appropriate.

20          (c) REPORT.—Not later than 3 years after the date  
21          of enactment of this Act, the Chairman of the Commission  
22          shall submit to the Committee on Banking, Housing, and  
23          Urban Affairs of the Senate and the Committee on Finan-  
24          cial Services of the House of Representatives a report on  
25          the results of the study conducted under subsection (a),

1 including recommendations, if any, for improving the in-  
2 tegrity of ratings issued by nationally recognized statis-  
3 tical rating organizations.

4 **SEC. 939B. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**  
5 **ON ALTERNATIVE BUSINESS MODELS.**

6 (a) **STUDY.**—The Comptroller General of the United  
7 States shall conduct a study on alternative means for com-  
8 pensating nationally recognized statistical rating organiza-  
9 tions in order to create incentives for nationally recognized  
10 statistical rating organizations to provide more accurate  
11 credit ratings, including any statutory changes that would  
12 be required to facilitate the use of an alternative means  
13 of compensation.

14 (b) **REPORT.**—Not later than 18 months after the  
15 date of enactment of this Act, the Comptroller General  
16 shall submit to the Committee on Banking, Housing, and  
17 Urban Affairs of the Senate and the Committee on Finan-  
18 cial Services of the House of Representatives a report on  
19 the results of the study conducted under subsection (a),  
20 including recommendations, if any, for providing incen-  
21 tives to credit rating agencies to improve the credit rating  
22 process.

1 **SEC. 939C. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**  
2 **ON THE CREATION OF AN INDEPENDENT**  
3 **PROFESSIONAL ANALYST ORGANIZATION.**

4 (a) STUDY.—The Comptroller General of the United  
5 States shall conduct a study on the feasibility and merits  
6 of creating an independent professional organization for  
7 rating analysts employed by nationally recognized statis-  
8 tical rating organizations that would be responsible for—

9 (1) establishing independent standards for gov-  
10 erning the profession of rating analysts;

11 (2) establishing a code of ethical conduct; and

12 (3) overseeing the profession of rating analysts.

13 (b) REPORT.—Not later than 1 year after the date  
14 of publication of the rules issued by the Commission pur-  
15 suant to section 936, the Comptroller General shall submit  
16 to the Committee on Banking, Housing, and Urban Af-  
17 fairs of the Senate and the Committee on Financial Serv-  
18 ices of the House of Representatives a report on the re-  
19 sults of the study conducted under subsection (a).

20 **SEC. 939D. INITIAL CREDIT RATING ASSIGNMENTS.**

21 Section 15E of the Securities Exchange Act of 1934  
22 (15 U.S.C. 78o–7), as amended by this Act, is amended  
23 by adding at the end the following:

24 “(w) INITIAL CREDIT RATING ASSIGNMENTS.—

25 “(1) DEFINITIONS.—In this subsection the fol-  
26 lowing definitions shall apply:





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1                   “(II)       CONSIDERATIONS.—In  
2                   issuing the regulations required under  
3                   subclause (I), the Commission shall  
4                   consider—

5                   “(aa) the types of issuers  
6                   that issue structured finance  
7                   products;

8                   “(bb) the types of investors  
9                   who purchase structured finance  
10                  products;

11                  “(cc) the different categories  
12                  of structured finance products  
13                  according to—

14                  “(AA) the types of cap-  
15                  ital flow and legal structure  
16                  used;

17                  “(BB) the types of un-  
18                  derlying products used; and

19                  “(CC) the types of  
20                  terms used in debt securi-  
21                  ties;

22                  “(dd) the different values of  
23                  debt securities; and

1                   “(ee) the different numbers  
2                   of units of debt securities that  
3                   are issued together.

4                   “(ii) REASONABLE FEE.—The Board  
5                   shall issue regulations to define the term  
6                   ‘reasonable fee’.

7                   “(2) CREDIT RATING AGENCY BOARD.—

8                   “(A) IN GENERAL.—Not later than 180  
9                   days after the date of enactment of the Restor-  
10                  ing American Financial Stability Act of 2010,  
11                  the Commission shall—

12                  “(i) establish the Credit Rating Agen-  
13                  cy Board, which shall be a self-regulatory  
14                  organization;

15                  “(ii) subject to subparagraph (C), se-  
16                  lect the initial members of the Board; and

17                  “(iii) establish a schedule to ensure  
18                  that the Board begins assigning qualified  
19                  nationally recognized statistical rating or-  
20                  ganizations to provide initial ratings not  
21                  later than 1 year after the selection of the  
22                  members of the Board.

23                  “(B) SCHEDULE.—The schedule estab-  
24                  lished under subparagraph (A)(iii) shall pre-  
25                  scribe when—

1           “(i) the Board will conduct a study of  
2           the securitization and ratings process and  
3           provide recommendations to the Commis-  
4           sion;

5           “(ii) the Commission will issue rules  
6           and regulations under this section;

7           “(iii) the Board may issue rules under  
8           this subsection; and

9           “(iv) the Board will—

10           “(I) begin accepting applications  
11           to select qualified national recognized  
12           statistical rating organizations; and

13           “(II) begin assigning qualified  
14           national recognized statistical rating  
15           organizations to provide initial rat-  
16           ings.

17           “(C) MEMBERSHIP.—

18           “(i) IN GENERAL.—The Board shall  
19           initially be composed of an odd number of  
20           members selected from the industry, with  
21           the total numerical membership of the  
22           Board to be determined by the Commis-  
23           sion.

1                   “(ii) SPECIFICATIONS.—Of the mem-  
2                   bers initially selected to serve on the  
3                   Board—

4                   “ (I) not less than a majority of  
5                   the members shall be representatives  
6                   of the investor industry who do not  
7                   represent issuers;

8                   “ (II) not less than 1 member  
9                   should be a representative of the  
10                  issuer industry;

11                  “ (III) not less than 1 member  
12                  should be a representative of the cred-  
13                  it rating agency industry; and

14                  “ (IV) not less than 1 member  
15                  should be an independent member.

16                  “(iii) TERMS.—Initial members shall  
17                  be appointed by the Commission for a term  
18                  of 4 years.

19                  “(iv) NOMINATION AND ELECTION OF  
20                  MEMBERS.—

21                  “ (I) IN GENERAL.—Prior to the  
22                  expiration of the terms of office of the  
23                  initial members, the Commission shall  
24                  establish fair procedures for the nomi-

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1 nation and election of future members  
2 of the Board.

3 “(II) MODIFICATIONS OF THE  
4 BOARD.—Prior to the expiration of  
5 the terms of office of the initial mem-  
6 bers, the Commission—

7 “(aa) may increase the size  
8 of the board to a larger odd num-  
9 ber and adjust the length of fu-  
10 ture terms; and

11 “(bb) shall retain the com-  
12 position of members described in  
13 clause (ii).

14 “(v) RESPONSIBILITIES OF MEM-  
15 BERS.—Members shall perform, at a min-  
16 imum, the duties described in this sub-  
17 section.

18 “(vi) RULEMAKING AUTHORITY.—The  
19 Commission shall, if it determines nec-  
20 essary and appropriate, issue further rules  
21 and regulations on the composition of the  
22 membership of the Board and the respon-  
23 sibilities of the members.

24 “(D) OTHER AUTHORITIES OF THE  
25 BOARD.—The Board shall have the authority to

1           levy fees from qualified nationally recognized  
2           statistical rating organization applicants, and  
3           periodically from qualified nationally recognized  
4           statistical rating organizations as necessary to  
5           fund expenses of the Board.

6           “(E) REGULATION.—The Commission has  
7           the authority to regulate the activities of the  
8           Board, and issue any further regulations of the  
9           Board it deems necessary, not in contravention  
10          with the intent of this section.

11          “(3) BOARD SELECTION OF QUALIFIED NATION-  
12          ALLY RECOGNIZED STATISTICAL RATING ORGANIZA-  
13          TION.—

14          “(A) APPLICATION.—

15                 “(i) IN GENERAL.—A nationally rec-  
16                 ognized statistical rating organization may  
17                 submit an application to the Board, in  
18                 such form and manner as the Board may  
19                 require, to become a qualified nationally  
20                 recognized statistical rating organization  
21                 with respect to a category of structured fi-  
22                 nance products.

23                 “(ii) CONTENTS.—An application sub-  
24                 mitted under clause (i) shall contain—

1                   “(I) information regarding the  
2                   institutional and technical capacity of  
3                   the nationally recognized statistical  
4                   rating organization to issue credit rat-  
5                   ings;

6                   “(II) information on whether the  
7                   nationally recognized statistical rating  
8                   organization has been exempted by  
9                   the Commission from any require-  
10                  ments under any other provision of  
11                  this section; and

12                  “(III) any additional information  
13                  the Board may require.

14                  “(iii) REJECTION OF APPLICATIONS.—  
15                  The Board may reject an application sub-  
16                  mitted under this paragraph if the nation-  
17                  ally recognized statistical rating organiza-  
18                  tion has been exempted by the Commission  
19                  from any requirements under any other  
20                  provision of this section.

21                  “(B) SELECTION.—The Board shall select  
22                  qualified national recognized statistical rating  
23                  organizations with respect to each category of  
24                  structured finance products from among nation-  
25                  ally recognized statistical rating organizations



1           that submit applications under subparagraph  
2           (A).

3           “(C) RETENTION OF STATUS AND OBLIGA-  
4           TIONS AFTER SELECTION.—An entity selected  
5           as a qualified nationally recognized statistical  
6           rating organization shall retain its status and  
7           obligations under the law as a nationally recog-  
8           nized statistical rating organization, and noth-  
9           ing in this subsection grants authority to the  
10          Commission or the Board to exempt qualified  
11          nationally recognized statistical rating organiza-  
12          tions from obligations or requirements other-  
13          wise imposed by Federal law on nationally rec-  
14          ognized statistical rating organizations.

15          “(4) REQUESTING AN INITIAL CREDIT RAT-  
16          ING.—An issuer that seeks an initial credit rating  
17          for a structured finance product—

18                 “(A) may not request an initial credit rat-  
19                 ing from a nationally recognized statistical rat-  
20                 ing organization; and

21                 “(B) shall submit a request for an initial  
22                 credit rating to the Board, in such form and  
23                 manner as the Board may prescribe.

24          “(5) ASSIGNMENT OF RATING DUTIES.—

1           “(A) IN GENERAL.—For each request re-  
2           ceived by the Board under paragraph (4)(B),  
3           the Board shall select a qualified nationally rec-  
4           ognized statistical rating organization to pro-  
5           vide the initial credit rating to the issuer.

6           “(B) METHOD OF SELECTION.—

7           “(i) IN GENERAL.—The Board shall—

8                   “(I) evaluate a number of selec-  
9                   tion methods, including a lottery or  
10                  rotating assignment system, incor-  
11                  porating the factors described in  
12                  clause (ii), to reduce the conflicts of  
13                  interest that exist under the issuer-  
14                  pays model; and

15                   “(II) prescribe and publish the  
16                   selection method to be used under  
17                   subparagraph (A).

18           “(ii) CONSIDERATION.—In evaluating  
19           a selection method described in clause  
20           (i)(I), the Board shall consider—

21                   “(I) the information submitted  
22                   by the qualified nationally recognized  
23                   statistical rating organization under  
24                   paragraph (3)(A)(ii) regarding the in-  
25                   stitutional and technical capacity of

1 the qualified nationally recognized sta-  
2 tistical rating organization to issue  
3 credit ratings;

4 “(II) evaluations conducted  
5 under paragraph (7);

6 “(III) formal feedback from insti-  
7 tutional investors; and

8 “(IV) information from sub-  
9 clauses (I) and (II) to implement a  
10 mechanism which increases or de-  
11 creases assignments based on past  
12 performance.

13 “(iii) PROHIBITION.—The Board, in  
14 choosing a selection method, may not use  
15 a method that would allow for the solicita-  
16 tion or consideration of the preferred na-  
17 tional recognized statistical rating organi-  
18 zations of the issuer.

19 “(iv) ADJUSTMENT OF PROCESS.—  
20 The Board shall issue rules describing the  
21 process by which it can modify the assign-  
22 ment process described in clause (i).

23 “(C) RIGHT OF REFUSAL.—

24 “(i) REFUSAL.—A qualified nationally  
25 recognized statistical rating organization

1 selected under subparagraph (A) may  
2 refuse to accept a selection for a particular  
3 request by—

4 “(I) notifying the Board of such  
5 refusal; and

6 “(II) submitting to the Board a  
7 written explanation of the refusal.

8 “(ii) SELECTION.—Upon receipt of a  
9 notification under clause (i), the Board  
10 shall make an additional selection under  
11 subparagraph (A).

12 “(iii) INSPECTION REPORTS.—The  
13 Board shall annually submit any expla-  
14 nations of refusals received under clause  
15 (i)(II) to the Commission, and such ex-  
16 planatory submissions shall be published in  
17 the annual inspection reports required  
18 under subsection (p)(3)(C).

19 “(6) DISCLAIMER REQUIRED.—Each initial  
20 credit rating issued under this subsection shall in-  
21 clude, in writing, the following disclaimer: ‘This ini-  
22 tial rating has not been evaluated, approved, or cer-  
23 tified by the Government of the United States or by  
24 a Federal agency.’.

25 “(7) EVALUATION OF PERFORMANCE.—

1           “(A) IN GENERAL.—The Board shall pre-  
2           scribe rules by which the Board will evaluate  
3           the performance of each qualified nationally  
4           recognized statistical rating organization, in-  
5           cluding rules that require, at a minimum, an  
6           annual evaluation of each qualified nationally  
7           recognized statistical rating organization.

8           “(B) CONSIDERATIONS.—The Board, in  
9           conducting an evaluation under subparagraph  
10          (A), shall consider—

11                   “(i) the results of the annual exam-  
12                   ination conducted under subsection (p)(3);

13                   “(ii) surveillance of credit ratings con-  
14                   ducted by the qualified nationally recog-  
15                   nized statistical rating organization after  
16                   the credit ratings are issued, including—

17                           “(I) how the rated instruments  
18                           perform;

19                           “(II) the accuracy of the ratings  
20                           provided by the qualified nationally  
21                           recognized statistical rating organiza-  
22                           tion as compared to the other nation-  
23                           ally recognized statistical rating orga-  
24                           nizations; and

1                   “(III) the effectiveness of the  
2                   methodologies used by the qualified  
3                   nationally recognized statistical rating  
4                   organization; and

5                   “(iii) any additional factors the Board  
6                   determines to be relevant.

7                   “(C) REQUEST FOR REEVALUATION.—Sub-  
8                   ject to rules prescribed by the Board, and not  
9                   less frequently than once a year, a qualified na-  
10                  tionally recognized statistical rating organiza-  
11                  tion may request that the Board conduct an  
12                  evaluation under this paragraph.

13                  “(D) DISCLOSURE.—The Board shall  
14                  make the evaluations conducted under this  
15                  paragraph available to Congress.

16                  “(8) RATING FEES CHARGED TO ISSUERS.—

17                  “(A) LIMITED TO REASONABLE FEES.—A  
18                  qualified nationally recognized statistical rating  
19                  organization shall charge an issuer a reasonable  
20                  fee, as determined by the Commission, for an  
21                  initial credit rating provided under this section.

22                  “(B) FEES.—Fees may be determined by  
23                  the qualified national recognized statistical rat-  
24                  ing organizations unless the Board determines  
25                  it is necessary to issue rules on fees.

1           “(9) NO PROHIBITION ON ADDITIONAL RAT-  
2           INGS.—Nothing in this section shall prohibit an  
3           issuer from requesting or receiving additional credit  
4           ratings with respect to a debt security, if the initial  
5           credit rating is provided in accordance with this sec-  
6           tion.

7           “(10) NO PROHIBITION ON INDEPENDENT RAT-  
8           INGS OFFERED BY NATIONALLY RECOGNIZED STA-  
9           TISTICAL RATING ORGANIZATIONS.—

10           “(A) IN GENERAL.—Nothing in this sec-  
11           tion shall prohibit a nationally recognized sta-  
12           tistical rating organization from independently  
13           providing a credit rating with respect to a debt  
14           security, if—

15           “(i) the nationally recognized statis-  
16           tical rating organization does not enter  
17           into a contract with the issuer of the debt  
18           security to provide the initial credit rating;  
19           and

20           “(ii) the nationally recognized statis-  
21           tical rating organization is not paid by the  
22           issuer of the debt security to provide the  
23           initial credit rating.

24           “(B) RULE OF CONSTRUCTION.—For pur-  
25           poses of this section, a credit rating described

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1 in subparagraph (A) may not be construed to  
2 be an initial credit rating.

3 “(11) PUBLIC COMMUNICATIONS.—Any commu-  
4 nications made with the public by an issuer with re-  
5 spect to the credit rating of a debt security shall  
6 clearly specify whether the credit rating was made  
7 by—

8 “(A) a qualified nationally recognized sta-  
9 tistical rating organization selected under para-  
10 graph (5)(A) to provide the initial credit rating  
11 for such debt security; or

12 “(B) a nationally recognized statistical rat-  
13 ing organization not selected under paragraph  
14 (5)(A).

15 “(12) PROHIBITION ON MISREPRESENTA-  
16 TION.—With respect to a debt security, it shall be  
17 unlawful for any person to misrepresent any subse-  
18 quent credit rating provided for such debt security  
19 as an initial credit rating provided for such debt se-  
20 curity by a qualified nationally recognized statistical  
21 rating organization selected under paragraph (5)(A).

22 “(13) INITIAL CREDIT RATING REVISION AFTER  
23 MATERIAL CHANGE IN CIRCUMSTANCE.—If the  
24 Board determines that it is necessary or appropriate  
25 in the public interest or for the protection of inves-





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1 motivated by a personal or family re-  
2 lationship.

3 “(ii) EMPLOYMENT NEGOTIATIONS  
4 PROHIBITION.—A member or employee of  
5 the Board shall not engage in employment  
6 negotiations with any nationally recognized  
7 statistical rating organization, issuer, or  
8 investor, unless the member or employee—

9 “(I) discloses the negotiations  
10 immediately upon initiation of the ne-  
11 gotiations; and

12 “(II) recuses himself from all  
13 proceedings concerning the entity in-  
14 volved in the negotiations until termi-  
15 nation of negotiations or until termi-  
16 nation of his employment by the  
17 Board, if an offer of employment is  
18 accepted.

19 “(B) CREDIT ANALYSTS.—

20 “(i) IN GENERAL.—A credit analyst of  
21 a qualified nationally recognized statistical  
22 rating organization shall not accept any  
23 loan of money or securities, or anything  
24 above nominal value, from any issuer or in-  
25 vestor.

1                   “(ii) EXCEPTION.—The prohibition  
2                   described in clause (i) does not apply to a  
3                   loan made in the context of disclosed, rou-  
4                   tine banking and brokerage agreements, or  
5                   a loan that is clearly motivated by a per-  
6                   sonal or family relationship.

7                   “(15) EVALUATION OF CREDIT RATING AGENCY  
8                   BOARD.—Not later than 5 years after the date that  
9                   the Board begins assigning qualified nationally rec-  
10                  ognized statistical rating organizations to provide  
11                  initial ratings, the Commission shall submit to Con-  
12                  gress a report that provides recommendations of—

13                         “(A) the continuation of the Board;

14                         “(B) any modification to the procedures of  
15                         the Board; and

16                         “(C) modifications to the provisions in this  
17                         subsection.”.

18 **Subtitle D—Improvements to the**  
19 **Asset-Backed                   Securitization**  
20 **Process**

21 **SEC. 941. REGULATION OF CREDIT RISK RETENTION.**

22                   (a) DEFINITION OF ASSET-BACKED SECURITY.—Sec-  
23 tion 3(a) of the Securities Exchange Act of 1934 (15  
24 U.S.C. 78c(a)) is amended by adding at the end the fol-  
25 lowing:

1           “(77) ASSET-BACKED SECURITY.—The term  
2           ‘asset-backed security’—

3           “(A) means a fixed-income or other secu-  
4           rity collateralized by any type of self-liquidating  
5           financial asset (including a loan, a lease, a  
6           mortgage, or a secured or unsecured receivable)  
7           that allows the holder of the security to receive  
8           payments that depend primarily on cash flow  
9           from the asset, including—

10           “(i) a collateralized mortgage obliga-  
11           tion;

12           “(ii) a collateralized debt obligation;

13           “(iii) a collateralized bond obligation;

14           “(iv) a collateralized debt obligation of  
15           asset-backed securities;

16           “(v) a collateralized debt obligation of  
17           collateralized debt obligations; and

18           “(vi) a security that the Commission,  
19           by rule, determines to be an asset-backed  
20           security for purposes of this section; and

21           “(B) does not include a security issued by  
22           a finance subsidiary held by the parent com-  
23           pany or a company controlled by the parent  
24           company, if none of the securities issued by the

1 finance subsidiary are held by an entity that is  
2 not controlled by the parent company.”.

3 (b) CREDIT RISK RETENTION.—The Securities Ex-  
4 change Act of 1934 (15 U.S.C. 78a et seq.) is amended  
5 by inserting after section 15F, as added by this Act, the  
6 following:

7 **“SEC. 15G. CREDIT RISK RETENTION.**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘Federal banking agencies’ means  
10 the Office of the Comptroller of the Currency, the  
11 Board of Governors of the Federal Reserve System,  
12 and the Federal Deposit Insurance Corporation;

13 “(2) the term ‘insured depository institution’  
14 has the same meaning as in section 3(e) of the Fed-  
15 eral Deposit Insurance Act (12 U.S.C. 1813(e));

16 “(3) the term ‘securitizer’ means—

17 “(A) an issuer of an asset-backed security;

18 or

19 “(B) a person who organizes and initiates  
20 an asset-backed securities transaction by selling  
21 or transferring assets, either directly or indi-  
22 rectly, including through an affiliate, to the  
23 issuer; and

24 “(4) the term ‘originator’ means a person  
25 who—

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1           “(A) through the extension of credit or  
2 otherwise, creates a financial asset that  
3 collateralizes an asset-backed security; and

4           “(B) sells an asset to a securitizer.

5       “(b) IN GENERAL.—Not later than 270 days after  
6 the date of enactment of this section, the Federal banking  
7 agencies and the Commission shall jointly prescribe regu-  
8 lations to require any securitizer to retain an economic  
9 interest in a portion of the credit risk for any asset that  
10 the securitizer, through the issuance of an asset-backed  
11 security, transfers, sells, or conveys to a third party.

12       “(c) STANDARDS FOR REGULATIONS.—

13           “(1) STANDARDS.—The regulations prescribed  
14 under subsection (b) shall—

15           “(A) prohibit a securitizer from directly or  
16 indirectly hedging or otherwise transferring the  
17 credit risk that the securitizer is required to re-  
18 tain with respect to an asset;

19           “(B) require a securitizer to retain—

20           “(i) not less than 5 percent of the  
21 credit risk for any asset—

22           “(I) that is not a qualified resi-  
23 dential mortgage that is transferred,  
24 sold, or conveyed through the issuance

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1 of an asset-backed security by the  
2 securitizer; or

3 “(II) that is a qualified residen-  
4 tial mortgage that is transferred, sold,  
5 or conveyed through the issuance of  
6 an asset-backed security by the  
7 securitizer, if 1 or more of the assets  
8 that collateralize the asset-backed se-  
9 curity are not qualified residential  
10 mortgages; or

11 “(ii) less than 5 percent of the credit  
12 risk for an asset that is not a qualified res-  
13 idential mortgage that is transferred, sold,  
14 or conveyed through the issuance of an  
15 asset-backed security by the securitizer, if  
16 the originator of the asset meets the un-  
17 derwriting standards prescribed under  
18 paragraph (2)(B);

19 “(C) specify—

20 “(i) the permissible forms of risk re-  
21 tention for purposes of this section;

22 “(ii) the minimum duration of the  
23 risk retention required under this section;

24 and

1           “(iii) that a securitizer is not required  
2           to retain any part of the credit risk for an  
3           asset that is transferred, sold or conveyed  
4           through the issuance of an asset-backed se-  
5           curity by the securitizer, if all of the assets  
6           that collateralize the asset-backed security  
7           are qualified residential mortgages;

8           “(D) apply, regardless of whether the  
9           securitizer is an insured depository institution;  
10          and

11          “(E) with respect to a commercial mort-  
12          gage, specify the permissible types, forms, and  
13          amounts of risk retention that would meet the  
14          requirements of subparagraph (B), such as—

15               “(i) retention of a specified amount or  
16               percentage of the total credit risk of the  
17               asset;

18               “(ii) retention of the first-loss position  
19               by a third-party purchaser that specifically  
20               negotiates for the purchase of such first-  
21               loss position and provides due diligence on  
22               all individual assets in the pool before the  
23               issuance of the asset-backed securities;

24               “(iii) a determination by a Federal  
25               banking agency or the Commission that



1 the underwriting standards and controls  
2 for the asset are adequate; and

3 “(iv) provision of adequate representa-  
4 tions and warranties and related enforce-  
5 ment mechanisms; and

6 “(F) provide for—

7 “(i) a total or partial exemption of  
8 any securitization, as may be appropriate  
9 in the public interest and for the protec-  
10 tion of investors;

11 “(ii) a total or partial exemption for  
12 the securitization of an asset issued or  
13 guaranteed by the United States, or an  
14 agency of the United States, as the Fed-  
15 eral banking agencies and the Commission  
16 jointly determine appropriate in the public  
17 interest and for the protection of investors,  
18 except that, for purposes of this clause, the  
19 Federal National Mortgage Association  
20 and the Federal Home Loan Mortgage  
21 Corporation are not agencies of the United  
22 States;

23 “(iii) a total or partial exemption for  
24 any asset-backed security that is a security  
25 issued or guaranteed by any State of the

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1 United States, or by any political subdivi-  
2 sion of a State or territory, or by any pub-  
3 lic instrumentality of a State or territory  
4 that is exempt from the registration re-  
5 quirements of the Securities Act of 1933  
6 by reason of section 3(a)(2) of that Act  
7 (15 U.S.C. 77c(a)(2)), or a security de-  
8 fined as a qualified scholarship funding  
9 bond in section 150(d)(2) of the Internal  
10 Revenue Code of 1986, as may be appro-  
11 priate in the public interest and for the  
12 protection of investors; and

13 “(iv) the allocation of risk retention  
14 obligations between a securitizer and an  
15 originator in the case of a securitizer that  
16 purchases assets from an originator, as the  
17 Federal banking agencies and the Commis-  
18 sion jointly determine appropriate.

19 “(2) ASSET CLASSES.—

20 “(A) ASSET CLASSES.—The regulations  
21 prescribed under subsection (b) shall establish  
22 asset classes with separate rules for securitizers  
23 of different classes of assets, including residen-  
24 tial mortgages, commercial mortgages, commer-  
25 cial loans, auto loans, and any other class of as-

1 sets that the Federal banking agencies and the  
2 Commission deem appropriate.

3 “(B) CONTENTS.—For each asset class es-  
4 tablished under subparagraph (A), the regula-  
5 tions prescribed under subsection (b) shall in-  
6 clude underwriting standards established by the  
7 Federal banking agencies that specify the  
8 terms, conditions, and characteristics of a loan  
9 within the asset class that indicate a low credit  
10 risk with respect to the loan.

11 “(d) ORIGINATORS.—In determining how to allocate  
12 risk retention obligations between a securitizer and an  
13 originator under subsection (c)(1)(E)(iv), the Federal  
14 banking agencies and the Commission shall—

15 “(1) reduce the percentage of risk retention ob-  
16 ligations required of the securitizer by the percent-  
17 age of risk retention obligations required of the  
18 originator; and

19 “(2) consider—

20 “(A) whether the assets sold to the  
21 securitizer have terms, conditions, and charac-  
22 teristics that reflect low credit risk;

23 “(B) whether the form or volume of trans-  
24 actions in securitization markets creates incen-

1           tives for imprudent origination of the type of  
2           loan or asset to be sold to the securitizer; and  
3           “(C) the potential impact of the risk reten-  
4           tion obligations on the access of consumers and  
5           businesses to credit on reasonable terms, which  
6           may not include the transfer of credit risk to a  
7           third party.

8           “(e) EXEMPTIONS, EXCEPTIONS, AND ADJUST-  
9           MENTS.—

10           “(1) IN GENERAL.—The Federal banking agen-  
11           cies and the Commission may jointly adopt or issue  
12           exemptions, exceptions, or adjustments to the rules  
13           issued under this section, including exemptions, ex-  
14           ceptions, or adjustments for classes of institutions or  
15           assets relating to the risk retention requirement and  
16           the prohibition on hedging under subsection (c)(1).

17           “(2) APPLICABLE STANDARDS.—Any exemp-  
18           tion, exception, or adjustment adopted or issued by  
19           the Federal banking agencies and the Commission  
20           under this paragraph shall—

21           “(A) help ensure high quality underwriting  
22           standards for the securitizers and originators of  
23           assets that are securitized or available for  
24           securitization; and

1           “(B) encourage appropriate risk manage-  
2           ment practices by the securitizers and origina-  
3           tors of assets, improve the access of consumers  
4           and businesses to credit on reasonable terms, or  
5           otherwise be in the public interest and for the  
6           protection of investors.

7           “(3) FARM CREDIT SYSTEM INSTITUTIONS.—A  
8           Farm Credit System institution, including the Fed-  
9           eral Agricultural Mortgage Corporation, that is  
10          chartered and subject to the provisions of the Farm  
11          Credit Act of 1971, as amended (12 U.S.C. 2001 et  
12          seq.), shall be exempt from the risk retention provi-  
13          sions of this subsection.

14          “(4) EXEMPTION FOR QUALIFIED RESIDENTIAL  
15          MORTGAGES.—

16                 “(A) IN GENERAL.—The Federal banking  
17                 agencies, the Commission, the Secretary of  
18                 Housing and Urban Development, and the Di-  
19                 rector of the Federal Housing Finance Agency  
20                 shall jointly issue regulations to exempt quali-  
21                 fied residential mortgages from the risk reten-  
22                 tion requirements of this subsection.

23                 “(B) QUALIFIED RESIDENTIAL MORT-  
24                 GAGE.—The Federal banking agencies, the  
25                 Commission, the Secretary of Housing and

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1 Urban Development, and the Director of the  
2 Federal Housing Finance Agency shall jointly  
3 define the term ‘qualified residential mortgage’  
4 for purposes of this subsection, taking into con-  
5 sideration underwriting and product features  
6 that historical loan performance data indicate  
7 result in a lower risk of default, such as—

8 “(i) documentation and verification of  
9 the financial resources relied upon to qual-  
10 ify the mortgagor;

11 “(ii) standards with respect to—

12 “(I) the residual income of the  
13 mortgagor after all monthly obliga-  
14 tions;

15 “(II) the ratio of the housing  
16 payments of the mortgagor to the  
17 monthly income of the mortgagor;

18 “(III) the ratio of total monthly  
19 installment payments of the mort-  
20 gagor to the income of the mortgagor;

21 “(iii) mitigating the potential for pay-  
22 ment shock on adjustable rate mortgages  
23 through product features and underwriting  
24 standards;

1           “(iv) mortgage guarantee insurance  
2           obtained at the time of origination for  
3           loans with combined loan-to-value ratios of  
4           greater than 80 percent; and

5           “(v) prohibiting or restricting the use  
6           of balloon payments, negative amortization,  
7           prepayment penalties, interest-only pay-  
8           ments, and other features that have been  
9           demonstrated to exhibit a higher risk of  
10          borrower default.

11          “(5) CONDITION FOR QUALIFIED RESIDENTIAL  
12          MORTGAGE EXEMPTION.—The regulations issued  
13          under paragraph (4) shall provide that an asset-  
14          backed security that is collateralized by tranches of  
15          other asset-backed securities shall not be exempt  
16          from the risk retention requirements of this sub-  
17          section.

18          “(6) CERTIFICATION.—The Commission shall  
19          require an issuer to certify, for each issuance of an  
20          asset-backed security collateralized exclusively by  
21          qualified residential mortgages, that the issuer has  
22          evaluated the effectiveness of the internal super-  
23          visory controls of the issuer with respect to the proc-  
24          ess for ensuring that all assets that collateralize the

1 asset-backed security are qualified residential mort-  
2 gages.

3 “(f) ENFORCEMENT.—The regulations issued under  
4 this section shall be enforced by—

5 “(1) the appropriate Federal banking agency,  
6 with respect to any securitizer that is an insured de-  
7 pository institution; and

8 “(2) the Commission, with respect to any  
9 securitizer that is not an insured depository institu-  
10 tion.

11 “(g) AUTHORITY OF COMMISSION.—The authority of  
12 the Commission under this section shall be in addition to  
13 the authority of the Commission to otherwise enforce the  
14 securities laws.

15 “(h) EFFECTIVE DATE OF REGULATIONS.—The reg-  
16 ulations issued under this section shall become effective—

17 “(1) with respect to securitizers and originators  
18 of asset-backed securities backed by residential  
19 mortgages, 1 year after the date on which final rules  
20 under this section are published in the Federal Reg-  
21 ister; and

22 “(2) with respect to securitizers and originators  
23 of all other classes of asset-backed securities, 2 years  
24 after the date on which final rules under this section  
25 are published in the Federal Register.”.



1 **SEC. 942. DISCLOSURES AND REPORTING FOR ASSET-**  
2 **BACKED SECURITIES.**

3 (a) SECURITIES EXCHANGE ACT OF 1934.—Section  
4 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.  
5 78o(d)) is amended—

6 (1) by striking “(d) Each” and inserting the  
7 following:

8 “(d) SUPPLEMENTARY AND PERIODIC INFORMA-  
9 TION.—

10 “(1) IN GENERAL.—Each”;

11 (2) in the third sentence, by inserting after “se-  
12 curities of each class” the following: “, other than  
13 any class of asset-backed securities,”; and

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

15 “(2) ASSET-BACKED SECURITIES.—

16 “(A) SUSPENSION OF DUTY TO FILE.—The  
17 Commission may, by rule or regulation, provide  
18 for the suspension or termination of the duty to  
19 file under this subsection for any class of asset-  
20 backed security, on such terms and conditions  
21 and for such period or periods as the Commis-  
22 sion deems necessary or appropriate in the pub-  
23 lic interest or for the protection of investors.

24 “(B) CLASSIFICATION OF ISSUERS.—The  
25 Commission may, for purposes of this sub-  
26 section, classify issuers and prescribe require-

1           ments appropriate for each class of issuers of  
2           asset-backed securities.”.

3           (b) SECURITIES ACT OF 1933.—Section 7 of the Se-  
4 curities Act of 1933 (15 U.S.C. 77g) is amended by add-  
5 ing at the end the following:

6           “(c) DISCLOSURE REQUIREMENTS.—

7           “(1) IN GENERAL.—The Commission shall  
8 adopt regulations under this subsection requiring  
9 each issuer of an asset-backed security to disclose,  
10 for each tranche or class of security, information re-  
11 garding the assets backing that security.

12           “(2) CONTENT OF REGULATIONS.—In adopting  
13 regulations under this subsection, the Commission  
14 shall—

15           “(A) set standards for the format of the  
16 data provided by issuers of an asset-backed se-  
17 curity, which shall, to the extent feasible, facili-  
18 tate comparison of such data across securities  
19 in similar types of asset classes; and

20           “(B) require issuers of asset-backed securi-  
21 ties, at a minimum, to disclose asset-level or  
22 loan-level data, if such data are necessary for  
23 investors to independently perform due dili-  
24 gence, including—

1 “(i) data having unique identifiers re-  
2 lating to loan brokers or originators;

3 “(ii) the nature and extent of the  
4 compensation of the broker or originator of  
5 the assets backing the security; and

6 “(iii) the amount of risk retention by  
7 the originator and the securitizer of such  
8 assets.”.

9 **SEC. 943. REPRESENTATIONS AND WARRANTIES IN ASSET-**  
10 **BACKED OFFERINGS.**

11 Not later than 180 days after the date of enactment  
12 of this Act, the Securities and Exchange Commission shall  
13 prescribe regulations on the use of representations and  
14 warranties in the market for asset-backed securities (as  
15 that term is defined in section 3(a)(77) of the Securities  
16 Exchange Act of 1934, as added by this subtitle) that—

17 (1) require each national recognized statistical  
18 rating organization to include in any report accom-  
19 panying a credit rating a description of—

20 (A) the representations, warranties, and  
21 enforcement mechanisms available to investors;  
22 and

23 (B) how they differ from the representa-  
24 tions, warranties, and enforcement mechanisms  
25 in issuances of similar securities; and

1           (2) require any securitizer (as that term is de-  
2           fined in section 15G(a) of the Securities Exchange  
3           Act of 1934, as added by this subtitle) to disclose  
4           fulfilled and unfulfilled repurchase requests across  
5           all trusts aggregated by the securitizer, so that in-  
6           vestors may identify asset originators with clear un-  
7           derwriting deficiencies.

8   **SEC. 944. EXEMPTED TRANSACTIONS UNDER THE SECURI-**  
9                                   **TIES ACT OF 1933.**

10          (a) EXEMPTION ELIMINATED.—Section 4 of the Se-  
11         curities Act of 1933 (15 U.S.C. 77d) is amended—

12                 (1) by striking paragraph (5); and

13                 (2) by striking “(6) transactions” and inserting  
14         the following:

15                 “(5) transactions”.

16          (b)           CONFORMING            AMENDMENT.—Section  
17         3(a)(4)(B)(vii)(I) of the Securities Exchange Act of 1934  
18         (15 U.S.C. 78c(a)(4)(B)(vii)(I)) is amended by striking  
19         “4(6)” and inserting “4(5)”.

20   **SEC. 945. DUE DILIGENCE ANALYSIS AND DISCLOSURE IN**  
21                                   **ASSET-BACKED SECURITIES ISSUES.**

22          Section 7 of the Securities Act of 1933 (15 U.S.C.  
23         77g), as amended by this subtitle, is amended by adding  
24         at the end the following:

1       “(d) REGISTRATION STATEMENT FOR ASSET-  
2 BACKED SECURITIES.—Not later than 180 days after the  
3 date of enactment of this subsection, the Commission shall  
4 issue rules relating to the registration statement required  
5 to be filed by any issuer of an asset-backed security (as  
6 that term is defined in section 3(a)(77) of the Securities  
7 Exchange Act of 1934) that require any issuer of an asset-  
8 backed security—

9               “(1) to perform a review of the assets under-  
10       lying the asset-backed security; and

11               “(2) to disclose the nature of the review under  
12       paragraph (1).”.

13       **Subtitle E—Accountability and**  
14       **Executive Compensation**

15       **SEC. 951. SHAREHOLDER VOTE ON EXECUTIVE COMPENSA-**  
16       **TION DISCLOSURES.**

17       The Securities Exchange Act of 1934 (15 U.S.C. 78a  
18 et seq.) is amended by inserting after section 14 (15  
19 U.S.C. 78n) the following:

20       **“SEC. 14A. ANNUAL SHAREHOLDER APPROVAL OF EXECU-**  
21       **TIVE COMPENSATION.**

22       “(a) SEPARATE RESOLUTION REQUIRED.—Any  
23 proxy or consent or authorization for an annual or other  
24 meeting of the shareholders occurring after the end of the  
25 6-month period beginning on the date of enactment of this

1 section, for which the proxy solicitation rules of the Com-  
2 mission require compensation disclosure, shall include a  
3 separate resolution subject to shareholder vote to approve  
4 the compensation of executives, as disclosed pursuant to  
5 section 229.402 of title 17, Code of Federal Regulations,  
6 or any successor thereto.

7 “(b) RULE OF CONSTRUCTION.—The shareholder  
8 vote referred to in subsection (a) shall not be binding on  
9 the issuer or the board of directors of an issuer, and may  
10 not be construed—

11 “(1) as overruling a decision by such issuer or  
12 board of directors;

13 “(2) to create or imply any change to the fidu-  
14 ciary duties of such issuer or board of directors;

15 “(3) to create or imply any additional fiduciary  
16 duties for such issuer or board of directors; or

17 “(4) to restrict or limit the ability of share-  
18 holders to make proposals for inclusion in proxy ma-  
19 terials related to executive compensation.”.

20 **SEC. 952. COMPENSATION COMMITTEE INDEPENDENCE.**

21 The Securities Exchange Act of 1934 (15 U.S.C. 78  
22 et seq.) is amended by inserting after section 10B, as  
23 added by section 753, the following:

1 **“SEC. 10C. COMPENSATION COMMITTEES.**

2 “(a) INDEPENDENCE OF COMPENSATION COMMIT-  
3 TEES.—

4 “(1) LISTING STANDARDS.—The Commission  
5 shall, by rule, direct the national securities ex-  
6 changes and national securities associations to pro-  
7 hibit the listing of any equity security of an issuer,  
8 other than an issuer that is a controlled company,  
9 limited partnership, company in bankruptcy pro-  
10 ceedings, open-ended management investment com-  
11 pany that is registered under the Investment Com-  
12 pany Act of 1940, or a foreign private issuer that  
13 provides annual disclosures to shareholders of the  
14 reasons that the foreign private issuer does not have  
15 an independent compensation committee, that does  
16 not comply with the requirements of this subsection.

17 “(2) INDEPENDENCE OF COMPENSATION COM-  
18 MITTEES.—The rules of the Commission under para-  
19 graph (1) shall require that each member of the  
20 compensation committee of the board of directors of  
21 an issuer be—

22 “(A) a member of the board of directors of  
23 the issuer; and

24 “(B) independent.

25 “(3) INDEPENDENCE.—The rules of the Com-  
26 mission under paragraph (1) shall require that, in

1 determining the definition of the term ‘independ-  
2 ence’ for purposes of paragraph (2), the national se-  
3 curities exchanges and the national securities asso-  
4 ciations shall consider relevant factors, including—

5 “(A) the source of compensation of a mem-  
6 ber of the board of directors of an issuer, in-  
7 cluding any consulting, advisory, or other com-  
8 pensatory fee paid by the issuer to such mem-  
9 ber of the board of directors; and

10 “(B) whether a member of the board of di-  
11 rectors of an issuer is affiliated with the issuer,  
12 a subsidiary of the issuer, or an affiliate of a  
13 subsidiary of the issuer.

14 “(4) EXEMPTION AUTHORITY.—The rules of  
15 the Commission under paragraph (1) shall permit a  
16 national securities exchange or a national securities  
17 association to exempt a particular relationship from  
18 the requirements of paragraph (2), with respect to  
19 the members of a compensation committee, as the  
20 national securities exchange or national securities  
21 association determines is appropriate, taking into  
22 consideration the size of an issuer and any other rel-  
23 evant factors.



1           “(b) INDEPENDENCE OF COMPENSATION CONSULT-  
2 ANTS AND OTHER COMPENSATION COMMITTEE ADVIS-  
3 ERS.—

4           “(1) IN GENERAL.—The compensation com-  
5 mittee of an issuer may only select a compensation  
6 consultant, legal counsel, or other adviser to the  
7 compensation committee after taking into consider-  
8 ation the factors identified by the Commission under  
9 paragraph (2).

10           “(2) RULES.—The Commission shall identify  
11 factors that affect the independence of a compensa-  
12 tion consultant, legal counsel, or other adviser to a  
13 compensation committee of an issuer, including—

14           “(A) the provision of other services to the  
15 issuer by the person that employs the com-  
16 pensation consultant, legal counsel, or other ad-  
17 viser;

18           “(B) the amount of fees received from the  
19 issuer by the person that employs the com-  
20 pensation consultant, legal counsel, or other ad-  
21 viser, as a percentage of the total revenue of  
22 the person that employs the compensation con-  
23 sultant, legal counsel, or other adviser;

24           “(C) the policies and procedures of the  
25 person that employs the compensation consult-

1 ant, legal counsel, or other adviser that are de-  
2 signed to prevent conflicts of interest;

3 “(D) any business or personal relationship  
4 of the compensation consultant, legal counsel,  
5 or other adviser with a member of the com-  
6 pensation committee; and

7 “(E) any stock of the issuer owned by the  
8 compensation consultant, legal counsel, or other  
9 adviser.

10 “(c) COMPENSATION COMMITTEE AUTHORITY RE-  
11 LATING TO COMPENSATION CONSULTANTS.—

12 “(1) AUTHORITY TO RETAIN COMPENSATION  
13 CONSULTANT.—

14 “(A) IN GENERAL.—The compensation  
15 committee of an issuer, in its capacity as a  
16 committee of the board of directors, may, in its  
17 sole discretion, retain or obtain the advice of a  
18 compensation consultant.

19 “(B) DIRECT RESPONSIBILITY OF COM-  
20 PENSATION COMMITTEE.—The compensation  
21 committee of an issuer shall be directly respon-  
22 sible for the appointment, compensation, and  
23 oversight of the work of a compensation con-  
24 sultant.

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1           “(C) RULE OF CONSTRUCTION.—This  
2 paragraph may not be construed—

3           “(i) to require the compensation com-  
4 mittee to implement or act consistently  
5 with the advice or recommendations of the  
6 compensation consultant; or

7           “(ii) to affect the ability or obligation  
8 of a compensation committee to exercise its  
9 own judgment in fulfillment of the duties  
10 of the compensation committee.

11           “(2) DISCLOSURE.—In any proxy or consent  
12 solicitation material for an annual meeting of the  
13 shareholders (or a special meeting in lieu of the an-  
14 nual meeting) occurring on or after the date that is  
15 1 year after the date of enactment of this section,  
16 each issuer shall disclose in the proxy or consent  
17 material, in accordance with regulations of the Com-  
18 mission, whether—

19           “(A) the compensation committee of the  
20 issuer retained or obtained the advice of a com-  
21 pensation consultant; and

22           “(B) the work of the compensation con-  
23 sultant has raised any conflict of interest and,  
24 if so, the nature of the conflict and how the  
25 conflict is being addressed.

1           “(d) AUTHORITY TO ENGAGE INDEPENDENT LEGAL  
2 COUNSEL AND OTHER ADVISERS.—

3           “(1) IN GENERAL.—The compensation com-  
4 mittee of an issuer, in its capacity as a committee  
5 of the board of directors, may, in its sole discretion,  
6 retain and obtain the advice of independent legal  
7 counsel and other advisers.

8           “(2) DIRECT RESPONSIBILITY OF COMPENSA-  
9 TION COMMITTEE.—The compensation committee of  
10 an issuer shall be directly responsible for the ap-  
11 pointment, compensation, and oversight of the work  
12 of independent legal counsel and other advisers.

13           “(3) RULE OF CONSTRUCTION.—This sub-  
14 section may not be construed—

15           “(A) to require a compensation committee  
16 to implement or act consistently with the advice  
17 or recommendations of independent legal coun-  
18 sel or other advisers under this subsection; or

19           “(B) to affect the ability or obligation of a  
20 compensation committee to exercise its own  
21 judgment in fulfillment of the duties of the  
22 compensation committee.

23           “(e) COMPENSATION OF COMPENSATION CONSULT-  
24 ANTS, INDEPENDENT LEGAL COUNSEL, AND OTHER AD-  
25 VISERS.—Each issuer shall provide for appropriate fund-

1 ing, as determined by the compensation committee in its  
2 capacity as a committee of the board of directors, for pay-  
3 ment of reasonable compensation—

4 “(1) to a compensation consultant; and

5 “(2) to independent legal counsel or any other  
6 adviser to the compensation committee.

7 “(f) COMMISSION RULES.—

8 “(1) IN GENERAL.—Not later than 360 days  
9 after the date of enactment of this section, the Com-  
10 mission shall, by rule, direct the national securities  
11 exchanges and national securities associations to  
12 prohibit the listing of any security of an issuer that  
13 is not in compliance with the requirements of this  
14 section.

15 “(2) OPPORTUNITY TO CURE DEFECTS.—The  
16 rules of the Commission under paragraph (1) shall  
17 provide for appropriate procedures for an issuer to  
18 have a reasonable opportunity to cure any defects  
19 that would be the basis for the prohibition under  
20 paragraph (1), before the imposition of such prohibi-  
21 tion.

22 “(3) EXEMPTION AUTHORITY.—

23 “(A) IN GENERAL.—The rules of the Com-  
24 mission under paragraph (1) shall permit a na-  
25 tional securities exchange or a national securi-

1           ties association to exempt a category of issuers  
2           from the requirements under this section, as  
3           the national securities exchange or the national  
4           securities association determines is appropriate.

5           “(B) CONSIDERATIONS.—In determining  
6           appropriate exemptions under subparagraph  
7           (A), the national securities exchange or the na-  
8           tional securities association shall take into ac-  
9           count the potential impact of the requirements  
10          of this section on smaller reporting issuers.

11         “(g) CONTROLLED COMPANY EXEMPTION.—

12           “(1) IN GENERAL.—This section shall not apply  
13          to any controlled company.

14           “(2) DEFINITION.—For purposes of this sec-  
15          tion, the term ‘controlled company’ means an  
16          issuer—

17           “(A) that is listed on a national securities  
18          exchange or by a national securities association;  
19          and

20           “(B) that holds an election for the board  
21          of directors of the issuer in which more than 50  
22          percent of the voting power is held by an indi-  
23          vidual, a group, or another issuer.”.

1 **SEC. 953. EXECUTIVE COMPENSATION DISCLOSURES.**

2 (a) DISCLOSURE OF PAY VERSUS PERFORMANCE.—

3 Section 14 of the Securities Exchange Act of 1934 (15  
4 U.S.C. 78n), as amended by this title, is amended by add-  
5 ing at the end the following:

6 “(i) DISCLOSURE OF PAY VERSUS PERFORMANCE.—

7 The Commission shall, by rule, require each issuer to dis-  
8 close in any proxy or consent solicitation material for an  
9 annual meeting of the shareholders of the issuer a clear  
10 description of any compensation required to be disclosed  
11 by the issuer under section 229.402 of title 17, Code of  
12 Federal Regulations (or any successor thereto), including  
13 information that shows the relationship between executive  
14 compensation actually paid and the financial performance  
15 of the issuer, taking into account any change in the value  
16 of the shares of stock and dividends of the issuer and any  
17 distributions. The disclosure under this subsection may in-  
18 clude a graphic representation of the information required  
19 to be disclosed.”.

20 (b) ADDITIONAL DISCLOSURE REQUIREMENTS.—

21 (1) IN GENERAL.—The Commission shall  
22 amend section 229.402 of title 17, Code of Federal  
23 Regulations, to require each issuer to disclose in any  
24 filing of the issuer described in section 229.10(a) of  
25 title 17, Code of Federal Regulations (or any suc-  
26 cessor thereto)—

1 (A) the median of the annual total com-  
2 pensation of all employees of the issuer, except  
3 the chief executive officer (or any equivalent po-  
4 sition) of the issuer;

5 (B) the annual total compensation of the  
6 chief executive officer (or any equivalent posi-  
7 tion) of the issuer; and

8 (C) the ratio of the amount described in  
9 subparagraph (A) to the amount described in  
10 subparagraph (B).

11 (2) TOTAL COMPENSATION.—For purposes of  
12 this subsection, the total compensation of an em-  
13 ployee of an issuer shall be determined in accordance  
14 with section 229.402(c)(2)(x) of title 17, Code of  
15 Federal Regulations, as in effect on the day before  
16 the date of enactment of this Act.

17 **SEC. 954. RECOVERY OF ERRONEOUSLY AWARDED COM-**  
18 **PENSATION.**

19 The Securities Exchange Act of 1934 is amended by  
20 inserting after section 10C, as added by section 952, the  
21 following:

22 **“SEC. 10D. RECOVERY OF ERRONEOUSLY AWARDED COM-**  
23 **PENSATION POLICY.**

24 “(a) LISTING STANDARDS.—The Commission shall,  
25 by rule, direct the national securities exchanges and na-



1 tional securities associations to prohibit the listing of any  
2 security of an issuer that does not comply with the re-  
3 quirements of this section.

4 “(b) RECOVERY OF FUNDS.—The rules of the Com-  
5 mission under subsection (a) shall require each issuer to  
6 develop and implement a policy providing—

7 “(1) for disclosure of the policy of the issuer on  
8 incentive-based compensation that is based on finan-  
9 cial information required to be reported under the  
10 securities laws; and

11 “(2) that, in the event that the issuer is re-  
12 quired to prepare an accounting restatement due to  
13 the material noncompliance of the issuer with any fi-  
14 nancial reporting requirement under the securities  
15 laws, the issuer will recover from any current or  
16 former executive officer of the issuer who received  
17 incentive-based compensation (including stock op-  
18 tions awarded as compensation) during the 3-year  
19 period preceding the date on which the issuer is re-  
20 quired to prepare an accounting restatement, based  
21 on the erroneous data, in excess of what would have  
22 been paid to the executive officer under the account-  
23 ing restatement.”.

1 **SEC. 955. DISCLOSURE REGARDING EMPLOYEE AND DIREC-**  
2 **TOR HEDGING.**

3 Section 14 of the Securities Exchange Act of 1934  
4 (15 U.S.C. 78n), as amended by this title, is amended by  
5 adding at the end the following:

6 “(j) DISCLOSURE OF HEDGING BY EMPLOYEES AND  
7 DIRECTORS.—The Commission shall, by rule, require each  
8 issuer to disclose in any proxy or consent solicitation mate-  
9 rial for an annual meeting of the shareholders of the issuer  
10 whether any employee or member of the board of directors  
11 of the issuer, or any designee of such employee or member,  
12 is permitted to purchase financial instruments (including  
13 prepaid variable forward contracts, equity swaps, collars,  
14 and exchange funds) that are designed to hedge or offset  
15 any decrease in the market value of equity securities—

16 “(1) granted to the employee or member of the  
17 board of directors by the issuer as part of the com-  
18 pensation of the employee or member of the board  
19 of directors; or

20 “(2) held, directly or indirectly, by the employee  
21 or member of the board of directors.”.

22 **SEC. 956. EXCESSIVE COMPENSATION BY HOLDING COMPA-**  
23 **NIES OF DEPOSITORY INSTITUTIONS.**

24 Section 5 of the Bank Holding Company Act of 1956  
25 (12 U.S.C. 1844) is amended by adding at the end the  
26 following:

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1 “(i) EXCESSIVE COMPENSATION.—

2 “(1) IN GENERAL.—Not later than 180 days  
3 after the transfer date established under section 311  
4 of the Restoring American Financial Stability Act of  
5 2010, the Board of Governors, in consultation with  
6 the Comptroller of the Currency and the Federal  
7 Deposit Insurance Corporation, shall, by rule or  
8 guideline, establish standards for bank holding com-  
9 panies and savings and loan holding companies pro-  
10 hibiting as an unsafe and unsound practice any com-  
11 pensation plan of a bank holding company or sav-  
12 ings and loan holding company that—

13 “(A) provides an executive officer, em-  
14 ployee, director, or principal shareholder of the  
15 bank holding company or savings and loan  
16 holding company with excessive compensation,  
17 fees, or benefits; or

18 “(B) could lead to material financial loss  
19 to the bank holding company or savings and  
20 loan holding company.

21 “(2) STANDARDS.—The Board of Governors  
22 shall—

23 “(A) ensure that the standards established  
24 under paragraph (1) are comparable to the  
25 standards established under section 39 of the

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1 Federal Deposit Insurance Act (12 U.S.C.  
2 1831p-1) for insured depository institutions;  
3 and

4 “(B) in establishing the standards under  
5 paragraph (1), take into consideration—

6 “(i) the compensation standards de-  
7 scribed in section 39(c) of the Federal De-  
8 posit Insurance Act (12 U.S.C. 1831p-  
9 1(c)); and

10 “(ii) the views and recommendations  
11 of the Comptroller of the Currency and the  
12 Federal Deposit Insurance Corporation.”.

13 **SEC. 957. VOTING BY BROKERS.**

14 Section 6(b) of the Securities Exchange Act of 1934  
15 (15 U.S.C. 78f(b)) is amended—

16 (1) in paragraph (9)—

17 (A) in subparagraph (A), by redesignating  
18 clauses (i) through (v) as subclauses (I)  
19 through (V), respectively, and adjusting the  
20 margins accordingly;

21 (B) by redesignating subparagraphs (A)  
22 through (D) as clauses (i) through (iv), respec-  
23 tively, and adjusting the margins accordingly;

24 (C) by inserting “(A)” after “(9)”; and

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1 (D) in the matter immediately following  
2 clause (iv), as so redesignated, by striking “As  
3 used” and inserting the following:

4 “(B) As used”.

5 (2) by adding at the end the following:

6 “(10)(A) The rules of the exchange prohibit  
7 any member that is not the beneficial owner of a se-  
8 curity registered under section 12 from granting a  
9 proxy to vote the security in connection with a  
10 shareholder vote described in subparagraph (B), un-  
11 less the beneficial owner of the security has in-  
12 structed the member to vote the proxy in accordance  
13 with the voting instructions of the beneficial owner.

14 “(B) A shareholder vote described in this sub-  
15 paragraph is a shareholder vote with respect to the  
16 election of a member of the board of directors of an  
17 issuer, executive compensation, or any other signifi-  
18 cant matter, as determined by the Commission, by  
19 rule.

20 “(C) Nothing in this paragraph shall be con-  
21 strued to prohibit a national securities exchange  
22 from prohibiting a member that is not the beneficial  
23 owner of a security registered under section 12 from  
24 granting a proxy to vote the security in connection

1 with a shareholder vote not described in subpara-  
2 graph (A).”.

3 **Subtitle F—Improvements to the**  
4 **Management of the Securities**  
5 **and Exchange Commission**

6 **SEC. 961. REPORT AND CERTIFICATION OF INTERNAL SU-**  
7 **PERVISORY CONTROLS.**

8 (a) ANNUAL REPORTS AND CERTIFICATION.—Not  
9 later than 90 days after the end of each fiscal year, the  
10 Commission shall submit a report to the Committee on  
11 Banking, Housing, and Urban Affairs of the Senate and  
12 the Committee on Financial Services of the House of Rep-  
13 resentatives on the conduct by the Commission of exami-  
14 nations of registered entities, enforcement investigations,  
15 and review of corporate financial securities filings.

16 (b) CONTENTS OF REPORTS.—Each report under  
17 subsection (a) shall contain—

18 (1) an assessment, as of the end of the most re-  
19 cent fiscal year, of the effectiveness of—

20 (A) the internal supervisory controls of the  
21 Commission; and

22 (B) the procedures of the Commission ap-  
23 plicable to the staff of the Commission who per-  
24 form examinations of registered entities, en-

1           enforcement investigations, and reviews of cor-  
2           porate financial securities filings;

3           (2) a certification that the Commission has ade-  
4           quate internal supervisory controls to carry out the  
5           duties of the Commission described in paragraph  
6           (1)(B); and

7           (3) a summary by the Comptroller General of  
8           the United States of the review carried out under  
9           subsection (d).

10          (c) CERTIFICATION.—

11           (1) SIGNATURE.—The certification under sub-  
12           section (b)(2) shall be signed by the Director of the  
13           Division of Enforcement, the Director of the Divi-  
14           sion of Corporation Finance, and the Director of the  
15           Office of Compliance Inspections and Examinations  
16           (or the head of any successor division or office).

17           (2) CONTENT OF CERTIFICATION.—Each indi-  
18           vidual described in paragraph (1) shall certify that  
19           the individual—

20                   (A) is directly responsible for establishing  
21                   and maintaining the internal supervisory con-  
22                   trols of the Division or Office of which the indi-  
23                   vidual is the head;

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1 (B) is knowledgeable about the internal su-  
2 pervisory controls of the Division or Office of  
3 which the individual is the head;

4 (C) has evaluated the effectiveness of the  
5 internal supervisory controls during the 90-day  
6 period ending on the final day of the fiscal year  
7 to which the report relates; and

8 (D) has disclosed to the Commission any  
9 significant deficiencies in the design or oper-  
10 ation of internal supervisory controls that could  
11 adversely affect the ability of the Division or  
12 Office to consistently conduct inspections, or in-  
13 vestigations, or reviews of filings with profes-  
14 sional competence and integrity.

15 (d) NEW DIRECTOR OR ACTING DIRECTOR.—Not-  
16 withstanding subsection (a), if the Director of the Division  
17 of Enforcement, the Director of the Division of Corporate  
18 Finance, or the Director of the Office of Compliance In-  
19 spections and Examinations has served as Director of the  
20 Division or Office for less than 90 days on the date on  
21 which a report is required to be submitted under sub-  
22 section (a), the Commission may submit the report on the  
23 date on which the Director has served as Director for 90  
24 days. If there is no Director of the Division of Enforce-  
25 ment, the Division of Corporate Finance, or the Office of



1 Compliance Inspections and Examinations, on the date on  
2 which a report is required to be submitted under sub-  
3 section (a), the Acting Director of the Division or Office  
4 may make the certification required under subsection (c).

5 (e) REVIEW BY THE COMPTROLLER GENERAL.—

6 (1) REPORT.—The Comptroller General of the  
7 United States shall submit to the Committee on  
8 Banking, Housing, and Urban Affairs of the Senate  
9 and the Committee on Financial Services of the  
10 House of Representatives a report that contains a  
11 review of the adequacy and effectiveness of the inter-  
12 nal supervisory control structure and procedures de-  
13 scribed in subsection (b)(1), not less frequently than  
14 once every 3 years, at a time to coincide with the  
15 publication of the reports of the Commission under  
16 this section.

17 (2) AUTHORITY TO HIRE EXPERTS.—The  
18 Comptroller General of the United States may hire  
19 independent consultants with specialized expertise in  
20 any area relevant to the duties of the Comptroller  
21 General described in this section, in order to assist  
22 the Comptroller General in carrying out such duties.

1 **SEC. 962. TRIENNIAL REPORT ON PERSONNEL MANAGE-**  
2 **MENT.**

3 (a) TRIENNIAL REPORT REQUIRED.—Once every 3  
4 years, the Comptroller General of the United States shall  
5 submit a report to the Committee on Banking, Housing,  
6 and Urban Affairs of the Senate and the Committee on  
7 Financial Services of the House of Representatives on the  
8 quality of personnel management by the Commission.

9 (b) CONTENTS OF REPORT.—Each report under sub-  
10 section (a) shall include—

11 (1) an evaluation of—

12 (A) the effectiveness of supervisors in  
13 using the skills, talents, and motivation of the  
14 employees of the Commission to achieve the  
15 goals of the Commission;

16 (B) the criteria for promoting employees of  
17 the Commission to supervisory positions;

18 (C) the fairness of the application of the  
19 promotion criteria to the decisions of the Com-  
20 mission;

21 (D) the competence of the professional  
22 staff of the Commission;

23 (E) the efficiency of communication be-  
24 tween the units of the Commission regarding  
25 the work of the Commission (including commu-  
26 nication between divisions and between subunits

1 of a division) and the efforts by the Commission  
2 to promote such communication;

3 (F) the turnover within subunits of the  
4 Commission, including the consideration of su-  
5 pervisors whose subordinates have an unusually  
6 high rate of turnover;

7 (G) whether there are excessive numbers of  
8 low-level, mid-level, or senior-level managers;

9 (H) any initiatives of the Commission that  
10 increase the competence of the staff of the  
11 Commission;

12 (I) the actions taken by the Commission  
13 regarding employees of the Commission who  
14 have failed to perform their duties and cir-  
15 cumstances under which the Commission has  
16 issued to employees a notice of termination; and

17 (J) such other factors relating to the man-  
18 agement of the Commission as the Comptroller  
19 General determines are appropriate;

20 (2) an evaluation of any improvements made  
21 with respect to the areas described in paragraph (1)  
22 since the date of submission of the previous report;  
23 and

24 (3) recommendations for how the Commission  
25 can use the human resources of the Commission

1 more effectively and efficiently to carry out the mis-  
2 sion of the Commission.

3 (c) CONSULTATION.—In preparing the report under  
4 subsection (a), the Comptroller General shall consult with  
5 current employees of the Commission, retired employees  
6 and other former employees of the Commission, the In-  
7 spector General of the Commission, persons that have  
8 business before the Commission, any union representing  
9 the employees of the Commission, private management  
10 consultants, academics, and any other source that the  
11 Comptroller General deems appropriate.

12 (d) REPORT BY COMMISSION.—Not later than 90  
13 days after the date on which the Comptroller General sub-  
14 mits each report under subsection (a), the Commission  
15 shall submit to the Committee on Banking, Housing, and  
16 Urban Affairs of the Senate and the Committee on Finan-  
17 cial Services of the House of Representatives a report de-  
18 scribing the actions taken by the Commission in response  
19 to the recommendations contained in the report under  
20 subsection (a).

21 (e) REIMBURSEMENTS FOR COST OF REPORTS.—

22 (1) REIMBURSEMENTS REQUIRED.—The Com-  
23 mission shall reimburse the Government Account-  
24 ability Office for the full cost of making the reports

1 under this section, as billed therefor by the Comp-  
2 troller General.

3 (2) CREDITING AND USE OF REIMBURSE-  
4 MENTS.—Such reimbursements shall—

5 (A) be credited to the appropriation ac-  
6 count “Salaries and Expenses, Government Ac-  
7 countability Office” current when the payment  
8 is received; and

9 (B) remain available until expended.

10 (f) AUTHORITY TO HIRE EXPERTS.—The Comp-  
11 troller General of the United States may hire independent  
12 consultants with specialized expertise in any area relevant  
13 to the duties of the Comptroller General described in this  
14 section, in order to assist the Comptroller General in car-  
15 rying out such duties.

16 **SEC. 963. ANNUAL FINANCIAL CONTROLS AUDIT.**

17 (a) REPORTS OF COMMISSION.—

18 (1) ANNUAL REPORTS REQUIRED.—Not later  
19 than 6 months after the end of each fiscal year, the  
20 Commission shall publish and submit to Congress a  
21 report that—

22 (A) describes the responsibility of the man-  
23 agement of the Commission for establishing and  
24 maintaining an adequate internal control struc-  
25 ture and procedures for financial reporting; and

1           (B) contains an assessment of the effec-  
2           tiveness of the internal control structure and  
3           procedures for financial reporting of the Com-  
4           mission during that fiscal year.

5           (2) ATTESTATION.—The reports required under  
6           paragraph (1) shall be attested to by the Chairman  
7           and chief financial officer of the Commission.

8           (b) REPORT BY COMPTROLLER GENERAL.—

9           (1) REPORT REQUIRED.—Not later than 6  
10          months after the end of the first fiscal year after the  
11          date of enactment of this Act, the Comptroller Gen-  
12          eral of the United States shall submit a report to  
13          Congress that assesses—

14                (A) the effectiveness of the internal control  
15                structure and procedures of the Commission for  
16                financial reporting; and

17                (B) the assessment of the Commission  
18                under subsection (a)(1)(B).

19           (2) ATTESTATION.—The Comptroller General  
20          shall attest to, and report on, the assessment made  
21          by the Commission under subsection (a).

22          (c) REIMBURSEMENTS FOR COST OF REPORTS.—

23                (1) REIMBURSEMENTS REQUIRED.—The Com-  
24                mission shall reimburse the Government Account-  
25                ability Office for the full cost of making the reports

1 under subsection (b), as billed therefor by the Comp-  
2 troller General.

3 (2) CREDITING AND USE OF REIMBURSE-  
4 MENTS.—Such reimbursements shall—

5 (A) be credited to the appropriation ac-  
6 count “Salaries and Expenses, Government Ac-  
7 countability Office” current when the payment  
8 is received; and

9 (B) remain available until expended.

10 **SEC. 964. REPORT ON OVERSIGHT OF NATIONAL SECURI-**  
11 **TIES ASSOCIATIONS.**

12 (a) REPORT REQUIRED.—Not later than 2 years  
13 after the date of enactment of this Act, and every 3 years  
14 thereafter, the Comptroller General of the United States  
15 shall submit to the Committee on Banking, Housing, and  
16 Urban Affairs of the Senate and the Committee on Finan-  
17 cial Services of the House of Representatives a report that  
18 includes an evaluation of the oversight by the Commission  
19 of national securities associations registered under section  
20 15A of the Securities Exchange Act of 1934 (15 U.S.C.  
21 78o–3) with respect to—

22 (1) the governance of such national securities  
23 associations, including the identification and man-  
24 agement of conflicts of interest by such national se-  
25 curities associations, together with an analysis of the

1 impact of any conflicts of interest on the regulatory  
2 enforcement or rulemaking by such national securi-  
3 ties associations;

4 (2) the examinations carried out by the national  
5 securities associations, including the expertise of the  
6 examiners;

7 (3) the executive compensation practices of such  
8 national securities associations;

9 (4) the arbitration services provided by the na-  
10 tional securities associations;

11 (5) the review performed by national securities  
12 associations of advertising by the members of the  
13 national securities associations;

14 (6) the cooperation with and assistance to State  
15 securities administrators by the national securities  
16 associations to promote investor protection;

17 (7) how the funding of national securities asso-  
18 ciations is used to support the mission of the na-  
19 tional securities associations, including—

20 (A) the methods of funding;

21 (B) the sufficiency of funds;

22 (C) how funds are invested by the national  
23 securities association pending use; and



1 (D) the impact of the methods, sufficiency,  
2 and investment of funds on regulatory enforce-  
3 ment by the national securities associations;

4 (8) the policies regarding the employment of  
5 former employees of national securities associations  
6 by regulated entities;

7 (9) the ongoing effectiveness of the rules of the  
8 national securities associations in achieving the goals  
9 of the rules;

10 (10) the transparency of governance and activi-  
11 ties of the national securities associations; and

12 (11) any other issue that has an impact, as de-  
13 termined by the Comptroller General, on the effec-  
14 tiveness of such national securities associations in  
15 performing their mission and in dealing fairly with  
16 investors and members;

17 (b) REIMBURSEMENTS FOR COST OF REPORTS.—

18 (1) REIMBURSEMENTS REQUIRED.—The Com-  
19 mission shall reimburse the Government Account-  
20 ability Office for the full cost of making the reports  
21 under subsection (a), as billed therefor by the Comp-  
22 troller General.

23 (2) CREDITING AND USE OF REIMBURSE-  
24 MENTS.—Such reimbursements shall—

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1 (A) be credited to the appropriation ac-  
2 count “Salaries and Expenses, Government Ac-  
3 countability Office” current when the payment  
4 is received; and

5 (B) remain available until expended.

6 **SEC. 965. COMPLIANCE EXAMINERS.**

7 Section 4 of the Securities Exchange Act of 1934 (15  
8 U.S.C. 78d) is amended by adding at the end the fol-  
9 lowing:

10 “(h) EXAMINERS.—

11 “(1) DIVISION OF TRADING AND MARKETS.—

12 The Division of Trading and Markets of the Com-  
13 mission, or any successor organizational unit, shall  
14 have a staff of examiners who shall—

15 “(A) perform compliance inspections and  
16 examinations of entities under the jurisdiction  
17 of that Division; and

18 “(B) report to the Director of that Divi-  
19 sion.

20 “(2) DIVISION OF INVESTMENT MANAGE-  
21 MENT.—The Division of Investment Management of  
22 the Commission, or any successor organizational  
23 unit, shall have a staff of examiners who shall—

1           “(A) perform compliance inspections and  
2           examinations of entities under the jurisdiction  
3           of that Division; and

4           “(B) report to the Director of that Divi-  
5           sion.”.

6   **SEC. 966. SUGGESTION PROGRAM FOR EMPLOYEES OF THE**  
7           **COMMISSION.**

8           The Securities Exchange Act of 1934 (15 U.S.C. 78a  
9   et seq.) is amended by inserting after section 4C (15  
10 U.S.C. 78d-3) the following:

11   **“SEC. 4D. ADDITIONAL DUTIES OF INSPECTOR GENERAL.**

12           “(a) SUGGESTION SUBMISSIONS BY COMMISSION EM-  
13   PLOYEES.—

14           “(1) HOTLINE ESTABLISHED.—The Inspector  
15           General of the Commission shall establish and main-  
16           tain a telephone hotline or other electronic means for  
17           the receipt of—

18           “(A) suggestions by employees of the Com-  
19           mission for improvements in the work effi-  
20           ciency, effectiveness, and productivity, and the  
21           use of the resources, of the Commission; and

22           “(B) allegations by employees of the Com-  
23           mission of waste, abuse, misconduct, or mis-  
24           management within the Commission.

1           “(2) CONFIDENTIALITY.—The Inspector Gen-  
2           eral shall maintain as confidential—

3                   “(A) the identity of any individual who  
4                   provides information by the means established  
5                   under paragraph (1), unless the individual re-  
6                   quests otherwise, in writing; and

7                   “(B) at the request of any such individual,  
8                   any specific information provided by the indi-  
9                   vidual.

10          “(b) CONSIDERATION OF REPORTS.—The Inspector  
11          General shall consider any suggestions or allegations re-  
12          ceived by the means established under subsection (a)(1),  
13          and shall recommend appropriate action in relation to  
14          such suggestions or allegations.

15          “(c) RECOGNITION.—The Inspector General may rec-  
16          ognize any employee who makes a suggestion under sub-  
17          section (a)(1) (or by other means) that would or does—

18                   “(1) increase the work efficiency, effectiveness,  
19                   or productivity of the Commission; or

20                   “(2) reduce waste, abuse, misconduct, or mis-  
21                   management within the Commission.

22          “(d) REPORT.—The Inspector General of the Com-  
23          mission shall submit to Congress an annual report con-  
24          taining a description of—

1 “(1) the nature, number, and potential benefits  
2 of any suggestions received under subsection (a);

3 “(2) the nature, number, and seriousness of  
4 any allegations received under subsection (a);

5 “(3) any recommendations made or actions  
6 taken by the Inspector General in response to sub-  
7 stantiated allegations received under subsection (a);  
8 and

9 “(4) any action the Commission has taken in  
10 response to suggestions or allegations received under  
11 subsection (a).

12 “(e) FUNDING.—The activities of the Inspector Gen-  
13 eral under this subsection shall be funded by the Securities  
14 and Exchange Commission Investor Protection Fund es-  
15 tablished under section 21F.”.

## 16 **Subtitle G—Strengthening** 17 **Corporate Governance**

### 18 **SEC. 971. ELECTION OF DIRECTORS BY MAJORITY VOTE IN** 19 **UNCONTESTED ELECTIONS.**

20 The Securities Exchange Act of 1934 (15 U.S.C. 78a  
21 et seq.) is amended by inserting after section 14A, as  
22 added by this title, the following:

#### 23 **“SEC. 14B. CORPORATE GOVERNANCE.**

24 “(a) CORPORATE GOVERNANCE STANDARDS.—

25 “(1) LISTING STANDARDS.—

1           “(A) IN GENERAL.—Not later than 1 year  
2           after the date of enactment of this subsection,  
3           the Commission shall, by rule, direct the na-  
4           tional securities exchanges and national securi-  
5           ties associations to prohibit the listing of any  
6           security of an issuer that is not in compliance  
7           with any of the requirements of this subsection.

8           “(B) OPPORTUNITY TO COMPLY AND  
9           CURE.—The rules established under this para-  
10          graph shall allow an issuer to have an oppor-  
11          tunity to come into compliance with the require-  
12          ments of this subsection, and to cure any defect  
13          that would be the basis for a prohibition under  
14          subparagraph (A), before the imposition of such  
15          prohibition.

16          “(C) AUTHORITY TO EXEMPT.—The Com-  
17          mission may, by rule or order, exempt an issuer  
18          from any or all of the requirements of this sub-  
19          section and the rules issued under this sub-  
20          section, based on the size of the issuer, the  
21          market capitalization of the issuer, the number  
22          of shareholders of record of the issuer, or any  
23          other criteria, as the Commission deems nec-  
24          essary and appropriate in the public interest or  
25          for the protection of investors.



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1 of time, as established by the  
2 Commission; and

3 “(cc) make the date under  
4 item (bb) public within a reason-  
5 able period of time, as estab-  
6 lished by the Commission; or

7 “(II) shall, upon a unanimous  
8 vote of the board, decline to accept  
9 the resignation and, not later than 30  
10 days after the date of the vote (or  
11 within such shorter period as the  
12 Commission may establish), make  
13 public, together with a discussion of  
14 the analysis used in reaching the con-  
15 clusion, the specific reasons that—

16 “(aa) the board chose not to  
17 accept the resignation; and

18 “(bb) the decision was in the  
19 best interests of the issuer and  
20 the shareholders of the issuer.”.

21 **SEC. 972. PROXY ACCESS.**

22 (a) PROXY ACCESS.—Section 14(a) of the Securities  
23 Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

24 (1) by inserting “(1)” after “(a)”; and

25 (2) by adding at the end the following:



1 “(2) The rules and regulations prescribed by the  
2 Commission under paragraph (1) may include—

3 “(A) a requirement that a solicitation of proxy,  
4 consent, or authorization by (or on behalf of) an  
5 issuer include a nominee submitted by a shareholder  
6 to serve on the board of directors of the issuer; and

7 “(B) a requirement that an issuer follow a cer-  
8 tain procedure in relation to a solicitation described  
9 in subparagraph (A).”.

10 (b) REGULATIONS.—The Commission may issue rules  
11 permitting the use by shareholders of proxy solicitation  
12 materials supplied by an issuer of securities for the pur-  
13 pose of nominating individuals to membership on the  
14 board of directors of the issuer, under such terms and con-  
15 ditions as the Commission determines are in the interests  
16 of shareholders and for the protection of investors.

17 **SEC. 973. DISCLOSURES REGARDING CHAIRMAN AND CEO**  
18 **STRUCTURES.**

19 Section 14B of the Securities Exchange Act of 1934,  
20 as added by section 971, is amended by adding at the end  
21 the following:

22 “(b) DISCLOSURES REGARDING CHAIRMAN AND CEO  
23 STRUCTURES.—Not later than 180 days after the date of  
24 enactment of this subsection, the Commission shall issue

1 rules that require an issuer to disclose in the annual proxy  
2 sent to investors the reasons why the issuer has chosen—

3 “(1) the same person to serve as chairman of  
4 the board of directors and chief executive officer (or  
5 in equivalent positions); or

6 “(2) different individuals to serve as chairman  
7 of the board of directors and chief executive officer  
8 (or in equivalent positions of the issuer).”.

## 9 **Subtitle H—Municipal Securities**

### 10 **SEC. 975. REGULATION OF MUNICIPAL SECURITIES AND**

#### 11 **CHANGES TO THE BOARD OF THE MSRB.**

12 (a) REGISTRATION OF MUNICIPAL SECURITIES  
13 DEALERS AND MUNICIPAL ADVISORS.—Section 15B(a) of  
14 the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(a))  
15 is amended—

16 (1) in paragraph (1)—

17 (A) by inserting “(A)” after “(1)”; and

18 (B) by adding at the end the following:

19 “(B) It shall be unlawful for a municipal  
20 advisor to provide advice to or on behalf of a  
21 municipal entity or obligated person with re-  
22 spect to municipal financial products or the  
23 issuance of municipal securities, or to under-  
24 take a solicitation of a municipal entity or obli-

1           gated person, unless the municipal advisor is  
2           registered in accordance with this subsection.”;

3           (2) in paragraph (2), by inserting “or municipal  
4           advisor” after “municipal securities dealer” each  
5           place that term appears;

6           (3) in paragraph (3), by inserting “or municipal  
7           advisor” after “municipal securities dealer” each  
8           place that term appears;

9           (4) in paragraph (4), by striking “dealer, or  
10          municipal securities dealer or class of brokers, deal-  
11          ers, or municipal securities dealers” and inserting  
12          “dealer, municipal securities dealer, or municipal ad-  
13          visor, or class of brokers, dealers, municipal securi-  
14          ties dealers, or municipal advisors”; and

15          (5) by adding at the end the following:

16          “(5) No municipal advisor shall make use of the  
17          mails or any means or instrumentality of interstate  
18          commerce to provide advice to or on behalf of a mu-  
19          nicipal entity or obligated person with respect to mu-  
20          nicipal financial products, the issuance of municipal  
21          securities, or to undertake a solicitation of a munic-  
22          ipal entity or obligated person, in connection with  
23          which such municipal advisor engages in any fraudu-  
24          lent, deceptive, or manipulative act or practice.”.

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1 (b) MUNICIPAL SECURITIES RULEMAKING BOARD.—  
2 Section 15B(b) of the Securities Exchange Act of 1934  
3 (15 U.S.C. 78o-4(b)) is amended—

4 (1) in paragraph (1)—

5 (A) in the first sentence, by striking “Not  
6 later than” and all that follows through “ap-  
7 pointed by the Commission” and inserting “The  
8 Municipal Securities Rulemaking Board shall be  
9 composed of 15 members, or such other number  
10 of members as specified by rules of the Board  
11 pursuant to paragraph (2)(B),”;

12 (B) by striking the second sentence and in-  
13 serting the following: “The members of the  
14 Board shall serve as members for a term of 3  
15 years or for such other terms as specified by  
16 rules of the Board pursuant to paragraph  
17 (2)(B), and shall consist of (A) 8 individuals  
18 who are not associated with any broker, dealer,  
19 municipal securities dealer, or municipal advisor  
20 (other than by reason of being under common  
21 control with, or indirectly controlling, any  
22 broker or dealer which is not a municipal secu-  
23 rities broker or municipal securities dealer), at  
24 least 1 of whom shall be representative of insti-  
25 tutional or retail investors in municipal securi-

1 ties, at least 1 of whom shall be representative  
2 of municipal entities, and at least 1 of whom  
3 shall be a member of the public with knowledge  
4 of or experience in the municipal industry  
5 (which members are hereinafter referred to as  
6 ‘public representatives’); and (B) 7 individuals  
7 who are associated with a broker, dealer, mu-  
8 nicipal securities dealer, or municipal advisor,  
9 including at least 1 individual who is associated  
10 with and representative of brokers, dealers, or  
11 municipal securities dealers that are not banks  
12 or subsidiaries or departments or divisions of  
13 banks (which members are hereinafter referred  
14 to as ‘broker-dealer representatives’), at least 1  
15 individual who is associated with and represent-  
16 ative of municipal securities dealers which are  
17 banks or subsidiaries or departments or divi-  
18 sions of banks (which members are hereinafter  
19 referred to as ‘bank representatives’), and at  
20 least 1 individual who is associated with a mu-  
21 nicipal advisor (which member is hereinafter re-  
22 ferred to as the ‘advisor representative’).”; and  
23 (C) in the third sentence, by striking “ini-  
24 tial”;  
25 (2) in paragraph (2)—

1 (A) in the matter preceding subparagraph

2 (A)—

3 (i) by inserting before the period at  
4 the end of the first sentence the following:  
5 “and advice provided to or on behalf of  
6 municipal entities or obligated persons by  
7 brokers, dealers, municipal securities deal-  
8 ers, and municipal advisors with respect to  
9 municipal financial products, the issuance  
10 of municipal securities, and solicitations of  
11 municipal entities or obligated persons un-  
12 dertaken by brokers, dealers, municipal se-  
13 curities dealers, and municipal advisors”;  
14 and

15 (ii) by striking the second sentence;

16 (B) in subparagraph (A)—

17 (i) in the matter preceding clause

18 (i)—

19 (I) by inserting “, and no broker,  
20 dealer, municipal securities dealer, or  
21 municipal advisor shall provide advice  
22 to or on behalf of a municipal entity  
23 or obligated person with respect to  
24 municipal financial products or the  
25 issuance of municipal securities,”

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1 after “sale of, any municipal secu-  
2 rity”; and

3 (II) by inserting “and municipal  
4 entities or obligated persons” after  
5 “protection of investors”;

6 (ii) in clause (i), by striking “munic-  
7 ipal securities brokers and municipal secu-  
8 rities dealers” each place that term ap-  
9 pears and inserting “municipal securities  
10 brokers, municipal securities dealers, and  
11 municipal advisors”;

12 (iii) in clause (ii), by adding “and” at  
13 the end;

14 (iv) in clause (iii), by striking “; and”  
15 and inserting a period; and

16 (v) by striking clause (iv);

17 (C) in subparagraph (B), by striking  
18 “nominations and elections” and all that follows  
19 through “specify” and inserting “nominations  
20 and elections of public representatives, broker-  
21 dealer representatives, bank representatives,  
22 and advisor representatives. Such rules shall  
23 provide that the membership of the Board shall  
24 at all times be as evenly divided in number as  
25 possible between entities or individuals who are

1 subject to regulation by the Board and entities  
2 or individuals not subject to regulation by the  
3 Board, provided, however, that a majority of  
4 the members of the Board shall at all times be  
5 public representatives. Such rules shall also  
6 specify”;

7 (D) in subparagraph (C)—

8 (i) by inserting “and municipal finan-  
9 cial products” after “municipal securities”  
10 the first two times that term appears;

11 (ii) by inserting “, municipal entities,  
12 obligated persons,” before “and the public  
13 interest”;

14 (iii) by striking “between” and insert-  
15 ing “among”;

16 (iv) by striking “issuers, municipal se-  
17 curities brokers, or municipal securities  
18 dealers, to fix” and inserting “municipal  
19 entities, obligated persons, municipal secu-  
20 rities brokers, municipal securities dealers,  
21 or municipal advisors, to fix”; and

22 (v) by striking “brokers or municipal  
23 securities dealers, to regulate” and insert-  
24 ing “brokers, municipal securities dealers,  
25 or municipal advisors, to regulate”;



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1 (E) in subparagraph (D)—

2 (i) by inserting “and advice con-  
3 cerning municipal financial products” after  
4 “transactions in municipal securities”;

5 (ii) by striking “That no” and insert-  
6 ing “that no”;

7 (iii) by inserting “municipal advisor,”  
8 before “or person associated”; and

9 (iv) by striking “a municipal securi-  
10 ties broker or municipal securities dealer  
11 may be compelled” and inserting “a mu-  
12 nicipal securities broker, municipal securi-  
13 ties dealer, or municipal advisor may be  
14 compelled”;

15 (F) in subparagraph (E)—

16 (i) by striking “municipal securities  
17 brokers and municipal securities dealers”  
18 and inserting “municipal securities bro-  
19 kers, municipal securities dealers, and mu-  
20 nicipal advisors”; and

21 (ii) by striking “municipal securities  
22 broker or municipal securities dealer” and  
23 inserting “municipal securities broker, mu-  
24 nicipal securities dealer, or municipal advi-  
25 sor”;

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1 (G) in subparagraph (G), by striking “mu-  
2 nicipal securities brokers and municipal securi-  
3 ties dealers” and inserting “municipal securities  
4 brokers, municipal securities dealers, and mu-  
5 nicipal advisors”;

6 (H) in subparagraph (J)—

7 (i) by striking “municipal securities  
8 broker and each municipal securities deal-  
9 er” and inserting “municipal securities  
10 broker, municipal securities dealer, and  
11 municipal advisor”; and

12 (ii) by striking the period at the end  
13 of the second sentence and inserting “,  
14 which may include charges for failure to  
15 submit to the Board, or to any information  
16 system operated by the Board, within the  
17 prescribed timeframes, any items of infor-  
18 mation or documents required to be sub-  
19 mitted under any rule issued by the  
20 Board.”;

21 (I) in subparagraph (K)—

22 (i) by inserting “broker, dealer, or”  
23 before “municipal securities dealer” each  
24 place that term appears; and

1                   (ii) by striking “municipal securities  
2                   investment portfolio” and inserting “re-  
3                   lated account of a broker, dealer, or mu-  
4                   nicipal securities dealer”; and  
5                   (J) by adding at the end the following:

6                   “(L) provide continuing education require-  
7                   ments for municipal advisors.

8                   “(M) provide professional standards.

9                   “(N) not impose a regulatory burden on  
10                  small municipal advisors that is not necessary  
11                  or appropriate in the public interest and for the  
12                  protection of investors, municipal entities, and  
13                  obligated persons, provided that there is robust  
14                  protection of investors against fraud.”;

15                  (3) by redesignating paragraph (3) as para-  
16                  graph (7); and

17                  (4) by inserting after paragraph (2) the fol-  
18                  lowing:

19                  “(3) The Board, in conjunction with or on be-  
20                  half of any Federal financial regulator or self-regu-  
21                  latory organization, may—

22                         “(A) establish information systems; and

23                         “(B) assess such reasonable fees and  
24                         charges for the submission of information to, or  
25                         the receipt of information from, such systems

1 from any persons which systems may be devel-  
2 oped for the purposes of serving as a repository  
3 of information from municipal market partici-  
4 pants or otherwise in furtherance of the pur-  
5 poses of the Board, a Federal financial regu-  
6 lator, or a self-regulatory organization, except  
7 that the Board—

8 “(i) may not charge a fee to municipal  
9 entities or obligated persons to submit doc-  
10 uments or other information to the Board  
11 or charge a fee to any person to obtain, di-  
12 rectly from the Internet site of the Board,  
13 documents or information submitted by  
14 municipal entities, obligated persons, bro-  
15 kers, dealers, municipal securities dealers,  
16 or municipal advisors, including documents  
17 submitted under the rules of the Board or  
18 the Commission; and

19 “(ii) shall not be prohibited from  
20 charging commercially reasonable fees for  
21 automated subscription-based feeds or  
22 similar services, or for charging for other  
23 data or document-based services cus-  
24 tomized upon request of any person, made  
25 available to commercial enterprises, munic-



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1                   “(ii) examination and enforcement of  
2                   compliance with Board rules.”.

3           (c) DISCIPLINE OF DEALERS AND MUNICIPAL ADVI-  
4 SORS AND OTHER MATTERS.—Section 15B(c) of the Se-  
5 curities Exchange Act of 1934 (15 U.S.C. 78o–4(c)) is  
6 amended—

7           (1) in paragraph (1), by inserting “, and no  
8           broker, dealer, municipal securities dealer, or munic-  
9           ipal advisor shall make use of the mails or any  
10          means or instrumentality of interstate commerce to  
11          provide advice to or on behalf of a municipal entity  
12          or obligated person with respect to municipal finan-  
13          cial products, the issuance of municipal securities, or  
14          to undertake a solicitation of a municipal entity or  
15          obligated person,” after “any municipal security”;

16          (2) in paragraph (2), by inserting “or municipal  
17          advisor” after “municipal securities dealer” each  
18          place that term appears;

19          (3) in paragraph (3)—

20                (A) by inserting “or municipal entities or  
21                obligated person” after “protection of inves-  
22                tors” each place that term appears; and

23                (B) by inserting “or municipal advisor”  
24                after “municipal securities dealer” each place  
25                that term appears;

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1 (4) in paragraph (4), by inserting “or municipal  
2 advisor” after “municipal securities dealer or obli-  
3 gated person” each place that term appears;

4 (5) in paragraph (6)(B), by inserting “or mu-  
5 nicipal entities or obligated person” after “protec-  
6 tion of investors”;

7 (6) in paragraph (7)—

8 (A) in subparagraph (A)—

9 (i) in clause (i), by striking “; and”  
10 and inserting a semicolon;

11 (ii) in clause (ii), by striking the pe-  
12 riod and inserting “; and”; and

13 (iii) by adding at the end the fol-  
14 lowing:

15 “(iii) the Commission, or its designee,  
16 in the case of municipal advisors.”.

17 (B) in subparagraph (B), by inserting “or  
18 municipal entities or obligated person” after  
19 “protection of investors”; and

20 (7) by adding at the end the following:

21 “(9)(A) Fines collected by the Commission for  
22 violations of the rules of the Board shall be equally  
23 divided between the Commission and the Board.

24 “(B) Fines collected by a registered securities  
25 association under section 15A(7) with respect to vio-

1       lations of the rules of the Board shall be accounted  
2       for by such registered securities association sepa-  
3       rately from other fines collected under section  
4       15A(7) and shall be allocated between such reg-  
5       istered securities association and the Board, and  
6       such allocation shall require the registered securities  
7       association to pay to the Board  $\frac{1}{3}$  of all fines col-  
8       lected by the registered securities association reason-  
9       ably allocable to violations of the rules of the Board,  
10      or such other portion of such fines as may be di-  
11      rected by the Commission upon agreement between  
12      the registered securities association and the Board.”.

13      (d) ISSUANCE OF MUNICIPAL SECURITIES.—Section  
14      15B(d)(2) of the Securities Exchange Act of 1934 (15  
15      U.S.C. 78o-4(d)) is amended—

16           (1) by striking “through a municipal securities  
17      broker or municipal securities dealer or otherwise”  
18      and inserting “through a municipal securities  
19      broker, municipal securities dealer, municipal advi-  
20      sor, or otherwise”; and

21           (2) by inserting “or municipal advisors” before  
22      “to furnish”.

23      (e) DEFINITIONS.—Section 15B of the Securities Ex-  
24      change Act of 1934 (15 U.S.C. 78o-4) is amended by add-  
25      ing at the end the following:



1 “(e) DEFINITIONS.—For purposes of this section—

2 “(1) the term ‘Board’ means the Municipal Se-  
3 curities Rulemaking Board established under sub-  
4 section (b)(1);

5 “(2) the term ‘guaranteed investment contract’  
6 includes any investment that has specified with-  
7 drawal or reinvestment provisions and a specifically  
8 negotiated or bid interest rate, and also includes any  
9 agreement to supply investments on 2 or more fu-  
10 ture dates, such as a forward supply contract;

11 “(3) the term ‘investment strategies’ includes  
12 plans or programs for the investment of the proceeds  
13 of municipal securities that are not municipal de-  
14 rivatives, guaranteed investment contracts, and the  
15 recommendation of and brokerage of municipal es-  
16 crow investments;

17 “(4) the term ‘municipal advisor’—

18 “(A) means a person (who is not a munic-  
19 ipal entity or an employee of a municipal enti-  
20 ty) that—

21 “(i) provides advice to or on behalf of  
22 a municipal entity or obligated person with  
23 respect to municipal financial products or  
24 the issuance of municipal securities, in-  
25 cluding advice with respect to the struc-

1           ture, timing, terms, and other similar mat-  
2           ters concerning such financial products or  
3           issues; or

4                   “(ii) undertakes a solicitation of a  
5           municipal entity;

6                   “(B) includes financial advisors, guaran-  
7           teed investment contract brokers, third-party  
8           marketers, placement agents, solicitors, finders,  
9           and swap advisors, if such persons are de-  
10          scribed in any of clauses (i) through (iii) of sub-  
11          paragraph (A); and

12                   “(C) does not include a broker, dealer, or  
13          municipal securities dealer serving as an under-  
14          writer (as defined in section 2(a)(11) of the Se-  
15          curities Act of 1933) (15 U.S.C. 77b(a)(11)),  
16          any investment adviser registered under the In-  
17          vestment Advisers Act of 1940, or persons asso-  
18          ciated with such investment advisers who are  
19          providing investment advice, any commodity  
20          trading advisor registered under the Commodity  
21          Exchange Act or persons associated with a com-  
22          modity trading advisor who are providing advice  
23          related to swaps, attorneys offering legal advice  
24          or providing services that are of a traditional

1 legal nature, or engineers providing engineering  
2 advice;

3 “(5) the term ‘municipal financial product’  
4 means municipal derivatives, guaranteed investment  
5 contracts, and investment strategies;

6 “(6) the term ‘rules of the Board’ means the  
7 rules proposed and adopted by the Board under sub-  
8 section (b)(2);

9 “(7) the term ‘person associated with a munic-  
10 ipal advisor’ or ‘associated person of an advisor’  
11 means—

12 “(A) any partner, officer, director, or  
13 branch manager of such municipal advisor (or  
14 any person occupying a similar status or per-  
15 forming similar functions);

16 “(B) any other employee of such municipal  
17 advisor who is engaged in the management, di-  
18 rection, supervision, or performance of any ac-  
19 tivities relating to the provision of advice to or  
20 on behalf of a municipal entity or obligated per-  
21 son with respect to municipal financial products  
22 or the issuance of municipal securities; and

23 “(C) any person directly or indirectly con-  
24 trolling, controlled by, or under common control  
25 with such municipal advisor;

1           “(8) the term ‘municipal entity’ means any  
2 State, political subdivision of a State, or municipal  
3 corporate instrumentality of a State, including—

4                   “(A) any agency, authority, or instrumen-  
5 tality of the State, political subdivision, or mu-  
6 nicipal corporate instrumentality;

7                   “(B) any plan, program, or pool of assets  
8 sponsored or established by the State, political  
9 subdivision, or municipal corporate instrumen-  
10 tality or any agency, authority, or instrumen-  
11 tality thereof; and

12                   “(C) any other issuer of municipal securi-  
13 ties;

14           “(9) the term ‘solicitation of a municipal entity  
15 or obligated person’ means a direct or indirect com-  
16 munication with a municipal entity or obligated per-  
17 son made by a person, for direct or indirect com-  
18 pensation, on behalf of a broker, dealer, municipal  
19 securities dealer, municipal advisor, or investment  
20 adviser (as defined in section 202 of the Investment  
21 Advisers Act of 1940) that does not control, is not  
22 controlled by, or is not under common control with  
23 the person undertaking such solicitation for the pur-  
24 pose of obtaining or retaining an engagement by a  
25 municipal entity or obligated person of a broker,

1 dealer, municipal securities dealer, or municipal ad-  
2 visor for or in connection with municipal financial  
3 products, the issuance of municipal securities, or of  
4 an investment adviser to provide investment advisory  
5 services to or on behalf of a municipal entity; and

6 “(10) the term ‘obligated person’ means any  
7 person, including an issuer of municipal securities,  
8 who is either generally or through an enterprise,  
9 fund, or account of such person, committed by con-  
10 tract or other arrangement to support the payment  
11 of all or part of the obligations on the municipal se-  
12 curities to be sold in an offering of municipal securi-  
13 ties.”.

14 (f) REGISTERED SECURITIES ASSOCIATION.—Section  
15 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C.  
16 78o–3(b)) is amended by adding at the end the following:

17 “(15) The rules of the association provide that  
18 the association shall—

19 “(A) request guidance from the Municipal  
20 Securities Rulemaking Board in interpretation  
21 of the rules of the Municipal Securities Rule-  
22 making Board; and

23 “(B) provide information to the Municipal  
24 Securities Rulemaking Board about the enforce-  
25 ment actions and examinations of the associa-

1           tion under section 15B(b)(2)(E), so that the  
2           Municipal Securities Rulemaking Board may—

3                   “(i) assist in such enforcement actions  
4                   and examinations; and

5                   “(ii) evaluate the ongoing effective-  
6                   ness of the rules of the Board.”.

7           (g) REGISTRATION AND REGULATION OF BROKERS  
8           AND DEALERS.—Section 15 of the Securities Exchange  
9           Act of 1934 is amended—

10           (1) in subsection (b)(4), by inserting “municipal  
11           advisor,” after “municipal securities dealer”  
12           each place that term appears; and

13           (2) in subsection (c), by inserting “broker, deal-  
14           er, or” before “municipal securities dealer” each  
15           place that term appears.

16           (h) ACCOUNTS AND RECORDS, REPORTS, EXAMINA-  
17           TIONS OF EXCHANGES, MEMBERS, AND OTHERS.—Sec-  
18           tion 17(a)(1) of the Securities Exchange Act of 1934 is  
19           amended by inserting “municipal advisor,” after “municipal  
20           securities dealer”.

21           (i) EFFECTIVE DATE.—This section, and the amend-  
22           ments made by this section, shall take effect on October  
23           1, 2010.

1 **SEC. 976. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**  
2 **OF INCREASED DISCLOSURE TO INVESTORS.**

3 (a) STUDY.—The Comptroller General of the United  
4 States shall conduct a study and review of the disclosure  
5 required to be made by issuers of municipal securities.

6 (b) SUBJECTS FOR EVALUATION.—In conducting the  
7 study under subsection (a), the Comptroller General of the  
8 United States shall—

9 (1) broadly describe—

10 (A) the size of the municipal securities  
11 markets and the issuers and investors; and

12 (B) the disclosures provided by issuers to  
13 investors;

14 (2) compare the amount, frequency, and quality  
15 of disclosures that issuers of municipal securities are  
16 required by law to provide for the benefit of munic-  
17 ipal securities holders, including the amount of and  
18 frequency of disclosures actually provided by issuers  
19 of municipal securities, with the amount of and fre-  
20 quency of disclosures that issuers of corporate secu-  
21 rities provide for the benefit of corporate securities  
22 holders, taking into account the differences between  
23 issuers of municipal securities and issuers of cor-  
24 porate securities;

25 (3) evaluate the costs and benefits to various  
26 types of issuers of municipal securities of requiring

1 issuers of municipal bonds to provide additional fi-  
2 nancial disclosures for the benefit of investors;

3 (4) evaluate the potential benefit to investors  
4 from additional financial disclosures by issuers of  
5 municipal bonds; and

6 (5) make recommendations relating to disclo-  
7 sure requirements for municipal issuers, including  
8 the advisability of the repeal or retention of section  
9 15B(d) of the Securities Exchange Act of 1934 (15  
10 U.S.C. 78o-4(d)) (commonly known as the “Tower  
11 Amendment”).

12 (c) REPORT.—Not later than 24 months after the  
13 date of enactment of this Act, the Comptroller General  
14 of the United States shall submit a report to Congress  
15 on the results of the study conducted under subsection (a),  
16 including recommendations for how to improve disclosure  
17 by issuers of municipal securities.

18 **SEC. 977. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**  
19 **ON THE MUNICIPAL SECURITIES MARKETS.**

20 (a) STUDY.—The Comptroller General of the United  
21 States shall conduct a study of the municipal securities  
22 markets.

23 (b) REPORT.—Not later than 18 months after the  
24 date of enactment of this Act, the Comptroller General  
25 of the United States shall submit a report to the Com-



1 mittee on Banking, Housing, and Urban Affairs of the  
2 Senate, and the Committee on Financial Services of the  
3 House of Representatives, with copies to the Special Com-  
4 mittee on Aging of the Senate and the Commission, on  
5 the results of the study conducted under subsection (a),  
6 including—

7           (1) an analysis of the mechanisms for trading,  
8           quality of trade executions, market transparency,  
9           trade reporting, price discovery, settlement clearing,  
10          and credit enhancements;

11          (2) the needs of the markets and investors and  
12          the impact of recent innovations;

13          (3) recommendations for how to improve the  
14          transparency, efficiency, fairness, and liquidity of  
15          trading in the municipal securities markets, includ-  
16          ing with reference to items listed in paragraph (1);  
17          and

18          (4) potential uses of derivatives in the munic-  
19          ipal securities markets.

20          (c) RESPONSES.—Not later than 180 days after re-  
21          ceipt of the report required under subsection (b), the Com-  
22          mission shall submit a response to the Committee on  
23          Banking, Housing, and Urban Affairs of the Senate, and  
24          the Committee on Financial Services of the House of Rep-  
25          resentatives, with a copy to the Special Committee on

1 Aging of the Senate, stating the actions the Commission  
2 has taken in response to the recommendations contained  
3 in such report.

4 **SEC. 978. STUDY OF FUNDING FOR GOVERNMENT AC-**  
5 **COUNTING STANDARDS BOARD.**

6 (a) STUDY.—The Commission shall conduct a study  
7 that evaluates—

8 (1) the role and importance of the Government  
9 Accounting Standards Board in the municipal secu-  
10 rities markets;

11 (2) the manner in which the Government Ac-  
12 counting Standards Board is funded, and how such  
13 manner of funding affects the financial information  
14 available to securities investors;

15 (3) the advisability of changes to the manner in  
16 which the Government Accounting Standards Board  
17 is funded; and

18 (4) whether legislative changes to the manner  
19 in which the Government Accounting Standards  
20 Board is funded are necessary for the benefit of in-  
21 vestors and in the public interest.

22 (b) CONSULTATION.—In conducting the study re-  
23 quired under subsection (a), the Commission shall consult  
24 with State and local government financial officers.

1 (c) REPORT.—Not later than 270 days after the date  
2 of enactment of this Act, the Commission shall submit to  
3 the Committee on Banking, Housing, and Urban Affairs  
4 of the Senate and the Committee on Financial Services  
5 of the House of Representatives a report on the study re-  
6 quired under subsection (a).

7 **SEC. 979. COMMISSION OFFICE OF MUNICIPAL SECURITIES.**

8 (a) IN GENERAL.—There shall be in the Commission  
9 an Office of Municipal Securities, which shall—

10 (1) administer the rules of the Commission with  
11 respect to the practices of municipal securities bro-  
12 kers and dealers, municipal securities advisors, mu-  
13 nicipal securities investors, and municipal securities  
14 issuers; and

15 (2) coordinate with the Municipal Securities  
16 Rulemaking Board for rulemaking and enforcement  
17 actions as required by law.

18 (b) DIRECTOR OF THE OFFICE.—The head of the Of-  
19 fice of Municipal Securities shall be the Director, who  
20 shall report to the Chairman.

21 (c) STAFFING.—

22 (1) IN GENERAL.—The Office of Municipal Se-  
23 curities shall be staffed sufficiently to carry out the  
24 requirements of this section.

1           (2) REQUIREMENT.—The staff of the Office of  
2           Municipal Securities shall include individuals with  
3           knowledge of and expertise in municipal finance.

4           **Subtitle I—Public Company Ac-**  
5           **counting Oversight Board, Port-**  
6           **folio Margining, and Other Mat-**  
7           **ters**

8           **SEC. 981. AUTHORITY TO SHARE CERTAIN INFORMATION**  
9           **WITH FOREIGN AUTHORITIES.**

10          (a) DEFINITION.—Section 2(a) of the Sarbanes-  
11          Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended by  
12          adding at the end the following:

13                 “(17) FOREIGN AUDITOR OVERSIGHT AUTHOR-  
14                 ITY.—The term ‘foreign auditor oversight authority’  
15                 means any governmental body or other entity em-  
16                 powered by a foreign government to conduct inspec-  
17                 tions of public accounting firms or otherwise to ad-  
18                 minister or enforce laws related to the regulation of  
19                 public accounting firms.”.

20          (b) AVAILABILITY TO SHARE INFORMATION.—Sec-  
21          tion 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15  
22          U.S.C. 7215(b)(5)) is amended by adding at the end the  
23          following:

24                 “(C) AVAILABILITY TO FOREIGN OVER-  
25                 SIGHT AUTHORITIES.—Without the loss of its

1 status as confidential and privileged in the  
2 hands of the Board, all information referred to  
3 in subparagraph (A) that relates to a public ac-  
4 counting firm that a foreign government has  
5 empowered a foreign auditor oversight authority  
6 to inspect or otherwise enforce laws with re-  
7 spect to, may, at the discretion of the Board, be  
8 made available to the foreign auditor oversight  
9 authority, if—

10 “(i) the Board finds that it is nec-  
11 essary to accomplish the purposes of this  
12 Act or to protect investors;

13 “(ii) the foreign auditor oversight au-  
14 thority provides—

15 “(I) such assurances of confiden-  
16 tiality as the Board may request;

17 “(II) a description of the applica-  
18 ble information systems and controls  
19 of the foreign auditor oversight au-  
20 thority; and

21 “(III) a description of the laws  
22 and regulations of the foreign govern-  
23 ment of the foreign auditor oversight  
24 authority that are relevant to informa-  
25 tion access; and

1                   “(iii) the Board determines that it is  
2                   appropriate to share such information.”.

3           (c)       CONFORMING        AMENDMENT.—Section  
4 105(b)(5)(A) of the Sarbanes-Oxley Act of 2002 (15  
5 U.S.C. 7215(b)(5)(A)) is amended by striking “subpara-  
6 graph (B)” and inserting “subparagraphs (B) and (C)”.

7 **SEC. 982. OVERSIGHT OF BROKERS AND DEALERS.**

8           (a) DEFINITIONS.—

9                   (1) DEFINITIONS AMENDED.—Title I of the  
10 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et  
11 seq.) is amended by adding at the end the following  
12 new section:

13 **“SEC. 110. DEFINITIONS.**

14           “For the purposes of this title, the following defini-  
15 tions shall apply:

16                   “(1) AUDIT.—The term ‘audit’ means an exam-  
17 ination of the financial statements, reports, docu-  
18 ments, procedures, controls, or notices of any issuer,  
19 broker, or dealer by an independent public account-  
20 ing firm in accordance with the rules of the Board  
21 or the Commission, for the purpose of expressing an  
22 opinion on the financial statements or providing an  
23 audit report.

24                   “(2) AUDIT REPORT.—The term ‘audit report’  
25 means a document, report, notice, or other record—

1           “(A) prepared following an audit per-  
2           formed for purposes of compliance by an issuer,  
3           broker, or dealer with the requirements of the  
4           securities laws; and

5           “(B) in which a public accounting firm ei-  
6           ther—

7                   “(i) sets forth the opinion of that firm  
8                   regarding a financial statement, report, no-  
9                   tice, or other document, procedures, or  
10                  controls; or

11                  “(ii) asserts that no such opinion can  
12                  be expressed.

13           “(3) **BROKER.**—The term ‘broker’ means a  
14           broker (as such term is defined in section 3(a)(4) of  
15           the Securities Exchange Act of 1934 (15 U.S.C.  
16           78c(a)(4))) that is required to file a balance sheet,  
17           income statement, or other financial statement  
18           under section 17(e)(1)(A) of such Act (15 U.S.C.  
19           78q(e)(1)(A)), where such balance sheet, income  
20           statement, or financial statement is required to be  
21           certified by a registered public accounting firm.

22           “(4) **DEALER.**—The term ‘dealer’ means a  
23           dealer (as such term is defined in section 3(a)(5) of  
24           the Securities Exchange Act of 1934 (15 U.S.C.  
25           78c(a)(5))) that is required to file a balance sheet,

1 income statement, or other financial statement  
2 under section 17(e)(1)(A) of such Act (15 U.S.C.  
3 78q(e)(1)(A)), where such balance sheet, income  
4 statement, or financial statement is required to be  
5 certified by a registered public accounting firm.

6 “(5) PROFESSIONAL STANDARDS.—The term  
7 ‘professional standards’ means—

8 “(A) accounting principles that are—

9 “(i) established by the standard set-  
10 ting body described in section 19(b) of the  
11 Securities Act of 1933, as amended by this  
12 Act, or prescribed by the Commission  
13 under section 19(a) of that Act (15 U.S.C.  
14 17a(s)) or section 13(b) of the Securities  
15 Exchange Act of 1934 (15 U.S.C. 78a(m));  
16 and

17 “(ii) relevant to audit reports for par-  
18 ticular issuers, brokers, or dealers, or dealt  
19 with in the quality control system of a par-  
20 ticular registered public accounting firm;  
21 and

22 “(B) auditing standards, standards for at-  
23 testation engagements, quality control policies  
24 and procedures, ethical and competency stand-  
25 ards, and independence standards (including



1 rules implementing title II) that the Board or  
2 the Commission determines—

3 “(i) relate to the preparation or  
4 issuance of audit reports for issuers, bro-  
5 kers, or dealers; and

6 “(ii) are established or adopted by the  
7 Board under section 103(a), or are pro-  
8 mulgated as rules of the Commission.

9 “(6) SELF-REGULATORY ORGANIZATION.—The  
10 term ‘self-regulatory organization’ has the same  
11 meaning as in section 3(a) of the Securities Ex-  
12 change Act of 1934 (15 U.S.C. 78c(a)).”.

13 (2) CONFORMING AMENDMENT.—Section 2(a)  
14 of the Sarbanes-Oxley Act of 2002 (15 U.S.C.  
15 7201(a)) is amended in the matter preceding para-  
16 graph (1), by striking “In this” and inserting “Ex-  
17 cept as otherwise specifically provided in this Act, in  
18 this”.

19 (b) ESTABLISHMENT AND ADMINISTRATION OF THE  
20 PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—  
21 Section 101 of the Sarbanes-Oxley Act of 2002 (15 U.S.C.  
22 7211) is amended—

23 (1) by striking “issuers” each place that term  
24 appears and inserting “issuers, brokers, and deal-  
25 ers”; and

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1 (2) in subsection (a)—

2 (A) by striking “public companies” and in-  
3 serting “companies”; and

4 (B) by striking “for companies the securi-  
5 ties of which are sold to, and held by and for,  
6 public investors”.

7 (c) REGISTRATION WITH THE BOARD.—Section 102  
8 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212) is  
9 amended—

10 (1) in subsection (a)—

11 (A) by striking “Beginning 180” and all  
12 that follows through “101(d), it” and inserting  
13 “It”; and

14 (B) by striking “issuer” and inserting  
15 “issuer, broker, or dealer”;

16 (2) in subsection (b)—

17 (A) in paragraph (2)(A), by striking  
18 “issuers” and inserting “issuers, brokers, and  
19 dealers”; and

20 (B) by striking “issuer” each place that  
21 term appears and inserting “issuer, broker, or  
22 dealer”.

23 (d) AUDITING AND INDEPENDENCE.—Section 103(a)  
24 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7213(a))  
25 is amended—

1           (1) in paragraph (1), by striking “and such eth-  
2           ics standards” and inserting “such ethics standards,  
3           and such independence standards”;

4           (2) in paragraph (2)(A)(iii), by striking “de-  
5           scribe in each audit report” and inserting “in each  
6           audit report for an issuer, describe”; and

7           (3) in paragraph (2)(B)(i), by striking  
8           “issuers” and inserting “issuers, brokers, and deal-  
9           ers”.

10          (e) INSPECTIONS OF REGISTERED PUBLIC ACCOUNT-  
11          ING FIRMS.—Section 104 of the Sarbanes-Oxley Act of  
12          2002 (15 U.S.C. 7214) is amended—

13                 (1) in subsection (a), by striking “issuers” and  
14                 inserting “issuers, brokers, and dealers”; and

15                 (2) in subsection (b)(1)—

16                         (A) by striking “audit reports for” each  
17                         place that term appears and inserting “audit  
18                         reports on annual financial statements for”;

19                         (B) in subparagraph (A), by striking  
20                         “and” at the end;

21                         (C) in subparagraph (B), by striking the  
22                         period at the end and inserting “; and”; and

23                         (D) by adding at the end the following:

24                                 “(C) with respect to each registered public  
25                                 accounting firm that regularly provides audit

1 reports and that is not described in subpara-  
2 graph (A) or (B), on a basis determined by the  
3 Board, by rule, that is consistent with the pub-  
4 lic interest and protection of investors.”.

5 (f) INVESTIGATIONS AND DISCIPLINARY PRO-  
6 CEEDINGS.—Section 105(c)(7)(B) of the Sarbanes-Oxley  
7 Act of 2002 (15 U.S.C. 7215(c)(7)(B)) is amended—

8 (1) in the subparagraph heading, by inserting  
9 “, BROKER, OR DEALER” after “ISSUER”;

10 (2) by striking “any issuer” each place that  
11 term appears and inserting “any issuer, broker, or  
12 dealer”; and

13 (3) by striking “an issuer under this sub-  
14 section” and inserting “a registered public account-  
15 ing firm under this subsection”.

16 (g) FOREIGN PUBLIC ACCOUNTING FIRMS.—Section  
17 106(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C.  
18 7216(a)) is amended—

19 (1) in paragraph (1), by striking “issuer” and  
20 inserting “issuer, broker, or dealer”; and

21 (2) in paragraph (2), by striking “issuers” and  
22 inserting “issuers, brokers, or dealers”.

23 (h) FUNDING.—Section 109 of the Sarbanes-Oxley  
24 Act of 2002 (15 U.S.C. 7219) is amended—

1 (1) in subsection (c)(2), by striking “subsection  
2 (i)” and inserting “subsection (j)”;

3 (2) in subsection (d)—

4 (A) in paragraph (2), by striking “allowing  
5 for differentiation among classes of issuers, as  
6 appropriate” and inserting “and among brokers  
7 and dealers, in accordance with subsection (h),  
8 and allowing for differentiation among classes  
9 of issuers, brokers and dealers, as appropriate”;  
10 and

11 (B) by adding at the end the following:

12 “(3) **BROKERS AND DEALERS.**—The Board  
13 shall begin the allocation, assessment, and collection  
14 of fees under paragraph (2) with respect to brokers  
15 and dealers with the payment of support fees to  
16 fund the first full fiscal year beginning after the ef-  
17 fective date of this paragraph.”;

18 (3) by redesignating subsections (h), (i), and (j)  
19 as subsections (i), (j), and (k), respectively; and

20 (4) by inserting after subsection (g) the fol-  
21 lowing:

22 “(h) **ALLOCATION OF ACCOUNTING SUPPORT FEES**  
23 **AMONG BROKERS AND DEALERS.**—

24 “(1) **OBLIGATION TO PAY.**—Each broker or  
25 dealer shall pay to the Board the annual accounting

1 support fee allocated to such broker or dealer under  
2 this section.

3 “(2) ALLOCATION.—Any amount due from a  
4 broker or dealer (or from a particular class of bro-  
5 kers and dealers) under this section shall be allo-  
6 cated among brokers and dealers and payable by the  
7 broker or dealer (or the brokers and dealers in the  
8 particular class, as applicable).

9 “(3) PROPORTIONALITY.—The amount due  
10 from a broker or dealer shall be in proportion to the  
11 net capital of the broker or dealer, compared to the  
12 total net capital of all brokers and dealers, in ac-  
13 cordance with rules issued by the Board.”.

14 (i) REFERRAL OF INVESTIGATIONS TO A SELF-REGU-  
15 LATORY ORGANIZATION.—Section 105(b)(4)(B) of the  
16 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(4)(B))  
17 is amended—

18 (1) by redesignating clauses (ii) and (iii) as  
19 clauses (iii) and (iv), respectively; and

20 (2) by inserting after clause (i) the following:

21 “(ii) to a self-regulatory organization,  
22 in the case of an investigation that con-  
23 cerns an audit report for a broker or deal-  
24 er that is under the jurisdiction of such  
25 self-regulatory organization;”.

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1 (j) USE OF DOCUMENTS RELATED TO AN INSPEC-  
2 TION OR INVESTIGATION.—Section 105(b)(5)(B)(ii) of the  
3 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(B)(ii))  
4 is amended—

5 (1) in subclause (III), by striking “and” at the  
6 end;

7 (2) in subclause (IV), by striking the comma  
8 and inserting “; and”; and

9 (3) by inserting after subclause (IV) the fol-  
10 lowing:

11 “(V) a self-regulatory organiza-  
12 tion, with respect to an audit report  
13 for a broker or dealer that is under  
14 the jurisdiction of such self-regulatory  
15 organization,”.

16 (k) EFFECTIVE DATE.—The amendments made by  
17 this section shall take effect 180 days after the date of  
18 enactment of this Act.

19 **SEC. 983. PORTFOLIO MARGINING.**

20 (a) ADVANCES.—Section 9(a)(1) of the Securities In-  
21 vestor Protection Act of 1970 (15 U.S.C. 78fff3(a)(1)) is  
22 amended by inserting “or options on commodity futures  
23 contracts” after “claim for securities”.

1 (b) DEFINITIONS.—Section 16 of the Securities In-  
2 vestor Protection Act of 1970 (15 U.S.C. 78ll) is amend-  
3 ed—

4 (1) by striking paragraph (2) and inserting the  
5 following:

6 “(2) CUSTOMER.—

7 “(A) IN GENERAL.—The term ‘customer’  
8 of a debtor means any person (including any  
9 person with whom the debtor deals as principal  
10 or agent) who has a claim on account of securi-  
11 ties received, acquired, or held by the debtor in  
12 the ordinary course of its business as a broker  
13 or dealer from or for the securities accounts of  
14 such person for safekeeping, with a view to sale,  
15 to cover consummated sales, pursuant to pur-  
16 chases, as collateral, security, or for purposes of  
17 effecting transfer.

18 “(B) INCLUDED PERSONS.—The term  
19 ‘customer’ includes—

20 “(i) any person who has deposited  
21 cash with the debtor for the purpose of  
22 purchasing securities;

23 “(ii) any person who has a claim  
24 against the debtor for cash, securities, fu-  
25 tures contracts, or options on futures con-



1 tracts received, acquired, or held in a port-  
2 folio margining account carried as a secu-  
3 rities account pursuant to a portfolio mar-  
4 gining program approved by the Commis-  
5 sion; and

6 “(iii) any person who has a claim  
7 against the debtor arising out of sales or  
8 conversions of such securities.

9 “(C) EXCLUDED PERSONS.—The term  
10 ‘customer’ does not include any person, to the  
11 extent that—

12 “(i) the claim of such person arises  
13 out of transactions with a foreign sub-  
14 sidiary of a member of SIPC; or

15 “(ii) such person has a claim for cash  
16 or securities which by contract, agreement,  
17 or understanding, or by operation of law,  
18 is part of the capital of the debtor, or is  
19 subordinated to the claims of any or all  
20 creditors of the debtor, notwithstanding  
21 that some ground exists for declaring such  
22 contract, agreement, or understanding void  
23 or voidable in a suit between the claimant  
24 and the debtor.”;

25 (2) in paragraph (4)—

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

3 (B) by redesignating subparagraph (D) as  
4 subparagraph (E); and

5 (C) by inserting after subparagraph (C)  
6 the following:

7 “(D) in the case of a portfolio margining  
8 account of a customer that is carried as a secu-  
9 rities account pursuant to a portfolio margining  
10 program approved by the Commission, a futures  
11 contract or an option on a futures contract re-  
12 ceived, acquired, or held by or for the account  
13 of a debtor from or for such portfolio margining  
14 account, and the proceeds thereof; and”;

15 (3) in paragraph (9), in the matter following  
16 subparagraph (L), by inserting after “Such term”  
17 the following: “includes revenues earned by a broker  
18 or dealer in connection with a transaction in the  
19 portfolio margining account of a customer carried as  
20 securities accounts pursuant to a portfolio margining  
21 program approved by the Commission. Such term”;  
22 and

23 (4) in paragraph (11)—

24 (A) in subparagraph (A)—

1 (i) by striking “filing date, all” and  
2 all that follows through the end of the sub-  
3 paragraph and inserting the following: “fil-  
4 ing date—

5 “(i) all securities positions of such  
6 customer (other than customer name secu-  
7 rities reclaimed by such customer); and

8 “(ii) all positions in futures contracts  
9 and options on futures contracts held in a  
10 portfolio margining account carried as a  
11 securities account pursuant to a portfolio  
12 margining program approved by the Com-  
13 mission, including all property  
14 collateralizing such positions, to the extent  
15 that such property is not otherwise in-  
16 cluded herein; minus”; and

17 (B) in the matter following subparagraph  
18 (C), by striking “In determining” and inserting  
19 the following: “A claim for a commodity futures  
20 contract received, acquired, or held in a port-  
21 folio margining account pursuant to a portfolio  
22 margining program approved by the Commis-  
23 sion or a claim for a security futures contract,  
24 shall be deemed to be a claim with respect to  
25 such contract as of the filing date, and such

1 claim shall be treated as a claim for cash. In  
2 determining”.

3 **SEC. 984. LOAN OR BORROWING OF SECURITIES.**

4 (a) RULEMAKING AUTHORITY.—Section 10 of the Se-  
5 curities Exchange Act of 1934 (15 U.S.C. 78j) is amended  
6 by adding at the end the following:

7 “(e)(1) To effect, accept, or facilitate a trans-  
8 action involving the loan or borrowing of securities  
9 in contravention of such rules and regulations as the  
10 Commission may prescribe as necessary or appro-  
11 priate in the public interest or for the protection of  
12 investors.

13 “(2) Nothing in paragraph (1) may be con-  
14 strued to limit the authority of the appropriate Fed-  
15 eral banking agency (as defined in section 3(q) of  
16 the Federal Deposit Insurance Act (12 U.S.C.  
17 1813(q))), the National Credit Union Administra-  
18 tion, or any other Federal department or agency  
19 having a responsibility under Federal law to pre-  
20 scribe rules or regulations restricting transactions  
21 involving the loan or borrowing of securities in order  
22 to protect the safety and soundness of a financial in-  
23 stitution or to protect the financial system from sys-  
24 temic risk.”.

1 (b) RULEMAKING REQUIRED.—Not later than 2  
2 years after the date of enactment of this Act, the Commis-  
3 sion shall promulgate rules that are designed to increase  
4 the transparency of information available to brokers, deal-  
5 ers, and investors, with respect to the loan or borrowing  
6 of securities.

7 **SEC. 985. TECHNICAL CORRECTIONS TO FEDERAL SECURI-**  
8 **TIES LAWS.**

9 (a) SECURITIES ACT OF 1933.—The Securities Act  
10 of 1933 (15 U.S.C. 77a et seq.) is amended—

11 (1) in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by  
12 striking “individual;” and inserting “individual;”;

13 (2) in section 18 (15 U.S.C. 77r)—

14 (A) in subsection (b)(1)(C), by striking “is  
15 a security” and inserting “a security”; and

16 (B) in subsection (c)(2)(B)(i), by striking  
17 “State, or” and inserting “State or”;

18 (3) in section 19(d)(6)(A) (15 U.S.C.  
19 77s(d)(6)(A)), by striking “in paragraph (1) of (3)”  
20 and inserting “in paragraph (1) or (3)”; and

21 (4) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z-  
22 2(c)(1)(B)(ii)), by striking “business entity;” and in-  
23 serting “business entity.”

1 (b) SECURITIES EXCHANGE ACT OF 1934.—The Se-  
2 curities Exchange Act of 1934 (15 U.S.C. 78a et seq.)  
3 is amended—

4 (1) in section 2 (15 U.S.C. 78b), by striking  
5 “affected” and inserting “effected”;

6 (2) in section 3 (15 U.S.C. 78c)—

7 (A) in subsection (a)(55)(A), by striking  
8 “section 3(a)(12) of the Securities Exchange  
9 Act of 1934” and inserting “section 3(a)(12) of  
10 this title”; and

11 (B) in subsection (g), by striking “com-  
12 pany, account person, or entity” and inserting  
13 “company, account, person, or entity”;

14 (3) in section 10A(i)(1)(B) (15 U.S.C. 78j-  
15 1(i)(1)(B))—

16 (A) in the subparagraph heading, by strik-  
17 ing “MINIMUS” and inserting “MINIMIS”; and

18 (B) in clause (i), by striking “nonaudit”  
19 and inserting “non-audit”;

20 (4) in section 13(b)(1) (15 U.S.C. 78m(b)(1)),  
21 by striking “earning statement” and inserting  
22 “earnings statement”;

23 (5) in section 15 (15 U.S.C. 78o)—

24 (A) in subsection (b)(1)—

1 (i) in subparagraph (B), by striking  
2 “The order granting” and all that follows  
3 through “from such membership.”; and

4 (ii) in the undesignated matter imme-  
5 diately following subparagraph (B), by in-  
6 sserting after the first sentence the fol-  
7 lowing: “The order granting registration  
8 shall not be effective until such broker or  
9 dealer has become a member of a reg-  
10 istered securities association, or until such  
11 broker or dealer has become a member of  
12 a national securities exchange, if such  
13 broker or dealer effects transactions solely  
14 on that exchange, unless the Commission  
15 has exempted such broker or dealer, by  
16 rule or order, from such membership.”;

17 (6) in section 15C(a)(2) (15 U.S.C. 78o-  
18 5(a)(2))—

19 (A) by redesignating clauses (i) and (ii) as  
20 subparagraphs (A) and (B), respectively, and  
21 adjusting the subparagraph margins accord-  
22 ingly;

23 (B) in subparagraph (B), as so redesign-  
24 ated, by striking “The order granting” and all

1 that follows through “from such membership.”;  
2 and

3 (C) in the matter following subparagraph  
4 (B), as so redesignated, by inserting after the  
5 first sentence the following: “The order grant-  
6 ing registration shall not be effective until such  
7 government securities broker or government se-  
8 curities dealer has become a member of a na-  
9 tional securities exchange registered under sec-  
10 tion 6 of this title, or a securities association  
11 registered under section 15A of this title, unless  
12 the Commission has exempted such government  
13 securities broker or government securities deal-  
14 er, by rule or order, from such membership.”;

15 (7) in section 17(b)(1)(B) (15 U.S.C.  
16 78q(b)(1)(B)), by striking “15A(k) gives” and in-  
17 serting “15A(k), give”; and

18 (8) in section 21C(c)(2) (15 U.S.C. 78u-  
19 3(c)(2)), by striking “paragraph (1) subsection” and  
20 inserting “Paragraph (1)”.

21 (c) TRUST INDENTURE ACT OF 1939.—The Trust  
22 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is  
23 amended—



1 (1) in section 304(b) (15 U.S.C. 77ddd(b)), by  
2 striking “section 2 of such Act” and inserting “sec-  
3 tion 2(a) of such Act”; and

4 (2) in section 317(a)(1) (15 U.S.C.  
5 77qqq(a)(1)), by striking “, in the” and inserting  
6 “in the”.

7 (d) INVESTMENT COMPANY ACT OF 1940.—The In-  
8 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)  
9 is amended—

10 (1) in section 2(a)(19) (15 U.S.C. 80a–  
11 2(a)(19)), in the matter following subparagraph  
12 (B)(vii)—

13 (A) by striking “clause (vi)” each place  
14 that term appears and inserting “clause (vii)”;  
15 and

16 (B) in each of subparagraphs (A)(vi) and  
17 (B)(vi), by adding “and” at the end of sub-  
18 clause (III);

19 (2) in section 9(b)(4)(B) (15 U.S.C. 80a–  
20 9(b)(4)(B)), by adding “or” after the semicolon at  
21 the end;

22 (3) in section 12(d)(1)(J) (15 U.S.C. 80a–  
23 12(d)(1)(J)), by striking “any provision of this sub-  
24 section” and inserting “any provision of this para-  
25 graph”;

## 1306

1 (4) in section 17(f) (15 U.S.C. 80a–17(f))—

2 (A) in paragraph (4), by striking “No such  
3 member” and inserting “No member of a na-  
4 tional securities exchange”; and

5 (B) in paragraph (6), by striking “com-  
6 pany may serve” and inserting “company, may  
7 serve”; and

8 (5) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a–  
9 60(a)(3)(B)(iii))—

10 (A) by striking “paragraph (1) of section  
11 205” and inserting “section 205(a)(1)”; and

12 (B) by striking “clause (A) or (B) of that  
13 section” and inserting “paragraph (1) or (2) of  
14 section 205(b)”.

15 (e) INVESTMENT ADVISERS ACT OF 1940.—The In-  
16 vestment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.)  
17 is amended—

18 (1) in section 203 (15 U.S.C. 80b–3)—

19 (A) in subsection (c)(1)(A), by striking  
20 “principal business office and” and inserting  
21 “principal office, principal place of business,  
22 and”; and

23 (B) in subsection (k)(4)(B), in the matter  
24 following clause (ii), by striking “principal place

1           of business” and inserting “principal office or  
2           place of business”;

3           (2) in section 206(3) (15 U.S.C. 80b–6(3)), by  
4           adding “or” after the semicolon at the end;

5           (3) in section 213(a) (15 U.S.C. 80b–13(a)), by  
6           striking “principal place of business” and inserting  
7           “principal office or place of business”; and

8           (4) in section 222 (15 U.S.C. 80b–18a), by  
9           striking “principal place of business” each place that  
10          term appears and inserting “principal office and  
11          place of business”.

12 **SEC. 986. CONFORMING AMENDMENTS RELATING TO RE-**  
13 **PEAL OF THE PUBLIC UTILITY HOLDING**  
14 **COMPANY ACT OF 1935.**

15          (a) SECURITIES EXCHANGE ACT OF 1934.—The Se-  
16 curities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is  
17 amended—

18           (1) in section 3(a)(47) (15 U.S.C. 78c(a)(47)),  
19          by striking “the Public Utility Holding Company  
20          Act of 1935 (15 U.S.C. 79a et seq.)”;

21           (2) in section 12(k) (15 U.S.C. 78l(k)), by  
22          amending paragraph (7) to read as follows:

23           “(7) DEFINITION.—For purposes of this sub-  
24          section, the term ‘emergency’ means—

1           “(A) a major market disturbance charac-  
2           terized by or constituting—

3                   “(i) sudden and excessive fluctuations  
4                   of securities prices generally, or a substan-  
5                   tial threat thereof, that threaten fair and  
6                   orderly markets; or

7                   “(ii) a substantial disruption of the  
8                   safe or efficient operation of the national  
9                   system for clearance and settlement of  
10                  transactions in securities, or a substantial  
11                  threat thereof; or

12           “(B) a major disturbance that substan-  
13           tially disrupts, or threatens to substantially dis-  
14           rupt—

15                   “(i) the functioning of securities mar-  
16                   kets, investment companies, or any other  
17                   significant portion or segment of the secu-  
18                   rities markets; or

19                   “(ii) the transmission or processing of  
20                   securities transactions.”; and

21           (3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)),  
22           by striking “section 18(c) of the Public Utility Hold-  
23           ing Company Act of 1935,”.

1 (b) TRUST INDENTURE ACT OF 1939.—The Trust  
2 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is  
3 amended—

4 (1) in section 303 (15 U.S.C. 77ccc), by strik-  
5 ing paragraph (17) and inserting the following:

6 “(17) The terms ‘Securities Act of 1933’ and  
7 ‘Securities Exchange Act of 1934’ shall be deemed  
8 to refer, respectively, to such Acts, as amended,  
9 whether amended prior to or after the enactment of  
10 this title.”;

11 (2) in section 308 (15 U.S.C. 77hhh), by strik-  
12 ing “Securities Act of 1933, the Securities Exchange  
13 Act of 1934, or the Public Utility Holding Company  
14 Act of 1935” each place that term appears and in-  
15 serting “Securities Act of 1933 or the Securities Ex-  
16 change Act of 1934”;

17 (3) in section 310 (15 U.S.C. 77jjj), by striking  
18 subsection (c);

19 (4) in section 311 (15 U.S.C. 77kkk), by strik-  
20 ing subsection (c);

21 (5) in section 323(b) (15 U.S.C. 77www(b)), by  
22 striking “Securities Act of 1933, or the Securities  
23 Exchange Act of 1934, or the Public Utility Holding  
24 Company Act of 1935” and inserting “Securities Act

1 of 1933 or the Securities Exchange Act of 1934”;  
2 and

3 (6) in section 326 (15 U.S.C. 77zzz), by strik-  
4 ing “Securities Act of 1933, or the Securities Ex-  
5 change Act of 1934, or the Public Utility Holding  
6 Company Act of 1935,” and inserting “Securities  
7 Act of 1933 or the Securities Exchange Act of  
8 1934”.

9 (c) INVESTMENT COMPANY ACT OF 1940.—The In-  
10 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)  
11 is amended—

12 (1) in section 2(a)(44) (15 U.S.C. 80a–  
13 2(a)(44)), by striking “‘Public Utility Holding Com-  
14 pany Act of 1935’,”;

15 (2) in section 3(c) (15 U.S.C. 80a–3(c)), by  
16 striking paragraph (8) and inserting the following:

17 “(8) [Repealed]”;

18 (3) in section 38(b) (15 U.S.C. 80a–37(b)), by  
19 striking “the Public Utility Holding Company Act of  
20 1935,”; and

21 (4) in section 50 (15 U.S.C. 80a–49), by strik-  
22 ing “the Public Utility Holding Company Act of  
23 1935,”.

24 (d) INVESTMENT ADVISERS ACT OF 1940.—Section  
25 202(a)(21) of the Investment Advisers Act of 1940 (15

1 U.S.C. 80b–2(a)(21)) is amended by striking “‘Public  
2 Utility Holding Company Act of 1935’”.

3 **SEC. 987. AMENDMENT TO DEFINITION OF MATERIAL LOSS**  
4 **AND NONMATERIAL LOSSES TO THE DEPOSIT**  
5 **INSURANCE FUND FOR PURPOSES OF IN-**  
6 **SPECTOR GENERAL REVIEWS.**

7 (a) IN GENERAL.—Section 38(k) of the Federal De-  
8 posit Insurance Act (U.S.C. 1831o(k)) is amended—

9 (1) in paragraph (2), by striking subparagraph  
10 (B) and inserting the following:

11 “(B) MATERIAL LOSS DEFINED.—The  
12 term ‘material loss’ means any estimated loss in  
13 excess of—

14 “(i) \$100,000,000, if the loss occurs  
15 during the period beginning on January 1,  
16 2010, and ending on December 31, 2011;

17 “(ii) \$75,000,000, if the loss occurs  
18 during the period beginning on January 1,  
19 2012, and ending on December 31, 2013;  
20 and

21 “(iii) \$50,000,000, if the loss occurs  
22 on or after January 1, 2014.”;

23 (2) in paragraph (4)(A) by striking “the re-  
24 port” and inserting “any report on losses required  
25 under this subsection.”;

1 (3) by striking paragraph (6);

2 (4) by redesignating paragraph (5) as para-  
3 graph (6); and

4 (5) by inserting after paragraph (4) the fol-  
5 lowing:

6 “(5) LOSSES THAT ARE NOT MATERIAL.—

7 “(A) SEMIANNUAL REPORT.—For the 6-  
8 month period ending on March 31, 2010, and  
9 each 6-month period thereafter, the Inspector  
10 General of each Federal banking agency shall—

11 “(i) identify losses that the Inspector  
12 General estimates have been incurred by  
13 the Deposit Insurance Fund during that 6-  
14 month period, with respect to the insured  
15 depository institutions supervised by the  
16 Federal banking agency;

17 “(ii) for each loss incurred by the De-  
18 posit Insurance Fund that is not a mate-  
19 rial loss, determine—

20 “(I) the grounds identified by the  
21 Federal banking agency or State bank  
22 supervisor for appointing the Corpora-  
23 tion as receiver under section  
24 11(c)(5); and



## 1313

1                   “(II) whether any unusual cir-  
2                   cumstances exist that might warrant  
3                   an in-depth review of the loss; and

4                   “(iii) prepare and submit a written re-  
5                   port to the appropriate Federal banking  
6                   agency and to Congress on the results of  
7                   any determination by the Inspector Gen-  
8                   eral, including—

9                   “(I) an identification of any loss  
10                  that warrants an in-depth review, to-  
11                  gether with the reasons why such re-  
12                  view is warranted, or, if the Inspector  
13                  General determines that no review is  
14                  warranted, an explanation of such de-  
15                  termination; and

16                  “(II) for each loss identified  
17                  under subclause (I) that warrants an  
18                  in-depth review, the date by which  
19                  such review, and a report on such re-  
20                  view prepared in a manner consistent  
21                  with reports under paragraph (1)(A),  
22                  will be completed and submitted to  
23                  the Federal banking agency and Con-  
24                  gress.

## 1314

1           “(B) DEADLINE FOR SEMIANNUAL RE-  
2           PORT.—The Inspector General of each Federal  
3           banking agency shall—

4                   “(i) submit each report required  
5                   under paragraph (A) expeditiously, and not  
6                   later than 90 days after the end of the 6-  
7                   month period covered by the report; and

8                           “(ii) provide a copy of the report re-  
9                           quired under paragraph (A) to any Mem-  
10                           ber of Congress, upon request.”.

11           (b) TECHNICAL AND CONFORMING AMENDMENT.—  
12           The heading for subsection (k) of section 38 of the Fed-  
13           eral Deposit Insurance Act (U.S.C. 1831o(k)) is amended  
14           to read as follows:

15                   “(k) REVIEWS REQUIRED WHEN DEPOSIT INSUR-  
16                   ANCE FUND INCURS LOSSES.—”.

17           **SEC. 988. AMENDMENT TO DEFINITION OF MATERIAL LOSS**  
18                           **AND NONMATERIAL LOSSES TO THE NA-**  
19                           **TIONAL CREDIT UNION SHARE INSURANCE**  
20                           **FUND FOR PURPOSES OF INSPECTOR GEN-**  
21                           **ERAL REVIEWS.**

22           (a) IN GENERAL.—Section 216(j) of the Federal  
23           Credit Union Act (12 U.S.C. 1790d(j)) is amended to read  
24           as follows:

## 1315

1           “(j) REVIEWS REQUIRED WHEN SHARE INSURANCE  
2 FUND EXPERIENCES LOSSES.—

3           “(1) IN GENERAL.—If the Fund incurs a mate-  
4 rial loss with respect to an insured credit union, the  
5 Inspector General of the Board shall—

6           “(A) submit to the Board a written report  
7 reviewing the supervision of the credit union by  
8 the Administration (including the implementa-  
9 tion of this section by the Administration),  
10 which shall include—

11           “(i) a description of the reasons why  
12 the problems of the credit union resulted  
13 in a material loss to the Fund; and

14           “(ii) recommendations for preventing  
15 any such loss in the future; and

16           “(B) submit a copy of the report under  
17 subparagraph (A) to—

18           “(i) the Comptroller General of the  
19 United States;

20           “(ii) the Corporation;

21           “(iii) in the case of a report relating  
22 to a State credit union, the appropriate  
23 State supervisor; and

24           “(iv) to any Member of Congress,  
25 upon request.

## 1316

1           “(2) MATERIAL LOSS DEFINED.—For purposes  
2 of determining whether the Fund has incurred a ma-  
3 terial loss with respect to an insured credit union, a  
4 loss is material if it exceeds the sum of—

5                   “(A) \$25,000,000; and

6                   “(B) an amount equal to 10 percent of the  
7 total assets of the credit union on the date on  
8 which the Board initiated assistance under sec-  
9 tion 208 or was appointed liquidating agent.

10           “(3) PUBLIC DISCLOSURE REQUIRED.—

11                   “(A) IN GENERAL.—The Board shall dis-  
12 close a report under this subsection, upon re-  
13 quest under section 552 of title 5, United  
14 States Code, without excising—

15                           “(i) any portion under section  
16 552(b)(5) of title 5, United States Code; or

17                           “(ii) any information about the in-  
18 sured credit union (other than trade se-  
19 crets) under section 552(b)(8) of title 5,  
20 United States Code.

21                   “(B) RULE OF CONSTRUCTION.—Subpara-  
22 graph (A) may not be construed as requiring  
23 the agency to disclose the name of any cus-  
24 tomer of the insured credit union (other than  
25 an institution-affiliated party), or information

1 from which the identity of such customer could  
2 reasonably be ascertained.

3 “(4) LOSSES THAT ARE NOT MATERIAL.—

4 “(A) SEMIANNUAL REPORT.—For the 6-  
5 month period ending on March 31, 2010, and  
6 each 6-month period thereafter, the Inspector  
7 General of the Board shall—

8 “(i) identify any losses that the In-  
9 spector General estimates were incurred by  
10 the Fund during such 6-month period,  
11 with respect to insured credit unions;

12 “(ii) for each loss to the Fund that is  
13 not a material loss, determine—

14 “(I) the grounds identified by the  
15 Board or the State official having ju-  
16 risdiction over a State credit union for  
17 appointing the Board as the liqui-  
18 dating agent for any Federal or State  
19 credit union; and

20 “(II) whether any unusual cir-  
21 cumstances exist that might warrant  
22 an in-depth review of the loss; and

23 “(iii) prepare and submit a written re-  
24 port to the Board and to Congress on the

1 results of the determinations of the Inspec-  
2 tor General that includes—

3 “(I) an identification of any loss  
4 that warrants an in-depth review, and  
5 the reasons such review is warranted,  
6 or if the Inspector General determines  
7 that no review is warranted, an expla-  
8 nation of such determination; and

9 “(II) for each loss identified in  
10 subclause (I) that warrants an in-  
11 depth review, the date by which such  
12 review, and a report on the review  
13 prepared in a manner consistent with  
14 reports under paragraph (1)(A), will  
15 be completed.

16 “(B) DEADLINE FOR SEMIANNUAL RE-  
17 PORT.—The Inspector General of the Board  
18 shall—

19 “(i) submit each report required  
20 under subparagraph (A) expeditiously, and  
21 not later than 90 days after the end of the  
22 6-month period covered by the report; and

23 “(ii) provide a copy of the report re-  
24 quired under subparagraph (A) to any  
25 Member of Congress, upon request.

1           “(5) GAO REVIEW.—The Comptroller General  
2 of the United States shall, under such conditions as  
3 the Comptroller General determines to be appropriate—  
4           

5                   “(A) review each report made under para-  
6 graph (1), including the extent to which the In-  
7 spector General of the Board complied with the  
8 requirements under section 8L of the Inspector  
9 General Act of 1978 (5 U.S.C. App.) with re-  
10 spect to each such report; and

11                   “(B) recommend improvements to the su-  
12 pervision of insured credit unions (including im-  
13 provements relating to the implementation of  
14 this section).”.

15 **SEC. 989. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**  
16 **ON PROPRIETARY TRADING.**

17 (a) DEFINITIONS.—In this section—

18 (1) the term “covered entity” means—

19                   (A) an insured depository institution, an  
20 affiliate of an insured depository institution, a  
21 bank holding company, a financial holding com-  
22 pany, or a subsidiary of a bank holding com-  
23 pany or a financial holding company, as those  
24 terms are defined in the Bank Holding Com-  
25 pany Act of 1956 (12 U.S.C. 1841 et seq.); and

1 (B) any other entity, as the Comptroller  
2 General of the United States may determine;  
3 and

4 (2) the term “proprietary trading” means the  
5 act of a covered entity investing as a principal in se-  
6 curities, commodities, derivatives, hedge funds, pri-  
7 vate equity firms, or such other financial products or  
8 entities as the Comptroller General may determine.

9 (b) STUDY.—

10 (1) IN GENERAL.—The Comptroller General of  
11 the United States shall conduct a study regarding  
12 the risks and conflicts associated with proprietary  
13 trading by and within covered entities, including an  
14 evaluation of—

15 (A) whether proprietary trading presents a  
16 material systemic risk to the stability of the  
17 United States financial system, and if so, the  
18 costs and benefits of options for mitigating such  
19 systemic risk;

20 (B) whether proprietary trading presents  
21 material risks to the safety and soundness of  
22 the covered entities that engage in such activi-  
23 ties, and if so, the costs and benefits of options  
24 for mitigating such risks;



1           (C) whether proprietary trading presents  
2 material conflicts of interest between covered  
3 entities that engage in proprietary trading and  
4 the clients of the institutions who use the firm  
5 to execute trades or who rely on the firm to  
6 manage assets, and if so, the costs and benefits  
7 of options for mitigating such conflicts of inter-  
8 est;

9           (D) whether adequate disclosure regarding  
10 the risks and conflicts of proprietary trading is  
11 provided to the depositors, trading and asset  
12 management clients, and investors of covered  
13 entities that engage in proprietary trading, and  
14 if not, the costs and benefits of options for the  
15 improvement of such disclosure; and

16           (E) whether the banking, securities, and  
17 commodities regulators of institutions that en-  
18 gage in proprietary trading have in place ade-  
19 quate systems and controls to monitor and con-  
20 tain any risks and conflicts of interest related  
21 to proprietary trading, and if not, the costs and  
22 benefits of options for the improvement of such  
23 systems and controls.

1           (2) CONSIDERATIONS.—In carrying out the  
2 study required under paragraph (1), the Comptroller  
3 General shall consider—

4           (A) current practice relating to proprietary  
5 trading;

6           (B) the advisability of a complete ban on  
7 proprietary trading;

8           (C) limitations on the scope of activities  
9 that covered entities may engage in with respect  
10 to proprietary trading;

11           (D) the advisability of additional capital  
12 requirements for covered entities that engage in  
13 proprietary trading;

14           (E) enhanced restrictions on transactions  
15 between affiliates related to proprietary trading;

16           (F) enhanced accounting disclosures relat-  
17 ing to proprietary trading;

18           (G) enhanced public disclosure relating to  
19 proprietary trading; and

20           (H) any other options the Comptroller  
21 General deems appropriate.

22       (c) REPORT TO CONGRESS.—Not later than 15  
23 months after the date of enactment of this Act, the Comp-  
24 troller General shall submit a report to Congress on the  
25 results of the study conducted under subsection (b).

1           (d) ACCESS BY COMPTROLLER GENERAL.—For pur-  
2 poses of conducting the study required under subsection  
3 (b), the Comptroller General shall have access, upon re-  
4 quest, to any information, data, schedules, books, ac-  
5 counts, financial records, reports, files, electronic commu-  
6 nications, or other papers, things, or property belonging  
7 to or in use by a covered entity that engages in proprietary  
8 trading, and to the officers, directors, employees, inde-  
9 pendent public accountants, financial advisors, staff, and  
10 agents and representatives of a covered entity (as related  
11 to the activities of the agent or representative on behalf  
12 of the covered entity), at such reasonable times as the  
13 Comptroller General may request. The Comptroller Gen-  
14 eral may make and retain copies of books, records, ac-  
15 counts, and other records, as the Comptroller General  
16 deems appropriate.

17           (e) CONFIDENTIALITY OF REPORTS.—

18           (1) IN GENERAL.—Except as provided in para-  
19 graph (2), the Comptroller General may not disclose  
20 information regarding—

21           (A) any proprietary trading activity of a  
22 covered entity, unless such information is dis-  
23 closed at a level of generality that does not re-  
24 veal the investment or trading position or strat-  
25 egy of the covered entity for any specific secu-

1           rity, commodity, derivative, or other investment  
2           or financial product; or

3           (B) any individual interviewed by the  
4           Comptroller General for purposes of the study  
5           under subsection (b), unless such information is  
6           disclosed at a level of generality that does not  
7           reveal—

8           (i) the name of or identifying details  
9           relating to such individual; or

10          (ii) in the case of an individual who is  
11          an employee of a third party that provides  
12          professional services to a covered entity be-  
13          lieved to be engaged in proprietary trading,  
14          the name of or any identifying details re-  
15          lating to such third party.

16          (2) EXCEPTIONS.—The Comptroller General  
17          may disclose the information described in paragraph  
18          (1)—

19                (A) to a department, agency, or official of  
20                the Federal Government, for official use, upon  
21                request;

22                (B) to a committee of Congress, upon re-  
23                quest; and

24                (C) to a court, upon an order of such  
25                court.

1 **SEC. 989A. SENIOR INVESTOR PROTECTIONS.**

2 (a) DEFINITIONS.—As used in this section—

3 (1) the term “eligible entity” means—

4 (A) a securities commission (or any agency  
5 or office performing like functions) of a State  
6 that the Office determines has adopted rules on  
7 the appropriate use of designations in the offer  
8 or sale of securities or the provision of invest-  
9 ment advice that meet or exceed the minimum  
10 requirements of the NASAA Model Rule on the  
11 Use of Senior-Specific Certifications and Pro-  
12 fessional Designations (or any successor there-  
13 to);

14 (B) the insurance commission (or any  
15 agency or office performing like functions) of  
16 any State that the Office determines has—

17 (i) adopted rules on the appropriate  
18 use of designations in the sale of insurance  
19 products that, to the extent practicable,  
20 conform to the minimum requirements of  
21 the National Association of Insurance  
22 Commissioners Model Regulation on the  
23 Use of Senior-Specific Certifications and  
24 Professional Designations in the Sale of  
25 Life Insurance and Annuities (or any suc-  
26 cessor thereto); and

1 (ii) adopted rules with respect to fidu-  
2 ciary or suitability requirements in the sale  
3 of annuities that meet or exceed the min-  
4 imum requirements established by the  
5 Suitability in Annuity Transactions Model  
6 Regulation of the National Association of  
7 Insurance Commissioners (or any successor  
8 thereto); or

9 (C) a consumer protection agency of any  
10 State, if—

11 (i) the securities commission (or any  
12 agency or office performing like functions)  
13 of the State is eligible under subparagraph  
14 (A); or

15 (ii) the insurance commission (or any  
16 agency or office performing like functions)  
17 of the State is eligible under subparagraph  
18 (B);

19 (2) the term “financial product” means a secu-  
20 rity, an insurance product (including an insurance  
21 product that pays a return, whether fixed or vari-  
22 able), a bank product, and a loan product;

23 (3) the term “misleading designation”—

24 (A) means a certification, professional des-  
25 ignation, or other purported credential that in-

1            dicates or implies that a salesperson or adviser  
2            has special certification or training in advising  
3            or servicing seniors; and

4            (B) does not include a certification, profes-  
5            sional designation, license, or other credential  
6            that—

7            (i) was issued by or obtained from an  
8            academic institution having regional ac-  
9            creditation;

10           (ii) meets the standards for certifi-  
11           cations and professional designations out-  
12           lined by the NASAA Model Rule on the  
13           Use of Senior-Specific Certifications and  
14           Professional Designations (or any suc-  
15           cessor thereto) or by the Model Regula-  
16           tions on the Use of Senior-Specific Certifi-  
17           cations and Professional Designations in  
18           the Sale of Life Insurance and Annuities,  
19           adopted by the National Association of In-  
20           surance Commissioners (or any successor  
21           thereto); or

22           (iii) was issued by or obtained from a  
23           State;

24           (4) the term “misleading or fraudulent mar-  
25           keting” means the use of a misleading designation

1 by a person that sells to or advises a senior in con-  
2 nection with the sale of a financial product;

3 (5) the term “NASAA” means the North Amer-  
4 ican Securities Administrators Association;

5 (6) the term “Office” means the Office of Fi-  
6 nancial Literacy of the Bureau;

7 (7) the term “senior” means any individual who  
8 has attained the age of 62 years or older; and

9 (8) the term “State” has the same meaning as  
10 in section 3 of the Securities Exchange Act of 1934  
11 (15 U.S.C. 78c(a)).

12 (b) GRANTS TO STATES FOR ENHANCED PROTEC-  
13 TION OF SENIORS FROM BEING MISLED BY FALSE DES-  
14 IGNATIONS.—The Office shall establish a program under  
15 which the Office may make grants to States or eligible  
16 entities—

17 (1) to hire staff to identify, investigate, and  
18 prosecute (through civil, administrative, or criminal  
19 enforcement actions) cases involving misleading or  
20 fraudulent marketing;

21 (2) to fund technology, equipment, and training  
22 for regulators, prosecutors, and law enforcement of-  
23 ficers, in order to identify salespersons and advisers  
24 who target seniors through the use of misleading  
25 designations;



1           (3) to fund technology, equipment, and training  
2           for prosecutors to increase the successful prosecution  
3           of salespersons and advisers who target seniors with  
4           the use of misleading designations;

5           (4) to provide educational materials and train-  
6           ing to regulators on the appropriateness of the use  
7           of designations by salespersons and advisers in con-  
8           nection with the sale and marketing of financial  
9           products;

10          (5) to provide educational materials and train-  
11          ing to seniors to increase awareness and under-  
12          standing of misleading or fraudulent marketing;

13          (6) to develop comprehensive plans to combat  
14          misleading or fraudulent marketing of financial  
15          products to seniors; and

16          (7) to enhance provisions of State law to pro-  
17          vide protection for seniors against misleading or  
18          fraudulent marketing.

19          (c) APPLICATIONS.—A State or eligible entity desir-  
20          ing a grant under this section shall submit an application  
21          to the Office, in such form and in such a manner as the  
22          Office may determine, that includes—

23                 (1) a proposal for activities to protect seniors  
24                 from misleading or fraudulent marketing that are

1 proposed to be funded using a grant under this sec-  
2 tion, including—

3 (A) an identification of the scope of the  
4 problem of misleading or fraudulent marketing  
5 in the State;

6 (B) a description of how the proposed ac-  
7 tivities would—

8 (i) protect seniors from misleading or  
9 fraudulent marketing in the sale of finan-  
10 cial products, including by proactively iden-  
11 tifying victims of misleading and fraudu-  
12 lent marketing who are seniors;

13 (ii) assist in the investigation and  
14 prosecution of those using misleading or  
15 fraudulent marketing; and

16 (iii) discourage and reduce cases of  
17 misleading or fraudulent marketing; and

18 (C) a description of how the proposed ac-  
19 tivities would be coordinated with other State  
20 efforts; and

21 (2) any other information, as the Office deter-  
22 mines is appropriate.

23 (d) PERFORMANCE OBJECTIVES AND REPORTING  
24 REQUIREMENTS.—The Office may establish such perform-  
25 ance objectives and reporting requirements for States and

1 eligible entities receiving a grant under this section as the  
2 Office determines are necessary to carry out and assess  
3 the effectiveness of the program under this section.

4 (e) MAXIMUM AMOUNT.—The amount of a grant  
5 under this section may not exceed—

6 (1) \$500,000 for each of 3 consecutive fiscal  
7 years, if the recipient is a State, or an eligible entity  
8 of a State, that has adopted rules—

9 (A) on the appropriate use of designations  
10 in the offer or sale of securities or investment  
11 advice that meet or exceed the minimum re-  
12 quirements of the NASAA Model Rule on the  
13 Use of Senior-Specific Certifications and Pro-  
14 fessional Designations (or any successor there-  
15 to);

16 (B) on the appropriate use of designations  
17 in the sale of insurance products that, to the  
18 extent practicable, conform to the minimum re-  
19 quirements of the National Association of In-  
20 surance Commissioners Model Regulation on  
21 the Use of Senior-Specific Certifications and  
22 Professional Designations in the Sale of Life  
23 Insurance and Annuities (or any successor  
24 thereto); and

1 (C) with respect to fiduciary or suitability  
2 requirements in the sale of annuities that meet  
3 or exceed the minimum requirements estab-  
4 lished by the Suitability in Annuity Trans-  
5 actions Model Regulation of the National Asso-  
6 ciation of Insurance Commissioners (or any  
7 successor thereto); and

8 (2) \$100,000 for each of 3 consecutive fiscal  
9 years, if the recipient is a State, or an eligible entity  
10 of a State, that has adopted—

11 (A) rules on the appropriate use of des-  
12 ignations in the offer or sale of securities or in-  
13 vestment advice that meet or exceed the min-  
14 imum requirements of the NASAA Model Rule  
15 on the Use of Senior-Specific Certifications and  
16 Professional Designations (or any successor  
17 thereto); or

18 (B) rules—

19 (i) on the appropriate use of designa-  
20 tions in the sale of insurance products  
21 that, to the extent practicable, conform to  
22 the minimum requirements of the National  
23 Association of Insurance Commissioners  
24 Model Regulation on the Use of Senior-  
25 Specific Certifications and Professional

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1 Designations in the Sale of Life Insurance  
2 and Annuities (or any successor thereto);  
3 and

4 (ii) with respect to fiduciary or suit-  
5 ability requirements in the sale of annu-  
6 ities that meet or exceed the minimum re-  
7 quirements established by the Suitability in  
8 Annuity Transactions Model Regulation of  
9 the National Association of Insurance  
10 Commissioners (or any successor thereto).

11 (f) SUBGRANTS.—A State or eligible entity that re-  
12 ceives a grant under this section may make a subgrant,  
13 as the State or eligible entity determines is necessary to  
14 carry out the activities funded using a grant under this  
15 section.

16 (g) REAPPLICATION.—A State or eligible entity that  
17 receives a grant under this section may reapply for a grant  
18 under this section, notwithstanding the limitations on  
19 grant amounts under subsection (e).

20 (h) AUTHORIZATION OF APPROPRIATIONS.—There  
21 are authorized to be appropriated to carry out this section,  
22 \$8,000,000 for each of fiscal years 2011 through 2015.

1 **SEC. 989B. DESIGNATED FEDERAL ENTITY INSPECTORS**  
2 **GENERAL INDEPENDENCE.**

3 Section 8G of the Inspector General Act of 1978 (5  
4 U.S.C. App.) is amended—

5 (1) in subsection (a)(4)—

6 (A) in the matter preceding subparagraph  
7 (A), by inserting “the board or commission of  
8 the designated Federal entity, or in the event  
9 the designated Federal entity does not have a  
10 board or commission,” after “means”;

11 (B) in subparagraph (A), by striking  
12 “and” after the semicolon; and

13 (C) by adding after subparagraph (B) the  
14 following:

15 “(C) with respect to the Federal Labor Re-  
16 lations Authority, such term means the mem-  
17 bers of the Authority (described under section  
18 7104 of title 5, United States Code);

19 “(D) with respect to the National Archives  
20 and Records Administration, such term means  
21 the Archivist of the United States;

22 “(E) with respect to the National Credit  
23 Union Administration, such term means the  
24 National Credit Union Administration Board  
25 (described under section 102 of the Federal  
26 Credit Union Act (12 U.S.C. 1752a);

1           “(F) with respect to the National Endow-  
2           ment of the Arts, such term means the Na-  
3           tional Council on the Arts;

4           “(G) with respect to the National Endow-  
5           ment for the Humanities, such term means the  
6           National Council on the Humanities; and

7           “(H) with respect to the Peace Corps, such  
8           term means the Director of the Peace Corps;”;  
9           and

10          (2) in subsection (h), by inserting “if the des-  
11          ignated Federal entity is not a board or commission,  
12          include” after “designated Federal entities and”.

13 **SEC. 989C. STRENGTHENING INSPECTOR GENERAL AC-**  
14 **COUNTABILITY.**

15          Section 5(a) of the Inspector General Act of 1978  
16 (5 U.S.C. App.) is amended—

17          (1) in paragraph (12), by striking “and” after  
18          the semicolon;

19          (2) in paragraph (13), by striking the period  
20          and inserting a semicolon; and

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

22          “(14)(A) an appendix containing the results of  
23          any peer review conducted by another Office of In-  
24          specter General during the reporting period; or

1           “(B) if no peer review was conducted within  
2           that reporting period, a statement identifying the  
3           date of the last peer review conducted by another  
4           Office of Inspector General;

5           “(15) a list of any outstanding recommenda-  
6           tions from any peer review conducted by another Of-  
7           fice of Inspector General that have not been fully  
8           implemented, including a statement describing the  
9           status of the implementation and why implementa-  
10          tion is not complete; and

11          “(16) a list of any peer reviews conducted by  
12          the Inspector General of another Office of the In-  
13          spector General during the reporting period, includ-  
14          ing a list of any outstanding recommendations made  
15          from any previous peer review (including any peer  
16          review conducted before the reporting period) that  
17          remain outstanding or have not been fully imple-  
18          mented.”.

19 **SEC. 989D. REMOVAL OF INSPECTORS GENERAL OF DES-**  
20 **IGNATED FEDERAL ENTITIES.**

21          Section 8G(e) of the Inspector General Act of 1978  
22 (5 U.S.C. App.) is amended—

23               (1) by redesignating the sentences following  
24               “(e)” as paragraph (2); and





1 (E) The Federal Deposit Insurance Cor-  
2 poration.

3 (F) The Federal Housing Finance Agency.

4 (G) The National Credit Union Adminis-  
5 tration.

6 (H) The Securities and Exchange Commis-  
7 sion.

8 (I) The Troubled Asset Relief Program  
9 (until the termination of the authority of the  
10 Special Inspector General for such program  
11 under section 121(k) of the Emergency Eco-  
12 nomic Stabilization Act of 2008 (12 U.S.C.  
13 5231(k))).

14 (2) DUTIES.—

15 (A) MEETINGS.—The Council of Inspec-  
16 tors General shall meet not less than once each  
17 quarter, or more frequently if the chair con-  
18 siders it appropriate, to facilitate the sharing of  
19 information among inspectors general and to  
20 discuss the ongoing work of each inspector gen-  
21 eral who is a member of the Council of Inspec-  
22 tors General, with a focus on concerns that may  
23 apply to the broader financial sector and ways  
24 to improve financial oversight.

1           (B) ANNUAL REPORT.—Each year the  
2           Council of Inspectors General shall submit to  
3           the Council and to Congress a report includ-  
4           ing—

5                   (i) for each inspector general who is a  
6                   member of the Council of Inspectors Gen-  
7                   eral, a section within the exclusive editorial  
8                   control of such inspector general that high-  
9                   lights the concerns and recommendations  
10                  of such inspector general in such inspector  
11                  general’s ongoing and completed work,  
12                  with a focus on issues that may apply to  
13                  the broader financial sector; and

14                   (ii) a summary of the general observa-  
15                   tions of the Council of Inspectors General  
16                   based on the views expressed by each in-  
17                   spector general as required by clause (i),  
18                   with a focus on measures that should be  
19                   taken to improve financial oversight.

20           (3) WORKING GROUPS TO EVALUATE COUN-  
21           CIL.—

22                   (A) CONVENING A WORKING GROUP.—The  
23                   Council of Inspectors General may, by majority  
24                   vote, convene a Council of Inspectors General

1 Working Group to evaluate the effectiveness  
2 and internal operations of the Council.

3 (B) PERSONNEL AND RESOURCES.—The  
4 inspectors general who are members of the  
5 Council of Inspectors General may detail staff  
6 and resources to a Council of Inspectors Gen-  
7 eral Working Group established under this  
8 paragraph to enable it to carry out its duties.

9 (C) REPORTS.—A Council of Inspectors  
10 General Working Group established under this  
11 paragraph shall submit regular reports to the  
12 Council and to Congress on its evaluations pur-  
13 suant to this paragraph.

14 (b) RESPONSE TO REPORT BY COUNCIL.—The Coun-  
15 cil shall respond to the concerns raised in the report of  
16 the Council of Inspectors General under subsection  
17 (a)(2)(B) for such year.

18 **SEC. 989F. GAO STUDY OF PERSON TO PERSON LENDING.**

19 (a) STUDY.—

20 (1) IN GENERAL.—The Comptroller General of  
21 the United States shall conduct a study of person to  
22 person lending to determine the optimal Federal reg-  
23 ulatory structure.

24 (2) CONSULTATION.—In conducting the study  
25 required under paragraph (1), the Comptroller Gen-

1           eral shall consult with Federal banking agencies, the  
2           Commission, consumer groups, outside experts, and  
3           the person to person lending industry.

4           (3) CONTENT OF STUDY.—The study required  
5           under paragraph (1) shall include an examination  
6           of—

7                   (A) the regulatory structure as it exists on  
8                   the date of enactment of this Act, as deter-  
9                   mined by the Commission, with particular at-  
10                  tention to—

11                           (i) the application of the Securities  
12                           Act of 1933 to person to person lending  
13                           platforms;

14                           (ii) the posting of consumer loan in-  
15                           formation on the EDGAR database of the  
16                           Commission; and

17                           (iii) the treatment of privately held  
18                           person to person lending platforms as pub-  
19                           lic companies;

20                   (B) the State and other Federal regulators  
21                   responsible for the oversight and regulation of  
22                   person to person lending markets;

23                   (C) any Federal, State, or local govern-  
24                   ment or private studies of person to person

1           lending completed or in progress on the date of  
2           enactment of this Act;

3           (D) consumer privacy and data protec-  
4           tions, minimum credit standards, anti-money  
5           laundering and risk management in the regu-  
6           latory structure as it exists on the date of en-  
7           actment of this Act, and whether additional or  
8           alternative safeguards are needed; and

9           (E) the uses of person to person lending.

10       (b) REPORT.—

11           (1) IN GENERAL.—Not later than 1 year after  
12       the date of enactment of this Act, the Comptroller  
13       General shall submit a report on the study required  
14       under subsection (a) to the Committee on Banking,  
15       Housing, and Urban Affairs of the Senate and the  
16       Committee on Financial Services of the House of  
17       Representatives.

18           (2) CONTENT OF REPORT.—The report re-  
19       quired under paragraph (1) shall include alternative  
20       regulatory options, including—

21           (A) the involvement of other Federal agen-  
22       cies; and

23           (B) alternative approaches by the Commis-  
24       sion and recommendations on whether the alter-  
25       native approaches are effective.

1 **Subtitle J—Self-funding of the Se-**  
2 **curities and Exchange Commis-**  
3 **sion**

4 **SEC. 991. SECURITIES AND EXCHANGE COMMISSION SELF-**  
5 **FUNDING.**

6 (a) SELF-FUNDING AUTHORITY.—Section 4 of the  
7 Securities Exchange Act of 1934 (15 U.S.C. 78d) is  
8 amended—

9 (1) in subsection (e), in the second sentence, by  
10 striking “credited to the appropriated funds of the  
11 Commission” and inserting “deposited in the ac-  
12 count described in subsection (i)(4)”;

13 (2) in subsection (f), in the second sentence, by  
14 striking “considered a reimbursement to the appro-  
15 priated funds of the Commission” and inserting “de-  
16 posited in the account described in subsection  
17 (i)(4)”;

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

19 “(i) FUNDING OF THE COMMISSION.—

20 “(1) BUDGET.—For each fiscal year, the Chair-  
21 man of the Commission shall prepare and submit to  
22 Congress a budget to Congress. Such budget shall be  
23 submitted at the same time the President submits a  
24 budget of the United States to Congress for such  
25 fiscal year. The budget submitted by the Chairman

1 of the Commission pursuant to this paragraph shall  
2 not be considered a request for appropriations.

3 “(2) TREASURY PAYMENT.—

4 “(A) On the first day of each fiscal year,  
5 the Treasury shall pay into the account de-  
6 scribed in paragraph (4) an amount equal to  
7 the budget submitted by the Chairman of the  
8 Commission pursuant to paragraph (1) for such  
9 fiscal year.

10 “(B) At or prior to the end of each fiscal  
11 year, the Commission shall pay to the Treasury  
12 from fees and assessments deposited in the ac-  
13 count described in paragraph (4) an amount  
14 equal to the amount paid by the Treasury pur-  
15 suant to subparagraph (A) for such fiscal year,  
16 unless there are not sufficient fees and assess-  
17 ments deposited in such account at or prior to  
18 the end of the fiscal year to make such pay-  
19 ment, in which case the Commission shall make  
20 such payment in a subsequent fiscal year.

21 “(3) OBLIGATIONS AND EXPENSES.—

22 “(A) IN GENERAL.—The Commission shall  
23 determine and prescribe the manner in which—

24 “(i) the obligations of the Commission  
25 shall be incurred; and



1                   “(ii) the disbursements and expenses  
2                   of the Commission allowed and paid.

3                   “(B) INSUFFICIENT FUNDS.—If, in the  
4                   course of any fiscal year, the Chairman of the  
5                   Commission determines that, due to unforeseen  
6                   circumstances, the obligations of the Commis-  
7                   sion will exceed those provided for in the budget  
8                   submitted under paragraph (1), the Chairman  
9                   of the Commission may notify Congress of the  
10                  amount and expected uses of the additional ob-  
11                  ligations.

12                  “(C) AUTHORITY TO INCUR EXCESS OBLI-  
13                  GATIONS.—The Commission may incur obliga-  
14                  tions in excess of the budget submitted under  
15                  paragraph (1) from amounts available in the  
16                  account described in paragraph (4).

17                  “(D) RULE OF CONSTRUCTION.—Any noti-  
18                  fication to Congress under this paragraph shall  
19                  not be considered a request for appropriations.

20                  “(4) ACCOUNT.—

21                  “(A) ESTABLISHMENT.—Fees and assess-  
22                  ments collected under this title, section 6(b) of  
23                  the Securities Act of 1933 (15 U.S.C. 77f(b)),  
24                  and section 24(f) of the Investment Company  
25                  Act of 1940 (15 U.S.C. 80a–24(f)) and pay-

1           ments made by the Treasury pursuant to para-  
2           graph (2)(A) for any fiscal year shall be depos-  
3           ited into an account established at any regular  
4           Government depository or any State or national  
5           bank.

6           “(B) RULE OF CONSTRUCTION.—Any  
7           amounts deposited into the account established  
8           under subparagraph (A) shall not be construed  
9           to be Government funds or appropriated mon-  
10          ies.

11          “(C) NO APPORTIONMENT.—Any amounts  
12          deposited into the account established under  
13          subparagraph (A) shall not be subject to appor-  
14          tionment for the purpose of chapter 15 of title  
15          31, United States Code, or under any other au-  
16          thority.

17          “(5) USE OF ACCOUNT FUNDS.—

18                 “(A) PERMISSIBLE USES.—Amounts avail-  
19                 able in the account described in paragraph (4)  
20                 may be withdrawn by the Commission and used  
21                 for the purposes described in paragraphs (2)  
22                 and (3).

23                 “(B) IMPERMISSIBLE USE.—Except as  
24                 provided in paragraph (6), no amounts available  
25                 in the account described in paragraph (4) shall

1           be deposited and credited as general revenue of  
2           the Treasury.

3           “(6) EXCESS FUNDS.—If, at the end of any fis-  
4           cal year and after all payments have been made to  
5           the Treasury pursuant to paragraph (2)(B) for such  
6           fiscal year and all prior fiscal years, the balance of  
7           the account described in paragraph (4) exceeds 25  
8           percent of the budget of the Commission for the fol-  
9           lowing fiscal year, the amount by which the balance  
10          exceeds 25 percent of such budget shall be credited  
11          as general revenue of the Treasury.”.

12          (b) CONFORMING AMENDMENTS TO TRANSACTION  
13 FEE PROVISIONS.—Section 31 of the Securities Exchange  
14 Act of 1934 (15 U.S.C. 78ee) is amended—

15           (1) by amending subsection (a) to read as fol-  
16          lows:

17           “(a) RECOVERY OF COSTS AND EXPENSES.—

18           “(1) IN GENERAL.—The Commission shall, in  
19           accordance with this section, collect transaction fees  
20           and assessments that are designed—

21           “(A) to recover the reasonable costs and  
22           expenses of the Commission, as set forth in the  
23           annual budget of the Commission; and

24           “(B) to provide funds necessary to main-  
25           tain a reserve.

1           “(2) OVERPAYMENTS.—The authority to collect  
2           transaction fees and assessments in accordance with  
3           this section shall include the authority to offset from  
4           such collection any overpayment of transaction fees  
5           or assessments, regardless of the fiscal year in which  
6           such overpayment is made.”;

7           (2) in subsection (e)(2), by striking “September  
8           30” and inserting “September 25”;

9           (3) in subsection (g), by striking “April 30”  
10          and inserting “August 31”;

11          (4) by amending subsection (i) to read as fol-  
12          lows:

13          “(i) FEE COLLECTIONS.—Fees and assessments col-  
14          lected pursuant to this section shall be deposited and cred-  
15          ited in accordance with section 4(g) of this title.”;

16          (5) by amending subsection (j) to read as fol-  
17          lows:

18          “(j) ADJUSTMENTS TO TRANSACTION FEE RATES.—

19                 “(1) ANNUAL ADJUSTMENT.—For each fiscal  
20                 year, the Commission shall by order adjust each of  
21                 the rates applicable under subsections (b) and (c)  
22                 for such fiscal year to a uniform adjusted rate that,  
23                 when applied to the baseline estimate of the aggre-  
24                 gate dollar amount of sales for such fiscal year, is  
25                 reasonably likely to produce aggregate fee collections

1 under this section (including assessments collected  
2 under subsection (d)) that are equal to the budget  
3 of the Commission for such fiscal year, plus amounts  
4 necessary to maintain a reserve.

5 “(2) MID-YEAR ADJUSTMENT.—For each fiscal  
6 year, the Commission shall determine, by March 1 of  
7 such fiscal year, whether, based on the actual aggregate  
8 dollar volume of sales during the first 4 months  
9 of such fiscal year, the baseline estimate of the aggregate  
10 dollar volume of sales used under paragraph  
11 (1) for such fiscal year is reasonably likely to be 10  
12 percent (or more) greater or less than the actual aggregate  
13 dollar volume of sales for such fiscal year.  
14 If the Commission so determines, the Commission  
15 shall by order, not later than March 1, adjust each  
16 of the rates applicable under subsections (b) and (c)  
17 for such fiscal year to a uniform adjusted rate that,  
18 when applied to the revised estimate of the aggregate  
19 dollar amount of sales for the remainder of  
20 such fiscal year, is reasonably likely to produce aggregate  
21 fee collections under this section (including  
22 fees estimated to be collected under subsections (b)  
23 and (c) during such fiscal year prior to the effective  
24 date of the new uniform adjusted rate and assessments  
25 collected under subsection (d)) that are equal

1 to the budget of the Commission for such fiscal year,  
2 plus amounts necessary to maintain a reserve. In  
3 making such revised estimate, the Commission shall,  
4 after consultation with the Congressional Budget Of-  
5 fice and the Office of Management and Budget, use  
6 the same methodology required by paragraph (4).

7 “(3) REVIEW AND EFFECTIVE DATE.—In exer-  
8 cising its authority under this subsection, the Com-  
9 mission shall not be required to comply with the pro-  
10 visions of section 553 of title 5 United States Code.  
11 An adjusted rate prescribed under paragraph (1) or  
12 (2) and published under subsection (g) shall not be  
13 subject to judicial review. An adjusted rate pre-  
14 scribed under paragraph (1) shall take effect on the  
15 first day of the fiscal year to which such rate ap-  
16 plies. An adjusted rate prescribed under paragraph  
17 (2) shall take effect on April 1 of the fiscal year to  
18 which such rate applies.

19 “(4) BASELINE ESTIMATE OF THE AGGREGATE  
20 DOLLAR AMOUNT OF SALES.—For purposes of this  
21 subsection, the baseline estimate of the aggregate  
22 dollar amount of sales for any fiscal year is the  
23 baseline estimate of the aggregate dollar amount of  
24 sales of securities (other than bonds, debentures,  
25 other evidences of indebtedness, security futures

1 products, and options on securities indexes excluding  
2 a narrow-based security index) to be transacted on  
3 each national securities exchange and by or through  
4 any member of each national securities association  
5 (otherwise than on a national securities exchange)  
6 during such fiscal year as determined by the Com-  
7 mission, after consultation with the Congressional  
8 Budget Office and the Office of Management and  
9 Budget, using the methodology required for making  
10 projections pursuant to section 907 of title 2.”; and

11 (6) by striking subsections (k) and (l).

12 (c) CONFORMING AMENDMENTS TO REGISTRATION  
13 FEE PROVISIONS.—

14 (1) SECTION 6(B) OF THE SECURITIES ACT OF  
15 1933.—Section 6(b) of the Securities Act of 1933  
16 (15 U.S.C. 77f(b)) is amended—

17 (A) by striking “offsetting” each place that  
18 term appears and inserting “fee”;

19 (B) in paragraph (3), in the paragraph  
20 heading, by striking “OFFSETTING” and insert-  
21 ing “FEE”;

22 (C) in paragraph (11)(A), in the subpara-  
23 graph heading, by striking “OFFSETTING” and  
24 inserting “FEE”;

1 (D) by striking paragraphs (1), (3), (4),  
2 (6), (8), and (9);

3 (E) by redesignating paragraph (2) as  
4 paragraph (1);

5 (F) in paragraph (1), as so redesignated,  
6 by striking “(5) or (6)” and inserting “(3)”;

7 (G) by inserting after paragraph (1), as so  
8 redesignated, the following:

9 “(2) FREE COLLECTIONS.—Fees collected pursu-  
10 ant to this subsection shall be deposited and credited  
11 in accordance with section 4(i) of the Securities Ex-  
12 change Act of 1934.”;

13 (H) by redesignating paragraph (5) as  
14 paragraph (3);

15 (I) in paragraph (3), as redesignated—

16 (i) by striking “of the fiscal years  
17 2003 through 2011” and inserting “fiscal  
18 year”; and

19 (ii) by striking “paragraph (2)” and  
20 inserting “paragraph (1)”;

21 (J) by redesignating paragraph (7) as  
22 paragraph (4);

23 (K) by inserting after paragraph (4), as so  
24 redesignated, the following:



1           “(5) REVIEW AND EFFECTIVE DATE.—In exer-  
 2           cising its authority under this subsection, the Com-  
 3           mission shall not be required to comply with the pro-  
 4           visions of section 553 of title 5, United States Code.  
 5           An adjusted rate prescribed under paragraph (3)  
 6           and published under paragraph (6) shall not be sub-  
 7           ject to judicial review. An adjusted rate prescribed  
 8           under paragraph (3) shall take effect on the first  
 9           day of the fiscal year to which such rate applies.”;

10                   (L) by redesignating paragraphs (10) and  
 11                   (11), as paragraphs (6) and (7);

12                   (M) in paragraph (6), as redesignated, by  
 13                   striking “April 30” and inserting “August 31”;  
 14                   and

15                   (N) in paragraph (7), as redesignated—

16                           (i) by striking “of the fiscal years  
 17                           2002 through 2011” and inserting “fiscal  
 18                           year”; and

19                           (ii) by inserting at the end of the  
 20                           table in subparagraph (A) the following:

|   |   |
|---|---|
| <b>2012 and each succeeding fiscal year</b> | <b>An amount that is equal to the target fee collection amount for the prior fiscal year adjusted by the rate of inflation.</b> |
|---|---|

1           (2) SECTION 13(E) OF THE SECURITIES EX-  
2 CHANGE ACT OF 1934.—Section 13(e) of the Securi-  
3 ties Exchange Act of 1934 (15 U.S.C. 78m(e)) is  
4 amended—

5           (A) by striking “offsetting” each place that  
6 term appears and inserting “fee”;

7           (B) in paragraph (3) by striking “para-  
8 graphs (5) and (6)” and inserting “paragraph  
9 (5)”;

10           (C) by amending paragraph (4) to read as  
11 follows:

12           “(4) FEE COLLECTIONS.—Fees collected pursu-  
13 ant to this subsection shall be deposited and credited  
14 in accordance with section 4(g) of this title.”;

15           (D) in paragraph (5), by striking “of the  
16 fiscal years 2003 through 2011” and inserting  
17 “fiscal year”;

18           (E) by striking paragraphs (6), (7), and  
19 (8);

20           (F) by redesignating paragraph (7) as  
21 paragraph (6);

22           (G) by inserting after paragraph (6), as so  
23 redesignated, the following:

24           “(7) REVIEW AND EFFECTIVE DATE.—In exer-  
25 cising its authority under this subsection, the Com-

1 mission shall not be required to comply with the pro-  
2 visions of section 553 of title 5. An adjusted rate  
3 prescribed under paragraph (5) and published under  
4 paragraph (8) shall not be subject to judicial review.  
5 An adjusted rate prescribed under paragraph (5)  
6 shall take effect on the first day of the fiscal year  
7 to which such rate applies.”;

8 (H) by striking paragraph (9);

9 (I) by redesignating paragraph (10) as  
10 paragraph (8); and

11 (J) in paragraph (8), as so redesignated,  
12 by striking “6(b)(10)” and inserting “6(b)(6)”.

13 (3) SECTION 14 OF THE SECURITIES EXCHANGE  
14 ACT OF 1934.—Section 14(g) of the Securities Ex-  
15 change Act of 1934 (15 U.S.C. 78n(g)) is amend-  
16 ed—

17 (A) by striking the word “offsetting” each  
18 time that it appears and inserting in its place  
19 the word “fee”;

20 (B) in paragraph (1)(A), by striking  
21 “paragraphs (5) and (6)” each time it appears  
22 and inserting “paragraph (5)”;

23 (C) in paragraph (3), by striking “para-  
24 graphs (5) and (6)” and inserting “paragraph  
25 (5)”;

1 (D) by amending paragraph (4) to read as  
2 follows:

3 “(4) FEE COLLECTIONS.—Fees collected pursu-  
4 ant to this subsection shall be deposited and credited  
5 in accordance with section 4(g) of this title.”;

6 (E) in paragraph (5), by striking “of the  
7 fiscal years 2003 through 2011” and inserting  
8 “fiscal year”;

9 (F) by striking paragraphs (6), (8), and  
10 (9);

11 (G) by redesignating paragraph (7) as  
12 paragraph (6);

13 (H) by inserting after paragraph (6), as so  
14 redesignated, the following:

15 “(7) REVIEW AND EFFECTIVE DATE.—In exer-  
16 cising its authority under this subsection, the Com-  
17 mission shall not be required to comply with the pro-  
18 visions of section 553 of title 5. An adjusted rate  
19 prescribed under paragraph (5) and published under  
20 paragraph (8) shall not be subject to judicial review.  
21 An adjusted rate prescribed under paragraph (5)  
22 shall take effect on the first day of the fiscal year  
23 to which such rate applies.”;

1 (I) by redesignating paragraphs (10) and  
2 (11) as paragraphs (8) and (9), respectively;  
3 and

4 (J) in paragraph (9), as so redesignated,  
5 by striking “6(b)(10)” and inserting “6(b)(7)”.

6 (d) REPEAL OF AUTHORIZATION OF APPROPRIA-  
7 TIONS.—Section 35 of the Securities Exchange Act of  
8 1934 (15 U.S.C. 78kk) is repealed.

9 (e) EFFECTIVE DATE AND TRANSITION PROVI-  
10 SIONS.—

11 (1) IN GENERAL.—Except as provided in para-  
12 graphs (2) and (3), the amendments made by this  
13 section shall be effective on the first day of the fiscal  
14 year following the fiscal year in which this Act is en-  
15 acted.

16 (2) TRANSITION PERIOD.—For the fiscal year  
17 following the fiscal year in which this Act is enacted,  
18 the budget of the Commission shall be deemed to be  
19 the budget submitted by the Chairman of the Com-  
20 mission to the President for such fiscal year in ac-  
21 cordance with the provisions of section 1108 of title  
22 31, United States Code.

23 (3) OTHER PROVISIONS.—The amendments  
24 made by this section to subsections (g) and (j)(1) of  
25 section 31 of the Securities Exchange Act of 1934

1 (15 U.S.C. 78ee) shall be effective on the date of en-  
2 actment of this Act, and shall require the Commis-  
3 sion to make and publish an annual adjustment to  
4 the fee rates applicable under subsections (b) and  
5 (c) of section 31 of the Securities Exchange Act of  
6 1934 (15 U.S.C. 78ee) for the fiscal year following  
7 the fiscal year in which this Act is enacted. The ad-  
8 justed rate described in the preceding sentence shall  
9 supersede any previously published adjusted rate ap-  
10 plicable under subsections (b) and (c) of section 31  
11 of the Securities Exchange Act of 1934 for the fiscal  
12 year following the fiscal year in which this Act is en-  
13 acted and shall take effect on the first day of the fis-  
14 cal year following the fiscal year in which this Act  
15 is enacted, except that, if this Act is enacted on or  
16 after August 31 and on or prior to September 30,  
17 the adjusted rate described in the first sentence shall  
18 be published not later than 15 days after the date  
19 of enactment of this Act and take effect 30 days  
20 thereafter, and the Commission shall continue to col-  
21 lect fees under subsections (b) and (c) of section 31  
22 of the Securities Exchange Act of 1934 at the rate  
23 in effect during the preceding fiscal year until the  
24 adjusted rate is effective.

1 **TITLE X—BUREAU OF CON-**  
2 **SUMER FINANCIAL PROTEC-**  
3 **TION**

4 **SEC. 1001. SHORT TITLE.**

5 This title may be cited as the “Consumer Financial  
6 Protection Act of 2010”.

7 **SEC. 1002. DEFINITIONS.**

8 Except as otherwise provided in this title, for pur-  
9 poses of this title, the following definitions shall apply:

10 (1) **AFFILIATE.**—The term “affiliate” means  
11 any person that controls, is controlled by, or is  
12 under common control with another person.

13 (2) **BUREAU.**—The term “Bureau” means the  
14 Bureau of Consumer Financial Protection.

15 (3) **BUSINESS OF INSURANCE.**—The term  
16 “business of insurance” means the writing of insur-  
17 ance or the reinsuring of risks by an insurer, includ-  
18 ing all acts necessary to such writing or reinsuring  
19 and the activities relating to the writing of insurance  
20 or the reinsuring of risks conducted by persons who  
21 act as, or are, officers, directors, agents, or employ-  
22 ees of insurers or who are other persons authorized  
23 to act on behalf of such persons.

1           (4) CONSUMER.—The term “consumer” means  
2           an individual or an agent, trustee, or representative  
3           acting on behalf of an individual.

4           (5) CONSUMER FINANCIAL PRODUCT OR SERV-  
5           ICE.—The term “consumer financial product or  
6           service” means any financial product or service that  
7           is described in one or more categories under—

8                   (A) paragraph (13) and is offered or pro-  
9                   vided for use by consumers primarily for per-  
10                  sonal, family, or household purposes; or

11                   (B) clause (i), (iii), (ix), or (x) of para-  
12                  graph (13)(A), and is delivered, offered, or pro-  
13                  vided in connection with a consumer financial  
14                  product or service referred to in subparagraph  
15                  (A).

16           (6) COVERED PERSON.—The term “covered  
17           person” means—

18                   (A) any person that engages in offering or  
19                   providing a consumer financial product or serv-  
20                   ice; and

21                   (B) any affiliate of a person described in  
22                  subparagraph (A) if such affiliate acts as a  
23                  service provider to such person.

24           (7) CREDIT.—The term “credit” means the  
25           right granted by a person to a consumer to defer



1 payment of a debt, incur debt and defer its payment,  
2 or purchase property or services and defer payment  
3 for such purchase.

4 (8) DEPOSIT-TAKING ACTIVITY.—The term “de-  
5 posit-taking activity” means—

6 (A) the acceptance of deposits, mainte-  
7 nance of deposit accounts, or the provision of  
8 services related to the acceptance of deposits or  
9 the maintenance of deposit accounts;

10 (B) the acceptance of funds, the provision  
11 of other services related to the acceptance of  
12 funds, or the maintenance of member share ac-  
13 counts by a credit union; or

14 (C) the receipt of funds or the equivalent  
15 thereof, as the Bureau may determine by rule  
16 or order, received or held by a covered person  
17 (or an agent for a covered person) for the pur-  
18 pose of facilitating a payment or transferring  
19 funds or value of funds between a consumer  
20 and a third party.

21 (9) DESIGNATED TRANSFER DATE.—The term  
22 “designated transfer date” means the date estab-  
23 lished under section 1062.

24 (10) DIRECTOR.—The term “Director” means  
25 the Director of the Bureau.

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1           (11) ELECTRONIC CONDUIT SERVICES.—The  
2 term “electronic conduit services”—

3           (A) means the provision, by a person, of  
4 electronic data transmission, routing, inter-  
5 mediate or transient storage, or connections to  
6 a telecommunications system or network; and

7           (B) does not include a person that provides  
8 electronic conduit services if, when providing  
9 such services, the person—

10           (i) selects or modifies the content of  
11 the electronic data;

12           (ii) transmits, routes, stores, or pro-  
13 vides connections for electronic data, in-  
14 cluding financial data, in a manner that  
15 such financial data is differentiated from  
16 other types of data of the same form that  
17 such person transmits, routes, or stores, or  
18 with respect to which, provides connec-  
19 tions; or

20           (iii) is a payee, payor, correspondent,  
21 or similar party to a payment transaction  
22 with a consumer.

23           (12) ENUMERATED CONSUMER LAWS.—The  
24 term “enumerated consumer laws” means—

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1 (A) the Alternative Mortgage Transaction  
2 Parity Act of 1982 (12 U.S.C. 3801 et seq.);

3 (B) the Consumer Leasing Act of 1976  
4 (15 U.S.C. 1667 et seq.);

5 (C) the Electronic Fund Transfer Act (15  
6 U.S.C. 1693 et seq.);

7 (D) the Equal Credit Opportunity Act (15  
8 U.S.C. 1691 et seq.);

9 (E) the Fair Credit Billing Act (15 U.S.C.  
10 1666 et seq.);

11 (F) the Fair Credit Reporting Act (15  
12 U.S.C. 1681 et seq.), except with respect to sec-  
13 tions 615(e) and 628 of that Act (15 U.S.C.  
14 1681m(e), 1681w);

15 (G) the Home Owners Protection Act of  
16 1998 (12 U.S.C. 4901 et seq.);

17 (H) the Fair Debt Collection Practices Act  
18 (15 U.S.C. 1692 et seq.);

19 (I) subsections (b) through (f) of section  
20 43 of the Federal Deposit Insurance Act (12  
21 U.S.C. 1831t(c)–(f));

22 (J) sections 502 through 509 of the  
23 Gramm-Leach-Bliley Act (15 U.S.C. 6802–  
24 6809) except for section 505 as it applies to  
25 section 501(b);

1 (K) the Home Mortgage Disclosure Act of  
2 1975 (12 U.S.C. 2801 et seq.);

3 (L) the Home Ownership and Equity Pro-  
4 tection Act of 1994 (15 U.S.C. 1601 note);

5 (M) the Real Estate Settlement Procedures  
6 Act of 1974 (12 U.S.C. 2601 et seq.);

7 (N) the S.A.F.E. Mortgage Licensing Act  
8 of 2008 (12 U.S.C. 5101 et seq.);

9 (O) the Truth in Lending Act (15 U.S.C.  
10 1601 et seq.);

11 (P) the Truth in Savings Act (12 U.S.C.  
12 4301 et seq.); and

13 (Q) section 626 of the Omnibus Appropria-  
14 tions Act, 2009 (Public Law 111–8).

15 (13) FAIR LENDING.—Term “fair lending”  
16 means fair, equitable, and nondiscriminatory access  
17 to credit for consumers.

18 (14) FEDERAL CONSUMER FINANCIAL LAW.—  
19 The term “Federal consumer financial law” means  
20 the provisions of this title, the enumerated consumer  
21 laws, the laws for which authorities are transferred  
22 under subtitles F and H, and any rule or order pre-  
23 scribed by the Bureau under this title, an enumer-  
24 ated consumer law, or pursuant to the authorities

1 transferred under subtitles F and H. The term does  
2 not include the Federal Trade Commission Act.

3 (15) FINANCIAL PRODUCT OR SERVICE.—The  
4 term “financial product or service”—

5 (A) means—

6 (i) extending credit and servicing  
7 loans, including acquiring, purchasing, sell-  
8 ing, brokering, or other extensions of credit  
9 (other than solely extending commercial  
10 credit to a person who originates consumer  
11 credit transactions);

12 (ii) extending or brokering leases of  
13 personal or real property that are the func-  
14 tional equivalent of purchase finance ar-  
15 rangements, if—

16 (I) the lease is on a non-oper-  
17 ating basis;

18 (II) the initial term of the lease  
19 is at least 90 days; and

20 (III) in the case of a lease involv-  
21 ing real property, at the inception of  
22 the initial lease, the transaction is in-  
23 tended to result in ownership of the  
24 leased property to be transferred to

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1 the lessee, subject to standards pre-  
2 scribed by the Bureau;

3 (iii) providing real estate settlement  
4 services, except such services excluded  
5 under subparagraph (B), or performing  
6 appraisals of real estate or personal prop-  
7 erty;

8 (iv) engaging in deposit-taking activi-  
9 ties, transmitting or exchanging funds, or  
10 otherwise acting as a custodian of funds or  
11 any financial instrument for use by or on  
12 behalf of a consumer;

13 (v) selling, providing, or issuing stored  
14 value or payment instruments, except that,  
15 in the case of a sale of, or transaction to  
16 reload, stored value, only if the seller exer-  
17 cises substantial control over the terms or  
18 conditions of the stored value provided to  
19 the consumer where, for purposes of this  
20 clause—

21 (I) a seller shall not be found to  
22 exercise substantial control over the  
23 terms or conditions of the stored value  
24 if the seller is not a party to the con-  
25 tract with the consumer for the stored

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1 value product, and another person is  
2 principally responsible for establishing  
3 the terms or conditions of the stored  
4 value; and

5 (II) advertising the nonfinancial  
6 goods or services of the seller on the  
7 stored value card or device is not in  
8 itself an exercise of substantial control  
9 over the terms or conditions;

10 (vi) providing check cashing, check  
11 collection, or check guaranty services;

12 (vii) providing payments or other fi-  
13 nancial data processing products or serv-  
14 ices to a consumer by any technological  
15 means, including processing or storing fi-  
16 nancial or banking data for any payment  
17 instrument, or through any payments sys-  
18 tems or network used for processing pay-  
19 ments data, including payments made  
20 through an online banking system or mo-  
21 bile telecommunications network, except  
22 that a person shall not be deemed to be a  
23 covered person with respect to financial  
24 data processing solely because the per-  
25 son—

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1 (I) is a merchant, retailer, or  
2 seller of any nonfinancial good or  
3 service who engages in financial data  
4 processing by transmitting or storing  
5 payments data about a consumer ex-  
6 clusively for purpose of initiating pay-  
7 ments instructions by the consumer to  
8 pay such person for the purchase of,  
9 or to complete a commercial trans-  
10 action for, such nonfinancial good or  
11 service sold directly by such person to  
12 the consumer; or

13 (II) provides access to a host  
14 server to a person for purposes of en-  
15 abling that person to establish and  
16 maintain a website;

17 (viii) providing financial advisory serv-  
18 ices (other than services relating to securi-  
19 ties provided by a person regulated by the  
20 Commission or a person regulated by a  
21 State securities Commission, but only to  
22 the extent that such person acts in a regu-  
23 lated capacity) to consumers on individual  
24 financial matters or relating to proprietary  
25 financial products or services (other than



1 by publishing any bona fide newspaper,  
2 news magazine, or business or financial  
3 publication of general and regular circula-  
4 tion, including publishing market data,  
5 news, or data analytics or investment in-  
6 formation or recommendations that are not  
7 tailored to the individual needs of a par-  
8 ticular consumer), including—

9 (I) providing credit counseling to  
10 any consumer; and

11 (II) providing services to assist a  
12 consumer with debt management or  
13 debt settlement, modifying the terms  
14 of any extension of credit, or avoiding  
15 foreclosure;

16 (ix) collecting, analyzing, maintaining,  
17 or providing consumer report information  
18 or other account information, including in-  
19 formation relating to the credit history of  
20 consumers, used or expected to be used in  
21 connection with any decision regarding the  
22 offering or provision of a consumer finan-  
23 cial product or service, except to the extent  
24 that—

25 (I) a person—

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1 (aa) collects, analyzes, or  
2 maintains information that re-  
3 lates solely to the transactions  
4 between a consumer and such  
5 person;

6 (bb) provides the informa-  
7 tion described in item (aa) to an  
8 affiliate of such person; or

9 (cc) provides information  
10 that is used or expected to be  
11 used solely in any decision re-  
12 garding the offering or provision  
13 of a product or service that is not  
14 a consumer financial product or  
15 service, including a decision for  
16 employment, government licens-  
17 ing, or a residential lease or ten-  
18 ancy involving a consumer; and

19 (II) the information described in  
20 subclause (I)(aa) is not used by such  
21 person or affiliate in connection with  
22 any decision regarding the offering or  
23 provision of a consumer financial  
24 product or service to the consumer,

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1 other than credit described in section  
2 1027(a)(2)(A);

3 (x) collecting debt related to any con-  
4 sumer financial product or service; and

5 (xi) such other financial product or  
6 service as may be defined by the Bureau,  
7 by regulation, for purposes of this title, if  
8 the Bureau finds that such financial prod-  
9 uct or service is—

10 (I) entered into or conducted as  
11 a subterfuge or with a purpose to  
12 evade any Federal consumer financial  
13 law; or

14 (II) permissible for a bank or for  
15 a financial holding company to offer  
16 or to provide under any provision of a  
17 Federal law or regulation applicable  
18 to a bank or a financial holding com-  
19 pany, and has, or likely will have, a  
20 material impact on consumers; and

21 (B) does not include—

22 (i) the business of insurance; or

23 (ii) electronic conduit services.

24 (16) FOREIGN EXCHANGE.—The term “foreign  
25 exchange” means the exchange, for compensation, of

1 currency of the United States or of a foreign govern-  
2 ment for currency of another government.

3 (17) INSURED CREDIT UNION.—The term “in-  
4 sured credit union” has the same meaning as in sec-  
5 tion 101 of the Federal Credit Union Act (12 U.S.C.  
6 1752).

7 (18) PAYMENT INSTRUMENT.—The term “pay-  
8 ment instrument” means a check, draft, warrant,  
9 money order, traveler’s check, electronic instrument,  
10 or other instrument, payment of funds, or monetary  
11 value (other than currency).

12 (19) PERSON.—The term “person” means an  
13 individual, partnership, company, corporation, asso-  
14 ciation (incorporated or unincorporated), trust, es-  
15 tate, cooperative organization, or other entity.

16 (20) PERSON REGULATED BY THE COMMODITY  
17 FUTURES TRADING COMMISSION.—The term “person  
18 regulated by the Commodity Futures Trading Com-  
19 mission” means any person that is registered, or re-  
20 quired by statute or regulation to be registered, with  
21 the Commodity Futures Trading Commission, but  
22 only to the extent that the activities of such person  
23 are subject to the jurisdiction of the Commodity Fu-  
24 tures Trading Commission under the Commodity  
25 Exchange Act.

1           (21) PERSON REGULATED BY THE COMMIS-  
2           SION.—The term “person regulated by the Commis-  
3           sion” means a person who is—

4                   (A) a broker or dealer that is required to  
5                   be registered under the Securities Exchange Act  
6                   of 1934;

7                   (B) an investment adviser that is reg-  
8                   istered under the Investment Advisers Act of  
9                   1940;

10                  (C) an investment company that is re-  
11                  quired to be registered under the Investment  
12                  Company Act of 1940, and any company that  
13                  has elected to be regulated as a business devel-  
14                  opment company under that Act;

15                  (D) a national securities exchange that is  
16                  required to be registered under the Securities  
17                  Exchange Act of 1934;

18                  (E) a transfer agent that is required to be  
19                  registered under the Securities Exchange Act of  
20                  1934;

21                  (F) a clearing corporation that is required  
22                  to be registered under the Securities Exchange  
23                  Act of 1934;

24                  (G) any self-regulatory organization that is  
25                  required to be registered with the Commission;

1 (H) any nationally recognized statistical  
2 rating organization that is required to be reg-  
3 istered with the Commission;

4 (I) any securities information processor  
5 that is required to be registered with the Com-  
6 mission;

7 (J) any municipal securities dealer that is  
8 required to be registered with the Commission;

9 (K) any other person that is required to be  
10 registered with the Commission under the Secu-  
11 rities Exchange Act of 1934; and

12 (L) any employee, agent, or contractor act-  
13 ing on behalf of, registered with, or providing  
14 services to, any person described in any of sub-  
15 paragraphs (A) through (K), but only to the ex-  
16 tent that any person described in any of sub-  
17 paragraphs (A) through (K), or the employee,  
18 agent, or contractor of such person, acts in a  
19 regulated capacity.

20 (22) PERSON REGULATED BY A STATE INSUR-  
21 ANCE REGULATOR.—The term “person regulated by  
22 a State insurance regulator” means any person that  
23 is engaged in the business of insurance and subject  
24 to regulation by any State insurance regulator, but

1           only to the extent that such person acts in such ca-  
2           pacity.

3           (23) PERSON THAT PERFORMS INCOME TAX  
4           PREPARATION ACTIVITIES FOR CONSUMERS.—The  
5           term “person that performs income tax preparation  
6           activities for consumers” means—

7                   (A) any tax return preparer (as defined in  
8                   section 7701(a)(36) of the Internal Revenue  
9                   Code of 1986), regardless of whether com-  
10                  pensated, but only to the extent that the person  
11                  acts in such capacity;

12                  (B) any person regulated by the Secretary  
13                  under section 330 of title 31, United States  
14                  Code, but only to the extent that the person  
15                  acts in such capacity; and

16                  (C) any authorized IRS e-file Providers (as  
17                  defined for purposes of section 7216 of the In-  
18                  ternal Revenue Code of 1986), but only to the  
19                  extent that the person acts in such capacity.

20           (24) PRUDENTIAL REGULATOR.—The term  
21           “prudential regulator” means—

22                   (A) in the case of an insured depository in-  
23                   stitution, the appropriate Federal banking  
24                   agency, as that term is defined in section 3 of  
25                   the Federal Deposit Insurance Act; and

1 (B) in the case of an insured credit union,  
2 the National Credit Union Administration.

3 (25) RELATED PERSON.—The term “related  
4 person”—

5 (A) shall apply only with respect to a cov-  
6 ered person that is not a bank holding company  
7 (as that term is defined in section 2 of the  
8 Bank Holding Company Act of 1956), credit  
9 union, or depository institution;

10 (B) shall be deemed to mean a covered  
11 person for all purposes of any provision of Fed-  
12 eral consumer financial law; and

13 (C) means—

14 (i) any director, officer, or employee  
15 charged with managerial responsibility for,  
16 or controlling shareholder of, or agent for,  
17 such covered person;

18 (ii) any shareholder, consultant, joint  
19 venture partner, or other person, as deter-  
20 mined by the Bureau (by rule or on a case-  
21 by-case basis) who materially participates  
22 in the conduct of the affairs of such cov-  
23 ered person; and

24 (iii) any independent contractor (in-  
25 cluding any attorney, appraiser, or ac-



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1                   countant) who knowingly or recklessly par-  
2                   ticipates in any—

3                               (I) violation of any provision of  
4                               law or regulation; or

5                               (II) breach of a fiduciary duty.

6                   (26) SERVICE PROVIDER.—

7                               (A) IN GENERAL.—The term “service pro-  
8                   vider” means any person that provides a mate-  
9                   rial service to a covered person in connection  
10                  with the offering or provision by such covered  
11                  person of a consumer financial product or serv-  
12                  ice, including a person that—

13                               (i) participates in designing, oper-  
14                               ating, or maintaining the consumer finan-  
15                               cial product or service; or

16                               (ii) processes transactions relating to  
17                               the consumer financial product or service  
18                               (other than unknowingly or incidentally  
19                               transmitting or processing financial data in  
20                               a manner that such data is undifferen-  
21                               tiated from other types of data of the same  
22                               form as the person transmits or processes).

23                               (B) EXCEPTIONS.—The term “service pro-  
24                   vider” does not include a person solely by virtue

1 of such person offering or providing to a cov-  
2 ered person—

3 (i) a support service of a type pro-  
4 vided to businesses generally or a similar  
5 ministerial service; or

6 (ii) time or space for an advertisement  
7 for a consumer financial product or service  
8 through print, newspaper, or electronic  
9 media.

10 (C) RULE OF CONSTRUCTION.—A person  
11 that is a service provider shall be deemed to be  
12 a covered person to the extent that such person  
13 engages in the offering or provision of its own  
14 consumer financial product or service.

15 (27) STATE.—The term “State” means any  
16 State, territory, or possession of the United States,  
17 the District of Columbia, the Commonwealth of  
18 Puerto Rico, the Commonwealth of the Northern  
19 Mariana Islands, Guam, American Samoa, or the  
20 United States Virgin Islands or any federally recog-  
21 nized Indian tribe, as defined by the Secretary of the  
22 Interior under section 104(a) of the Federally Rec-  
23 ognized Indian Tribe List Act of 1994 (25 U.S.C.  
24 479a–1(a)).

1           (28) STORED VALUE.—The term “stored value”  
2           means funds or monetary value represented in any  
3           electronic format, whether or not specially encrypted,  
4           and stored or capable of storage on electronic media  
5           in such a way as to be retrievable and transferred  
6           electronically, and includes a prepaid debit card or  
7           product, or any other similar product, regardless of  
8           whether the amount of the funds or monetary value  
9           may be increased or reloaded.

10           (29) TRANSMITTING OR EXCHANGING FUNDS.—  
11           The term “transmitting or exchanging funds” means  
12           receiving currency, monetary value, or payment in-  
13           struments from a consumer for the purpose of ex-  
14           changing or transmitting the same by any means,  
15           including transmission by wire, facsimile, electronic  
16           transfer, courier, the Internet, or through bill pay-  
17           ment services or through other businesses that facili-  
18           tate third-party transfers within the United States  
19           or to or from the United States.

20           **Subtitle A—Bureau of Consumer**  
21           **Financial Protection**

22           **SEC. 1011. ESTABLISHMENT OF THE BUREAU OF CON-**  
23           **SUMER FINANCIAL PROTECTION.**

24           (a) BUREAU ESTABLISHED.—There is established in  
25           the Federal Reserve System, an independent bureau to be

1 known as the “Bureau of Consumer Financial Protec-  
2 tion”, which shall regulate the offering and provision of  
3 consumer financial products or services under the Federal  
4 consumer financial laws.

5 (b) DIRECTOR AND DEPUTY DIRECTOR.—

6 (1) IN GENERAL.—There is established the po-  
7 sition of the Director, who shall serve as the head  
8 of the Bureau.

9 (2) APPOINTMENT.—Subject to paragraph (3),  
10 the Director shall be appointed by the President, by  
11 and with the advice and consent of the Senate.

12 (3) QUALIFICATION.—The President shall  
13 nominate the Director from among individuals who  
14 are citizens of the United States.

15 (4) COMPENSATION.—The Director shall be  
16 compensated at the rate prescribed for level II of the  
17 Executive Schedule under section 5313 of title 5,  
18 United States Code.

19 (5) DEPUTY DIRECTOR.—There is established  
20 the position of Deputy Director, who shall—

21 (A) be appointed by the Director; and

22 (B) serve as acting Director in the absence  
23 or unavailability of the Director.

24 (c) TERM.—

1           (1) IN GENERAL.—The Director shall serve for  
2 a term of 5 years.

3           (2) EXPIRATION OF TERM.—An individual may  
4 serve as Director after the expiration of the term for  
5 which appointed, until a successor has been ap-  
6 pointed and qualified.

7           (3) REMOVAL FOR CAUSE.—The President may  
8 remove the Director for inefficiency, neglect of duty,  
9 or malfeasance in office.

10          (d) SERVICE RESTRICTION.—No Director or Deputy  
11 Director may hold any office, position, or employment in  
12 any Federal reserve bank, Federal home loan bank, cov-  
13 ered person, or service provider during the period of serv-  
14 ice of such person as Director or Deputy Director.

15          (e) OFFICES.—The principal office of the Bureau  
16 shall be in the District of Columbia. The Director may  
17 establish regional offices of the Bureau, including in cities  
18 in which the Federal reserve banks, or branches of such  
19 banks, are located, in order to carry out the responsibil-  
20 ities assigned to the Bureau under the Federal consumer  
21 financial laws.

22 **SEC. 1012. EXECUTIVE AND ADMINISTRATIVE POWERS.**

23          (a) POWERS OF THE BUREAU.—The Bureau is au-  
24 thorized to establish the general policies of the Bureau

1 with respect to all executive and administrative functions,  
2 including—

3 (1) the establishment of rules for conducting  
4 the general business of the Bureau, in a manner not  
5 inconsistent with this title;

6 (2) to bind the Bureau and enter into con-  
7 tracts;

8 (3) directing the establishment and mainte-  
9 nance of divisions or other offices within the Bureau,  
10 in order to carry out the responsibilities under the  
11 Federal consumer financial laws, and to satisfy the  
12 requirements of other applicable law;

13 (4) to coordinate and oversee the operation of  
14 all administrative, enforcement, and research activi-  
15 ties of the Bureau;

16 (5) to adopt and use a seal;

17 (6) to determine the character of and the neces-  
18 sity for the obligations and expenditures of the Bu-  
19 reau;

20 (7) the appointment and supervision of per-  
21 sonnel employed by the Bureau;

22 (8) the distribution of business among per-  
23 sonnel appointed and supervised by the Director and  
24 among administrative units of the Bureau;

25 (9) the use and expenditure of funds;

1           (10) implementing the Federal consumer finan-  
2           cial laws through rules, orders, guidance, interpreta-  
3           tions, statements of policy, examinations, and en-  
4           forcement actions; and

5           (11) performing such other functions as may be  
6           authorized or required by law.

7           (b) DELEGATION OF AUTHORITY.—The Director of  
8           the Bureau may delegate to any duly authorized employee,  
9           representative, or agent any power vested in the Bureau  
10          by law.

11          (c) AUTONOMY OF THE BUREAU.—

12           (1) COORDINATION WITH THE BOARD OF GOV-  
13           ERNORS.—Notwithstanding section 18 of the Fed-  
14           eral Trade Commission Act (15 U.S.C. 57a) and any  
15           other provision of law applicable to the supervision  
16           or examination of persons with respect to Federal  
17           consumer financial laws, the Board of Governors  
18           may delegate to the Bureau the authorities to exam-  
19           ine persons subject to the jurisdiction of the Board  
20           of Governors for compliance with the Federal con-  
21           sumer financial laws.

22           (2) AUTONOMY.—Notwithstanding the authori-  
23           ties granted to the Board of Governors under the  
24           Federal Reserve Act, the Board of Governors may  
25           not—

1 (A) intervene in any matter or proceeding  
2 before the Director, including examinations or  
3 enforcement actions, unless otherwise specifi-  
4 cally provided by law;

5 (B) appoint, direct, or remove any officer  
6 or employee of the Bureau; or

7 (C) merge or consolidate the Bureau, or  
8 any of the functions or responsibilities of the  
9 Bureau, with any division or office of the Board  
10 of Governors or the Federal reserve banks.

11 (3) RULES AND ORDERS.—No rule or order of  
12 the Bureau shall be subject to approval or review by  
13 the Board of Governors. The Board of Governors  
14 may not delay or prevent the issuance of any rule  
15 or order of the Bureau.

16 (4) RECOMMENDATIONS AND TESTIMONY.—No  
17 officer or agency of the United States shall have any  
18 authority to require the Director or any other officer  
19 of the Bureau to submit legislative recommenda-  
20 tions, or testimony or comments on legislation, to  
21 any officer or agency of the United States for ap-  
22 proval, comments, or review prior to the submission  
23 of such recommendations, testimony, or comments to  
24 the Congress, if such recommendations, testimony,  
25 or comments to the Congress include a statement in-



1       dicating that the views expressed therein are those  
2       of the Director or such officer, and do not nec-  
3       essarily reflect the views of the Board of Governors  
4       or the President.

5 **SEC. 1013. ADMINISTRATION.**

6       (a) PERSONNEL.—

7           (1) APPOINTMENT.—

8               (A) IN GENERAL.—The Director may fix  
9               the number of, and appoint and direct, all em-  
10              ployees of the Bureau.

11              (B) EMPLOYEES OF THE BUREAU.—The  
12              Director is authorized to employ attorneys,  
13              compliance examiners, compliance supervision  
14              analysts, economists, statisticians, and other  
15              employees as may be deemed necessary to con-  
16              duct the business of the Bureau. Notwith-  
17              standing any other provision of law, all such  
18              employees shall be appointed and compensated  
19              on terms and conditions that are consistent  
20              with the terms and conditions set forth in sec-  
21              tion 11(l) of the Federal Reserve Act (12  
22              U.S.C. 248(l)).

23              (2) COMPENSATION.—The Director shall at all  
24              times provide compensation and benefits to each  
25              class of employees that, at a minimum, are equiva-

1       lent to the compensation and benefits then being  
2       provided by the Board of Governors for the cor-  
3       responding class of employees, and without regard to  
4       the provisions of other laws applicable to officers or  
5       employees of the United States.

6           (3) LABOR-MANAGEMENT RELATIONS.—

7           (A) IN GENERAL.—Except as provided in  
8       subparagraph (B), chapter 71 of title 5, United  
9       States Code, shall apply to the Bureau and the  
10      employees of the Bureau.

11          (B) RULE OF CONSTRUCTION.—Nothing in  
12      subparagraph (A) shall be construed to modify,  
13      limit, or supersede the authority granted to the  
14      Director under paragraph (1)(B) or the re-  
15      quirements set forth in paragraph (2).

16      (b) SPECIFIC FUNCTIONAL UNITS.—

17          (1) RESEARCH.—The Director shall establish a  
18      unit whose functions shall include researching, ana-  
19      lyzing, and reporting on—

20           (A) developments in markets for consumer  
21      financial products or services, including market  
22      areas of alternative consumer financial products  
23      or services with high growth rates and areas of  
24      risk to consumers;

1 (B) access to fair and affordable credit for  
2 traditionally underserved communities;

3 (C) consumer awareness, understanding,  
4 and use of disclosures and communications re-  
5 garding consumer financial products or services;

6 (D) consumer awareness and under-  
7 standing of costs, risks, and benefits of con-  
8 sumer financial products or services;

9 (E) consumer behavior with respect to con-  
10 sumer financial products or services, including  
11 performance on mortgage loans; and

12 (F) experiences of traditionally under-  
13 served consumers, including un-banked and  
14 under-banked consumers.

15 (2) COMMUNITY AFFAIRS.—The Director shall  
16 establish a unit whose functions shall include pro-  
17 viding information, guidance, and technical assist-  
18 ance regarding the offering and provision of con-  
19 sumer financial products or services to traditionally  
20 underserved consumers and communities.

21 (3) COLLECTING AND TRACKING COM-  
22 PLAINTS.—

23 (A) IN GENERAL.—The Director shall es-  
24 tablish a unit whose functions shall include es-  
25 tablishing a single, toll-free telephone number, a

1 website, and a database or utilizing an existing  
2 database to facilitate the centralized collection  
3 of, monitoring of, and response to consumer  
4 complaints regarding consumer financial prod-  
5 ucts or services. The Director shall coordinate  
6 with the Federal Trade Commission or other  
7 Federal agencies to route complaints to such  
8 agencies, where appropriate.

9 (B) ROUTING CALLS TO STATES.—To the  
10 extent practicable, State agencies may receive  
11 appropriate complaints from the systems estab-  
12 lished under subparagraph (A), if—

13 (i) the State agency system has the  
14 functional capacity to receive calls or elec-  
15 tronic reports routed by the Bureau sys-  
16 tems; and

17 (ii) the State agency has satisfied any  
18 conditions of participation in the system  
19 that the Bureau may establish, including  
20 treatment of personally identifiable infor-  
21 mation and sharing of information on com-  
22 plaint resolution or related compliance pro-  
23 cedures and resources.

24 (C) REPORTS TO THE CONGRESS.—The  
25 Director shall present an annual report to Con-

1           gress not later than March 31 of each year on  
2           the complaints received by the Bureau in the  
3           prior year regarding consumer financial prod-  
4           ucts and services. Such report shall include in-  
5           formation and analysis about complaint num-  
6           bers, complaint types, and, where applicable, in-  
7           formation about resolution of complaints.

8                   (D) DATA SHARING REQUIRED.—To facili-  
9           tate preparation of the reports required under  
10          subparagraph (C), supervision and enforcement  
11          activities, and monitoring of the market for  
12          consumer financial products and services, the  
13          Bureau shall share consumer complaint infor-  
14          mation with prudential regulators, the Federal  
15          Trade Commission, other Federal agencies, and  
16          State agencies, consistent with Federal law ap-  
17          plicable to personally identifiable information.  
18          The prudential regulators, the Federal Trade  
19          Commission, and other Federal agencies shall  
20          share data relating to consumer complaints re-  
21          garding consumer financial products and serv-  
22          ices with the Bureau, consistent with Federal  
23          law applicable to personally identifiable infor-  
24          mation.

1 (c) OFFICE OF FAIR LENDING AND EQUAL OPPOR-  
2 TUNITY.—

3 (1) ESTABLISHMENT.—The Director shall es-  
4 tablish within the Bureau the Office of Fair Lending  
5 and Equal Opportunity.

6 (2) FUNCTIONS.—The Office of Fair Lending  
7 and Equal Opportunity shall have such powers and  
8 duties as the Director may delegate to the Office, in-  
9 cluding—

10 (A) providing oversight and enforcement of  
11 Federal laws intended to ensure the fair, equi-  
12 table, and nondiscriminatory access to credit for  
13 both individuals and communities that are en-  
14 forced by the Bureau, including the Equal  
15 Credit Opportunity Act and the Home Mort-  
16 gage Disclosure Act;

17 (B) coordinating fair lending efforts of the  
18 Bureau with other Federal agencies and State  
19 regulators, as appropriate, to promote con-  
20 sistent, efficient, and effective enforcement of  
21 Federal fair lending laws;

22 (C) working with private industry, fair  
23 lending, civil rights, consumer and community  
24 advocates on the promotion of fair lending com-  
25 pliance and education; and

1 (D) providing annual reports to Congress  
2 on the efforts of the Bureau to fulfill its fair  
3 lending mandate.

4 (3) ADMINISTRATION OF OFFICE.—There is es-  
5 tablished the position of Assistant Director of the  
6 Bureau for Fair Lending and Equal Opportunity,  
7 who—

8 (A) shall be appointed by the Director; and

9 (B) shall carry out such duties as the Di-  
10 rector may delegate to such Assistant Director.

11 (d) OFFICE OF FINANCIAL LITERACY.—

12 (1) ESTABLISHMENT.—The Director shall es-  
13 tablish an Office of Financial Literacy, which shall  
14 be responsible for developing and implementing ini-  
15 tiatives intended to educate and empower consumers  
16 to make better informed financial decisions.

17 (2) OTHER DUTIES.—The Office of Financial  
18 Literacy shall develop and implement a strategy to  
19 improve the financial literacy of consumers that in-  
20 cludes measurable goals and objectives, in consulta-  
21 tion with the Financial Literacy and Education  
22 Commission, consistent with the National Strategy  
23 for Financial Education, through activities including  
24 providing opportunities for consumers to access—

25 (A) financial counseling;

1 (B) information to assist with the evalua-  
2 tion of credit products and the understanding  
3 of credit histories and scores;

4 (C) savings, borrowing, and other services  
5 found at mainstream financial institutions;

6 (D) activities intended to—

7 (i) prepare the consumer for edu-  
8 cational expenses and the submission of fi-  
9 nancial aid applications, and other major  
10 purchases;

11 (ii) reduce debt; and

12 (iii) improve the financial situation of  
13 the consumer;

14 (E) assistance in developing long-term sav-  
15 ings strategies; and

16 (F) wealth building and financial services  
17 during the preparation process to claim earned  
18 income tax credits and Federal benefits.

19 (3) COORDINATION.—The Office of Financial  
20 Literacy shall coordinate with other units within the  
21 Bureau in carrying out its functions, including—

22 (A) working with the Community Affairs  
23 Office to implement the strategy to improve fi-  
24 nancial literacy of consumers; and



1 (B) working with the research unit estab-  
2 lished by the Director to conduct research re-  
3 lated to consumer financial education and coun-  
4 seling.

5 (4) REPORT.—Not later than 24 months after  
6 the designated transfer date, and annually there-  
7 after, the Director shall submit a report on its finan-  
8 cial literacy activities and strategy to improve finan-  
9 cial literacy of consumers to—

10 (A) the Committee on Banking, Housing,  
11 and Urban Affairs of the Senate; and

12 (B) the Committee on Financial Services  
13 of the House of Representatives.

14 (5) MEMBERSHIP IN FINANCIAL LITERACY AND  
15 EDUCATION COMMISSION.—Section 513(c)(1) of the  
16 Financial Literacy and Education Improvement Act  
17 (20 U.S.C. 9702(c)(1)) is amended—

18 (A) in subparagraph (B), by striking  
19 “and” at the end;

20 (B) by redesignating subparagraph (C) as  
21 subparagraph (D); and

22 (C) by inserting after subparagraph (B)  
23 the following new subparagraph:

24 “(C) the Director of the Bureau of Con-  
25 sumer Financial Protection; and”.

1           (6) CONFORMING AMENDMENT.—Section  
2           513(d) of the Financial Literacy and Education Im-  
3           provement Act (20 U.S.C. 9702(d)) is amended by  
4           adding at the end the following: “The Director of  
5           the Bureau of Consumer Financial Protection shall  
6           serve as the Vice Chairman.”.

7           (e) OFFICE OF SERVICE MEMBER AFFAIRS.—

8           (1) IN GENERAL.—The Director shall establish  
9           an Office of Service Member Affairs, which shall be  
10          responsible for developing and implementing initia-  
11          tives for service members and their families intended  
12          to—

13                (A) educate and empower service members  
14                and their families to make better informed deci-  
15                sions regarding consumer financial products  
16                and services;

17                (B) coordinate with the unit of the Bureau  
18                established under subsection (b)(3), in order to  
19                monitor complaints by service members and  
20                their families and responses to those complaints  
21                by the Bureau or other appropriate Federal or  
22                State agency; and

23                (C) coordinate efforts among Federal and  
24                State agencies, as appropriate, regarding con-  
25                sumer protection measures relating to consumer

1 financial products and services offered to, or  
2 used by, service members and their families.

3 (2) COORDINATION.—

4 (A) REGIONAL SERVICES.—The Director is  
5 authorized to assign employees of the Bureau  
6 as may be deemed necessary to conduct the  
7 business of the Office of Service Member Af-  
8 fairs, including by establishing and maintaining  
9 the functions of the Office in regional offices of  
10 the Bureau located near military bases, military  
11 treatment facilities, or other similar military fa-  
12 cilities.

13 (B) AGREEMENTS.—The Director is au-  
14 thorized to enter into memoranda of under-  
15 standing and similar agreements with the De-  
16 partment of Defense, including any branch or  
17 agency as authorized by the department, in  
18 order to carry out the business of the Office of  
19 Service Member Affairs.

20 (3) DEFINITION.—As used in this subsection,  
21 the term “service member” means any member of  
22 the United States Armed Forces and any member of  
23 the National Guard or Reserves.

24 (f) TIMING.—The Office of Fair Lending, the Office  
25 of Financial Literacy, and the Office of Service Member

1 Affairs shall each be established not later than 1 year after  
2 the designated transfer date.

3 **SEC. 1014. CONSUMER ADVISORY BOARD.**

4 (a) ESTABLISHMENT REQUIRED.—The Director shall  
5 establish a Consumer Advisory Board to advise and con-  
6 sult with the Bureau in the exercise of its functions under  
7 the Federal consumer financial laws, and to provide infor-  
8 mation on emerging practices in the consumer financial  
9 products or services industry, including regional trends,  
10 concerns, and other relevant information.

11 (b) MEMBERSHIP.—In appointing the members of  
12 the Consumer Advisory Board, the Director shall seek to  
13 assemble experts in consumer protection, financial serv-  
14 ices, community development, fair lending, and consumer  
15 financial products or services and representatives of depos-  
16 itory institutions that primarily serve underserved commu-  
17 nities, and representatives of communities that have been  
18 significantly impacted by higher-priced mortgage loans,  
19 and seek representation of the interests of covered persons  
20 and consumers, without regard to party affiliation. Not  
21 fewer than 6 members shall be appointed upon the rec-  
22 ommendation of the regional Federal Reserve Bank Presi-  
23 dents, on a rotating basis.

1 (c) MEETINGS.—The Consumer Advisory Board shall  
2 meet from time to time at the call of the Director, but,  
3 at a minimum, shall meet at least twice in each year.

4 (d) COMPENSATION AND TRAVEL EXPENSES.—Mem-  
5 bers of the Consumer Advisory Board who are not full-  
6 time employees of the United States shall—

7 (1) be entitled to receive compensation at a rate  
8 fixed by the Director while attending meetings of the  
9 Consumer Advisory Board, including travel time;  
10 and

11 (2) be allowed travel expenses, including trans-  
12 portation and subsistence, while away from their  
13 homes or regular places of business.

14 **SEC. 1015. COORDINATION.**

15 The Bureau shall coordinate with the Commission,  
16 the Commodity Futures Trading Commission, the Federal  
17 Trade Commission, and other Federal agencies and State  
18 regulators, as appropriate, to promote consistent regu-  
19 latory treatment of consumer financial and investment  
20 products and services.

21 **SEC. 1016. APPEARANCES BEFORE AND REPORTS TO CON-**  
22 **GRESS.**

23 (a) APPEARANCES BEFORE CONGRESS.—The Direc-  
24 tor of the Bureau shall appear before the Committee on  
25 Banking, Housing, and Urban Affairs of the Senate and

1 the Committee on Financial Services of the House of Rep-  
2 resentatives at semi-annual hearings regarding the reports  
3 required under subsection (b).

4 (b) REPORTS REQUIRED.—The Bureau shall, concur-  
5 rent with each semi-annual hearing referred to in sub-  
6 section (a), prepare and submit to the President and to  
7 the Committee on Banking, Housing, and Urban Affairs  
8 of the Senate and the Committee on Financial Services  
9 of the House of Representatives, a report, beginning with  
10 the session following the designated transfer date.

11 (c) CONTENTS.—The reports required by subsection  
12 (b) shall include—

13 (1) a discussion of the significant problems  
14 faced by consumers in shopping for or obtaining  
15 consumer financial products or services;

16 (2) a justification of the budget request of the  
17 previous year;

18 (3) a list of the significant rules and orders  
19 adopted by the Bureau, as well as other significant  
20 initiatives conducted by the Bureau, during the pre-  
21 ceding year and the plan of the Bureau for rules, or-  
22 ders, or other initiatives to be undertaken during the  
23 upcoming period;

24 (4) an analysis of complaints about consumer  
25 financial products or services that the Bureau has

1 received and collected in its central database on  
2 complaints during the preceding year;

3 (5) a list, with a brief statement of the issues,  
4 of the public supervisory and enforcement actions to  
5 which the Bureau was a party during the preceding  
6 year;

7 (6) the actions taken regarding rules, orders,  
8 and supervisory actions with respect to covered per-  
9 sons which are not credit unions or depository insti-  
10 tutions;

11 (7) an assessment of significant actions by  
12 State attorneys general or State regulators relating  
13 to Federal consumer financial law;

14 (8) an analysis of the efforts of the Bureau to  
15 fulfill the fair lending mission of the Bureau; and

16 (9) an analysis of the efforts of the Bureau to  
17 increase workforce and contracting diversity con-  
18 sistent with the procedures established by the Office  
19 of Minority and Women Inclusion.

20 **SEC. 1017. FUNDING; PENALTIES AND FINES.**

21 (a) TRANSFER OF FUNDS FROM BOARD OF GOV-  
22 ERNORS.—

23 (1) IN GENERAL.—Each year (or quarter of  
24 such year), beginning on the designated transfer  
25 date, and each quarter thereafter, the Board of Gov-

1        errors shall transfer to the Bureau from the com-  
2        bined earnings of the Federal Reserve System, the  
3        amount determined by the Director to be reasonably  
4        necessary to carry out the authorities of the Bureau  
5        under Federal consumer financial law, taking into  
6        account such other sums made available to the Bu-  
7        reau from the preceding year (or quarter of such  
8        year).

9            (2) FUNDING CAP.—

10            (A) IN GENERAL.—Notwithstanding para-  
11            graph (1), and in accordance with this para-  
12            graph, the amount that shall be transferred to  
13            the Bureau in each fiscal year shall not exceed  
14            a fixed percentage of the total operating ex-  
15            penses of the Federal Reserve System, as re-  
16            ported in the Annual Report, 2009, of the  
17            Board of Governors, equal to—

18            (i) 10 percent of such expenses in fis-  
19            cal year 2011;

20            (ii) 11 percent of such expenses in fis-  
21            cal year 2012; and

22            (iii) 12 percent of such expenses in  
23            fiscal year 2013, and in each year there-  
24            after.



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1 (B) AMOUNT ADJUSTED FOR INFLA-  
2 TION.—The dollar amount referred to in sub-  
3 paragraph (A)(iii) shall be adjusted annually,  
4 using the percent by which the average urban  
5 consumer price index for the quarter preceding  
6 the date of the payment differs from the aver-  
7 age of that index for the same quarter in the  
8 prior year.

9 (3) TRANSITION PERIOD.—Beginning on the  
10 date of enactment of this Act and until the des-  
11 ignated transfer date, the Board of Governors shall  
12 transfer to the Bureau the amount estimated by the  
13 Secretary needed to carry out the authorities grant-  
14 ed to the Bureau under Federal consumer financial  
15 law, from the date of enactment of this Act until the  
16 designated transfer date.

17 (4) BUDGET AND FINANCIAL MANAGEMENT.—

18 (A) FINANCIAL OPERATING PLANS AND  
19 FORECASTS.—The Director shall provide to the  
20 Director of the Office of Management and  
21 Budget copies of the financial operating plans  
22 and forecasts of the Director, as prepared by  
23 the Director in the ordinary course of the oper-  
24 ations of the Bureau, and copies of the quar-  
25 terly reports of the financial condition and re-

1           sults of operations of the Bureau, as prepared  
2           by the Director in the ordinary course of the  
3           operations of the Bureau.

4           (B) FINANCIAL STATEMENTS.—The Bu-  
5           reau shall prepare annually a statement of—

6                   (i) assets and liabilities and surplus or  
7                   deficit;

8                   (ii) income and expenses; and

9                   (iii) sources and application of funds.

10          (C) FINANCIAL MANAGEMENT SYSTEMS.—

11          The Bureau shall implement and maintain fi-  
12          nancial management systems that comply sub-  
13          stantially with Federal financial management  
14          systems requirements and applicable Federal  
15          accounting standards.

16          (D) ASSERTION OF INTERNAL CON-  
17          TROLS.—The Director shall provide to the

18          Comptroller General of the United States an as-  
19          sertion as to the effectiveness of the internal

20          controls that apply to financial reporting by the  
21          Bureau, using the standards established in sec-

22          tion 3512(c) of title 31, United States Code.

23          (E) RULE OF CONSTRUCTION.—This sub-

24          section may not be construed as implying any  
25          obligation on the part of the Director to consult

1 with or obtain the consent or approval of the  
2 Director of the Office of Management and  
3 Budget with respect to any report, plan, fore-  
4 cast, or other information referred to in sub-  
5 paragraph (A) or any jurisdiction or oversight  
6 over the affairs or operations of the Bureau.

7 (5) AUDIT OF THE BUREAU.—

8 (A) IN GENERAL.—The Comptroller Gen-  
9 eral shall annually audit the financial trans-  
10 actions of the Bureau in accordance with the  
11 United States generally accepted government  
12 auditing standards, as may be prescribed by the  
13 Comptroller General of the United States. The  
14 audit shall be conducted at the place or places  
15 where accounts of the Bureau are normally  
16 kept. The representatives of the Government  
17 Accountability Office shall have access to the  
18 personnel and to all books, accounts, docu-  
19 ments, papers, records (including electronic  
20 records), reports, files, and all other papers,  
21 automated data, things, or property belonging  
22 to or under the control of or used or employed  
23 by the Bureau pertaining to its financial trans-  
24 actions and necessary to facilitate the audit,  
25 and such representatives shall be afforded full

1 facilities for verifying transactions with the bal-  
2 ances or securities held by depositories, fiscal  
3 agents, and custodians. All such books, ac-  
4 counts, documents, records, reports, files, pa-  
5 pers, and property of the Bureau shall remain  
6 in possession and custody of the Bureau. The  
7 Comptroller General may obtain and duplicate  
8 any such books, accounts, documents, records,  
9 working papers, automated data and files, or  
10 other information relevant to such audit with-  
11 out cost to the Comptroller General, and the  
12 right of access of the Comptroller General to  
13 such information shall be enforceable pursuant  
14 to section 716(e) of title 31, United States  
15 Code.

16 (B) REPORT.—The Comptroller General  
17 shall submit to the Congress a report of each  
18 annual audit conducted under this subsection.  
19 The report to the Congress shall set forth the  
20 scope of the audit and shall include the state-  
21 ment of assets and liabilities and surplus or  
22 deficit, the statement of income and expenses,  
23 the statement of sources and application of  
24 funds, and such comments and information as  
25 may be deemed necessary to inform Congress of

1           the financial operations and condition of the  
2           Bureau, together with such recommendations  
3           with respect thereto as the Comptroller General  
4           may deem advisable. A copy of each report shall  
5           be furnished to the President and to the Bu-  
6           reau at the time submitted to the Congress.

7           (C) ASSISTANCE AND COSTS.—For the  
8           purpose of conducting an audit under this sub-  
9           section, the Comptroller General may, in the  
10          discretion of the Comptroller General, employ  
11          by contract, without regard to section 3709 of  
12          the Revised Statutes of the United States (41  
13          U.S.C. 5), professional services of firms and or-  
14          ganizations of certified public accountants for  
15          temporary periods or for special purposes. Upon  
16          the request of the Comptroller General, the Di-  
17          rector of the Bureau shall transfer to the Gov-  
18          ernment Accountability Office from funds avail-  
19          able, the amount requested by the Comptroller  
20          General to cover the full costs of any audit and  
21          report conducted by the Comptroller General.  
22          The Comptroller General shall credit funds  
23          transferred to the account established for sala-  
24          ries and expenses of the Government Account-  
25          ability Office, and such amount shall be avail-

1           able upon receipt and without fiscal year limita-  
2           tion to cover the full costs of the audit and re-  
3           port.

4           (b) CONSUMER FINANCIAL PROTECTION FUND.—

5           (1) SEPARATE FUND IN FEDERAL RESERVE  
6           BOARD ESTABLISHED.—There is established in the  
7           Federal Reserve Board a separate fund, to be known  
8           as the “Consumer Financial Protection Fund” (re-  
9           ferred to in this section as the “Bureau Fund”).

10          (2) FUND RECEIPTS.—All amounts transferred  
11          to the Bureau under subsection (a) shall be depos-  
12          ited into the Bureau Fund.

13          (3) INVESTMENT AUTHORITY.—

14           (A) AMOUNTS IN BUREAU FUND MAY BE  
15           INVESTED.—The Bureau may request the  
16           Board of Governors to invest the portion of the  
17           Bureau Fund that is not, in the judgment of  
18           the Bureau, required to meet the current needs  
19           of the Bureau.

20           (B) ELIGIBLE INVESTMENTS.—Invest-  
21           ments authorized by this paragraph shall be  
22           made by the Board of Governors in obligations  
23           of the United States or obligations that are  
24           guaranteed as to principal and interest by the  
25           United States, with maturities suitable to the

1 needs of the Bureau Fund, as determined by  
2 the Bureau.

3 (C) INTEREST AND PROCEEDS CRED-  
4 ITED.—The interest on, and the proceeds from  
5 the sale or redemption of, any obligations held  
6 in the Bureau Fund shall be credited to the  
7 Bureau Fund.

8 (c) USE OF FUNDS.—

9 (1) IN GENERAL.—Funds obtained by, trans-  
10 ferred to, or credited to the Bureau Fund shall be  
11 immediately available to the Bureau and under the  
12 control of the Director, and shall remain available  
13 until expended, to pay the expenses of the Bureau  
14 in carrying out its duties and responsibilities. The  
15 compensation of the Director and other employees of  
16 the Bureau and all other expenses thereof may be  
17 paid from, obtained by, transferred to, or credited to  
18 the Bureau Fund under this section.

19 (2) FUNDS THAT ARE NOT GOVERNMENT  
20 FUNDS.—Funds obtained by or transferred to the  
21 Bureau Fund shall not be construed to be Govern-  
22 ment funds or appropriated monies.

23 (3) AMOUNTS NOT SUBJECT TO APPORTION-  
24 MENT.—Notwithstanding any other provision of law,  
25 amounts in the Bureau Fund and in the Civil Pen-

1 alty Fund established under subsection (d) shall not  
2 be subject to apportionment for purposes of chapter  
3 15 of title 31, United States Code, or under any  
4 other authority.

5 (d) PENALTIES AND FINES.—

6 (1) ESTABLISHMENT OF VICTIMS RELIEF  
7 FUND.—There is established in the Federal Reserve  
8 Board a fund to be known as the “Consumer Finan-  
9 cial Protection Civil Penalty Fund” (referred to in  
10 this subsection as the “Civil Penalty Fund”). If the  
11 Bureau obtains a civil penalty against any person in  
12 any judicial or administrative action under Federal  
13 consumer financial laws, the Bureau shall deposit  
14 into the Civil Penalty Fund, the amount of the pen-  
15 alty collected.

16 (2) PAYMENT TO VICTIMS.—Amounts in the  
17 Civil Penalty Fund shall be available to the Bureau,  
18 without fiscal year limitation, for payments to the  
19 victims of activities for which civil penalties have  
20 been imposed under the Federal consumer financial  
21 laws. To the extent such victims cannot be located  
22 or such payments are otherwise not practicable, the  
23 Bureau may use such funds for the purpose of con-  
24 sumer education and financial literacy programs.



1 **SEC. 1018. EFFECTIVE DATE.**

2 This subtitle shall become effective on the date of en-  
3 actment of this Act.

4 **Subtitle B—General Powers of the**  
5 **Bureau**

6 **SEC. 1021. PURPOSE, OBJECTIVES, AND FUNCTIONS.**

7 (a) **PURPOSE.**—The Bureau shall seek to implement  
8 and, where applicable, enforce Federal consumer financial  
9 law consistently for the purpose of ensuring that all con-  
10 sumers have access to markets for consumer financial  
11 products and services and that markets for consumer fi-  
12 nancial products and services are fair, transparent, and  
13 competitive.

14 (b) **OBJECTIVES.**—The Bureau is authorized to exer-  
15 cise its authorities under Federal consumer financial law  
16 for the purposes of ensuring that, with respect to con-  
17 sumer financial products and services—

18 (1) consumers are provided with timely and un-  
19 derstandable information to make responsible deci-  
20 sions about financial transactions;

21 (2) consumers are protected from unfair, decep-  
22 tive, or abusive acts and practices and from dis-  
23 crimination;

24 (3) outdated, unnecessary, or unduly burden-  
25 some regulations are regularly identified and ad-

1 dressed in order to reduce unwarranted regulatory  
2 burdens;

3 (4) Federal consumer financial law is enforced  
4 consistently, without regard to the status of a person  
5 as a depository institution, in order to promote fair  
6 competition; and

7 (5) markets for consumer financial products  
8 and services operate transparently and efficiently to  
9 facilitate access and innovation.

10 (c) FUNCTIONS.—The primary functions of the Bu-  
11 reau are—

12 (1) conducting financial education programs;

13 (2) collecting, investigating, and responding to  
14 consumer complaints;

15 (3) collecting, researching, monitoring, and  
16 publishing information relevant to the functioning of  
17 markets for consumer financial products and serv-  
18 ices to identify risks to consumers and the proper  
19 functioning of such markets;

20 (4) subject to sections 1024 through 1026, su-  
21 pervising covered persons for compliance with Fed-  
22 eral consumer financial law, and taking appropriate  
23 enforcement action to address violations of Federal  
24 consumer financial law;

1           (5) issuing rules, orders, and guidance imple-  
2           menting Federal consumer financial law; and

3           (6) performing such support activities as may  
4           be necessary or useful to facilitate the other func-  
5           tions of the Bureau.

6 **SEC. 1022. RULEMAKING AUTHORITY.**

7           (a) IN GENERAL.—The Bureau is authorized to exer-  
8           cise its authorities under Federal consumer financial law  
9           to administer, enforce, and otherwise implement the provi-  
10          sions of Federal consumer financial law.

11          (b) RULEMAKING, ORDERS, AND GUIDANCE.—

12           (1) GENERAL AUTHORITY.—The Director may  
13           prescribe rules and issue orders and guidance, as  
14           may be necessary or appropriate to enable the Bu-  
15           reau to administer and carry out the purposes and  
16           objectives of the Federal consumer financial laws,  
17           and to prevent evasions thereof.

18           (2) STANDARDS FOR RULEMAKING.—In pre-  
19           scribing a rule under the Federal consumer financial  
20           laws—

21           (A) the Bureau shall consider the potential  
22           benefits and costs to consumers and covered  
23           persons, including the potential reduction of ac-  
24           cess by consumers to consumer financial prod-  
25           ucts or services resulting from such rule;

1 (B) the Bureau shall consult with the ap-  
2 propriate prudential regulators or other Federal  
3 agencies prior to proposing a rule and during  
4 the comment process regarding consistency with  
5 prudential, market, or systemic objectives ad-  
6 ministered by such agencies; and

7 (C) if, during the consultation process de-  
8 scribed in subparagraph (B), a prudential regu-  
9 lator provides the Bureau with a written objec-  
10 tion to the proposed rule of the Bureau or a  
11 portion thereof, the Bureau shall include in the  
12 adopting release a description of the objection  
13 and the basis for the Bureau decision, if any,  
14 regarding such objection, except that nothing in  
15 this clause shall be construed as altering or lim-  
16 iting the procedures under section 1023 that  
17 may apply to any rule prescribed by the Bu-  
18 reau.

19 (3) EXEMPTIONS.—

20 (A) IN GENERAL.—The Bureau, by rule,  
21 may conditionally or unconditionally exempt  
22 any class of covered persons, service providers,  
23 or consumer financial products or services, from  
24 any provision of this title, or from any rule  
25 issued under this title, as the Bureau deter-

1 mines necessary or appropriate to carry out the  
2 purposes and objectives of this title, taking into  
3 consideration the factors in subparagraph (B).

4 (B) FACTORS.—In issuing an exemption,  
5 as permitted under subparagraph (A), the Bu-  
6 reau shall, as appropriate, take into consider-  
7 ation—

8 (i) the total assets of the class of cov-  
9 ered persons;

10 (ii) the volume of transactions involv-  
11 ing consumer financial products or services  
12 in which the class of covered persons en-  
13 gages; and

14 (iii) existing provisions of law which  
15 are applicable to the consumer financial  
16 product or service and the extent to which  
17 such provisions provide consumers with  
18 adequate protections.

19 (4) EXCLUSIVE RULEMAKING AUTHORITY.—  
20 Notwithstanding any other provisions of Federal law  
21 and except as provided in section 1061(b)(5), to the  
22 extent that a provision of Federal consumer finan-  
23 cial law authorizes the Bureau and another Federal  
24 agency to issue regulations under that provision of  
25 law for purposes of assuring compliance with Fed-

1       eral consumer financial law and any regulations  
2       thereunder, the Bureau shall have the exclusive au-  
3       thority to prescribe rules subject to those provisions  
4       of law.

5       (c) MONITORING.—

6           (1) IN GENERAL.—In order to support its rule-  
7       making and other functions, the Bureau shall mon-  
8       itor for risks to consumers in the offering or provi-  
9       sion of consumer financial products or services, in-  
10      cluding developments in markets for such products  
11      or services.

12          (2) CONSIDERATIONS.—In allocating its re-  
13      sources to perform the monitoring required by this  
14      section, the Bureau may consider, among other fac-  
15      tors—

16           (A) likely risks and costs to consumers as-  
17      sociated with buying or using a type of con-  
18      sumer financial product or service;

19           (B) understanding by consumers of the  
20      risks of a type of consumer financial product or  
21      service;

22           (C) the legal protections applicable to the  
23      offering or provision of a consumer financial  
24      product or service, including the extent to which

1 the law is likely to adequately protect con-  
2 sumers;

3 (D) rates of growth in the offering or pro-  
4 vision of a consumer financial product or serv-  
5 ice;

6 (E) the extent, if any, to which the risks  
7 of a consumer financial product or service may  
8 disproportionately affect traditionally under-  
9 served consumers; or

10 (F) the types, number, and other pertinent  
11 characteristics of covered persons that offer or  
12 provide the consumer financial product or serv-  
13 ice.

14 (3) REPORTS.—The Bureau shall publish not  
15 fewer than 1 report of significant findings of its  
16 monitoring required by this subsection in each cal-  
17 endar year, beginning with the first calendar year  
18 that begins at least 1 year after the designated  
19 transfer date.

20 (4) COLLECTION OF INFORMATION.—In con-  
21 ducting research on the offering and provision of  
22 consumer financial products or services, the Bureau  
23 shall have the authority to gather information from  
24 time to time regarding the organization, business  
25 conduct, markets, and activities of persons operating

1 in consumer financial services markets. In order to  
2 gather such information, the Bureau may—

3 (A) gather and compile information from  
4 examination reports concerning covered persons  
5 or service providers, assessment of consumer  
6 complaints, surveys, and interviews of covered  
7 persons and consumers, and review of available  
8 databases;

9 (B) require persons to file with the Bu-  
10 reau, under oath or otherwise, in such form and  
11 within such reasonable period of time as the  
12 Bureau may prescribe, by rule or order, annual  
13 or special reports, or answers in writing to spe-  
14 cific questions, furnishing such information as  
15 the Bureau may require; and

16 (C) make public such information obtained  
17 by the Bureau under this section, as is in the  
18 public interest in reports or otherwise in the  
19 manner best suited for public information and  
20 use.

21 (5) CONFIDENTIALITY RULES.—The Bureau  
22 shall prescribe rules regarding the confidential treat-  
23 ment of information obtained from persons in con-  
24 nection with the exercise of its authorities under  
25 Federal consumer financial law.



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1 (A) ACCESS BY THE BUREAU TO REPORTS  
2 OF OTHER REGULATORS.—

3 (i) EXAMINATION AND FINANCIAL  
4 CONDITION REPORTS.—Upon providing  
5 reasonable assurances of confidentiality,  
6 the Bureau shall have access to any report  
7 of examination or financial condition made  
8 by a prudential regulator or other Federal  
9 agency having jurisdiction over a covered  
10 person or service provider, and to all revi-  
11 sions made to any such report.

12 (ii) PROVISION OF OTHER REPORTS  
13 TO THE BUREAU.—In addition to the re-  
14 ports described in clause (i), a prudential  
15 regulator or other Federal agency having  
16 jurisdiction over a covered person or serv-  
17 ice provider may, in its discretion, furnish  
18 to the Bureau any other report or other  
19 confidential supervisory information con-  
20 cerning any insured depository institution,  
21 credit union, or other entity examined by  
22 such agency under authority of any provi-  
23 sion of Federal law.

24 (B) ACCESS BY OTHER REGULATORS TO  
25 REPORTS OF THE BUREAU.—

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1 (i) EXAMINATION REPORTS.—Upon  
2 providing reasonable assurances of con-  
3 fidentiality, a prudential regulator, a State  
4 regulator, or any other Federal agency  
5 having jurisdiction over a covered person  
6 or service provider shall have access to any  
7 report of examination made by the Bureau  
8 with respect to such person, and to all re-  
9 visions made to any such report.

10 (ii) PROVISION OF OTHER REPORTS  
11 TO OTHER REGULATORS.—In addition to  
12 the reports described in clause (i), the Bu-  
13 reau may, in its discretion, furnish to a  
14 prudential regulator or other agency hav-  
15 ing jurisdiction over a covered person or  
16 service provider any other report or other  
17 confidential supervisory information con-  
18 cerning such person examined by the Bu-  
19 reau under the authority of any other pro-  
20 vision of Federal law.

21 (6) PRIVACY CONSIDERATIONS.—In collecting  
22 information from any person, publicly releasing in-  
23 formation held by the Bureau, or requiring covered  
24 persons to publicly report information, the Bureau  
25 shall take steps to ensure that proprietary, personal,

1 or confidential consumer information that is pro-  
2 tected from public disclosure under section 552(b) or  
3 552a of title 5, United States Code, or any other  
4 provision of law, is not made public under this title.

5 (d) ASSESSMENT OF SIGNIFICANT RULES.—

6 (1) IN GENERAL.—The Bureau shall conduct  
7 an assessment of each significant rule or order  
8 adopted by the Bureau under Federal consumer fi-  
9 nancial law. The assessment shall address, among  
10 other relevant factors, the effectiveness of the rule or  
11 order in meeting the purposes and objectives of this  
12 title and the specific goals stated by the Bureau.  
13 The assessment shall reflect available evidence and  
14 any data that the Bureau reasonably may collect.

15 (2) REPORTS.—The Bureau shall publish a re-  
16 port of its assessment under this subsection not  
17 later than 5 years after the effective date of the sub-  
18 ject rule or order.

19 (3) PUBLIC COMMENT REQUIRED.—Before pub-  
20 lishing a report of its assessment, the Bureau shall  
21 invite public comment on recommendations for modi-  
22 fying, expanding, or eliminating the newly adopted  
23 significant rule or order.

24 (e) INFORMATION GATHERING.—In conducting any  
25 monitoring or assessment required by this section, the Bu-

1 reau may gather information through a variety of meth-  
2 ods, including by conducting surveys or interviews of con-  
3 sumers.

4 **SEC. 1023. REVIEW OF BUREAU REGULATIONS.**

5 (a) REVIEW OF BUREAU REGULATIONS.—On the pe-  
6 tition of a member agency of the Council, the Council may  
7 set aside a final regulation prescribed by the Bureau, or  
8 any provision thereof, if the Council decides, in accordance  
9 with subsection (c), that the regulation or provision would  
10 put the safety and soundness of the United States banking  
11 system or the stability of the financial system of the  
12 United States at risk.

13 (b) PETITION.—

14 (1) PROCEDURE.—An agency represented by a  
15 member of the Council may petition the Council, in  
16 writing, and in accordance with rules prescribed pur-  
17 suant to subsection (f), to stay the effectiveness of,  
18 or set aside, a regulation if the member agency filing  
19 the petition—

20 (A) has in good faith attempted to work  
21 with the Bureau to resolve concerns regarding  
22 the effect of the rule on the safety and sound-  
23 ness of the United States banking system or  
24 the stability of the financial system of the  
25 United States; and

1 (B) files the petition with the Council not  
2 later than 10 days after the date on which the  
3 regulation has been published in the Federal  
4 Register.

5 (2) PUBLICATION.—Any petition filed with the  
6 Council under this section shall be published in the  
7 Federal Register and transmitted contemporaneously  
8 with filing to the Committee on Banking, Housing,  
9 and Urban Affairs of the Senate and the Committee  
10 on Financial Services of the House of Representa-  
11 tives.

12 (c) STAYS AND SET ASIDES.—

13 (1) STAY.—

14 (A) IN GENERAL.—Upon the request of  
15 any member agency, the Chairperson of the  
16 Council may stay the effectiveness of a regula-  
17 tion for the purpose of allowing appropriate  
18 consideration of the petition by the Council.

19 (B) EXPIRATION.—A stay issued under  
20 this paragraph shall expire on the earlier of—

21 (i) 90 days after the date of filing of  
22 the petition under subsection (b); or

23 (ii) the date on which the Council  
24 makes a decision under paragraph (3).

1           (2) NO ADVERSE INFERENCE.—After the expi-  
2           ration of any stay imposed under this section, no in-  
3           ference shall be drawn regarding the validity or en-  
4           forceability of a regulation which was the subject of  
5           the petition.

6           (3) VOTE.—

7           (A) IN GENERAL.—The decision to issue a  
8           stay of, or set aside, any regulation under this  
9           section shall be made only with the affirmative  
10          vote in accordance with subparagraph (B) of  $\frac{2}{3}$   
11          of the members of the Council then serving.

12          (B) AUTHORIZATION TO VOTE.—A member  
13          of the Council may vote to stay the effectiveness  
14          of, or set aside, a final regulation prescribed by  
15          the Bureau only if the agency or department  
16          represented by that member has—

17                 (i) considered any relevant informa-  
18                 tion provided by the agency submitting the  
19                 petition and by the Bureau; and

20                 (ii) made an official determination, at  
21                 a public meeting where applicable, that the  
22                 regulation which is the subject of the peti-  
23                 tion would put the safety and soundness of  
24                 the United States banking system or the

1 stability of the financial system of the  
2 United States at risk.

3 (4) DECISIONS TO SET ASIDE.—

4 (A) EFFECT OF DECISION.—A decision by  
5 the Council to set aside a regulation prescribed  
6 by the Bureau, or provision thereof, shall  
7 render such regulation, or provision thereof, un-  
8 enforceable.

9 (B) TIMELY ACTION REQUIRED.—The  
10 Council may not issue a decision to set aside a  
11 regulation, or provision thereof, which is the  
12 subject of a petition under this section after the  
13 expiration of the later of—

14 (i) 45 days following the date of filing  
15 of the petition, unless a stay is issued  
16 under paragraph (1); or

17 (ii) the expiration of a stay issued by  
18 the Council under this section.

19 (C) SEPARATE AUTHORITY.—The issuance  
20 of a stay under this section does not affect the  
21 authority of the Council to set aside a regula-  
22 tion.

23 (5) DISMISSAL DUE TO INACTION.—A petition  
24 under this section shall be deemed dismissed if the  
25 Council has not issued a decision to set aside a regu-

1 lation, or provision thereof, within the period for  
2 timely action under paragraph (4)(B).

3 (6) PUBLICATION OF DECISION.—Any decision  
4 under this subsection to issue a stay of, or set aside,  
5 a regulation or provision thereof shall be published  
6 by the Council in the Federal Register as soon as  
7 practicable after the decision is made, with an expla-  
8 nation of the reasons for the decision.

9 (7) RULEMAKING PROCEDURES INAPPLI-  
10 CABLE.—The notice and comment procedures under  
11 section 553 of title 5, United States Code, shall not  
12 apply to any decision under this section of the Coun-  
13 cil to issue a stay of, or set aside, a regulation.

14 (8) JUDICIAL REVIEW OF DECISIONS BY THE  
15 COUNCIL.—A decision by the Council to set aside a  
16 regulation prescribed by the Bureau, or provision  
17 thereof, shall be subject to review under chapter 7  
18 of title 5, United States Code.

19 (d) APPLICATION OF OTHER LAW.—Nothing in this  
20 section shall be construed as altering, limiting, or restrict-  
21 ing the application of any other provision of law, except  
22 as otherwise specifically provided in this section, including  
23 chapter 5 and chapter 7 of title 5, United States Code,  
24 to a regulation which is the subject of a petition filed  
25 under this section.



1 (e) SAVINGS CLAUSE.—Nothing in this section shall  
2 be construed as limiting or restricting the Bureau from  
3 engaging in a rulemaking in accordance with applicable  
4 law.

5 (f) IMPLEMENTING RULES.—The Council shall pre-  
6 scribe procedural rules to implement this section.

7 **SEC. 1024. SUPERVISION OF NONDEPOSITORY COVERED**  
8 **PERSONS.**

9 (a) SCOPE OF COVERAGE.—

10 (1) APPLICABILITY.—Notwithstanding any  
11 other provision of this title, and except as provided  
12 in paragraph (3), this section shall apply to any cov-  
13 ered person who—

14 (A) offers or provides origination, broker-  
15 age, or servicing of loans secured by real estate  
16 for use by consumers primarily for personal,  
17 family, or household purposes, or loan modifica-  
18 tion or foreclosure relief services in connection  
19 with such loans;

20 (B) is a larger participant of a market for  
21 other consumer financial products or services,  
22 as defined by rule in accordance with paragraph  
23 (2); or

24 (C) the Bureau has reasonable cause to de-  
25 termine, by order, after notice to the covered

1 person and a reasonable opportunity for such  
2 covered person to respond, based on complaints  
3 collected through the system under section  
4 1013(b)(3) or information from other sources,  
5 is engaging, or has engaged, in a pattern of  
6 conduct that poses undue risks to consumers  
7 with regard to the offering or provision of con-  
8 sumer financial products or services.

9 (2) RULEMAKING TO DEFINE COVERED PER-  
10 SONS SUBJECT TO THIS SECTION.—The Bureau  
11 shall consult with the Federal Trade Commission  
12 prior to issuing a rule, in accordance with paragraph  
13 (1)(B), to define covered persons subject to this sec-  
14 tion. The Bureau shall issue its initial rule not later  
15 than 1 year after the designated transfer date.

16 (3) RULES OF CONSTRUCTION.—

17 (A) CERTAIN PERSONS EXCLUDED.—This  
18 section shall not apply to persons described in  
19 section 1025(a) or 1026(a).

20 (B) ACTIVITY LEVELS.—For purposes of  
21 computing activity levels under paragraph (1)  
22 or rules issued thereunder, activities of affili-  
23 ated companies (other than insured depository  
24 institutions or insured credit unions) shall be  
25 aggregated.

1 (b) SUPERVISION.—

2 (1) IN GENERAL.—The Bureau shall require re-  
3 ports and conduct examinations on a periodic basis  
4 of persons described in subsection (a)(1) for pur-  
5 poses of—

6 (A) assessing compliance with the require-  
7 ments of Federal consumer financial law;

8 (B) obtaining information about the activi-  
9 ties and compliance systems or procedures of  
10 such person; and

11 (C) detecting and assessing risks to con-  
12 sumers and to markets for consumer financial  
13 products and services.

14 (2) RISK-BASED SUPERVISION PROGRAM.—The  
15 Bureau shall exercise its authority under paragraph  
16 (1) in a manner designed to ensure that such exer-  
17 cise, with respect to persons described in subsection  
18 (a)(1), is based on the assessment by the Bureau of  
19 the risks posed to consumers in the relevant product  
20 markets and geographic markets, and taking into  
21 consideration, as applicable—

22 (A) the asset size of the covered person;

23 (B) the volume of transactions involving  
24 consumer financial products or services in  
25 which the covered person engages;

1 (C) the risks to consumers created by the  
2 provision of such consumer financial products  
3 or services;

4 (D) the extent to which such institutions  
5 are subject to oversight by State authorities for  
6 consumer protection; and

7 (E) any other factors that the Bureau de-  
8 termines to be relevant to a class of covered  
9 persons.

10 (3) COORDINATION.—To minimize regulatory  
11 burden, the Bureau shall coordinate its supervisory  
12 activities with the supervisory activities conducted by  
13 prudential regulators and the State bank regulatory  
14 authorities, including establishing their respective  
15 schedules for examining persons described in sub-  
16 section (a)(1) and requirements regarding reports to  
17 be submitted by such persons.

18 (4) USE OF EXISTING REPORTS.—The Bureau  
19 shall, to the fullest extent possible, use—

20 (A) reports pertaining to persons described  
21 in subsection (a)(1) that have been provided or  
22 required to have been provided to a Federal or  
23 State agency; and

24 (B) information that has been reported  
25 publicly.

1           (5) PRESERVATION OF AUTHORITY.—Nothing  
2           in this title may be construed as limiting the author-  
3           ity of the Director to require reports from persons  
4           described in subsection (a)(1), as permitted under  
5           paragraph (1), regarding information owned or  
6           under the control of such person, regardless of  
7           whether such information is maintained, stored, or  
8           processed by another person.

9           (6) REPORTS OF TAX LAW NONCOMPLIANCE.—  
10          The Bureau shall provide the Commissioner of In-  
11          ternal Revenue with any report of examination or re-  
12          lated information identifying possible tax law non-  
13          compliance.

14          (7) REGISTRATION, RECORDKEEPING, AND  
15          OTHER REQUIREMENTS FOR CERTAIN PERSONS.—

16                (A) IN GENERAL.—The Bureau shall pre-  
17                scribe rules to facilitate supervision of persons  
18                described in subsection (a)(1) and assessment  
19                and detection of risks to consumers.

20                (B) REGISTRATION.—

21                    (i) IN GENERAL.—The Bureau shall  
22                    prescribe rules regarding registration re-  
23                    quirements for persons described in sub-  
24                    section (a)(1).

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1 (ii) EXCEPTION FOR RELATED PER-  
2 SONS.—The Bureau may not impose re-  
3 quirements under this section regarding  
4 the registration of a related person.

5 (iii) REGISTRATION INFORMATION.—  
6 Subject to rules prescribed by the Bureau,  
7 the Bureau shall publicly disclose the reg-  
8 istration information about persons de-  
9 scribed in subsection (a)(1) to facilitate the  
10 ability of consumers to identify persons de-  
11 scribed in subsection (a)(1) registered with  
12 the Bureau.

13 (C) RECORDKEEPING.—The Bureau may  
14 require a person described in subsection (a)(1),  
15 to generate, provide, or retain records for the  
16 purposes of facilitating supervision of such per-  
17 sons and assessing and detecting risks to con-  
18 sumers.

19 (D) REQUIREMENTS CONCERNING OBLIGA-  
20 TIONS.—The Bureau may prescribe rules re-  
21 garding a person described in subsection (a)(1),  
22 to ensure that such persons are legitimate enti-  
23 ties and are able to perform their obligations to  
24 consumers. Such requirements may include  
25 background checks for principals, officers, di-

1           rectors, or key personnel and bonding or other  
2           appropriate financial requirements.

3                   (E) CONSULTATION WITH STATE AGEN-  
4           CIES.—In developing and implementing require-  
5           ments under this paragraph, the Bureau shall  
6           consult with State agencies regarding require-  
7           ments or systems (including coordinated or  
8           combined systems for registration), where ap-  
9           propriate.

10          (c) ENFORCEMENT AUTHORITY.—

11                   (1) THE BUREAU TO HAVE ENFORCEMENT AU-  
12          THORITY.—Except as provided in paragraph (3) and  
13          section 1061(b)(5), with respect to any person de-  
14          scribed in subsection (a)(1), to the extent that Fed-  
15          eral law authorizes the Bureau and another Federal  
16          agency to enforce Federal consumer financial law,  
17          the Bureau shall have exclusive authority to enforce  
18          that Federal consumer financial law.

19                   (2) REFERRAL.—Any Federal agency author-  
20          ized to enforce a Federal consumer financial law de-  
21          scribed in paragraph (1) may recommend in writing  
22          to the Bureau that the Bureau initiate an enforce-  
23          ment proceeding, as the Bureau is authorized by  
24          that Federal law or by this title.

1           (3) COORDINATION WITH THE FEDERAL TRADE  
2 COMMISSION.—

3           (A) IN GENERAL.—The Bureau and the  
4 Federal Trade Commission shall negotiate an  
5 agreement for coordinating with respect to en-  
6 forcement actions by each agency regarding the  
7 offering or provision of consumer financial  
8 products or services by any covered person that  
9 is described in subsection (a)(1), or service pro-  
10 viders thereto. The agreement shall include pro-  
11 cedures for notice to the other agency, where  
12 feasible, prior to initiating a civil action to en-  
13 force any Federal law regarding the offering or  
14 provision of consumer financial products or  
15 services.

16           (B) CIVIL ACTIONS.—Whenever a civil ac-  
17 tion has been filed by, or on behalf of, the Bu-  
18 reau or the Federal Trade Commission for any  
19 violation of any provision of Federal law de-  
20 scribed in subparagraph (A), or any regulation  
21 prescribed under such provision of law—

22           (i) the other agency may not, during  
23 the pendency of that action, institute a  
24 civil action under such provision of law  
25 against any defendant named in the com-



1                   plaint in such pending action for any viola-  
2                   tion alleged in the complaint; and

3                   (ii) the Bureau or the Federal Trade  
4                   Commission may intervene as a party in  
5                   any such action brought by the other agen-  
6                   cy, and, upon intervening—

7                   (I) be heard on all matters aris-  
8                   ing in such enforcement action; and

9                   (II) file petitions for appeal in  
10                  such actions.

11               (C) AGREEMENT TERMS.—The terms of  
12               any agreement negotiated under subparagraph  
13               (A) may modify or supersede the provisions of  
14               subparagraph (B).

15               (D) DEADLINE.—The agencies shall reach  
16               the agreement required under subparagraph (A)  
17               not later than 6 months after the designated  
18               transfer date.

19               (d) EXCLUSIVE RULEMAKING AND EXAMINATION  
20               AUTHORITY.—Notwithstanding any other provision of  
21               Federal law and except as provided in section 1061(b)(5),  
22               to the extent that Federal law authorizes the Bureau and  
23               another Federal agency to issue regulations or guidance,  
24               conduct examinations, or require reports from a person  
25               described in subsection (a)(1) under such law for purposes

1 of assuring compliance with Federal consumer financial  
2 law and any regulations thereunder, the Bureau shall have  
3 the exclusive authority to prescribe rules, issue guidance,  
4 conduct examinations, require reports, or issue exemptions  
5 with regard to a person described in subsection (a)(1),  
6 subject to those provisions of law.

7 (e) SERVICE PROVIDERS.—A service provider to a  
8 person described in subsection (a)(1) shall be subject to  
9 the authority of the Bureau under this section, to the  
10 same extent as if such service provider were engaged in  
11 a service relationship with a bank, and the Bureau were  
12 an appropriate Federal banking agency under section 7(c)  
13 of the Bank Service Company Act (12 U.S.C. 1867(c)).  
14 In conducting any examination or requiring any report  
15 from a service provider subject to this subsection, the Bu-  
16 reau shall coordinate with the appropriate prudential reg-  
17 ulator, as applicable.

18 (f) PRESERVATION OF FARM CREDIT ADMINISTRA-  
19 TION AUTHORITY.—No provision of this title may be con-  
20 strued as modifying, limiting, or otherwise affecting the  
21 authority of the Farm Credit Administration.

22 **SEC. 1025. SUPERVISION OF VERY LARGE BANKS, SAVINGS**  
23 **ASSOCIATIONS, AND CREDIT UNIONS.**

24 (a) SCOPE OF COVERAGE.—

1           (1) APPLICABILITY.—This section shall apply  
2 to any covered person that is—

3           (A) an insured depository institution with  
4 total assets of more than \$10,000,000,000 and  
5 any affiliate thereof; or

6           (B) an insured credit union with total as-  
7 sets of more than \$10,000,000,000 and any af-  
8 filiate thereof.

9           (2) RULE OF CONSTRUCTION.—For purposes of  
10 determining total assets under this section and sec-  
11 tion 1026, the Bureau shall rely on the same regula-  
12 tions and interim methodologies specified in section  
13 605.

14           (b) SUPERVISION.—

15           (1) IN GENERAL.—The Bureau shall require re-  
16 ports and conduct examinations on a periodic basis  
17 of persons described in subsection (a) for purposes  
18 of—

19           (A) assessing compliance with the require-  
20 ments of Federal consumer financial laws;

21           (B) obtaining information about the activi-  
22 ties and compliance systems or procedures of  
23 such persons; and

1 (C) detecting and assessing risks to con-  
2 sumers and to markets for consumer financial  
3 products and services.

4 (2) COORDINATION.—To minimize regulatory  
5 burden, the Bureau shall coordinate its supervisory  
6 activities with the supervisory activities conducted by  
7 prudential regulators and the State bank regulatory  
8 authorities, including establishing their respective  
9 schedules for examining such persons described in  
10 subsection (a) and requirements regarding reports to  
11 be submitted by such persons.

12 (3) USE OF EXISTING REPORTS.—The Bureau  
13 shall, to the fullest extent possible, use—

14 (A) reports pertaining to a person de-  
15 scribed in subsection (a) that have been pro-  
16 vided or required to have been provided to a  
17 Federal or State agency; and

18 (B) information that has been reported  
19 publicly.

20 (4) PRESERVATION OF AUTHORITY.—Nothing  
21 in this title may be construed as limiting the author-  
22 ity of the Director to require reports from a person  
23 described in subsection (a), as permitted under para-  
24 graph (1), regarding information owned or under the  
25 control of such person, regardless of whether such

1 information is maintained, stored, or processed by  
2 another person.

3 (5) REPORTS OF TAX LAW NONCOMPLIANCE.—

4 The Bureau shall provide the Commissioner of In-  
5 ternal Revenue with any report of examination or re-  
6 lated information identifying possible tax law non-  
7 compliance.

8 (c) PRIMARY ENFORCEMENT AUTHORITY.—

9 (1) THE BUREAU TO HAVE PRIMARY ENFORCE-  
10 MENT AUTHORITY.—To the extent that the Bureau  
11 and another Federal agency are authorized to en-  
12 force a Federal consumer financial law, the Bureau  
13 shall have primary authority to enforce that Federal  
14 consumer financial law with respect to any person  
15 described in subsection (a).

16 (2) REFERRAL.—Any Federal agency, other  
17 than the Federal Trade Commission, that is author-  
18 ized to enforce a Federal consumer financial law  
19 may recommend, in writing, to the Bureau that the  
20 Bureau initiate an enforcement proceeding with re-  
21 spect to a person described in subsection (a), as the  
22 Bureau is authorized to do by that Federal con-  
23 sumer financial law.

24 (3) BACKUP ENFORCEMENT AUTHORITY OF  
25 OTHER FEDERAL AGENCY.—If the Bureau does not,

1 before the end of the 120-day period beginning on  
2 the date on which the Bureau receives a rec-  
3 ommendation under paragraph (2), initiate an en-  
4 forcement proceeding, the other agency referred to  
5 in paragraph (2) may initiate an enforcement pro-  
6 ceeding.

7 (d) SERVICE PROVIDERS.—A service provider to a  
8 person described in subsection (a) shall be subject to the  
9 authority of the Bureau under this section, to the same  
10 extent as if the Bureau were an appropriate Federal bank-  
11 ing agency under section 7(c) of the Bank Service Com-  
12 pany Act 12 U.S.C. 1867(c). In conducting any examina-  
13 tion or requiring any report from a service provider sub-  
14 ject to this subsection, the Bureau shall coordinate with  
15 the appropriate prudential regulator.

16 (e) SIMULTANEOUS AND COORDINATED SUPER-  
17 VISORY ACTION.—

18 (1) EXAMINATIONS.—A prudential regulator  
19 and the Bureau shall, with respect to each insured  
20 depository institution, insured credit union, or other  
21 covered person described in subsection (a) that is su-  
22 pervised by the prudential regulator and the Bureau,  
23 respectively—

24 (A) coordinate the scheduling of examina-  
25 tions of the insured depository institution, in-

1           sured credit union, or other covered person de-  
2           scribed in subsection (a);

3           (B) conduct simultaneous examinations of  
4           each insured depository institution, insured  
5           credit union, or other covered person described  
6           in subsection (a), unless such institution re-  
7           quests examinations to be conducted separately;

8           (C) share each draft report of examination  
9           with the other agency and permit the receiving  
10          agency a reasonable opportunity (which shall  
11          not be less than a period of 30 days after the  
12          date of receipt) to comment on the draft report  
13          before such report is made final; and

14          (D) prior to issuing a final report of exam-  
15          ination or taking supervisory action, take into  
16          consideration concerns, if any, raised in the  
17          comments made by the other agency.

18          (2) COORDINATION WITH STATE BANK SUPER-  
19          VISORS.—The Bureau shall pursue arrangements  
20          and agreements with State bank supervisors to co-  
21          ordinate examinations, consistent with paragraph  
22          (1).

23          (3) AVOIDANCE OF CONFLICT IN SUPER-  
24          VISION.—

1           (A) REQUEST.—If the proposed super-  
2           visory determinations of the Bureau and a pru-  
3           dential regulator (in this section referred to col-  
4           lectively as the “agencies”) are conflicting, an  
5           insured depository institution, insured credit  
6           union, or other covered person described in sub-  
7           section (a) may request the agencies to coordi-  
8           nate and present a joint statement of coordi-  
9           nated supervisory action.

10           (B) JOINT STATEMENT.—The agencies  
11           shall provide a joint statement under subpara-  
12           graph (A), not later than 30 days after the date  
13           of receipt of the request of the insured deposi-  
14           tory institution, credit union, or covered person  
15           described in subsection (a).

16           (4) APPEALS TO GOVERNING PANEL.—

17           (A) IN GENERAL.—If the agencies do not  
18           resolve the conflict or issue a joint statement  
19           required by subparagraph (B), or if either of  
20           the agencies takes or attempts to take any su-  
21           pervisory action relating to the request for the  
22           joint statement without the consent of the other  
23           agency, an insured depository institution, in-  
24           sured credit union, or other covered person de-  
25           scribed in subsection (a) may institute an ap-





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1 (C) CONDUCT OF APPEAL.—In an appeal  
2 under this paragraph—

3 (i) the insured depository institution,  
4 insured credit union, or other covered per-  
5 son described in subsection (a)—

6 (I) shall include in its appeal all  
7 the facts and legal arguments per-  
8 taining to the matter; and

9 (II) may, through counsel, em-  
10 ployees, or representatives, appear be-  
11 fore the governing panel in person or  
12 by telephone; and

13 (ii) the governing panel—

14 (I) may request the insured de-  
15 pository institution, insured credit  
16 union, or other covered person de-  
17 scribed in subsection (a), the Bureau,  
18 or the prudential regulator to produce  
19 additional information relevant to the  
20 appeal; and

21 (II) by a majority vote of its  
22 members, shall provide a final deter-  
23 mination, in writing, not later than 30  
24 days after the date of filing of an  
25 informationally complete appeal, or

1                   such longer period as the panel and  
2                   the insured depository institution, in-  
3                   sured credit union, or other covered  
4                   person described in subsection (a)  
5                   may jointly agree.

6                   (D) PUBLIC AVAILABILITY OF DETERMINA-  
7                   TIONS.—A governing panel shall publish all in-  
8                   formation contained in a determination by the  
9                   governing panel, with appropriate redactions of  
10                  information that would be subject to an exemp-  
11                  tion from disclosure under section 552 of title  
12                  5, United States Code.

13                  (E) PROHIBITION AGAINST RETALIA-  
14                  TION.—The Bureau and the prudential regu-  
15                  lators shall prescribe rules to provide safe-  
16                  guards from retaliation against the insured de-  
17                  pository institution, insured credit union, or  
18                  other covered person described in subsection (a)  
19                  instituting an appeal under this paragraph, as  
20                  well as their officers and employees.

21                  (F) LIMITATION.—The process provided in  
22                  this paragraph shall not apply to a determina-  
23                  tion by a prudential regulator to appoint a con-  
24                  servator or receiver for an insured depository  
25                  institution or a liquidating agent for an insured

1 credit union, as the case may be, or a decision  
2 to take action pursuant to section 38 of the  
3 Federal Deposit Insurance Act (12 U.S.C.  
4 1831o) or section 212 of the Federal Credit  
5 Union Act (112 U.S.C. 1790a), as applicable.

6 (G) EFFECT ON OTHER AUTHORITY.—  
7 Nothing in this section shall modify or limit the  
8 authority of the Bureau to interpret, or take  
9 enforcement action under, any Federal con-  
10 sumer financial law.

11 **SEC. 1026. OTHER BANKS, SAVINGS ASSOCIATIONS, AND**  
12 **CREDIT UNIONS.**

13 (a) SCOPE OF COVERAGE.—This section shall apply  
14 to any covered person that is—

15 (1) an insured depository institution with total  
16 assets of \$10,000,000,000 or less; or

17 (2) an insured credit union with total assets of  
18 \$10,000,000,000 or less.

19 (b) REPORTS.—The Director may require reports  
20 from a person described in subsection (a), as necessary  
21 to support the role of the Bureau in implementing Federal  
22 consumer financial law, to support its examination activi-  
23 ties under subsection (c), and to assess and detect risks  
24 to consumers and consumer financial markets.

1           (1) USE OF EXISTING REPORTS.—The Bureau  
2 shall, to the fullest extent possible, use—

3           (A) reports pertaining to a person de-  
4 scribed in subsection (a) that have been pro-  
5 vided or required to have been provided to a  
6 Federal or State agency; and

7           (B) information that has been reported  
8 publicly.

9           (2) PRESERVATION OF AUTHORITY.—Nothing  
10 in this subsection may be construed as limiting the  
11 authority of the Director from requiring from a per-  
12 son described in subsection (a), as permitted under  
13 paragraph (1), information owned or under the con-  
14 trol of such person, regardless of whether such infor-  
15 mation is maintained, stored, or processed by an-  
16 other person.

17           (3) REPORTS OF TAX LAW NONCOMPLIANCE.—  
18 The Bureau shall provide the Commissioner of In-  
19 ternal Revenue with any report of examination or re-  
20 lated information identifying possible tax law non-  
21 compliance.

22           (c) EXAMINATIONS.—

23           (1) IN GENERAL.—The Bureau may, at its dis-  
24 cretion, include examiners on a sampling basis of the

1 examinations performed by the prudential regulator  
2 of persons described in subsection (a).

3 (2) AGENCY COORDINATION.—The prudential  
4 regulator shall—

5 (A) provide all reports, records, and docu-  
6 mentation related to the examination process  
7 for any institution included in the sample re-  
8 ferred to in paragraph (1) to the Bureau on a  
9 timely and continual basis;

10 (B) involve such Bureau examiner in the  
11 entire examination process for such person; and

12 (C) consider input of the Bureau con-  
13 cerning the scope of an examination, conduct of  
14 the examination, the contents of the examina-  
15 tion report, the designation of matters requiring  
16 attention, and examination ratings.

17 (d) ENFORCEMENT.—

18 (1) IN GENERAL.—Except for requiring reports  
19 under subsection (b), the prudential regulator is au-  
20 thorized to enforce the requirements of Federal con-  
21 sumer financial laws and, with respect to a covered  
22 person described in subsection (a), shall have exclu-  
23 sive authority to enforce such laws.

24 (2) COORDINATION WITH PRUDENTIAL REGU-  
25 LATOR.—

1           (A) REFERRAL.—When the Bureau has  
2           reason to believe that a person described in sub-  
3           section (a) has engaged in a material violation  
4           of a Federal consumer financial law, the Bu-  
5           reau shall notify the prudential regulator in  
6           writing and recommend appropriate action to  
7           respond.

8           (B) RESPONSE.—Upon receiving a rec-  
9           ommendation under subparagraph (A), the pru-  
10          dential regulator shall provide a written re-  
11          sponse to the Bureau not later than 60 days  
12          thereafter.

13          (e) SERVICE PROVIDERS.—A service provider to a  
14          substantial number of persons described in subsection (a)  
15          shall be subject to the authority of the Bureau under sec-  
16          tion 1025 to the same extent as if the Bureau were an  
17          appropriate Federal bank agency under section 7(c) of the  
18          Bank Service Company Act (12 U.S.C. 1867(c)). When  
19          conducting any examination or requiring any report from  
20          a service provider subject to this subsection, the Bureau  
21          shall coordinate with the appropriate prudential regulator.

1 **SEC. 1027. LIMITATIONS ON AUTHORITIES OF THE BUREAU;**  
2 **PRESERVATION OF AUTHORITIES.**

3 (a) EXCLUSION FOR MERCHANTS, RETAILERS, AND  
4 OTHER SELLERS OF NONFINANCIAL GOODS OR SERV-  
5 ICES.—

6 (1) SALE OR BROKERAGE OF NONFINANCIAL  
7 GOOD OR SERVICE.—The Bureau may not exercise  
8 any rulemaking, supervisory, enforcement or other  
9 authority under this title with respect to a person  
10 who is a merchant, retailer, or seller of any non-  
11 financial good or service and is engaged in the sale  
12 or brokerage of such nonfinancial good or service,  
13 except to the extent that such person is engaged in  
14 offering or providing any consumer financial product  
15 or service, or is otherwise subject to any enumerated  
16 consumer law or any law for which authorities are  
17 transferred under subtitle F or H.

18 (2) OFFERING OR PROVISION OF CERTAIN CON-  
19 SUMER FINANCIAL PRODUCTS OR SERVICES IN CON-  
20 NECTION WITH THE SALE OR BROKERAGE OF NON-  
21 FINANCIAL GOOD OR SERVICE.—

22 (A) IN GENERAL.—Except as provided in  
23 subparagraph (B), and subject to subparagraph  
24 (C), the Bureau may not exercise any rule-  
25 making, supervisory, enforcement, or other au-  
26 thority under this title with respect to a mer-



1           chant, retailer, or seller of nonfinancial goods or  
2           services, but only to the extent that such per-  
3           son—

4                   (i) extends credit directly to a con-  
5                   sumer, in a case in which the good or serv-  
6                   ice being provided is not itself a consumer  
7                   financial product or service (other than  
8                   credit described in this subparagraph), ex-  
9                   clusively for the purpose of enabling that  
10                  consumer to purchase such nonfinancial  
11                  good or service directly from the merchant,  
12                  retailer, or seller;

13                  (ii) directly, or through an agreement  
14                  with another person, collects debt arising  
15                  from credit extended as described in clause  
16                  (i); or

17                  (iii) sells or conveys debt described in  
18                  clause (i) that is delinquent or otherwise in  
19                  default.

20           (B) APPLICABILITY.—Subparagraph (A)  
21           does not apply to any credit transaction or col-  
22           lection of debt, other than as described in sub-  
23           paragraph (C)(i), arising from a transaction de-  
24           scribed in subparagraph (A)—

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1 (i) in which the merchant, retailer, or  
2 seller of nonfinancial goods or services as-  
3 signs, sells or otherwise conveys to another  
4 person such debt owed by the consumer  
5 (except for a sale of debt that is delinquent  
6 or otherwise in default, as described in  
7 subparagraph (A)(iii));

8 (ii) in which the credit extended ex-  
9 ceeds the market value of the nonfinancial  
10 good or service provided, or the Bureau  
11 otherwise finds that the sale of the non-  
12 financial good or service is done as a sub-  
13 terfuge, so as to evade or circumvent the  
14 provisions of this title; or

15 (iii) in which the merchant, retailer,  
16 or seller of nonfinancial goods or services  
17 regularly extends credit and the credit is  
18 subject to a finance charge.

19 (C) LIMITATIONS.—

20 (i) IN GENERAL.—Notwithstanding  
21 subparagraph (B), subparagraph (A) shall  
22 apply with respect to a merchant, retailer,  
23 or seller of nonfinancial goods or services  
24 that is not engaged significantly in offering

1 or providing consumer financial products  
2 or services.

3 (ii) EXCEPTION.—Subparagraph (A)  
4 and clause (i) of this subparagraph do not  
5 apply to any merchant, retailer, or seller of  
6 nonfinancial goods or services, to the ex-  
7 tent that such person is subject to any  
8 enumerated consumer law or any law for  
9 which authorities are transferred under  
10 subtitle F or H.

11 (D) RULES.—

12 (i) AUTHORITY OF OTHER AGEN-  
13 CIES.—No provision of this title shall be  
14 construed as modifying, limiting, or super-  
15 seding the supervisory or enforcement au-  
16 thority of the Federal Trade Commission  
17 or any other agency (other than the Bu-  
18 reau) with respect to credit extended, or  
19 the collection of debt arising from such ex-  
20 tension, directly by a merchant or retailer  
21 to a consumer exclusively for the purpose  
22 of enabling that consumer to purchase  
23 nonfinancial goods or services directly from  
24 the merchant or retailer.

1 (ii) SMALL BUSINESSES.—A mer-  
2 chant, retailer, or seller of nonfinancial  
3 goods or services that would otherwise be  
4 subject to the authority of the Bureau sole-  
5 ly by virtue of the application of subpara-  
6 graph (B)(iii) shall be deemed not to be  
7 engaged significantly in offering or pro-  
8 viding consumer financial products or serv-  
9 ices under subparagraph (C)(i), if such  
10 person—

11 (I) only extends credit for the  
12 sale of nonfinancial goods or services,  
13 as described in subparagraph (A)(i);

14 (II) retains such credit on its  
15 own accounts (except to sell or convey  
16 such debt that is delinquent or other-  
17 wise in default); and

18 (III) meets the relevant industry  
19 size threshold to be a small business  
20 concern, based on annual receipts,  
21 pursuant to section 3 of the Small  
22 Business Act (15 U.S.C. 632) and the  
23 implementing rules thereunder.

24 (iii) INITIAL YEAR.—A merchant, re-  
25 tailer, or seller of nonfinancial goods or

1 services shall be deemed to meet the rel-  
2 evant industry size threshold described in  
3 clause (ii)(III) during the first year of op-  
4 erations of that business concern if, during  
5 that year, the receipts of that business  
6 concern reasonably are expected to meet  
7 that size threshold.

8 (E) EXCEPTION FROM STATE ENFORCE-  
9 MENT.—To the extent that the Bureau may not  
10 exercise authority under this subsection with re-  
11 spect to a merchant, retailer, or seller of non-  
12 financial goods or services, no action by a State  
13 attorney general or State regulator with respect  
14 to a claim made under this title may be brought  
15 under subsection 1042(a), with respect to an  
16 activity described in any of clauses (i) through  
17 (iii) of subparagraph (A) by such merchant, re-  
18 tailer, or seller of nonfinancial goods or serv-  
19 ices.

20 (b) EXCLUSION FOR REAL ESTATE BROKERAGE AC-  
21 TIVITIES.—

22 (1) REAL ESTATE BROKERAGE ACTIVITIES EX-  
23 CLUDED.—Without limiting subsection (a), and ex-  
24 cept as permitted in paragraph (2), the Bureau may  
25 not exercise any rulemaking, supervisory, enforce-

1       ment, or other authority under this title with respect  
2       to a person that is licensed or registered as a real  
3       estate broker or real estate agent, in accordance  
4       with State law, to the extent that such person—

5               (A) acts as a real estate agent or broker  
6               for a buyer, seller, lessor, or lessee of real prop-  
7               erty;

8               (B) brings together parties interested in  
9               the sale, purchase, lease, rental, or exchange of  
10              real property;

11              (C) negotiates, on behalf of any party, any  
12              portion of a contract relating to the sale, pur-  
13              chase, lease, rental, or exchange of real prop-  
14              erty (other than in connection with the provi-  
15              sion of financing with respect to any such  
16              transaction); or

17              (D) offers to engage in any activity, or act  
18              in any capacity, described in subparagraph (A),  
19              (B), or (C).

20       (2) DESCRIPTION OF ACTIVITIES.—The Bureau  
21       may exercise rulemaking, supervisory, enforcement,  
22       or other authority under this title with respect to a  
23       person described in paragraph (1) when such person  
24       is—

1 (A) engaged in an activity of offering or  
2 providing any consumer financial product or  
3 service, except that the Bureau may exercise  
4 such authority only with respect to that activ-  
5 ity; or

6 (B) otherwise subject to any enumerated  
7 consumer law or any law for which authorities  
8 are transferred under subtitle F or H, except  
9 that the Bureau may exercise such authority  
10 only with respect to that law.

11 (c) EXCLUSION FOR MANUFACTURED HOME RETAIL-  
12 ERS AND MODULAR HOME RETAILERS.—

13 (1) IN GENERAL.—The Director may not exer-  
14 cise any rulemaking, supervisory, enforcement, or  
15 other authority over a person to the extent that—

16 (A) such person is not described in para-  
17 graph (2); and

18 (B) such person—

19 (i) acts as an agent or broker for a  
20 buyer or seller of a manufactured home or  
21 a modular home;

22 (ii) facilitates the purchase by a con-  
23 sumer of a manufactured home or modular  
24 home, by negotiating the purchase price or  
25 terms of the sales contract (other than

1 providing financing with respect to such  
2 transaction); or

3 (iii) offers to engage in any activity  
4 described in clause (i) or (ii).

5 (2) DESCRIPTION OF ACTIVITIES.—A person is  
6 described in this paragraph to the extent that such  
7 person is engaged in the offering or provision of any  
8 consumer financial product or service or is otherwise  
9 subject to any enumerated consumer law or any law  
10 for which authorities are transferred under subtitle  
11 F or H.

12 (3) DEFINITIONS.—For purposes of this sub-  
13 section, the following definitions shall apply:

14 (A) MANUFACTURED HOME.—The term  
15 “manufactured home” has the same meaning as  
16 in section 603 of the National Manufactured  
17 Housing Construction and Safety Standards  
18 Act of 1974 (42 U.S.C. 5402).

19 (B) MODULAR HOME.—The term “mod-  
20 ular home” means a house built in a factory in  
21 2 or more modules that meet the State or local  
22 building codes where the house will be located,  
23 and where such modules are transported to the  
24 building site, installed on foundations, and com-  
25 pleted.



1 (d) EXCLUSION FOR ACCOUNTANTS AND TAX PRE-  
2 PARERS.—

3 (1) IN GENERAL.—Except as permitted in para-  
4 graph (2), the Bureau may not exercise any rule-  
5 making, supervisory, enforcement, or other authority  
6 over—

7 (A) any person that is a certified public ac-  
8 countant, permitted to practice as a certified  
9 public accounting firm, or certified or licensed  
10 for such purpose by a State, or any individual  
11 who is employed by or holds an ownership inter-  
12 est with respect to a person described in this  
13 subparagraph, when such person is performing  
14 or offering to perform—

15 (i) customary and usual accounting  
16 activities, including the provision of ac-  
17 counting, tax, advisory, or other services  
18 that are subject to the regulatory authority  
19 of a State board of accountancy or a Fed-  
20 eral authority; or

21 (ii) other services that are incidental  
22 to such customary and usual accounting  
23 activities, to the extent that such incidental  
24 services are not offered or provided—

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1 (I) by the person separate and  
2 apart from such customary and usual  
3 accounting activities; or

4 (II) to consumers who are not re-  
5 ceiving such customary and usual ac-  
6 counting activities; or

7 (B) any person, other than a person de-  
8 scribed in subparagraph (A) that performs in-  
9 come tax preparation activities for consumers.

10 (2) DESCRIPTION OF ACTIVITIES.—

11 (A) IN GENERAL.—Paragraph (1) shall not  
12 apply to any person described in paragraph  
13 (1)(A) or (1)(B) to the extent that such person  
14 is engaged in any activity which is not a cus-  
15 tomary and usual accounting activity described  
16 in paragraph (1)(A) or incidental thereto but  
17 which is the offering or provision of any con-  
18 sumer financial product or service, except to the  
19 extent that a person described in paragraph  
20 (1)(A) is engaged in an activity which is a cus-  
21 tomary and usual accounting activity described  
22 in paragraph (1)(A), or incidental thereto.

23 (B) NOT A CUSTOMARY AND USUAL AC-  
24 COUNTING ACTIVITY.—For purposes of this  
25 subsection, extending or brokering credit is not

1 a customary and usual accounting activity, or  
2 incidental thereto.

3 (C) RULE OF CONSTRUCTION.—For pur-  
4 poses of subparagraphs (A) and (B), a person  
5 described in paragraph (1)(A) shall not be  
6 deemed to be extending credit, if such person is  
7 only extending credit directly to a consumer, ex-  
8 clusively for the purpose of enabling such con-  
9 sumer to purchase services described in clause  
10 (i) or (ii) of paragraph (1)(A) directly from  
11 such person, and such credit is—

- 12 (i) not subject to a finance charge;  
13 and  
14 (ii) not payable by written agreement  
15 in more than 4 installments.

16 (D) OTHER LIMITATIONS.—Paragraph (1)  
17 does not apply to any person described in para-  
18 graph (1)(A) or (1)(B) that is otherwise subject  
19 to any enumerated consumer law or any law for  
20 which authorities are transferred under subtitle  
21 F or H.

22 (e) EXCLUSION FOR ATTORNEYS.—

23 (1) IN GENERAL.—The Bureau may not exer-  
24 cise any authority to conduct examinations of an at-  
25 torney licensed by a State, to the extent that the at-

1           torney is engaged in the practice of law under the  
2           laws of such State.

3           (2) EXCEPTION FOR ENUMERATED CONSUMER  
4           LAWS AND TRANSFERRED AUTHORITIES.—Para-  
5           graph (1) shall not apply to an attorney who is en-  
6           gaged in the offering or provision of any consumer  
7           financial product or service, or is otherwise subject  
8           to any enumerated consumer law or any law for  
9           which authorities are transferred under subtitle F or  
10          H.

11          (f) EXCLUSION FOR PERSONS REGULATED BY A  
12          STATE INSURANCE REGULATOR.—

13           (1) IN GENERAL.—No provision of this title  
14           shall be construed as altering, amending, or affect-  
15           ing the authority of any State insurance regulator to  
16           adopt rules, initiate enforcement proceedings, or  
17           take any other action with respect to a person regu-  
18           lated by a State insurance regulator. Except as pro-  
19           vided in paragraph (2), the Bureau shall have no au-  
20           thority to exercise any power to enforce this title  
21           with respect to a person regulated by a State insur-  
22           ance regulator.

23           (2) DESCRIPTION OF ACTIVITIES.—Paragraph  
24           (1) does not apply to any person described in such  
25           paragraph to the extent that such person is engaged

1 in the offering or provision of any consumer finan-  
2 cial product or service or is otherwise subject to any  
3 enumerated consumer law or any law for which au-  
4 thorities are transferred under subtitle F or H.

5 (g) EXCLUSION FOR EMPLOYEE BENEFIT AND COM-  
6 PENSATION PLANS AND CERTAIN OTHER ARRANGEMENTS  
7 UNDER THE INTERNAL REVENUE CODE OF 1986.—

8 (1) PRESERVATION OF AUTHORITY OF OTHER  
9 AGENCIES.—No provision of this title shall be con-  
10 strued as altering, amending, or affecting the au-  
11 thority of the Secretary of the Treasury, the Sec-  
12 retary of Labor, or the Commissioner of Internal  
13 Revenue to adopt regulations, initiate enforcement  
14 proceedings, or take any actions with respect to any  
15 specified plan or arrangement.

16 (2) ACTIVITIES NOT CONSTITUTING THE OF-  
17 FERING OR PROVISION OF ANY CONSUMER FINAN-  
18 CIAL PRODUCT OR SERVICE.—For purposes of this  
19 title, a person shall not be treated as having engaged  
20 in the offering or provision of any consumer finan-  
21 cial product or service solely because such person  
22 is—

23 (A) a specified plan or arrangement;

24 (B) engaged in the activity of establishing  
25 or maintaining, for the benefit of employees of

1 such person (or for members of an employee or-  
2 ganization), any specified plan or arrangement;  
3 or

4 (C) engaged in the activity of establishing  
5 or maintaining a qualified tuition program  
6 under section 529(b)(1) of the Internal Revenue  
7 Code of 1986, offered by a State.

8 (3) LIMITATION ON BUREAU AUTHORITY.—

9 (A) IN GENERAL.—Except as provided  
10 under subparagraphs (B) and (C), the Bureau  
11 may not exercise any rulemaking or enforce-  
12 ment authority with respect to products or serv-  
13 ices that relate to any specified plan or arrange-  
14 ment.

15 (B) BUREAU ACTION ONLY PURSUANT TO  
16 AGENCY REQUEST.—The Secretary and the Sec-  
17 retary of Labor may jointly issue a written re-  
18 quest to the Bureau regarding implementation  
19 of appropriate consumer protection standards  
20 under this title with respect to the provision of  
21 services relating to any specified plan or ar-  
22 rangement. Subject to a request made under  
23 this subparagraph, the Bureau may exercise  
24 rulemaking authority, and may act to enforce a  
25 rule prescribed pursuant to such request, in ac-

1 cordance with the provisions of this title. A re-  
2 quest made by the Secretary and the Secretary  
3 of Labor under this subparagraph shall describe  
4 the basis for, and scope of, appropriate con-  
5 sumer protection standards to be implemented  
6 under this title with respect to the provision of  
7 services relating to any specified plan or ar-  
8 rangement.

9 (C) DESCRIPTION OF PRODUCTS OR SERV-  
10 ICES.—To the extent that a person engaged in  
11 providing products or services relating to any  
12 specified plan or arrangement is subject to any  
13 enumerated consumer law or any law for which  
14 authorities are transferred under subtitle F or  
15 H, subparagraph (A) shall not apply with re-  
16 spect to that law.

17 (4) SPECIFIED PLAN OR ARRANGEMENT.—For  
18 purposes of this subsection, the term “specified plan  
19 or arrangement” means any plan, account, or ar-  
20 rangement described in section 220, 223, 401(a),  
21 403(a), 403(b), 408, 408A, 529, or 530 of the Inter-  
22 nal Revenue Code of 1986, or any employee benefit  
23 or compensation plan or arrangement, including a  
24 plan that is subject to title I of the Employee Retirement  
25 Income Security Act of 1974.

1 (h) PERSONS REGULATED BY A STATE SECURITIES  
2 COMMISSION.—

3 (1) IN GENERAL.—No provision of this title  
4 shall be construed as altering, amending, or affect-  
5 ing the authority of any securities commission (or  
6 any agency or office performing like functions) of  
7 any State to adopt rules, initiate enforcement pro-  
8 ceedings, or take any other action with respect to a  
9 person regulated by any securities commission (or  
10 any agency or office performing like functions) of  
11 any State. Except as permitted in paragraph (2) and  
12 subsection (f), the Bureau shall have no authority to  
13 exercise any power to enforce this title with respect  
14 to a person regulated by any securities commission  
15 (or any agency or office performing like functions)  
16 of any State, but only to the extent that the person  
17 acts in such regulated capacity.

18 (2) DESCRIPTION OF ACTIVITIES.—Paragraph  
19 (1) shall not apply to any person to the extent such  
20 person is engaged in the offering or provision of any  
21 consumer financial product or service, or is other-  
22 wise subject to any enumerated consumer law or any  
23 law for which authorities are transferred under sub-  
24 title F or H.



1 (i) EXCLUSION FOR PERSONS REGULATED BY THE  
2 COMMISSION.—

3 (1) IN GENERAL.—No provision of this title  
4 may be construed as altering, amending, or affecting  
5 the authority of the Commission to adopt rules, ini-  
6 tiate enforcement proceedings, or take any other ac-  
7 tion with respect to a person regulated by the Com-  
8 mission. The Bureau shall have no authority to exer-  
9 cise any power to enforce this title with respect to  
10 a person regulated by the Commission.

11 (2) CONSULTATION AND COORDINATION.—Not-  
12 withstanding paragraph (1), the Commission shall  
13 consult and coordinate, where feasible, with the Bu-  
14 reau with respect to any rule (including any advance  
15 notice of proposed rulemaking) regarding an invest-  
16 ment product or service that is the same type of  
17 product as, or that competes directly with, a con-  
18 sumer financial product or service that is subject to  
19 the jurisdiction of the Bureau under this title or  
20 under any other law. In carrying out this paragraph,  
21 the agencies shall negotiate an agreement to estab-  
22 lish procedures for such coordination, including pro-  
23 cedures for providing advance notice to the Bureau  
24 when the Commission is initiating a rulemaking.

1 (j) EXCLUSION FOR PERSONS REGULATED BY THE  
2 COMMODITY FUTURES TRADING COMMISSION.—

3 (1) IN GENERAL.—No provision of this title  
4 shall be construed as altering, amending, or affect-  
5 ing the authority of the Commodity Futures Trading  
6 Commission to adopt rules, initiate enforcement pro-  
7 ceedings, or take any other action with respect to a  
8 person regulated by the Commodity Futures Trading  
9 Commission. The Bureau shall have no authority to  
10 exercise any power to enforce this title with respect  
11 to a person regulated by the Commodity Futures  
12 Trading Commission.

13 (2) CONSULTATION AND COORDINATION.—Not-  
14 withstanding paragraph (1), the Commodity Futures  
15 Trading Commission shall consult and coordinate  
16 with the Bureau with respect to any rule (including  
17 any advance notice of proposed rulemaking) regard-  
18 ing a product or service that is the same type of  
19 product as, or that competes directly with, a con-  
20 sumer financial product or service that is subject to  
21 the jurisdiction of the Bureau under this title or  
22 under any other law.

23 (k) EXCLUSION FOR PERSONS REGULATED BY THE  
24 FARM CREDIT ADMINISTRATION.—

1           (1) IN GENERAL.—No provision of this title  
2 shall be construed as altering, amending, or affect-  
3 ing the authority of the Farm Credit Administration  
4 to adopt rules, initiate enforcement proceedings, or  
5 take any other action with respect to a person regu-  
6 lated by the Farm Credit Administration. The Bu-  
7 reau shall have no authority to exercise any power  
8 to enforce this title with respect to a person regu-  
9 lated by the Farm Credit Administration.

10           (2) DEFINITION.—For purposes of this sub-  
11 section, the term “person regulated by the Farm  
12 Credit Administration” means any Farm Credit Sys-  
13 tem institution that is chartered and subject to the  
14 provisions of the Farm Credit Act of 1971 (12  
15 U.S.C. 2001 et seq.).

16           (1) EXCLUSION FOR ACTIVITIES RELATING TO CHAR-  
17 ITABLE CONTRIBUTIONS.—

18           (1) IN GENERAL.—The Director and the Bu-  
19 reau may not exercise any rulemaking, supervisory,  
20 enforcement, or other authority, including authority  
21 to order penalties, over any activities related to the  
22 solicitation or making of voluntary contributions to  
23 a tax-exempt organization as recognized by the In-  
24 ternal Revenue Service, by any agent, volunteer, or  
25 representative of such organizations to the extent

1 the organization, agent, volunteer, or representative  
2 thereof is soliciting or providing advice, information,  
3 education, or instruction to any donor or potential  
4 donor relating to a contribution to the organization.

5 (2) LIMITATION.—The exclusion in paragraph  
6 (1) does not apply to other activities not described  
7 in paragraph (1) that are the offering or provision  
8 of any consumer financial product or service, or are  
9 otherwise subject to any enumerated consumer law  
10 or any law for which authorities are transferred  
11 under subtitle F or H.

12 (m) INSURANCE.—The Bureau may not define as a  
13 financial product or service, by regulation or otherwise,  
14 engaging in the business of insurance.

15 (n) LIMITED AUTHORITY OF THE BUREAU.—Not-  
16 withstanding subsections (a) through (h) and (l), a person  
17 subject to or described in one or more of such sub-  
18 sections—

19 (1) may be a service provider; and

20 (2) may be subject to requests from, or require-  
21 ments imposed by, the Bureau regarding informa-  
22 tion in order to carry out the responsibilities and  
23 functions of the Bureau and in accordance with sec-  
24 tion 1022, 1052, or 1053.

1           (o) NO AUTHORITY TO IMPOSE USURY LIMIT.—No  
2 provision of this title shall be construed as conferring au-  
3 thority on the Bureau to establish a usury limit applicable  
4 to an extension of credit offered or made by a covered per-  
5 son to a consumer, unless explicitly authorized by law.

6           (p) ATTORNEY GENERAL.—No provision of this title,  
7 including section 1024(c)(1), shall affect the authorities  
8 of the Attorney General under otherwise applicable provi-  
9 sions of law.

10          (q) SECRETARY OF THE TREASURY.—No provision of  
11 this title shall affect the authorities of the Secretary, in-  
12 cluding with respect to prescribing rules, initiating en-  
13 forcement proceedings, or taking other actions with re-  
14 spect to a person that performs income tax preparation  
15 activities for consumers.

16          (r) DEPOSIT INSURANCE AND SHARE INSURANCE.—  
17 Nothing in this title shall affect the authority of the Cor-  
18 poration under the Federal Deposit Insurance Act or the  
19 National Credit Union Administration Board under the  
20 Federal Credit Union Act as to matters related to deposit  
21 insurance and share insurance, respectively.

22          (s) FAIR HOUSING ACT.—No provision of this title  
23 shall be construed as affecting any authority arising under  
24 the Fair Housing Act.

1 **SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DIS-**  
2 **PUTE ARBITRATION.**

3 (a) **STUDY AND REPORT.**—The Bureau shall conduct  
4 a study of, and shall provide a report to Congress con-  
5 cerning, the use of agreements providing for arbitration  
6 of any future dispute between covered persons and con-  
7 sumers in connection with the offering or providing of con-  
8 sumer financial products or services.

9 (b) **FURTHER AUTHORITY.**—The Bureau, by regula-  
10 tion, may prohibit or impose conditions or limitations on  
11 the use of an agreement between a covered person and  
12 a consumer for a consumer financial product or service  
13 providing for arbitration of any future dispute between the  
14 parties, if the Bureau finds that such a prohibition or im-  
15 position of conditions or limitations is in the public inter-  
16 est and for the protection of consumers. The findings in  
17 such rule shall be consistent with the study conducted  
18 under subsection (a).

19 (c) **LIMITATION.**—The authority described in sub-  
20 section (b) may not be construed to prohibit or restrict  
21 a consumer from entering into a voluntary arbitration  
22 agreement with a covered person after a dispute has aris-  
23 en.

24 (d) **EFFECTIVE DATE.**—Notwithstanding any other  
25 provision of law, any regulation prescribed by the Bureau  
26 under subsection (b) shall apply, consistent with the terms

1 of the regulation, to any agreement between a consumer  
2 and a covered person entered into after the end of the  
3 180-day period beginning on the effective date of the regu-  
4 lation, as established by the Bureau.

5 **SEC. 1029. EFFECTIVE DATE.**

6 This subtitle shall become effective on the designated  
7 transfer date.

8 **Subtitle C—Specific Bureau**  
9 **Authorities**

10 **SEC. 1031. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE**  
11 **ACTS OR PRACTICES.**

12 (a) IN GENERAL.—The Bureau may take any action  
13 authorized under subtitle E to prevent a covered person  
14 or service provider from committing or engaging in an un-  
15 fair, deceptive, or abusive act or practice under Federal  
16 law in connection with any transaction with a consumer  
17 for a consumer financial product or service, or the offering  
18 of a consumer financial product or service.

19 (b) RULEMAKING.—The Bureau may prescribe rules  
20 applicable to a covered person or service provider identi-  
21 fying as unlawful unfair, deceptive, or abusive acts or  
22 practices in connection with any transaction with a con-  
23 sumer for a consumer financial product or service, or the  
24 offering of a consumer financial product or service. Rules

1 under this section may include requirements for the pur-  
2 pose of preventing such acts or practices.

3 (c) UNFAIRNESS.—

4 (1) IN GENERAL.—The Bureau shall have no  
5 authority under this section to declare an act or  
6 practice in connection with a transaction with a con-  
7 sumer for a consumer financial product or service,  
8 or the offering of a consumer financial product or  
9 service, to be unlawful on the grounds that such act  
10 or practice is unfair, unless the Bureau has a rea-  
11 sonable basis to conclude that—

12 (A) the act or practice causes or is likely  
13 to cause substantial injury to consumers which  
14 is not reasonably avoidable by consumers; and

15 (B) such substantial injury is not out-  
16 weighed by countervailing benefits to consumers  
17 or to competition.

18 (2) CONSIDERATION OF PUBLIC POLICIES.—In  
19 determining whether an act or practice is unfair, the  
20 Bureau may consider established public policies as  
21 evidence to be considered with all other evidence.  
22 Such public policy considerations may not serve as  
23 a primary basis for such determination.

24 (d) ABUSIVE.—The Bureau shall have no authority  
25 under this section to declare an act or practice abusive



1 in connection with the provision of a consumer financial  
2 product or service, unless the act or practice—

3 (1) materially interferes with the ability of a  
4 consumer to understand a term or condition of a  
5 consumer financial product or service; or

6 (2) takes unreasonable advantage of—

7 (A) a lack of understanding on the part of  
8 the consumer of the material risks, costs, or  
9 conditions of the product or service;

10 (B) the inability of the consumer to protect  
11 the interests of the consumer in selecting or  
12 using a consumer financial product or service;  
13 or

14 (C) the reasonable reliance by the con-  
15 sumer on a covered person to act in the inter-  
16 ests of the consumer.

17 (e) CONSULTATION.—In prescribing rules under this  
18 section, the Bureau shall consult with the Federal banking  
19 agencies, or other Federal agencies, as appropriate, con-  
20 cerning the consistency of the proposed rule with pruden-  
21 tial, market, or systemic objectives administered by such  
22 agencies.

23 (f) CONSIDERATION OF SEASONAL INCOME.—The  
24 rules of the Bureau under this section shall provide, with  
25 respect to an extension of credit secured by residential real

1 estate or a dwelling, if documented income of the bor-  
2 rower, including income from a small business, is a repay-  
3 ment source for an extension of credit secured by residen-  
4 tial real estate or a dwelling, the creditor may consider  
5 the seasonality and irregularity of such income in the un-  
6 derwriting of and scheduling of payments for such credit.

7 **SEC. 1032. DISCLOSURES.**

8 (a) IN GENERAL.—The Bureau may prescribe rules  
9 to ensure that the features of any consumer financial  
10 product or service, both initially and over the term of the  
11 product or service, are fully, accurately, and effectively  
12 disclosed to consumers in a manner that permits con-  
13 sumers to understand the costs, benefits, and risks associ-  
14 ated with the product or service, in light of the facts and  
15 circumstances.

16 (b) MODEL DISCLOSURES.—

17 (1) IN GENERAL.—Any final rule prescribed by  
18 the Bureau under this section requiring disclosures  
19 may include a model form that may be used at the  
20 option of the covered person for provision of the re-  
21 quired disclosures.

22 (2) FORMAT.—A model form issued pursuant to  
23 paragraph (1) shall contain a clear and conspicuous  
24 disclosure that, at a minimum—

1 (A) uses plain language comprehensible to  
2 consumers;

3 (B) contains a clear format and design,  
4 such as an easily readable type font; and

5 (C) succinctly explains the information  
6 that must be communicated to the consumer.

7 (3) CONSUMER TESTING.—Any model form  
8 issued pursuant to this subsection shall be validated  
9 through consumer testing.

10 (c) BASIS FOR RULEMAKING.—In prescribing rules  
11 under this section, the Bureau shall consider available evi-  
12 dence about consumer awareness, understanding of, and  
13 responses to disclosures or communications about the  
14 risks, costs, and benefits of consumer financial products  
15 or services.

16 (d) SAFE HARBOR.—Any covered person that uses a  
17 model form included with a rule issued under this section  
18 shall be deemed to be in compliance with the disclosure  
19 requirements of this section with respect to such model  
20 form.

21 (e) TRIAL DISCLOSURE PROGRAMS.—

22 (1) IN GENERAL.—The Bureau may permit a  
23 covered person to conduct a trial program that is  
24 limited in time and scope, subject to specified stand-  
25 ards and procedures, for the purpose of providing

1 trial disclosures to consumers that are designed to  
2 improve upon any model form issued pursuant to  
3 subsection (b)(1), or any other model form issued to  
4 implement an enumerated statute, as applicable.

5 (2) SAFE HARBOR.—The standards and proce-  
6 dures issued by the Bureau shall be designed to en-  
7 courage covered persons to conduct trial disclosure  
8 programs. For the purposes of administering this  
9 subsection, the Bureau may establish a limited pe-  
10 riod during which a covered person conducting a  
11 trial disclosure program shall be deemed to be in  
12 compliance with, or may be exempted from, a re-  
13 quirement of a rule or an enumerated consumer law.

14 (3) PUBLIC DISCLOSURE.—The rules of the Bu-  
15 reau shall provide for public disclosure of trial dis-  
16 closure programs, which public disclosure may be  
17 limited, to the extent necessary to encourage covered  
18 persons to conduct effective trials.

19 (f) COMBINED MORTGAGE LOAN DISCLOSURE.—Not  
20 later than 1 year after the designated transfer date, the  
21 Bureau shall propose for public comment rules and model  
22 disclosures that combine the disclosures required under  
23 the Truth in Lending Act and the Real Estate Settlement  
24 Procedures Act of 1974, into a single, integrated disclo-  
25 sure for mortgage loan transactions covered by those laws,

1 unless the Bureau determines that any proposal issued by  
2 the Board of Governors and the Secretary of Housing and  
3 Urban Development carries out the same purpose.

4 **SEC. 1033. CONSUMER RIGHTS TO ACCESS INFORMATION.**

5 (a) IN GENERAL.—Subject to rules prescribed by the  
6 Bureau, a covered person shall make available to a con-  
7 sumer, upon request, information in the control or posses-  
8 sion of the covered person concerning the consumer finan-  
9 cial product or service that the consumer obtained from  
10 such covered person, including information relating to any  
11 transaction, series of transactions, or to the account in-  
12 cluding costs, charges and usage data. The information  
13 shall be made available in an electronic form usable by  
14 consumers.

15 (b) EXCEPTIONS.—A covered person may not be re-  
16 quired by this section to make available to the consumer—

17 (1) any confidential commercial information, in-  
18 cluding an algorithm used to derive credit scores or  
19 other risk scores or predictors;

20 (2) any information collected by the covered  
21 person for the purpose of preventing fraud or money  
22 laundering, or detecting, or making any report re-  
23 garding other unlawful or potentially unlawful con-  
24 duct;

1           (3) any information required to be kept con-  
2           fidential by any other provision of law; or

3           (4) any information that the covered person  
4           cannot retrieve in the ordinary course of its business  
5           with respect to that information.

6           (c) NO DUTY TO MAINTAIN RECORDS.—Nothing in  
7           this section shall be construed to impose any duty on a  
8           covered person to maintain or keep any information about  
9           a consumer.

10          (d) STANDARDIZED FORMATS FOR DATA.—The Bu-  
11          reau, by rule, shall prescribe standards applicable to cov-  
12          ered persons to promote the development and use of stand-  
13          ardized formats for information, including through the use  
14          of machine readable files, to be made available to con-  
15          sumers under this section.

16          (e) CONSULTATION.—The Bureau shall, when pre-  
17          scribing any rule under this section, consult with the Fed-  
18          eral banking agencies and the Federal Trade Commission  
19          to ensure, to the extent appropriate, that the rules—

20                (1) impose substantively similar requirements  
21                on covered persons;

22                (2) take into account conditions under which  
23                covered persons do business both in the United  
24                States and in other countries; and

1           (3) do not require or promote the use of any  
2           particular technology in order to develop systems for  
3           compliance.

4 **SEC. 1034. RESPONSE TO CONSUMER COMPLAINTS AND IN-**  
5 **QUIRIES.**

6           (a) **TIMELY REGULATOR RESPONSE TO CON-**  
7 **SUMERS.**—The Bureau shall establish, in consultation  
8 with the appropriate Federal regulatory agencies, reason-  
9 able procedures to provide a timely response to consumers,  
10 in writing where appropriate, to complaints against, or in-  
11 quires concerning, a covered person, including—

12           (1) steps that have been taken by the regulator  
13           in response to the complaint or inquiry of the con-  
14           sumer;

15           (2) any responses received by the regulator  
16           from the covered person; and

17           (3) any follow-up actions or planned follow-up  
18           actions by the regulator in response to the complaint  
19           or inquiry of the consumer.

20           (b) **TIMELY RESPONSE TO REGULATOR BY COVERED**  
21 **PERSON.**—A covered person subject to supervision and  
22 primary enforcement by the Bureau pursuant to section  
23 1025 shall provide a timely response, in writing where ap-  
24 propriate, to the Bureau, the prudential regulators, and  
25 any other agency having jurisdiction over such covered

1 person concerning a consumer complaint or inquiry, in-  
2 cluding—

3 (1) steps that have been taken by the covered  
4 person to respond to the complaint or inquiry of the  
5 consumer;

6 (2) responses received by the covered person  
7 from the consumer; and

8 (3) follow-up actions or planned follow-up ac-  
9 tions by the covered person to respond to the com-  
10 plaint or inquiry of the consumer.

11 (c) PROVISION OF INFORMATION TO CONSUMERS.—

12 (1) IN GENERAL.—A covered person subject to  
13 supervision and primary enforcement by the Bureau  
14 pursuant to section 1025 shall, in a timely manner,  
15 comply with a consumer request for information in  
16 the control or possession of such covered person con-  
17 cerning the consumer financial product or service  
18 that the consumer obtained from such covered per-  
19 son, including supporting written documentation,  
20 concerning the account of the consumer.

21 (2) EXCEPTIONS.—A covered person subject to  
22 supervision and primary enforcement by the Bureau  
23 pursuant to section 1025, a prudential regulator,  
24 and any other agency having jurisdiction over a cov-  
25 ered person subject to supervision and primary en-



1           forcement by the Bureau pursuant to section 1025  
2           may not be required by this section to make avail-  
3           able to the consumer—

4                   (A) any confidential commercial informa-  
5                   tion, including an algorithm used to derive cred-  
6                   it scores or other risk scores or predictors;

7                   (B) any information collected by the cov-  
8                   ered person for the purpose of preventing fraud  
9                   or money laundering, or detecting or making  
10                  any report regarding other unlawful or poten-  
11                  tially unlawful conduct;

12                  (C) any information required to be kept  
13                  confidential by any other provision of law; or

14                  (D) any nonpublic or confidential informa-  
15                  tion, including confidential supervisory informa-  
16                  tion.

17           (d) AGREEMENTS WITH OTHER AGENCIES.—The  
18 Bureau shall enter into a memorandum of understanding  
19 with any affected Federal regulatory agency regarding  
20 procedures by which any covered person, and the pruden-  
21 tial regulators, and any other agency having jurisdiction  
22 over a covered person, including the Secretary of the De-  
23 partment of Housing and Urban Development and the  
24 Secretary of Education, shall comply with this section.

1 **SEC. 1035. PRIVATE EDUCATION LOAN OMBUDSMAN.**

2 (a) ESTABLISHMENT.—The Secretary, in consulta-  
3 tion with the Director, shall designate a Private Education  
4 Loan Ombudsman (in this section referred to as the “Om-  
5 budsman”) within the Bureau, to provide timely assist-  
6 ance to borrowers of private education loans.

7 (b) PUBLIC INFORMATION.—The Secretary and the  
8 Director shall disseminate information about the avail-  
9 ability and functions of the Ombudsman to borrowers and  
10 potential borrowers, as well as institutions of higher edu-  
11 cation, lenders, guaranty agencies, loan servicers, and  
12 other participants in private education student loan pro-  
13 grams.

14 (c) FUNCTIONS OF OMBUDSMAN.—The Ombudsman  
15 designated under this subsection shall—

16 (1) in accordance with regulations of the Direc-  
17 tor, receive, review, and attempt to resolve infor-  
18 mally complaints from borrowers of loans described  
19 in subsection (a), including, as appropriate, attempts  
20 to resolve such complaints in collaboration with the  
21 Department of Education and with institutions of  
22 higher education, lenders, guaranty agencies, loan  
23 servicers, and other participants in private education  
24 loan programs;

25 (2) not later than 90 days after the designated  
26 transfer date, establish a memorandum of under-

1 standing with the student loan ombudsman estab-  
2 lished under section 141(f) of the Higher Education  
3 Act of 1965 (20 U.S.C. 1018(f)), to ensure coordi-  
4 nation in providing assistance to and serving bor-  
5 rowers seeking to resolve complaints related to their  
6 private education or Federal student loans;

7 (3) compile and analyze data on borrower com-  
8 plaints regarding private education loans; and

9 (4) make appropriate recommendations to the  
10 Director, the Secretary, the Secretary of Education,  
11 the Committee on Banking, Housing, and Urban Af-  
12 fairs and the Committee on Health, Education,  
13 Labor, and Pensions of the Senate and the Com-  
14 mittee on Financial Services and the Committee on  
15 Education and Labor of the House of Representa-  
16 tives.

17 (d) ANNUAL REPORTS.—

18 (1) IN GENERAL.—The Ombudsman shall pre-  
19 pare an annual report that describes the activities,  
20 and evaluates the effectiveness of the Ombudsman  
21 during the preceding year.

22 (2) SUBMISSION.—The report required by para-  
23 graph (1) shall be submitted on the same date annu-  
24 ally to the Secretary, the Secretary of Education,  
25 the Committee on Banking, Housing, and Urban Af-

1       fairs and the Committee on Health, Education,  
2       Labor, and Pensions of the Senate and the Com-  
3       mittee on Financial Services and the Committee on  
4       Education and Labor of the House of Representa-  
5       tives.

6       (e) DEFINITIONS.—For purposes of this section, the  
7       terms “private education loan” and “institution of higher  
8       education” have the same meanings as in section 140 of  
9       the Truth in Lending Act (15 U.S.C. 1650).

10   **SEC. 1036. PROHIBITED ACTS.**

11       (a) IN GENERAL.—It shall be unlawful for—

12               (1) any covered person or service provider—

13                       (A) to offer or provide to a consumer any  
14                       financial product or service not in conformity  
15                       with Federal consumer financial law, or other-  
16                       wise commit any act or omission in violation of  
17                       a Federal consumer financial law; or

18                       (B) to engage in any unfair, deceptive, or  
19                       abusive act or practice;

20               (2) any covered person or service provider to  
21               fail or refuse, as required by Federal consumer fi-  
22               nancial law, or any rule or order issued by the Bu-  
23               reau thereunder—

24                       (A) to permit access to or copying of  
25                       records;

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1 (B) to establish or maintain records; or

2 (C) to make reports or provide information

3 to the Bureau; or

4 (3) any person to knowingly or recklessly pro-

5 vide substantial assistance to a covered person or

6 service provider in violation of the provisions of sec-

7 tion 1031, or any rule or order issued thereunder,

8 and notwithstanding any provision of this title, the

9 provider of such substantial assistance shall be

10 deemed to be in violation of that section to the same

11 extent as the person to whom such assistance is pro-

12 vided.

13 (b) EXCEPTION.—No person shall be held to have

14 violated subsection (a)(1) solely by virtue of providing or

15 selling time or space to a covered person or service pro-

16 vider placing an advertisement.

17 **SEC. 1037. EFFECTIVE DATE.**

18 This subtitle shall take effect on the designated

19 transfer date.

## 20 **Subtitle D—Preservation of State** 21 **Law**

22 **SEC. 1041. RELATION TO STATE LAW.**

23 (a) IN GENERAL.—

24 (1) RULE OF CONSTRUCTION.—This title, other

25 than sections 1044 through 1048, may not be con-

1       strued as annulling, altering, or affecting, or ex-  
2       empting any person subject to the provisions of this  
3       title from complying with, the statutes, regulations,  
4       orders, or interpretations in effect in any State, ex-  
5       cept to the extent that any such provision of law is  
6       inconsistent with the provisions of this title, and  
7       then only to the extent of the inconsistency.

8               (2) GREATER PROTECTION UNDER STATE  
9       LAW.—For purposes of this subsection, a statute,  
10      regulation, order, or interpretation in effect in any  
11      State is not inconsistent with the provisions of this  
12      title if the protection that such statute, regulation,  
13      order, or interpretation affords to consumers is  
14      greater than the protection provided under this title.  
15      A determination regarding whether a statute, regu-  
16      lation, order, or interpretation in effect in any State  
17      is inconsistent with the provisions of this title may  
18      be made by the Bureau on its own motion or in re-  
19      sponse to a nonfrivolous petition initiated by any in-  
20      terested person.

21               (b) RELATION TO OTHER PROVISIONS OF ENUMER-  
22      ATED CONSUMER LAWS THAT RELATE TO STATE LAW.—  
23      No provision of this title, except as provided in section  
24      1083, shall be construed as modifying, limiting, or super-  
25      seding the operation of any provision of an enumerated

1 consumer law that relates to the application of a law in  
2 effect in any State with respect to such Federal law.

3 (c) ADDITIONAL CONSUMER PROTECTION REGULA-  
4 TIONS IN RESPONSE TO STATE ACTION.—

5 (1) NOTICE OF PROPOSED RULE REQUIRED.—

6 The Bureau shall issue a notice of proposed rule-  
7 making whenever a majority of the States has en-  
8 acted a resolution in support of the establishment or  
9 modification of a consumer protection regulation by  
10 the Bureau.

11 (2) BUREAU CONSIDERATIONS REQUIRED FOR  
12 ISSUANCE OF FINAL REGULATION.—Before pre-  
13 scribing a final regulation based upon a notice  
14 issued pursuant to paragraph (1), the Bureau shall  
15 take into account whether—

16 (A) the proposed regulation would afford  
17 greater protection to consumers than any exist-  
18 ing regulation;

19 (B) the intended benefits of the proposed  
20 regulation for consumers would outweigh any  
21 increased costs or inconveniences for con-  
22 sumers, and would not discriminate unfairly  
23 against any category or class of consumers; and

24 (C) a Federal banking agency has advised  
25 that the proposed regulation is likely to present

1 an unacceptable safety and soundness risk to  
2 insured depository institutions.

3 (3) EXPLANATION OF CONSIDERATIONS.—The  
4 Bureau—

5 (A) shall include a discussion of the con-  
6 siderations required in paragraph (2) in the  
7 Federal Register notice of a final regulation  
8 prescribed pursuant to this subsection; and

9 (B) whenever the Bureau determines not  
10 to prescribe a final regulation, shall publish an  
11 explanation of such determination in the Fed-  
12 eral Register, and provide a copy of such expla-  
13 nation to each State that enacted a resolution  
14 in support of the proposed regulation, the Com-  
15 mittee on Banking, Housing, and Urban Affairs  
16 of the Senate, and the Committee on Financial  
17 Services of the House of Representatives.

18 (4) RESERVATION OF AUTHORITY.—No provi-  
19 sion of this subsection shall be construed as limiting  
20 or restricting the authority of the Bureau to enhance  
21 consumer protection standards established pursuant  
22 to this title in response to its own motion or in re-  
23 sponse to a request by any other interested person.

24 (5) RULE OF CONSTRUCTION.—No provision of  
25 this subsection shall be construed as exempting the



1 Bureau from complying with subchapter II of chap-  
2 ter 5 of title 5, United States Code.

3 (6) DEFINITION.—For purposes of this sub-  
4 section, the term “consumer protection regulation”  
5 means a regulation that the Bureau is authorized to  
6 prescribe under the Federal consumer financial laws.

7 **SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF**  
8 **STATES.**

9 (a) IN GENERAL.—

10 (1) ACTION BY STATE.—Except as provided in  
11 paragraph (2), the attorney general (or the equiva-  
12 lent thereof) of any State may bring a civil action  
13 in the name of such State in any district court of  
14 the United States in that State or in State court  
15 that is located in that State and that has jurisdic-  
16 tion over the defendant, to enforce provisions of this  
17 title or regulations issued under this title, and to se-  
18 cure remedies under provisions of this title or rem-  
19 edies otherwise provided under other law. A State  
20 regulator may bring a civil action or other appro-  
21 priate proceeding to enforce the provisions of this  
22 title or regulations issued under this title with re-  
23 spect to any entity that is State-chartered, incor-  
24 porated, licensed, or otherwise authorized to do busi-  
25 ness under State law (except as provided in para-

1 graph (2)), and to secure remedies under provisions  
2 of this title or remedies otherwise provided under  
3 other provisions of law with respect to such an enti-  
4 ty.

5 (2) ACTION BY STATE AGAINST NATIONAL  
6 BANK OR FEDERAL SAVINGS ASSOCIATION TO EN-  
7 FORCE RULES.—

8 (A) IN GENERAL.—Except as permitted  
9 under subparagraph (B), the attorney general  
10 (or equivalent thereof) of any State may not  
11 bring a civil action in the name of such State  
12 against a national bank or Federal savings as-  
13 sociation with respect to an act or omission that  
14 would be a violation of a provision of this title.

15 (B) ENFORCEMENT OF RULES PER-  
16 MITTED.—The attorney general (or the equiva-  
17 lent thereof) of any State may bring a civil ac-  
18 tion in the name of such State against a na-  
19 tional bank or Federal savings association in  
20 any district court of the United States in the  
21 State or in State court that is located in that  
22 State and that has jurisdiction over the defend-  
23 ant to enforce a regulation prescribed by the  
24 Bureau under a provision of this title and to se-

1           cure remedies under provisions of this title or  
2           remedies otherwise provided under other law.

3           (3) RULE OF CONSTRUCTION.—No provision of  
4           this title shall be construed as modifying, limiting,  
5           or superseding the operation of any provision of an  
6           enumerated consumer law that relates to the author-  
7           ity of a State attorney general or State regulator to  
8           enforce such Federal law.

9           (b) CONSULTATION REQUIRED.—

10          (1) NOTICE.—

11               (A) IN GENERAL.—Before initiating any  
12               action in a court or other administrative or reg-  
13               ulatory proceeding against any covered person  
14               as authorized by subsection (a) to enforce any  
15               provision of this title, including any regulation  
16               prescribed by the Bureau under this title, a  
17               State attorney general or State regulator shall  
18               timely provide a copy of the complete complaint  
19               to be filed and written notice describing such  
20               action or proceeding to the Bureau and the pru-  
21               dential regulator, if any, or the designee there-  
22               of.

23               (B) EMERGENCY ACTION.—If prior notice  
24               is not practicable, the State attorney general or  
25               State regulator shall provide a copy of the com-

1           plete complaint and the notice to the Bureau  
2           and the prudential regulator, if any, imme-  
3           diately upon instituting the action or pro-  
4           ceeding.

5           (C) CONTENTS OF NOTICE.—The notifica-  
6           tion required under this paragraph shall, at a  
7           minimum, describe—

8                   (i) the identity of the parties;

9                   (ii) the alleged facts underlying the  
10           proceeding; and

11                   (iii) whether there may be a need to  
12           coordinate the prosecution of the pro-  
13           ceeding so as not to interfere with any ac-  
14           tion, including any rulemaking, undertaken  
15           by the Bureau, a prudential regulator, or  
16           another Federal agency.

17           (2) BUREAU RESPONSE.—In any action de-  
18           scribed in paragraph (1), the Bureau may—

19                   (A) intervene in the action as a party;

20                   (B) upon intervening—

21                           (i) remove the action to the appro-  
22           priate United States district court, if the  
23           action was not originally brought there;  
24           and

1 (ii) be heard on all matters arising in  
2 the action; and

3 (C) appeal any order or judgment, to the  
4 same extent as any other party in the pro-  
5 ceeding may.

6 (c) REGULATIONS.—The Bureau shall prescribe reg-  
7 ulations to implement the requirements of this section  
8 and, from time to time, provide guidance in order to fur-  
9 ther coordinate actions with the State attorneys general  
10 and other regulators.

11 (d) PRESERVATION OF STATE AUTHORITY.—

12 (1) STATE CLAIMS.—No provision of this sec-  
13 tion shall be construed as altering, limiting, or af-  
14 fecting the authority of a State attorney general or  
15 any other regulatory or enforcement agency or au-  
16 thority to bring an action or other regulatory pro-  
17 ceeding arising solely under the law in effect in that  
18 State.

19 (2) STATE SECURITIES REGULATORS.—No pro-  
20 vision of this title shall be construed as altering, lim-  
21 iting, or affecting the authority of a State securities  
22 commission (or any agency or office performing like  
23 functions) under State law to adopt rules, initiate  
24 enforcement proceedings, or take any other action

1 with respect to a person regulated by such commis-  
2 sion or authority.

3 (3) STATE INSURANCE REGULATORS.—No pro-  
4 vision of this title shall be construed as altering, lim-  
5 iting, or affecting the authority of a State insurance  
6 commission or State insurance regulator under State  
7 law to adopt rules, initiate enforcement proceedings,  
8 or take any other action with respect to a person  
9 regulated by such commission or regulator.

10 **SEC. 1043. PRESERVATION OF EXISTING CONTRACTS.**

11 This title, and regulations, orders, guidance, and in-  
12 terpretations prescribed, issued, or established by the Bu-  
13 reau, shall not be construed to alter or affect the applica-  
14 bility of any regulation, order, guidance, or interpretation  
15 prescribed, issued, and established by the Comptroller of  
16 the Currency or the Director of the Office of Thrift Super-  
17 vision regarding the applicability of State law under Fed-  
18 eral banking law to any contract entered into on or before  
19 the date of enactment of this Act, by national banks, Fed-  
20 eral savings associations, or subsidiaries thereof that are  
21 regulated and supervised by the Comptroller of the Cur-  
22 rency or the Director of the Office of Thrift Supervision,  
23 respectively.

1 **SEC. 1044. STATE LAW PREEMPTION STANDARDS FOR NA-**  
2 **TIONAL BANKS AND SUBSIDIARIES CLARI-**  
3 **FIED.**

4 (a) IN GENERAL.—Chapter one of title LXII of the  
5 Revised Statutes of the United States (12 U.S.C. 21 et  
6 seq.) is amended by inserting after section 5136B the fol-  
7 lowing new section:

8 **“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NA-**  
9 **TIONAL BANKS AND SUBSIDIARIES CLARI-**  
10 **FIED.**

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

13 “(1) NATIONAL BANK.—The term ‘national  
14 bank’ includes—

15 “(A) any bank organized under the laws of  
16 the United States; and

17 “(B) any Federal branch established in ac-  
18 cordance with the International Banking Act of  
19 1978.

20 “(2) STATE CONSUMER FINANCIAL LAWS.—The  
21 term ‘State consumer financial law’ means a State  
22 law that does not directly or indirectly discriminate  
23 against national banks and that directly and specifi-  
24 cally regulates the manner, content, or terms and  
25 conditions of any financial transaction (as may be

1 authorized for national banks to engage in), or any  
2 account related thereto, with respect to a consumer.

3 “(3) OTHER DEFINITIONS.—The terms ‘affil-  
4 iate’, ‘subsidiary’, ‘includes’, and ‘including’ have the  
5 same meanings as in section 3 of the Federal De-  
6 posit Insurance Act.

7 “(b) PREEMPTION STANDARD.—

8 “(1) IN GENERAL.—State consumer financial  
9 laws are preempted, only if—

10 “(A) application of a State consumer fi-  
11 nancial law would have a discriminatory effect  
12 on national banks, in comparison with the effect  
13 of the law on a bank chartered by that State;

14 “(B) the State consumer financial law is  
15 preempted in accordance with the legal stand-  
16 ard of the decision of the Supreme Court of the  
17 United States in *Barnett Bank of Marion  
18 County, N.A. v. Nelson, Florida Insurance  
19 Commissioner, et al.*, 517 U.S. 25 (1996), and  
20 any preemption determination under this sub-  
21 paragraph may be made by a court, or by regu-  
22 lation or order of the Comptroller of the Cur-  
23 rency on a case-by-case basis, in accordance  
24 with applicable law; or



1           “(C) the State consumer financial law is  
2           preempted by a provision of Federal law other  
3           than this title.

4           “(2) SAVINGS CLAUSE.—This title and section  
5           24 of the Federal Reserve Act (12 U.S.C. 371) do  
6           not preempt, annul, or affect the applicability of any  
7           State law to any subsidiary or affiliate of a national  
8           bank (other than a subsidiary or affiliate that is  
9           chartered as a national bank).

10          “(3) CASE-BY-CASE BASIS.—

11                 “(A) DEFINITION.—As used in this section  
12                 the term ‘case-by-case basis’ refers to a deter-  
13                 mination pursuant to this section made by the  
14                 Comptroller concerning the impact of a par-  
15                 ticular State consumer financial law on any na-  
16                 tional bank that is subject to that law, or the  
17                 law of any other State with substantively equiv-  
18                 alent terms.

19                 “(B) CONSULTATION.—When making a  
20                 determination on a case-by-case basis that a  
21                 State consumer financial law of another State  
22                 has substantively equivalent terms as one that  
23                 the Comptroller is preempting, the Comptroller  
24                 shall first consult with the Bureau of Consumer  
25                 Financial Protection and shall take the views of

1           the Bureau into account when making the de-  
2           termination.

3           “(4) RULE OF CONSTRUCTION.—This title does  
4           not occupy the field in any area of State law.

5           “(5) STANDARDS OF REVIEW.—

6           “(A) PREEMPTION.—A court reviewing  
7           any determinations made by the Comptroller re-  
8           garding preemption of a State law by this title  
9           or section 24 of the Federal Reserve Act (12  
10          U.S.C. 371) shall assess the validity of such de-  
11          terminations, depending upon the thoroughness  
12          evident in the consideration of the agency, the  
13          validity of the reasoning of the agency, the con-  
14          sistency with other valid determinations made  
15          by the agency, and other factors which the  
16          court finds persuasive and relevant to its deci-  
17          sion.

18          “(B) SAVINGS CLAUSE.—Except as pro-  
19          vided in subparagraph (A), nothing in this sec-  
20          tion shall affect the deference that a court may  
21          afford to the Comptroller in making determina-  
22          tions regarding the meaning or interpretation of  
23          title LXII of the Revised Statutes of the United  
24          States or other Federal laws.

1           “(6) COMPTROLLER DETERMINATION NOT DEL-  
2           EGABLE.—Any regulation, order, or determination  
3           made by the Comptroller of the Currency under  
4           paragraph (1)(B) shall be made by the Comptroller,  
5           and shall not be delegable to another officer or em-  
6           ployee of the Comptroller of the Currency.

7           “(c) SUBSTANTIAL EVIDENCE.—No regulation or  
8           order of the Comptroller of the Currency prescribed under  
9           subsection (b)(1)(B), shall be interpreted or applied so as  
10          to invalidate, or otherwise declare inapplicable to a na-  
11          tional bank, the provision of the State consumer financial  
12          law, unless substantial evidence, made on the record of  
13          the proceeding, supports the specific finding regarding the  
14          preemption of such provision in accordance with the legal  
15          standard of the decision of the Supreme Court of the  
16          United States in *Barnett Bank of Marion County, N.A.*  
17          *v. Nelson*, Florida Insurance Commissioner, et al., 517  
18          U.S. 25 (1996).

19          “(d) PERIODIC REVIEW OF PREEMPTION DETER-  
20          MINATIONS.—

21                 “(1) IN GENERAL.—The Comptroller of the  
22                 Currency shall periodically conduct a review,  
23                 through notice and public comment, of each deter-  
24                 mination that a provision of Federal law preempts a  
25                 State consumer financial law. The agency shall con-

1       duct such review within the 5-year period after pre-  
2       scribing or otherwise issuing such determination,  
3       and at least once during each 5-year period there-  
4       after. After conducting the review of, and inspecting  
5       the comments made on, the determination, the agen-  
6       cy shall publish a notice in the Federal Register an-  
7       nouncing the decision to continue or rescind the de-  
8       termination or a proposal to amend the determina-  
9       tion. Any such notice of a proposal to amend a de-  
10      termination and the subsequent resolution of such  
11      proposal shall comply with the procedures set forth  
12      in subsections (a) and (b) of section 5244 of the Re-  
13      vised Statutes of the United States (12 U.S.C. 43  
14      (a), (b)).

15           “(2) REPORTS TO CONGRESS.—At the time of  
16      issuing a review conducted under paragraph (1), the  
17      Comptroller of the Currency shall submit a report  
18      regarding such review to the Committee on Finan-  
19      cial Services of the House of Representatives and  
20      the Committee on Banking, Housing, and Urban Af-  
21      fairs of the Senate. The report submitted to the re-  
22      spective committees shall address whether the agen-  
23      cy intends to continue, rescind, or propose to amend  
24      any determination that a provision of Federal law

1 preempts a State consumer financial law, and the  
2 reasons therefor.

3 “(e) APPLICATION OF STATE CONSUMER FINANCIAL  
4 LAW TO SUBSIDIARIES AND AFFILIATES.—Notwith-  
5 standing any provision of this title or section 24 of Federal  
6 Reserve Act (12 U.S.C. 371), a State consumer financial  
7 law shall apply to a subsidiary or affiliate of a national  
8 bank (other than a subsidiary or affiliate that is chartered  
9 as a national bank) to the same extent that the State con-  
10 sumer financial law applies to any person, corporation, or  
11 other entity subject to such State law.

12 “(f) PRESERVATION OF POWERS RELATED TO  
13 CHARGING INTEREST.—No provision of this title shall be  
14 construed as altering or otherwise affecting the authority  
15 conferred by section 5197 of the Revised Statutes of the  
16 United States (12 U.S.C. 85) for the charging of interest  
17 by a national bank at the rate allowed by the laws of the  
18 State, territory, or district where the bank is located, in-  
19 cluding with respect to the meaning of ‘interest’ under  
20 such provision.

21 “(g) TRANSPARENCY OF OCC PREEMPTION DETER-  
22 MINATIONS.—The Comptroller of the Currency shall pub-  
23 lish and update no less frequently than quarterly, a list  
24 of preemption determinations by the Comptroller of the  
25 Currency then in effect that identifies the activities and

1 practices covered by each determination and the require-  
2 ments and constraints determined to be preempted.”.

3 (b) CLERICAL AMENDMENT.—The table of sections  
4 for chapter one of title LXII of the Revised Statutes of  
5 the United States is amended by inserting after the item  
6 relating to section 5136B the following new item:

“Sec. 5136C. State law preemption standards for national banks and subsidi-  
aries clarified.”.

7 **SEC. 1045. CLARIFICATION OF LAW APPLICABLE TO NON-**  
8 **DEPOSITORY INSTITUTION SUBSIDIARIES.**

9 Section 5136C of the Revised Statutes of the United  
10 States (as added by this subtitle) is amended by adding  
11 at the end the following:

12 “(h) CLARIFICATION OF LAW APPLICABLE TO NON-  
13 DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILI-  
14 ATES OF NATIONAL BANKS.—

15 “(1) DEFINITIONS.—For purposes of this sub-  
16 section, the terms ‘depository institution’, ‘sub-  
17 sidiary’, and ‘affiliate’ have the same meanings as in  
18 section 3 of the Federal Deposit Insurance Act.

19 “(2) RULE OF CONSTRUCTION.—No provision  
20 of this title or section 24 of the Federal Reserve Act  
21 (12 U.S.C. 371) shall be construed as preempting,  
22 annulling, or affecting the applicability of State law  
23 to any subsidiary, affiliate, or agent of a national

1 bank (other than a subsidiary, affiliate, or agent  
2 that is chartered as a national bank).”.

3 **SEC. 1046. STATE LAW PREEMPTION STANDARDS FOR FED-**  
4 **ERAL SAVINGS ASSOCIATIONS AND SUBSIDI-**  
5 **ARIES CLARIFIED.**

6 (a) IN GENERAL.—The Home Owners’ Loan Act (12  
7 U.S.C. 1461 et seq.) is amended by inserting after section  
8 5 the following new section:

9 **“SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FED-**  
10 **ERAL SAVINGS ASSOCIATIONS CLARIFIED.**

11 “(a) IN GENERAL.—Any determination by a court or  
12 by the Director or any successor officer or agency regard-  
13 ing the relation of State law to a provision of this Act  
14 or any regulation or order prescribed under this Act shall  
15 be made in accordance with the laws and legal standards  
16 applicable to national banks regarding the preemption of  
17 State law.

18 “(b) PRINCIPLES OF CONFLICT PREEMPTION APPLI-  
19 CABLE.—Notwithstanding the authorities granted under  
20 sections 4 and 5, this Act does not occupy the field in  
21 any area of State law.”.

22 (b) CLERICAL AMENDMENT.—The table of sections  
23 for the Home Owners’ Loan Act (12 U.S.C. 1461 et seq.)  
24 is amended by striking the item relating to section 6 and  
25 inserting the following new item:

“Sec. 6. State law preemption standards for Federal savings associations and subsidiaries clarified.”.

1 **SEC. 1047. VISITORIAL STANDARDS FOR NATIONAL BANKS**  
2 **AND SAVINGS ASSOCIATIONS.**

3 (a) NATIONAL BANKS.—Section 5136C of the Re-  
4 vised Statutes of the United States (as added by this sub-  
5 title) is amended by adding at the end the following:

6 “(i) VISITORIAL POWERS.—

7 “(1) IN GENERAL.—In accordance with the de-  
8 cision of the Supreme Court of the United States in  
9 *Cuomo v. Clearing House Assn., L. L. C.* (129 S.  
10 Ct. 2710 (2009)), no provision of this title which re-  
11 lates to visitorial powers or otherwise limits or re-  
12 stricts the visitorial authority to which any national  
13 bank is subject shall be construed as limiting or re-  
14 stricting the authority of any attorney general (or  
15 other chief law enforcement officer) of any State to  
16 bring an action against a national bank in a court  
17 of appropriate jurisdiction to enforce an applicable  
18 law and to seek relief as authorized by such law.

19 “(j) ENFORCEMENT ACTIONS.—The ability of the  
20 Comptroller of the Currency to bring an enforcement ac-  
21 tion under this title or section 5 of the Federal Trade  
22 Commission Act does not preclude any private party from  
23 enforcing rights granted under Federal or State law in the  
24 courts.”.



1 (b) SAVINGS ASSOCIATIONS.—Section 6 of the Home  
2 Owners’ Loan Act (as added by this title) is amended by  
3 adding at the end the following:

4 “(c) VISITORIAL POWERS.—The provisions of sec-  
5 tions 5136C(i) of the Revised Statutes of the United  
6 States shall apply to Federal savings associations, and any  
7 subsidiary thereof, to the same extent and in the same  
8 manner as if such savings associations, or subsidiaries  
9 thereof, were national banks or subsidiaries of national  
10 banks, respectively.”

11 “(d) ENFORCEMENT ACTIONS.—The ability of the  
12 Comptroller of the Currency to bring an enforcement ac-  
13 tion under this Act or section 5 of the Federal Trade Com-  
14 mission Act does not preclude any private party from en-  
15 forcing rights granted under Federal or State law in the  
16 courts.”.

17 **SEC. 1048. EFFECTIVE DATE.**

18 This subtitle shall become effective on the designated  
19 transfer date.

20 **Subtitle E—Enforcement Powers**

21 **SEC. 1051. DEFINITIONS.**

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

24 (1) BUREAU INVESTIGATION.—The term “Bu-  
25 reau investigation” means any inquiry conducted by

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1 a Bureau investigator for the purpose of  
2 ascertaining whether any person is or has been en-  
3 gaged in any conduct that is a violation, as defined  
4 in this section.

5 (2) BUREAU INVESTIGATOR.—The term “Bu-  
6 reau investigator” means any attorney or investi-  
7 gator employed by the Bureau who is charged with  
8 the duty of enforcing or carrying into effect any  
9 Federal consumer financial law.

10 (3) CIVIL INVESTIGATIVE DEMAND AND DE-  
11 MAND.—The terms “civil investigative demand” and  
12 “demand” mean any demand issued by the Bureau.

13 (4) CUSTODIAN.—The term “custodian” means  
14 the custodian or any deputy custodian designated by  
15 the Bureau.

16 (5) DOCUMENTARY MATERIAL.—The term  
17 “documentary material” includes the original or any  
18 copy of any book, document, record, report, memo-  
19 randum, paper, communication, tabulation, chart,  
20 logs, electronic files, or other data or data compila-  
21 tions stored in any medium.

22 (6) VIOLATION.—The term “violation” means  
23 any act or omission that, if proved, would constitute  
24 a violation of any provision of Federal consumer fi-  
25 nancial law.

1 **SEC. 1052. INVESTIGATIONS AND ADMINISTRATIVE DIS-**  
2 **COVERY.**

3 (a) JOINT INVESTIGATIONS.—

4 (1) IN GENERAL.—The Bureau or, where ap-  
5 propriate, a Bureau investigator, may engage in  
6 joint investigations and requests for information, as  
7 authorized under this title.

8 (2) FAIR LENDING.—The authority under para-  
9 graph (1) includes matters relating to fair lending,  
10 and where appropriate, joint investigations with, and  
11 requests for information from, the Secretary of  
12 Housing and Urban Development, the Attorney Gen-  
13 eral of the United States, or both.

14 (b) SUBPOENAS.—

15 (1) IN GENERAL.—The Bureau or a Bureau in-  
16 vestigator may issue subpoenas for the attendance  
17 and testimony of witnesses and the production of  
18 relevant papers, books, documents, or other material  
19 in connection with hearings under this title.

20 (2) FAILURE TO OBEY.—In the case of contu-  
21 macy or refusal to obey a subpoena issued pursuant  
22 to this paragraph and served upon any person, the  
23 district court of the United States for any district in  
24 which such person is found, resides, or transacts  
25 business, upon application by the Bureau or a Bu-  
26 reau investigator and after notice to such person,

1       may issue an order requiring such person to appear  
2       and give testimony or to appear and produce docu-  
3       ments or other material.

4               (3) CONTEMPT.—Any failure to obey an order  
5       of the court under this subsection may be punished  
6       by the court as a contempt thereof.

7       (c) DEMANDS.—

8               (1) IN GENERAL.—Whenever the Bureau has  
9       reason to believe that any person may be in posses-  
10      sion, custody, or control of any documentary mate-  
11      rial or tangible things, or may have any information,  
12      relevant to a violation, the Bureau may, before the  
13      institution of any proceedings under the Federal  
14      consumer financial law, issue in writing, and cause  
15      to be served upon such person, a civil investigative  
16      demand requiring such person to—

17               (A) produce such documentary material for  
18      inspection and copying or reproduction in the  
19      form or medium requested by the Bureau;

20               (B) submit such tangible things;

21               (C) file written reports or answers to ques-  
22      tions;

23               (D) give oral testimony concerning docu-  
24      mentary material, tangible things, or other in-  
25      formation; or

1           (E) furnish any combination of such mate-  
2           rial, answers, or testimony.

3           (2) REQUIREMENTS.—Each civil investigative  
4           demand shall state the nature of the conduct consti-  
5           tuting the alleged violation which is under investiga-  
6           tion and the provision of law applicable to such vio-  
7           lation.

8           (3) PRODUCTION OF DOCUMENTS.—Each civil  
9           investigative demand for the production of documen-  
10          tary material shall—

11           (A) describe each class of documentary  
12          material to be produced under the demand with  
13          such definiteness and certainty as to permit  
14          such material to be fairly identified;

15           (B) prescribe a return date or dates which  
16          will provide a reasonable period of time within  
17          which the material so demanded may be assem-  
18          bled and made available for inspection and  
19          copying or reproduction; and

20           (C) identify the custodian to whom such  
21          material shall be made available.

22           (4) PRODUCTION OF THINGS.—Each civil inves-  
23          tigative demand for the submission of tangible  
24          things shall—

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1 (A) describe each class of tangible things  
2 to be submitted under the demand with such  
3 definiteness and certainty as to permit such  
4 things to be fairly identified;

5 (B) prescribe a return date or dates which  
6 will provide a reasonable period of time within  
7 which the things so demanded may be assem-  
8 bled and submitted; and

9 (C) identify the custodian to whom such  
10 things shall be submitted.

11 (5) DEMAND FOR WRITTEN REPORTS OR AN-  
12 SWERS.—Each civil investigative demand for written  
13 reports or answers to questions shall—

14 (A) propound with definiteness and cer-  
15 tainty the reports to be produced or the ques-  
16 tions to be answered;

17 (B) prescribe a date or dates at which time  
18 written reports or answers to questions shall be  
19 submitted; and

20 (C) identify the custodian to whom such  
21 reports or answers shall be submitted.

22 (6) ORAL TESTIMONY.—Each civil investigative  
23 demand for the giving of oral testimony shall—

24 (A) prescribe a date, time, and place at  
25 which oral testimony shall be commenced; and

1           (B) identify a Bureau investigator who  
2 shall conduct the investigation and the custo-  
3 dian to whom the transcript of such investiga-  
4 tion shall be submitted.

5           (7) SERVICE.—Any civil investigative demand  
6 and any enforcement petition filed under this section  
7 may be served—

8           (A) by any Bureau investigator at any  
9 place within the territorial jurisdiction of any  
10 court of the United States; and

11           (B) upon any person who is not found  
12 within the territorial jurisdiction of any court of  
13 the United States—

14           (i) in such manner as the Federal  
15 Rules of Civil Procedure prescribe for serv-  
16 ice in a foreign nation; and

17           (ii) to the extent that the courts of  
18 the United States have authority to assert  
19 jurisdiction over such person, consistent  
20 with due process, the United States Dis-  
21 trict Court for the District of Columbia  
22 shall have the same jurisdiction to take  
23 any action respecting compliance with this  
24 section by such person that such district  
25 court would have if such person were per-

1                   sonally within the jurisdiction of such dis-  
2                   trict court.

3                   (8) METHOD OF SERVICE.—Service of any civil  
4                   investigative demand or any enforcement petition  
5                   filed under this section may be made upon a person,  
6                   including any legal entity, by—

7                   (A) delivering a duly executed copy of such  
8                   demand or petition to the individual or to any  
9                   partner, executive officer, managing agent, or  
10                  general agent of such person, or to any agent  
11                  of such person authorized by appointment or by  
12                  law to receive service of process on behalf of  
13                  such person;

14                  (B) delivering a duly executed copy of such  
15                  demand or petition to the principal office or  
16                  place of business of the person to be served; or

17                  (C) depositing a duly executed copy in the  
18                  United States mails, by registered or certified  
19                  mail, return receipt requested, duly addressed  
20                  to such person at the principal office or place  
21                  of business of such person.

22                  (9) PROOF OF SERVICE.—

23                  (A) IN GENERAL.—A verified return by the  
24                  individual serving any civil investigative demand  
25                  or any enforcement petition filed under this sec-



1           tion setting forth the manner of such service  
2           shall be proof of such service.

3                   (B) RETURN RECEIPTS.—In the case of  
4           service by registered or certified mail, such re-  
5           turn shall be accompanied by the return post  
6           office receipt of delivery of such demand or en-  
7           forcement petition.

8                   (10) PRODUCTION OF DOCUMENTARY MATE-  
9           RIAL.—The production of documentary material in  
10          response to a civil investigative demand shall be  
11          made under a sworn certificate, in such form as the  
12          demand designates, by the person, if a natural per-  
13          son, to whom the demand is directed or, if not a  
14          natural person, by any person having knowledge of  
15          the facts and circumstances relating to such produc-  
16          tion, to the effect that all of the documentary mate-  
17          rial required by the demand and in the possession,  
18          custody, or control of the person to whom the de-  
19          mand is directed has been produced and made avail-  
20          able to the custodian.

21                   (11) SUBMISSION OF TANGIBLE THINGS.—The  
22          submission of tangible things in response to a civil  
23          investigative demand shall be made under a sworn  
24          certificate, in such form as the demand designates,  
25          by the person to whom the demand is directed or,

1 if not a natural person, by any person having knowl-  
2 edge of the facts and circumstances relating to such  
3 production, to the effect that all of the tangible  
4 things required by the demand and in the posses-  
5 sion, custody, or control of the person to whom the  
6 demand is directed have been submitted to the cus-  
7 todian.

8 (12) SEPARATE ANSWERS.—Each reporting re-  
9 quirement or question in a civil investigative demand  
10 shall be answered separately and fully in writing  
11 under oath, unless it is objected to, in which event  
12 the reasons for the objection shall be stated in lieu  
13 of an answer, and it shall be submitted under a  
14 sworn certificate, in such form as the demand des-  
15 ignates, by the person, if a natural person, to whom  
16 the demand is directed or, if not a natural person,  
17 by any person responsible for answering each report-  
18 ing requirement or question, to the effect that all in-  
19 formation required by the demand and in the posses-  
20 sion, custody, control, or knowledge of the person to  
21 whom the demand is directed has been submitted.

22 (13) TESTIMONY.—

23 (A) IN GENERAL.—

24 (i) OATH OR AFFIRMATION.—Any Bu-  
25 reau investigator before whom oral testi-

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1           mony is to be taken shall put the witness  
2           under oath or affirmation, and shall per-  
3           sonally, or by any individual acting under  
4           the direction of and in the presence of the  
5           Bureau investigator, record the testimony  
6           of the witness.

7                   (ii) TRANSCRIPTION.—The testimony  
8           shall be taken stenographically and tran-  
9           scribed.

10                   (iii) TRANSMISSION TO CUSTODIAN.—  
11           After the testimony is fully transcribed,  
12           the Bureau investigator before whom the  
13           testimony is taken shall promptly transmit  
14           a copy of the transcript of the testimony to  
15           the custodian.

16                   (B) PARTIES PRESENT.—Any Bureau in-  
17           vestigator before whom oral testimony is to be  
18           taken shall exclude from the place where the  
19           testimony is to be taken all other persons, ex-  
20           cept the person giving the testimony, the attor-  
21           ney of that person, the officer before whom the  
22           testimony is to be taken, an investigator or rep-  
23           resentative of an agency with which the Bureau  
24           is engaged in a joint investigation, and any ste-  
25           nographer taking such testimony.

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1 (C) LOCATION.—The oral testimony of any  
2 person taken pursuant to a civil investigative  
3 demand shall be taken in the judicial district of  
4 the United States in which such person resides,  
5 is found, or transacts business, or in such other  
6 place as may be agreed upon by the Bureau in-  
7 vestigator before whom the oral testimony of  
8 such person is to be taken and such person.

9 (D) ATTORNEY REPRESENTATION.—

10 (i) IN GENERAL.—Any person com-  
11 pelled to appear under a civil investigative  
12 demand for oral testimony pursuant to this  
13 section may be accompanied, represented,  
14 and advised by an attorney.

15 (ii) AUTHORITY.—The attorney may  
16 advise a person described in clause (i), in  
17 confidence, either upon the request of such  
18 person or upon the initiative of the attor-  
19 ney, with respect to any question asked of  
20 such person.

21 (iii) OBJECTIONS.—A person de-  
22 scribed in clause (i), or the attorney for  
23 that person, may object on the record to  
24 any question, in whole or in part, and such  
25 person shall briefly state for the record the

1           reason for the objection. An objection may  
2           properly be made, received, and entered  
3           upon the record when it is claimed that  
4           such person is entitled to refuse to answer  
5           the question on grounds of any constitu-  
6           tional or other legal right or privilege, in-  
7           cluding the privilege against self-incrimina-  
8           tion, but such person shall not otherwise  
9           object to or refuse to answer any question,  
10          and such person or attorney shall not oth-  
11          erwise interrupt the oral examination.

12                   (iv) REFUSAL TO ANSWER.—If a per-  
13          son described in clause (i) refuses to an-  
14          swer any question—

15                           (I) the Bureau may petition the  
16          district court of the United States  
17          pursuant to this section for an order  
18          compelling such person to answer  
19          such question; and

20                           (II) on grounds of the privilege  
21          against self-incrimination, the testi-  
22          mony of such person may be com-  
23          pelled in accordance with the provi-  
24          sions of section 6004 of title 18,  
25          United States Code.

1 (E) TRANSCRIPTS.—For purposes of this  
2 subsection—

3 (i) after the testimony of any witness  
4 is fully transcribed, the Bureau investi-  
5 gator shall afford the witness (who may be  
6 accompanied by an attorney) a reasonable  
7 opportunity to examine the transcript;

8 (ii) the transcript shall be read to or  
9 by the witness, unless such examination  
10 and reading are waived by the witness;

11 (iii) any changes in form or substance  
12 which the witness desires to make shall be  
13 entered and identified upon the transcript  
14 by the Bureau investigator, with a state-  
15 ment of the reasons given by the witness  
16 for making such changes;

17 (iv) the transcript shall be signed by  
18 the witness, unless the witness in writing  
19 waives the signing, is ill, cannot be found,  
20 or refuses to sign; and

21 (v) if the transcript is not signed by  
22 the witness during the 30-day period fol-  
23 lowing the date on which the witness is  
24 first afforded a reasonable opportunity to  
25 examine the transcript, the Bureau investi-

1 gator shall sign the transcript and state on  
2 the record the fact of the waiver, illness,  
3 absence of the witness, or the refusal to  
4 sign, together with any reasons given for  
5 the failure to sign.

6 (F) CERTIFICATION BY INVESTIGATOR.—

7 The Bureau investigator shall certify on the  
8 transcript that the witness was duly sworn by  
9 him or her and that the transcript is a true  
10 record of the testimony given by the witness,  
11 and the Bureau investigator shall promptly de-  
12 liver the transcript or send it by registered or  
13 certified mail to the custodian.

14 (G) COPY OF TRANSCRIPT.—The Bureau  
15 investigator shall furnish a copy of the tran-  
16 script (upon payment of reasonable charges for  
17 the transcript) to the witness only, except that  
18 the Bureau may for good cause limit such wit-  
19 ness to inspection of the official transcript of  
20 his testimony.

21 (H) WITNESS FEES.—Any witness appear-  
22 ing for the taking of oral testimony pursuant to  
23 a civil investigative demand shall be entitled to  
24 the same fees and mileage which are paid to

1 witnesses in the district courts of the United  
2 States.

3 (d) CONFIDENTIAL TREATMENT OF DEMAND MATE-  
4 RIAL.—

5 (1) IN GENERAL.—Documentary materials and  
6 tangible things received as a result of a civil inves-  
7 tigative demand shall be subject to requirements and  
8 procedures regarding confidentiality, in accordance  
9 with rules established by the Bureau.

10 (2) DISCLOSURE TO CONGRESS.—No rule es-  
11 tablished by the Bureau regarding the confidentiality  
12 of materials submitted to, or otherwise obtained by,  
13 the Bureau shall be intended to prevent disclosure to  
14 either House of Congress or to an appropriate com-  
15 mittee of the Congress, except that the Bureau is  
16 permitted to adopt rules allowing prior notice to any  
17 party that owns or otherwise provided the material  
18 to the Bureau and had designated such material as  
19 confidential.

20 (e) PETITION FOR ENFORCEMENT.—

21 (1) IN GENERAL.—Whenever any person fails  
22 to comply with any civil investigative demand duly  
23 served upon him under this section, or whenever sat-  
24 isfactory copying or reproduction of material re-  
25 quested pursuant to the demand cannot be accom-



1 plished and such person refuses to surrender such  
2 material, the Bureau, through such officers or attor-  
3 neys as it may designate, may file, in the district  
4 court of the United States for any judicial district  
5 in which such person resides, is found, or transacts  
6 business, and serve upon such person, a petition for  
7 an order of such court for the enforcement of this  
8 section.

9 (2) SERVICE OF PROCESS.—All process of any  
10 court to which application may be made as provided  
11 in this subsection may be served in any judicial dis-  
12 trict.

13 (f) PETITION FOR ORDER MODIFYING OR SETTING  
14 ASIDE DEMAND.—

15 (1) IN GENERAL.—Not later than 20 days after  
16 the service of any civil investigative demand upon  
17 any person under subsection (b), or at any time be-  
18 fore the return date specified in the demand, which-  
19 ever period is shorter, or within such period exceed-  
20 ing 20 days after service or in excess of such return  
21 date as may be prescribed in writing, subsequent to  
22 service, by any Bureau investigator named in the de-  
23 mand, such person may file with the Bureau a peti-  
24 tion for an order by the Bureau modifying or setting  
25 aside the demand.

1           (2) COMPLIANCE DURING PENDENCY.—The  
2           time permitted for compliance with the demand in  
3           whole or in part, as determined proper and ordered  
4           by the Bureau, shall not run during the pendency of  
5           a petition under paragraph (1) at the Bureau, ex-  
6           cept that such person shall comply with any portions  
7           of the demand not sought to be modified or set  
8           aside.

9           (3) SPECIFIC GROUNDS.—A petition under  
10          paragraph (1) shall specify each ground upon which  
11          the petitioner relies in seeking relief, and may be  
12          based upon any failure of the demand to comply  
13          with the provisions of this section, or upon any con-  
14          stitutional or other legal right or privilege of such  
15          person.

16          (g) CUSTODIAL CONTROL.—At any time during  
17          which any custodian is in custody or control of any docu-  
18          mentary material, tangible things, reports, answers to  
19          questions, or transcripts of oral testimony given by any  
20          person in compliance with any civil investigative demand,  
21          such person may file, in the district court of the United  
22          States for the judicial district within which the office of  
23          such custodian is situated, and serve upon such custodian,  
24          a petition for an order of such court requiring the per-

1 formance by such custodian of any duty imposed upon him  
2 by this section or rule promulgated by the Bureau.

3 (h) JURISDICTION OF COURT.—

4 (1) IN GENERAL.—Whenever any petition is  
5 filed in any district court of the United States under  
6 this section, such court shall have jurisdiction to  
7 hear and determine the matter so presented, and to  
8 enter such order or orders as may be required to  
9 carry out the provisions of this section.

10 (2) APPEAL.—Any final order entered as de-  
11 scribed in paragraph (1) shall be subject to appeal  
12 pursuant to section 1291 of title 28, United States  
13 Code.

14 **SEC. 1053. HEARINGS AND ADJUDICATION PROCEEDINGS.**

15 (a) IN GENERAL.—The Bureau is authorized to con-  
16 duct hearings and adjudication proceedings with respect  
17 to any person in the manner prescribed by chapter 5 of  
18 title 5, United States Code in order to ensure or enforce  
19 compliance with—

20 (1) the provisions of this title, including any  
21 rules prescribed by the Bureau under this title; and

22 (2) any other Federal law that the Bureau is  
23 authorized to enforce, including an enumerated con-  
24 sumer law, and any regulations or order prescribed  
25 thereunder, unless such Federal law specifically lim-

1       its the Bureau from conducting a hearing or adju-  
2       dication proceeding and only to the extent of such  
3       limitation.

4       (b) SPECIAL RULES FOR CEASE-AND-DESIST PRO-  
5       CEEDINGS.—

6             (1) ORDERS AUTHORIZED.—

7                 (A) IN GENERAL.—If, in the opinion of the  
8       Bureau, any covered person or service provider  
9       is engaging or has engaged in an activity that  
10      violates a law, rule, or any condition imposed in  
11      writing on the person by the Bureau, the Bu-  
12      reau may, subject to sections 1024, 1025, and  
13      1026, issue and serve upon the covered person  
14      or service provider a notice of charges in re-  
15      spect thereof.

16             (B) CONTENT OF NOTICE.—The notice  
17      under subparagraph (A) shall contain a state-  
18      ment of the facts constituting the alleged viola-  
19      tion or violations, and shall fix a time and place  
20      at which a hearing will be held to determine  
21      whether an order to cease and desist should  
22      issue against the covered person or service pro-  
23      vider, such hearing to be held not earlier than  
24      30 days nor later than 60 days after the date  
25      of service of such notice, unless an earlier or a

1 later date is set by the Bureau, at the request  
2 of any party so served.

3 (C) CONSENT.—Unless the party or par-  
4 ties served under subparagraph (B) appear at  
5 the hearing personally or by a duly authorized  
6 representative, such person shall be deemed to  
7 have consented to the issuance of the cease-and-  
8 desist order.

9 (D) PROCEDURE.—In the event of consent  
10 under subparagraph (C), or if, upon the record,  
11 made at any such hearing, the Bureau finds  
12 that any violation specified in the notice of  
13 charges has been established, the Bureau may  
14 issue and serve upon the covered person or  
15 service provider an order to cease and desist  
16 from the violation or practice. Such order may,  
17 by provisions which may be mandatory or other-  
18 wise, require the covered person or service pro-  
19 vider to cease and desist from the subject activ-  
20 ity, and to take affirmative action to correct the  
21 conditions resulting from any such violation.

22 (2) EFFECTIVENESS OF ORDER.—A cease-and-  
23 desist order shall become effective at the expiration  
24 of 30 days after the date of service of an order  
25 under paragraph (1) upon the covered person or

1 service provider concerned (except in the case of a  
2 cease-and-desist order issued upon consent, which  
3 shall become effective at the time specified therein),  
4 and shall remain effective and enforceable as pro-  
5 vided therein, except to such extent as the order is  
6 stayed, modified, terminated, or set aside by action  
7 of the Bureau or a reviewing court.

8 (3) DECISION AND APPEAL.—Any hearing pro-  
9 vided for in this subsection shall be held in the Fed-  
10 eral judicial district or in the territory in which the  
11 residence or principal office or place of business of  
12 the person is located unless the person consents to  
13 another place, and shall be conducted in accordance  
14 with the provisions of chapter 5 of title 5 of the  
15 United States Code. After such hearing, and within  
16 90 days after the Bureau has notified the parties  
17 that the case has been submitted to the Bureau for  
18 final decision, the Bureau shall render its decision  
19 (which shall include findings of fact upon which its  
20 decision is predicated) and shall issue and serve  
21 upon each party to the proceeding an order or or-  
22 ders consistent with the provisions of this section.  
23 Judicial review of any such order shall be exclusively  
24 as provided in this subsection. Unless a petition for  
25 review is timely filed in a court of appeals of the

1 United States, as provided in paragraph (4), and  
2 thereafter until the record in the proceeding has  
3 been filed as provided in paragraph (4), the Bureau  
4 may at any time, upon such notice and in such man-  
5 ner as the Bureau shall determine proper, modify,  
6 terminate, or set aside any such order. Upon filing  
7 of the record as provided, the Bureau may modify,  
8 terminate, or set aside any such order with permis-  
9 sion of the court.

10 (4) APPEAL TO COURT OF APPEALS.—Any  
11 party to any proceeding under this subsection may  
12 obtain a review of any order served pursuant to this  
13 subsection (other than an order issued with the con-  
14 sent of the person concerned) by the filing in the  
15 court of appeals of the United States for the circuit  
16 in which the principal office of the covered person is  
17 located, or in the United States Court of Appeals for  
18 the District of Columbia Circuit, within 30 days  
19 after the date of service of such order, a written pe-  
20 tition praying that the order of the Bureau be modi-  
21 fied, terminated, or set aside. A copy of such peti-  
22 tion shall be forthwith transmitted by the clerk of  
23 the court to the Bureau, and thereupon the Bureau  
24 shall file in the court the record in the proceeding,  
25 as provided in section 2112 of title 28 of the United

1 States Code. Upon the filing of such petition, such  
2 court shall have jurisdiction, which upon the filing of  
3 the record shall except as provided in the last sen-  
4 tence of paragraph (3) be exclusive, to affirm, mod-  
5 ify, terminate, or set aside, in whole or in part, the  
6 order of the Bureau. Review of such proceedings  
7 shall be had as provided in chapter 7 of title 5 of  
8 the United States Code. The judgment and decree of  
9 the court shall be final, except that the same shall  
10 be subject to review by the Supreme Court of the  
11 United States, upon certiorari, as provided in section  
12 1254 of title 28 of the United States Code.

13 (5) NO STAY.—The commencement of pro-  
14 ceedings for judicial review under paragraph (4)  
15 shall not, unless specifically ordered by the court,  
16 operate as a stay of any order issued by the Bureau.

17 (c) SPECIAL RULES FOR TEMPORARY CEASE-AND-  
18 DESIST PROCEEDINGS.—

19 (1) IN GENERAL.—Whenever the Bureau deter-  
20 mines that the violation specified in the notice of  
21 charges served upon a person, including a service  
22 provider, pursuant to subsection (b), or the continu-  
23 ation thereof, is likely to cause the person to be in-  
24 solvent or otherwise prejudice the interests of con-  
25 sumers before the completion of the proceedings con-



1 ducted pursuant to subsection (b), the Bureau may  
2 issue a temporary order requiring the person to  
3 cease and desist from any such violation or practice  
4 and to take affirmative action to prevent or remedy  
5 such insolvency or other condition pending comple-  
6 tion of such proceedings. Such order may include  
7 any requirement authorized under this subtitle. Such  
8 order shall become effective upon service upon the  
9 person and, unless set aside, limited, or suspended  
10 by a court in proceedings authorized by paragraph  
11 (2), shall remain effective and enforceable pending  
12 the completion of the administrative proceedings  
13 pursuant to such notice and until such time as the  
14 Bureau shall dismiss the charges specified in such  
15 notice, or if a cease-and-desist order is issued  
16 against the person, until the effective date of such  
17 order.

18 (2) APPEAL.—Not later than 10 days after the  
19 covered person or service provider concerned has  
20 been served with a temporary cease-and-desist order,  
21 the person may apply to the United States district  
22 court for the judicial district in which the residence  
23 or principal office or place of business of the person  
24 is located, or the United States District Court for  
25 the District of Columbia, for an injunction setting

1       aside, limiting, or suspending the enforcement, oper-  
2       ation, or effectiveness of such order pending the  
3       completion of the administrative proceedings pursu-  
4       ant to the notice of charges served upon the person  
5       under subsection (b), and such court shall have ju-  
6       risdiction to issue such injunction.

7               (3) INCOMPLETE OR INACCURATE RECORDS.—

8               (A) TEMPORARY ORDER.—If a notice of  
9       charges served under subsection (b) specifies,  
10      on the basis of particular facts and cir-  
11      cumstances, that the books and records of a  
12      covered person or service provider are so incom-  
13      plete or inaccurate that the Bureau is unable to  
14      determine the financial condition of that person  
15      or the details or purpose of any transaction or  
16      transactions that may have a material effect on  
17      the financial condition of that person, the Bu-  
18      reau may issue a temporary order requiring—

19              (i) the cessation of any activity or  
20              practice which gave rise, whether in whole  
21              or in part, to the incomplete or inaccurate  
22              state of the books or records; or

23              (ii) affirmative action to restore such  
24              books or records to a complete and accu-

1 rate state, until the completion of the pro-  
2 ceedings under subsection (b)(1).

3 (B) EFFECTIVE PERIOD.—Any temporary  
4 order issued under subparagraph (A)—

5 (i) shall become effective upon service;

6 and

7 (ii) unless set aside, limited, or sus-  
8 pended by a court in proceedings under  
9 paragraph (2), shall remain in effect and  
10 enforceable until the earlier of—

11 (I) the completion of the pro-  
12 ceeding initiated under subsection (b)  
13 in connection with the notice of  
14 charges; or

15 (II) the date the Bureau deter-  
16 mines, by examination or otherwise,  
17 that the books and records of the cov-  
18 ered person or service provider are ac-  
19 curate and reflect the financial condi-  
20 tion thereof.

21 (d) SPECIAL RULES FOR ENFORCEMENT OF OR-  
22 DERS.—

23 (1) IN GENERAL.—The Bureau may in its dis-  
24 cretion apply to the United States district court  
25 within the jurisdiction of which the principal office

1 or place of business of the person is located, for the  
2 enforcement of any effective and outstanding notice  
3 or order issued under this section, and such court  
4 shall have jurisdiction and power to order and re-  
5 quire compliance herewith.

6 (2) EXCEPTION.—Except as otherwise provided  
7 in this subsection, no court shall have jurisdiction to  
8 affect by injunction or otherwise the issuance or en-  
9 forcement of any notice or order or to review, mod-  
10 ify, suspend, terminate, or set aside any such notice  
11 or order.

12 (e) RULES.—The Bureau shall prescribe rules estab-  
13 lishing such procedures as may be necessary to carry out  
14 this section.

15 **SEC. 1054. LITIGATION AUTHORITY.**

16 (a) IN GENERAL.—If any person violates a Federal  
17 consumer financial law, the Bureau may, subject to sec-  
18 tions 1024, 1025, and 1026, commence a civil action  
19 against such person to impose a civil penalty or to seek  
20 all appropriate legal and equitable relief including a per-  
21 manent or temporary injunction as permitted by law.

22 (b) REPRESENTATION.—The Bureau may act in its  
23 own name and through its own attorneys in enforcing any  
24 provision of this title, rules thereunder, or any other law

1 or regulation, or in any action, suit, or proceeding to which  
2 the Bureau is a party.

3 (c) COMPROMISE OF ACTIONS.—The Bureau may  
4 compromise or settle any action if such compromise is ap-  
5 proved by the court.

6 (d) NOTICE TO THE ATTORNEY GENERAL.—When  
7 commencing a civil action under Federal consumer finan-  
8 cial law, or any rule thereunder, the Bureau shall notify  
9 the Attorney General and, with respect to a civil action  
10 against an insured depository institution or insured credit  
11 union, the appropriate prudential regulator.

12 (e) APPEARANCE BEFORE THE SUPREME COURT.—  
13 The Bureau may represent itself in its own name before  
14 the Supreme Court of the United States, provided that  
15 the Bureau makes a written request to the Attorney Gen-  
16 eral within the 10-day period which begins on the date  
17 of entry of the judgment which would permit any party  
18 to file a petition for writ of certiorari, and the Attorney  
19 General concurs with such request or fails to take action  
20 within 60 days of the request of the Bureau.

21 (f) FORUM.—Any civil action brought under this title  
22 may be brought in a United States district court or in  
23 any court of competent jurisdiction of a state in a district  
24 in which the defendant is located or resides or is doing  
25 business, and such court shall have jurisdiction to enjoin

1 such person and to require compliance with any Federal  
2 consumer financial law.

3 (g) TIME FOR BRINGING ACTION.—

4 (1) IN GENERAL.—Except as otherwise per-  
5 mitted by law or equity, no action may be brought  
6 under this title more than 3 years after the date of  
7 discovery of the violation to which an action relates.

8 (2) LIMITATIONS UNDER OTHER FEDERAL  
9 LAWS.—

10 (A) IN GENERAL.—For purposes of this  
11 subsection, an action arising under this title  
12 does not include claims arising solely under  
13 enumerated consumer laws.

14 (B) BUREAU AUTHORITY.—In any action  
15 arising solely under an enumerated consumer  
16 law, the Bureau may commence, defend, or in-  
17 tervene in the action in accordance with the re-  
18 quirements of that provision of law, as applica-  
19 ble.

20 (C) TRANSFERRED AUTHORITY.—In any  
21 action arising solely under laws for which au-  
22 thorities were transferred under subtitles F and  
23 H, the Bureau may commence, defend, or inter-  
24 vene in the action in accordance with the re-

1            requirements of that provision of law, as applica-  
2            ble.

3 **SEC. 1055. RELIEF AVAILABLE.**

4            (a) ADMINISTRATIVE PROCEEDINGS OR COURT AC-  
5 TIONS.—

6            (1) JURISDICTION.—The court (or the Bureau,  
7            as the case may be) in an action or adjudication pro-  
8            ceeding brought under Federal consumer financial  
9            law, shall have jurisdiction to grant any appropriate  
10           legal or equitable relief with respect to a violation of  
11           Federal consumer financial law, including a violation  
12           of a rule or order prescribed under a Federal con-  
13           sumer financial law.

14           (2) RELIEF.—Relief under this section may in-  
15           clude, without limitation—

16                    (A) rescission or reformation of contracts;

17                    (B) refund of moneys or return of real  
18            property;

19                    (C) restitution;

20                    (D) disgorgement or compensation for un-  
21            just enrichment;

22                    (E) payment of damages or other mone-  
23            tary relief;

24                    (F) public notification regarding the viola-  
25            tion, including the costs of notification;

1 (G) limits on the activities or functions of  
2 the person; and

3 (H) civil money penalties, as set forth  
4 more fully in subsection (c).

5 (3) NO EXEMPLARY OR PUNITIVE DAMAGES.—

6 Nothing in this subsection shall be construed as au-  
7 thorizing the imposition of exemplary or punitive  
8 damages.

9 (b) RECOVERY OF COSTS.—In any action brought by  
10 the Bureau, a State attorney general, or any State regu-  
11 lator to enforce any Federal consumer financial law, the  
12 Bureau, the State attorney general, or the State regulator  
13 may recover its costs in connection with prosecuting such  
14 action if the Bureau, the State attorney general, or the  
15 State regulator is the prevailing party in the action.

16 (c) CIVIL MONEY PENALTY IN COURT AND ADMINIS-  
17 TRATIVE ACTIONS.—

18 (1) IN GENERAL.—Any person that violates,  
19 through any act or omission, any provision of Fed-  
20 eral consumer financial law shall forfeit and pay a  
21 civil penalty pursuant to this subsection.

22 (2) PENALTY AMOUNTS.—

23 (A) FIRST TIER.—For any violation of a  
24 law, rule, or final order or condition imposed in  
25 writing by the Bureau, a civil penalty may not



1 exceed \$5,000 for each day during which such  
2 violation or failure to pay continues.

3 (B) SECOND TIER.—Notwithstanding  
4 paragraph (A), for any person that recklessly  
5 engages in a violation of a Federal consumer fi-  
6 nancial law, a civil penalty may not exceed  
7 \$25,000 for each day during which such viola-  
8 tion continues.

9 (C) THIRD TIER.—Notwithstanding sub-  
10 paragraphs (A) and (B), for any person that  
11 knowingly violates a Federal consumer financial  
12 law, a civil penalty may not exceed \$1,000,000  
13 for each day during which such violation con-  
14 tinues.

15 (3) MITIGATING FACTORS.—In determining the  
16 amount of any penalty assessed under paragraph  
17 (2), the Bureau or the court shall take into account  
18 the appropriateness of the penalty with respect to—

19 (A) the size of financial resources and good  
20 faith of the person charged;

21 (B) the gravity of the violation or failure  
22 to pay;

23 (C) the severity of the risks to or losses of  
24 the consumer, which may take into account the  
25 number of products or services sold or provided;

1 (D) the history of previous violations; and

2 (E) such other matters as justice may re-

3 quire.

4 (4) AUTHORITY TO MODIFY OR REMIT PEN-  
5 ALTY.—The Bureau may compromise, modify, or  
6 remit any penalty which may be assessed or had al-  
7 ready been assessed under paragraph (2). The  
8 amount of such penalty, when finally determined,  
9 shall be exclusive of any sums owed by the person  
10 to the United States in connection with the costs of  
11 the proceeding, and may be deducted from any sums  
12 owing by the United States to the person charged.

13 (5) NOTICE AND HEARING.—No civil penalty  
14 may be assessed under this subsection with respect  
15 to a violation of any Federal consumer financial law,  
16 unless—

17 (A) the Bureau gives notice and an oppor-  
18 tunity for a hearing to the person accused of  
19 the violation; or

20 (B) the appropriate court has ordered such  
21 assessment and entered judgment in favor of  
22 the Bureau.

23 **SEC. 1056. REFERRALS FOR CRIMINAL PROCEEDINGS.**

24 If the Bureau obtains evidence that any person, do-  
25 mestic or foreign, has engaged in conduct that may con-

1 stitute a violation of Federal criminal law, the Bureau  
2 shall have the power to transmit such evidence to the At-  
3 torney General of the United States, who may institute  
4 criminal proceedings under appropriate law. Nothing in  
5 this section affects any other authority of the Bureau to  
6 disclose information.

7 **SEC. 1057. EMPLOYEE PROTECTION.**

8 (a) IN GENERAL.—No covered person or service pro-  
9 vider shall terminate or in any other way discriminate  
10 against, or cause to be terminated or discriminated  
11 against, any covered employee or any authorized rep-  
12 resentative of covered employees by reason of the fact that  
13 such employee or representative, whether at the initiative  
14 of the employee or in the ordinary course of the duties  
15 of the employee (or any person acting pursuant to a re-  
16 quest of the employee), has—

17 (1) provided, caused to be provided, or is about  
18 to provide or cause to be provided, information to  
19 the employer, the Bureau, or any other State, local,  
20 or Federal, government authority or law enforce-  
21 ment agency relating to any violation of, or any act  
22 or omission that the employee reasonably believes to  
23 be a violation of, any provision of this title or any  
24 other provision of law that is subject to the jurisdic-

1           tion of the Bureau, or any rule, order, standard, or  
2           prohibition prescribed by the Bureau;

3           (2) testified or will testify in any proceeding re-  
4           sulting from the administration or enforcement of  
5           any provision of this title or any other provision of  
6           law that is subject to the jurisdiction of the Bureau,  
7           or any rule, order, standard, or prohibition pre-  
8           scribed by the Bureau;

9           (3) filed, instituted, or caused to be filed or in-  
10          stituted any proceeding under any Federal consumer  
11          financial law; or

12          (4) objected to, or refused to participate in, any  
13          activity, policy, practice, or assigned task that the  
14          employee (or other such person) reasonably believed  
15          to be in violation of any law, rule, order, standard,  
16          or prohibition, subject to the jurisdiction of, or en-  
17          forceable by, the Bureau.

18          (b) DEFINITION OF COVERED EMPLOYEE.—For the  
19          purposes of this section, the term “covered employee”  
20          means any individual performing tasks related to the of-  
21          fering or provision of a consumer financial product or  
22          service.

23          (c) PROCEDURES AND TIMETABLES.—

24                  (1) COMPLAINT.—

1           (A) IN GENERAL.—A person who believes  
2           that he or she has been discharged or otherwise  
3           discriminated against by any person in violation  
4           of subsection (a) may, not later than 180 days  
5           after the date on which such alleged violation  
6           occurs, file (or have any person file on his or  
7           her behalf) a complaint with the Secretary of  
8           Labor alleging such discharge or discrimination  
9           and identifying the person responsible for such  
10          act.

11          (B) ACTIONS OF SECRETARY OF LABOR.—  
12          Upon receipt of such a complaint, the Secretary  
13          of Labor shall notify, in writing, the person  
14          named in the complaint who is alleged to have  
15          committed the violation, of—

- 16                   (i) the filing of the complaint;  
17                   (ii) the allegations contained in the  
18                   complaint;  
19                   (iii) the substance of evidence sup-  
20                   porting the complaint; and  
21                   (iv) opportunities that will be afforded  
22                   to such person under paragraph (2).

23          (2) INVESTIGATION BY SECRETARY OF  
24          LABOR.—

1           (A) IN GENERAL.—Not later than 60 days  
2           after the date of receipt of a complaint filed  
3           under paragraph (1), and after affording the  
4           complainant and the person named in the com-  
5           plaint who is alleged to have committed the vio-  
6           lation that is the basis for the complaint an op-  
7           portunity to submit to the Secretary of Labor  
8           a written response to the complaint and an op-  
9           portunity to meet with a representative of the  
10          Secretary of Labor to present statements from  
11          witnesses, the Secretary of Labor shall—

12                   (i) initiate an investigation and deter-  
13                   mine whether there is reasonable cause to  
14                   believe that the complaint has merit; and

15                   (ii) notify the complainant and the  
16                   person alleged to have committed the viola-  
17                   tion of subsection (a), in writing, of such  
18                   determination.

19          (B) NOTICE OF RELIEF AVAILABLE.—If  
20          the Secretary of Labor concludes that there is  
21          reasonable cause to believe that a violation of  
22          subsection (a) has occurred, the Secretary of  
23          Labor shall, together with the notice under sub-  
24          paragraph (A)(ii), issue a preliminary order

1 providing the relief prescribed by paragraph  
2 (4)(B).

3 (C) REQUEST FOR HEARING.—Not later  
4 than 30 days after the date of receipt of notifi-  
5 cation of a determination of the Secretary of  
6 Labor under this paragraph, either the person  
7 alleged to have committed the violation or the  
8 complainant may file objections to the findings  
9 or preliminary order, or both, and request a  
10 hearing on the record. The filing of such objec-  
11 tions shall not operate to stay any reinstatement  
12 remedy contained in the preliminary  
13 order. Any such hearing shall be conducted ex-  
14 peditiously, and if a hearing is not requested in  
15 such 30-day period, the preliminary order shall  
16 be deemed a final order that is not subject to  
17 judicial review.

18 (3) GROUNDS FOR DETERMINATION OF COM-  
19 PLAINTS.—

20 (A) IN GENERAL.—The Secretary of Labor  
21 shall dismiss a complaint filed under this sub-  
22 section, and shall not conduct an investigation  
23 otherwise required under paragraph (2), unless  
24 the complainant makes a prima facie showing  
25 that any behavior described in paragraphs (1)

1 through (4) of subsection (a) was a contrib-  
2 uting factor in the unfavorable personnel action  
3 alleged in the complaint.

4 (B) REBUTTAL EVIDENCE.—Notwith-  
5 standing a finding by the Secretary of Labor  
6 that the complainant has made the showing re-  
7 quired under subparagraph (A), no investiga-  
8 tion otherwise required under paragraph (2)  
9 shall be conducted, if the employer dem-  
10 onstrates, by clear and convincing evidence,  
11 that the employer would have taken the same  
12 unfavorable personnel action in the absence of  
13 that behavior.

14 (C) EVIDENTIARY STANDARDS.—The Sec-  
15 retary of Labor may determine that a violation  
16 of subsection (a) has occurred only if the com-  
17 plainant demonstrates that any behavior de-  
18 scribed in paragraphs (1) through (4) of sub-  
19 section (a) was a contributing factor in the un-  
20 favorable personnel action alleged in the com-  
21 plaint. Relief may not be ordered under sub-  
22 subparagraph (A) if the employer demonstrates by  
23 clear and convincing evidence that the employer  
24 would have taken the same unfavorable per-  
25 sonnel action in the absence of that behavior.





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1 with compensation (including back  
2 pay) and restore the terms, condi-  
3 tions, and privileges associated with  
4 his or her employment; and

5 (III) to provide compensatory  
6 damages to the complainant.

7 (ii) PENALTY.—If an order is issued  
8 under clause (i), the Secretary of Labor, at  
9 the request of the complainant, shall assess  
10 against the person against whom the order  
11 is issued, a sum equal to the aggregate  
12 amount of all costs and expenses (includ-  
13 ing attorney fees and expert witness fees)  
14 reasonably incurred, as determined by the  
15 Secretary of Labor, by the complainant  
16 for, or in connection with, the bringing of  
17 the complaint upon which the order was  
18 issued.

19 (C) PENALTY FOR FRIVOLOUS CLAIMS.—If  
20 the Secretary of Labor finds that a complaint  
21 under paragraph (1) is frivolous or has been  
22 brought in bad faith, the Secretary of Labor  
23 may award to the prevailing employer a reason-  
24 able attorney fee, not exceeding \$1,000, to be  
25 paid by the complainant.

1 (D) DE NOVO REVIEW.—

2 (i) FAILURE OF THE SECRETARY TO  
3 ACT.—If the Secretary of Labor has not  
4 issued a final order within 210 days after  
5 the date of filing of a complaint under this  
6 subsection, or within 90 days after the  
7 date of receipt of a written determination,  
8 the complainant may bring an action at  
9 law or equity for de novo review in the ap-  
10 propriate district court of the United  
11 States having jurisdiction, which shall have  
12 jurisdiction over such an action without re-  
13 gard to the amount in controversy, and  
14 which action shall, at the request of either  
15 party to such action, be tried by the court  
16 with a jury.

17 (ii) PROCEDURES.—A proceeding  
18 under clause (i) shall be governed by the  
19 same legal burdens of proof specified in  
20 paragraph (3). The court shall have juris-  
21 diction to grant all relief necessary to  
22 make the employee whole, including injunc-  
23 tive relief and compensatory damages, in-  
24 cluding—

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1 (I) reinstatement with the same  
2 seniority status that the employee  
3 would have had, but for the discharge  
4 or discrimination;

5 (II) the amount of back pay, with  
6 interest; and

7 (III) compensation for any spe-  
8 cial damages sustained as a result of  
9 the discharge or discrimination, in-  
10 cluding litigation costs, expert witness  
11 fees, and reasonable attorney fees.

12 (E) OTHER APPEALS.—Unless the com-  
13 plainant brings an action under subparagraph  
14 (D), any person adversely affected or aggrieved  
15 by a final order issued under subparagraph (A)  
16 may file a petition for review of the order in the  
17 United States Court of Appeals for the circuit  
18 in which the violation with respect to which the  
19 order was issued, allegedly occurred or the cir-  
20 cuit in which the complainant resided on the  
21 date of such violation, not later than 60 days  
22 after the date of the issuance of the final order  
23 of the Secretary of Labor under subparagraph  
24 (A). Review shall conform to chapter 7 of title  
25 5, United States Code. The commencement of

1 proceedings under this subparagraph shall not,  
2 unless ordered by the court, operate as a stay  
3 of the order. An order of the Secretary of  
4 Labor with respect to which review could have  
5 been obtained under this subparagraph shall  
6 not be subject to judicial review in any criminal  
7 or other civil proceeding.

8 (5) FAILURE TO COMPLY WITH ORDER.—

9 (A) ACTIONS BY THE SECRETARY.—If any  
10 person has failed to comply with a final order  
11 issued under paragraph (4), the Secretary of  
12 Labor may file a civil action in the United  
13 States district court for the district in which  
14 the violation was found to have occurred, or in  
15 the United States district court for the District  
16 of Columbia, to enforce such order. In actions  
17 brought under this paragraph, the district  
18 courts shall have jurisdiction to grant all appro-  
19 priate relief including injunctive relief and com-  
20 pensatory damages.

21 (B) CIVIL ACTIONS TO COMPEL COMPLI-  
22 ANCE.—A person on whose behalf an order was  
23 issued under paragraph (4) may commence a  
24 civil action against the person to whom such  
25 order was issued to require compliance with

1           such order. The appropriate United States dis-  
2           trict court shall have jurisdiction, without re-  
3           gard to the amount in controversy or the citi-  
4           zenship of the parties, to enforce such order.

5           (C) AWARD OF COSTS AUTHORIZED.—The  
6           court, in issuing any final order under this  
7           paragraph, may award costs of litigation (in-  
8           cluding reasonable attorney and expert witness  
9           fees) to any party, whenever the court deter-  
10          mines such award is appropriate.

11          (D) MANDAMUS PROCEEDINGS.—Any non-  
12          discretionary duty imposed by this section shall  
13          be enforceable in a mandamus proceeding  
14          brought under section 1361 of title 28, United  
15          States Code.

16          (d) UNENFORCEABILITY OF CERTAIN AGREE-  
17          MENTS.—

18           (1) NO WAIVER OF RIGHTS AND REMEDIES.—  
19          Except as provided under paragraph (3), and not-  
20          withstanding any other provision of law, the rights  
21          and remedies provided for in this section may not be  
22          waived by any agreement, policy, form, or condition  
23          of employment, including by any predispute arbitra-  
24          tion agreement.

1           (2) NO PREDISPUTE ARBITRATION AGREE-  
2           MENTS.—Except as provided under paragraph (3),  
3           and notwithstanding any other provision of law, no  
4           predispute arbitration agreement shall be valid or  
5           enforceable to the extent that it requires arbitration  
6           of a dispute arising under this section.

7           (3) EXCEPTION.—Notwithstanding paragraphs  
8           (1) and (2), an arbitration provision in a collective  
9           bargaining agreement shall be enforceable as to dis-  
10          putes arising under subsection (a)(4), unless the Bu-  
11          reau determines, by rule, that such provision is in-  
12          consistent with the purposes of this title.

13 **SEC. 1058. EFFECTIVE DATE.**

14          This subtitle shall become effective on the designated  
15          transfer date.

16 **Subtitle F—Transfer of Functions**  
17 **and Personnel; Transitional**  
18 **Provisions**

19 **SEC. 1061. TRANSFER OF CONSUMER FINANCIAL PROTEC-**  
20 **TION FUNCTIONS.**

21          (a) DEFINED TERMS.—For purposes of this sub-  
22          title—

23               (1) the term “consumer financial protection  
24               functions” means research, rulemaking, issuance of  
25               orders or guidance, supervision, examination, and

1 enforcement activities, powers, and duties relating to  
2 the offering or provision of consumer financial prod-  
3 ucts or services; and

4 (2) the terms “transferor agency” and “trans-  
5 feror agencies” mean, respectively—

6 (A) the Board of Governors (and any Fed-  
7 eral reserve bank, as the context requires), the  
8 Federal Deposit Insurance Corporation, the  
9 Federal Trade Commission, the National Credit  
10 Union Administration, the Office of the Comp-  
11 troller of the Currency, the Office of Thrift Su-  
12 pervision, and the Department of Housing and  
13 Urban Development, and the heads of those  
14 agencies; and

15 (B) the agencies listed in subparagraph  
16 (A), collectively.

17 (b) IN GENERAL.—Except as provided in subsection  
18 (c), consumer financial protection functions are trans-  
19 ferred as follows:

20 (1) BOARD OF GOVERNORS.—

21 (A) TRANSFER OF FUNCTIONS.—All con-  
22 sumer financial protection functions of the  
23 Board of Governors are transferred to the Bu-  
24 reau.



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1 (B) BOARD OF GOVERNORS AUTHORITY.—

2 The Bureau shall have all powers and duties  
3 that were vested in the Board of Governors, re-  
4 lating to consumer financial protection func-  
5 tions, on the day before the designated transfer  
6 date.

7 (2) COMPTROLLER OF THE CURRENCY.—

8 (A) TRANSFER OF FUNCTIONS.—All con-  
9 sumer financial protection functions of the  
10 Comptroller of the Currency are transferred to  
11 the Bureau.

12 (B) COMPTROLLER AUTHORITY.—The Bu-  
13 reau shall have all powers and duties that were  
14 vested in the Comptroller of the Currency, re-  
15 lating to consumer financial protection func-  
16 tions, on the day before the designated transfer  
17 date.

18 (3) DIRECTOR OF THE OFFICE OF THRIFT SU-  
19 PERVISION.—

20 (A) TRANSFER OF FUNCTIONS.—All con-  
21 sumer financial protection functions of the Di-  
22 rector of the Office of Thrift Supervision are  
23 transferred to the Bureau.

24 (B) DIRECTOR AUTHORITY.—The Bureau  
25 shall have all powers and duties that were vest-

1 ed in the Director of the Office of Thrift Super-  
2 vision, relating to consumer financial protection  
3 functions, on the day before the designated  
4 transfer date.

5 (4) FEDERAL DEPOSIT INSURANCE CORPORA-  
6 TION.—

7 (A) TRANSFER OF FUNCTIONS.—All con-  
8 sumer financial protection functions of the Fed-  
9 eral Deposit Insurance Corporation are trans-  
10 ferred to the Bureau.

11 (B) CORPORATION AUTHORITY.—The Bu-  
12 reau shall have all powers and duties that were  
13 vested in the Federal Deposit Insurance Cor-  
14 poration, relating to consumer financial protec-  
15 tion functions, on the day before the designated  
16 transfer date.

17 (5) FEDERAL TRADE COMMISSION.—

18 (A) TRANSFER OF FUNCTIONS.—The au-  
19 thority of the Federal Trade Commission under  
20 an enumerated consumer law to prescribe rules,  
21 issue guidelines, or conduct a study or issue a  
22 report mandated under such law shall be trans-  
23 ferred to the Bureau on the designated transfer  
24 date. Nothing in this title shall be construed to

1           require a mandatory transfer of any employee  
2           of the Federal Trade Commission.

3           (B) BUREAU AUTHORITY.—

4           (i) IN GENERAL.—The Bureau shall  
5           have all powers and duties under the enu-  
6           merated consumer laws to prescribe rules,  
7           issue guidelines, or to conduct studies or  
8           issue reports mandated by such laws, that  
9           were vested in the Federal Trade Commis-  
10          sion on the day before the designated  
11          transfer date.

12          (ii) FEDERAL TRADE COMMISSION  
13          ACT.—Subject to subtitle B, the Bureau  
14          may enforce a rule prescribed under the  
15          Federal Trade Commission Act by the  
16          Federal Trade Commission with respect to  
17          an unfair or deceptive act or practice to  
18          the extent that such rule applies to a cov-  
19          ered person or service provider with re-  
20          spect to the offering or provision of a con-  
21          sumer financial product or service as if it  
22          were a rule prescribed under section 1031  
23          of this title.

24          (C) AUTHORITY OF THE FEDERAL TRADE  
25          COMMISSION.—

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1 (i) IN GENERAL.—No provision of this  
2 title shall be construed as modifying, lim-  
3 iting, or otherwise affecting the authority  
4 of the Federal Trade Commission under  
5 the Federal Trade Commission Act or any  
6 other law, other than the authority under  
7 an enumerated consumer law to prescribe  
8 rules, issue official guidelines, or conduct a  
9 study or issue a report mandated under  
10 such law.

11 (ii) COMMISSION AUTHORITY RELAT-  
12 ING TO RULES PRESCRIBED BY THE BU-  
13 REAU.—Subject to subtitle B, the Federal  
14 Trade Commission shall have authority to  
15 enforce under the Federal Trade Commis-  
16 sion Act (15 U.S.C. 41 et seq.) a rule pre-  
17 scribed by the Bureau under this title with  
18 respect to a covered person subject to the  
19 jurisdiction of the Federal Trade Commis-  
20 sion under that Act, and a violation of  
21 such a rule by such a person shall be treat-  
22 ed as a violation of a rule issued under sec-  
23 tion 18 of that Act (15 U.S.C. 57a) with  
24 respect to unfair or deceptive acts or prac-  
25 tices.

1           (D) COORDINATION.—To avoid duplication  
2 of or conflict between rules prescribed by the  
3 Bureau under section 1031 of this title and the  
4 Federal Trade Commission under section  
5 18(a)(1)(B) of the Federal Trade Commission  
6 Act that apply to a covered person or service  
7 provider with respect to the offering or provi-  
8 sion of consumer financial products or services,  
9 the agencies shall negotiate an agreement with  
10 respect to rulemaking by each agency, including  
11 consultation with the other agency prior to pro-  
12 posing a rule and during the comment period.

13           (E) DEFERENCE.—No provision of this  
14 title shall be construed as altering, limiting, ex-  
15 panding, or otherwise affecting the deference  
16 that a court affords to the—

17           (i) Federal Trade Commission in  
18 making determinations regarding the  
19 meaning or interpretation of any provision  
20 of the Federal Trade Commission Act, or  
21 of any other Federal law for which the  
22 Commission has authority to prescribe  
23 rules; or

24           (ii) Bureau in making determinations  
25 regarding the meaning or interpretation of

1           any provision of a Federal consumer finan-  
2           cial law (other than any law described in  
3           clause (i)).

4           (6) NATIONAL CREDIT UNION ADMINISTRA-  
5           TION.—

6           (A) TRANSFER OF FUNCTIONS.—All con-  
7           sumer financial protection functions of the Na-  
8           tional Credit Union Administration are trans-  
9           ferred to the Bureau.

10          (B) NATIONAL CREDIT UNION ADMINIS-  
11          TRATION AUTHORITY.—The Bureau shall have  
12          all powers and duties that were vested in the  
13          National Credit Union Administration, relating  
14          to consumer financial protection functions, on  
15          the day before the designated transfer date.

16          (7) DEPARTMENT OF HOUSING AND URBAN DE-  
17          VELOPMENT.—

18          (A) TRANSFER OF FUNCTIONS.—All con-  
19          sumer protection functions of the Secretary of  
20          the Department of Housing and Urban Devel-  
21          opment relating to the Real Estate Settlement  
22          Procedures Act of 1974 (12 U.S.C. 2601 et  
23          seq.) and the Secure and Fair Enforcement for  
24          Mortgage Licensing Act of 2008 (12 U.S.C.  
25          5102 et seq.) are transferred to the Bureau.

1                   (B) AUTHORITY OF THE DEPARTMENT OF  
2                   HOUSING AND URBAN DEVELOPMENT.—The  
3                   Bureau shall have all powers and duties that  
4                   were vested in the Secretary of the Department  
5                   of Housing and Urban Development relating to  
6                   the Real Estate Settlement Procedures Act of  
7                   1974 (12 U.S.C. 2601 et seq.), and the Secure  
8                   and Fair Enforcement for Mortgage Licensing  
9                   Act of 2008 (12 U.S.C. 5101 et seq.), on the  
10                  day before the designated transfer date.

11               (c) TRANSFERS OF FUNCTIONS SUBJECT TO EXAM-  
12               INATION AND ENFORCEMENT AUTHORITY REMAINING  
13               WITH TRANSFEROR AGENCIES.—The transfers of func-  
14               tions in subsection (b) do not affect the authority of the  
15               agencies identified in subsection (b) from conducting ex-  
16               aminations or initiating and maintaining enforcement pro-  
17               ceedings, including performing appropriate supervisory  
18               and support functions relating thereto, in accordance with  
19               sections 1024, 1025, and 1026.

20               (d) EFFECTIVE DATE.—Subsections (b) and (c) shall  
21               become effective on the designated transfer date.

22       **SEC. 1062. DESIGNATED TRANSFER DATE.**

23               (a) IN GENERAL.—Not later than 60 days after the  
24               date of enactment of this Act, the Secretary shall—

1           (1) in consultation with the Chairman of the  
2 Board of Governors, the Chairperson of the Cor-  
3 poration, the Chairman of the Federal Trade Com-  
4 mission, the Chairman of the National Credit Union  
5 Administration Board, the Comptroller of the Cur-  
6 rency, the Director of the Office of Thrift Super-  
7 vision, the Secretary of the Department of Housing  
8 and Urban Development, and the Director of the Of-  
9 fice of Management and Budget, designate a single  
10 calendar date for the transfer of functions to the  
11 Bureau under section 1061; and

12           (2) publish notice of that designated date in the  
13 Federal Register.

14 (b) CHANGING DESIGNATION.—The Secretary—

15           (1) may, in consultation with the Chairman of  
16 the Board of Governors, the Chairperson of the Fed-  
17 eral Deposit Insurance Corporation, the Chairman  
18 of the Federal Trade Commission, the Chairman of  
19 the National Credit Union Administration Board,  
20 the Comptroller of the Currency, the Director of the  
21 Office of Thrift Supervision, the Secretary of the  
22 Department of Housing and Urban Development,  
23 and the Director of the Office of Management and  
24 Budget, change the date designated under sub-  
25 section (a); and



1           (2) shall publish notice of any changed des-  
2           ignated date in the Federal Register.

3           (c) PERMISSIBLE DATES.—

4           (1) IN GENERAL.—Except as provided in para-  
5           graph (2), any date designated under this section  
6           shall be not earlier than 180 days, nor later than 12  
7           months, after the date of enactment of this Act.

8           (2) EXTENSION OF TIME.—The Secretary may  
9           designate a date that is later than 12 months after  
10          the date of enactment of this Act if the Secretary  
11          transmits to appropriate committees of Congress—

12           (A) a written determination that orderly  
13           implementation of this title is not feasible be-  
14           fore the date that is 12 months after the date  
15           of enactment of this Act;

16           (B) an explanation of why an extension is  
17           necessary for the orderly implementation of this  
18           title; and

19           (C) a description of the steps that will be  
20           taken to effect an orderly and timely implemen-  
21           tation of this title within the extended time pe-  
22           riod.

23          (3) EXTENSION LIMITED.—In no case may any  
24          date designated under this section be later than 18  
25          months after the date of enactment of this Act.

1 **SEC. 1063. SAVINGS PROVISIONS.**

2 (a) BOARD OF GOVERNORS.—

3 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-  
4 TIONS NOT AFFECTED.—Section 1061(b)(1) does  
5 not affect the validity of any right, duty, or obliga-  
6 tion of the United States, the Board of Governors  
7 (or any Federal reserve bank), or any other person  
8 that—

9 (A) arises under any provision of law relat-  
10 ing to any consumer financial protection func-  
11 tion of the Board of Governors transferred to  
12 the Bureau by this title; and

13 (B) existed on the day before the des-  
14 ignated transfer date.

15 (2) CONTINUATION OF SUITS.—No provision of  
16 this Act shall abate any proceeding commenced by  
17 or against the Board of Governors (or any Federal  
18 reserve bank) before the designated transfer date  
19 with respect to any consumer financial protection  
20 function of the Board of Governors (or any Federal  
21 reserve bank) transferred to the Bureau by this title,  
22 except that the Bureau, subject to sections 1024,  
23 1025, and 1026, shall be substituted for the Board  
24 of Governors (or Federal reserve bank) as a party  
25 to any such proceeding as of the designated transfer  
26 date.

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1 (b) FEDERAL DEPOSIT INSURANCE CORPORATION.—

2 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-  
3 TIONS NOT AFFECTED.—Section 1061(b)(4) does  
4 not affect the validity of any right, duty, or obliga-  
5 tion of the United States, the Federal Deposit In-  
6 surance Corporation, the Board of Directors of that  
7 Corporation, or any other person, that—

8 (A) arises under any provision of law relat-  
9 ing to any consumer financial protection func-  
10 tion of the Federal Deposit Insurance Corpora-  
11 tion transferred to the Bureau by this title; and

12 (B) existed on the day before the des-  
13 igned transfer date.

14 (2) CONTINUATION OF SUITS.—No provision of  
15 this Act shall abate any proceeding commenced by  
16 or against the Federal Deposit Insurance Corpora-  
17 tion (or the Board of Directors of that Corporation)  
18 before the designated transfer date with respect to  
19 any consumer financial protection function of the  
20 Federal Deposit Insurance Corporation transferred  
21 to the Bureau by this title, except that the Bureau,  
22 subject to sections 1024, 1025, and 1026, shall be  
23 substituted for the Federal Deposit Insurance Cor-  
24 poration (or Board of Directors) as a party to any  
25 such proceeding as of the designated transfer date.

1           (c) FEDERAL TRADE COMMISSION.—Section  
2 1061(b)(5) does not affect the validity of any right, duty,  
3 or obligation of the United States, the Federal Trade  
4 Commission, or any other person, that—

5           (1) arises under any provision of law relating to  
6 any consumer financial protection function of the  
7 Federal Trade Commission transferred to the Bu-  
8 reau by this title; and

9           (2) existed on the day before the designated  
10 transfer date.

11          (d) NATIONAL CREDIT UNION ADMINISTRATION.—

12           (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-  
13 TIONS NOT AFFECTED.—Section 1061(b)(6) does  
14 not affect the validity of any right, duty, or obliga-  
15 tion of the United States, the National Credit Union  
16 Administration, the National Credit Union Adminis-  
17 tration Board, or any other person, that—

18           (A) arises under any provision of law relat-  
19 ing to any consumer financial protection func-  
20 tion of the National Credit Union Administra-  
21 tion transferred to the Bureau by this title; and

22           (B) existed on the day before the des-  
23 igned transfer date.

24           (2) CONTINUATION OF SUITS.—No provision of  
25 this Act shall abate any proceeding commenced by

1 or against the National Credit Union Administration  
2 (or the National Credit Union Administration  
3 Board) before the designated transfer date with re-  
4 spect to any consumer financial protection function  
5 of the National Credit Union Administration trans-  
6 ferred to the Bureau by this title, except that the  
7 Bureau, subject to sections 1024, 1025, and 1026,  
8 shall be substituted for the National Credit Union  
9 Administration (or National Credit Union Adminis-  
10 tration Board) as a party to any such proceeding as  
11 of the designated transfer date.

12 (e) OFFICE OF THE COMPTROLLER OF THE CUR-  
13 RENCY.—

14 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-  
15 TIONS NOT AFFECTED.—Section 1061(b)(2) does  
16 not affect the validity of any right, duty, or obliga-  
17 tion of the United States, the Comptroller of the  
18 Currency, the Office of the Comptroller of the Cur-  
19 rency, or any other person, that—

20 (A) arises under any provision of law relat-  
21 ing to any consumer financial protection func-  
22 tion of the Comptroller of the Currency trans-  
23 ferred to the Bureau by this title; and

24 (B) existed on the day before the des-  
25 ignated transfer date.

1           (2) CONTINUATION OF SUITS.—No provision of  
2 this Act shall abate any proceeding commenced by  
3 or against the Comptroller of the Currency (or the  
4 Office of the Comptroller of the Currency) with re-  
5 spect to any consumer financial protection function  
6 of the Comptroller of the Currency transferred to  
7 the Bureau by this title before the designated trans-  
8 fer date, except that the Bureau, subject to sections  
9 1024, 1025, and 1026, shall be substituted for the  
10 Comptroller of the Currency (or the Office of the  
11 Comptroller of the Currency) as a party to any such  
12 proceeding as of the designated transfer date.

13 (f) OFFICE OF THRIFT SUPERVISION.—

14           (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-  
15 TIONS NOT AFFECTED.—Section 1061(b)(3) does  
16 not affect the validity of any right, duty, or obliga-  
17 tion of the United States, the Director of the Office  
18 of Thrift Supervision, the Office of Thrift Super-  
19 vision, or any other person, that—

20           (A) arises under any provision of law relat-  
21 ing to any consumer financial protection func-  
22 tion of the Director of the Office of Thrift Su-  
23 pervision transferred to the Bureau by this  
24 title; and

1 (B) that existed on the day before the des-  
2 igned transfer date.

3 (2) CONTINUATION OF SUITS.—No provision of  
4 this Act shall abate any proceeding commenced by  
5 or against the Director of the Office of Thrift Su-  
6 pervision (or the Office of Thrift Supervision) with  
7 respect to any consumer financial protection func-  
8 tion of the Director of the Office of Thrift Super-  
9 vision transferred to the Bureau by this title before  
10 the designated transfer date, except that the Bu-  
11 reau, subject to sections 1024, 1025, and 1026,  
12 shall be substituted for the Director (or the Office  
13 of Thrift Supervision) as a party to any such pro-  
14 ceeding as of the designated transfer date.

15 (g) DEPARTMENT OF HOUSING AND URBAN DEVEL-  
16 OPMENT.—

17 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-  
18 TIONS NOT AFFECTED.—Section 1061(b)(7) shall  
19 not affect the validity of any right, duty, or obliga-  
20 tion of the United States, the Secretary of the De-  
21 partment of Housing and Urban Development (or  
22 the Department of Housing and Urban Develop-  
23 ment), or any other person, that—

24 (A) arises under any provision of law relat-  
25 ing to any function of the Secretary of the De-

1           partment of Housing and Urban Development  
2           with respect to the Real Estate Settlement Pro-  
3           cedures Act of 1974 (12 U.S.C. 2601 et seq.)  
4           or the Secure and Fair Enforcement for Mort-  
5           gage Licensing Act of 2008 (12 U.S.C. 5102 et  
6           seq.) transferred to the Bureau by this title;  
7           and

8                   (B) existed on the day before the des-  
9           ignated transfer date.

10           (2) CONTINUATION OF SUITS.—This title shall  
11           not abate any proceeding commenced by or against  
12           the Secretary of the Department of Housing and  
13           Urban Development (or the Department of Housing  
14           and Urban Development) with respect to any con-  
15           sumer financial protection function of the Secretary  
16           of the Department of Housing and Urban Develop-  
17           ment transferred to the Bureau by this title before  
18           the designated transfer date, except that the Bu-  
19           reau, subject to sections 1024, 1025, and 1026,  
20           shall be substituted for the Secretary of the Depart-  
21           ment of Housing and Urban Development (or the  
22           Department of Housing and Urban Development) as  
23           a party to any such proceeding as of the designated  
24           transfer date.



1 (h) CONTINUATION OF EXISTING ORDERS, RULES,  
2 DETERMINATIONS, AGREEMENTS, AND RESOLUTIONS.—

3 All orders, resolutions, determinations, agreements, and  
4 rules that have been issued, made, prescribed, or allowed  
5 to become effective by any transferor agency or by a court  
6 of competent jurisdiction, in the performance of consumer  
7 financial protection functions that are transferred by this  
8 title and that are in effect on the day before the designated  
9 transfer date, shall continue in effect according to the  
10 terms of those orders, resolutions, determinations, agree-  
11 ments, and rules, and shall not be enforceable by or  
12 against the Bureau.

13 (i) IDENTIFICATION OF RULES CONTINUED.—Not  
14 later than the designated transfer date, the Bureau—

15 (1) shall, after consultation with the head of  
16 each transferor agency, identify the rules continued  
17 under subsection (h) that will be enforced by the  
18 Bureau; and

19 (2) shall publish a list of such rules in the Fed-  
20 eral Register.

21 (j) STATUS OF RULES PROPOSED OR NOT YET EF-  
22 FECTIVE.—

23 (1) PROPOSED RULES.—Any proposed rule of a  
24 transferor agency which that agency, in performing  
25 consumer financial protection functions transferred

1 by this title, has proposed before the designated  
2 transfer date, but has not been published as a final  
3 rule before that date, shall be deemed to be a pro-  
4 posed rule of the Bureau.

5 (2) RULES NOT YET EFFECTIVE.—Any interim  
6 or final rule of a transferor agency which that agen-  
7 cy, in performing consumer financial protection  
8 functions transferred by this title, has published be-  
9 fore the designated transfer date, but which has not  
10 become effective before that date, shall become effec-  
11 tive as a rule of the Bureau according to its terms.

12 **SEC. 1064. TRANSFER OF CERTAIN PERSONNEL.**

13 (a) IN GENERAL.—

14 (1) CERTAIN FEDERAL RESERVE SYSTEM EM-  
15 PLOYEES TRANSFERRED.—

16 (A) IDENTIFYING EMPLOYEES FOR TRANS-  
17 FER.—The Bureau and the Board of Governors  
18 shall—

19 (i) jointly determine the number of  
20 employees of the Board of Governors nec-  
21 essary to perform or support the consumer  
22 financial protection functions of the Board  
23 of Governors that are transferred to the  
24 Bureau by this title; and

1 (ii) consistent with the number deter-  
2 mined under clause (i), jointly identify em-  
3 ployees of the Board of Governors for  
4 transfer to the Bureau, in a manner that  
5 the Bureau and the Board of Governors, in  
6 their sole discretion, determine equitable.

7 (B) IDENTIFIED EMPLOYEES TRANS-  
8 FERRED.—All employees of the Board of Gov-  
9 ernors identified under subparagraph (A)(ii)  
10 shall be transferred to the Bureau for employ-  
11 ment.

12 (C) FEDERAL RESERVE BANK EMPLOY-  
13 EES.—Employees of any Federal reserve bank  
14 who, on the day before the designated transfer  
15 date, are performing consumer financial protec-  
16 tion functions on behalf of the Board of Gov-  
17 ernors shall be treated as employees of the  
18 Board of Governors for purposes of subpara-  
19 graphs (A) and (B).

20 (2) CERTAIN FDIC EMPLOYEES TRANS-  
21 FERRED.—

22 (A) IDENTIFYING EMPLOYEES FOR TRANS-  
23 FER.—The Bureau and the Board of Directors  
24 of the Federal Deposit Insurance Corporation  
25 shall—

1 (i) jointly determine the number of  
2 employees of that Corporation necessary to  
3 perform or support the consumer financial  
4 protection functions of the Corporation  
5 that are transferred to the Bureau by this  
6 title; and

7 (ii) consistent with the number deter-  
8 mined under clause (i), jointly identify em-  
9 ployees of the Corporation for transfer to  
10 the Bureau, in a manner that the Bureau  
11 and the Board of Directors of the Corpora-  
12 tion, in their sole discretion, determine eq-  
13 uitable.

14 (B) IDENTIFIED EMPLOYEES TRANS-  
15 FERRED.—All employees of the Corporation  
16 identified under subparagraph (A)(ii) shall be  
17 transferred to the Bureau for employment.

18 (3) CERTAIN NCUA EMPLOYEES TRANS-  
19 FERRED.—

20 (A) IDENTIFYING EMPLOYEES FOR TRANS-  
21 FER.—The Bureau and the National Credit  
22 Union Administration Board shall—

23 (i) jointly determine the number of  
24 employees of the National Credit Union  
25 Administration necessary to perform or

1 support the consumer financial protection  
2 functions of the National Credit Union Ad-  
3 ministration that are transferred to the  
4 Bureau by this title; and

5 (ii) consistent with the number deter-  
6 mined under clause (i), jointly identify em-  
7 ployees of the National Credit Union Ad-  
8 ministration for transfer to the Bureau, in  
9 a manner that the Bureau and the Na-  
10 tional Credit Union Administration Board,  
11 in their sole discretion, determine equi-  
12 table.

13 (B) IDENTIFIED EMPLOYEES TRANS-  
14 FERRED.—All employees of the National Credit  
15 Union Administration identified under subpara-  
16 graph (A)(ii) shall be transferred to the Bureau  
17 for employment.

18 (4) CERTAIN OFFICE OF THE COMPTROLLER OF  
19 THE CURRENCY EMPLOYEES TRANSFERRED.—

20 (A) IDENTIFYING EMPLOYEES FOR TRANS-  
21 FER.—The Bureau and the Comptroller of the  
22 Currency shall—

23 (i) jointly determine the number of  
24 employees of the Office of the Comptroller  
25 of the Currency necessary to perform or

1 support the consumer financial protection  
2 functions of the Office of the Comptroller  
3 of the Currency that are transferred to the  
4 Bureau by this title; and

5 (ii) consistent with the number deter-  
6 mined under clause (i), jointly identify em-  
7 ployees of the Office of the Comptroller of  
8 the Currency for transfer to the Bureau, in  
9 a manner that the Bureau and the Office  
10 of the Comptroller of the Currency, in  
11 their sole discretion, determine equitable.

12 (B) IDENTIFIED EMPLOYEES TRANS-  
13 FERRED.—All employees of the Office of the  
14 Comptroller of the Currency identified under  
15 subparagraph (A)(ii) shall be transferred to the  
16 Bureau for employment.

17 (5) CERTAIN OFFICE OF THRIFT SUPERVISION  
18 EMPLOYEES TRANSFERRED.—

19 (A) IDENTIFYING EMPLOYEES FOR TRANS-  
20 FER.—The Bureau and the Director of the Of-  
21 fice of Thrift Supervision shall—

22 (i) jointly determine the number of  
23 employees of the Office of Thrift Super-  
24 vision necessary to perform or support the  
25 consumer financial protection functions of

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1 the Office of Thrift Supervision that are  
2 transferred to the Bureau by this title; and

3 (ii) consistent with the number deter-  
4 mined under clause (i), jointly identify em-  
5 ployees of the Office of Thrift Supervision  
6 for transfer to the Bureau, in a manner  
7 that the Bureau and the Office of Thrift  
8 Supervision, in their sole discretion, deter-  
9 mine equitable.

10 (B) IDENTIFIED EMPLOYEES TRANS-  
11 FERRED.—All employees of the Office of Thrift  
12 Supervision identified under subparagraph  
13 (A)(ii) shall be transferred to the Bureau for  
14 employment.

15 (6) CERTAIN EMPLOYEES OF DEPARTMENT OF  
16 HOUSING AND URBAN DEVELOPMENT TRANS-  
17 FERRED.—

18 (A) IDENTIFYING EMPLOYEES FOR TRANS-  
19 FER.—The Bureau and the Secretary of the  
20 Department of Housing and Urban Develop-  
21 ment shall—

22 (i) jointly determine the number of  
23 employees of the Department of Housing  
24 and Urban Development necessary to per-  
25 form or support the consumer protection

1 functions of the Department that are  
2 transferred to the Bureau by this title; and

3 (ii) consistent with the number deter-  
4 mined under clause (i), jointly identify em-  
5 ployees of the Department of Housing and  
6 Urban Development for transfer to the Bu-  
7 reau in a manner that the Bureau and the  
8 Secretary of the Department of Housing  
9 and Urban Development, in their sole dis-  
10 cretion, deem equitable.

11 (B) IDENTIFIED EMPLOYEES TRANS-  
12 FERRED.—All employees of the Department of  
13 Housing and Urban Development identified  
14 under subparagraph (A)(ii) shall be transferred  
15 to the Bureau for employment.

16 (7) APPOINTMENT AUTHORITY FOR EXCEPTED  
17 SERVICE AND SENIOR EXECUTIVE SERVICE TRANS-  
18 FERRED.—

19 (A) IN GENERAL.—In the case of an em-  
20 ployee occupying a position in the excepted  
21 service or the Senior Executive Service, any ap-  
22 pointment authority established pursuant to law  
23 or regulations of the Office of Personnel Man-  
24 agement for filling such positions shall be  
25 transferred, subject to subparagraph (B).



1 (B) DECLINING TRANSFERS ALLOWED.—

2 An agency or entity may decline to make a  
3 transfer of authority under subparagraph (A)  
4 (and the employees appointed pursuant thereto)  
5 to the extent that such authority relates to posi-  
6 tions excepted from the competitive service be-  
7 cause of their confidential, policy-making, pol-  
8 icy-determining, or policy-advocating character,  
9 and non-career positions in the Senior Execu-  
10 tive Service (within the meaning of section  
11 3132(a)(7) of title 5, United States Code).

12 (b) TIMING OF TRANSFERS AND POSITION ASSIGN-  
13 MENTS.—Each employee to be transferred under this sec-  
14 tion shall—

15 (1) be transferred not later than 90 days after  
16 the designated transfer date; and

17 (2) receive notice of a position assignment not  
18 later than 120 days after the effective date of his or  
19 her transfer.

20 (c) TRANSFER OF FUNCTION.—

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

1           (2) PRIORITY OF THIS TITLE.—If any provi-  
2           sions of this title conflict with any protection pro-  
3           vided to transferred employees under section 3503 of  
4           title 5, United States Code, the provisions of this  
5           title shall control.

6           (d) EQUAL STATUS AND TENURE POSITIONS.—

7           (1) EMPLOYEES TRANSFERRED FROM FDIC,  
8           HUD, NCUA, OCC, AND OTS.—Each employee trans-  
9           ferred from the Federal Deposit Insurance Corpora-  
10          tion, the National Credit Union Administration, the  
11          Office of the Comptroller of the Currency, the Office  
12          of Thrift Supervision, or the Department of Housing  
13          and Urban Development shall be placed in a position  
14          at the Bureau with the same status and tenure as  
15          that employee held on the day before the designated  
16          transfer date.

17          (2) EMPLOYEES TRANSFERRED FROM THE  
18          FEDERAL RESERVE SYSTEM.—

19                (A) COMPARABILITY.—Each employee  
20                transferred from the Board of Governors or  
21                from a Federal reserve bank shall be placed in  
22                a position with the same status and tenure as  
23                that of an employee transferring to the Bureau  
24                from the Office of the Comptroller of the Cur-

1           rency who perform similar functions and have  
2           similar periods of service.

3                   (B) SERVICE PERIODS CREDITED.—For  
4           purposes of this paragraph, periods of service  
5           with the Board of Governors or a Federal re-  
6           serve bank shall be credited as periods of serv-  
7           ice with a Federal agency.

8           (e) ADDITIONAL CERTIFICATION REQUIREMENTS  
9 LIMITED.—Examiners transferred to the Bureau are not  
10 subject to any additional certification requirements before  
11 being placed in a comparable examiner position at the Bu-  
12 reau examining the same types of institutions as they ex-  
13 amined before they were transferred.

14           (f) PERSONNEL ACTIONS LIMITED.—

15                   (1) 2-YEAR PROTECTION.—Except as provided  
16           in paragraph (2), each transferred employee holding  
17           a permanent position on the day before the des-  
18           ignated transfer date may not, during the 2-year pe-  
19           riod beginning on the designated transfer date, be  
20           involuntarily separated, or involuntarily reassigned  
21           outside his or her locality pay area, as defined by  
22           the Office of Personnel Management.

23                   (2) EXCEPTIONS.—Paragraph (1) does not  
24           limit the right of the Bureau—

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

3 (B) to terminate an appointment to a posi-  
4 tion excepted from the competitive service be-  
5 cause of its confidential policy-making, policy-  
6 determining, or policy-advocating character; or

7 (C) to reassign a supervisory employee out-  
8 side his or her locality pay area, as defined by  
9 the Office of Personnel Management, when the  
10 Bureau determines that the reassignment is  
11 necessary for the efficient operation of the Bu-  
12 reau.

13 (g) PAY.—

14 (1) 2-YEAR PROTECTION.—Except as provided  
15 in paragraph (2), each transferred employee shall,  
16 during the 2-year period beginning on the des-  
17 ignated transfer date, receive pay at a rate equal to  
18 not less than the basic rate of pay (including any ge-  
19 ographic differential) that the employee received  
20 during the pay period immediately preceding the  
21 date of transfer.

22 (2) EXCEPTIONS.—Paragraph (1) does not  
23 limit the right of the Bureau to reduce the rate of  
24 basic pay of a transferred employee—

25 (A) for cause;

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1 (B) for unacceptable performance; or

2 (C) with the consent of the employee.

3 (3) PROTECTION ONLY WHILE EMPLOYED.—

4 Paragraph (1) applies to a transferred employee  
5 only while that employee remains employed by the  
6 Bureau.

7 (4) PAY INCREASES PERMITTED.—Paragraph  
8 (1) does not limit the authority of the Bureau to in-  
9 crease the pay of a transferred employee.

10 (h) REORGANIZATION.—

11 (1) BETWEEN 1ST AND 3RD YEAR.—

12 (A) IN GENERAL.—If the Bureau deter-  
13 mines, during the 2-year period beginning 1  
14 year after the designated transfer date, that a  
15 reorganization of the staff of the Bureau is re-  
16 quired—

17 (i) that reorganization shall be  
18 deemed a “major reorganization” for pur-  
19 poses of affording affected employees re-  
20 tirement under section 8336(d)(2) or  
21 8414(b)(1)(B) of title 5, United States  
22 Code;

23 (ii) before the reorganization occurs,  
24 all employees in the same locality pay area  
25 as defined by the Office of Personnel Man-

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1                   agement shall be placed in a uniform posi-  
2                   tion classification system; and

3                   (iii) any resulting reduction in force  
4                   shall be governed by the provisions of  
5                   chapter 35 of title 5, United States Code,  
6                   except that the Bureau shall—

7                   (I) establish competitive areas  
8                   (as that term is defined in regulations  
9                   issued by the Office of Personnel  
10                  Management) to include at a min-  
11                  imum all employees in the same local-  
12                  ity pay area as defined by the Office  
13                  of Personnel Management;

14                  (II) establish competitive levels  
15                  (as that term is defined in regulations  
16                  issued by the Office of Personnel  
17                  Management) without regard to  
18                  whether the particular employees have  
19                  been appointed to positions in the  
20                  competitive service or the excepted  
21                  service; and

22                  (III) afford employees appointed  
23                  to positions in the excepted service  
24                  (other than to a position excepted  
25                  from the competitive service because

1 of its confidential policy-making, pol-  
2 icy-determining, or policy-advocating  
3 character) the same assignment rights  
4 to positions within the Bureau as em-  
5 ployees appointed to positions in the  
6 competitive service.

7 (B) SERVICE CREDIT FOR REDUCTIONS IN  
8 FORCE.—For purposes of this paragraph, peri-  
9 ods of service with a Federal home loan bank,  
10 a joint office of the Federal home loan banks,  
11 the Board of Governors, a Federal reserve  
12 bank, the Federal Deposit Insurance Corpora-  
13 tion, or the National Credit Union Administra-  
14 tion shall be credited as periods of service with  
15 a Federal agency.

16 (2) AFTER 3RD YEAR.—

17 (A) IN GENERAL.—If the Bureau deter-  
18 mines, at any time after the 3-year period be-  
19 ginning on the designated transfer date, that a  
20 reorganization of the staff of the Bureau is re-  
21 quired, any resulting reduction in force shall be  
22 governed by the provisions of chapter 35 of title  
23 5, United States Code, except that the Bureau  
24 shall establish competitive levels (as that term  
25 is defined in regulations issued by the Office of

1 Personnel Management) without regard to  
2 types of appointment held by particular employ-  
3 ees transferred under this section.

4 (B) SERVICE CREDIT FOR REDUCTIONS IN  
5 FORCE.—For purposes of this paragraph, peri-  
6 ods of service with a Federal home loan bank,  
7 a joint office of the Federal home loan banks,  
8 the Board of Governors, a Federal reserve  
9 bank, the Federal Deposit Insurance Corpora-  
10 tion, or the National Credit Union Administra-  
11 tion shall be credited as periods of service with  
12 a Federal agency.

13 (i) BENEFITS.—

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

16 (A) IN GENERAL.—

17 (i) CONTINUATION OF EXISTING RE-  
18 TIREMENT PLAN.—Except as provided in  
19 subparagraph (B), each transferred em-  
20 ployee shall remain enrolled in his or her  
21 existing retirement plan, through any pe-  
22 riod of continuous employment with the  
23 Bureau.

24 (ii) EMPLOYER CONTRIBUTION.—The  
25 Bureau shall pay any employer contribu-



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1           tions to the existing retirement plan of  
2           each transferred employee, as required  
3           under that plan.

4           (B) OPTION FOR EMPLOYEES TRANS-  
5           FERRED FROM FEDERAL RESERVE SYSTEM TO  
6           BE SUBJECT TO FEDERAL EMPLOYEE RETIRE-  
7           MENT PROGRAM.—

8           (i) ELECTION.—Any transferred em-  
9           ployee who was enrolled in a Federal Re-  
10          serve System retirement plan on the day  
11          before his or her transfer to the Bureau  
12          may, during the 1-year period beginning 6  
13          months after the designated transfer date,  
14          elect to be subject to the Federal employee  
15          retirement program.

16          (ii) EFFECTIVE DATE OF COV-  
17          ERAGE.—For any employee making an  
18          election under clause (i), coverage by the  
19          Federal employee retirement program shall  
20          begin 1 year after the designated transfer  
21          date.

22          (C) BUREAU PARTICIPATION IN FEDERAL  
23          RESERVE SYSTEM RETIREMENT PLAN.—

24          (i) SEPARATE ACCOUNT IN FEDERAL  
25          RESERVE SYSTEM RETIREMENT PLAN ES-



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1 not make the election under subparagraph  
2 (B).

3 (iv) ACCOUNT ADMINISTRATION.—The  
4 Bureau shall administer the account estab-  
5 lished under clause (i) as a participating  
6 employer in the Federal Reserve System  
7 retirement plan.

8 (D) DEFINITIONS.—For purposes of this  
9 paragraph—

10 (i) the term “existing retirement  
11 plan” means, with respect to any employee  
12 transferred under this section, the par-  
13 ticular retirement plan (including the Fi-  
14 nancial Institutions Retirement Fund) and  
15 any associated thrift savings plan of the  
16 agency or Federal reserve bank from which  
17 the employee was transferred, in which the  
18 employee was enrolled on the day before  
19 the designated transfer date; and

20 (ii) the term “Federal employee re-  
21 tirement program” means the retirement  
22 program for Federal employees established  
23 by chapter 84 of title 5, United States  
24 Code.

1           (2) BENEFITS OTHER THAN RETIREMENT BEN-  
2           EFITS FOR TRANSFERRED EMPLOYEES.—

3           (A) DURING 1ST YEAR.—

4           (i) EXISTING PLANS CONTINUE.—

5           Each transferred employee may, for 1 year  
6           after the designated transfer date, retain  
7           membership in any other employee benefit  
8           program of the agency or bank from which  
9           the employee transferred, including a den-  
10          tal, vision, long term care, or life insurance  
11          program, to which the employee belonged  
12          on the day before the designated transfer  
13          date.

14          (ii) EMPLOYER CONTRIBUTION.—The  
15          Bureau shall reimburse the agency or bank  
16          from which an employee was transferred  
17          for any cost incurred by that agency or  
18          bank in continuing to extend coverage in  
19          the benefit program to the employee, as re-  
20          quired under that program or negotiated  
21          agreements.

22          (B) DENTAL, VISION, OR LIFE INSURANCE  
23          AFTER 1ST YEAR.—If, after the 1-year period  
24          beginning on the designated transfer date, the  
25          Bureau decides not to continue participation in

1 any dental, vision, or life insurance program of  
2 an agency or bank from which an employee  
3 transferred, a transferred employee who is a  
4 member of such a program may, before the de-  
5 cision of the Bureau takes effect, elect to enroll,  
6 without regard to any regularly scheduled open  
7 season, in—

8 (i) the enhanced dental benefits estab-  
9 lished by chapter 89A of title 5, United  
10 States Code;

11 (ii) the enhanced vision benefits estab-  
12 lished by chapter 89B of title 5, United  
13 States Code; or

14 (iii) the Federal Employees Group  
15 Life Insurance Program established by  
16 chapter 87 of title 5, United States Code,  
17 without regard to any requirement of in-  
18 surability.

19 (C) LONG TERM CARE INSURANCE AFTER  
20 1ST YEAR.—If, after the 1-year period begin-  
21 ning on the designated transfer date, the Bu-  
22 reau decides not to continue participation in  
23 any long term care insurance program of an  
24 agency or bank from which an employee trans-  
25 ferred, a transferred employee who is a member

1 of such a program may, before the decision of  
2 the Bureau takes effect, elect to apply for cov-  
3 erage under the Federal Long Term Care In-  
4 surance Program established by chapter 90 of  
5 title 5, United States Code, under the under-  
6 writing requirements applicable to a new active  
7 workforce member (as defined in part 875, title  
8 5, Code of Federal Regulations).

9 (D) EMPLOYEE CONTRIBUTION.—An indi-  
10 vidual enrolled in the Federal Employees  
11 Health Benefits program shall pay any em-  
12 ployee contribution required by the plan.

13 (E) ADDITIONAL FUNDING.—The Bureau  
14 shall transfer to the Federal Employees Health  
15 Benefits Fund established under section 8909  
16 of title 5, United States Code, an amount deter-  
17 mined by the Director of the Office of Per-  
18 sonnel Management, after consultation with the  
19 Bureau and the Office of Management and  
20 Budget, to be necessary to reimburse the Fund  
21 for the cost to the Fund of providing benefits  
22 under this paragraph.

23 (F) CREDIT FOR TIME ENROLLED IN  
24 OTHER PLANS.—For employees transferred  
25 under this title, enrollment in a health benefits

1 plan administered by a transferor agency or a  
2 Federal reserve bank, as the case may be, im-  
3 mediately before enrollment in a health benefits  
4 plan under chapter 89 of title 5, United States  
5 Code, shall be considered as enrollment in a  
6 health benefits plan under that chapter for pur-  
7 poses of section 8905(b)(1)(A) of title 5, United  
8 States Code.

9 (G) SPECIAL PROVISIONS TO ENSURE CON-  
10 TINUATION OF LIFE INSURANCE BENEFITS.—

11 (i) IN GENERAL.—An annuitant (as  
12 defined in section 8901(3) of title 5,  
13 United States Code) who is enrolled in a  
14 life insurance plan administered by a  
15 transferor agency on the day before the  
16 designated transfer date shall be eligible  
17 for coverage by a life insurance plan under  
18 sections 8706(b), 8714a, 8714b, and  
19 8714c of title 5, United States Code, or in  
20 a life insurance plan established by the  
21 Bureau, without regard to any regularly  
22 scheduled open season and requirement of  
23 insurability.

24 (ii) EMPLOYEE CONTRIBUTION.—An  
25 individual enrolled in a life insurance plan

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1 under this subparagraph shall pay any em-  
2 ployee contribution required by the plan.

3 (iii) ADDITIONAL FUNDING.—The Bu-  
4 reau shall transfer to the Employees' Life  
5 Insurance Fund established under section  
6 8714 of title 5, United States Code, an  
7 amount determined by the Director of the  
8 Office of Personnel Management, after  
9 consultation with the Bureau and the Of-  
10 fice of Management and Budget, to be nec-  
11 essary to reimburse the Fund for the cost  
12 to the Fund of providing benefits under  
13 this subparagraph not otherwise paid for  
14 by the employee under clause (ii).

15 (iv) CREDIT FOR TIME ENROLLED IN  
16 OTHER PLANS.—For employees transferred  
17 under this title, enrollment in a life insur-  
18 ance plan administered by a transferor  
19 agency immediately before enrollment in a  
20 life insurance plan under chapter 87 of  
21 title 5, United States Code, shall be con-  
22 sidered as enrollment in a life insurance  
23 plan under that chapter for purposes of  
24 section 8706(b)(1)(A) of title 5, United  
25 States Code.



1           (3) OPM RULES.—The Office of Personnel  
2           Management shall issue such rules as are necessary  
3           to carry out this subsection.

4           (j) IMPLEMENTATION OF UNIFORM PAY AND CLASSI-  
5           FICATION SYSTEM.—Not later than 2 years after the des-  
6           ignated transfer date, the Bureau shall implement a uni-  
7           form pay and classification system for all employees trans-  
8           ferred under this title.

9           (k) EQUITABLE TREATMENT.—In administering the  
10          provisions of this section, the Bureau—

11           (1) shall take no action that would unfairly dis-  
12          advantage transferred employees relative to each  
13          other based on their prior employment by the Board  
14          of Governors, the Federal Deposit Insurance Cor-  
15          poration, the Federal Trade Commission, the Na-  
16          tional Credit Union Administration, the Office of the  
17          Comptroller of the Currency, the Office of Thrift  
18          Supervision, a Federal reserve bank, a Federal home  
19          loan bank, or a joint office of the Federal home loan  
20          banks; and

21           (2) may take such action as is appropriate in  
22          individual cases so that employees transferred under  
23          this section receive equitable treatment, with respect  
24          to the status, tenure, pay, benefits (other than bene-  
25          fits under programs administered by the Office of

1 Personnel Management), and accrued leave or vaca-  
2 tion time of those employees, for prior periods of  
3 service with any Federal agency, including the  
4 Board of Governors, the Corporation, the Federal  
5 Trade Commission, the National Credit Union Ad-  
6 ministration, the Office of the Comptroller of the  
7 Currency, the Office of Thrift Supervision, a Federal  
8 reserve bank, a Federal home loan bank, or a joint  
9 office of the Federal home loan banks.

10 (l) IMPLEMENTATION.—In implementing the provi-  
11 sions of this section, the Bureau shall coordinate with the  
12 Office of Personnel Management and other entities having  
13 expertise in matters related to employment to ensure a  
14 fair and orderly transition for affected employees.

15 **SEC. 1065. INCIDENTAL TRANSFERS.**

16 (a) INCIDENTAL TRANSFERS AUTHORIZED.—The Di-  
17 rector of the Office of Management and Budget, in con-  
18 sultation with the Secretary, shall make such additional  
19 incidental transfers and dispositions of assets and liabil-  
20 ities held, used, arising from, available, or to be made  
21 available, in connection with the functions transferred by  
22 this title, as the Director may determine necessary to ac-  
23 complish the purposes of this title.

1 (b) SUNSET.—The authority provided in this section  
2 shall terminate 5 years after the date of enactment of this  
3 Act.

4 **SEC. 1066. INTERIM AUTHORITY OF THE SECRETARY.**

5 (a) IN GENERAL.—The Secretary is authorized to  
6 perform the functions of the Bureau under this subtitle  
7 until the Director of the Bureau is confirmed by the Sen-  
8 ate in accordance with section 1011.

9 (b) INTERIM ADMINISTRATIVE SERVICES BY THE  
10 DEPARTMENT OF THE TREASURY.—The Department of  
11 the Treasury may provide administrative services nec-  
12 essary to support the Bureau before the designated trans-  
13 fer date.

14 **SEC. 1067. TRANSITION OVERSIGHT.**

15 (a) PURPOSE.—The purpose of this section is to en-  
16 sure that the Bureau—

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

22 (b) REPORTING REQUIREMENT.—

23 (1) IN GENERAL.—The Bureau shall submit an  
24 annual report to the Committee on Banking, Hous-  
25 ing, and Urban Affairs of the Senate and the Com-

1        mittee on Financial Services of the House of Rep-  
2        resentatives that includes the plans described in  
3        paragraph (2).

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

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

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

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

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

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

19            (B) WORKPLACE FLEXIBILITIES PLAN.—  
20        The Bureau shall submit a workforce flexibility  
21        plan that includes, to the extent practicable—

22            (i) telework;

23            (ii) flexible work schedules;

24            (iii) phased retirement;

25            (iv) reemployed annuitants;

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

9 (C) RECRUITMENT AND RETENTION

10 PLAN.—The Bureau shall submit a recruitment

11 and retention plan that includes, to the extent

12 practicable, provisions relating to—

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

23 (c) EXPIRATION.—The reporting requirement under

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

25 enactment of this Act.

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

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

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

9 **Subtitle G—Regulatory**  
10 **Improvements**

11 **SEC. 1071. SMALL BUSINESS DATA COLLECTION.**

12 (a) IN GENERAL.—The Equal Credit Opportunity  
13 Act (15 U.S.C. 1691 et seq.) is amended by inserting after  
14 section 704A the following:

15 **“SEC. 704B. SMALL BUSINESS LOAN DATA COLLECTION.**

16 “(a) PURPOSE.—The purpose of this section is to fa-  
17 cilitate enforcement of fair lending laws and enable com-  
18 munities, governmental entities, and creditors to identify  
19 business and community development needs and opportu-  
20 nities of women-owned, minority-owned, and small busi-  
21 nesses.

22 “(b) INFORMATION GATHERING.—Subject to the re-  
23 quirements of this section, in the case of any application  
24 to a financial institution for credit for a small business,  
25 the financial institution shall—

1           “(1) inquire whether the small business is a  
2 women- or minority-owned small business, without  
3 regard to whether such application is received in  
4 person, by mail, by telephone, by electronic mail or  
5 other form of electronic transmission, or by any  
6 other means, and whether or not such application is  
7 in response to a solicitation by the financial institu-  
8 tion; and

9           “(2) maintain a record of the responses to such  
10 inquiry, separate from the application and accom-  
11 panying information.

12       “(c) RIGHT TO REFUSE.—Any applicant for credit  
13 may refuse to provide any information requested pursuant  
14 to subsection (b) in connection with any application for  
15 credit.

16       “(d) NO ACCESS BY UNDERWRITERS.—

17           “(1) LIMITATION.—Where feasible, no loan un-  
18 derwriter or other officer or employee of a financial  
19 institution, or any affiliate of a financial institution,  
20 involved in making any determination concerning an  
21 application for credit shall have access to any infor-  
22 mation provided by the applicant pursuant to a re-  
23 quest under subsection (b) in connection with such  
24 application.

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1           “(2) LIMITED ACCESS.—If a financial institu-  
2           tion determines that a loan underwriter or other of-  
3           ficer or employee of a financial institution, or any  
4           affiliate of a financial institution, involved in making  
5           any determination concerning an application for  
6           credit should have access to any information pro-  
7           vided by the applicant pursuant to a request under  
8           subsection (b), the financial institution shall provide  
9           notice to the applicant of the access of the under-  
10          writer to such information, along with notice that  
11          the financial institution may not discriminate on the  
12          basis of such information.

13          “(e) FORM AND MANNER OF INFORMATION.—

14               “(1) IN GENERAL.—Each financial institution  
15               shall compile and maintain, in accordance with regu-  
16               lations of the Bureau, a record of the information  
17               provided by any loan applicant pursuant to a request  
18               under subsection (b).

19               “(2) ITEMIZATION.—Information compiled and  
20               maintained under paragraph (1) shall be itemized in  
21               order to clearly and conspicuously disclose—

22                       “(A) the number of the application and the  
23                       date on which the application was received;

24                       “(B) the type and purpose of the loan or  
25                       other credit being applied for;



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1           “(C) the amount of the credit or credit  
2           limit applied for, and the amount of the credit  
3           transaction or the credit limit approved for such  
4           applicant;

5           “(D) the type of action taken with respect  
6           to such application, and the date of such action;

7           “(E) the census tract in which is located  
8           the principal place of business of the small busi-  
9           ness loan applicant;

10           “(F) the gross annual revenue of the busi-  
11           ness in the last fiscal year of the small business  
12           loan applicant preceding the date of the appli-  
13           cation;

14           “(G) the race, sex, and ethnicity of the  
15           principal owners of the business; and

16           “(H) any additional data that the Bureau  
17           determines would aid in fulfilling the purposes  
18           of this section.

19           “(3) NO PERSONALLY IDENTIFIABLE INFORMA-  
20           TION.—In compiling and maintaining any record of  
21           information under this section, a financial institution  
22           may not include in such record the name, specific  
23           address (other than the census tract required under  
24           paragraph (1)(E)), telephone number, electronic  
25           mail address, or any other personally identifiable in-

1 formation concerning any individual who is, or is  
2 connected with, the small business loan applicant.

3 “(4) DISCRETION TO DELETE OR MODIFY PUB-  
4 LICLY AVAILABLE DATA.—The Bureau may, at its  
5 discretion, delete or modify data collected under this  
6 section which is or will be available to the public, if  
7 the Bureau determines that the deletion or modifica-  
8 tion of the data would advance a compelling privacy  
9 interest.

10 “(f) AVAILABILITY OF INFORMATION.—

11 “(1) SUBMISSION TO BUREAU.—The data re-  
12 quired to be compiled and maintained under this  
13 section by any financial institution shall be sub-  
14 mitted annually to the Bureau.

15 “(2) AVAILABILITY OF INFORMATION.—Infor-  
16 mation compiled and maintained under this section  
17 shall be—

18 “(A) retained for not less than 3 years  
19 after the date of preparation;

20 “(B) made available to any member of the  
21 public, upon request, in the form required  
22 under regulations prescribed by the Bureau;

23 “(C) annually made available to the public  
24 generally by the Bureau, in such form and in

1           such manner as is determined by the Bureau,  
2           by regulation.

3           “(3) COMPILATION OF AGGREGATE DATA.—The  
4           Bureau may, at its discretion—

5                   “(A) compile and aggregate data collected  
6                   under this section for its own use; and

7                   “(B) make public such compilations of ag-  
8                   gregate data.

9           “(g) BUREAU ACTION.—

10                   “(1) IN GENERAL.—The Bureau shall prescribe  
11                   such rules and issue such guidance as may be nec-  
12                   essary to carry out, enforce, and compile data pursu-  
13                   ant to this section.

14                   “(2) EXCEPTIONS.—The Bureau, by rule or  
15                   order, may adopt exceptions to any requirement of  
16                   this section and may, conditionally or uncondition-  
17                   ally, exempt any financial institution or class of fi-  
18                   nancial institutions from the requirements of this  
19                   section, as the Bureau deems necessary or appro-  
20                   priate to carry out the purposes of this section.

21                   “(3) GUIDANCE.—The Bureau shall issue guid-  
22                   ance designed to facilitate compliance with the re-  
23                   quirements of this section, including assisting finan-  
24                   cial institutions in working with applicants to deter-

1 mine whether the applicants are women- or minor-  
2 ity-owned for purposes of this section.

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

5 “(1) FINANCIAL INSTITUTION.—The term ‘fi-  
6 nancial institution’ means any partnership, com-  
7 pany, corporation, association (incorporated or unin-  
8 corporated), trust, estate, cooperative organization,  
9 or other entity that engages in any financial activity.

10 “(2) MINORITY.—The term ‘minority’ has the  
11 same meaning as in section 1204(c)(3) of the Finan-  
12 cial Institutions Reform, Recovery, and Enforcement  
13 Act of 1989.

14 “(3) MINORITY-OWNED BUSINESS.—The term  
15 ‘minority-owned business’ means a business—

16 “(A) more than 50 percent of the owner-  
17 ship or control of which is held by 1 or more  
18 minority individuals; and

19 “(B) more than 50 percent of the net prof-  
20 it or loss of which accrues to 1 or more minor-  
21 ity individuals.

22 “(4) SMALL BUSINESS LOAN.—The term ‘small  
23 business loan’ shall be defined by the Bureau, which  
24 may take into account—

25 “(A) the gross revenues of the borrower;

1           “(B) the total number of employees of the  
2 borrower;

3           “(C) the industry in which the borrower  
4 has its primary operations; and

5           “(D) the size of the loan.

6           “(5) WOMEN-OWNED BUSINESS.—The term  
7 ‘women-owned business’ means a business—

8           “(A) more than 50 percent of the owner-  
9 ship or control of which is held by 1 or more  
10 women; and

11           “(B) more than 50 percent of the net prof-  
12 it or loss of which accrues to 1 or more  
13 women.”.

14           (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
15 Section 701(b) of the Equal Credit Opportunity Act (15  
16 U.S.C. 1691(b)) is amended—

17           (1) in paragraph (3), by striking “or” at the  
18 end;

19           (2) in paragraph (4), by striking the period at  
20 the end and inserting “; or”; and

21           (3) by inserting after paragraph (4), the fol-  
22 lowing:

23           “(5) to make an inquiry under section 704B, in  
24 accordance with the requirements of that section.”.

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1 (c) CLERICAL AMENDMENT.—The table of sections  
2 for title VII of the Consumer Credit Protection Act is  
3 amended by inserting after the item relating to section  
4 704A the following new item:

“704B. Small business loan data collection.”.

5 (d) EFFECTIVE DATE.—This section shall become ef-  
6 fective on the designated transfer date.

7 **SEC. 1072. GAO STUDY ON THE EFFECTIVENESS AND IM-**  
8 **PACT OF VARIOUS APPRAISAL METHODS.**

9 (a) IN GENERAL.—The Government Accountability  
10 Office shall conduct a study on the effectiveness and im-  
11 pact of—

12 (1) various appraisal methods, including the  
13 cost approach, the comparative sales approach, the  
14 income approach, and other methods that may be  
15 available; and

16 (2) the Home Valuation Code of Conduct (re-  
17 ferred to in this section as the “HVCC”).

18 (b) STUDY.—Not later than—

19 (1) 1 year after the date of enactment of this  
20 Act, the Government Accountability Office shall sub-  
21 mit a study to the Committee on Banking, Housing,  
22 and Urban Affairs of the Senate and the Committee  
23 on Financial Services of the House of Representa-  
24 tives;

1           (2) 90 days after the date of enactment of this  
2 Act, the Government Accountability Office shall pro-  
3 vide a report on the status of the study and any pre-  
4 liminary findings to the Committee on Banking,  
5 Housing, and Urban Affairs of the Senate and the  
6 Committee on Financial Services of the House of  
7 Representatives.

8           (c) CONTENT OF STUDY.—The study required by this  
9 section shall include an examination of—

10           (1) the prevalence, alone or in combination, of  
11 such appraisal approaches in purchase-money and  
12 refinance mortgage transactions;

13           (2) the accuracy of the various approaches in  
14 assessing the property as collateral;

15           (3) whether and how the approaches contrib-  
16 uted to price speculation in the previous cycle;

17           (4) the costs to consumers of these approaches;

18           (5) the disclosure of fees to consumers in the  
19 appraisal process;

20           (6) to what extent such approaches may be in-  
21 fluenced by a conflict of interest between the mort-  
22 gage lender and the appraiser and the mechanism by  
23 which the lender selects and compensates the ap-  
24 praiser;

1 (7) the suitability of appraisal approaches in  
2 rural versus urban areas;

3 (8) how the HVCC affects the selection of ap-  
4 praisers by mortgage lenders; and

5 (9) how the HVCC affects the performance of  
6 appraisers.

7 (d) CONFORMING AMENDMENTS.—Section 129(c) of  
8 the Truth in Lending Act (15 U.S.C. 1639(c)) is amend-  
9 ed—

10 (1) by striking paragraph (2);

11 (2) by striking “(1) IN GENERAL.—”; and

12 (3) by redesignating subparagraphs (A) and  
13 (B) as paragraphs (1) and (2), respectively.

14 **SEC. 1073. ASSISTANCE FOR ECONOMICALLY VULNERABLE**  
15 **INDIVIDUALS AND FAMILIES.**

16 (a) HERA AMENDMENTS.—Section 1132 of the  
17 Housing and Economic Recovery Act of 2008 (12 U.S.C.  
18 1701x note) is amended—

19 (1) in subsection (a), by inserting in each of  
20 paragraphs (1), (2), (3), and (4) “or economically  
21 vulnerable individuals and families” after “home-  
22 buyers” each place that term appears;

23 (2) in subsection (b)(1), by inserting “or eco-  
24 nomically vulnerable individuals and families” after  
25 “homebuyers”;



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1 (3) in subsection (c)(1)—

2 (A) in subparagraph (A), by striking “or”  
3 at the end;

4 (B) in subparagraph (B), by striking the  
5 period at the end and inserting “; or”; and

6 (C) by adding at the end the following:

7 “(C) a nonprofit corporation that—

8 “(i) is exempt from taxation under  
9 section 501(c)(3) of the Internal Revenue  
10 Code of 1986; and

11 “(ii) specializes or has expertise in  
12 working with economically vulnerable indi-  
13 viduals and families, but whose primary  
14 purpose is not provision of credit coun-  
15 seling services.”; and

16 (4) in subsection (d)(1), by striking “not more  
17 than 5”.

18 (b) APPLICABILITY.—Amendments made by sub-  
19 section (a) shall not apply to programs authorized by sec-  
20 tion 1132 of the Housing and Economic Recovery Act of  
21 2008 (12 U.S.C. 1701x note) that are funded with appro-  
22 priations prior to fiscal year 2011.

1 **SEC. 1074. REMITTANCE TRANSFERS.**

2 (a) TREATMENT OF REMITTANCE TRANSFERS.—The  
3 Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.)  
4 is amended—

5 (1) in section 902(b) (15 U.S.C. 1693(b)), by  
6 inserting “and remittance” after “electronic fund”;

7 (2) in section 904(c) (15 U.S.C. 1693b(c)), in  
8 the first sentence, by inserting “or remittance trans-  
9 fers” after “electronic fund transfers”;

10 (3) by redesignating sections 919, 920, 921,  
11 and 922 as sections 920, 921, 922, and 923, respec-  
12 tively; and

13 (4) by inserting after section 918 the following:

14 **“SEC. 919. REMITTANCE TRANSFERS.**

15 “(a) DISCLOSURES REQUIRED FOR REMITTANCE  
16 TRANSFERS.—

17 “(1) IN GENERAL.—Each remittance transfer  
18 provider shall make disclosures as required under  
19 this section and in accordance with rules prescribed  
20 by the Board. Disclosures required under this sec-  
21 tion shall be in addition to any other disclosures ap-  
22 plicable under this title.

23 “(2) DISCLOSURES.—Subject to rules pre-  
24 scribed by the Board, each a remittance transfer  
25 provider shall provide, in writing and in a form that

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1 the sender may keep, to each sender requesting a re-  
2 mittance transfer, as applicable to the transaction—

3 “(A) at the time at which the sender re-  
4 quests a remittance transfer to be initiated, and  
5 prior to the sender making any payment in con-  
6 nection with the remittance transfer, a disclo-  
7 sure describing the amount of currency that will  
8 be received by the designated recipient, using  
9 the values of the currency into which the funds  
10 will be exchanged; and

11 “(B) at the time at which the sender  
12 makes payment in connection with the remit-  
13 tance transfer—

14 “(i) a receipt showing—

15 “(I) the information described in  
16 subparagraph (A);

17 “(II) the promised date of deliv-  
18 ery to the designated recipient; and

19 “(III) the name and either the  
20 telephone number or the address of  
21 the designated recipient; and

22 “(ii) a statement containing—

23 “(I) information about the rights  
24 of the sender under this section re-  
25 garding the resolution of errors; and

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1 “(II) appropriate contact infor-  
2 mation for—

3 “(aa) the remittance trans-  
4 fer provider; and

5 “(bb) the State agency that  
6 regulates the remittance transfer  
7 provider and the Board, includ-  
8 ing the toll-free telephone num-  
9 ber established under section  
10 1013 of the Consumer Financial  
11 Protection Act of 2010.

12 “(3) REQUIREMENTS RELATING TO DISCLO-  
13 SURES.—With respect to each disclosure required to  
14 be provided under paragraph (2) a remittance trans-  
15 fer provider shall—

16 “(A) provide an initial notice and receipt,  
17 as required by subparagraphs (A) and (B) of  
18 paragraph (2), and an error resolution state-  
19 ment, as required by subsection (d), that clearly  
20 and conspicuously describe the information re-  
21 quired to be disclosed therein; and

22 “(B) with respect to any transaction that  
23 a sender conducts electronically, comply with  
24 the Electronic Signatures in Global and Na-  
25 tional Commerce Act (15 U.S.C. 7001 et seq.).

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1           “(4) EXCEPTION FOR DISCLOSURES OF  
2 AMOUNT RECEIVED.—

3           “(A) IN GENERAL.—Subject to the rules  
4 prescribed by the Board, and except as provided  
5 under subparagraph (B), the disclosures re-  
6 quired regarding the amount of currency that  
7 will be received by the designated recipient shall  
8 be deemed to be accurate, so long as the disclo-  
9 sures provide a reasonably accurate estimate of  
10 the foreign currency to be received. This para-  
11 graph shall apply only to a remittance transfer  
12 provider who is an insured depository institu-  
13 tion, as defined in section 3 of the Federal De-  
14 posit Insurance Act (12 U.S.C. 1813), or an in-  
15 sured credit union, as defined in section 101 of  
16 the Federal Credit Union Act (12 U.S.C.  
17 1752), and if—

18           “(i) a remittance transfer is con-  
19 ducted through a demand deposit, savings  
20 deposit, or other asset account that the  
21 sender holds with such remittance transfer  
22 provider; and

23           “(ii) at the time at which the sender  
24 requests the transaction, the remittance  
25 transfer provider is unable to know, for

1 reasons beyond its control, the amount of  
2 currency that will be made available to the  
3 designated recipient.

4 “(B) DEADLINE.—The application of sub-  
5 paragraph (A) shall terminate 5 years after the  
6 date of enactment of the Consumer Financial  
7 Protection Act of 2010, unless the Board deter-  
8 mines that termination of such provision would  
9 negatively affect the ability of remittance trans-  
10 fer providers described in subparagraph (A)(i)  
11 to send remittances to locations in foreign coun-  
12 tries, in which case, the Board may, by rule, ex-  
13 tend the application of subparagraph (A) to not  
14 longer than 10 years after the date of enact-  
15 ment of the Consumer Financial Protection Act  
16 of 2010.

17 “(5) EXEMPTION AUTHORITY.—The Board  
18 may, by rule, permit a remittance transfer provider  
19 to satisfy the requirements of—

20 “(A) paragraph (2)(A) orally, if the trans-  
21 action is conducted entirely by telephone;

22 “(B) paragraph (2)(B), in the case of a  
23 transaction conducted entirely by telephone, by  
24 mailing the disclosures required under such  
25 subparagraph to the sender, not later than 1

1 business day after the date on which the trans-  
2 action is conducted, or by including such docu-  
3 ments in the next periodic statement, if the  
4 telephone transaction is conducted through a  
5 demand deposit, savings deposit, or other asset  
6 account that the sender holds with the remit-  
7 tance transfer provider;

8 “(C) subparagraphs (A) and (B) of para-  
9 graph (2) together in one written disclosure,  
10 but only to the extent that the information pro-  
11 vided in accordance with paragraph (3)(A) is  
12 accurate at the time at which payment is made  
13 in connection with the subject remittance trans-  
14 fer; and

15 “(D) paragraph (2)(A), without compliance  
16 with section 101(c) of the Electronic Signatures  
17 in Global Commerce Act, if a sender initiates  
18 the transaction electronically and the informa-  
19 tion is displayed electronically in a manner that  
20 the sender can keep.

21 “(6) STOREFRONT AND INTERNET NOTICES.—

22 “(A) IN GENERAL.—

23 “(i) PROMINENT POSTING.—Subject  
24 to subparagraph (B), the Board may pre-  
25 scribe rules to require a remittance trans-

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1           fer provider to prominently post, and time-  
2           ly update, a notice describing a model re-  
3           mittance transfer for one or more  
4           amounts, as the Board may determine,  
5           which notice shall show the amount of cur-  
6           rency that will be received by the des-  
7           ignated recipient, using the values of the  
8           currency into which the funds will be ex-  
9           changed.

10           “(ii) ONSITE DISPLAYS.—The Board  
11           may require the notice prescribed under  
12           this subparagraph to be displayed in every  
13           physical storefront location owned or con-  
14           trolled by the remittance transfer provider.

15           “(iii) INTERNET NOTICES.—Subject to  
16           paragraph (3), the Board may prescribe  
17           rules to require a remittance transfer pro-  
18           vider that providers remittance transfers  
19           via the Internet to provide a notice, com-  
20           parable to a storefront notice described in  
21           this subparagraph, located on the home  
22           page or landing page (with respect to such  
23           remittance transfer services) owned or con-  
24           trolled by the remittance transfer provider.



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1           “(iv) RULEMAKING AUTHORITY.—In  
2           prescribing rules under this subparagraph,  
3           the Board may impose standards or re-  
4           quirements regarding the provision of the  
5           storefront and Internet notices required  
6           under this subparagraph and the provision  
7           of the disclosures required under para-  
8           graphs (2) and (3).

9           “(B) STUDY AND ANALYSIS.—Prior to pro-  
10          posing rules under subparagraph (A), the  
11          Board shall undertake appropriate studies and  
12          analyses, which shall be consistent with section  
13          904(a)(2), and may include an advanced notice  
14          of proposed rulemaking, to determine whether a  
15          storefront notice or Internet notice facilitates  
16          the ability of a consumer—

17                 “(i) to compare prices for remittance  
18                 transfers; and

19                 “(ii) to understand the types and  
20                 amounts of any fees or costs imposed on  
21                 remittance transfers.

22          “(b) FOREIGN LANGUAGE DISCLOSURES.—The dis-  
23          losures required under this section shall be made in  
24          English and in each of the same foreign languages prin-  
25          cipally used by the remittance transfer provider, or any

1 of its agents, to advertise, solicit, or market, either orally  
2 or in writing, at that office.

3 “(c) REGULATIONS REGARDING TRANSFERS TO CER-  
4 TAIN NATIONS.—If the Board determines that a recipient  
5 nation does not legally allow a remittance transfer pro-  
6 vider to know the amount of currency that will be received  
7 by the designated recipient, the Board may prescribe rules  
8 (not later than 18 months after the date of enactment of  
9 the Consumer Financial Protection Act of 2010) to ad-  
10 dress the issue, which rules shall include standards for a  
11 remittance transfer provider to provide—

12 “(1) a receipt that is consistent with sub-  
13 sections (a) and (b); and

14 “(2) a reasonably accurate estimate of the for-  
15 eign currency to be received, based on the rate pro-  
16 vided to the sender by the remittance transfer pro-  
17 vider at the time at which the transaction was initi-  
18 ated by the sender.

19 “(d) REMITTANCE TRANSFER ERRORS.—

20 “(1) ERROR RESOLUTION.—

21 “(A) IN GENERAL.—If a remittance trans-  
22 fer provider receives oral or written notice from  
23 the sender within 180 days of the promised  
24 date of delivery that an error occurred with re-  
25 spect to a remittance transfer, including the

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1 amount of currency designated in subsection  
2 (a)(3)(A) that was to be sent to the designated  
3 recipient of the remittance transfer, using the  
4 values of the currency into which the funds  
5 should have been exchanged, but was not made  
6 available to the designated recipient in the for-  
7 eign country, the remittance transfer provider  
8 shall resolve the error pursuant to this sub-  
9 section and investigate the reason for the error.

10 “(B) REMEDIES.—Not later than 90 days  
11 after the date of receipt of a notice from the  
12 sender pursuant to subparagraph (A), the re-  
13 mittance transfer provider shall, as applicable  
14 to the error and as designated by the sender—

15 “(i) refund to the sender the total  
16 amount of funds tendered by the sender in  
17 connection with the remittance transfer  
18 which was not properly transmitted;

19 “(ii) make available to the designated  
20 recipient, without additional cost to the  
21 designated recipient or to the sender, the  
22 amount appropriate to resolve the error;

23 “(iii) provide such other remedy, as  
24 determined appropriate by rule of the  
25 Board for the protection of senders; or

1                   “(iv) provide written notice to the  
2                   sender that there was no error with an ex-  
3                   planation responding to the specific com-  
4                   plaint of the sender.

5                   “(2) RULES.—The Board shall establish, by  
6                   rule issued not later than 18 months after the date  
7                   of enactment of the Consumer Financial Protection  
8                   Act of 2010, clear and appropriate standards for re-  
9                   mittance transfer providers with respect to error res-  
10                  olution relating to remittance transfers, to protect  
11                  senders from such errors. Standards prescribed  
12                  under this paragraph shall include appropriate  
13                  standards regarding record keeping, as required, in-  
14                  cluding documentation—

15                         “(A) of the complaint of the sender;

16                         “(B) that the sender provides the remit-  
17                         tance transfer provider with respect to the al-  
18                         leged error; and

19                         “(C) of the findings of the remittance  
20                         transfer provider regarding the investigation of  
21                         the alleged error that the sender brought to  
22                         their attention.

23                   “(3) CANCELLATION AND REFUND POLICY  
24                   RULES.—Not later than 18 months after the date of  
25                   enactment of the Consumer Financial Protection Act

1 of 2010, the Board shall issue final rules regarding  
2 appropriate remittance transfer cancellation and re-  
3 fund policies for consumers.

4 “(e) APPLICABILITY OF THIS TITLE.—

5 “(1) IN GENERAL.—A remittance transfer that  
6 is not an electronic fund transfer, as defined in sec-  
7 tion 903, shall not be subject to any of the provi-  
8 sions of sections 905 through 913. A remittance  
9 transfer that is an electronic fund transfer, as de-  
10 fined in section 903, shall be subject to all provisions  
11 of this title, except for section 908, that are other-  
12 wise applicable to electronic fund transfers under  
13 this title.

14 “(2) RULE OF CONSTRUCTION.—Nothing in  
15 this section shall be construed—

16 “(A) to affect the application to any trans-  
17 action, to any remittance provider, or to any  
18 other person of any of the provisions of sub-  
19 chapter II of chapter 53 of title 31, United  
20 States Code, section 21 of the Federal Deposit  
21 Insurance Act (12 U.S.C. 1829b), or chapter 2  
22 of title I of Public Law 91–508 (12 U.S.C.  
23 1951–1959), or any regulations promulgated  
24 thereunder; or

1           “(B) to cause any fund transfer that would  
2           not otherwise be treated as such under para-  
3           graph (1) to be treated as an electronic fund  
4           transfer, or as otherwise subject to this title, for  
5           the purposes of any of the provisions referred to  
6           in subparagraph (A) or any regulations promul-  
7           gated thereunder.

8           “(f) ACTS OF AGENTS.—

9           “(1) IN GENERAL.—A remittance transfer pro-  
10          vider shall be liable for any violation of this section  
11          by any agent, authorized delegate, or person affili-  
12          ated with such provider, when such agent, author-  
13          ized delegate, or affiliate acts for that remittance  
14          transfer provider.

15          “(2) OBLIGATIONS OF REMITTANCE TRANSFER  
16          PROVIDERS.—The Bureau may prescribe rules to  
17          implement appropriate standards or conditions of, li-  
18          ability of a remittance transfer provider, including a  
19          provider who acts through an agent or authorized  
20          delegate. An agency charged with enforcing the re-  
21          quirements of this section, or rules prescribed by the  
22          Bureau under this section, may consider, in any ac-  
23          tion or other proceeding against a remittance trans-  
24          fer provider, the extent to which the provider had es-  
25          tablished and maintained policies or procedures for

1 compliance, including policies, procedures, or other  
2 appropriate oversight measures designed to assure  
3 compliance by an agent or authorized delegate act-  
4 ing for such provider.

5 “(g) DEFINITIONS.—As used in this section—

6 “(1) the term ‘designated recipient’ means any  
7 person located in a foreign country and identified by  
8 the sender as the authorized recipient of a remit-  
9 tance transfer to be made by a remittance transfer  
10 provider, except that a designated recipient shall not  
11 be deemed to be a consumer for purposes of this  
12 Act;

13 “(2) the term ‘remittance transfer’—

14 “(A) means the electronic (as defined in  
15 section 106(2) of the Electronic Signatures in  
16 Global and National Commerce Act (15 U.S.C.  
17 7006(2))) transfer of funds requested by a  
18 sender located in any State to a designated re-  
19 cipient that is initiated by a remittance transfer  
20 provider, whether or not the sender holds an ac-  
21 count with the remittance transfer provider or  
22 whether or not the remittance transfer is also  
23 an electronic fund transfer, as defined in sec-  
24 tion 903; and

1           “(B) does not include a transfer described  
2           in subparagraph (A) in an amount that is equal  
3           to or lesser than the amount of a small-value  
4           transaction determined, by rule, to be excluded  
5           from the requirements under section 906(a);

6           “(3) the term ‘remittance transfer provider’  
7           means any person or financial institution that pro-  
8           vides remittance transfers for a consumer in the nor-  
9           mal course of its business, whether or not the con-  
10          sumer holds an account with such person or finan-  
11          cial institution; and

12          “(4) the term ‘sender’ means a consumer who  
13          requests a remittance provider to send a remittance  
14          transfer for the consumer to a designated recipi-  
15          ent.”.

16          (b) AUTOMATED CLEARINGHOUSE SYSTEM.—

17                 (1) EXPANSION OF SYSTEM.—The Board of  
18          Governors shall work with the Federal reserve banks  
19          and the Department of the Treasury to expand the  
20          use of the automated clearinghouse system and  
21          other payment mechanisms for remittance transfers  
22          to foreign countries, with a focus on countries that  
23          receive significant remittance transfers from the  
24          United States, based on—



1 (A) the number, volume, and size of such  
2 transfers;

3 (B) the significance of the volume of such  
4 transfers relative to the external financial flows  
5 of the receiving country, including—

6 (i) the total amount transferred; and

7 (ii) the total volume of payments  
8 made by United States Government agen-  
9 cies to beneficiaries and retirees living  
10 abroad;

11 (C) the feasibility of such an expansion;

12 and

13 (D) the ability of the Federal Reserve Sys-  
14 tem to establish payment gateways in different  
15 geographic regions and currency zones to re-  
16 ceive remittance transfers and route them  
17 through the payments systems in the destina-  
18 tion countries.

19 (2) REPORT TO CONGRESS.—Not later than one  
20 calendar year after the date of enactment of this  
21 Act, and on April 30 biennially thereafter during the  
22 10-year period beginning on that date of enactment,  
23 the Board of Governors shall submit a report to the  
24 Committee on Banking, Housing, and Urban Affairs  
25 of the Senate and the Committee on Financial Serv-

1       ices of the House of Representatives on the status  
2       of the automated clearinghouse system and its  
3       progress in complying with the requirements of this  
4       subsection. The report shall include an analysis of  
5       adoption rates of International ACH Transactions  
6       rules and formats, the efficacy of increasing adop-  
7       tion rates, and potential recommendations to in-  
8       crease adoption.

9       (c) EXPANSION OF FINANCIAL INSTITUTION PROVI-  
10      SION OF REMITTANCE TRANSFERS.—

11           (1) PROVISION OF GUIDELINES TO INSTITU-  
12      TIONS.—Each of the Federal banking agencies and  
13      the National Credit Union Administration shall pro-  
14      vide guidelines to financial institutions under the ju-  
15      risdiction of the agency regarding the offering of  
16      low-cost remittance transfers and no-cost or low-cost  
17      basic consumer accounts, as well as agency services  
18      to remittance transfer providers.

19           (2) ASSISTANCE TO FINANCIAL LITERACY COM-  
20      MISSION.—As part of its duties as members of the  
21      Financial Literacy and Education Commission, the  
22      Bureau, the Federal banking agencies, and the Na-  
23      tional Credit Union Administration shall assist the  
24      Financial Literacy and Education Commission in  
25      executing the Strategy for Assuring Financial Em-

1 powerment (or the “SAFE Strategy”), as it relates  
2 to remittances.

3 (d) FEDERAL CREDIT UNION ACT CONFORMING  
4 AMENDMENT.—Paragraph (12) of section 107 of the Fed-  
5 eral Credit Union Act (12 U.S.C. 1757) is amended to  
6 read as follows:

7 “(12) in accordance with regulations prescribed  
8 by the Board—

9 “(A) to sell, to persons in the field of  
10 membership, negotiable checks (including trav-  
11 elers checks), money orders, and other similar  
12 money transfer instruments (including inter-  
13 national and domestic electronic fund transfers  
14 and remittance transfers, as defined in section  
15 919 of the Electronic Fund Transfer Act); and

16 “(B) to cash checks and money orders for  
17 persons in the field of membership for a fee;”.

18 (e) REPORT ON FEASIBILITY OF AND IMPEDIMENTS  
19 TO USE OF REMITTANCE HISTORY IN CALCULATION OF  
20 CREDIT SCORE.—Before the end of the 365-day period  
21 beginning on the date of enactment of this Act, the Direc-  
22 tor shall submit a report to the President, the Committee  
23 on Banking, Housing, and Urban Affairs of the Senate,  
24 and the Committee on Financial Services of the House of  
25 Representatives regarding—

1           (1) the manner in which the remittance history  
2 of a consumer could be used to enhance the credit  
3 score of the consumer;

4           (2) the current legal and business model bar-  
5 riers and impediments that impede the use of the re-  
6 mittance history of the consumer to enhance the  
7 credit score of the consumer; and

8           (3) recommendations on the manner in which  
9 maximum transparency and disclosure to consumers  
10 of exchange rates for remittance transfers subject to  
11 this title and the amendments made by this title  
12 may be accomplished, whether or not such exchange  
13 rates are known at the time of origination or pay-  
14 ment by the consumer for the remittance transfer,  
15 including disclosure to the sender of the actual ex-  
16 change rate used and the amount of currency that  
17 the recipient of the remittance transfer received,  
18 using the values of the currency into which the  
19 funds were exchanged, as contained in sections  
20 919(a)(2)(D) and 919(a)(3) of the Electronic Fund  
21 Transfer Act (as amended by this section).

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1 **SEC. 1075. DEPARTMENT OF THE TREASURY STUDY ON**  
2 **ENDING THE CONSERVATORSHIP OF FANNIE**  
3 **MAE, FREDDIE MAC, AND REFORMING THE**  
4 **HOUSING FINANCE SYSTEM.**

5 (a) STUDY REQUIRED.—

6 (1) IN GENERAL.—The Secretary of the Treas-  
7 ury shall conduct a study of and develop rec-  
8 ommendations regarding the options for ending the  
9 conservatorship of the Federal National Mortgage  
10 Association (in this section referred to as “Fannie  
11 Mae”) and the Federal Home Loan Mortgage Cor-  
12 poration (in this section referred to as “Freddie  
13 Mac”), while minimizing the cost to taxpayers, in-  
14 cluding such options as—

15 (A) the gradual wind-down and liquidation  
16 of such entities;

17 (B) the privatization of such entities;

18 (C) the incorporation of the functions of  
19 such entities into a Federal agency;

20 (D) the dissolution of Fannie Mae and  
21 Freddie Mac into smaller companies; or

22 (E) any other measures the Secretary de-  
23 termines appropriate.

24 (2) ANALYSES.—The study required under  
25 paragraph (1) shall include an analysis of—

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1 (A) the role of the Federal Government in  
2 supporting a stable, well-functioning housing fi-  
3 nance system, and whether and to what extent  
4 the Federal Government should bear risks in  
5 meeting Federal housing finance objectives;

6 (B) how the current structure of the hous-  
7 ing finance system can be improved;

8 (C) how the housing finance system should  
9 support the continued availability of mortgage  
10 credit to all segments of the market;

11 (D) how the housing finance system should  
12 be structured to ensure that consumers con-  
13 tinue to have access to 30-year, fixed rate, pre-  
14 payable mortgages and other mortgage products  
15 that have simple terms that can be easily un-  
16 derstood;

17 (E) the role of the Federal Housing Ad-  
18 ministration and the Department of Veterans  
19 Affairs in a future housing system;

20 (F) the impact of reforms of the housing  
21 finance system on the financing of rental hous-  
22 ing;

23 (G) the impact of reforms of the housing  
24 finance system on secondary market liquidity;

1 (H) the role of standardization in the  
2 housing finance system;

3 (I) how housing finance systems in other  
4 countries offer insights that can help inform op-  
5 tions for reform in the United States; and

6 (J) the options for transition to a reformed  
7 housing finance system.

8 (b) REPORT AND RECOMMENDATIONS.—Not later  
9 than January 31, 2011, the Secretary of the Treasury  
10 shall submit the report and recommendations required  
11 under subsection (a) to the Committee on Banking, Hous-  
12 ing, and Urban Affairs of the Senate and the Committee  
13 on Financial Services of the House of Representatives.

14 **SEC. 1076. REASONABLE FEES AND RULES FOR PAYMENT**  
15 **CARD TRANSACTIONS.**

16 The Electronic Fund Transfer Act (15 U.S.C. 1693  
17 et seq.) is amended—

18 (1) by redesignating sections 920 and 921 as  
19 sections 921 and 922, respectively; and

20 (2) by inserting after section 919 the following:

21 **“SEC. 920. REASONABLE FEES AND RULES FOR PAYMENT**  
22 **CARD TRANSACTIONS.**

23 **“(a) REASONABLE INTERCHANGE TRANSACTION**  
24 **FEES FOR ELECTRONIC DEBIT TRANSACTIONS.—**

1           “(1) REGULATORY AUTHORITY.—The Board  
2 shall have authority to establish rules, pursuant to  
3 section 553 of title 5, United States Code, regarding  
4 any interchange transaction fee that an issuer or  
5 payment card network may charge with respect to  
6 an electronic debit transaction.

7           “(2) REASONABLE FEES.—The amount of any  
8 interchange transaction fee that an issuer or pay-  
9 ment card network may charge with respect to an  
10 electronic debit transaction shall be reasonable and  
11 proportional to the actual cost incurred by the issuer  
12 or payment card network with respect to the trans-  
13 action.

14           “(3) RULEMAKING REQUIRED.—The Board  
15 shall issue final rules, not later than 9 months after  
16 the date of enactment of the Consumer Financial  
17 Protection Act of 2010, to establish standards for  
18 assessing whether the amount of any interchange  
19 transaction fee described in paragraph (2) is reason-  
20 able and proportional to the actual cost incurred by  
21 the issuer or payment card network with respect to  
22 the transaction.

23           “(4) CONSIDERATIONS.—In issuing rules re-  
24 quired by this section, the Board shall—



1           “(A) consider the functional similarity be-  
2           tween—

3                   “(i) electronic debit transactions; and

4                   “(ii) checking transactions that are  
5                   required within the Federal Reserve bank  
6                   system to clear at par;

7           “(B) distinguish between—

8                   “(i) the actual incremental cost in-  
9                   curred by an issuer or payment card net-  
10                  work for the role of the issuer or the pay-  
11                  ment card network in the authorization,  
12                  clearance, or settlement of a particular  
13                  electronic debit transaction, which cost  
14                  shall be considered under paragraph (2);  
15                  and

16                  “(ii) other costs incurred by an issuer  
17                  or payment card network which are not  
18                  specific to a particular electronic debit  
19                  transaction, which costs shall not be con-  
20                  sidered under paragraph (2); and

21           “(C) consult, as appropriate, with the  
22           Comptroller of the Currency, the Board of Di-  
23           rectors of the Federal Deposit Insurance Cor-  
24           poration, the Director of the Office of Thrift  
25           Supervision, the National Credit Union Admin-

1           istration Board, the Administrator of the Small  
2           Business Administration, and the Director of  
3           the Bureau of Consumer Financial Protection.

4           “(5) EXEMPTION FOR SMALL ISSUERS.—This  
5           subsection shall not apply to issuers that, together  
6           with affiliates, have assets of less than  
7           \$10,000,000,000, and the Board shall exempt such  
8           issuers from rules issued under paragraph (3).

9           “(6) EFFECTIVE DATE.—Paragraph (2) shall  
10          become effective 12 months after the date of enact-  
11          ment of the Consumer Financial Protection Act of  
12          2010.

13          “(b) LIMITATION ON ANTI-COMPETITIVE PAYMENT  
14          CARD NETWORK RESTRICTIONS.—

15          “(1) NO RESTRICTIONS ON OFFERING DIS-  
16          COUNTS FOR USE OF A COMPETING PAYMENT CARD  
17          NETWORK.—A payment card network shall not, di-  
18          rectly or through any agent, processor, or licensed  
19          member of the network, by contract, requirement,  
20          condition, penalty, or otherwise, inhibit the ability of  
21          any person to provide a discount or in-kind incentive  
22          for payment through the use of a card or device of  
23          another payment card network, provided that the  
24          discount or in-kind incentive only differentiates be-

1           tween payment card networks and not between other  
2           issuers.

3           “(2) NO RESTRICTIONS ON OFFERING DIS-  
4           COUNTS FOR USE OF A FORM OF PAYMENT.—A pay-  
5           ment card network shall not, directly or through any  
6           agent, processor, or licensed member of the network,  
7           by contract, requirement, condition, penalty, or oth-  
8           erwise, inhibit the ability of any person to provide a  
9           discount or in-kind incentive for payment by the use  
10          of cash, check, debit card, or credit card.

11          “(3) NO RESTRICTIONS ON SETTING TRANS-  
12          ACTION MINIMUMS OR MAXIMUMS.—A payment card  
13          network shall not, directly or through any agent,  
14          processor, or licensed member of the network, by  
15          contract, requirement, condition, penalty, or other-  
16          wise, inhibit the ability of any person to set a min-  
17          imum or maximum dollar value for the acceptance  
18          by that person of credit cards, provided that such  
19          minimum or maximum dollar value does not dif-  
20          ferentiate between issuers or between payment card  
21          networks.

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

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

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1           “(A) means any card, or other payment  
2           code or device, issued or approved for use  
3           through a payment card network to debit an  
4           asset account for the purpose of transferring  
5           money between accounts or obtaining goods or  
6           services, whether authorization is based on sig-  
7           nature, PIN, or other means;

8           “(B) includes general use prepaid cards, as  
9           that term is defined in section 915(a)(2)(A) (15  
10          U.S.C. 1693l-1(a)(2)(A)); and

11          “(C) does not include paper checks.

12          “(2) CREDIT CARD.—The term ‘credit card’ has  
13          the same meaning as in section 103 of the Truth in  
14          Lending Act (15 U.S.C. 1602).

15          “(3) DISCOUNT.—The term ‘discount’—

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

19                 “(B) does not include any means of in-  
20                 creasing the price that customers are informed  
21                 is the regular price.

22          “(4) ELECTRONIC DEBIT TRANSACTION.—The  
23          term ‘electronic debit transaction’ means a trans-  
24          action in which a person uses a debit card to debit  
25          an asset account.

1           “(5) INTERCHANGE TRANSACTION FEE.—The  
2 term ‘interchange transaction fee’ means any fee es-  
3 tablished by a payment card network that has been  
4 established for the purpose of compensating an  
5 issuer or payment card network for its involvement  
6 in an electronic debit transaction.

7           “(6) ISSUER.—The term ‘issuer’ means any  
8 person who issues a debit card, or credit card, or the  
9 agent of such person with respect to such card.

10           “(7) PAYMENT CARD NETWORK.—The term  
11 ‘payment card network’ means an entity that di-  
12 rectly, or through licensed members, processors, or  
13 agents, provides the proprietary services, infrastruc-  
14 ture, and software that route information and data  
15 to conduct transaction authorization, clearance, and  
16 settlement, and that a person uses in order to accept  
17 as a form of payment a brand of debit card, credit  
18 card or other device that may be used to carry out  
19 debit or credit transactions.”.

20 **SEC. 1077. USE OF CONSUMER REPORTS.**

21           Section 615 of the Fair Credit Reporting Act (15  
22 U.S.C. 1681m) is amended—

23           (1) in subsection (a)—

24                   (A) by redesignating paragraphs (2) and

25                   (3) as paragraphs (3) and (4), respectively;

1 (B) by inserting after paragraph (1) the  
2 following:

3 “(2) provide to the consumer written or elec-  
4 tronic disclosure—

5 “(A) of a numerical credit score as defined  
6 in section 609(f)(2)(A) used by such person in  
7 taking any adverse action based in whole or in  
8 part on any information in a consumer report;  
9 and

10 “(B) of the information set forth in sub-  
11 paragraphs (B) through (E) of section  
12 609(f)(1);” and

13 (C) in paragraph (4) (as so redesignated),  
14 by striking “paragraph (2)” and inserting  
15 “paragraph (3)”; and  
16 (2) in subsection (h)(5)—

17 (A) in subparagraph (C), by striking “;  
18 and” and inserting a semicolon;

19 (B) in subparagraph (D), by striking the  
20 period and inserting “; and”; and

21 (C) by inserting at the end the following:

22 “(E) include a statement informing the  
23 consumer of—

24 “(i) a numerical credit score as de-  
25 fined in section 609(f)(2)(A), used by such

1 person in making the credit decision de-  
2 scribed in paragraph (1) based in whole or  
3 in part on any information in a consumer  
4 report; and

5 “(ii) the information set forth in sub-  
6 paragraphs (B) through (E) of section  
7 609(f)(1).”.

8 **SEC. 1078. REPORT ON PRIVATE EDUCATION LOANS AND**  
9 **PRIVATE EDUCATIONAL LENDERS.**

10 (a) REPORT.—Not later than 2 years after the date  
11 of enactment of this Act, the Director and the Secretary  
12 of Education, in consultation with the Commissioners of  
13 the Federal Trade Commission, and the Attorney General  
14 of the United States, shall submit a report to the Com-  
15 mittee on Banking, Housing, and Urban Affairs and the  
16 Committee on Health, Education, Labor, and Pensions of  
17 the Senate and the Committee on Financial Services and  
18 the Committee on Education and Labor of the House of  
19 Representatives, on private education loans (as that term  
20 is defined in section 140 of the Truth in Lending Act (15  
21 U.S.C. 1650)) and private educational lenders (as that  
22 term is defined in such section).

23 (b) CONTENT.—The report required by this section  
24 shall examine, at a minimum—

1           (1) the growth and changes of the private edu-  
2           cation loan market in the United States;

3           (2) factors influencing such growth and  
4           changes;

5           (3) the extent to which students and parents of  
6           students rely on private education loans to finance  
7           postsecondary education and the private education  
8           loan indebtedness of borrowers;

9           (4) the characteristics of private education loan  
10          borrowers, including—

11                 (A) the types of institutions of higher edu-  
12                 cation that they attend;

13                 (B) socioeconomic characteristics (includ-  
14                 ing income and education levels, racial charac-  
15                 teristics, geographical background, age, and  
16                 gender);

17                 (C) what other forms of financing bor-  
18                 rowers use to pay for education;

19                 (D) whether they exhaust their Federal  
20                 loan options before taking out a private loan;

21                 (E) whether such borrowers are dependent  
22                 or independent students (as determined under  
23                 part F of title IV of the Higher Education Act  
24                 of 1965) or parents of such students;



1 (F) whether such borrowers are students  
2 enrolled in a program leading to a certificate, li-  
3 cense, or credential other than a degree, an as-  
4 sociates degree, a baccalaureate degree, or a  
5 graduate or professional degree; and

6 (G) if practicable, employment and repay-  
7 ment behaviors;

8 (5) the characteristics of private educational  
9 lenders, including whether such creditors are for-  
10 profit, non-profit, or institutions of higher education;

11 (6) the underwriting criteria used by private  
12 educational lenders, including the use of cohort de-  
13 fault rate (as such term is defined in section 435(m)  
14 of the Higher Education Act of 1965);

15 (7) the terms, conditions, and pricing of private  
16 education loans;

17 (8) the consumer protections available to pri-  
18 vate education loan borrowers, including the effec-  
19 tiveness of existing disclosures and requirements and  
20 borrowers' awareness and understanding about  
21 terms and conditions of various financial products;

22 (9) whether Federal regulators and the public  
23 have access to information sufficient to provide them  
24 with assurances that private education loans are  
25 provided in accord with the Nation's fair lending

1 laws and that allows public officials to determine  
2 lender compliance with fair lending laws; and

3 (10) any statutory or legislative recommenda-  
4 tions necessary to improve consumer protections for  
5 private education loan borrowers and to better en-  
6 able Federal regulators and the public to ascertain  
7 private educational lender compliance with fair lend-  
8 ing laws.

9 **SEC. 1079. STUDY AND REPORT ON CREDIT SCORES.**

10 (a) **STUDY.**—The Bureau shall conduct a study on  
11 the nature, range, and size of variations between the credit  
12 scores sold to creditors and those sold to consumers by  
13 consumer reporting agencies that compile and maintain  
14 files on consumers on a nationwide basis (as defined in  
15 section 603(p) of the Fair Credit Reporting Act; 15  
16 U.S.C. 1681a(p)), and whether such variations disadvan-  
17 tage consumers.

18 (b) **REPORT TO CONGRESS.**—The Bureau shall sub-  
19 mit a report to Congress on the results of the study con-  
20 ducted under subsection (a) not later than 1 year after  
21 the date of enactment of this Act.

1                   **Subtitle H—Conforming**  
2                   **Amendments**

3 **SEC. 1081. AMENDMENTS TO THE INSPECTOR GENERAL**  
4                   **ACT.**

5           Effective on the date of enactment of this Act, the  
6 Inspector General Act of 1978 (5 U.S.C. App. 3) is  
7 amended—

8           (1) in section 8G(a)(2), by inserting “and the  
9 Bureau of Consumer Financial Protection” after  
10 “Board of Governors of the Federal Reserve Sys-  
11 tem”;

12           (2) in section 8G(e), by adding at the end the  
13 following: “For purposes of implementing this sec-  
14 tion, the Chairman of the Board of Governors of the  
15 Federal Reserve System shall appoint the Inspector  
16 General of the Board of Governors of the Federal  
17 Reserve System and the Bureau of Consumer Finan-  
18 cial Protection. The Inspector General of the Board  
19 of Governors of the Federal Reserve System and the  
20 Bureau of Consumer Financial Protection shall have  
21 all of the authorities and responsibilities provided by  
22 this Act with respect to the Bureau of Consumer Fi-  
23 nancial Protection, as if the Bureau were part of the  
24 Board of Governors of the Federal Reserve Sys-  
25 tem.”; and

1           (3) in section 8G(g)(3), by inserting “and the  
2 Bureau of Consumer Financial Protection” after  
3 “Board of Governors of the Federal Reserve Sys-  
4 tem” the first place that term appears.

5 **SEC. 1082. AMENDMENTS TO THE PRIVACY ACT OF 1974.**

6           Effective on the date of enactment of this Act, section  
7 552a of title 5, United States Code, is amended by adding  
8 at the end the following:

9           “(w) APPLICABILITY TO BUREAU OF CONSUMER FI-  
10 NANCIAL PROTECTION.—Except as provided in the Con-  
11 sumer Financial Protection Act of 2010, this section shall  
12 apply with respect to the Bureau of Consumer Financial  
13 Protection.”.

14 **SEC. 1083. AMENDMENTS TO THE ALTERNATIVE MORT-  
15 GAGE TRANSACTION PARITY ACT OF 1982.**

16           (a) IN GENERAL.—The Alternative Mortgage Trans-  
17 action Parity Act of 1982 (12 U.S.C. 3801 et seq.) is  
18 amended—

19           (1) in section 803 (12 U.S.C. 3802(1)), by  
20 striking “1974” and all that follows through “de-  
21 scribed and defined” and inserting the following:  
22 “1974), in which the interest rate or finance charge  
23 may be adjusted or renegotiated, described and de-  
24 fined”; and

25           (2) in section 804 (12 U.S.C. 3803)—

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1 (A) in subsection (a)—

2 (i) in each of paragraphs (1), (2), and  
3 (3), by inserting after “transactions made”  
4 each place that term appears “on or before  
5 the designated transfer date, as deter-  
6 mined under section 1062 of the Consumer  
7 Financial Protection Act of 2010,”;

8 (ii) in paragraph (2), by striking  
9 “and” at the end;

10 (iii) in paragraph (3), by striking the  
11 period at the end and inserting “; and”;  
12 and

13 (iv) by adding at the end the following  
14 new paragraph:

15 “(4) with respect to transactions made after the  
16 designated transfer date, only in accordance with  
17 regulations governing alternative mortgage trans-  
18 actions, as issued by the Bureau of Consumer Fi-  
19 nancial Protection for federally chartered housing  
20 creditors, in accordance with the rulemaking author-  
21 ity granted to the Bureau of Consumer Financial  
22 Protection with regard to federally chartered hous-  
23 ing creditors under provisions of law other than this  
24 section.”;

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1 (B) by striking subsection (c) and insert-  
2 ing the following:

3 “(c) PREEMPTION OF STATE LAW.—An alternative  
4 mortgage transaction may be made by a housing creditor  
5 in accordance with this section, notwithstanding any State  
6 constitution, law, or regulation that prohibits an alter-  
7 native mortgage transaction. For purposes of this sub-  
8 section, a State constitution, law, or regulation that pro-  
9 hibits an alternative mortgage transaction does not in-  
10 clude any State constitution, law, or regulation that regu-  
11 lates mortgage transactions generally, including any re-  
12 striction on prepayment penalties or late charges.”; and

13 (C) by adding at the end the following:

14 “(d) BUREAU ACTIONS.—The Bureau of Consumer  
15 Financial Protection shall—

16 “(1) review the regulations identified by the  
17 Comptroller of the Currency and the National Credit  
18 Union Administration, (as those rules exist on the  
19 designated transfer date), as applicable under para-  
20 graphs (1) through (3) of subsection (a);

21 “(2) determine whether such regulations are  
22 fair and not deceptive and otherwise meet the objec-  
23 tives of the Consumer Financial Protection Act of  
24 2010; and

1           “(3) promulgate regulations under subsection  
2           (a)(4) after the designated transfer date.

3           “(e) DESIGNATED TRANSFER DATE.—As used in  
4 this section, the term ‘designated transfer date’ means the  
5 date determined under section 1062 of the Consumer Fi-  
6 nancial Protection Act of 2010.”.

7           (b) EFFECTIVE DATE.—This section and the amend-  
8 ments made by this section shall become effective on the  
9 designated transfer date.

10          (c) RULE OF CONSTRUCTION.—The amendments  
11 made by subsection (a) shall not affect any transaction  
12 covered by the Alternative Mortgage Transaction Parity  
13 Act of 1982 (12 U.S.C. 3801 et seq.) and entered into on  
14 or before the designated transfer date.

15 **SEC. 1084. AMENDMENTS TO THE ELECTRONIC FUND**  
16 **TRANSFER ACT.**

17          The Electronic Fund Transfer Act (15 U.S.C. 1693  
18 et seq.) is amended—

19           (1) by striking “Board” each place that term  
20 appears and inserting “Bureau”, except in section  
21 918 (as so designated by the Credit Card Act of  
22 2009) (15 U.S.C. 1693o);

23           (2) in section 903 (15 U.S.C. 1693a)—

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1 (A) by redesignating paragraphs (3)  
2 through (11) as paragraphs (4) through (12),  
3 respectively; and

4 (B) by inserting after paragraph (3) the  
5 following:

6 “(4) the term ‘Bureau’ means the Bureau of  
7 Consumer Financial Protection;”;

8 (3) in section 904(a) (15 U.S.C. 1693b(a)), in  
9 subsection (a), by striking “(a) PRESCRIPTION BY  
10 BOARD.—The Board shall prescribe regulations to  
11 carry out the purposes of this title.” and inserting  
12 the following:

13 “(a) PRESCRIPTION BY THE BUREAU.—The Bureau  
14 shall prescribe regulations to carry out the purposes of  
15 this title.”;

16 (4) in section 916(d) (as so designated by the  
17 Credit CARD Act of 2009) (15 U.S.C. 1693m)—

18 (A) in the subsection heading, by striking  
19 “OF BOARD OR APPROVAL OF DULY AUTHOR-  
20 IZED OFFICIAL OR EMPLOYEE OF FEDERAL  
21 RESERVE SYSTEM”;

22 (B) by inserting “Bureau or the” before  
23 “Board” each place that term appears; and



1 (C) by inserting “Bureau of Consumer Fi-  
2 nancial Protection or the” before “Federal Re-  
3 serve System”; and

4 (5) in section 918 (as so designated by the  
5 Credit CARD Act of 2009) (15 U.S.C. 1693o)—

6 (A) in subsection (a)—

7 (i) by striking “Compliance” and in-  
8 serting “Subject to subtitle B of the Con-  
9 sumer Financial Protection Act of 2010,  
10 compliance”;

11 (ii) by striking paragraphs (1) and  
12 (2), and inserting the following:

13 “(1) section 8 of the Federal Deposit Insurance  
14 Act, by the appropriate Federal banking agency, as  
15 defined in section 3(q) of the Federal Deposit Insur-  
16 ance Act (12 U.S.C. 1813(q)), with respect to—

17 “(A) national banks, Federal savings asso-  
18 ciations, and Federal branches and Federal  
19 agencies of foreign banks;

20 “(B) member banks of the Federal Reserve  
21 System (other than national banks), branches  
22 and agencies of foreign banks (other than Fed-  
23 eral branches, Federal agencies, and insured  
24 State branches of foreign banks), commercial  
25 lending companies owned or controlled by for-

1           eign banks, and organizations operating under  
2           section 25 or 25A of the Federal Reserve Act;  
3           and

4                   “(C) banks and State savings associations  
5           insured by the Federal Deposit Insurance Cor-  
6           poration (other than members of the Federal  
7           Reserve System), and insured State branches of  
8           foreign banks;”;

9                   (iii) by redesignating paragraphs (3)  
10           through (5) as paragraphs (2) through (4),  
11           respectively;

12                   (iv) in paragraph (2) (as so redesign-  
13           ated), by striking the period at the end  
14           and inserting a semicolon;

15                   (v) in paragraph (3) (as so redesign-  
16           ated), by striking “and” at the end;

17                   (vi) in paragraph (4) (as so redesign-  
18           ated), by striking the period at the end  
19           and inserting “and”; and

20                   (vii) by adding at the end the fol-  
21           lowing:

22                   “(5) subtitle E of the Consumer Financial Pro-  
23           tection Act of 2010, by the Bureau, with respect to  
24           any person subject to that subtitle E.”;

1 (B) in subsection (b), by inserting “any of  
2 paragraphs (1) through (5) of” before “sub-  
3 section (a)” each place that term appears; and

4 (C) by striking subsection (c) and inserting  
5 the following:

6 “(c) OVERALL ENFORCEMENT AUTHORITY OF THE  
7 FEDERAL TRADE COMMISSION.—Except to the extent  
8 that enforcement of the requirements imposed under this  
9 title is specifically committed to some other Government  
10 agency under any of paragraphs (1) through (5) of sub-  
11 section (a), and subject to subtitle B of the Consumer Fi-  
12 nancial Protection Act of 2010, the Federal Trade Com-  
13 mission shall be authorized to enforce such requirements.  
14 For the purpose of the exercise by the Federal Trade  
15 Commission of its functions and powers under the Federal  
16 Trade Commission Act, a violation of any requirement im-  
17 posed under this title shall be deemed a violation of a re-  
18 quirement imposed under that Act. All of the functions  
19 and powers of the Federal Trade Commission under the  
20 Federal Trade Commission Act are available to the Fed-  
21 eral Trade Commission to enforce compliance by any per-  
22 son subject to the jurisdiction of the Federal Trade Com-  
23 mission with the requirements imposed under this title,  
24 irrespective of whether that person is engaged in com-

1 merce or meets any other jurisdictional tests under the  
2 Federal Trade Commission Act.”.

3 **SEC. 1085. AMENDMENTS TO THE EQUAL CREDIT OPPOR-**  
4 **TUNITY ACT.**

5 The Equal Credit Opportunity Act (15 U.S.C. 1691  
6 et seq.) is amended—

7 (1) by striking “Board” each place that term  
8 appears, other than in section 704(a)(4) (15 U.S.C.  
9 1691c(a)(4)), and inserting “Bureau”;

10 (2) in section 702 (15 U.S.C. 1691a), by strik-  
11 ing subsection (c) and inserting the following:

12 “(c) The term ‘Bureau’ means the Bureau of Con-  
13 sumer Financial Protection.”;

14 (3) in section 703 (15 U.S.C. 1691b)—

15 (A) by striking the section heading and in-  
16 serting the following:

17 **“SEC. 703. PROMULGATION OF REGULATIONS BY THE BU-**  
18 **REAU.”;**

19 (B) by striking “(a) REGULATIONS.—”;

20 (C) by striking subsection (b);

21 (D) by redesignating paragraphs (1)  
22 through (5) as subsections (a) through (e), re-  
23 spectively; and

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1 (E) in subsection (e), as so redesignated,  
2 by striking “paragraph (2)” and inserting “sub-  
3 section (b)”;

4 (4) in section 704 (15 U.S.C. 1691e)—

5 (A) in subsection (a)—

6 (i) by striking “Compliance” and in-  
7 serting “Subject to subtitle B of the Con-  
8 sumer Protection Financial Protection Act  
9 of 2010”;

10 (ii) by striking paragraphs (1) and (2)  
11 and inserting the following:

12 “(1) section 8 of the Federal Deposit Insurance  
13 Act, by the appropriate Federal banking agency, as  
14 defined in section 3(q) of the Federal Deposit Insur-  
15 ance Act (12 U.S.C. 1813(q)), with respect to—

16 “(A) national banks, Federal savings asso-  
17 ciations, and Federal branches and Federal  
18 agencies of foreign banks;

19 “(B) member banks of the Federal Reserve  
20 System (other than national banks), branches  
21 and agencies of foreign banks (other than Fed-  
22 eral branches, Federal agencies, and insured  
23 State branches of foreign banks), commercial  
24 lending companies owned or controlled by for-  
25 eign banks, and organizations operating under

1 section 25 or 25A of the Federal Reserve Act;  
2 and

3 “(C) banks and State savings associations  
4 insured by the Federal Deposit Insurance Cor-  
5 poration (other than members of the Federal  
6 Reserve System), and insured State branches of  
7 foreign banks;”;

8 (iii) by redesignating paragraphs (3)  
9 through (9) as paragraphs (2) through (8),  
10 respectively;

11 (iv) in paragraph (7) (as so redesi-  
12 gnated), by striking “and” at the end;

13 (v) in paragraph (8) (as so redesi-  
14 gnated), by striking the period at the end,  
15 and inserting “; and”; and

16 (vi) by adding at the end the fol-  
17 lowing:

18 “(9) Subtitle E of the Consumer Financial Pro-  
19 tection Act of 2010, by the Bureau.”;

20 (B) by striking subsection (c) and insert-  
21 ing the following:

22 “(c) OVERALL ENFORCEMENT AUTHORITY OF FED-  
23 ERAL TRADE COMMISSION.—Except to the extent that en-  
24 forcement of the requirements imposed under this title is  
25 specifically committed to some other Government agency

1 under any of paragraphs (1) through (9) of subsection (a),  
2 and subject to subtitle B of the Consumer Financial Pro-  
3 tection Act of 2010, the Federal Trade Commission shall  
4 be authorized to enforce such requirements. For the pur-  
5 pose of the exercise by the Federal Trade Commission of  
6 its functions and powers under the Federal Trade Com-  
7 mission Act (15 U.S.C. 41 et seq.), a violation of any re-  
8 quirement imposed under this subchapter shall be deemed  
9 a violation of a requirement imposed under that Act. All  
10 of the functions and powers of the Federal Trade Commis-  
11 sion under the Federal Trade Commission Act are avail-  
12 able to the Federal Trade Commission to enforce compli-  
13 ance by any person with the requirements imposed under  
14 this title, irrespective of whether that person is engaged  
15 in commerce or meets any other jurisdictional tests under  
16 the Federal Trade Commission Act, including the power  
17 to enforce any rule prescribed by the Bureau under this  
18 title in the same manner as if the violation had been a  
19 violation of a Federal Trade Commission trade regulation  
20 rule.”; and

21 (C) in subsection (d), by striking “Board”  
22 and inserting “Bureau”;

23 (5) in section 706(e) (15 U.S.C. 1691e(e))—

24 (A) in the subsection heading—

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1 (i) by striking “BOARD” each place  
2 that term appears and inserting “BU-  
3 REAU”; and

4 (ii) by striking “FEDERAL RESERVE  
5 SYSTEM” and inserting “BUREAU OF CON-  
6 SUMER FINANCIAL PROTECTION”; and

7 (B) by striking “Federal Reserve System”  
8 and inserting “Bureau of Consumer Financial  
9 Protection”;

10 (6) in section 706(g) (15 U.S.C. 1691e(g)), by  
11 striking “(3)” and inserting “(9)”; and

12 (7) in section 706(f) (15 U.S.C. 1691e(f)), by  
13 striking “two years from” each place that term ap-  
14 pears and inserting “5 years after”.

15 **SEC. 1086. AMENDMENTS TO THE EXPEDITED FUNDS**  
16 **AVAILABILITY ACT.**

17 (a) AMENDMENT TO SECTION 603.—Section  
18 603(d)(1) of the Expedited Funds Availability Act (12  
19 U.S.C. 4002) is amended by inserting after “Board” the  
20 following “, jointly with the Director of the Bureau of  
21 Consumer Financial Protection,”.

22 (b) AMENDMENTS TO SECTION 604.—Section 604 of  
23 the Expedited Funds Availability Act (12 U.S.C. 4003)  
24 is amended—



1           (1) by inserting after “Board” each place that  
2 term appears, other than in subsection (f), the fol-  
3 lowing: “, jointly with the Director of the Bureau of  
4 Consumer Financial Protection,”; and

5           (2) in subsection (f), by striking “Board.” each  
6 place that term appears and inserting the following:  
7 “Board, jointly with the Director of the Bureau of  
8 Consumer Financial Protection.”.

9           (c) AMENDMENTS TO SECTION 605.—Section 605 of  
10 the Expedited Funds Availability Act (12 U.S.C. 4004)  
11 is amended—

12           (1) by inserting after “Board” each place that  
13 term appears, other than in the heading for section  
14 605(f)(1), the following: “, jointly with the Director  
15 of the Bureau of Consumer Financial Protection,”;  
16 and

17           (2) in subsection (f)(1), in the paragraph head-  
18 ing, by inserting “AND BUREAU” after “BOARD”.

19           (d) AMENDMENTS TO SECTION 609.—Section 609 of  
20 the Expedited Funds Availability Act (12 U.S.C. 4008)  
21 is amended:

22           (1) in subsection (a), by inserting after  
23 “Board” the following “, jointly with the Director of  
24 the Bureau of Consumer Financial Protection,”; and

1           (2) by striking subsection (e) and inserting the  
2 following:

3           “(e) CONSULTATIONS.—In prescribing regulations  
4 under subsections (a) and (b), the Board and the Director  
5 of the Bureau of Consumer Financial Protection, in the  
6 case of subsection (a), and the Board, in the case of sub-  
7 section (b), shall consult with the Comptroller of the Cur-  
8 rency, the Board of Directors of the Federal Deposit In-  
9 surance Corporation, and the National Credit Union Ad-  
10 ministration Board.”.

11           (e) EXPEDITED FUNDS AVAILABILITY IMPROVE-  
12 MENTS.—Section 603 of the Expedited Funds Availability  
13 Act (12 U.S.C. 4002) is amended—

14           (1) in subsection (a)(2)(D), by striking “\$100”  
15 and inserting “\$200”; and

16           (2) in subsection (b)(3)(C), in the subpara-  
17 graph heading, by striking “\$100” and inserting  
18 “\$200”; and

19           (3) in subsection (c)(1)(B)(iii), in the clause  
20 heading, by striking “\$100” and inserting “\$200”.

21           (f) REGULAR ADJUSTMENTS FOR INFLATION.—Sec-  
22 tion 607 of the Expedited Funds Availability Act (12  
23 U.S.C. 4006) is amended by adding at the end the fol-  
24 lowing:

1           “(f) ADJUSTMENTS TO DOLLAR AMOUNTS FOR IN-  
2 FLATION.—The dollar amounts under this title shall be  
3 adjusted every 5 years after December 31, 2011, by the  
4 annual percentage increase in the Consumer Price Index  
5 for Urban Wage Earners and Clerical Workers, as pub-  
6 lished by the Bureau of Labor Statistics, rounded to the  
7 nearest multiple of \$25.”.

8   **SEC. 1087. AMENDMENTS TO THE FAIR CREDIT BILLING**  
9                                   **ACT.**

10           The Fair Credit Billing Act (15 U.S.C. 1666–1666j)  
11 is amended by striking “Board” each place that term ap-  
12 pears and inserting “Bureau”.

13   **SEC. 1088. AMENDMENTS TO THE FAIR CREDIT REPORTING**  
14                                   **ACT AND THE FAIR AND ACCURATE CREDIT**  
15                                   **TRANSACTIONS ACT OF 2003.**

16           (a) FAIR CREDIT REPORTING ACT.—The Fair Credit  
17 Reporting Act (15 U.S.C. 1681 et seq.) is amended—

18                   (1) in section 603 (15 U.S.C. 1681a)—

19                           (A) by redesignating subsections (w) and  
20                           (x) as subsections (x) and (y), respectively; and

21                           (B) by inserting after subsection (v) the  
22                   following:

23                   “(w) The term ‘Bureau’ means the Bureau of Con-  
24           sumer Financial Protection.”; and

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1 (2) except as otherwise specifically provided in  
2 this subsection—

3 (A) by striking “Federal Trade Commis-  
4 sion” each place that term appears and insert-  
5 ing “Bureau”;

6 (B) by striking “FTC” each place that  
7 term appears and inserting “Bureau”;

8 (C) by striking “the Commission” each  
9 place that term appears, other than sections  
10 615(e) (15 U.S.C. 1681m(e)) and 628(a)(1)  
11 (15 U.S.C. 1681w(a)(1)), and inserting “the  
12 Bureau”; and

13 (D) by striking “The Federal banking  
14 agencies, the National Credit Union Adminis-  
15 tration, and the Commission shall jointly” each  
16 place that term appears, other than section  
17 615(e)(1) (15 U.S.C. 1681m(e)) and section  
18 628(a)(1) (15 U.S.C. 1681w(a)(1)), and insert-  
19 ing “The Bureau shall”;

20 (3) in section 603(k)(2) (15 U.S.C.  
21 1681a(k)(2)), by striking “Board of Governors of  
22 the Federal Reserve System” and inserting “Bu-  
23 reau”;

24 (4) in section 604(g) (15 U.S.C. 1681b(g))—

1 (A) in paragraph (3), by striking subpara-  
2 graph (C) and inserting the following:

3 “(C) as otherwise determined to be nec-  
4 essary and appropriate, by regulation or order,  
5 by the Bureau (consistent with the enforcement  
6 authorities prescribed under section 621(b)), or  
7 the applicable State insurance authority (with  
8 respect to any person engaged in providing in-  
9 surance or annuities).”; and

10 (B) by striking paragraph (5) and insert-  
11 ing the following:

12 “(5) REGULATIONS AND EFFECTIVE DATE FOR  
13 PARAGRAPH (2).—

14 “(A) REGULATIONS REQUIRED.—The Bu-  
15 reau may, after notice and opportunity for com-  
16 ment, prescribe regulations that permit trans-  
17 actions under paragraph (2) that are deter-  
18 mined to be necessary and appropriate to pro-  
19 tect legitimate operational, transactional, risk,  
20 consumer, and other needs (and which shall in-  
21 clude permitting actions necessary for adminis-  
22 trative verification purposes), consistent with  
23 the intent of paragraph (2) to restrict the use  
24 of medical information for inappropriate pur-  
25 poses.”;

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1           (5) in section 605(h)(2)(A) (15 U.S.C.  
2           1681c(h)(2)(A)), by striking “with respect to the en-  
3           tities that are subject to their respective enforcement  
4           authority under section 621” and inserting “, in  
5           consultation with the Federal banking agencies, the  
6           National Credit Union Administration, and the Fed-  
7           eral Trade Commission,”.

8           (6) in section 611(e)(2) (15 U.S.C. 1681i(e)),  
9           by striking paragraph (2) and inserting the fol-  
10          lowing:

11          “(2) EXCLUSION.—Complaints received or ob-  
12          tained by the Bureau pursuant to its investigative  
13          authority under the Consumer Financial Protection  
14          Act of 2010 shall not be subject to paragraph (1).”;

15          (7) in section 615(d)(2)(B) (15 U.S.C.  
16          1681m(d)(2)(B)), by striking “the Federal banking  
17          agencies” and inserting “the Federal Trade Com-  
18          mission, the Federal banking agencies,”;

19          (8) in section 615(e)(1) (15 U.S.C.  
20          1681m(e)(1)), by striking “and the Commission”  
21          and inserting “the Federal Trade Commission, the  
22          Commodity Futures Trading Commission, and the  
23          Securities and Exchange Commission”;

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1           (9) in section 615(h)(6) (15 U.S.C.  
2           1681m(h)(6)), by striking subparagraph (A) and in-  
3           serting the following:

4                   “(A) RULES REQUIRED.—The Bureau  
5           shall prescribe rules to carry out this sub-  
6           section.”;

7           (10) in section 621 (15 U.S.C. 1681s)—

8                   (A) by striking subsection (a) and insert-  
9           ing the following:

10           “(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-  
11          SION.—

12                   “(1) IN GENERAL.—The Federal Trade Com-  
13          mission shall be authorized to enforce compliance  
14          with the requirements imposed by this title under  
15          the Federal Trade Commission Act (15 U.S.C. 41 et  
16          seq.), with respect to consumer reporting agencies  
17          and all other persons subject thereto, except to the  
18          extent that enforcement of the requirements imposed  
19          under this title is specifically committed to some  
20          other Government agency under any of subpara-  
21          graphs (A) through (G) of subsection (b)(1), and  
22          subject to subtitle B of the Consumer Financial Pro-  
23          tection Act of 2010, subsection (b). For the purpose  
24          of the exercise by the Federal Trade Commission of  
25          its functions and powers under the Federal Trade

1 Commission Act, a violation of any requirement or  
2 prohibition imposed under this title shall constitute  
3 an unfair or deceptive act or practice in commerce,  
4 in violation of section 5(a) of the Federal Trade  
5 Commission Act (15 U.S.C. 45(a)), and shall be  
6 subject to enforcement by the Federal Trade Com-  
7 mission under section 5(b) of that Act with respect  
8 to any consumer reporting agency or person that is  
9 subject to enforcement by the Federal Trade Com-  
10 mission pursuant to this subsection, irrespective of  
11 whether that person is engaged in commerce or  
12 meets any other jurisdictional tests under the Fed-  
13 eral Trade Commission Act. The Federal Trade  
14 Commission shall have such procedural, investiga-  
15 tive, and enforcement powers, including the power to  
16 issue procedural rules in enforcing compliance with  
17 the requirements imposed under this title and to re-  
18 quire the filing of reports, the production of docu-  
19 ments, and the appearance of witnesses, as though  
20 the applicable terms and conditions of the Federal  
21 Trade Commission Act were part of this title. Any  
22 person violating any of the provisions of this title  
23 shall be subject to the penalties and entitled to the  
24 privileges and immunities provided in the Federal  
25 Trade Commission Act as though the applicable



1 terms and provisions of such Act are part of this  
2 title.

3 “(2) PENALTIES.—

4 “(A) KNOWING VIOLATIONS.—Except as  
5 otherwise provided by subtitle B of the Con-  
6 sumer Financial Protection Act of 2010, in the  
7 event of a knowing violation, which constitutes  
8 a pattern or practice of violations of this title,  
9 the Federal Trade Commission may commence  
10 a civil action to recover a civil penalty in a dis-  
11 trict court of the United States against any  
12 person that violates this title. In such action,  
13 such person shall be liable for a civil penalty of  
14 not more than \$2,500 per violation.

15 “(B) DETERMINING PENALTY AMOUNT.—

16 In determining the amount of a civil penalty  
17 under subparagraph (A), the court shall take  
18 into account the degree of culpability, any his-  
19 tory of such prior conduct, ability to pay, effect  
20 on ability to continue to do business, and such  
21 other matters as justice may require.

22 “(C) LIMITATION.—Notwithstanding para-  
23 graph (2), a court may not impose any civil  
24 penalty on a person for a violation of section  
25 623(a)(1), unless the person has been enjoined

1 from committing the violation, or ordered not to  
2 commit the violation, in an action or proceeding  
3 brought by or on behalf of the Federal Trade  
4 Commission, and has violated the injunction or  
5 order, and the court may not impose any civil  
6 penalty for any violation occurring before the  
7 date of the violation of the injunction or  
8 order.”;

9 (B) by striking subsection (b) and insert-  
10 ing the following:

11 “(b) ENFORCEMENT BY OTHER AGENCIES.—

12 “(1) IN GENERAL.—Subject to subtitle B of the  
13 Consumer Financial Protection Act of 2010, compli-  
14 ance with the requirements imposed under this title  
15 with respect to consumer reporting agencies, persons  
16 who use consumer reports from such agencies, per-  
17 sons who furnish information to such agencies, and  
18 users of information that are subject to section  
19 615(d) shall be enforced under—

20 “(A) section 8 of the Federal Deposit In-  
21 surance Act (12 U.S.C. 1818), by the appro-  
22 priate Federal banking agency, as defined in  
23 section 3(q) of the Federal Deposit Insurance  
24 Act (12 U.S.C. 1813(q)), with respect to—

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1           “(i) any national bank or State sav-  
2           ings association, and any Federal branch  
3           or Federal agency of a foreign bank;

4           “(ii) any member bank of the Federal  
5           Reserve System (other than a national  
6           bank), a branch or agency of a foreign  
7           bank (other than a Federal branch, Fed-  
8           eral agency, or insured State branch of a  
9           foreign bank), a commercial lending com-  
10          pany owned or controlled by a foreign  
11          bank, and any organization operating  
12          under section 25 or 25A of the Federal  
13          Reserve Act; and

14          “(iii) any bank or Federal savings as-  
15          sociation insured by the Federal Deposit  
16          Insurance Corporation (other than a mem-  
17          ber of the Federal Reserve System) and  
18          any insured State branch of a foreign  
19          bank;

20          “(B) the Federal Credit Union Act (12  
21          U.S.C. 1751 et seq.), by the Administrator of  
22          the National Credit Union Administration with  
23          respect to any Federal credit union;

24          “(C) subtitle IV of title 49, United States  
25          Code, by the Secretary of Transportation, with

1           respect to all carriers subject to the jurisdiction  
2           of the Surface Transportation Board;

3           “(D) the Federal Aviation Act of 1958 (49  
4           U.S.C. App. 1301 et seq.), by the Secretary of  
5           Transportation, with respect to any air carrier  
6           or foreign air carrier subject to that Act;

7           “(E) the Packers and Stockyards Act,  
8           1921 (7 U.S.C. 181 et seq.) (except as provided  
9           in section 406 of that Act), by the Secretary of  
10          Agriculture, with respect to any activities sub-  
11          ject to that Act;

12          “(F) the Commodity Exchange Act, with  
13          respect to a person subject to the jurisdiction of  
14          the Commodity Futures Trading Commission;

15          “(G) the Federal securities laws, and any  
16          other laws that are subject to the jurisdiction of  
17          the Securities and Exchange Commission, with  
18          respect to a person that is subject to the juris-  
19          diction of the Securities and Exchange Commis-  
20          sion; and

21          “(H) subtitle E of the Consumer Financial  
22          Protection Act of 2010, by the Bureau.

23          “(2) INCORPORATED DEFINITIONS.—The terms  
24          used in paragraph (1) that are not defined in this  
25          title or otherwise defined in section 3(s) of the Fed-

1       eral Deposit Insurance Act (12 U.S.C. 1813(s)) have  
2       the same meanings as in section 1(b) of the Inter-  
3       national Banking Act of 1978 (12 U.S.C. 3101).”;

4               (C) in subsection (c)(2)—

5                       (i) by inserting “and the Federal  
6                       Trade Commission” before “or the appro-  
7                       priate”; and

8                       (ii) by inserting “and the Federal  
9                       Trade Commission” before “or appro-  
10                      priate” each place that term appears;

11               (D) by inserting “, the Federal Trade  
12               Commission,” before “or the appropriate” each  
13               place that term appears;

14               (E) by striking subsection (e) and insert-  
15               ing the following:

16       “(e) REGULATORY AUTHORITY.—The Bureau shall  
17       prescribe such regulations as are necessary to carry out  
18       the purposes of this title, except with respect to sections  
19       615(e) and 628. The regulations prescribed by the Bureau  
20       under this title shall apply to any person that is subject  
21       to this title, notwithstanding the enforcement authorities  
22       granted to other agencies under this section.”; and

23               (F) in subsection (f)(2), by striking “the  
24               Federal banking agencies” and insert “the Fed-

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1 eral Trade Commission, the Federal banking  
2 agencies,”;

3 (11) in section 623 (15 U.S.C. 1681s-2)—

4 (A) in subsection (a)(7), by striking sub-  
5 paragraph (D) and inserting the following:

6 “(D) MODEL DISCLOSURE.—

7 “(i) DUTY OF BUREAU.—The Bureau  
8 shall prescribe a brief model disclosure  
9 that a financial institution may use to  
10 comply with subparagraph (A), which shall  
11 not exceed 30 words.

12 “(ii) USE OF MODEL NOT RE-  
13 QUIRED.—No provision of this paragraph  
14 may be construed to require a financial in-  
15 stitution to use any such model form pre-  
16 scribed by the Bureau.

17 “(iii) COMPLIANCE USING MODEL.—A  
18 financial institution shall be deemed to be  
19 in compliance with subparagraph (A) if the  
20 financial institution uses any model form  
21 prescribed by the Bureau under this sub-  
22 paragraph, or the financial institution uses  
23 any such model form and rearranges its  
24 format.”;

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1 (B) in subsection (a)(8), by inserting “, in  
2 consultation with the Federal Trade Commis-  
3 sion, the Federal banking agencies, and the Na-  
4 tional Credit Union Administration,” before  
5 “shall jointly”; and

6 (C) by striking subsection (e) and inserting  
7 the following:

8 “(e) ACCURACY GUIDELINES AND REGULATIONS RE-  
9 QUIRED.—

10 “(1) GUIDELINES.—The Bureau shall, with re-  
11 spect to persons or entities that are subject to the  
12 enforcement authority of the Bureau under section  
13 621—

14 “(A) establish and maintain guidelines for  
15 use by each person that furnishes information  
16 to a consumer reporting agency regarding the  
17 accuracy and integrity of the information relat-  
18 ing to consumers that such entities furnish to  
19 consumer reporting agencies, and update such  
20 guidelines as often as necessary; and

21 “(B) prescribe regulations requiring each  
22 person that furnishes information to a con-  
23 sumer reporting agency to establish reasonable  
24 policies and procedures for implementing the

1 guidelines established pursuant to subpara-  
2 graph (A).

3 “(2) CRITERIA.—In developing the guidelines  
4 required by paragraph (1)(A), the Bureau shall—

5 “(A) identify patterns, practices, and spe-  
6 cific forms of activity that can compromise the  
7 accuracy and integrity of information furnished  
8 to consumer reporting agencies;

9 “(B) review the methods (including techno-  
10 logical means) used to furnish information re-  
11 lating to consumers to consumer reporting  
12 agencies;

13 “(C) determine whether persons that fur-  
14 nish information to consumer reporting agen-  
15 cies maintain and enforce policies to ensure the  
16 accuracy and integrity of information furnished  
17 to consumer reporting agencies; and

18 “(D) examine the policies and processes  
19 that persons that furnish information to con-  
20 sumer reporting agencies employ to conduct re-  
21 investigations and correct inaccurate informa-  
22 tion relating to consumers that has been fur-  
23 nished to consumer reporting agencies.”;

24 (12) in section 628(a)(1) (15 U.S.C.  
25 1681w(a)(1)), by striking “Not later than” and all



1 that follows through “Exchange Commission,” and  
2 inserting “The Federal Trade Commission, the Se-  
3 curities and Exchange Commission, the Commodity  
4 Futures Trading Commission, the Federal banking  
5 agencies, and the National Credit Union Administra-  
6 tion, with respect to the entities that are subject to  
7 their respective enforcement authority under section  
8 621,”; and

9 (13) in section 628(a)(3) (15 U.S.C.  
10 1681w(a)(3)), by striking “the Federal banking  
11 agencies, the National Credit Union Administration,  
12 the Commission, and the Securities and Exchange  
13 Commission” and inserting “the agencies identified  
14 in paragraph (1)”.

15 (b) FAIR AND ACCURATE CREDIT TRANSACTIONS  
16 ACT OF 2003.—Section 214(b)(1) of the Fair and Accu-  
17 rate Credit Transactions Act of 2003 (15 U.S.C. 1681s–  
18 3 note) is amended by striking paragraph (1) and insert-  
19 ing the following:

20 “(1) IN GENERAL.—Regulations to carry out  
21 section 624 of the Fair Credit Reporting Act (15  
22 U.S.C. 1681s–3), shall be prescribed, as described in  
23 paragraph (2), by—

1           “(A) the Commodity Futures Trading  
2 Commission, with respect to entities subject to  
3 its enforcement authorities;

4           “(B) the Securities and Exchange Commis-  
5 sion, with respect to entities subject to its en-  
6 forcement authorities; and

7           “(C) the Bureau, with respect to other en-  
8 tities subject to this Act.”.

9 **SEC. 1089. AMENDMENTS TO THE FAIR DEBT COLLECTION**  
10 **PRACTICES ACT.**

11       The Fair Debt Collection Practices Act (15 U.S.C.  
12 1692 et seq.) is amended—

13           (1) by striking “Commission” each place that  
14 term appears and inserting “Bureau”;

15           (2) in section 803 (15 U.S.C. 1692a)—

16           (A) by striking paragraph (1) and insert-  
17 ing the following:

18           “(1) The term ‘Bureau’ means the Bureau of  
19 Consumer Financial Protection.”;

20           (3) in section 814 (15 U.S.C. 1692l)—

21           (A) by striking subsection (a) and insert-  
22 ing the following:

23           “(a) FEDERAL TRADE COMMISSION.—The Federal  
24 Trade Commission shall be authorized to enforce compli-  
25 ance with this title, except to the extent that enforcement

1 of the requirements imposed under this title is specifically  
2 committed to another Government agency under any of  
3 paragraphs (1) through (6) of subsection (b). For purpose  
4 of the exercise by the Federal Trade Commission of its  
5 functions and powers under the Federal Trade Commis-  
6 sion Act (15 U.S.C. 41 et seq.), a violation of this title  
7 shall be deemed an unfair or deceptive act or practice in  
8 violation of that Act. All of the functions and powers of  
9 the Federal Trade Commission under the Federal Trade  
10 Commission Act are available to the Federal Trade Com-  
11 mission to enforce compliance by any person with this  
12 title, irrespective of whether that person is engaged in  
13 commerce or meets any other jurisdictional tests under the  
14 Federal Trade Commission Act, including the power to en-  
15 force the provisions of this title, in the same manner as  
16 if the violation had been a violation of a Federal Trade  
17 Commission trade regulation rule.”; and

18 (B) in subsection (b)—

19 (i) by striking “Compliance” and in-  
20 sserting “Subject to subtitle B of the Con-  
21 sumer Financial Protection Act of 2010,  
22 compliance”;

23 (ii) by striking paragraphs (1) and (2)  
24 and inserting the following:

1           “(1) section 8 of the Federal Deposit Insurance  
2 Act, by the appropriate Federal banking agency, as  
3 defined in section 3(q) of the Federal Deposit Insur-  
4 ance Act (12 U.S.C. 1813(q)), with respect to—

5           “(A) national banks, Federal savings asso-  
6 ciations, and Federal branches and Federal  
7 agencies of foreign banks;

8           “(B) member banks of the Federal Reserve  
9 System (other than national banks), branches  
10 and agencies of foreign banks (other than Fed-  
11 eral branches, Federal agencies, and insured  
12 State branches of foreign banks), commercial  
13 lending companies owned or controlled by for-  
14 eign banks, and organizations operating under  
15 section 25 or 25A of the Federal Reserve Act;  
16 and

17           “(C) banks and State savings associations  
18 insured by the Federal Deposit Insurance Cor-  
19 poration (other than members of the Federal  
20 Reserve System), and insured State branches of  
21 foreign banks;”;

22           (iii) by redesignating paragraphs (3)  
23 through (6), as paragraphs (2) through  
24 (5), respectively;

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1 (iv) in paragraph (4) (as so redesignated), by striking “and” at the end;

2  
3 (v) in paragraph (5) (as so redesignated), by striking the period at the end  
4 and inserting “; and”; and

5  
6 (vi) by inserting before the undesignated matter at the end the following:

7  
8 “(6) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to  
9 any person subject to that subtitle E.”.

10  
11 (4) in subsection (d), by striking “Neither the  
12 Commission” and all that follows through the end of  
13 the subsection and inserting the following: “The Bureau may prescribe rules with respect to the collection  
14 of debts by debt collectors, as defined in this  
15 Act.”.

16  
17 **SEC. 1090. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.**  
18

19 The Federal Deposit Insurance Act (12 U.S.C. 1811  
20 et seq.) is amended—

21 (1) in section 8(t) (12 U.S.C. 1818(t)), by adding at the end the following:

22  
23 “(6) REFERRAL TO BUREAU OF CONSUMER FINANCIAL PROTECTION.—Subject to subtitle B of the  
24 Consumer Financial Protection Act of 2010, each  
25

1 appropriate Federal banking agency shall make a re-  
2 ferral to the Bureau of Consumer Financial Protec-  
3 tion when the Federal banking agency has a reason-  
4 able belief that a violation of an enumerated con-  
5 sumer law, as defined in the Consumer Financial  
6 Protection Act of 2010, has been committed by any  
7 insured depository institution or institution-affiliated  
8 party within the jurisdiction of that appropriate  
9 Federal banking agency.”; and

10 (2) in section 43 (12 U.S.C. 1831t)—

11 (A) in subsection (c), by striking “Federal  
12 Trade Commission” and inserting “Bureau”;

13 (B) in subsection (d), by striking “Federal  
14 Trade Commission” and inserting “Bureau”;

15 (C) in subsection (e)—

16 (i) in paragraph (2), by striking  
17 “Federal Trade Commission” and insert-  
18 ing “Bureau”; and

19 (ii) by adding at the end the following  
20 new paragraph:

21 “(5) BUREAU.—The term ‘Bureau’ means the  
22 Bureau of Consumer Financial Protection.”; and

23 (D) in subsection (f)—

24 (i) by striking paragraph (1) and in-  
25 serting the following:

1           “(1) LIMITED ENFORCEMENT AUTHORITY.—  
2           Compliance with the requirements of subsections (b),  
3           (c), and (e), and any regulation prescribed or order  
4           issued under such subsection, shall be enforced  
5           under the Consumer Financial Protection Act of  
6           2010, by the Bureau, subject to subtitle B of the  
7           Consumer Financial Protection Act of 2010, and  
8           under the Federal Trade Commission Act (15  
9           U.S.C. 41 et seq.) by the Federal Trade Commis-  
10          sion.”; and

11                       (ii) in paragraph (2), by striking sub-  
12                       paragraph (C) and inserting the following:

13                       “(C) LIMITATION ON STATE ACTION  
14                       WHILE FEDERAL ACTION PENDING.—If the Bu-  
15                       reau or Federal Trade Commission has insti-  
16                       tuted an enforcement action for a violation of  
17                       this section, no appropriate State supervisory  
18                       agency may, during the pendency of such ac-  
19                       tion, bring an action under this section against  
20                       any defendant named in the complaint of the  
21                       Bureau or Federal Trade Commission for any  
22                       violation of this section that is alleged in that  
23                       complaint.”.

1 **SEC. 1091. AMENDMENT TO FEDERAL FINANCIAL INSTITU-**  
2 **TIONS EXAMINATION COUNCIL ACT OF 1978.**

3 Section 1004(a)(4) of the Federal Financial Institu-  
4 tions Examination Council Act of 1978 (12 U.S.C.  
5 3303(a)(4)) is amended by striking “Director, Office of  
6 Thrift Supervision” and inserting “Director of the Con-  
7 sumer Financial Protection Bureau”.

8 **SEC. 1092. AMENDMENTS TO THE GRAMM-LEACH-BLILEY**  
9 **ACT.**

10 Title V of the Gramm-Leach-Bliley Act (15 U.S.C.  
11 6801 et seq.) is amended—

12 (1) in section 501(b) (15 U.S.C. 6801(b)), by  
13 inserting “, other than the Bureau of Consumer Fi-  
14 nancial Protection,” after “505(a)”;

15 (2) in section 502(e)(5) (15 U.S.C. 6802(e)(5)),  
16 by inserting “the Bureau of Consumer Financial  
17 Protection” after “(including”;

18 (3) in section 504(a) (15 U.S.C. 6804(a))—

19 (A) by striking paragraphs (1) and (2) and  
20 inserting the following:

21 “(1) RULEMAKING.—

22 “(A) IN GENERAL.—The Bureau of Con-  
23 sumer Financial Protection and the Securities  
24 and Exchange Commission shall have authority  
25 to prescribe such regulations as may be nec-  
26 essary to carry out the purposes of this subtitle



1 with respect to financial institutions and other  
2 persons subject to their respective jurisdiction  
3 under section 505 (and notwithstanding subtitle  
4 B of the Consumer Financial Protection Act of  
5 2010), except that the Bureau of Consumer Fi-  
6 nancial Protection shall not have authority to  
7 prescribe regulations with respect to the stand-  
8 ards under section 501.

9 “(B) CFTC.—The Commodity Futures  
10 Trading Commission shall have authority to  
11 prescribe such regulations as may be necessary  
12 to carry out the purposes of this subtitle with  
13 respect to financial institutions and other per-  
14 sons subject to the jurisdiction of the Com-  
15 modity Futures Trading Commission under sec-  
16 tion 5g of the Commodity Exchange Act.

17 “(C) RULE OF CONSTRUCTION.—Nothing  
18 in this paragraph shall be construed to alter,  
19 affect, or otherwise limit the authority of a  
20 State insurance authority to adopt regulations  
21 to carry out this subtitle.

22 “(2) COORDINATION, CONSISTENCY, AND COM-  
23 PARABILITY.—Each of the agencies authorized  
24 under paragraph (1) to prescribe regulations shall  
25 consult and coordinate with the other such agencies

1 and, as appropriate, and with representatives of  
2 State insurance authorities designated by the Na-  
3 tional Association of Insurance Commissioners, for  
4 the purpose of assuring, to the extent possible, that  
5 the regulations prescribed by each such agency are  
6 consistent and comparable with the regulations pre-  
7 scribed by the other such agencies.”; and

8 (B) in paragraph (3), by striking “, and  
9 shall be issued in final form not later than 6  
10 months after the date of enactment of this  
11 Act”;

12 (4) in section 505(a) (15 U.S.C. 6805(a))—

13 (A) by striking “This subtitle” and all that  
14 follows through “as follows:” and inserting  
15 “Subject to subtitle B of the Consumer Finan-  
16 cial Protection Act of 2010, this subtitle and  
17 the regulations prescribed thereunder shall be  
18 enforced by the Bureau of Consumer Financial  
19 Protection, the Federal functional regulators,  
20 the State insurance authorities, and the Federal  
21 Trade Commission with respect to financial in-  
22 stitutions and other persons subject to their ju-  
23 risdiction under applicable law, as follows:”;

24 (B) in paragraph (1)—

1 (i) in the matter preceding subpara-  
2 graph (A), by inserting “by the appro-  
3 priate Federal banking agency, as defined  
4 in section 3(q) of the Federal Deposit In-  
5 surance Act,” after “Act,”;

6 (ii) in subparagraph (A), by striking  
7 “, by the Office of the Comptroller of the  
8 Currency”;

9 (iii) in subparagraph (B), by striking  
10 “, by the Board of Governors of the Fed-  
11 eral Reserve System”;

12 (iv) in subparagraph (C), by striking  
13 “, by the Board of Directors of the Federal  
14 Deposit Insurance Corporation”; and

15 (v) in subparagraph (D), by striking  
16 “, by the Director of the Office of Thrift  
17 Supervision”; and

18 (C) by adding at the end the following:

19 “(8) Under subtitle E of the Consumer Finan-  
20 cial Protection Act of 2010, by the Bureau of Con-  
21 sumer Financial Protection, in the case of any finan-  
22 cial institution and other covered person or service  
23 provider that is subject to the jurisdiction of the Bu-  
24 reau under that Act, but not with respect to the  
25 standards under section 501.”;

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1 (5) in section 505(b)(1) (15 U.S.C.  
2 6805(b)(1)), by inserting “, other than the Bureau  
3 of Consumer Financial Protection,” after “sub-  
4 section (a)”;

5 (6) in section 507(b) (15 U.S.C. 6807), by  
6 striking “Federal Trade Commission” and inserting  
7 “Bureau of Consumer Financial Protection”.

8 **SEC. 1093. AMENDMENTS TO THE HOME MORTGAGE DIS-**  
9 **CLOSURE ACT OF 1975.**

10 The Home Mortgage Disclosure Act of 1975 (12  
11 U.S.C. 2801 et seq.) is amended—

12 (1) by striking “Board” each place that term  
13 appears, other than in sections 303, 304(h), 305(b)  
14 (as amended by this section), and 307(a) (as amend-  
15 ed by this section) and inserting “Bureau”.

16 (2) in section 303 (12 U.S.C. 2802)—

17 (A) by redesignating paragraphs (1)  
18 through (6) as paragraphs (2) through (7), re-  
19 spectively; and

20 (B) by inserting before paragraph (2) the  
21 following:

22 “(1) the term ‘Bureau’ means the Bureau of  
23 Consumer Financial Protection;”;

24 (3) in section 304 (12 U.S.C. 2803)—

25 (A) in subsection (b)—

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1 (i) in paragraph (4), by inserting  
2 “age,” before “and gender”;

3 (ii) in paragraph (3), by striking  
4 “and” at the end;

5 (iii) in paragraph (4), by striking the  
6 period at the end and inserting a semi-  
7 colon; and

8 (iv) by adding at the end the fol-  
9 lowing:

10 “(5) the number and dollar amount of mort-  
11 gage loans grouped according to measurements of—

12 “(A) the total points and fees payable at  
13 origination in connection with the mortgage as  
14 determined by the Bureau, taking into account  
15 15 U.S.C. 1602(aa)(4);

16 “(B) the difference between the annual  
17 percentage rate associated with the loan and a  
18 benchmark rate or rates for all loans;

19 “(C) the term in months of any prepay-  
20 ment penalty or other fee or charge payable on  
21 repayment of some portion of principal or the  
22 entire principal in advance of scheduled pay-  
23 ments; and

24 “(D) such other information as the Bureau  
25 may require; and

1           “(6) the number and dollar amount of mort-  
2           gage loans and completed applications grouped ac-  
3           cording to measurements of—

4                   “(A) the value of the real property pledged  
5                   or proposed to be pledged as collateral;

6                   “(B) the actual or proposed term in  
7                   months of any introductory period after which  
8                   the rate of interest may change;

9                   “(C) the presence of contractual terms or  
10                  proposed contractual terms that would allow the  
11                  mortgagor or applicant to make payments other  
12                  than fully amortizing payments during any por-  
13                  tion of the loan term;

14                  “(D) the actual or proposed term in  
15                  months of the mortgage loan;

16                  “(E) the channel through which applica-  
17                  tion was made, including retail, broker, and  
18                  other relevant categories;

19                  “(F) as the Bureau may determine to be  
20                  appropriate, a unique identifier that identifies  
21                  the loan originator as set forth in section 1503  
22                  of the S.A.F.E. Mortgage Licensing Act of  
23                  2008;

24                  “(G) as the Bureau may determine to be  
25                  appropriate, a universal loan identifier;

1           “(H) as the Bureau may determine to be  
2           appropriate, the parcel number that cor-  
3           responds to the real property pledged or pro-  
4           posed to be pledged as collateral;

5           “(I) the credit score of mortgage appli-  
6           cants and mortgagors, in such form as the Bu-  
7           reau may prescribe; and

8           “(J) such other information as the Bureau  
9           may require.”;

10           (B) by striking subsection (h) and insert-  
11           ing the following:

12           “(h) SUBMISSION TO AGENCIES.—

13           “(1) IN GENERAL.—The data required to be  
14           disclosed under subsection (b) shall be submitted to  
15           the Bureau or to the appropriate agency for the in-  
16           stitution reporting under this title, in accordance  
17           with rules prescribed by the Bureau. Notwith-  
18           standing the requirement of subsection (a)(2)(A) for  
19           disclosure by census tract, the Bureau, in consulta-  
20           tion with other appropriate agencies described in  
21           paragraph (2), shall develop regulations that—

22           “(A) prescribe the format for such disclo-  
23           sures, the method for submission of the data to  
24           the appropriate agency, and the procedures for  
25           disclosing the information to the public;

1           “(B) require the collection of data required  
2           to be disclosed under subsection (b) with re-  
3           spect to loans sold by each institution reporting  
4           under this title;

5           “(C) require disclosure of the class of the  
6           purchaser of such loans; and

7           “(D) permit any reporting institution to  
8           submit in writing to the Bureau or to the ap-  
9           propriate agency such additional data or expla-  
10          nations as it deems relevant to the decision to  
11          originate or purchase mortgage loans.

12          “(2) OTHER APPROPRIATE AGENCIES.—The ap-  
13          propriate agencies described in this paragraph are—

14               “(A) the appropriate Federal banking  
15               agencies, as defined in section 3(q) of the Fed-  
16               eral Deposit Insurance Act (12 U.S.C.  
17               1813(q)), with respect to the entities that are  
18               subject to the jurisdiction of each such agency,  
19               respectively;

20               “(B) the Federal Deposit Insurance Cor-  
21               poration for banks insured by the Federal De-  
22               posit Insurance Corporation (other than mem-  
23               bers of the Federal Reserve System), mutual  
24               savings banks, insured State branches of for-  
25               eign banks, and any other depository institution



1 described in section 303(2)(A) which is not oth-  
2 erwise referred to in this paragraph;

3 “(C) the National Credit Union Adminis-  
4 tration Board with respect to credit unions; and

5 “(D) the Secretary of Housing and Urban  
6 Development with respect to other lending insti-  
7 tutions not regulated by the agencies referred  
8 to in subparagraph (A) or (B).”; and

9 (C) in subsection (i), by striking “sub-  
10 section (b)(4)” and inserting “subsections  
11 (b)(4), (b)(5), and (b)(6)”;

12 (D) in subsection (j)—

13 (i) in paragraph (1), by striking “(as”  
14 and inserting “(containing loan-level and  
15 application-level information relating to  
16 disclosures required under subsections (a)  
17 and (b) and as otherwise”;

18 (ii) by striking paragraph (3) and in-  
19 serting the following:

20 “(3) CHANGE OF FORM NOT REQUIRED.—A de-  
21 pository institution meets the disclosure requirement  
22 of paragraph (1) if the institution provides the infor-  
23 mation required under such paragraph in such for-  
24 mats as the Bureau may require”; and

1 (iii) in paragraph (2)(A), by striking  
2 “in the format in which such information  
3 is maintained by the institution” and in-  
4 serting “in such formats as the Bureau  
5 may require”;

6 (E) in subsection (m), by striking para-  
7 graph (2) and inserting the following:

8 “(2) FORM OF INFORMATION.—In complying  
9 with paragraph (1), a depository institution shall  
10 provide the person requesting the information with  
11 a copy of the information requested in such formats  
12 as the Bureau may require.”;

13 (F) by adding at the end the following:

14 “(n) TIMING OF CERTAIN DISCLOSURES.—The data  
15 required to be disclosed under subsection (b) shall be sub-  
16 mitted to the Bureau or to the appropriate agency for any  
17 institution reporting under this title, in accordance with  
18 regulations prescribed by the Bureau. Institutions shall  
19 not be required to report new data under paragraph (5)  
20 or (6) of subsection (b) before the first January 1 that  
21 occurs after the end of the 9-month period beginning on  
22 the date on which regulations are issued by the Bureau  
23 in final form with respect to such disclosures.”;

24 (4) in section 305 (12 U.S.C. 2804)—

1 (A) by striking subsection (b) and insert-  
2 ing the following:

3 “(b) POWERS OF CERTAIN OTHER AGENCIES.—

4 “(1) IN GENERAL.—Subject to subtitle B of the  
5 Consumer Financial Protection Act of 2010, compli-  
6 ance with the requirements of this title shall be en-  
7 forced—

8 “(A) under section 8 of the Federal De-  
9 posit Insurance Act, the appropriate Federal  
10 banking agency, as defined in section 3(q) of  
11 the Federal Deposit Insurance Act (12 U.S.C.  
12 1813(q)), with respect to—

13 “(i) any national bank or Federal sav-  
14 ings association, and any Federal branch  
15 or Federal agency of a foreign bank;

16 “(ii) any member bank of the Federal  
17 Reserve System (other than a national  
18 bank), branch or agency of a foreign bank  
19 (other than a Federal branch, Federal  
20 agency, and insured State branch of a for-  
21 eign bank), commercial lending company  
22 owned or controlled by a foreign bank, and  
23 any organization operating under section  
24 25 or 25A of the Federal Reserve Act; and

1           “(iii) any bank or State savings asso-  
2           ciation insured by the Federal Deposit In-  
3           surance Corporation (other than a member  
4           of the Federal Reserve System), any mu-  
5           tual savings bank as, defined in section  
6           3(f) of the Federal Deposit Insurance Act  
7           (12 U.S.C. 1813(f)), any insured State  
8           branch of a foreign bank, and any other  
9           depository institution not referred to in  
10          this paragraph or subparagraph (B) or  
11          (C);

12          “(B) under subtitle E of the Consumer Fi-  
13          nancial Protection Act of 2010, by the Bureau,  
14          with respect to a covered person or service pro-  
15          vider subject to that subtitle;

16          “(C) under the Federal Credit Union Act,  
17          by the Administrator of the National Credit  
18          Union Administration with respect to any in-  
19          sured credit union; and

20          “(D) with respect to other lending institu-  
21          tions, by the Secretary of Housing and Urban  
22          Development.

23          “(2) INCORPORATED DEFINITIONS.—The terms  
24          used in paragraph (1) that are not defined in this  
25          title or otherwise defined in section 3(s) of the Fed-

1       eral Deposit Insurance Act (12 U.S.C. 1813(s))  
2       shall have the same meanings as in section 1(b) of  
3       the International Banking Act of 1978 (12 U.S.C.  
4       3101).”; and

5                   (B) by adding at the end the following:

6       “(d) OVERALL ENFORCEMENT AUTHORITY OF THE  
7 BUREAU OF CONSUMER FINANCIAL PROTECTION.—Sub-  
8 ject to subtitle B of the Consumer Financial Protection  
9 Act of 2010, enforcement of the requirements imposed  
10 under this title is committed to each of the agencies under  
11 subsection (b). The Bureau may exercise its authorities  
12 under the Consumer Financial Protection Act of 2010 to  
13 exercise principal authority to examine and enforce com-  
14 pliance by any person with the requirements of this title.”;

15               (5) in section 306 (12 U.S.C. 2805(b)), by  
16 striking subsection (b) and inserting the following:

17       “(b) EXEMPTION AUTHORITY.—The Bureau may, by  
18 regulation, exempt from the requirements of this title any  
19 State-chartered depository institution within any State or  
20 subdivision thereof, if the agency determines that, under  
21 the law of such State or subdivision, that institution is  
22 subject to requirements that are substantially similar to  
23 those imposed under this title, and that such law contains  
24 adequate provisions for enforcement. Notwithstanding any  
25 other provision of this subsection, compliance with the re-

1 requirements imposed under this subsection shall be en-  
2 forced by the Office of the Comptroller of the Currency  
3 under section 8 of the Federal Deposit Insurance Act, in  
4 the case of national banks and Federal savings associa-  
5 tions, the deposits of which are insured by the Federal  
6 Deposit Insurance Corporation.”; and

7 (6) by striking section 307 (12 U.S.C. 2806)  
8 and inserting the following:

9 **“SEC. 307. COMPLIANCE IMPROVEMENT METHODS.**

10 “(a) IN GENERAL.—

11 “(1) CONSULTATION REQUIRED.—The Director  
12 of the Bureau of Consumer Financial Protection,  
13 with the assistance of the Secretary, the Director of  
14 the Bureau of the Census, the Board of Governors  
15 of the Federal Reserve System, the Federal Deposit  
16 Insurance Corporation, and such other persons as  
17 the Bureau deems appropriate, shall develop or as-  
18 sist in the improvement of, methods of matching ad-  
19 dresses and census tracts to facilitate compliance by  
20 depository institutions in as economical a manner as  
21 possible with the requirements of this title.

22 “(2) AUTHORIZATION OF APPROPRIATIONS.—

23 There are authorized to be appropriated, such sums  
24 as may be necessary to carry out this subsection.

1           “(3) CONTRACTING AUTHORITY.—The Director  
2           of the Bureau of Consumer Financial Protection is  
3           authorized to utilize, contract with, act through, or  
4           compensate any person or agency in order to carry  
5           out this subsection.

6           “(b) RECOMMENDATIONS TO CONGRESS.—The Di-  
7           rector of the Bureau of Consumer Financial Protection  
8           shall recommend to the Committee on Banking, Housing,  
9           and Urban Affairs of the Senate and the Committee on  
10          Financial Services of the House of Representatives, such  
11          additional legislation as the Director of the Bureau of  
12          Consumer Financial Protection deems appropriate to  
13          carry out the purpose of this title.”.

14   **SEC. 1094. AMENDMENTS TO THE HOMEOWNERS PROTEC-**  
15                           **TION ACT OF 1998.**

16          Section 10 of the Homeowners Protection Act of  
17   1998 (12 U.S.C. 4909) is amended—

18               (1) in subsection (a)—

19                       (A) by striking “Compliance” and all that  
20                       follows through the end of paragraph (1) and  
21                       inserting the following: “Subject to subtitle B  
22                       of the Consumer Financial Protection Act of  
23                       2010, compliance with the requirements im-  
24                       posed under this Act shall be enforced under—

1           “(1) section 8 of the Federal Deposit Insurance  
2 Act, by the appropriate Federal banking agency (as  
3 defined in section 3(q) of that Act), with respect  
4 to—

5           “(A) insured depository institutions (as de-  
6 fined in section 3(c)(2) of that Act);

7           “(B) depository institutions described in  
8 clause (i), (ii), or (iii) of section 19(b)(1)(A) of  
9 the Federal Reserve Act which are not insured  
10 depository institutions (as defined in section  
11 3(e)(2) of the Federal Deposit Insurance Act);  
12 and

13           “(C) depository institutions described in  
14 clause (v) or (vi) of section 19(b)(1)(A) of the  
15 Federal Reserve Act which are not insured de-  
16 pository institutions (as defined in section  
17 3(e)(2) of the Federal Deposit Insurance  
18 Act);”;

19           (B) in paragraph (2), by striking “and” at  
20 the end;

21           (C) in paragraph (3), by striking the pe-  
22 riod at the end and inserting “; and”; and

23           (D) by adding at the end the following:



1 “(4) subtitle E of the Consumer Financial Pro-  
2 tection Act of 2010, by the Bureau of Consumer Fi-  
3 nancial Protection.”; and

4 (2) in subsection (b)(2), by inserting before the  
5 period at the end the following: “, subject to subtitle  
6 B of the Consumer Financial Protection Act of  
7 2010”.

8 **SEC. 1095. AMENDMENTS TO THE HOME OWNERSHIP AND**  
9 **EQUITY PROTECTION ACT OF 1994.**

10 The Home Ownership and Equity Protection Act of  
11 1994 (15 U.S.C. 1601 note) is amended—

12 (1) in section 158(a), by striking “Board of  
13 Governors of the Federal Reserve System, in con-  
14 sultation with the Consumer Advisory Council of the  
15 Board” and inserting “Bureau, in consultation with  
16 the Advisory Board to the Bureau”; and

17 (2) in section 158(b), by striking “Board of  
18 Governors of the Federal Reserve System” and in-  
19 serting “Bureau”.

20 **SEC. 1096. AMENDMENTS TO THE OMNIBUS APPROPRIA-**  
21 **TIONS ACT, 2009.**

22 Section 626 of the Omnibus Appropriations Act,  
23 2009 (15 U.S.C. 1638 note) is amended—

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

1           “(a)(1) The Bureau of Consumer Financial Protec-  
2 tion shall have authority to prescribe rules with respect  
3 to mortgage loans in accordance with section 553 of title  
4 5, United States Code. Such rulemaking shall relate to  
5 unfair or deceptive acts or practices regarding mortgage  
6 loans, which may include unfair or deceptive acts or prac-  
7 tices involving loan modification and foreclosure rescue  
8 services. Any violation of a rule prescribed under this  
9 paragraph shall be treated as a violation of a rule prohib-  
10 iting unfair, deceptive, or abusive acts or practices under  
11 the Consumer Financial Protection Act of 2010 and a vio-  
12 lation of a rule under section 18 of the Federal Trade  
13 Commission Act (15 U.S.C. 57a) regarding unfair or de-  
14 ceptive acts or practices.

15           “(2) The Bureau of Consumer Financial Protection  
16 shall enforce the rules issued under paragraph (1) in the  
17 same manner, by the same means, and with the same ju-  
18 risdiction, powers, and duties, as though all applicable  
19 terms and provisions of the Consumer Financial Protec-  
20 tion Act of 2010 were incorporated into and made part  
21 of this subsection.

22           “(3) Subject to subtitle B of the Consumer Financial  
23 Protection Act of 2010, the Federal Trade Commission  
24 shall enforce the rules issued under paragraph (1), in the  
25 same manner, by the same means, and with the same ju-

1 jurisdiction, as though all applicable terms and provisions  
2 of the Federal Trade Commission Act were incorporated  
3 into and made part of this section.”; and

4 (2) in subsection (b)—

5 (A) by striking paragraph (1) and insert-  
6 ing the following:

7 “(1) Except as provided in paragraph (6), in  
8 any case in which the attorney general of a State  
9 has reason to believe that an interest of the resi-  
10 dents of the State has been or is threatened or ad-  
11 versely affected by the engagement of any person  
12 subject to a rule prescribed under subsection (a) in  
13 practices that violate such rule, the State, as *parens*  
14 *patriae*, may bring a civil action on behalf of its resi-  
15 dents in an appropriate district court of the United  
16 States or other court of competent jurisdiction—

17 “(A) to enjoin that practice;

18 “(B) to enforce compliance with the rule;

19 “(C) to obtain damages, restitution, or  
20 other compensation on behalf of the residents of  
21 the State; or

22 “(D) to obtain penalties and relief provided  
23 under the Consumer Financial Protection Act  
24 of 2010, the Federal Trade Commission Act,

1 and such other relief as the court deems appro-  
2 priate.”;

3 (B) in paragraphs (2) and (3), by striking  
4 “the primary Federal regulator” each time the  
5 term appears and inserting “the Bureau of  
6 Consumer Financial Protection or the Commis-  
7 sion, as appropriate”;

8 (C) in paragraph (3), by inserting “and  
9 subject to subtitle B of the Consumer Financial  
10 Protection Act of 2010,” after “paragraph  
11 (2),”; and

12 (D) in paragraph (6), by striking “the pri-  
13 mary Federal regulator” each place that term  
14 appears and inserting “the Bureau of Con-  
15 sumer Financial Protection or the Commis-  
16 sion”.

17 **SEC. 1097. AMENDMENTS TO THE REAL ESTATE SETTLE-**  
18 **MENT PROCEDURES ACT OF 1974.**

19 The Real Estate Settlement Procedures Act of 1974  
20 (12 U.S.C. 2601 et seq.) is amended—

21 (1) in section 3 (12 U.S.C. 2602)—

22 (A) in paragraph (7), by striking “and” at  
23 the end;

24 (B) in paragraph (8), by striking the pe-  
25 riod at the end and inserting “; and”; and

## 1701

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

2 “(9) the term ‘Bureau’ means the Bureau of  
3 Consumer Financial Protection.”;

4 (2) in section 4 (12 U.S.C. 2603)—

5 (A) in subsection (a), by striking the first  
6 sentence and inserting the following: “The Bu-  
7 reau shall publish a single, integrated disclosure  
8 for mortgage loan transactions (including real  
9 estate settlement cost statements) which in-  
10 cludes the disclosure requirements of this title,  
11 in conjunction with the disclosure requirements  
12 of the Truth in Lending Act that, taken to-  
13 gether, may apply to a transaction that is sub-  
14 ject to both or either provisions of law. The  
15 purpose of such model disclosure shall be to fa-  
16 cilitate compliance with the disclosure require-  
17 ments of this title and the Truth in Lending  
18 Act, and to aid the borrower or lessee in under-  
19 standing the transaction by utilizing readily un-  
20 derstandable language to simplify the technical  
21 nature of the disclosures.”;

22 (B) by striking “Secretary” each place  
23 that term appears and inserting “Bureau”; and

24 (C) by striking “form” each place that  
25 term appears and inserting “forms”;

## 1702

1 (3) in section 5 (12 U.S.C. 2604)—

2 (A) by striking “Secretary” each place that  
3 term appears and inserting “Bureau”; and

4 (B) in subsection (a), by striking the first  
5 sentence and inserting the following: “The Bu-  
6 reau shall prepare and distribute booklets joint-  
7 ly addressing compliance with the requirements  
8 of the Truth in Lending Act and the provisions  
9 of this title, in order to help persons borrowing  
10 money to finance the purchase of residential  
11 real estate better to understand the nature and  
12 costs of real estate settlement services.”;

13 (4) in section 6(j)(3) (12 U.S.C. 2605(j)(3))—

14 (A) by striking “Secretary” and inserting  
15 “Bureau”; and

16 (B) by striking “, by regulations that shall  
17 take effect not later than April 20, 1991,”;

18 (5) in section 7(b) (12 U.S.C. 2606(b)) by  
19 striking “Secretary” and inserting “Bureau”;

20 (6) in section 8(d) (12 U.S.C. 2607(d))—

21 (A) in the subsection heading, by inserting  
22 “BUREAU AND” before “SECRETARY”; and

23 (B) by striking paragraph (4), and insert-  
24 ing the following:

1           “(4) The Bureau, the Secretary, or the attorney  
2           general or the insurance commissioner of any State  
3           may bring an action to enjoin violations of this sec-  
4           tion. Except, to the extent that a person is subject  
5           to the jurisdiction of the Bureau, the Secretary, or  
6           the attorney general or the insurance commissioner  
7           of any State, the Bureau shall have primary author-  
8           ity to enforce or administer this section, subject to  
9           subtitle B of the Consumer Financial Protection Act  
10          of 2010.”.

11           (7) in section 10(c) (12 U.S.C. 2609(c) and  
12           (d)), by striking “Secretary” and inserting “Bu-  
13           reau”;

14           (8) in section 16 (12 U.S.C. 2614), by inserting  
15           “the Bureau,” before “the Secretary”;

16           (9) in section 18 (12 U.S.C. 2616), by striking  
17           “Secretary” each place that term appears and in-  
18           serting “Bureau”; and

19           (10) in section 19 (12 U.S.C. 2617)—

20           (A) in the section heading by striking  
21           “**SECRETARY**” and inserting “**BUREAU**”;

22           (B) in subsection (a), by striking “Sec-  
23           retary” each place that term appears and in-  
24           serting “Bureau”;

1 (C) in subsection (b), by inserting “the  
2 Bureau” before “the Secretary”; and

3 (D) in subsection (c), by inserting “or the  
4 Bureau” after “the Secretary” each time that  
5 term appears.

6 **SEC. 1098. AMENDMENTS TO THE RIGHT TO FINANCIAL**  
7 **PRIVACY ACT OF 1978.**

8 The Right to Financial Privacy Act of 1978 (12  
9 U.S.C. 3401 et seq.) is amended—

10 (1) in section 1101—

11 (A) in paragraph (6)—

12 (i) in subparagraph (A), by inserting  
13 “and” after the semicolon;

14 (ii) in subparagraph (B), by striking  
15 “and” at the end; and

16 (iii) by striking subparagraph (C);

17 and

18 (B) in paragraph (7), by striking subpara-  
19 graph (B), and inserting the following:

20 “(B) the Bureau of Consumer Financial  
21 Protection;”;

22 (2) in section 1112(e) (12 U.S.C. 3412(e)), by  
23 striking “and the Commodity Futures Trading Com-  
24 mission is permitted” and inserting “the Commodity



1 Futures Trading Commission, and the Bureau of  
2 Consumer Financial Protection is permitted”; and

3 (3) in section 1113 (12 U.S.C. 3413), by add-  
4 ing at the end the following new subsection:

5 “(r) DISCLOSURE TO THE BUREAU OF CONSUMER  
6 FINANCIAL PROTECTION.—Nothing in this title shall  
7 apply to the examination by or disclosure to the Bureau  
8 of Consumer Financial Protection of financial records or  
9 information in the exercise of its authority with respect  
10 to a financial institution.”.

11 **SEC. 1099. AMENDMENTS TO THE SECURE AND FAIR EN-**  
12 **FORCEMENT FOR MORTGAGE LICENSING ACT**  
13 **OF 2008.**

14 The S.A.F.E. Mortgage Licensing Act of 2008 (12  
15 U.S.C. 5101 et seq.) is amended—

16 (1) by striking “a Federal banking agency”  
17 each place that term appears, other than in para-  
18 graphs (7) and (11) of section 1503 and section  
19 1507(a)(1), and inserting “the Bureau”;

20 (2) by striking “Federal banking agencies”  
21 each place that term appears and inserting “Bu-  
22 reau”; and

23 (3) by striking “Secretary” each place that  
24 term appears and inserting “Director”;

25 (4) in section 1503 (12 U.S.C. 5102)—

## 1706

1 (A) by redesignating paragraphs (2)  
2 through (12) as (3) through (13), respectively;

3 (B) by striking paragraph (1) and insert-  
4 ing the following:

5 “(1) BUREAU.—The term ‘Bureau’ means the  
6 Bureau of Consumer Financial Protection.

7 “(2) FEDERAL BANKING AGENCY.—The term  
8 ‘Federal banking agency’ means the Board of Gov-  
9 ernors of the Federal Reserve System, the Office of  
10 the Comptroller of the Currency, the National Credit  
11 Union Administration, and the Federal Deposit In-  
12 surance Corporation.”; and

13 (C) by striking paragraph (10), as so des-  
14 igned by this section, and inserting the fol-  
15 lowing:

16 “(10) DIRECTOR.—The term ‘Director’ means  
17 the Director of the Bureau of Consumer Financial  
18 Protection.”; and

19 (5) in section 1507 (12 U.S.C. 5106)—

20 (A) in subsection (a)—

21 (i) by striking paragraph (1) and in-  
22 sserting the following:

23 “(1) IN GENERAL.—The Bureau shall develop  
24 and maintain a system for registering employees of  
25 a depository institution, employees of a subsidiary

1 that is owned and controlled by a depository institu-  
2 tion and regulated by a Federal banking agency, or  
3 employees of an institution regulated by the Farm  
4 Credit Administration, as registered loan originators  
5 with the Nationwide Mortgage Licensing System and  
6 Registry. The system shall be implemented before  
7 the end of the 1-year period beginning on the date  
8 of enactment of the Consumer Financial Protection  
9 Act of 2010.”; and

10 (ii) in paragraph (2)—

11 (I) by striking “appropriate Fed-  
12 eral banking agency and the Farm  
13 Credit Administration” and inserting  
14 “Bureau”; and

15 (II) by striking “employees’s  
16 identity” and inserting “identity of  
17 the employee”; and

18 (B) in subsection (b), by striking “through  
19 the Financial Institutions Examination Council,  
20 and the Farm Credit Administration”, and in-  
21 sserting “and the Bureau of Consumer Financial  
22 Protection”;

23 (6) in section 1508 (12 U.S.C. 5107)—

24 (A) by striking the section heading and in-  
25 sserting the following: “**SEC. 1508. BUREAU OF**

1           **CONSUMER FINANCIAL PROTECTION**  
2           **BACKUP AUTHORITY TO ESTABLISH LOAN**  
3           **ORIGINATOR LICENSING SYSTEM.”; and**

4           (B) by adding at the end the following:

5           “(f) REGULATION AUTHORITY.—

6           “(1) IN GENERAL.—The Bureau is authorized  
7           to promulgate regulations setting minimum net  
8           worth or surety bond requirements for residential  
9           mortgage loan originators and minimum require-  
10          ments for recovery funds paid into by loan origina-  
11          tors.

12          “(2) CONSIDERATIONS.—In issuing regulations  
13          under paragraph (1), the Bureau shall take into ac-  
14          count the need to provide originators adequate in-  
15          centives to originate affordable and sustainable  
16          mortgage loans, as well as the need to ensure a com-  
17          petitive origination market that maximizes consumer  
18          access to affordable and sustainable mortgage  
19          loans.”;

20          (7) by striking section 1510 (12 U.S.C. 5109)  
21          and inserting the following:

22         **“SEC. 1510. FEES.**

23                 “The Bureau, the Farm Credit Administration, and  
24                 the Nationwide Mortgage Licensing System and Registry  
25                 may charge reasonable fees to cover the costs of maintain-

1 ing and providing access to information from the Nation-  
2 wide Mortgage Licensing System and Registry, to the ex-  
3 tent that such fees are not charged to consumers for ac-  
4 cess to such system and registry.”;

5 (8) by striking section 1513 (12 U.S.C. 5112)  
6 and inserting the following:

7 **“SEC. 1513. LIABILITY PROVISIONS.**

8 “The Bureau, any State official or agency, or any or-  
9 ganization serving as the administrator of the Nationwide  
10 Mortgage Licensing System and Registry or a system es-  
11 tablished by the Director under section 1509, or any offi-  
12 cer or employee of any such entity, shall not be subject  
13 to any civil action or proceeding for monetary damages  
14 by reason of the good faith action or omission of any offi-  
15 cer or employee of any such entity, while acting within  
16 the scope of office or employment, relating to the collec-  
17 tion, furnishing, or dissemination of information con-  
18 cerning persons who are loan originators or are applying  
19 for licensing or registration as loan originators.”; and

20 (9) in section 1514 (12 U.S.C. 5113) in the  
21 section heading, by striking “**UNDER HUD BACKUP**  
22 **LICENSING SYSTEM**” and inserting “**BY THE BU-**  
23 **REAU**”.

1 **SEC. 1099A. AMENDMENTS TO THE TRUTH IN LENDING ACT.**

2 The Truth in Lending Act (15 U.S.C. 1601 et seq.)  
3 is amended—

4 (1) in section 103 (5 U.S.C. 1602)—

5 (A) by redesignating subsections (b)  
6 through (bb) as subsections (c) through (cc),  
7 respectively; and

8 (B) by inserting after subsection (a) the  
9 following:

10 “(b) BUREAU.—The term ‘Bureau’ means the Bu-  
11 reau of Consumer Financial Protection.”;

12 (2) by striking “Board” each place that term  
13 appears, other than in section 140(d) and section  
14 108(a), as amended by this section, and inserting  
15 “Bureau”;

16 (3) by striking “Federal Trade Commission”  
17 each place that term appears, other than in section  
18 108(c) and section 129(m), as amended by this Act,  
19 and other than in the context of a reference to the  
20 Federal Trade Commission Act, and inserting “Bu-  
21 reau”;

22 (4) in section 105(a) (15 U.S.C. 1604(a)), in  
23 the second sentence—

24 (A) by striking “Except in the case of a  
25 mortgage referred to in section 103(aa), these  
26 regulations may contain such” and inserting

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1           “Except with respect to the provisions of sec-  
2           tion 129 that apply to a mortgage referred to  
3           in section 103(aa), such regulations may con-  
4           tain such additional requirements,”; and

5                   (B) by inserting “all or” after “exceptions  
6           for”;

7           (5) in section 105(b) (15 U.S.C. 1604(b)), by  
8           striking the first sentence and inserting the fol-  
9           lowing: “The Bureau shall publish a single, inte-  
10          grated disclosure for mortgage loan transactions (in-  
11          cluding real estate settlement cost statements) which  
12          includes the disclosure requirements of this title in  
13          conjunction with the disclosure requirements of the  
14          Real Estate Settlement Procedures Act of 1974  
15          that, taken together, may apply to a transaction that  
16          is subject to both or either provisions of law. The  
17          purpose of such model disclosure shall be to facili-  
18          tate compliance with the disclosure requirements of  
19          this title and the Real Estate Settlement Procedures  
20          Act of 1974, and to aid the borrower or lessee in un-  
21          derstanding the transaction by utilizing readily un-  
22          derstandable language to simplify the technical na-  
23          ture of the disclosures.”;

## 1712

1 (6) in section 105(f)(1) (15 U.S.C. 1604(f)(1)),  
2 by inserting “all or” after “from all or part of this  
3 title”;

4 (7) in section 108 (15 U.S.C. 1607)—

5 (A) by striking subsection (a) and insert-  
6 ing the following:

7 “(a) ENFORCING AGENCIES.—Subject to subtitle B  
8 of the Consumer Financial Protection Act of 2010, compli-  
9 ance with the requirements imposed under this title shall  
10 be enforced under—

11 “(1) section 8 of the Federal Deposit Insurance  
12 Act, by the appropriate Federal banking agency, as  
13 defined in section 3(q) of the Federal Deposit Insur-  
14 ance Act (12 U.S.C. 1813(q)), with respect to—

15 “(A) national banks, Federal savings asso-  
16 ciations, and Federal branches and Federal  
17 agencies of foreign banks;

18 “(B) member banks of the Federal Reserve  
19 System (other than national banks), branches  
20 and agencies of foreign banks (other than Fed-  
21 eral branches, Federal agencies, and insured  
22 State branches of foreign banks), commercial  
23 lending companies owned or controlled by for-  
24 eign banks, and organizations operating under



1 section 25 or 25A of the Federal Reserve Act;  
2 and

3 “(C) banks and State savings associations  
4 insured by the Federal Deposit Insurance Cor-  
5 poration (other than members of the Federal  
6 Reserve System), and insured State branches of  
7 foreign banks;

8 “(2) the Federal Credit Union Act, by the Di-  
9 rector of the National Credit Union Administration,  
10 with respect to any Federal credit union;

11 “(3) the Federal Aviation Act of 1958, by the  
12 Secretary of Transportation, with respect to any air  
13 carrier or foreign air carrier subject to that Act;

14 “(4) the Packers and Stockyards Act, 1921 (ex-  
15 cept as provided in section 406 of that Act), by the  
16 Secretary of Agriculture, with respect to any activi-  
17 ties subject to that Act;

18 “(5) the Farm Credit Act of 1971, by the Farm  
19 Credit Administration with respect to any Federal  
20 land bank, Federal land bank association, Federal  
21 intermediate credit bank, or production credit asso-  
22 ciation; and

23 “(6) subtitle E of the Consumer Financial Pro-  
24 tection Act of 2010, by the Bureau.”; and

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1 (B) by striking subsection (c) and insert-  
2 ing the following:

3 “(c) OVERALL ENFORCEMENT AUTHORITY OF THE  
4 FEDERAL TRADE COMMISSION.—Except to the extent  
5 that enforcement of the requirements imposed under this  
6 title is specifically committed to some other Government  
7 agency under any of paragraphs (1) through (6) of sub-  
8 section (a), and subject to subtitle B of the Consumer Fi-  
9 nancial Protection Act of 2010, the Federal Trade Com-  
10 mission shall be authorized to enforce such requirements.  
11 For the purpose of the exercise by the Federal Trade  
12 Commission of its functions and powers under the Federal  
13 Trade Commission Act, a violation of any requirement im-  
14 posed under this title shall be deemed a violation of a re-  
15 quirement imposed under that Act. All of the functions  
16 and powers of the Federal Trade Commission under the  
17 Federal Trade Commission Act are available to the Fed-  
18 eral Trade Commission to enforce compliance by any per-  
19 son with the requirements under this title, irrespective of  
20 whether that person is engaged in commerce or meets any  
21 other jurisdictional tests under the Federal Trade Com-  
22 mission Act.”;

23 (8) in section 129 (15 U.S.C. 1639), by striking  
24 subsection (m) and inserting the following:

1 “(m) CIVIL PENALTIES IN FEDERAL TRADE COM-  
2 MISSION ENFORCEMENT ACTIONS.—For purposes of en-  
3 forcement by the Federal Trade Commission, any violation  
4 of a regulation issued by the Bureau pursuant to sub-  
5 section (l)(2) shall be treated as a violation of a rule pro-  
6 mulgated under section 18 of the Federal Trade Commis-  
7 sion Act (15 U.S.C. 57a) regarding unfair or deceptive  
8 acts or practices.”; and

9 (9) in chapter 5 (15 U.S.C. 1667 et seq.)—

10 (A) by striking “the Board” each place  
11 that term appears and inserting “the Bureau”;  
12 and

13 (B) by striking “The Board” each place  
14 that term appears and inserting “The Bureau”.

15 **SEC. 1099B. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.**

16 The Truth in Savings Act (12 U.S.C. 4301 et seq.)  
17 is amended—

18 (1) by striking “Board” each place that term  
19 appears, other than in section 272(b) (12 U.S.C.  
20 4311), and inserting “Bureau”;

21 (2) in section 270(a) (12 U.S.C. 4309)—

22 (A) by striking “Compliance” and all that  
23 follows through the end of paragraph (1) and  
24 inserting: “Subject to subtitle B of the Con-  
25 sumer Financial Protection Act of 2010, com-

1           pliance with the requirements imposed under  
2           this subtitle shall be enforced under—

3           “(1) section 8 of the Federal Deposit Insurance  
4           Act by the appropriate Federal banking agency (as  
5           defined in section 3(q) of that Act), with respect  
6           to—

7                   “(A) insured depository institutions (as de-  
8                   fined in section 3(c)(2) of that Act);

9                   “(B) depository institutions described in  
10                  clause (i), (ii), or (iii) of section 19(b)(1)(A) of  
11                  the Federal Reserve Act which are not insured  
12                  depository institutions (as defined in section  
13                  3(c)(2) of the Federal Deposit Insurance Act);  
14                  and

15                  “(C) depository institutions described in  
16                  clause (v) or (vi) of section 19(b)(1)(A) of the  
17                  Federal Reserve Act which are not insured de-  
18                  pository institutions (as defined in section  
19                  3(c)(2) of the Federal Deposit Insurance  
20                  Act);”;

21                  (B) in paragraph (2), by striking the pe-  
22                  riod at the end and inserting “; and”; and

23                  (C) by adding at the end the following:

24                  “(3) subtitle E of the Consumer Financial Pro-  
25                  tection Act of 2010, by the Bureau.”;

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1           (3) in section 272(b) (12 U.S.C. 4311(b)), by  
2           striking “regulation prescribed by the Board” each  
3           place that term appears and inserting “regulation  
4           prescribed by the Bureau”; and

5           (4) in section 274 (12 U.S.C. 4313), by striking  
6           paragraph (4) and inserting the following:

7           “(4) BUREAU.—The term ‘Bureau’ means the  
8           Bureau of Consumer Financial Protection.”.

9   **SEC. 1099C. AMENDMENTS TO THE TELEMARKETING AND**  
10                           **CONSUMER FRAUD AND ABUSE PREVENTION**  
11                           **ACT.**

12           (a) AMENDMENTS TO SECTION 3.—Section 3 of the  
13   Telemarketing and Consumer Fraud and Abuse Preven-  
14   tion Act (15 U.S.C. 6102) is amended by striking sub-  
15   sections (b) and (c) and inserting the following:

16           “(b) RULEMAKING AUTHORITY.—The Commission  
17   shall have authority to prescribe rules under subsection  
18   (a), in accordance with section 553 of title 5, United  
19   States Code. In prescribing a rule under this section that  
20   relates to the provision of a consumer financial product  
21   or service that is subject to the Consumer Financial Pro-  
22   tection Act of 2010, including any enumerated consumer  
23   law thereunder, the Commission shall consult with the Bu-  
24   reau of Consumer Financial Protection regarding the con-  
25   sistency of a proposed rule with standards, purposes, or

1 objectives administered by the Bureau of Consumer Fi-  
2 nancial Protection.

3 “(c) VIOLATIONS.—Any violation of any rule pre-  
4 scribed under subsection (a)—

5 “(1) shall be treated as a violation of a rule  
6 under section 18 of the Federal Trade Commission  
7 Act regarding unfair or deceptive acts or practices;  
8 and

9 “(2) that is committed by a person subject to  
10 the Consumer Financial Protection Act of 2010  
11 shall be treated as a violation of a rule under section  
12 1031 of that Act regarding unfair, deceptive, or abu-  
13 sive acts or practices.”.

14 (b) AMENDMENTS TO SECTION 4.—Section 4(d) of  
15 the Telemarketing and Consumer Fraud and Abuse Pre-  
16 vention Act (15 U.S.C. 6103(d)) is amended by inserting  
17 after “Commission” each place that term appears the fol-  
18 lowing: “or the Bureau of Consumer Financial Protec-  
19 tion”.

20 (c) AMENDMENTS TO SECTION 5.—Section 5(c) of  
21 the Telemarketing and Consumer Fraud and Abuse Pre-  
22 vention Act (15 U.S.C. 6104(c)) is amended by inserting  
23 after “Commission” each place that term appears the fol-  
24 lowing: “or the Bureau of Consumer Financial Protec-  
25 tion”.

1 (d) AMENDMENT TO SECTION 6.—Section 6 of the  
2 Telemarketing and Consumer Fraud and Abuse Preven-  
3 tion Act (15 U.S.C. 6105) is amended by adding at the  
4 end the following:

5 “(d) ENFORCEMENT BY BUREAU OF CONSUMER FI-  
6 NANCIAL PROTECTION.—Except as otherwise provided in  
7 sections 3(d), 3(e), 4, and 5, and subject to subtitle B  
8 of the Consumer Financial Protection Act of 2010, this  
9 Act shall be enforced by the Bureau of Consumer Finan-  
10 cial Protection under subtitle E of the Consumer Finan-  
11 cial Protection Act of 2010, with respect to the offering  
12 or provision of a consumer financial product or service  
13 subject to that Act.”.

14 **SEC. 1099D. AMENDMENTS TO THE PAPERWORK REDUC-**  
15 **TION ACT.**

16 (a) DESIGNATION AS AN INDEPENDENT AGENCY.—  
17 Section 2(5) of the Paperwork Reduction Act (44 U.S.C.  
18 3502(5)) is amended by inserting “the Bureau of Con-  
19 sumer Financial Protection, the Office of Financial Re-  
20 search,” after “the Securities and Exchange Commis-  
21 sion,”.

22 (b) COMPARABLE TREATMENT.—Section 3513 of  
23 title 44, United States Code, is amended by adding at the  
24 end the following:

1           “(c) COMPARABLE TREATMENT.—Notwithstanding  
2 any other provision of law, the Director shall treat or re-  
3 view a rule or order prescribed or proposed by the Director  
4 of the Bureau of Consumer Financial Protection on the  
5 same terms and conditions as apply to any rule or order  
6 prescribed or proposed by the Board of Governors of the  
7 Federal Reserve System.”.

8   **SEC. 1099E. ADJUSTMENTS FOR INFLATION IN THE TRUTH**  
9                                   **IN LENDING ACT.**

10          (a) CAPS.—

11               (1) CREDIT TRANSACTIONS.—Section 104(3) of  
12 the Truth in Lending Act (15 U.S.C. 1603(3)) is  
13 amended by striking “\$25,000” and inserting  
14 “\$50,000”.

15               (2) CONSUMER LEASES.—Section 181(1) of the  
16 Truth in Lending Act (15 U.S.C. 1667(1)) is  
17 amended by striking “\$25,000” and inserting  
18 “\$50,000”.

19          (b) ADJUSTMENTS FOR INFLATION.—On and after  
20 December 31, 2011, the Bureau shall adjust annually the  
21 dollar amounts described in sections 104(3) and 181(1)  
22 of the Truth in Lending Act (as amended by this section),  
23 by the annual percentage increase in the Consumer Price  
24 Index for Urban Wage Earners and Clerical Workers, as



1 published by the Bureau of Labor Statistics, rounded to  
2 the nearest multiple of \$100, or \$1,000, as applicable.

3 **SEC. 1099F. SMALL BUSINESS FAIRNESS AND REGULATORY**  
4 **TRANSPARENCY.**

5 (a) PANEL REQUIREMENT.—Section 609(d) of title  
6 5, United States Code, is amended by striking “means  
7 the” and all that follows and inserting the following:  
8 “means—

9 “(1) the Environmental Protection Agency;

10 “(2) the Consumer Financial Protection Bureau  
11 of the Federal Reserve System; and

12 “(3) the Occupational Safety and Health Ad-  
13 ministration of the Department of Labor.”.

14 (b) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—  
15 Section 603 of title 5, United States Code, is amended  
16 by adding at the end the following:

17 “(d)(1) For a covered agency, as defined in section  
18 609(d)(2), each initial regulatory flexibility analysis shall  
19 include a description of—

20 “(A) any projected increase in the cost of credit  
21 for small entities;

22 “(B) any significant alternatives to the pro-  
23 posed rule which accomplish the stated objectives of  
24 applicable statutes and which minimize any increase  
25 in the cost of credit for small entities; and

1           “(C) advice and recommendations of represent-  
2           atives of small entities relating to issues described in  
3           subparagraphs (A) and (B) and subsection (b).

4           “(2) A covered agency, as defined in section  
5           609(d)(2), shall, for purposes of complying with para-  
6           graph (1)(C)—

7           “(A) identify representatives of small entities in  
8           consultation with the Chief Counsel for Advocacy of  
9           the Small Business Administration; and

10           “(B) collect advice and recommendations from  
11           the representatives identified under subparagraph  
12           (A) relating to issues described in subparagraphs  
13           (A) and (B) of paragraph (1) and subsection (b).”.

14           (c) FINAL REGULATORY FLEXIBILITY ANALYSIS.—  
15           Section 604(a) of title 5, United States Code, is amend-  
16           ed—

17           (1) in paragraph (4), by striking “and” at the  
18           end;

19           (2) in paragraph (5), by striking the period at  
20           the end and inserting “; and”; and

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

22           “(6) for a covered agency, as defined in section  
23           609(d)(2), a description of the steps the agency has  
24           taken to minimize any additional cost of credit for  
25           small entities.”.

1 **SEC. 1099G. EFFECTIVE DATE.**

2 Except as otherwise provided in this subtitle and the  
3 amendments made by this subtitle, this subtitle and the  
4 amendments made by this subtitle, other than sections  
5 1081 and 1082, shall become effective on the designated  
6 transfer date.

7 **TITLE XI—FEDERAL RESERVE**  
8 **SYSTEM PROVISIONS**

9 **SEC. 1101. FEDERAL RESERVE ACT AMENDMENTS ON**  
10 **EMERGENCY LENDING AUTHORITY.**

11 (a) FEDERAL RESERVE ACT.—The third undesig-  
12 nated paragraph of section 13 of the Federal Reserve Act  
13 (12 U.S.C. 343) (relating to emergency lending authority)  
14 is amended—

15 (1) by inserting “(3)(A)” before “In unusual”;

16 (2) by striking “individual, partnership, or cor-  
17 poration” the first place that term appears and in-  
18 serting the following: “participant in any program or  
19 facility with broad-based eligibility”;

20 (3) by striking “exchange for an individual or  
21 a partnership or corporation” and inserting “ex-  
22 change,”;

23 (4) by striking “such individual, partnership, or  
24 corporation” and inserting the following: “such par-  
25 ticipant in any program or facility with broad-based  
26 eligibility”;

1           (5) by striking “for individuals, partnerships,  
2           corporations” and inserting “for any participant in  
3           any program or facility with broad-based eligibility”;

4           (6) by striking “may prescribe.” and inserting  
5           the following: “may prescribe.

6                       “(B)(i) As soon as is practicable after the  
7           date of enactment of this subparagraph, the  
8           Board shall establish, by regulation, in con-  
9           sultation with the Secretary of the Treasury,  
10          the policies and procedures governing emer-  
11          gency lending under this paragraph. Such poli-  
12          cies and procedures shall be designed to ensure  
13          that any emergency lending program or facility  
14          is for the purpose of providing liquidity to the  
15          financial system, and not to aid a failing finan-  
16          cial company, and that the security for emer-  
17          gency loans is sufficient to protect taxpayers  
18          from losses and that any such program is ter-  
19          minated in a timely and orderly fashion. The  
20          policies and procedures established by the  
21          Board shall require that a Federal reserve bank  
22          assign, consistent with sound risk management  
23          practices and to ensure protection for the tax-  
24          payer, a lendable value to all collateral for a  
25          loan executed by a Federal reserve bank under

1           this paragraph in determining whether the loan  
2           is secured satisfactorily for purposes of this  
3           paragraph.

4                   “(ii) The Board shall establish procedures  
5           to prohibit borrowing from programs and facili-  
6           ties by borrowers that are insolvent. Such pro-  
7           cedures may include a certification from the  
8           chief executive officer (or other authorized offi-  
9           cer) of the borrower, at the time the borrower  
10          initially borrows under the program or facility  
11          (with a duty by the borrower to update the cer-  
12          tification if the information in the certification  
13          materially changes), that the borrower is not in-  
14          solvent. A borrower shall be considered insol-  
15          vent for purposes of this subparagraph, if the  
16          borrower is in bankruptcy, resolution under title  
17          II of the Restoring American Financial Sta-  
18          bility Act of 2010, or any other Federal or  
19          State insolvency proceeding.

20                   “(iii) A program or facility that is struc-  
21          tured to remove assets from the balance sheet  
22          of a single and specific company, or that is es-  
23          tablished for the purpose of assisting a single  
24          and specific company avoid bankruptcy, resolu-  
25          tion under title II of the Restoring American

1 Financial Stability Act of 2010, or any other  
2 Federal or State insolvency proceeding, shall  
3 not be considered a program or facility with  
4 broad-based eligibility.

5 “(iv) The Board may not establish any  
6 program or facility under this paragraph with-  
7 out the prior approval of the Secretary of the  
8 Treasury.

9 “(C) The Board shall provide to the Com-  
10 mittee on Banking, Housing, and Urban Affairs  
11 of the Senate and the Committee on Financial  
12 Services of the House of Representatives—

13 “(i) not later than 7 days after the  
14 Board authorizes any loan or other finan-  
15 cial assistance under this paragraph, a re-  
16 port that includes—

17 “(I) the justification for the exer-  
18 cise of authority to provide such as-  
19 sistance;

20 “(II) the identity of the recipi-  
21 ents of such assistance;

22 “(III) the date and amount of  
23 the assistance, and form in which the  
24 assistance was provided; and

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1 “(IV) the material terms of the  
2 assistance, including—

3 “(aa) duration;

4 “(bb) collateral pledged and  
5 the value thereof;

6 “(cc) all interest, fees, and  
7 other revenue or items of value to  
8 be received in exchange for the  
9 assistance;

10 “(dd) any requirements im-  
11 posed on the recipient with re-  
12 spect to employee compensation,  
13 distribution of dividends, or any  
14 other corporate decision in ex-  
15 change for the assistance; and

16 “(ee) the expected costs to  
17 the taxpayers of such assistance;  
18 and

19 “(ii) once every 30 days, with respect  
20 to any outstanding loan or other financial  
21 assistance under this paragraph, written  
22 updates on—

23 “(I) the value of collateral;

24 “(II) the amount of interest,  
25 fees, and other revenue or items of

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1 value received in exchange for the as-  
2 sistance; and

3 “(III) the expected or final cost  
4 to the taxpayers of such assistance.

5 “(D) The information required to be sub-  
6 mitted to Congress under subparagraph (C) re-  
7 lated to—

8 “(i) the identity of the participants in  
9 an emergency lending program or facility  
10 commenced under this paragraph;

11 “(ii) the amounts borrowed by each  
12 participant in any such program or facility;

13 “(iii) identifying details concerning  
14 the assets or collateral held by, under, or  
15 in connection with such a program or facil-  
16 ity,

17 shall be kept confidential, upon the written re-  
18 quest of the Chairman of the Board, in which  
19 case such information shall be made available  
20 only to the Chairpersons or Ranking Members  
21 of the Committees described in subparagraph  
22 (C).

23 “(E) If an entity to which a Federal re-  
24 serve bank has provided a loan under this para-  
25 graph becomes a covered financial company, as



1 defined in section 203 of the Restoring Amer-  
2 ican Financial Stability Act of 2010, at any  
3 time while such loan is outstanding, and the  
4 Federal reserve bank incurs a realized net loss  
5 on the loan, then the Federal reserve bank shall  
6 have a claim equal to the amount of the net re-  
7 alized loss against the covered entity, with the  
8 same priority as an obligation to the Secretary  
9 of the Treasury under sections 210(n) and  
10 210(o) of the Restoring American Financial  
11 Stability Act of 2010.”.

12 (b) CONFORMING AMENDMENT.—Section 507(a)(2)  
13 of title 11, United States Code, is amended by inserting  
14 “unsecured claims of any Federal reserve bank related to  
15 loans made through programs or facilities authorized  
16 under section 13(3) of the Federal Reserve Act (12 U.S.C.  
17 343),” after “this title,”.

18 (c) REFERENCES.—On and after the date of enact-  
19 ment of this Act, any reference in any provision of Federal  
20 law to the third undesignated paragraph of section 13 of  
21 the Federal Reserve Act (12 U.S.C. 343) shall be deemed  
22 to be a reference to section 13(3) of the Federal Reserve  
23 Act, as so designated by this section.

1 **SEC. 1102. REVIEWS OF SPECIAL FEDERAL RESERVE CRED-**  
2 **IT FACILITIES.**

3 (a) REVIEWS.—Section 714 of title 31, United States  
4 Code, is amended by adding at the end the following:

5 “(f) REVIEWS OF CREDIT FACILITIES OF THE FED-  
6 ERAL RESERVE SYSTEM.—

7 “(1) DEFINITION.—In this subsection, the term  
8 ‘credit facility’ means a program or facility, includ-  
9 ing any special purpose vehicle or other entity estab-  
10 lished by or on behalf of the Board of Governors of  
11 the Federal Reserve System or a Federal reserve  
12 bank, authorized by the Board of Governors under  
13 section 13(3) of the Federal Reserve Act (12 U.S.C.  
14 343), that is not subject to audit under subsection  
15 (e).

16 “(2) AUTHORITY FOR REVIEWS AND EXAMINA-  
17 TIONS.—Subject to paragraph (3), and notwith-  
18 standing any limitation in subsection (b) on the au-  
19 diting and oversight of certain functions of the  
20 Board of Governors of the Federal Reserve System  
21 or any Federal reserve bank, the Comptroller Gen-  
22 eral of the United States may conduct reviews, in-  
23 cluding onsite examinations, of the Board of Gov-  
24 ernors, a Federal reserve bank, or a credit facility,  
25 if the Comptroller General determines that such re-

1 views are appropriate, solely for the purposes of as-  
2 ssuming, with respect to a credit facility—

3 “(A) the operational integrity, accounting,  
4 financial reporting, and internal controls of the  
5 credit facility;

6 “(B) the effectiveness of the security and  
7 collateral policies established for the facility in  
8 mitigating risk to the relevant Federal reserve  
9 bank and taxpayers;

10 “(C) whether the credit facility inappropri-  
11 ately favors one or more specific participants  
12 over other institutions eligible to utilize the fa-  
13 cility; and

14 “(D) the policies governing the use, selec-  
15 tion, or payment of third-party contractors by  
16 or for any credit facility.

17 “(3) REPORTS AND DELAYED DISCLOSURE.—

18 “(A) REPORTS REQUIRED.—A report on  
19 each review conducted under paragraph (2)  
20 shall be submitted by the Comptroller General  
21 to the Congress before the end of the 90-day  
22 period beginning on the date on which such re-  
23 view is completed.

24 “(B) CONTENTS.—The report under sub-  
25 paragraph (A) shall include a detailed descrip-

1           tion of the findings and conclusions of the  
2           Comptroller General with respect to the matters  
3           described in paragraph (2) that were reviewed  
4           and are the subject of the report, together with  
5           such recommendations for legislative or admin-  
6           istrative action relating to such matters as the  
7           Comptroller General may determine to be ap-  
8           propriate.

9           “(C) DELAYED RELEASE OF CERTAIN IN-  
10          FORMATION.—

11           “(i) IN GENERAL.—The Comptroller  
12          General shall not disclose to any person or  
13          entity, including to Congress, the names or  
14          identifying details of specific participants  
15          in any credit facility, the amounts bor-  
16          rowed by specific participants in any credit  
17          facility, or identifying details regarding as-  
18          sets or collateral held by, under, or in con-  
19          nection with any credit facility, and any re-  
20          port provided under subparagraph (A)  
21          shall be redacted to ensure that such  
22          names and details are not disclosed.

23           “(ii) DELAYED RELEASE.—The non-  
24          disclosure obligation under clause (i) shall  
25          expire with respect to any participant on

1 the date on which the Board of Governors,  
2 directly or through a Federal reserve bank,  
3 publicly discloses the identity of the subject  
4 participant or the identifying details of the  
5 subject assets or collateral.

6 “(iii) GENERAL RELEASE.—The  
7 Comptroller General shall release a non-  
8 redacted version of any report on a credit  
9 facility 1 year after the effective date of  
10 the termination by the Board of Governors  
11 of the authorization for the credit facility.  
12 For purposes of this clause, a credit facil-  
13 ity shall be deemed to have terminated 24  
14 months after the date on which the credit  
15 facility ceases to make extensions of credit  
16 and loans, unless the credit facility is oth-  
17 erwise terminated by the Board of Gov-  
18 ernors.

19 “(iv) EXCEPTIONS.—The nondisclo-  
20 sure obligation under clause (i) shall not  
21 apply to the credit facilities Maiden Lane,  
22 Maiden Lane II, and Maiden Lane III.”.

23 (b) ACCESS TO RECORDS.—Section 714(d) of title  
24 31, United States Code, is amended—

1           (1) in paragraph (2), by inserting “or any per-  
2           son or entity described in paragraph (3)(A)” after  
3           “used by an agency”;

4           (2) in paragraph (3), by inserting “or (f)” after  
5           “subsection (e)” each place that term appears; and

6           (3) in paragraph (3)(B), by adding at the end  
7           the following: “The Comptroller General may make  
8           and retain copies of books, accounts, and other  
9           records provided under subparagraph (A) as the  
10          Comptroller General deems appropriate. The Comp-  
11          troller General shall provide to any person or entity  
12          described in subparagraph (A) a current list of offi-  
13          cers and employees to whom, with proper identifica-  
14          tion, records and property may be made available,  
15          and who may make notes or copies necessary to  
16          carry out a review or examination under this sub-  
17          section.”.

18 **SEC. 1103. PUBLIC ACCESS TO INFORMATION.**

19          Section 2B of the Federal Reserve Act (12 U.S.C.  
20          225b) is amended by adding at the end the following:

21          “(c) PUBLIC ACCESS TO INFORMATION.—The Board  
22          shall place on its home Internet website, a link entitled  
23          ‘Audit’, which shall link to a webpage that shall serve as  
24          a repository of information made available to the public  
25          for a reasonable period of time, not less than 6 months

1 following the date of release of the relevant information,  
2 including—

3 “(1) the reports prepared by the Comptroller  
4 General under section 714 of title 31, United States  
5 Code;

6 “(2) the annual financial statements prepared  
7 by an independent auditor for the Board in accord-  
8 ance with section 11B;

9 “(3) the reports to the Committee on Banking,  
10 Housing, and Urban Affairs of the Senate required  
11 under section 13(3) (relating to emergency lending  
12 authority); and

13 “(4) such other information as the Board rea-  
14 sonably believes is necessary or helpful to the public  
15 in understanding the accounting, financial reporting,  
16 and internal controls of the Board and the Federal  
17 reserve banks.”.

18 **SEC. 1104. LIQUIDITY EVENT DETERMINATION.**

19 (a) DETERMINATION AND WRITTEN RECOMMENDA-  
20 TION.—

21 (1) DETERMINATION REQUEST.—The Secretary  
22 may request the Corporation and the Board of Gov-  
23 ernors to determine whether a liquidity event exists  
24 that warrants use of the guarantee program author-  
25 ized under section 1105.

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1           (2) REQUIREMENTS OF DETERMINATION.—Any  
2           determination pursuant to paragraph (1) shall—

3                   (A) be written; and

4                   (B) contain an evaluation of the evidence  
5           that—

6                           (i) a liquidity event exists;

7                           (ii) failure to take action would have  
8                   serious adverse effects on financial stability  
9                   or economic conditions in the United  
10           States; and

11                           (iii) actions authorized under section  
12                   1105 are needed to avoid or mitigate po-  
13                   tential adverse effects on the United States  
14                   financial system or economic conditions.

15           (b) PROCEDURES.—Notwithstanding any other provi-  
16           sion of Federal or State law, upon the determination of  
17           both the Corporation (upon a vote of not fewer than  $\frac{2}{3}$   
18           of the members of the Corporation then serving) and the  
19           Board of Governors (upon a vote of not fewer than  $\frac{2}{3}$   
20           of the members of the Board of Governors then serving)  
21           under subsection (a) that a liquidity event exists that war-  
22           rants use of the guarantee program authorized under sec-  
23           tion 1105, and with the written consent of the Secretary—

24                   (1) the Corporation shall take action in accord-  
25           ance with section 1105(a); and



1           (2) the Secretary (in consultation with the  
2     President) shall take action in accordance with sec-  
3     tion 1105(c).

4     (c) DOCUMENTATION AND REVIEW.—

5           (1) DOCUMENTATION.—The Secretary shall—

6                 (A) maintain the written documentation of  
7                 each determination of the Corporation and the  
8                 Board of Governors under this section; and

9                 (B) provide the documentation for review  
10                under paragraph (2).

11           (2) GAO REVIEW.—The Comptroller General of  
12     the United States shall review and report to Con-  
13     gress on any determination of the Corporation and  
14     the Board of Governors under subsection (a), includ-  
15     ing—

16                 (A) the basis for the determination; and

17                 (B) the likely effect of the actions taken.

18     (d) REPORT TO CONGRESS.—On the earlier of the  
19     date of a submission made to Congress under section  
20     1105(c), or within 30 days of the date of a determination  
21     under subsection (a), the Secretary shall provide written  
22     notice of the determination of the Corporation and the  
23     Board of Governors to the Committee on Banking, Hous-  
24     ing, and Urban Affairs of the Senate and the Committee

1 on Financial Services of the House of Representatives, in-  
2 cluding a description of the basis for the determination.

3 **SEC. 1105. EMERGENCY FINANCIAL STABILIZATION.**

4 (a) IN GENERAL.—Upon the written determination  
5 of the Corporation and the Board of Governors under sec-  
6 tion 1104, the Corporation shall create a widely available  
7 program to guarantee obligations of solvent insured depos-  
8 itory institutions or solvent depository institution holding  
9 companies (including any affiliates thereof) during times  
10 of severe economic distress, except that a guarantee of ob-  
11 ligations under this section may not include the provision  
12 of equity in any form.

13 (b) RULEMAKING AND TERMS AND CONDITIONS.—

14 (1) POLICIES AND PROCEDURES.—As soon as is  
15 practicable after the date of enactment of this Act,  
16 the Corporation shall establish, by regulation, and in  
17 consultation with the Secretary, policies and proce-  
18 dures governing the issuance of guarantees author-  
19 ized by this section. Such policies and procedures  
20 may include a requirement of collateral as a condi-  
21 tion of any such guarantee.

22 (2) TERMS AND CONDITIONS.—The terms and  
23 conditions of any guarantee program shall be estab-  
24 lished by the Corporation, with the concurrence of  
25 the Secretary.

1 (c) DETERMINATION OF GUARANTEED AMOUNT.—

2 (1) IN GENERAL.—In connection with any pro-  
3 gram established pursuant to subsection (a) and  
4 subject to paragraph (2) of this subsection, the Sec-  
5 retary (in consultation with the President) shall de-  
6 termine the maximum amount of debt outstanding  
7 that the Corporation may guarantee under this sec-  
8 tion, and the President may transmit to Congress a  
9 written report on the plan of the Corporation to ex-  
10 ercise the authority under this section to issue guar-  
11 antees up to that maximum amount and a request  
12 for approval of such plan. The Corporation shall ex-  
13 ercise the authority under this section to issue guar-  
14 antees up to that specified maximum amount upon  
15 passage of the joint resolution of approval, as pro-  
16 vided in subsection (d). Absent such approval, the  
17 Corporation shall issue no such guarantees.

18 (2) ADDITIONAL DEBT GUARANTEE AUTHOR-  
19 ITY.—If the Secretary (in consultation with the  
20 President) determines, after a submission to Con-  
21 gress under paragraph (1), that the maximum guar-  
22 antee amount should be raised, and the Council con-  
23 curs with that determination, the President may  
24 transmit to Congress a written report on the plan of  
25 the Corporation to exercise the authority under this

1 section to issue guarantees up to the increased max-  
2 imum debt guarantee amount. The Corporation shall  
3 exercise the authority under this section to issue  
4 guarantees up to that specified maximum amount  
5 upon passage of the joint resolution of approval, as  
6 provided in subsection (d). Absent such approval,  
7 the Corporation shall issue no such guarantees.

8 (d) RESOLUTION OF APPROVAL.—

9 (1) ADDITIONAL DEBT GUARANTEE AUTHOR-  
10 ITY.—A request by the President under this section  
11 shall be considered granted by Congress upon adop-  
12 tion of a joint resolution approving such request.  
13 Such joint resolution shall be considered in the Sen-  
14 ate under expedited procedures.

15 (2) FAST TRACK CONSIDERATION IN SENATE.—

16 (A) RECONVENING.—Upon receipt of a re-  
17 quest under subsection (c), if the Senate has  
18 adjourned or recessed for more than 2 days, the  
19 majority leader of the Senate, after consultation  
20 with the minority leader of the Senate, shall no-  
21 tify the Members of the Senate that, pursuant  
22 to this section, the Senate shall convene not  
23 later than the second calendar day after receipt  
24 of such message.

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1 (B) PLACEMENT ON CALENDAR.—Upon in-  
2 troduction in the Senate, the joint resolution  
3 shall be placed immediately on the calendar.

4 (C) FLOOR CONSIDERATION.—

5 (i) IN GENERAL.—Notwithstanding  
6 Rule XXII of the Standing Rules of the  
7 Senate, it is in order at any time during  
8 the period beginning on the 4th day after  
9 the date on which Congress receives a re-  
10 quest under subsection (c), and ending on  
11 the 7th day after that date (even though a  
12 previous motion to the same effect has  
13 been disagreed to) to move to proceed to  
14 the consideration of the joint resolution,  
15 and all points of order against the joint  
16 resolution (and against consideration of  
17 the joint resolution) are waived. The mo-  
18 tion to proceed is not debatable. The mo-  
19 tion is not subject to a motion to postpone.  
20 A motion to reconsider the vote by which  
21 the motion is agreed to or disagreed to  
22 shall not be in order. If a motion to pro-  
23 ceed to the consideration of the resolution  
24 is agreed to, the joint resolution shall re-

1 main the unfinished business until dis-  
2 posed of.

3 (ii) DEBATE.—Debate on the joint  
4 resolution, and on all debatable motions  
5 and appeals in connection therewith, shall  
6 be limited to not more than 10 hours,  
7 which shall be divided equally between the  
8 majority and minority leaders or their des-  
9 ignees. A motion further to limit debate is  
10 in order and not debatable. An amendment  
11 to, or a motion to postpone, or a motion to  
12 proceed to the consideration of other busi-  
13 ness, or a motion to recommit the joint  
14 resolution is not in order.

15 (iii) VOTE ON PASSAGE.—The vote on  
16 passage shall occur immediately following  
17 the conclusion of the debate on the joint  
18 resolution, and a single quorum call at the  
19 conclusion of the debate if requested in ac-  
20 cordance with the rules of the Senate.

21 (iv) RULINGS OF THE CHAIR ON PRO-  
22 CEDURE.—Appeals from the decisions of  
23 the Chair relating to the application of the  
24 rules of the Senate, as the case may be, to

1           the procedure relating to a joint resolution  
2           shall be decided without debate.

3           (3) RULES.—

4           (A) COORDINATION WITH ACTION BY  
5           HOUSE OF REPRESENTATIVES.—If, before the  
6           passage by the Senate of a joint resolution of  
7           the Senate, the Senate receives a joint resolu-  
8           tion, from the House of Representatives, then  
9           the following procedures shall apply:

10           (i) The joint resolution of the House  
11           of Representatives shall not be referred to  
12           a committee.

13           (ii) With respect to a joint resolution  
14           of the Senate—

15           (I) the procedure in the Senate  
16           shall be the same as if no joint resolu-  
17           tion had been received from the other  
18           House; but

19           (II) the vote on passage shall be  
20           on the joint resolution of the House of  
21           Representatives.

22           (B) TREATMENT OF JOINT RESOLUTION  
23           OF HOUSE OF REPRESENTATIVES.—If the Sen-  
24           ate fails to introduce or consider a joint resolu-  
25           tion under this section, the joint resolution of

1 the House of Representatives shall be entitled  
2 to expedited floor procedures under this sub-  
3 section.

4 (C) TREATMENT OF COMPANION MEAS-  
5 URES.—If, following passage of the joint resolu-  
6 tion in the Senate, the Senate then receives the  
7 companion measure from the House of Rep-  
8 resentatives, the companion measure shall not  
9 be debatable.

10 (D) RULES OF THE SENATE.—This sub-  
11 section is enacted by Congress—

12 (i) as an exercise of the rulemaking  
13 power of the Senate, and as such it is  
14 deemed a part of the rules of the Senate,  
15 but applicable only with respect to the pro-  
16 cedure to be followed in the Senate in the  
17 case of a joint resolution, and it supersedes  
18 other rules, only to the extent that it is in-  
19 consistent with such rules; and

20 (ii) with full recognition of the con-  
21 stitutional right of the Senate to change  
22 the rules (so far as relating to the proce-  
23 dure of the Senate) at any time, in the  
24 same manner, and to the same extent as in  
25 the case of any other rule of the Senate.



1           (4) DEFINITION.—As used in this subsection,  
2           the term “joint resolution” means only a joint reso-  
3           lution—

4                   (A) that is introduced not later than 3 cal-  
5                   endar days after the date on which the request  
6                   referred to in subsection (c) is received by Con-  
7                   gress;

8                   (B) that does not have a preamble;

9                   (C) the title of which is as follows: “Joint  
10                  resolution relating to the approval of a plan to  
11                  guarantee obligations under section 1105 of the  
12                  Restoring American Financial Stability Act of  
13                  2010”; and

14                  (D) the matter after the resolving clause of  
15                  which is as follows: “That Congress approves  
16                  the obligation of any amount described in sec-  
17                  tion 1105(c) of the Restoring American Finan-  
18                  cial Stability Act of 2010.”.

19           (e) FUNDING.—

20                   (1) FEES AND OTHER CHARGES.—The Corpora-  
21                   tion shall charge fees and other assessments to all  
22                   participants in the program established pursuant to  
23                   this section, in such amounts as are necessary to off-  
24                   set projected losses and administrative expenses, in-  
25                   cluding amounts borrowed pursuant to paragraph

1 (3), and such amounts shall be available to the Cor-  
2 poration.

3 (2) EXCESS FUNDS.—If, at the conclusion of  
4 the program established under this section, there are  
5 any excess funds collected from the fees associated  
6 with such program, the funds shall be deposited in  
7 the General Fund of the Treasury.

8 (3) AUTHORITY OF CORPORATION.—The Cor-  
9 poration—

10 (A) may borrow funds from the Secretary  
11 of the Treasury and issue obligations of the  
12 Corporation to the Secretary for amounts bor-  
13 rowed, and the amounts borrowed shall be  
14 available to the Corporation for purposes of car-  
15 rying out a program established pursuant to  
16 this section, including the payment of reason-  
17 able costs of administering the program, and  
18 the obligations issued shall be repaid in full  
19 with interest through fees and charges paid by  
20 participants in accordance with paragraphs (1)  
21 and (4), as applicable; and

22 (B) may not borrow funds from the De-  
23 posit Insurance Fund established pursuant to  
24 section 11(a)(4) of the Federal Deposit Insur-  
25 ance Act.

1           (4) BACKUP SPECIAL ASSESSMENTS.—To the  
2           extent that the funds collected pursuant to para-  
3           graph (1) are insufficient to cover any losses or ex-  
4           penses, including amounts borrowed pursuant to  
5           paragraph (3), arising from a program established  
6           pursuant to this section, the Corporation shall im-  
7           pose a special assessment solely on participants in  
8           the program, in amounts necessary to address such  
9           insufficiency, and which shall be available to the  
10          Corporation to cover such losses or expenses.

11          (5) AUTHORITY OF THE SECRETARY.—The Sec-  
12          retary may purchase any obligations issued under  
13          paragraph (3)(A). For such purpose, the Secretary  
14          may use the proceeds of the sale of any securities  
15          issued under chapter 31 of title 31, United States  
16          Code, and the purposes for which securities may be  
17          issued under that chapter 31 are extended to include  
18          such purchases, and the amount of any securities  
19          issued under that chapter 31 for such purpose shall  
20          be treated in the same manner as securities issued  
21          under section 208(n)(3)(B).

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

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

3 (1) COMPANY.—The term “company” means  
4 any entity other than a natural person that is incor-  
5 porated or organized under Federal law or the laws  
6 of any State.

7 (2) DEPOSITORY INSTITUTION HOLDING COM-  
8 PANY.—The term “depository institution holding  
9 company” has the same meaning as in section 3 of  
10 the Federal Deposit Insurance Act (12 U.S.C.  
11 1813).

12 (3) LIQUIDITY EVENT.—The term “liquidity  
13 event” means—

14 (A) an exceptional and broad reduction in  
15 the general ability of financial market partici-  
16 pants—

17 (i) to sell financial assets without an  
18 unusual and significant discount; or

19 (ii) to borrow using financial assets as  
20 collateral without an unusual and signifi-  
21 cant increase in margin; or

22 (B) an unusual and significant reduction  
23 in the ability of financial market participants to  
24 obtain unsecured credit.

1           (4) SOLVENT.—The term “solvent” means that  
2           the value of the assets of an entity exceed its obliga-  
3           tions to creditors.

4 **SEC. 1106. ADDITIONAL RELATED AMENDMENTS.**

5           (a) SUSPENSION OF PARALLEL FEDERAL DEPOSIT  
6 INSURANCE ACT AUTHORITY.—Effective upon the date of  
7 enactment of this section, the Corporation may not exer-  
8 cise its authority under section 13(c)(4)(G)(i) of the Fed-  
9 eral Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i))  
10 to establish any widely available debt guarantee program  
11 for which section 1105 would provide authority.

12           (b) FEDERAL DEPOSIT INSURANCE ACT.—Section  
13 13(c)(4)(G) of the Federal Deposit Insurance Act (12  
14 U.S.C. 1823(c)(4)(G)) is amended—

15           (1) in clause (i)—

16                   (A) in subclause (I), by inserting “for  
17                   which the Corporation has been appointed re-  
18                   ceiver” before “would have serious”; and

19                   (B) in the undesignated matter following  
20                   subclause (II), by inserting “for the purpose of  
21                   winding up the insured depository institution  
22                   for which the Corporation has been appointed  
23                   receiver” after “provide assistance under this  
24                   section”; and

1           (2) in clause (v)(I), by striking “The” and in-  
2           serting “Not later than 3 days after making a deter-  
3           mination under clause (i), the”.

4           (c) EFFECT OF DEFAULT ON AN FDIC GUAR-  
5 ANTEE.—If an insured depository institution or depository  
6 institution holding company (as those terms are defined  
7 in section 3 of the Federal Deposit Insurance Act) partici-  
8 pating in a program under section 1105, or any partici-  
9 pant in a debt guarantee program established pursuant  
10 to section 13(c)(4)(G)(i) of the Federal Deposit Insurance  
11 Act defaults on any obligation guaranteed by the Corpora-  
12 tion after the date of enactment of this Act, the Corpora-  
13 tion shall—

14           (1) appoint itself as receiver for the insured de-  
15           pository institution that defaults; and

16           (2) with respect to any other participating com-  
17           pany that is not an insured depository institution  
18           that defaults—

19           (A) require—

20                   (i) consideration of whether a deter-  
21                   mination shall be made, as provided in sec-  
22                   tion 202 to resolve the company under sec-  
23                   tion 203; and

24                   (ii) the company to file a petition for  
25                   bankruptcy under section 301 of title 11,

1 United States Code, if the Corporation is  
2 not appointed receiver pursuant to section  
3 203 within 30 days of the date of default;  
4 or

5 (B) file a petition for involuntary bank-  
6 ruptcy on behalf of the company under section  
7 303 of title 11, United States Code.

8 **SEC. 1107. FEDERAL RESERVE ACT AMENDMENTS ON FED-**  
9 **ERAL RESERVE BANK GOVERNANCE.**

10 The Federal Reserve Act (12 U.S.C. 221 et seq.) is  
11 amended in section 4 by adding at the end the following:

12 “(25) SELECTION OF THE PRESIDENT OF THE  
13 FEDERAL RESERVE BANK OF NEW YORK.—Notwith-  
14 standing any other provision of this section, after  
15 the date of enactment of the Restoring American Fi-  
16 nancial Stability Act of 2010, the president of the  
17 Federal Reserve Bank of New York shall be ap-  
18 pointed by the President, by and with the advice and  
19 consent of the Senate, for terms of 5 years.

20 “(26) LIMITATION ON ELIGIBILITY TO VOTE  
21 FOR OR SERVE AS A FEDERAL RESERVE BANK DI-  
22 RECTOR.—Notwithstanding any other provision of  
23 this section, after the date of enactment of the Re-  
24 storing American Financial Stability Act of 2010, no  
25 company, or subsidiary or affiliate of a company

1 that is supervised by the Board, may vote for mem-  
2 bers of the board of directors of a Federal reserve  
3 bank, and no past or current officer, director, or em-  
4 ployee of such company, or subsidiary or affiliate of  
5 such company, may serve as a member of the board  
6 of directors of a Federal reserve bank.”.

7 **SEC. 1108. FEDERAL RESERVE ACT AMENDMENTS ON SU-**  
8 **PERVISION AND REGULATION POLICY.**

9 (a) ESTABLISHMENT OF THE POSITION OF VICE  
10 CHAIRMAN FOR SUPERVISION.—

11 (1) POSITION ESTABLISHED.—The second un-  
12 designated paragraph of section 10 of the Federal  
13 Reserve Act (12 U.S.C. 242) (relating to the Chair-  
14 man and Vice Chairman of the Board) is amended  
15 by striking the third sentence and inserting the fol-  
16 lowing: “Of the persons thus appointed, 1 shall be  
17 designated by the President, by and with the advice  
18 and consent of the Senate, to serve as Chairman of  
19 the Board for a term of 4 years, and 2 shall be des-  
20 ignated by the President, by and with the advice and  
21 consent of the Senate, to serve as Vice Chairmen of  
22 the Board, each for a term of 4 years, 1 of whom  
23 shall serve in the absence of the Chairman, as pro-  
24 vided in the fourth undesignated paragraph of this  
25 section, and 1 of whom shall be designated Vice



1 Chairman for Supervision. The Vice Chairman for  
2 Supervision shall develop policy recommendations for  
3 the Board regarding supervision and regulation of  
4 depository institution holding companies and other  
5 financial firms supervised by the Board, and shall  
6 oversee the supervision and regulation of such  
7 firms.”.

8 (2) EFFECTIVE DATE.—The amendment made  
9 by subsection (a) takes effect on the date of enact-  
10 ment of this title and applies to individuals who are  
11 designated by the President on or after that date to  
12 serve as Vice Chairman of Supervision.

13 (b) FINANCIAL STABILITY AS BOARD FUNCTION.—  
14 Section 10 of the Federal Reserve Act (12 U.S.C. 241)  
15 is amended by adding at the end the following:

16 “(11) FINANCIAL STABILITY FUNCTION.—The  
17 Board of Governors shall identify, measure, monitor,  
18 and mitigate risks to the financial stability of the  
19 United States.”.

20 (c) APPEARANCES BEFORE CONGRESS.—Section 10  
21 of the Federal Reserve Act (12 U.S.C. 241) is amended  
22 by adding at the end the following:

23 “(12) APPEARANCES BEFORE CONGRESS.—The  
24 Vice Chairman for Supervision shall appear before  
25 the Committee on Banking, Housing, and Urban Af-

1       fairs of the Senate and the Committee on Financial  
2       Services of the House of Representatives and at  
3       semi-annual hearings regarding the efforts, activi-  
4       ties, objectives, and plans of the Board with respect  
5       to the conduct of supervision and regulation of de-  
6       pository institution holding companies and other fi-  
7       nancial firms supervised by the Board.”.

8       (d) **BOARD RESPONSIBILITY TO SET SUPERVISION**  
9 **AND REGULATORY POLICY.**—Section 11 of the Federal  
10 Reserve Act (12 U.S.C. 248) (relating to enumerated pow-  
11 ers of the Board) is amended by adding at the end of sub-  
12 section (k) (relating to delegation) the following: “The  
13 Board of Governors may not delegate to a Federal reserve  
14 bank its functions for the establishment of policies for the  
15 supervision and regulation of depository institution hold-  
16 ing companies and other financial firms supervised by the  
17 Board of Governors.”.

18 **SEC. 1109. GAO AUDIT OF THE FEDERAL RESERVE FACILI-**  
19 **TIES; PUBLICATION OF BOARD ACTIONS.**

20       (a) **GAO AUDIT.**—

21           (1) **IN GENERAL.**—Notwithstanding section  
22       714(b) of title 31, United States Code, or any other  
23       provision of law, the Comptroller General of the  
24       United States (in this subsection referred to as the  
25       “Comptroller General”) shall conduct a one-time

1       audit of all loans and other financial assistance pro-  
2       vided during the period beginning on December 1,  
3       2007 and ending on the date of enactment of this  
4       Act by the Board of Governors or a Federal reserve  
5       bank under the Asset-Backed Commercial Paper  
6       Money Market Mutual Fund Liquidity Facility, the  
7       Term Asset-Backed Securities Loan Facility, the  
8       Primary Dealer Credit Facility, the Commercial  
9       Paper Funding Facility, the Term Securities Lend-  
10      ing Facility, the Term Auction Facility, Maiden  
11      Lane, Maiden Lane II, Maiden Lane III, the agency  
12      Mortgage-Backed Securities program, foreign cur-  
13      rency liquidity swap lines, and any other program  
14      created as a result of section 13(3) of the Federal  
15      Reserve Act (as so designated by this title).

16           (2) ASSESSMENTS.—In conducting the audit  
17      under paragraph (1), the Comptroller General shall  
18      assess—

19                   (A) the operational integrity, accounting,  
20                   financial reporting, and internal controls of the  
21                   credit facility;

22                   (B) the effectiveness of the security and  
23                   collateral policies established for the facility in  
24                   mitigating risk to the relevant Federal reserve  
25                   bank and taxpayers;

1           (C) whether the credit facility inappropriately favors one or more specific participants  
2           over other institutions eligible to utilize the facility;  
3             
4           

5           (D) the policies governing the use, selection, or payment of third-party contractors by  
6           or for any credit facility; and  
7           

8           (E) whether there were conflicts of interest  
9           with respect to the manner in which such facility was established or operated.  
10          

11          (3) TIMING.—The audit required by this subsection shall be commenced not later than 30 days  
12          after the date of enactment of this Act, and shall be completed not later than 12 months after that date  
13          of enactment.  
14          

15          (4) REPORT REQUIRED.—The Comptroller General shall submit a report on the audit conducted  
16          under paragraph (1) to the Congress not later than 12 months after the date of enactment of this Act,  
17          and such report shall be made available to—  
18          

19                (A) the Speaker of the House of Representatives;  
20                

21                (B) the majority and minority leaders of the House of Representatives;  
22                

23                

24

1 (C) the majority and minority leaders of  
2 the Senate;

3 (D) the Chairman and Ranking Member of  
4 the Committee on Banking, Housing, and  
5 Urban Affairs of the Senate and of the Com-  
6 mittee on Financial Services of the House of  
7 Representatives; and

8 (E) any member of Congress who requests  
9 it.

10 (b) AUDIT OF FEDERAL RESERVE BANK GOVERN-  
11 ANCE.—

12 (1) AUDIT.—

13 (A) IN GENERAL.—Not later than 1 year  
14 after the date of enactment of this Act, the  
15 Comptroller General shall complete an audit of  
16 the governance of the Federal reserve bank sys-  
17 tem.

18 (B) REQUIRED EXAMINATIONS.—The audit  
19 required under subparagraph (A) shall—

20 (i) examine the extent to which the  
21 current system of appointing Federal re-  
22 serve bank directors effectively represents  
23 “the public, without discrimination on the  
24 basis of race, creed, color, sex or national  
25 origin, and with due but not exclusive con-

1           sideration to the interests of agriculture,  
2           commerce, industry, services, labor, and  
3           consumers” in the selection of bank direc-  
4           tors, as such requirement is set forth  
5           under section 4 of the Federal Reserve  
6           Act;

7           (ii) examine whether there are actual  
8           or potential conflicts of interest created  
9           when the directors of Federal reserve  
10          banks, which execute the supervisory func-  
11          tions of the Board of Governors of the  
12          Federal Reserve System, are elected by  
13          member banks;

14          (iii) examine the establishment and  
15          operations of each facility described in sub-  
16          section (a)(1) and each Federal reserve  
17          bank involved in the establishment and op-  
18          erations thereof; and

19          (iv) identify changes to selection pro-  
20          cedures for Federal reserve bank directors,  
21          or to other aspects of Federal reserve bank  
22          governance, that would—

23                  (I) improve how the public is rep-  
24                  resented;

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1 (II) eliminate actual or potential  
2 conflicts of interest in bank super-  
3 vision;

4 (III) increase the availability of  
5 information useful for the formation  
6 and execution of monetary policy; or

7 (IV) in other ways increase the  
8 effectiveness or efficiency of reserve  
9 banks.

10 (2) REPORT REQUIRED.—A report on the audit  
11 conducted under paragraph (1) shall be submitted  
12 by the Comptroller General to the Congress before  
13 the end of the 90-day period beginning on the date  
14 on which such audit is completed, and such report  
15 shall be made available to—

16 (A) the Speaker of the House of Rep-  
17 resentatives;

18 (B) the majority and minority leaders of  
19 the House of Representatives;

20 (C) the majority and minority leaders of  
21 the Senate;

22 (D) the Chairman and Ranking Member of  
23 the Committee on Banking, Housing, and  
24 Urban Affairs of the Senate and of the Com-

1           mittee on Financial Services of the House of  
2           Representatives; and

3                   (E) any member of Congress who requests  
4           it.

5           (c) PUBLICATION OF BOARD ACTIONS.—Notwith-  
6 standing any other provision of law, the Board of Gov-  
7 ernors shall publish on its website, not later than Decem-  
8 ber 1, 2010, with respect to all loans and other financial  
9 assistance it has provided during the period beginning on  
10 December 1, 2007 and ending on the date of enactment  
11 of this Act under the Asset-Backed Commercial Paper  
12 Money Market Mutual Fund Liquidity Facility, the Term  
13 Asset-Backed Securities Loan Facility, the Primary Deal-  
14 er Credit Facility, the Commercial Paper Funding Facil-  
15 ity, the Term Securities Lending Facility, the Term Auc-  
16 tion Facility, Maiden Lane, Maiden Lane II, Maiden Lane  
17 III, the agency Mortgage-Backed Securities program, for-  
18 eign currency liquidity swap lines, and any other program  
19 created as a result of section 13(3) of the Federal Reserve  
20 Act (as so designated by this title)—

21                   (1) the identity of each business, individual, en-  
22           tity, or foreign central bank to which the Board of  
23           Governors has provided such assistance;



1           (2) the type of financial assistance provided to  
2           that business, individual, entity, or foreign central  
3           bank;

4           (3) the value or amount of that financial assist-  
5           ance;

6           (4) the date on which the financial assistance  
7           was provided;

8           (5) the specific terms of any repayment ex-  
9           pected, including the repayment time period, interest  
10          charges, collateral, limitations on executive com-  
11          pensation or dividends, and other material terms;  
12          and

13          (6) the specific rationale for each such facility  
14          or program.

15 **TITLE XII—IMPROVING ACCESS**  
16 **TO MAINSTREAM FINANCIAL**  
17 **INSTITUTIONS**

18 **SEC. 1201. SHORT TITLE.**

19          This title may be cited as the “Improving Access to  
20 Mainstream Financial Institutions Act of 2010”.

21 **SEC. 1202. PURPOSE.**

22          The purpose of this title is to encourage initiatives  
23 for financial products and services that are appropriate  
24 and accessible for millions of Americans who are not fully  
25 incorporated into the financial mainstream.

1 **SEC. 1203. DEFINITIONS.**

2 In this title, the following definitions shall apply:

3 (1) ACCOUNT.—The term “account” means an  
4 agreement between an individual and an eligible en-  
5 tity under which the individual obtains from or  
6 through the entity 1 or more banking products and  
7 services, and includes a deposit account, a savings  
8 account (including a money market savings ac-  
9 count), an account for a closed-end loan, and other  
10 products or services, as the Secretary deems appro-  
11 priate.

12 (2) COMMUNITY DEVELOPMENT FINANCIAL IN-  
13 STITUTION.—The term “community development fi-  
14 nancial institution” has the same meaning as in sec-  
15 tion 103(5) of the Community Development Banking  
16 and Financial Institutions Act of 1994 (12 U.S.C.  
17 4702(5)).

18 (3) ELIGIBLE ENTITY.—The term “eligible enti-  
19 ty” means—

20 (A) an organization described in section  
21 501(c)(3) of the Internal Revenue Code of  
22 1986, and exempt from tax under section  
23 501(a) of such Code;

24 (B) a federally insured depository institu-  
25 tion;

1 (C) a community development financial in-  
2 stitution;

3 (D) a State, local, or tribal government en-  
4 tity; or

5 (E) a partnership or other joint venture  
6 comprised of 1 or more of the entities described  
7 in subparagraphs (A) through (D), in accord-  
8 ance with regulations prescribed by the Sec-  
9 retary under this title.

10 (4) **FEDERALLY INSURED DEPOSITORY INSTI-**  
11 **TUTION.**—The term “federally insured depository in-  
12 stitution” means any insured depository institution  
13 (as that term is defined in section 3 of the Federal  
14 Deposit Insurance Act (12 U.S.C. 1813)) and any  
15 insured credit union (as that term is defined in sec-  
16 tion 101 of the Federal Credit Union Act (12 U.S.C.  
17 1752)).

18 (5) **PAYDAY LOAN.**—The term “payday loan”  
19 means any transaction in which a small cash ad-  
20 vance is made to a consumer in exchange for—

21 (A) the personal check or share draft of  
22 the consumer, in the amount of the advance  
23 plus a fee, where presentment or negotiation of  
24 such check or share draft is deferred by agree-

1           ment of the parties until a designated future  
2           date; or

3                   (B) the authorization of the consumer to  
4           debit the transaction account or share draft ac-  
5           count of the consumer, in the amount of the ad-  
6           vance plus a fee, where such account will be  
7           debited on or after a designated future date.

8   **SEC. 1204. EXPANDED ACCESS TO MAINSTREAM FINANCIAL**  
9                   **INSTITUTIONS.**

10           (a) IN GENERAL.—The Secretary is authorized to es-  
11          tablish a multiyear program of grants, cooperative agree-  
12          ments, financial agency agreements, and similar contracts  
13          or undertakings to promote initiatives designed—

14                   (1) to enable low- and moderate-income individ-  
15          uals to establish one or more accounts in a federally  
16          insured depository institution that are appropriate to  
17          meet the financial needs of such individuals; and

18                   (2) to improve access to the provision of ac-  
19          counts, on reasonable terms, for low- and moderate-  
20          income individuals.

21           (b) PROGRAM ELIGIBILITY AND ACTIVITIES.—

22                   (1) IN GENERAL.—The Secretary shall restrict  
23          participation in any program established under sub-  
24          section (a) to an eligible entity. Subject to regula-  
25          tions prescribed by the Secretary under this title, 1

1 or more eligible entities may participate in 1 or sev-  
2 eral programs established under subsection (a).

3 (2) ACCOUNT ACTIVITIES.—Subject to regula-  
4 tions prescribed by the Secretary, an eligible entity  
5 may, in participating in a program established under  
6 subsection (a), offer or provide to low- and mod-  
7 erate-income individuals products and services relat-  
8 ing to accounts, including—

9 (A) small-dollar value loans; and

10 (B) financial education and counseling re-  
11 lating to conducting transactions in and man-  
12 aging accounts.

13 **SEC. 1205. LOW-COST ALTERNATIVES TO PAYDAY LOANS.**

14 (a) GRANTS AUTHORIZED.—The Secretary is author-  
15 ized to establish multiyear demonstration programs by  
16 means of grants, cooperative agreements, financial agency  
17 agreements, and similar contracts or undertakings, with  
18 eligible entities to provide low-cost, small loans to con-  
19 sumers that will provide alternatives to more costly payday  
20 loans.

21 (b) TERMS AND CONDITIONS.—

22 (1) IN GENERAL.—Loans under this section  
23 shall be made on terms and conditions, and pursu-  
24 ant to lending practices, that are reasonable for con-  
25 sumers.

1           (2) FINANCIAL LITERACY AND EDUCATION OP-  
2           PORTUNITIES.—

3           (A) IN GENERAL.—Each eligible entity  
4           awarded a grant under this section shall pro-  
5           mote and take appropriate steps to ensure the  
6           provision of financial literacy and education op-  
7           portunities, such as relevant counseling services,  
8           educational courses, or wealth building pro-  
9           grams, to each consumer provided with a loan  
10          pursuant to this section.

11          (B) AUTHORITY TO EXPAND ACCESS.—As  
12          part of the grants, agreements, and under-  
13          takings established under this section, the Sec-  
14          retary may implement reasonable measures or  
15          programs designed to expand access to financial  
16          literacy and education opportunities, including  
17          relevant counseling services, educational  
18          courses, or wealth building programs to be pro-  
19          vided to individuals who obtain loans from eligi-  
20          ble entities under this section.

21 **SEC. 1206. GRANTS TO ESTABLISH LOAN-LOSS RESERVE**  
22 **FUNDS.**

23          The Community Development Banking and Financial  
24          Institutions Act of 1994 (12 U.S.C. 4701 et seq.) is  
25          amended by adding at the end the following:

1 **“SEC. 122. GRANTS TO ESTABLISH LOAN-LOSS RESERVE**  
2 **FUNDS.**

3 “(a) PURPOSES.—The purposes of this section are—

4 “(1) to make financial assistance available from  
5 the Fund in order to help community development  
6 financial institutions defray the costs of operating  
7 small dollar loan programs, by providing the  
8 amounts necessary for such institutions to establish  
9 their own loan loss reserve funds to mitigate some  
10 of the losses on such small dollar loan programs;  
11 and

12 “(2) to encourage community development fi-  
13 nancial institutions to establish and maintain small  
14 dollar loan programs that would help give consumers  
15 access to mainstream financial institutions and com-  
16 bat payday lending.

17 “(b) GRANTS.—

18 “(1) LOAN-LOSS RESERVE FUND GRANTS.—The  
19 Fund shall make grants to community development  
20 financial institutions or to any partnership between  
21 such community development financial institutions  
22 and any other federally insured depository institu-  
23 tion with a primary mission to serve targeted invest-  
24 ment areas, as such areas are defined under section  
25 103(16), to enable such institutions or any partner-  
26 ship of such institutions to establish a loan-loss re-

1       serve fund in order to defray the costs of a small  
2       dollar loan program established or maintained by  
3       such institution.

4               “(2) MATCHING REQUIREMENT.—A community  
5       development financial institution or any partnership  
6       of institutions established pursuant to paragraph (1)  
7       shall provide non-Federal matching funds in an  
8       amount equal to 50 percent of the amount of any  
9       grant received under this section.

10              “(3) USE OF FUNDS.—Any grant amounts re-  
11       ceived by a community development financial institu-  
12       tion or any partnership between or among such in-  
13       stitutions under paragraph (1)—

14                      “(A) may not be used by such institution  
15       to provide direct loans to consumers;

16                      “(B) may be used by such institution to  
17       help recapture a portion or all of a defaulted  
18       loan made under the small dollar loan program  
19       of such institution; and

20                      “(C) may be used to designate and utilize  
21       a fiscal agent for services normally provided by  
22       such an agent.

23              “(4) TECHNICAL ASSISTANCE GRANTS.—The  
24       Fund shall make technical assistance grants to com-  
25       munity development financial institutions or any



1 partnership between or among such institutions to  
2 support and maintain a small dollar loan program.  
3 Any grant amounts received under this paragraph  
4 may be used for technology, staff support, and other  
5 costs associated with establishing a small dollar loan  
6 program.

7 “(c) DEFINITIONS.—For purposes of this section—

8 “(1) the term ‘consumer reporting agency that  
9 compiles and maintains files on consumers on a na-  
10 tionwide basis’ has the same meaning given such  
11 term in section 603(p) of the Fair Credit Reporting  
12 Act (15 U.S.C. 1681a(p)); and

13 “(2) the term ‘small dollar loan program’  
14 means a loan program wherein a community devel-  
15 opment financial institution or any partnership be-  
16 tween or among such institutions offers loans to con-  
17 sumers that—

18 “(A) are made in amounts not exceeding  
19 \$2,500;

20 “(B) must be repaid in installments;

21 “(C) have no pre-payment penalty;

22 “(D) the institution has to report pay-  
23 ments regarding the loan to at least 1 of the  
24 consumer reporting agencies that compiles and

1 maintains files on consumers on a nationwide  
2 basis; and

3 “(E) meet any other affordability require-  
4 ments as may be established by the Adminis-  
5 trator.”.

6 **SEC. 1207. PROCEDURAL PROVISIONS.**

7 An eligible entity desiring to participate in a program  
8 or obtain a grant under this title shall submit an applica-  
9 tion to the Secretary, in such form and containing such  
10 information as the Secretary may require.

11 **SEC. 1208. AUTHORIZATION OF APPROPRIATIONS.**

12 (a) AUTHORIZATION TO THE SECRETARY.—There  
13 are authorized to be appropriated to the Secretary, such  
14 sums as are necessary to both administer and fund the  
15 programs and projects authorized by this title, to remain  
16 available until expended.

17 (b) AUTHORIZATION TO THE FUND.—There is au-  
18 thorized to be appropriated to the Fund for each fiscal  
19 year beginning in fiscal year 2010, an amount equal to  
20 the amount of the administrative costs of the Fund for  
21 the operation of the grant program established under this  
22 title.

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**1 SEC. 1209. REGULATIONS.**

2 (a) IN GENERAL.—The Secretary is authorized to  
3 promulgate regulations to implement and administer the  
4 grant programs and undertakings authorized by this title.

5 (b) REGULATORY AUTHORITY.—Regulations pre-  
6 scribed under this section may contain such classifications,  
7 differentiations, or other provisions, and may provide for  
8 such adjustments and exceptions for any class of grant  
9 programs, undertakings, or eligible entities, as, in the  
10 judgment of the Secretary, are necessary or proper to ef-  
11 fectuate the purposes of this title, to prevent circumven-  
12 tion or evasion of this title, or to facilitate compliance with  
13 this title.

**14 SEC. 1210. EVALUATION AND REPORTS TO CONGRESS.**

15 For each fiscal year in which a program or project  
16 is carried out under this title, the Secretary shall submit  
17 a report to the Committee on Banking, Housing, and  
18 Urban Affairs of the Senate and the Committee on Finan-  
19 cial Services of the House of Representatives containing  
20 a description of the activities funded, amounts distributed,  
21 and measurable results, as appropriate and available.

**22 TITLE XIII—PAY IT BACK ACT****23 SEC. 1301. SHORT TITLE.**

24 This title may be cited as the “Pay It Back Act”.

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1 **SEC. 1302. AMENDMENT TO REDUCE TARP AUTHORIZA-**  
2 **TION.**

3 Section 115(a) of the Emergency Economic Stabiliza-  
4 tion Act of 2008 (12 U.S.C. 5225(a)) is amended—

5 (1) in paragraph (3)—

6 (A) by striking “If” and inserting “Except  
7 as provided in paragraph (4), if”;

8 (B) by striking “, \$700,000,000,000, as  
9 such amount is reduced by \$1,259,000,000, as  
10 such amount is reduced by \$1,244,000,000”  
11 and inserting “\$550,000,000,000”; and

12 (C) by striking “outstanding at any one  
13 time”; and

14 (2) by adding at the end the following:

15 “(4) If the Secretary, with the concurrence of  
16 the Chairman of the Board of Governors of the Fed-  
17 eral Reserve System, determines that there is an im-  
18 mediate and substantial threat to the economy aris-  
19 ing from financial instability, the Secretary is au-  
20 thorized to purchase troubled assets under this Act  
21 in an amount equal to amounts received by the Sec-  
22 retary before, on, or after the date of enactment of  
23 the Pay It Back Act for repayment of the principal  
24 of financial assistance by an entity that has received  
25 financial assistance under the TARP or any other  
26 program enacted by the Secretary under the authori-

1 ties granted to the Secretary under this Act, but  
2 only—

3 “(A) to the extent necessary to address the  
4 threat; and

5 “(B) upon transmittal of such determina-  
6 tion, in writing, to the appropriate committees  
7 of Congress.”.

8 **SEC. 1303. REPORT.**

9 Section 106 of the Emergency Economic Stabilization  
10 Act of 2008 (12 U.S.C. 5216) is amended by inserting  
11 at the end the following:

12 “(f) REPORT.—The Secretary of the Treasury shall  
13 report to Congress every 6 months on amounts received  
14 and transferred to the general fund under subsection  
15 (d).”.

16 **SEC. 1304. AMENDMENTS TO HOUSING AND ECONOMIC RE-**  
17 **COVERY ACT OF 2008.**

18 (a) SALE OF FANNIE MAE OBLIGATIONS AND SECURITIES BY THE TREASURY; DEFICIT REDUCTION.—Section 304(g)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(g)(2)) is amended—

22 (1) by redesignating subparagraph (C) as sub-  
23 paragraph (D); and

24 (2) by inserting after subparagraph (B) the fol-  
25 lowing:

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1           “(C) DEFICIT REDUCTION.—The Secretary  
2 of the Treasury shall deposit in the General  
3 Fund of the Treasury any amounts received by  
4 the Secretary from the sale of any obligation  
5 acquired by the Secretary under this subsection,  
6 where such amounts shall be—

7                   “(i) dedicated for the sole purpose of  
8 deficit reduction; and

9                   “(ii) prohibited from use as an offset  
10 for other spending increases or revenue re-  
11 ductions.”.

12           (b) SALE OF FREDDIE MAC OBLIGATIONS AND SE-  
13 CURITIES BY THE TREASURY; DEFICIT REDUCTION.—  
14 Section 306(l)(2) of the Federal Home Loan Mortgage  
15 Corporation Act (12 U.S.C. 1455(l)(2)) is amended—

16           (1) by redesignating subparagraph (C) as sub-  
17 paragraph (D); and

18           (2) by inserting after subparagraph (B) the fol-  
19 lowing:

20                   “(C) DEFICIT REDUCTION.—The Secretary  
21 of the Treasury shall deposit in the General  
22 Fund of the Treasury any amounts received by  
23 the Secretary from the sale of any obligation  
24 acquired by the Secretary under this subsection,  
25 where such amounts shall be—

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1 “(i) dedicated for the sole purpose of  
2 deficit reduction; and

3 “(ii) prohibited from use as an offset  
4 for other spending increases or revenue re-  
5 ductions.”.

6 (c) SALE OF FEDERAL HOME LOAN BANKS OBLIGA-  
7 TIONS BY THE TREASURY; DEFICIT REDUCTION.—Sec-  
8 tion 11(l)(2) of the Federal Home Loan Bank Act (12  
9 U.S.C. 1431(l)(2)) is amended—

10 (1) by redesignating subparagraph (C) as sub-  
11 paragraph (D); and

12 (2) by inserting after subparagraph (B) the fol-  
13 lowing:

14 “(C) DEFICIT REDUCTION.—The Secretary  
15 of the Treasury shall deposit in the General  
16 Fund of the Treasury any amounts received by  
17 the Secretary from the sale of any obligation  
18 acquired by the Secretary under this subsection,  
19 where such amounts shall be—

20 “(i) dedicated for the sole purpose of  
21 deficit reduction; and

22 “(ii) prohibited from use as an offset  
23 for other spending increases or revenue re-  
24 ductions.”.

1 (d) REPAYMENT OF FEES.—Any periodic commit-  
2 ment fee or any other fee or assessment paid by the Fed-  
3 eral National Mortgage Association or Federal Home  
4 Loan Mortgage Corporation to the Secretary of the Treas-  
5 ury as a result of any preferred stock purchase agreement,  
6 mortgage-backed security purchase program, or any other  
7 program or activity authorized or carried out pursuant to  
8 the authorities granted to the Secretary of the Treasury  
9 under section 1117 of the Housing and Economic Recov-  
10 ery Act of 2008 (Public Law 110–289; 122 Stat. 2683),  
11 including any fee agreed to by contract between the Sec-  
12 retary and the Association or Corporation, shall be depos-  
13 ited in the General Fund of the Treasury where such  
14 amounts shall be—

15 (1) dedicated for the sole purpose of deficit re-  
16 duction; and

17 (2) prohibited from use as an offset for other  
18 spending increases or revenue reductions.

19 **SEC. 1305. FEDERAL HOUSING FINANCE AGENCY REPORT.**

20 The Director of the Federal Housing Finance Agency  
21 shall submit to Congress a report on the plans of the  
22 Agency to continue to support and maintain the Nation’s  
23 vital housing industry, while at the same time guaran-  
24 teeing that the American taxpayer will not suffer unneces-  
25 sary losses.



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1 **SEC. 1306. REPAYMENT OF UNOBLIGATED ARRA FUNDS.**

2 (a) REJECTION OF ARRA FUNDS BY STATE.—Sec-  
3 tion 1607 of the American Recovery and Reinvestment Act  
4 of 2009 (Public Law 111–5; 123 Stat. 305) is amended  
5 by adding at the end the following:

6 “(d) STATEWIDE REJECTION OF FUNDS.—If funds  
7 provided to any State in any division of this Act are not  
8 accepted for use by the Governor of the State pursuant  
9 to subsection (a) or by the State legislature pursuant to  
10 subsection (b), then all such funds shall be—

11 “(1) rescinded; and

12 “(2) deposited in the General Fund of the  
13 Treasury where such amounts shall be—

14 “(A) dedicated for the sole purpose of def-  
15 icit reduction; and

16 “(B) prohibited from use as an offset for  
17 other spending increases or revenue reduc-  
18 tions.”.

19 (b) WITHDRAWAL OR RECAPTURE OF UNOBLIGATED  
20 FUNDS.—Title XVI of the American Recovery and Rein-  
21 vestment Act of 2009 (Public Law 111–5; 123 Stat. 302)  
22 is amended by adding at the end the following:

23 **“SEC. 1613. WITHDRAWAL OR RECAPTURE OF UNOBLI-  
24 GATED FUNDS.**

25 “Notwithstanding any other provision of this Act, if  
26 the head of any executive agency withdraws or recaptures

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1 for any reason funds appropriated or otherwise made  
2 available under this division, and such funds have not been  
3 obligated by a State to a local government or for a specific  
4 project, such recaptured funds shall be—

5           “(1) rescinded; and

6           “(2) deposited in the General Fund of the  
7 Treasury where such amounts shall be—

8           “(A) dedicated for the sole purpose of def-  
9 icit reduction; and

10           “(B) prohibited from use as an offset for  
11 other spending increases or revenue reduc-  
12 tions.”.

13       (c) RETURN OF UNOBLIGATED FUNDS BY END OF  
14 2012.—Section 1603 of the American Recovery and Rein-  
15 vestment Act of 2009 (Public Law 111–5; 123 Stat. 302)  
16 is amended by—

17           (1) striking “All funds” and inserting “(a) IN  
18 GENERAL.—All funds”; and

19           (2) adding at the end the following:

20       “(b) REPAYMENT OF UNOBLIGATED FUNDS.—Any  
21 discretionary appropriations made available in this divi-  
22 sion that have not been obligated as of December 31,  
23 2012, are hereby rescinded, and such amounts shall be  
24 deposited in the General Fund of the Treasury where such  
25 amounts shall be—

1           “(1) dedicated for the sole purpose of deficit re-  
2           duction; and

3           “(2) prohibited from use as an offset for other  
4           spending increases or revenue reductions.

5           “(c) PRESIDENTIAL WAIVER AUTHORITY.—

6           “(1) IN GENERAL.—The President may waive  
7           the requirements under subsection (b), if the Presi-  
8           dent determines that it is not in the best interest of  
9           the Nation to rescind a specific unobligated amount  
10          after December 31, 2012.

11          “(2) REQUESTS.—The head of an executive  
12          agency may also apply to the President for a waiver  
13          from the requirements under subsection (b).”.

14       **TITLE XIV—MORTGAGE REFORM**  
15       **AND ANTI-PREDATORY LEND-**  
16       **ING ACT**

17       **SEC. 1400. SHORT TITLE; DESIGNATION AS ENUMERATED**  
18       **CONSUMER LAW.**

19       (a) SHORT TITLE.—This title may be cited as the  
20       “Mortgage Reform and Anti-Predatory Lending Act”.

21       (b) DESIGNATION AS ENUMERATED CONSUMER LAW  
22       UNDER THE PURVIEW OF THE BUREAU OF CONSUMER  
23       FINANCIAL PROTECTION.—Subtitles A, B, C, and E and  
24       sections 1471, 1472, 1475, and 1476, and the amend-  
25       ments made by such subtitles and sections, shall be enu-

1 merated consumer laws, as defined in section 1002, and  
2 come under the purview of the Bureau of Consumer Fi-  
3 nancial Protection for purposes of title X, including the  
4 transfer of functions and personnel under subtitle F of  
5 title X and the savings provisions of such subtitle.

6 **Subtitle A—Residential Mortgage**  
7 **Loan Origination Standards**

8 **SEC. 1401. DEFINITIONS.**

9 Section 103 of the Truth in Lending Act (15 U.S.C.  
10 1602) is amended by adding at the end the following new  
11 subsection:

12 “(cc) DEFINITIONS RELATING TO MORTGAGE ORIGI-  
13 NATION AND RESIDENTIAL MORTGAGE LOANS.—

14 “(1) COMMISSION.—Unless otherwise specified,  
15 the term ‘Commission’ means the Federal Trade  
16 Commission.

17 “(2) FEDERAL BANKING AGENCIES.—The term  
18 ‘Federal banking agencies’ means the Board of Gov-  
19 ernors of the Federal Reserve System, the Comp-  
20 troller of the Currency, the Director of the Office of  
21 Thrift Supervision, the Federal Deposit Insurance  
22 Corporation, and the National Credit Union Admin-  
23 istration Board. All rule writing by the ‘Federal  
24 banking agencies’ as designated by the Mortgage  
25 Reform and Anti-Predatory Lending Act will be co-

1           ordinated through the Financial Institutions Exam-  
2           ination Council in consultation with the Chairman of  
3           the State Liaison Committee.

4           “(3) MORTGAGE ORIGINATOR.—The term  
5           ‘mortgage originator’—

6           “(A) means any person who, for direct or  
7           indirect compensation or gain, or in the expect-  
8           ation of direct or indirect compensation or  
9           gain—

10           “(i) takes a residential mortgage loan  
11           application;

12           “(ii) assists a consumer in obtaining  
13           or applying to obtain a residential mort-  
14           gage loan; or

15           “(iii) offers or negotiates terms of a  
16           residential mortgage loan;

17           “(B) includes any person who represents  
18           to the public, through advertising or other  
19           means of communicating or providing informa-  
20           tion (including the use of business cards, sta-  
21           tionery, brochures, signs, rate lists, or other  
22           promotional items), that such person can or will  
23           provide any of the services or perform any of  
24           the activities described in subparagraph (A);

1           “(C) does not include any person who is (i)  
2           not otherwise described in subparagraph (A) or  
3           (B) and who performs purely administrative or  
4           clerical tasks on behalf of a person who is de-  
5           scribed in any such subparagraph, or (ii) an  
6           employee of a retailer of manufactured homes  
7           who is not described in clause (i) or (iii) of sub-  
8           paragraph (A) and who does not advise a con-  
9           sumer on loan terms (including rates, fees, and  
10          other costs);

11          “(D) does not include a person or entity  
12          that only performs real estate brokerage activi-  
13          ties and is licensed or registered in accordance  
14          with applicable State law, unless such person or  
15          entity is compensated for performing such bro-  
16          kerage activities by a lender, a mortgage  
17          broker, or other mortgage originator or by any  
18          agent of such lender, mortgage broker, or other  
19          mortgage originator;

20          “(E) does not include, with respect to a  
21          residential mortgage loan, a person, estate, or  
22          trust that provides mortgage financing for the  
23          sale of 1 property in any 36-month period, pro-  
24          vided that such loan—

25                 “(i) is fully amortizing;

1           “(ii) is with respect to a sale for  
2           which the seller determines in good faith  
3           and documents that the buyer has a rea-  
4           sonable ability to repay the loan;

5           “(iii) has a fixed rate or an adjustable  
6           rate that is adjustable after 5 or more  
7           years, subject to reasonable annual and  
8           lifetime limitations on interest rate in-  
9           creases; and

10           “(iv) meets any other criteria the  
11           Board may prescribe;

12           “(F) does not include the creditor under  
13           paragraph (1), (2), or (4) of section 129B(c);  
14           and

15           “(G) does not include a servicer or servicer  
16           employees, agents and contractors, including  
17           but not limited to those who offer or negotiate  
18           terms of a residential mortgage loan for pur-  
19           poses of renegotiating, modifying, replacing and  
20           subordinating principal of existing mortgages  
21           where borrowers are behind in their payments,  
22           in default or have a reasonable likelihood of  
23           being in default or falling behind.

24           “(4) NATIONWIDE MORTGAGE LICENSING SYS-  
25           TEM AND REGISTRY.—The term ‘Nationwide Mort-

1 gage Licensing System and Registry’ has the same  
2 meaning as in the Secure and Fair Enforcement for  
3 Mortgage Licensing Act of 2008.

4 “(5) OTHER DEFINITIONS RELATING TO MORT-  
5 GAGE ORIGINATOR.—For purposes of this sub-  
6 section, a person ‘assists a consumer in obtaining or  
7 applying to obtain a residential mortgage loan’ by,  
8 among other things, advising on residential mort-  
9 gage loan terms (including rates, fees, and other  
10 costs), preparing residential mortgage loan packages,  
11 or collecting information on behalf of the consumer  
12 with regard to a residential mortgage loan.

13 “(6) RESIDENTIAL MORTGAGE LOAN.—The  
14 term ‘residential mortgage loan’ means any con-  
15 sumer credit transaction that is secured by a mort-  
16 gage, deed of trust, or other equivalent consensual  
17 security interest on a dwelling or on residential real  
18 property that includes a dwelling, other than a con-  
19 sumer credit transaction under an open end credit  
20 plan or, for purposes of sections 129B and 129C  
21 and section 128(a) (16), (17), and (18), and 128(f)  
22 and any regulations promulgated thereunder, an ex-  
23 tension of credit relating to a plan described in sec-  
24 tion 101(53D) of title 11, United States Code.



1           “(7) SECRETARY.—The term ‘Secretary’, when  
2           used in connection with any transaction or person  
3           involved with a residential mortgage loan, means the  
4           Secretary of Housing and Urban Development.

5           “(8) SECURITIZATION VEHICLE.—The term  
6           ‘securitization vehicle’ means a trust, corporation,  
7           partnership, limited liability entity, special purpose  
8           entity, or other structure that—

9                   “(A) is the issuer, or is created by the  
10                  issuer, of mortgage pass-through certificates,  
11                  participation certificates, mortgage-backed secu-  
12                  rities, or other similar securities backed by a  
13                  pool of assets that includes residential mortgage  
14                  loans; and

15                  “(B) holds such loans.

16           “(9) SECURITIZER.—The term ‘securitizer’  
17           means the person that transfers, conveys, or assigns,  
18           or causes the transfer, conveyance, or assignment of,  
19           residential mortgage loans, including through a spe-  
20           cial purpose vehicle, to any securitization vehicle, ex-  
21           cluding any trustee that holds such loans solely for  
22           the benefit of the securitization vehicle.

23           “(10) SERVICER.—The term ‘servicer’ has the  
24           same meaning as in section 6(i)(2) of the Real Es-  
25           tate Settlement Procedures Act of 1974.”.

1 **SEC. 1402. RESIDENTIAL MORTGAGE LOAN ORIGINATION.**

2 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-  
3 ing Act (15 U.S.C. 1631 et seq.) is amended—

4 (1) by redesignating the 2nd of the 2 sections  
5 designated as section 129 (15 U.S.C. 1639a) (relat-  
6 ing to duty of servicers of residential mortgages) as  
7 section 129A; and

8 (2) by inserting after section 129A (as so redес-  
9 igned) the following new section:

10 **“§ 129B. Residential mortgage loan origination**

11 “(a) FINDING AND PURPOSE.—

12 “(1) FINDING.—The Congress finds that eco-  
13 nomic stabilization would be enhanced by the protec-  
14 tion, limitation, and regulation of the terms of resi-  
15 dential mortgage credit and the practices related to  
16 such credit, while ensuring that responsible, afford-  
17 able mortgage credit remains available to consumers.

18 “(2) PURPOSE.—It is the purpose of this sec-  
19 tion and section 129C to assure that consumers are  
20 offered and receive residential mortgage loans on  
21 terms that reasonably reflect their ability to repay  
22 the loans and that are understandable and not un-  
23 fair, deceptive or abusive.

24 “(b) DUTY OF CARE.—

25 “(1) STANDARD.—Subject to regulations pre-  
26 scribed under this subsection, each mortgage origi-

1 nator shall, in addition to the duties imposed by oth-  
2 erwise applicable provisions of State or Federal  
3 law—

4 “(A) be qualified and, when required, reg-  
5 istered and licensed as a mortgage originator in  
6 accordance with applicable State or Federal  
7 law, including the Secure and Fair Enforcement  
8 for Mortgage Licensing Act of 2008; and

9 “(B) include on all loan documents any  
10 unique identifier of the mortgage originator  
11 provided by the Nationwide Mortgage Licensing  
12 System and Registry.

13 “(2) COMPLIANCE PROCEDURES REQUIRED.—  
14 The Board shall prescribe regulations requiring de-  
15 pository institutions to establish and maintain proce-  
16 dures reasonably designed to assure and monitor the  
17 compliance of such depository institutions, the sub-  
18 sidiaries of such institutions, and the employees of  
19 such institutions or subsidiaries with the require-  
20 ments of this section and the registration procedures  
21 established under section 1507 of the Secure and  
22 Fair Enforcement for Mortgage Licensing Act of  
23 2008.”.

24 (b) CLERICAL AMENDMENT.—The table of sections  
25 for chapter 2 of the Truth in Lending Act is amended

1 by inserting after the item relating to section 129 the fol-  
2 lowing new items:

“129A. Fiduciary duty of servicers of pooled residential mortgages.  
“129B. Residential mortgage loan origination.”.

3 **SEC. 1403. PROHIBITION ON STEERING INCENTIVES.**

4 Section 129B of the Truth in Lending Act (as added  
5 by section 1402(a)) is amended by inserting after sub-  
6 section (b) the following new subsection:

7 “(c) PROHIBITION ON STEERING INCENTIVES.—

8 “(1) IN GENERAL.—For any mortgage loan, no  
9 mortgage originator shall receive from any person  
10 and no person shall pay to a mortgage originator,  
11 directly or indirectly, compensation that varies based  
12 on the terms of the loan (other than the amount of  
13 the principal).

14 “(2) RESTRUCTURING OF FINANCING ORIGINA-  
15 TION FEE.—

16 “(A) IN GENERAL.—For any mortgage  
17 loan, a mortgage originator may not receive  
18 from any person other than the consumer and  
19 no person, other than the consumer, who knows  
20 or has reason to know that a consumer has di-  
21 rectly compensated or will directly compensate  
22 a mortgage originator may pay a mortgage  
23 originator any origination fee or charge except  
24 bona fide third party charges not retained by

1           the creditor, mortgage originator, or an affiliate  
2           of the creditor or mortgage originator .

3           “(B) EXCEPTION.—Notwithstanding sub-  
4           paragraph (A), a mortgage originator may re-  
5           ceive from a person other than the consumer an  
6           origination fee or charge, and a person other  
7           than the consumer may pay a mortgage origi-  
8           nator an origination fee or charge, if—

9                   “(i) the mortgage originator does not  
10                  receive any compensation directly from the  
11                  consumer; and

12                  “(ii) the consumer does not make an  
13                  upfront payment of discount points, origi-  
14                  nation points, or fees, however denomi-  
15                  nated (other than bona fide third party  
16                  charges not retained by the mortgage origi-  
17                  nator, creditor, or an affiliate of the cred-  
18                  itor or originator), except that the Board  
19                  may, by rule, waive or provide exemptions  
20                  to this clause if the Board determines that  
21                  such waiver or exemption is in the interest  
22                  of consumers and in the public interest.

23           “(3) REGULATIONS.—The Board shall prescribe  
24           regulations to prohibit—

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1           “(A) mortgage originators from steering  
2 any consumer to a residential mortgage loan  
3 that—

4                   “(i) the consumer lacks a reasonable  
5 ability to repay (in accordance with regula-  
6 tions prescribed under section 129C(a));

7                   “(ii) in the case of a refinancing of a  
8 residential mortgage loan, does not provide  
9 the consumer with a net tangible benefit  
10 (in accordance with regulations prescribed  
11 under section 129C(b)); or

12                   “(iii) has predatory characteristics or  
13 effects (such as equity stripping, excessive  
14 fees, or abusive terms);

15           “(B) mortgage originators from steering  
16 any consumer from a residential mortgage loan  
17 for which the consumer is qualified that is a  
18 qualified mortgage (as defined in section  
19 129C(e)(3)) to a residential mortgage loan that  
20 is not a qualified mortgage;

21           “(C) abusive or unfair lending practices  
22 that promote disparities among consumers of  
23 equal credit worthiness but of different race,  
24 ethnicity, gender, or age; and

25           “(D) mortgage originators from—

1                   “(i) mischaracterizing the credit his-  
2                   tory of a consumer or the residential mort-  
3                   gage loans available to a consumer;

4                   “(ii) mischaracterizing or suborning  
5                   the mischaracterization of the appraised  
6                   value of the property securing the exten-  
7                   sion of credit; or

8                   “(iii) if unable to suggest, offer, or  
9                   recommend to a consumer a loan that is  
10                  not more expensive than a loan for which  
11                  the consumer qualifies, discouraging a con-  
12                  sumer from seeking a home mortgage loan  
13                  secured by a consumer’s principal dwelling  
14                  from another mortgage originator.

15                  “(4) RULES OF CONSTRUCTION.—No provision  
16                  of this subsection shall be construed as—

17                  “(A) permitting any yield spread premium  
18                  or other similar compensation that would, for  
19                  any mortgage loan, permit the total amount of  
20                  direct and indirect compensation from all  
21                  sources permitted to a mortgage originator to  
22                  vary based on the terms of the loan (other than  
23                  the amount of the principal);

24                  “(B) limiting or affecting the amount of  
25                  compensation received by a creditor upon the

1 sale of a consummated loan to a subsequent  
2 purchaser;

3 “(C) restricting a consumer’s ability to fi-  
4 nance, at the option of the consumer, including  
5 through principal or rate, any origination fees  
6 or costs permitted under this subsection, or the  
7 mortgage originator’s right to receive such fees  
8 or costs (including compensation) from any per-  
9 son, subject to paragraph (2)(B), so long as  
10 such fees or costs do not vary based on the  
11 terms of the loan (other than the amount of the  
12 principal) or the consumer’s decision about  
13 whether to finance such fees or costs; or

14 “(D) prohibiting incentive payments to a  
15 mortgage originator based on the number of  
16 residential mortgage loans originated within a  
17 specified period of time.”.

18 **SEC. 1404. LIABILITY.**

19 Section 129B of the Truth in Lending Act is amend-  
20 ed by inserting after subsection (c) (as added by section  
21 1403) the following new subsection:

22 “(d) LIABILITY FOR VIOLATIONS.—

23 “(1) IN GENERAL.—For purposes of providing  
24 a cause of action for any failure by a mortgage origi-  
25 nator, other than a creditor, to comply with any re-



1        requirement imposed under this section and any regu-  
2        lation prescribed under this section, section 130  
3        shall be applied with respect to any such failure by  
4        substituting ‘mortgage originator’ for ‘creditor’ each  
5        place such term appears in each such subsection.

6            “(2) MAXIMUM.—The maximum amount of any  
7        liability of a mortgage originator under paragraph  
8        (1) to a consumer for any violation of this section  
9        shall not exceed the greater of actual damages or an  
10       amount equal to 3 times the total amount of direct  
11       and indirect compensation or gain accruing to the  
12       mortgage originator in connection with the residen-  
13       tial mortgage loan involved in the violation, plus the  
14       costs to the consumer of the action, including a rea-  
15       sonable attorney’s fee.”.

16 **SEC. 1405. REGULATIONS.**

17        (a) DISCRETIONARY REGULATORY AUTHORITY.—  
18        Section 129B of the Truth in Lending Act is amended  
19        by inserting after subsection (d) (as added by section  
20        1404) the following new subsection:

21            “(e) DISCRETIONARY REGULATORY AUTHORITY.—

22            “(1) IN GENERAL.—The Board shall, by regula-  
23        tions, prohibit or condition terms, acts or practices  
24        relating to residential mortgage loans that the Board  
25        finds to be abusive, unfair, deceptive, predatory, nec-

1        necessary or proper to ensure that responsible, afford-  
2        able mortgage credit remains available to consumers  
3        in a manner consistent with the purposes of this sec-  
4        tion and section 129C, necessary or proper to effec-  
5        tuate the purposes of this section and section 129C,  
6        to prevent circumvention or evasion thereof, or to fa-  
7        cilitate compliance with such sections, or are not in  
8        the interest of the borrower.

9            “(2) APPLICATION.—The regulations prescribed  
10        under paragraph (1) shall be applicable to all resi-  
11        dential mortgage loans and shall be applied in the  
12        same manner as regulations prescribed under section  
13        105.

14        “(f) Section 129B and any regulations promulgated  
15        thereunder do not apply to an extension of credit relating  
16        to a plan described in section 101(53D) of title 11, United  
17        States Code.”.

18        (b) EFFECTIVE DATE.—The regulations required or  
19        authorized to be prescribed under this subtitle or the  
20        amendments made by this subtitle—

21            (1) shall be prescribed in final form before the  
22        end of the 12-month period beginning on the des-  
23        ignated transfer date; and

24            (2) shall take effect not later than 18 months  
25        after the designated transfer date.

1 (c) TECHNICAL AND CONFORMING AMENDMENTS.—  
2 Section 129(l)(2) of the Truth in Lending Act (15 U.S.C.  
3 1639(l)(2)) is amended by inserting “referred to in section  
4 103(aa)” after “loans” each place such term appears.

5 (d) DISCLOSURES.—Notwithstanding any other pro-  
6 vision of this title, in order to improve consumer aware-  
7 ness and understanding of transactions involving residen-  
8 tial mortgage loans through the use of disclosures, the Bu-  
9 reau may, by rule, exempt from or modify disclosure re-  
10 quirements, in whole or in part, for any class of residential  
11 mortgage loans if the Bureau determines that such exemp-  
12 tion or modification is in the interest of consumers and  
13 in the public interest.

14 **SEC. 1406. STUDY OF SHARED APPRECIATION MORTGAGES.**

15 (a) STUDY.—The Secretary of Housing and Urban  
16 Development, in consultation with the Secretary of the  
17 Treasury and other relevant agencies, shall conduct a com-  
18 prehensive study to determine prudent statutory and regu-  
19 latory requirements sufficient to provide for the wide-  
20 spread use of shared appreciation mortgages to strengthen  
21 local housing markets, provide new opportunities for af-  
22 fordable homeownership, and enable homeowners at risk  
23 of foreclosure to refinance or modify their mortgages.

24 (b) REPORT.—Not later than the expiration of the  
25 6-month period beginning on the date of the enactment

1 of this Act, the Secretary of Housing and Urban Develop-  
2 ment shall submit a report to the Congress on the results  
3 of the study, which shall include recommendations for the  
4 regulatory and legislative requirements referred to in sub-  
5 section (a).

6 **Subtitle B—Minimum Standards**  
7 **For Mortgages**

8 **SEC. 1411. ABILITY TO REPAY.**

9 (a) IN GENERAL.—

10 (1) RULE OF CONSTRUCTION.—No regulation,  
11 order, or guidance issued by the Bureau under this  
12 title shall be construed as requiring a depository in-  
13 stitution to apply mortgage underwriting standards  
14 that do not meet the minimum underwriting stand-  
15 ards required by the appropriate prudential regu-  
16 lator of the depository institution.

17 (2) AMENDMENT TO TRUTH IN LENDING  
18 ACT.—Chapter 2 of the Truth in Lending Act (15  
19 U.S.C. 1631 et seq.) is amended by inserting after  
20 section 129B (as added by section 1402(a)) the fol-  
21 lowing new section:

22 **“§ 129C. Minimum standards for residential mortgage**  
23 **loans**

24 **“(a) ABILITY TO REPAY.—**

1           “(1) IN GENERAL.—In accordance with regula-  
2           tions prescribed by the Board, no creditor may make  
3           a residential mortgage loan unless the creditor  
4           makes a reasonable and good faith determination  
5           based on verified and documented information that,  
6           at the time the loan is consummated, the consumer  
7           has a reasonable ability to repay the loan, according  
8           to its terms, and all applicable taxes, insurance (in-  
9           cluding mortgage guarantee insurance), and assess-  
10          ments.

11          “(2) MULTIPLE LOANS.—If the creditor knows,  
12          or has reason to know, that 1 or more residential  
13          mortgage loans secured by the same dwelling will be  
14          made to the same consumer, the creditor shall make  
15          a reasonable and good faith determination, based on  
16          verified and documented information, that the con-  
17          sumer has a reasonable ability to repay the com-  
18          bined payments of all loans on the same dwelling ac-  
19          cording to the terms of those loans and all applicable  
20          taxes, insurance (including mortgage guarantee in-  
21          surance), and assessments.

22          “(3) BASIS FOR DETERMINATION.—A deter-  
23          mination under this subsection of a consumer’s abil-  
24          ity to repay a residential mortgage loan shall include  
25          consideration of the consumer’s credit history, cur-

1       rent income, expected income the consumer is rea-  
2       sonably assured of receiving, current obligations,  
3       debt-to-income ratio or the residual income the con-  
4       sumer will have after paying non-mortgage debt and  
5       mortgage-related obligations, employment status,  
6       and other financial resources other than the con-  
7       sumer's equity in the dwelling or real property that  
8       secures repayment of the loan. A creditor shall de-  
9       termine the ability of the consumer to repay using  
10      a payment schedule that fully amortizes the loan  
11      over the term of the loan.

12           “(4) INCOME VERIFICATION.—A creditor shall  
13      verify amounts of income or assets that such cred-  
14      itor relies on to determine repayment ability, includ-  
15      ing expected income or assets, by reviewing the con-  
16      sumer's Internal Revenue Service Form W-2, tax  
17      returns, payroll receipts, financial institution  
18      records, or other third-party documents that provide  
19      reasonably reliable evidence of the consumer's in-  
20      come or assets. In order to safeguard against fraud-  
21      ulent reporting, any consideration of a consumer's  
22      income history in making a determination under this  
23      subsection shall include the verification of such in-  
24      come by the use of—

1           “(A) Internal Revenue Service transcripts  
2 of tax returns; or

3           “(B) a method that quickly and effectively  
4 verifies income documentation by a third party  
5 subject to rules prescribed by the Board.

6           “(5) NONSTANDARD LOANS.—

7           “(A) VARIABLE RATE LOANS THAT DEFER  
8 REPAYMENT OF ANY PRINCIPAL OR INTER-  
9 EST.—For purposes of determining, under this  
10 subsection, a consumer’s ability to repay a vari-  
11 able rate residential mortgage loan that allows  
12 or requires the consumer to defer the repay-  
13 ment of any principal or interest, the creditor  
14 shall use a fully amortizing repayment schedule.

15           “(B) INTEREST-ONLY LOANS.—For pur-  
16 poses of determining, under this subsection, a  
17 consumer’s ability to repay a residential mort-  
18 gage loan that permits or requires the payment  
19 of interest only, the creditor shall use the pay-  
20 ment amount required to amortize the loan by  
21 its final maturity.

22           “(C) CALCULATION FOR NEGATIVE AMOR-  
23 TIZATION.—In making any determination under  
24 this subsection, a creditor shall also take into

1 consideration any balance increase that may ac-  
2 crue from any negative amortization provision.

3 “(D) CALCULATION PROCESS.—For pur-  
4 poses of making any determination under this  
5 subsection, a creditor shall calculate the month-  
6 ly payment amount for principal and interest on  
7 any residential mortgage loan by assuming—

8 “(i) the loan proceeds are fully dis-  
9 bursed on the date of the consummation of  
10 the loan;

11 “(ii) the loan is to be repaid in sub-  
12 stantially equal monthly amortizing pay-  
13 ments for principal and interest over the  
14 entire term of the loan with no balloon  
15 payment, unless the loan contract requires  
16 more rapid repayment (including balloon  
17 payment), in which case the calculation  
18 shall be made (I) in accordance with regu-  
19 lations prescribed by the Board, with re-  
20 spect to any loan which has an annual per-  
21 centage rate that does not exceed the aver-  
22 age prime offer rate for a comparable  
23 transaction, as of the date the interest rate  
24 is set, by 1.5 or more percentage points for  
25 a first lien residential mortgage loan; and



1 by 3.5 or more percentage points for a  
2 subordinate lien residential mortgage loan;  
3 or (II) using the contract's repayment  
4 schedule, with respect to a loan which has  
5 an annual percentage rate, as of the date  
6 the interest rate is set, that is at least 1.5  
7 percentage points above the average prime  
8 offer rate for a first lien residential mort-  
9 gage loan; and 3.5 percentage points above  
10 the average prime offer rate for a subordi-  
11 nate lien residential mortgage loan; and

12 “(iii) the interest rate over the entire  
13 term of the loan is a fixed rate equal to the  
14 fully indexed rate at the time of the loan  
15 closing, without considering the introduc-  
16 tory rate.

17 “(E) REFINANCE OF HYBRID LOANS WITH  
18 CURRENT LENDER.—In considering any appli-  
19 cation for refinancing an existing hybrid loan  
20 by the creditor into a standard loan to be made  
21 by the same creditor in any case in which the  
22 sole net-tangible benefit to the mortgagor would  
23 be a reduction in monthly payment and the  
24 mortgagor has not been delinquent on any pay-

1           ment on the existing hybrid loan, the creditor  
2           may—

3                   “(i) consider the mortgagor’s good  
4                   standing on the existing mortgage;

5                   “(ii) consider if the extension of new  
6                   credit would prevent a likely default should  
7                   the original mortgage reset and give such  
8                   concerns a higher priority as an acceptable  
9                   underwriting practice; and

10                   “(iii) offer rate discounts and other  
11                   favorable terms to such mortgagor that  
12                   would be available to new customers with  
13                   high credit ratings based on such under-  
14                   writing practice.

15                   “(6) FULLY-INDEXED RATE DEFINED.—For  
16                   purposes of this subsection, the term ‘fully indexed  
17                   rate’ means the index rate prevailing on a residential  
18                   mortgage loan at the time the loan is made plus the  
19                   margin that will apply after the expiration of any in-  
20                   troductory interest rates.

21                   “(7) REVERSE MORTGAGES.—This subsection  
22                   shall not apply with respect to any reverse mortgage.

23                   “(8) SEASONAL INCOME.—If documented in-  
24                   come, including income from a small business, is a  
25                   repayment source for an extension of credit secured

1 by residential real estate or a dwelling, a creditor  
2 may consider the seasonality and irregularity of such  
3 income in the underwriting of and scheduling of pay-  
4 ments for such credit.”.

5 (b) CLERICAL AMENDMENT.—The table of sections  
6 for chapter 2 of the Truth in Lending Act is amended  
7 by inserting after the item relating to section 129B (as  
8 added by section 1402(b)) the following new item:

“129C. Minimum standards for residential mortgage loans.”.

9 **SEC. 1412. NET TANGIBLE BENEFIT FOR REFINANCING OF**  
10 **RESIDENTIAL MORTGAGE LOANS.**

11 Section 129C of the Truth in Lending Act (as added  
12 by section 1411) is amended by inserting after subsection  
13 (a) the following new subsection:

14 “(b) NET TANGIBLE BENEFIT FOR REFINANCING OF  
15 RESIDENTIAL MORTGAGE LOANS.—

16 “(1) IN GENERAL.—In accordance with regula-  
17 tions prescribed under paragraph (3), no creditor  
18 may extend credit in connection with any residential  
19 mortgage loan that involves a refinancing of a prior  
20 existing residential mortgage loan unless the creditor  
21 reasonably and in good faith determines, at the time  
22 the loan is consummated and on the basis of infor-  
23 mation known by or obtained in good faith by the  
24 creditor, that the refinanced loan will provide a net  
25 tangible benefit to the consumer, considering all of

1 the circumstances, including the terms of both the  
2 new and the refinanced loans or credit, the cost of  
3 the new loan or credit, and the consumer's cir-  
4 cumstances.

5 “(2) CERTAIN LOANS PROVIDING NO NET TAN-  
6 GIBLE BENEFIT.—A residential mortgage loan that  
7 involves a refinancing of a prior existing residential  
8 mortgage loan shall not be considered to provide a  
9 net tangible benefit to the consumer if the costs of  
10 the refinanced loan, including points, fees and other  
11 charges, exceed the amount of any newly advanced  
12 principal without any corresponding changes in the  
13 terms of the refinanced loan that are advantageous  
14 to the consumer.

15 “(3) NET TANGIBLE BENEFIT.—The Board  
16 shall prescribe regulations defining the term ‘net  
17 tangible benefit’ for purposes of this subsection.”.

18 **SEC. 1413. SAFE HARBOR AND REBUTTABLE PRESUMPTION.**

19 Section 129C of the Truth in Lending Act is amend-  
20 ed by inserting after subsection (b) (as added by section  
21 1411) the following new subsection:

22 “(c) PRESUMPTION OF ABILITY TO REPAY AND NET  
23 TANGIBLE BENEFIT.—

24 “(1) IN GENERAL.—Any creditor with respect  
25 to any residential mortgage loan, and any assignee

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1 or securitizer of such loan, may presume that the  
2 loan has met the requirements of subsections (a)  
3 and (b), if the loan is a qualified mortgage.

4 “(2) DEFINITIONS.—For purposes of this sub-  
5 section, the following definitions shall apply:

6 “(A) QUALIFIED MORTGAGE.—The term  
7 ‘qualified mortgage’ means any residential  
8 mortgage loan—

9 “(i) for which the regular periodic  
10 payments for the loan may not—

11 “(I) result in an increase of the  
12 principal balance; or

13 “(II) allow the consumer to defer  
14 repayment of principal;

15 “(ii) the terms of which do not result  
16 in a balloon payment, where a ‘balloon  
17 payment’ is a scheduled payment that is  
18 more than twice as large as the average of  
19 earlier scheduled payments;

20 “(iii) for which the income and finan-  
21 cial resources relied upon to qualify the ob-  
22 ligors on the loan are verified and docu-  
23 mented;

24 “(iv) in the case of a fixed rate loan,  
25 for which the underwriting process is based

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1 on a payment schedule that fully amortizes  
2 the loan over the loan term and takes into  
3 account all applicable taxes, insurance, and  
4 assessments;

5 “(v) in the case of an adjustable rate  
6 loan, for which the underwriting is based  
7 on the maximum rate permitted under the  
8 loan during the first 5 years, and a pay-  
9 ment schedule that fully amortizes the loan  
10 over the loan term and takes into account  
11 all applicable taxes, insurance, and assess-  
12 ments;

13 “(vi) that does not cause the con-  
14 sumer’s total monthly debts, including  
15 amounts under the loan, to exceed a per-  
16 centage established by regulation of the  
17 consumer’s monthly gross income or such  
18 other maximum percentage of such income,  
19 or does not exceed a threshold that permits  
20 the consumer to pay regular expenses after  
21 payment of all installment and revolving  
22 debt, as such percentage or threshold may  
23 be prescribed by regulation under para-  
24 graph (4);

1           “(vii) for which the total points and  
2           fees (as defined in subparagraph (C)) pay-  
3           able in connection with the loan do not ex-  
4           ceed 3 percent of the total loan amount;  
5           and

6           “(viii) for which the term of the loan  
7           does not exceed 30 years, except as such  
8           term may be extended under paragraph  
9           (4), such as in high-cost areas.

10           “(B) AVERAGE PRIME OFFER RATE.—The  
11           term ‘average prime offer rate’ means the  
12           Freddie Mac Weekly Primary Mortgage Market  
13           Survey Rate or the equivalent for 30-year fixed  
14           rate conforming loans.

15           “(C) POINTS AND FEES.—

16           “(i) IN GENERAL.—For purposes of  
17           subparagraph (A), the term ‘points and  
18           fees’—

19                   “(I) means points and fees as de-  
20                   fined by section 103(aa)(4) (other  
21                   than bona fide third party charges not  
22                   retained by the mortgage originator,  
23                   creditor, or an affiliate of the creditor  
24                   or mortgage originator), subject to  
25                   clause (ii); and

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1                   “(II) includes any premium for  
2 mortgage guarantee insurance that is  
3 not provided by an agency of the Fed-  
4 eral Government or an agency of a  
5 State and is paid by the consumer at  
6 or before closing.

7                   “(ii) COMPUTATION.—For purposes of  
8 computing the total points and fees under  
9 this subparagraph, the total points and  
10 fees shall exclude either of the amounts de-  
11 scribed in the following subclauses, but not  
12 both:

13                   “(I) Up to and including 2 bona  
14 fide discount points payable by the  
15 consumer in connection with the mort-  
16 gage, but only if the interest rate  
17 from which the mortgage’s interest  
18 rate will be discounted does not ex-  
19 ceed by more than 1 percentage point  
20 the average prime offer rate.

21                   “(II) Unless 2 bona fide discount  
22 points have been excluded under sub-  
23 clause (I), up to and including 1 bona  
24 fide discount point payable by the  
25 consumer in connection with the mort-



1                   gage, but only if the interest rate  
2                   from which the mortgage's interest  
3                   rate will be discounted does not ex-  
4                   ceed by more than 2 percentage  
5                   points the average prime offer rate.

6                   “(iii) BONA FIDE DISCOUNT POINTS  
7                   DEFINED.—For purposes of clause (ii), the  
8                   term ‘bona fide discount points’ means  
9                   loan discount points which are knowingly  
10                  paid by the consumer for the purpose of  
11                  reducing, and which in fact result in a  
12                  bona fide reduction of, the interest rate or  
13                  time-price differential applicable to the  
14                  mortgage.

15                  “(iv) INTEREST RATE REDUCTION.—  
16                  Subclauses (I) and (II) of clause (ii) shall  
17                  not apply to discount points used to pur-  
18                  chase an interest rate reduction unless the  
19                  amount of the interest rate reduction pur-  
20                  chased is reasonably consistent with estab-  
21                  lished industry norms and practices for  
22                  secondary mortgage market transactions.

23                  “(D) REVERSE MORTGAGES.—For pur-  
24                  poses of this subsection, the term ‘qualified  
25                  mortgage’ includes any reverse mortgage that—

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1 “(i) is insured by the Federal Housing  
2 Administration; or

3 “(ii) which has an annual percentage  
4 rate that does not exceed the Freddie Mac  
5 Weekly Primary Mortgage Market Survey  
6 Rate or the equivalent for 30-year fixed  
7 rate conforming loans, as of the date the  
8 interest rate is set—

9 “(I) by 1.5 or more percentage  
10 points, in the case of a first lien resi-  
11 dential mortgage loan having a origi-  
12 nal principal obligation amount that is  
13 equal to or less than the amount of  
14 the maximum limitation on the origi-  
15 nal principal obligation of mortgage in  
16 effect for a residence of the applicable  
17 size, as of the date of such interest  
18 rate set, pursuant to the sixth sen-  
19 tence of section 305(a)(2) the Federal  
20 Home Loan Mortgage Corporation  
21 Act (12 U.S.C. 1454(a)(2));

22 “(II) by 2.5 or more percentage  
23 points, in the case of a first lien resi-  
24 dential mortgage loan having a origi-  
25 nal principal obligation amount that is

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1 more than the amount of the max-  
2 imum limitation on the original prin-  
3 cipal obligation of mortgage in effect  
4 for a residence of the applicable size,  
5 as of the date of such interest rate  
6 set, pursuant to the sixth sentence of  
7 section 305(a)(2) the Federal Home  
8 Loan Mortgage Corporation Act (12  
9 U.S.C. 1454(a)(2)); and

10 “(III) by 3.5 or more percentage  
11 points, in the case of a subordinate  
12 lien residential mortgage loan.

13 “(3) REGULATIONS.—

14 “(A) IN GENERAL.—The Board shall pre-  
15 scribe regulations to carry out the purposes of  
16 this subsection.

17 “(B) REVISION OF SAFE HARBOR CRI-  
18 TERIA.—

19 “(i) IN GENERAL.—The Board may  
20 prescribe regulations that revise, add to, or  
21 subtract from the criteria that define a  
22 qualified mortgage upon a finding that  
23 such regulations are necessary or proper to  
24 ensure that responsible, affordable mort-  
25 gage credit remains available to consumers

1 in a manner consistent with the purposes  
2 of this section, necessary and appropriate  
3 to effectuate the purposes of this section  
4 and section 129B, to prevent circumven-  
5 tion or evasion thereof, or to facilitate  
6 compliance with such sections.

7 “(ii) LOAN DEFINITION.—The Board  
8 shall, in consultation with the following  
9 agencies, prescribe regulations defining the  
10 types of loans such agencies insure, guar-  
11 antee or administer, as the case may be,  
12 that are qualified mortgages for purposes  
13 of subsection (c)(1)(A) upon a finding that  
14 such rules are consistent with the purposes  
15 of this section and section 129B, to pre-  
16 vent circumvention or evasion thereof, or  
17 to facilitate compliance with such sec-  
18 tions—

19 “(I) The Secretary of Housing  
20 and Urban Development, with regard  
21 to mortgages insured under title II of  
22 the National Housing Act (12 U.S.C.  
23 1707 et seq.);

24 “(II) The Secretary of Veterans  
25 Affairs, with regard to a loan made or

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1 guaranteed by the Secretary of Vet-  
2 erans Affairs;

3 “(III) The Secretary of Agri-  
4 culture, with regard loans guaranteed  
5 by the Secretary of Agriculture pursu-  
6 ant to 42 U.S.C. 1472(h); and

7 “(IV) The Rural Housing Serv-  
8 ice, with regard to loans insured by  
9 the Rural Housing Service.”.

10 **SEC. 1414. DEFENSE TO FORECLOSURE.**

11 Section 130 of the Truth in Lending Act (15 U.S.C.  
12 1640) is amended by adding at the end the following new  
13 subsection:

14 “(k) DEFENSE TO FORECLOSURE.—

15 “(1) IN GENERAL.—Notwithstanding any other  
16 provision of law, when a creditor, assignee, or other  
17 holder of a residential mortgage loan or anyone act-  
18 ing on behalf of such creditor, assignee, or holder,  
19 initiates a judicial or nonjudicial foreclosure of the  
20 residential mortgage loan, or any other action to col-  
21 lect the debt in connection with such loan, a con-  
22 sumer may assert a violation by a creditor of para-  
23 graph (1) or (2) of section 129B(c), or of section  
24 129C(a), as a matter of defense by recoupment or

1 set off without regard for the time limit on a private  
2 action for damages under subsection (e).

3 “(2) AMOUNT OF RECOUPMENT OR SETOFF.—

4 “(A) IN GENERAL.—The amount of  
5 recoupment or set-off under paragraph (1) shall  
6 equal the amount to which the consumer would  
7 be entitled under subsection (a) for damages for  
8 a valid claim brought in an original action  
9 against the creditor, plus the costs to the con-  
10 sumer of the action, including a reasonable at-  
11 torney’s fee.

12 “(B) SPECIAL RULE.—Where such judg-  
13 ment is rendered after the expiration of the ap-  
14 plicable time limit on a private action for dam-  
15 ages under subsection (e), the amount of  
16 recoupment or set-off under paragraph (1) de-  
17 rived from damages under subsection (a)(4)  
18 shall not exceed the amount to which the con-  
19 sumer would have been entitled under sub-  
20 section (a)(4) for damages computed up to the  
21 day preceding the expiration of the applicable  
22 time limit.”.

1 **SEC. 1415. ADDITIONAL STANDARDS AND REQUIREMENTS.**

2 (a) IN GENERAL.—Section 129C of the Truth in  
3 Lending Act is amended by inserting after subsection (c)  
4 (as added by this title) the following new subsections:

5 “(d) PROHIBITION ON CERTAIN PREPAYMENT PEN-  
6 ALTIES.—

7 “(1) PROHIBITED ON CERTAIN LOANS.—

8 “(A) IN GENERAL.—A residential mort-  
9 gage loan that is not a ‘qualified mortgage’ may  
10 not contain terms under which a consumer  
11 must pay a prepayment penalty for paying all  
12 or part of the principal after the loan is con-  
13 summated.

14 “(B) EXCLUSIONS.—For purposes of this  
15 subsection, a ‘qualified mortgage’ may not in-  
16 clude a residential mortgage loan that—

17 “(i) has an adjustable rate; or

18 “(ii) has an annual percentage rate  
19 that does not exceed the average prime  
20 offer rate for a comparable transaction, as  
21 of the date the interest rate is set—

22 “(I) by 1.5 or more percentage  
23 points, in the case of a first lien resi-  
24 dential mortgage loan having a origi-  
25 nal principal obligation amount that is  
26 equal to or less than the amount of

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1 the maximum limitation on the origi-  
2 nal principal obligation of mortgage in  
3 effect for a residence of the applicable  
4 size, as of the date of such interest  
5 rate set, pursuant to the 6th sentence  
6 of section 305(a)(2) the Federal  
7 Home Loan Mortgage Corporation  
8 Act (12 U.S.C. 1454(a)(2));

9 “(II) by 2.5 or more percentage  
10 points, in the case of a first lien resi-  
11 dential mortgage loan having a origi-  
12 nal principal obligation amount that is  
13 more than the amount of the max-  
14 imum limitation on the original prin-  
15 cipal obligation of mortgage in effect  
16 for a residence of the applicable size,  
17 as of the date of such interest rate  
18 set, pursuant to the 6th sentence of  
19 section 305(a)(2) the Federal Home  
20 Loan Mortgage Corporation Act (12  
21 U.S.C. 1454(a)(2)); and

22 “(III) by 3.5 or more percentage  
23 points, in the case of a subordinate  
24 lien residential mortgage loan.



1           “(2) PUBLICATION OF AVERAGE PRIME OFFER  
2           RATE AND APR THRESHOLDS.—The Board—

3                   “(A) shall publish, and update at least  
4                   weekly, average prime offer rates;

5                   “(B) may publish multiple rates based on  
6                   varying types of mortgage transactions; and

7                   “(C) shall adjust the thresholds established  
8                   under subclause (I), (II), and (III) as necessary  
9                   to reflect significant changes in market condi-  
10                  tions and to effectuate the purposes of the  
11                  Mortgage Reform and Anti-Predatory Lending  
12                  Act.

13           “(3) PHASED-OUT PENALTIES ON QUALIFIED  
14           MORTGAGES.—A qualified mortgage (as defined in  
15           subsection (c)) may not contain terms under which  
16           a consumer must pay a prepayment penalty for pay-  
17           ing all or part of the principal after the loan is con-  
18           summated in excess of the following limitations:

19                   “(A) During the 1-year period beginning  
20                   on the date the loan is consummated, the pre-  
21                   payment penalty shall not exceed an amount  
22                   equal to 3 percent of the outstanding balance  
23                   on the loan.

24                   “(B) During the 1-year period beginning  
25                   after the period described in subparagraph (A),

1           the prepayment penalty shall not exceed an  
2           amount equal to 2 percent of the outstanding  
3           balance on the loan.

4                   “(C) During the 1-year period beginning  
5           after the 1-year period described in subpara-  
6           graph (B), the prepayment penalty shall not ex-  
7           ceed an amount equal to 1 percent of the out-  
8           standing balance on the loan.

9                   “(D) After the end of the 3-year period be-  
10          ginning on the date the loan is consummated,  
11          no prepayment penalty may be imposed on a  
12          qualified mortgage.

13                   “(4) OPTION FOR NO PREPAYMENT PENALTY  
14          REQUIRED.—A creditor may not offer a consumer a  
15          residential mortgage loan product that has a prepay-  
16          ment penalty for paying all or part of the principal  
17          after the loan is consummated as a term of the loan  
18          without offering the consumer a residential mort-  
19          gage loan product that does not have a prepayment  
20          penalty as a term of the loan.

21                   “(e) SINGLE PREMIUM CREDIT INSURANCE PROHIB-  
22          ITED.—No creditor may finance, directly or indirectly, in  
23          connection with any residential mortgage loan or with any  
24          extension of credit under an open end consumer credit  
25          plan secured by the principal dwelling of the consumer,

1 any credit life, credit disability, credit unemployment or  
2 credit property insurance, or any other accident, loss-of-  
3 income, life or health insurance, or any payments directly  
4 or indirectly for any debt cancellation or suspension agree-  
5 ment or contract, except that—

6 “(1) insurance premiums or debt cancellation or  
7 suspension fees calculated and paid in full on a  
8 monthly basis shall not be considered financed by  
9 the creditor; and

10 “(2) this subsection shall not apply to credit  
11 unemployment insurance for which the unemploy-  
12 ment insurance premiums are reasonable, the cred-  
13 itor receives no direct or indirect compensation in  
14 connection with the unemployment insurance pre-  
15 miums, and the unemployment insurance premiums  
16 are paid pursuant to another insurance contract and  
17 not paid to an affiliate of the creditor.

18 “(f) ARBITRATION.—

19 “(1) IN GENERAL.—No residential mortgage  
20 loan and no extension of credit under an open end  
21 consumer credit plan secured by the principal dwell-  
22 ing of the consumer may include terms which re-  
23 quire arbitration or any other nonjudicial procedure  
24 as the method for resolving any controversy or set-  
25 tling any claims arising out of the transaction.

1           “(2) POST-CONTROVERSY AGREEMENTS.—Sub-  
2           ject to paragraph (3), paragraph (1) shall not be  
3           construed as limiting the right of the consumer and  
4           the creditor, any assignee, or any securitizer to  
5           agree to arbitration or any other nonjudicial proce-  
6           dure as the method for resolving any controversy at  
7           any time after a dispute or claim under the trans-  
8           action arises.

9           “(3) NO WAIVER OF STATUTORY CAUSE OF AC-  
10          TION.—No provision of any residential mortgage  
11          loan or of any extension of credit under an open end  
12          consumer credit plan secured by the principal dwell-  
13          ing of the consumer, and no other agreement be-  
14          tween the consumer and the creditor relating to the  
15          residential mortgage loan or extension of credit re-  
16          ferred to in paragraph (1), shall be applied or inter-  
17          preted so as to bar a consumer from bringing an ac-  
18          tion in an appropriate district court of the United  
19          States, or any other court of competent jurisdiction,  
20          pursuant to section 130 or any other provision of  
21          law, for damages or other relief in connection with  
22          any alleged violation of this section, any other provi-  
23          sion of this title, or any other Federal law.

24          “(g) MORTGAGES WITH NEGATIVE AMORTIZA-  
25          TION.—No creditor may extend credit to a borrower in

1 connection with a consumer credit transaction under an  
2 open or closed end consumer credit plan secured by a  
3 dwelling or residential real property that includes a dwell-  
4 ing, other than a reverse mortgage, that provides or per-  
5 mits a payment plan that may, at any time over the term  
6 of the extension of credit, result in negative amortization  
7 unless, before such transaction is consummated—

8           “(1) the creditor provides the consumer with a  
9           statement that—

10                   “(A) the pending transaction will or may,  
11                   as the case may be, result in negative amortiza-  
12                   tion;

13                   “(B) describes negative amortization in  
14                   such manner as the Board shall prescribe;

15                   “(C) negative amortization increases the  
16                   outstanding principal balance of the account;  
17                   and

18                   “(D) negative amortization reduces the  
19                   consumer’s equity in the dwelling or real prop-  
20                   erty; and

21           “(2) in the case of a first-time borrower with  
22           respect to a residential mortgage loan that is not a  
23           qualified mortgage, the first-time borrower provides  
24           the creditor with sufficient documentation to dem-  
25           onstrate that the consumer received homeownership

1 counseling from organizations or counselors certified  
2 by the Secretary of Housing and Urban Develop-  
3 ment as competent to provide such counseling.”.

4 (b) CONFORMING AMENDMENT RELATING TO EN-  
5 FORCEMENT.—Section 108(a) of the Truth in Lending  
6 Act (15 U.S.C. 1607(a)) is amended by inserting after  
7 paragraph (6) the following new paragraph:

8 “(7) sections 21B and 21C of the Securities  
9 Exchange Act of 1934, in the case of a broker or  
10 dealer, other than a depository institution, by the  
11 Securities and Exchange Commission.”.

12 (c) PROTECTION AGAINST LOSS OF ANTI-DEFI-  
13 CIENCY PROTECTION.—Section 129C of the Truth in  
14 Lending Act is amended by inserting after subsection (g)  
15 (as added by subsection (a)) the following new subsection:

16 “(h) PROTECTION AGAINST LOSS OF ANTI-DEFI-  
17 CIENCY PROTECTION.—

18 “(1) DEFINITION.—For purposes of this sub-  
19 section, the term ‘anti-deficiency law’ means the law  
20 of any State which provides that, in the event of  
21 foreclosure on the residential property of a consumer  
22 securing a mortgage, the consumer is not liable, in  
23 accordance with the terms and limitations of such  
24 State law, for any deficiency between the sale price

1       obtained on such property through foreclosure and  
2       the outstanding balance of the mortgage.

3           “(2) NOTICE AT TIME OF CONSUMMATION.—In  
4       the case of any residential mortgage loan that is, or  
5       upon consummation will be, subject to protection  
6       under an anti-deficiency law, the creditor or mort-  
7       gage originator shall provide a written notice to the  
8       consumer describing the protection provided by the  
9       anti-deficiency law and the significance for the con-  
10      sumer of the loss of such protection before such loan  
11      is consummated.

12          “(3) NOTICE BEFORE REFINANCING THAT  
13      WOULD CAUSE LOSS OF PROTECTION.—In the case  
14      of any residential mortgage loan that is subject to  
15      protection under an anti-deficiency law, if a creditor  
16      or mortgage originator provides an application to a  
17      consumer, or receives an application from a con-  
18      sumer, for any type of refinancing for such loan that  
19      would cause the loan to lose the protection of such  
20      anti-deficiency law, the creditor or mortgage origi-  
21      nator shall provide a written notice to the consumer  
22      describing the protection provided by the anti-defi-  
23      ciency law and the significance for the consumer of  
24      the loss of such protection before any agreement for  
25      any such refinancing is consummated.”.

1 (d) POLICY REGARDING ACCEPTANCE OF PARTIAL  
2 PAYMENT.—Section 129C of the Truth in Lending Act  
3 is amended by inserting after subsection (h) (as added by  
4 subsection (e)) the following new subsection:

5 “(i) POLICY REGARDING ACCEPTANCE OF PARTIAL  
6 PAYMENT.—In the case of any residential mortgage loan,  
7 a creditor shall disclose prior to settlement or, in the case  
8 of a person becoming a creditor with respect to an existing  
9 residential mortgage loan, at the time such person be-  
10 comes a creditor—

11 “(1) the creditor’s policy regarding the accept-  
12 ance of partial payments; and

13 “(2) if partial payments are accepted, how such  
14 payments will be applied to such mortgage and if  
15 such payments will be placed in escrow.”.

16 **SEC. 1416. RULE OF CONSTRUCTION.**

17 Except as otherwise expressly provided in section  
18 129B or 129C of the Truth in Lending Act (as added by  
19 this title), no provision of such section 129B or 129C shall  
20 be construed as superseding, repealing, or affecting any  
21 duty, right, obligation, privilege, or remedy of any person  
22 under any other provision of the Truth in Lending Act  
23 or any other provision of Federal or State law.



1 **SEC. 1417. REGULATIONS.**

2 Regulations required or authorized to be prescribed  
3 under this subtitle or the amendments made by this sub-  
4 title—

5 (1) shall be prescribed in final form before the  
6 end of the 12-month period beginning on the date of  
7 the enactment of this Act; and

8 (2) shall take effect not later than 18 months  
9 after the date of the enactment of this Act.

10 **SEC. 1418. AMENDMENTS TO CIVIL LIABILITY PROVISIONS.**

11 (a) INCREASE IN AMOUNT OF CIVIL MONEY PEN-  
12 ALTIES FOR CERTAIN VIOLATIONS.—Section 130(a) of  
13 the Truth in Lending Act (15 U.S.C. 1640(a)) is amend-  
14 ed—

15 (1) in paragraph (2)—

16 (A) by striking “\$100” and inserting  
17 “\$200”;

18 (B) by striking “\$1,000” and inserting  
19 “\$2,000”; and

20 (C) by striking “\$500,000” and inserting  
21 “\$1,000,000”; and

22 (2) in paragraph (4), by inserting “, paragraph  
23 (1) or (2) of section 129B(e), or section 129C(a)”  
24 after “section 129”.

1 (b) STATUTE OF LIMITATIONS EXTENDED FOR SEC-  
2 TION 129 VIOLATIONS.—Section 130(e) of the Truth in  
3 Lending Act (15 U.S.C. 1640(e)) is amended—

4 (1) in the first sentence, by striking “Any ac-  
5 tion” and inserting “Except as provided in the sub-  
6 sequent sentence, any action”; and

7 (2) by inserting after the first sentence the fol-  
8 lowing new sentence: “Any action under this section  
9 with respect to any violation of section 129, 129B,  
10 or 129C may be brought in any United States dis-  
11 trict court, or in any other court of competent juris-  
12 diction, before the end of the 3-year period begin-  
13 ning on the date of the occurrence of the violation.”.

14 **SEC. 1419. LENDER RIGHTS IN THE CONTEXT OF BOR-**  
15 **ROWER DECEPTION.**

16 Section 130 of the Truth in Lending Act (15 U.S.C.  
17 1640) is amended by adding after subsection (k) (as added  
18 by this title) the following new subsection:

19 “(l) EXEMPTION FROM LIABILITY AND RESCISSION  
20 IN CASE OF BORROWER FRAUD OR DECEPTION.—In ad-  
21 dition to any other remedy available by law or contract,  
22 no creditor, assignee, or securitizer shall be liable to an  
23 obligor under this section, if such obligor, or co-obligor  
24 has been convicted of obtaining by actual fraud such resi-  
25 dential mortgage loan.”.

1 **SEC. 1420. SIX-MONTH NOTICE REQUIRED BEFORE RESET**  
2 **OF HYBRID ADJUSTABLE RATE MORTGAGES.**

3 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-  
4 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting  
5 after section 128 the following new section:

6 **“§ 128A. Reset of hybrid adjustable rate mortgages**

7 “(a) HYBRID ADJUSTABLE RATE MORTGAGES DE-  
8 FINED.—For purposes of this section, the term ‘hybrid ad-  
9 justable rate mortgage’ means a consumer credit trans-  
10 action secured by the consumer’s principal residence with  
11 a fixed interest rate for an introductory period that ad-  
12 justs or resets to a variable interest rate after such period.

13 “(b) NOTICE OF RESET AND ALTERNATIVES.—Dur-  
14 ing the 1-month period that ends 6 months before the date  
15 on which the interest rate in effect during the introductory  
16 period of a hybrid adjustable rate mortgage adjusts or  
17 resets to a variable interest rate or, in the case of such  
18 an adjustment or resetting that occurs within the first 6  
19 months after consummation of such loan, at consumma-  
20 tion, the creditor or servicer of such loan shall provide a  
21 written notice, separate and distinct from all other cor-  
22 respondence to the consumer, that includes the following:

23 “(1) Any index or formula used in making ad-  
24 justments to or resetting the interest rate and a  
25 source of information about the index or formula.

1           “(2) An explanation of how the new interest  
2 rate and payment would be determined, including an  
3 explanation of how the index was adjusted, such as  
4 by the addition of a margin.

5           “(3) A good faith estimate, based on accepted  
6 industry standards, of the creditor or servicer of the  
7 amount of the monthly payment that will apply after  
8 the date of the adjustment or reset, and the assump-  
9 tions on which this estimate is based.

10           “(4) A list of alternatives consumers may pur-  
11 sue before the date of adjustment or reset, and de-  
12 scriptions of the actions consumers must take to  
13 pursue these alternatives, including—

14                   “(A) refinancing;

15                   “(B) renegotiation of loan terms;

16                   “(C) payment forbearances; and

17                   “(D) pre-foreclosure sales.

18           “(5) The names, addresses, telephone numbers,  
19 and Internet addresses of counseling agencies or  
20 programs reasonably available to the consumer that  
21 have been certified or approved and made publicly  
22 available by the Secretary of Housing and Urban  
23 Development or a State housing finance authority  
24 (as defined in section 1301 of the Financial Institu-

1 tions Reform, Recovery, and Enforcement Act of  
2 1989).

3 “(6) The address, telephone number, and Inter-  
4 net address for the State housing finance authority  
5 (as so defined) for the State in which the consumer  
6 resides.”.

7 (b) CLERICAL AMENDMENT.—The table of sections  
8 for chapter 2 of the Truth in Lending Act is amended  
9 by inserting after the item relating to section 128 the fol-  
10 lowing new item:

“128A. Reset of hybrid adjustable rate mortgages.”.

11 **SEC. 1421. REQUIRED DISCLOSURES.**

12 Section 128(a) of Truth in Lending Act (15 U.S.C.  
13 1638(a)) is amended by adding at the end the following  
14 new paragraphs:

15 “(16) In the case of a variable rate residential  
16 mortgage loan for which an escrow or impound ac-  
17 count will be established for the payment of all ap-  
18 plicable taxes, insurance, and assessments—

19 “(A) the amount of initial monthly pay-  
20 ment due under the loan for the payment of  
21 principal and interest, and the amount of such  
22 initial monthly payment including the monthly  
23 payment deposited in the account for the pay-  
24 ment of all applicable taxes, insurance, and as-  
25 sessments; and

1           “(B) the amount of the fully indexed  
2           monthly payment due under the loan for the  
3           payment of principal and interest, and the  
4           amount of such fully indexed monthly payment  
5           including the monthly payment deposited in the  
6           account for the payment of all applicable taxes,  
7           insurance, and assessments.

8           “(17) In the case of a residential mortgage  
9           loan, the aggregate amount of settlement charges for  
10          all settlement services provided in connection with  
11          the loan, the amount of charges that are included in  
12          the loan and the amount of such charges the bor-  
13          rower must pay at closing, the approximate amount  
14          of the wholesale rate of funds in connection with the  
15          loan, and the aggregate amount of other fees or re-  
16          quired payments in connection with the loan.

17          “(18) In the case of a residential mortgage  
18          loan, the aggregate amount of fees paid to the mort-  
19          gage originator in connection with the loan, the  
20          amount of such fees paid directly by the consumer,  
21          and any additional amount received by the originator  
22          from the creditor.

23          “(19) In the case of a residential mortgage  
24          loan, the total amount of interest that the consumer  
25          will pay over the life of the loan as a percentage of

1 the principal of the loan. Such amount shall be com-  
2 puted assuming the consumer makes each monthly  
3 payment in full and on-time, and does not make any  
4 over-payments.”.

5 **SEC. 1422. DISCLOSURES REQUIRED IN MONTHLY STATE-**  
6 **MENTS FOR RESIDENTIAL MORTGAGE**  
7 **LOANS.**

8 Section 128 of the Truth in Lending Act (15 U.S.C.  
9 1638) is amended by adding at the end the following new  
10 subsection:

11 “(f) PERIODIC STATEMENTS FOR RESIDENTIAL  
12 MORTGAGE LOANS.—

13 “(1) IN GENERAL.—The creditor, assignee, or  
14 servicer with respect to any residential mortgage  
15 loan shall transmit to the obligor, for each billing  
16 cycle, a statement setting forth each of the following  
17 items, to the extent applicable, in a conspicuous and  
18 prominent manner:

19 “(A) The amount of the principal obliga-  
20 tion under the mortgage.

21 “(B) The current interest rate in effect for  
22 the loan.

23 “(C) The date on which the interest rate  
24 may next reset or adjust.

1           “(D) The amount of any prepayment fee  
2           to be charged, if any.

3           “(E) A description of any late payment  
4           fees.

5           “(F) A telephone number and electronic  
6           mail address that may be used by the obligor to  
7           obtain information regarding the mortgage.

8           “(G) The names, addresses, telephone  
9           numbers, and Internet addresses of counseling  
10          agencies or programs reasonably available to  
11          the consumer that have been certified or ap-  
12          proved and made publicly available by the Sec-  
13          retary of Housing and Urban Development or a  
14          State housing finance authority (as defined in  
15          section 1301 of the Financial Institutions Re-  
16          form, Recovery, and Enforcement Act of 1989).

17          “(H) Such other information as the Board  
18          may prescribe in regulations.

19          “(2) DEVELOPMENT AND USE OF STANDARD  
20          FORM.—The Federal banking agencies shall jointly  
21          develop and prescribe a standard form for the dislo-  
22          sure required under this subsection, taking into ac-  
23          count that the statements required may be trans-  
24          mitted in writing or electronically.”.



1 **SEC. 1423. EFFECTIVE DATE.**

2 The amendments made by this subtitle shall apply to  
3 transactions consummated on or after the effective date  
4 of the regulations specified in section 1417.

5 **SEC. 1424. REPORT BY THE GAO.**

6 (a) REPORT REQUIRED.—The Comptroller General  
7 shall conduct a study to determine the effects the enact-  
8 ment of this Act will have on the availability and afford-  
9 ability of credit for consumers, small businesses, home-  
10 buyers, and mortgage lending, including the effect—

11 (1) on the mortgage market for mortgages that  
12 are not within the safe harbor provided in the  
13 amendments made by this subtitle;

14 (2) on the ability of prospective homebuyers to  
15 obtain financing;

16 (3) on the ability of homeowners facing resets  
17 or adjustments to refinance—for example, do they  
18 have fewer refinancing options due to the unavail-  
19 ability of certain loan products that were available  
20 before the enactment of this Act;

21 (4) on minorities' ability to access affordable  
22 credit compared with other prospective borrowers;

23 (5) on home sales and construction;

24 (6) of extending the rescission right, if any, on  
25 adjustable rate loans and its impact on litigation;

1           (7) of State foreclosure laws and, if any, an in-  
2       vestor's ability to transfer a property after fore-  
3       closure;

4           (8) of expanding the existing provisions of the  
5       Home Ownership and Equity Protection Act of  
6       1994;

7           (9) of prohibiting prepayment penalties on  
8       high-cost mortgages; and

9           (10) of establishing counseling services under  
10      the Department of Housing and Urban Development  
11      and offered through the Office of Housing Coun-  
12      seling.

13       (b) REPORT.—Before the end of the 1-year period be-  
14      ginning on the date of the enactment of this Act, the  
15      Comptroller General shall submit a report to the Congress  
16      containing the findings and conclusions of the Comptroller  
17      General with respect to the study conducted pursuant to  
18      subsection (a).

19       (c) EXAMINATION RELATED TO CERTAIN CREDIT  
20      RISK RETENTION PROVISIONS.—The report required by  
21      subsection (b) shall also include an analysis by the Comp-  
22      troller General of the effect on the capital reserves and  
23      funding of lenders of credit risk retention provisions for  
24      non-qualified mortgages, including an analysis of the ex-  
25      ceptions and adjustments authorized in section

1 129C(1)(3)(A) of the Truth in Lending Act and a rec-  
2 ommendation on whether a uniform standard is needed.

3 (d) ANALYSIS OF CREDIT RISK RETENTION PROVI-  
4 SIONS.—The report required by subsection (b) shall also  
5 include—

6 (1) an analysis by the Comptroller General of  
7 whether the credit risk retention provisions have sig-  
8 nificantly reduced risks to the larger credit market  
9 of the repackaging and selling of securitized loans on  
10 a secondary market; and

11 (2) recommendations to the Congress on adjust-  
12 ments that should be made, or additional measures  
13 that should be undertaken.

14 **SEC. 1425. STATE ATTORNEY GENERAL ENFORCEMENT AU-**  
15 **THORITY.**

16 Section 130(e) of the Truth in Lending Act (15  
17 U.S.C. 1640(e)) is amended by striking “section 129 may  
18 also” and inserting “section 129, 129B, or 129C of this  
19 Act may also”.

20 **Subtitle C—High-Cost Mortgages**

21 **SEC. 1431. DEFINITIONS RELATING TO HIGH-COST MORT-**  
22 **GAGES.**

23 (a) HIGH-COST MORTGAGE DEFINED.—Section  
24 103(aa) of the Truth in Lending Act (15 U.S.C.

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1 1602(aa)) is amended by striking all that precedes para-  
2 graph (2) and inserting the following:

3 “(aa) HIGH-COST MORTGAGE.—

4 “(1) DEFINITION.—

5 “(A) IN GENERAL.—The term ‘high-cost  
6 mortgage’, and a mortgage referred to in this  
7 subsection, means a consumer credit trans-  
8 action that is secured by the consumer’s prin-  
9 cipal dwelling, other than a reverse mortgage  
10 transaction, if—

11 “(i) in the case of a credit transaction  
12 secured—

13 “(I) by a first mortgage on the  
14 consumer’s principal dwelling, the an-  
15 nual percentage rate at consummation  
16 of the transaction will exceed by more  
17 than 6.5 percentage points (8.5 per-  
18 centage points, if the dwelling is per-  
19 sonal property and the transaction is  
20 for less than \$50,000) the average  
21 prime offer rate, as defined in section  
22 129C(c)(2)(B), for a comparable  
23 transaction; or

24 “(II) by a subordinate or junior  
25 mortgage on the consumer’s principal

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1 dwelling, the annual percentage rate  
2 at consummation of the transaction  
3 will exceed by more than 8.5 percent-  
4 age points the average prime offer  
5 rate, as defined in section  
6 129C(e)(2)(B), for a comparable  
7 transaction;

8 “(ii) the total points and fees payable  
9 in connection with the transaction, other  
10 than bona fide third party charges not re-  
11 tained by the mortgage originator, cred-  
12 itor, or an affiliate of the creditor or mort-  
13 gage originator, exceed—

14 “(I) in the case of a transaction  
15 for \$20,000 or more, 5 percent of the  
16 total transaction amount; or

17 “(II) in the case of a transaction  
18 for less than \$20,000, the lesser of 8  
19 percent of the total transaction  
20 amount or \$1,000 (or such other dol-  
21 lar amount as the Board shall pre-  
22 scribe by regulation); or

23 “(iii) the credit transaction documents  
24 permit the creditor to charge or collect pre-  
25 payment fees or penalties more than 36

1 months after the transaction closing or  
2 such fees or penalties exceed, in the aggregate,  
3 more than 2 percent of the amount  
4 prepaid.

5 “(B) INTRODUCTORY RATES TAKEN INTO  
6 ACCOUNT.—For purposes of subparagraph  
7 (A)(i), the annual percentage rate of interest  
8 shall be determined based on the following interest  
9 rate:

10 “(i) In the case of a fixed-rate transaction  
11 in which the annual percentage rate  
12 will not vary during the term of the loan,  
13 the interest rate in effect on the date of  
14 consummation of the transaction.

15 “(ii) In the case of a transaction in  
16 which the rate of interest varies solely in  
17 accordance with an index, the interest rate  
18 determined by adding the index rate in effect  
19 on the date of consummation of the  
20 transaction to the maximum margin permitted  
21 at any time during the loan agreement.  
22

23 “(iii) In the case of any other transaction  
24 in which the rate may vary at any  
25 time during the term of the loan for any

1                   reason, the interest charged on the trans-  
2                   action at the maximum rate that may be  
3                   charged during the term of the loan.

4                   “(C) PRIVATE MORTGAGE INSURANCE.—  
5                   For the purposes of computing the total points  
6                   and fees under this paragraph, the total points  
7                   and fees shall include any premium for mort-  
8                   gage guarantee insurance that is not provided  
9                   by an agency of the Federal Government or an  
10                  agency of a State and that is paid by the con-  
11                  sumer at or before closing.”.

12                  (b) ADJUSTMENT OF PERCENTAGE POINTS.—Section  
13 103(aa)(2) of the Truth in Lending Act (15 U.S.C.  
14 1602(aa)(2)) is amended by striking subparagraph (B)  
15 and inserting the following new subparagraph:

16                  “(B) An increase or decrease under sub-  
17                  paragraph (A)—

18                          “(i) may not result in the number of  
19                          percentage points referred to in paragraph  
20                          (1)(A)(i)(I) being less than 6 percentage  
21                          points or greater than 10 percentage  
22                          points; and

23                          “(ii) may not result in the number of  
24                          percentage points referred to in paragraph  
25                          (1)(A)(i)(II) being less than 8 percentage

1                   points or greater than 12 percentage  
2                   points.”.

3           (c) POINTS AND FEES DEFINED.—

4                   (1) IN GENERAL.—Section 103(aa)(4) of the  
5           Truth in Lending Act (15 U.S.C. 1602(aa)(4)) is  
6           amended—

7                   (A) by striking subparagraph (B) and in-  
8           serting the following:

9                   “(B) all compensation paid directly or indi-  
10           rectly by a consumer or creditor to a mortgage  
11           originator from any source, including a mort-  
12           gage originator that originates a loan in the  
13           name of the creditor in a table-funded trans-  
14           action;”;

15                   (B) in subparagraph (C)(ii), by inserting  
16           “except where applied to the charges set forth  
17           in section 106(e)(1) where a creditor may re-  
18           ceive indirect compensation solely as a result of  
19           obtaining distributions of profits from an affili-  
20           ated entity based on its ownership interest in  
21           compliance with section 8(c)(4) of the Real Es-  
22           tate Settlement Procedures Act of 1974” before  
23           the semicolon at the end;



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1 (C) in subparagraph (C)(iii), by striking “;  
2 and” and inserting “, except as provided for in  
3 clause (ii);”;

4 (D) by redesignating subparagraph (D) as  
5 subparagraph (G); and

6 (E) by inserting after subparagraph (C)  
7 the following new subparagraphs:

8 “(D) premiums or other charges payable at  
9 or before closing for any credit life, credit dis-  
10 ability, credit unemployment, or credit property  
11 insurance, or any other accident, loss-of-income,  
12 life or health insurance, or any payments di-  
13 rectly or indirectly for any debt cancellation or  
14 suspension agreement or contract, except that  
15 insurance premiums or debt cancellation or sus-  
16 pension fees calculated and paid in full on a  
17 monthly basis shall not be considered financed  
18 by the creditor;

19 “(E) except as provided in subsection (cc),  
20 the maximum prepayment fees and penalties  
21 which may be charged or collected under the  
22 terms of the credit transaction;

23 “(F) all prepayment fees or penalties that  
24 are incurred by the consumer if the loan refi-  
25 nances a previous loan made or currently held

1           by the same creditor or an affiliate of the cred-  
2           itor; and”.

3           (2) CALCULATION OF POINTS AND FEES FOR  
4           OPEN-END CONSUMER CREDIT PLANS.—Section  
5           103(aa) of the Truth in Lending Act (15 U.S.C.  
6           1602(aa)) is amended—

7                   (A) by redesignating paragraph (5) as  
8                   paragraph (6); and

9                   (B) by inserting after paragraph (4) the  
10           following new paragraph:

11           “(5) CALCULATION OF POINTS AND FEES FOR  
12           OPEN-END CONSUMER CREDIT PLANS.—In the case  
13           of open-end consumer credit plans, points and fees  
14           shall be calculated, for purposes of this section and  
15           section 129, by adding the total points and fees  
16           known at or before closing, including the maximum  
17           prepayment penalties which may be charged or col-  
18           lected under the terms of the credit transaction, plus  
19           the minimum additional fees the consumer would be  
20           required to pay to draw down an amount equal to  
21           the total credit line.”.

22           (d) BONA FIDE DISCOUNT LOAN DISCOUNT  
23           POINTS.—Section 103 of the Truth in Lending Act (15  
24           U.S.C. 1602) is amended by inserting after subsection (cc)  
25           (as added by section 1401) the following new subsection:

1           “(dd) BONA FIDE DISCOUNT POINTS AND PREPAY-  
2 MENT PENALTIES.—For the purposes of determining the  
3 amount of points and fees for purposes of subsection (aa),  
4 either the amounts described in paragraph (1) or (2) of  
5 the following paragraphs, but not both, shall be excluded:

6           “(1) Up to and including 2 bona fide discount  
7 points payable by the consumer in connection with  
8 the mortgage, but only if the interest rate from  
9 which the mortgage’s interest rate will be discounted  
10 does not exceed by more than 1 percentage point—

11           “(A) the average prime offer rate, as de-  
12 fined in section 129C; or

13           “(B) if secured by a personal property  
14 loan, the average rate on a loan in connection  
15 with which insurance is provided under title I  
16 of the National Housing Act (12 U.S.C. 1702  
17 et seq.).

18           “(2) Unless 2 bona fide discount points have  
19 been excluded under paragraph (1), up to and in-  
20 cluding 1 bona fide discount point payable by the  
21 consumer in connection with the mortgage, but only  
22 if the interest rate from which the mortgage’s inter-  
23 est rate will be discounted does not exceed by more  
24 than 2 percentage points—

1           “(A) the average prime offer rate, as de-  
2           fined in section 129C; or

3           “(B) if secured by a personal property  
4           loan, the average rate on a loan in connection  
5           with which insurance is provided under title I  
6           of the National Housing Act (12 U.S.C. 1702  
7           et seq.).

8           “(3) For purposes of paragraph (1), the term  
9           ‘bona fide discount points’ means loan discount  
10          points which are knowingly paid by the consumer for  
11          the purpose of reducing, and which in fact result in  
12          a bona fide reduction of, the interest rate or time-  
13          price differential applicable to the mortgage.

14          “(4) Paragraphs (1) and (2) shall not apply to  
15          discount points used to purchase an interest rate re-  
16          duction unless the amount of the interest rate reduc-  
17          tion purchased is reasonably consistent with estab-  
18          lished industry norms and practices for secondary  
19          mortgage market transactions.”.

20 **SEC. 1432. AMENDMENTS TO EXISTING REQUIREMENTS**  
21 **FOR CERTAIN MORTGAGES.**

22          (a) PREPAYMENT PENALTY PROVISIONS.—Section  
23 129(c)(2) of the Truth in Lending Act (15 U.S.C.  
24 1639(c)(2)) is hereby repealed.

1 (b) NO BALLOON PAYMENTS.—Section 129(e) of the  
2 Truth in Lending Act (15 U.S.C. 1639(e)) is amended to  
3 read as follows:

4 “(e) NO BALLOON PAYMENTS.—No high-cost mort-  
5 gage may contain a scheduled payment that is more than  
6 twice as large as the average of earlier scheduled pay-  
7 ments. This subsection shall not apply when the payment  
8 schedule is adjusted to the seasonal or irregular income  
9 of the consumer or in the case of a balance due under  
10 the customary terms of a reverse mortgage.”.

11 **SEC. 1433. ADDITIONAL REQUIREMENTS FOR CERTAIN**  
12 **MORTGAGES.**

13 (a) ADDITIONAL REQUIREMENTS FOR CERTAIN  
14 MORTGAGES.—Section 129 of the Truth in Lending Act  
15 (15 U.S.C. 1639) is amended—

16 (1) by redesignating subsections (j), (k), (l) and  
17 (m) as subsections (n), (o), (p), and (q) respectively;  
18 and

19 (2) by inserting after subsection (i) the fol-  
20 lowing new subsections:

21 “(j) RECOMMENDED DEFAULT.—No creditor shall  
22 recommend or encourage default on an existing loan or  
23 other debt prior to and in connection with the closing or  
24 planned closing of a high-cost mortgage that refinances  
25 all or any portion of such existing loan or debt.

1 “(k) LATE FEES.—

2 “(1) IN GENERAL.—No creditor may impose a  
3 late payment charge or fee in connection with a  
4 high-cost mortgage—

5 “(A) in an amount in excess of 4 percent  
6 of the amount of the payment past due;

7 “(B) unless the loan documents specifically  
8 authorize the charge or fee;

9 “(C) before the end of the 15-day period  
10 beginning on the date the payment is due, or in  
11 the case of a loan on which interest on each in-  
12 stallment is paid in advance, before the end of  
13 the 30-day period beginning on the date the  
14 payment is due; or

15 “(D) more than once with respect to a sin-  
16 gle late payment.

17 “(2) COORDINATION WITH SUBSEQUENT LATE  
18 FEES.—If a payment is otherwise a full payment for  
19 the applicable period and is paid on its due date or  
20 within an applicable grace period, and the only delin-  
21 quency or insufficiency of payment is attributable to  
22 any late fee or delinquency charge assessed on any  
23 earlier payment, no late fee or delinquency charge  
24 may be imposed on such payment.

1           “(3) FAILURE TO MAKE INSTALLMENT PAY-  
2           MENT.—If, in the case of a loan agreement the  
3           terms of which provide that any payment shall first  
4           be applied to any past due principal balance, the  
5           consumer fails to make an installment payment and  
6           the consumer subsequently resumes making install-  
7           ment payments but has not paid all past due install-  
8           ments, the creditor may impose a separate late pay-  
9           ment charge or fee for any principal due (without  
10          deduction due to late fees or related fees) until the  
11          default is cured.

12          “(1) ACCELERATION OF DEBT.—No high-cost mort-  
13          gage may contain a provision which permits the creditor  
14          to accelerate the indebtedness, except when repayment of  
15          the loan has been accelerated by default in payment, or  
16          pursuant to a due-on-sale provision, or pursuant to a ma-  
17          terial violation of some other provision of the loan docu-  
18          ment unrelated to payment schedule.

19          “(m) RESTRICTION ON FINANCING POINTS AND  
20          FEES.—No creditor may directly or indirectly finance, in  
21          connection with any high-cost mortgage, any of the fol-  
22          lowing:

23                 “(1) Any prepayment fee or penalty payable by  
24                 the consumer in a refinancing transaction if the

1 creditor or an affiliate of the creditor is the  
2 noteholder of the note being refinanced.

3 “(2) Any points or fees.”.

4 (b) PROHIBITIONS ON EVASIONS.—Section 129 of  
5 the Truth in Lending Act (15 U.S.C. 1639) is amended  
6 by inserting after subsection (q) (as so redesignated by  
7 subsection (a)(1)) the following new subsection:

8 “(r) PROHIBITIONS ON EVASIONS, STRUCTURING OF  
9 TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—A  
10 creditor may not take any action in connection with a  
11 high-cost mortgage—

12 “(1) to structure a loan transaction as an open-  
13 end credit plan or another form of loan for the pur-  
14 pose and with the intent of evading the provisions of  
15 this title; or

16 “(2) to divide any loan transaction into sepa-  
17 rate parts for the purpose and with the intent of  
18 evading provisions of this title.”.

19 (c) MODIFICATION OR DEFERRAL FEES.—Section  
20 129 of the Truth in Lending Act (15 U.S.C. 1639) is  
21 amended by inserting after subsection (r) (as added by  
22 subsection (b) of this section) the following new sub-  
23 section:

24 “(s) MODIFICATION AND DEFERRAL FEES PROHIB-  
25 ITED.—A creditor, successor in interest, assignee, or any



1 agent of any of the above, may not charge a consumer  
2 any fee to modify, renew, extend, or amend a high-cost  
3 mortgage, or to defer any payment due under the terms  
4 of such mortgage.”.

5 (d) PAYOFF STATEMENT.—Section 129 of the Truth  
6 in Lending Act (15 U.S.C. 1639) is amended by inserting  
7 after subsection (s) (as added by subsection (c) of this  
8 section) the following new subsection:

9 “(t) PAYOFF STATEMENT.—

10 “(1) FEES.—

11 “(A) IN GENERAL.—Except as provided in  
12 subparagraph (B), no creditor or servicer may  
13 charge a fee for informing or transmitting to  
14 any person the balance due to pay off the out-  
15 standing balance on a high-cost mortgage.

16 “(B) TRANSACTION FEE.—When payoff in-  
17 formation referred to in subparagraph (A) is  
18 provided by facsimile transmission or by a cou-  
19 rier service, a creditor or servicer may charge a  
20 processing fee to cover the cost of such trans-  
21 mission or service in an amount not to exceed  
22 an amount that is comparable to fees imposed  
23 for similar services provided in connection with  
24 consumer credit transactions that are secured

1 by the consumer's principal dwelling and are  
2 not high-cost mortgages.

3 “(C) FEE DISCLOSURE.—Prior to charging  
4 a transaction fee as provided in subparagraph  
5 (B), a creditor or servicer shall disclose that  
6 payoff balances are available for free pursuant  
7 to subparagraph (A).

8 “(D) MULTIPLE REQUESTS.—If a creditor  
9 or servicer has provided payoff information re-  
10 ferred to in subparagraph (A) without charge,  
11 other than the transaction fee allowed by sub-  
12 paragraph (B), on 4 occasions during a cal-  
13 endar year, the creditor or servicer may there-  
14 after charge a reasonable fee for providing such  
15 information during the remainder of the cal-  
16 endar year.

17 “(2) PROMPT DELIVERY.—Payoff balances shall  
18 be provided within 5 business days after receiving a  
19 request by a consumer or a person authorized by the  
20 consumer to obtain such information.”.

21 (e) PRE-LOAN COUNSELING REQUIRED.—Section  
22 129 of the Truth in Lending Act (15 U.S.C. 1639) is  
23 amended by inserting after subsection t) (as added by sub-  
24 section (d) of this section) the following new subsection:

25 “(u) PRE-LOAN COUNSELING.—

1           “(1) IN GENERAL.—A creditor may not extend  
2           credit to a consumer under a high-cost mortgage  
3           without first receiving certification from a counselor  
4           that is approved by the Secretary of Housing and  
5           Urban Development, or at the discretion of the Sec-  
6           retary, a State housing finance authority, that the  
7           consumer has received counseling on the advisability  
8           of the mortgage. Such counselor shall not be em-  
9           ployed by the creditor or an affiliate of the creditor  
10          or be affiliated with the creditor.

11          “(2) DISCLOSURES REQUIRED PRIOR TO COUN-  
12          SELING.—No counselor may certify that a consumer  
13          has received counseling on the advisability of the  
14          high-cost mortgage unless the counselor can verify  
15          that the consumer has received each statement re-  
16          quired (in connection with such loan) by this section  
17          or the Real Estate Settlement Procedures Act of  
18          1974 with respect to the transaction.

19          “(3) REGULATIONS.—The Board may prescribe  
20          such regulations as the Board determines to be ap-  
21          propriate to carry out the requirements of paragraph  
22          (1).”.

23          (f) FLIPPING PROHIBITED.—Section 129 of the  
24          Truth in Lending Act (15 U.S.C. 1639) is amended by

1 inserting after subsection (u) (as added by subsection (e))  
2 the following new subsections:

3 “(v) FLIPPING.—

4 “(1) IN GENERAL.—No creditor may knowingly  
5 or intentionally engage in the unfair act or practice  
6 of flipping in connection with a high-cost mortgage.

7 “(2) FLIPPING DEFINED.—For purposes of this  
8 subsection, the term ‘flipping’ means the making of  
9 a loan or extension of credit in the form a high-cost  
10 mortgage to a consumer which refinances an existing  
11 mortgage when the creditor does not reasonably and  
12 in good faith determine that, at the time the loan is  
13 consummated and on the basis of information known  
14 or obtained in good faith by the creditor, the new  
15 loan or extension of credit has a reasonable, net tan-  
16 gible benefit (as determined in accordance with regu-  
17 lations prescribed under section 129C(b)) to the con-  
18 sumer considering all of the circumstances, including  
19 the terms of both the new and the refinanced loans  
20 or credit, the cost of the new loan or credit, and the  
21 consumer’s circumstances.

22 “(w) CORRECTIONS AND UNINTENTIONAL VIOLA-  
23 TIONS.—A creditor or assignee in a high cost loan who,  
24 when acting in good faith, fails to comply with any re-  
25 quirement under this section will not be deemed to have

1 violated such requirement if the creditor or assignee estab-  
2 lishes that either—

3           “(1) within 30 days of the loan closing and  
4 prior to the institution of any action, the consumer  
5 is notified of or discovers the violation, appropriate  
6 restitution is made, and whatever adjustments are  
7 necessary are made to the loan to either, at the  
8 choice of the consumer—

9           “(A) make the loan satisfy the require-  
10 ments of this chapter; or

11           “(B) in the case of a high-cost mortgage,  
12 change the terms of the loan in a manner bene-  
13 ficial to the consumer so that the loan will no  
14 longer be a high-cost mortgage; or

15           “(2) within 60 days of the creditor’s discovery  
16 or receipt of notification of an unintentional viola-  
17 tion or bona fide error as described in subsection (c)  
18 and prior to the institution of any action, the con-  
19 sumer is notified of the compliance failure, appro-  
20 priate restitution is made, and whatever adjustments  
21 are necessary are made to the loan to either, at the  
22 choice of the consumer—

23           “(A) make the loan satisfy the require-  
24 ments of this chapter; or

1           “(B) in the case of a high-cost mortgage,  
2           change the terms of the loan in a manner bene-  
3           ficial so that the loan will no longer be a high-  
4           cost mortgage.”.

5 **SEC. 1434. REGULATIONS.**

6           The Board of Governors of the Federal Reserve Sys-  
7           tem shall publish regulations implementing this subtitle,  
8           and the amendments made by this subtitle, in final form  
9           before the end of the 6-month period beginning on the  
10          date of the enactment of this Act.

11 **SEC. 1435. EFFECTIVE DATE.**

12          The amendments made by this subtitle shall take ef-  
13          fect at the end of the 6-month period beginning on the  
14          date of the enactment of this Act and shall apply to mort-  
15          gages referred to in section 103(aa) of the Truth in Lend-  
16          ing Act (15 U.S.C. 1602(aa)) for which an application is  
17          received by the creditor after the end of such period.

18                   **Subtitle D—Office of Housing**  
19                                   **Counseling**

20 **SEC. 1441. SHORT TITLE.**

21          This subtitle may be cited as the “Expand and Pre-  
22          serve Home Ownership Through Counseling Act”.

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1 **SEC. 1442. ESTABLISHMENT OF OFFICE OF HOUSING COUN-**  
2 **SELING.**

3 Section 4 of the Department of Housing and Urban  
4 Development Act (42 U.S.C. 3533) is amended by adding  
5 at the end the following new subsection:

6 “(g) OFFICE OF HOUSING COUNSELING.—

7 “(1) ESTABLISHMENT.—There is established,  
8 in the Department, the Office of Housing Coun-  
9 seling.

10 “(2) DIRECTOR.—There is established the posi-  
11 tion of Director of Housing Counseling. The Direc-  
12 tor shall be the head of the Office of Housing Coun-  
13 seling and shall be appointed by, and shall report to,  
14 the Secretary. Such position shall be a career-re-  
15 served position in the Senior Executive Service.

16 “(3) FUNCTIONS.—

17 “(A) IN GENERAL.—The Director shall  
18 have primary responsibility within the Depart-  
19 ment for all activities and matters relating to  
20 homeownership counseling and rental housing  
21 counseling, including—

22 “(i) research, grant administration,  
23 public outreach, and policy development re-  
24 lating to such counseling; and

25 “(ii) establishment, coordination, and  
26 administration of all regulations, require-

1                   ments, standards, and performance meas-  
2                   ures under programs and laws adminis-  
3                   tered by the Department that relate to  
4                   housing counseling, homeownership coun-  
5                   seling (including maintenance of homes),  
6                   mortgage-related counseling (including  
7                   home equity conversion mortgages and  
8                   credit protection options to avoid fore-  
9                   closure), and rental housing counseling, in-  
10                  cluding the requirements, standards, and  
11                  performance measures relating to housing  
12                  counseling.

13                  “(B) SPECIFIC FUNCTIONS.—The Director  
14                  shall carry out the functions assigned to the Di-  
15                  rector and the Office under this section and any  
16                  other provisions of law. Such functions shall in-  
17                  clude establishing rules necessary for—

18                         “(i) the counseling procedures under  
19                         section 106(g)(1) of the Housing and  
20                         Urban Development Act of 1968 (12  
21                         U.S.C. 1701x(h)(1));

22                         “(ii) carrying out all other functions  
23                         of the Secretary under section 106(g) of  
24                         the Housing and Urban Development Act  
25                         of 1968, including the establishment, oper-



1                   ation, and publication of the availability of  
2                   the toll-free telephone number under para-  
3                   graph (2) of such section;

4                   “(iii) contributing to the preparation  
5                   and distribution of home buying informa-  
6                   tion booklets pursuant to section 5 of the  
7                   Real Estate Settlement Procedures Act of  
8                   1974 (12 U.S.C. 2604);

9                   “(iv) carrying out the certification  
10                  program under section 106(e) of the Hous-  
11                  ing and Urban Development Act of 1968  
12                  (12 U.S.C. 1701x(e));

13                  “(v) carrying out the assistance pro-  
14                  gram under section 106(a)(4) of the Hous-  
15                  ing and Urban Development Act of 1968,  
16                  including criteria for selection of applica-  
17                  tions to receive assistance;

18                  “(vi) carrying out any functions re-  
19                  garding abusive, deceptive, or unscrupulous  
20                  lending practices relating to residential  
21                  mortgage loans that the Secretary con-  
22                  siders appropriate, which shall include con-  
23                  ducting the study under section 6 of the  
24                  Expand and Preserve Home Ownership  
25                  Through Counseling Act;

1           “(vii) providing for operation of the  
2           advisory committee established under para-  
3           graph (4) of this subsection;

4           “(viii) collaborating with community-  
5           based organizations with expertise in the  
6           field of housing counseling; and

7           “(ix) providing for the building of ca-  
8           pacity to provide housing counseling serv-  
9           ices in areas that lack sufficient services,  
10          including underdeveloped areas that lack  
11          basic water and sewer systems, electricity  
12          services, and safe, sanitary housing.

13          “(4) ADVISORY COMMITTEE.—

14               “(A) IN GENERAL.—The Secretary shall  
15               appoint an advisory committee to provide advice  
16               regarding the carrying out of the functions of  
17               the Director.

18               “(B) MEMBERS.—Such advisory committee  
19               shall consist of not more than 12 individuals,  
20               and the membership of the committee shall  
21               equally represent the mortgage and real estate  
22               industry, including consumers and housing  
23               counseling agencies certified by the Secretary.

24               “(C) TERMS.—Except as provided in sub-  
25               paragraph (D), each member of the advisory

1 committee shall be appointed for a term of 3  
2 years. Members may be reappointed at the dis-  
3 cretion of the Secretary.

4 “(D) TERMS OF INITIAL APPOINTEES.—As  
5 designated by the Secretary at the time of ap-  
6 pointment, of the members first appointed to  
7 the advisory committee, 4 shall be appointed for  
8 a term of 1 year and 4 shall be appointed for  
9 a term of 2 years.

10 “(E) PROHIBITION OF PAY; TRAVEL EX-  
11 PENSES.—Members of the advisory committee  
12 shall serve without pay, but shall receive travel  
13 expenses, including per diem in lieu of subsist-  
14 ence, in accordance with applicable provisions  
15 under subchapter I of chapter 57 of title 5,  
16 United States Code.

17 “(F) ADVISORY ROLE ONLY.—The advi-  
18 sory committee shall have no role in reviewing  
19 or awarding housing counseling grants.

20 “(5) SCOPE OF HOMEOWNERSHIP COUN-  
21 SELING.—In carrying out the responsibilities of the  
22 Director, the Director shall ensure that homeown-  
23 ership counseling provided by, in connection with, or  
24 pursuant to any function, activity, or program of the  
25 Department addresses the entire process of home-

1 ownership, including the decision to purchase a  
2 home, the selection and purchase of a home, issues  
3 arising during or affecting the period of ownership  
4 of a home (including refinancing, default and fore-  
5 closure, and other financial decisions), and the sale  
6 or other disposition of a home.”.

7 **SEC. 1443. COUNSELING PROCEDURES.**

8 (a) IN GENERAL.—Section 106 of the Housing and  
9 Urban Development Act of 1968 (12 U.S.C. 1701x) is  
10 amended by adding at the end the following new sub-  
11 section:

12 “(g) PROCEDURES AND ACTIVITIES.—

13 “(1) COUNSELING PROCEDURES.—

14 “(A) IN GENERAL.—The Secretary shall  
15 establish, coordinate, and monitor the adminis-  
16 tration by the Department of Housing and  
17 Urban Development of the counseling proce-  
18 dures for homeownership counseling and rental  
19 housing counseling provided in connection with  
20 any program of the Department, including all  
21 requirements, standards, and performance  
22 measures that relate to homeownership and  
23 rental housing counseling.

24 “(B) HOMEOWNERSHIP COUNSELING.—

25 For purposes of this subsection and as used in

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1 the provisions referred to in this subparagraph,  
2 the term ‘homeownership counseling’ means  
3 counseling related to homeownership and resi-  
4 dential mortgage loans. Such term includes  
5 counseling related to homeownership and resi-  
6 dential mortgage loans that is provided pursu-  
7 ant to—

8 “(i) section 105(a)(20) of the Housing  
9 and Community Development Act of 1974  
10 (42 U.S.C. 5305(a)(20));

11 “(ii) in the United States Housing  
12 Act of 1937—

13 “(I) section 9(e) (42 U.S.C.  
14 1437g(e));

15 “(II) section 8(y)(1)(D) (42  
16 U.S.C. 1437f(y)(1)(D));

17 “(III) section 18(a)(4)(D) (42  
18 U.S.C. 1437p(a)(4)(D));

19 “(IV) section 23(c)(4) (42 U.S.C.  
20 1437u(c)(4));

21 “(V) section 32(e)(4) (42 U.S.C.  
22 1437z-4(e)(4));

23 “(VI) section 33(d)(2)(B) (42  
24 U.S.C. 1437z-5(d)(2)(B));

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1 “(VII) sections 302(b)(6) and  
2 303(b)(7) (42 U.S.C. 1437aaa–  
3 1(b)(6), 1437aaa–2(b)(7)); and

4 “(VIII) section 304(c)(4) (42  
5 U.S.C. 1437aaa–3(c)(4));

6 “(iii) section 302(a)(4) of the Amer-  
7 ican Homeownership and Economic Oppor-  
8 tunity Act of 2000 (42 U.S.C. 1437f note);

9 “(iv) sections 233(b)(2) and 258(b) of  
10 the Cranston-Gonzalez National Affordable  
11 Housing Act (42 U.S.C. 12773(b)(2),  
12 12808(b));

13 “(v) this section and section 101(e) of  
14 the Housing and Urban Development Act  
15 of 1968 (12 U.S.C. 1701x, 1701w(e));

16 “(vi) section 220(d)(2)(G) of the Low-  
17 Income Housing Preservation and Resident  
18 Homeownership Act of 1990 (12 U.S.C.  
19 4110(d)(2)(G));

20 “(vii) sections 422(b)(6), 423(b)(7),  
21 424(c)(4), 442(b)(6), and 443(b)(6) of the  
22 Cranston-Gonzalez National Affordable  
23 Housing Act (42 U.S.C. 12872(b)(6),  
24 12873(b)(7), 12874(c)(4), 12892(b)(6),  
25 and 12893(b)(6));

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1 “(viii) section 491(b)(1)(F)(iii) of the  
2 McKinney-Vento Homeless Assistance Act  
3 (42 U.S.C. 11408(b)(1)(F)(iii));

4 “(ix) sections 202(3) and  
5 810(b)(2)(A) of the Native American  
6 Housing and Self-Determination Act of  
7 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));

8 “(x) in the National Housing Act—

9 “(I) in section 203 (12 U.S.C.  
10 1709), the penultimate undesignated  
11 paragraph of paragraph (2) of sub-  
12 section (b), subsection (c)(2)(A), and  
13 subsection (r)(4);

14 “(II) subsections (a) and (c)(3)  
15 of section 237 (12 U.S.C. 1715z-2);  
16 and

17 “(III) subsections (d)(2)(B) and  
18 (m)(1) of section 255 (12 U.S.C.  
19 1715z-20);

20 “(xi) section 502(h)(4)(B) of the  
21 Housing Act of 1949 (42 U.S.C.  
22 1472(h)(4)(B));

23 “(xii) section 508 of the Housing and  
24 Urban Development Act of 1970 (12  
25 U.S.C. 1701z-7); and

1                   “(xiii) section 106 of the Energy Pol-  
2                   icy Act of 1992 (42 U.S.C. 12712 note).

3                   “(C) RENTAL HOUSING COUNSELING.—  
4                   For purposes of this subsection, the term ‘rent-  
5                   al housing counseling’ means counseling related  
6                   to rental of residential property, which may in-  
7                   clude counseling regarding future homeownership  
8                   opportunities and providing referrals for  
9                   renters and prospective renters to entities pro-  
10                  viding counseling and shall include counseling  
11                  related to such topics that is provided pursuant  
12                  to—

13                   “(i) section 105(a)(20) of the Housing  
14                   and Community Development Act of 1974  
15                   (42 U.S.C. 5305(a)(20));

16                   “(ii) in the United States Housing  
17                   Act of 1937—

18                   “(I) section 9(e) (42 U.S.C.  
19                   1437g(e));

20                   “(II) section 18(a)(4)(D) (42  
21                   U.S.C. 1437p(a)(4)(D));

22                   “(III) section 23(c)(4) (42  
23                   U.S.C. 1437u(c)(4));

24                   “(IV) section 32(e)(4) (42 U.S.C.  
25                   1437z-4(e)(4));



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1 “(V) section 33(d)(2)(B) (42  
2 U.S.C. 1437z–5(d)(2)(B)); and

3 “(VI) section 302(b)(6) (42  
4 U.S.C. 1437aaa–1(b)(6));

5 “(iii) section 233(b)(2) of the Cran-  
6 ston-Gonzalez National Affordable Housing  
7 Act (42 U.S.C. 12773(b)(2));

8 “(iv) section 106 of the Housing and  
9 Urban Development Act of 1968 (12  
10 U.S.C. 1701x);

11 “(v) section 422(b)(6) of the Cran-  
12 ston-Gonzalez National Affordable Housing  
13 Act (42 U.S.C. 12872(b)(6));

14 “(vi) section 491(b)(1)(F)(iii) of the  
15 McKinney-Vento Homeless Assistance Act  
16 (42 U.S.C. 11408(b)(1)(F)(iii));

17 “(vii) sections 202(3) and  
18 810(b)(2)(A) of the Native American  
19 Housing and Self-Determination Act of  
20 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));  
21 and

22 “(viii) the rental assistance program  
23 under section 8 of the United States Hous-  
24 ing Act of 1937 (42 U.S.C. 1437f).

1           “(2) STANDARDS FOR MATERIALS.—The Sec-  
2           retary, in consultation with the advisory committee  
3           established under subsection (g)(4) of the Depart-  
4           ment of Housing and Urban Development Act, shall  
5           establish standards for materials and forms to be  
6           used, as appropriate, by organizations providing  
7           homeownership counseling services, including any re-  
8           cipients of assistance pursuant to subsection (a)(4).

9           “(3) MORTGAGE SOFTWARE SYSTEMS.—

10           “(A) CERTIFICATION.—The Secretary shall  
11           provide for the certification of various computer  
12           software programs for consumers to use in eval-  
13           uating different residential mortgage loan pro-  
14           posals. The Secretary shall require, for such  
15           certification, that the mortgage software sys-  
16           tems take into account—

17                   “(i) the consumer’s financial situation  
18                   and the cost of maintaining a home, in-  
19                   cluding insurance, taxes, and utilities;

20                   “(ii) the amount of time the consumer  
21                   expects to remain in the home or expected  
22                   time to maturity of the loan; and

23                   “(iii) such other factors as the Sec-  
24                   retary considers appropriate to assist the  
25                   consumer in evaluating whether to pay

1 points, to lock in an interest rate, to select  
2 an adjustable or fixed rate loan, to select  
3 a conventional or government-insured or  
4 guaranteed loan and to make other choices  
5 during the loan application process.

6 If the Secretary determines that available exist-  
7 ing software is inadequate to assist consumers  
8 during the residential mortgage loan application  
9 process, the Secretary shall arrange for the de-  
10 velopment by private sector software companies  
11 of new mortgage software systems that meet  
12 the Secretary's specifications.

13 “(B) USE AND INITIAL AVAILABILITY.—  
14 Such certified computer software programs  
15 shall be used to supplement, not replace, hous-  
16 ing counseling. The Secretary shall provide that  
17 such programs are initially used only in connec-  
18 tion with the assistance of housing counselors  
19 certified pursuant to subsection (e).

20 “(C) AVAILABILITY.—After a period of ini-  
21 tial availability under subparagraph (B) as the  
22 Secretary considers appropriate, the Secretary  
23 shall take reasonable steps to make mortgage  
24 software systems certified pursuant to this  
25 paragraph widely available through the Internet

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1 and at public locations, including public librar-  
2 ies, senior-citizen centers, public housing sites,  
3 offices of public housing agencies that admin-  
4 ister rental housing assistance vouchers, and  
5 housing counseling centers.

6 “(D) BUDGET COMPLIANCE.—This para-  
7 graph shall be effective only to the extent that  
8 amounts to carry out this paragraph are made  
9 available in advance in appropriations Acts.

10 “(4) NATIONAL PUBLIC SERVICE MULTIMEDIA  
11 CAMPAIGNS TO PROMOTE HOUSING COUNSELING.—

12 “(A) IN GENERAL.—The Director of Hous-  
13 ing Counseling shall develop, implement, and  
14 conduct national public service multimedia cam-  
15 paigns designed to make persons facing mort-  
16 gage foreclosure, persons considering a  
17 subprime mortgage loan to purchase a home, el-  
18 derly persons, persons who face language bar-  
19 riers, low-income persons, minorities, and other  
20 potentially vulnerable consumers aware that it  
21 is advisable, before seeking or maintaining a  
22 residential mortgage loan, to obtain homeown-  
23 ership counseling from an unbiased and reliable  
24 sources and that such homeownership coun-  
25 seling is available, including through programs

1 sponsored by the Secretary of Housing and  
2 Urban Development.

3 “(B) CONTACT INFORMATION.—Each seg-  
4 ment of the multimedia campaign under sub-  
5 paragraph (A) shall publicize the toll-free tele-  
6 phone number and website of the Department  
7 of Housing and Urban Development through  
8 which persons seeking housing counseling can  
9 locate a housing counseling agency in their  
10 State that is certified by the Secretary of Hous-  
11 ing and Urban Development and can provide  
12 advice on buying a home, renting, defaults,  
13 foreclosures, credit issues, and reverse mort-  
14 gages.

15 “(C) AUTHORIZATION OF APPROPRIA-  
16 TIONS.—There are authorized to be appro-  
17 priated to the Secretary, not to exceed  
18 \$3,000,000 for fiscal years 2009, 2010, and  
19 2011, for the development, implementation, and  
20 conduct of national public service multimedia  
21 campaigns under this paragraph.

22 “(D) FORECLOSURE RESCUE EDUCATION  
23 PROGRAMS.—

24 “(i) IN GENERAL.—Ten percent of  
25 any funds appropriated pursuant to the

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1 authorization under subparagraph (C)  
2 shall be used by the Director of Housing  
3 Counseling to conduct an education pro-  
4 gram in areas that have a high density of  
5 foreclosure. Such program shall involve di-  
6 rect mailings to persons living in such  
7 areas describing—

8 “(I) tips on avoiding foreclosure  
9 rescue scams;

10 “(II) tips on avoiding predatory  
11 lending mortgage agreements;

12 “(III) tips on avoiding for-profit  
13 foreclosure counseling services; and

14 “(IV) local counseling resources  
15 that are approved by the Department  
16 of Housing and Urban Development.

17 “(ii) PROGRAM EMPHASIS.—In con-  
18 ducting the education program described  
19 under clause (i), the Director of Housing  
20 Counseling shall also place an emphasis on  
21 serving communities that have a high per-  
22 centage of retirement communities or a  
23 high percentage of low-income minority  
24 communities.

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1                   “(iii) TERMS DEFINED.—For pur-  
2 poses of this subparagraph:

3                   “(I) HIGH DENSITY OF FORE-  
4 CLOSURES.—An area has a ‘high den-  
5 sity of foreclosures’ if such area is one  
6 of the metropolitan statistical areas  
7 (as that term is defined by the Direc-  
8 tor of the Office of Management and  
9 Budget) with the highest home fore-  
10 closure rates.

11                   “(II) HIGH PERCENTAGE OF RE-  
12 TIREMENT COMMUNITIES.—An area  
13 has a ‘high percentage of retirement  
14 communities’ if such area is one of  
15 the metropolitan statistical areas (as  
16 that term is defined by the Director of  
17 the Office of Management and Budg-  
18 et) with the highest percentage of  
19 residents aged 65 or older.

20                   “(III) HIGH PERCENTAGE OF  
21 LOW-INCOME MINORITY COMMU-  
22 NITIES.—An area has a ‘high percent-  
23 age of low-income minority commu-  
24 nities’ if such area contains a higher-  
25 than-normal percentage of residents

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1                   who are both minorities and low-in-  
2                   come, as defined by the Director of  
3                   Housing Counseling.

4                   “(5) EDUCATION PROGRAMS.—The Secretary  
5                   shall provide advice and technical assistance to  
6                   States, units of general local government, and non-  
7                   profit organizations regarding the establishment and  
8                   operation of, including assistance with the develop-  
9                   ment of content and materials for, educational pro-  
10                  grams to inform and educate consumers, particularly  
11                  those most vulnerable with respect to residential  
12                  mortgage loans (such as elderly persons, persons  
13                  facing language barriers, low-income persons, mi-  
14                  norities, and other potentially vulnerable con-  
15                  sumers), regarding home mortgages, mortgage refi-  
16                  nancing, home equity loans, home repair loans, and  
17                  where appropriate by region, any requirements and  
18                  costs associated with obtaining flood or other dis-  
19                  aster-specific insurance coverage.”.

20                  (b) CONFORMING AMENDMENTS TO GRANT PRO-  
21                  GRAM FOR HOMEOWNERSHIP COUNSELING ORGANIZA-  
22                  TIONS.—Section 106(c)(5)(A)(ii) of the Housing and  
23                  Urban Development Act of 1968 (12 U.S.C.  
24                  1701x(c)(5)(A)(ii)) is amended—



1 (1) in subclause (III), by striking “and” at the  
2 end;

3 (2) in subclause (IV) by striking the period at  
4 the end and inserting “; and”; and

5 (3) by inserting after subclause (IV) the fol-  
6 lowing new subclause:

7 (V) notify the housing or mort-  
8 gage applicant of the availability of  
9 mortgage software systems provided  
10 pursuant to subsection (g)(3).”.

11 **SEC. 1444. GRANTS FOR HOUSING COUNSELING ASSIST-**  
12 **ANCE.**

13 Section 106(a) of the Housing and Urban Develop-  
14 ment Act of 1968 (12 U.S.C. 1701x(a)(3)) is amended  
15 by adding at the end the following new paragraph:

16 “(4) HOMEOWNERSHIP AND RENTAL COUNSELING  
17 ASSISTANCE.—

18 “(A) IN GENERAL.—The Secretary shall make  
19 financial assistance available under this paragraph  
20 to HUD-approved housing counseling agencies and  
21 State housing finance agencies.

22 “(B) QUALIFIED ENTITIES.—The Secretary  
23 shall establish standards and guidelines for eligibility  
24 of organizations (including governmental and non-

1 profit organizations) to receive assistance under this  
2 paragraph, in accordance with subparagraph (D).

3 “(C) DISTRIBUTION.—Assistance made avail-  
4 able under this paragraph shall be distributed in a  
5 manner that encourages efficient and successful  
6 counseling programs and that ensures adequate dis-  
7 tribution of amounts for rural areas having tradi-  
8 tionally low levels of access to such counseling serv-  
9 ices, including areas with insufficient access to the  
10 Internet. In distributing such assistance, the Sec-  
11 retary may give priority consideration to entities  
12 serving areas with the highest home foreclosure  
13 rates.

14 “(D) LIMITATION ON DISTRIBUTION OF ASSIST-  
15 ANCE.—

16 “(i) IN GENERAL.—None of the amounts  
17 made available under this paragraph shall be  
18 distributed to—

19 “(I) any organization which has been  
20 convicted for a violation under Federal law  
21 relating to an election for Federal office; or

22 “(II) any organization which employs  
23 applicable individuals.

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1                   “(ii) DEFINITION OF APPLICABLE INDIVID-  
2                   UALS.—In this subparagraph, the term ‘appli-  
3                   cable individual’ means an individual who—

4                   “(I) is—

5                   “(aa) employed by the organiza-  
6                   tion in a permanent or temporary ca-  
7                   pacity;

8                   “(bb) contracted or retained by  
9                   the organization; or

10                  “(cc) acting on behalf of, or with  
11                  the express or apparent authority of,  
12                  the organization; and

13                  “(II) has been convicted for a viola-  
14                  tion under Federal law relating to an elec-  
15                  tion for Federal office.

16                  “(E) GRANTMAKING PROCESS.—In making as-  
17                  sistance available under this paragraph, the Sec-  
18                  retary shall consider appropriate ways of stream-  
19                  lining and improving the processes for grant applica-  
20                  tion, review, approval, and award.

21                  “(F) AUTHORIZATION OF APPROPRIATIONS.—  
22                  There are authorized to be appropriated  
23                  \$45,000,000 for each of fiscal years 2009 through  
24                  2012 for—

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1 “(i) the operations of the Office of Hous-  
2 ing Counseling of the Department of Housing  
3 and Urban Development;

4 “(ii) the responsibilities of the Director of  
5 Housing Counseling under paragraphs (2)  
6 through (5) of subsection (g); and

7 “(iii) assistance pursuant to this para-  
8 graph for entities providing homeownership and  
9 rental counseling.”.

10 **SEC. 1445. REQUIREMENTS TO USE HUD-CERTIFIED COUN-**  
11 **SELORS UNDER HUD PROGRAMS.**

12 Section 106(e) of the Housing and Urban Develop-  
13 ment Act of 1968 (12 U.S.C. 1701x(e)) is amended—

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

16 “(1) REQUIREMENT FOR ASSISTANCE.—An or-  
17 ganization may not receive assistance for counseling  
18 activities under subsection (a)(1)(iii), (a)(2), (a)(4),  
19 (c), or (d) of this section, or under section 101(e),  
20 unless the organization, or the individuals through  
21 which the organization provides such counseling, has  
22 been certified by the Secretary under this subsection  
23 as competent to provide such counseling.”;

24 (2) in paragraph (2)—

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1 (A) by inserting “and for certifying organi-  
2 zations” before the period at the end of the  
3 first sentence; and

4 (B) in the second sentence by striking “for  
5 certification” and inserting “, for certification  
6 of an organization, that each individual through  
7 which the organization provides counseling shall  
8 demonstrate, and, for certification of an indi-  
9 vidual,”;

10 (3) in paragraph (3), by inserting “organiza-  
11 tions and” before “individuals”;

12 (4) by redesignating paragraph (3) as para-  
13 graph (5); and

14 (5) by inserting after paragraph (2) the fol-  
15 lowing new paragraphs:

16 “(3) REQUIREMENT UNDER HUD PROGRAMS.—  
17 Any homeownership counseling or rental housing  
18 counseling (as such terms are defined in subsection  
19 (g)(1)) required under, or provided in connection  
20 with, any program administered by the Department  
21 of Housing and Urban Development shall be pro-  
22 vided only by organizations or counselors certified by  
23 the Secretary under this subsection as competent to  
24 provide such counseling.

1           “(4) OUTREACH.—The Secretary shall take  
2           such actions as the Secretary considers appropriate  
3           to ensure that individuals and organizations pro-  
4           viding homeownership or rental housing counseling  
5           are aware of the certification requirements and  
6           standards of this subsection and of the training and  
7           certification programs under subsection (f).”.

8   **SEC. 1446. STUDY OF DEFAULTS AND FORECLOSURES.**

9           The Secretary of Housing and Urban Development  
10          shall conduct an extensive study of the root causes of de-  
11          fault and foreclosure of home loans, using as much empir-  
12          ical data as are available. The study shall also examine  
13          the role of escrow accounts in helping prime and nonprime  
14          borrowers to avoid defaults and foreclosures, and the role  
15          of computer registries of mortgages, including those used  
16          for trading mortgage loans. Not later than 12 months  
17          after the date of the enactment of this Act, the Secretary  
18          shall submit to the Congress a preliminary report regard-  
19          ing the study. Not later than 24 months after such date  
20          of enactment, the Secretary shall submit a final report re-  
21          garding the results of the study, which shall include any  
22          recommended legislation relating to the study, and rec-  
23          ommendations for best practices and for a process to iden-  
24          tify populations that need counseling the most.

1 **SEC. 1447. DEFAULT AND FORECLOSURE DATABASE.**

2 (a) ESTABLISHMENT.—The Secretary of Housing  
3 and Urban Development, in consultation with the Federal  
4 agencies responsible for regulation of banking and finan-  
5 cial institutions involved in residential mortgage lending  
6 and servicing, shall establish and maintain a database of  
7 information on foreclosures and defaults on mortgage  
8 loans for one- to four-unit residential properties and shall  
9 make such information publicly available.

10 (b) CENSUS TRACT DATA.—Information in the data-  
11 base shall be collected, aggregated, and made available on  
12 a census tract basis.

13 (c) REQUIREMENTS.—Information collected and  
14 made available through the database shall include—

15 (1) the number and percentage of such mort-  
16 gage loans that are delinquent by more than 30  
17 days;

18 (2) the number and percentage of such mort-  
19 gage loans that are delinquent by more than 90  
20 days;

21 (3) the number and percentage of such prop-  
22 erties that are real estate-owned;

23 (4) number and percentage of such mortgage  
24 loans that are in the foreclosure process;

25 (5) the number and percentage of such mort-  
26 gage loans that have an outstanding principal obli-

1           gation amount that is greater than the value of the  
2           property for which the loan was made; and

3           (6) such other information as the Secretary  
4           considers appropriate.

5 **SEC. 1448. DEFINITIONS FOR COUNSELING-RELATED PRO-**  
6 **GRAMS.**

7           Section 106 of the Housing and Urban Development  
8 Act of 1968 (12 U.S.C. 1701x), as amended by the pre-  
9 ceding provisions of this subtitle, is amended by adding  
10 at the end the following new subsection:

11           “(h) DEFINITIONS.—For purposes of this section:

12           “(1) NONPROFIT ORGANIZATION.—The term  
13 ‘nonprofit organization’ has the meaning given such  
14 term in section 104(5) of the Cranston-Gonzalez Na-  
15 tional Affordable Housing Act (42 U.S.C.  
16 12704(5)), except that subparagraph (D) of such  
17 section shall not apply for purposes of this section.

18           “(2) STATE.—The term ‘State’ means each of  
19 the several States, the Commonwealth of Puerto  
20 Rico, the District of Columbia, the Commonwealth  
21 of the Northern Mariana Islands, Guam, the Virgin  
22 Islands, American Samoa, the Trust Territories of  
23 the Pacific, or any other possession of the United  
24 States.



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1           “(3) UNIT OF GENERAL LOCAL GOVERN-  
2           MENT.—The term ‘unit of general local government’  
3           means any city, county, parish, town, township, bor-  
4           ough, village, or other general purpose political sub-  
5           division of a State.

6           “(4) HUD-APPROVED COUNSELING AGENCY.—  
7           The term ‘HUD-approved counseling agency’ means  
8           a private or public nonprofit organization that is—

9                   “(A) exempt from taxation under section  
10                  501(c) of the Internal Revenue Code of 1986;  
11                  and

12                   “(B) certified by the Secretary to provide  
13                  housing counseling services.

14           “(5) STATE HOUSING FINANCE AGENCY.—The  
15           term ‘State housing finance agency’ means any pub-  
16           lic body, agency, or instrumentality specifically cre-  
17           ated under State statute that is authorised to fi-  
18           nance activities designed to provide housing and re-  
19           lated facilities throughout an entire State through  
20           land acquisition, construction, or rehabilitation.”.

21 **SEC. 1449. ACCOUNTABILITY AND TRANSPARENCY FOR**  
22 **GRANT RECIPIENTS.**

23           Section 106 of the Housing and Urban Development  
24 Act of 1968 (12 U.S.C. 1701x), as amended by the pre-

1 ceding provisions of this subtitle, is amended by adding  
2 at the end the following:

3 “(i) ACCOUNTABILITY FOR RECIPIENTS OF COVERED  
4 ASSISTANCE.—

5 “(1) TRACKING OF FUNDS.—The Secretary  
6 shall—

7 “(A) develop and maintain a system to en-  
8 sure that any organization or entity that re-  
9 ceives any covered assistance uses all amounts  
10 of covered assistance in accordance with this  
11 section or section 1415 of the Mortgage Reform  
12 and Anti-Predatory Lending Act, as applicable,  
13 the regulations issued under this section or  
14 such section 1415, as applicable, and any re-  
15 quirements or conditions under which such  
16 amounts were provided; and

17 “(B) require any organization or entity, as  
18 a condition of receipt of any covered assistance,  
19 to agree to comply with such requirements re-  
20 garding covered assistance as the Secretary  
21 shall establish, which shall include—

22 “(i) appropriate periodic financial and  
23 grant activity reporting, record retention,  
24 and audit requirements for the duration of  
25 the covered assistance to the organization

1 or entity to ensure compliance with the  
2 limitations and requirements of this section  
3 or section 1415 of the Mortgage Reform  
4 and Anti-Predatory Lending Act, as appli-  
5 cable, the regulations under this section or  
6 such section 1415, as applicable, and any  
7 requirements or conditions under which  
8 such amounts were provided; and

9 “(ii) any other requirements that the  
10 Secretary determines are necessary to en-  
11 sure appropriate administration and com-  
12 pliance.

13 “(2) MISUSE OF FUNDS.—If any organization  
14 or entity that receives any covered assistance is de-  
15 termined by the Secretary to have used any covered  
16 assistance in a manner that is materially in violation  
17 of this section or section 1415 of the Mortgage Re-  
18 form and Anti-Predatory Lending Act, as applicable,  
19 the regulations issued under this section or such sec-  
20 tion 1415, as applicable, or any requirements or con-  
21 ditions under which such assistance was provided—

22 “(A) the Secretary shall require that, with-  
23 in 12 months after the determination of such  
24 misuse, the organization or entity shall reim-  
25 burse the Secretary for such misused amounts

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1 and return to the Secretary any such amounts  
2 that remain unused or uncommitted for use;  
3 and

4 “(B) such organization or entity shall be  
5 ineligible, at any time after such determination,  
6 to apply for or receive any further covered as-  
7 sistance.

8 The remedies under this paragraph are in addition  
9 to any other remedies that may be available under  
10 law.

11 “(3) COVERED ASSISTANCE.—For purposes of  
12 this subsection, the term ‘covered assistance’ means  
13 any grant or other financial assistance provided  
14 under—

15 “(A) this section; or

16 “(B) section 1415 of the Mortgage Reform  
17 and Anti-Predatory Lending Act.”.

18 **SEC. 1450. UPDATING AND SIMPLIFICATION OF MORTGAGE**  
19 **INFORMATION BOOKLET.**

20 Section 5 of the Real Estate Settlement Procedures  
21 Act of 1974 (12 U.S.C. 2604) is amended—

22 (1) in the section heading, by striking “SPE-  
23 CIAL” and inserting “HOME BUYING”;

24 (2) by striking subsections (a) and (b) and in-  
25 serting the following new subsections:

1           “(a) PREPARATION AND DISTRIBUTION.—The Direc-  
2 tor of the Consumer Financial Protection Agency (here-  
3 after in this section referred to as the ‘Director’) shall pre-  
4 pare, at least once every 5 years, a booklet to help con-  
5 sumers applying for federally related mortgage loans to  
6 understand the nature and costs of real estate settlement  
7 services. The Director shall prepare the booklet in various  
8 languages and cultural styles, as the Director determines  
9 to be appropriate, so that the booklet is understandable  
10 and accessible to homebuyers of different ethnic and cul-  
11 tural backgrounds. The Director shall distribute such  
12 booklets to all lenders that make federally related mort-  
13 gage loans. The Director shall also distribute to such lend-  
14 ers lists, organized by location, of homeownership coun-  
15 selors certified under section 106(e) of the Housing and  
16 Urban Development Act of 1968 (12 U.S.C. 1701x(e)) for  
17 use in complying with the requirement under subsection  
18 (c) of this section.

19           “(b) CONTENTS.—Each booklet shall be in such form  
20 and detail as the Director shall prescribe and, in addition  
21 to such other information as the Director may provide,  
22 shall include in plain and understandable language the fol-  
23 lowing information:

24                   “(1) A description and explanation of the na-  
25           ture and purpose of the costs incident to a real es-

1       tate settlement or a federally related mortgage loan.

2       The description and explanation shall provide gen-

3       eral information about the mortgage process as well

4       as specific information concerning, at a minimum—

5               “(A) balloon payments;

6               “(B) prepayment penalties;

7               “(C) the advantages of prepayment; and

8               “(D) the trade-off between closing costs

9               and the interest rate over the life of the loan.

10              “(2) An explanation and sample of the uniform

11              settlement statement required by section 4.

12              “(3) A list and explanation of lending practices,

13              including those prohibited by the Truth in Lending

14              Act or other applicable Federal law, and of other un-

15              fair practices and unreasonable or unnecessary

16              charges to be avoided by the prospective buyer with

17              respect to a real estate settlement.

18              “(4) A list and explanation of questions a con-

19              sumer obtaining a federally related mortgage loan

20              should ask regarding the loan, including whether the

21              consumer will have the ability to repay the loan,

22              whether the consumer sufficiently shopped for the

23              loan, whether the loan terms include prepayment

24              penalties or balloon payments, and whether the loan

25              will benefit the borrower.

1           “(5) An explanation of the right of rescission as  
2           to certain transactions provided by sections 125 and  
3           129 of the Truth in Lending Act.

4           “(6) A brief explanation of the nature of a vari-  
5           able rate mortgage and a reference to the booklet  
6           entitled ‘Consumer Handbook on Adjustable Rate  
7           Mortgages’, published by the Director, or to any  
8           suitable substitute of such booklet that the Director  
9           may subsequently adopt pursuant to such section.

10           “(7) A brief explanation of the nature of a  
11           home equity line of credit and a reference to the  
12           pamphlet required to be provided under section  
13           127A of the Truth in Lending Act.

14           “(8) Information about homeownership coun-  
15           seling services made available pursuant to section  
16           106(a)(4) of the Housing and Urban Development  
17           Act of 1968 (12 U.S.C. 1701x(a)(4)), a rec-  
18           ommendation that the consumer use such services,  
19           and notification that a list of certified providers of  
20           homeownership counseling in the area, and their  
21           contact information, is available.

22           “(9) An explanation of the nature and purpose  
23           of escrow accounts when used in connection with  
24           loans secured by residential real estate and the re-

1        requirements under section 10 of this Act regarding  
2        such accounts.

3            “(10) An explanation of the choices available to  
4        buyers of residential real estate in selecting persons  
5        to provide necessary services incidental to a real es-  
6        tate settlement.

7            “(11) An explanation of a consumer’s respon-  
8        sibilities, liabilities, and obligations in a mortgage  
9        transaction.

10           “(12) An explanation of the nature and purpose  
11        of real estate appraisals, including the difference be-  
12        tween an appraisal and a home inspection.

13           “(13) Notice that the Office of Housing of the  
14        Department of Housing and Urban Development has  
15        made publicly available a brochure regarding loan  
16        fraud and a World Wide Web address and toll-free  
17        telephone number for obtaining the brochure.

18        The booklet prepared pursuant to this section shall take  
19        into consideration differences in real estate settlement pro-  
20        cedures that may exist among the several States and terri-  
21        tories of the United States and among separate political  
22        subdivisions within the same State and territory.”;

23           (3) in subsection (c), by inserting at the end  
24        the following new sentence: “Each lender shall also  
25        include with the booklet a reasonably complete or



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1 updated list of homeownership counselors who are  
2 certified pursuant to section 106(e) of the Housing  
3 and Urban Development Act of 1968 (12 U.S.C.  
4 1701x(e)) and located in the area of the lender.”;  
5 and

6 (4) in subsection (d), by inserting after the pe-  
7 riod at the end of the first sentence the following:  
8 “The lender shall provide the HUD-issued booklet in  
9 the version that is most appropriate for the person  
10 receiving it.”.

11 **SEC. 1451. HOME INSPECTION COUNSELING.**

12 (a) PUBLIC OUTREACH.—

13 (1) IN GENERAL.—The Secretary of Housing  
14 and Urban Development (in this section referred to  
15 as the “Secretary”) shall take such actions as may  
16 be necessary to inform potential homebuyers of the  
17 availability and importance of obtaining an inde-  
18 pendent home inspection. Such actions shall in-  
19 clude—

20 (A) publication of the HUD/FHA form  
21 HUD 92564–CN entitled “For Your Protec-  
22 tion: Get a Home Inspection”, in both English  
23 and Spanish languages;

24 (B) publication of the HUD/FHA booklet  
25 entitled “For Your Protection: Get a Home In-

1           spection”, in both English and Spanish lan-  
2           guages;

3           (C) development and publication of a HUD  
4           booklet entitled “For Your Protection—Get a  
5           Home Inspection” that does not reference  
6           FHA-insured homes, in both English and Span-  
7           ish languages; and

8           (D) publication of the HUD document en-  
9           titled “Ten Important Questions To Ask Your  
10          Home Inspector”, in both English and Spanish  
11          languages.

12          (2) AVAILABILITY.—The Secretary shall make  
13          the materials specified in paragraph (1) available for  
14          electronic access and, where appropriate, inform po-  
15          tential homebuyers of such availability through home  
16          purchase counseling public service announcements  
17          and toll-free telephone hotlines of the Department of  
18          Housing and Urban Development. The Secretary  
19          shall give special emphasis to reaching first-time and  
20          low-income homebuyers with these materials and ef-  
21          forts.

22          (3) UPDATING.—The Secretary may periodi-  
23          cally update and revise such materials, as the Sec-  
24          retary determines to be appropriate.

1           (b) REQUIREMENT FOR FHA-APPROVED LEND-  
2 ERS.—Each mortgagee approved for participation in the  
3 mortgage insurance programs under title II of the Na-  
4 tional Housing Act shall provide prospective homebuyers,  
5 at first contact, whether upon pre-qualification, pre-ap-  
6 proval, or initial application, the materials specified in  
7 subparagraphs (A), (B), and (D) of subsection (a)(1).

8           (c) REQUIREMENTS FOR HUD-APPROVED COUN-  
9 SELING AGENCIES.—Each counseling agency certified  
10 pursuant by the Secretary to provide housing counseling  
11 services shall provide each of their clients, as part of the  
12 home purchase counseling process, the materials specified  
13 in subparagraphs (C) and (D) of subsection (a)(1).

14           (d) TRAINING.—Training provided the Department  
15 of Housing and Urban Development for housing coun-  
16 seling agencies, whether such training is provided directly  
17 by the Department or otherwise, shall include—

18               (1) providing information on counseling poten-  
19 tial homebuyers of the availability and importance of  
20 getting an independent home inspection;

21               (2) providing information about the home in-  
22 spection process, including the reasons for specific  
23 inspections such as radon and lead-based paint test-  
24 ing;

1           (3) providing information about advising poten-  
2           tial homebuyers on how to locate and select a quali-  
3           fied home inspector; and

4           (4) review of home inspection public outreach  
5           materials of the Department.

6 **SEC. 1452. WARNINGS TO HOMEOWNERS OF FORECLOSURE**  
7                                   **RESCUE SCAMS.**

8           (a) ASSISTANCE TO NRC.—Notwithstanding any  
9           other provision of law, of any amounts made available for  
10          any fiscal year pursuant to section 106(a)(4)(F) of the  
11          Housing and Urban Development Act of 1968 (12 U.S.C.  
12          1701x(a)(4)(F)) (as added by section 1444), 10 percent  
13          shall be used only for assistance to the Neighborhood Re-  
14          investment Corporation for activities, in consultation with  
15          servicers of residential mortgage loans, to provide notice  
16          to borrowers under such loans who are delinquent with  
17          respect to payments due under such loans that makes such  
18          borrowers aware of the dangers of fraudulent activities as-  
19          sociated with foreclosure.

20          (b) NOTICE.—The Neighborhood Reinvestment Cor-  
21          poration, in consultation with servicers of residential mort-  
22          gage loans, shall use the amounts provided pursuant to  
23          subsection (a) to carry out activities to inform borrowers  
24          under residential mortgage loans—

1           (1) that the foreclosure process is complex and  
2           can be confusing;

3           (2) that the borrower may be approached dur-  
4           ing the foreclosure process by persons regarding sav-  
5           ing their home and they should use caution in any  
6           such dealings;

7           (3) that there are Federal Government and  
8           nonprofit agencies that may provide information  
9           about the foreclosure process, including the Depart-  
10          ment of Housing and Urban Development;

11          (4) that they should contact their lender imme-  
12          diately, contact the Department of Housing and  
13          Urban Development to find a housing counseling  
14          agency certified by the Department to assist in  
15          avoiding foreclosure, or visit the Department's  
16          website regarding tips for avoiding foreclosure; and

17          (5) of the telephone number of the loan servicer  
18          or successor, the telephone number of the Depart-  
19          ment of Housing and Urban Development housing  
20          counseling line, and the Uniform Resource Locators  
21          (URLs) for the Department of Housing and Urban  
22          Development Web sites for housing counseling and  
23          for tips for avoiding foreclosure.

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1       **Subtitle E—Mortgage Servicing**

2       **SEC. 1461. ESCROW AND IMPOUND ACCOUNTS RELATING**  
3                   **TO CERTAIN CONSUMER CREDIT TRANS-**  
4                   **ACTIONS.**

5           (a) IN GENERAL.—Chapter 2 of the Truth in Lend-  
6 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting  
7 after section 129C (as added by section 1411) the fol-  
8 lowing new section:

9       **“SEC. 129D. ESCROW OR IMPOUND ACCOUNTS RELATING**  
10                   **TO CERTAIN CONSUMER CREDIT TRANS-**  
11                   **ACTIONS.**

12           “(a) IN GENERAL.—Except as provided in subsection  
13 (b), (c), or (d) , a creditor, in connection with the forma-  
14 tion or consummation of a consumer credit transaction se-  
15 cured by a first lien on the principal dwelling of the con-  
16 sumer, other than a consumer credit transaction under an  
17 open end credit plan or a reverse mortgage, shall establish,  
18 before the consummation of such transaction, an escrow  
19 or impound account for the payment of taxes and hazard  
20 insurance, and, if applicable, flood insurance, mortgage in-  
21 surance, ground rents, and any other required periodic  
22 payments or premiums with respect to the property or the  
23 loan terms, as provided in, and in accordance with, this  
24 section.

1           “(b) WHEN REQUIRED.—No impound, trust, or other  
2 type of account for the payment of property taxes, insur-  
3 ance premiums, or other purposes relating to the property  
4 may be required as a condition of a real property sale con-  
5 tract or a loan secured by a first deed of trust or mortgage  
6 on the principal dwelling of the consumer, other than a  
7 consumer credit transaction under an open end credit plan  
8 or a reverse mortgage, except when—

9           “(1) any such impound, trust, or other type of  
10 escrow or impound account for such purposes is re-  
11 quired by Federal or State law;

12           “(2) a loan is made, guaranteed, or insured by  
13 a State or Federal governmental lending or insuring  
14 agency;

15           “(3) the transaction is secured by a first mort-  
16 gage or lien on the consumer’s principal dwelling  
17 having an original principal obligation amount  
18 that—

19           “(A) does not exceed the amount of the  
20 maximum limitation on the original principal  
21 obligation of mortgage in effect for a residence  
22 of the applicable size, as of the date such inter-  
23 est rate set, pursuant to the sixth sentence of  
24 section 305(a)(2) the Federal Home Loan  
25 Mortgage Corporation Act (12 U.S.C.

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1 1454(a)(2)), and the annual percentage rate  
2 will exceed the average prime offer rate for a  
3 comparable transaction by 1.5 or more percent-  
4 age points; or

5 “(B) exceeds the amount of the maximum  
6 limitation on the original principal obligation of  
7 mortgage in effect for a residence of the appli-  
8 cable size, as of the date such interest rate set,  
9 pursuant to the sixth sentence of section  
10 305(a)(2) the Federal Home Loan Mortgage  
11 Corporation Act (12 U.S.C. 1454(a)(2)), and  
12 the annual percentage rate will exceed the aver-  
13 age prime offer rate for a comparable trans-  
14 action by 2.5 or more percentage points; or

15 “(4) so required pursuant to regulation.

16 “(c) DURATION OF MANDATORY ESCROW OR IM-  
17 POUND ACCOUNT.—An escrow or impound account estab-  
18 lished pursuant to subsection (b), shall remain in existence  
19 for a minimum period of 5 years, beginning with the date  
20 of the consummation of the loan, and until such borrower  
21 has sufficient equity in the dwelling securing the consumer  
22 credit transaction so as to no longer be required to main-  
23 tain private mortgage insurance, or such other period as  
24 may be provided in regulations to address situations such



1 as borrower delinquency, unless the underlying mortgage  
2 establishing the account is terminated.

3 “(d) LIMITED EXEMPTIONS FOR LOANS SECURED BY  
4 SHARES IN A COOPERATIVE AND FOR CERTAIN CONDO-  
5 MINUM UNITS.—Escrow accounts need not be established  
6 for loans secured by shares in a cooperative. Insurance  
7 premiums need not be included in escrow accounts for  
8 loans secured by condominium units, where the condo-  
9 minium association has an obligation to the condominium  
10 unit owners to maintain a master policy insuring condo-  
11 minium units.

12 “(e) CLARIFICATION ON ESCROW ACCOUNTS FOR  
13 LOANS NOT MEETING STATUTORY TEST.—For mort-  
14 gages not covered by the requirements of subsection (b),  
15 no provision of this section shall be construed as pre-  
16 cluding the establishment of an impound, trust, or other  
17 type of account for the payment of property taxes, insur-  
18 ance premiums, or other purposes relating to the prop-  
19 erty—

20 “(1) on terms mutually agreeable to the parties  
21 to the loan;

22 “(2) at the discretion of the lender or servicer,  
23 as provided by the contract between the lender or  
24 servicer and the borrower; or

1           “(3) pursuant to the requirements for the  
2           escrowing of flood insurance payments for regulated  
3           lending institutions in section 102(d) of the Flood  
4           Disaster Protection Act of 1973.

5           “(f) ADMINISTRATION OF MANDATORY ESCROW OR  
6           IMPOUND ACCOUNTS.—

7           “(1) IN GENERAL.—Except as may otherwise  
8           be provided for in this title or in regulations pre-  
9           scribed by the Board, escrow or impound accounts  
10          established pursuant to subsection (b) shall be estab-  
11          lished in a federally insured depository institution.

12          “(2) ADMINISTRATION.—Except as provided in  
13          this section or regulations prescribed under this sec-  
14          tion, an escrow or impound account subject to this  
15          section shall be administered in accordance with—

16                 “(A) the Real Estate Settlement Proce-  
17                 dures Act of 1974 and regulations prescribed  
18                 under such Act;

19                 “(B) the Flood Disaster Protection Act of  
20                 1973 and regulations prescribed under such  
21                 Act; and

22                 “(C) the law of the State, if applicable,  
23                 where the real property securing the consumer  
24                 credit transaction is located.

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1           “(3) APPLICABILITY OF PAYMENT OF INTER-  
2           EST.—If prescribed by applicable State or Federal  
3           law, each creditor shall pay interest to the consumer  
4           on the amount held in any impound, trust, or escrow  
5           account that is subject to this section in the manner  
6           as prescribed by that applicable State or Federal  
7           law.

8           “(4) PENALTY COORDINATION WITH RESPA.—  
9           Any action or omission on the part of any person  
10          which constitutes a violation of the Real Estate Set-  
11          tlement Procedures Act of 1974 or any regulation  
12          prescribed under such Act for which the person has  
13          paid any fine, civil money penalty, or other damages  
14          shall not give rise to any additional fine, civil money  
15          penalty, or other damages under this section, unless  
16          the action or omission also constitutes a direct viola-  
17          tion of this section.

18          “(g) DISCLOSURES RELATING TO MANDATORY ES-  
19          CROW OR IMPOUND ACCOUNT.—In the case of any im-  
20          pound, trust, or escrow account that is subject to this sec-  
21          tion, the creditor shall disclose by written notice to the  
22          consumer at least 3 business days before the consumma-  
23          tion of the consumer credit transaction giving rise to such  
24          account or in accordance with timeframes established in  
25          prescribed regulations the following information:

## 1900

1           “(1) The fact that an escrow or impound ac-  
2           count will be established at consummation of the  
3           transaction.

4           “(2) The amount required at closing to initially  
5           fund the escrow or impound account.

6           “(3) The amount, in the initial year after the  
7           consummation of the transaction, of the estimated  
8           taxes and hazard insurance, including flood insur-  
9           ance, if applicable, and any other required periodic  
10          payments or premiums that reflects, as appropriate,  
11          either the taxable assessed value of the real property  
12          securing the transaction, including the value of any  
13          improvements on the property or to be constructed  
14          on the property (whether or not such construction  
15          will be financed from the proceeds of the trans-  
16          action) or the replacement costs of the property.

17          “(4) The estimated monthly amount payable to  
18          be escrowed for taxes, hazard insurance (including  
19          flood insurance, if applicable) and any other re-  
20          quired periodic payments or premiums.

21          “(5) The fact that, if the consumer chooses to  
22          terminate the account at the appropriate time in the  
23          future, the consumer will become responsible for the  
24          payment of all taxes, hazard insurance, and flood in-  
25          surance, if applicable, as well as any other required

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1 periodic payments or premiums on the property un-  
2 less a new escrow or impound account is established.

3 “(6) Such other information as the Federal  
4 banking agencies jointly determine necessary for the  
5 protection of the consumer.

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

8 “(1) FLOOD INSURANCE.—The term ‘flood in-  
9 surance’ means flood insurance coverage provided  
10 under the national flood insurance program pursu-  
11 ant to the National Flood Insurance Act of 1968.

12 “(2) HAZARD INSURANCE.—The term ‘hazard  
13 insurance’ shall have the same meaning as provided  
14 for ‘hazard insurance’, ‘casualty insurance’, ‘home-  
15 owner’s insurance’, or other similar term under the  
16 law of the State where the real property securing the  
17 consumer credit transaction is located.”.

18 (b) IMPLEMENTATION.—

19 (1) REGULATIONS.—The Board of Governors of  
20 the Federal Reserve System, the Comptroller of the  
21 Currency, the Director of the Office of Thrift Super-  
22 vision, the Federal Deposit Insurance Corporation,  
23 the National Credit Union Administration Board,  
24 (hereafter in this title referred to as the “Federal  
25 banking agencies”) and the Federal Trade Commis-

## 1902

1 sion shall prescribe, in final form, such regulations  
2 as determined to be necessary to implement the  
3 amendments made by subsection (a) before the end  
4 of the 180-day period beginning on the date of the  
5 enactment of this Act.

6 (2) EFFECTIVE DATE.—The amendments made  
7 by subsection (a) shall only apply to covered mort-  
8 gage loans consummated after the end of the 1-year  
9 period beginning on the date of the publication of  
10 final regulations in the Federal Register.

11 (c) CLERICAL AMENDMENT.—The table of sections  
12 for chapter 2 of the Truth in Lending Act is amended  
13 by inserting after the item relating to section 129C (as  
14 added by section 1411) the following new item:

“129D. Escrow or impound accounts relating to certain consumer credit trans-  
actions.”.

15 **SEC. 1462. DISCLOSURE NOTICE REQUIRED FOR CON-**  
16 **SUMERS WHO WAIVE ESCROW SERVICES.**

17 (a) IN GENERAL.—Section 129D of the Truth in  
18 Lending Act (as added by section 1461) is amended by  
19 adding at the end the following new subsection:

20 “(i) DISCLOSURE NOTICE REQUIRED FOR CON-  
21 SUMERS WHO WAIVE ESCROW SERVICES.—

22 “(1) IN GENERAL.—If—

23 “(A) an impound, trust, or other type of  
24 account for the payment of property taxes, in-

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1           surance premiums, or other purposes relating to  
2           real property securing a consumer credit trans-  
3           action is not established in connection with the  
4           transaction; or

5                   “(B) a consumer chooses, and provides  
6           written notice to the creditor or servicer of such  
7           choice, at any time after such an account is es-  
8           tablished in connection with any such trans-  
9           action and in accordance with any statute, reg-  
10          ulation, or contractual agreement, to close such  
11          account,

12          the creditor or servicer shall provide a timely and  
13          clearly written disclosure to the consumer that ad-  
14          vises the consumer of the responsibilities of the con-  
15          sumer and implications for the consumer in the ab-  
16          sence of any such account.

17                   “(2) DISCLOSURE REQUIREMENTS.—Any dis-  
18          closure provided to a consumer under paragraph (1)  
19          shall include the following:

20                           “(A) Information concerning any applica-  
21          ble fees or costs associated with either the non-  
22          establishment of any such account at the time  
23          of the transaction, or any subsequent closure of  
24          any such account.

## 1904

1           “(B) A clear and prominent notice that the  
2           consumer is responsible for personally and di-  
3           rectly paying the non-escrowed items, in addi-  
4           tion to paying the mortgage loan payment, in  
5           the absence of any such account, and the fact  
6           that the costs for taxes, insurance, and related  
7           fees can be substantial.

8           “(C) A clear explanation of the con-  
9           sequences of any failure to pay non-escrowed  
10          items, including the possible requirement for  
11          the forced placement of insurance by the cred-  
12          itor or servicer and the potentially higher cost  
13          (including any potential commission payments  
14          to the servicer) or reduced coverage for the con-  
15          sumer in the event of any such creditor-placed  
16          insurance.

17          “(D) Such other information as the Fed-  
18          eral banking agencies jointly determine nec-  
19          essary for the protection of the consumer.”.

20          (b) IMPLEMENTATION.—

21                 (1) REGULATIONS.—The Federal banking agen-  
22                 cies and the Federal Trade Commission shall pre-  
23                 scribe, in final form, such regulations as such agen-  
24                 cies determine to be necessary to implement the  
25                 amendments made by subsection (a) before the end



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1 of the 180-day period beginning on the date of the  
2 enactment of this Act.

3 (2) EFFECTIVE DATE.—The amendments made  
4 by subsection (a) shall only apply in accordance with  
5 the regulations established in paragraph (1) and be-  
6 ginning on the date occurring 180-days after the  
7 date of the publication of final regulations in the  
8 Federal Register.

9 **SEC. 1463. REAL ESTATE SETTLEMENT PROCEDURES ACT**  
10 **OF 1974 AMENDMENTS.**

11 (a) SERVICER PROHIBITIONS.—Section 6 of the Real  
12 Estate Settlement Procedures Act of 1974 (12 U.S.C.  
13 2605) is amended by adding at the end the following new  
14 subsections:

15 “(k) SERVICER PROHIBITIONS.—

16 “(1) IN GENERAL.—A servicer of a federally re-  
17 lated mortgage shall not—

18 “(A) obtain force-placed hazard insurance  
19 unless there is a reasonable basis to believe the  
20 borrower has failed to comply with the loan  
21 contract’s requirements to maintain property  
22 insurance;

23 “(B) charge fees for responding to valid  
24 qualified written requests (as defined in regula-

## 1906

1           tions which the Secretary shall prescribe) under  
2           this section;

3           “(C) fail to take timely action to respond  
4           to a borrower’s requests to correct errors relat-  
5           ing to allocation of payments, final balances for  
6           purposes of paying off the loan, or avoiding  
7           foreclosure, or other standard servicer’s duties;

8           “(D) fail to respond within 10 business  
9           days to a request from a borrower to provide  
10          the identity, address, and other relevant contact  
11          information about the owner assignee of the  
12          loan; or

13          “(E) fail to comply with any other obliga-  
14          tion found by the Secretary, by regulation, to  
15          be appropriate to carry out the consumer pro-  
16          tection purposes of this Act.

17          “(2) FORCE-PLACED INSURANCE DEFINED.—  
18          For purposes of this subsection and subsections (l)  
19          and (m), the term ‘force-placed insurance’ means  
20          hazard insurance coverage obtained by a servicer of  
21          a federally related mortgage when the borrower has  
22          failed to maintain or renew hazard insurance on  
23          such property as required of the borrower under the  
24          terms of the mortgage.

## 1907

1           “(1) REQUIREMENTS FOR FORCE-PLACED INSUR-  
2 ANCE.—A servicer of a federally related mortgage shall  
3 not be construed as having a reasonable basis for obtain-  
4 ing force-placed insurance unless the requirements of this  
5 subsection have been met.

6           “(1) WRITTEN NOTICES TO BORROWER.—A  
7 servicer may not impose any charge on any borrower  
8 for force-placed insurance with respect to any prop-  
9 erty securing a federally related mortgage unless—

10                   “(A) the servicer has sent, by first-class  
11 mail, a written notice to the borrower con-  
12 taining—

13                           “(i) a reminder of the borrower’s obli-  
14 gation to maintain hazard insurance on the  
15 property securing the federally related  
16 mortgage;

17                           “(ii) a statement that the servicer  
18 does not have evidence of insurance cov-  
19 erage of such property;

20                           “(iii) a clear and conspicuous state-  
21 ment of the procedures by which the bor-  
22 rower may demonstrate that the borrower  
23 already has insurance coverage; and

24                           “(iv) a statement that the servicer  
25 may obtain such coverage at the borrower’s

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1 expense if the borrower does not provide  
2 such demonstration of the borrower's exist-  
3 ing coverage in a timely manner;

4 “(B) the servicer has sent, by first-class  
5 mail, a second written notice, at least 30 days  
6 after the mailing of the notice under subpara-  
7 graph (A) that contains all the information de-  
8 scribed in each clause of such subparagraph;  
9 and

10 “(C) the servicer has not received from the  
11 borrower any demonstration of hazard insur-  
12 ance coverage for the property securing the  
13 mortgage by the end of the 15-day period be-  
14 ginning on the date the notice under subpara-  
15 graph (B) was sent by the servicer.

16 “(2) SUFFICIENCY OF DEMONSTRATION.—A  
17 servicer of a federally related mortgage shall accept  
18 any reasonable form of written confirmation from a  
19 borrower of existing insurance coverage, which shall  
20 include the existing insurance policy number along  
21 with the identity of, and contact information for, the  
22 insurance company or agent.

23 “(3) TERMINATION OF FORCE-PLACED INSUR-  
24 ANCE.—Within 15 days of the receipt by a servicer

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1 of confirmation of a borrower’s existing insurance  
2 coverage, the servicer shall—

3 “(A) terminate the force-placed insurance;  
4 and

5 “(B) refund to the consumer all force-  
6 placed insurance premiums paid by the bor-  
7 rower during any period during which the bor-  
8 rower’s insurance coverage and the force-placed  
9 insurance coverage were each in effect, and any  
10 related fees charged to the consumer’s account  
11 with respect to the force-placed insurance dur-  
12 ing such period.

13 “(4) CLARIFICATION WITH RESPECT TO FLOOD  
14 DISASTER PROTECTION ACT.—No provision of this  
15 section shall be construed as prohibiting a servicer  
16 from providing simultaneous or concurrent notice of  
17 a lack of flood insurance pursuant to section 102(e)  
18 of the Flood Disaster Protection Act of 1973.

19 “(m) LIMITATIONS ON FORCE-PLACED INSURANCE  
20 CHARGES.—All charges for force-placed insurance pre-  
21 miums shall be bona fide and reasonable in amount.”.

22 (b) INCREASE IN PENALTY AMOUNTS.—Section 6(f)  
23 of the Real Estate Settlement Procedures Act of 1974 (12  
24 U.S.C. 2605(f)) is amended—

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1 (1) in paragraphs (1)(B) and (2)(B), by strik-  
2 ing “\$1,000” each place such term appears and in-  
3 serting “\$2,000”; and

4 (2) in paragraph (2)(B)(i), by striking  
5 “\$500,000” and inserting “\$1,000,000”.

6 (c) DECREASE IN RESPONSE TIMES.—Section 6(e) of  
7 the Real Estate Settlement Procedures Act of 1974 (12  
8 U.S.C. 2605(e)) is amended—

9 (1) in paragraph (1)(A), by striking “20 days”  
10 and inserting “5 days”;

11 (2) in paragraph (2), by striking “60 days” and  
12 inserting “30 days”; and

13 (3) by adding at the end the following new  
14 paragraph:

15 “(4) LIMITED EXTENSION OF RESPONSE  
16 TIME.—The 30-day period described in paragraph  
17 (2) may be extended for not more than 15 days if,  
18 before the end of such 30-day period, the servicer  
19 notifies the borrower of the extension and the rea-  
20 sons for the delay in responding.”.

21 (d) PROMPT REFUND OF ESCROW ACCOUNTS UPON  
22 PAYOFF.—Section 6(g) of the Real Estate Settlement  
23 Procedures Act of 1974 (12 U.S.C. 2605(g)) is amended  
24 by adding at the end the following new sentence: “Any  
25 balance in any such account that is within the servicer’s

1 control at the time the loan is paid off shall be promptly  
2 returned to the borrower within 20 business days or cred-  
3 ited to a similar account for a new mortgage loan to the  
4 borrower with the same lender.”.

5 **SEC. 1464. TRUTH IN LENDING ACT AMENDMENTS.**

6 (a) **REQUIREMENTS FOR PROMPT CREDITING OF**  
7 **HOME LOAN PAYMENTS.**—Chapter 2 of the Truth in  
8 Lending Act (15 U.S.C. 1631 et seq.) is amended by in-  
9 serting after section 129E (as added by section 1462) the  
10 following new section:

11 **“SEC. 129F. REQUIREMENTS FOR PROMPT CREDITING OF**  
12 **HOME LOAN PAYMENTS.**

13 “(a) **IN GENERAL.**—In connection with a consumer  
14 credit transaction secured by a consumer’s principal dwell-  
15 ing, no servicer shall fail to credit a payment to the con-  
16 sumer’s loan account as of the date of receipt, except when  
17 a delay in crediting does not result in any charge to the  
18 consumer or in the reporting of negative information to  
19 a consumer reporting agency, except as required in sub-  
20 section (b).

21 “(b) **EXCEPTION.**—If a servicer specifies in writing  
22 requirements for the consumer to follow in making pay-  
23 ments, but accepts a payment that does not conform to  
24 the requirements, the servicer shall credit the payment as  
25 of 5 days after receipt.”.

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1 (b) REQUESTS FOR PAYOFF AMOUNTS.—Chapter 2  
2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.),  
3 as amended by this title, is amended by inserting after  
4 section 129F (as added by subsection (a)) the following  
5 new section:

6 **“SEC. 129G. REQUESTS FOR PAYOFF AMOUNTS OF HOME**  
7 **LOAN.**

8 “A creditor or servicer of a home loan shall send an  
9 accurate payoff balance within a reasonable time, but in  
10 no case more than 7 business days, after the receipt of  
11 a written request for such balance from or on behalf of  
12 the borrower.”.

13 **SEC. 1465. ESCROWS INCLUDED IN REPAYMENT ANALYSIS.**

14 Section 128(b) of the Truth in Lending Act (15  
15 U.S.C. 1638(b)) is amended by adding at the end the fol-  
16 lowing new paragraph:

17 “(4) REPAYMENT ANALYSIS REQUIRED TO IN-  
18 CLUDE ESCROW PAYMENTS.—

19 “(A) IN GENERAL.—In the case of any  
20 consumer credit transaction secured by a first  
21 mortgage or lien on the principal dwelling of  
22 the consumer, other than a consumer credit  
23 transaction under an open end credit plan or a  
24 reverse mortgage, for which an impound, trust,  
25 or other type of account has been or will be es-



## 1913

1           tablished in connection with the transaction for  
2           the payment of property taxes, hazard and flood  
3           (if any) insurance premiums, or other periodic  
4           payments or premiums with respect to the  
5           property, the information required to be pro-  
6           vided under subsection (a) with respect to the  
7           number, amount, and due dates or period of  
8           payments scheduled to repay the total of pay-  
9           ments shall take into account the amount of  
10          any monthly payment to such account for each  
11          such repayment in accordance with section  
12          10(a)(2) of the Real Estate Settlement Proce-  
13          dures Act of 1974.

14                 “(B) ASSESSMENT VALUE.—The amount  
15                 taken into account under subparagraph (A) for  
16                 the payment of property taxes, hazard and flood  
17                 (if any) insurance premiums, or other periodic  
18                 payments or premiums with respect to the  
19                 property shall reflect the taxable assessed value  
20                 of the real property securing the transaction  
21                 after the consummation of the transaction, in-  
22                 cluding the value of any improvements on the  
23                 property or to be constructed on the property  
24                 (whether or not such construction will be fi-  
25                 nanced from the proceeds of the transaction), if

1 known, and the replacement costs of the prop-  
2 erty for hazard insurance, in the initial year  
3 after the transaction.”.

## 4 **Subtitle F—Appraisal Activities**

### 5 **SEC. 1471. PROPERTY APPRAISAL REQUIREMENTS.**

6 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-  
7 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting  
8 after 129G (as added by section 1464(b)) the following  
9 new section:

#### 10 **“SEC. 129H PROPERTY APPRAISAL REQUIREMENTS.**

11 “(a) IN GENERAL.—A creditor may not extend credit  
12 in the form of a subprime mortgage to any consumer with-  
13 out first obtaining a written appraisal of the property to  
14 be mortgaged prepared in accordance with the require-  
15 ments of this section.

16 “(b) APPRAISAL REQUIREMENTS.—

17 “(1) PHYSICAL PROPERTY VISIT.—An appraisal  
18 of property to be secured by a subprime mortgage  
19 does not meet the requirement of this section unless  
20 it is performed by a qualified appraiser who con-  
21 ducts a physical property visit of the interior of the  
22 mortgaged property.

23 “(2) SECOND APPRAISAL UNDER CERTAIN CIR-  
24 CUMSTANCES.—

## 1915

1           “(A) IN GENERAL.—If the purpose of a  
2           subprime mortgage is to finance the purchase  
3           or acquisition of the mortgaged property from  
4           a person within 180 days of the purchase or ac-  
5           quisition of such property by that person at a  
6           price that was lower than the current sale price  
7           of the property, the creditor shall obtain a sec-  
8           ond appraisal from a different qualified ap-  
9           praiser. The second appraisal shall include an  
10          analysis of the difference in sale prices, changes  
11          in market conditions, and any improvements  
12          made to the property between the date of the  
13          previous sale and the current sale.

14          “(B) NO COST TO APPLICANT.—The cost  
15          of any second appraisal required under sub-  
16          paragraph (A) may not be charged to the appli-  
17          cant.

18          “(3) QUALIFIED APPRAISER DEFINED.—For  
19          purposes of this section, the term ‘qualified ap-  
20          praiser’ means a person who—

21                 “(A) is, at a minimum, certified or licensed  
22                 by the State in which the property to be ap-  
23                 praised is located; and

24                 “(B) performs each appraisal in con-  
25                 formity with the Uniform Standards of Profes-

## 1916

1           sional Appraisal Practice and title XI of the Fi-  
2           nancial Institutions Reform, Recovery, and En-  
3           forcement Act of 1989, and the regulations pre-  
4           scribed under such title, as in effect on the date  
5           of the appraisal.

6           “(c) FREE COPY OF APPRAISAL.—A creditor shall  
7           provide 1 copy of each appraisal conducted in accordance  
8           with this section in connection with a subprime mortgage  
9           to the applicant without charge, and at least 3 days prior  
10          to the transaction closing date.

11          “(d) CONSUMER NOTIFICATION.—At the time of the  
12          initial mortgage application, the applicant shall be pro-  
13          vided with a statement by the creditor that any appraisal  
14          prepared for the mortgage is for the sole use of the cred-  
15          itor, and that the applicant may choose to have a separate  
16          appraisal conducted at their own expense.

17          “(e) VIOLATIONS.—In addition to any other liability  
18          to any person under this title, a creditor found to have  
19          willfully failed to obtain an appraisal as required in this  
20          section shall be liable to the applicant or borrower for the  
21          sum of \$2,000.

22          “(f) SUBPRIME MORTGAGE DEFINED.—For purposes  
23          of this section, the term ‘subprime mortgage’ means a res-  
24          idential mortgage loan, other than a reverse mortgage loan  
25          insured by the Federal Housing Administration, secured

## 1917

1 by a principal dwelling with an annual percentage rate  
2 that exceeds the average prime offer rate for a comparable  
3 transaction, as of the date the interest rate is set—

4           “(1) by 1.5 or more percentage points, in the  
5 case of a first lien residential mortgage loan having  
6 an original principal obligation amount that does not  
7 exceed the amount of the maximum limitation on the  
8 original principal obligation of mortgage in effect for  
9 a residence of the applicable size, as of the date of  
10 such interest rate set, pursuant to the sixth sentence  
11 of section 305(a)(2) the Federal Home Loan Mort-  
12 gage Corporation Act (12 U.S.C. 1454(a)(2));

13           “(2) by 2.5 or more percentage points, in the  
14 case of a first lien residential mortgage loan having  
15 an original principal obligation amount that exceeds  
16 the amount of the maximum limitation on the origi-  
17 nal principal obligation of mortgage in effect for a  
18 residence of the applicable size, as of the date of  
19 such interest rate set, pursuant to the sixth sentence  
20 of section 305(a)(2) the Federal Home Loan Mort-  
21 gage Corporation Act (12 U.S.C. 1454(a)(2)); and

22           “(3) by 3.5 or more percentage points for a  
23 subordinate lien residential mortgage loan.”.

1918

1 **SEC. 1472. UNFAIR AND DECEPTIVE PRACTICES AND ACTS**  
2 **RELATING TO CERTAIN CONSUMER CREDIT**  
3 **TRANSACTIONS.**

4 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-  
5 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting  
6 after section 129D (as added by section 1461(a)) the fol-  
7 lowing new section:

8 **“SEC. 129E. UNFAIR AND DECEPTIVE PRACTICES AND ACTS**  
9 **RELATING TO CERTAIN CONSUMER CREDIT**  
10 **TRANSACTIONS.**

11 “(a) IN GENERAL.—It shall be unlawful, in extending  
12 credit or in providing any services for a consumer credit  
13 transaction secured by the principal dwelling of the con-  
14 sumer, to engage in any unfair or deceptive act or practice  
15 as described in or pursuant to regulations prescribed  
16 under this section.

17 “(b) APPRAISAL INDEPENDENCE.—For purposes of  
18 subsection (a), unfair and deceptive practices shall in-  
19 clude—

20 “(1) any appraisal of a property offered as se-  
21 curity for repayment of the consumer credit trans-  
22 action that is conducted in connection with such  
23 transaction in which a person with an interest in the  
24 underlying transaction compensates, coerces, extorts,  
25 colludes, instructs, induces, bribes, or intimidates a  
26 person, appraisal management company, firm, or

## 1919

1 other entity conducting or involved in an appraisal,  
2 or attempts, to compensate, coerce, extort, collude,  
3 instruct, induce, bribe, or intimidate such a person,  
4 for the purpose of causing the appraised value as-  
5 signed, under the appraisal, to the property to be  
6 based on any factor other than the independent  
7 judgment of the appraiser;

8 “(2) mischaracterizing, or suborning any  
9 mischaracterization of, the appraised value of the  
10 property securing the extension of the credit;

11 “(3) seeking to influence an appraiser or other-  
12 wise to encourage a targeted value in order to facili-  
13 tate the making or pricing of the transaction; and

14 “(4) withholding or threatening to withhold  
15 timely payment for an appraisal report or for ap-  
16 praisal services rendered when the appraisal report  
17 or services are provided for in accordance with the  
18 contract between the parties.

19 “(c) EXCEPTIONS.—The requirements of subsection  
20 (b) shall not be construed as prohibiting a mortgage lend-  
21 er, mortgage broker, mortgage banker, real estate broker,  
22 appraisal management company, employee of an appraisal  
23 management company, consumer, or any other person  
24 with an interest in a real estate transaction from asking  
25 an appraiser to undertake 1 or more of the following:

## 1920

1           “(1) Consider additional, appropriate property  
2 information, including the consideration of addi-  
3 tional comparable properties to make or support an  
4 appraisal.

5           “(2) Provide further detail, substantiation, or  
6 explanation for the appraiser’s value conclusion.

7           “(3) Correct errors in the appraisal report.

8           “(d) PROHIBITIONS ON CONFLICTS OF INTEREST.—  
9 No certified or licensed appraiser conducting, and no ap-  
10 praisal management company procuring or facilitating, an  
11 appraisal in connection with a consumer credit transaction  
12 secured by the principal dwelling of a consumer may have  
13 a direct or indirect interest, financial or otherwise, in the  
14 property or transaction involving the appraisal.

15           “(e) MANDATORY REPORTING.—Any mortgage lend-  
16 er, mortgage broker, mortgage banker, real estate broker,  
17 appraisal management company, employee of an appraisal  
18 management company, or any other person involved in a  
19 real estate transaction involving an appraisal in connection  
20 with a consumer credit transaction secured by the prin-  
21 cipal dwelling of a consumer who has a reasonable basis  
22 to believe an appraiser is failing to comply with the Uni-  
23 form Standards of Professional Appraisal Practice, is vio-  
24 lating applicable laws, or is otherwise engaging in uneth-  
25 ical or unprofessional conduct, shall refer the matter to



## 1921

1 the applicable State appraiser certifying and licensing  
2 agency.

3 “(f) NO EXTENSION OF CREDIT.—In connection with  
4 a consumer credit transaction secured by a consumer’s  
5 principal dwelling, a creditor who knows, at or before loan  
6 consummation, of a violation of the appraisal independ-  
7 ence standards established in subsections (b) or (d) shall  
8 not extend credit based on such appraisal unless the cred-  
9 itor documents that the creditor has acted with reasonable  
10 diligence to determine that the appraisal does not materi-  
11 ally misstate or misrepresent the value of such dwelling.

12 “(g) RULEMAKING PROCEEDINGS.—The Director of  
13 the Bureau of Consumer Financial Protection—

14 “(1) shall, for purposes of this section, pre-  
15 scribe regulations no later than 180 days after the  
16 date of the enactment of this section, and where  
17 such regulations have an effective date of no later  
18 than 1 year after the date of the enactment of this  
19 section, defining with specificity acts or practices  
20 which are unfair or deceptive in the provision of  
21 mortgage lending services for a consumer credit  
22 transaction secured by the principal dwelling of the  
23 consumer or mortgage brokerage services for such a  
24 transaction and defining any terms in this section or  
25 such regulations; and

## 1922

1           “(2) may issue interpretive guidelines and gen-  
2           eral statements of policy with respect to unfair or  
3           deceptive acts or practices in the provision of mort-  
4           gage lending services for a consumer credit trans-  
5           action secured by the principal dwelling of the con-  
6           sumer and mortgage brokerage services for such a  
7           transaction, within the meaning of subsections (a),  
8           (b), (c), (d), (e), and (f).

9           “(h) PENALTIES.—

10           “(1) FIRST VIOLATION.—In addition to the en-  
11           forcement provisions referred to in section 130, each  
12           person who violates this section shall forfeit and pay  
13           a civil penalty of not more than \$10,000 for each  
14           day any such violation continues.

15           “(2) SUBSEQUENT VIOLATIONS.—In the case of  
16           any person on whom a civil penalty has been im-  
17           posed under paragraph (1), paragraph (1) shall be  
18           applied by substituting ‘\$20,000’ for ‘\$10,000’ with  
19           respect to all subsequent violations.

20           “(3) ASSESSMENT.—The agency referred to in  
21           subsection (a) or (c) of section 108 with respect to  
22           any person described in paragraph (1) shall assess  
23           any penalty under this subsection to which such per-  
24           son is subject.”.

## 1923

1 (b) CLERICAL AMENDMENT.—The table of sections  
 2 for chapter 2 of the Truth in Lending Act is amended  
 3 by inserting after the item relating to section 129D (as  
 4 added by section 1461(c)) the following new item:

“129E. Unfair and deceptive practices and acts relating to certain consumer credit transactions.

“129F. Requirements for prompt crediting of home loan payments.

“129G. Requests for payoff amounts of home loan.

“129H. Property appraisal requirements.”.

5 **SEC. 1473. AMENDMENTS RELATING TO APPRAISAL SUB-**  
 6 **COMMITTEE OF FFIEC, APPRAISER INDE-**  
 7 **PENDENCE MONITORING, APPROVED AP-**  
 8 **PRAISER EDUCATION, APPRAISAL MANAGE-**  
 9 **MENT COMPANIES, APPRAISER COMPLAINT**  
 10 **HOTLINE, AUTOMATED VALUATION MODELS,**  
 11 **AND BROKER PRICE OPINIONS.**

12 (a) CONSUMER PROTECTION MISSION.—

13 (1) PURPOSES.—Section 1101 of the Financial  
 14 Institutions Reform, Recovery, and Enforcement Act  
 15 of 1989 (12 U.S.C. 3331) is amended by inserting  
 16 “and to provide the Appraisal Subcommittee with a  
 17 consumer protection mandate” before the period at  
 18 the end.

19 (2) FUNCTIONS OF APPRAISAL SUB-  
 20 COMMITTEE.—Section 1103(a) of the Financial In-  
 21 stitutions Reform, Recovery, and Enforcement Act  
 22 of 1989 (12 U.S.C. 3332(a)) is amended—

## 1924

1 (A) by striking “and” at the end of para-  
2 graph (3); and

3 (B) by amending paragraph (4) to read as  
4 follows:

5 “(4) monitor the efforts of, and requirements  
6 established by, States and the Federal financial in-  
7 stitutions regulatory agencies to protect consumers  
8 from improper appraisal practices and the preda-  
9 tions of unlicensed appraisers in consumer credit  
10 transactions that are secured by a consumer’s prin-  
11 cipal dwelling; and”.

12 (3) THRESHOLD LEVELS.—Section 1112(b) of  
13 the Financial Institutions Reform, Recovery, and  
14 Enforcement Act of 1989 (12 U.S.C. 3341(b)) is  
15 amended by inserting before the period the fol-  
16 lowing: “, and that such threshold level provides rea-  
17 sonable protection for consumers who purchase 1–4  
18 unit single-family residences. In determining whether  
19 a threshold level provides reasonable protection for  
20 consumers, each Federal financial institutions regu-  
21 latory agency shall consult with consumer groups  
22 and convene a public hearing”.

23 (b) ANNUAL REPORT OF APPRAISAL SUB-  
24 COMMITTEE.—Section 1103(a) of the Financial Institu-  
25 tions Reform, Recovery, and Enforcement Act of 1989 (12

## 1925

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—

18           (1) by inserting “in public session after notice  
19 in the Federal Register, but may close certain por-  
20 tions of these meetings related to personnel and re-  
21 view of preliminary State audit reports,” after “shall  
22 meet”; and

23           (2) by adding after the final period the fol-  
24 lowing: “The subject matter discussed in any closed

## 1926

1 or executive session shall be described in the Federal  
2 Register notice of the meeting.”.

3 (d) REGULATIONS.—Section 1106 of the Financial  
4 Institutions Reform, Recovery, and Enforcement Act of  
5 1989 (12 U.S.C. 3335) is amended—

6 (1) by inserting “prescribe regulations after no-  
7 tice and opportunity for comment,” after “hold  
8 hearings”; and

9 (2) at the end by inserting “Any regulations  
10 prescribed by the Appraisal Subcommittee shall (un-  
11 less otherwise provided in this title) be limited to the  
12 following functions: temporary practice, national reg-  
13 istry, information sharing, and enforcement. For  
14 purposes of prescribing regulations, the Appraisal  
15 Subcommittee shall establish an advisory committee  
16 of industry participants, including appraisers, lend-  
17 ers, consumer advocates, real estate agents, and gov-  
18 ernment agencies, and hold meetings as necessary to  
19 support the development of regulations.”.

20 (e) APPRAISALS AND APPRAISAL REVIEWS.—Section  
21 1113 of the Financial Institutions Reform, Recovery, and  
22 Enforcement Act of 1989 (12 U.S.C. 3342) is amended—

23 (1) by striking “In determining” and inserting  
24 “(a) IN GENERAL.—In determining”;

## 1927

1           (2) in subsection (a) (as designated by para-  
2           graph (1)), by inserting before the period the fol-  
3           lowing: “, where a complex 1-to-4 unit single family  
4           residential appraisal means an appraisal for which  
5           the property to be appraised, the form of ownership,  
6           the property characteristics, or the market condi-  
7           tions are atypical”; and

8           (3) by adding at the end the following new sub-  
9           section:

10          “(b) APPRAISALS AND APPRAISAL REVIEWS.—All ap-  
11          praisals performed at a property within a State shall be  
12          prepared by appraisers licensed or certified in the State  
13          where the property is located. All appraisal reviews for  
14          compliance with the Uniform Standards of Professional  
15          Appraisal Practice, including appraisal reviews by a lend-  
16          er, appraisal management company, or other third party  
17          organization, shall be performed by an appraiser who is  
18          duly licensed or certified by a State appraisal board.”.

19          (f) APPRAISAL MANAGEMENT SERVICES.—

20                 (1) SUPERVISION OF THIRD PARTY PROVIDERS  
21                 OF APPRAISAL MANAGEMENT SERVICES.—Section  
22                 1103(a) of the Financial Institutions Reform, Recov-  
23                 ery, and Enforcement Act of 1989 (12 U.S.C.  
24                 3332(a)) (as previously amended by this section) is  
25                 amended—

## 1928

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

3 “(1) monitor the requirements established by  
4 States—

5 “(A) for the certification and licensing of  
6 individuals who are qualified to perform ap-  
7 praisals in connection with federally related  
8 transactions, including a code of professional  
9 responsibility; and

10 “(B) for the registration and supervision  
11 of the operations and activities of an appraisal  
12 management company;”; and

13 (B) by adding at the end the following new  
14 paragraph:

15 “(7) maintain a national registry of appraisal  
16 management companies that either are registered  
17 with and subject to supervision of a State appraiser  
18 certifying and licensing agency or are operating sub-  
19 sidiaries of a Federally regulated financial institu-  
20 tion.”.

21 (2) APPRAISAL MANAGEMENT COMPANY MIN-  
22 IMUM QUALIFICATIONS.—Title XI of the Financial  
23 Institutions Reform, Recovery, and Enforcement Act  
24 of 1989 (12 U.S.C. 3331 et seq.) is amended by



1929

1 adding at the end the following new section (and  
2 amending the table of contents accordingly):

3 **“SEC. 1124. APPRAISAL MANAGEMENT COMPANY MINIMUM**  
4 **QUALIFICATIONS.**

5 “(a) IN GENERAL.—The Appraiser Qualifications  
6 Board of the Appraisal Foundation shall establish min-  
7 imum qualifications to be applied by a State in the reg-  
8 istration of appraisal management companies. Such quali-  
9 fications shall include a requirement that such compa-  
10 nies—

11 “(1) register with and be subject to supervision  
12 by a State appraiser certifying and licensing agency  
13 in each State in which such company operates;

14 “(2) verify that only licensed or certified ap-  
15 praisers are used for federally related transactions;

16 “(3) require that appraisals coordinated by an  
17 appraisal management company comply with the  
18 Uniform Standards of Professional Appraisal Prac-  
19 tice; and

20 “(4) require that appraisals are conducted inde-  
21 pendently and free from inappropriate influence and  
22 coercion pursuant to the appraisal independence  
23 standards established under section 129E of the  
24 Truth in Lending Act.

## 1930

1           “(b) EXCEPTION FOR FEDERALLY REGULATED FI-  
2   NANCIAL INSTITUTIONS.—The requirements of subsection  
3   (a) shall not apply to an appraisal management company  
4   that is a subsidiary owned and controlled by a financial  
5   institution and regulated by a federal financial institution  
6   regulatory agency. In such case, the appropriate federal  
7   financial institutions regulatory agency shall, at a min-  
8   imum, develop regulations affecting the operations of the  
9   appraisal management company to—

10           “(1) verify that only licensed or certified ap-  
11   praisers are used for federally related transactions;

12           “(2) require that appraisals coordinated by an  
13   institution or subsidiary providing appraisal manage-  
14   ment services comply with the Uniform Standards of  
15   Professional Appraisal Practice; and

16           “(3) require that appraisals are conducted inde-  
17   pendently and free from inappropriate influence and  
18   coercion pursuant to the appraisal independence  
19   standards established under section 129E of the  
20   Truth in Lending Act.

21           “(c) REGISTRATION LIMITATIONS.—An appraisal  
22   management company shall not be registered by a State  
23   or included on the national registry if such company, in  
24   whole or in part, directly or indirectly, is owned by any  
25   person who has had an appraiser license or certificate re-

## 1931

1 fused, denied, cancelled, surrendered in lieu of revocation,  
2 or revoked in any State. Additionally, each person that  
3 owns more than 10 percent of an appraisal management  
4 company shall be of good moral character, as determined  
5 by the State appraiser certifying and licensing agency, and  
6 shall submit to a background investigation carried out by  
7 the State appraiser certifying and licensing agency.

8       “(d) REGULATIONS.—The Appraisal Subcommittee  
9 shall promulgate regulations to implement the minimum  
10 qualifications developed by the Appraiser Qualifications  
11 Board under this section, as such qualifications relate to  
12 the State appraiser certifying and licensing agencies. The  
13 Appraisal Subcommittee shall also promulgate regulations  
14 for the reporting of the activities of appraisal management  
15 companies in determining the payment of the annual reg-  
16 istry fee.

17       “(e) EFFECTIVE DATE.—

18               “(1) IN GENERAL.—No appraisal management  
19 company may perform services related to a federally  
20 related transaction in a State after the date that is  
21 36 months after the date of the enactment of this  
22 section unless such company is registered with such  
23 State or subject to oversight by a federal financial  
24 institutions regulatory agency.

## 1932

1           “(2) EXTENSION OF EFFECTIVE DATE.—Sub-  
2       ject to the approval of the Council, the Appraisal  
3       Subcommittee may extend by an additional 12  
4       months the requirements for the registration and su-  
5       pervision of appraisal management companies if it  
6       makes a written finding that a State has made sub-  
7       stantial progress in establishing a State appraisal  
8       management company registration and supervision  
9       system that appears to conform with the provisions  
10      of this title.”.

11           (3) STATE APPRAISER CERTIFYING AND LI-  
12      CENSING AGENCY AUTHORITY.—Section 1117 of the  
13      Financial Institutions Reform, Recovery, and En-  
14      forcement Act of 1989 (12 U.S.C. 3346) is amended  
15      by adding at the end the following: “The duties of  
16      such agency may additionally include the registra-  
17      tion and supervision of appraisal management com-  
18      panies.”.

19           (4) APPRAISAL MANAGEMENT COMPANY DEFINI-  
20      TION.—Section 1121 of the Financial Institutions  
21      Reform, Recovery, and Enforcement Act of 1989  
22      (12 U.S.C. 3350) is amended by adding at the end  
23      the following:

24           “(11) APPRAISAL MANAGEMENT COMPANY.—  
25      The term ‘appraisal management company’ means,

## 1933

1 in connection with valuing properties collateralizing  
2 mortgage loans or mortgages incorporated into a  
3 securitization, any external third party authorized ei-  
4 ther by a creditor of a consumer credit transaction  
5 secured by a consumer's principal dwelling or by an  
6 underwriter of or other principal in the secondary  
7 mortgage markets, that oversees a network or panel  
8 of more than 15 certified or licensed appraisers in  
9 a State or 25 or more nationally within a given  
10 year—

11 “(A) to recruit, select, and retain apprais-  
12 ers;

13 “(B) to contract with licensed and certified  
14 appraisers to perform appraisal assignments;

15 “(C) to manage the process of having an  
16 appraisal performed, including providing admin-  
17 istrative duties such as receiving appraisal or-  
18 ders and appraisal reports, submitting com-  
19 pleted appraisal reports to creditors and under-  
20 writers, collecting fees from creditors and un-  
21 derwriters for services provided, and reimburs-  
22 ing appraisers for services performed; or

23 “(D) to review and verify the work of ap-  
24 praisers.”.

## 1934

1 (g) STATE AGENCY REPORTING REQUIREMENT.—  
2 Section 1109(a) of the Financial Institutions Reform, Re-  
3 covery, and Enforcement Act of 1989 (12 U.S.C. 3338(a))  
4 is amended—

5 (1) by striking “and” after the semicolon in  
6 paragraph (1);

7 (2) by redesignating paragraph (2) as para-  
8 graph (4); and

9 (3) by inserting after paragraph (1) the fol-  
10 lowing new paragraphs:

11 “(2) transmit reports on sanctions, disciplinary  
12 actions, license and certification revocations, and li-  
13 cense and certification suspensions on a timely basis  
14 to the national registry of the Appraisal Sub-  
15 committee;

16 “(3) transmit reports on a timely basis of su-  
17 pervisory activities involving appraisal management  
18 companies or other third-party providers of apprais-  
19 als and appraisal management services, including in-  
20 vestigations initiated and disciplinary actions taken;  
21 and”.

22 (h) REGISTRY FEES MODIFIED.—

23 (1) IN GENERAL.—Section 1109(a) of the Fi-  
24 nancial Institutions Reform, Recovery, and Enforce-

## 1935

1       ment Act of 1989 (12 U.S.C. 3338(a)) is amend-  
2       ed—

3               (A) by amending paragraph (4) (as modi-  
4       fied by section 1473(g)) to read as follows:

5       “(4) collect—

6               “(A) from such individuals who perform or  
7       seek to perform appraisals in federally related  
8       transactions, an annual registry fee of not more  
9       than \$40, such fees to be transmitted by the  
10      State agencies to the Council on an annual  
11      basis; and

12              “(B) from an appraisal management com-  
13      pany that either has registered with a State ap-  
14      praiser certifying and licensing agency in ac-  
15      cordance with this title or operates as a sub-  
16      sidiary of a federally regulated financial institu-  
17      tion, an annual registry fee of—

18              “(i) in the case of such a company  
19      that has been in existence for more than a  
20      year, \$25 multiplied by the number of ap-  
21      praisers working for or contracting with  
22      such company in such State during the  
23      previous year, but where such \$25 amount  
24      may be adjusted, up to a maximum of \$50,  
25      at the discretion of the Appraisal Sub-

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1 committee, if necessary to carry out the  
2 Subcommittee's functions under this title;  
3 and

4 “(ii) in the case of such a company  
5 that has not been in existence for more  
6 than a year, \$25 multiplied by an appro-  
7 priate number to be determined by the Ap-  
8 praisal Subcommittee, and where such  
9 number will be used for determining the  
10 fee of all such companies that were not in  
11 existence for more than a year, but where  
12 such \$25 amount may be adjusted, up to  
13 a maximum of \$50, at the discretion of the  
14 Appraisal Subcommittee, if necessary to  
15 carry out the Subcommittee's functions  
16 under this title.”; and

17 (B) by amending the matter following  
18 paragraph (4), as redesignated, to read as fol-  
19 lows:

20 “Subject to the approval of the Council, the Appraisal  
21 Subcommittee may adjust the dollar amount of registry  
22 fees under paragraph (4)(A), up to a maximum of \$80  
23 per annum, as necessary to carry out its functions under  
24 this title. The Appraisal Subcommittee shall consider at  
25 least once every 5 years whether to adjust the dollar



## 1937

1 amount of the registry fees to account for inflation. In  
2 implementing any change in registry fees, the Appraisal  
3 Subcommittee shall provide flexibility to the States for  
4 multi-year certifications and licenses already in place, as  
5 well as a transition period to implement the changes in  
6 registry fees. In establishing the amount of the annual  
7 registry fee for an appraisal management company, the  
8 Appraisal Subcommittee shall have the discretion to im-  
9 pose a minimum annual registry fee for an appraisal man-  
10 agement company to protect against the under reporting  
11 of the number of appraisers working for or contracted by  
12 the appraisal management company.”.

13           (2) INCREMENTAL REVENUES.—Incremental  
14 revenues collected pursuant to the increases required  
15 by this subsection shall be placed in a separate ac-  
16 count at the United States Treasury, entitled the  
17 “Appraisal Subcommittee Account”.

18           (i) GRANTS AND REPORTS.—Section 1109(b) of the  
19 Financial Institutions Reform, Recovery, and Enforce-  
20 ment Act of 1989 (12 U.S.C. 3348(b)) is amended—

21           (1) by striking “and” after the semicolon in  
22 paragraph (3);

23           (2) by striking the period at the end of para-  
24 graph (4) and inserting a semicolon;

1938

1           (3) by adding at the end the following new  
2 paragraphs:

3           “(5) to make grants to State appraiser certi-  
4 fying and licensing agencies, in accordance with poli-  
5 cies to be developed by the Appraisal Subcommittee,  
6 to support the efforts of such agencies to comply  
7 with this title, including—

8           “(A) the complaint process, complaint in-  
9 vestigations, and appraiser enforcement activi-  
10 ties of such agencies; and

11           “(B) the submission of data on State li-  
12 censed and certified appraisers and appraisal  
13 management companies to the National ap-  
14 praisal registry, including information affirming  
15 that the appraiser or appraisal management  
16 company meets the required qualification cri-  
17 teria and formal and informal disciplinary ac-  
18 tions; and

19           “(6) to report to all State appraiser certifying  
20 and licensing agencies when a license or certification  
21 is surrendered, revoked, or suspended.”.

22 Obligations authorized under this subsection may not ex-  
23 ceed 75 percent of the fiscal year total of incremental in-  
24 crease in fees collected and deposited in the “Appraisal  
25 Subcommittee Account” pursuant to subsection (h).

## 1939

1 (j) CRITERIA.—Section 1116 of the Financial Institu-  
2 tions Reform, Recovery, and Enforcement Act of 1989 (12  
3 U.S.C. 3345) is amended—

4 (1) in subsection (c), by inserting “whose cri-  
5 teria for the licensing of a real estate appraiser cur-  
6 rently meet or exceed the minimum criteria issued  
7 by the Appraisal Qualifications Board of The Ap-  
8 praisal Foundation for the licensing of real estate  
9 appraisers” before the period at the end; and

10 (2) by striking subsection (e) and inserting the  
11 following new subsection:

12 “(e) MINIMUM QUALIFICATION REQUIREMENTS.—  
13 Any requirements established for individuals in the posi-  
14 tion of ‘Trainee Appraiser’ and ‘Supervisory Appraiser’  
15 shall meet or exceed the minimum qualification require-  
16 ments of the Appraiser Qualifications Board of The Ap-  
17 praisal Foundation. The Appraisal Subcommittee shall  
18 have the authority to enforce these requirements.”.

19 (k) MONITORING OF STATE APPRAISER CERTIFYING  
20 AND LICENSING AGENCIES.—Section 1118 of the Finan-  
21 cial Institutions Reform, Recovery, and Enforcement Act  
22 of 1989 (12 U.S.C. 3347) is amended—

23 (1) by amending subsection (a) to read as fol-  
24 lows:

## 1940

1           “(a) IN GENERAL.—The Appraisal Subcommittee  
2 shall monitor each State appraiser certifying and licensing  
3 agency for the purposes of determining whether such  
4 agency—

5                   “(1) has policies, practices, funding, staffing,  
6 and procedures that are consistent with this title;

7                   “(2) processes complaints and completes inves-  
8 tigations in a reasonable time period;

9                   “(3) appropriately disciplines sanctioned ap-  
10 praisers and appraisal management companies;

11                   “(4) maintains an effective regulatory program;  
12 and

13                   “(5) reports complaints and disciplinary actions  
14 on a timely basis to the national registries on ap-  
15 praisers and appraisal management companies main-  
16 tained by the Appraisal Subcommittee.

17 The Appraisal Subcommittee shall have the authority to  
18 remove a State licensed or certified appraiser or a reg-  
19 istered appraisal management company from a national  
20 registry on an interim basis, not to exceed 90 days, pend-  
21 ing State agency action on licensing, certification, reg-  
22 istration, and disciplinary proceedings. The Appraisal  
23 Subcommittee and all agencies, instrumentalities, and  
24 Federally recognized entities under this title shall not rec-  
25 ognize appraiser certifications and licenses from States

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1 whose appraisal policies, practices, funding, staffing, or  
2 procedures are found to be inconsistent with this title. The  
3 Appraisal Subcommittee shall have the authority to im-  
4 pose sanctions, as described in this section, against a State  
5 agency that fails to have an effective appraiser regulatory  
6 program. In determining whether such a program is effec-  
7 tive, the Appraisal Subcommittee shall include an analyses  
8 of the licensing and certification of appraisers, the reg-  
9 istration of appraisal management companies, the  
10 issuance of temporary licenses and certifications for ap-  
11 praisers, the receiving and tracking of submitted com-  
12 plaints against appraisers and appraisal management  
13 companies, the investigation of complaints, and enforce-  
14 ment actions against appraisers and appraisal manage-  
15 ment companies. The Appraisal Subcommittee shall have  
16 the authority to impose interim actions and suspensions  
17 against a State agency as an alternative to, or in advance  
18 of, the derecognition of a State agency.”.

19           (2) in subsection (b)(2), by inserting after “au-  
20           thority” the following: “or sufficient funding”.

21           (1) RECIPROCIITY.—Subsection (b) of section 1122 of  
22 the Financial Institutions Reform, Recovery, and Enforce-  
23 ment Act of 1989 (12 U.S.C. 3351(b)) is amended to read  
24 as follows:

## 1942

1           “(b) RECIPROCITY.—A State appraiser certifying or  
2 licensing agency shall issue a reciprocal certification or li-  
3 cense for an individual from another State when—

4           “(1) the appraiser licensing and certification  
5 program of such other State is in compliance with  
6 the provisions of this title; and

7           “(2) the appraiser holds a valid certification  
8 from a State whose requirements for certification or  
9 licensing meet or exceed the licensure standards es-  
10 tablished by the State where an individual seeks ap-  
11 praisal licensure.”.

12           (m) CONSIDERATION OF PROFESSIONAL APPRAISAL  
13 DESIGNATIONS.—Section 1122(d) of the Financial Insti-  
14 tutions Reform, Recovery, and Enforcement Act of 1989  
15 (12 U.S.C. 3351(d)) is amended by striking “shall not ex-  
16 clude” and all that follows through the end of the sub-  
17 section and inserting the following: “may include edu-  
18 cation achieved, experience, sample appraisals, and ref-  
19 erences from prior clients. Membership in a nationally rec-  
20 ognized professional appraisal organization may be a cri-  
21 teria considered, though lack of membership therein shall  
22 not be the sole bar against consideration for an assign-  
23 ment under these criteria.”.

24           (n) APPRAISER INDEPENDENCE.—Section 1122 of  
25 the Financial Institutions Reform, Recovery, and Enforce-

## 1943

1 ment Act of 1989 (12 U.S.C. 3351) is amended by adding  
2 at the end the following new subsection:

3       “(g) APPRAISER INDEPENDENCE MONITORING.—  
4 The Appraisal Subcommittee shall monitor each State ap-  
5 praiser certifying and licensing agency for the purpose of  
6 determining whether such agency’s policies, practices, and  
7 procedures are consistent with the purposes of maintain-  
8 ing appraiser independence and whether such State has  
9 adopted and maintains effective laws, regulations, and  
10 policies aimed at maintaining appraiser independence.”.

11       (o) APPRAISER EDUCATION.—Section 1122 of the  
12 Financial Institutions Reform, Recovery, and Enforce-  
13 ment Act of 1989 (12 U.S.C. 3351) is amended by insert-  
14 ing after subsection (g) (as added by subsection (l) of this  
15 section) the following new subsection:

16       “(h) APPROVED EDUCATION.—The Appraisal Sub-  
17 committee shall encourage the States to accept courses ap-  
18 proved by the Appraiser Qualification Board’s Course Ap-  
19 proval Program.”.

20       (p) APPRAISAL COMPLAINT HOTLINE.—Section 1122  
21 of the Financial Institutions Reform, Recovery, and En-  
22 forcement Act of 1989 (12 U.S.C. 3351), as amended by  
23 this section, is amended by adding at the end the following  
24 new subsection:

1           “(i) APPRAISAL COMPLAINT NATIONAL HOTLINE.—  
2 If, 6 months after the date of the enactment of this sub-  
3 section, the Appraisal Subcommittee determines that no  
4 national hotline exists to receive complaints of non-compli-  
5 ance with appraisal independence standards and Uniform  
6 Standards of Professional Appraisal Practice, including  
7 complaints from appraisers, individuals, or other entities  
8 concerning the improper influencing or attempted im-  
9 proper influencing of appraisers or the appraisal process,  
10 the Appraisal Subcommittee shall establish and operate  
11 such a national hotline, which shall include a toll-free tele-  
12 phone number and an email address. If the Appraisal Sub-  
13 committee operates such a national hotline, the Appraisal  
14 Subcommittee shall refer complaints for further action to  
15 appropriate governmental bodies, including a State ap-  
16 praiser certifying and licensing agency, a financial institu-  
17 tion regulator, or other appropriate legal authorities. For  
18 complaints referred to State appraiser certifying and li-  
19 censing agencies or to Federal regulators, the Appraisal  
20 Subcommittee shall have the authority to follow up such  
21 complaint referrals in order to determine the status of the  
22 resolution of the complaint.”.

23           (q) AUTOMATED VALUATION MODELS.—Title XI of  
24 the Financial Institutions Reform, Recovery, and Enforce-  
25 ment Act of 1989 (12 U.S.C. 3331 et seq.), as amended



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1 by this section, is amended by adding at the end the fol-  
2 lowing new section (and amending the table of contents  
3 accordingly):

4 **“SEC. 1125. AUTOMATED VALUATION MODELS USED TO**  
5 **VALUE CERTAIN MORTGAGES.**

6 “(a) IN GENERAL.—Automated valuation models  
7 shall adhere to quality control standards designed to—

8 “(1) ensure a high level of confidence in the es-  
9 timates produced by automated valuation models;

10 “(2) protect against the manipulation of data;

11 “(3) seek to avoid conflicts of interest; and

12 “(4) require random sample testing and re-  
13 views, where such testing and reviews are performed  
14 by an appraiser who is licensed or certified in the  
15 State where the testing and reviews take place.

16 “(b) ADOPTION OF REGULATIONS.—The Appraisal  
17 Subcommittee and its member agencies, in consultation  
18 with the Appraisal Standards Board of the Appraisal  
19 Foundation and other interested parties, shall promulgate  
20 regulations to implement the quality control standards re-  
21 quired under this section.

22 “(c) ENFORCEMENT.—Compliance with regulations  
23 issued under this subsection shall be enforced by—

24 “(1) with respect to a financial institution, or  
25 subsidiary owned and controlled by a financial insti-

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1       tution and regulated by a Federal financial institu-  
2       tion regulatory agency, the Federal financial institu-  
3       tion regulatory agency that acts as the primary Fed-  
4       eral supervisor of such financial institution or sub-  
5       sidiary; and

6               “(2) with respect to other persons, the Ap-  
7       praisal Subcommittee.

8       “(d) AUTOMATED VALUATION MODEL DEFINED.—  
9       For purposes of this section, the term ‘automated valu-  
10      ation model’ means any computerized model used by mort-  
11      gage originators and secondary market issuers to deter-  
12      mine the collateral worth of a mortgage secured by a con-  
13      sumer’s principal dwelling.”.

14       (r) BROKER PRICE OPINIONS.—Title XI of the Fi-  
15      nancial Institutions Reform, Recovery, and Enforcement  
16      Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this  
17      section, is amended by adding at the end the following  
18      new section (and amending the table of contents accord-  
19      ingly):

20      **“SEC. 1126. BROKER PRICE OPINIONS.**

21       “(a) GENERAL PROHIBITION.—In conjunction with  
22      the purchase of a consumer’s principal dwelling, broker  
23      price opinions may not be used as the primary basis to  
24      determine the value of a piece of property for the purpose

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1 of a loan origination of a residential mortgage loan se-  
2 cured by such piece of property.

3 “(b) BROKER PRICE OPINION DEFINED.—For pur-  
4 poses of this section, the term ‘broker price opinion’ means  
5 an estimate prepared by a real estate broker, agent, or  
6 sales person that details the probable selling price of a  
7 particular piece of real estate property and provides a  
8 varying level of detail about the property’s condition, mar-  
9 ket, and neighborhood, and information on comparable  
10 sales, but does not include an automated valuation model,  
11 as defined in section 1125(c).”.

12 (s) AMENDMENTS TO APPRAISAL SUBCOMMITTEE.—  
13 Section 1011 of the Federal Financial Institutions Exam-  
14 ination Council Act of 1978 (12 U.S.C. 3310) is amend-  
15 ed—

16 (1) in the first sentence, by adding before the  
17 period the following: “and the Federal Housing Fi-  
18 nance Agency”; and

19 (2) by inserting at the end the following: “At  
20 all times at least one member of the Appraisal Sub-  
21 committee shall have demonstrated knowledge and  
22 competence through licensure, certification, or pro-  
23 fessional designation within the appraisal profes-  
24 sion.”.

25 (t) TECHNICAL CORRECTIONS.—

1948

1           (1) Section 1119(a)(2) of the Financial Institu-  
2           tions Reform, Recovery, and Enforcement Act of  
3           1989 (12 U.S.C. 3348(a)(2)) is amended by striking  
4           “council,” and inserting “Council,”.

5           (2) Section 1121(6) of the Financial Institu-  
6           tions Reform, Recovery, and Enforcement Act of  
7           1989 (12 U.S.C. 3350(6)) is amended by striking  
8           “Corporations,” and inserting “Corporation,”.

9           (3) Section 1121(8) of the Financial Institu-  
10          tions Reform, Recovery, and Enforcement Act of  
11          1989 (12 U.S.C. 3350(8)) is amended by striking  
12          “council” and inserting “Council”.

13          (4) Section 1122 of the Financial Institutions  
14          Reform, Recovery, and Enforcement Act of 1989  
15          (12 U.S.C. 3351) is amended—

16                (A) in subsection (a)(1) by moving the left  
17                margin of subparagraphs (A), (B), and (C) 2  
18                ems to the right; and

19                (B) in subsection (c)—

20                    (i) by striking “Federal Financial In-  
21                    stitutions Examination Council” and in-  
22                    serting “Financial Institutions Examina-  
23                    tion Council”; and

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1 (ii) by striking “the council’s func-  
2 tions” and inserting “the Council’s func-  
3 tions”.

4 **SEC. 1474. STUDY REQUIRED ON IMPROVEMENTS IN AP-  
5 PRAISAL PROCESS AND COMPLIANCE PRO-  
6 GRAMS.**

7 (a) STUDY.—The Comptroller General shall conduct  
8 a comprehensive study on possible improvements in the  
9 appraisal process generally, and specifically on the consist-  
10 ency in and the effectiveness of, and possible improve-  
11 ments in, State compliance efforts and programs in ac-  
12 cordance with title XI of the Financial Institutions Re-  
13 form, Recovery, and Enforcement Act of 1989. In addi-  
14 tion, this study shall examine the existing exemptions to  
15 the use of certified appraisers issued by Federal financial  
16 institutions regulatory agencies. The study shall also re-  
17 view the threshold level established by Federal regulators  
18 for compliance under title XI and whether there is a need  
19 to revise them to reflect the addition of consumer protec-  
20 tion to the purposes and functions of the Appraisal Sub-  
21 committee. The study shall additionally examine the qual-  
22 ity of different types of mortgage collateral valuations pro-  
23 duced by broker price opinions, automated valuation mod-  
24 els, licensed appraisals, and certified appraisals, among  
25 others, and the quality of appraisals provided through dif-

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1 ferent distribution channels, including appraisal manage-  
2 ment companies, independent appraisal operations within  
3 a mortgage originator, and fee-for-service appraisals. The  
4 study shall also include an analysis and statistical break-  
5 down of enforcement actions taken during the last 10  
6 years against different types of appraisers, including cer-  
7 tified, licensed, supervisory, and trainee appraisers. Fur-  
8 thermore, the study shall examine the benefits and costs,  
9 as well as the advantages and disadvantages, of estab-  
10 lishing a national repository to collect data related to real  
11 estate property collateral valuations performed in the  
12 United States.

13 (b) REPORT.—Before the end of the 18-month period  
14 beginning on the date of the enactment of this Act, the  
15 Comptroller General shall submit a report on the study  
16 under subsection (a) to the Committee on Financial Serv-  
17 ices of the House of Representatives and the Committee  
18 on Banking, Housing, and Urban Affairs of the Senate,  
19 together with such recommendations for administrative or  
20 legislative action, at the Federal or State level, as the  
21 Comptroller General may determine to be appropriate.

22 (c) ADDITIONAL STUDY REQUIRED.—The Comp-  
23 troller General shall conduct an additional study to deter-  
24 mine the effects that the changes to the seller-guide ap-  
25 praisal requirements of Fannie Mae and Freddie Mac con-

1 tained in the Home Valuation Code of Conduct have on  
2 small business, like mortgage brokers and independent ap-  
3 praisers, and consumers, including the effect on the—

4 (1) quality and costs of appraisals;

5 (2) length of time for obtaining appraisals;

6 (3) impact on consumer protection, especially  
7 regarding maintaining appraisal independence, abat-  
8 ing appraisal inflation, and mitigating acts of ap-  
9 praisal fraud;

10 (4) structure of the appraisal industry, espe-  
11 cially regarding appraisal management companies,  
12 fee-for-service appraisers, and the regulation of ap-  
13 praisal management companies by the states; and

14 (5) impact on mortgage brokers and other small  
15 business professionals in the financial services indus-  
16 try.

17 (d) ADDITIONAL REPORT.—Before the end of the 6-  
18 month period beginning on the date of the enactment of  
19 this Act, the Comptroller General shall submit an addi-  
20 tional report to the Committee on Financial Services of  
21 the House of Representatives and the Committee on  
22 Banking, Housing, and Urban Affairs of the Senate con-  
23 taining the findings and conclusions of the Comptroller  
24 General with respect to the study conducted pursuant to  
25 subsection (c). Such additional report shall take into con-

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1 sideration the Small Business Administration's views on  
2 how small businesses are affected by the Home Valuation  
3 Code of Conduct.

4 **SEC. 1475. EQUAL CREDIT OPPORTUNITY ACT AMENDMENT.**

5 Subsection (e) of section 701 of the Equal Credit Op-  
6 portunity Act (15 U.S.C. 1691) is amended to read as  
7 follows:

8 “(e) COPIES FURNISHED TO APPLICANTS.—

9 “(1) IN GENERAL.—Each creditor shall furnish  
10 to an applicant a copy of any and all written ap-  
11 praisals and valuations developed in connection with  
12 the applicant's application for a loan that is secured  
13 or would have been secured by a first lien on a  
14 dwelling promptly upon completion, but in no case  
15 later than 3 days prior to the closing of the loan,  
16 whether the creditor grants or denies the applicant's  
17 request for credit or the application is incomplete or  
18 withdrawn.

19 “(2) WAIVER.—The applicant may waive the 3  
20 day requirement provided for in paragraph (1), ex-  
21 cept where otherwise required in law.

22 “(3) REIMBURSEMENT.—The applicant may be  
23 required to pay a reasonable fee to reimburse the  
24 creditor for the cost of the appraisal, except where  
25 otherwise required in law.



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1           “(4) FREE COPY.—Notwithstanding paragraph  
2           (3), the creditor shall provide a copy of each written  
3           appraisal or valuation at no additional cost to the  
4           applicant.

5           “(5) NOTIFICATION TO APPLICANTS.—At the  
6           time of application, the creditor shall notify an ap-  
7           plicant in writing of the right to receive a copy of  
8           each written appraisal and valuation under this sub-  
9           section.

10           “(6) REGULATIONS.—The Board shall prescribe  
11           regulations to implement this subsection within 1  
12           year of the date of the enactment of this subsection.

13           “(7) VALUATION DEFINED.—For purposes of  
14           this subsection, the term ‘valuation’ shall include  
15           any estimate of the value of a dwelling developed in  
16           connection with a creditor’s decision to provide cred-  
17           it, including those values developed pursuant to a  
18           policy of a government sponsored enterprise or by an  
19           automated valuation model, a broker price opinion,  
20           or other methodology or mechanism.”.

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1 **SEC. 1476. REAL ESTATE SETTLEMENT PROCEDURES ACT**  
2 **OF 1974 AMENDMENT RELATING TO CERTAIN**  
3 **APPRAISAL FEES.**

4 Section 4 of the Real Estate Settlement Procedures  
5 Act of 1974 is amended by adding at the end the following  
6 new subsection:

7 “(c) The standard form described in subsection (a)  
8 shall include, in the case of an appraisal coordinated by  
9 an appraisal management company (as such term is de-  
10 fined in section 1121(11) of the Financial Institutions Re-  
11 form, Recovery, and Enforcement Act of 1989 (12 U.S.C.  
12 3350(11))), a clear disclosure of—

13 “(1) the fee paid directly to the appraiser by  
14 such company; and

15 “(2) the administration fee charged by such  
16 company.”.

17 **Subtitle G—Mortgage Resolution**  
18 **and Modification**

19 **SEC. 1481. MULTIFAMILY MORTGAGE RESOLUTION PRO-**  
20 **GRAM.**

21 (a) ESTABLISHMENT.—The Secretary of Housing  
22 and Urban Development shall develop a program under  
23 this subsection to ensure the protection of current and fu-  
24 ture tenants and at-risk multifamily properties, where fea-  
25 sible, based on criteria that may include—

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1           (1) creating sustainable financing of such prop-  
2           erties, that may take into consideration such factors  
3           as—

4                   (A) the rental income generated by such  
5           properties; and

6                   (B) the preservation of adequate operating  
7           reserves;

8           (2) maintaining the level of Federal, State, and  
9           city subsidies in effect as of the date of the enact-  
10          ment of this Act;

11          (3) providing funds for rehabilitation; and

12          (4) facilitating the transfer of such properties,  
13          when appropriate and with the agreement of owners,  
14          to responsible new owners and ensuring affordability  
15          of such properties.

16          (b) COORDINATION.—The Secretary of Housing and  
17          Urban Development may, in carrying out the program de-  
18          veloped under this section, coordinate with the Secretary  
19          of the Treasury, the Federal Deposit Insurance Corpora-  
20          tion, the Board of Governors of the Federal Reserve Sys-  
21          tem, the Federal Housing Finance Agency, and any other  
22          Federal Government agency that the Secretary considers  
23          appropriate.

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1 (c) DEFINITION.—For purposes of this section, the  
2 term “multifamily properties” means a residential struc-  
3 ture that consists of 5 or more dwelling units.

4 **SEC. 1482. HOME AFFORDABLE MODIFICATION PROGRAM**  
5 **GUIDELINES.**

6 (a) NET PRESENT VALUE INPUT DATA.—The Sec-  
7 retary of the Treasury (in this section referred to as the  
8 “Secretary”) shall revise the supplemental directives and  
9 other guidelines for the Home Affordable Modification  
10 Program of the Making Home Affordable initiative of the  
11 Secretary of the Treasury, authorized under the Emer-  
12 gency Economic Stabilization Act of 2008 (Public Law  
13 110–343), to require each mortgage servicer participating  
14 in such program to provide each borrower under a mort-  
15 gage whose request for a mortgage modification under the  
16 Program is denied with all borrower-related and mort-  
17 gage-related input data used in any net present value  
18 (NPV) analyses performed in connection with the subject  
19 mortgage. Such input data shall be provided to the bor-  
20 rower at the time of such denial.

21 (b) WEB-BASED SITE FOR NPV CALCULATOR AND  
22 APPLICATION.—

23 (1) NPV CALCULATOR.—In carrying out the  
24 Home Affordable Modification Program, the Sec-  
25 retary shall establish and maintain a site on the

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1 World Wide Web that provides a calculator for net  
2 present value analyses of a mortgage, based on the  
3 Secretary's methodology for calculating such value,  
4 that mortgagors can use to enter information re-  
5 garding their own mortgages and that provides a de-  
6 termination after entering such information regard-  
7 ing a mortgage of whether such mortgage would be  
8 accepted or rejected for modification under the Pro-  
9 gram, using such methodology.

10 (2) DISCLOSURE.—Such Web site shall also  
11 prominently disclose that each mortgage servicer  
12 participating in such Program may use a method for  
13 calculating net present value of a mortgage that is  
14 different than the method used by such calculator.

15 (3) APPLICATION.—The Secretary shall make a  
16 reasonable effort to include on such World Wide  
17 Web site a method for homeowners to apply for a  
18 mortgage modification under the Home Affordable  
19 Modification Program.

20 (c) PUBLIC AVAILABILITY OF NPV METHODOLOGY,  
21 COMPUTER MODEL, AND VARIABLES.—The Secretary  
22 shall make publicly available, including by posting on a  
23 World Wide Web site of the Secretary—

24 (1) the Secretary's methodology and computer  
25 model, including all formulae used in such computer

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1 model, used for calculating net present value of a  
2 mortgage that is used by the calculator established  
3 pursuant to subsection (b); and

4 (2) all variables used in such net present value  
5 analysis.

6 **SEC. 1483. PUBLIC AVAILABILITY OF INFORMATION OF**  
7 **MAKING HOME AFFORDABLE PROGRAM.**

8 (a) REVISIONS TO PROGRAM GUIDELINES.—The Sec-  
9 retary of the Treasury (in this section referred to as the  
10 “Secretary”) shall revise the guidelines for the Home Af-  
11 fordable Modification Program of the Making Home Af-  
12 fordable initiative of the Secretary of the Treasury, au-  
13 thorized under the Emergency Economic Stabilization Act  
14 of 2008 (Public Law 110–343), to provide that the data  
15 being collected by the Secretary from each mortgage  
16 servicer and lender participating in the Program is made  
17 public in accordance with subsection (b).

18 (b) PUBLIC AVAILABILITY.—Data shall be made  
19 available according to the following guidelines:

20 (1) Not more than 14 days after each monthly  
21 deadline for submission of data by mortgage  
22 servicers and lenders participating in the Program,  
23 reports shall be made publicly available by means of  
24 a World Wide Web site of the Secretary, and by sub-

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1       mitting a report to the Congress, that shall includes  
2       the following information:

3               (A) The number of requests for mortgage  
4               modifications under the Program that the  
5               servicer or lender has received.

6               (B) The number of requests for mortgage  
7               modifications under the Program that the  
8               servicer or lender has processed.

9               (C) The number of requests for mortgage  
10              modifications under the Program that the  
11              servicer or lender has approved.

12              (D) The number of requests for mortgage  
13              modifications under the Program that the  
14              servicer or lender has denied.

15              (2) Not more than 60 days after each monthly  
16              deadline for submission of data by mortgage  
17              servicers and lenders participating in the Program,  
18              the Secretary shall make data tables available to the  
19              public at the individual record level. The Secretary  
20              shall issue regulations prescribing—

21                      (A) the procedures for disclosing such data  
22                      to the public; and

23                      (B) such deletions as the Secretary may  
24                      determine to be appropriate to protect any pri-  
25                      vacy interest of any mortgage modification ap-

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1           plicant, including the deletion or alteration of  
2           the applicant’s name and identification number.

3 **SEC. 1484. PROTECTING TENANTS AT FORECLOSURE EX-**  
4                                   **TENSION.**

5           Section 704 of the Protecting Tenants at Foreclosure  
6 Act of 2009 (12 U.S.C. 5201 note) is amended by striking  
7 “2012” and inserting “2014”.

8                                   **Subtitle H—Miscellaneous**  
9                                   **Provisions**

10 **SEC. 1491. SENSE OF CONGRESS REGARDING THE IMPOR-**  
11                                   **TANCE OF GOVERNMENT-SPONSORED EN-**  
12                                   **TERPRISES REFORM TO ENHANCE THE PRO-**  
13                                   **TECTION, LIMITATION, AND REGULATION OF**  
14                                   **THE TERMS OF RESIDENTIAL MORTGAGE**  
15                                   **CREDIT.**

16           (a) FINDINGS.—The Congress finds as follows:

17                   (1) The Government-sponsored enterprises,  
18 Federal National Mortgage Association (Fannie  
19 Mae) and the Federal Home Loan Mortgage Cor-  
20 poration (Freddie Mac), were chartered by Congress  
21 to ensure a reliable and affordable supply of mort-  
22 gage funding, but enjoy a dual legal status as pri-  
23 vately owned corporations with Government man-  
24 dated affordable housing goals.



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1           (2) In 1996, the Department of Housing and  
2           Urban Development required that 42 percent of  
3           Fannie Mae’s and Freddie Mac’s mortgage financing  
4           should go to borrowers with income levels below the  
5           median for a given area.

6           (3) In 2004, the Department of Housing and  
7           Urban Development revised those goals, increasing  
8           them to 56 percent of their overall mortgage pur-  
9           chases by 2008, and additionally mandated that 12  
10          percent of all mortgage purchases by Fannie Mae  
11          and Freddie Mac be “special affordable” loans made  
12          to borrowers with incomes less than 60 percent of an  
13          area’s median income, a target that ultimately in-  
14          creased to 28 percent for 2008.

15          (4) To help fulfill those mandated affordable  
16          housing goals, in 1995 the Department of Housing  
17          and Urban Development authorized Fannie Mae and  
18          Freddie Mac to purchase subprime securities that  
19          included loans made to low-income borrowers.

20          (5) After this authorization to purchase  
21          subprime securities, subprime and near-prime loans  
22          increased from 9 percent of securitized mortgages in  
23          2001 to 40 percent in 2006, while the market share  
24          of conventional mortgages dropped from 78.8 per-  
25          cent in 2003 to 50.1 percent by 2007 with a cor-

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1       responding increase in subprime and Alt-A loans  
2       from 10.1 percent to 32.7 percent over the same pe-  
3       riod.

4           (6) In 2004 alone, Fannie Mae and Freddie  
5       Mac purchased \$175,000,000,000 in subprime mort-  
6       gage securities, which accounted for 44 percent of  
7       the market that year, and from 2005 through 2007,  
8       Fannie Mae and Freddie Mac purchased approxi-  
9       mately \$1,000,000,000,000 in subprime and Alt-A  
10      loans, while Fannie Mae's acquisitions of mortgages  
11      with less than 10 percent down payments almost tri-  
12      pled.

13          (7) According to data from the Federal Hous-  
14      ing Finance Agency (FHFA) for the fourth quarter  
15      of 2008, Fannie Mae and Freddie Mac own or guar-  
16      antee 75 percent of all newly originated mortgages,  
17      and Fannie Mae and Freddie Mac currently own  
18      13.3 percent of outstanding mortgage debt in the  
19      United States and have issued mortgage-backed se-  
20      curities for 31.0 percent of the residential debt mar-  
21      ket, a combined total of 44.3 percent of outstanding  
22      mortgage debt in the United States.

23          (8) On September 7, 2008, the FHFA placed  
24      Fannie Mae and Freddie Mac into conservatorship,  
25      with the Treasury Department subsequently agree-

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1       ing to purchase at least \$200,000,000,000 of pre-  
2       ferred stock from each enterprise in exchange for  
3       warrants for the purchase of 79.9 percent of each  
4       enterprise's common stock.

5           (9) The conservatorship for Fannie Mae and  
6       Freddie Mac has potentially exposed taxpayers to  
7       upwards of \$5,300,000,000,000 worth of risk.

8           (10) The hybrid public-private status of Fannie  
9       Mae and Freddie Mac is untenable and must be re-  
10      solved to assure that consumers are offered and re-  
11      ceive residential mortgage loans on terms that rea-  
12      sonably reflect their ability to repay the loans and  
13      that are understandable and not unfair, deceptive, or  
14      abusive.

15       (b) SENSE OF THE CONGRESS.—It is the sense of  
16      the Congress that efforts to enhance by the protection,  
17      limitation, and regulation of the terms of residential mort-  
18      gage credit and the practices related to such credit would  
19      be incomplete without enactment of meaningful structural  
20      reforms of Fannie Mae and Freddie Mac.

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1 **SEC. 1492. GAO STUDY REPORT ON GOVERNMENT EFFORTS**  
2 **TO COMBAT MORTGAGE FORECLOSURE RES-**  
3 **CUE SCAMS AND LOAN MODIFICATION**  
4 **FRAUD.**

5 (a) STUDY.—The Comptroller General of the United  
6 States shall conduct a study of the current inter-agency  
7 efforts of the Secretary of the Treasury, the Secretary of  
8 Housing and Urban Development, the Attorney General,  
9 and the Federal Trade Commission to crackdown on mort-  
10 gage foreclosure rescue scams and loan modification fraud  
11 in order to advise the Congress to the risks and  
12 vulnerabilities of emerging schemes in the loan modifica-  
13 tion arena.

14 (b) REPORT.—

15 (1) IN GENERAL.—The Comptroller General  
16 shall submit a report to the Congress on the study  
17 conducted under subsection (a) containing such rec-  
18 ommendations for legislative and administrative ac-  
19 tions as the Comptroller General may determine to  
20 be appropriate in addition to the recommendations  
21 required under paragraph (2).

22 (2) SPECIFIC TOPICS.—The report made under  
23 paragraph (1) shall include—

24 (A) an evaluation of the effectiveness of  
25 the inter-agency task force current efforts to

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1 combat mortgage foreclosure rescue scams and  
2 loan modification fraud scams;

3 (B) specific recommendations on agency or  
4 legislative action that are essential to properly  
5 protect homeowners from mortgage foreclosure  
6 rescue scams and loan modification fraud  
7 scams; and

8 (C) the adequacy of financial resources  
9 that the Federal Government is allocating to—

10 (i) crackdown on loan modification  
11 and foreclosure rescue scams; and

12 (ii) the education of homeowners  
13 about fraudulent scams relating to loan  
14 modification and foreclosure rescues.

15 **SEC. 1493. REPORTING OF MORTGAGE DATA BY STATE.**

16 (a) IN GENERAL.—Section 104(a) of the Helping  
17 Families Save Their Homes Act of 2009 (division A of  
18 Public Law 111–22) is amended—

19 (1) in paragraph (2), by striking “resulting”  
20 and inserting “in each State that result”;

21 (2) in paragraph (3), by inserting “each State  
22 for” after “modifications in”; and

23 (3) in paragraph (4), by inserting “in each  
24 State” after “total number of loans”.

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1 (b) CONFORMING AMENDMENT.—Section  
2 104(b)(1)(A) of such Act is amended by adding at the end  
3 the following sentence: “Not later than 60 days after the  
4 date of the enactment of the Wall Street Reform and Con-  
5 sumer Protection Act of 2009, the Comptroller of the Cur-  
6 rency and the Director of the Office of Thrift Supervision  
7 shall update such requirements to reflect amendments  
8 made to this section by such Act.”.

9 **SEC. 1494. STUDY OF EFFECT OF DRYWALL PRESENCE ON**  
10 **FORECLOSURES.**

11 (a) STUDY.—The Secretary of Housing and Urban  
12 Development, in consultation with the Secretary of the  
13 Treasury, shall conduct a study of the effect on residential  
14 mortgage loan foreclosures of—

15 (1) the presence in residential structures sub-  
16 ject to such mortgage loans of drywall that was im-  
17 ported from China during the period beginning with  
18 2004 and ending at the end of 2007; and

19 (2) the availability of property insurance for  
20 residential structures in which such drywall is  
21 present.

22 (b) REPORT.—Not later than the expiration of the  
23 120-day period beginning on the date of the enactment  
24 of this Act, the Secretary of Housing and Urban Develop-  
25 ment shall submit to the Congress a report on the study

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1 conducted under subsection (a) containing its findings,  
2 conclusions, and recommendations.

3 **TITLE XV—MISCELLANEOUS**  
4 **PROVISIONS**

5 **SEC. 1501. RESTRICTIONS ON USE OF UNITED STATES**  
6 **FUNDS FOR FOREIGN GOVERNMENTS; PRO-**  
7 **TECTION OF AMERICAN TAXPAYERS.**

8 The Bretton Woods Agreements Act (22 U.S.C. 286  
9 et seq.) is amended by adding at the end the following:

10 **“SEC. 68. RESTRICTIONS ON USE OF UNITED STATES**  
11 **FUNDS FOR FOREIGN GOVERNMENTS; PRO-**  
12 **TECTION OF AMERICAN TAXPAYERS.**

13 “(a) IN GENERAL.—The Secretary of the Treasury  
14 shall instruct the United States Executive Director at the  
15 International Monetary Fund—

16 “(1) to evaluate, prior to consideration by the  
17 Board of Executive Directors of the Fund , any pro-  
18 posal submitted to the Board for the Fund to make  
19 a loan to a country if—

20 “(A) the amount of the public debt of the  
21 country exceeds the gross domestic product of  
22 the country as of the most recent year for  
23 which such information is available; and

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1           “(B) the country is not eligible for assist-  
2           ance from the International Development Asso-  
3           ciation.

4           “(2) OPPOSITION TO LOANS UNLIKELY TO BE  
5           REPAID IN FULL.—If any such evaluation indicates  
6           that the proposed loan is not likely to be repaid in  
7           full, the Secretary of the Treasury shall instruct the  
8           United States Executive Director at the Fund to use  
9           the voice and vote of the United States to oppose the  
10          proposal.

11          “(b) REPORTS TO CONGRESS.—Within 30 days after  
12          the Board of Executive Directors of the Fund approves  
13          a proposal described in subsection (a), and annually there-  
14          after by June 30, for the duration of any program ap-  
15          proved under such proposals, the Secretary of the Treas-  
16          ury shall report in writing to the Committee on Financial  
17          Services of the House of Representatives and the Com-  
18          mittee on Foreign Relations and the Committee on Bank-  
19          ing, Housing, and Urban Affairs of the Senate assessing  
20          the likelihood that loans made pursuant to such proposals  
21          will be repaid in full, including—

22                 “(1) the borrowing country’s current debt sta-  
23                 tus, including, to the extent possible, its maturity  
24                 structure, whether it has fixed or floating rates,  
25                 whether it is indexed, and by whom it is held;



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1           “(2) the borrowing country’s external and inter-  
2           nal vulnerabilities that could potentially affect its  
3           ability to repay; and

4           “(3) the borrowing country’s debt management  
5           strategy.”.

6 **SEC. 1502. CONGO CONFLICT MINERALS.**

7           (a) SENSE OF CONGRESS ON EXPLOITATION AND  
8           TRADE OF COLUMBITE-TANTALITE, CASSITERITE, GOLD,  
9           AND WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUB-  
10          LIC OF CONGO.—It is the sense of Congress that the ex-  
11          ploitation and trade of columbite-tantalite, cassiterite,  
12          gold, and wolframite in the eastern Democratic Republic  
13          of Congo is helping to finance extreme levels of violence  
14          in the eastern Democratic Republic of Congo, particularly  
15          sexual and gender-based violence, and contributing to an  
16          emergency humanitarian situation therein, warranting the  
17          provisions of section 13(o) of the Securities Exchange Act  
18          of 1934, as added by section 1302.

19          (b) DISCLOSURE TO SECURITIES AND EXCHANGE  
20          COMMISSION RELATING TO COLUMBITE-TANTALITE, CAS-  
21          SITERITE, GOLD, AND WOLFRAMITE ORIGINATING IN  
22          DEMOCRATIC REPUBLIC OF CONGO.—Section 13 of the  
23          Securities Exchange Act of 1934 (15 U.S.C. 78m), as  
24          amended by section 763 of this Act, is further amended  
25          by adding at the end the following new subsection:

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1       “(o) DISCLOSURES TO COMMISSION RELATING TO  
2 COLUMBITE-TANTALITE, CASSITERITE, GOLD, AND  
3 WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUBLIC  
4 OF CONGO.—

5           “(1) IN GENERAL.—Not later than 180 days  
6 after the date of the enactment of this subsection,  
7 the Commission shall promulgate rules requiring any  
8 person described in paragraph (2)—

9           “(A) to disclose annually to the Commis-  
10 sion in a report—

11           “(i) whether the columbite-tantalite,  
12 cassiterite, gold, or wolframite that was  
13 necessary as described in paragraph  
14 (2)(A)(ii) in the year for which such report  
15 is submitted originated or may have origi-  
16 nated in the Democratic Republic of Congo  
17 or an adjoining country; and

18           “(ii) a description of the measures  
19 taken by the person, which may include an  
20 independent audit, to exercise due diligence  
21 on the source and chain of custody of such  
22 columbite-tantalite, cassiterite, gold, or  
23 wolframite, or derivatives of such minerals,  
24 in order to ensure that the activities of  
25 such person that involve such minerals or

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1 derivatives did not directly or indirectly fi-  
2 nance or benefit armed groups in the  
3 Democratic Republic of Congo or an ad-  
4 joining country; and

5 “(B) make the information disclosed under  
6 subparagraph (A) available to the public on the  
7 Internet website of the person.

8 “(2) PERSON DESCRIBED.—

9 “(A) IN GENERAL.—A person is described  
10 in this paragraph if—

11 “(i) the person is required to file re-  
12 ports to the Commission under subsection  
13 (a)(2); and

14 “(ii) columbite-tantalite, cassiterite,  
15 gold, or wolframite is necessary to the  
16 functionality or production of a product  
17 manufactured by such person.

18 “(B) DERIVATIVES.—For purposes of this  
19 paragraph, if a derivative of a mineral is nec-  
20 essary to the functionality or production of a  
21 product manufactured by a person, such min-  
22 eral shall also be considered necessary to the  
23 functionality or production of a product manu-  
24 factured by the person.

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1           “(3) REVISIONS AND WAIVERS.—The Commis-  
2           sion shall revise or temporarily waive the require-  
3           ments described in paragraph (1) if the President  
4           determines that such revision or waiver is in the  
5           public interest.

6           “(4) TERMINATION OF DISCLOSURE REQUIRE-  
7           MENTS.—

8           “(A) IN GENERAL.—Except as provided in  
9           subparagraph (B), the requirements of para-  
10          graph (1) shall terminate on the date that is 5  
11          years after the date of the enactment of this  
12          subsection.

13          “(B) EXTENSION BY SECRETARY OF  
14          STATE.—The date described in subparagraph  
15          (A) shall be extended by 1 year for each year  
16          in which the Secretary of State certifies that  
17          armed parties to the ongoing armed conflict in  
18          the Democratic Republic of Congo or adjoining  
19          countries continue to be directly involved and  
20          benefitting from commercial activity involving  
21          columbite-tantalite, cassiterite, gold, or wolf-  
22          ramite.

23          “(5) ADJOINING COUNTRY DEFINED.—In this  
24          subsection, the term ‘adjoining country’, with re-  
25          spect to the Democratic Republic of Congo, means

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1 a country that shares an internationally recognized  
2 border with the Democratic Republic of Congo.”.

3 (c) REPORT.—Not later than 2 years after the date  
4 of the enactment of this Act, the Comptroller General of  
5 the United States shall submit to Congress a report that  
6 includes the following:

7 (1) An assessment of the effectiveness of sec-  
8 tion 13(o) of the Securities Exchange Act of 1934,  
9 as added by section 1302, in promoting peace and  
10 security in the eastern Democratic Republic of  
11 Congo.

12 (2) A description of the problems, if any, en-  
13 countered by the Securities and Exchange Commis-  
14 sion in carrying out the provisions of such section  
15 13(o).

16 (3) A description of the adverse impacts of car-  
17 rying out the provisions of such section 13(o), if  
18 any, on communities in the eastern Democratic Re-  
19 public of Congo.

20 (4) Recommendations for legislative or regu-  
21 latory actions that can be taken—

22 (A) to improve the effectiveness of the pro-  
23 visions of such section 13(o) to promote peace  
24 and security in the eastern Democratic Republic  
25 of Congo;

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- 1 (B) to resolve the problems described pur-
- 2 suant to paragraph (2), if any; and
- 3 (C) to mitigate the adverse impacts de-
- 4 scribed pursuant paragraph (3), if any.